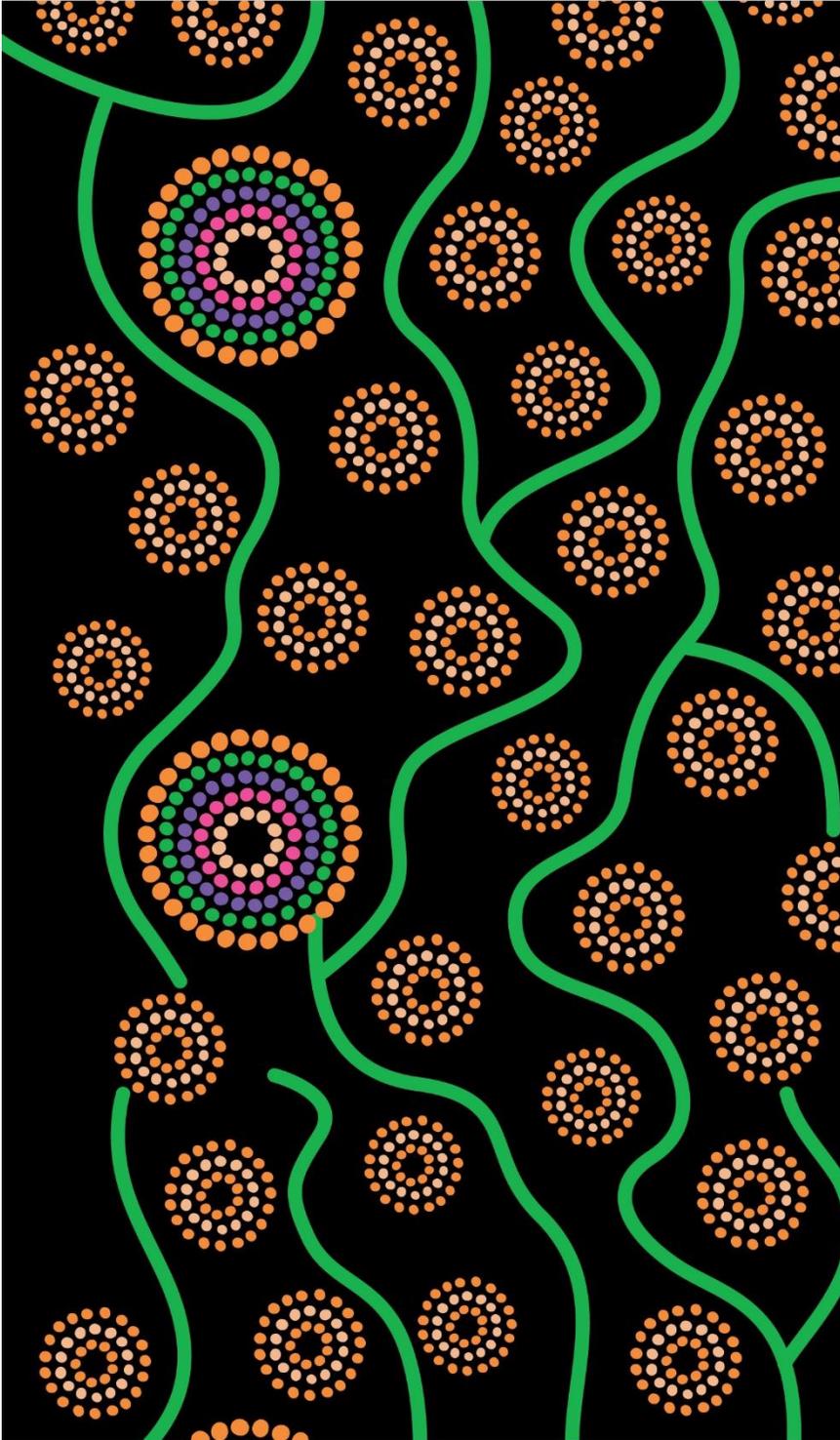




Sharing stories, finding solutions



## Djirra

### Submission to the Parliamentary Inquiry into Victoria's Criminal Justice System

*Djirra acknowledges and respects the traditional custodians whose lands we are fortunate to live and work on, and we pay our respects to all Elders past and present. Djirra also acknowledges the many Aboriginal and Torres Strait Islander women we work with who share their stories and experiences to enable Djirra to contribute to important submissions such as this.*

September 2021

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## **Executive Summary**

Djirra welcomes the opportunity to contribute to the Victorian Legislative Council's Inquiry into Victoria's Criminal Justice System. The overrepresentation of Aboriginal and Torres Strait Islander women in the criminal justice system in Victoria is a crisis that requires whole of system reform.

As a specialist family violence Aboriginal Community Controlled Organisation (**ACCO**), Djirra has a unique insight into the connection between family violence and other intersecting factors that contribute to the increasing incarceration of Aboriginal and Torres Strait Islander women. These factors include housing instability, poverty, disability, and social and emotional wellbeing issues, which are compounded by the impact of colonisation and intergenerational trauma.

The issues and recommendations outlined in this submission recognise and respond to the unique experiences of Aboriginal and Torres Strait Islander women. These include:

- Bail and sentencing reform;
- Failure of the criminal justice system to identify family violence;
- Lack of access to culturally appropriate legal representation and support services;
- Lack of services in community to keep women out of the justice system;
- Women in prison with disability;
- Mothers in prison;
- Impacts on children, including child removal;
- Best practice early intervention and prevention programs; and
- Victorian Aboriginal Social Justice Commissioner.

Djirra also endorses and echoes the submissions made by Smart Justice for Women (**SJFW**) and the Aboriginal Justice Caucus (**AJC**) to this Inquiry.

## **Introduction**

The overrepresentation of Aboriginal and Torres Strait Islander women in the criminal justice system is a national crisis that has largely been overlooked.<sup>1</sup> Thirty years after the Royal Commission into Aboriginal Deaths in Custody (**RCIADIC**), Aboriginal and Torres Strait Islander women are being imprisoned at staggeringly high rates. First Nations women are currently the fastest growing prison population in Australia<sup>2</sup> and 21 times more likely to be incarcerated than other women.<sup>3</sup>

In Victoria, Aboriginal and Torres Strait Islander women represent 0.8%<sup>4</sup> of the female population and 10% of the female prison population.<sup>5</sup> The number of incarcerated Aboriginal and Torres Strait Islander women have soared over the last decade, increasing by 52% between 2010 and 2020.<sup>6</sup> Whilst there was

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<sup>1</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', pp 4-5.

