Campaign to Combat Racism: A Report Reviewing Persistence of Racism within the Northern Territory Government and Strategies to Eliminate Racism.

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Disclaimer

Contents

List of Acronyms

ACBF	Aboriginal Community Benefit Fund
ACPP	Aboriginal Child Placement Principle
ADC	Anti-Discrimination Commission (NT)
AEC	Australian Electoral Commission
AHRC	Australian Human Rights Commission
AIHW	Australian Institute of Health and Welfare
AJA	Aboriginal Justice Agreement 2021-2027 (NT)
AJU	Aboriginal Justice Unit, NT Department of Attorney-General & Justice
ALRC	Australian Law Reform Commission
ANAO	Australian National Audit Office
APONT	Aboriginal Peak Organisations of NT
BDR	Banned Drinker Register
CALD	Culturally and Linguistically Diverse
CERD	*Convention on the Elimination of all forms of Racial Discrimination1965*
CLANT	Criminal Lawyers' Association of the Northern Territory
CRC	*Convention on the Rights of the Child 1989*
HREOC	Human Rights and Equal Opportunity Commission
HRLC	Human Rights Law Centre
LDM	Local Decision-Making policy
NAAJA	North Australia Aboriginal Justice Agency
NAPLAN	National Assessment Program – Literacy and Numeracy
NT	Northern Territory
NTDCS	Northern Territory Department of Correctional Services
NTER	Northern Territory Emergency Response
NTG	Northern Territory Government
NTLRC	Northern Territory Law Reform Committee
NTPF	Northern Territory Police Force
OCC	Office of the Children's Commissioner (NT)
RCIADIC	Royal Commission into Aboriginal Deaths in Custody
REC	Remote Engagement and Coordination strategy
SNAICC	Secretariat of National Aboriginal and Islander Child Care
UNDRIP	*United Nations Declaration of the Rights of Indigenous Peoples 2007*

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1.0 Executive Summary

Many of the 339 recommendations of the 1991 Royal Commission into Aboriginal Deaths in Custody (RCIADIC), the most significant report on reducing Aboriginal incarceration rates and combatting systemic racism, have not been, or only partially implemented. The *Partnership Agreement on Closing the Gap 2019-2029*, signed by all Australian governments, the Australian Local Government Association and the Coalition of Aboriginal and Torres Strait Islander Peak Organisations, aims to reduce incarceration and detention of Aboriginal and Torres Strait Islander peoples, with parties committing to systemic change including identifying and eliminating institutional racism, discrimination and unconscious bias. The Northern Territory Government signed the NT Aboriginal Justice Agreement in 2021.

Racism occurs in many forms, including in systems and institutions, and presents barriers to particular peoples in achieving equal outcomes. It is reproduced when dominant white values and ideologies that are exclusionary are taken as normative. Not only is racism morally and legally wrong and physically or mentally damaging to its victims, it leads to a society with higher levels of violence, conflict and anxiety, whilst simultaneously failing to benefit from different perspectives and practices that increase social cohesiveness and collaboration, which also leads to reduced economic costs.

Although interpersonal racism is the most readily recognised form of racism, another form is systemic racism which is those institutional structures and processes that routinely advantage dominant cultural or racial groups, which may be deliberate or may be a result of corporate cultures that normalise the routine operations of that system. Cultural racism is a third form of racism, where real or imagined generalised explanations are used to account for unequal outcomes for 'others'. Internalised racism is a fourth type where an individual accepts attitudes, beliefs, or ideologies about the superiority of other groups and/or the inferiority of their own group, which often leads to substance abuse, poor mental wellbeing and self or lateral violence: core issues in Aboriginal contact with the justice system. These forms are all intertwined but also have intersectional effects with other forms of social differentiation such as gender, age, class, sexuality, education, religion, disability, and/or politics. Fundamentally, racism is a result of power and how it leads to the dominance of some groups and subordination of others.

There is some research reporting the extent of racism in public and work settings, and that many victims experience racism some or all the time, there is a dearth of more specific data related to geography, health etc. Much data is of individual racism incidents, and their underreporting. Systemic racism, however, has an historical legacy in the justice system, ever since the dispossession of Aboriginal and Torres Strait Islanders. Police involvement in hunting parties to support settler expansion, and subsequent child removals, has partly led to the cumulative discrimination that

results in over-representation of Aboriginal people in prison today. The national imprisonment rate has more than tripled from 1985 to 2019; and in 2018 Aboriginal people made up 28% of the adult prison population (despite being only 3% of the national population). Similarly, while only 5% of young people are Aboriginal and Torres Strait Islander people, they represent 59% of young people in detention. Current approaches to offending such as over-policing, hypervigilance, pursuit of minor offences and the excessive use of force in detaining people (criticised by the RCIADIC) are not working.

Instead, solutions such as police discretion to caution rather than arrest, better training police for regional and remote communities, support for officers to stay there, need to be offered. Policing is part of the public service which is a normatively and culturally 'white' institution. Aboriginal Police Liaison Officers and Aboriginal Community Police Officers tend to have lower status and high attrition, so transition arrangements and exit interviews might help with promotion of Aboriginal police, better community relations, and better representation of the NT populace. Also better recognising cultural knowledge and relationships, in partnership with local Law and Justice Groups.

Aboriginal women and girls in the NT are massively over-represented as victims and witnesses of crimes, and increasingly as offenders. Incarceration rates for Aboriginal women and girls are increasing. Overwhelmingly, female violent offenders are themselves victims of chronic domestic and family abuse, requiring significant focus on reducing violence against Aboriginal women and girls through a range of actions that include addressing the legacies and impacts of colonisation (through healing trauma, specific initiatives, access to justice etc), the gendered drivers of violence (through female leadership, challenging gender stereotypes, etc) and alternatives to custody such as long-term rehabilitation and healing by closing women's prisons and replacing them with residential care and training facilities.

The rate of prisoners on remand has also increased in recent years but are denied access to rehabilitation or training programs available to convicted prisoners. Bail provisions have become more punitive without ensuring that Aboriginal youth in particular, understand the conditions of their bail and what constitutes breaches. There is a lack of suitable bail accommodation and bail is harder to obtain for Aboriginal Territorians.

Indigenous jurors on a criminal trial are almost non-existent, meaning most Aboriginal defendants are judged by all-white jurors, as are those responsible for the death of Aboriginal people. Structural problems include the definition of jury districts that excludes many Aboriginal people, the requirement for a formal birth certificate and registration on the electoral roll, pre-emptory challenges, challenges for cause and prosecutorial vetting. Systemic changes could also lead to more Aboriginal foster parents and Commissioners of Oaths and JPs and reduce driving offences.

Most paperless arrests are of Aboriginal people and although these arrests are declining, they are not the last resort option recommended by RCIADIC. Instead, a health-based approach to public drunkenness should be adopted.

Offensive language offences are another area of conflict despite swearing being normalised in most Aboriginal (and non-Aboriginal) communities. Police discretion can have a marked influence on charges laid and ultimately on imprisonment rates.

In some jurisdictions, customary law, and/or inclusion of Indigenous status/background/circumstances, have been taken into consideration when sentencing. Mitigating factors might include ongoing impacts of colonisation, such as racism, loss of language, removal from land, a member of the Stolen Generations and foster care (as per the Gladue principles), community's perspectives, and considering all options other than jail to help them address the challenges they face (e.g. participation in a restorative justice program to help them work with those affected by their offending and repair the harm done) and reliance on local Community Courts and Law and Justice Groups. Mandatory sentencing affects mostly Aboriginal people. There is also an enormous lack of alternatives to custody such as rehabilitative residential care and other diversionary and supervisory programs such as Aboriginal night patrols, community justice groups, healing centres and Community Courts to mitigate offending and provide advice on sentencing options.

Incarceration may offer opportunities for through-care (in partnership with Aboriginal-controlled health services) and other treatments. Parole is rarely applied for and more Aboriginal members on the Parole Board are required. Effective through-care plans that recognise ongoing impacts of colonialism are crucial for ex-prisoners on release including safe transport to community, accommodation and access to services post-release, community-based programs for development and behavioural change, flexible employment that includes life skills and handling cultural and family obligations.

Alcohol-related offending has not diminished despite the many policy changes. Place-based management plans led by local Law and Justice Groups, community health staff and local police can foster better relationships and outcomes for families and non-drinkers.

There are many unsatisfactory practices revealed by coronial inquests into Aboriginal deaths, largely due to systemic failures in duty of care. Deaths in custody and suicides are a key component of coronial inquests and are disproportionately higher for Aboriginal people than for non-Aboriginal Australians. Reasons are constructed as a response to disadvantage or individual factors rather than the collective allegations of dysfunction made towards Aboriginal people.

The fundamental reason for the high rate of Aboriginal deaths in custody is over-representation in custody in the first place. Drug and alcohol abuse, child neglect and abuse, poor school performance and unemployment, and prior offending are symptoms, not causes, of systemic racism in justice, along with welfare, education, health, and other aspects of the state that trigger contact with the justice system.

But the primary obstacle to comprehension, and subsequent action, is the inability of most Australians to understand or acknowledge the fundamental presence of systemic racism, which means we can be doing our jobs as they should be done yet causing harm and unfair treatment to some within our community because of structural bias within normal legal and common-sense structures and processes. Along with culturally and linguistically derived differences in values of moral versus legal authority, justice and punishment can be extremely obtuse for victims, witnesses (and communities) and perpetrators in ways that compound the challenge of reducing rates of offending and recidivism.

There is also over-representation of Aboriginal children in out of home care in current child protection systems. Many of these had experienced family and domestic violence that has ongoing impacts through a lifetime of intrusive government interventions from notification, to finalised investigation, to substantiation of neglect or abuse, to enactment of a child protection order, to placement in out of home care, to enactment of a juvenile justice supervision order, to detention in a juvenile or adult prison. Despite a policy preference for family/kin and foster care; purchased home-based care has not been phased out. Factors linking residential care with contact with the justice system included the care environment itself, use of police as a behavioural management tool, deficient staff training and inadequate policies. Better diversion programs, including with built-in education, training and employment pathways, mentoring, healing and community-controlled are needed.

These are intertwined with other areas of public service, notably health and education and with employment and housing, and service provision (e.g. water and sewerage, waste management, road reserves and electricity supply), particularly to remote communities. Whole-of-government responses need to address systemic racism in their respective departments to critically evaluate those that cause mental health challenges including stress, lack of optimism, lack of control, social connections, cultural identity, and reactions/responses to interpersonal racism. The influence of experiencing racism is the intense feelings of powerlessness and lack of control, which is strongly associated with risk-taking, lack of foresight and often offending behaviours that increase the likelihood of Aboriginal incarceration and negative encounters with the justice system. To date, emphasis and response has pointed to dysfunction of Aboriginal communities rather than the structural causes of such challenges.

Other important discussions of institutional racism concern legislation, funding, and governance, for example, differential treatment of community-controlled services

compared with government departments and the low expectations or lack of preparedness by non-Aboriginal police, teachers, and health professionals particularly in remote areas. Two-way capacity exchange needs to be recognised where genuine decision-making power vests with community organisations in designing rather than taking on models of governance that devolve responsibility without power or resources to succeed.

Due to financial abuses in commercial dealings, there is also need for proper diligence from government authorities and statutory bodies to proactively seek to receive complaints and to vigorously pursue them and compensation for those abused, and to run education campaigns, especially for those whose first language is not English and/or live remotely, about financial literacy and their consumer rights. There also may need to be interpreting services for languages other than English and NT Aboriginal languages for those wishing to complain about NTG services. Complaints processes, however, largely deal with individual rather than systemic racism.

Structural change (not culture change) is the most effective way to eliminate systemic racism. Anti-racism codes of practice and policies are one mechanism when they become institutionalised in organisational practices, rather than simply relying on goodwill. These should be accompanied by anti-racism training, monitoring and effective grievance procedures, which become normalised as organisational practice and the responsibility of senior managers in maintaining a safe, non-discriminatory environment.

Education campaigns can be effective, but much of the content relies on stereotypical generalisations of culture, whereas anti-racist education engages with systemic racism. Mass media campaigns about diversity lead to supporters who sign up but little else is done nor is systemic racism addressed. Cultural awareness training has had little effect and is too generic rather than place-based and community-specific. And although RAPs can have positive effects for workers where they engage all staff, they can also be used for marketing corporate images and deflect from the need for institutional change.

Cultural competency along with more recent initiatives has improved training to offer skills but, these can become shallow knowledge/lists of competencies, can sustain ethnocentrism and biases, and still does not engage with systemic change and power differentials. These maintain culturalist approaches that obscure management responsibility and structural oppression by directing attention to vague, ill-defined weaknesses in 'culture' which is blamed rather than the power that resides within organisational structures and processes. Fundamentally, it is the commitment of Ministers and senior and middle management that will successfully drive change, particularly with codes of practice containing standards and targets to identify and combat systemic racism, evaluation and two-way accountability, and bystander and ally training. A standing committee of senior executives in a whole-of-government

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approach, with Aboriginal membership and external independent members could report annually on the campaign to identify and eliminate (systemic) racism in the NTG.

2.0 Recommendations

2.0 Recommendations

1. Design and implement a multi-year campaign within the Northern Territory Government (NTG) to require and enable NTG staff (especially senior and middle management) to identify and eliminate racism in all its forms (refer this report in its entirety, especially 5.1.4).

2. The NTG acknowledge that any campaign, policy, or intention will fail if it lacks political will and determination to overcome denial and resistance as also happens when coronial inquest findings are not fully implemented (refer Policy context and section 5.1.3.8).

3. Consistent with that political will, explicitly name racism and especially systemic racism and avoid pseudonyms such as cultural confusion or miscommunication or even ignorance (sections 6.1, 5.1.4 and 5.4).

4. Acknowledge that what is needed within the NTG is structural change not some vague notion of cultural change (section 6.6).

5. Enact either a NT *Human Rights Act* or an *Anti-racism Act* that would bind all government agencies and statutory authorities to the highest standards of equitable anti-racism practice (section 6.7.1).

6. To ensure effectiveness, transparency, and accountability within the NTG, establish a standing committee of very senior executive members of each department, chaired and with secretariat support by the Department of the Attorney-General and Justice and reporting annually to the NT Parliament (section 6.7.1).

7. Given racism is structured and expressed differently in different locations and contexts with differing impacts and that racism intersects with other aspects of identity such as gender, age, disability in complex and dynamic ways, this campaign will need to incorporate these intersections and complexities rather than a one size fits all approach (refer sections 4.2 and 5.1.2).

8. Carefully evaluate the effectiveness of mass public campaigns to counter racism in the light of evidence of limited impact (section 6.2.3).

9. Incorporate evidence-based research into anti-racism training and bystander training to be implemented within the NTG (sections 6.7.3 and 6.7.4) and recognise that the work of anti-racism should not fall on Aboriginal people.

10. Ensure any RAPs within NTG are used as transformative processes rather than box-ticking and include rigorous anti-racism training (section 6.3).

11. Recognise that cultural competence is a misguided ambition, and that continuous transparent and accountable relations are key to learning from and co-designing with Aboriginal Territorians (section 6.4).

12. Conduct an independent executive level review of the NT Police Service considering the NT has by far the highest rates of policing per 100,000 population, the most expensive police per head, the lowest level of satisfaction, and the second highest rate of complaints per sworn officers nationally (refer sections 5.1.1 and 8).

13. Address support, supervision and retention for all police, especially Aboriginal officers, and prioritise locational stability (with promotion) for those suited to work in remote communities (refer section 5.1.1).

14. Critically examine cross-cultural training for all NTG agencies and major contracted service providers to ensure that, in addition to generic cultural-awareness training (which is of little value), they receive serious education in the history of NT race relations, Aboriginal policy (e.g. child removals) and understanding of all forms of racism. Such training should include acknowledgement the often-poor history of interactions between government and Aboriginal people and how government officers may act to open better communications with community leaders and general interaction with the community (refer section 4.1 and sections 6.3, 6.4 and 6.6).

15. Review NTG recruitment and promotions policies and workplace practices to identify opportunities for the exercise of bias in assessing candidates and the sometimes-unconscious evaluations of applicants' suitability (e.g. not a team player, vulnerable to nepotism and favouring their family, hard to understand their accent, overseas qualifications). Establish independent mechanisms to review patterns of recruitment and promotions to identify structural barriers and privileging of white middle class candidates and report such findings alongside statements of diversity within departmental workforces (refer section 4.2.1, and section 5.1.1, section 5.3).

16. Create structured and targeted pathways for increased Aboriginal employment in the NTG not only at entry level but across all levels and implement data collection on retention and attrition including exit interviews (section 6.7.5).

17. Establish high level strategic training in modern leadership styles that address all forms of diversity and the preferences that different people have for being supervised or supervising, with particular awareness of the extent to which we all have ways of operating with that we are comfortable with but may deny others a sense of safety and support. This training will in particular need to focus on unacknowledged white privilege, class, and gender privileges (refer section 4.2.2).

18. Given that much systemic racism operates unseen within middle management despite policy statements and managers' pronouncements, review Performance Review Procedures to include demonstration of an awareness of,

and capacity to, supervise and model non-discriminatory and culturally inclusive practice across all NTG agencies (refer section 4.2.2).

19. Ensure that all media and communications staff across the NTG are given specific training in media representation of cultural differences and Aboriginality, and its impacts on minorities, and that they not only meet ethical standards in relation to their own productions but demand the media they serve respect the same principles (refer section 4.3, section 7).

20. Specifically address and rebut popular myths about 'special' treatment and handouts for Aboriginal Territorians, not only in any mass or public campaign against racism, but also within NTG agencies and contracted service providers as these are especially harmful to Aboriginal employees in the NTG. These efforts need to explain the difference between formal equality and equity and to note the national and international obligations and justifications for affirmative action to address the intergenerational impacts of past racist discrimination (refer section 4.3).

21. Investigate and eliminate current racial discrimination in bail provisions for Aboriginal adults and juveniles as systemically racist but also preventing educational and rehabilitative opportunities for Aboriginal prisoners on remand (refer section 5.1.3.1).

22. Establish a whole-of-government strategy to identify and remove legislative and structural barriers preventing Aboriginal Territorians from exercising the full range of their human and civil rights including jury service (refer section 5.1.3.2).

23. Repeal the paperless arrest law and adopt a health-based approach to public drunkenness (refer section 5.1.3.3).

24. Provide thorough physical and mental health assessments to all Aboriginal prisoners in partnership with Aboriginal-controlled health services and as necessary treatment for underlying conditions that predict further negative interactions with the criminal justice system (refer section 5.1.3.6).

25. Survey existing documentation of complaints including the Aboriginality or CALD identity of the complainant, across all NTG agencies, recognising that i) there is massive under-reporting of racial discrimination, and ii) increases in the numbers of complaints may reflect well on the public educational efforts of complaint agencies. The inherent individualisation of complaints created by current procedures is itself a serious barrier to the identification of systemic racism. Enact representational complaints mechanisms that can more adequately address the widespread impacts of systemic racism on all Aboriginal Territorians as foreshadowed in the draft Exposure Bill amending the *Anti-Discrimination Act 1992*[1] (refer section 5, section 5.6, section 7, section 8).

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[1] https://justice.nt.gov.au/attorney-general-and-justice/law-reform-reviews/open-law-reform-consultations/exposure-draft-anti-discrimination-amendment-bill-2022

26. Identification of all forms of racism, but especially systemic racism, requires detailed and accurate data, disaggregated by Aboriginality and CALD indicators. There are some excellent research and statistical staff in the NTG, but they largely work in isolation. It is recommended that the Office of the Chief Minister establish an overarching research and statistical unit, which could be stand-alone but just as easily could be a network of the current resources, coordinated to produce annual data on service delivery and equity of outcomes across the NTG (refer section 5.1, section 5.4, section 7).

27. Access to interpreting and translation services should be guaranteed for all Territorians who are not fluent in English in all interactions with the NTG, in all complaints mechanisms, and in all aspects of the criminal justice system (refer section 5.7, section 7).

28. The most fundamental issue that this report identifies is the need for accountability and the taking of responsibility at both a corporate and individual level. The complex nature of the 'wicked' problem of racism and the highly fragmented nature of Territory Government and the federal system has for too long allowed blame-shifting and obfuscation. From the highest levels and throughout the NTG, staff must understand that being accountable is a basic work requirement and that taking responsibility or calling out abuses is not unprofessional, but in fact, demonstrates their worth as public servants. Management will have to both create that belief in personal and professional responsibility but also create a safe space for self-reported errors and ensure there is no victimisation of whistle-blowers or those who more actively than others pursue anti-racism (refer section 5.1, section 5.4, section 7, section 8).

29. Maximise Aboriginal participation in governance of the NTG and statutory authorities through direct appointment or formal partnership agreements with Aboriginal organisations (section 6.7.2).

30. The NTG is committed to reducing violence towards Aboriginal women and girls but needs to recognise the very complex interconnections between the victimisation of Aboriginal women and girls and their offending when implementing programs and especially in the sentencing of Aboriginal women and girls. The NTG should aim to close all women's jails and replace them with suitable residential rehabilitation and training centres (refer section 5.1.2).

31. The Attorney-General and Minister for Justice should implement a comprehensive review of current legislation that appears to have discriminatory impact on Aboriginal peoples in cooperation with NAAJA and CLANT, as called for in the NT AJA (refer section 2.1.3, section 2.1.3.1, section 2.1.3.2, section 2.1.3.3). In reviewing the *Sentencing Act,* specific attention should be made to the issue of formal and informal recognition of the role of Aboriginality as a mitigating factor in sentencing. This should include consideration of practices in other Australian jurisdictions as well as the Gladue principles in Canada. The question of how to appropriately recognise customary law must be examined, but this report recommends much greater reliance upon local Law and Justice Groups and Community Courts to both recognise traditions and assist courts to understand in depth the circumstances of offenders and their offending, the

harm caused to victims and community by the offending, and the fashioning of sentencing orders calculated to restore community harmony and minimise the risk of further offending (refer section 5.1.3.5, section 5.1.4).

32. As a core element within a whole-of-government approach to the identification and elimination of racism in all its forms, require all Cabinet submissions to include an Aboriginal impact statement with evidence of any predictable negative implications for Aboriginal Territorians. This will require each department attach such an impact statement to any relevant Cabinet submission that demonstrates awareness of the often-unconscious impacts of systemic racism and coincidentally will upskill senior policy officers in their abilities to recognise, identify and engage with racism (refer section 5.1.3.5).

33. Explore alternative models of parole and probation and the cost-effectiveness of intensive case management support for parolees within a comprehensive Throughcare model (refer section 5.1.3.6).

34. The Parole Board should have a minimum of 6 Aboriginal members to reflect the prison population more accurately (refer section 5.1.3.6).

35. The NTG must address homelessness, overcrowding, and accommodation insecurities across the Territory if a significant reduction in offending and improvements in community safety are to be possible. This includes specific attention to bail accommodation, and various alternatives to custody and itinerant campsites (refer section 5.1.3.6).

36. Legislation and regulations about alcohol management must be designed in consultation with local Law and Justice Groups where they exist and relevant councils and community structures including health services and police (refer section 5.1.3.7).

37. Territory Families renew their commitment to the Aboriginal Child Placement Principle in out-of-home care placements and provide sufficient public education and support to encourage both kin and non-kin Aboriginal foster carers (refer section 5.2).

38. The NTG lift the age of criminal responsibility from 10 to 14 years of age (refer section 5.2).

39. Maximise the potential of Local Decision-Making to reset relationships between the NTG and Aboriginal Territorians as a whole-of-government approach rather than an engagement strategy. That is, recognition of diversity and place-based authority is crucial and should inhibit Territory-wide blanket policies such as the abolition of income-based rental schemes and Stronger Futures alcohol restrictions (see section 5.5).

40. Recognise that capacity-strengthening must occur on both sides (especially within government) and there is need for rigorous and iterative evaluations of programs which are genuinely critical of the planning, motives and

implementation in ways that reject deficit discourses and victim-blaming (refer section 5.5, section 7).

41. Build financial literacy and knowledge of commercial and civil rights amongst Aboriginal Territorians as a priority given the gross abuses by some corporates. Also ensure regular, rigorous evaluations of government contracted services that deliver the bulk of programs in community and ensure value for money in outcomes that matter to community (refer section 5.6).

42. Review anti-racism policies and codes of practice, enact racial vilification provisions as foreshadowed in the draft Exposure Bill amending the *Anti-Discrimination Act 1992*[2] and consider introduction of an NT Human Rights Act (section 6.2.1, section 6.7.1, section 8)

43. Address the lack of legislation prohibiting systemic racism and group victimisation in NT legislation within the proposed draft Exposure Bill amending the *Anti-Discrimination Act 1992* (section 6.2.4)

44. The NTG abandon cultural awareness training and cultural competency in favour of anti-racism training and structural competency (section 6.3, section 6.4, section 6.6, section 6.7, section 6.7.3)

45. Specific bystander training and ally training programs be offered within the NTG (section 6.7.4)

46. Enhanced funding for the NT ADC and the Ombudsman (sections 5.6, 6.7.1 and section 8).

47. Improve retention and job satisfaction amongst Aboriginal employees through the provision of measures such as Aboriginal caucuses, mentoring, and secondment in and out of the NTG (section 6.7.5)

48. Monitor, evaluate and redesign key service models and contracted services that impact on justice outcomes to ensure they are efficient, effective, and meet the needs of Aboriginal Territorians (section 6.7.7, section 6.7.9)

49. All NTG departments and agencies adopt the amended version of the Marrie Matrix to assist them in identifying and responding shortcomings in the structural arrangements for Aboriginal participation in governance, policy implementation, service delivery, recruitment and employment, and financial accountability (section 7.1).

50. Significantly improve reporting processes on the campaign to combat racism and its strategic elements to parliament, to stakeholders and partners, to Aboriginal Territorians (including in language) and the general public (section 6.7.8)

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[2] https://justice.nt.gov.au/attorney-general-and-justice/law-reform-reviews/open-law-reform-consultations/exposure-draft-anti-discrimination-amendment-bill-2022

51. The NT Auditor-General should include in its purview of efficient, effective, and appropriate program design and delivery that they do not result in racist disparities for Aboriginal Territorians (section 7).

3.0 Introduction

3.1 Policy Context for this Report

Calls to reduce Aboriginal incarceration rates and to combat systemic racism have been made repeatedly since the 1970s. The most significant response to those calls was the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) which handed down its final report in 1991. Six years later, continued high incarceration rates and deaths in custody of Aboriginal people prompted a high-level meeting of Aboriginal and Torres Strait Islander (ATSI) leaders. As an outcome of this meeting, it was recommended that each state and territory, in coordination with respective Aboriginal Justice Advisory Councils and relevant Aboriginal bodies, develop Aboriginal Justice Agreements (AJAs) to improve the delivery of justice programs and outcomes for Aboriginal people.

However, it was not until later that year, at the National Ministerial Summit on Aboriginal Deaths in Custody in Canberra, that all state and territory governments, except the Northern Territory, agreed and adopted the recommendation to implement strategic agreements in partnership with Aboriginal people.
Between 2000 and 2010, Queensland, Victoria, New South Wales, Western Australia, and the Australian Capital Territory introduced AJAs, while in South Australia and Tasmania the development of justice agreements was never followed through. By 2019, only Victoria had maintained an active agreement. In 2021, the NTG and the co-chairs of the NT AJA Reference Committee signed the *NT AJA 2021-2027.*

Of the RCIADIC's 339 recommendations, many remain unimplemented or only partially addressed (Anthony et al., 2021). Unsurprisingly rates of imprisonment for Aboriginal people have steadily increased over time, as have the deaths (Gannoni and Bricknell, 2019). At the beginning of 2022 there were 500 deaths in custody recorded since the RCIADIC[3].

In November 2008 the Council of Australian Governments approved the *National Indigenous Reform Agreement* (commonly known as Closing the Gap) that set out 6 targets to achieve parity with national figures over time. There was no target set for reducing Aboriginal incarceration rates. On the 22nd of March 2019 the *Partnership Agreement on Closing the Gap 2019-2029* was signed by all Australian governments, the Australian Local Government Association and the Coalition of Aboriginal and Torres Strait Islander Peak Organisations. The new Agreement contains 2 Justice Targets:

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[3] https://www.theguardian.com/australia-news/2021/dec/06/beyond-heartbreaking-500-indigenous-deaths-in-custody-since-1991-royal-commission

Target 10: By 2031, reduce the rate of Aboriginal and Torres Strait Islander adults held in incarceration by at least 15 per cent.

Target 11: By 2031, reduce the rate of Aboriginal and Torres Strait Islander young people (10-17 years) in detention by at least 30 per cent.

Priority Reform Three of the National Agreement states:

The Parties commit to systemic and structural transformation of mainstream government organisations to improve accountability and respond to the needs of Aboriginal and Torres Strait Islander people.

Clause 59 (a) calls on government organisations to:

Identify and eliminate racism – Identify and call out institutional racism, discrimination and unconscious bias in order to address these experiences. Undertake system-focused efforts to address disproportionate outcomes and overrepresentation of Aboriginal and Torres Strait Islander people by addressing features of systems that cultivate institutionalised racism. The feedback from the engagements included that more Aboriginal and Torres Strait Islander people should be employed in mainstream institutions and agencies, including through more identified positions, more Aboriginal and Torres Strait Islander people in senior positions, and appointments to boards (*National Agreement on Closing the Gap*, 2020: 11).

An excellent set of policy recommendations to implement a rights-based participatory development approach is found in Hunt and Bauman (2022) which respond to the *National Partnership Agreement* and the *United Nations Declaration on the Rights of indigenous Peoples* (UNDRIP). Their paper shows how "business as usual" is incapable of delivering on Aboriginal people's rights to self-determination and "free, prior and informed consent" as put forward in the NT Aboriginal Affairs Strategy and the NTG Local Decision-Making Framework.

One driver for the long-overdue inclusion of justice targets was the *Black Lives Matter* public campaign around deaths in custody here and internationally[4]. Another was the publication in December 2017 of Australian Law Reform Commission (ALRC) report *Pathways to Justice - Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*. This excellent overview makes many crucial recommendations to reduce incarceration rates, including for all jurisdictions to introduce or revive AJAs.

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[4] https://theconversation.com/au/topics/black-lives-matter-everywhere-44608

That same year the National Constitutional Convention met at Uluru and endorsed the *Uluru – Statement from the Heart*. The statement called for a constitutional Voice to Parliament on First Nations affairs, and a Makarrata Commission to manage a national agreement-making process and truth-telling about our history. The statement also declared:

> Proportionally, we are the most incarcerated people on the planet. We are not an innately criminal people. Our children are aliened from their families at unprecedented rates. This cannot be because we have no love for them. And our youth languish in detention in obscene numbers. They should be our hope for the future[5].

