

## Yoorrook Justice Commission – Djirra submission

### Issues Papers 1 & 2

March 2023

#### Key Recommendations

Djirra endorses the recommendations made by the Aboriginal Justice Caucus (AJC) to the Commission, some of which have been included below. Djirra also refers to our submission to the [Parliamentary inquiry into Victoria's criminal justice system](#).

#### *Issues Paper 1: Call for Submissions on Systemic Injustice in the Criminal Justice System*

##### End criminalisation of Aboriginal and Torres Strait Islander women

1. Urgently repeal the reverse-onus and double uplift provisions of the *Bail Act 1977 (Vic)* (**Bail Act**) and provide a presumption in favour of bail unless there is a specific and immediate risk to the safety of another person.
2. Adopt a gendered and culturally appropriate approach to determining 'risk' to community safety that takes into account the specific disadvantage and marginalisation experienced by Aboriginal and Torres Strait Islander women.
3. Ensure that Aboriginal and Torres Strait Islander women are not refused bail due to homelessness or a lack of social and affordable housing.
4. Ensure that minor offences related to homelessness, poverty and disadvantage do not criminalise Aboriginal and Torres Strait Islander women.
5. Aboriginal and Torres Strait Islander women must have access to culturally appropriate legal representation.

##### Reform the Sentencing Act

6. Reform the *Sentencing Act 1991 (Vic)* (**Sentencing Act**) to better consider and meet the unique needs of Aboriginal and Torres Strait Islander women, including:
  - i. Reintroduce suspended sentences and a range of sentencing options, with incarceration as a last resort.
  - ii. Incorporate an Aboriginal and Torres Strait Islander specific sentencing principle that requires Judges and Magistrates to take into account Aboriginality for the purposes of sentencing.
  - iii. Amend the Sentencing Act to ensure that Aboriginal and Torres Strait Islander women who have children in their care do not get a custodial sentence for low-level offences.
7. Ensure that police and justice responses are appropriate, culturally safe and meet the needs of Aboriginal and Torres Strait Islander women.
8. Better utilise Section 83a of the Sentencing Act, ensuring that Aboriginal and Torres Strait Islander facilitators are involved.

### **Children in the criminal justice system**

9. The age of criminal responsibility must immediately be raised from 10 to at least 14 years of age, with a minimum age of incarceration of 16 years.
10. Invest in culturally appropriate early intervention programs, such as Djirra's YoungLuv, that support Aboriginal and Torres Strait Islander children and young people and strengthen their connections to culture.

### **Victorian Aboriginal Social Justice Commissioner**

11. In partnership with the Aboriginal Justice Caucus, establish an independent, statutory office of the Aboriginal Social Justice Commissioner with appropriate resources and powers.

### **End Aboriginal and Torres Strait Islander deaths in custody**

12. Invest in self-determined, community-based solutions, not the criminalisation of our people.
13. Review the Royal Commission into Aboriginal deaths in custody (**RCIADIC**) final report recommendations to determine their relevance to today's service system responses. This must be led by the Victorian Aboriginal Social Justice Commissioner and incorporate the impact on Aboriginal and Torres Strait Islander women's experiences in the criminal justice system.
14. Recognise Djirra's expertise and the critical role we play in supporting Aboriginal and Torres Strait Islander women who are criminalised.

### **Mistreatment of Aboriginal and Torres Strait Islander women in prison**

15. Ensure the Victorian Aboriginal Community Controlled Health Organisation (**VACCHO**) oversees the medical care of Aboriginal and Torres Strait Islander people in Victoria's prisons.
16. Give Aboriginal and Torres Strait Islander women the option of continuing with their existing health professionals, including allied health, whilst incarcerated. Where not possible, an adequate referral must be made.
17. Provide improved training for police, court and prison staff:
  - i. To appropriately respond to Aboriginal and Torres Strait Islander women with a disability. This training should be delivered either by or in consultation with an Aboriginal Community Controlled Organisation (**ACCO**).
  - ii. To conduct capacity screening and assessments for people with cognitive impairments. This must include meaningful cultural safety training delivered by an ACCO.
18. Increase culturally safe support for Aboriginal and Torres Strait women with a disability to access the National Disability Insurance Scheme (**NDIS**), with dedicated programs to support access for women in prison.

### **Mothers in prison and child removal**

19. Amend the *Children, Youth and Families Act 2005 (Vic)* to allow the court to extend Family Reunification Orders to beyond current prescribed time-limits.
20. Implement culturally appropriate and timely processes to ensure that Aboriginal and Torres Strait Islander mothers can keep their babies whilst in prison. These processes should also be available to those with young children.
21. Provide regular reports to the Aboriginal Justice Forum (**AJF**) on the numbers of Aboriginal and Torres Strait Islander mothers who have their children in prison. This data should include the number of applications, the outcome and an explanation if the application was denied.
22. Provide regular reports to the AJF on the number of women in prison who are mothers and the number of children attached to each woman.

### **Misidentification and failure to identify family violence**

23. An automatic review mechanism must be introduced for Family Violence Safety Notices issued by police against Aboriginal and Torres Strait Islander women to ensure misidentification is identified as soon as possible.
24. Ensure police responses are safe and appropriate for Aboriginal and Torres Strait Islander women experiencing family violence. This must include mandatory cultural safety training.

### **Housing for Aboriginal and Torres Strait Islander women escaping family violence and exiting prison**

25. Urgent steps must be taken to end the housing crisis and immediately increase the availability of culturally appropriate, safe and affordable housing for Aboriginal and Torres Strait Islander women.
26. Djirra endorses Smart Justice for Women's call for a housing guarantee for women exiting prison. This will ensure women are safe from violence and not further criminalised due to lack of housing.

### **A community-based residential program to prevent Aboriginal and Torres Strait Islander women from being criminalised and imprisoned**

27. Djirra strongly recommends the establishment of a community-based residential program to keep Aboriginal and Torres Strait Islander women out of prison. An Aboriginal designed and operated residential centre would provide opportunities for women to reconnect and further strengthen their connection to culture.

