

REPORT

**ABORIGINAL
JUSTICE
AGREEMENTS
SEM 1 2021**





ABOUT

The WA Justice Association (**WAJA**) is a not-for-profit organisation and a registered charity with the ACNC. WAJA's mission is to reduce incarceration rates and improve outcomes for people coming into contact with Western Australia's criminal justice system. We hope to achieve this by effecting law/policy reform and promoting student engagement with social justice organisations and the legal community.

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The Western Australian Justice Association acknowledges Aboriginal people as the traditional owners and custodians of Australia and recognises their continuing connection to land, waters and community.

We acknowledge and respect Aboriginal Elders past and present, and support emerging leaders across Western Australia and Australia.

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THE PROJECT

Aboriginal Justice Agreements



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1. EXECUTIVE SUMMARY

REFERENCE

The Western Australian Justice Association (WAJA) is working in collaboration with Social Reinvestment WA (SRWA) to develop a report on potential Western Australian Aboriginal Justice Advisory mechanisms, specifically Aboriginal justice agreements (AJAs).

This report is based on the considerations put forward by consultation with stakeholders in other jurisdictions and models used in those jurisdictions.

This is a summarised public version of the Project team's consultation report to Social Reinvestment WA. It does not contain information obtained through confidential consultations and other sensitive information that is not appropriate for publication.

AIM

We hope this report will facilitate decision-making by providing a roadmap for the establishment of an Aboriginal justice agreement in Western Australia (WA).

ADVOCACY GOAL

To create a framework for collaboration and coordination between the Western Australian Aboriginal community and the Government to address Aboriginal justice related issues.

WHY IS AN ABORIGINAL JUSTICE AGREEMENT NECESSARY?

- Disproportionate impacts faced by Aboriginal people within the criminal justice system.
- Limited self-determination for Aboriginal communities.
- Lack of strategic framework guiding Aboriginal justice solutions.

NEXT STEPS

The research presented in this report will be used by SRWA to inform their future community engagement and advocacy for the establishment of an Aboriginal Justice Agreement. This will provide the basis for Western Australia to take the next steps towards implementing a meaningful and effective Aboriginal justice advisory mechanism.

2. WESTERN AUSTRALIA: HISTORY OF ABORIGINAL ADVISORY MECHANISMS

2000

ABORIGINAL JUSTICE COUNCIL

The Aboriginal Justice Council (AJC) assisted in the development of the Aboriginal Justice Plan (AJP) in Western Australia in 2000,[1] this was a precursor to the West Australian Aboriginal Justice Agreement (WA AJA). It was designed to assist the Aboriginal community to work in collaboration with the Government by defining priorities for addressing the underlying issues contributing to Aboriginal over-representation in the criminal justice system.[2]

In 2002 the AJC was disbanded and was no longer involved in the development of the WA AJA.[3]

2002

THE ABORIGINAL JUSTICE COUNCIL WAS DISBANDED

The AJC was disbanded due to the following reasons:

- The AJC duplicated the role and efforts of ATSIC and other existing agencies, therefore, the continued cost could not be justified.[4]
- The commitment of the AJC was to be partially carried out by ATSIC however ATSIC was later dissolved.

2004

WESTERN AUSTRALIA ABORIGINAL JUSTICE AGREEMENT (WA AJA)

The WA AJA aimed to reduce over-representation of Aboriginal people in the criminal justice system.[5] This was a 'partnership framework' jointly developed by the justice related government agencies; the WA Police (WAPOL), Aboriginal and Torres Strait Islander Commission (ATSIC), Aboriginal and Torres Strait Islander Services (ATSIS) and the Aboriginal Legal Service of Western Australia (ALSWA).[6]

The purpose of WA AJA was to:

- Provide a means of increasing Aboriginal communities' capacity to determine their own justice outcomes
- Define and commit processes ensuring that Aboriginal people are partners in policy development, planning, provision and monitoring of justice related programs and services impact them.
- Develop a state-wide structure supporting cross-agency cooperation and coordination of policy.
- Develop short, medium and long-term benchmarks with other accountability mechanisms.[7]

2004

The key justice outcomes for Aboriginal people in Western Australia included safe and sustainable communities, a reduction in the number of victims of crime and reduction in the over-representation of Aboriginal people in the criminal justice system.[8]

