



Australian
National
University

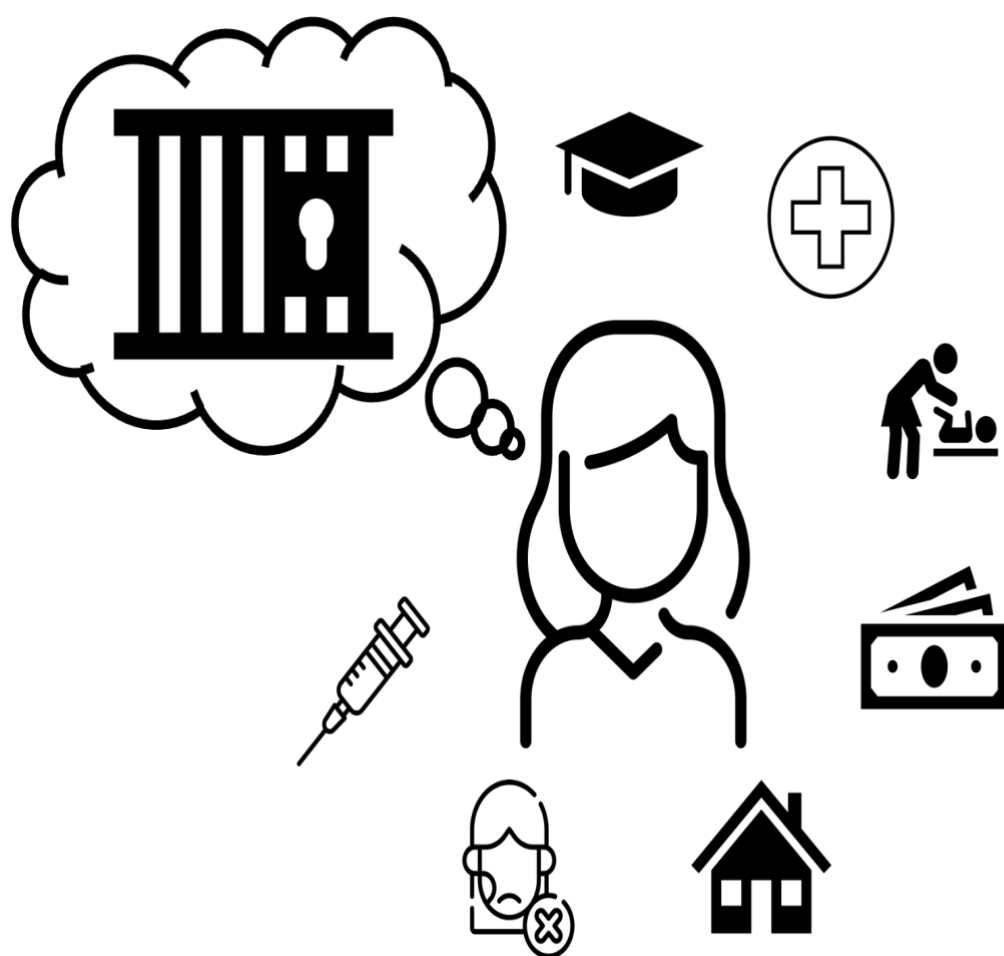
Responding to the needs of women and girls involved with court services

Lorana Bartels, Karen Gelb, Sally Eales, Lydia Corcoran,

Hayley Boxall and Valerie Cooms

2024

ISBN - 978-0-6451416-6-5
DOI - 10.25911/R175-Z793



Acknowledgments

We would like to acknowledge the assistance of the Queensland Department of Justice (formerly Department of Justice and Attorney-General), especially Dr Marion Norton, in undertaking this project.

We also are also very grateful to the members of the Project Advisory Group, who provided invaluable insights.

We thank everyone who provided advice and research for this literature review.

The team drew on the insights of Professor Valerie Cooms, a proud Quandmooka woman, and Lydia Corcoran, a proud Weilwan woman, in preparing this review. We value their insights and acknowledge the resilience and strength of their and all Aboriginal and Torres Strait Islander people.

In this report, we use the terms 'Aboriginal', 'Aboriginal and Torres Strait Islander', 'First Nations' and 'Indigenous' interchangeably. However, we acknowledge that some people consider that the terms 'Indigenous' and 'First Nations' do not appropriately recognise the heterogeneity of Aboriginal and Torres Strait Islander peoples across Australia. We acknowledge and celebrate the differences amongst Australia's many and diverse Aboriginal and Torres Strait Islander cultures.

All errors are the authors' own.

Table of contents

Acknowledgments	ii
Table of contents	iii
List of tables and figures	vi
Acronyms	vii
Executive summary	lix
Background	lix
Methodology.....	lix
The needs of women and girls	x
Good practice frameworks and principles for working with women and girls	xii
Pre-court support and diversion	xiv
Specialist court programs	xv
Education for judicial officers and other relevant stakeholders	xviii
Court design and administration.....	xx
Case study: Taleeyah.....	xxii
1. Introduction	1
1.1 Background.....	1
Case study: Amy	6
2. Methodology	7
2.1 Literature searches	7
2.2 Key areas of focus underpinning literature review	9
2.2.1 Limitations	10
Case study: Mary.....	13
3. The needs of girls and women involved with the justice system	14
3.1 Pathways to offending	14
3.1.1 Specific issues in relation to Indigenous people	16
3.2 Risk assessment.....	20
3.2.1 Specific issues in relation to Indigenous people	22
3.3 Special needs and populations	24
3.3.1 Victims/survivors of domestic and family violence (DFV) and sexual violence	25
Spotlight on the misidentification of women as primary perpetrators of DFV	27
3.3.2 Caring responsibilities.....	33
3.3.3 Children and young people.....	38
3.3.4 Prior child protection and/or youth justice involvement	43
3.3.5 Homelessness.....	46
3.3.6 Poverty and lack of financial means.....	47
3.3.7 Rural, regional, remote	49
3.3.8 Disability and mental illness	50
3.3.9 Substance use	56
3.3.10 Literacy and communication issues	56

3.3.11 Cultural and linguistic diversity	58
3.3.12 LBT and/or gender diversity	62
Spotlight on gambling	64
Case study: Dina	65
4. Good practice frameworks and principles	66
4.1 Therapeutic jurisprudence	66
4.2 Trauma-informed practice	67
4.2.1 Intermediaries	69
4.2.2 Court support dog programs.....	71
4.3 Strengths-based practice	71
4.4 Gender responsiveness.....	73
4.5 Youth justice principles.....	79
4.6 Culturally appropriate responses for Indigenous women and girls	81
Case study: Kirra	88
5. Pre-court support and diversion.....	89
5.1 Community-based programs for girls and women.....	89
5.2 Community Justice Groups	97
5.3 Restorative justice	100
5.3.1 Restorative justice in Queensland.....	101
5.3.2 Key lessons from similar programs in other jurisdictions	101
Case study: Sarah	105
6. Specialist court programs.....	106
6.1 Pre-sentence/bail support programs.....	108
6.1.1 Court Link bail support program	109
6.1.2 Key lessons from similar programs in other jurisdictions	111
6.2 Drug courts	113
6.2.1 Key lessons from similar programs in other jurisdictions	113
6.3 Indigenous courts	115
6.3.1 Murri Court	115
6.3.2 Key lessons from similar programs in other jurisdictions	118
6.4 Domestic and family violence courts.....	124
6.4.1 Queensland Specialist DFV Court.....	125
6.4.2 Key lessons from similar programs in other jurisdictions	127
6.5 Special lists for women and girls.....	129
Case study: Anne	136
7. Education for judicial officers and other relevant stakeholders.....	137
7.1 Judicial training	138
7.2 Benchbooks and handbooks	139
7.2.1 Trauma-informed practice	140
7.2.2 Equality before the law benchbook	144
7.2.3 National DFV benchbook.....	145

7.2.4 Sexual assault trials handbook.....	146
7.2.5 Children	147
7.2.6 Interpreters.....	147
7.3 Bugmy Bar Book project.....	147
Case study: Sam	150
8. Court design and administration	151
8.1 Architecture and design.....	153
8.1.1 Indigenous considerations.....	155
Spotlight on the Neighbourhood Justice Centre	158
8.2 Court administration	159
Case study: Jessica.....	166
References.....	167
Appendix A: Rapid evidence assessment protocols	190

List of tables and figures

Table 3.2: Recommendations for court support for neurodiverse people	53
Figure 3.1: Risk and protective factors associated with offending.....	22
Figure 3.2: Images of childcare facilities at Family Court of Western Australia	36
Figure 6.1: Image of courtroom in Marram-Ngala Ganbu program	120
Figure 8.1: Kunamurra courthouse	156
Figure 8.2: Port Augusta Court Complex.....	157

Acronyms

ACT	Australian Capital Territory
ADHD	attention deficit hyperactivity disorder
AIJA	Australasian Institute of Judicial Administration
ALRC	Australian Law Reform Commission
ANROWS	Australian National Research Organisation for Women's Safety
ANU	Australian National University
AOD	alcohol and other drugs
ATC	Alternative to Custody
BOCSAR	NSW Bureau of Crime Statistics and Research
CALD	culturally and linguistically diverse
CCTV	closed-circuit television
CISP	Court Integrated Services Program
CJGs	Community Justice Groups
CRC	Community Restorative Centre
CSP	Court Support Program
CVA	Court Victim Advisor
CYP	children and young people
DFV	domestic and family violence
DFVE	Domestic and Family Violence Enhancement
DLO	disability liaison officer
FCFCA	Federal Circuit and Family Court of Australia
IDVAs	Independent Domestic Abuse Advocates
JCCD	Judicial Council on Cultural Diversity
JCV	Judicial College of Victoria
LCA	Law Council of Australia
LGBTIQ	lesbian, gay, bisexual, transgender, intersex, queer
MACR	minimum age of criminal responsibility
NGOs	non-government organisations
NJC	Neighbourhood Justice Centre
NJCA	National Judicial College of Australia
NSW	New South Wales
OOHC	out-of-home care
QDAC	Queensland Drug and Alcohol Court
POI	person of interest
REA	rapid evidence assessment
Rec	Recommendation
RJ	restorative justice
RMIT CIJ	RMIT Centre for Innovative Justice
RQ	research questions
RRR	rural, regional and remote
SDAC	Specialist Domestic Abuse Courts
TGD	trans and gender-diverse

TJ	therapeutic jurisprudence
UK	United Kingdom
US	United States
VSAC	Victorian Sentencing and Advisory Council
VWC	Victorian Women's Court
WPP	Wise practice principle
WRC	Women's Review Court
WSA	Whole System Approach
WTJ	Women Transforming Justice
YA	young adult

Executive summary

POLIS: the ANU Centre for Social Policy Research, Australian National University (ANU) was engaged by the Department of Justice (then the Department of Justice and Attorney-General) to conduct a literature review, based on specific recommendations made by the Women's Safety and Justice Taskforce in *Hear her voice Report two – Women and girls' experiences of the criminal justice system* (Report 2). The purpose of the literature review is to outline current evidence-based research that identifies the needs and experiences of women and girls involved with courts and applies gender and cultural lenses to examine the efficacy of court-based interventions.