<sup>2</sup> Australian Institute of Health and Welfare (November 2020), 'The Health and Welfare of Women in Australia's prisons', pp 2-4.

<sup>3</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', p 6.

<sup>4</sup> Australian Bureau of Statistics (2016), '2016 Census QuickStats; Victoria.'

<sup>5</sup> Corrections Victoria (2021), 'Monthly Prisoner and Offender Statistics 2021-2022'.

<sup>6</sup> Corrections Victoria (2020), 'Profile of Women in Prison'.

a temporary reduction due to the COVID-19 pandemic,<sup>7</sup> Djirra is extremely concerned about the overall trend towards incarceration of Aboriginal and Torres Strait Islander women. Significant reform is required to prevent these numbers from rising further and meet the Victorian Government's commitments under Closing the Gap<sup>8</sup> and Burra Lotjpa Dunguludja (AJA4).<sup>9</sup>

Aboriginal and Torres Strait Islander women are disproportionately overrepresented for minor offences relating to poverty, homelessness, family violence, disability, and lack of support for alcohol and other drug (AOD) or social and emotional wellbeing issues.<sup>10</sup> Many women are held on remand without receiving a custodial sentence, which has a devastating impact on their lives. If they do receive a custodial sentence, this is likely to be longer than the sentence received by non-Aboriginal and Torres Strait Islander women.<sup>11</sup>

Aboriginal and Torres Strait Islander women also experience violence at vastly disproportionate rates that continue to rise. Nationally, Aboriginal and Torres Strait Islander women are:

- **32 times** more likely to be hospitalised due to family violence<sup>12</sup>; and
- **10 times** more likely to die due to assault,<sup>13</sup>

than their non-Aboriginal and Torres Strait Islander counterparts.

Up to 90% of Aboriginal and Torres Strait Islander women in prison have experienced sexual or family violence.<sup>14</sup> Barriers to reporting, including poor police responses and fear of child removal, have a significant impact on reporting rates so these numbers are likely to be much higher.<sup>15</sup> 80% of Aboriginal and Torres Strait Islander women in prison are also mothers.<sup>16</sup> Separation of mothers and children, even for short periods of time, has a devastating impact. Despite these figures, the criminal justice system is not responsive to Aboriginal and Torres Strait Islander women's experiences of family violence, or their roles as mothers.

There is minimal understanding of how trauma impacts Aboriginal and Torres Strait Islander women in the criminal justice system, though most have experienced multiple forms of violence. Many women also have experiences of other forms of disadvantage, including housing instability and poverty. These factors intersect with, and compound, the impact of colonisation and punitive laws and policies which continue to impact Aboriginal and Torres Strait Islander women today.<sup>17</sup> Further, Aboriginal and Torres

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<sup>7</sup> Ibid.

<sup>8</sup> Objective 15.2 of Victorian Aboriginal Affairs Framework (VAAF), committed to under the Victorian Closing the Gap Implementation Plan 2021 – 2023.

<sup>9</sup> Burra Lotjpa Dunguludja, Victorian Aboriginal Justice Agreement Phase 4.

<sup>10</sup> Between 2010 – 2013, theft/burglary was one of the most common offences Aboriginal and Torres Strait Islander women were charged with. MacGillivray, P. & Baldry, E. (2015), 'Australian Indigenous Women's Offending Patterns Brief 19', pp 4-5.

<sup>11</sup> RMIT Centre for Innovative Justice (December 2020), 'Women Transforming Justice: Final Evaluation Report', p 24.

<sup>12</sup> Australian Institute of Health and Welfare (2019), 'Family, domestic and sexual violence in Australia: continuing the national story 2019', p ix.

<sup>13</sup> Australian Human Rights Commission (December 2020), 'Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report', p 4.

<sup>14</sup> Corrections Victoria (January 2019), 'Women in the Victorian Prison System', p 12.

<sup>15</sup> Research conducted by the Australian Institute of Criminology found that up to 90% of violence against Aboriginal and Torres Strait Islander women goes unreported. Willis, M. (January 2011), 'Non-Disclosure of Violence in Australian Indigenous Communities', pp 4–10.

<sup>16</sup> HRLC/CTR (n 1), p 10.

<sup>17</sup> Ibid, p 5.

Strait Islander women with disability (particularly ABI), or social and emotional wellbeing issues will experience additional systemic barriers.

The increasing rates of incarceration and overrepresentation are a consequence of a criminal justice system that consistently fails Aboriginal and Torres Strait women. Djirra urges the Victorian government to move away from a punitive approach and instead invest in Aboriginal community-led solutions that support and build on the lives and resilience of Aboriginal and Torres Strait Islander women. This requires services such as Djirra to be appropriately funded to provide holistic and culturally safe support to keep Aboriginal and Torres Strait Islander women and their children safe.

### **About Djirra**

Established in 2002, Djirra is an Aboriginal Community Controlled Organisation with state-wide reach, specialising in family violence. Djirra provides culturally safe, holistic support and specialist family violence legal assistance and representation. Djirra also designs and delivers early intervention and prevention programs by Aboriginal and Torres Strait Islander women, for Aboriginal and Torres Strait Islander women. Our frontline work in community informs Djirra's advocacy for systemic reform to strengthen Aboriginal and Torres Strait Islander women's access to justice, safety and equality.

### **Djirra's work with women in prisons**

Djirra provides legal and non-legal support to Aboriginal and Torres Strait Islander women at Dame Phyllis Frost Centre and HM Prison Tarrengower. Djirra's legal work focuses on the areas of Child Protection, Family Violence Intervention Orders (**FVIOs**), Family Law and Victims of Crime Assistance (**VOCA**). Djirra's Community Education Team and Koori Women's Place also provide community education programs and activities to Aboriginal and Torres Strait Islander women in prison and on Community Corrections Orders.

## **Summary of Recommendations**

Djirra endorses and echoes the recommendations made by Smart Justice for Women (**SJFW**) and the Aboriginal Justice Caucus (**AJC**) to this Inquiry, some of which have been included below.

### **Bail reform**

1. 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 unnecessarily criminalise Aboriginal and Torres Strait Islander women.
5. Aboriginal and Torres Strait Islander women must have access to culturally appropriate legal representation to ensure that police responses are safe and appropriate.
6. Investment in culturally appropriate AOD and emotional and social wellbeing treatment facilities for Aboriginal and Torres Strait Islander women.
7. Through COVID-19, there was a drastic reduction of Aboriginal and Torres Strait Islander women incarcerated in Victoria. Djirra calls on the Victorian government to draw on the learnings from this period to ensure the continued reduction in these numbers. This will be informed by the Centre for Innovative Justice's report 'Lessons from COVID-19' (yet to be published).