In 2022, the incoming Commonwealth Labor government has committed to implementing the Uluru statement and holding a referendum to enshrine a Voice to Parliament in its first term of office.

Over many decades well-intended and ambitious polices have failed to be implemented and/or have failed to deliver the hoped-for outcomes in Aboriginal affairs[6] (see various Productivity Commission and Closing the Gap progress reports). One fundamental explanation is the refusal to acknowledge the persistence of a colonial mindset and the systemic racism that mindset fosters (O'Sullivan, 2022). This report aims to enable the NTG to identify and escape that mindset and its constraints.

Within the NT, various groups have lobbied for years for reform of the crime and justice systems. The *Making Justice Work* campaign lobbied for six 'Asks' in the lead-up to the 2016 NT election, the first of these being the establishment of an AJA. On 19 October of that year, Natasha Fyles, the NT Attorney-General and Minister for Justice, outlined the Government's commitment to develop an AJA in a speech to Parliament. Alongside these developments the Gunner government initiated a raft of policies that align with the aims of the AJA (NTG, 2019a: 16)

To assist in guiding the development of the NT AJA, an interim AJA Reference Committee was established in 2017 comprising 16 representatives from peak bodies and community organisations in the NT. At the same time the Aboriginal Justice Unit was established to introduce the AJA. From 2017 to 2019 hundreds of consultations about the draft AJA were held across the NT. In 2018 workshops were held with stakeholders and all NTG agencies to get feedback and a commitment to a whole-of-government approach to the AJA. In late 2019 the *Pathways to the Northern territory Aboriginal Justice Agreement* document and the draft AJA were released for

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[5] https://ulurustatement.org/the-statement/view-the-statement/

[6] https://parlinfo.aph.gov.au/parlInfo/download/library/prspub/4855446/upload_binary/4855446.pdf

comment. In 2021 the NT AJA was signed by the NTG and the co-chairs of the Reference Committee.

These national and Territory developments together with a sustained grassroots campaign, not only resulted in the NT AJA, but also highlighted the crucial task of identifying and eliminating all forms of racism - especially the systemic racism that lies at the heart of Aboriginal over-representation in the criminal justice system. For that reason, the AJU contracted a consultant to prepare this report.

3.2 Terms of reference

Under the instructions of the Director of the Aboriginal Justice Unit (the Contract Manager), Adjunct Professor David Hollinsworth was required to deliver a report outlining what racism is, and how it can be prevented and reduced in the Northern Territory Government. The specific deliverables were:

1. Define racism and provide a broad outline of the impact it has on people.
2. Provide a contextual summary of all forms of racism that have impacted Aboriginal people in the Northern Territory.
3. Drill down into the structures and processes that routinely ensure discrimination is perpetuated systemically within government agencies including but not limited to the attitudes of executives and influence of leadership. The recommendations will set out actions that together can identify and combat racism in government agencies and by extension their contracted service providers.
4. Develop mechanisms to measure progress and reforms over time in reducing and or eliminating the incidence of racism against Aboriginal people, especially within a whole of government approach.
5. Recommend strategies to improve the capacity of government and statutory agencies to respond adequately and equitably to Aboriginal people denied legal protections in line with the AJA Commitment to increase Aboriginal Territorians knowledge and use of justice and other complaint mechanisms.

4.0 Racism and racial discrimination

The Australian Human Rights Commission (AHRC) is currently in the process of an extensive process of national consultations especially with those Australians who have lived experience of racism. That process is designed to revitalise a new *National Anti-racism Framework* to be launched in 2022. The *Conversation and Consultation Guide* (AHRC, 2021) defines racism in general as follows:

> Racism exists in systems and institutions that operate in ways that lead to unequal outcomes. Racism can come in many forms and can happen in many places. Racism includes prejudice, discrimination or hatred directed at someone because of their colour, ethnicity, or national origin. Racism can be revealed through people's actions as well as their attitudes and beliefs. It includes all the barriers that prevent people from enjoying dignity and equality because of their race.[7]

This definition notes that racism can occur in many forms and varies over time and space/context. It acknowledges the significance of systemic or institutional racism that typically operates in ways that are not recognised as racist but nevertheless lead to unequal or unfair outcomes for racialized minorities.

The term *racialized* is used to remind us that scientifically or genetically there are no such things as 'races' despite what we believe we can see with "our own eyes" (Hollinsworth, 2006: 24-26). What we apprehend as different 'races' are groups or categories of the population who over time are socially constructed as fundamentally or essentially different to the dominant category in ways that permit or explain the inequalities they face. For this reason, this report will put quotation marks around the term 'race' to highlight the artificiality of the concept, even though legislation routinely employs the term.

The rest of the AHRC definition through its use of terms like "directed at someone" and even "actions and beliefs", can be read as referring to deliberate or intentional behaviours that are frequently referred to as racial discrimination. This is especially so following the United Nations International Convention on the Elimination of All Forms of Racial Discrimination (CERD) 1965, which provided a foundational definition of racism often used today (see below). The report argues that racism is much more than incidents of racial discrimination.

In defining racial discrimination, Article 1.1 of the CERD reads:

> In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or

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[7] See also the information document Australian Human Rights Commission, 'What is Racism?', Race Discrimination (Web Page)
https://humanrights.gov.au/our-work/race-discrimination/what-racism

ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life. https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx

4.1 Rationale: Why should we be concerned about racism?

We may think that it is obvious that racism is unacceptable and inhumane. However, many Australians hold racist beliefs and some practice racist behaviours. Virtually all our institutions and many of our organisations have been affected by prevailing racist or exclusionary beliefs and ideologies that were commonly accepted in earlier times. Our media and educations systems continue to reproduce cultural racism that supports white supremacy[8] and dominant white values as normative. We therefore need to make explicit reasons for combatting racism and to develop persuasive arguments why this must be a priority. The following brief discussion of some of the grounds on which we should be concerned about racism should explicitly inform any anti-racism campaign.

Racism is morally wrong.
Racism is contrary to basic human rights and respect for each other's humanity. These fundamental rights to equal enjoyment of the resources and social benefits of a society cannot be taken for granted but should form an essential principle of modern philosophical and political systems. One important aspect in considering equal rights with respect to racism is the need to remember collective or group rights as well as the rights of individuals so prominent in our legal system.

Another important consideration is the difference between formal equality and equity. Equity recognizes that each person has different historical and social circumstances and allocates the resources and opportunities needed in order to reach an equal outcome for all. Formal equality provides exactly the same resources and opportunities to all regardless of circumstances and need. For example, strict per capita health funding ignores the poorer health of Aboriginal people by three to four times that of the general population. This is why the 1975 *Race Discrimination Act* (Cth.) and the NTG allow for "special measures" in relation to Aboriginal programs for example, in employment targets and purchasing services.

Racism damages its victims.
Racism in all its forms, but particularly the everyday experience of racist marginalisation and exclusion, can be extremely damaging to those targeted. Racism reduces the life chances for its victims, harming their physical and mental health, and

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[8] White supremacy is conceived as a comprehensive condition whereby the interests and perceptions of white subjects are continually placed centre stage and assumed as 'normal' (Gillborn, 2006).

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their ability to participate in and enjoy the possibilities offered in today's society. Exposure to racism and bigotry causes great sadness, frustration, and anger amongst its victims and their families, as well as serious physical and mental health harms as documented earlier in this report.

This is something that those of us fortunate enough to not be the victim of racist abuse and discrimination can find difficult to understand. While we may recognise the impact of actual violence or direct discrimination, we are often unaware of the more subtle and systemic forms of racism, including micro-aggressions. This lack of awareness is sometimes compounded by unwillingness on the part of those who experience racism to speak out about such issues for a variety of reasons.

Racism harms all members of society.
Racist beliefs and practices not only damage those who are targeted, but also have negative effects on the whole of society. Racism reduces the capacity of a society to function effectively with minimum levels of violence, anxiety, and conflict. Racism denies valuable resources to society through preventing or limiting the enormous contribution potentially available from within racially oppressed groups. Perpetrators also experience anger and frustration, although these feelings are often misdirected. The inflexibility and bigotry that underlies much racism in Australia, and elsewhere, limits the capacity of those who subscribe to such beliefs to respond appropriately to new challenges or to imagine more positive social interaction and outcomes. All of us not only bear some responsibility for the prevalence of racist practices, but we will also have to bear the costs of responding to the effects of such racism, for example, in the poor health and employment outcomes of those who are racially discriminated against, or in the policing and detention of some who respond to racism in 'anti-social' ways. Conversely nations that are culturally inclusive, socially cohesive and respect human rights have dramatically better health, economic, and social outcomes, and save tens of billions of dollars (Wilkinson, 2020).

Racism prevents us from working effectively.
Like sexual harassment and other forms of bullying, racism has direct impacts on productivity and on the capacity of organisations to function effectively. Many of us are less able to perform our duties and to produce our desired outcomes because of racism. Often this racism occurs as an inability to understand or empathise with different cultural perspectives. Frequently our professional education was extremely narrow in terms of its skill base and knowledge. Often our training did not include rigorous and effective instruction in how to work effectively with diverse communities or in situations where historical oppression and contemporary power differences continue to distort relationships. For example, many (Northern Territory) police officers remain poorly prepared for work in Aboriginal communities and lack the skills necessary to create and maintain positive relationships with those who have experienced routine mistreatment at the hands of the authorities for generations (ALRC, 2017: 472-484; Anthony and Blagg, 2012).

Racism is against the law.

A final reason to be concerned about racism is that racial discrimination is illegal under international, national, state and territory law. Apart from the argument that we should generally obey the law, identifying and combating racial discrimination is an obligation under international provisions such as the United Nations *Convention on the Elimination of all forms of Racial Discrimination 1965* (CERD), the *International Covenant on Civil and Political Rights 1966, and the United Nations Declaration of the Rights of Indigenous Peoples 2007* (UNDRIP) (see Hollinsworth, 2006; Cowan, 2013). Other significant international instruments include the United Nations *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (1984) and the United Nations *Convention on the Rights of the Child* (CRC, 1989). The last two Conventions were central to the finding and recommendations of the *Royal Commission into the Protection and Detention of Children in the Northern Territory* (The Don Dale Inquiry).

As a signatory to these and other Conventions, Australia is bound to comply with their declared rights, but this is much more likely to occur when we enact complementary or matching national, state and territory legislation. So, in 1975 Australia passed the *Race Discrimination Act* mirroring the 1965 UN CERD. By contrast, Australia ratified the CRC in 1990 and appointed a Commissioner of Children to the Australian Human Rights Commission (AHRC) in 2013, but is yet to pass domestic legislation. Unlike most liberal democracies, Australia does not have a consolidated Bill of Rights, although the ACT, Victoria and Queensland have passed their own Human Rights laws. This report strongly endorses the merit and value of having a *Human Rights Act* for the NT with Queensland[9] offering the most compatible model given the Territory's history, geography, and demographics. Racism and racial discrimination is unlawful under the Northern Territory *Anti-Discrimination Act 1992*.

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[9] https://www.qhrc.qld.gov.au/your-rights/human-rights-law/easy-read-guide

4.2 Different forms of racism

To fully understand the nature, functioning and resilience of racism, and therefore be able to counter or eliminate it, we need a more sophisticated understanding of the different forms or levels of racism. There are several different theories or models, but the most useful version identifies four different forms.

4.2.1 Interpersonal racism

The first and most readily recognised form is direct intentional *interpersonal racism* or discrimination where a person is denied a service or a rightful entitlement because of their 'race' or ethnicity or country of origin or religion. As can be seen, this form is easier to identify when it occurs in public places and/or is recorded by CCTV or phones. In many instances such as recruitment and promotion processes this can be much more difficult given privacy and confidentiality measures (Bargallie, 2020). These incidents of racial discrimination are overwhelmingly what is formally complained about through the various commonwealth, state and territory human rights and anti-discrimination authorities, although it should be noted that formal complaints are quite rare and probably represent less than 10% of actual occurrences. Interpersonal racism is sometimes called individual racism in the literature.

4.2.2 Systemic Racism

The second main form of racism is *systemic racism*. Systemic racism describes types of racism that are structured into political and social institutions that discriminate either deliberately or indirectly and unconsciously against specific racial or cultural groups. Systemic racism routinely advantages dominant cultural or racial groups while disadvantaging and excluding others. Systemic racism can be hard to recognise or demonstrate because the institutional structures and processes are seen as the norm or common-sense because of being long established or appearing to be even-handed and reasonable. Systemic racism can also be called institutional racism or structural racism.

Senior Commissioner for the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) Elliott Johnston noted the difficulty many non-Aboriginal people have in accepting the significance of systemic racism in the lives of most Aboriginal people:

> My experience in talking with non-Aboriginal people over many years (and including in the course of this Commission) is that many have great difficulty in understanding institutional racism and the sort of statement I quoted above about racism: 'We lived it day by day, we went to bed with it'. The difficulty is understandable. Many people in capital and main provincial cities have little contact at all with Aboriginal people and know little of their circumstances. Furthermore, they knew neighbours, friends, work-mates who seemed decent people not given to going around abusing people for their

colour, religion etc. They knew similar people in other places. They can understand that there might be some bad apples in the barrel but how can it be, they think, that Aboriginal people are experiencing racism every day. I think it is important to address this because it is not an uncommon view, including among people who think what happened two hundred years ago was wrong (RCIADIC, 1991, Volume 2: 160).

The values underpinning these practices are widely accepted as embodying Western liberal democratic and bureaucratic beliefs in rationality, efficiency, effectiveness, universality, professionalism, individualism, and merit (Augoustinos et al, 2005). Recent debates about merit have highlighted the power of narrow conceptions of what merit (and leadership) can mean or include especially with regard to gender but also cultural diversity and inclusiveness. There is also increasing awareness of the impact of unconscious bias about gender, 'race', religion, and culture in everyday life and especially in managing largescale organisations. Such bias must be addressed to minimise the ways in which decision makers reproduce existing discrimination and favouritism. One fascinating example is a famous American orchestra with historically few women that changed its process of auditioning to hide the gender identity of applicants (they even removed their shoes to disguise the sound of walking on stage) and over very few years had gender equity. Similar actions have seen names removed from university assignments and job applications resulting in more diverse successful outcomes.

Systemic racism is often denied or misunderstood as the individual responsibility of workers inside systems such as health services or the police. This so-called rotten apple defence fails to recognise the power of corporate cultures and shared ideological beliefs that encourage and normalise these behaviours and restrain any condemnation of them by peers or supervisors until a crisis occurs. The key idea is that in most cases systems automatically and routinely discriminate regardless of the malice or intentions of workers. As the Macpherson Report UK argued:

> "if racist consequences accrue to institutional laws, customs or practices, the institution is racist whether or not the individuals maintaining those practices have racial intentions" (Macpherson 1999, section 6.30).

Such behaviours and outcomes become normalised and accepted, often resulting in victim blaming or inaccurate explanations for disadvantage and inequality. A classic example is poor performance of Aboriginal children in school NAPLAN tests which ignore unequal school funding, teacher expectations and skills, inappropriate curriculum and assessment methods and explain deficiencies in terms of parental disinterest, absenteeism, lack of cognitive ability, poor health and so on.

4.2.3 Cultural Racism

Obviously, ideas, beliefs and attitudes matter in normalising systemic racism and in justifying racial discrimination by individuals and organisations. It is therefore helpful to acknowledge a third key form of racism, *cultural racism,* or ideological racism. Jan Pettman (1986: 6) explains the connection:

> Racism as an ideology expresses social myths about other racial and ethnic groups. It devalues others, asserting and explaining their inferiority or disadvantage in ways that blame the victim. … Racism as an ideology furnishes common sense explanations about inequality, which distracts attention from the workings of those institutions which may systematically disadvantage people from minority racial or cultural groups.

Cultural racism typically compounds and conflates combinations of real and imagined physical, social and cultural characteristics (both significant and trivial) in ways that are ahistorical, overgeneralised and ignore structural conditions to create images of changeless, primordial and essentially different groups (Rizvi and Crowley, 1993). Historical examples include the decision in 1901 to omit Aboriginal people from the constitution of the new nation (overturned in the 1967 referendum) that meant that Aboriginal and Torres Strait Islander peoples were not counted in the census, and the widespread and largely welcomed belief in a dying race that would not long survive in modern Australia (Hollinsworth, 2006: 80-84, 115-117).

While past examples were often brutally inhumane and denigrating, omission from the grand narratives of public histories, museums, and the like as well as curriculum [what Stanner (1968) called the Great Australian Silence] is equally powerful within cultural racism. A measure of that power is the perpetuation of the History Wars and the Culture Wars since the 1970s especially into the teaching of Aboriginal studies and Australian history.

4.2.4 Internalised Discrimination

In recent years Aboriginal scholar Yin Paradies has popularised a fourth form of racism in his work on Indigenous health and racism (Paradies et al., 2009). *Internalised discrimination* is being increasingly recognised. It occurs when an individual accepts attitudes, beliefs, or ideologies about the superiority of other groups and/or the inferiority of their own group. This can then affect how they regard and behave toward themselves, members of their group, and those from other groups. It has profound mental and physical health impacts including substance use, lateral violence, self-harm, and suicide that are all core issues in Aboriginal contact with the justice system.

While it is important to think about these different forms of racism separately for analysis and actions to combat them, we should remember that usually all forms are

working in interconnected ways at the same time. This is why so many well-intentioned efforts to combat racism fail. Unless we address the interlocking and mutually reinforcing nature of the scaffolding that holds the different forms of racism together, we are highly unlikely to produce more than short-lived attitudinal change. This is especially a problem with most cultural awareness programs currently on offer (Hollinsworth, 1992; Downing, Kowal and Paradies, 2011; Hollinsworth et al. 2017).

Racism shape-shifts over time and space. Racism in Canberra differs from racism in Casuarina and from Rabbit Flat in its violence, its overtness, its logics and ideologies, and in the degree to which it is publicly endorsed. Similarly, racism is expressed differently and has different impacts depending on the perpetrator's structural position and personal privilege. For example, an unemployed young person compared to a senior manager, a probationary constable compared to an Assistant Commissioner. These differences must be addressed when designing and implementing a campaign to combat racism.

A further important consideration is what is called intersectionality; that is, the interplay between oppression based on 'race' or culture with other forms of social differentiation such as gender, age, class, sexuality, education, religion, disability, politics and so on. These additional elements in relationships can enhance or mitigate against racial discrimination and hostility and their impacts. In the context of this report, the intersection with gender is especially important. Again, these different combinations of identities must be acknowledged and addressed when designing and implementing a campaign to combat racism.

4.3 Denial of racism and the racial state

The National Aboriginal and Torres Strait Islander Health Plan 2013-2023 acknowledges that direct conversations about racism in Australia are difficult and often resisted.

> Discussion about racism is difficult and highly charged in the Australian community and action should be focused on the development of respectful relationships and sanctioning of discriminatory behaviour, policies and practices, including within the health system (Australian Government Department of Health and Ageing, 2013: 14).

The dominant culture decides what racism is (and is not), and how it will be discussed, as part of maintaining the social order (Hollinsworth, 2006: 9-23).
Most people see racism as an individual characteristic which they don't share, partly because they picture racist behaviour as limited to violence, threats of violence and verbal abuse that most of us avoid. Ghassan Hage (2003: 247) comments:

> Violent racists are always a tiny minority. However, their breathing space is determined by the degree of 'ordinary' non-violent racism a government and culture will allow.

Such beliefs externalise racism and exempt us from important and less overt forms such as unconscious bias and microaggressions - defined in the 1970s by Harvard professor Chester Pierce as follows:

> These assaults to black dignity and black hope are incessant and cumulative. Any single one may be gross. In fact, the major vehicle for racism in this country is offenses done to blacks by whites in this sort of gratuitous never-ending way. These offenses are microaggressions. Almost all black/white racial interactions are characterized by white put-downs, done in automatic, preconscious, or unconscious fashion. These mini disasters accumulate. It is the sum total of multiple microaggressions by whites to blacks that has pervasive effect to the stability and peace of this world.

https://www.vox.com/2015/2/16/8031073/what-are-microaggressions

It is the cumulative nature of such assaults rather than their apparent individual gravity that is so damaging to people's feeling, self-esteem, and mental health. Their impacts are frequently compounded by those not subject to such routine microaggressions complaining that 'victims' lack a sense of humour or should "toughen up princess!"

The vast majority of non-Aboriginal Australians have often unconsciously or without thinking committed microaggressions (including unvoiced body language) but continue to fail to acknowledge these as racist behaviours because they were not intentional (Dunn and Nelson, 2011). Sexual harassment is often treated quite

differently in that the perspective of the victim/survivor is accepted regardless of the perpetrator's intentions or awareness of the hurt and humiliation felt.

Denials at the personal level are matched by denials at the societal level. Nelson (2013) identifies four discursive strategies of denial in Australia:

- absence: outright dismissal there is racism.
- temporal deflections: "it used to happen back in the days of the White Australia Policy or before the 1967 referendum"
- spatial deflections: "there's no racism here", "it happens elsewhere" for example when Melbournians state that Darwin or Katherine have racism not them, or "other countries are more racist than Australia".
- deflections from the mainstream: "racism is not a serious problem but rather something done by a few bigoted or ignorant individuals".

Linda Martín Alcoff describes white epistemology of ignorance as "a set of substantive epistemic practices designed to protect their belief that society is basically a meritocracy, people of color are responsible for their troubles, and
racism is a thing of the past" (cited in Mayes, 2020: 290). Nelson's (2013) typology of denial are expressions of the epistemology of ignorance that blinds us to the power and persistence of racism and white privilege in Australia and protects many of us from taking any professional or personal responsibility for their impacts.

This pattern of widespread denial of the existence or at least the pervasiveness and impacts of racism is why it is essential for any effective anti-racism campaign to explicitly name, address and map the significance of all forms of racism.

Blatant racism and unrestrained assertions of white superiority and black inferiority have become less acceptable since the Holocaust and the civil rights movements in the USA and elsewhere. The abandonment of the White Australia policy and the 1967 referendum to amend the Australian constitution added to a general but by no means universal reluctance to declare Aboriginal people less than human (Hollinsworth, 2006). These hierarchical ideologies such as social Darwinism are sometimes called old racism in contrast with a new or differentialist racism that is based on beliefs in essential cultural differences between peoples and a "natural preference for one's own kind".

> The new racism … is a racism whose dominant theme is not biological heredity but the insurmountability of cultural differences, a racism which, at first sight, does not postulate the superiority of certain groups or peoples in relation to others but 'only' the harmfulness of abolishing frontiers, the incompatibility of life-styles and traditions: in short, … a *differentialist racism* (Balibar, 1991: 21).

These beliefs are most often mobilised against some migration and asylum seekers and seen most strongly in alt-right parties. However, they have had immense influence on Australian politics since 2001 and are also deployed in representations of Aboriginal community dysfunction.

Because such arguments avoid explicit reference to biological inferiority, proponents deny being racist; hence the common (and now often ridiculed) declaration: "I'm not a racist, but …". This leads us to expand definitions of racism to include beliefs where the fundamental distinctions between groups are expressed in cultural or social terms because these supposed cultural characteristics are regarded as inherent and essential rather than resulting from historical or situational circumstances.

One paradox with denials of racism is the increasing willingness to recognise racism as a problem in Australian society alongside denials of Anglophone or white privilege (Dunn and Nelson, 2011). In the 2021 Scanlon Survey those agreeing racism was a "very big or fairly big" problem jumped from just over 40% to 60% (Markus, 2021). The same survey found nationally that 16% of respondents had experienced racism in the last 12 months, 11% of those born in Australia but 34% born overseas in a non-English-speaking country and 40% born in Asia (Markus, 2021).

One response to such denials is the theorisation of the concept of a *racial state*. Goldberg (2002: 271) defines a racial state as "one where a racially (self-)conceived group (usually the one controlling the terms of … definition) dominates the power, resources, and representational media of the state to the relative exclusion, subjection, or subordination of other groups racially conceived".

I would argue that modern Australia is an example of a racial state as described by Goldberg. Other scholars agree. For example, Ghassan Hage (1998: 17) observes that many white Australians see themselves as "masters of national space" and "therefore [see] … ethnic others as people [they] can make decisions about: objects to be governed" in their drive to ensure the nation is a comfortable space for them. Such nationalist and racist vigilance sees culturally and linguistically diverse migrants as "space invaders" and threats to "our" values and way of life including long held privileges. This position extends the repertoire of denials to agree racism now exists in Australia but is a "reverse racism" directed at white males in an age of politically correct entitlements for women and other minorities. Such accusations are especially vitriolic in relation to Aboriginal people who are said to be "above the law", given unjustified millions of "taxpayers' dollars" and generally to receive "Special Treatment" (Mickler, 1998; Nelson et al., 2018). Combatting beliefs in preferential treatment and handouts to Aboriginal Territorians will be critical to any mass anti-racism campaign but will also be significant with the NTG audience that are the object of this project.

To conclude, racism is not just prejudice or ignorance or the result of some psychological illness or moral failing. Racists are not simply mad or bad people.

Racism in all its forms is very complex, widely dispersed and often socially acceptable. It is best understood as relationships of dominance and subordination: it is about power (DiAngelo, 2018). Racism exists as much in our established institutions (their structures and processes) as in the hearts and minds of those who work inside those systems. This is not to deny that there are many people who have strong feelings of hostility or contempt for others based on their assumed racial or cultural otherness. Critically, however, even someone who does not hold or express such hostility can nonetheless behave in racially discriminatory ways where the dominant values and practices of our agency exclude, ignore, silence or harm those 'others'. Racism makes us do things, accept things, ignore things, and condone things that no-one in non-racialized circumstances would normally accept.

5.0 The effects of racism on Aboriginal Territorians

This chapter will document the impacts of racism in all its forms on Aboriginal Territorians in a range of areas, some of which are the subject of Closing the Gap policies and targets. In a few cases, the racism reported will be examples of individual racism, but the primary focus will be on systemic racism and cultural racism in our key institutions. For the reasons set out above, this is usually a much more difficult task as systemic racism doesn't occur in public where CCT or mobile phone footage can capture the 'event' or incident but rather operates in silence and in the dark, twenty-four seven. Wherever possible NT data and research will be provided but unsurprisingly there is a dearth of available NT research on key issues around all forms of racism. Therefore, national research and findings will be used on occasion to argue that similar patterns can be expected to apply in the NT.

Cunningham and Paradies (2013) analysed a national survey of over 7,000 Aboriginal and Torres Strait Islander adults who reported on frequency and settings for self-reported incidents of racism in the 2008-09 National Aboriginal and Torres Strait Islander Survey (NATSIS) conducted by the Australian Bureau of Statistics. The NATSIS was introduced in 1994 in response to Recommendation 49 of the Royal Commission into Aboriginal Deaths in Custody

Twenty-seven percent of those surveyed reported experiencing racial discrimination in the past year. Racial discrimination was most reported in public (41% of those reporting any racial discrimination), legal (40%) and work (30%) settings. Among those reporting any racial discrimination, about 40% experienced this discrimination most or all the time (as opposed to a little or some of the time) in at least one setting. Reporting of racial discrimination peaked in the 35-44 age group and then declined. Higher reporting of racial discrimination was associated with removal from family, low trust, unemployment, having a university degree, and indicators of Aboriginal identity and cultural participation. Lower reporting of racial discrimination was associated with home ownership, remote residence and having relatively few Indigenous friends Cunningham and Paradies, 2013).

The NATSIS has been replaced by the National Aboriginal and Torres Strait Islander Social Survey (NATSISS) and National Aboriginal and Torres Strait Islander Health Survey (NATSIHS), both run by the ABS[10]. It is highly regrettable that these more recent national surveys do not appear to collect any data on exposure to racism.

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[10] https://www.abs.gov.au/about/aboriginal-and-torres-strait-islander-peoples/aboriginal-and-torres-strait-islander-surveys#national-aboriginal-and-torres-strait-islander-social-survey-natsiss-

The Australian Institute of Health and Welfare (AIHW) has an exceptional set of data and analysis of the social determinants of health for Indigenous Australians – see for example, *Regional Insights for Indigenous communities* (December 2021) for fine scale data. We find percentages for obesity, diabetes, smoking etc. but no data on racism. Similarly on the otherwise excellent *Clearinghouse* site a search for racism reveals no documents. Given the copious number of studies documenting the impacts of racism (especially systemic racism) on Aboriginal health and its recognition internationally as a social determinant of health, this is extremely regrettable.

One way to measure the incidence of racism in the NT is through looking at formal complaints to police, the Ombudsman, the NT Anti-Discrimination Commission, and the Australian Human Rights Commission. For reasons already stated, these overwhelmingly concern interpersonal racism in the forms of violence, threats of and abuse, or denial of service. More importantly, as with domestic violence, sexual assaults, and other crimes against persons, they are vastly underreported[11].

One important complaint about indirect racial discrimination in the NT was lodged by Mathew Ryan, Mayor of the West Arnhem Regional Council, and the late Ross Mandi, Chairman of the Yalu Aboriginal Corporation in Galiwin'ku on Elcho Island off the coast of Arnhem Land, against the Australian Electoral Commission (AEC) in June 2021[12]. The complaint accuses the AEC of supressing voting eligibility of Aboriginal people in remote areas by the way it administers an amendment to the Commonwealth Electoral Act passed by the Gillard government in 2012. The amendment allowed the AEC to directly enrol eligible voters who were not on the electoral role using data from Centrelink records and driver licences and saw national enrolment rise from 91% in 2009 to 97% in 2019. Indigenous enrolment is static below 69% and the AEC estimate that of 84,247 eligible voters in the NT some 16,527 were not enrolled. The reason lies not in the law itself but in the AEC administration that determined only those with a stable personal postal address could be automatically enrolled. Many NT communities have no street names or numbered letter boxes. There is no legal or technical reason why the AEC cannot send a text message to an Aboriginal person with no personalised postal address an SMS informing them they have been automatically put on the roll allowing them 28 days to ask to be removed. In 2021 the Morrison government unsuccessfully attempted to introduce stricter voter identification

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[11] For a detailed discussion, see Babacan, H. and Hollinsworth, D. 2009. *Confronting Racism in Communities Project: a final report on the nature and extent of racism in Queensland.* Report. Centre for Multicultural Pastoral care, Paddington.

[12] For details, see https://www.abc.net.au/news/2021-06-19/nt-voters-racial-discrimination-human-rights-commission/100227762
https://theconversation.com/past-policies-have-created-barriers-to-voting-in-remote-first-nations-communities-181194

rules (such as a birth certificate or current drivers' licence) that would have made it much harder for many Aboriginal people to vote[13].

The second part of the complaint refers to the short periods of time electoral booths are open in many Aboriginal communities compared to non-Aboriginal centres of similar population. For example, the AEC manned booths in Jabiru for twice the time they were open in Maningrida despite Maningrida having twice the population of Jabiru.

