

Djirra's Submission to the Victorian Law Reform Commission Inquiry
Improving the Response of the Justice System to Sexual Offences



December 2020

Acknowledgment

Djirra would like to acknowledge that this document was developed by its staff working on the lands of the Wurundjeri people of the Kulin Nations. Djirra pays respect to all Elders past, present and emerging and recognises that sovereignty was never ceded on this land.

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Introduction

This submission has been prepared by Djirra, which is an Aboriginal community controlled specialist family violence service in Victoria exclusively dedicated to assisting Aboriginal and Torres Strait Islander victims/survivors of family violence.

Djirra's scope of practice

Djirra receives funding from multiple sources including the Victorian and Federal governments to deliver family violence legal services to support Aboriginal people who are experiencing or have experienced family violence (women and men). We also assist non-Aboriginal people experiencing family violence who are parents of Aboriginal children.

Djirra is one of 14 members of the National FVPLS Forum, the national peak body for Aboriginal and Torres Strait Islander survivors of family violence *and* sexual assault.

Following the Royal Commission in Family Violence in Victoria, Djirra received a major investment from the Victorian Government to deliver frontline legal and non-legal services.

We provide legal advice and representation, including court representation in relation to the following areas of law:

- Intervention Orders
- Family Law
- Child Protection
- Victims of Crime Assistance.

Djirra may also assist with other legal issues connected to a family violence situation such as complaints about Police, assistance with Centrelink or the Child Support Agency, and problems with the Office of Housing about property damage arising as a result of family violence.

While Djirra has a wide range of early intervention and prevention programs and other support services, all of Djirra's work in relation to sexual violence and assault is within a framing of family violence. Current examples include:

- Direct legal assistance and non-legal support (i.e. flexible support packages) provided by Djirra in relation to sexual violence is within the context of family violence (noting data is not collected on sexual assault or sexual violence as a separate indicator within family violence matters). As noted above, legal assistance is limited to civil matters relating to family violence, primarily intervention orders, child protection, family law and victims of crime assistance.
- Addressing issues of sexual violence and consent in our Young Luv program (aimed at 13-18 year old cohort).

- Community Legal Education sessions include discussions of ‘what is family violence’ which includes sexual assault.
- Djirra’s other family violence early intervention and prevention projects and programs, which are delivered by their Community Engagement Unit across Victoria (see details in Attachment 1 below).
- Djirra’s participation in community forums and working groups such as the Dhelk Dja working group on Support Services for Survivors of Sexual Assault and the Dhelk Dja North Metro Action Group (see below for details).

Due to the funder requirements, Djirra is not adequately resourced to support victims/survivors of sexual assault where it occurs outside of the context of family violence.

Our scope of practice does include circumstances where sexual assault is the primary form of family violence, as well as sexual assault co-occurring within and alongside other forms of family violence. However, sexual assault is rarely talked about and often is not disclosed until after we have worked with each woman for some time, and have gained her trust.

While comprehensive data is not available, our staff report that many (possibly most) adult victims/survivors of family violence attending Djirra have experienced sexual assault, often from early childhood, and that sexual assault is often a feature of the family violence about which they are presenting. However these disclosures tend to be made in specific contexts and very rarely proceed to reports or charges through the criminal justice process. These disclosures may be of recent or historic harm, and may be the first time a woman has disclosed.

Due to the reporting barriers identified here, the data on rates of sexual assault are completely inadequate. This includes internal data, which is limited further by Djirra’s scope of practice as a provider of family violence services and by the requirement to use common data collection systems with other legal assistance services. Given these limitations, we have chosen not to review the available data. There is ample evidence on the record from other sources (including in the *From Shame to Pride Report* at **Attachment 2**)¹ about the prevalence and nature of this issue within our communities. It is important that our women, speaking in this case through reports from Djirra staff, are believed.

Djirra believe that the disclosures of sexual assault to our workers are a result of our creating a culturally safe and supported space for women to be heard. The facilitators at Dilly Bag, community engagement workers, and the therapists who work in partnership with Djirra, are most likely to receive disclosures of sexual violence from Aboriginal and Torres Strait Islander women. We detail below the significance of Djirra’s model as a pathway to reporting and/or access to other avenues of culturally safe healing and support.

¹ Elizabeth Hoffman House. (2004). *From shame to pride: Access to sexual assault services for Indigenous people*. Elizabeth Hoffman House, Melbourne.

Despite the known intersection between family violence and sexual assault, and the disproportionate rates and impacts of both for Aboriginal victims/survivors, Djirra is not currently funded for prevention initiatives which specifically focus on sexual harassment, sexual violence or sexual assault (see Attachment 1), or for emotional support or legal advocacy services to assist women seeking to pursue sexual assault matters through civil claims or within the criminal justice system.

Lessons from existing services

Djirra's community engagement staff most often hear disclosures of the following types of sexual harm, in about equal numbers:

- Child sexual assault by family/community member
- Institutional child sexual assault (sometimes in context of removal from family as stolen generation)
- Sexual assault by an intimate partner as part of family violence

Djirra offers support and legal services in all of the above circumstances.