### **Sentencing reform**

8. 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.
9. Ensure that police and justice responses are appropriate, culturally safe and meet the needs of Aboriginal and Torres Strait Islander women.
10. Better utilise Section 83a of the Sentencing Act, ensuring that Aboriginal and Torres Strait Islander facilitators are involved.

### **Failure to identify family violence**

11. Ensure police responses are safe and appropriate for Aboriginal and Torres Strait Islander women experiencing family violence. This must include mandatory cultural safety training.
12. Undertake automatic reviews of Family Violence Safety Notices issued by police against Aboriginal and Torres Strait Islander women to ensure misidentification is identified as soon as possible.

### **Community Corrections Orders (CCO)**

13. Adopt a collaborative problem-solving response to Aboriginal and Torres Strait Islander women who are unable to comply with the conditions of a CCO because of lack of support and access to appropriate services. Conditions must be reviewed to ensure the unique barriers facing Aboriginal and Torres Strait Islander women are taken into consideration and culturally appropriate support is identified and provided.

### **Royal Commission into Aboriginal Deaths in Custody (RCIADIC)**

14. Establish a Victorian Aboriginal Social Justice Commissioner with adequate resources.
15. Review the implementation of all 339 recommendations from the Royal Commission into Aboriginal Deaths in Custody 1991 Final Report. This review should incorporate the impact on Aboriginal and Torres Strait Islander women's experiences in the criminal justice system.

### **Housing**

16. Investment is required to ensure Aboriginal and Torres Strait Islander women have access to culturally appropriate, safe and affordable housing that meets their specific needs.

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

17. Amend the *Children, Youth and Families Act 2005 (Vic)* to allow the court to extend Family Reunification Orders to beyond current prescribed time-limits.
18. Establish culturally appropriate processes to ensure that Aboriginal and Torres Strait Islander mothers who are incarcerated can keep their babies whilst in prison. These processes should also be available to those with young children.
19. 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.

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

20. 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.

### **Aboriginal and Torres Strait Islander women with a disability**

21. Provide funding for ACCOs such as Djirra to support Aboriginal and Torres Strait Islander women and girls with disability to access culturally safe early intervention and prevention programs.
22. 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 ACCO.
  - ii. To conduct capacity screening and assessments for people with cognitive impairments. This must include meaningful cultural safety training delivered by an ACCO.
23. Increase culturally safe support for Aboriginal and Torres Strait Islander women with a disability to access the National Disability Insurance Scheme (NDIS), with dedicated programs to support access for women in prison.

**Access to legal representation**

24. Ensure that Aboriginal and Torres Strait Islander women have access to culturally appropriate, specialist legal advice and representation that is culturally safe.

**Funding for best practice programs, models and services**

25. Support the recommendations from the proposed Koori Women's Feasibility Study (to be finalised December 2021) on a diversion program for Aboriginal and Torres Strait Islander women, similar to Wulgunggo Ngalu Learning Place.
26. Following the COVID-19 outbreak, face to face service delivery was challenging and Djirra's programs transitioned online. There must be sufficient technology in prisons to better facilitate access to external programs and workshops, such as Djirra's Sisters Day In.
27. Provide access for Aboriginal and Torres Strait Islander women in prison to external counselling by increasing funding to ACCOs like Djirra. This will assist with continuity of counselling services where women were accessing them prior to incarceration.
28. Increase funding to family violence specialist ACCOs like Djirra to:
  - i. Design and deliver culturally safe pre and post release services and programs for Aboriginal and Torres Strait Islander women in prison. This includes funding for monitoring and evaluation of these programs.
  - ii. Expand and prioritise additional funding for Djirra to work with women in the criminal justice system, including funding for our legal services and community engagement work.

## **Preventing over-incarceration of Aboriginal and Torres Strait Islander women**

### **Bail Reform**

Djirra calls on the Victorian government to act urgently to reform the Bail Act and reduce the staggering incarceration rates of Aboriginal and Torres Strait Islander women.

Over the past decade there has been a dramatic increase in the number of Aboriginal and Torres Strait Islander women incarcerated in Victoria.<sup>18</sup> This is attributed to the disproportionate impact that the Bail Act reforms are having on women they were designed to protect.<sup>19</sup>

In Djirra's experience, Aboriginal and Torres Strait Islander women are remanded for mostly low-level offending including property and drug related offences. These offences are often causally connected to family violence and disadvantage.

Once remanded, Aboriginal and Torres Strait Islander women are less likely to apply for bail.<sup>20</sup> In Djirra's experience, if women do apply for bail, they will have limited chance of success if there are social and emotional wellbeing or AOD issues and treatment is unavailable. In 2015-16, 72% of Aboriginal and Torres Strait Islander women reported daily drug use prior to entering remand,<sup>21</sup> demonstrating the need for investment in culturally appropriate AOD and social and emotional wellbeing treatment facilities.<sup>22</sup>

Aboriginal and Torres Strait Islander women experiencing housing instability or homelessness are also unlikely to obtain bail. If they have been a victim of family violence, they are often forced to choose between returning to the address of the perpetrator or remaining on remand. Crisis accommodation is not considered sufficient in these circumstances.

Most Aboriginal and Torres Strait Islander women on remand will not receive custodial sentences.<sup>23</sup> However, 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.

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.

### **Impacts of housing instability and homelessness**

There is a clear causal link between family violence, housing instability and homelessness, and the incarceration of Aboriginal and Torres Strait Islander women. Family violence is the leading cause of

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<sup>18</sup> The number of Aboriginal and Torres Strait Islander women in prison has risen from 15 in 2008 to 575 in 2019. The percentage of Aboriginal and Torres Strait Islander women in prison in Victoria during this period also increased from 20.4% to 47.7%: Corrections Victoria (n 6).

<sup>19</sup> Crivellaro, G, 9th October 2020, 'Number of Indigenous women in Victorian prisons skyrocketing', National Indigenous Times.

<sup>20</sup> Corrections Victoria (n 14), p 12.

<sup>21</sup> Ibid, p 10.

<sup>22</sup> The *Our youth, our way* report also highlighted the lack of AOD and social and emotional wellbeing support services available to Aboriginal and Torres Strait Islander girls and young women: Commission for Children and Young People (2021). 'Our youth, our way: Inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system', p 361 and 368.