### **Issues Paper 2: Call for Submissions on Systemic Injustice in the Child Protection System**

### **Urgently establish and fund a mandatory Aboriginal and Torres Strait Islander child protection notification and referral system**

28. This will ensure that upon a child protection notification being received for an Aboriginal and Torres Strait Islander family, the primary parent is immediately referred to Djirra or another appropriate legal service and informed of the importance of obtaining independent legal advice.

### **Stop legislative changes that disproportionately impact Aboriginal and Torres Strait Islander mothers**

29. Urgently repeal the 2016 'permanent removal fast track' child protection laws.
30. Given the significant concerns raised by many stakeholders in relation to the *Children, Youth and Families Amendment (Child Protection) Bill 2021 (Vic)*, these proposed legislative amendments should not proceed.
31. Any future reviews of the *Children Youth and Families Act 2005 (Vic)* must be led by Aboriginal Community Controlled legal services.
32. Djirra must be a member of the Department of Families, Fairness and Housing (DFFH) Aboriginal Children's Forum, and all other relevant child protection governance groups and forums. This will ensure that Djirra's expertise informs policy in this area.
33. Ensure that government responses which are proven failures are not transferred to ACCOs without organisations being resourced to develop a self-determined approach.

### **Invest in Aboriginal led, self-determined solutions**

34. Invest in specialist ACCOs such as Djirra to lead the development and delivery of wraparound services that focus on supporting women and children's safety.
35. Invest in ACCOs to lead the design, delivery, monitoring and evaluation of programs and services. This must be underpinned by principles of self-determination and Data Sovereignty.
36. Invest and resource Djirra to provide policy and legislative advice to government on issues impacting Aboriginal and Torres Strait Islander women.
37. Invest and support Djirra to realise our 20 year vision to establish Victoria's first Aboriginal and Torres Strait Islander Women's Centre based in Melbourne with state-wide reach.

## **Introduction**

Djirra welcomes the opportunity to respond to Yoorrook's Issues Papers 1 and 2, dealing with systemic injustice in the criminal justice and child protection systems.

Djirra is an Aboriginal Community Controlled Organisation (**ACCO**) with over 20 years' experience accompanying Aboriginal and Torres Strait Islander women, and their children, on their individual journeys. We find solutions through Aboriginal and Torres Strait Islander women sharing their stories, journeys, and experiences. Djirra celebrates women's strength and resilience. We are committed to a future without family violence.

We deliver holistic, culturally safe, specialist family violence support, legal services and case management, alongside cultural and wellbeing workshops and programs. Our services have state-wide reach, touching every part of Victoria to meet the needs of Aboriginal and Torres Strait Islander women. Self-determination is the foundation of everything we do.

Djirra amplifies the voices of Aboriginal and Torres Strait Islander women. We advocate for system-wide change to improve access to justice, eliminate systemic violence, and strengthen women's resilience.

We are an active member of the National Family Violence Prevention and Legal Services (**NFVPLS**) Forum, the peak body for Aboriginal and Torres Strait Islander people who are experiencing or at risk of family violence.

Djirra's CEO Antoinette Braybrook held elected roles as Chair and Co-Chair of the NFVPLS Forum for over ten years. Antoinette is Co-Chair of Change the Record, Australia's only national First Nations led justice coalition of legal, health and family violence prevention experts.

As an ACCO specialising in supporting and empowering women who have experienced family violence, Djirra sees the intersecting ways Aboriginal and Torres Strait Islander women are let down by the system, punished by harsh criminal justice and child protection policies that are compounded by failures in housing and other support services. We see this in our family violence and child protection legal matters, our prison outreach, and our wraparound supports and workshops. So often women who experience family violence end up at the harsh end of a punitive system, incarcerated for minor offences or with their children removed.

The answer is not more prisons or money for removing kids and placing them in out of home care. It is in prioritising preventative measures – and investing in specialist organisations such as Djirra to provide culturally safe specialist services, housing, case management, specialist legal advice and representation – so that our women are supported to escape the cycles established and sustained by the ongoing impacts of colonisation. Governments must listen to, trust and invest in Djirra as a specialist organisation to develop and deliver self-determined measures. We have the lived experience, we have the solutions and we must determine our own.

## Issues Paper 1: Call for Submissions on Systemic Injustice in the Criminal Justice System

Aboriginal and Torres Strait Islander women are the fastest growing prison population in Australia. In Victoria, the number of Aboriginal and Torres Strait Islander women held in remand continues to rise which can be attributed to punitive laws and policies, particularly the bail ‘reforms’.<sup>1</sup> In our work we see women targeted, misidentified and criminalised for matters relating to poverty, homelessness, family violence, experiences of disability (particularly acquired brain injuries) and mental health.

The bail laws, and the Victorian government’s reliance on harsh policies and incarceration, must be one of the key focusses of any discussion about how to reduce the damage done to Aboriginal and Torres Strait Islander women, families and communities by the criminal justice system. Whatever supports are put in place, nothing can change the fact that prison is never culturally safe. Aboriginal and Torres Strait Islander women do not belong behind bars. Prisons are violent and harmful. Our women belong with their families and in their communities.

### Victoria’s punitive bail laws

Djirra has repeatedly called on the Victorian government to urgently repeal the punitive bail laws that have contributed to Aboriginal and Torres Strait Islander women being the fastest growing cohort in Victoria’s prisons.

These laws have resulted in increasing numbers of Aboriginal and Torres Strait Islander women being locked up on remand for minor offending before a sentence has been imposed by the court. These offences are often causally connected to family violence and disadvantage. A high number of our women do not receive a custodial sentence, or if they do, it is less than the time served on remand. In November 2022, 58% of our women in Victoria’s prisons were unsentenced.<sup>2</sup> Being placed on remand can have devastating long-term consequences for Aboriginal and Torres Strait Islander women and their families:

“When a woman goes into prison, she has a lot more to lose than her freedom. She loses her income, her kids, her housing... Even if she is on remand for a short time, when she comes back out she has to totally rebuild her life” - Djirra Community Engagement Manager.