It is rare to hear of sexual assault perpetrated by strangers. A lawyer reporting working on multiple VOCAT cases in which women disclosed sexual assault from a stranger or distant acquaintance (not a family or community member) when they were homeless and sleeping rough. This exception highlights the extent to which homelessness (often occurring as a result of family violence) increases vulnerability to this kind of sexual assault by a stranger.

Djirra recommends a model of support to women experiencing sexual assault and other sexual harms irrespective of when or by whom.

Following COVID restrictions in March 2020, Djirra offered phone counselling to clients of the service. The uptake of this service was much greater than the face to face counselling offered previously, which may be due to the multiple barriers to access (e.g. time and privacy to attend therapy appointments, ability to leave the house and/or children, costs of transport, etc) by Aboriginal victims/survivors. In addition, phone counselling does not require the technology or digital literacy of video counselling through platforms such as Skype and Zoom. Noting that digital literacy may increase through parallel strategies, Djirra considers phone counselling is currently the most successful and appropriate method of offering counselling for Aboriginal women.

One of the counsellors emphasised the importance of attending to the needs of Aboriginal older women in relation to historical assaults and other sexual harms. For many women, the isolation imposed by COVID-19 created an introspective environment in which the trauma of sexual assaults came to the forefront for them, particularly where triggered by events

that happen to their children or grandchildren. For older generations in particular, sexual assault is extremely difficult to talk about, or even to think about, and it was more difficult to self-regulate and respond to family members in the ways they wanted to. Many of the women carried guilt and shame for the intergenerational impacts of their traumas, blaming themselves for what is occurring to the younger women in their families.

An arts therapist working with Djirra's legal clients at Dame Phyllis Frost Correctional Centre reports she heard multiple disclosures of sexual assault and family violence, often repeated over the course of each woman's life, but few reports of sexual assault in the context of intimate partner violence. This is consistent with reports from the legal team that the women may not always identify these events as sexual assault, though it could be other factors such as shame which are deterring those disclosures.

Crucially, it is noted that Aboriginal victims/survivors of family violence and sexual assault are disproportionately impacted by criminal justice systems and responses. For example, the bail reforms introduced by the Victorian Government in response to public outcry about Adrian Bailey had direct and in many cases devastating impacts on Aboriginal women seeking bail, the majority of whom are themselves victims/survivors of family violence and sexual assault.

Another example can be found in the design of a women's residential program, in which Djirra was involved. Residential programs often exclude anybody with a violent offence on their record, which had significant implications for this program. If the program adopted a policy that children could stay at the facility with their mothers, women charged with violent crimes wouldn't be able to access the service. Policies like this make services choose between mothers and children and penalise women with criminal records. There is an urgent need for a more holistic response, in recognition of intergenerational trauma and the impacts on both women and children of separations of this kind.

There has been progress through the introduction of the National Redress Schemes for victims/survivors of childhood sexual assault in institutional settings, with culturally safe delivery through an ACCO, but there have been reports of women finding the process traumatic and distressing. Victims/survivors have been required to tell their story multiple times to multiple people. As one woman put it to a Djirra staff member: "Each time you're asked to repeat your story you feel like they don't believe you. It's like you have to justify yourself." This woman received unexpected phone calls at unexpected times where she was asked to tell her story again and clarify aspects of her story. She reached breaking point and told her family "I cannot tell my story again." It is important to ensure the system itself is trauma informed and develop more sensitive options (such as targeted and consensual information sharing) so the story doesn't need to be re-told this frequently by the victim/survivor.

Some staff felt that civil claims hold promise because the compensation can be much higher, but they are only worthwhile where the offences have been committed within institutions, or by individuals who have financial resources to pay the compensation.

For most Djirra clients, this leaves VOCAT as the only/primary option. However, VOCAT was described by one worker as a “very judgemental” jurisdiction. For example, because Aboriginal women are more likely to have a criminal justice history themselves, and less likely to proceed with pursuing charges through the police, their VOCAT claims can be, and often are, reduced.

There is a significant gap in legal assistance and advice to support victims/survivors of sexual assault, whether through overseeing the proceedings and upholding their rights in criminal justice processes, or in pursuing civil claims outside of VOCAT. In relation to criminal justice, Djirra recommends integrating components of this work within its existing legal framework, and notes the ongoing inequities in access to justice through civil compensation.

As the most common form of sexual harm is interpersonal and inter-familial, this situation indicates the current government schemes are wholly insufficient.

Pathways to reporting

Aboriginal women face unique barriers to reporting sexual harm. Many of these are similar to barriers to reporting family violence, as Djirra has detailed in multiple submissions.²

The following barriers are shared with other victims/survivors of sexual harm, but may in some circumstances have a cultural/community element to them:

- Shame and stigma associated with being a victim/survivor of family violence;
- It’s hard to prove, there are rarely witnesses – one person’s word against another;
- The harm has been done by someone known to the victim/survivor, in the context of complex family and community relationships in which the victim/survivor may not be supported; and
- Normalisation of sexual assault by an intimate partner, due in part to a lack of recognition that sexual assaults that occur within relationships are sexual assaults.

