

DJIRRA'S SUBMISSION ON THE VICTORIAN LAW REFORM COMMISSION'S CONSULTATION PAPER ON STALKING

August 2021



Djirra thanks the Victorian Law Reform Commission (VLRC) for the opportunity to respond to the Consultation Paper on Stalking - June 2021.

Established 19 years ago, Djirra is an Aboriginal Community Controlled Organisation with state-wide reach, specialising in family violence. Djirra provides culturally safe and holistic support and specialist family violence legal assistance and representation through Djirra's Aboriginal Family Violence Legal Service. Djirra also designs and delivers early intervention and prevention programs, and undertakes policy and advocacy work to identify systemic issues for reform and strengthen Aboriginal and Torres Strait Islander women's access to justice, safety and equality.

Djirra makes the following recommendations:

Reporting, recognising, and responding to stalking

Recommendations:

1. Mandatory and ongoing training for services working with victims of stalking, including cultural awareness and capacity assessment training.
2. More support for women with a disability who experience stalking, particularly women in prison.
3. Establish a Personal Safety Intervention Orders (PSIO) Code of Practice to guide the investigations of stalking complaints.
4. Ensure that risk assessment tools are culturally appropriate to help avoid victim/perpetrator misidentification.
5. Information sharing to be applied sensitively and for the purpose of providing victim support.

Some studies show that up to 90% of violence against Aboriginal and Torres Strait Islander women goes unreported¹, indicating significant barriers to reporting. In Djirra's experience, key reasons for underreporting include profound police mistrust and/or police inaction. Clients also fear that reporting to police may result in child removal, incarceration, and victim/perpetrator misidentification.

Further, stalking behaviour is cumulative and may not be easily identified by the victim, which can make it difficult to report. This issue is prevalent in technology-facilitated abuse and cyberstalking. For example, many of Djirra's clients share phone passwords and other information with their partners, which can be used to coercively control them if the relationship breaks down. In these situations, clients are further deterred from reporting because of concerns that the incident is perceived as a minor, isolated event rather than as part of a wider pattern of stalking behaviour. A report by the eSafety Commissioner found that police responses to technology-facilitated abuse were

¹ Matthew Willis, 'Non-Disclosure of Violence in Australian Indigenous Communities' (Trends and Issues in Crime and Criminal Justice No 405, Australian Institute of Criminology, January 2011) 4–10.; Australian Government, Online safety for Aboriginal and Torres Strait Islander women living in urban areas, (October 2019), 26.

"even lower" than other forms of abuse,² which contributes to the amplified underreporting in technology-facilitated abuse.³ In Djirra's experience, even when clients do report family violence incidents, they often feel discouraged and dismissed by police. Djirra recommends that all services working with victims of stalking, including the police and the courts, must have mandatory and ongoing specialised training regarding the identification of stalking behaviour.

Responding to stalking behaviour must include early intervention, prevention and identification of risk escalation. In Djirra's experience, family violence related stalking behaviours are often not identified at an early stage which means that the stalking behaviour has escalated by the time the client engages with Djirra. It is important to consider the potential for this issue in non-family violence stalking as well. Cultural competency and other training relevant to the unique needs and barriers of Aboriginal and Torres Strait Islander people experiencing stalking must also be mandatory.

Women with a disability are more likely to experience physical violence, stalking and sexual harassment,⁴ with Aboriginal and Torres Strait Islander women at higher risk of having a cognitive impairment than other women.⁵ In Djirra's experience cognitive impairments, particularly ABI's, are often not recognised by police or inappropriately assessed as a drug and alcohol issue. Djirra recommends more rigorous education and training for police in relation to capacity assessments for people with cognitive impairments to ensure that victims are supported and not inappropriately criminalised. This is particularly important in the context of stalking behaviours and identification of the primary aggressor. Djirra also recommends more support for women with cognitive impairments to access the National Disability Insurance Scheme (NDIS), particularly women in prison.