In Djirra’s experience, women often remain on remand due to a lack of housing and access to culturally appropriate supports. Where women have experienced family violence, they are too often forced to choose between returning to the address of the perpetrator or

<sup>1</sup> Fitzroy Legal Service and the La Trobe Centre for Health, Law and Society (2020), ‘A Constellation of Circumstances: The Drivers of Women’s Increasing Rates of Remand in Victoria’.

<sup>2</sup> ABC News (2022), [Yoorrook Justice Commission hears Victorian bail laws are criminalising Aboriginal people, especially women](#).

remaining on remand. Crisis accommodation is not considered sufficient in these circumstances.

Djirra is also concerned that women on remand are unable to access prison support services and programs which increases their isolation, vulnerability and risk of future incarceration. It costs Victoria around \$1.1 million a day to keep unsentenced people in custody.<sup>3</sup> Prisons are being used as detox and mental health facilities, and to address housing shortages. This money must be invested in Aboriginal-led solutions.

Community driven solutions are proven to be much more effective at reducing crime and addressing underlying drivers; including family violence, homelessness and housing instability, emotional and social wellbeing issues and AOD issues.<sup>4</sup>

High incarceration rates of Aboriginal and Torres Strait Islander women directly impact on child removal rates and the rights of Aboriginal and Torres Strait Islander children, and have ongoing devastating impacts on our families and communities. Of the women Djirra work with in our prison support program, the majority are mothers with children caught up in the child protection system. Many of the women Djirra assist are also from regional Victoria and have little to no contact with their children whilst they are incarcerated. One day in prison can destroy a woman's life – she may lose employment, housing and her children. The emotional loss and attempted destruction of a woman's spirit and connection to culture cannot be underestimated.

### **Sentencing**

The majority of Aboriginal and Torres Strait Islander women sentenced in Victorian courts are victims of sexual, physical and/or emotional abuse.<sup>5</sup> Yet police and judicial officers often fail to recognise and consider the unique systemic and background factors affecting Aboriginal and Torres Strait Islander women as part of the sentencing process.

The Sentencing Act must be reformed to better consider and meet the needs of Aboriginal and Torres Strait Islander women. This includes an Aboriginal and Torres Strait Islander specific sentencing principle that requires Judges and Magistrates to take into account Aboriginality for the purposes of sentencing. Djirra also strongly recommends the reintroduction of suspended sentences and a range of sentencing options, with incarceration as a last resort. For Aboriginal and Torres Strait Islander women with children in their care, the Sentencing Act must be reformed to ensure women do not receive custodial sentences for low-level offending.

Aboriginal and Torres Strait Islander women do not feel safe to speak to experiences as victims of family violence in the sentencing process, especially where the parties are co-

<sup>3</sup> Productivity Commission (2021), 'Report on Government Services 2021; Part C Section 8 Corrective Services'.

<sup>4</sup> Change the Record (November 2015), 'Blueprint for Change', p 9.

<sup>5</sup> Australian Law Reform Commission (2018), 'Drivers of incarceration for Aboriginal and Torres Strait Islander women' para 11.19.

offenders in a joint hearing. Djirra is aware of instances in which women are charged for their male partner's offending, within the context of family violence. For example, one client was coerced into picking up drugs for her partner and was then charged with a related offence in his place.

While Djirra has made previous recommendations regarding the efficacy and cultural safety of the Koori Court, we are aware that for some Aboriginal and Torres Strait Islander women, the Koori Court setting can be an additional barrier to disclosing family violence. Some women have reported that they do not feel safe or comfortable disclosing family violence in a setting where Elders and other community members are present.

Where the environment discourages women from disclosing their experiences of family violence it also reinforces their mistrust in the entire justice system. This is consistent with Djirra's experience that, once sentenced, Aboriginal and Torres Strait Islander women in prison are not reporting family violence because they do not trust the system to support them. There must be further training and education to ensure that police and justice responses are appropriate, culturally safe and meet the needs of Aboriginal and Torres Strait Islander women.

#### **Raise the age of criminal responsibility to at least 14**

Djirra joins many other ACCOs and mainstream organisations, coalitions and forums in calling on the Victorian government (along with all other Australian governments) to raise the age of criminal responsibility from 10 to at least 14 years of age, with a minimum age of incarceration of 16 years.

The intersection between child protection and criminal justice is well documented and understood. Aboriginal and Torres Strait Islander children who are removed are more likely to be caught up in the youth justice system which then leads to adult incarceration.<sup>6</sup>

This is demonstrated by the *'Our youth, our way: Inquiry into the over-representation of Aboriginal and Torres Strait Islander children and young people in the Victorian youth justice system'* report. The findings highlighted that Aboriginal and Torres Strait Islander children, in particular girls and young people, are remanded in custody and sentenced to custodial orders at much higher rates than any others.<sup>7</sup>

Children do not belong in prisons. Criminalising and incarcerating Aboriginal and Torres Strait Islander children compounds the intergenerational trauma so many are already carrying. Governments must invest in programs that support children, such as Djirra's YoungLuv, that strengthen our young people and their connections to culture.

<sup>6</sup> The Sentencing Advisory Council found that 1 in 2 children who had involvement with youth justice had experienced 5 or more child protection placements.

<sup>7</sup> *Our youth, our way: Inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system*, Commission for Children and Young People, p. 224.



### Victorian Aboriginal Social Justice Commissioner

The Victorian Aboriginal Justice Caucus (AJC) has been calling for the establishment of a permanent Aboriginal Social Justice Commissioner for more than 16 years. Djirra as an active member of the AJC stands with other Caucus members appealing to the Victorian government for an immediate commitment to establish an independent, statutory office of the Aboriginal Social Justice Commissioner with appropriate resources and powers. The Commissioner would have the power to:

- Ensure greater accountability and monitoring of the implementation of the RCIADIC recommendations, including identifying gaps for further consideration;
- Promote and ensure high quality, culturally safe justice related services are effectively and consistently provided to the Aboriginal and Torres Strait Islander community;
- Improve civil and criminal justice outcomes and equity for Aboriginal and Torres Strait Islander communities and people; and
- Increase confidence of the Aboriginal and Torres Strait Islander community in the operations of the justice system.