Background

In March 2021, the Queensland Government established the Women's Safety and Justice Taskforce (the Taskforce), as an independent, consultative taskforce. Its first report was focused on coercive control and made 89 recommendations. In Report 2, the Taskforce examined and reviewed the experiences of women and girls across Queensland's criminal justice system. This report contained 188 recommendations. This review focuses on Recommendations 120 and 121.

Methodology

The literature review seeks to answer the following research questions:

1. What are the specific needs and issues for women and girls engaging with courts (e.g. as accused/defendants, offenders, respondents, victims)?
2. What approaches to increase the accessibility and responsiveness for women and girls with disparate needs and circumstances have been applied within courts, a court program or court-related service?
3. What are the necessary components of approaches, systems, programs and services that work (critical success factors):
 - a. who for and in what contexts?
 - b. what does 'success' look like from different perspectives and how is it measured?
4. Based on the accumulated evidence, what foundations need to be in place in order to deliver good practice that supports women and girls through a court process and addresses underlying factors contributing to offending for those with repeated court contact?

The research team identified relevant literature using systematic and targeted searches, using the following strategies:

- manual searches of online academic catalogues (e.g., Scopus, CINCH) and Google Scholar, using identified keywords;

- reviewing the reference lists of identified articles/papers/reports;
- manual searches of Australian and international government and non-government websites; and
- manual searches of online research repositories (e.g., the Campbell Collaboration).



A note about the scope of the review

This review focuses principally on areas within the courts' locus of control, such as court programs, designs, processes and education for those who work in the courts. We recognise that there are numerous aspects of the courts' operation that are affected by issues such as health, policing, prosecution and other legal practices and resources. Where possible, examples of good practice are discussed, but are not the key focus of this review. Broader system-wide approaches, such as justice reinvestment and legislative reform, are considered outside the scope of the review. Given the focus on the criminal justice system, we have also not undertaken a detailed review of issues and responses in the context of the courts' civil jurisdiction.

The research team contacted representatives across Australia from the Department of Justice (or equivalent), legal aid services and women's legal centres (where applicable) in each jurisdiction, to identify any papers or reports relevant to the current research questions that have not been publicly released. Where appropriate, the research team sought access to these resources for inclusion in the review.

The review includes case studies, designed to illustrate the issues explored in this review and some practical responses that courts can adopt to address them. The case studies highlight the intersectional nature of the issues discussed. While they are inspired by real cases, the details do not represent real people or actual events.

The needs of women and girls

Pathways to offending for women and girls

Pathways to offending among women and girls are significantly characterised by histories of domestic and family violence (DFV), trauma, homelessness, illicit drug use, unemployment and/or mental illness. While the 'school-to-prison pipeline' is often used as a short-hand description of boys' pathways to incarceration, a 'sexual

abuse-to-prison pipeline' is a more apt description of the trajectories for girls and young women.

Crucially, the foregoing issues are compounded for Aboriginal and Torres Strait Islander people, who experience the ongoing impacts of colonisation, dispossession, racism and discrimination, with subsequent collective and cumulative trauma, grief and despair. This can be seen in most communities surviving deep colonisation processes.

Risk assessment

Gender differences in pathways to offending may mean that women and girls are misclassified in current risk assessment instruments. There is some evidence that the use of gender-neutral risk assessment results in their over-classification in the high-risk category. This section examines the risk factors associated with female offending and specific issues in relation to Aboriginal people.



'Women coming before courts as accused persons and offenders are likely to have specific needs in relation to domestic and family violence, child caring arrangements, child protection issues, trauma history, economic security and housing. The Taskforce has consistently heard that women should be connected to suitable (in many cases gender-specific) supports at the court stage to better meet their needs, support them in the community and reduce their likelihood of receiving a prison sentence and/or reoffending' (Taskforce, 2022, 559).

Special needs and populations

It is well established that girls and women appearing before the courts (and involved in the justice system more broadly) not only have gender-specific needs, but also experience a range of other complex – often intersecting – issues and needs. This section considers the following areas of focus:

- victims/survivors of DFV and sexual violence;
- caring responsibilities;
- children and young people;
- prior child protection and/or youth justice involvement;
- homelessness;
- poverty and lack of financial means;
- people living in rural, regional, remote areas;

- disability and mental illness;
- substance use;
- literacy and communication issues;
- cultural and linguistic diversity; and
- LBT and/or gender diversity.

This section also shines a spotlight on the misidentification of women as primary perpetrators of DFV and issues around women and gambling.

Good practice frameworks and principles for working with women and girls

Much has been written about foundational principles of good practice, in relation to working with and designing interventions for justice-involved women and girls. These principles and frameworks include: therapeutic jurisprudence, trauma-informed practice, strengths-based practice and gender responsiveness. Specific principles also apply when working with young and Aboriginal and Torres Strait Islander peoples.

Therapeutic jurisprudence

Therapeutic jurisprudence (TJ) acknowledges the role of the law as a therapeutic agent. TJ suggests that legal rules, legal procedures and legal actors, such as lawyers and judges, can produce either therapeutic or anti-therapeutic consequences. TJ may be seen as a framework, within which to examine the operation of legal processes and behaviour of legal actors, to identify their negative and positive impacts on people's wellbeing. By adopting a TJ lens, the legal system can be designed in a way that improves its effectiveness and ability to contribute to a healthier and more resilient community.

Trauma-informed practice

There has been increasing recognition in recent years of the need for the courts to adopt trauma-informed approaches. This is in part due to consistent evidence that many people who appear in court are trauma survivors and may continue to experience trauma. Examples of programs that have been implemented within the courts that are underpinned by trauma-informed practice are the use of court support dogs and intermediary programs.

Gender responsiveness

Being *gender-responsive* or *gender-informed* refers to programming that explicitly considers needs that are particularly salient to women. Gender-responsive approaches are trauma-informed and consider the gendered context (or 'pathways') of criminal offending.

The following six guiding principles address system requirements for the effective and appropriate management, supervision and treatment of women and girls in the justice system:

1. Gender – Acknowledge that gender makes a difference
2. Environment – Create an environment based on safety, respect and dignity
3. Relationships – Develop policies, practices and programs that are relational
4. Services and supervision – Address substance use, trauma and mental health issues
5. Socio-economic status – Provide opportunities to improve socio-economic conditions
6. Community – Establish a collaborative system of community supervision and re-entry

On the basis of these principles, best practice in working with justice-involved women is achieved through approaches underpinned by empowerment, meaningful and responsible choices, respect and dignity, supportive environments and shared responsibility.



Adopting a strengths-based approach is a key element for gender-responsive treatment and services, especially in clinical services for women and girls. A strengths-based approach requires seeing women and girls as possessing the strengths and skills necessary for their healing and transformation processes. However, strengths need to be understood in relation to constraints: a narrow focus on strengths risks portraying individuals and communities as responsible for their own situations, minimising the impact of broader power relations and inequality.

Youth justice principles

Addressing offending among people who have entered the youth justice system requires a system that is tailored to their particular needs, characteristics and circumstances. In other words, youth justice systems cannot simply replicate adult criminal justice systems. Accordingly, the following principles should be read in combination with (and complement) the six guiding gender-responsive principles set out above:

1. Treat young people differently to adults
2. Keep young people away from the criminal justice system
3. Privilege engagement and relationships

4. Collaborate with family and community
5. Partner with education
6. Address trauma and complexity therapeutically
7. Connect service systems
8. Invest in restorative approaches
9. Tailor responses to different cohorts
10. Provide safe, structured custodial environments

Culturally appropriate responses for Indigenous women and girls

The literature consistently recognises self-determination and capacity-building as central to improving justice outcomes for Aboriginal people. This means that communities must drive decision-making and local knowledge must inform any decisions that impact Indigenous people. Approaches to programs for Aboriginal and Torres Strait Islander women and girls should be culturally safe. This means that broader systemic issues in relation to racism need to be recognised and addressed and practitioners working with this cohort must also be culturally competent.

There are several key components to ensuring that justice system interventions are culturally appropriate and safe. The Queensland Government Statistician's Office has published a set of four interconnected 'wise practice' principles, to inform the design and implementation of tertiary criminal justice programs for Aboriginal and Torres Strait Islander people. These are:

1. Support Aboriginal ownership, engagement and oversight
2. Value, respect and strengthen Aboriginal authority and capacity
3. Commit to cultural competence
4. Provide culturally sensitive program delivery

Again, these wise practice principles should be considered alongside general evidence-based practice for criminal justice programs, as well as the youth justice and gender responsiveness principles outlined above.