<sup>23</sup> Corrections Victoria (n 14), p3.

homelessness in Victoria.<sup>24</sup> In 2015-16, 35% of Aboriginal and Torres Strait Islander women entering remand were experiencing some form of housing instability or homelessness.<sup>25</sup>

As outlined above, housing instability and a lack of culturally appropriate supports are key reasons for Aboriginal and Torres Strait Islander women remaining on remand. Barriers to housing stability include women being unable to accept or keep social housing while in prison. For Aboriginal and Torres Strait Islander women with disability, this is compounded by a lack of accessible housing options for women who require modifications.

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 recidivism. For example, Djirra's legal team have reported instances where clients were forced to breach bail because their bail address was unsafe to return to 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 available puts Aboriginal and Torres Strait Islander women and their children at unacceptable risk. Djirra urges the government to invest in appropriate and culturally safe housing options to ensure Aboriginal and Torres Strait Islander women are safe from violence and not criminalised due to lack of housing.

#### *Case study*

*Djirra's client Kelsey has been experiencing family violence for decades. Kelsey lives in public housing and for years has been waiting for approval that she can move to a new place where she will be safe. The house Kelsey is currently living in is where the violence occurred, and the perpetrator knows that she still lives there. Kelsey relies on a Duress alarm that she can press to call police to her home when the perpetrator arrives and is threatening. Djirra provided Kelsey with the Duress alarm and also culturally safe counselling through our phone-counselling service.*

## **Sentencing**

The majority of Aboriginal and Torres Strait Islander women sentenced in Victorian courts are victims of sexual, physical and/or emotional abuse.<sup>26</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

<sup>24</sup> Parliament of Victoria (2021), 'Inquiry into Homelessness in Victoria: Final Report', p xxi.

<sup>25</sup> Aboriginal and Torres Strait Islander women who entered remand during this period experienced higher rates of housing instability and homelessness compared with non-Aboriginal and Torres Strait Islander women. Corrections Victoria (n 14), p 9.

<sup>26</sup> Australian Law Reform Commission (2018), 'Drivers of incarceration for Aboriginal and Torres Strait Islander women' para 11.19.

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-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 community 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.

## **Community Corrections Orders**

Victoria's CCO regime does not sufficiently consider the unique individual circumstances and barriers facing Aboriginal and Torres Strait Islander women. Compliance with CCOs is poor, with only 45% of CCOs successfully completed in 2019 to 2020.<sup>27</sup>

In Djirra's experience, an overwhelming number of clients breach CCOs because of compliance barriers. Barriers for Aboriginal and Torres Strait Islander people will often include 'clashes with cultural obligations...attempts to reconnect with family and community...remoteness, substance abuse, [social and emotional wellbeing] issues and poor literacy skills.'<sup>28</sup>

Low compliance rates are not assisted by the lack of culturally safe AOD rehabilitation options. Djirra is aware of instances where Aboriginal and Torres Strait Islander women have applied for an in-patient AOD program, but the waitlist has been so long that the opportunity is missed.

There is also a lack of coordination of services Aboriginal and Torres Strait Islander women are expected to engage with. For example, if a client is subject to a CCO and Child Protection Order that both require drug screens, they often have to complete two separate screens. This can be expensive, stressful and unnecessarily burdensome on Aboriginal and Torres Strait Islander women.

Experiences of homelessness or unstable housing make it even more difficult to comply with a CCO. This includes a lack of culturally safe and/or long-term housing, and housing which requires women having to live far away from their families, communities and other supports.

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<sup>27</sup> Department of Justice and Community Safety (October 2020), '2019-20 Corrections and Justice Services Data Report to the Aboriginal Justice Forum: Key Insights,'.

<sup>28</sup> Australian Law Reform Commission (2017), 'Incarceration Rates of Aboriginal and Torres Strait Islander Peoples (Discussion Paper 84)', p 94.

As recommended in SJFW's submission, the initiation of breach proceedings should be a last resort<sup>29</sup>. A more collaborative, problem-solving response for Aboriginal and Torres Strait Islander women who are unable to comply with the conditions of a CCO is required. Conditions must be reviewed to ensure the unique barriers facing Aboriginal and Torres Strait Islander women are taken into consideration and culturally appropriate support is identified and provided.

Djirra joins the AJC in calling for the establishment of a diversion program for Aboriginal and Torres Strait Islander women, similar to Wulgunggo Ngalu Learning Place. Wulgunggo Ngalu is an incredibly successful model demonstrating how restorative and culturally appropriate CCOs can be delivered. An Aboriginal and Torres Strait Islander designed and operated residential centre would provide opportunities for women to reconnect or further strengthen their connection to culture.

Djirra, the Centre for Innovative Justice and PWC Indigenous Consulting have been engaged by the Victorian Government to complete a feasibility study on preferred residential models for women undertaking CCOs, similar to Wulgunggo Ngalu. The report is scheduled for completion in December 2021. Djirra calls on the government to support and implement the recommendations from this report once released.<sup>30</sup>

## Failure to identify family violence

Up to 90% of violence against Aboriginal and Torres Strait Islander women goes unreported.<sup>31</sup> Key reasons for underreporting include profound mistrust and/or police inaction. Women also fear that reporting to police may result in child removal, incarceration and victim/perpetrator misidentification.

In Djirra's experience, when Aboriginal and Torres Strait Islander women report violence and/or FVIO breaches to police, police are inconsistent in their responses, and often respond inadequately. This further erodes the limited trust that Aboriginal and Torres Strait Islander women have in the criminal justice system to support them.

### Case Study

*Djirra's client Cara called the police when her ex-partner, Jack, arrived at her house with his friends. The police did not report Jack's breach of the intervention order that was in place. When Cara tried to report other breaches such as Jack's constant attempts to call her, Cara couldn't prove it was him, as he ensured to always call from a private number and never messaged. Cara was discouraged from reaching out for support.*

*The final time Jack used physical violence against Cara, she was pregnant with their fourth child and the violence was witnessed by police officers. Police supported Cara immediately following the incident. However, on conviction Jack only received a good behaviour bond, despite offending multiple times. Cara lost trust in the justice system, and reflects, 'My life was in shambles, and he got squat. And I kind of just gave up on the justice system.'*

<sup>29</sup> Smart Justice for Women (September 2021), 'Submission to the Inquiry into the Criminal Justice System; Reducing the criminalisation of women in Victoria'.

<sup>30</sup> State of Victoria (2021), 'Feasibility study for women's residential program.' [www.aboriginaljustice.vic.gov.au](http://www.aboriginaljustice.vic.gov.au).

<sup>31</sup> Willis, M. (January 2011), 'Non-Disclosure of Violence in Australian Indigenous Communities', pp 4–10.

## **Misidentification**

Djirra frequently assists women who have called police to seek help for family violence and are then misidentified by police as the primary aggressor/perpetrator rather than the victim of crime.