Barriers more specific to Aboriginal victim/survivors include but are not limited to:

- Experiences of racism, including individual and systemic racism, within the justice system and broader community;
- Where the person committing the assault/harm is not Aboriginal:

² Djirra. (July 2020). Submission to the Parliamentary Inquiry into Family, Domestic and Sexual Violence. <https://djirra.org.au/wp-content/uploads/2020/08/Djirras-Submission-to-the-Parliamentary-Inquiry-into-Family-Domestic-and-Sexual-Violence-July-2020-FINAL.pdf>; Djirra. (July 2020). Submission to the Family Violence Reforms Implementation Monitor. <https://djirra.org.au/wp-content/uploads/2020/08/Djirras-Submission-to-the-Family-Violence-Reform-Implementation-Monitor-July-2020-FINAL.pdf>.

- fear of not being believed when their word is against a non-Aboriginal person
- Where the person committing the assault/harm is Aboriginal
 - fear of not being believed by the community
 - community backlash
 - community concerns and at times the victim/survivors own concerns about the consequences of Aboriginal men's involvement in the criminal justice system (ie police racism, imprisonment rates, deaths in custody, etc).

Djirra staff were clear however, that for Aboriginal women, racism is the number one reason that sexual assault is not reported, especially if the other party is not Aboriginal.

Djirra clients have reported countless examples of racism made to them by police in the context of reporting family violence and/or sexual assault. It is common for Djirra clients to go to the police to make a report and then return to Djirra saying "I didn't make the statement because the police said [x] to me". Where the women insist on actually lodging the complaint, they are frequently faced with further racism, deterrence and/or diminishment in the interview room - "I don't even think you're going to say this in court, so why would I even write it down...". While the more abhorrent content and detail does not need to be included here, the comments often reflect a deep bias towards Aboriginal women as violent and aggressive themselves, promiscuous or highly sexualised, likely to withdraw the complaint and/or untrustworthy as witnesses.

This is especially vitriolic where the report is against a white man, and in regional towns where he may be well known to local police (e.g. attending school with them, playing sports with them). Examples included the police warning the man in advance, as soon as a complaint is first heard, so that he can take steps to leave town or defend himself against the accusation.

It is crucial to have a safe person sit alongside the victim/survivor through the reporting process, and any follow up processes through court or restorative justice. In addition to emotional and practical support, this person must be culturally safe (ideally Aboriginal staff) and facilitate access to legal and procedural advice when needed. It is also essential to have culturally safe options for the reporting location, with the therapeutic supports that are available in a multidisciplinary centre. This should include, for example, conducting interviews at Djirra. Victoria should also consider reintroducing options for anonymous reporting.

Where police reports are taken into consideration to determine whether women can access compensation, this impacts on whether the women have the resources needed to heal, or otherwise manage the impacts of an assault (e.g. claims for counselling costs submitted through VOCAT). This makes it clear to the victim/survivor that these supports are

conditional. This is not a real choice and can leave women feeling disempowered, if not further victimised, by the systems that claim to support them.

Calls from the U.S. Black Lives Matter movement to “defund the police” are resonating in Australia. Robyn Oxley describes this in terms of “dismantling the systems that created and continue the ongoing oppression, violence, discrimination and the ‘othering’ of this country’s Aboriginal and Torres Strait Islander people”.³

For many people in Australia, the power and visibility of #BlackLivesMatter as an international human rights movement means they are navigating a new conversation, but this is nothing new for us. For over 17 years Djirra has been speaking up about the loss of Black Lives in Australia. We have been speaking up about things that are happening to Aboriginal people in Australia every day that are not seen by mainstream media.

Aboriginal women who are victims/survivors of sexual assault are met with punitive responses (e.g. police and prisons, child removal) rather than support. Aboriginal women, children and communities must be supported on their own terms. The recent Victorian state budget provides clear evidence of the government’s preference to fund backend systems over frontend support. The budget failed to deliver for Aboriginal women, with no support for Aboriginal specific legal services or family violence support through Djirra. The budget prioritises Victoria Police, Corrections and Youth Justice – the systems that target our people. This means that more of our women will be targeted and will have contact with police, leading to imprisonment and/or losing their children. We expect to see an increase of our women dying through incarceration and violence.

Our children are still being taken. Our lives are still being threatened and taken by police. Our women are 34 times more likely to be victims of family violence compared to other women. Our people are still being imprisoned and dying in custody. Aboriginal women are now the fastest growing prison population in the country. We have ten years less life expectancy. We are living with the toll of intergenerational trauma. Lives are being lost and our people are hurting.

The Issues Paper focuses on what reforms are needed to the mainstream justice systems, as though they are the only options. But Aboriginal Community Controlled organisations like Djirra must be funded to create self-determined change. If we are properly resourced and invested in we will make a difference. This is what we mean by saying “defund the police”.

³ Oxley, R. (2020, September 17). *Defunding the police and abolishing prisons in Australia are not radical ideas*. The Guardian. <https://www.theguardian.com/commentisfree/2020/sep/17/defunding-the-police-and-abolishing-prisons-in-australia-are-not-a-radical-ideas#>

Djirra's work in family violence has focussed on supporting safe reporting pathways for Aboriginal victims/survivors. This includes Djirra as a pathway - i.e. a service model designed specifically to offer a safe trusted pathway - as well as Djirra's relationships with external agencies/models, including Orange Door.