The intended WA AJA process was to create an Aboriginal Justice Implementation Plan comprised of Regional Aboriginal Justice Plans and Agreements, and community driven Local Justice Plans.[9]

2009

WA AJA EXPIRED

The Law Reform Commission of WA observed that after 18 months of operation it was difficult to find evidence demonstrating a correlation between the WA AJA and empowerment of Aboriginal people to determine their own justice issues and solutions.[10]

In 2009 the WA AJA expired.[11] The failure to document or make publicly available materials pertaining to the outcomes limited Government accountability.[12]

The WA AJA was superseded by the State Aboriginal Justice Congress and the State Justice Plan.[13]

2011

AG TAKES OVER ABORIGINAL JUSTICE PROGRAM & REVIEW OF THE WA AJA

In February 2011, the Department of the Attorney General in WA commenced oversight of the Aboriginal Justice Program, signalling a change of direction from the WA AJA.[14]

In mid-2011, a review of the WA AJA by the Attorney-General found difficulties in convening regional meetings with ATSI leaders, resulting in fewer meetings than initially anticipated.[15]

2014

STATE JUSTICE PLAN EXPIRED

No information about this plan was published.[16]

2021

PRESENT DAY

Western Australia currently has an Aboriginal Advisory Council and an Aboriginal Justice Advisory Committee within the Department of Justice, which was proposed to provide culturally appropriate advice relating to justice matters.[17]

The Aboriginal Advisory Council endorsed the establishment and offered their support to the initiative.[18]



3. CASE STUDIES

3. 1. VICTORIAN ABORIGINAL JUSTICE AGREEMENT (VAJA)

A. Foundations

The Victorian Aboriginal Justice Agreement (VAJA) is a long-term agreement between the Victorian State Government and the Aboriginal community (Koori people). Having been in continuous operation since 2000, it is the longest running AJA in Australia.

The agreement's rationale is for justice agencies to work alongside the Koori community to ensure better justice outcomes for Aboriginal Australians.[19] The VAJA creates a strategic framework that guides initiatives to achieve the VAJA's primary aim of 'minimizing Koori overrepresentation in the criminal justice system by improving accessibility, utilisation and efficacy of justice-related programs and services, in partnership with the Koori community. [20]

B. Agreement Design

The VAJA has been developed over a series of consecutive phases. Independent evaluations at the end of each phase guides necessary amendments to the prevailing phase and its strategic objectives. This approach ensures the VAJA is regularly evaluated and is capable of adapting to changing policies and political climates, arguably contributing to its longevity.[21]

PHASE 1

- Set up the infrastructure for robust long-term partnerships between the Victorian Government and the Aboriginal Community at the State, regional and local level.[22]
- Established the Aboriginal Justice Forum and the Aboriginal Justice Caucus.
- Funding: allocated \$1.6 million per year in the 2000/2001 State Budget. [23]

PHASE 2

- Adopted a place-based approach, expanding the number of initiatives at the local level.
- Strategic objectives included crime prevention & early intervention, reducing re-offending and victimisation, and improving inclusive response services at the community level.[24]
- Independent evaluation estimated that Phase 2 had provided a gross benefit to Victoria of between \$22-26 million in 2010.[25] While it also found that overrepresentation had worsened, it acknowledged that without the VAJA this overrepresentation would have been greater.[26]
- Funding: \$13.4 million in direct funding between 2009-2010.[27]