### End Aboriginal and Torres Strait Islander deaths in custody

Many of the 339 recommendations of the RCIADIC final report have not been implemented. Deaths in custody continue to rise, with at least 517 deaths since the original report.<sup>8</sup> This said, Djirra acknowledges this report is over 30 years old and many of the recommendations would be outdated and not relevant to today's service system responses.

The report failed to make any specific recommendations relating to Aboriginal and Torres Strait Islander women's contact with the criminal justice system. This rendered our women invisible to policy and law makers. Subsequently we have seen a substantial increase in the number of Aboriginal and Torres Strait Islander women criminalised and imprisoned.<sup>9</sup>

Prisons are inherently unsafe places for Aboriginal and Torres Strait Islander women – they cannot be made culturally safe.

The Victorian government must:

- Review the RCIADIC recommendations to determine their relevance to today's service system responses. This must be led by an Aboriginal Social Justice Commissioner;

<sup>8</sup> Australian Institute of Criminology (August 2022), Deaths in Custody in Australia.

<sup>9</sup> The number of incarcerated Aboriginal and Torres Strait Islander women have soared between 2010 and 2020, increasing by 52%. Corrections Victoria (2020), 'Profile of Women in Prison'.

- Invest in self-determined Aboriginal and Torres Strait Islander community-led solutions – not systems that perpetuate the criminalisation of our people; and
- Recognise Djirra's expertise and the critical role we play in supporting Aboriginal and Torres Strait Islander women who are criminalised.

### **Mistreatment of Aboriginal and Torres Strait Islander women in prison**

Keeping Aboriginal and Torres Strait Islander women out of prison is an urgent priority. Prisons perpetuate the cycle of disadvantage. They are violent, harmful and inherently unsafe for Aboriginal and Torres Strait Islander women who cannot heal in prison.

There must be legislative reform to ensure our women are no longer targeted, and investment in strength-based programs in community rather than the criminalisation of our people. This is Djirra's focus, however we do see the human rights failures towards our people in the prison system. These failures include the poor conditions and lack of access to services for our women on remand.

Conditions in prison, including for prisoners on remand under Victoria's draconian bail laws, are unacceptable. As highlighted during the coronial inquest into Veronica Nelson's death, prisons are inhumane institutions with a callous culture that results in severe medical neglect. Djirra has had other clients with similar experiences of neglectful health treatment. In 2022 Djirra wrote to several ministers about one of our clients who alleged police racism at the point of arrest as well as a series of failures to provide adequate basic medical services by Corrections.

Aboriginal and Torres Strait Islander women with disability are also overrepresented in the justice system.<sup>10</sup> Aboriginal and Torres Strait Islander women are more likely to be impacted by both disability and family violence, and this increases their vulnerability to contact with the justice system and criminalisation.

For women with a disability in prison who require NDIS support, Djirra understands it is difficult to access and there is limited information about this. Even if an NDIS plan is prepared pre-release, which is rare, the system is too complex for women to navigate post-release. This means that women are often left to figure it out on their own and do not get the support that they need. Women should also be given the option of continuing with their existing health professionals whilst incarcerated. If this is not possible, an appropriate referral must be made.

Djirra does not want to see investment into systems that are designed to 'profit' from our disadvantage. However, the system as it is currently designed breaches basic human rights and while it exists in its current form must provide a better standard of care. Djirra supports the Victorian Aboriginal and Torres Strait Islander Community Controlled Health

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<sup>10</sup> Parliament of Australia (2017), 'Provision of services under the NDIS for people with psychosocial disability related to a mental health condition.

Organisation's (VACCHO) calls to oversee the medical care of Aboriginal and Torres Strait Islander people in Victoria's prisons to stop further deaths in custody.

### **Mothers in prison and child removal**

The majority of women Djirra assist in prison are mothers. Separation of mothers and children, even for short periods of time, can be devastating. The harm of child removal from Aboriginal and Torres Strait Islander mothers must be considered in the context of the ongoing harms of colonisation.

As highlighted by the Bringing them Home Report,<sup>11</sup> the history of forcible removals of successive governments has had a devastating intergenerational impact on Aboriginal and Torres Strait Islander families and communities. Aboriginal and Torres Strait Islander women have described child removal as 'the most significant injury to their health and [social and emotional] wellbeing'.<sup>12</sup>

Djirra's Legal Team reports that over the last decade there has not been any successful applications for a pregnant mother to keep her baby with her in prison. The application process disproportionately impacts on Aboriginal and Torres Strait Islander women as the threshold is very high. There are also long delays in receiving an outcome because the woman must wait for a Steering Committee to sit before a decision is made.

Djirra's Community Engagement team also reports instances of Aboriginal and Torres Strait Islander women who were taken from prison to hospital to give birth, the baby was taken away and the women then had to return to prison without their baby. This is a specific trauma that could be prevented.

Djirra urgently recommends that Aboriginal and Torres Strait Islander women who have children not be imprisoned. Where this is not possible, Djirra recommends the urgent implementation of a culturally safe process for women to keep their babies with them in prison. These processes should also be available to those with young children.

High incarceration rates of Aboriginal and Torres Strait Islander women directly impact on child removal rates, the rights of Aboriginal and Torres Strait Islander children, and have ongoing devastating impacts on our families and communities.

As outlined further in our response to Issues Paper 2, Aboriginal and Torres Strait Islander children in Victoria are disproportionately overrepresented in the child protection system and the gap continues to widen.<sup>13</sup> When an Aboriginal and Torres Strait Islander woman is remanded or sentenced the impact on their children and families is profound. Children

<sup>11</sup> Commonwealth of Australia (1997), 'Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families'.

<sup>12</sup> Justice Connect (May 2021), 'Closing the Revolving Door: Scoping holistic legal needs of Victorians exiting prison', p 12.