Djirra's cultural leaders speak about the "healing journey" that women go on when they begin to access Djirra's holistic services. It is a journey that is undertaken at a woman's own pace, based on self-determination and relationships of trust, where her choices are respected. Through accessing cultural workshops, prevention programs and events in the Koori Women's Place, women begin to build trust and feel comfortable to share their story, which may include disclosing family violence and sexual harm. Over time, a woman's healing journey may include attending a Dilly Bag small group retreat, seeking a referral to Djirra's legal service to obtain an intervention order, accessing phone counselling or support from a drug and alcohol worker from Djirra's intensive case management team.

Expanding the Koori Women's Place model to regional locations would broaden access to this pathway, but requires resourcing and intensive work over time to ensure appropriate information barriers and other protections can be put in place.

Djirra's Dilly Bag staff and dedicated counsellor report that the Dilly Bag program is the perfect environment to support disclosures of sexual harm and a healing response. There is also a lot of informal time between staff and participants, which helps to build relationships of trust and safety, and a mix of ages across the generations. All of the women who are offered counselling in that setting have said yes. Where the older women have been effectively supported, and a process of healing from earlier traumas has commenced, they have then been able to support a healing process for others. This then contributes to a broader community healing, both within the group and through their roles as cultural and community leaders.

It is vital to support women in contexts where they find it easier to disclose and/or engage. For example, the women who engaged in therapy in Dame Phyllis Frost Correctional Centre may have been more ready to reflect on experiences of intimate partner violence in that context because they were not at immediate risk from that partner.

There is scope to fund new initiatives for Aboriginal women/survivors to tell their stories and have them acknowledged, but it is vital that there is no pressure for the stories to be made "public" - ie accessible to the broader community. Djirra staff report that many women who have attended VOCAT have been surprised at how helpful they found it to have their voices heard, and have their pain acknowledged through this process. However there are other experiences where women have told their stories publicly and found it extremely difficult and/or damaging. However Djirra supports offering women options and support to tell their stories within trusted groups and settings (e.g. as they do at Dilly Bag) and/or

through creative mediums such as art, music and theatre. It may be that some of the women would benefit from sharing these more publicly but involvement in the projects should not be dependent on this outcome for individual women.

Requirement for specialist service

There is a need for a specialist, culturally safe Aboriginal Sexual Assault Legal Service. It is envisaged such a service would provide discrete culturally safe assistance to Aboriginal and Torres Strait Islander women who have experienced sexual assault or other sexual harms, irrespective of the context in which this harm occurred. The service should be holistic, culturally safe, discrete and non-judgmental in order to properly address the needs of women.

Djirra has been vocal in a number of forums on the development of an Aboriginal specific sexual assault support service. Our previous and current policy positions include:

- A call for a dedicated Aboriginal sexual assault service.
- This service must be delivered by a culturally safe Aboriginal women's service. Aboriginal women face significant barriers in accessing mainstream sexual assault services and are much more likely to disclose to culturally safe specialists such as Djirra, and when in a safe setting with other Aboriginal women.
- Exposure to systemic racism in the justice system is well documented but inadequately actioned. Racism is reported as the primary reason Aboriginal women are not reporting to police, or are withdrawing from the process after initiating a report. Much more work is needed to understand and to address this at the intersection of race and gender, specifically as it is experienced by Aboriginal women and victims/survivors of family violence.
- Djirra is best placed to design and deliver this dedicated sexual assault service for Aboriginal women. Djirra have been supporting Aboriginal victim/survivors of sexual assault and family violence for over 18 years and are well positioned to develop more specialised and culturally safe responses to sexual assault.

Building on earlier consultations in preparation for this submission, these points are elaborated here as follows:

- Djirra recommends restricting our services to Aboriginal women (see below). While many Aboriginal men and children are victims/survivors of sexual assault, if Aboriginal men with histories of sexual assault access the service this would create new opportunities for conflicts and likely exclusion of women where they are experiencing family violence in relationships with those men. It is more appropriate to establish specialist services for men through another agency, building on the model/funding to be provided to an ACCO by Family Safety Victoria (see details below).

- Djirra is not seeking to provide services directly to children. While we believe a holistic response is more culturally appropriate and much safer for the women and children, it also raises potential for conflicts and perceived conflicts where a child's interests or legal rights are not seen as compatible with those of their mother, father or other caregiver experiencing family violence. In addition, and just as crucially, Djirra does not hold the expertise required to appropriately support children who have experienced, or are experiencing, sexual assault and other sexual harms.
- Aboriginal children who have experienced sexual harm need specialist psychological support from a culturally safe provider and there must be an effective referral pathway from Djirra to this trusted service. With adequate funding, Djirra could form a strong partnership with an specialist sexual assault service for children. This service must be independent of any services for men.
- The above models must include resourcing to support Djirra's case management team to build relationships with external staff directly, so that they are able to personally endorse external therapists to the community. This would make a big difference in facilitating smooth and culturally safe transition for Aboriginal children (especially) into the partnering external service, and to ensure the caseworkers themselves receive adequate training, supervision and support to work with victims/survivors of sexual assault, including children.