2000 - 2005

2006 - 2012

PHASE 3

2013 - 2018

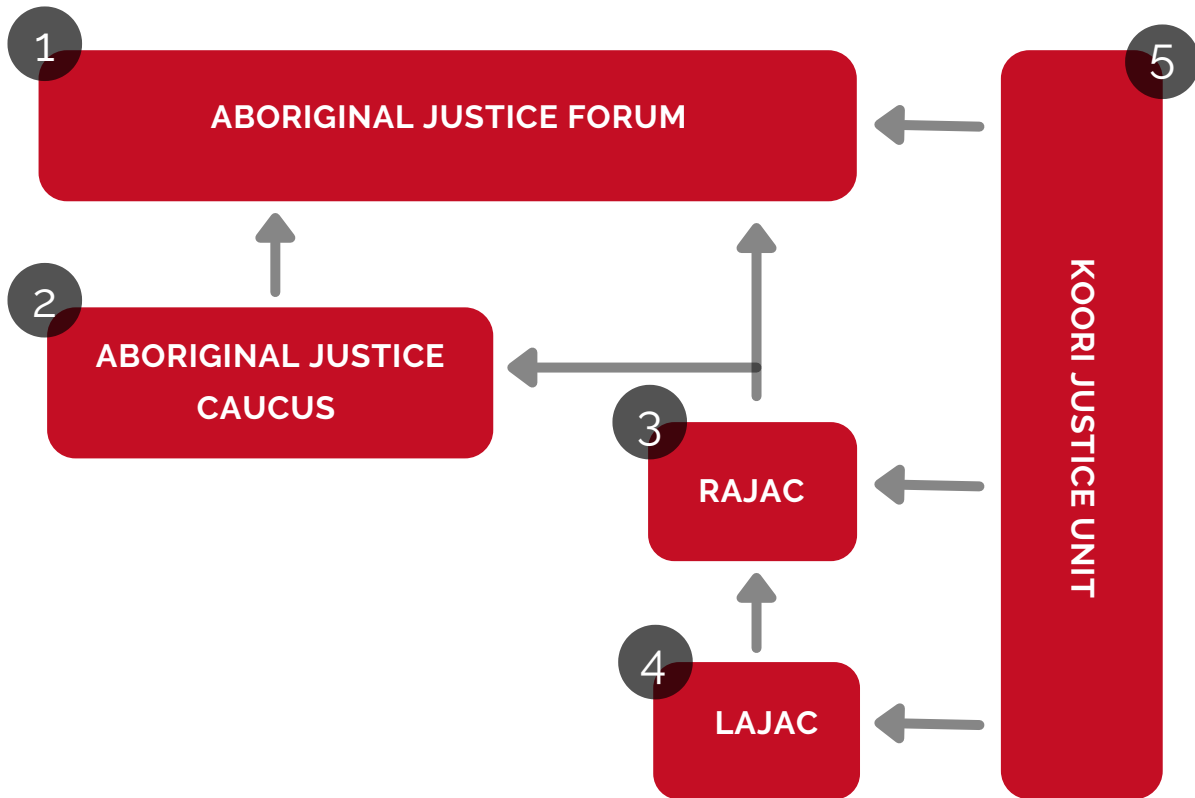
- Adopted a place-based approach, expanding the number of · Continued the place-based approach of Phase 2.
- Expanded Phase 2's strategic objectives of reducing victimisation, to include reducing violence & conflict, and expanded the focus of community justice responses to include community safety.[28]
- **Whole of government approach:** the Victorian Aboriginal Affairs Framework (2013-2018) is an overarching Government agreement aimed at addressing issues often underlying Aboriginal contact with the justice system.[29]
- **Independent Evaluation:** Increasing number of government agencies have developed their own portfolio-specific strategies, which led to an increased demand for Aboriginal participation. This means that the Agreement's organisational structures need to be strategic and effective to avoid depleting resources.[30] Also identified the need to expand the number of programs targeted at Aboriginal women.[31]

PHASE 4: "Burra Lotjpa Dunguludja" ('Senior Leaders Talking Strong')

2018- 2023

- Focused on self-determination and community led initiatives. For example, additional funding to enhance the capacity of the Aboriginal Justice Caucus.[32]
- Adopted an outcome focused approach centred around four critical areas:[33]
 - 1.Strong and safe aboriginal families and communities.
 - 2.Fewer aboriginal people in the criminal justice system.
 - 3.A more effective justice system with greater aboriginal control.
 - 4.Greater self-determination in the justice sector.
- Funding: Victorian Budget 2018/2019 allocated \$40.3 million to support initiatives to be implemented under Burra Lotjpa Dunguludja.[34]
- Continuous reporting: An implementation plan details actions and indicators to measure progress towards each outcome. Progress is frequently published on the VAJA website.[35]

C. Governance Structure^[36]



1

ABORIGINAL JUSTICE FORUM

- The AJF is the peak body established to oversee the development and implementation the VAJA.
- Members include senior representatives from Government departments, and representatives from the Aboriginal Community including the RAJAC chairs and senior representatives from Aboriginal community organisations.
- The forum meets three times a year to discuss Aboriginal justice issues and identify solutions.