Pre-court support and diversion

As the focus of this review is on initiatives *within* the court context, it is beyond scope to conduct a comprehensive review of the community-based initiatives that aim to divert women *from* court. However, we acknowledge that there is a strong case for investing in diversion schemes for justice-involved women and girls. Women's offending – most commonly non-violent acquisitive crime – is typically suitable for diversion. Further, girls and women committing low-level offences are less likely than men to re-offend and criminalisation is more damaging to their rehabilitation than for men. This section provides some examples of community-based programs, such as the **Community Restorative Centre's Miranda Project** in New South Wales

(NSW) and the **Dilly Bag program**, which has been specifically designed for Indigenous women.

This section also examines **Community Justice Groups** and **restorative justice** (RJ) in Queensland and key lessons from similar programs in other jurisdictions.

Specialist court programs

There is no one definition that encompasses specialist courts. However, common features include specialisation, collaborative intervention, accountability through judicial monitoring and fostering a procedurally fair, less adversarial court environment. Programs of this nature generally aim to address the root causes of criminal behaviour, by addressing the practical and psychological barriers to reducing recidivism. They are generally underpinned by TJ principles and there is a clear overlap with trauma-informed practice.

Pre-sentence/bail support programs

Issues with bail and remand are a significant driver of women's imprisonment. This has led to a range of recommendations, including legislative reform, changes to police practices, the adoption of gendered and culturally appropriate approaches to determining 'risk' to community safety and ensuring women are not refused bail, due to homelessness or a lack of social and affordable housing.

Some of these suggestions can be facilitated through bail support programs, which often attempt to deal with the underlying causes of offending, adopting a rehabilitative focus to support defendants with issues across a range of areas, such as mental health, housing instability and unemployment. One such program is the **Court Link bail support program** in the Queensland Magistrates Court. Referrals can be made by the magistrate, police, defendant, their lawyer, family or others. After referral, a case manager will assess the person, to determine their service needs. Subject to this, they can be case managed for up to 12 weeks. This will include working with the individual, to develop a case plan and coordinating referrals to community-based services for support and assistance. An evaluation of the program found that it takes into account individuals' unique characteristics, including gender. There is also evidence that the program achieved significant results for participants in relation to improving their lives and wellbeing and reducing the seriousness and frequency of their offending. However, there was an identified lack of availability of support services and treatment programs to which female defendants can be referred and long waitlists for domestic violence programs.

This section examines the key lessons from similar programs in other jurisdictions, such as **Magistrates' Early Referral Into Treatment** (MERIT) in NSW and **Court Integrated Services** Program in Victoria, as well as initiatives outside of court to increase women's access to bail.

Drug courts

The Queensland Drug and Alcohol Court (QDAC) commenced in the Brisbane Magistrates Court in January 2018. Analysis of similar programs in other jurisdictions highlights the paucity of gender-specific consideration of drug courts. However, there is some research calling for women's-only programs.

Indigenous courts

Indigenous courts were developed as a way of providing culturally appropriate and meaningful criminal justice responses for Aboriginal people. Bringing together the defendant, respected community members and criminal justice system representatives in a non-adversarial environment, these courts aim to address the needs of the community by encouraging the defendant to take responsibility for their actions. Most such courts use elements of RJ and culturally appropriate practices to inform sentencing, with some also allowing deferral of sentence, to enable participation in court-monitored treatments and programs. Versions of these courts have been implemented across Australia, Canada and New Zealand.



Most Indigenous courts operate in the sentencing context, although the ACT Galambany Court has recently established a dedicated bail list. There are also some examples of culturally appropriate DFV courts for Indigenous participants.

In Queensland, **Murri Court** is available in both the Magistrates Court and Children's Court for adult and youth (aged under 18) Aboriginal defendants. Women's yarning or talking circles are gender-specific bail programs in Murri Court. An evaluation of the Murri Court program found that it had led to reunification, desire for self-improvement, and most participants said it had helped them to avoid deviant or offending behaviours. Further, the

cultural safety of Murri Court was described

as improving participant engagement with the court process, although it did not necessarily improve understanding of the process overall.

This section draws on the lessons from similar programs in other jurisdictions, including in the context of DFV and child protection matters.

Domestic and family violence courts

Domestic violence courts, also known as specialised domestic violence or family violence courts, are a judicial system designed to respond to cases related to DFV in a comprehensive and coordinated way. Their objective is to take a nuanced

approach to the unique dynamics of DFV and provide targeted and holistic support to victims.

The **Queensland Specialist Domestic and Family Violence Court** operates in Southport, Townsville, Beenleigh, Mount Isa, Brisbane, Cairns and Palm Island. The specialist DFV courts are working towards the coordination of civil and criminal matters in each location. In locations where these matters are coordinated, dedicated magistrates hear both criminal and civil DFV related matters (i.e., civil applications and criminal matters in the same callover).. The final evaluation of the Southport component of this program found that the program was fulfilling its purpose of ensuring a coordinated, respectful, and fair response to DFV across the human services sector, which prioritises the safety of the victim and their children, holds perpetrators accountable and promotes changes in attitudes and behaviour.

This section highlights some of the key lessons learnt from this model, especially in the United Kingdom.

Special lists for women and girls

The Taskforce has recommended piloting a women's list within the Court Link program operating within the Queensland Magistrates Court. Some other jurisdictions have also developed specialist courts for women and girls and the key findings and lessons are discussed in this section.

Key lessons on specialist courts

- Although evaluations of specialist courts have generally been positive, in terms of recidivism, health and other benefits, they have not focused on gender, so their impact on women and girls is unclear.
- The effectiveness of mainstream court programs like the QDAC are well established; their effectiveness for Aboriginal people is, however, contested. This may be due in part to the way in which the effectiveness of problem-solving criminal justice programs is typically measured, with attention focused on how criminogenic needs have been resolved and whether people have ceased criminal activity.
- Some women, especially Indigenous women, may be less able to engage with drug court programs, possibly due to their experience of trauma or DFV.
- Specialist court participants benefit when magistrates understand the demands of raising children and the need to balance carer responsibilities while meeting the requirements of drug court.
- Referrals made by magistrates should be to female-only services, to minimise discomfort associated with discussing vulnerable topics, such as their complex histories of trauma, and men dominating group-based treatment programs.

- Courts dealing with child protection, welfare and juvenile justice proceedings in relation to Aboriginal children need to provide a space for listening, given that Aboriginal people contextualise these issues within the history of colonial intervention.
- Current models of Indigenous courts which exist in Australia have a tendency to broadly brush all participants as Aboriginal, without delving deeper into where they are from. The pathway to offending for many in the justice system involves histories of removal from their mob and culture; it is only when those lines can be reformed that people can heal.
- To be effective, diversionary initiatives need to include well-resourced, culturally appropriate rehabilitation programs that address the underlying causes of offending in a holistic fashion.

Education for judicial officers and other relevant stakeholders

The Taskforce recommended ‘encouraging judicial officers to participate in professional development about gendered issues and trauma-informed practice relevant to the experiences of women and girls as accused persons and offenders’.

There are two main forms of judicial education in Australia: formal training and benchbooks. This section highlights some examples that are of most relevance to women and girls appearing before the courts, although there is limited evaluation of the impact of such material.

Judicial training

There are four Australian organisations that provide judicial education programs on an ongoing basis, although the smaller courts may also organise their own judicial training. The programs for 2024 listed on the Judicial College of Victoria (JCV) and National Judicial College of Australia (NJCA) websites include workshops on:

- sexual assault hearings (JCV, NJCA);
- FV matters (JCV, NJCA);
- Indigenous cultural awareness (JCV);
- cognitive impairment and forensic disability services (JCV);
- personality disorders and complex trauma (JCV); and
- visits to prison, community corrections and the parole board (JCV).

Benchbooks and handbooks

There are a number of benchbooks and handbooks available to guide judicial practice. Some are technical guides to a jurisdiction’s legislation and case law, while others provide more information about relevant research on issues explored in this review. Guides that include information of relevance to women and girls include the:

- *Equality before the law benchbook*;

- *National DFV benchbook*;
- *Benchbook for children giving evidence in Australian courts*;
- *Interpreters in criminal proceedings: Benchbook for judicial officers*; and
- *Bugmy Bar Book* project.

Of particular relevance to the current review is the *Trauma-informed courts: Guidance for trauma-informed judicial practices* handbook. This handbook details the history of trauma-informed practice and description of trauma and articulates how and why to embed a trauma-informed practice. The handbook suggests that being a trauma-informed judicial officer will:

- help defuse the stressful courtroom environment parties/witnesses/defendants, and minimise the risk of re-traumatisation for judicial officers, legal practitioners and court staff;
- recognise that the effects of overwhelming stress may impede a traumatised witness giving evidence, as their evidence and conduct may appear ‘discursive, episodic, unreliable and even mendacious’; and
- enhance the likelihood that fair processes and justice will be achieved.

In addition, the handbook adapts the Substance Abuse and Mental Health Services Administration principles for the courtroom of safety, trustworthiness and transparency, peer support, collaboration and mutuality, empowerment, voice and choice, and cultural, historic and gender issues.

The Taskforce recommended consideration of a sexual assault benchbook. The NSW Judicial Commission developed the *Sexual assault trials handbook* benchbook in 2008 and most recently updated it in 2023. In addition to items specific to NSW (eg, legislative provisions), it includes links to research on a range of legal and non-legal issues, including:

- the dynamics, impact and consequences of child sexual abuse;
- child sexual abuse and the criminal law;
- institutional child sexual abuse;
- investigation and interviewing children in child sexual abuse cases;
- challenges facing child witnesses: special measures, witness assistance and intermediaries;
- recording evidence and evidentiary issues in child sexual abuse cases;
- adult victims of sexual assault;
- First Nations women and children
- juvenile sex offenders; and
- online exploitation.

Court design and administration

Adapting buildings for wheelchair use makes them more accessible to people with crutches, canes, bicycles, prams, wheeled bags etc. Similarly the benefits of adopting a range of initiatives in the courts will of course extend beyond women and girls to all court users.