Djirra is concerned that poor police responses reinforce stereotyping and frequently results 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 increases 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 VOCA. It can limit access to critical support services, increase isolation, compound distrust in police,<sup>32</sup> and increase risk of violence. A review of family violence related deaths in 2015 found that 44.4% of female victims of homicide were identified as the respondent in a protection order on at least one occasion<sup>33</sup>.

Djirra lawyers observe that misidentification is common, but by its nature it is difficult to accurately quantify. Research on misidentification is also limited. Data analysis by Women's Legal Service Victoria found that misidentification occurred in 1 in 10 police applications for FVIOs.<sup>34</sup> The rate of misidentification for Aboriginal and Torres Strait Islander women is likely higher due to racist and/or victim blaming attitudes 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 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 lawyers 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 (pursuant to Victoria's Royal Commission into Family Violence Recommendation 151), Djirra continues to see examples of misidentification, and receives very few referrals from police.<sup>35</sup> It is vital that police responses are improved to ensure that they are safe and appropriate for Aboriginal and

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<sup>32</sup> ANROWS (November 2020), 'Accurately Identifying the "Person most in need to protection" in domestic and family violence law', p 5.

<sup>33</sup> Domestic and Family Violence Death Review and Advisory Board (2017), 'A report of the Domestic and Family Violence Death Review and Advisory Board', p 82.

<sup>34</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>35</sup> This was raised previously in this submission: Djirra (July 2020), 'Monitoring the Family Violence Reforms: Djirra's Submission to the Family Violence Reform Implementation Monitor', p 17.

Torres Strait Islander women experiencing family violence. This must include mandatory cultural safety training.

A review mechanism must also be introduced for Family Violence Safety Notices<sup>36</sup> issued against Aboriginal and Torres Strait Islander women to ensure misidentification is identified as soon as possible. This would reduce the unnecessary criminalisation of Aboriginal and Torres Strait Islander women. It would also build trust in the justice system, promote reporting of family violence and ultimately prevent misidentification and its consequences.

### **Technology facilitated abuse**

Technology facilitated abuse (**TFA**) is often a component of coercive control and is a significant issue for the Aboriginal and Torres Strait Islander women.<sup>37</sup> Many Djirra clients require support from our lawyers to stay safe from the various forms of TFA. Djirra is aware of technology being used by perpetrators to harass and embarrass women online; report women to child protection through their social media; and track and monitor women and their children. However, the women we work with often do not want to go to police for support with this type of abuse. Djirra's experience is that police often do not take this form of abuse seriously and are not providing adequate support to women. Culturally safe specialist services like Djirra can provide legal advice, practical and financial support for women experiencing TFA.

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

Thirty years after the RCIADIC final report<sup>38</sup>, a number of the recommendations have not been implemented. Deaths in custody continue to rise, with at least 474 deaths in custody since the original report<sup>39</sup>.

At the time of the Royal Commission, there were no specific recommendations relating to Aboriginal and Torres Strait Islander women's contact with the criminal justice system as the numbers were low. Since the Royal Commission, there has been a rapid increase in the number of Aboriginal and Torres Strait Islander women in the criminal justice system which must be urgently addressed.

The Aboriginal Justice Caucus has been calling for the establishment of a permanent Aboriginal Social Justice Commissioner (Commissioner) for 16 years. Djirra has also directly appealed to the Victorian Attorney General for an immediate commitment to establish the Commissioner role with adequate resources. The Commissioner would have the power to:

- Review and assess the RCIADIC recommendations and identify gaps for further consideration.
- Oversee and review the implementation of all RCIADIC recommendations and hold the Victorian government to account.
- Contribute to the Terms of Reference for *Yoo-Rrook*, the Truth and Justice Commission.
- Investigate how to prevent Aboriginal and Torres Strait Islander incarceration and deaths in custody, especially of women.

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<sup>36</sup> s.24 *Family Violence Protection Act 2008 (Vic)*.

<sup>37</sup> ESafety Commissioner (2021), 'Experiences of technology-facilitated abuse among Aboriginal and Torres Strait Islander women from regional and remote areas'; and ESafety Commissioner (2019), 'Online Safety for Aboriginal and Torres Strait Islander women living in urban areas'.

<sup>38</sup> Commonwealth (1991), Royal Commission into Aboriginal Deaths in Custody, National Report.

<sup>39</sup> The Guardian (2021), 'Death Inside: Indigenous Deaths in Custody 2021', Retrieved from: <https://www.theguardian.com/australia-news/ng-interactive/2018/aug/28/deaths-inside-indigenous-australian-deaths-in-custody>

Proper consultation will be a key element of the Commissioner's role to ensure that communities and people with lived experiences are being heard, including women. The establishment of a Commissioner is necessary to ensure that the voices of Aboriginal and Torres Strait Islander women are heard and that there is transparency and accountability in closing this gap.

## Justice Reinvestment

*"Evidence clearly demonstrates that strong, healthy communities are the most effective way to prevent crime and make communities safe. Prisons have been shown to be extremely costly, damaging and ultimately ineffective at reducing crime. Every dollar spent on prisons is one less dollar available to invest in reducing social and economic disadvantage through education, health, disability, housing, employment and other programs. Government funding must be reinvested into initiatives that address the underlying causes of crime".<sup>40</sup>*

The Victorian Government spends close to \$1billion per year on prisons and continues to invest in incarceration through significant prison expansion programs.<sup>41</sup> This includes \$188.9 million for 106 new cells at the Dame Phyllis Frost Centre.<sup>42</sup>

Investing in prison expansion does not solve over-incarceration and is ineffective at reducing crime.<sup>43</sup> Djirra recommends the government instead invest in self-determined Aboriginal Community Controlled solutions. Community-led 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>44</sup>

## **Better support for Aboriginal and Torres Strait Islander women in prison and on release**

### **Mothers in prison**

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>45</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>46</sup>

<sup>40</sup> Change the Record (November 2015), 'Blueprint for Change', p 6.

<sup>41</sup> In 2019-20, Victoria's operating expenditure for prisons was \$934,002, and \$196,580 for community corrections: Productivity Commission (2021), 'Report on Government Services 2021; Part C Section 8 Corrective Services'.

<sup>42</sup> Premier of Victoria (March 2021), 'Construction Set To Start On Women's Prison Upgrade' Media Release.

<sup>43</sup> Change the Record (n 40), p 6.

<sup>44</sup> Ibid, p 9.

<sup>45</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>46</sup> Justice Connect (May 2021), 'Closing the Revolving Door: Scoping holistic legal needs of Victorians exiting prison', p 12.