2

ABORIGINAL JUSTICE CAUCUS

- The Caucus is the key body for entrenching the Aboriginal voice into all facets of the Agreement.
- Members include Aboriginal community members of the AJF, the RAJAC chairs and Aboriginal representatives from Aboriginal peak bodies and some Aboriginal community-controlled organisations.
- Meets prior to the AJF, helping to shape their agenda and inform government responses to justice related issues.
- Funding is provided by the Department of Justice and Community Safety (DJCS).

3

REGIONAL ABORIGINAL JUSTICE ADVISORY COMMITTEES

- A Regional Aboriginal Justice Advisory Committee (RAJAC) operates in one of nine regions around Victoria.
- Each RAJAC is supported by a full-time Executive Officer employed by DJCS, who is responsible for day-to-day management and planning for the committee.
- Develop Regional Justice Action Plans and aid in the successful delivery of AJA programs.
- Participate in the assessment process for government grant funding applications for Aboriginal justice-related programs.
- RAJACs are essential for providing advice and expertise in development of place-based initiatives, and they encourage community participation in these initiatives.

4

LOCAL ABORIGINAL JUSTICE ACTION COMMITTEE

- The Local Aboriginal Justice Action Committee (LAJAC) network was created in 2006.
- LAJACs promote Aboriginal participation in local justice initiatives, promote justice programs and services across Aboriginal communities, and provide local knowledge and advice to inform AJA related work.
- In some cases, there is a LAJAC Project Officer supported by the DJCS. In other cases, a RAJAC Executive Officer supports the function of the LAJAC.

5

KOORI JUSTICE UNIT

- The Koori Justice Unit is framed within the Department of Justice and Community Safety.
- Acts as a secretariat to the Aboriginal Justice Forum coordinating the delivery of AJA related programs.
- Provides advice to the Justice Executive, Ministers and staff across the DJCS on issues impacting on Aboriginal communities across Victoria.
- Direct funding towards AJA initiatives.

D. Outcomes

- **Koori Court** (est. 2003) and **Koori Children's Court** (est. 2005): A division of the Magistrates' Court which provides a culturally appropriate Court process for Koori offenders who plead guilty to a range of offences.[37]
- **Frontline Youth program**: commenced in 2005 to provide grants for social and vocational programs initiated by Aboriginal Community Controlled Organisations to support at-risk youth.[38]
- **Community Initiative Program (CIP)**: commenced in 2002 to provide community grants to develop initiatives and undertake research aimed at reducing negative contact with the Criminal Justice System.[39] Evaluation of Phase 2 reported the Frontline and CIP programs receive an average of \$1.2 million per year.[40]
- **Wulgunggo Ngalu Learning place**: opened in 2008 as a culturally appropriate, residential diversion program for Koori men undertaking community correction orders.[41]

E. Insights

(1) Strong community engagement in the development, implementation and evaluation of the VAJA.[42]

The infrastructure created by the VAJA has allowed for strong community ownership and empowerment. The Aboriginal Justice forum (AJF) has maintained momentum and focus on improving justice related outcomes.[43] The AJF enables direct communication between the Koori community and the Government at local, regional and State levels. There is also a growing number of Koori peoples in senior justice leadership positions within the Department of Justice.[44]

(2) Effective accountability and evaluation processes, including clarity of objectives.[45]

The staged approach allows each prevailing phase to identify the previous phase's shortcomings, and to focus on rectifying these issues. For example, the independent evaluation of Phase 2 referred to a lack of accountability to deliver and discuss relevant outcomes.[46] Phase 4 has now taken an outcome focused approach to ensure all initiatives are directed towards a specific outcome, and progress is reported and published on an ongoing basis.[47]

Nonetheless, there is a lack of systematic evaluation with respect to each program underlying the VAJA. Evaluation tends to focus on the VAJA as a whole, rather than each individual part.[48]

3. 1. NORTHERN TERRITORY ABORIGINAL JUSTICE AGREEMENT (NTAJA)

A. Foundations

The Northern Territory is a more effective comparison than Victoria for Western Australia given its greater proportion of Aboriginal Australians and more expansive territory with dispersed communities. This being said, The Northern Territory Aboriginal Justice Agreement (NTAJA) is in very early stages of development, so while it provides a template for methodologies and design, its success is yet to be proven.