Architecture and design

Trauma-informed court design aims to create courtrooms that are sensitive to the unique needs of people attending court, prevent re-traumatisation and promote healing. Approaches should take into account concerns around accessibility, safety, privacy and Indigenous considerations. All courts should be safe environments for women and girls and there should be safety measures in place to ensure this. To contribute to this, the Judicial Council on Cultural Diversity developed the *National framework to improve accessibility to Australian courts for Aboriginal women and migrant and refugee women*.

An example of a courthouse built with trauma-informed design in mind is **Thunder Bay Courthouse**, Ontario. This is considered to be ground-breaking in its design, with the inclusion of non-threatening spaces that are a purposeful move towards a less oppressive court building. Thunder Bay features an accessible route to the main entrance, signage that includes Braille, tactile lettering and large font sizes with high-contrast lettering, for easier reading. Other features include wide corridors and aisles, height-adjustable lecterns and witness boxes, and barrier-free jury and witness boxes.

Western-style court buildings can exacerbate how court procedures contribute to Indigenous overrepresentation in the criminal justice system. As such, consideration has been given to ways in which Australian courthouses can be adapted to be more appropriate for Indigenous people and reduce anxiety among users. For example, Indigenous sentencing courts often include Indigenous artwork and participants usually sit in a circle, with the judicial officer on the same level as the defendant and Elders, creating a more equal power dynamic. The **Kununurra Courthouse** in Western Australia was designed in accordance with Indigenous design principles, to provide an environment that is more inclusive and less intimidating to Indigenous people. For example, it includes an outside area, where families and groups can gather while a case is heard. The building was designed to create close links with Country and local Aboriginal artists were involved in creating artworks under the theme of 'law and culture'.

Court administration

The implementation of due process in court is an important aspect of ensuring women and girls' fair and equitable access to justice and the Taskforce made a recommendation around improving court efficiency. The Law Council of Australia has made a number of suggestions about court practices, to promote access to justice, including:

- courts and tribunals be sufficiently resourced, to avoid delays;
- efficiency and fairness often depend on ready access to legal assistance;
- active case management and triage can facilitate efficiency and fairness;
- accommodating different communication needs is necessary to ensure procedural justice;
- courts and tribunals should be accessible, in terms of disability access, geographic location and physical safety;
- developing greater cultural awareness and competency across the justice sector is essential; and
- fragmentation of the court system can be improved, by connecting jurisdictions and increasing information-sharing and collaboration.

Since April 2021, the Adelaide Magistrates Court has implemented an early resolution court model to expeditiously deal with some summary offences. Whilst this model is not targeted at women, addressing issues in relation to delays may have benefits in the context of caring responsibilities and reducing additional anxieties around uncertain court outcomes. The process aims to shorten the time between the alleged offending and appearing in court and provide important information to accused people, before coming to court.

This section also includes a spotlight on the **Neighbourhood Justice Centre**. Other considerations include simplifying court processes and the use of technology, including the use of virtual courts and apps.



Emerging principles for place-based court design

- engaging local Indigenous communities in the design process
- relevance to the local Indigenous nation/s
- provision for heterogeneous Indigenous groups
- importance of access and vision of external spaces
- accommodating Indigenous needs in internal spaces
- being responsive to intra-Indigenous relationships
- security and comfort for Indigenous users
- accommodating Indigenous users living with disability and chronic health conditions

Case study: Taleeyah

Taleeyah and Jarred are both Wirradjuri. They are proud of and trying to learn more about their culture and want to be the best possible parents to their young daughter, Marli. Unfortunately, they are struggling with the inter-generational effects of having members of their family 'taken by the welfare'. Recently, they received a letter about their public housing and were having a loud argument about what it meant. Jarred has been violent to Taleeyah before and the neighbours called the police. When the police arrived, Taleeyah told them she was fine and asked them to leave, but the police ran her and Jarred's names through their databases. Because they had outstanding warrants, they were both arrested. None of their family was able to take their young daughter, Marli, at such short notice and she was placed in state care. After a few weeks in custody, Taleeyah was released on bail, but Jarred is still in custody and has been self-harming. Taleeyah is both worried about him and relieved to have a break from the violence at home. She also finds it easier to stay away from drugs while he is inside. She has been trying to get Marli back, but the child protection worker involved in Marli's case says that she needs to take out a domestic violence order and can only have Marli back if Jarred stays away. The tenancy agreement is in Jarred's name and the stress about housing is keeping Taleeyah up every night. She is also worried that, if she loses the property, she will have to go back inside and will never get Marli back. She is scared no one will understand her situation, but when she finally talks to someone from a local Aboriginal family violence service, they are finally able to put systems in place and get her family the support she needs, without judgement.

1. Introduction

POLIS: the ANU Centre for Social Policy Research, Australian National University (ANU) was engaged by the Department of Justice (formerly the Department of Justice and Attorney-General) to conduct a literature review. The purpose of the literature review is to outline current evidence-based research that identifies the needs and experiences of women and girls involved with courts and applies a gender lens and a cultural lens, to examine the efficacy of court-based interventions.

This understanding will inform ongoing improvements to Queensland's existing specialist court models and court-based programs.

1.1 Background

In March 2021, the Queensland Government established the Women's Safety and Justice Taskforce¹ (the Taskforce), as an independent, consultative taskforce, to examine:

- coercive control and review the need for a specific offence of domestic violence; and
- the experiences of women across the criminal justice system.

The first report was focused on coercive control and made 89 recommendations.² In *Hear her voice, Report 2 – Women and girls' experiences of the criminal justice system* (Report 2), the Taskforce examined and reviewed the experiences of women and girls across Queensland's criminal justice system. Report 2 contained 188 recommendations, although some of these reiterated recommendations from the first report. The following recommendations, both of which were supported by the Government,³ are most relevant for this literature review:

- the Department of Justice ensure that each of the existing specialist court models and court-based programs operating in Queensland, including the Murri Court located in the Magistrates and Children's Courts; the Queensland Drug and Alcohol Court; Court Link integrated court assessment, referral and support program; and Specialist Domestic and Family Violence Courts incorporate a renewed focus on meeting the needs of women and girls who are accused persons and offenders. This will be supported by public reporting in existing annual reporting processes including participant data broken down by age, gender, Aboriginal status and court outcomes to provide increased transparency

¹ Women's Safety and Justice Taskforce (nd). *A wide-ranging review of the experience of women across the criminal justice system (2021-2022)* <https://www.womenstaskforce.qld.gov.au>.

² Women's Safety and Justice Taskforce (2021). *Hear her voice - Addressing coercive control and domestic and family Violence in Queensland: Report 1*.

³ Queensland Government (2022). *Response to the report of the Queensland Women's Safety and Justice Taskforce, Hear her voice: Report 2*, 38.

and accountability in relation to outcomes for women and girls (Recommendation (Rec) 120); and

- the Department of Justice, in consultation with Elders, respected persons and Community Justice Groups review how the Murri Court can be further strengthened and improved to better meet the needs of women and girls, including consultation with women and girl participants. The review will build upon the successful outcomes achieved to date and identify opportunities for further gender-responsive and culturally safe practices across the Murri Court and Queensland Magistrates Courts more generally (Rec 121).⁴

There are a number of other recommendations in Report 2 of particular relevance to the courts (and the Government's response). The most directly relevant to the courts are highlighted in bold:

- developing, funding and implementing a statewide model for the delivery of a professional victim advocate service (Rec 9; supported);
- embedding a trauma-informed system of safe pathways for victim-survivors of sexual violence across the sexual assault and criminal justice systems (Rec 13; supported in principle);
- developing guidance about the prosecution of sexual violence cases and treatment of victim-survivors (Rec 47; supported);
- reviewing the Victim Liaison program (Rec 49; supported in principle);
- **extending the proposed statewide plan to improve safety for victims of domestic and family violence (DFV), when attending courts, to victim-survivors of sexual violence and upgrading courtroom technology for the recording of evidence (Rec 52; supported);**
- legislative reforms to enable special witnesses to give evidence from a remote room (Rec 53), increase use of video-recorded evidence (Recs 54 and 55) and include examples of improper questioning (Rec 56) (supported);
- **introducing ground rules hearings in domestic, family and sexual violence cases (Rec 57; supported);**
- **considering whether to expand the intermediary scheme to adult victims of sexual violence (Rec 62; supported);**
- considering the need for funding for legal support and representation for victim-survivors of sexual violence (Recs 64 and 65; supported);
- specialist training for legal staff who work with victim-survivors of sexual violence, including best practice in communicating with First Nations women and girls (Rec 67; supported in principle; see also Rec 118; supported);
- **considering the need for a specialist list for sexual violence cases in the District Court (Rec 69) and/or a plan to improve court case management of sexual violence cases, to operate as part of the specialist court list (Rec 71) (both supported in principle);**

⁴ Women's Safety and Justice Taskforce (2022). *Hear her voice - Women and girls' experiences across the criminal justice system: Report 2, Volume 1*.

