

Aboriginal Community Controlled
Culturally Safe
Prevention of Family Violence
Legal Services and Holistic Support
Cultural and Wellbeing Workshops
Policy and Advocacy



Yoorrook Justice Commission
Issues Papers 1 & 2
Submission from Djirra
December 2022

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 vulnerable Aboriginal 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.

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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 – 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 women are the fastest growing prison population in Australia. In Victoria, the number of Aboriginal women held in remand continues to rise which can be attributed to punitive laws and policies, particularly the bail ‘reforms’. 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 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 women do not belong behind bars. Prisons are violent and harmful. Aboriginal 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 women being the fastest growing cohort in Victoria’s prisons.

These laws have resulted in increasing numbers of Aboriginal women being locked up on remand for minor offending before there has even been a sentence imposed by the court. 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 Djirra’s experience, women often remain on remand due to a lack of housing and access to culturally appropriate supports.

High incarceration rates of Aboriginal women directly impact on child removal rates, the rights of Aboriginal children and have ongoing devastating impacts on Aboriginal families and communities. Many of the women Djirra assist are 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.

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Djirra continues to call on the government to urgently introduce legislation to:

- Reinststate the presumption in favour of bail unless there is a specific and immediate risk to the safety of another person;
- Adopt a gendered and culturally appropriate approach.

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 findings in *'Our youth, our way: Inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system'* were that Aboriginal children, in particular girls and young people are remanded in custody and sentenced to custodial orders at much higher rates than any other cohort.¹

Children do not belong in prisons. Criminalising and incarcerating Aboriginal 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.

Aboriginal deaths in custody

Many of the 339 recommendations of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) final report have not been implemented. Deaths in custody continue to rise, with at least 517 deaths since the original report.² 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 women's contact with the criminal justice system rendering our women invisible to policy and law makers. Subsequently we have seen a substantial increase in the number of Aboriginal women criminalised and imprisoned.

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

¹Our 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.

² Australian Institute of Criminology (August 2022), Deaths in Custody in Australia.

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

Mistreatment of Aboriginal women in prison

Keeping women out of prison is an urgent priority. 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 we 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.

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.

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 Community Controlled Health Organisation's (VACCHO) calls to oversee the medical care of Aboriginal people in Victoria's prisons to stop further deaths in custody.

A Victorian Aboriginal Justice Commissioner

The Aboriginal Justice Caucus (AJC) has been calling for the establishment of a permanent Aboriginal Justice Commissioner for more than 16 years. Djirra as an active member of

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the AJC stands with other Caucus members appealing to the Victorian government for an immediate commitment to establish the Commissioner role with adequate resources. 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 community;
- Improve civil and criminal justice outcomes and equity for Aboriginal communities and people; and
- Increase confidence of the Aboriginal community in the operations of the justice system.

A community-based residential program to prevent Aboriginal women from being criminalised and imprisoned

As an active member of AJC, Djirra stands with all members calling for the establishment of a community-based residential program to keep Aboriginal 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.

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 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 by the end of 2022.

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 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.

Culturally safe and affordable housing for Aboriginal 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 safe affordable housing for Aboriginal women. No woman should be forced to choose between family violence and homelessness.

Family violence is a key driver to Aboriginal women becoming homeless. The lack of safe and affordable housing is a major factor preventing women from leaving violent

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relationships and also contributes to women's incarceration. Victoria has the highest rate of Aboriginal people accessing homelessness services in the country.³

In 2020-21, 50.2% of Aboriginal clients of specialist homelessness services in Victoria experienced family violence (4,492 clients)⁴. 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 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,⁵ it does not go far enough to prioritise Aboriginal 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 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 women.

Djirra has worked with clients who were forced to breach bail because their bail address was unsafe due to family violence. For Aboriginal 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 women and their children at unacceptable risk.

Housing instability and a lack of culturally safe support are key reasons for Aboriginal 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 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.

³ 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/meovkxm92o8jo45>

⁴ 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 \(ahvic.org.au\)](https://vahhf.org.au/), p36.

⁵ Aboriginal Housing Victoria, 2020, Mana-na woorn-tyeen maar-takoort Victorian Aboriginal Housing and Homelessness Framework, Available online: <https://vahhf.org.au/>

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Djirra Case Study

Jenny (not her real name) 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 Jenny was then 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. Jenny eventually got offered a place at Baggarrook and was granted parole.

Jenny's story is sadly not unique, and clearly demonstrates the impact the homelessness has on our women. Djirra stands with Smart Justice for Women in calling 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.

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.⁶ This unacceptable situation must be the starting point when considering improvements that can be made by the Victorian government, especially when it currently has provisions before Parliament designed to delay,⁷ or limit,⁸ 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;
- Develop 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
- Winding back the 'permanency fast-track' laws from 2016.

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

⁶ Australian Institute of Health and Welfare (2021), Child Protection Australia 2019-20, p 54.

⁷ Part 5, *Children, Youth and Families Amendment (Child Protection) Bill 2021*.

⁸ Clause 68, *ibid*.

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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 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 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 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 child protection notification and referral system. This would ensure that upon a child protection notification being received for an Aboriginal family, the primary parent is immediately referred to 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 Department of Families, Fairness and Housing 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.

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New laws that will delay and reduce Court oversight

In light of the high rate of removal of Aboriginal 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 understand it is likely to be revived, and remain concerned that these proposals have not been formally rejected by the government.

The proposed changes in the CP 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 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 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 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 to assist reunification, not rely on legislative blunt instruments that take away the discretion of the Children's Court and favour permanent removal.

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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 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.⁹ 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 data sovereignty - a key tenet of self-determination.

Sisters Day Out

This is Djirra's long standing wellbeing workshop, where Aboriginal 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 Dame Phyllis Frost Centre.

Dilly Bag

Dilly Bag is a small group residential workshop that draws on Aboriginal 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 society and culture. The strengths and roles of Aboriginal women are reaffirmed and validated. During COVID-19, a modified version of this program was also delivered online to women in Dame Phyllis

⁹ State of Victoria (March 2016), 'Royal Commission into Family Violence: Report and recommendations, Chapter 26 Family violence and diversity', pp 20 & 52.

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Frost Centre and Tarrengower. As part of this program, women participate in a possum skin drum workshop.

YoungLuv

YoungLuv is designed for young Aboriginal 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 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 Communities.

Koori Women's Place

Djirra's Koori Women's Place is a culturally framed specialist family violence support service which supports Aboriginal 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 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 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 Aboriginal 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 women at Dame Phyllis Frost Centre and Tarrengower.

This program includes Lawyers and Paralegal Support Workers and case managers who connect with and support Aboriginal 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

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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 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.