Similar technical issues in the 2020 NT election saw 188 postal votes from prisoners rejected for "avoidable reasons" when the result in Barkly was only a margin of 6 votes. The NT AEC could have run a mobile booth in the Darwin Correctional Centre but didn't[14]. It is often said that Aboriginal and Torres Strait Islander votes are too few to affect results except in the NT. The Centre for Aboriginal Economic Policy Research has found that were all Aboriginal and Torres Strait Islander adults eligible to vote enrolled and voted the outcomes in up to 15 Federal seats could be impacted (Markham and Williamson, 2022). Again, we can see structural barriers for Aboriginal and Torres Strait Islanders to exercise what for other Australians are basic civil and political rights, another example of systemic racism.

The case against the Commonwealth AEC is clearly not part of the NTG ambit, although it does impact on electoral boundaries and other calculations for federal entitlements. However, it serves to illustrate the profound impact of unintended systemic racism resulting from poor planning and a lack of capacity to recognise racially skewed consequences from structures and processes that appear to many as common-sense or universally egalitarian. Such systemic racism is the primary focus of this report.

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[13] https://www.theguardian.com/australia-news/2021/oct/27/proposed-voter-id-laws-real-threat-to-rights-of-indigenous-australians-and-people-without-homes

[14] For details, see https://www.abc.net.au/news/2021-06-07/nt-prisoner-postal-votes-electoral-commission/100194040

5.1 Racism and Aboriginal people in the NT justice system

Australia is a settler society founded on the dispossession of Aboriginal peoples. Since 1788 police have been tasked to subdue, control, and manage Aboriginal people in the service of the state and settler commercial interests especially pastoralism. The history of the frontier in Australia is a bloody and largely unregulated history right up until the early twentieth century in the NT and elsewhere in northern Australia (Reid, 1990; Roberts, 2005). Rogers and Bain (2016) term it genocide.

Original settler violence was supplemented by police-led hunting parties such as the 1928 Coniston Massacre where dozens (possibly hundreds) of Warlpiri, Anmatyerre, and Kaytetye people were killed in a violent campaign led by Mounted Constable George Murray after the killing of white dingo trapper Fred Brooks in 1928 (Wilson and O'Brien, 2003). In 2018, to mark the 90th anniversary of the massacre, Northern Territory Police apologised to descendants of those killed, saying the actions of officers could never be justified.

Very occasionally such killings were investigated at the time, and even more rarely went to trial and police were found culpable. One interesting case was a probable police manslaughter of a female witness ("Dolly") in a cattle-killing case in Borroloola in 1932 by Constable Stott that went unsuccessfully to trial twice due to pressure from the south. The case overlapped with the higher profile trial and mysterious disappearance of Dhakiyarr for killing Constable McColl in north-east Arnhem Land (Finnane and Paisley, 2010).

This colonial legacy has been embedded into the architecture of the Australian and NT criminal justice systems over the decades as systemic racism and cultural racism as well as the more observable interpersonal incidents. That is, the very structures and processes automatically without needing purposeful intention reproduce cumulative discrimination that results in over-representation of Aboriginal people in prison. It is not the only cause of the higher than national averages, but it is the most powerful single factor.

At a national level, the imprisonment rate (per 100,000 of adult population) more than tripled, from 66 in 1985 to 223 in 2019. In 2018, Aboriginal and Torres Strait Islander peoples accounted for 3% of the total population, but 28% of the adult prison population. In an even grimmer statistic, only 5% of young people (age 10–17) are Aboriginal and Torres Strait Islander people, but they represent 59% of young people in detention (Justice Reform Initiative, 2020).

Target 10 of the *National Agreement on Closing the Gap* (July 2020) aims to:

> By 2031, reduce the rate of Aboriginal and Torres Strait Islander adults held in incarceration by at least 15 per cent.

Nationally, based on the most recent year (June 2020) of data, this target is not on track to be met.

Target 11 of the *National Agreement on Closing the Gap* (July 2020) aims to:

> By 2031, reduce the rate of Aboriginal and Torres Strait Islander youth (10-17) held in incarceration by at least 30 per cent.

Nationally, based on the most recent year (June 2020) of data, this target is on track to be met (Productivity Commission, 2021). Given the short timelines involved at this point, these conclusions on progress to achieve targets could shift dramatically when the 2022 *Annual Data Compilation Report* is released.

The figures for the NT are striking when compared to these national averages (see Tables 1 and 2 below).

NT Imprisonment Rate per 100,000 adult population	
December Quarter 2017	886.3
December Quarter 2018	904.5
December Quarter 2019	951.8
December Quarter 2020	931.1
December Quarter 2021	993.5

Table 1a: NT Aboriginal imprisonment rates per adult population. Source: https://www.abs.gov.au/statistics/people/crime-and-justice/corrective-services-australia/latest-release

December Quarter	Aboriginal % of NT total adult population	Aboriginal average daily % of persons in corrective services	NT Aboriginal imprisonment rate per 100,000 adult Aboriginal population
2017	27	83	2748
2018	27	83	2766
2019	28	82	2793
2020	29	85	2760
2021	29	86	2914

Table 1b: NT Aboriginal imprisonment rates per NT adult and per Aboriginal adult. Source: https://www.abs.gov.au/statistics/people/crime-and-justice/corrective-services-australia/latest-release

December Quarter	Aboriginal proportion of NT youth detention population aged 10-17	Aboriginal proportion of NT population aged 10-17
2017	100%	45%
2018	97%	45%
2019	98%	45%
2020	98%	44%
2021	96%	na

Table 2: NT Aboriginal youth detention percentages. Source: https://www.aihw.gov.au/reports/youth-justice/youth-detention-population-in-australia-2021/data

This punitive approach to Aboriginal offending offers no solution, no decrease in offending, no reduction in recidivism, no real relief to victims and witnesses, but increased financial and social costs to the Territory as a whole. Jailing is Failing!

By its very nature, systemic racism is extremely hard to observe directly, but can be inferred by grossly disproportionate outcomes from what are supposedly fair and equal procedures. Detailed research using accurate data is required to drill down into the inner workings of the system and its lack of capacity to deliver equitable outcomes in face of entrenched racialized beliefs and expectations and unsuitable and often inflexible application of the law. Racism is a systemic problem in all areas of public policy and performance, not just the legal or criminal justice system. Structured disadvantage and discrimination in one field such as housing, bleeds into others such as health, family, and domestic violence, contact with the police, and so on in what Head (2008; 2022) terms 'a wicked problem'.

Wicked problems are immensely complex, with multiple layers of interconnecting push and pull factors that make analysing and acting on them very difficult. They are also 'wicked' in enabling responsible parties to deflect blame and responsibility to other elements of the problem, other departments, the Federal or Territory government, and especially Aboriginal families themselves. They encourage resignation and acceptance of circumstances and outcomes that would never be tolerated in the dominant white population. To focus more clearly on the processes involved, the rest of this chapter will look at some specific aspects of the NT criminal justice system to the extent possible in desk top research.

5.1.1 Policing and Aboriginal Territorians

Massacres attract media and historical interest, but mundane, daily interactions are more important though less noteworthy. Police rightly complain that they have do the dirty jobs to keep the 'nice' people safe and untroubled. This dynamic has established fraught relationships marked by lack of trust, mutual antagonism, and ongoing conflict (Cunneen, 2020). One aspect of this conflict has been the role of police in enforcing public order, alcohol, and welfare laws, including the Stolen Generations.

> . . . the relationship between Aboriginal people and the police was significantly damaged by the role that police officers played in removing children from Aboriginal families and enforcing discriminatory legislation (McRae, Nettheim, & Beacroft, 1991: 239.

Cunneen (2019a) traces these relations back to the findings of the RCIADIC (1987-1991) as fuelled by over-policing, hypervigilance, and pursuit of minor offences that continues today with police not using discretion to caution[15] instead of arresting Aboriginal people at the same rates as non-Aboriginal offenders (see also Schwartz, 2013; O'Brien, 2021). A related issue is the excessive use of force in detaining Aboriginal people which is a factor in the incredible number of Aboriginal deaths in custody nationally (Cunneen, 2017 and 2019a).

The most recent data (2020-2021) from the Productivity Commission shows that the NT is the most heavily policed jurisdiction in the country, with 745 officers per 100,000 people. This rate is more than twice the next highest (South Australia) with 312 officers per 100,000. Despite this, Territorians feel less safe than any other part of the country. NT staff cost an average of $212, 323 which is three times the cost of a Western Australian officer (Averill, 2022). The Productivity Commission said the Territory had the second highest rate of complaints against officers, behind only South Australian Police.

In 2020-21 the NT Police had a record breaking rate of complaints from the public, with 39 complaints for every 100 operational staff. The survey found Territorians had the lowest satisfaction rate with police, with 71.8 per cent saying they were "totally satisfied" with the NT Police. Every other policing jurisdiction had satisfaction rates higher than 79 per cent. These are serious findings, especially in the light of dramatically increasing police budgets, and the grave problem of police investigating police complaints, see section 5.

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[15] Of concern is the information that 1200 iPads loaded with police cautions in NT Aboriginal languages were distributed to NT police but only activated 73 times when around 4,000 Aboriginal Territorians are arrested each year.

A question to be considered in the final chapters of this report is how best to train and support non-Aboriginal police to communicate and work well with Aboriginal Territorians. Many NT police posted to regional and remote communities have never been there before and have had minimal contact with Aboriginal people (although some have served there effectively for many years). They quite literally suffer 'cultural shock' at being on Aboriginal land and can retreat to the station and interact only with other non-Aboriginal people in informal or social contexts, leaving for weekends and holidays along with other 'white' staff (Dwyer, Scott and Staines, 2020). Nurses and teachers often experience remote posting in similar ways but have Aboriginal health workers and teacher aides alongside them in their work. There are some Aboriginal Police Liaison Officers (previously police aides) and Aboriginal Community Police Officers (ACPOs), but their cultural insider status is often undervalued or treated with suspicion of favouritism.

The police service is strictly hierarchical and ALOs are not sworn officers and receive only 3 weeks training – they are public servants at AO level 2 - so policing remains normatively and culturally 'white' (Cefai, 2015). NT Police Force figures show there are currently 37 ALOs employed, 22 Males and 15 Females. Since October 2020, NTPF have recruited 57 ALOs however 20 ALOs have ceased work but this could mean transitioned to other roles such as ACPO, Auxiliaries or Constables, or that they resigned. Better data on all manner of attrition, especially for Aboriginal staff, and exit interviews would enable the NT Police Service to better manage retention and promotion of Aboriginal police in all capacities and identify ways of improving support to obtain a Police Force that better reflected the NT population.

Attrition is an increasing problem with the rate across all classifications increasing from 4% in 2017-18 to an estimated 10.75% in 2021-22. Apart from the human and efficiency costs, this leads to greater churning of police in remote regions and more inexperienced officers facing complex intercultural contexts. Better trained and better supported officers who choose to stay in one community could transform relations and significantly reduce offending as well as employing de-escalation of conflict.

Recently, more ACPOs are from the NT. As sworn officers with a Certificate IV they are, crucially able to transition with some credit to the Diploma in Policing and become Constables. Encouraging ACPOs to make that transition and providing culturally safe support to retain them and promote them within the NT Police Service will be an important contribution to better relations with Aboriginal communities. To our knowledge there has never been an Aboriginal Commissioned Officer or even a Senior Sergeant.

Another strategy is to formally acknowledge the crucial role of cultural knowledge and relationships of ACPOs in deescalating tension and reducing offending in remote communities in partnership with local Law and Justice Groups where possible. For a

compelling analysis of the possibilities for self-determination in First Nations policing as a distinct policing model in Canada see Jones et al. (2014).

The death of 19-year-old Kumanjayi Walker on the 9th of November 2019 highlighted the often fractious and traumatic relations between NT police and Aboriginal Territorians[16]. Zachary Rolfe's acquittal and coming Coronial inquest will continue to be fiercely debated, as is the increased 2022 police budget of $510 million with more remote police postings and creation of a permanent Community Resilience and Engagement Command to "help the Northern Territory Police, Fire and Emergency services connect with Indigenous communities"[17].

Some experienced officers spend most of their careers in remote postings establishing strong relationships with communities and helping Aboriginal Territorians to negotiate the justice system. Many officers posted to remote areas are novice police with basic academy training and little aptitude to form respectful relationships (see above). They need strong mentoring from senior officers and wherever possible to be supported by local Law and Justice Groups who can teach them how to conduct themselves effectively.

5.1.2 Aboriginal women and the justice system

This brief overview of incarceration of Aboriginal women in the NT should be read in the broader context of analysis and comments on the whole NT criminal justice system.

Aboriginal women and girls in the NT are massively over-represented as victims and witnesses of crimes. Increasingly they are massively over-represented as offenders and the incarceration rates for Aboriginal women and girls are increasing (Bartels, 2010: Hurst, 2019), as shown in Tables 3 and 4 below. Significant increases in convictions for offences "likely to cause injury" are a major factor in the spike in female incarceration.

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[16] https://www.theguardian.com/australia-news/2022/mar/12/this-case-is-tragic-zachary-rolfe-is-cleared-and-an-aboriginal-family-left-with-questions?utm_term=622bf09372ef6654784e9e696789e799&utm_campaign=GuardianTodayAUS&utm_source=esp&utm_medium=Email&CMP=GTAU_email
https://theconversation.com/the-kumanjayi-walker-murder-case-echoes-a-long-history-of-police-violence-against-first-nations-people-179289?utm

[17] https://www.abc.net.au/news/2022-05-06/nt-police-budget-funding-reaction-warlpiri-elders-yuendumu/101042460
https://www.theguardian.com/australia-news/2022/may/06/more-police-in-remote-nt-areas-is-a-direct-threat-to-aboriginal-community-elders-say

NT Aboriginal women imprisonment rate per 100,000 adult Aboriginal population	
Quarter	Rate per 100,000
December 2017	313
December 2018	387
December 2019	317
December 2020	332
December 2021	333

Table 3: NT Aboriginal women imprisonment rate. Source: https://www.abs.gov.au/statistics/people/crime-and-justice/corrective-services-australia/latest-release

NT Aboriginal girls (10-17) imprisonment rate per 10,000 Aboriginal population	
Quarter	Rate per 10,000
December 2017	2.8
December 2018	1.8
December 2019	1.1
December 2020	2.4
June 2021	2.7

Table 4: NT Aboriginal girls imprisonment rate. Source: https://www.aihw.gov.au/reports/youth-justice/youth-detention-population-in-australia-2021/data

As discussed above, racism doesn't operate in isolation but rather intersectionally in complex interplay with a variety of other characteristics including class, age, location, sexuality, religion, mental health, and disability. But perhaps the most powerful intersectionality is between 'race' and gender, or between racism, and patriarchy and sexism (Baldry and Cunneen, 2014; Black and Trounson, 2019).

Overwhelmingly and unsurprisingly, female violent offenders are almost invariably victims of chronic domestic and family abuse (Tubex and Cox, 2020). Efforts to significantly reduce Aboriginal female imprisonment therefore demand sustained attention to reducing violence against Aboriginal women and girls.

Our Watch (2018a and 2018b) presents excellent analysis and recommendations to combat violence against Aboriginal and Torres Strait Islander women (Table 5).

Table 5: Essential Preventive Actions. Source: Our Watch, 2018b: 10.

Essential prevention actions

Responding to current extreme levels of violence against Aboriginal and Torres Strait Islander women is critical. But to prevent this violence from happening in the first place, we need actions that directly address its three underlying drivers.

Action 1: Address the legacies and ongoing impacts of colonisation for Aboriginal and Torres Strait Islander people, families and communities

- Heal the impacts of intergenerational trauma, strengthening culture and identity
- Strengthen and support Aboriginal and Torres Strait Islander families
- Implement specific initiatives for Aboriginal and Torres Strait Islander women and girls, boys and men, and children and young people
- Challenge the condoning of violence in Aboriginal and Torres Strait Islander communities
- Increase access to justice for Aboriginal and Torres Strait Islander people

Action 2: Address the legacies and ongoing impacts of colonisation for non-Indigenous people, and across Australian society

- Challenge and prevent all forms of racism, indifference, ignorance and disrespect towards Aboriginal and Torres Strait Islander people and cultures
- Address racialised power inequalities and amend discriminatory policies and practices
- Challenge the condoning of violence against Aboriginal and Torres Strait Islander people

Action 3: Address the gendered drivers of violence against Aboriginal and Torres Strait Islander women

- Implement intersectional approaches to preventing violence against women across the Australian population
- Challenge the condoning of violence against Aboriginal and Torres Strait Islander women by challenging both racist and sexist attitudes and social norms
- Support Aboriginal and Torres Strait Islander women's participation in leadership and decision making
- Challenge gender stereotypes, and the impacts of colonisation on men's and women's roles, relationships and identities
- Strengthen positive, equal and respectful relationships between women and men, girls and boys
- Engage both Indigenous and non-Indigenous men to challenge harmful and violence-supportive ideas about masculinity and relationships

Sometimes the application of allegedly feminist criminological frameworks to entrenched family and domestic violence in Aboriginal communities ignores both the

history of colonialism and intergenerational impacts of that history, especially child removals and welfare surveillance (Blagg and Anthony, 2019a).

Incarceration of Aboriginal women (including prior to conviction) is usually catastrophic for many others, especially children, but also for extended kin including other vulnerable women and girls. Shockwaves of blame and retribution can reverberate across communities leading to even more violence and social breakdown.

The complex historical and social determinants of high rates of Aboriginal women offending and increasingly receiving custodial sentencing is a national catastrophe but there are some remarkable analyses and recommendations for alternative responses (ALRC, 2017, chapter 11; HRLC, 2017; Blagg and Anthony, 2019a). Of particular interest in the context of the NT AJA's commitment to establishing Alternatives to Custody is the change in response from knee-jerk punitive actions to long-term rehabilitation and healing (Atkinson, 2020; Anthony, Sentance and Bartels, 2020). It is entirely realistic in the short to medium term to close all women's prisons in the NT and replace them with residential care and training facilities like that currently operating successfully in Alice Springs.

5.1.3 Specific issues for NT criminal justice in relation to racism

The first Aim of the NT AJA is to reduce offending and imprisonment of Aboriginal Territorians. While most of the factors including racism and other underlying issues for the over-representation of Aboriginal people in the criminal justice system occur to a greater or lesser degree across the whole country (ALRC, 2017), some are specific to the NT or occur in only one or two other jurisdictions. Some of these are embedded in current or recent NT legislation and therefore the AJA commits to an examination of the *Bail Act 1982,* the *Parole Act 1971,* the *Sentencing Act 1995,* the *Juries Act 1962,* the *Liquor Act 2019,* the *Police Administration Act 1978,* and the *Criminal Code* to identify discriminatory impact on Aboriginal people and how these can be addressed. Such detailed legislative reviews require skills and time not available to this report writer, but the recommendations of the NT's Law Reform Committee and the Criminal Lawyers' Association of the Northern Territory (CLANT) should be referred to. Some relevant literature and research will be presented below addressing some of these concerns.

5.1.3.1 Bail

In the Northern Territory the rate per 100,000 Aboriginal population increased from the December quarter 2017 to the December quarter 2021 from 2748 to 2914.

Again, we see the pattern of large increases in prisoners on remand with sentenced prisoners increasing by 1% to 1,163 and unsentenced prisoners increasing by 32% to 637.[18] For most remand prisoners, their eventual sentence if convicted amounts to time served, potentially a longer term than would have been applied if they been on bail.

Daily average of NT adult prisoners by sentence status			
December quarter	Sentenced	Unsentenced	Total
2017	1139	484	1623
2018	1217	452	1669
2019	1262	488	1750
2020	1159	558	1717
2021	1160	675	1835

Table 6: Daily average of NT adult prisoners by sentence status.
Source: unpublished report. Attorney-General and Justice Research and Statistics Unit, *NT Quarterly Daily Average Prisoner Numbers March Quarter 2022*.

You might assume that these figures would demand a serious overhaul of the NT *Bail Act 1982*. Indeed, we have recently seen such an overhaul BUT to make bail much harder to get! The presumption of bail has been removed for a range of offences including unlawful entry and unlawful use of a motor vehicle, both offences that are disproportionately committed by Aboriginal people. Even more punitive amendments have been implemented to youth bail processes (Anthony and Cubillo, 2021). These provisions include:

- Automatically revoking bail for serious breaches
- Expanding the list of prescribed offences in the *Bail Act 1982* (NT)
- Expanding electronic monitoring by police
- Allowing a record of past bail breaches
- Toughening the *Traffic Act 1987* (NT) to breath test youth without the presence of an adult
- Amending the *Youth Justice Act 2005* (NT).

"Bail is a privilege not a right," the government said.

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[18] Australian Bureau of Statistics. 2021. *Prisoners in Australia.* https://www.abs.gov.au/statistics/people/crime-and-justice/prisoners-australia/latest-release#data-download

"If a young person commits a serious breach of bail — their bail will be revoked, and they will be taken into remand".[19]

These moves directly abandon the recommendations of the 2016 Don Dale Royal Commission[20] which found that those granting bail to Aboriginal youth did "not ensure sufficiently that young people understand the conditions of their bail and what is required of them", leading to further breaches.

Other structural problems for youth and adult charged with offences include the lack of suitable bail accommodation given the levels of overcrowding and homelessness within the Aboriginal community. In January 2018 there were 3 youth in the new supported bail accommodation, 2 in Darwin and 1 in Alice Springs[21].

A critical issue is that prisoners on remand do not have access to rehabilitation or training programs available to convicted prisoners. Combining these and other factors mean that bail (and therefore the presumption of innocence) is much harder to obtain for Aboriginal people charged with an offence than non-Aboriginal Territorians charged with similar offences.

This is a very serious racial disparity that must be addressed within the NTG's campaign to combat systemic racism. Capacity to access bail and be supported whilst on bail is one issue. The other is the dramatic increase in remand prisoners who could spend multiple relatively short periods in custody that compound to several years without any access to educational or rehabilitative programs that could break their cycle of offending.

5.1.3.2 Juries

The right to be heard by a jury of one's peers allegedly dates from the Magna Carta signing in England in 1215. Whether race can be used in jury selection has been subject to appeal over the use of peremptory challenges to preclude black jurors in the USA, although such challenges are available on many other grounds that can have the same effect indirectly. In the NT the real question is how practical and possible efforts are to include Aboriginal jurors in a Jury pool (Goldflam, 2011).

In 2013 the NT Law Reform Committee recommended changes to the *Juries Act 1962* to get more Aboriginal jurors, but nothing substantial has so far been implemented

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[19] NIT. 2 April 2021. Aboriginal justice groups criticise NT Government proposed youth law reform
https://nit.com.au/aboriginal-justice-groups-criticise-nt-government-proposed-youth-law-reform/

[20] https://www.royalcommission.gov.au/system/files/2020-09/findings-and-recommendations.pdf

[21] https://www.abc.net.au/news/2018-01-31/nt-supported-bail-accommodation-housing-just-three-youths/9380986

(NTLRC, 2013). Anthony and Longman (2017) find that Indigenous peoples in Australia, the United States and Canada are significantly overrepresented as defendants in criminal trials and yet vastly underrepresented on juries in criminal trials. This means that all-white juries mostly determine the guilt of Indigenous defendants or white defendants responsible for harming Indigenous victims. All-white juries in high profile NT criminal cases involving non-Aboriginal defendants (including police) charged with unlawful killing of Aboriginal people have caused dismay in victim's families and concern nationally[22]. The Walker family's response to the not guilty verdicts was to lament:

> We felt this trial was not fair. We wanted the jury to hear our stories and the truth of what happened on that irreversible day, 9 November 2019. Our intention was to have the trial in Mparntwe Alice Springs. But instead, we had to have it here, a long way from home. We thought we could have a multicultural jury instead of just non-Indigenous people. But to our surprise there was not one Indigenous person on the panel. We felt left out. Are we not part of Australia? We feel neglected not to see Indigenous yapa on the jury. We want yapa on the jury so that we can express our culture and feelings based on the truth. They can tell other jury members how we see it. It's always kardiya people, seeing through their eyes but they need to accept our perspective too.

Despite comprising 31% of the NT population, it is very rare to see any Aboriginal person on a jury in a criminal trial. One of several structural obstacles is the definition of the jury district that excludes huge numbers of Aboriginal voters not just from remote communities but even from neighbouring areas to Alice Springs and Darwin including Palmerston. Other structural barriers including people required to have a formal birth certificate[23], to be registered on electoral rolls[24], peremptory challenges (when a set number of persons, without reason, may be set aside); challenges for cause (when persons are removed for a reason); and prosecutorial vetting - for example, identifying whether the prospective juror has a disqualifying criminal record (Anthony and Longman, 2017).

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[22] https://www.abc.net.au/news/2022-03-16/nt-law-reform-push-rolfe-trial/100912198

[23] Births, Deaths and Marriages NT want to assist older Aboriginal people in obtaining birth certificates but need more funding and remote area capacity. See Queensland's Cape Licensing Muster for a successful coordinated program for all manner of licences and registrations in remote areas: https://mypolice.qld.gov.au/farnorth/2019/09/27/the-cape-licensing-muster-gains-momentum/

[24] Over the past few decades, the percentage of eligible Aboriginal people enrolled to vote in the NT has fallen dramatically due to various political and legislative changes. See Harrington, M. 2022. Past policies have created barriers to voting in remote First Nations communities. *The Conversation*, https://theconversation.com/past-policies-have-created-barriers-to-voting-in-remote-first-nations-communities-

While these initiatives would hopefully increase the odds of an Aboriginal person serving on a jury, especially for a serious crime with an Aboriginal defendant, they would also directly reduce the huge number of driving offences, assist Aboriginal people to become foster parents, and Commissioners of Oaths and JPs, and generally to successfully negotiate interactions with administrative and justice systems.

The structural barriers detailed above combine to effectively disenfranchise many Aboriginal Territorians for effective citizenship and civic participation. A concerted effort from the NTG, including Births, Deaths and Marriage, Police, and from the AEC and Services Australia is needed to address these gaps in enabling Aboriginal people to exercise basic human and civil rights.

5.1.3.3 Paperless arrests

> "It's a form of catch and release"
> Northern Territory, Parliamentary Debates, Legislative Assembly,
> 26 November 2014 (The Hon John Elferink, Attorney-General).

The *Police Administration Amendment Act 2014* (NT) which commenced operation on 17 December 2014, authorises NT police to arbitrarily detain individuals arrested for 'infringement notice offences' for up to four hours[25]. If the person is intoxicated, they can be held until the police officer 'believes on reasonable grounds that the person is no longer intoxicated'. This is known as a 'paperless arrest'. During the time in custody, police are not required to bring the person before a court or provide an opportunity for legal advice to be sought. At the conclusion of the detention, the police officer may release the person unconditionally, with an infringement notice, on bail or bring the person before a court.

Paperless arrests were introduced as an alternative or addition to existing powers in relation to public drunkenness and loitering. In effect police replace the magistrate or judge. This is justified as more efficient, avoiding loss of police time in preparing court documentation. It is not clear how this is a positive option given the existing powers to "move on" persons loitering in a public place (Yang, 2015).

Justice Deane found:

> An arrest is the deprivation of freedom. The ultimate instrument of
> arrest is force. The customary companions of arrest are ignominy and
> fear. A police power of arbitrary arrest is a negation of any true right
> to personal liberty. A police practice of arbitrary arrest is a hallmark

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[25] https://www.auspublaw.org/2015/11/the-paperless-arrest/
https://www.altlj.org/news-and-views/downunderallover/duao-vol-40-3/922-paperless-arrests

of tyranny (quoted in Yang, 2015: 23).

It also appears to be racially discriminatory with 87% of paperless arrests between 2017 and today being Aboriginal people (Table 7) discounting those whose Aboriginality was not recorded.

Number of people held by paperless arrest in NT from 2017-2021			
Year	Aboriginal Count	Non-Aboriginal Count	Unknown
2017	2388	427	318
2018	2542	353	309
2019	1759	267	289
2020	1469	220	209
2021	1116	169	205
Until 31/3/2022	274	22	34

Table 7: Paperless arrests in the NT. Source: Data provided by NT Police, Fire and Emergency Services – Statistics & Performance Unit.

Rates of paperless arrests are declining but remain in principle an abuse of executive powers and constitute the antithesis of the RCIADIC recommendation of "imprisonment as a last resort" (Hunyor, 2015). At least one death in custody has resulted, see Greg Cavanagh's coronial inquest into the death of Kumanjayi Landon (2015). The report recommends this fundamentally racist provision be repealed and a health-based approach be adopted to Aboriginal people intoxicated in public.

5.1.3.4 Offensive language

Historically offensive language charges have been a major initiator of conflict between police and Aboriginal people (often while intoxicated) that subsequently led on to major offences including resisting arrest and assault police (Methven, 2018; Cunneen, 2020). There are ethnographic studies of Aboriginal English language usage that emphasise the normalisation of swearing within Aboriginal communities that problematise the notion of intent in charges of offensive language (White, 2002; Eades, 2013). In one day in 1993 Aboriginal magistrate Pat O'Shane in the Brewarrina court dismissed 116 cases against Aboriginal people charged with offensive language as trivial under section 556A of the NSW Crimes Act, expressing her doubt that "police could be genuinely offended by swearing which had become almost part of the Australian vernacular" (Taylor, 2012).

Over time magistrates and judges have found it harder to accept that police are offended by swearing, given shifts in community usage and their own language when making arrests as seen in body-worn cameras. NT figures for offensive language

charges have dropped significantly in recent years with the introduction of paperless arrests (Table 8) showing how changes in police use of discretion can have a marked influence on charges laid and ultimately on imprisonment rates. One is again reminded of the RCIADIC's many recommendations about so-called minor street offences including public drunkenness, disorderly conduct, offensive language, and failure to move on.

Number of people charged with offensive language in the NT, 2017 to 2021			
Year	Aboriginal	Non-Aboriginal	Total
2017	31	8	39
2018	12	3	15
2019	16	1	17
2020	10	3	13
2021	8	4	12

Table 8: Number charged with offensive language in the NT, 2018-2021. Source: Unpublished Department of Justice Figures, 2022.