- identifying opportunities to improve the efficiency and timeliness for finalising matters, in accordance with trauma-informed principles and approaches (Rec 70; supported in principle);
- considering a voluntary case conferencing model pilot in sexual violence cases in the District Court (Rec 72; supported in principle);
- **consider developing and implementing a sexual assault benchbook (Rec 73; supported in principle);**
- **reforms to jury directions, to address rape myths (Rec 78; supported in principle);**
- developing a sustainable long-term plan for the expansion of adult restorative justice (Rec 90; supported in principle; see also Recs 91 and 125 (supported in principle and supported, respectively);
- undertaking a pilot restorative justice program for adult sexual violence and DFV offences (Rec 92; supported);
- developing and implementing a whole-of-government strategy for women and girls in the criminal justice system, as accused persons and offenders (Rec 93; see also Recs 141 and 185) (all supported);
- adopting a systemic justice reinvestment approach to address the underlying causes of women and girls' offending behaviour (Rec 94; noted);
- funding and establishing a legal advice hotline, so accused persons have access to independent legal information and advice about diversion (Rec 99; supported in principle);
- reducing the number and proportion of women and girls held on remand and length of time they spend on remand (Rec 108; supported in principle);
- legislative reforms to require consideration of the probable effect that a refusal of bail would have on a person's family or dependants, and their responsibility to family and dependants, when making bail conditions (Rec 110; supported)
- expanding early bail support programs and intervention services for women and girls, to ensure they are supported to apply for bail at the earliest opportunity and to understand and comply with bail condition (Rec 113; supported);
- **encouraging judicial officers to participate in professional development about gendered issues and trauma-informed practice relevant to the experiences of women and girls as accused persons and offenders (Rec 119; supported in principle);**
- **considering the establishment of a Murri Court program within the District Court (Rec 122; supported in principle);**
- **ensuring the evaluation of the Drug and Alcohol Court incorporates a gendered analysis (Rec 123; supported);**
- **piloting a women's list within the Court Link program operating within the Magistrates Court which aims to identify and address the underlying needs of women in contact with the criminal justice system, through risk assessment, connecting women to gender-responsive case**

management, and supporting women to address their needs while they are on bail (Rec 124; supported);

- reforming the *Penalties and Sentences Act 1992*, to require the court to consider a range of factors, including the offender's gender, parental status, history of victimisation and the impact of systemic disadvantage and intergenerational trauma (Rec 126; supported);
- expanding the suitable, gender-specific services that support women being sentenced to community-based orders rather than short periods of imprisonment (Rec 127; supported in principle);
- designing and implementing a model to identify women and girls at risk of being refused bail, to assist them to access appropriate accommodation, services and supports, so they are not held in custody longer than is necessary (Rec 163; supported); and
- **developing a plan to improve data capability to promote effective and efficient court administration (Rec 177; supported).**

Recent research by the Queensland Sentencing Advisory Council⁵ also provides some useful context, in relation to the sentencing of girls and women in Queensland:

- the rate of sentenced women and girls has been declining;
- 98% of women and girls were sentenced in the Magistrates Courts;
- remote areas had the highest rate of sentenced women and girls;
- Aboriginal and Torres Strait Islander women and especially girls were over-represented, with 47% of all sentenced girls identifying as Aboriginal and Torres Strait Islander, compared to 30% of sentenced women;
- a higher proportion of girls were sentenced aged 12-15, compared to boys;
- women and girls commit different types of offences; girls were mostly sentenced for theft (48%), followed by public order and justice offences (eg, breach of bail) (28% and 24% respectively), while women were sentenced for traffic (39%) and justice offences (22%), then theft (15%);
- the number of cases involving drug offences increased by 164% for women between 2005-6 and 2018-19, while the number of theft offences by girls nearly doubled;
- over one-third of sentenced women and girls were repeat offenders;
- the number of women sentenced to imprisonment quadrupled between 2005-6 and 2018-19;
- 41% of women and 60% of girls sentenced to imprisonment received a sentence of under six months; and
- the most common offences for which women received a sentence of imprisonment were stealing; breach of bail – failure to appear; and possession of dangerous drugs.

⁵ Hilderley L et al (2022). *Engendering justice: The sentencing of women and girls in Queensland*. Queensland Sentencing Advisory Council.

The report noted:

Women and girls who come before the courts challenge societal expectations of traditional female behaviour. Criminal justice systems historically have focussed on the needs of a predominantly male population of offenders and prisoners, which has resulted in a 'general disregard to the gender-specific needs of women'. The report's title, 'Engendering justice' was chosen to highlight both the closing gender gap in the criminal justice system and the need for an approach to justice that is mindful of the intersecting disadvantage and marginalisation many sentenced women and girls experience.⁶

In addition, it was acknowledged that:

The heterogeneity of offending by women and girls means that a single approach to reducing rates of offending for women and girls is unlikely to be successful. Nuanced, tailored crime prevention, diversion strategies, and gender-specific criminal justice and rehabilitative responses are likely to yield the best outcomes to reduce female offending and recidivism rates.⁷

In the context of girls specifically, the report's findings also

clearly highlight the need for a gender-specific approach to youth justice, bearing in mind the vulnerabilities, offending patterns and socio-demographics of girls sentenced in Queensland courts.⁸

⁶ Ibid, 1.

⁷ Ibid, 52.

⁸ Ibid.

Case study: Amy

Amy has a brain injury, after her ex-husband attempted to strangle her. She has struggled financially and been unemployed since the attack, due to ongoing trauma and physical pain. She started gambling, but this only increased her financial stresses. She has now been charged with fraud, after making Medicare claims she was not entitled to. When she appeared in court, her court-appointed lawyer told her that he was 'not interested in her sob story' and was 'just here to find out how long you're going away for'. She was very relieved when the case was adjourned and she was allocated a new lawyer, who took an interest in her circumstances. Her lawyer facilitated access to the court's support dog program and disability liaison officer and took steps to make sure that the family violence order against her ex-husband was still in place. Her lawyer put relevant information about her situation before the magistrate, who took it into account on sentencing and imposed a community-based order, including financial, mental health and employment counselling. She also received information about gambling issues and community supports for people with disabilities.

2. Methodology

The specific research questions (RQs) the literature review seeks to answer are:

1. What are the specific needs and issues for women and girls engaging with courts (eg, as accused/defendants, offenders, respondents, victims)?
2. What approaches to increase the accessibility and responsiveness for women and girls with disparate needs and circumstances have been applied within courts, a court program or court-related service?
3. What are the necessary components of approaches, systems, programs and services that work (critical success factors):
 - a. who for and in what contexts?
 - b. what does 'success' look like from different perspectives and how is it measured?
4. Based on the accumulated evidence, what foundations need to be in place in order to deliver good practice that supports women and girls through a court process and addresses underlying factors contributing to offending for those with repeated court contact?

The project also sought to determine culturally and other appropriate responses for individuals with different and intersecting needs (eg, mental and physical disability, culturally and linguistically diverse (CALD), lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ+)).

The research was undertaken in a series of stages described in detail below.

2.1 Literature searches

Literature included in the review was drawn from various sources. First, several members of the ANU research team have recent experience conducting comparable literature reviews exploring the needs of women and girls in contact with the criminal justice system. These existing reviews include information of direct relevance to the current project, particularly as it relates to RQ 1.

To address RQs 2, 3 and 4, the ANU accessed information about initiatives that are currently or have previously been delivered by the courts in Queensland and elsewhere in Australia that may include a gender lens (eg, evaluation reports). The research team also contacted representatives across Australia from the Department of Justice or equivalent, legal aid services and women's legal centres (where applicable) in each jurisdiction, to identify any papers or reports relevant to the RQs that have not been publicly released. Where appropriate, the research team sought access to these resources for inclusion in the review.

Finally, the research team conducted a rapid evidence assessment (REA) of the existing literature, to identify any other court-based or initiated programs targeted at

women and girls operating in Australia and internationally or that have been proposed for implementation. Following preliminary discussions with the Department of Justice, the research team focused on the common law countries, whose court systems are most similar to Australia (United Kingdom (UK), Ireland, Canada, New Zealand). However, examples of good practice from countries outside of this remit (particularly, Brazil and Scandinavian countries) were also included.

The following criteria were used for the REA:

- published during the years 2019-2023 (inclusive);
- available in English; and
- included specific reference to women/girls/gender and courts.

The review included both peer-reviewed (eg, books, book chapters, journal articles) and grey literature (government reports). Scholarly dissertations and conference proceedings were also within scope.

The REA protocols, including the search terms, were developed, in consultation with the Department of Justice (see Appendix A).⁹

The research strategy involved both systematic and targeted searches of the literature. The systematic searches helped the research team to identify strategies and interventions that they may not have been aware of and facilitated the development of a general literature evidence base. The targeted searches focused on identifying the evidence base for specific initiatives (eg, specialist courts) that were identified through the systematic searches and through consultation with the advisory group.

The research team identified relevant literature as part of the REA and the targeted searches using the following strategies:

- manual searches of online academic catalogues (eg, Scopus, CINCH) and Google Scholar, using identified keywords;
- reviewing the reference lists of identified articles/papers/reports;
- manual searches of Australian and international government (eg, the Australian Institute of Criminology and the Australian Law Reform Commission (ALRC) and non-government (eg, the United Nations Office for Drugs and Crime) websites; and
- manual searches of online research repositories (eg, the Campbell Collaboration).

⁹ The initial systematic searches identified 2,809 papers, of which 613 were duplicates. The titles and abstracts were reviewed for 2,196 papers, of which 109 were deemed relevant to the current review.

2.2 Key areas of focus underpinning literature review

The guiding principles for the review were that it should:

- incorporate holistic trauma-informed and strength-based practices and therapeutic jurisprudence;
- focus on the courts context and research within the last five years, unless it involved seminal research;
- recognise the intersectional issues that women and girls appearing before the courts typically face; and
- consider the specific needs of and issues and impacts for diverse girls and women.

We are mindful of the close overlap between women's experiences as defendants/offenders and complainants/victims. In this context, we note the submission by Queensland advocacy group Sisters Inside to the Taskforce's Discussion Paper 2, which critiqued the Taskforce for '[t]reating criminalised women and girls with lived experience of violence primarily as accused or offenders (and only secondly as victims/survivors)'.¹⁰ Sisters Inside 'understands the need to separately address women's experiences of the criminal legal system in response to their experience of violence and when an accused person', but suggested that their 'experience of the criminal legal system – as both victim/survivor and accused/convicted – is profoundly impacted by criminalisation'.¹¹ Russell, Carlton and Tyson likewise observed that 'criminalised women do not fit neatly into the "innocent victim" category that the criminal legal system projects and expects of women who have been abused'.¹² The focus of this review is principally on women as accused (see Rec 120 above). Wherever possible, however, we seek holistic responses that do not create a false dichotomy between women's experiences as accused/offenders and victims/survivors.