Further to this, "Without question, the main factor affecting the women's health and SEWB in prison was stress and worry for and about their children." Kendal S. et al (Sep 2019), 'Holistic Conceptualisations of Health by Incarcerated Aboriginal Women in New South Wales, Australia'.

Djirra's legal team have reported that over the last decade they have not had 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 have also reported instances of Aboriginal and Torres Strait Islander women who were taken from prison to hospital to give birth and the baby was taken away:

*"One of Djirra's clients was taken to hospital from prison to give birth. The baby was immediately taken from her and placed in out of home care, and she returned to prison without her newborn."*

There must be culturally appropriate processes in place to ensure that Aboriginal and Torres Strait Islander mothers who are incarcerated are able to keep their babies whilst in prison. These processes should also be available to those with young children. The Aboriginal Justice Forum should receive regular updates on the number 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.

### **Impacts on children**

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

There has been a steady increase in Aboriginal and Torres Strait Islander children in out of home care in the past decade. Victoria is the worst-performing Australian jurisdiction for the removal of Aboriginal and Torres Strait Islander children.<sup>47</sup> Victorian Aboriginal and Torres Strait Islander children are overrepresented in the child protection system and the gap continues to widen<sup>48</sup>.

When an Aboriginal and Torres Strait Islander woman is remanded or sentenced the impact on their children and families is profound. Children 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>49</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.

### **Raise the age of criminal responsibility**

Removal of Aboriginal and Torres Strait Islander children has devastating impacts, including increased risk of a child entering the justice system. These impacts are highlighted in the 2021 report *'Our youth, our way: Inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system'*.<sup>50</sup>

<sup>47</sup> Where an index of 1 would indicate a proportionate representation, Victoria's disproportionality index for Out of Home Care is 15.77.: Productivity Commission (January 2021), 'Report on Government Services 2021; 16. Child protection services'. p 16.11.

<sup>48</sup>Ibid.

<sup>49</sup> HRLC and CTR (n 1), p 13.

<sup>50</sup> Commission for Children and Young People (2021). 'Our youth, our way: Inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system', p. 296.

Djirra is particularly concerned by the findings in this report that Aboriginal and Torres Strait Islander girls and young people are disproportionately impacted by child protection<sup>51</sup>, remanded in custody and sentenced to custodial orders at much higher rates than any other cohort.<sup>52</sup> They also have higher rates of past trauma and issues with social and emotional wellbeing.<sup>53</sup> This demonstrates the need for culturally appropriate, early intervention and prevention services like Djirra's YoungLuv program.

The government must act to break the cycle of intergenerational trauma and incarceration. Djirra strongly endorses the AJC's recommendation that the age of criminal responsibility in Victoria be raised from 10 to at least 14 years of age, with a minimum age of incarceration of 16 years.<sup>54</sup>

### **Effect on reunification**

Since 2016, Djirra has been consistently advocating against the 12 and 24 month time limits on family reunification orders which came into effect with the Permanency Amendments to the *Children, Youth & Families (Permanent Care & Others Matters) Amendment Act 2014 (Vic)*.

This rigid timeframe ignores the reality that deep-seated intergenerational trauma cannot be resolved quickly in accordance with arbitrary and abbreviated timelines. It is unrealistic and stressful for Aboriginal and Torres Strait Islander mothers, who are recovering from their own trauma related to experiences of family violence and incarceration, to achieve reunification within these timeframes. This is particularly the case if they are not provided with adequate and culturally appropriate support.

For Aboriginal and Torres Strait Islander women who are on remand or serving a custodial sentence, this timeframe does not recognise the experience of women who may not be able to address protective concerns to resume care of their children in this period. This is further compounded by the impact of the COVID-19 pandemic on women in prison.

Djirra are extremely concerned about the impact the COVID-19 pandemic has had on meaningful contact between incarcerated mothers and their children. This includes the impact on Contact Plans and Family Reunification Orders for Aboriginal and Torres Strait Islander mothers.<sup>55</sup>

Many of the women Djirra assist are from regional Victoria and have little to no contact with their children whilst they are incarcerated. Prior to COVID-19, mothers from regional locations experienced additional barriers to face-to-face contact with their children because of DPFC's centralised location. The long commutes to DPFC from the regions create a logistical challenge for children and their carers. For some, it may require a full day or multi-day trip, require carers to take time off work, and impose additional financial burdens.

COVID-19 restrictions only exacerbated this issue further. In particular, many mothers cannot currently communicate with their children, or can only do so via phone or video contact due to suspensions or reductions of in-person contact in different contexts. This is an extremely challenging, and often impossible, situation when contact is with babies, young children or those with complex communication needs. It is also the case that many families/carers don't have access to video facilities and consequently cannot exercise that option even when it is afforded.

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<sup>51</sup> Ibid, p. 225

<sup>52</sup> Ibid, p. 224.

<sup>53</sup> Ibid, p. 224.

<sup>54</sup> This recommendation was also made in the 2021 *Our youth, our way* report: Ibid, p.150.

<sup>55</sup> In June 2020, Djirra joined with the Centre for Innovative Justice, Legal and Advocacy Centre for Women, Flat Out Inc and Drummond St Services to write to the Minister for Child Protection, Former Attorney-General, Minister for Corrections (and others) outlining these concerns.

Many parents are expected to demonstrate their interest in maintaining contact with their children when the services or individual carers who can support this contact are unavailable or unwilling to facilitate contact in the current environment. In some cases, this is being incorrectly viewed as the parent's lack of interest in maintaining contact. Aboriginal and Torres Strait Islander families face particular disadvantage in this respect as kinship carers are often of advanced age and may be immunocompromised.

Djirra recognises the temporary extension to these timeframes in response to the COVID-19 pandemic.<sup>56</sup> However, Djirra strongly urges the government to permanently amend the *Children, Youth and Families Act 2005 (Vic)* to allow the court to extend Family Reunification Orders to beyond current prescribed time-limits. Investment in specialist ACCOs like Djirra is also critical in ensuring Aboriginal and Torres women exiting prison are provided with culturally safe, holistic legal and non-legal support to assist with family reunification on release.<sup>57</sup>

## **Women in prison during COVID-19**

The number of Aboriginal and Torres Strait Islander women in prison, particularly those on remand, significantly decreased in the first half of 2020.<sup>58</sup> Djirra understands the decrease was a result of COVID-19 measures and policy changes. This demonstrates that it is possible to significantly reduce the number of Aboriginal and Torres Strait Islander women in prisons in a short period of time.