<sup>13</sup> Australian Productivity Commission report on child protection rates in Victoria, released January 2023: <https://www.pc.gov.au/ongoing/report-on-government-services/2023/community-services/child-protection>

whose mothers spend time in prison are much more likely to be removed and have a disrupted education, poor health and unstable housing – factors that heighten the risk of a young person entering child protection and subsequently the justice system.<sup>14</sup> This is particularly concerning given that Aboriginal and Torres Strait Islander children are the most vulnerable and over-represented cohort within the child protection system.

### Misidentification

Djirra works with many women who have called police to seek help for family violence and are then misidentified by police as the primary aggressor rather than supported for their safety as a victim of the violence.

Djirra is concerned that poor and unsafe police responses reinforce stereotyping and result in the misidentification of Aboriginal and Torres Strait Islander women. This issue is particularly complex in regional areas, as the more familiar relationships between police and community members increase the likelihood of misidentification and creates an additional reporting barrier.

Police misidentification in family violence incidents can heavily influence outcomes in other legal proceedings, such as child protection, family law and victims of crime applications. It can limit access to critical support services, increase isolation, compound distrust in police,<sup>15</sup> and increase risk of violence.

Djirra's Legal Team observes that misidentification is common, but by its nature it is difficult to accurately quantify and research is limited. Data analysis by Women's Legal Service Victoria found that misidentification occurred in 1 in 10 police applications for Family Violence Intervention Orders (FVIOs).<sup>16</sup> The rate of misidentification for Aboriginal and Torres Strait Islander women is likely higher due to racist and/or victim blaming attitudes, discrimination towards women who have, or do use drugs,<sup>17</sup> and poor police practices. Further, police often fail to identify coercive and controlling behaviours in these situations.

Djirra's Legal Team have also reported systems abuse by perpetrators in relation to misidentification. For example, a perpetrator may respond to a FVIO against them by seeking a FVIO against the victim. If court registrars and Magistrates fail to identify the family violence dynamics, an Interim FVIO may be made against the victim. If the client

<sup>14</sup> Human Rights Law Centre (HLRC) and Change the Record (CTR) (May 2017), 'Overrepresented and overlooked: the crisis of Aboriginal and Torres Strait Islander women's growing imprisonment', p 13.

<sup>15</sup> ANROWS (November 2020), 'Accurately Identifying the "Person most in need to protection" in domestic and family violence law', p 5.

<sup>16</sup> Women's Legal Service Victoria (July 2018), 'Policy Paper 1, "Officer she's psychotic and I need protection": Police misidentification of the 'primary aggressor' in family violence incidents in Victoria', p 1.

<sup>17</sup> The intersectional stigma towards First Nations women who use drugs was highlighted by Coroner Simon McGregor in the inquest findings into the passing of Veronica Nelson delivered 30 January 2023, see in particular paragraph 33, p.5.

does not have access to appropriate legal representation or engage in the court process, the perpetrator may be successful in obtaining a final FVIO.

Djirra's Legal Team provide advice on the legal implications of a FVIO, including the conditions and potential consequences of breaching. However, the conditions can be difficult for Aboriginal and Torres Strait Islander women to comply with. They may restrict access to children or stipulate that the woman cannot go to areas in which she can access her family and other supports. If women breach these FVIOs, this brings them into contact with the criminal justice system, causing undue stress and further risk of child removal, incarceration and perpetuation of intergenerational trauma.

On first contact with police for a family violence incident, Aboriginal and Torres Strait Islander women must be offered a referral to an Aboriginal Community Controlled family violence legal service such as Djirra. Despite the implementation of the Koori Family Violence Police Protocols in designated areas across the state, Djirra continues to see examples of misidentification, and receives very few referrals from police. It is vital that police responses are improved to ensure that they are safe and appropriate for Aboriginal and Torres Strait Islander women experiencing family violence. This must include mandatory cultural safety training delivered by a specialist ACCO.

A review mechanism must also be introduced for Family Violence Safety Notices<sup>18</sup> issued against Aboriginal and Torres Strait Islander women to ensure misidentification is identified as soon as possible. This would reduce unnecessary criminalisation, build trust in the justice system, promote reporting of family violence and ultimately help prevent misidentification and its consequences.

### **Housing for Aboriginal and Torres Strait Islander women escaping family violence and exiting prison**

The Victorian government must take urgent steps to end the housing crisis and immediately increase the availability of culturally appropriate, safe and affordable housing for Aboriginal and Torres Strait Islander women. No woman should be forced to choose between family violence and homelessness.

Family violence is a key driver to Aboriginal and Torres Strait Islander women becoming homeless. The lack of safe and affordable housing is a major factor preventing women from leaving violent relationships and contributes to women's incarceration. Victoria has the highest rate of Aboriginal and Torres Strait Islander people accessing homelessness services in the country.<sup>19</sup>

<sup>18</sup> s.24 Family Violence Protection Act 2008 (Vic)

<sup>19</sup> Aboriginal & Torres Strait Islander people access homelessness services at a rate of 1703.2 per 10,000 people in Victoria, compared to 810.6 per 10,000 Australia-wide. Australian Institute of Health and Welfare, Specialist Homelessness Services Annual Report 2020-21 Housing Data Dashboard, <https://www.housingdata.gov.au/dashboard/meovkmx92o8jo45>

In 2020-21, 50.2% of Aboriginal and Torres Strait Islander clients of specialist homelessness services in Victoria experienced family violence (4,492 clients).<sup>20</sup> During this same period, 22% of the clients Djirra's legal service assisted were homeless, or at risk of homelessness, and 94% experienced financial disadvantage. Djirra's housing referrals are often to services that the client has already been linked with, where they are on a very long waitlist.

Housing security is integral to ensuring Aboriginal and Torres Strait Islander women and children experiencing family violence have a safe alternative. While Djirra supports the objectives of Mana-na woorn-tyeen maar-takoort Victorian Aboriginal Housing and Homelessness Framework,<sup>21</sup> it does not go far enough to prioritise Aboriginal and Torres Strait Islander women escaping family violence. Aboriginal Housing Victoria and the Victorian government must work with ACCOs like Djirra to ensure this framework meets the needs of our people who experience family violence.