Due to the high incidence of Aboriginal and Torres Strait Islander women and girls in the justice system, specific consideration of the unique history, culture, roles and experiences of Indigenous women and girls and contemporary insight from Indigenous researchers into cultural approaches that support Indigenous women and girls are important inclusions. Innovative approaches to court proceedings, interdisciplinary and interagency collaborations, and responses co-designed with Indigenous people are of particular interest. It is acknowledged, however, that many of these will require a whole-of-government response.

¹⁰ Sisters Inside (2021). *Women and girls' experience of the criminal 'justice' system - Response to Discussion Paper 2, Women's Safety and Justice Taskforce, Queensland*, 1.

¹¹ Ibid, 4.

¹² See eg Russell E, Carlton B and Tyson D (2022). 'It's a gendered issue, 100 per cent': How tough bail laws entrench gender and racial inequality and social disadvantage. *International Journal for Crime, Justice and Social Democracy*, 11: 107-121, 118.

Where possible, the research team included details of relevant programs' purpose, program logic, values, service type (eg, case management), features (eg, eligibility, intensity, duration, frequency), location, accessibility, interconnectedness, what counts as success, limitations and weaknesses. We also considered the foundations necessary for delivering good practice, such as leadership, governance, culture, environment, resourcing including staff capability, training, research (where there continue to be gaps in evidence), stakeholder engagement, policies and strategies, information and communication, risk management, performance monitoring and reporting.

In addition, we have included a number of case studies, to illustrate the issues explored in this review and some practical responses that courts can adopt, to address them. These are generally based on anonymised real situations, although some details have been changed and/or aggregated. The case studies highlight the intersectional nature of the issues discussed.

2.2.1 Limitations

We note the United Nations Office on Drugs and Crime *Toolkit on gender-responsive non-custodial measures* statement that:

for minor charges where the woman in contact with the law does not pose a serious or dangerous threat to safety and society, alternatives to prosecution such as case dismissal, depenalization/decriminalization, gender-responsive diversion and treatment programmes, restorative justice and other related alternatives should be considered by police and prosecutors, while keeping in mind upholding respect for the law and the rights of victims.¹³

We also recognise that a number of issues both inside and outside of the criminal justice system impact on the courts' operation including, but not limited to:

- criminal justice issues, such as:
 - policing and prosecution practices, especially in relation to low-level offending and responses to DFV;
 - the availability of legal services, including for Aboriginal and Torres Strait Islander people and in rural, regional and remote (RRR) areas;
 - legislative reform, especially in relation to raising the age of criminal responsibility, decriminalising drug use, bail and sentencing; and
 - the availability, use and effectiveness of programs in prison and post-release support; and
- community-based responses to a broad range of social issues, including:

¹³ United Nations Office on Drugs and Crime (2020). *Toolkit on gender-responsive non-custodial measures*.

- healthcare, including support for alcohol and other drugs (AOD), gambling and mental health;
- housing;
- education;
- employment;
- transport, especially in RRR areas;
- family responsibilities; and
- community attitudes and responses to DFV.

These issues will inevitably impact on the courts' work, workload, efficiency and effectiveness. Given the focus on the courts context, detailed consideration of these issues was considered beyond the scope of the project.¹⁴ Accordingly, to limit the review to what is meaningfully within the courts' remit, the review focuses principally on areas within the courts' locus of control, such as court programs, design, processes and education for those who work in the courts. We recognise that there are a number of aspects of the courts' operation that are affected by issues such as health, policing, prosecution and other legal practices and resources. Where possible, examples of good practice are discussed, but are not the key focus of this review. Broader system-wide approaches,¹⁵ such as justice reinvestment¹⁶ and legislative reform,¹⁷ are considered outside the scope of the review.¹⁸

Given the focus on the criminal justice system, we have also not undertaken a detailed review of issues and responses in the context of the courts' civil jurisdiction,

¹⁴ For a comprehensive analysis of these issues, see the Law Council of Australia, *Justice Project*, which provides 'a comprehensive, national review into the state of access to justice in Australia...focus[ing] on justice barriers facing those with significant social and economic disadvantage, as well as identifying what is working to reduce those barriers': Law Council of Australia (2018). *The Justice Project* <https://lawcouncil.au/justice-project/about-the-project>. The final report, released in 2018, included separate chapters on people with disability; people who are homeless; people experiencing economic disadvantage; LGBTI+ people; prisoners and detainees; Aboriginal people; people who experience family violence; people who have been trafficked and exploited; recent arrivals to Australia; asylum seekers; children and young people; older people; and rural, regional and remote (RRR) Australians, as well as chapters on sector responses, including legal services; courts and tribunals; critical support services; broader justice system players; and governments and policy-makers. Although the project did not include a separate chapter on women or girls, the Law Council instead 'specifically endeavoured to increase the focus on women across the entirety of the Project': LCA (2018). *Introduction and overview*, 14.

¹⁵ For a recent discussion, see eg Committee for Economic Development of Australia (eds) (2022). *Double jeopardy: The economic and social costs of keeping women behind bars*; Russell E, Zhou H, Franich G (2022). *Gendered injustice: The policing and criminalisation of victim-survivors of domestic and family violence*. Fitzroy Legal Service.

¹⁶ Australian Government (nd). *Justice reinvestment* <https://www.ag.gov.au/legal-system/justice-reinvestment>.

¹⁷ See eg Smart Justice for Women (2021). *Submission to the inquiry into Victoria's criminal justice system - Reducing the criminalisation of women in Victoria*.

¹⁸ For an overview of broader strategies to reduce Indigenous over-representation in the justice system, see eg Australian Law Reform Commission (ALRC) (2017). *Pathways to justice - Inquiry into the incarceration rate of Aboriginal people*; Knudsen A and Roth L (2023). *Reducing incarceration of Aboriginal people: Challenges and choices*. Parliament of New South Wales (NSW). See also the

such as tenancy; employment; protection orders, other than in relation to breaches of DFV orders; child protection system; or family law.¹⁹ We recognise, however, that these issues may be concurrent concerns in the lives of many of the women appearing in the criminal courts and reiterate the need for a holistic approach that responds to women's complex, intersecting and individualised needs.

¹⁹ Many matters in the Federal Circuit and Family Court of Australia (FCFCA) involve domestic and family violence (DFV). This is outside the scope of the present review but see eg FCFCA (nd). *Family violence* <https://www.fccoa.gov.au/fl/fv/orders>; FCFCA (nd). *Lighthouse* <https://www.fccoa.gov.au/fl/fv/lighthouse>. For discussion of the issues that arise at the intersection between state/territory and federal law, see Easteal P et al (2022). A jurisdictional collision? Responses to family violence and family law in the ACT. *Alternative Law Journal*, 47: 23-29.

Case study: Mary

Mary is 13 years old. She was placed in out-of-home care at the age of three, when her father went to prison and her mother was unable to care for her, due to substance use and mental health issues. Since then, she has lived in over 15 foster homes and residential care facilities. She has had little stable support in her life and been expelled from several schools. She uses alcohol and drugs, to help manage her emotions. She has been diagnosed with autism, attention deficit hyperactivity disorder (ADHD) and dyslexia and has a long record of minor offences. After an upsetting visit with her father, whom she had not seen in many years, she threw a plate at a care worker in the residential care facility where she lives, damaging her vision. She has now been charged with assault occasioning actual bodily harm. She lives in a rural area, with no suitable placement options available, and has previously breached court orders, so she has been placed on remand again. Before her matter was next listed in court, she started self-harming and was placed in segregation. Her lawyer has managed to get in touch with Mary's aunt, who lives far away from Mary's negative peer influences. She is willing to have Mary live with her, if she deals with her substance use and starts attending school regularly. The transition support worker at the youth detention centre has visited Mary's aunt and spoken with the learning support team at the local school about how they could help her get settled in. She has also found a local community centre that runs weekly AOD sessions for young people. The court disability liaison officer has also been in contact with the National Disability Insurance Agency, to see if Mary is eligible for further support. Mary says she is ready to turn over a new leaf and would like to apologise to the care worker.

3. The needs of girls and women involved with the justice system

Key points

- Pathways to offending for women and girls are significantly characterised by histories of domestic and family violence (DFV), trauma, homelessness, illicit drug use, unemployment and/or mental illness [3.1].
- Pathways to offending differ for women and girls compared to men and boys. While the ‘school-to-prison pipeline’ is often used as a short-hand description of boys’ pathways to incarceration, a ‘sexual abuse-to-prison pipeline’ is a more apt description of the trajectories for girls and young women.
- These issues are compounded for Aboriginal and Torres Strait Islander people, who experience the ongoing impacts of colonisation, dispossession, racism and discrimination, with subsequent collective and cumulative trauma, grief and despair [3.1.1].
- Gender differences in pathways to offending may contribute to the misclassification of women and girls as high-risk within risk assessment instruments and frameworks that have typically been developed using data collected about men and boys [3.2].
- Girls and women appearing before the courts (and involved in the justice system more broadly) not only have gender-specific needs, but also experience a range of other intersecting issues and needs. Relevant considerations include health status, carer responsibilities, housing stability, substance use, literacy and communication issues, and sexual and gender identity [3.3].

This chapter contextualises the gender-specific responses that will be discussed in later chapters, by summarising the research on female pathways to offending and risk assessment, before shining a spotlight on the key focus areas for the review.

3.1 Pathways to offending

Research has shown that, despite general similarities in risk factors for offending for male and female youth and adults, there are differences in females’ trajectories, due to their unique experiences. While the literature identifies common core risk factors for women and girls, it is not useful to understand them as homogeneous groups.²⁰ However, by understanding characteristics that are common within different groups

²⁰ See eg Hilderley et al, n 5.

of women, we can more effectively address how courts can better accommodate their needs.