Economic security also plays a large role in preventing incarceration<sup>59</sup>. Djirra observed a significant increase in financial security for women that we work with over this period, due to COVID-19 relief payments. As Djirra's Managing Lawyer noted:

*"For some women, it was the first time they didn't have to worry about how they were going to pay for groceries for their kids."*

Djirra calls on the Victorian government to draw on the learnings from this period to ensure that there is a continued reduction in these numbers. This should include a focus on the connection between poverty and offending, with consideration of measures to increase Aboriginal and Torres Strait Islander women's financial security and decrease the risk of incarceration. This will be informed by the Centre for Innovative Justice's report 'Lessons from COVID-19' (yet to be published).

Apart from contact made remotely through our online programs and workshops, Djirra's staff and funded counselling supports have been unable to access Aboriginal and Torres Strait Islander women in prison face-to-face. Online contact is not conducive to women sharing as openly as they would in a face-to-face Dilly Bag program or with a Djirra Prison Support Worker. Prior to COVID-19 we were able to have a good understanding of what was occurring in women's lives and the support needed. Djirra's lack of access to the women inside prisons during COVID-19 makes those women less visible and reduces transparency of what is occurring in prisons.

The efficacy of online delivery in part depends on access to adequate technology. Djirra recommends ensuring that Aboriginal and Torres Strait Islander women in prison have continued access to technology

<sup>56</sup> *Covid-19 Omnibus (Emergency Measures) and Other Acts Amendment Act 2020 (No. 27 of 2020) (Vic)*, Section 7, Div. 4A.

<sup>57</sup> Justice Connect (n 46), p 12.

<sup>58</sup> Department of Justice and Community Safety (n 27), p 4.

<sup>59</sup> Australian Institute of Criminology (2010), 'Indigenous women's offending patterns: A literature review', p. 13.

to meaningfully engage in programs. It is important to consider how technology may enable other accessibility features as well for Aboriginal and Torres Strait Islander women with disability.

### **Aboriginal and Torres Strait Islander women with Disability**

Aboriginal and Torres Strait Islander women with disability are overrepresented in the justice system.<sup>60</sup> It is important to recognise the intersection between disability, family violence and incarceration. There is a clear causal link between family violence and Acquired Brain Injury (**ABI**)<sup>61</sup>. Aboriginal and Torres Strait Islander people are admitted to hospital at a higher rate than other Victorians for family violence related injuries, with 42% of these patients sustaining a brain injury.<sup>62</sup> Disability can also significantly increase a person's vulnerability to family violence.<sup>63</sup>

Disability in Aboriginal and Torres Strait Islander communities is twice as prevalent, more complex in terms of co-occurring disabilities, and compressed within a shorter life expectancy, compared to other Australians.<sup>64</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.

Many of Djirra's clients have disclosed a disability. In 2020, around 3/20 of Djirra clients disclosed that they had one or more form of disability (83/600). Of those who disclosed their disability:

- 11 different categories of disability were identified.
- The most prevalent categories of disability disclosed were psychological (n. 51), intellectual (n. 21) and physical (n. 9).
- 15 clients had more than one disability.

These numbers likely underrepresent the number of clients with disability and the number of clients with multiple forms of disability.

#### *Case Study*

*Sally has a cognitive disability, intellectual disability and Autism Spectrum Disorder. She received no support for this growing up and as a result doesn't have the skills to manage her disability or regulate her emotions.*

*From young adulthood she has been in violent relationships with men who manipulate her and coerce her into doing things like shop lifting and picking up drugs. She never learnt the difference between a*

<sup>60</sup> Parliament of Australia (2017), 'Provision of services under the NDIS for people with psychosocial disability related to a mental health condition.'

This report states that reliable data on cognitive disability is difficult to source as each jurisdiction measures disability differently. However, as an example, 86% of Aboriginal and Torres Strait Islander women in Queensland prisons have a cognitive disability. It is estimated that 20-25% of people in the Australian criminal justice system have a cognitive disability.

<sup>61</sup> Lansdell, G.T., *et al.* (May 2021), 'Strengthening the Connection Between Acquired Brain Injury (ABI) and Family Violence: The Importance of Ongoing Monitoring, Research and Inclusive Terminology', p 3.

<sup>62</sup> Aboriginal and Torres Strait Islander people made up 6% of family violence related hospital admissions, and 3% of emergency department presentations. Brain Injury Australia (2018), 'The Prevalence of Acquired Brain Injury Among Victims and Perpetrators of Family Violence', pp vi and 12.

<sup>63</sup> Australian Institute of Health and Welfare (October 2020), 'People with Disability in Australia', p viii.

<sup>64</sup> Hindman, L. (July 2018), 'Culture is Inclusion: Community-Control the way forward for Aboriginal disability research.'

*healthy and an unhealthy relationship. She tends to take communication very literally, and as a result she struggles to identify when she is being manipulated.*

*The police picked her up once for questioning about a drug offence. She didn't really understand what they were talking about in the interview room and when they asked her to sign some papers, she did. She was then charged with a drug offence and ended up on remand because she didn't have anywhere safe to stay and she was scared to go back to the apartment she shared with her ex-partner who had been particularly violent recently.*

*When she was sentenced, she didn't receive any support for her disability in prison. Sometimes she would get upset and have a 'explosive episode'. The prison officers would slot her for these types of behaviours. When this happened in the lead up to her parole, her parole was denied. She received no specialist support once in prison.*

*Once she left prison, she found it very difficult and ended up returning to her violent ex-partner because he was all she knew, and the only support she could think of. He pressured her to engage once again in the offending behaviour she was doing before prison, risking a breach of parole and reincarceration.*

## **Barriers to accessing the justice system**

Aboriginal and Torres Strait Islander women with disability face many barriers in accessing the justice system including:

- Police are not adequately trained to recognise behaviours that are a result of a woman's disability. For example, cognitive impairments (particularly ABI's) are often not recognised by police and may be inappropriately assessed as an AOD issue.
- The court system is not well equipped to adequately identify and respond to the impacts of cognitive impairments and other forms of disability on offending.
- In Djirra's experience contact with Child Protection, and in many cases child removal, is more frequent for Aboriginal and Torres Strait Islander mothers or children with disability.