As noted above, Djirra participates in the Dhelk Dja working group on Support Services for Survivors of Sexual Assault and was part of the Dhelk Dja North Metro Action Group. This group has been working to establish an Aboriginal specific sexual assault service in the North metro region for over five years. Through this involvement, Djirra helped guide a community conversation on the core elements of an Aboriginal sexual assault service. While detailed notes of this discussion are not available, the feedback has informed Djirra's policy work in this area, including considerations for this submission.

Lessons from history

"I have to say that when I hear this question I get really frustrated. I can sit here and list thousands of gaps and barriers for Aboriginal people. I could probably draw out some really thick reports too that will say the same thing. The big difference is that will this discussion fall on deaf ears, or will it actually get heard by government and by mainstream agencies. Isn't this the real issue? What gets done around the gaps and barriers to me is more important than telling it all again." (Indigenous Worker, *From Shame to Pride Report*)⁴.

⁴ Elizabeth Hoffman House. (2004). *From shame to pride: Access to sexual assault services for Indigenous people*. Elizabeth Hoffman House, Melbourne. p. 11.

In 2004, Elizabeth Hoffman House and CASA House worked in partnership on a project designed to begin much needed processes of change within Aboriginal communities around the issue of sexual violence. See **Attachment 2** for a copy of this report.

The project sought to improve and enhance the skills of Aboriginal workers in working with victim/survivors of sexual assault, as well as explore the range of collaborative approaches between Centres Against Sexual Assault and Indigenous organisations and workers. A further aim of the project was to contribute this information into the Victorian Law Reform Commission's Review of the sexual offences act.

This was envisaged as the first stage of a deep consultative process in which long term and meaningful partnerships could be established between relevant Indigenous organisations and individuals and the Victorian Centres Against Sexual Assault. This first stage project (with its limited resources) did not deliver any skills development training programs, but honoured the strong recommendations made by the respondents, that training be developed in the next stage in direct consultation with relevant Indigenous organisations, including through the establishment of a Statewide Indigenous/CASA Sexual Assault Reference Group.

However reviewing this work 16 years later it is clear that many of the issues are the same and not enough has been done to address the "gaps and barriers" mentioned by this worker. It is crucial that the need for this kind of in-depth consultation and co-design process is recognised, and resourced, in ways that give much more meaningful agency/control to Aboriginal organisations, communities and, most importantly, victims/survivors. But the integrity of this process is completely dependent on the follow up. It is devastating and re-traumatising for all of us to tell this story of our community, ask for assistance and see it continue to fall through the cracks left by the lack of commitment, hope and vision from the decision makers.

Djirra believes a Steering Committee of this nature would still be of value to better understand the rates of violence, needs and services for Aboriginal women, men and children who have experienced sexual assault, with care taken to ensure appropriate membership of the committee and with dedicated and specialist attention to each cohort. This could also be an appropriate governance mechanism to oversee/support the co-design processes recommended below.

In early 2020, Djirra was offered an opportunity to apply for funding from Family Safety Victoria to develop a model that will deliver therapeutic and culturally healing sexual assault services and support for:

- a) Adult victim survivors
- b) Children and adolescents who have experienced sexual abuse; and
- c) Their families.

FVPLS was established specifically in response to address barriers to victims/survivors of family violence, primarily women, who were turned away from the Aboriginal Legal Services as a result of legal conflicts. That is, if the male/person using violence had ever accessed legal assistance from the Aboriginal Legal Service, the service had to refuse legal assistance to the victim/survivor of family violence.

Given this circumstance, and given the requirement to provide services to families is likely to include people who use violence, Djirra was not able to apply for funding through Family Safety Victoria without partnering with another organisation. Similarly providing services to male victim/survivors of sexual assault introduces the likelihood that many existing Djirra clients who are experiencing family violence would need to be turned away. While we recognise and are deeply concerned about the rates of sexual violence against Aboriginal men and in particular boys, Djirra is unable to compromise the specific access needs of Aboriginal women requiring our support.

The Family Safety Victoria submission process allowed around 6 weeks for applications. Building an appropriate partnership and service delivery model with two other organisations will take much longer than this, especially in an area this sensitive within Aboriginal communities.

Effective response through effective partnerships

It is not yet known if an Aboriginal community controlled organisation (ACCO) will be successful in securing the funding through Family Safety Victoria. As noted above, this service is required to be holistic and so does not offer a women's specialist service. It remains critical to fund a women's only service to address barriers to access and community perceptions around privacy, and ensure cultural, emotional and physical safety, is available to women accessing services for sexual assault. If Djirra was funded to meet this unmet need, ideally working alongside the new service at another ACCO, there would be opportunities to refer male victims/survivors to the other service, while specialising at Djirra in sexual assault and other sexual harms as a form of violence against women.