5.1.3.5 Sentencing

Ever since the RCIADIC there has been a debate about the contribution sentencing practices play in the overrepresentation of Aboriginal people in prison. A small group of criminologists have written many studies of disparity between Indigenous and non-Indigenous defendants in lower and higher courts in most jurisdictions, but not the NT (Snowball and Weatherburn, 2007; Jeffries and Bond, 2011 and 2012a; Bond and Jeffries, 2011; Bond, Jeffries and Weatherburn, 2011). Unsurprisingly they found varying evidence for harsher sentencing in comparable circumstances between jurisdictions, over time, and between higher and lower courts. These 'inconclusive' results led them on balance to look elsewhere for drivers for the higher rates of convictions and imprisonment of Aboriginal people (see below Conflicting Explanations). Similarly, crimes committed when Aboriginal offenders were drunk, or drug affected could amplify or mitigate the sentencing outcomes in different courts at different times (see Lawler et al., 2020: Velazquez, Petray and Miles, 2022). There is an evolving case law around appropriate sentencing for offenders with Foetal Alcohol Spectrum Disorder (Freckelton, 2017; Blagg and Tulich, 2018) but often no suitable facilities for sentenced offenders in the NT[26]. In some important trials in SA and the NT, customary law and traditional punishments have been taken into consideration when sentencing has been taken (Anthony, 2010), however the NT Intervention saw the *Crimes Act* amended to prohibit such consideration (Goldflam, 2013). On its face, this seems a racially discriminatory intervention by the Commonwealth government to

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[26] https://www.theguardian.com/australia-news/2016/oct/13/royal-commission-told-foetal-alcohol-disorder-and-hearing-loss-contributing-to-incarceration

deny NT judiciary the right to consider all and any mitigating factors in sentencing and should be repealed as soon as possible. There is considerable but not consistent case law in different Australian jurisdictions on the inclusion of Indigenous status/background/circumstances in sentencing (Anthony, 2010). One particular set of guidelines in NSW are the Fernando principles but these carry troubling reference to genetic vulnerabilities that could reproduce eugenic notions of Aboriginality as inherently prone to violence or alcoholism or criminality (McCay, 2013).

In an interesting comparison, the Canadian criminal justice system requires judges to take into consideration all the individual circumstances of the person before them in court to determine a fit and fair sentence. If you identify as Aboriginal and are charged with a crime, the judge must apply Gladue principles when you're in a criminal court. Gladue principles are a way for the judge to consider the unique experiences of Aboriginal peoples (Pfefferle, 2006; Ralston, 2021). These unique circumstances include the challenges of colonization the offender, their family, and community faced and resisted as Indigenous people, and continue to affect them today. These challenges include racism, loss of language, removal from land, Indian residential schools [Canada's stolen generations], and foster care. These challenges are called Gladue factors.

Judges must consider Gladue factors when they make decisions about Aboriginal offenders. Judges must consider options other than jail to help them address the challenges they face. For example, participation in a restorative justice program to help them work with those affected by their offending and repair the harm done.
Gladue principles also require judges to make decisions that are appropriate to specific local Indigenous heritage or connection. This means judges must consider:

- The community's perspective on the situation, their needs, and their suggested alternatives to jail. That community can be the Indigenous community where you live or come from, but it's also your support network or the people you interact with.
- the laws, practices, customs, and legal traditions of the offender's Nation or the Nation where the alleged offence took place.
- ways of making decisions that are sensitive and appropriate to that culture.

The judge can still sentence an offender to jail, but the judge must respect Gladue principles to decide how long the sentence and condition of probation. Recent literature has been critical of the ways in which some prosecutors and judges undermine the Gladue principles though application of risk profiles, Foetal Alcohol Spectrum Disorder, and other criteria (Dickson and Stewart, 2022). Consideration of these principles should lead the NT to a renewed reliance on Community Courts and aligned local Law and Justice Groups as envisaged in the NT AJA but will also require review and amendments of existing mandatory sentencing that inhibit the discretion of the judiciary.

The mandatory sentencing regime in the Northern Territory came into force on 8 March 1997, following amendments to the *Sentencing Act 1995* and was repealed in October 2001. The regime introduced compulsory minimum terms of imprisonment of 14 days, 3 months and 1 year respectively for first, second and third property offenders over the age of 17. Similar provisions were introduced for juvenile offenders over 15 years old, imposing a compulsory minimum term of 28 days detention for second and subsequent offences (Schetzer, 1998).

These amendments were widely criticised by judges, magistrates, and lawyers for limiting judicial discretion and expanding Executive power, and by welfare and Aboriginal justice organisations as violating human rights[27] and as racially discriminatory given the preponderance of Aboriginal offenders committing multiple minor property offences, including theft of food, sweets, and drinks (Schetzer, 1998; Goldflam and Hunyor, 1999; Thomson, 1999; Cunneen, 2002). Similar concerns were raised about the Western Australian use of criminal infringement notices for minor offences even though offenders avoided a criminal record (Methven, 2019).

While these particular provisions for mandatory sentencing for minor property crimes were repealed in 2001, other mandatory sentencing provisions remain within the *Sentencing Act 1995*, the *Domestic and Family Violence Act 2007* and the *Misuse of Drugs Act 1990.* In 2021 the NT Law Reform Committee (Report No. 47) called for the repeal of these provisions and the prescribed mandatory non-parole periods under the *Sentencing Act 1995*. The NTLRC further determined that the "penalty of mandatory life sentence for murder should be abolished. The maximum penalty for murder should be imprisonment for life with a power in the court to impose a lesser sentence if the circumstances of the offence or of the offender warrant that course" (2021: 54).

Given mandatory sentencing for minor property offences applied in the NT for less than five years, why include it in this report? Because it is a striking example of how in the 'right/wrong' political circumstances a policy that was demonstrably racist in its application and impacts and largely without deterrent effect could be passed into law (Goldflam and Hunyor, 1999; Cunneen, 2002).

One way to mitigate such discriminatory legislation is to require Cabinet submissions to include an Aboriginal impact statement with evidence of any predictable negative implications for the almost one third of Territorians who identify as Aboriginal. Currently the Office of Aboriginal Affairs within the Department of the Chief Minister has some oversight through the Aboriginal Affairs Sub-Committee of Cabinet – chaired by the Chief Minister and Assistant Ministers for Aboriginal Affairs. The Sub-Committee

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[27]https://humanrights.gov.au/sites/default/files/content/pdf/social_justice/submissions_un_hr_committee/5_mandatory_sentencing.pdf

comprises all Aboriginal MLAs, and bush MLAs who have an 80% Aboriginal constituency in their electorate and nine Aboriginal advisors. It is not clear whether this process interrogates all pending legislation that can reasonably be assumed to impact negatively on Aboriginal Territorians or just those that specifically relate to the Closing the Gap policy.

One fundamental problem facing those required to decide sentences in the NT criminal justice system is the enormous lack of alternatives to custody (see below) including rehabilitative residential care and other diversionary and supervisory programs, especially outside of Darwin and Alice Springs. Using notions of sovereignty and decolonisation, Blagg (2016) explores the potential for 'hybrid' initiatives in the complex 'liminal' space between Aboriginal and non-Aboriginal domains, for example, Aboriginal night patrols, community justice groups, healing centres and Aboriginal courts. The NT AJA strongly supports the (re)creation of Community Courts and the role for community Law and Justice Groups in mitigating offending and in providing expert advice on options for sentencing (Anthony and Crawford, 2013; NTLRC, 2021).

5.1.3.6 Corrections, Parole and Alternatives to Custody

Ever since the RCIADIC 1991 reports recommended imprisonment "as a last resort", there have been discussions of correctional reforms including all manner of diversionary programs and alternatives to custody. The Hamburger Report (2016) concluded:

> It is clear that the excessive number of prisoners, the high recidivism rate and the gross over-representation of Indigenous people in contact with the criminal justice and correctional systems are the greatest drivers of inefficient and ineffective outcomes in the NTDCS, and in the Territory's criminal justice system and human service delivery agencies generally, incurring huge costs to the taxpayer (Hamburger et al., 2016: 4).

Harry Blagg is investigating rehabilitation and training programs with the NT Department of Correctional Services for the AJU, and that report will provide current offerings and outcomes. Previous observations about Bail and Sentencing (see above sections) also obviously negatively impact over-representation of Aboriginal people in prison (especially those on remand) and on recidivism rates.

Many Aboriginal prisoners offend and are sentenced to imprisonment in part due to health and disability pre-conditions (2015 AMA Report Card on Indigenous Health). The health of some Aboriginal prisoners actually improves in prison because of regular food, some access to health care, exercise opportunities and (relative) lack of drugs and alcohol. Underlying and chronic conditions tend to persist with little or no effective

diagnosis or treatment (Indig et al., 2010; Grace et al., 2013). In particular, depression, anxiety and other mental health conditions are undertreated.

There is a strong argument that incarceration offers a unique opportunity for Aboriginal people to have thorough health assessments (in partnership with Aboriginal-controlled health services) and in some cases treatment for underlying conditions that predict further negative interactions with the criminal justice system. Even those on remand who are denied access to education and rehabilitation programs could participate in such assessments. These assessments are not critical in improving overall health and therefore reducing offending, but also can assist the judiciary in more effective sentencing options and decisions as to culpability. Grace et al. (2013: 16-17) note the importance of post-release health and rehabilitation programs to maintain health and welfare and lower recidivism rates.

One interesting pattern in the incarceration of Aboriginal people is an apparent lack of preparedness to apply for and be granted parole at rates equivalent to non-Aboriginal prisoners (NT Parole Board, Annual Report 2019). This could be seen as a rational response to the higher rates of breaching parole and probation orders for Aboriginal people, leading to a calculation that serving the full term is preferable. More research into this issue is recommended as the current situation leads to more disruption and greater impact on Aboriginal prisoners and their families.

The excellent report *Pathways to Justice* of the Australian Law Reform Commission found that:

> Stakeholders have articulated two key reasons why eligible Aboriginal and Torres Strait Islander prisoners may not apply for parole. First, eligible Aboriginal and Torres Strait Islander prisoners may believe that they are unlikely to be granted parole by the parole authority; this may be due living arrangements, previous offending, or lack of attendance in prison programs. It may also be related to a complex history in dealing with government representatives. Second, in jurisdictions [NT is one] that do not count time served on parole in the case of revocation, being granted parole creates too great a risk of increased prison time. (2017: 303).

The Parole Board has not yet provided its 2020 and 2021 Annual Reports, although these are expected to be published together later this year. The last available Parole Board Annual Report (2019) includes the following statistics (Table 9).

Statistics at a Glance	2017	2018	2019
Number of matters before the Parole Board	985	1317	1351
Number of distinct prisoners with matters before the Parole Board	450	530	569
Number of initial parole applications	325	341	376

Number of parole applications granted	161	158	155
Number of parole applications refused	132	134	123
Number of parole applications where prisoners declined parole	81	79	109
Number of parole orders revoked	76	90	81

Table 9: NT Parole Statistics. Source: Parole Board Annual Report (2019).

These statistics show more matters and more prisoners under review, more initial applications but slightly declining numbers granted and significantly increased numbers where parole was declined.

Of the 155 applications granted in 2019, 131 or 84.5% were Aboriginal (8 women and 123 men) and 24 or 15.5% were non-Aboriginal (3 women and 21 men) (Parole Board Annual Report, 2019: 39).

More recent unpublished data (Tables 10a-c) show:

Aboriginal Status	2019	%	2020	%	2021	%
Aboriginal	328	87%	334	87%	360	89%
Non-Aboriginal	48	13%	52	13%	45	11%
Total	376	100%	386	100%	405	100%

Table 10a: Parole Applications. Source: Unpublished NT Parole Board Data, 2022.

	Outcome							
	Parole Granted				Parole Refused			
Aboriginal Status	2020	%	2021	%	2020	%	2021	%
Aboriginal	87	81%	131	82%	78	91%	130	98%
Non-Aboriginal	21	19%	28	18%	8	9%	3	2%
Total	108	100%	159	100%	86	100%	133	100%

Table 10b: Parole Applications Granted or Refused. Source: Unpublished NT Parole Board Data, 2022.

	Outcome other than granted or refused			
	Parole deferred, declined and noted			
Aboriginal Status	2020	%	2021	%
Aboriginal	87	81%	131	82%
Non-Aboriginal	21	19%	28	18%
Total	108	100%	159	100%

Table 10c: Parole Outcomes. Source: Unpublished NT Parole Board Data, 2022.

Of those who declined parole in 2020, 96% were Aboriginal and in 2021, 88%.

Reasons given for declining parole are shown in Table 11.

Reason	Number	%
Fear of revocation – Parole conditions too difficult	66	60.5
Obtained employment with the Sentenced to a Job Program	7	6.5
Other	31	28.5
Wants to attend work camp	1	0.9
Wishes to reduce security rating	4	3.6

Table 11: Reasons for declining parole. Source: Parole Board Annual Report, 2019: 35.

Note: The Parole Board says that the large category Other mostly consists of people who wanted to complete a program or didn't want to complete a required program.
Regrettably, the Parole Board does not keep statistics in relation to whether an interpreter was used or not in obtaining these reasons.

There are currently no Aboriginal members on the Parole Board following the resignation of two long-standing members. The Minister is reviewing new recommendations including for two Aboriginal members. The percentage seems very low given the Board is required to have ten members who are women or Aboriginal and given the vast preponderance of Aboriginal people within the prison population. This report recommends a minimum of 6 Aboriginal members to adequately reflect the proportion of Aboriginal prisoners.

Tubex, Rynne and Blagg (2020) interviewed Indigenous people in Western Australia and the Northern Territory about the challenges facing ex-prisoners on release. They found effective throughcare plans that recognise ongoing impacts of colonialism were crucial, when still imprisoned as well as after release. They present comprehensive recommendations to break the cycle of offending and reoffending and address the over-representation of Indigenous people in prison that are primarily aimed to prevent recidivism in the first instance. Critically these involve:

- understanding the ongoing consequences of colonisation;
- political engagement and operational structures that support and strengthen traditional systems of authority and community involvement;
- throughcare as a process that seamlessly integrates prisoner management from intake to imprisonment through to release and beyond;
- prison programs and services that are culturally safe and evidence-based, and join up prison programs with community-based programs for skills development and behavioural change;
- release from prison must include safe transport to community where they will live including prior negotiations with the receiving community;
- support for accommodation and access to services post-release because most prisoners are homeless at the point of release;

- flexible employment that includes advice around lifeskills and handling cultural obligations;
- coordinated service delivery in partnership with community given that currently too many programs are delivered in an uncoordinated, short term and largely inefficient and ineffective way; and
- Aboriginal people be empowered to drive reform of prison programs designed to deliver throughcare (Tubex, Rynee and Blagg, 2020: 11-13).

NAAJA has run a Throughcare program for some years that has strong support from the NT Parole Board.

Eileen Baldry has conducted years of research into Aboriginal women prisoners and their experiences in prison and on release, much of it in NSW but likely to be relevant to the NT. A key issue is homelessness and capacity to break free of contact with the criminal justice system (Baldry et al., 2006). Baldry and Cunneen (2014) shows the powerful interaction between colonial racism and patriarchal sexism in the offending, conviction, and imprisonment of Aboriginal women. Finally, Baldry (2009) examines the interplay between Aboriginal women post-prison and the health and welfare of their children.

Jones et al. (2018) also researched the complexities of prison for Aboriginal mothers, which is fundamental given that most female Aboriginal prisoners are mothers or carers for children. Anthony, Sentence and Bartels (2020) also work within a neo-colonial framework to call for a paradigm shift from punishment to healing in the management of Aboriginal women's imprisonment.

Within that spirit, as mentioned above, this report finds that it is entirely realistic in the short to medium term to close all women's prisons in the NT and replace them with residential care and training facilities like that in Alice Springs.

5.1.3.7 Alcohol management[28]

Alcohol and other drugs contribute to high rates of family and domestic violence and offending among Aboriginal Territorians. Alcohol also makes compliance with court orders, bail and probation conditions very difficult for many. Alcohol plays a huge part in the lives of many NT residents and has extra significance for older Aboriginal people as a sign of acceptance/non-acceptance as citizens given the history of discriminatory legislation. This symbolic importance was highlighted during the Northern Territory Emergency Response (NTER) where residents of 369 NT Aboriginal living areas, town camps and homeland outstations were banned from consuming alcohol in their own homes. This was in addition to the residents of a further 110 Aboriginal remote communities, outstations and town camps in the Territory that were already "dry". In

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[28] This section has benefited from expert contributions from Russell Goldflam.

that latter group, possession of alcohol was and remains permitted only by permit, arrangements, in many cases initiated at the request of community members, dating back in some instances to the 1970s.

Velazquez, Petray and Miles (2022) examined the ways personal use of illicit substances and alcohol are constructed as either mitigating or aggravating factors in sentencing offenders in supreme and district courts in northern Queensland. They found that lawyers discussing non-Indigenous defendants primarily constructed illicit substance use as connected to other disadvantages such as poor mental health, physical pain, and trauma. In contrast, alcohol use was primarily raised as an aggravating factor for First Nations defendants, constructed by legal practitioners as a personal flaw linked to violent offending, and overshadowed the interrelated disadvantages that many First Nations defendants experience. This reflected social attitudes about First Nations people, reinforces individualistic explanations for offending patterns, and points to the systemic racism embedded in the structural processes of Queensland's higher courts that continues to profoundly impact First Nations people. I know of no similar research in the NT, but the Queensland research highlights how stereotypes and cultural racism can profoundly distort apparently fair judicial processes.

The NT Court of Criminal Appeal has held that social, economic and other disadvantages which may be associated with or related to a particular offender's Aboriginal identity "may operate as a mitigating factor, including where there is a clear causal nexus between the commission of the offence, an offender's alcoholism and the circumstances of his or her upbringing; but there is no general rule that intoxication by reason of alcohol consumption is either an aggravating or mitigating factor."[29]

Clifford et al. (2021) provides a comprehensive historical overview of legislated alcohol policy in the NT between 1979-2021 demonstrating the extent to which supposedly universal legislation in fact is overwhelmingly aimed at control of Aboriginal drinking. A pervasive theme of the long-running and often rancorous public debates about alcohol policy in the NT has been the resistance to community-wide restrictions on the supply of alcohol, on the basis that this punishes and discriminates against "responsible drinkers", which is in this context a euphemism for non-Aboriginal drinkers. Chikritzhs and Weeramanthri (2021) provide vital analysis of NT alcohol policy, especially on pricing.

Ransley and Marchetti (2021) argue that alcohol policy and practice (such as the Alcohol Mandatory Treatment Program, which operated from 2013 to 2017) in the NT has perpetuated a regime of control and punishment of Aboriginal Territorians. Analysing a coronial inquest into the 2014 death of an Aboriginal woman under treatment, they find that Aboriginal people have been reconstituted from a 'dying race'

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[29] *Forrest v The Queen* [2017] NTCCA 5 at 40

needing protection to a population of vulnerable and criminogenic alcoholics who need to be detained for their own and others' safety, and so they can be treated. Rather than protecting vulnerable people, the regime relied on techniques of detention and coercive treatment that continue the colonial state's production of their Indigenous 'vulnerability'.

Veteran researcher Peter d'Abbs has written dozens of useful accounts of alcohol use and policy responses over the decades. In his 2019 study of the implementation of an Alcohol Management Plan in a small NT community between 2007 and 2017, he found that the policy as implemented had the unintended consequence of undermining rather than enhancing the capacity of the community to act collectively in managing alcohol, providing many insights into the challenges of such plans on the ground (d'Abbs, Burlayn, and Jamijin, 2019). On the other hand, d'Abbs also co-authored a major study (Shaw, Brady and d'Abbs, 2015), which identified best practice models for licensed social clubs in remote communities.

In 2017 the incoming Labor government reintroduced the Banned Drinker Register (BDR), an explicit alcohol supply reduction measure that involves placing persons who consume alcohol at harmful levels to themselves or others onto a register, which prohibits the purchase of alcohol from take-away liquor outlets. Almost all those on the BDR are Aboriginal. This is neither remarkable nor surprising, as it is well-documented that alcohol-related harm falls disproportionately on Aboriginal Territorians. Evaluation of the program suggests that, in conjunction with other elements of the NT's alcohol harm minimisation programs, it has had a modestly beneficial effect (Smith and Adamson, 2018). Nevertheless, it is a further example of well-intentioned measures that tend to stigmatise and stereotype Indigenous members of the community.

The NT's current alcohol harm minimisation framework is based largely on the 2017 Riley Review, which led to substantial reforms to the *Liquor Act*, a moratorium on the issue of takeaway licences, an alcohol floor price, and the establishment of an independent Liquor Commission.

The single measure widely considered to have been the most effective in reducing alcohol-related harm over the last decade has been the stationing of Police Auxiliary Liquor Inspectors (PALIs) in Alice Springs, Tennant Creek and Katherine outside every takeaway outlet during opening hours. PALIs screen all intending customers and bar entry to those who are unable to provide evidence of residence at a place where alcohol is not prohibited. When the program first started, PALIs tended to only stop and question Indigenous people, but they are now trained and directed to screen everyone who approaches a bottle shop.   Overwhelmingly, however, those who are turned away are Aboriginal people, some of whom have successfully complained of racial discrimination. Research conducted in the Alice Springs Hospital Intensive Care Unit suggests that alcohol reforms including a minimum unit price for alcohol, the

introduction of Police Auxiliary Liquor Inspection Officers manning bottle shops and a Banned Drinkers Register have together reduced admissions for serious injury[30].

The PALI program graphically illustrates the tension between the benefit of implementing alcohol harm-reduction measures directed at members of the Aboriginal community, who suffer disproportionately from alcohol-related harm; and the cost of maintaining measures that are racially discriminatory. A further illustration of this tension is in the prevalence, particularly in Pitjantjatjara/Yankunyjatjatjara country, which extends across the so-called tri-state region where the NT shares boundaries with South Australia and Western Australia, of liquor licences with conditions that prohibit the sale of liquor to local Aboriginal people. Those conditions were imposed in response to a lengthy campaign by Ngaanyatjarra Pitjantjatjara Yankunyjatjara Women's Council (NPY) starting in the 1980s and are still strongly supported by NPY as well as by Anangu Pitjantjatjara Yankunytjatjara, their male counterparts.

On the other hand, some NT licensees continue to maintain the clearly racist practice of operating a "front bar" for blacks and a "back bar" for whites, a trading arrangement that was once ubiquitous across outback Australia.[31]

A current example of poor planning and lack of commitment to Local
Decision Making is the NTG's determination to allow the sunset clause s118 to terminate on July 16th, 2022. The Stronger Futures bans on alcohol require every community to opt back into alcohol controls rather than opting out as recommended by NT peak health and justice organisations[32]. This decision squanders opportunity for the NTG to collaborate with APONT in proper consultation across affected communities to develop appropriate place-based alcohol management plans. The AJA envisages that such careful and deliberate consultation could be led by local Law and Justice Groups and community health staff and local police. It further creates significant increases in police workloads and presumably increases in charges, convictions and imprisonment for alcohol dependent people, and health crisis, violence and chaos for many families and non-drinkers. This is counter to other efforts to enhance relations between police and communities across the NT.

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[30] https://www.katherinetimes.com.au/story/7101794/police-liquor-inspectors-bdr-and-alcohol-floor-price-reforms-effective-study-finds/

[31] See, for example, Northern Territory Liquor Commission, *Notice of Variation of Licence Conditions, Victoria River Locality* (17 January 2022) at [38]

[32] https://nit.com.au/powerful-indigenous-group-joins-call-to-halt-nt-govt-booze-reforms/
https://www.firstnationstelegraph.com/alcoholprotectedareasworkinalicesprings?utm_source=newsletter&utm_medium=email&utm_campaign=first_nations_telegraph_tuesday_10_may_2022&utm_term=2022-05-10
https://www.theaustralian.com.au/nation/indigenous/northern-territory-was-warned-lifting-grog-bans-would-cause-grief/news-story/2578db95111a8094ba614cb8a0aee561
https://www.abc.net.au/news/2022-07-25/nt-intervention-era-alcohol-bans-end-indigenous-communities/101189594

NT alcohol management policies need to be placed in the broader context of Aboriginal welfare and justice initiatives including from the Commonwealth government. Recent Commonwealth Indigenous affairs have been devised within a neoliberal ideological frame that seeks to diminish to role of peak bodies and land councils while individualising responsibility for disadvantage and its consequences (Altman, 2014; Strakosch, 2016; Howard-Wagner, 2018). Bielefeld (2018) focuses on income management (the cashless Basics card) as a core example of such paternalistic regimes that remain overwhelmingly targeted at regions with high Aboriginal populations. Government rationale for income management is to restrict access to alcohol and other drugs and to promote 'socially responsible behaviour'. However, empirical evidence indicates that income management in the Northern Territory has not been successful in achieving the government's policy objectives.

As with many of the topics examined in this Report, we can identify unintended consequences of poorly planned and coordinated policies and programs with insufficient attention to complex interconnections and place-based community engagement (Lea, 2012). Apparently well-intentioned and universal strategies to address real social and health problems fail in part because of colonial thinking and systemic racism (O'Sullivan, 2022).

5.1.3.8 Coronial inquests

In a wide-ranging discussion of the need to follow UNDRIP as the minimum standard for all forensic practice with Indigenous Australians, Gillies (2013) argues that psychologists and other forensic practitioners must recognise the impact of colonialism, racism, and intergenerational trauma in their work. She adds that the:

> failure to appreciate and respond to the unique requirements of Indigenous forensic practice through much of last century and the ongoing use of dominant cultural methods and cross-cultural methods developed for use with migrants is an example of institutional racism (Gillies, 2013: 14).

There have been nationally a number of coronial inquests that found bias and racism to be contributing factors in the deaths of Aboriginal people. One such case was that of Ms Dhu, a 22-year-old Western Australian, who died in 2014 of septicaemia and pneumonia after being denied medical care by both police and hospital staff[33]. Another was that of Naomi Williams, a 27-year-old Wiradjuri woman who was 22 weeks pregnant when she was discharged from the Tumut hospital without proper examination[34]. Another is the case of Tanya Day in Victoria who died in custody after

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[33] https://theconversation.com/ms-dhu-coronial-findings-show-importance-of-teaching-doctors-and-nurses-about-unconscious-bias-60319

[34] https://coroners.nsw.gov.au/documents/findings/2019/Naomi%20Williams%20findings.pdf

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being arrested for being drunk on a train[35]. A current inquest in Queensland into the deaths of three young women who suffered rheumatic fever as children who all died after being denied admission to the Doomadgee hospital will likely make similar findings[36]. An invaluable exemplar of what should occur in suspicious deaths of Aboriginal people is found in the paper published by the Victorian Equal Opportunity & Human Rights Commission and the Victorian Aboriginal Legal Service for the Day inquest, entitled *Investigating systemic racism*.[37] This resource for advocates and lawyers explains what systemic racism is, and how it can be investigated by the Coroner under the *Victorian Charter of Human Rights and Responsibilities*. Systemic racism is included in the first and the current versions of the Victorian Aboriginal Justice Agreement.

Newhouse, Ghezelbash and Whittaker (2020) detail, using specific examples, the trauma and unsatisfactory outcomes of many coronial inquests concerning Aboriginal deaths. In particular, they note the failure of findings concerning institutional racism and gross police misconduct in investigations to result in disciplinary actions or systemic change. The clash between Aboriginal family expectations and the limits placed on Coroners is always a tension, as we will see in relation to the upcoming Coronial inquest into the death of Kumanjayi Walker. Many NT coroners' reports provide excellent analysis of a common systemic failure in duty of care that fleshes out institutional racism and its impacts (Phillips, 2016). However, coronial findings are insufficient when not followed up by courageous and sustained government responses. This is a salutary lesson for this report and the planned implementation of the AJA. Political will and commitment to fully implement recommendations is essential if systemic racism is to be eliminated.

Deaths in custody form a key component of coronial inquests as do possible suicides. Indigenous Australians are more than twice as likely to commit suicide than non-Indigenous Australians, with regions like the Kimberley having years of much higher rates. From 2001 to 2020, age-standardised rates:

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https://www.theguardian.com/australia-news/2019/jul/29/naomi-williams-inquest-coroner-finds-bias-in-way-hospital-treated-aboriginal-woman

[35] https://www.hrlc.org.au/human-rights-case-summaries/2020/9/8/tanya-day-inquest-summary-of-findings
https://www.coronerscourt.vic.gov.au/sites/default/files/2020-04/Finding%20-%20Tanya%20Day-%20COR%202017%206424%20-%20AMENDED%2017042020.pdf

[36] https://www.sbs.com.au/nitv/article/2022/07/18/coronial-inquest-deaths-three-qld-women-over-12-month-period-begins-1
https://www.abc.net.au/news/2022-07-18/doomadgee-inquest-begins-with-statements-from-families/101248384
https://www.abc.net.au/news/2022-07-17/coronial-inquest-launches-doomadgee-hospital-aboriginal-deaths/101241012

[37] https://www.humanrights.vic.gov.au/static/735110063dbbc8b12c2baba3d2dd60e2/Resource-Investigating_systemic_racism_in_the_Coroners_Court-Tanya_Day_inquest_resource.pdf

- fluctuated in Indigenous males from a low of 25.1 deaths per 100,000 population (75 deaths) in 2008 to a high of? 42.9 (147 deaths) in 2020,
- could not be reported for some years for Indigenous females due to small numbers of deaths by suicide; however, for those years that can be reported, rates fluctuated from 7.2 deaths per 100,000 population (22 deaths) in 2006 to 15.2 (58 deaths) in 2019, and
- for Indigenous people ranged from 1.4 to 2.4 times that of non-Indigenous Australians.

In 2020:

- suicide accounted for 5.5% of all deaths of Aboriginal and Torres Strait Islander peoples while the comparable proportion for non-Indigenous Australians was 1.9% (AIHW, 2021).

Suicide and self-harm (including when in custody) is a huge issue beyond adequate discussion for the report (but see Tighe, McKay and Maple, 2013 and Dickson et al., 2019). Many of the factors involved mirror those in the more general social determinants of social and emotional wellbeing and health more broadly. Of particular concern are lack of control, racism, mental health, and family and peer relations.

In a powerful analysis of how these proximate factors lead to disproportionate suicide rates amongst Indigenous peoples globally, Carpenter et al. (2021) point to how histories of colonialism and ongoing racism function to systematically transform the colonial condition into a medical one.

> This transformation occurs in three ways. First, a lower evidentiary standard of proof for suicide determination by coroners when the victim is Indigenous is based on a coronial supposition that Indigenous Australians cannot produce a workable response to their disadvantage. Suicide is then interpreted as an understandable response, if not a reasonable one. Second, a focus by suicide researchers on individual risk factors is treated by coroners as an indication of vulnerability to suicide and ignores the collective rates of risk among Indigenous people that cannot equate with the pathological weaknesses of the individual. Third, a paternalistic approach to Indigenous people and communities in social policy positions them as failing subjects of modernity, supposedly requiring a range of government interventions to ensure Indigenous wellbeing (Carpenter et al., 2021: 527).

This study was based on interviews with thirty-two coroners across Australia, as well as an exploration of inquests into clusters of Indigenous suicide in Australia.