There is a critical need for Aboriginal and Torres Strait Islander women exiting prison to have access to safe housing. There is a clear causal link between family violence, housing instability and homelessness, and the incarceration of Aboriginal and Torres Strait Islander women.

Djirra has worked with clients who were forced to breach bail because their bail address was unsafe due to family violence. For Aboriginal and Torres Strait Islander women subject to both Community Corrections and Child Protection orders, there is often inadequate communication and coordination between the services. This means women can be forced to nominate bail addresses far away from their children or in a geographic area that is unsafe due to family violence. The lack of suitable housing puts Aboriginal and Torres Strait Islander women and their children at unacceptable risk.

Housing instability and a lack of culturally safe support are key reasons for Aboriginal and Torres Strait Islander women entering prison and remaining on remand. In turn, barriers to housing stability include women being unable to accept or keep social housing while in prison – extending the harm caused by harsh bail laws. Aboriginal and Torres Strait Islander women exiting prison into homelessness or unstable housing are more likely to experience further legal and non-legal issues and have an increased risk of being targeted and criminalised.

### Case Study

*Djirra's client intentionally engaged in low level offending to be brought back to Dame Phyllis Frost Centre (DPFC) as she could 'no longer bear to be homeless'. When she was*

<sup>20</sup> Victorian Aboriginal Housing and Homelessness Framework (2022), Mana-na woorn-tyeen maar-takoort Every Aboriginal Person Has a Home: 2022 Annual Report Card. Victorian Government. [vahhf-annual-report-card-2022-final.pdf](https://vahhf.org.au/) (ahvic.org.au), p36.

<sup>21</sup> Aboriginal Housing Victoria, 2020, Mana-na woorn-tyeen maar-takoort Victorian Aboriginal Housing and Homelessness Framework, Available online: <https://vahhf.org.au/>

*eligible for parole, it was not granted as she did not have “stand-alone” housing. This led to her serving further time in prison, time that should have been spent transitioning back into the community. She was eventually offered a place at Baggarook and granted parole.*

This story is sadly not unique, and clearly demonstrates the impact the homelessness has on our women. Djirra endorses Smart Justice for Women’s call for a housing guarantee for women exiting prison. This will ensure women are safe from violence and not further criminalised due to lack of housing.

### **A community-based residential program to prevent Aboriginal and Torres Strait Islander women from being criminalised and imprisoned**

Djirra stands with all members of the AJC calling for the establishment of a community-based residential program to keep Aboriginal and Torres Strait Islander women out of prison. An Aboriginal designed and operated residential centre would provide opportunities for women to reconnect and further strengthen connection to culture.

Djirra and the Centre for Innovative Justice have been engaged by the Department of Justice and Community Safety to undertake a feasibility study to develop a community-based residential model for Aboriginal and Torres Strait Islander women. It will be crucial for the government to support, implement and fund the recommendations from this report immediately upon its release, which is anticipated in 2023.

The proposed model is a purpose built or redesigned residential program to support connection to family and community and enable time on country for Aboriginal and Torres Strait Islander women exiting or at risk of contact with the prison system. It would have three key components: a day program, a residential program for moderate needs and intensive residential programs. This should be ACCO-led, delivered in partnership with the Victorian government.

## **Issues Paper 2: Call for Submissions on Systemic Injustice in the Child Protection System**

Victoria has highest rates of removal into out of home care in the country.<sup>22</sup> This unacceptable situation must be the starting point when considering improvements that can be made by the Victorian government, especially when it has committed to bring

<sup>22</sup> Australian Institute of Health and Welfare (2021), Child Protection Australia 2019-20, p 54.

provisions before Parliament designed to delay,<sup>23</sup> or limit,<sup>24</sup> Children’s Court oversight of departmental child-removal decisions.

The solutions are complex, but must include:

- Shifting the focus to prevention and support for mums escaping family violence;
- Investing in ACCOs like Djirra to deliver that support;
- Developing a child protection notification scheme so that mums have early access to legal advice and representation;
- Stopping legislative changes that are designed to reduce Children’s Court oversight and punish mothers who need support; and
- Repealing the 2016 ‘permanent removal fast track’ child protection laws.

### Prevention and support

Today, there is too much focus and investment on the ‘tertiary’ end of child protection; removing children and going to court. This must always be the last resort. It is not acceptable that the punitive approaches of child protection result in the devastatingly high removal of our children when the solution is simple. There must be adequate and sustained investment in specialist support services, including stable housing, which we know will keep families together.

In our on the ground work, Djirra sees how the system consistently fails and reinforces mistrust for Aboriginal and Torres Strait Islander women. This includes the overlap between the ‘system infrastructure response’ of child protection and family violence. By way of example, the Orange Doors were meant to be safe entry points into the system for women experiencing violence. However, because of the presence of government child protection workers, it can be unsafe for Aboriginal and Torres Strait Islander women to access these services.

Government must change direction and invest in ACCOs like Djirra to lead the development and delivery of wraparound services that focus on supporting women and children’s safety. As a specialist ACCO we use our on the ground experience to advocate for systemic change. Djirra’s best practice programs are the self-determined solutions Aboriginal and Torres Strait Islander women have called for. Culturally safe, effective and supportive, not punitive approaches that rely on removing children.

### Child protection notification scheme

For many years Djirra has been calling on the Victorian government to establish and fund an Aboriginal and Torres Strait Islander child protection notification and referral system. This would ensure that upon a child protection notification being received for an Aboriginal and Torres Strait Islander family, the primary parent is immediately referred to

<sup>23</sup> Part 5, *Children, Youth and Families Amendment (Child Protection) Bill 2021*.

<sup>24</sup> Clause 68, *ibid*.



Djirra or another appropriate legal service and informed of the importance of obtaining independent legal advice. Early access to legal advice and representation for mothers escaping family violence is critical to prevent child removal.