Pathways to offending among women and girls are significantly characterised by histories of domestic violence, trauma, homelessness, illicit drug use, unemployment, mental illness or a combination of these factors.²¹ Data from the United States (US) shows that the prevalence of complex trauma (five or more adverse childhood experiences)²² among girls involved in the juvenile justice system is nearly twice as high (45%) as for boys (24%); while the 'school-to-prison pipeline' is often used as a short-hand description of boys' pathways to incarceration, a 'sexual abuse-to-prison pipeline' is a more apt description of the trajectories of girls and young women.²³ In Australia, a 40-year study of women and girls found that those who had experienced abuse and neglect in childhood were far more likely than a control group to have been arrested as juveniles (20% vs 10.8%), with this pattern consistently seen over the decades; by an average age of 51, 34.5% of those with a history of childhood abuse and neglect had been arrested as an adult, compared with 21.9% of those without such histories.²⁴ The pathway from childhood victimisation to offending has been found to be indirect – victimisation predicts poor mental health, which in turn predicts offending²⁵ – but the high prevalence of child maltreatment in Australia suggests that there is significant need for addressing trauma as a way to prevent offending and re-offending.²⁶

This research has led to the identification of several key pathways to offending for women:²⁷

- *child abuse pathway*: child abuse leads to depression and anxiety, which lead to substance use and offending;

²¹ See eg RMIT Centre for Innovative Justice (CIJ) (2021). *Leaving custody behind: A fact sheet on drivers and alternatives to women's incarceration*; Caruana C et al (2021). *Leaving custody behind: Foundations for safer communities and gender-informed criminal justice systems - Issues paper*. RMIT CIJ; Hilderley et al, *ibid*.

²² For recent research on adverse childhood experiences and the Australian youth justice system, see Malvosio C et al (2022). *Adverse childhood experiences and trauma among young people in the youth justice system*. Australian Institute of Criminology.

²³ Saada Saar M et al (2015). *The sexual abuse to prison pipeline: The girls' story*. Georgetown University Law Center.

²⁴ Widom C and Osborn M (2021). The cycle of violence: Abused and neglected girls to adult female offenders. *Feminist Criminology*, 16: 266-285.

²⁵ Lynch S et al (2013). *Women's pathways to jail: Examining mental health, trauma, and substance use*. Bureau of Justice Assistance.

²⁶ Haslam D et al (2023). *The prevalence and impact of child maltreatment in Australia: Findings from the Australian Child Maltreatment Study*. Queensland University of Technology.

²⁷ Van Voorhis P (2013). *Women's risk factors and new treatments/interventions for addressing them: Evidence-based interventions in the United States and Canada*. Participants' papers of the 153rd International Senior Seminar, United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders, Tokyo, Japan.

- *relational pathway*: unhealthy intimate relationships are characterised by limited personal power, low self-efficacy and abuse, leading to depression and substance use, which lead to offending; and
- *social and human capital pathway*: some women's paths begin with limited support from families, unhealthy intimate relationships and limited educational accomplishments. Poverty is a key factor in this pathway.

3.1.1 Specific issues in relation to Indigenous people

The foregoing issues are compounded for Aboriginal and Torres Strait Islander people, who experience the ongoing impacts of colonisation, dispossession, racism and discrimination, subsequent collective and cumulative trauma, grief and despair, which can be seen in most communities surviving deep colonisation processes.²⁸ The current system perpetuates histories of colonialism and victimisation as it is a transplanted, highly outdated, oppressive model designed for White men by White men, which means that Aboriginal and Torres Strait Islander women are existing in a system which fundamentally does not provide for their needs.²⁹

Aboriginal and Torres Strait Islander women in prison are disproportionately more likely than their non-Indigenous counterparts to:

- be mothers and primary caregivers of children;
- be living in unstable housing or homeless;
- be unemployed;
- have experienced family violence and sexual abuse;
- have mental illness or cognitive disability;
- have substance use issues;
- have entered into the child protection system as children;
- have earlier and more frequent criminal justice contact – including police contact and incarceration; and
- have lower levels of educational attainment.³⁰

These circumstances of extreme disadvantage undoubtedly contribute to the over-representation of Aboriginal and Torres Strait Islander women in the criminal justice system. The criminal justice system thereby perpetuates this cycle of oppression and disadvantage by punishing women for their colonial realities.³¹

²⁸ Beatrice M (2021). A problem-solving approach to criminalised women in the Australian context. *Alternative Law Journal*, 46: 41-46. See also ALRC, n 18.

²⁹ ALRC, *ibid*, 359, citing Blagg H et al, Submission 121.

³⁰ ALRC (2017). *Incarceration rates of Aboriginal and Torres Strait Islander peoples*. Discussion Paper, 84.

³¹ ALRC, n 18, 350.

Research with Indigenous communities in Queensland and the Northern Territory has identified a number of common social drivers of offending. Community members consistently identified the following as key drivers:³²

- a lack of a sense of belonging and connection: people feeling lost or not feeling good inside or lacking a sense of belonging and connection;
- family issues: disengagement from family, entrenched social disadvantage (poverty and unemployment), family breakdown (including parental incarceration), young parents not having parenting skills, and poor maternal health;
- educational challenges: disengagement from school, evidenced by an over-reliance on suspension and expulsion. Difficulties are often seen in transitioning to high school;
- unemployment: particularly when it leads to a diminished sense of direction, motivation and confidence. Barriers to employment include poor educational outcomes, lack of transport and a dearth of local jobs;
- health issues: misuse of drugs and alcohol, mental health and wellbeing issues, and disability, including cognitive impairment. These issues are often underpinned by ongoing grief and trauma related to victimisation and colonisation; and
- Indigenous disempowerment: as a result of colonisation, this manifests as the undermining of Indigenous culture, including traditional community and family structures, and loss of identity.

More recently, research by the Australian Human Rights Commission, led by Aboriginal and Torres Strait Islander Social Justice Commissioner June Oscar AO,³³ indicated that the key drivers of Indigenous women's imprisonment are:

- **Poverty, inequality and intergenerational trauma:** Intergenerational traumas and inequalities were reported to be the main drivers of contact with the criminal justice system for Aboriginal and Torres Strait Islander women and girls. The justice system then 'causes additional trauma and further entrenches inequalities', leaving women and girls even more disadvantaged than they had been before.³⁴
- **Domestic, family and sexual violence:** Family violence was said to be a significant precursor to a range of conditions that increase vulnerability to criminalisation and imprisonment, with violence and abuse leading – either directly or indirectly – to offending. High rates of sexual and physical violence, when left unaddressed, can drive offending behaviours, sometimes including

³² Allison F (2016). *Justice reinvestment in Katherine: Report on initial community consultations*; Allison F (2018). *Justice reinvestment in Cherbourg: Report on initial community consultations*.

³³ Australian Human Rights Commission (AHRC) (2020). *Wiyi Yani U Thangani (Women's voices): Securing our rights, securing our future - Report*.

³⁴ Ibid, 167.

the use of violence in acts of self-defence or retaliation, or substance use to 'numb the pain'.³⁵

- **Mental health and cognitive impairment:** High levels of mental health disorder, cognitive impairment, and undiagnosed fetal alcohol spectrum disorder – combined with an inadequate systemic response to addressing complex need – mean that 'the criminal justice system has often become the only intervention provided' to many Aboriginal and Torres Strait islander women and girls.³⁶

3.1.1.1 Trauma

The majority of Aboriginal and Torres Strait Islander people who offend have experienced some significant trauma, which is gaining widespread recognition as a pressing Indigenous health issue. Professor Pat Dudgeon, a Bardi woman from the Kimberley region, described this complex and developmental trauma as:

- related to historical events with intergenerational and transgenerational impacts;
- resulting from repeated exposure to life stressors;
- resulting from specific, intense life experiences; and
- arising from adverse childhood experiences including complex and developmental trauma including but not limited to physical and sexual abuse, neglect and exposure to family violence.³⁷

Developmental trauma in children can result in impaired emotional, cognitive and social functioning, which can lead to the child coming to the attention of child protection, mental health services and police at the same time. Each agency may attempt to treat these children without coordination and with different priorities.³⁸ The Royal Commission into the Protection and Detention of Children in the Northern Territory³⁹ has also recognised the cyclical and intergenerational nature of disadvantage and trauma on Indigenous people. The significance of this intergenerational-trauma and deep-rooted distrust of authority cannot be overstated; care must be taken to address these factors when creating culturally appropriate programs for Aboriginal and Torres Strait Islander women in the courts. In saying this, their strength and resilience cannot be overlooked, in the development and delivery of programs to address their needs.

³⁵ Ibid, 170.

³⁶ Ibid, 172.

³⁷ Dudgeon P (2017). Trauma in the Aboriginal and Torres Strait Islander population. *Australian Clinical Psychologist*, 3: 19-30, 23.

³⁸ Ibid.

³⁹ Royal Commission into the Protection and Detention of Children in the Northern Territory (2017). *Final report*.

3.1.1.2 Distrust of authority

The Australian Law Reform Commission (ALRC) *Pathways to Justice—An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* report⁴⁰ (*Pathways to Justice* report) identifies a number of factors which contribute to the underlying deep mistrust of police by Aboriginal and Torres Strait Islander women, including:

- over-policing and under-policing of Indigenous communities;
- the role of police in implementing former oppressive government policy, including child removal;
- histories of conflict between Aboriginal and Torres Strait Islander peoples and the police; and
- the role of police in Aboriginal and Torres Strait Islander deaths in custody.

Histories of violence perpetrated by police or the state on Indigenous peoples adds a layer of complex trauma, when interacting with the criminal justice system such that Aboriginal and Torres Strait Islander populations are hypervigilant of authorities.⁴¹ This fear and mistrust of mainstream legal, medical, community and other support services can lead to disengagement with services which can be a barrier to healing.⁴²

3.1.1.3 Homelessness and overcrowding

Homelessness, overcrowding and inadequate housing is a seminal issue contributing to the over incarceration of Indigenous people and also serves as a pathway to offending behaviour. This issue is often elevated on release from prison which adds to the likelihood of reoffending and can in turn, put children at a high risk of entering the child protection system.⁴³ Of the prison population, Aboriginal and Torres Strait Islander women are the least likely demographic to find appropriate accommodation upon release from prison and this risk is heightened for women with dependent children.⁴⁴ Between 2001-2003, a study found that, of Indigenous women in prison in NSW and Victoria, none of the women was able to find stable family accommodation, half were still homeless at nine months after release and over two-thirds (68%) returned to prison within nine months.⁴⁵ While this study is somewhat dated, the statistics are so damning that they warrant inclusion. While not the focus

⁴⁰ ALRC, n 18.