Racism in all its forms is implicated in self-harm, suicide and in the inadequacy of many responses to those suicides. There are important community-led suicide prevention programs especially in Western Australia that offer good practice relevant to the NT (Dudgeon, Bray and Walker, 2020; Dudgeon et al., 2022). An excellent guide to families and communities for supporting young Aboriginal people who self-harm can be found at Walker et al. (2022).

5.1.4   Conflicting explanations for the over-representation of Aboriginal people in prison.

> When the structural character of racism is ignored in discussions of crime and the rising population of incarcerated people, the racial imbalance in jails and prisons is treated as a contingency, at best as a product of the "culture of poverty", and at worst as proof of an assumed black monopoly on criminality (Davis,1997: 265).

The RCIADIC (1987-1991) was tasked with investigating the causes of gross over-representation of Aboriginal people in custody and the consequent disproportionate deaths in custody. Surprising many, they found that death rates for Aboriginal and non-Aboriginal prisoners were effectively the same once the over-representation of Aboriginal people in custody was allowed for. Commissioner Hal Wootten noted that at that time:

> On an Australia wide basis an Aboriginal was 27 times more likely to be in police custody than a non-Aboriginal … Australia wide an Aboriginal was 11 times more likely to be in prison than a non-Aboriginal … Had non-Aboriginals died in custody during the period investigated by the Royal Commission at the same rate as Aboriginals there would have been roughly 7400 non-Aboriginal deaths rather than the 400 which did occur (cited in Hollinsworth, 2006: 13).

Wootten further found in the inquiry into the death of Glenn Allan Clark:

> While no other person intended or took part in his death, it resulted from shocking and callous disregard for his welfare on the part of a hospital sister, a doctor from the Royal Flying Doctor service and two police officers. I find it impossible to believe that so many experienced people could have been so reckless in the care of a seriously ill person dependent on them, were it not for the dehumanised stereotype of Aboriginals so common in Australia and in small towns in western New South Wales in particular. In that stereotype a police cell is a natural and proper place for an Aboriginal (cited in Hollinsworth, 2006: 14).

The 2016 inquest by Western Australian coroner Ros Fogliani into the death in custody of 22-year-old Ms Dhu found almost identical failure in their duty of care by police and medical staff (Phillips, 2016).

RCIADIC Senior Commissioner Elliott Johnston noted the difficulty many non-Aboriginal people have in accepting the significance of systemic racism in the lives of Aboriginal people:

> My experience in talking with non-Aboriginal people over many years (and including in the course of this Commission) is that many have great difficulty in understanding institutional racism and the sort of statement I quoted above about racism: 'We lived it day by day, we went to bed with it'. The difficulty is understandable. Many people in capital and main provincial cities have little contact at all with Aboriginal people and know little of their circumstances. Furthermore, they knew neighbours, friends, workmates who seemed decent people not given to going around abusing people for their colour, religion etc. They knew similar people in other places. They can understand that there might be some bad apples in the barrel but how can it be, they think, that Aboriginal people are experiencing racism every day. I think it is important to address this because it is not an uncommon view, including among people who think what happened two hundred years ago was wrong (RCIADIC, 1991, Volume 2: 160).

That difficulty is found in non-Aboriginal people of all walks of life including police, health authorities, politicians, media, and policy makers. It also occurs in academic debates about the over-representation of Aboriginal people in prison.

The argument is symbolised by the work of Chris Cunneen versus that of Don Weatherburn (for key readings see Cunneen, 2006, 2019b and 2020; Weatherburn, Fitzgerald and Hua, 2003 and Weatherburn, 2014). Weatherburn highlights the influence of drug and alcohol abuse, child neglect and abuse, poor school performance and unemployment, and prior offending as the underlying causes of the over-imprisonment of Aboriginal people.

On the other hand, Cunneen and Tauri (2016; 2019) acknowledge these factors as triggering contact with the criminal justice system but sees them fundamentally as symptoms of an underlying systemic racism in justice, but also welfare, education, health, and other aspects of the state. This could be phrased as seeing them as proximate rather than distal or fundamentally causative. Harry Blagg and Thalia Anthony hold positions close to Cunneen, but they tend to express this system as grounded in colonialism (see Blagg et al., 2005; Blagg 2016, Blagg and Anthony 2019b and Anthony 2020).

This argument has been re-run endlessly in Aboriginal affairs policy debates since the 1970s. But the primary obstacle to comprehension, and subsequent action, is the

inability Commissioner Johnston observed of most Australians to understand or acknowledge the fundamental presence of systemic racism. They continue to see racism as some things 'bad' or ignorant people might do, but not as something all of us (even Aboriginal people) are implicated in through our employment and training in the racial state (see Chapter One). We can be doing our jobs as they should be done yet causing harm and unfair treatment to some within our community because of structural bias within normal legal and common-sense structures and processes.

This report finds on the evidence across the NTG including the justice system that the role of systemic racism is fundamental and that the proximate causes, while crucial to the daily lives of Aboriginal Territorians and requiring strategic interventions, are best understood as deriving from the history of colonisation and the ongoing, intergenerational impacts of systemic racism. As recommended in the NT AJA, identifying, and eliminating systemic racism is crucial in significantly reducing Aboriginal offending and imprisonment rates.

An additional argument relevant to the NT is the influence of cultural and linguistic differences on the fundamental clash between Aboriginal and dominant understandings of the justice system. Based on conversations during a class on the legal system at the Alice Springs jail, Ralph Folds documents a distinct:

> culturally defined sense of right and wrong, and understandings of the appropriate way to deal with members who disrupt the social order. Many of the mainstream laws and punishments to which this group is now subject are inconsistent with, or even antithetical to, these understandings of what is lawful behaviour and what punishments are appropriate for unlawful acts (2019: 112).

For example,

> Punishing a reckless driver who caused no injury, therefore, is just as antithetical to the legal precepts of the remote Central Australian Aboriginal cohort as the punishing of a 'blameless' passenger in a vehicle involved in a fatal accident is to Australian mainstream law (Folds, 2019: 113).

Along with the lengthy delays in going to trial, in sentencing and with appeal processes, these antithetical values of moral versus legal authority make justice and punishment extremely obtuse for victims, witnesses (and communities) and perpetrators in ways that compound the challenge of reducing rates of offending and recidivism. They add weight to calls in the AJA for local Law and Justice Groups and Community Courts. The Folds paper is also important for reminding us of the extent to which much literature and debate in criminology renders Aboriginal (prisoners) voices silent and treats them as objects of study and policy rather than as subjects with their own agency. Regrettably, this report is overwhelmingly written from such an objectivist perspective, largely because it is a desk-top survey of available research

and other data rather than a qualitative, ethnographic study of actual lived experiences due to time restrictions.

5.2 Racism, Aboriginal families, child protection and youth justice

One of the best examples of the ways in which past history becomes embedded in the structures and processes of the modern racial state is the over-representation of Aboriginal children in out of home care in current child protection systems (HREOC, 1997; Cunneen and Libesman, 2000; Hollinsworth, 2006: 107-109, 186-189).

Communities and Justice Evidence Brief. May 2022. *Comparing outcomes for maltreated children: Out-of-home care versus remaining at home – A literature summary* concluded that:

> Children in out-of-home care have often experienced greater socio-economic disadvantage, more severe maltreatment and trauma, and higher levels of prior contact with child protection services than children at risk who were not removed from their parents' custody (2022: 1).

The Brief further found that:
> Data analysis undertaken for the *Family is Culture Review* found a higher burden of developmental vulnerability among Aboriginal children who escalate through child protection services during early childhood than non-Aboriginal children involved in the child protection system. The Review highlights the fact that rather than supporting recovery and healing the out-of-home care system can compound and add to the trauma of Aboriginal children and young people (2022: 3).

Morgan et al. (2022: 7) found that
> On average, over 48 per cent of all Aboriginal and Torres Strait Islander child protection cases in these [Queensland] sites were primarily due to the presence of DFV.

They believe this figure is an underestimate. They add:
> We know from the evidence that the consequences for children who experience DFV are significant. Many can suffer serious impacts on their ability to learn and develop positive relationships with others and may be at heightened risk of alcohol misuse, future victimisation, drug dependency and contact with justice systems in later life. … Current responses rely heavily on the use of child protection processes that often lead to separation of children from their families and culture and leave them with limited support to process their experiences.

The bulk of the report explores culturally sensitive healing and support for these children whether remaining in family or is some form of out-of-home care.

Nationally Aboriginal and Torres Strait Islander children are more than ten times more likely to be placed in out of home care than non-Indigenous children (Tilbury, 2009; SNAICC, 2021). In some regions these rates are almost 30 times higher, reminiscent of the one in three to one in ten children removed under Stolen Generations policies (HREOC, 1997). Alarmingly, such removals are quite common for babies and infants (O'Donnell et al., 2019) and continue to occur multiple times for the same mothers/families.

In 2021 20% of NT children had had a notification under the *the Care and Protection of Children Act NT 2007* (twice the national average) and 47% of these children had multiple notifications. Latest figures for the NT show that 90% of children in care are Aboriginal. Twenty percent of NT children received a notification (twice the national average) of whom 81% were Aboriginal and 87% of those notifications were substantiated (OCC, 2021).

Ninety percent of NT children living in out of home care are Aboriginal (an over-representation of three times the NT population). The breakdown of placement types is as follows (Table 12):

Foster care	27%
Kinship care	24%
Purchased Home Based care	39%
Residential care	6%
Other care types	4%
Self-placing	1%

Table 12: Out of home care placement types. Source: OCC, 2021: 35.

The NTG (2018) adopted an ambitious new policy for Aboriginal children and families in 2018. In 2019 the NTG released *Transforming Out-of-Home Care in the Northern Territory Strategy* which aims to deliver a "system that prioritises and increases Aboriginal family/kin and foster carers and … improves wrap around support services for carers, children and young people and their families" (Territory Families, 2019: 3). The strategy outlined a three-year implementation program, commencing in June 2019. Purchased home-based care was not to feature in the new model with preference for family/kin and foster care; purchased home-based care was to be phased out by December 2021.

Clearly, it hasn't been. Purchased home-based care continues to increase in the percentage of children in out-of-home care being placed into purchased home based placements; and does not reflect any significant increases in either foster care or kinship care placements. This is contrary to what you would expect to see if the December 2021 phase out of purchased home-based care is to be achieved (OCC, 2021).

For all juveniles involved in the justice system adverse childhood experience and trauma is an overwhelmingly causative factor (Malvaso et al., 2022). Tilbury (2009), White and Gooda (2017), SNAICC (2021) and others, have documented the intergenerational and life-time cascade of increasingly intrusive government interventions from notification, to finalised investigation, to substantiation of neglect or abuse, to enactment of a child protection order, to placement in out of home care, to enactment of a juvenile justice supervision order, to detention in a juvenile or adult prison.

The 2022 Australian Institute of Health and Welfare report *Youth Justice in Australia 2020-21* found that:

> In 2020–21, the rate of Indigenous young people aged 10-17 under supervision on an average day was 117 per 10,000, compared with 7.2 per 10,000 for non-Indigenous young people. This means Indigenous young people aged 10-17 were about 16 times as likely as their non-Indigenous counterparts to be under supervision on an average day. This level of Indigenous over-representation … was slightly higher for those in detention (about 18 times as likely) than for those in community-based supervision (almost 16 times as likely) (AIHW, 2022:11).

In June 2020 40 children were in detention in the NT but this figure rose to 82 in June 2021. Ninety-six percent of those young people in detention in the NT were Aboriginal, and 77% were on remand (OCC, 2021).

> The 2011 Carney Review of the Northern Territory youth justice system and the 2017 Royal Commission demonstrate the negative effect lengthy remand periods have on children and that remanding children in custody is ineffective in improving community safety (OCC, 2021: 59).

This system is patently failing!

Despite promising to implement the recommendations of the Don Dale Royal Commission, few of them have been implemented in full, the old Don Dale facility which should have been decommissioned has been renovated and a second facility built next door. These centres will be filled under new youth bail and remand practices, with 96% of those in detention being Aboriginal children, some as young as ten years old[38]. Between July 2021 and June 2022, 54 young detainees in Don Dale either

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[38] https://theconversation.com/the-nts-tough-on-crime-approach-wont-reduce-youth-offending-this-is-what-we-know-works-160361
https://theconversation.com/theres-still-a-long-way-to-go-for-the-don-dale-royal-commission-to-achieve-justice-92736
https://www.lawcouncil.asn.au/media/media-releases/nt-governments-unacceptable-don-dale-backflip-fails-young-people-and-community-

attempted suicide or self-harmed[39]. Of the current population in Don Dale almost all are Aboriginal. This failure to follow through on promises shows how challenging the law-and-order climate in the NT can be, as well as the inertia caused by underlying systemic racism within the state.

Those children with a history of residential care are disproportionately represented in the criminal justice system. In a major NSW study, Gerard et al (2019) interviewed a range of police officers, residential care service providers, legal aid lawyers and juvenile justice workers. They found that factors linking residential care with contact with the justice system included the care environment itself, use of police as a behavioural management tool, deficient staff training and inadequate policies and funding to address the overrepresentation. These factors, combined with the legacy of Australia's colonial past, were a particularly potent source of criminalisation for Aboriginal children in care. There is no reason to doubt these findings apply equally to the NT.

Cunneen, Russell and Schwartz (2021) provide important indicators of better practice that could combat this over-representation of Aboriginal children in youth detention facilities. They interviewed youth justice workers and Aboriginal detainees in the NT, Queensland, and NSW to suggest nine principles of good practice in diversion of Aboriginal and Torres Strait Islander young people that would address many of the concerns raised in the White and Gooda Royal Commission.

1. Self-determination: diversion programs should be Aboriginal and Torres Strait Islander-community developed, owned and driven, and incorporate young peoples' voices
2. Consistent with the principle of self-determination, discretion to access diversionary programs should not be solely in the hands of police
3. Diversionary programs should ensure cultural safety and cultural security
4. Programs should incorporate elements of Aboriginal and Torres Strait Islander custom and law
5. Programs should deliver family-centred support based on a holistic view of Aboriginal and Torres Strait Islander health and wellbeing
6. Diversion programs should include built-in education, training and employment pathways alongside mentoring specific to the needs of Aboriginal and Torres Strait Islander people
7. Approaches to diversion initiatives should be trauma-informed and involve healing plans specific to the needs of Aboriginal and Torres Strait Islander people
8. Diversion must be appropriately funded with strong evaluation frameworks

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[39] https://www.theguardian.com/australia-news/2022/jun/10/is-it-really-going-to-take-a-death-legal-advocates-say-don-dale-must-be-shut-down

9. Minimising the reach of criminalisation of children and young people through increasing the age of criminal responsibility.

These principles could be adapted to serve many of the various areas needing to address the impacts of colonialism and the influence of systemic racism within a whole-of-government approach[40].

It is important to acknowledge that child protection orders for Aboriginal children are more likely to be for neglect and witnessing family violence than for physical violence or sexual assault than is the case for non-Aboriginal children, and harm was more than twice as likely to occur in foster care as with parents or in residential care (OCC, 2021). SNAICC (2021) and others emphasise the fundamental role of structural drivers such as poverty, mental ill-health, drug and alcohol dependence, lack of access to safe, affordable housing and service inadequacies such as barriers to quality health and childcare (Austin and Arabena, 2021), and especially inadequate government investment in family support services.

Amongst this lack of government support is half-hearted adoption of the Aboriginal Child Placement Principle (Gray, 2021). For an excellent analysis of compliance with the ACPP, see the Victorian Commission for Children and Young People's 2015 report. Arney et al. (2015) estimated that nationally the ACPP is followed in less than 13% of child protection cases involving Aboriginal and Torres Strait Islander children, although other estimates are higher. Insufficient effort is given to finding and supporting kin care and Aboriginal non-kin placement options and to eventual re-integration of those removed (McDowall, 2016) – see above for the data.

How does it make sense to persist with a broken system that is a proven pathway to juvenile detention and adult offending and incarceration that costs millions of dollars and ignore the calls for greater self-determination and reliance on community-controlled family services (Gerard et al., 2019)? One obvious change to break this cycle is the lifting of the age of criminal responsibility from 10 to 14 years of age.[41]

This evidence shows the weight of systemic racism and conservative government services in decision-making about the capacity of Aboriginal parents and extended family to provide stable, loving (if impoverished) environments - if given much less expensive but reliable and culturally safe support (Harnett and Featherstone, 2020). In an indicative finding the OCC (2021) found that 100% of Aboriginal children who completed the Alice Springs Youth Diversion program did not re-offend. No-one

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[40] See also Senior et al., 2012 for recommendations for successful youth diversion programs in the NT.
[41] https://ntcoss.org.au/ntcoss-submissions/ntcoss-age-of-criminal-responsibility-working-group-review/
https://humanrights.gov.au/sites/default/files/2020-10/australias_minimum_age_of_criminal_responsibility_-_australias_third_upr_2021.pdf

pretends that child protection and youth justice is not one of the most challenging areas of government service provision given current levels of funding and caseloads. But the NTG must do better in line with the Closing the Gap target and community expectation. The NT AJA is directed at adults rather than children but the core principles of reducing incarceration, alternatives to custody, strengthening community leadership, reducing family and domestic violence offending, and eliminating systemic racism in government agencies and contracted service providers are all integral to improved outcomes for children and youth.

5.3 Racism and Aboriginal health

The extent of evidence-based research on the impacts of racism in all its forms on the health and wellbeing of Aboriginal Territorians (and consequently the amount of analysis in this report) does not indicate that racism is any more prevalent in health services compared to other government agencies. One could argue that the attention given to the problem shows that health services are more attuned to these questions than other domains of Australian and NT government. Many other agencies and departments can gather inspiration and examples of good practice from a careful consideration of both the efforts to reform and the prevailing obstacles and failures.

The health outcomes for Aboriginal Territorians remain much worse than other residents (NTG, 2021a; Australian Indigenous HealthInfoNet, 2022). The social determinants of poor Aboriginal health are widely documented and recognised (Carson, Dunbar, Chenhall and Bailie, 2020). However, improved epidemiological understanding can lead to policy confusion and blame shifting between the NTG and the Commonwealth, and within the NTG between different portfolios and budgets about who is responsible for what social determinant.

Particular attention needs to be paid to distal as well as proximate causes. Apparently intractable 'gaps' in Aboriginal social and economic outcomes including in the health and justice systems can become resignedly accepted as just that: 'wicked problems' (Head, 2008) that are beyond anyone's control and consequently responsibility. Crucial components of the social determinant model can be lost or obscured, especially racism and its pervasive influence (Awofeso, 2011; Paradies et al., 2015; Bastos, Harnois and Paradies, 2018; Paradies, 2018; Gatwiri, Rotumah and Rix, 2021).

Ben et al. (2017) review racism as a barrier to accessing health services internationally. Mayes (2020) provides a comprehensive historical analysis of the embeddedness of that racism and normative whiteness within healthcare and the challenge those structural barriers present to reformers dedicated to eliminating systemic racism from the health system. In a powerful critique, Bond, Singh and Tyson (2021) call for a Black bioethics within health research and health care to counter

systemic racism and centre whiteness as a pathogenic and iatrogenic cause of Aboriginal illness and death (see also Ewen and Hollinsworth, 2016; Mayes, Paradies and Elias, 2021). In reviewing the NHMRC's guidelines for researchers and stakeholders regarding "Ethical Conduct in Research with Aboriginal and Torres Strait Islander Peoples and Communities", Bond, Singh and Tyson note:

> Interesting too that there is no mention of terms such as race, racism, racialization within the guidelines - instead "cultural" is referenced eighty-nine times across thirty-five pages. References to an apparent universal Indigenous culture is attached to the six core principles of what the NHMRC deems ethical research, with no mention of the five hundred different Aboriginal and Torres Strait Islander clan groups across the continent, beyond a reference to diversity (2021: 85).

They continue:

> We are thus presented with a false binary of the morally good health research agenda and the culturally othered Indigenous subject who must be prepared to receive the boon of enlightened western Science. In positioning the Indigenous subject as supplicant in the course of establishing the right way to ethically conduct Indigenous health research, the guidelines fail to procedurally attend to the broad question of power in the research enterprise and specifically the raced location of Black bodies (2021: 86).

A related omission particularly in program design and implementation in health care and more generally is the issue of control or more precisely lack of control (Tsey, 2008). Policy pronouncements bristle with declarations about participation, partnerships, empowerment, two-way approaches and so on, with very little serious power-sharing and relinquishment of control especially of funding and evaluation. It is not that such pronouncements are deliberately untrue (though on occasion, that may be the case) but more that our systems, our structures and processes, our professional identities and certainties, even our passion to do good, work to dilute our capacity to genuinely let go of control and allow Aboriginal people to literally live or die by their own decisions when given adequate information, resources and authority (Kowal and Paradies, 2005; Kowal, 2011 and 2015). These tensions and dilemmas work out at the systemic level in tandem with the higher order policy and practice questions of contested governance (Hunt et al., 2008) and the promise of self-determination (Sanders, 2018a [1993] and Rademaker and Rowse, 2020). Efforts to identify and eliminate all forms of racism within the NTG must be able to recognise both the complex histories of this maladministration and the cracks and leverage points that can be deployed to unravel and correct them.

Racism as a social determinant of Aboriginal health

The Implementation Plan for the National Aboriginal and Torres Strait Islander Health Plan 2013-2023 defines its application of the term racism as follows:

> Racism is a key social determinant of health for Aboriginal and Torres Strait Islander people, and can deter people from achieving their full capabilities, by debilitating confidence and self-worth which in turn leads to poorer health outcomes. Evidence suggests that racism experienced in the delivery of health services contributes to low levels of access to health services by Aboriginal and Torres Strait Islander people (Department of Health (Cth), 2015).

Gatwiri, Rotumah and Rix (2021) argue that despite decades of evidence showing that institutional and interpersonal racism are significant barriers to accessible healthcare for Aboriginal and Torres Strait Islander Peoples, attempts to address this systemic problem still fall short. The social determinants of health are
particularly poignant given the socio-political-economic history of invasion, colonisation, and subsequent entrenchment of racialised practices in the Australian healthcare landscape. Embedded within Eurocentric, bio-medical discourses, Western dominated healthcare processes can erase significant cultural and historical contexts and unwittingly reproduce unsafe practices.

Paradies and Cunningham (2009 & 2012) report on the Darwin Region Urban Indigenous Diabetes (DRUID) study where 164 Aboriginal adults completed a validated instrument assessing interpersonal racism and a separate item on discrimination-related stress and a self-assessment on their health status.
Stress, lack of optimism, lack of control, social connections, cultural identity, and reactions/responses to interpersonal racism were considered as mediators and moderators of the relationship between racism/discrimination and self-assessed health status.

Around Australia Aboriginal people do not wait for treatment or discharge themselves against medical advice at higher rates than non-Aboriginal people (Sealy et al., 2019). Many factors are involved but research often identifies miscommunication and alienation as primary causes (Einsiedel et al., 2012). Such factors are often pseudonyms for racism in all its forms. Wright (2009) shows how in an emergency department of a regional hospital in NSW, discharge against medical advice/left against medical advice (DAMA/LAMA) was so normalised for staff they just shrugged and said "they don't like to wait" with any awareness that their attitudes and behaviours could influence these outcomes. Current DAMA/LAMA data for the NT shows these patterns persist but the NT Health Department prevents publication for privacy concerns.

The DRUID study found that, after adjusting for socio-demographic factors, interpersonal racism was significantly associated with the self-reported mental (but not the physical) health component (see also Elias and Paradies, 2016). Stress, lack of control and feeling powerless as a reaction to racism emerged as significant mediators of the relationship between racism and general mental health. Similar findings emerged for discrimination-related stress. A critical component of this multiplex influence of experiencing racism is the intense feelings of powerlessness and lack of control or mastery of your circumstances. This is strongly associated with risk-taking, lack of foresight and often offending behaviours that increase the likelihood of Aboriginal incarceration.

While this study demonstrated direct impacts of Aboriginal mental health form experiencing racism, many other studies show that chronic stress has many profound effects on a person's physical health, especially on the circulatory system increasing risk of strokes and heart failure, renal failure, as well the indirect impact of higher rates of smoking, drug, and alcohol use (Cass et al., 2004; Larson et al., 2007; Yeates et al., 2009; Paradies et al., 2015).

A rigorous study of causal associations between self-reported experiences of racism by carers and householders and an overburden of childhood illness in remote Aboriginal communities in the NT found significant evidence for the impact of poor carer mental health and consequent greater alcohol and drug use (Priest et al., 2012). Racism was reported by 34.4% of carers and 38.2% of householders in the 12 months prior to the survey. It is common for these health and wellbeing data to be responded to with victim-blaming and deficit discourse (Fforde et al., 2013; Fogarty et al., 2018). Emphasis is placed on 'dysfunctional' families, poor caring and parental practices, alcohol and drug use, late presentation at clinics, and failure to stick to medical advice.

Such judgements often eventually result in allegations of neglect and child removals (see below). The Priest et al. (2012) study found direct associations with poor child health outcomes from systemic factors in the provision of health services and community resources. For example, visits from a doctor on weekly or fortnightly basis rather than a resident doctor, having less than two staff for more than six months, and having no Aboriginal health worker in the clinic were related to poor outcomes. Racism was positively associated with the presence of a canteen and CDEP but negatively associated with having a women's centre and an aged care facility. The research is very important in exposing the impacts of structural factors and the provision of services over and above the often-harsh judgements of lack of capacity and responsibility on Aboriginal people and families[42]. It directs our attention to what we do and fail to do to address racism in all its forms as a fundamental cause of Aboriginal suffering and disadvantage.

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[42] For a classic example of deficit discourse and the need for personal responsibility, see Davey, 2022 and other publications by the Centre for Independent Studies.

Most of these studies rely on self-reported experiences of racism. This is not a weakness as other studies have shown that people are as likely to under-report as over-report due to a range of factors including age, gender, level of education and geography (Duncan, Mavisakalyan and Tarverdi, 2019). Many of the incidents referred to occurred in institutional settings such as clinics, schools, workplaces, and police stations but may be regarded as interpersonal racism rather than systemic. As noted above, the different forms of racism 'bleed' into each other and are mutually reinforcing. Racist attitudes are built upon privilege which is structured by patriarchal, class and racial supremacy that is expressed in dominant ideologies and forms the architecture of our systems. Those attitudes and their underpinning ideologies 'normalise' those material and power inequalities, making common-sense or "the way things are and have always been".

An important Western Australian study demonstrates this co-constitution of all forms of racism in a major urban hospital servicing many Aboriginal patients from remote communities (Durey, Thompson and Wood, 2012). The study explores why few real improvements in Aboriginal health outcomes have been shown despite increased designated funding. They note that doctors frequently see treating Aboriginal patients as very challenging and often ask "why don't they look after themselves, present earlier, be compliant with our treatments" etc. They identify repeated failures in good practice: for example, incomplete admission data, incorrect names, no discharge letters to the GP or clinic as the patients don't know those full names and addresses. These can be seen as cross-cultural misunderstanding or poor communications but are very common and not remediated through mandatory changes in practices. They explicitly identify institutional racism as a key driver of these health failures and urge doctors and admin staff to critically reflect on their role in perpetuating power imbalances (see also Aboriginal Health Policy Directorate, 2017).

Dwyer et al. (2016: 13) define institutional racism in health services as "encoded in the policies and funding regimes, healthcare practices and prejudices that affect Aboriginal and Torres Strait Islander people's access to good care differentially". They found systemic or institutional racism and what they call "racism anxiety" amongst staff leading to defensiveness and denial of white values and racism profoundly impact Aboriginal health outcomes. Cunningham (2002) found in NT public hospitals Aboriginal patients were much less likely to receive standard principal diagnostic and therapeutic procedures than non-Aboriginal patients in the same hospitals with the same symptoms. Significantly Condon et al. (2006) found much poorer cancer outcomes for Aboriginal Territorians who had an Aboriginal first language and were more culturally 'other' than the health professionals. Tavella et al. (2016) found Aboriginal and Torres Strait Islander people are less likely to receive appropriate treatment for coronary heart disease after admission to hospital. Finally, the AIHW (2017) found Aboriginal and Torres Strait Islander people waited significantly longer for elective surgery than national averages. Overall, there is considerable evidence

that systemic disparities of care contribute to the disparities of health outcomes in hospital settings (Davidson et al., 2012).

A critical question that challenges the competence and authority of non-Aboriginal doctors and health bureaucrats is whether their confident determinations of what good health is aligns with the views of their Aboriginal patients. Pholi, Black and Richards (2009) question the whole notion of statistical parity at the core of the Closing the Gap policies as assimilationist by presuming that most Aboriginal people want to mirror middle-class, Western or whitefella values and lifestyles.

Ian Anderson (1987) illustrates this with a story of a Koori grandma whose desire to lavish care and love on young kin prevents her from following medical instructions for her diabetes. Similar issues prevent some patients from leaving country and kin for regular dialysis treatment in cities, or drive others to discharge against medical advice. In a classic overview of Aboriginal Health politics and cultures in the NT, Humphrey and Weeramanthri (2001) analyse the often-mutual misunderstanding and clashes between many Aboriginal patients and the medical establishment that lie at the heart of this systemic racism.

In an important study of the ways in which assumptions about Aboriginal patients with end stage renal failure are assessed as non-compliers by specialist nephrologists and therefore high-risk kidney transplants, Anderson et al. found:

> Definition and assessment of 'compliance' was neither formal nor systematic. There was uncertainty about the value of compliance status in predicting post-transplant outcomes and the issue of organ scarcity permeated participants' responses.

They concluded that:

> Reliance on notions of patient 'compliance' in decision-making for transplant referral is likely to result in continuing disadvantage for Indigenous Australian ESKD patients. In the absence of robust evidence on predictors of post-transplant outcomes, referral decision-making processes require attention and debate (2012: 1).

Such research supports Bourke, Marrie and Marrie's calculation that:

> The extent of the effect [of racism] was indicated in the recent report on the Closing the Gap targets from the Australian Institute of Health and Welfare [2018], which attributes 53% of the health gap between non-Indigenous Australians and Aboriginal and Torres Strait Islander people to the social determinants of health and risk factors. The remaining 47% of the health gap

may be attributed to institutional racism, interpersonal racism and intergenerational trauma (2019: 613).