Djirra has also observed the following punitive responses towards Aboriginal and Torres Strait Islander women with disability in prison:

- Instances where Aboriginal and Torres Strait Islander women have been "slotted", put in separation, for behaviours connected to unmanaged disability. Prisons do not have a strategy for how to manage such behaviours.
- Transfers from Tarrengower back to DPFC for behaviours connected to disability or mental health. This has a significant emotional impact on those women, who believed that they were going to finish their sentence in the lower security environment of Tarrengower. One Djirra team member described this as "heart-breaking" for the women.
- Djirra is aware of a number of Aboriginal and Torres Strait Islander women who have received longer prison sentences for reasons connected to their disability. For instance, if a woman displays behaviours of concern whilst in prison, they may not be eligible for their parole.

There is a need for improved education and training for police, courts and prison staff in relation women in prison with disability. This includes training for capacity assessments to ensure that Aboriginal and Torres Strait Islander women are supported and not inappropriately criminalised. Improved understanding of, and access to, culturally safe assessment tools and processes is crucial.

### **Barriers to accessing services and supports**

Some Aboriginal and Torres Strait Islander women “pass” as not having a disability. Obtaining a formal diagnosis is difficult, due in part to cultural differences in the understanding of disability, a lack of cultural safety among assessing practitioners, and prohibitive assessment costs.

Even when an assessment is possible, Djirra understands that very few of the recognised assessment tools have been validated as appropriate for use with Aboriginal and Torres Strait Islander peoples. This limitation is implicitly acknowledged in the National Disability Insurance Scheme’s recently abolished Independent Assessment Framework.<sup>65</sup> As a result, high numbers of Aboriginal and Torres Strait Islander women, both in prison and in the community, have a disability but are much less likely to have a formal diagnosis.

For women 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.

Djirra is also aware of women in prisons who require physiotherapy or occupational therapy who are unable to access it. The paperwork is burdensome and there are significant delays for women who are successful in receiving that support. Some women are having to wait, while suffering from physical pain, until the end of their sentences to access appropriate treatment.

Djirra has received positive feedback about the accessibility of our programs and workshops for Aboriginal and Torres Strait Islander women with disability in prison. The incorporation of culturally safe, sensory activities that utilise motor skills such as damper making, or weaving workshops is particularly beneficial.

Primary prevention is key to educating and increasing the resilience of Aboriginal and Torres Strait Islander women and girls with disability. However, funding limitations mean that some programs are not as accessible as they ought to be. Funding is required to enable Djirra to support women and girls with disability to access and participate in our workshops and programs. For example, this could pay for Auslan interpreters, or for carers, to participate in programs.

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<sup>65</sup> National Disability Insurance Agency (2020), ‘Independent Assessment Framework.’ p.30. See also Bohanna et al (2013), ‘Assessment of Acquired Brain Injury in Aboriginal and Torres Strait Islander Australians: Guidance for Disability Care Australia.’

## **Djirra's best practice programs and services**

Over 80% of Aboriginal and Torres Strait Islander people in prison in Victoria have previously been incarcerated.<sup>66</sup> This makes pre- and post-release support vital to reducing the over-representation of Aboriginal and Torres Strait Islander women in prison. These supports must also be culturally appropriate to be effective.<sup>67</sup>

Djirra have developed a number of successful early intervention and prevention programs which have been recognised by the Royal Commission into Family Violence as best practice.<sup>68</sup> In response to the COVID-19 pandemic, these programs successfully transitioned online in modified formats. Whilst our programs are being delivered in a different way, they remain rich in culture, are trauma informed, and continue to promote the important work of Djirra.

Djirra recommends continued investment into these programs, alongside increased monitoring and evaluation capacity. This would ensure Aboriginal and Torres Strait Islander data sovereignty which is a key tenet of self-determination. That is, the right of Aboriginal and Torres Strait Islander people to exercise authority over and govern the creation, collection, ownership and use of their data. This would also meet the Victorian governments commitment to data sovereignty for ACCOs under its Closing the Gap targets.<sup>69</sup>

### **Sisters Day Out**

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. "Sisters Day In" is a specialised version of Sisters Day Out, hosted inside DPFC. During COVID-19, a modified one-day version of this program has been delivered to women in DPFC and Tarrengower online. As part of this modified program, the women participate in a bush bouquet workshop. At the end of the day, the women have made bush bouquets that they are able to send to their families.

### **Dilly Bag**

Dilly Bag is a small group residential workshop that draws on cultural principles and the strength of our Aboriginal and Torres Strait Islander heritage to promote healing. Over four days, program activities seek to begin the healing process by focusing on the positive traits of participants and the richness of, and traditional values found within, Aboriginal society and culture. The strengths and roles of Aboriginal women are reaffirmed and celebrated as positive and strong. During COVID-19, a modified version of this program has also been delivered to women in DPFC and Tarrengower online. As part of this program, women participate in a possum skin drum workshop.

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<sup>66</sup> Department of Justice and Community Safety (n 27), p 6.

<sup>67</sup> Justice Connect (n 46), p 28.

<sup>68</sup> State of Victoria (March 2016), 'Royal Commission into Family Violence: Report and recommendations, *Chapter 26 Family violence and diversity*', pp 20 & 52.

<sup>69</sup> Commonwealth of Australia (2021), *Victorian Closing the Gap Implementation Plan 2021 – 2023*, p. 26.

## **YoungLuv**

YoungLuv is designed for Aboriginal and Torres Strait Islander young women aged 13 to 18. The workshops are focussed on promoting healthy and respectful relationships. They aim to equip young Aboriginal and Torres Strait Islander 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 Young Luv are effective at preventing Aboriginal and Torres Strait Islander girls from entering into violent relationships.<sup>70</sup>

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 Community.

## **Koori Women's Place**

Djirra's Koori Women's Place (KWP) 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.

Following the outbreak of the COVID-19 pandemic, KWP began delivering programs and a range of workshops online to Aboriginal and Torres Strait Islander women. The culturally based programs range from jewellery making to goal setting to cooking. Women in Tarrengower have also been able to participate in these workshops, which is hugely beneficial for those women. The transition online has been highly successful and led to the number of women attending KWP workshops doubling in 2020-21.

## **Counselling service**

Djirra's counselling program has successfully been providing Aboriginal and Torres Strait Islander women 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 from two to four days to meet increased demand. Djirra's counselling service is available to both women in the community and in prison. Djirra recommends the government increase funding to ACCOs like Djirra to provide Aboriginal and Torres Strait Islander 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 Dame Phyllis Frost Centre and Tarrengower.

This program includes Lawyers and Paralegal Support Workers who connect with and support Aboriginal and Torres Strait Islander women in prison. Between 2019-20, 165 women accessed the Djirra's program. 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.

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<sup>70</sup> Jill Guthrie, et al. (2020), 'The answers were there before white man come in': stories of strength and resilience for responding to violence in Aboriginal and Torres Strait Islander communities', p 112.