There would also be significant value in Djirra and the other ACCOs working closely with specialists within the sexual assault sector, as this could offer opportunities for mutual capacity building. Specifically, some of the potential benefits could include:

- Opportunity for more effective and sustainable referral pathways across Victoria, and the opportunity for these specialists to support trial/s through the ACCOs at a metro and regional site;
- Development of in-house specialist expertise for Djirra through access to specialist training and mentoring;
- The possibility of secondments to provide in-house roles within Djirra;
- Guidance for Djirra in navigating the sexual assault service sector and stakeholder relationships;

- Enhanced capacity of the mainstream organisation/s to deliver culturally safe services. This is important in locations where Djirra and the other ACCOs are unable to provide support directly due to conflicts and in circumstances where Aboriginal clients are either unable or unwilling to access our services; and
- Enhanced understanding for the mainstream service of the importance of legal assistance and early intervention referrals for family violence and sexual assault, particularly in matters other than VOCAT.

Djirra recommends further funding to establish a taskforce to undertake Aboriginal led consultations and co-design and develop a model for best practice supporting Aboriginal children who have experienced sexual assault and other sexual harms. This requires engaging research specialists who have expertise in childhood sexual assault and the requisite understanding of the cultural needs and perspectives, with an ability to effectively navigate the historical distrust engendered by previous government responses such as the Northern Territory Intervention and the systemic racism experienced when reporting through the police. Given our experience working with Aboriginal women and, through this, exposure to the impacts on their children, Djirra must be a significant contributor to this process and be supported in our commitment to prioritise safety for both women and children.

Djirra itself seeks to provide a specific suite of services that can bridge mainstream specialist services with expertise in sensitive responses to victim/survivors of sexual assault (including specifically children) and other Aboriginal community controlled organisations with a commitment to work alongside men, families and children with whom Djirra shares cultural expertise and holistic approaches to intergenerational trauma and social and emotional wellbeing.

It is crucial to allow sufficient lead time for the development of a specialist service. This includes time to support consideration and establishment of appropriate partnerships, such as those suggested above, ensuring they are based on shared visions, goals and values and allowing for rigorous, constructive discussions over time to work through the policy and program complexities. We could be guided in this process by the partnering principles suggested by Partnership Brokers Australia,⁵ with funded access to an external partnership broker if needed, but would require a strong cultural lens and expertise to ensure its relevance to our sector and communities.

⁵Partnership Brokers Association. (2019, September). *Brokering better partnerships handbook*. 2nd edition. <https://partnershipbrokers.org/w/wp-content/uploads/2020/05/Brokering-Better-Partnerships-Handbook.pdf>.

Consideration of new models

The *Improving the Response of the Justice System to Sexual Offences: Issues papers* indicate a potential interest in the establishment of some new models, including a specialist court for sexual offences, an independent sexual harm advisor and restorative justice approaches.⁶

Consideration of these models and related issues must take into account the deeper histories and complexities of sexual assaults and other traumas experienced by Aboriginal women, children and men across the generations, often under the care or authority of the state, and without adequate access to justice or due process through the colonial legal system. Legal redress schemes for some of the assaults in institutional settings are still very new, but offer important opportunities to build trust in processes of disclosure and the potential for individual and community healing.

Given this background, Djirra is unable to simply endorse or reject a specialist court for sexual offences or a restorative justice program. Rather, both models require intensive work engaging with Aboriginal communities to test the likely uptake of these models (which must not be mandated) and co-design the program with those communities to ensure accessibility and safety by Aboriginal women and other victims/survivors. Priority must be given to the perspectives and experiences of Aboriginal people, and women in particular, with lived experiences of sexual assault and other sexual harms, whether these harms occurred as children or as adults. Funding must be available to provide culturally safe counselling to the women involved, both during the co-design process and as follow up afterwards.

Specialist court for sexual offences

From Djirra's internal consultations in preparation for this submission, it is clear there are diverse views on the establishment of a specialist court for sexual offences and significant concerns about whether a specialist court would further deter Aboriginal women from reporting. In particular, concerns were expressed that:

- Attendance at a specialist sexual assault court could label/stigmatise the victim/survivor, or at least be perceived to do so by Aboriginal women for whom the shame, stigma and other consequences associated with being involved in the case may be higher than for the broader community.

⁶ Victorian Law Reform Commission. (2020, October 5). *Improving the response of the justice system to sexual offences: Issues papers*. https://lawreform.vic.gov.au/sex_offences_2020/issues_papers.

- There may be privacy implications arising from a specialist court, which could occur for example through appearance on a court list in which the nature of the case is apparent to all who have access to the list.
- The potential of the court to explicitly stigmatise Aboriginal male defendants could in itself be a deterrent, with further backlash in the community responses to a woman pressing charges.
- All people who work in courts should work in a trauma informed way and that, if they did, there wouldn't be a need for a specialist court. The recent development of a *Trauma Informed Toolkit for Legal Professionals* by the Golden Eagle Rising Society in Vancouver, for example, may offer some new strategies and models for building the capacity of justice personnel in Australia.⁷
- Specialist courts can create more silos and inadvertently make processes more difficult and onerous for victims/survivors to navigate.
- While formal data is inadequate, it is clear that very few Aboriginal women are even disclosing sexual violence, let alone reporting it or pursuing it through the courts. This calls for more attention (and resources) at the point at which the women are sharing their experiences and a much deeper understanding of what the women would like to see happen in response to their disclosures.