Other important discussions of institutional racism in health care concern legislation, funding, governance, and non-coverage by supposedly universal systems such as Medicare and PBS. Henry, Houston and Mooney (2004) highlight differential treatment of community-controlled services compared to government departments and the lower per capita funding for Aboriginal people health costs. The latter has been reversed over time, but the systemic inequities remain largely in place. Mooney (2003) notes that in 1999 Double Bay residents received over $900 per annum in Medicare primary health care funds compared to $80 for Kutjunka in the Kimberley, one the sickest regions of WA, because of the exclusion of Commonwealth-funded community-controlled clinics from the 'universal' scheme. In 2022 research showed that in 2019-2020 NT Aboriginal people received only 16% of the average national Medicare spending per person. This meant that on average NT Aboriginal people received $154 of Medicare funding compared to $850 for non-Aboriginal Territorians.[43]

Such structural imbalances persist to this day, along with short-term contracts and insecure funding. Mooney (2003) also reported that Aboriginal staff employed in government health services (in part) on the basis of their Aboriginality are required to curb cultural and familial values and conform to 'white' behaviours. Nearly twenty years later the total expenditure on Aboriginal health had spiralled but could still be argued (as per Mooney) to be less than proportionate to the overburden of illness and harm (Dwyer et al., 2009). NACCHO & Equity Economics (2022) calculate the current gap in total recurrent health expenditure to be $4.4 billion.

Elias and Paradies (2021) argue that, in many ways, the laws, social structures, and institutions in Western society have operated to perpetuate the continuation of historical legacies of racial inequities with or without the intention of individuals and groups in society. By merely maintaining existing structures, laws, and social norms, society can impose social, economic, and health costs on racial minorities that impinge on their well-being and human dignity. Clearly, health itself is a huge factor in the negative contact many Aboriginal people have with the criminal justice system (see for example, Blagg, Tulich and Bush, 2017; McCausland, McEntyre and Baldry, 2017; Lansdell, Saunders and Eriksson, 2022; McLean, 2022). Equally important is the acknowledgement that efforts to address poor health outcomes will come to little if not twinned with strong action to eliminate systemic racism from health systems and services. Consequently, elimination of systemic racism in health is a core element of the campaign to identify and eliminate racism in the NTG within a whole-of-government approach.

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[43] https://theconversation.com/first-nations-people-in-the-nt-receive-just-16-of-the-medicare-funding-of-an-average-australian-183210

5.4 Racism and Aboriginal education

Poor educational outcomes for Aboriginal children especially in rural and remote schools have been measured, debated, and pontificated about for decades. Many of these arguments echo those found in the health domain but compared to health, there has been less progress or resolution. There have been dramatic shifts in policy, not always observed in classrooms, such as the contest between phonics and whole language approaches especially for those with English as a third or fourth language, culturally responsive pedagogies versus 'back to basics', the place of Kriol or Aboriginal English languages, the need for bilingual education or its prohibition and so on (Nicholls, 2005: Devlin, Disbray and Devlin, 2017; Vass, 2018; Rahman, 2020; Oldfield, 2022). State-territory borders assign Aboriginal children to different schooling regimes than their kin and countrymen across those artificial lines (Osborne et al., 2020).

Educational participation and attainments have always been key targets under the Closing the Gap policy. While there has been some progress at the national level, Aboriginal Territorians' NAPLAN results remain of concern especially in remote areas (Fry, 2020; Bunch, 2021). There is an emerging body of literature that questions the value of standard metrics such as NAPLAN in evaluating the 'success' of NT remote education and on whose terms, success will be defined (Guenther, Bat and Osborne, 2013; Street et al., 2022). There are important efforts to listen to and learn from Aboriginal teachers as to what the real barriers to better outcomes are (Burgess and Lowe, 2019; Staley et al., 2019; Moodie, Vass and Lowe, 2021).

A core finding common to much analysis and policymaking in Aboriginal affairs, not just education, is the persistence of deficit discourses that effectively 'blame the victim' (Fforde et al., 2013; Lovell, 2014; Fogarty et al., 2018; Daniels-Mayes, 2020). Sarra (2012) powerfully argues that the biggest obstacle to Aboriginal children's educational success is low expectations by non-Aboriginal teachers. His work at Cherbourg school and the Stronger Smarter Institute showed dramatic improvements in engagement and outcomes when the students were expected to perform at consistently high levels of behaviour and commitment.

Vass (2013) reminds us that the answers provided to the question "what is wrong with Indigenous education?" depend on the values and perspectives, and positionality of those concerned. Crucially it depends on where you are in the power relations that structure the education system (McConaghy, 2000; Beresford, Partington and Gower, 2003; Vass, 2015; Wilson et al., 2019). In a significant systematic review of research Burgess et al. (2019) found that most of the research identifies effective pedagogies to engage and support Aboriginal students rather than to improve their educational outcomes.

Absenteeism (Jorgensen, 2012) and failure to engage Aboriginal children is a major issue but again responses vary from cynical efforts to 'round up the kids' for the annual census on which resources, including staffing is based, to football and Maccas, to bringing elders and home languages into schools, to sending children to boarding schools in Adelaide or Melbourne.

The 'elephant in the room' in all of this is racism in its various forms; see above for deficit discourses (Rizvi and Crowley, 1993; McConaghy, 2000; De Plevitz, 2007; Bodkin-Andrews and Carlson, 2016). One element is the attitudes of non-Aboriginal pre-service and just graduated teachers who are often unconfident and poorly prepared for the dynamic realities of living and working in remote communities (Lowe, 2017; Trimmer, Dixon and Guenther, 2021). These are often seen as a short-term 'rite of passage' that can lead to 'better' appointments and advancement. Conversely teaching graduates from the Batchelor Institute of Indigenous Tertiary Education are ambivalently regarded by many in the education system; essential and likely to stay especially in their own community but 'not really' willing or able to assume lead roles, contrary to the research cited above. Regardless of the recognition afforded an Aboriginal teacher, they are typically placed in contradictory positions of great responsibility but little authority as the bridge (and sometimes barricade) between the school and community, and blamed when things go wrong (Hogarth, 2019).

Behind such interpersonal racism sits the systemic racism that continues to silence and marginalise parents and others in community who often are dismayed at the schooling situation and the passing parade of inexperienced teachers. One important study (Moodie, Maxwell and Rudolph, 2019) highlights the challenges inherent in a systematic review of inclusion/exclusion criteria related to racism in education in which racism and discrimination are frequently misrepresented or misreported, for example, as disciplinary and behaviour management issues, disadvantage, or as regional and remote education challenges.

The current NT *Indigenous Education Strategy 2015-2024* (NTG, 2015) is based on a massive review conducted by Bruce Wilson (2015). This otherwise admirable piece of work is remarkable in that there is no reference to any aspect of racism in its more than 300 pages. This report strongly recommends that the next policy robustly faces up to the challenge of identifying and eliminating racism in all its forms within the NT schooling and higher education systems.

Given the impact that a relevant and culturally safe education free of racism in all its forms can have in relation to Aboriginal employment, health, housing, and many other factors that predict negative encounters with the justice system, it is imperative that the proposed campaign to identify and eliminate racism within the NTG place moves to address racism in the education system at its heart.

5.5 Racism and Aboriginal local government services

The question of how best to incorporate Aboriginal community councils and associations into an evolving local government system in the NT has been a contentious issue for decades (Mowbray, 1994; Mowbray, 1999; Sanders 2018b [2006]). The challenge is obviously compounded by the complex political and financial relations between the NTG and the Commonwealth (Smith, 2018). Aboriginal people own approximately 50% of the NT landmass and 80% of its coastline. Repeated reforms of local government regulations have aimed to replace autonomous Aboriginal councils (and the over-arching Land Councils) with amalgamated regional councils diluting the autonomy of Aboriginal communities in the name of greater efficiencies and economies of scale. Clearly, given low numbers of residents and large numbers of unemployed, there is effectively no available rate base for Aboriginal councils and the precarious, short-term nature of various government funding arrangements prevent effective governance and service provisions (Hunt et al, 2008; Michel & Taylor, 2012). Further amendments followed the enactment of the *Local Government Act 2019* which commenced 1 July 2021.
https://cmc.nt.gov.au/supporting-government/local-government/local-government-act-2019

A parallel process has been various government-initiated reforms to allow leasing by non-community members of Aboriginal lands under the *Aboriginal Land Rights Act (Northern Territory) Act 1976.* These are complex legal and political processes but have been heavily criticised as undermining the authority of traditional owners and large land councils. (For a balanced analysis of these questions, see Weepers, 2021.)

In 2015 the Australian government transferred responsibility for municipal and essential services on NT homelands to the NTG. There are currently 17 Local Government Areas in the NT and 72 remote communities plus 79 outstations with more 39,000 residents. Using different nomenclature there are 500 homelands with 2,400 homes. The massive challenge of providing even basic essential services such as housing, potable water, power, driveable roads, telecommunications, and community infrastructure to homelands and smaller or more remote communities is almost overwhelming. For current policies and resources, see
https://tfhc.nt.gov.au/housing-and-homelessness/homelands?SQ_VARIATION_226844=0

The just released Senate Committee on COVID-19 (2022) included the following Recommendation 13:

> The committee recommends that the Australian Government adequately address the social determinants of health, which have been exacerbated by the pandemic, when delivering responses to COVID-19 with First Nations

communities, including food security, fuel security, water security, quarantine facilities, transport, infrastructure, housing.

The ongoing challenge of minimising death and long-term illness in remote Aboriginal communities from the pandemic has highlighted these risks and focused especially on overcrowding and the impossibility of isolating COVID sufferers and close contacts in most remote settings. Increased climate change extreme weather will also expose the potential for massive impacts on remote Aboriginal communities as seen in recent wildfires and flooding, for example.

There are at least 80,000 Aboriginal Territorians with more than half living outside of the towns of Darwin, Palmerston, Katherine, Tennant Creek, and Alice Springs (ABS, 2022). Accepting the immense challenges involved, do we imagine that 1 town with 40,000 non-Aboriginal people or 4 towns of 10,000 non-Aboriginal people would be expected to endure the prevailing conditions on Aboriginal lands in the NT? This situation seems to be, along with many other factors, the result of entrenched systemic racism across the NTG.

In 2021 a new target on community infrastructure was added to the National Agreement on Closing the Gap. This will measure progress towards parity in infrastructure, essential services, and environmental health and conditions. This will include data development to measure essential service provision to Aboriginal and Torres Strait Islander communities, including water and sewerage, waste management, road reserves and electricity supply. Hopefully this development will assist the NTG in monitoring the enhancement of essential services across these remote communities.

The NTG *Local Decision Making Framework Policy* (2020) is a 10-year Agreement between the NTG and the Aboriginal Peak Organisations of NT (APONT) to partner with Aboriginal communities to transition government services to community control. Government and Aboriginal communities will work together to develop policies and practices for service delivery in areas including housing; local government; education, training and jobs; health; children and families; and law and justice.
The Northern Territory Government recognises that building, supporting, and investing in strong Aboriginal governance is necessary to ensure local people drive local solutions, and that Aboriginal organisations are supported in managing local decision making.

The rationale for such an initiative is clear. Even allowing for remoteness and scale, government services cost much more per capita for Aboriginal Territorians than for the rest of the population yet little progress has been achieved in Closing the Gap (NTG, 2020: 12). As the Policy document concludes: "Government cannot keep doing things the same way" (NTG, 2020: 12).

A central tenet of the Local Decision Making (LDM) Framework policy is in two-way capacity strengthening in line with sound collaborative governance principles:

> Taking genuine decision–making powers away from communities and organisations and handing them back later and expecting Indigenous people to assume 'ownership' of models and rules they have had no say in developing, will not work (NTG, 2020: 17).

Too often capacity is seen as lacking (the deficit discourse) in those the government comes to help, rather than within government and contracted service providers who repeatedly fail to listen to and respectfully engage with Aboriginal communities. Therefore, key Actions under Aim Three of the NT AJA 2021-2027 include to:

- review and redesign key service models and contracted services that impact on justice outcomes to ensure they are efficient, effective, and meet the needs of Aboriginal Territorians.
- identify and eliminate systemic racism in government agencies and contracted service providers that directly or indirectly discriminate against Aboriginal Territorians engaged in the justice system.

The LDM policy suggests that two-way capacity strengthening includes:

> Where required, community representatives must be supported to revitalise and strengthen their negotiation skills, leadership aspirations and traditional support structures. Government agencies must also better understand place-based approaches and frontline leadership, then work to strengthen local cultural competency, preferably through training provided by people from that particular community (NTG, 2020: 17).

The LDM policy builds on the 2016 Remote Engagement and Coordination Strategy[44] which aims to improve the way NTG coordinates services and engages with regional and remote Aboriginal community members. Lack of coordination and duplication of services and consultation creates exhaustion and burnout amongst community leadership and alienation from partnering efforts (Hunt and Smith, 2005 and 2007).

A recent example where the promise of the LDM appears to have badly failed is the decision of the NTG to abolish income-based rent setting for public housing in remote Aboriginal communities and the Town Camps in Tennant Creek and Alice Springs. As Markham and Klerck (2022: iii) conclude:

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[44] https://apo.org.au/node/312875

Redistributing funds from remote community residents to the housing authority will transfer the cost of supplying housing away from the fiscally constrained Northern Territory Government and onto impoverished Aboriginal citizens. The abolition of income-based rent setting in remote public housing alone is arguably a form of indirect discrimination and is out of step with current Commonwealth Government moves to terminate a swathe of programs that discriminate against Indigenous residents of remote communities.

This report will critically examine the problems with binary notions of cultural competence and argue strenuously for courageous and robust anti-racism in later chapters, but recognition of the serious lack of NTG capacity is refreshing and shows the potential of the REC strategy and the LDM policy to fundamentally transform governance in the NT (if it is rigorously applied). It is also relevant to note that almost all existing cultural training is quite generic as opposed to place-based and community specific.

The *Local Decision-Making* policy offers a transformative pathway to re-set relationships between the NTG and Aboriginal communities. It recognises the lack of capacity currently within the NTG although it doesn't reference systemic racism. It recommends a commitment to acknowledging diversity across the NT and to a genuinely place-based approach. Recent policy decisions including the blanket repeal of the *Stronger Futures* alcohol restrictions and the income-based rental system for public housing evidence a failure to follow through on this commitment. Taking seriously the potential of the LDM policy offers the NTG an avenue to identify and eliminate systemic racism in its dealings with Aboriginal Territorians.

5.6 Racism and Aboriginal people in commercial dealings

There are many news stories and reports of unconscionable commercial dealings between private companies and Aboriginal families in the Northern Territory and nationally (House of Representatives Standing Committee on Indigenous Affairs. 2022). The House of Representatives 2022 Report found major failings in telecommunications, financial and banking, payday lending, car financing, funeral insurance, utilities, and public sector agencies such as the ATO in both performance and responsiveness to complaints. Many of these stories are of individuals being taken advantage of in relation of financing of major purchases such as cars, white goods and phone and internet contracts. Some are horrendously immoral such as the Cessna loads of car salesmen descending on communities at the times of royalty payments. Other studies have shown immoral and sometimes unlawful negotiating practices with Native Title Holders in relation to prospecting and mining operations (Banerjee, 2000; Woodley, 2019). Given the current levels of literacy including financial literacy and numeracy and access to independent advice in many communities, this is hardly surprising. This report cannot adequately document such abuses but does stress the need for proper diligence from government authorities and statutory bodies to proactively seek to receive complaints and to vigorously pursue them and compensation for those so abused. The relevant complaints authorities of Consumer Affairs NT, NTCAT, and the Australian Financial Complaints Authority all have work to do to educate Aboriginal Territorians, especially those whose first language is not English and/or live remotely, about financial literacy and their consumer rights.

One of the most egregious examples is the shameful history of the Aboriginal Community Benefit Fund (ACBF) companies that aggressively sold what appeared to be Aboriginal-owned time-payment or savings funeral schemes to Aboriginal families across Australia[45]. The first complaints of fraudulent behaviour were in 1992 but it took 30 years for the various government and statutory authorities to act decisively[46]. Tens of thousands of Aboriginal families signed up and many continued to pay regularly after the ACBF companies were instructed to cease recruiting new members following the Royal Commission into Banking. What they didn't realise was the scheme was not saving towards their future funeral costs but an insurance scheme. After 2015 when the government stopped allowing ACBF to deduct contributions directly from people's Centrelink payments 6,000 policies were cancelled. Between 2018 and 2022, 13,175 plans were cancelled due to non-payment of premiums. All ACBF companies are now

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[45] https://financialrights.org.au/media-release-aboriginal-community-benefit-fund-pty-ltd-no-2-pty-ltd-youpla-in-liquidation/
https://asic.gov.au/about-asic/news-centre/key-matters/youpla-group-formerly-aboriginal-community-benefit-fund/
https://www.afca.org.au/news/current-matters/acbf-youpla
[46] https://www.theguardian.com/australia-news/2022/may/27/youpla-how-aboriginal-funeral-fund-evaded-regulators-despite-30-years-of-complaints

broke and in liquidation and nationally more than 14,000 policy holders now have no cover and are very unlikely to receive any repayments despite having paid tens of thousands of dollars for potential payouts amounting to much less.[47] The Australian Financial Complaints Authority has registered more than 500 complaints against the ACBF companies (also trading as Youpla) since its inception in 2018. They have found in favour of complainants in 178 cases so far for misleading and deceptive practices. The incoming Albanese government has committed to prosecute the Directors of ACBF/Youpla. A very similar example is the funeral, life and accident insurance company Select AFSL that has been found by the Federal Court to have coerced several Aboriginal customers to sign up to policies using pressure tactics by rushing through calls, speaking too quickly, and ignoring their objections and requests for time to consider whether they wanted to buy insurance[48].

While an extreme example of national significance, the fining of Telstra for $50 million over unconscionable behaviour when sales staff at five licensed Telstra-branded stores signed up 108 Indigenous consumers to multiple post-paid mobile contracts which they did not understand and could not afford[49] shows that huge corporations as well as small retailers are all liable to prey on vulnerable Aboriginal Territorians unaware of their commercial and consumer rights.

The NT AJA Aim Three is "to improve justice responses and services for Aboriginal Territorians". Avenues to monitor the performance of private corporations and government contracted services are critical to this task. Also required are community education programs on financial literacy and risk, as well as how to seek redress for wrongdoing. There is currently insufficient funding for complaint authorities such as the NT ADC and the Ombudsman and bodies like NAAJA are primarily dealing with criminal rather than civil matters.

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[47] https://www.abc.net.au/news/2022-03-16/all-youpla-acbf-funds-in-liquidation-call-on-government-step-up/100907774
[48] https://www.smh.com.au/business/banking-and-finance/unconscionable-insurer-preyed-on-indigenous-customers-20220711

[49] https://www.accc.gov.au/media-release/telstra-to-pay-50m-penalty-for-unconscionable-sales-to-indigenous-consumers
https://www.accc.gov.au/media-release/telstra-in-court-over-unconscionable-sales-to-indigenous-consumers

5.7 The effects of racism on other vulnerable groups in the Northern Territory

The NT is a thriving multicultural, multifaith society with long-term non-European communities such as the Chinese who outnumbered Europeans more than one hundred years ago, large Greek and Filipino communities who mostly arrived in the post-World War 2 period, to recent waves of refugees from Timor Leste, the Middle East and Africa. The 2016 Census found 46% of the NT are culturally or linguistically diverse (26% being Indigenous Australians and 20% born overseas). But these data are out of date with both cohorts now much bigger and fails to recognize the number of NT residents who, though born in Australia, are culturally or linguistically diverse (CALD). Some data suggests the NT is more multicultural than the nation as a whole. The key policy instrument is the Department of Territory Families, Housing and Communities' *Multicultural Policy for the Northern Territory 2020-2025*[50] but this document does not address racism or discrimination against CALD groups or religious minorities. It is regrettable that there appear to be no interpreting services for languages other than English and NT Aboriginal languages for those wishing to complain about NTG services, other than the Ombudsman and the NT ADC.

There is only a smattering of research studies into NT's multicultural communities, and it would be unsound to assume that findings from national or interstate studies would necessarily hold for the Territory. It would also be a mistake to assume that the experiences and challenges faced by Aboriginal Territorians are the same or utterly different from those of non-Anglo Territorians. More research needs to be undertaken led by members of the NT's diverse communities. What can be argued is that measures that are undertaken to make government services eliminate systemic racism and offer more culturally safe and inclusive services are likely to benefit all those who differ from the Anglo-majority. In a similar fashion, one can assume that a campaign to counter racist beliefs in the broader public would also reinforce positive social cohesion. It should be noted that there is some evidence that there is anti-Aboriginal sentiment within migrant and CALD communities similar to that found in the Anglo majority (Habtegiorgis, Paradies and Dunn, 2014; Smith, Ralph and Pollard, 2017).

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[50] https://apo.org.au/node/306379

6.0 Review of systemic racism within government and recommendations to identify and combat racism across government and contracted service providers

This section will explore different approaches to identifying and eliminating racism in all its forms, but especially systemic racism, across the whole NTG and its contracting services. Specific recommendations about various aspects of systemic racism in NTG departments and agencies are linked to the explanatory analyses and discussions contained in Section 2. This section will review differing approaches to anti-racism including their strengths and limitations, will critique cultural awareness and Reconciliation Action Plans (RAPs), will argue that cultural competency is a flawed ambition, and sketch anti-racism strategies. The section will also strongly argue against the organisational cultural approach in favour of structural change and structural competency.

6.1 Naming (systemic) racism

People often feel reluctant to use the word 'racism' because of other people's strong reactions (Nelson, 2015). We may be uncertain that what we, or others, are experiencing is actually racism. Other people including family members, colleagues, managers, or friends may contradict us or want to deny or minimise the existence, extent, and effects of racism (see above 1.3).

People who don't experience racism often will deny racism, seeing it as 'very bad' and not something that 'we' could ever be party to. This reaction follows from an inadequate understanding of racism as meaning deliberate acts of violence or intimidation, and extreme behaviours. We therefore need to explain that racism occurs in a variety of forms (see 1.2) and that intent is not required for actions and outcomes to be accurately described as racist.

For the NTG to seriously grapple with systemic racism, it will need to use the 'R' word and not permit alternate, softer terms such as miscommunication, bad manners, or propose negative outcomes are caused primarily by Aboriginal choices and behaviour (see 2.1.4 and 2.4 above).

6.2 Different strategies for anti-racism

There are many different strategies that have been proposed to combat racism. This report will very briefly canvas four principal avenues: policies, education, communications, and anti-discrimination complaints mechanisms.

6.2.1 Anti-racism policies and codes of practice

As noted, people who complain about racial discrimination or try to raise issues of racism in workplaces often encounter resistance or a denial that the problem exists. They are told that they're being 'oversensitive', or that the issue is just a personality clash or differences in style, or the way people use humour or language. Often it is difficult to readily identify or prove the existence of racial discrimination, which can occur in subtle and covert ways.

One important strategy to combat such denial and minimisation, and to take the pressure off individuals, is to develop anti-racism codes of practices and policies. These often take a long time, and may encounter considerable resistance, but the effort is usually worthwhile in that the changes that result can become institutionalised or embedded in the practices of an organisation and are no longer subject to the 'goodwill' or support of senior managers.

Eventually NTG should aim to make anti-racism training, monitoring and proper grievance procedures part of the fabric of their organisations. That is, anti-discrimination and equity become mundane or ordinary (like Occupational Health & Safety), not seen as extra or only the concern of those few people who might experience discrimination. Indeed, the language of health and safety, risk management and reputational damage is often the most effective way of appealing to management for support in introducing such policies. The responsibility should be firmly located with senior management who are required (often by law) to maintain a safe, non-discriminatory environment for all employees. Again, we aim to make non-discrimination a basic industrial or social entitlement rather than an extra or peripheral measure to deal with special interest groups.

Considerable amount of good policy statements as well as excellent advice in Royal Commissions, coronial inquests and other inquiries exist, BUT the problem appears to be more a case of the slow up-take and implementation of those policies throughout the organisation and at the local level, and a lack of accountability mechanisms, reinforced by legislation and regulation, to make them do so.

6.2.2 Confronting racism through education

Alongside legal processes to respond to discrimination, most commentators recommend education as the most important means by which to confront racism and promote harmonious community relations. It is often suggested that children in particular should be exposed to educational programs that encourage tolerance and reduce bigotry. The programs are often simplistic and rely on gross stereotypes such Aboriginal people are spiritual and family-centred while 'Anglo-Australians' are materialistic and individualised. Rarely are such programs well thought through in the

light of contemporary research and understandings of the complex nature of all forms of racism and the contexts in which they operate.

Multicultural (including Aboriginal) education is criticised for failing to adequately address systemic racism in teaching or the curriculum, and for presenting positive but stereotypic notions of cultures. For example, Madan Sarup criticised British efforts:

> Multicultural education focuses only on culture – moreover it reflects a white view of black cultures as homogenous, static and conflict-free. It is preoccupied with exotic aspects of cultural difference and ignores the effects of racism. After all, just to learn about other people's cultures is not to learn about the racism of one's own (1991: 31).

Anti-racist education aims to directly engage with institutional racism by exposing the narrow class and cultural frameworks of schooling by examining school governance and teaching methods as well as curriculum (see 2.4 above).

6.2.3 Media and public communications campaigns

Using mass media to communicate tolerance of diversity and opposition to racism has been tried intermittently at national and state levels (Millbank, 1998; AHRC, 2019). Results have been mixed at best, with large numbers of individuals "signing on" as supporters but then not having anything much else to do. In these days of online petitions at a click, such engagement is superficial at best.

The AHRC have previously run a mass anti-racism campaign, *Racism It Stops with Me*[51] and is currently 'refreshing' the campaign for launch later this year. The campaign as well as targeting individual supporters aims to engage sporting codes and clubs, businesses and in the future, education. They have been quite successful in the sports area with major codes and high-profile players lending their support, making videos, etc. Given the persistence of crowd racism and allegations within the clubs, the effectiveness of this campaign and its uptake is debatable.

Some anti-racism advertising has produced powerful ads such as Beyond Blue's *The Invisible Discriminator*[52] and the New Zealand Human Rights Commission film, *Give Nothing to Racism*[53]. These are well scripted and beautifully executed works that give great pleasure to those who experience racism and their allies but there is little evidence of widespread transformation in the public's attitudes and behaviours. This is partly because most people continue to see racism as violent and aggressive acts committed by a minority not as something most of us are implicated in even if unwittingly (see 1.2.2 and 1.3).

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[51] https://humanrights.gov.au/our-work/race-discrimination/projects/racism-it-stops-me
[52] https://www.beyondblue.org.au/who-does-it-affect/the-invisible-discriminator
[53] https://www.hrc.co.nz/news/give-nothing-racism/
https://www.youtube.com/watch?v=g9n_UPyVR5s

Use of mass media and public communications campaigns to combat racism in the NT community needs to be examined in the light of extensive evidence questioned the effectiveness of such campaigns and their inability to explain or eliminate systemic racism.

6.2.4 Anti-discrimination legislation and complaints mechanisms

All states and territories have anti-discrimination laws on various grounds (see Policy Context under Introduction). All prohibit discrimination in provision of services on grounds of 'race', ethnicity, colour, country of origin, but not all on religious grounds[54]. These are very important avenues for redress although changes over the decades have weakened their capacity to make findings and impose penalties themselves and forced them to basically rely on mediation and conciliation. The fundamental problem with both the legislation and the complaints processes is inability to address forms of racism other than those committed by individuals against individuals in specified public situations. As noted previously, only a tiny fraction of racist incidents are formally complained about and even fewer result in a satisfactory outcome for the complainant. Critically, there is virtually no capacity to identify and address systemic racism and group victimisation. Even were there to be such legal possibilities, the actual ability of the agencies to adequately pursue them is limited by available resources (pers. comm. NT Anti-Discrimination Commissioner, June 2022).

6.3 Problems with cultural awareness and Reconciliation Action Plans (RAPs)

One of the oldest efforts to reduce prejudice and discrimination, especially against Aboriginal people is cultural awareness training (CAT). It is still the default option for many organisations that want to avoid accusations of racism today. Many branches of the NTG provide CAT to all employees during training, upon recruitment or on an annual basis. Most of this training is delivered by Aboriginal people, either from inside or external to the organisation. The time given, the approaches, the content (eg. how much historical as opposed to 'cultural' content) and the quality vary widely. The reception is also mixed, with many staff enjoying hearing from Aboriginal people (especially if they are seen as 'real ones' or authentic) and in particular, stories that seem exotic or new. Other staff resent such training (especially if it is mandatory and repeated annually), and if it raises the issue of racism and bigotry (Pedersen et al., 2000 and 2011; Johnstone and Kanitsaki, 2008). More worrying than resistance (that is probably unavoidable), studies of the actual impact on attitudes and behaviours after

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[54] See https://adc.nt.gov.au/ for details of the NT Anti-Discrimination Commission legislation and complaints procedures.

CAT show little or no sustained effects (Mooney et al., 2005; Chapman, Martin and Smith, 2014).

Cultural awareness training is of doubtful value and potentially can increase prejudice (including "pollyannaish" positive beliefs) through the use of gross cultural stereotypes that don't recognize the extraordinary diversity within 700,000 Aboriginal and Torres Strait Islander peoples or the intersectionalities with other aspects of their identities. The false notion that all Aboriginal people (or any population) can be characterised as possessing homogenous, unchanging, inherent characteristics is known as essentialism (Hollinsworth, 2013 and 2016). Binary contrasts between 'Western' and 'Aboriginal' or even worse 'Australian' and 'Aboriginal' cultures frequently occur in CAT (Hollinsworth, 1992 and 2006). They do nothing to educate about the magnificent diversity and richness of all cultures and the many commonalities involved, nor do they teach about the shared histories of Australia and the persistence of racism in all its forms. For these reasons, the report recommends that CAT be abandoned within the NTG as an anti-racism approach or at least needs thorough and independent evaluation if it is to be continued.

Another approach similar to CAT is the development by corporations and NGOs of Reconciliation Action Plans (RAPs}. Reconciliation Australia[55] is an independent NGO that emerged after the delivery to the Howard government in 2000 of the Ten-year report of the Reconciliation Council established in the wake of RCIADIC. Their main activities are mounting Reconciliation week and promoting the adoption of RAPs.

Reconciliation Australia's Workplace RAP Barometer (WRB) to measure the impacts of the program found in 2020 that 78% of employees at RAP organisations are proud of Aboriginal and Torres Strait Islander cultures compared to 64% in the general population. The WRB further found that 81% of Aboriginal and Torres Strait Islander employees at RAP organisations reported that they can 'always be true to
their culture while at work', compared to 69% in the general population (HRSCIA, 2022: 7).

Despite these pleasing results, there are strong criticisms of RAPs from within Aboriginal communities. Several contributors to the 2022 HRSCIA inquiry expressed concerns that RAPs were sometimes being used by corporate entities for image purposes only, or as a 'tick and flick' exercise. The Aboriginal Medical Services Alliance Northern Territory (AMSANT) expressed the view … that some businesses were establishing RAPs to enhance their reputation as good corporate citizens, rather than improve their engagement strategies:
> …some of them [RAPs] aren't worth the paper that they're written on. They're
> a bit of a tick being given to Reconciliation Australia. 'Yes, we're all good

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[55] https://www.reconciliation.org.au/

corporate citizens: we've got a RAP in place'… unless there are real, concrete, firm actions and processes about engagement, particularly around the big stuff like alcohol and things that have a detrimental impact on communities, and the most vulnerable communities—those documents, if they're to serve a purpose, need to have some of the genuine actions… population (HRSCIA, 2022: 9).