The NTAJA was one of six key "Asks" that were part of the 2016 "Making Justice Work" campaign that was lobbied by over 40 organisations in the lead-up to the 2016 Northern Territory election.[49] In 2017, a 2-year consultation process commenced, featuring discussions with relevant government and non-government agencies, individuals and communities, which served as the basis for the NTAJA.

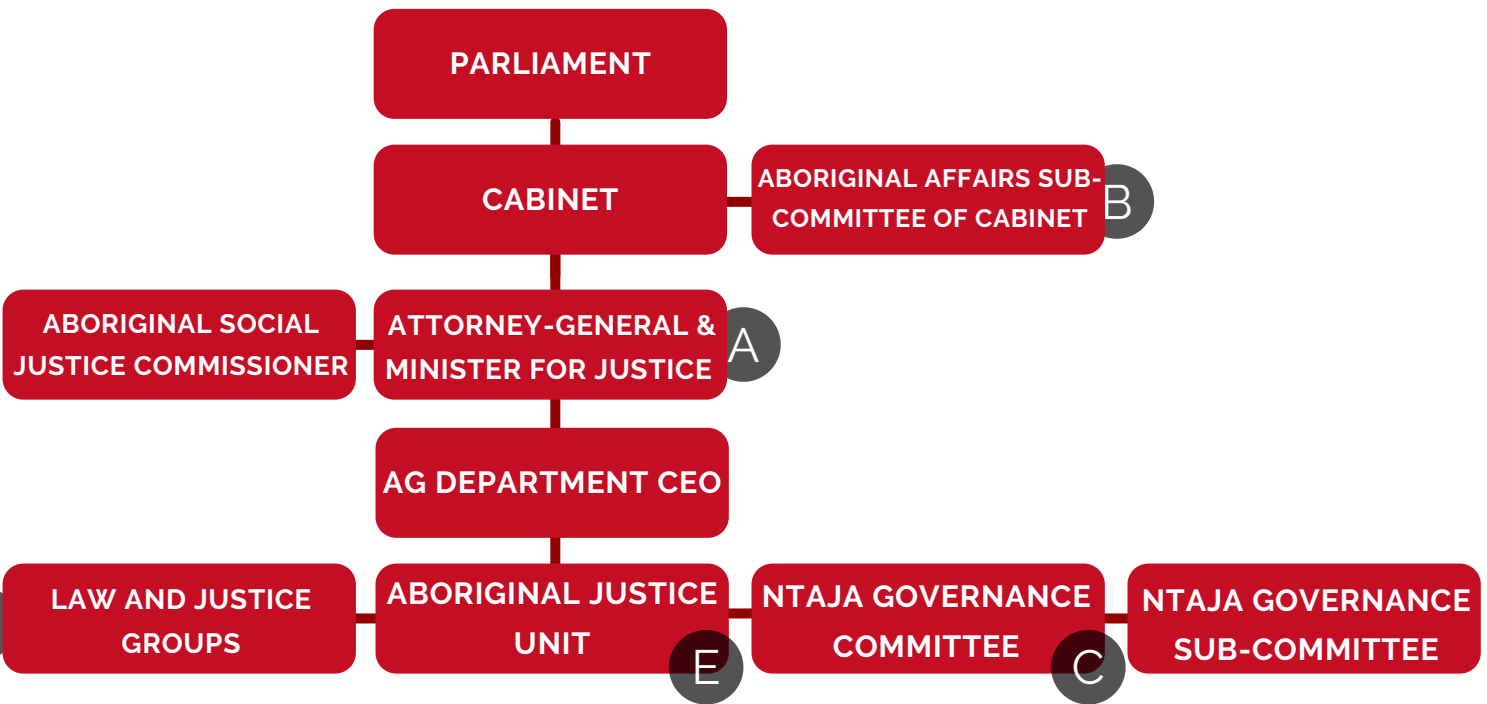
Aboriginal input, particularly with remote community leaders, was central to the consultation process. This ensured effective engagement with Aboriginal peoples which is an essential criterion suggested by Chris Cunneen and Fiona Allison for a successful agreement.[50] This consultation information was combined with empirical evidence from the Australian Bureau of Statistics, which was then reviewed by criminal justice experts to draft the NTAJA in 2019 and start the implementation phase.[51]