Djirra is concerned that poor police responses and practices contribute to stereotyping and often results in the misidentification of Aboriginal and Torres Strait Islander women as offenders. This issue is particularly complex in regional areas, where relationships between police and community members are more familiar, which can also be an additional reporting barrier. Djirra recommends establishing a PSIO Code of Practice⁶ to guide police on investigating complaints. It is particularly important to consider how to implement such a protocol to ensure compliance by police, such as the inclusion of appropriate oversight mechanisms and investment in training. Further, any police use of risk assessment tools must be culturally appropriate, especially when investigating stalking incidents involving Aboriginal and Torres Strait Islander people, to avoid issues of misidentification.

While Djirra recognises that sharing information can protect a victim from potential trauma in retelling her experience, it is vital that the information shared is critically analysed for accuracy and that the services and stakeholders accessing the information is limited to only those that are crucial. Similar to family violence information sharing, any information sharing which places the victim at further risk of exposure by disclosing sensitive information to third parties must be directly related to the stalking and shared for the primary purpose of providing necessary support for the victim.

The Personal Safety Intervention Order (PSIO) system

Recommendations:

6. PSIOs to be nationally recognised.
7. PSIO publication restrictions to extend to adults.

² Australian Government E-safety Commissioner, 'Online safety for Aboriginal and Torres Strait Islander women living in urban areas' (October 2019), 47.

³ Australian Government E-safety Commissioner, 'Online safety for Aboriginal and Torres Strait Islander women living in urban areas' (October 2019), 6.

⁴ Australian Bureau of Statistics, 'Disability and Violence – In Focus: Crime and Justice Statistics', April 2021

⁵ Brain Injury Australia reports that Aboriginal and Torres Strait Islander women are hospitalised for head injury at a rate of 70 times that of non-Indigenous women. Brain Injury Australia, 'Brain Injury Australia Asked for Quote to Fund Australia's First Prevalence Study of Brain Injury and Family Violence'.

⁶ Similar to Code of Practice for the Investigation of Family Violence, Edition 3, 2019.

8. Victim-survivors to receive the same protections available in family violence proceedings.

Djirra has limited exposure to the PSIO system because it is not funded to assist clients with PSIO applications. Djirra understands that there is currently no Aboriginal Community Controlled legal services receiving funding to support clients with PSIOs. This means that the PSIO system is not accessible to Aboriginal and Torres Strait Islander people, many of whom cannot afford a private lawyer. Despite this, Djirra can speak to potential improvements to the PSIO system based on Djirra's experience of similar issues facing clients in the family violence system.

Djirra recommends the implementation of a nationally recognised PSIO Scheme in the same manner as the National Domestic Violence Order Scheme, which would particularly assist Aboriginal and Torres Strait Islander people who live in border communities.

Djirra also supports expanding the restriction on publication in the *Personal Safety Intervention Orders Act 2010* (Vic) to cover adults and protect the safety and privacy of Aboriginal and Torres Strait Islander people who have experienced stalking.

Further, Djirra supports the implementation of certain protections to assist victims through court, such as alternative arrangements for giving evidence, limits on cross-examination for stalking related PSIOs and broadening the scope of witness protection.

Funding

Recommendation:

9. Aboriginal Community Controlled Organisations like Djirra be funded to provide holistic legal and non-legal support to Aboriginal and Torres Strait Islander women and children experiencing non-family violence stalking.

Djirra is concerned that Aboriginal and Torres Strait Islander women and children experiencing non-family violence stalking, are not currently receiving adequate support due to a lack of funding for non-family violence assistance. Funding is required to provide clients with holistic legal support, including making PSIO applications and legal representation at court.

While Djirra can offer some non-legal support through the Koori Women's Place, further funding is required to increase the scope of services available to women and children experiencing non-family violence stalking, particularly community education around cyberstalking and electronic safety. This need is recognised by the report of the eSafety Commissioner, which identified that Aboriginal and Torres Strait Islander women are more vulnerable to lower levels of digital literacy and poorer awareness of privacy protection.⁷ Adequate resourcing would allow Djirra to assist women to better recognise and seek assistance for cyberstalking (including coercive controlling behaviours) and other stalking and personal safety related issues.

⁷ Australian Government E-safety Commissioner, Online safety for Aboriginal and Torres Strait Islander women living in urban areas (October 2019), 35.