While Aboriginal women who do want to pursue charges through criminal justice responses will need active support and safety to do so, it cannot be assumed that this pathway is wanted or even appropriate for other Aboriginal women. At the same time, it is not yet known whether alternative models such as restorative justice programs will be perceived, or experienced, as safe or more suitable by Aboriginal women. Another approach could be to retain the existing court process but invest in better supports for victims/survivors of sexual assault, including specialist supports for Aboriginal victims/survivors.

Independent Advisor

Djirra does see merit in proceeding with an independent sexual harm advisor if cultural safety is prioritised and this service is funded, co-designed and delivered through a specialist Aboriginal organisation such as Djirra. The core elements of this model would ensure that Aboriginal women can get support from an advisor before reporting the harm to the police, and that this support would extend after a court or alternative justice process. The role must be broad, including advocating, educating, liaison and support, as detailed in the Issues Paper, and empower the victim/survivor to make informed decisions. While a benefit may be to reduce disengagement during a court process, it is crucial that no pressure is applied to proceed with a particular process and that a range of pathways are available and

⁷ Golden Eagle Rising Society. (2020, October 28). *Trauma informed toolkit for legal professionals*. <https://www.goldeneaglerising.org/initiatives-and-actions/trauma-informed-toolkit-for-legal-professionals/>

supported. Given Djirra's experience and observations regarding safe contexts for sexual assault disclosures, it is essential that this support is available through Aboriginal women and organisations, and that the staff involved are adequately resourced through meaningful training and clinical supervision. The *From Shame to Pride Report* recommendations included that funding bodies recognise "Aboriginal people do not have the same opportunities to disassociate themselves from the issues within their communities and hence; funding bodies need to consider the provisions for supervision, debriefing and access to adequate cultural training opportunities".⁸

Whichever model is introduced, Djirra encourages consideration of alternative ways of reporting that support and work proactively to maintain the conditions of trust and safety required for the disclosure to take place. In particular, the victim/survivor needs to control the process, however it unfolds. Control was taken away by the sexual offence and the court process must be empowering, not re-traumatising. If a victim/survivor begins a process of disclosure, reporting to police or becoming a witness in court proceedings and then wants to stop, that has to be her choice. Her choice must be respected.

If the Victorian Government does decide to proceed with a specialist sexual offences court, it is essential to support a collaborative co-design process so that the new court is accessible for Aboriginal people. The process must be adequately funded to do good quality, Aboriginal-led service design, with a focus on facilitating meaningful contributions from Aboriginal women with lived experience. This must include appropriately skilled and sensitive facilitation and access to counselling on-site and as follow up after the session/s.

Restorative Justice

Djirra makes the same recommendation in regards to restorative justice programs. Some of the risks here are similar to those associated with hearing sexual assault matters in the Koori Court, including in particular whether:

- the processes and parties involved are sufficiently sensitive to the needs of victims/survivors;
- the victims/survivors trust that their privacy will be adequately protected, especially where other Aboriginal community members are involved in the process;
- the women feel pressured by community perspectives on the criminal justice system and potential consequences and/or do not experience the process or outcome as just;

⁸ Elizabeth Hoffman House. (2004). *From shame to pride: Access to sexual assault services for Indigenous people*. Elizabeth Hoffman House, Melbourne. p. 61.

- agreed processes for cultural safety are upheld for Aboriginal victim / survivors when they are subjected to offences by non-Aboriginal parties, including white men and organisations;
- the significant power imbalances can be taken into account, especially where the harm has taken place within organisational settings.

It is important to note that, as Kathleen Daley points out, there is major debate in Canada among Indigenous women on the merits and pitfalls of restorative justice.

The debate is complex, and among the concerns are that restorative justice is largely a ‘white justice model’, Indigenous male band leaders may use restorative justice to their advantage, and so called ‘cultural arguments’ about violence may be used against women.⁹

Djirra has similar concerns about hearing sexual offences in the Koori Court. In addition, even the most sensitive responses from the restorative justice panels and/or the Koori court can be compromised by perceived conflicts, shame and lack of privacy that will deter Aboriginal women from proceeding in that setting.

In summary, we are not opposed to restorative justice being offered as one option for Aboriginal victims/survivors of sexual assault. Djirra recognises the limitations of, and the diversity of community perspectives on, criminal justice responses, and strongly supports a wider range of options being available to victims/survivors. At the same time, there is no benefit in having these options in place if Aboriginal women continue to distrust them and maintain the current culture of silence around the sexual harms they are experiencing.

If models of restorative justice are to go forward, it is essential to commit to a process of collaborative co-design that is specifically resourced to sensitively seek and incorporate the views of Aboriginal women who are most impacted by these issues. It is also vital to learn from other jurisdictions and specialists with experience in restorative justice models, including lessons from scenarios where risks to women’s safety have been identified and effectively addressed.