The Implementation Phase is a seven-year process split into 2 stages. Stage 1 (2019-2021) drafts and refines the NTAJA. The draft contains a proposed governance structure, agreement framework and more general aims of the agreement; namely to reduce reoffending and imprisonment rates, to engage and support Aboriginal leadership, and to improve justice responses and services. This draft has been distributed to relevant agencies and communities for feedback, and participation confirmation.[52]

Following the completion of Stage 1, an independent evaluation will take place to make necessary amendments for Stage 2 (planned for 2022-2025). Anticipated changes include introducing specific targets for participating organisations, and a refined governance structure.[53]

To date (June 2021), this plan has been delayed, most probably due to Covid-19 impacts. Feedback on the draft has been received and amendments have been made. The final copy is currently waiting to be released.

B. Governance Structure^{[54][55]}



A

ATTORNEY-GENERAL AND MINISTER FOR JUSTICE

- The Attorney-General and Minister for Justice are responsible for overseeing the NTAJA implementation within the State's justice portfolio as a whole, reporting to Parliament, and coordinating activities across senior government bodies.

B

ABORIGINAL AFFAIRS SUB-COMMITTEE OF CABINET

- The Aboriginal Affairs Sub-Committee of Cabinet provides high-level advice to the NT Government on policies and legislative reforms related to the NTAJA.

C

NTAJA GOVERNANCE COMMITTEE

- The NTAJA Governance Committee reports to the A-G (A) and Sub-Committee of Cabinet (B) on implementation progress and provides advice on culturally-relevant matters.

D

LAW AND JUSTICE GROUPS

- Law and Justice Groups, comparable with Victoria's RAJACs, develop and implement Local Action Plans tailored to specific communities.

E

ABORIGINAL JUSTICE UNIT

- The Aboriginal Justice Unit serves as the NTAJA secretariat, fulfilling administrative support roles for the Governance Committee (C) and LJGs (D).

C. Implementation

Northern Territory Government initiatives, projects, policies, strategies, and reforms provide the NTAJA's content, by aligning with NTAJA's aims.[56] In this regard, the agreement functions as a framework for communication and coordination among participating organisations, to ensure these efforts work holistically rather than independently.

D. Monitoring & Evaluation

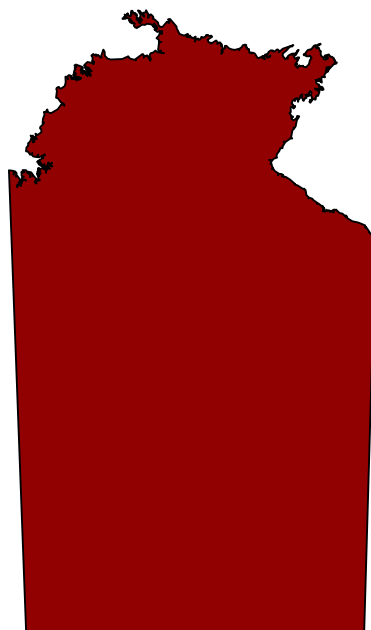
The NTAJA avoids targets for Stage 1 as prior agreements in other States suggest they are often overly-ambitious which contributes to unsatisfactory performance and a loss of trust. Stage 2 will implement targets built on the data collected throughout Stage 1.[57]

E. Insights

(1) The NT did not have the organisational infrastructure for incorporating Aboriginal engagement as Victoria had. In this respect it's more comparable to WA. As a result, a more significant consultation process was necessary to draw up the agreement.

(2) There is clear support from communities and stakeholder agencies, as determined from the consultation.

(3) The strategic focus of the NTAJA is concentrated on criminal law issues. Arguably this scope is too narrow as it fails to consider family and civil law issues that are inherently linked to criminal justice outcomes.



4. WHERE TO FOR WESTERN AUSTRALIA NOW?

POLITICAL

- The McGowan Labor Government has the largest majority in Legislative Assembly history.
- Labor also has control of the Legislative Council.
- The 2019 WA Labor State Platform shows commitment to working with First Nations people and restorative justice programs.[58]

WA Labor have support from the WA voters which may allow them to pursue more progressive justice policies, such as a WA AJA, which aligns with their State Platform.