The First Nations Media Australia (FNMA) submitted that there is little evidence of RAPs being understood and implemented across the corporate sector in mid-level management, marketing, and promotional and communication activities and stated that an understanding of RAP commitment needs to be strengthened. FNMA also stressed the importance of RAPs being understood by department heads, human resources and communication staff so that "corporations don't stifle their own opportunities to benefit from RAPs" (HRSCIA, 2022: 9).

The report questions the value of RAPs for the NTG, at least in the absence of a sustained and critical anti-racism strategy to ensure that the development of a RAP engages all staff, not just Aboriginal staff and some senior managers. Where RAPs exist and are intended to be further developed through the various stages, specific consideration should be given to explicit anti-racism training by competent, external parties.

6.4 Problems with cultural competency

A significant improvement of CAT is cultural competency training which allow for more consideration of cross-cultural factors but retains some fundamental problems (Abrams and Moio, 2009; Hollinsworth, 2013; Beagan, 2018). Indeed, in a 2009 study by Kumagai & Lypson, only two of thirty-four cultural competency curricula included discussions of racism (cited in Cahn, 2020: 431). Johnstone and Kanitsaki (2008: 135) describe cultural competency as going beyond "cultural awareness and sensitivity" in that it requires "not only possession of cultural knowledge and respect for different cultural perspectives but also having skills and being able to use them effectively in cross-cultural situations".

Fundamentally cultural competency continues to oversimplify the problem by ignoring racism and the history of Aboriginal people in Australia. Rather it proposes the issue as one of intent and communication. Lists of skills are presented with shallow knowledge and understanding as a set of competencies the practitioner can and should learn and employ when working with (or is that 'on') Aboriginal people. The practitioner is assumed to be non-Aboriginal and probably a middleclass white Australian. There is no awareness of power differentials or of the need to relinquish power to establish trusting working relationships (Pedersen et al., 2013). Dwyer et al. (2016: 11) note that "People working in and using the health system need to relate across cultures, but they approach this endeavour with a complex mixture of goodwill,

defensiveness, guilt and anxiety. … moving beyond [racism anxiety] can enable people of goodwill to 'see' where change is needed, and to see themselves as part of the solution. It is time to get beyond the barriers and attend to practical improvements in care, focused on the care system, not simply on the skills and knowledge of individuals within it." For an excellent analysis of the dilemmas facing those in the NT who define themselves as 'helping' Aboriginal people, see Kowal and Paradies (2005).

Berger and Miller (2021) argue that health disparities are primarily driven by structural inequality including systemic racism, but medical educators minimize these core drivers of health disparities. Instead, they have adopted a culture-based agenda through the framework of cultural competence to address disparities despite a paucity of supporting data. Cultural competence is ethnocentric in orientation and its content sustains biases that are long-standing in health care. Moreover, cultural competence is based on flawed assumptions and is not structured around a set of clearly stated ethical values. They conclude that cultural competence reflects embedded ethnocentrism, perpetuates entrenched biases, and fails to recognize the depth and breadth of systemic racism.

Downing, Kowal and Paradies (2011) provide an illuminating matrix positioning cultural safety, cultural competence, and other styles of intercultural training based on their relative emphasis on: (i) individual versus systemic behavioural change (individual/systemic axis); and (ii) training health workers to develop an understanding of their own culture and processes of identity versus understanding the culture of others (process/knowledge axis). They strongly endorse cultural safety but even that lacks a fully developed systemic analysis. Curtis et al. (2019) also strongly advocate cultural safety over cultural competency in grappling with systemic racism to achieve (health) equity.

In cultural competence there is no critical reflection on what working 'for' Aboriginal clients or service users might look like or require. Dean (2001: 624) rejects cultural competence as an "unachievable and undesirable aspiration based on a modernist project to control and manipulate". She argues that seeking understanding offers much more than acquiring knowledge about the other, given the diversity, fluidity, and hybridity of individuals and families. Understanding can emerge within relationship building when "working from an appreciation of one's lack of competence":

> The paradoxical combination of these two ideas—being "informed" and "not knowing" simultaneously—captures the orientation to one's "lack of competence" that I am suggesting is needed in cross-cultural work (Dean, 2001: 628).

If we do not, indeed cannot 'know', we must rely on the information and insights offered by the client. Johnson and Munch (2009, p. 223) argue that modern social work has shifted from *knowing about* the client to *learning from* the client. This means constantly checking in within a therapeutic relationship but also means being

transparent and accountable as a government service partnering with Aboriginal communities and organisations. This cultural humility is critical for the NTG and its staff if they wish to identify and eliminate racism in all its forms.

6.5 Problems with unconscious bias training

A very fashionable form of commercial diversity training is unconscious bias training (Ogunyemi, 2021). Such training is widely used overseas and in Australia. While it may be useful to make people aware of the implicit and unconscious nature of their thinking about "others", it again fails to acknowledge and address structural barriers (Guschke and Christensen, 2021).

Noon (2018) argues that unconscious bias training is unlikely to help eliminate racism in the workplace, because knowing about bias does not automatically result in changes in behaviour by managers and employees. Noon concludes that:

> even if those deemed racist are motivated to change behaviour, structural constraints can militate against pro-diversity actions. Agency is overstated by psychology-inspired 'unconscious bias training' proponents, leading them to assume the desirability and effectiveness of this type of diversity training intervention, but from a critical diversity perspective (sociologically influenced) the training looks pointless (2018: 198).

6.6 What is wrong with pursuing cultural change to transform key organisations?

Royal Commissions and inquiries follow earlier Royal Commissions and inquiries in institutional sexual and gender abuses, failures of duty of care, breaches of human rights entitlements and International Conventions, corruption, and maladministration. There is momentary outrage and media and political focus and then things settle back to the status quo. The usual government or corporate response is to embark on an expensive program of organisational culture change (Knights and Willmott, 1987). These are often not rigorously evaluated and indeed merely foreshadow the next damning inquiry. Decades of research have shown the limitations of such approaches although they still have obvious appeal to those who administer these "toxic corporate cultures" (Van Rooij and Fine, 2018). A key element of that appeal is that a cultural or culturist (Rizvi and Crowley, 1993) approach obscures management responsibility and structural oppression by directing attention to vague, ill-defined weaknesses in 'culture'. It 'muddies' accountability both for past failings and future ones and does not address long-acting structural barriers for fairness and equity.

Samantha Crompvoets has written an important argument, based on many years of work with the Defence Department including the Special Air Service, about the challenge of transforming major organisations. She is particularly opposed to framing

this work as an issue of cultural change as it is commonly done these days. She suggests the "'culture diagnosis' is problematic in itself. It's too abstract, too unwieldy, and ultimately it blurs accountability and action" (Crompvoets, 2021: 3). In response to the usual defence that abuses by government agencies are the result of a few "bad apples", she suggests they show a 'poisoned orchard' that is the culpability of the 'orchard keepers'" (Crompvoets, 2021: 24-25).

She continues that 'culture' is in fact a barrier that organisations may defer to for complex/wicked problems, using blame-shifting, rather than the undertaking the responsibility, momentum and a journey of change.

> Culture "provides a signpost for organisation-wide characteristics and matters of importance. But does it provide clarity or obscurity when it comes to really understanding a problem? Does it lead to accountability, or is it a barrier to the taking of responsibility? How do you even know when you've achieved cultural change? Should we in fact be considering other ways of analysing and addressing deeply entrenched organisational issues?" (Crompvoets, 2021: 2-3).

Specifically, she charges that cultural change approaches have "led to a diffusion of accountability when addressing issues of misconduct in organisations, where problems that have been entrenched by history and tradition are inherited but not owned. It has led to an inability to ask the right questions, and uncertainty about what to measure and monitor in order to evaluate potential change." (Crompvoets, 2021: 5).

Crompvoets' alternative is to focus on where power lies and how it is exercised within these systems, so that the power may be counteracted, through the 'surety' of micro-changes rather than attempting something transformational but unachievable. In addition:

> Understanding how power operates within an organisation enables you to move beyond observing the problems. It allows you to focus resources—time, effort, money and goodwill—where they can have the greatest effect. In other words, instead of trying to orchestrate a whole-of-organisation transformation, which so often is doomed to fail, moving beyond culture enables targeted interventions (Crompvoets, 2021: 27).

This means that:

> … power should not be framed as a component of culture; rather, it should be examined *instead* of culture … that accountability goes hand-in-glove with power and needs to be unpacked, called out, made explicit and transparent, and that dismantling the organisational scaffolding that holds dysfunctional

power structures in place requires small, sustainable changes rather than what's offered by the so-called flagship culture change programs (Crompvoets, 2021: 68).

In warnings that are especially pertinent for efforts to identify and eliminate systemic racism in a whole-of-government context, Crompvoets declares:

> Organisational structures are the scaffolding that holds culture firmly in place. I'm not referring to hierarchical, organisational or functional charts that illustrate roles and ranks, but rather the legislation, policies, standard operating procedures, remuneration models, performance management frameworks, and sometimes even the physical locations of buildings and/or parts of an organisation. Even after leaders have moved on and change programs have run their course, this scaffolding still supports the underlying power structure (2021: 58).

Consequently, no amount of time, money, or other investment in cultural change will see permanent attitudinal change, nor the underlying core change that needs to happen for people to feel their sense of identity and belonging because they become protective of their known and taken for granted organisational cultures.

When the object of change is elimination of racism these questions of identity, merit, integrity are even more intense than normal, and will typically lead to denial, deflection and 'white-anting' of any top-down initiatives. All of the above, must be taken into serious consideration when designing and implementing the NT anti-racism strategy for the NTG.

In a much more nuanced approach that recognises the fundamental power of middle management and peer groups, Crompvoets proposes we examine climate rather than culture, because:

> The concept of climate is far more practical to apply than culture when it comes to organisational misconduct—or, in fact, when trying to understand any organisational issue. It takes into account the fact that behaviours or attitudes at the lower levels of an organisation may not manifest at a higher level. Unlike culture, the organisational climate can quite literally change overnight, usually with a change in leadership (2021: 44).

And further:

> Looking at climate and networks rather than culture creates a significant opportunity to better understand risks and how conducive an environment might be to misconduct. If the misconduct is not a generalised organisational phenomenon, then whole-of-organisation broad-brush culture transformation is

likely to be very costly and ineffective, and it will prompt a backlash from those who don't relate to that culture (Crompvoets, 2021: 53).

This lengthy restatement of the Crompvoets thesis reflects its saliency for the intentions of this report. Apart from avoiding culturalist misconceptions, her analysis rightly emphasises mid-management and organisational networks, and specifically anticipates push-back from those who wish to deny systemic racism and personal and professional accountability. Her stress on structural change (and climate) is consistent with the work of Cahn (2020) on combining interprofessional collaborative practice with anti-racism to go beyond cultural competency to what he calls structural competency.

This report recommends that efforts by the NTG to combat racism in all its forms renounce cultural change in favour of structural (climate) change as spelt out by Crompvoets that focus on leadership and accountability of senior and middle management.

6.7 Structural reforms and anti-racism strategies

This whole report has been an attempt to fundamentally shift thinking about racism in government agencies and to move from a cultural to a structural approach (see below for more details). Among many other commentators, Crompvoets (2021) stresses power, structures, and accountability as the most effective way to identify and eliminate organisational misconduct, including racism. Elias, Mansouri and Paradies (2021) review anti-racism efforts generally and opt for rigorous and reflexive structural approaches. In a seminal review of strategies from 2005, Pedersen, Walker and Wise remind us that "talk does not cook rice" and urge us to move beyond anti-racism rhetoric to effective strategies for social action. Part of that move involves coordinated, purposeful engagement with allies to support through action those who experience racism (Came and Griffith, 2018).

While this degree of transformation and renewal can seem totally daunting, it can be achieved when a crisis is recognised and responded to appropriately. Bond et al. (2020) remind us that all governments were able to work effectively with the community-controlled Aboriginal health sector to respond to the potentially catastrophic dangers of COVID-19. They ask why it has been beyond these same authorities to deal with systemic failure in the broader Aboriginal health system including systemic racism. One of their recommendations is the "Introduction of publication guidelines for health and medical journals requiring research relating to racialised health disparities to foreground institutional racism in its analysis, rather than socio-economic disadvantage and other social and cultural factors."

6.7.1 Policy and mandates

Arguably the most important ingredient in an effective anti-racism campaign in the NTG is the genuine commitment of Ministers and their staff, senior and middle management to the task. This requires a serious reflection of the complexity and embedded nature of the challenge and a willingness to rigorously pursue necessary action regardless of resistance or misconceptions. The bipartisan adoption of the NT AJA is a good start to that commitment.

A central policy plank is the NTG's *Everyone Together: Aboriginal Affairs Strategy 2019-2029* which references the National Agreement on Closing the Gap's commitment to addressing systemic racism (2019b: 9) but makes no further reference to racism or how to address it. It does, however, commit to a new relationship with Aboriginal communities, informed by truth-telling:

> …I'm saying to the departments, this is non-negotiable. The old way is finished. At the pace communities are comfortable with, the government is ceding decision-making power back to where it belongs: the communities (2019b: 4).

One option to strengthen that commitment is the adoption of a NT *Human Rights Act* like those in some other states that enshrines strong prohibitions against racism in all its forms, especially systemic racism. Alternatively, the NTG could adopt a *Code of Practice* or *Anti-racism Act* that would bind all government agencies and statutory authorities to the highest standards of equitable anti-racism practice. However, this is achieved, its purpose is to set targets, draw 'red lines' and empower those who experience or witness racism within government (see 3.2.1 above).

Part of this commitment should be enhanced funding for the NT ADC and the Ombudsman to permit more extension into remote areas, more public education and taking on representational and class actions against racism including in the NTG.

A further requirement is an instrument or oversight mechanism that can hold all arms of government to transparent account and catalyse best practice. This would consist of a standing committee of very senior executive members of each department, chaired and with secretariat support by the Department of the Attorney-General and Justice. The standing committee should ensure some Aboriginal membership, but this could include additional external appointments, and a representative from the Multicultural Council of the NT[56]. The standing committee should report annually the NT Parliament and release that report to the public.

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[56] https://www.mcnt.org.au/

6.7.2 Governance

The 2018 Australian Human Rights Commission *Leading for change blueprint* found that:

> Using statistical modelling based on the 2016 Census, we estimate that 58% of the population have an Anglo-Celtic background. An estimated 18% of the population have a European background, 21% of the population have a non-European background, and 3% of the population have an Aboriginal or Torres Strait Islander (Indigenous) background. This cultural diversity is significantly underrepresented among senior leaders in Australian organisations and institutions. Of those who occupy 2490 of the most senior posts in Australia, 75.9% have an Anglo-Celtic background, 19.0% have a European background, 4.7% have a non-European background and 0.4% have an Indigenous background. Described another way, about 95% of senior leaders in Australia have an Anglo-Celtic or European background. Although those who have non-European and Indigenous backgrounds make up an estimated 24% of the Australian population, such backgrounds account for only 5% of senior leaders. Cultural diversity is particularly low within the senior leadership of Australian government departments and Australian universities. Of the 372 chief executives and equivalents identified in this study, we find that 76.9% of chief executives have an Anglo-Celtic background, 20.1% have a European background, and 2.7% have a non-European background. There is one chief executive who has an Indigenous background (0.3%). (AHRC, 2018: 1).

Since then, figures nationally and in the NT for Indigenous and CALD senior appointments have improved but still lag way behind statistical parity. Along with accountability, governance could be the most critical aspect of making partnering between the NTG and Aboriginal Territorians genuine. It is becoming more normal for Aboriginal representation on Boards of NGOs and other agencies to be mandatory but as seen in the case of the NT Parole Board (see above), it can fall away unless it is made a priority. As with general Aboriginal employment, inclusion of effective Aboriginal governance may require specific attention to identification and support of suitable candidates and appropriate pathways. Within public service departments there may be limitations to such Aboriginal participation, but many NTG agencies have partnership agreements with Aboriginal peak bodies or other Advisory or reference committees that can serve as alternate ways to enhance Aboriginal participation in governance. It can be hoped that future treaty and agreement-making in the NT will provide more opportunities for shared governance and recognition of Aboriginal sovereignty by the NTG (see the Barunga Agreement 8 June 2018 between the NTG and the Land Councils of the NT[57]).

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[57] https://dcm.nt.gov.au/__data/assets/pdf_file/0003/514272/barunga-muo-treaty.pdf

6.7.3 Anti-racism training

This report has found that current CAT and cultural competency methods are inadequate or at best insufficient to identify and eliminate racism in all its forms (Downing and Kowal, 2011). Specific anti-racism training delivered by experienced experts in the field, especially for senior and middle management, is essential. The *Everyone Together Strategy* commits the NTG to building a "culturally responsive Northern Territory Public Sector through the development and implementation of a cultural responsiveness framework" (2019b: 7). It is crucial that any such framework seriously confront systemic racism or the attempt to pursue "culturally appropriate" policy making and service delivery will be inadequate for the reasons outlined above.

This training will basically cover the same territory as this report in presenting information and argument about forms of racism, the history and impacts of racism on Aboriginal people, especially in the NT, and strategies to combat and hopefully eliminate racism especially systemic racism (Pedersen, Walker, Paradies and Guerin, 2011; Kowal, Franklin and Paradies, 2013). Managing the structural and human changes required must become explicit parts of the performance review for all senior and middle management positions and mandatory in promotions. When serious racist incidents and practices, it can no longer be acceptable for managers to "hang frontline staff out to dry" but must accept their failures in leadership and supervision.

Shorter and less complex but still critical anti-racism training should occur throughout the NTG. Emphasis should be on the ways in which just "doing your job" as has been customary can, because of systemic racism, have devastating discriminatory impacts on Aboriginal and CALD people. Without triggering guilt or encouraging "paralysis through fear", staff should be led to see that working in anti-racist and inclusive ways not only is ethical and legally required, it also can enhance your job satisfaction and sense of effectiveness in a difficult job. It must be clear that the task of ridding the NTG of racism does not fall to Aboriginal people but lies more heavily on those who are privileged by and benefit from that racism.

6.7.4 Bystander and ally training and support

Many people who witness casual racism find it difficult to know how to respond. Others further down the journey of anti-racism will want to act but are aware of the problems of "speaking for Aboriginal people" or re-centring themselves as advocates and 'saviours'. Specific bystander training should be provided to NTG staff that not only covers witnessing racism in public spaces but in particular deals with incidents that occur within NTG workplaces (Nelson, Dunn and Paradies, 2011; Pedersen, Paradies, Hartley and Dunn, 2011; Stewart, Pedersen and Paradies, 2014). Unless strong support is provided by non-Aboriginal colleagues and receives encouraging support

from managers, racism in the NTG will continue to provoke resignation and damaging disputes.

In a similar fashion, ally training programs will need to be offered within the NTG. Allyship[58] is a crucial attitudinal and skill set that enables non-Aboriginal allies to strongly support Aboriginal people in resisting racism without taking over or speaking for Aboriginal people. Among many excellent resources, Amnesty International's *10 ways to be a genuine ally to Indigenous communities* (2022) is a very useful short guide. It defines an ally as follows:

> An ally is an individual or a group who possess structural power and privilege and stand in solidarity with peoples and groups in society without this same power or privilege. Being an ally is an ongoing strategic process of critical reflection, education, listening, and action, both of oneself and the environment and structural factors that have helped create social inequity and systemic racism.

6.7.5 Aboriginal employment, recruitment, retention

Clause 59 of the *National Agreement on Closing the Gap* urged all governments to increase Aboriginal and Torres Strait Islander employment:

> … more Aboriginal and Torres Strait Islander people should be employed in mainstream institutions and agencies, including through more identified positions, more Aboriginal and Torres Strait Islander people in senior positions, and appointments to boards (2020: 11).

The NTG has a target for Aboriginal public service employment of 16% by 2025 with the latest actual figure (30 June 2022) being 10.35% (2512 employees). Current (30 June 2022) Aboriginal employment in Senior Management sits at 4.6% (173 Aboriginal employees at the SAO1 level or equivalent and above). There is no available data on the distribution of Aboriginal employees across the full range of levels within the NTG. Data on the current distribution of Aboriginal employees across all the different departments is provided in Table 13 below.

Significantly the distribution is very uneven across the NT Public Service, from a high of 26.67% in the Office of the Chief Minister and 17.75% in the Department of Territory Families, Housing and Communities, to zero employees in Jacana Energy, Territory Generation and the Department of Treasury and Finance. Critically there is no data on retention and attrition of Aboriginal employees.

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[58] https://www.theguardian.com/world/2021/sep/19/no-more-white-saviours-thanks-how-to-be-a-true-anti-racist-ally
https://itstopswithme.humanrights.gov.au/learn-about-racism/be-good-ally

NTPS Employees as at Quarter 4 YR 2021-22
Paid Employees

Agency Description	Aboriginal Paid Employees		Non-Aboriginal Paid Employees		Total Paid Employees
	Total	Percentage	Total	Percentage	
Dept of Environment, Parks and Water Security	61	10.70%	509	89.30%	570
Dept of Corporate & Digital Development	87	7.11%	1,137	92.89%	1224
Jacana Energy	■	■	■	■	76
Dept of Territory Families, Housing and Communities	246	17.75%	1,140	82.25%	1386
Dept of Legislative Assembly	17	13.28%	111	86.72%	128
Dept of the Chief Minister and Cabinet	144	26.67%	396	73.33%	540
Territory Generation	■	■	■	■	189
Department of Education	663	13.83%	4,131	86.17%	4794
NT Police, Fire and Emergency Services	261	11.17%	2,075	88.83%	2336
Dept of Health	666	7.54%	8,167	92.46%	8833
Power and Water Corporation	64	7.71%	766	92.29%	830
Dept of Industry, Tourism and Trade	65	8.32%	716	91.68%	781
Dept of Infrastructure Planning and Logistics	75	8.05%	857	91.95%	932
Dept of Attorney-General and Justice	147	10.27%	1,285	89.73%	1432
Dept of Treasury and Finance	■	■	■	■	120
Total Whole of Government	2512	10.35%	21768	89.65%	24280

Table 13: NT Public Service employees as of 30 June 2022. Supplied by Aboriginal Employment and Career Development, Office of the Commissioner for Public Employment.

Recruitment is one thing, retention is another (Minderoo Foundation et al., 2022: 19). The main reason why Aboriginal employment percentages remain elusive for most public services is the high rate of attrition, often due to frustration at the ways they are pigeon-holed and sometimes subject to overt racism (Larkin, 2013; Jovanovic, 2018; Bargallie, 2020).

The NSW Public Sector Aboriginal Employment Strategy: NSW working together for a better future 2019-2025 (2019) has a target of 114 senior management positions and 3% of all public service jobs by 2025.

> Our strategy has 3 elements to help us meet our commitment: 1. Building a talent pipeline by attracting more Aboriginal peoples to work in the NSW public sector and helping them advance their careers 2. Improving Aboriginal cultural capability by teaching all public sector employees to respect and accommodate cultural differences 3. Engaging with our Aboriginal workforce to help us meet our targets. (NSW Public Service Commission 2019: 8).

Similar policies and strategies apply across the country, but progress is slow and job satisfaction and retention amongst Aboriginal employees mixed. Jovanovic's thesis (2018) is an excellent account of many of the conceptual and structural impediments to achieving these outcomes. He discusses the often-confused issue of Aboriginality as a "genuine occupational qualification" and of Identified Aboriginal positions

(Jovanovic, 2018: 10-22). He also lists common racial stereotypes held within the NSW Public Service (Jovanovic, 2018: 70-71).

An important report of a survey of more than 1,000 Aboriginal and/or Torres Strait Islander employees from across Australia conducted by Diversity Council Australia/Jumbunna Institute (2020), the *Gari Yala: speak the truth* report, found that

- 63% experience high identity strain – the strain Indigenous employees feel when they themselves, or others, view their identity as not meeting the norms or expectations of the dominant culture in the workplace
- 39% carry the burden of high cultural load, which comes in the form of extra work demands and the expectation to educate others
- 38% reported being treated unfairly because of their Indigenous background sometimes, often or all the time
- 44% reported hearing racial slurs sometimes, often or all the time
- 59% reported experiencing appearance racism – receiving comments about the way they look or 'should' look as an Aboriginal or Torres Strait Islander person

Unsurprisingly, the survey found that racism impacts wellbeing and job satisfaction – Aboriginal and/or Torres Strait Islander workers who experienced unfair racist treatment were:

- 2.5 times less likely to always be satisfied with their job, compared to those who rarely or never experienced unfair racist treatment
- 3 times less likely to always recommend their workplace to other Indigenous people
- 2 times as likely to be looking for a new employer in the next year

Such racism and work stressors will impact on the productivity and retention rates of Aboriginal employees within the NTG.

The 2022 Indigenous Employment Index survey of 42 employers employing 5% of the Australian workforce and 17,412 (6%) of the Indigenous workforce found that:

- The mean Indigenous employment rate across surveyed employers is 2.2 per cent, ranging from 0.17 per cent to 10.9 per cent.
- Only half of participating employers collect Indigenous retention data, of which the majority (62 per cent) reported lower retention of Indigenous employees compared to the rest of their workforce. In addition, over a third of the 42 participating employers do not provide any Indigenous-specific development opportunities.
- Indigenous representation at senior leadership levels was just 0.7 per cent among the 31 employers that reported the relevant data.
- Racism against Indigenous employees is common in the workplace, with over 50 per cent of Indigenous interviewees reporting direct or indirect racism currently and throughout their careers.

- Consistent with findings from other research, many Indigenous employees feel culturally unsafe at work, meaning they cannot practice their cultural identity without discrimination, ridicule or denunciation. Employers have low levels of understanding of racism, and how to appropriately respond to it (Minderoo Foundation et al., 2022; 19).

Fundamentally the problem Jovanovic (2018) and Larkin (2013) identify is the persistence of a deficit discourse that requires ill-defined compensation to enable Aboriginal people to be employed in the public service. In part this follows the requirement to seek exemption for the 1975 *Racial Discrimination Act* under its 'special measures' provisions for a position to be "Identified". Some managers believe this is an onerous task, which it is not. What it does require is serious thought as to the purposes and rationale for seeking such an exemption. Wanting to employ more Aboriginal people is a good intention but a poor reason for an Identified position that will probably lead to resentment amongst non-Aboriginal colleagues. This means that the second element of the NSW strategy to improve "Aboriginal cultural capability by teaching all public sector employees to respect and accommodate cultural differences" is critical with specific attention to anti-racism including the need for Identified positions and the function of 'special measures' as reparations for past discrimination.

Just adding "Aboriginal applicants are encouraged to apply" does not generally work either. Provisions such as "knowledge of Aboriginal culture and history and ability to communicate effectively" are so vague as to allow most non-Aboriginal Territorians to claim eligibility, and a reference from an Aboriginal person is often easy to obtain.

If the aim is to increase Aboriginal participation in the NTG across the board, then a much more structured pathway approach is needed. Several Job Network companies with a record of successfully placing Aboriginal people in employment could be contracted to recruit, train and specifically prepare and support Aboriginal applicants not only for base grade appointments but also for 'graduate' and other levels. At present this will continue to mean that some NTG Aboriginal employees are not Territorians, especially at higher levels, but hopefully this will reduce over time.

Bargallie (2020) interviewed dozens of past and current Commonwealth public service employees, most of whom recounted stories of discrimination, pigeon-holing as only able to contribute to "Aboriginal matters" and ongoing suspicion and surveillance. This points to deeply entrenched racism within government and the urgent need for sustained and critical approach especially to systemic racism. Some managers and HR staff suggest that posters, cultural leave and leave for NAIDOC etc. are crucial for employing Aboriginal staff. They, like acknowledgement of country before meetings and RAPs may be symbolic and appreciated but the real supports are about flexible and consistent supervision that genuinely values all the attributes an Aboriginal employee brings to the table including sometimes a desire to not "work in Aboriginal areas" and even be seen more as a competent planner or finance officer than as an

"Aboriginal staff member". Provision of opportunities for Aboriginal caucuses, excellent mentoring, secondment in and out of the NTG and other core supports are likely to be more impactful than some of the 'easy' symbolic gestures.

6.7.6 Aboriginal procurement policies and practices

The Commonwealth Indigenous Procurement Policy[59] (IPP) is an example of a relatively successful strategy for greater Aboriginal economic participation.
How the IPP works:

1. Annual targets for the volume and value of contracts to be awarded to Indigenous enterprises by the Commonwealth and each Portfolio.
2. The Mandatory Set Aside (MSA) requires that Indigenous businesses be given an opportunity to demonstrate value for money before a general approach to market. The MSA applies to procurements to be delivered in remote Australia and for all other procurements wholly delivered in Australia valued between $80,000-$200,000 (GST inclusive).
3. Indigenous employment and business participation targets apply to contracts wholly delivered in Australia valued at $7.5 million or more in 19 industries, known as Mandatory Minimum Indigenous Participation Requirements (MMR).

Exemption 16 of the Commonwealth Procurement Rules allows portfolios to procure directly with Indigenous small to medium size enterprises, provided the enterprise can demonstrate value for money.
Since 2015, the IPP has performed well against these KPIs, generating over $5.3 billion in contracting opportunities for Indigenous businesses. This has involved over 35,763 contracts awarded to more than 2,140 Indigenous businesses.

Of course, there are always questions about what constitutes an Aboriginal business (ownership in full or in part, staffing proportions, community or social benefits, etc.) but obviously this is a fairly straightforward way the NTG can promote Aboriginal economic development and possibly enhance the NTG's cultural capacity. Currently, the NTG has a procurement policy governed by the NT *Procurement Act 1995*[60]. The first version of the Procurement Policy was published in July 2017.

The latest version 1.5 of the Procurement governance policy and 1.6 of the Procurement rules were published 1 July 2022 and were the first to explicitly require consideration of Aboriginal participation and employment. Principle 4 of the policy, *Enhancing Capabilities of Territory Enterprises and Industries* now includes

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[59] https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp
https://www.finance.gov.au/government/procurement/clausebank/indigenous-procurement-policy-ipp

[60] https://nt.gov.au/industry/procurement/how-procurement-works/procurement-framework

"Implementing procurement strategies to improve Aboriginal participation" (NTG, 2022a: 7).

Procurement rule 2.2 states:

> The agency **must** consider opportunities to maximise Aboriginal participation and employment throughout the Procurement Lifecycle (NTG, 2022b: 10).

The rules also allow for alternative procurement methods (direct purchasing) for regional councils and remote areas where there is a minimum of 30% Aboriginal full-time staff (NTG, 2022b: 21).