Through our work, we see the unnecessary removal of children because mothers are not supported to escape violence and do not understand that they have legal rights. For example, Djirra has been told by women that child protection advised them not to involve lawyers because that would only complicate matters. Our women are rarely given the full picture when child protection is planning to go to Court, and frequently do not fully understand the risk of losing their children.

Early legal advice is critical to keeping families together, and organisations like Djirra are critical to providing the supports that mothers who are targeted and vulnerable need.

The development of a child protection notification system must be properly established and funded by government and led by Djirra. In 2022, the DFFH started to reach out to Djirra to discuss how this notification scheme could work. This engagement is welcome and Djirra will continue to pursue these discussions and all avenues for shifting the focus away from removing kids and on to investing in mums escaping violence.

### **New laws that will delay and reduce Court oversight**

In light of the high removal rates of Aboriginal and Torres Strait Islander children, it is concerning that the government is trying to pass laws designed to reduce Court oversight and discretion. Djirra and many other ACCO and legal profession stakeholders have raised strong concerns about Part 5 and Clause 68 in the *Children, Youth and Families Amendment (Child Protection) Bill 2021*. While the Bill appears to have lapsed at the end of the 59th Parliament, we remain concerned that these proposals have not been formally rejected by the government.

The proposed changes in the Bill will:

- Delay emergency hearings;
- Reduce the discretion of the Children's Court's to make interim orders to a parent who is not abusive but needs supervision; and
- Disproportionately impact Aboriginal and Torres Strait Islander mothers escaping family violence and people with a disability.

Like the permanency fast-track provisions, these changes reduce the Children's Court's ability to make certain decisions in the best interests of the child, giving weight to all the evidence before it. In addition to increasing the likelihood of permanent removal, this is a failure to uphold Article 3 of the *Convention on the Rights of the Child*.

Under its Closing the Gap targets, the Victorian government has committed to reduce the rate of Aboriginal and Torres Strait Islander children in out-of-home care by 45% (Target

12) by 2031. Victoria currently has the highest rate of Aboriginal and Torres Strait Islander children in out-of-home care in the country, and it is difficult to see how the government will meet this target if these punitive policies continue.

### **The 2016 'permanent removal fast-track' laws**

Since 2016, Djirra has consistently advocated against the 12- and 24-month time limits on family reunification orders (the 'permanency amendments'), which were introduced by the *Children, Youth & Families (Permanent Care & Others Matters) Amendment Act 2014*.

Djirra continues to witness the devastating impact these provisions have had on Aboriginal and Torres Strait Islander families. They ignore the reality that deep-seated intergenerational trauma cannot be resolved quickly under arbitrary and abbreviated timelines. The time limits can punish our women for delays, which are often outside their control.

The provisions are harsh for mothers who are healing from family violence or incarceration-related trauma, substance abuse or mental illness. The government must do more to invest in adequate, culturally appropriate support services for mothers and children to assist reunification, not rely on legislative blunt instruments that take away the discretion of the Children's Court and favour permanent removal.

### **Concerns on expansion of powers under section 18**

Djirra has ongoing concerns about the expansion of powers under section 18 of the *Children Youth and Families Act 2005 (CYFA)* which transfers the responsibility for Victoria's broken children protection system to ACCOs. This is highlighted by current amendments to the CYFA proposed by the Victorian Government in *Children and Health Legislation Amendment (Statement of Recognition and Other Matters) Bill 2022* which enable ACCOs to both investigate and intervene following child protection notifications.

Under section 18 powers, generalist ACCOs (e.g. Aboriginal co-operatives) that provide multiple programs; such as, men's behaviour change programs, cultural strengthening programs, convening Aboriginal Family Led Decision making meetings and health services, will also take on the role of child protection services.

Djirra has identified a number of issues that may arise as a result of the increased responsibilities and roles that some ACCOs will now hold with section 18 powers, particularly in regional locations. These include:

- Perceived, or actual, conflicts of interest; and
- Lack of safety and anonymity for Aboriginal and Torres Strait Islander women;

meaning that women will be less likely to disclose family violence and seek out assistance for safety.

These unintended consequences do not appear to have been adequately considered. We must be satisfied that Aboriginal and Torres Strait Islander women will be safe and supported in accessing these services, which should also prioritise women being referred to Djirra as a specialist in this area.

### Recent Djirra Child Protection Case Studies

The following case studies highlight failures by Child Protection and the critical role specialist, Aboriginal Community Controlled legal services like Djirra play in supporting Aboriginal and Torres Strait Islander women in contact with the child protection system.

- 1. The Department's primary protective concern related to our client's lack of housing, however it made no effort to support her achieving stable housing. The child protection worker said to our client "You are not fit to be a Mum, you will never have your kids." This was soul-crushing for our client, who had been doing very well abstaining from marijuana use and was relocating constantly to be safe from her violent ex-partner. This comment caused our client to relapse and use marijuana for the first time in six months. Six months after this, our client's two children were returned to her care after the Court pressed the Department to change their case plan, despite their Care by Secretary Order application.*
- 2. Our client has a learning disability. A child protection worker called to question her about the services she was engaging with. Our client was on the bus at the time and had difficulty recalling the (many) services she was engaged with as she did not have her notebook. Our client asked if the worker could call her back when she was with her NDIS Coordinator so they could go through it all together. Subsequently, the Department wrote in a Court Report that our client "Needs to take accountability for the work that she wants to do and recall information."*
- 3. Our client asked the Department why she had not been invited to any care team meetings regarding her child and was told by the child protection worker: "I didn't think you would want to come." Our client's teenager had been living in out-of-home care after absconding from home due to resisting parental rules and boundaries. Our client was desperate to know how the child was going and when they were ready to come home and had repeatedly told the Department she wanted regular updates and to be consulted in all decision-making.*
- 4. Our client questioned the Department about her children's Cultural Support Plans and was told: "It doesn't matter where the service is from, as long as the children are linked in with Aboriginal activities." Our client had queried whether the children's cultural needs would be fulfilled by goals that did not include going back on country or learning*

*about and engaging with their mob in WA, and only specified engaging with Koori-based services (on a surface level).*

### **What do self-determined solutions look like?**

In Djirra's view Aboriginal self-determination does not mean simply delegating existing powers or responsibilities. The current system fails Aboriginal and Torres Strait Islander children, and this failure is being transferred from government to ACCOs. This is a missed opportunity to undertake systemic change in partnership with ACCOs.