SOCIAL

- Studies show that the WA public favour more punitive sentencing decisions than other states.[59]
- Survey responses reveal a common misconception that Indigenous people are receiving preferential treatment within the WA legal system.[60]
- The WA general public have a 'frontier mentality', having less tolerance for those who deviate.[61]

There may be less public support for a WA AJA as the general public are largely unaware of the current justice system and more punitive in sentencing

STAKEHOLDERS

Judges

- A study of the WA Children's Court judges found that a majority believed the traditional justice system was failing Aboriginal peoples.[62]
- Supportive of restorative justice approaches that keep people out of prisons and with family.[63]

Police

- WA police have a low diversion rate and high arrest rate compared to what is necessary.[64]
- Between 2012-2016, police could have diverted between 88 and 96% of offences by young people but instead chose to divert less than half.[65]
- Aboriginal people were diverted less often (35%) than non-Aboriginal people (45%).[66]

Judges are largely supportive of reform to the justice system. Police are less so, given the conflicting mandate of arrests against community care.

5. RESOURCES

For further reading on Indigenous Justice Agreements in Australia, please see the following resources

WA Justice Association Resources

- **Literature Review (Aboriginal Justice Advisory Mechanisms):** Explores various Aboriginal justice advisory mechanisms that exist in Australia and overseas, specifically focusing on Aboriginal Justice Agreements (AJAs) and Aboriginal Justice Advisory Councils (AJACs). Email WAJA for a copy.

WA Resources

- Aboriginal Legal Service of Western Australia, Submission to the Australian Law Reform Commission's Discussion Paper on Incarceration Rates of Aboriginal and Torres Strait Islander Peoples, (11 December 2017) <https://www.alrc.gov.au/wp-content/uploads/2019/08/74._aboriginal_legal_service_of_wa_limited..pdf>.
- UNSW-Comparative Youth Penalty Project, Western Australian Aboriginal Justice-Specific Policy Framework, (Web Page, 26 October 2010) <<https://www.cypj.unsw.edu.au/western-australian-aboriginal-justice-specific-policy-frameworks/>>.



Northern Territory Resources

- Department of the Attorney-General and Justice (NT), Pathways to the Northern Territory Aboriginal Justice Agreement (2019).

Victorian Resources

Victorian Aboriginal Justice Agreement

- Victorian Aboriginal Justice Agreement, Burra Lotjpa Dunguludja, (Web Page) <<https://www.aboriginaljustice.vic.gov.au/>>.
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- Department of Justice, Victorian Aboriginal Justice Agreement Phase 2 (June 2006) <<https://www.aboriginaljustice.vic.gov.au/the-aboriginal-justice-agreement-phase-2>>.
- Department of Justice and the Koori Justice Unit, Victorian Aboriginal Justice Agreement Phase 3 (March 2013) <<https://www.aboriginaljustice.vic.gov.au/the-aboriginal-justice-agreement-phase-3>>.
- Victorian Government, Burra Lotjpa Dunguludja Victorian Aboriginal Justice Agreement Phase 4 (August 2018) <<https://www.aboriginaljustice.vic.gov.au/aboriginal-justice-agreement-phase-4-0>>.

Victorian Resources (Cont.)

Evaluation and Commentary

- Department of Justice and Community Safety (Vic), 'Victorian Implementation Review of the Recommendations from The Royal Commission into Aboriginal Deaths in Custody' (Review Report, Volume 1, October 2005) <<https://www.justice.vic.gov.au/royal-commission-into-aboriginal-deaths-in-custody-response>>.
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- Allison, Fiona and Chris Cunneen, 'Indigenous Justice Agreements' (Current Initiatives Paper No 4, Indigenous Justice Clearinghouse, June 2013).
- Allison, Fiona and Chris Cunneen, 'The Role of Indigenous Justice Agreements in Improving Legal and Social Outcomes for Indigenous People' (2012) 32(4) Sydney Law Review 645.
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3 Allison and Cunneen, 'Indigenous Justice Agreements (n 1) 3.

4 Attorney General Minister's Office, 'Aboriginal Justice Council in WA to be disbanded' (Media Release, 1 May 2002) < <https://www.mediastatements.wa.gov.au/Pages/Gallop/2002/05/Aboriginal-Justice-Council-in-WA-to-be-disbanded.aspx>>.

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23 Department of Treasury and Finance (Vic) Budget Statement 2000-01, Budget Paper 2 (2000) 96, 271.

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