One important point is that employing Aboriginal enterprises to maintain indoor plants or service printers or provide accounting services is as important and easy as employing Aboriginal cultural brokers or remote housing contractors. Again, a whole-of-government approach rather than seeing this as linked to the degree of Aboriginal clients or service provision of a particular department is also key.

6.7.7 Management of contracted service providers

In line with neoliberal management theories, Australian governments now primarily purchase service delivery rather than provide services themselves. The NTG has massive contracts for the provision of all manner of services that are aimed at or include Aboriginal 'customers'. Most of these contracted service providers are not Aboriginal enterprises. Many of them have been contracted for years, typically with no real evaluations of value for money or effectiveness against the contract KPIs. Some of them are excellent but many are not and explain away their failures to deliver through deficit or victim-blaming excuses. There is extraordinary waste and lack of coordination, especially in remote area service provision, complicated by irrational jurisdictional federal and Territory responsibilities, as detailed in repeated Auditor-General and Productivity Commission[61] reports.

Under the NT AJA Aim Three, one Action calls for:

> Review and redesign key service models and contracted services that impact on justice outcomes to ensure they are efficient, effective, and meet the needs of Aboriginal Territorians.

This Action should be adopted within a whole-of-government strategy to eliminate racism in government agencies and contracted services and to guarantee value for money and the maximum possible degrees of Aboriginal local community decision-making and accountability (see also monitoring and evaluation below).

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[61] https://www.pc.gov.au/research/ongoing/indigenous-expenditure-report
https://www.anao.gov.au/work/performance-audit/evaluating-indigenous-programs
https://audit.wa.gov.au/reports-and-publications/reports/delivering-essential-services-to-remote-aboriginal-communities-follow-up/

6.7.8 Accountability, transparency, and reporting

In the 160 consultations informing the NT AJA across the Territory led by the Director of the AJU in 2018-21, apart from racism, the issue that kept coming up was accountability of government and other authorities. People have been exhausted and dismayed at the frequency with which their advice seems to disappear without effect and their interests are ignored by those responsible for good governance.

It is imperative for the campaign within the NTG to identify and eliminate racism that all branches of the NTG abandon defensive secrecy and lack of transparency in favour of genuine openness and willingness to seek, heed and respond to critical comments especially from their most marginalised populations. Properly handled, such candour and proactive responsiveness will counter scandals and media sensationalism more effectively than blocking FOI requests and hiding behind "commercial in confidence" and privacy provisions. Aboriginal local community decision-making and partnerships with peak Aboriginal controlled organisations (see governance above) will provide resilience and robust conduct. Adequate reporting, to parliament, to stakeholders and partners, to Aboriginal Territorians (including in language) and the public will cultivate trust and "buy-in" and sustain support for government initiatives to transform the ways Aboriginal business is done in the NT.

6.7.9 Monitoring and evaluation

As detailed in section 7 below, monitoring and evaluation is fundamental to effective non-discriminatory and anti-racist government services. All programs including those delivered by contracted service providers must be regularly evaluated if funding is to be continued. Evaluation must include Aboriginal people and priorities as well as those of the NTG and other funders. A minimum percentage (perhaps 3% of all program budget lines) should be mandated for independent monitoring and evaluation.

7.0 Develop mechanisms to measure progress and reforms over time in reducing and or eliminating the incidence of racism against Aboriginal people, especially within a whole of government approach.

What does not get counted doesn't count.

Preparing this report required finding, interpreting, and analysing available data from a large range of websites, annual reports, grey literature, and other government publications as well as an enormous number of peer-reviewed academic literature. This report has been greatly assisted by statisticians in the NTG including access to some material not for publication. However, frequently the data needed to demonstrate disparities in outcomes that could be the result of systemic racism were not readily available or available at all.

Most commonly, the data is apparently not collected or at least not collected in forms that disaggregate Aboriginality from the total population. There are still public servants and other leaders in contracted service providers who say it is too difficult to ask people to self-identify or that collecting data by 'race' is too sensitive or contrary to privacy concerns. This is often contrary to federal or Territory policy guidelines and to funding acquittal requirements but still occurs. Given the covert and largely invisible nature of systemic racism, this denies policy makers, auditors, advocacy groups and other stakeholders vital evidence of unfair and unequal outcomes from what are regarded as universal and unbiased structures and procedures.

Even when the data is apparently available, there can be structural problems with its collection and accuracy as often noted by the Australian Bureau of Statistics. Total number identifying as Aboriginal can be overstated or understated (Griffiths et al., 2019). Equally as Walter and Andersen (2016) argue the simple juxtaposition of Indigenous and non-Indigenous reproduces colonial logics and reinforces deficit narratives.

Of particular relevance to this report are recent improvements in the design and implementation of evaluation of Indigenous programs that also recognise the colonial legacy and power imbalance involved[62]. Long-time Indigenous Affairs bureaucrat and policy analyst, Michael Dillon, concluded in 2020:

> that while there are benefits to evaluation and review, the impact of politics and
> pervasive structural power imbalances in determining the architecture of

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[62] https://www.socialventures.com.au/sva-quarterly/how-can-evaluation-better-recognise-indigenous-self-determination/
https://www.socialventures.com.au/sva-quarterly/indigenous-evaluation-how-you-do-it-is-as-important-as-what-you-find-out/

strategic policy settings makes policy evaluation and review highly problematic as drivers of policy outcomes and thus as drivers of reform.

Probably the most important government response was the 2020 Productivity Commission report *Indigenous Evaluation Strategy.* The Strategy:

> puts Aboriginal and Torres Strait Islander people at its centre, and emphasises the importance of drawing on the perspectives, priorities and knowledges of Aboriginal and Torres Strait Islander people when deciding what to evaluate and how to conduct an evaluation. It provides a whole-of-government framework for Australian Government agencies when they are evaluating both Indigenous-specific and mainstream policies and programs affecting Aboriginal and Torres Strait Islander people (Productivity Commission, 2020: 2).

This fundamentally acknowledges the two-way nature of accountability in Indigenous programs: up to the funding and auditing bodies, but crucially down to those who such programs supposedly serve (Hunt et al., 2008). As the *Empowering Communities* (2019) submission to the Productivity Commission asserts:

> We need to know what is working and if policy and programs which apply to Indigenous individuals, families and communities are having an impact. We also want greater insight into why policy or program implementation is not effective, and we need early opportunities for correction or reinvestment of funds and effort to ensure that funding is directed to where it is needed most (cited Productivity Commission, 2020: 4).

The Australian National Audit Office (ANAO) states:
> Program evaluation … can be defined as the systematic and unbiased assessment of the efficiency, effectiveness or appropriateness of government policies or programs (or parts of policies or programs). …
> The objective of the audit was to examine the effectiveness of the design and implementation of the department's evaluation framework for the IAS in achieving its purpose to ensure that evaluation is high quality, ethical, inclusive and focused on improving outcomes for Aboriginal and Torres Strait Islander peoples (2019).

The NT Auditor-General's office operates under the NT *Audit Act 1995*. The 2021 NT Auditor-General's Annual Report has no mentions of Aboriginal matters apart from listing the Aboriginal Areas Protection Authority as an audited entity. In line with the overall recommendation for a whole-of-government commitment to identifying and eliminating systemic racism, this report recommends that the NT Auditor-General include in its purview of efficient, effective and appropriate program design and delivery that they not result in racist disparities for Aboriginal Territorians. The

NT Auditor-General's Office would require professional development to enable it to complete this objective to identify systemic racism within their normal reviews of departments and programs, but it would serve as a powerful force in sustaining the efforts of the NTG, and the AJA in particular, to fulfil its ambition of combatting racism in all its forms.

Mechanisms designed to monitor and evaluate measures designed to combat racism in the NTG must attend to these ethical and political concerns and ensure transparency and accountability to Aboriginal peak bodies and general community to restore faith in government policy and pronouncements. The same transparency will also incentivise different NTG agencies and contracted services to not stand out as laggards or uncommitted to the process of eliminating all forms of racism. This will demand genuine political will from government in line the 2022 Reconciliation Week theme of "Be brave, make change". In the area of criminal justice, this is very hard when facing relentless scaremongering and hysteria around crime rates, and the judiciary being "soft on crime"[63] (Mickler, 1998). Here is where robust data-collection and analysis is crucial. The evidence is what the NTG and other stakeholders need to stare down those who wish to politicise these debates and contest the simplistic and racist interpretations often found in the media (Kilty and Swank, 1997). The same evidence can demonstrate improvements over time and significant cost savings for example, by reducing incarceration rates and youth detention rates (Willis and Kapira, 2018; NPS 2020; Craft, Steffens and Scott, 2022).

One possible measure of the incidence of racism in the NT is to count formal complaints to the NTADC, the Ombudsman and the AHRC on grounds of racial discrimination. Regrettably this approach is inherently flawed because of the very low rate of formal complaints made (Babacan and Hollinsworth, 2009) and the fact that an increase in complaints can signal a positive improvement in awareness of rights and avenues to complain as appears to have followed the Territory-wide consultations for the AJA. There is also serious reluctance to complain to authorities, especially to police, amongst many Aboriginal people, even victims of crime[64]. Even if it were possible to capture informal complaints to police, to Aboriginal legal and community services etc. we would still be very unclear as to the direction of progress or regression.

7.1 The Marrie Matrix

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[63] https://www.abc.net.au/news/2017-01-13/nt-crime-wave-rhetoric-questioned-by-justice-groups/8179422
https://www.theguardian.com/australia-news/2020/sep/27/and-embellishment-the-myth-fuelling-queensland-election-debate
[64] Willis (2010: iii) notes "Victims of crime need to be confident they can go to police for help without fear of retribution and further victimisation."

Adrian and Henrietta Marrie developed their Matrix in 2014 "as a tool for external assessment purposes to provide an objective, straight-forward and easy way to identify, measure and monitor racism in an institutional setting and to provide a measure for public health sector engagement with Aboriginal and Torres Strait Islander people in the decision-making, planning, implementation and accountability processes regarding Aboriginal and Torres Strait Islander community healthcare needs and service delivery" (Marrie and Marrie, 2014: 7).

Most literature treats structural, systemic, and institutional racism as essentially the same phenomenon, as does this Report. Marrie and Marrie (2014: 5 footnote 8) distinguishes between structural, systemic, and institutional racism and uses them to refer to quite separate locations and forms of racism:

> In the context of the Matrix, structural racism is located at the legislative level as hospital and health service (HHS) laws effectively provide the legislative architecture or infrastructure which structures governance, management, performance, employment, reporting and accountability arrangements. If the needs of the Indigenous population are not visible in the relevant laws, this has a flow-on effect within public hospitals and health services. Systemic racism is treated more as a senior and middle management phenomenon, particularly within the domain of human resources departments/units charged with the management of workplace relations. In identifying institutional racism, this is seen as a phenomenon that has many manifestations that can occur across all facets of an organisation's activities and as reflected in the culture of an organisation as a whole - therefore, from a point of view of analysis and measurement institutions/organisations are treated holistically as discrete entities. In terms of their relationship, structural racism (in this case referring to HHS laws) is the fundamental driver of institutional culture, institutional racism encompasses the various direct and indirect manifestations of racism within an institution as a whole, and systemic racism is a particular manifestation of racism primarily occurring within workplace management, and which can also be a primary site where interpersonal racism can occur.

This is a crucial advantage for the application of the Matrix using publicly available data in standardised ways enabling comparisons between hospitals and health services and over time for the same institution. It also is a limitation in that it does not assess those critical issues of legislation (structural) and management and leadership or qualitative assessments especially by Aboriginal staff of workplace climate and cultural safety (systemic according to Marrie). Other tools and approaches will be needed to assess the extent of those aspects of racism and how they change (or not) over time in response to government efforts to eliminate systemic (in terms of this Report) racism.

The Matrix has been designed around five key indicators of institutional racism and a set of 13 criteria. The five key indicators focus on areas in which institutional racism is commonly noted or experienced by Aboriginal and Torres Strait Islander people: (i) governance; (ii) policy implementation; (iii) service delivery; (iv) employment; and (v) financial accountability (Marrie and Marrie, 2014: 20).

1. Governance: Aboriginal representation in governance structures, including at Executive and Board level, for direct involvement in decision-making and "legal visibility" in enabling health service laws and regulations.
2. Policy implementation: An integrated and coordinated approach between public health and Aboriginal Community Controlled Health Organisations, Aboriginal community engagement and readily available sources of information to Aboriginal people if community engagement is to be effective.
3. Service delivery: Culturally secure health care hinges upon having both a culturally competent non-Aboriginal workforce and strong participation by an appropriately trained Aboriginal workforce.
4. Recruitment and employment: Measuring the actual status of the Aboriginal health

workforce against national and state targets, commitment to employment equity principles at a local level and strategies in place to improve Aboriginal employment.
5. Financial accountability: Transparency and accountability in funding arrangements, including at the local level (Marrie and Marrie, 2014: 20).

The Matrix is underpinned by a set of 13 criteria and indicators which are derived from publicly available information. For example, under the 'Service Delivery' key indicator, several Tier 3 Health System Performance Measures were selected from the Aboriginal and Torres Strait Islander Health Performance Framework 2014 including:

· Discharge Against Medical Advice
· Selected potentially preventable hospital admissions
· Cultural competency
· Aboriginal and Torres Strait islander people in the health workforce.

For operational explanations of the thirteen criteria gathered under those 5 indicators for identifying, measuring, and monitoring Institutional Racism within Public Hospitals and Health Services, see Marrie and Marrie, (2014: 26-35). For an example of the support for the Marrie Matrix in another state's health system, see Aboriginal Health Policy Directorate (2017).

The original Matrix is set out below followed by an Adaptation which maintains the more restricted definition of Institutional Racism used by the Marries but modified for use across the NTG as a whole (department by department). I thank Adrian and

Henrietta for their permission to make this adaptation, any weaknesses of the adapted version are my own responsibility.

Original Marrie Matrix (2014)

1. Governance: Aboriginal representation in governance structures, including at Executive and Board level, for direct involvement in decision-making and "legal visibility" in enabling health service laws and regulations.

Criteria	Score	Scoring
• Legal visibility	20	?
• Aboriginal and Torres Strait Islander representation at Board level	10	?
• Representation at Executive Management level	10	?
Total	40	?

2. Policy implementation: An integrated and coordinated approach between public health and Aboriginal Community Controlled Health Organisations, Aboriginal community engagement and readily available sources of information to Aboriginal people if community engagement is to be effective.

Criteria	Score	Scoring
• Closing the Gap in Aboriginal and Torres Strait Islander health outcomes	10	?
• Local Aboriginal and Torres Strait Islander Health Services	10	?
• Community Engagement	10	?
• Public Reporting and Accountability	10	?
Total	40	?

3. Service delivery: Culturally secure health care hinges upon having both a culturally competent non-Aboriginal workforce and strong participation by an appropriately trained Aboriginal workforce.

Criteria	Score	Scoring
• Cultural competence	10	?
• Aboriginal and Torres Strait Islander participation in health workforce	10	?
Total	20	?

4. Recruitment and employment: Measuring the actual status of the Aboriginal health workforce against national and state targets, commitment to employment equity principles at a local level and strategies in place to improve Aboriginal employment.

Criteria	Score	Scoring
• Employment profile	10	?
• Aboriginal and Torres Strait Islander health workforce development	10	?
Total	20	?

5. Financial accountability: Transparency and accountability in funding arrangements, including at the local level.

Criteria	Score	Scoring
• Closing the Gap funding	10	?
• Other identified Indigenous public health service funding	10	?
Total	20	?

Score							140	?

Institutional Rating scored against criteria

Score:	>110	80-109	60-79	40-59	20-39	<20
Evidence of Inst. Racism:	Very Low	Low	Moderate	High	Very High	Extreme

Adaptation of the Marrie Matrix to 'Institutional' Racism in the NTG

1. Governance: Aboriginal representation in governance structures, including at Executive and Board level, for direct involvement in decision-making and "legal visibility" in enabling departmental service laws and regulations.

Criteria	Score	Scoring
• Legal visibility	20	?
• Formal Aboriginal Advisory Committee	10	?
• Representation at Executive Management level	10	?
Total	40	?

2. Policy implementation: An integrated and coordinated approach between NTG and Aboriginal Peak Organisations, Aboriginal community engagement and readily available sources of information to Aboriginal people if community engagement is to be effective.

Criteria	Score	Scoring
• Closing the Gap policy outcomes	10	?
• Local Aboriginal organisations and services	10	?
• Community Engagement	10	?
• Public Reporting and Accountability	10	?
Total	40	?

3. Service delivery: Culturally secure service delivery hinges upon having both a culturally competent non-Aboriginal workforce and strong participation by an appropriately trained Aboriginal workforce.

Criteria	Score	Scoring
• Cultural competence	10	?
• Aboriginal participation in NTG workforce	10	?
Total	20	?

4. Recruitment and employment: Measuring the actual status of the Aboriginal workforce against national and state targets, commitment to employment equity principles at a local level and strategies in place to improve Aboriginal employment.

Criteria	Score	Scoring
• Employment profile	10	?
• Aboriginal workforce development	10	?
Total	20	?

5. Financial accountability: Transparency and accountability in funding arrangements, including at the local level.

Criteria	Score	Scoring
• Closing the Gap funding	10	?
• Other identified Aboriginal funding	10	?
Total	20	?

Score	140	?

Institutional Rating scored against criteria

Score:	>110	80-110	60-79	40-59	20-39	<20
Evidence of Inst. Racism:	Very Low	Low	Moderate	High	Very High	Extreme

Note re both Matrices:

The term 'cultural security' is defined in this project as the final stage in a continuum of development from cultural awareness, safety, and competency to security. Key principles for implementation of a cultural security policy include: changing service providers' behaviour; improving understanding of service providers' own cultural influences; actions at the structural, systemic and individual levels; ongoing organisational cultural competency evaluations that involve industry partners and Indigenous clients (Dunbar et al. 2009). Critically, this definition operates within the human rights agenda. It encompasses an active conceptualisation of cultural security, emphasising 'behaviour' over 'attitude' and 'action' over 'understandings' (Dunbar, 2011: 4).

This report recommends that all departments and agencies of the NTG adopt the adaptation of the Marrie Matrix to assist them in identifying and responding shortcomings in the structural arrangements for Aboriginal participation in governance, policy implementation, service delivery, recruitment and employment, and financial accountability.

8.0 Analysis of current systems available within the NTG for Aboriginal Territorians to seek redress when racism occurs and provide recommendations to improve these systems[65]

There are several currently existing complaint mechanisms in the NT but the most important are the NT Ombudsman and the NT Anti-Discrimination Commission. Both are limited by resources but offer some support for those Territorians who experience racism in various forms. This section provides a brief overview of those two agencies and the Health and Community Services Complaints Commission. It is suggested that all NT Complaints agencies be provided with this report, and they be encouraged to adopt more strategic and structural strategies to combat racism in the NT. They should also be encouraged to enter negotiations with the NTG to secure more funds to enhance their capacity.

Ombudsman

The NT Ombudsman is a key pathway for all Territorians to complain about police, all other government departments and agencies, public schools and higher education institutions, and local councils. It is free, independent, and capable of investigating complaints about racial discrimination (*NT Ombudsman Annual Report 2020-21[66]).*

The website has informative videos in 8 Aboriginal languages and a multilingual brochure in German, Greek, Indonesian, 'Chinese', Tagalog, and Vietnamese.
46% of complaints made to the Ombudsman were from Aboriginal people. Sixty-nine percent of complaints to the Ombudsman were made by phone. The Ombudsman will not deal with any complaint more than one year old, and you need to have contacted the agency first.

One striking feature of the *NT Ombudsman Annual Report 2020-21* is the absence of Aboriginal/non-Aboriginal identification in most summaries of Cases presented, although the complainant's Aboriginality can sometimes be inferred by the details provided. In 2020-21 46% of all complaints made to the Ombudsman were from Territorians who identified as Indigenous.

There can be major problems with getting evidence of such discrimination, especially in its systemic form, although phone and video footage is more available than in the past. It is also a small office with limited capacity to get out of Darwin. It is not clear what capacity they have to use translators and interpreters on phone complaints and

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[65] This section of the Report was assisted by work done for the AJU by Project Officer Isobel Nomchong.
[66] https://www.ombudsman.nt.gov.au/publications

using the online pathway requires a medium level of English and comfort with digital processes.

There is a specific section for complaints against police if someone believes they have been unfairly treated, or that a police officer has behaved inappropriately. An advantage of the Ombudsman is independence from the police, and their services to the public are free of charge. The Office of the Ombudsman cannot provide legal advice or act on the complainant's behalf.

Seventy-Eight per cent of all complaints made to the Ombudsman were related to police conduct. Critically, complaints about Police should be made at the earliest opportunity as the Police Administration Act places time limits on actions and prosecutions commencing, i.e.:

- Section 162(1) of the *Police Administration Act* requires any prosecution against a Northern Territory Police member to be commenced within 2 months of the act or omission complained of.
- Section 162(6) of the *Police Administration Act* requires any action regarding a breach of discipline by a Northern Territory Police member to be commenced within 6 months after the act or omission constituting the alleged breach of discipline was discovered, or such longer period as a magistrate allows.

Departments and statutory authorities within the Ombudsman's jurisdiction include:

- All NT Government departments
- Public schools
- Public hospitals
- Government transport services
- Police, Fire and Emergency Services
- Power Water / Jacana Energy
- Darwin Port Corporation
- Charles Darwin University
- Batchelor Institute of Indigenous Tertiary Education
- Local Government Councils

A complaint may be made about any decision, recommendation, action or inaction by a department, agency, or local government council within the Ombudsman's jurisdiction. For example, you may complain about the process a department used to make a decision, delay in taking any action, any requirement which a department has placed on you which you believe is unreasonable, a harsh or wrong decision or any other action by the department. Complaints can be made online, in person in Darwin, by phone or email, or by post. Investigation of complaints can take a long time although you should be kept up to date with progress. The Ombudsman recorded 517

approaches (enquiries which weren't necessary substantiated complaints) relating to Correctional Services (majority from prisoners) in 2020/2021.

There are certain matters about which the Ombudsman cannot consider complaints. Among these are decisions of courts or tribunals, complaints about employment matters and actions of Ministers of the Crown or other politicians. However, for an agency within jurisdiction, virtually any action taken by the agency may be within the Ombudsman's jurisdiction.

In 2020-21 the number of complaints again increased, adding along with COVID-19, to a decrease to 90% in the number of complaints resolved within 90 days. There is a workload issue with complex cases taking much longer, partly due to difficulties obtaining information from agencies, some of whom continue to act in a defensive manner to such complaints. Other cases are logistically difficult to resolve satisfactorily such as the need for remote police stations to be able to process payments to the Motor Vehicles Registry using the Basics Card (*NT Ombudsman Annual Report 2020-21*: 37-38). There were several cases where failure of police to follow NT Police General Orders such as ability of an arrested person to speak to a Custody Notification Service lawyer prior to interview and to have an interpreter present (*NT Ombudsman Annual Report 2020-21*: 37-38). Other examples saw failures to correctly enter, and process administrative steps designed to protect a detainee's rights and subsequent failure of integration between different electronic data bases. In all these cases where failures were determined the police involved received the euphemistic "remedial advice".

One systemic issue for the Ombudsman and other complaints authorities is access to and use of Aboriginal Interpreter Services, especially for outward-facing phone services. It is also a critical chokepoint for the fair and reasonable administration of all government agencies, structures and processes. In 2018 the NT Ombudsman published an excellent study of these issues with detailed recommendations[67]. It is not clear to what extent since then these recommendations have been implemented nor if the capacity of the Aboriginal Interpreter Services has been adequately enhanced.

The NT Ombudsman Office appears quite well informed about the complexities involved in indirect discrimination and systemic racism. The Office needs more funds to enable that understanding to be translated into wide-ranging and accessible support for Aboriginal Territorians experiencing discrimination, especially those in remote areas who currently may be unaware of its existence and functions.

Police Complaints dealt with by police.

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[67] https://www.ombudsman.nt.gov.au/publications/strangers-their-own-land-use-aboriginal-interpreters-nt-public-authorities

Territorians can make a complaint or pay a compliment in relation to the service delivery by members of the NT Police, Fire and/or Emergency Services, in person, by phone, by letter or online @ https://pfes.nt.gov.au/contact-us/compliments-and-complaints.

Community members can also make a victim impact statement in the same way. Alternatively, you can make a complaint about police through the Ombudsman (see above).

Complaints are categorized (Table 14) as:

Cat 1   serious complaints about serious misconduct
Cat 2   complaints about minor misconduct unsuitable for conciliation
CRP   minor indiscretions that can be dealt with through conciliation.

Complaint type	Number of complaints	Number of members involved	Police Officer	Police Auxiliary	ACPO	Unidentified
Cat 1	4	9	8	1	0	0
Cat 2	75	200	187	4	9	0
CRP	164	242	174	30	12	26
Decline	173	279	211	13	11	44
Info only	73	7	3	0	0	4
Total	489	737	583	48	32	74

Table 14: Police complaints. Source: NTPFES Annual Report 2020-21: 198.

Of the 3 Cat 1 complaints finalised in 2020-21, 2 were sustained, and of the 61 Cat 2 complaints finalised in 2020-21, 26 were sustained.

Of the 287 complaints finalised, 190 required "no action", 77 resulted in "remedial advice", 7 resulted in "action not taken due to inability", 6 resulted in a formal caution and 4 saw a period of good behaviour imposed and 10 others were miscellaneous. No complaints saw a member receiving a fine, a reduction in rank, a transfer from locality, or being dismissed.

It is not possible from available information to assess the appropriateness of this apparently 'soft' approach to discipline. No information is provided as to what percentage of complaints come from Aboriginal people or organisations. There are serious concerns about police investigating complaints about police, upheld in many coronial inquests across the country (Victorian Aboriginal Legal Service, 2022) especially given the lack of transparency in many decisions.

NT Anti-Discrimination Commission

The Northern Territory Anti-Discrimination Commission (ADC) promotes equal opportunity for all Territorians. Established in 1993, it aims to eliminate discrimination from happening by raising awareness about individual's rights and responsibilities under the Northern Territory *Anti-Discrimination Act 1992*. The ADC has three main roles: public education and training, community engagement, and handling complaints. Funding limitations mean there is effectively no operational budget, and therefore complaints management and conciliation take up virtually all available resources. There is an effective training function for those employers who can pay for anti-discrimination training, but public training and community education can only occur thorough a third party such as NAAJA or NT Legal Aid. The ADC has excellent, animated resources explaining racial discrimination in some common settings in some major Aboriginal languages. There is currently no NT legislation for cases of racial vilification so such inquiries must be referred on by the complainant to the Australian Human Rights Commission in Sydney. This report recommends urgent consideration of the introduction of racial vilification provisions within amendments to the NT *Anti-Discrimination Act 1992*.

In 2020-21 the ADC received 371 enquiries: 66% by phone, 25% by email and 4% in person. Twenty-two percent were in relation to racial discrimination, down from 27% in 2019-20 anecdotally because a rise followed the consultations by the AJU about the AJA. Forty-four percent related to access to goods, services and facilities, 34% to workplace discrimination and 6% to accommodation (ADC Annual Report 2020-21).

There were 190 new complaints lodged in 2020-21, a total of 248 including the carryover from the previous year which was exaggerated by COVID restrictions. Complainants should get a response within 10 days and a conciliation hearing within 6 weeks, but these timelines and those for finalisations were stretched again by COVID and staff limitations. Ninety-seven complaints (22%) to the ADC were about racial discrimination, of these 55% came from Territorians who identify as Indigenous. Thirty-one per cent of all complaints were lodged by Aboriginal people. Sixty-one percent were successfully conciliated (ADC Annual Report 2020-21).

Health and Community Services Complaints Commission (HCSCC)

The HCSCC can help resolve complaints about services sought, used, or received from a community service, community service provider, health professional, health service or health service provider. Primarily these relate to health services and health practitioners, aged care, and disability services. The HCSCC is governed by the *Health and Community Services Complaints Act 1998* (NT). The *Act* is currently under review.

The breakdown of how complaints to the HCSCC were resolved shows:

i. 121 complaints resulted in a finding of 'no further action required'.
ii. 106 complaints were dealt with by the Board.
iii. 65 complaints were resolved with an explanation.
iv. 28 complaints were resolved with an apology.
v. 4 complaints resulted in compensation being paid.

The *HCSCC 2020-21 Annual Report* does not provide any breakdown of complaint figures by Aboriginality. In fact, the Report has only one reference to Aboriginal matters apart from the names of some agencies that report to the Commissioner. This was in the context of explaining some longer than preferred delays in dealing with complaints. The Report explained that there were often long delays in getting advice from Aboriginal Legal Aid offices as many communities are only visited every 3 months, adding that if Commission knows about the delay, extensions can be granted (*HCSCC 2020-21 Annual Report*: 20).

Under Case Studies on the website there are very valuable reports for example:

- *Investigation into the Prison Health Service at Darwin Correctional Centre* (2016) identified systemic problems of neglect and failure to provide standard medical care such as antenatal care, X-rays, and pain relief to both male and female prisoners.
- *Report of Investigation into the Care Provided to Ms N* (2013) into the systemic failure of coordinated care and support provided to an Aboriginal lady with an intellectual disability who was for many years under Public Guardianship.

However, these are quite old, and don't contain information on implementation of the findings of these investigations.

The NT Independent Commission Against Corruption (ICAC)

The NT ICAC[68] is a potential recipient of complaints about racism but the 2020-21 *Annual Report* has no reference to racism and almost no reference to Aboriginal Territorians except for the case of Health official Ashley Brown who was accused, among other things of falsely claiming Aboriginality to precure an Identified position, and ICAC's public education efforts in 15 Aboriginal languages.

Conclusions

The only 2 agencies that captured data on the Aboriginality of complainants were the Ombudsman and the ADC. This is unacceptable even if there are privacy or other concerns. It is not possible to identify racial discrimination without accurate

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[68] https://icac.nt.gov.au/

disaggregated figures. It is not possible to recognise a failure in agency promotion and community education unless not just Aboriginality, but location of complainant is also recorded. Lack of resources and capacity are acknowledged BUT they also reflect a lack of priority on the part of the Boards of these agencies and ultimately their funders who are primarily the NTG.

All NTG agencies advertise the NTG Aboriginal Interpreter services as being available to Aboriginal Territorians if they need a translator or interpreter to make a complaint. No alternative translating services were offered by any NTG agency.

The NT complaints architecture relies principally on the NT Anti-Discrimination Commission and the Ombudsman. Both agencies need more funding to permit improved community education about one's rights (as noted in Aim 3 of the AJA) and to allow better access off the bitumen. Police investigation of serious misconduct by police (Category 1 and 2- see above) should cease with the Ombudsman's office setting up an independent tribunal.

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