The system is not working. Services fail our women, who continue to be harmed by the intersecting effects of racism, intergenerational trauma, and ongoing colonisation. Instead of locking up our women and taking away their children, Djirra calls on governments to prioritise and resource measures and programs that address harms and empower our people to take control of their lives.

Self-determination means supporting communities and ACCOs to lead the development and delivery of programs to help keep our women out of prisons, and with their children.

Djirra have developed a number of successful early intervention and prevention programs, recognised by the Royal Commission into Family Violence as best practice.<sup>25</sup> Our programs are trusted, rich in culture, trauma informed, and promote the important work of Djirra, including by offering safe, alternative ways for women to learn about and access family violence and legal supports.

Governments need to invest in these and other ACCO-led programs, as well as supporting increased monitoring and evaluation capacity to ensure Aboriginal and Torres Strait Islander data sovereignty - a key tenet of self-determination.

Djirra is often overlooked and excluded from or not meaningfully consulted on legislative changes and policy that directly impact Aboriginal and Torres Strait Islander women. As a specialist organisation working exclusively with Aboriginal and Torres Strait Islander victim survivors of family violence, Djirra's on the ground experience and expertise must be recognised by government.

Djirra asks that the Victorian government consult Djirra on all reforms impacting Aboriginal and Torres Strait Islander women. Government must also invest in our policy work which is critical to ensuring Aboriginal and Torres Strait Islander women's experiences are included and inform government agendas. Djirra is seeking funding for our policy area which remains largely unfunded. Resourcing Djirra to do this work is in

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<sup>25</sup> State of Victoria (March 2016), 'Royal Commission into Family Violence: Report and recommendations, Chapter 26 Family violence and diversity', pp 20 & 52.

line with the principles of self-determination. Aboriginal and Torres Strait Islander women must be invested in to lead the way to a future without family violence.

### **Sisters Day Out**

This is Djirra's long standing wellbeing workshop, where Aboriginal and Torres Strait Islander women can support each other, enjoy wellness sessions, get information and engage with support services. The workshop focuses on community awareness raising around family violence prevention and accessing services in a culturally safe space. Sisters Day Out workshops are held regularly in community, and Djirra has also delivered "Sisters Day In"; a specialised version of Sisters Day Out for women in DPFC.

### **Dilly Bag**

Dilly Bag is a small group residential workshop that draws on Aboriginal and Torres Strait Islander cultural principles and draws on the strength of our cultural in order to live a cultural safe and meaningful lifestyle. Over four days, program activities seek focusing on individual strengths and the richness of, and traditional values found within, Aboriginal and Torres Strait Islander society and culture. The strengths and roles of Aboriginal and Torres Strait Islander women are reaffirmed and validated. During COVID-19, a modified version of this program was also delivered online to women in DPFC and Tarrengower. As part of this program, women participate in a possum skin drum workshop.

### **YoungLuv**

YoungLuv is designed for young Aboriginal and Torres Strait Islander women, aged 13 to 18. The workshops focus on promoting healthy and respectful relationships. They aim to equip young women with information and skills to challenge unhealthy relationships, and to practise positive and safe behaviours. It has been recognised that programs like Djirra's YoungLuv are effective at preventing Aboriginal and Torres Strait Islander girls from entering into violent relationships.

The program also focuses on strengthening cultural knowledge and valuing of culture and cultural identity. YoungLuv workshops are delivered across Victoria in collaboration with local Aboriginal and Torres Strait Islander communities.

### **Koori Women's Place**

Djirra's Koori Women's Place is a culturally framed specialist family violence support service which supports Aboriginal and Torres Strait Islander women to lead strong, independent and positive lives as they confront the ongoing trauma of family violence.

During the COVID-19 pandemic, Koori Women's Place began delivering programs and workshops online to Aboriginal and Torres Strait Islander women. The culturally based programs range from jewellery making and goal setting to cooking.

### **Counselling service**

Djirra's counselling program has successfully been providing Aboriginal and Torres Strait Islander women, in the community and in prison, with a culturally safe and trauma informed service that has had positive impacts of the lives of these women. Following the outbreak of COVID-19, this program transitioned online and expanded to try to meet increased demand. There is still unmet need and further funding is required to provide culturally safe counselling to our women.

There is also an urgent need for governments to increase funding to ACCOs like Djirra to provide women in prison access to external counselling. This will assist with continuity of counselling services where women were accessing them prior to incarceration.

### **Djirra's legal services in prison**

Djirra has developed a Prison Support Program to provide legal and non-legal support to Aboriginal and Torres Strait Islander women at DPFC and Tarrengower.

This program includes Lawyers and Paralegal Support Workers and case managers who connect with and support Aboriginal and Torres Strait Islander women in prison. This program has been extremely effective for women in prison as their legal needs can be identified and met with a holistic approach, including supported access to counselling and art therapy. Djirra also links women in with other culturally appropriate services and programs that assist women to maintain connection to family, culture, and community.

### **Next steps - Victorian Aboriginal and Torres Strait Islander Women's Centre**

Djirra is calling on the Victorian government to invest in our long-standing vision for the first Aboriginal and Torres Strait Islander Women's Centre in Victoria. This will be a game changer, ensuring our women can access a broad range of supports and services in a single location. This Centre will be accessed by Aboriginal and Torres Strait Islander women from across the state and underpinned by the principles of self-determination.

Djirra's programs have successfully demonstrated that ACCO-led solutions can keep our women safe and empower them to build lives beyond the harmful punitive policies of the criminal justice and child protection systems.