It is also important to recognise that our Koori community in Victoria is made up of 38 original clans that have been here for thousands of years, and also incorporates Aboriginal people from all over Australia and the Torres Strait Islands. A one size fits all approach is not

⁹ Daly, K. (2005, 14 September). Remarks to Victims Support Agency Forum. ‘What does a modernised justice system mean to women?’ Melbourne Town Hall.
https://www.griffith.edu.au/__data/assets/pdf_file/0026/226709/2005-Daly-What-does-a-modernised-justice-system-paper.pdf

appropriate and community led consultation must determine the most appropriate model of restorative justice for each community.

The sensitivity and expertise required to access the views of Aboriginal victims/survivors within these discussions must not be overlooked. Djirra's track record in listening to and supporting Aboriginal women over the last 18 years, including in particular through the Dilly Bag Program, has earned us the trust required to contribute substantially to this work, alongside recognised leaders in this field like Aunty Lois Peeler.

VOCAT

Issues Paper H indicates consideration of replacing VOCAT with a more flexible compensation scheme.¹⁰ Djirra has noted above some concerns with the VOCAT model and would support more flexibility, more equitable access to compensation through civil means, more acknowledgement and recognition of harms suffered and less emphasis on formal reports to police and the criminal justice histories of victims/survivors. As with other models considered in this paper, it is essential that Aboriginal victims/survivors are supported effectively to contribute to the design of the new model.

¹⁰ Victorian Law Reform Commission. (2020). *Improving the response of the justice system to sexual offences. Issues paper H. Sexual offences: Civil law and other non-criminal responses*. https://lawreform.vic.gov.au/sites/default/files/2657-VLRC_Sexual%20Offences%20Issue%20Papers-H_web.pdf

Recommendations

Based on the background and frontline evidence detailed in this submission, Djirra recommends focussing resources for Aboriginal victims/survivors at the point of disclosure, ensuring victims/survivors are supported with information about, and culturally safe pathways through, a range of options for their healing and/or redress. This includes funding for Djirra to:

1. Design and develop a specialist service model for women who are victims/survivors of sexual assault and other sexual harms. This must include appropriate resourcing for sensitive co-design by victim/survivors, with scope for the model to include access to a culturally safe independent advisor, specialist paralegal or support worker, and access to appropriate therapeutic support.
2. Participate in processes of co-design and partnership development with other ACCOs to facilitate support for men and children, with input from mainstream specialists as required, and with formal priority to the physical and emotional safety of all victims/survivors.
3. Receive in-depth training and supervision for staff who are involved in the delivery of specialist sexual assault services. This is needed also by staff at other ACCOs providing specialist sexual assault services (e.g. for men and children) and at mainstream services working in partnership with Aboriginal organisations.
4. Maintain and where necessary increase our Early intervention/prevention programs to support safe pathways to disclosure. Key programs include Dilly Bag, Young Luv, Sisters Day Out and Sisters Day In, and funding for the Koori Women's Place to expand to regional locations and in Melbourne beyond 2023. This includes ongoing funding for a counsellor to be present at Djirra's Dilly Bag residential workshops, where the culturally safe, small group format creates an environment where women feel safe to disclose sexual assault and an ideal window of opportunity for immediate referral to a trusted counsellor.
5. Undertake a consultation and co-design process to identify alternative reporting pathways following disclosure, with scope for the model to adjust reporting processes to police (e.g offering them on-site at Djirra) and/or identifying other parties who could receive and record a report.
6. Ensure more empowerment and recognition of the role of victim/survivor in any process, through access to information about all of the available options following disclosure or formal report (e.g. potential options include mainstream and specialist court; criminal justice and restorative justice; civil claims, redress schemes and VOCAT). It is crucial that access to the preferred pathways and specialist therapeutic supports are available and non-conditional and that equitable access to compensation is available for victims/survivors harmed by individuals without financial resources. Information can be provided with hands-on guidance and

support from a culturally safe independent advisor or equivalent, and a range of therapeutic options (e.g. psychology, counselling, art and play therapy, group and individual therapy) offered to victims/survivors through and immediately following the process.

7. Undertake a co-design process with Aboriginal women to identify the wellbeing, safety, procedural and privacy features they would need to access a restorative justice program, if at all.
8. Undertake a co-design process with Aboriginal women to identify the wellbeing, safety, procedural and privacy features they would need to access a specialist court for sexual assault, if at all.
9. Provide integrated access to legal assistance and community legal education for victims/survivors in each of the models identified above. This could include, for example, access to in-house legal advice, supervision, and training for our paralegals or independent advisors.

Djirra is best placed to lead involvement of women who are victims/survivors in all of the processes of co-design and consultation above. This needs to be a sensitive and appropriately resourced process requiring the involvement of specialists in program design and/or research, expertise in family violence, sexual assault and cultural safety, with a focus on healing for the participants involved and follow up supports available as needed. It may be appropriate to bring in external expertise, such as partnership brokers, mainstream specialists, etc, for specific functions through the process, but it must be guided at all times by a cultural lens and sensitivity to the needs and safety of victims/survivors.

Sources

This submission has been prepared in consultation with the Community Engagement and Legal teams and with three external therapists, all of whom who provided input about their activities and services related to sexual violence and sexual assault.