⁴¹ Longbottom M and Porter A (2021). *Submission to the Women's Safety and Justice Taskforce: Discussion paper 1 – Options for legislating against coercive control and the creation of a standalone domestic violence offence.*

⁴² Dudgeon, n 37.

⁴³ ALRC, n 18, 356.

⁴⁴ Ibid.

⁴⁵ Baldry E et al (2006). Ex-prisoners, homelessness and the state in Australia. *Australian & New Zealand Journal of Criminology*, 38: 20-33.

of this study, access to adequate housing is an Australian crisis and courts must be alive to this reality when conducting court business.

The issues associated with homelessness are particularly significant for women and girls seeking bail and/or non-custodial sentences. This is discussed further below.

3.1.1.4 Minor fines and short sentences of imprisonment

The *Pathways to Justice* report indicates that Aboriginal and Torres Strait Islander incarceration has been characterised by:

- low-level offending, including justice procedure offences and failure to pay fines;
- prior incarceration; and
- short terms of imprisonment.⁴⁶

Repeated disruption caused by the above factors exacerbates existing disadvantage as listed below and creates major barriers for women in the justice system to reintegrate into the community.⁴⁷

3.2 Risk assessment

Gender differences in pathways to offending may mean that women and girls are misclassified in current risk-assessment instruments. There is some evidence that the use of gender-neutral risk assessment results in their over-classification in the high-risk category. For example, it has been suggested that the Risk-Need-Responsivity model that currently dominates the Australian justice landscape, which gives priority to the assessment and treatment of criminal thinking, antisocial associates and impulsive personality traits, pays insufficient attention to women's different pathways to crime and underestimates the importance of mental health, poverty, trauma, and dysfunctional relationship patterns.⁴⁸

Risk assessment tools must reflect women's and girls' unique needs and vulnerabilities. Women in the criminal justice system are more likely than men to be imprisoned for less serious offences and for shorter periods of time, and have higher rates of health issues and homelessness.⁴⁹ They are also more likely to experience economic hardship, lower educational attainment, underemployment, employment

⁴⁶ ALRC, n 18, 349.

⁴⁷ Victorian Equal Opportunity and Human Rights Commission (2013). *Unfinished business: Koori women and the justice system*, 88.

⁴⁸ Van Voorhis P et al (2010). Women's risk factors and their contributions to existing risk/needs assessment: The current status of a gender-responsive supplement. *Criminal Justice and Behavior*, 37: 261-288.

⁴⁹ Caruana et al, n 21.

instability and have fewer vocational skills.⁵⁰ These factors are particularly problematic when considering that women are more likely to have child-rearing responsibilities, particularly as single mothers. Compared with men, it is more difficult for justice-involved women to obtain and maintain legitimate and well-paying employment that will meet their family's needs, both before and following incarceration. There is evidence that programming designed to enhance women's educational and vocational skills is particularly effective in reducing their risk of recidivism.⁵¹

Women are more likely than men to report needs associated with accommodation, employment and finance, and poor educational attainment, and are far more likely to report relationship difficulties than men (59% vs 35%). This higher prevalence of poor relationships has implications for efforts toward rehabilitation: stable relationships are important in reducing reoffending, with good family ties being positively linked to successful justice system outcomes.⁵²

Tests of gender-specific risk assessment models for women have found promising results for the predictive value of measures of parental stress, family support, self-efficacy, educational assets, housing safety, anger/hostility, and current mental health factors.⁵³ While gender-neutral risk factors remain predictive for women who offend, adding gender-responsive factors appears to create more powerful prediction models. This suggests different treatment priorities for men and women. While typical priorities for men include their attitudes or associates, treatment priorities for women – factors most closely predictive of reoffending – are substance use, economic difficulties, educational deficits, parental stress and mental health problems.⁵⁴

Gender differences have also been found for male and female youth, with girls scoring significantly higher than boys on risk factors such as a history of self-harm, exposure to violence in the home, early caregiver disruption and poor parental management. As girls' offending pathways 'often originate from abusive, chaotic, lawless homes and relationships' and associated trauma, it has been suggested that:

multifaceted gender responsive treatment programs focusing on connectivity and emotional guidance, empowerment, repairing relationships, and specific services providing support for trauma, abuse,

⁵⁰ Ney B, Ramirez R and Van Diemen M (2012). *Ten truths that matter when working with justice involved women*. National Resource Center on Justice Involved Women.

⁵¹ Ibid.

⁵² Social Exclusion Task Force (2009). *Short study on women offenders*. Ministry of Justice (UK).

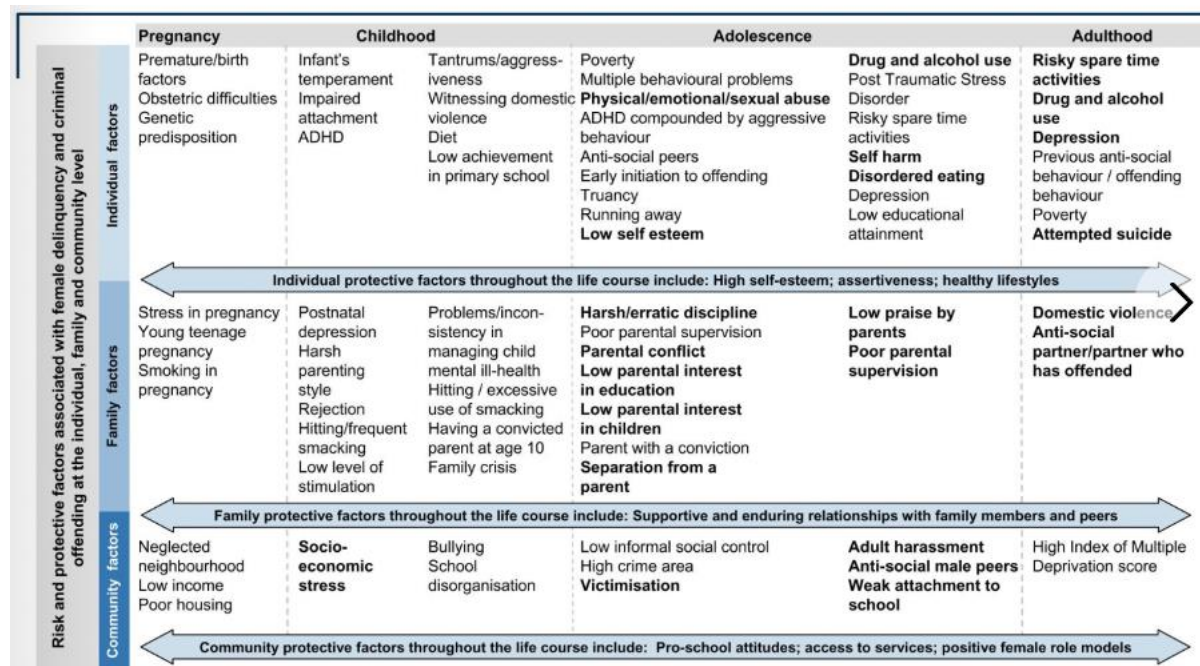
⁵³ Fedock G and Covington S (2022). Strength-based approaches to the treatment of incarcerated women and girls. In C Langton and J Worling (eds). *Facilitating desistance from aggression and crime: Theory, research, and strength-based practices*. John Wiley & Sons Ltd. See also McNeill F et al (2012). *How and why people stop offending: Discovering desistance*. Iriss.

⁵⁴ Van Voorhis et al, n 48.

child care, employment opportunities, and drug dependency could provide unique holistic support in addressing key needs.⁵⁵

The following diagram (Figure 3.1) summarises the many risk and protective factors that have been found to be associated with offending, with those particularly important for women and girls highlighted in bold.⁵⁶

Figure 3.1: Risk and protective factors associated with offending



3.2.1 Specific issues in relation to Indigenous people

There is currently no risk assessment tool designed specifically for Indigenous people. Canadian meta-analyses have shown that general risk tools do predict recidivism for Indigenous people, but their predictive accuracy is lower than for non-Indigenous people who offend.⁵⁷ The unique current and historical circumstances of Indigenous peoples are not taken into account in contemporary risk assessment tools. For example, broader understandings of family in Indigenous communities may not be incorporated, when assessing risk factors in the family/marital domain, such that the meaning of these indicators may be different. Similarly, whereas substance use may reflect self-regulation problems for non-Indigenous people who

⁵⁵ Shepherd S, Luebbers S and Dolan M (2013). Identifying gender differences in an Australian youth offender population. *SAGE Open*, April-June:1-12, 6-7.

⁵⁶ Social Exclusion Task Force, n 52, 27.

⁵⁷ Gutierrez L, Helmus L and Hanson R (2017). *What we do and don't know about risk assessment with offenders of Indigenous heritage*. Public Safety Canada.

offend, it may reflect self-medication to cope with trauma or other adverse conditions among Indigenous people.⁵⁸

There may also be risk factors unique to Indigenous people who offend that are not adequately captured in current risk scales. In Australia, it has been suggested that social and cultural contextual factors should be included in assessing risk for Aboriginal and Torres Strait Islander people who offend: exposure to intergenerational trauma, social disorganisation, the effects of foetal alcohol syndrome, a confused sense of cultural identity, unprocessed anger due to experiences of racism, inequality and disadvantage, and lack of social support. Conversely, connection with culture and community are protective factors for Aboriginal people, promoting social and emotional wellbeing, resilience and coping.⁵⁹

For some time, the paucity of data in relation to female Aboriginal and Torres Strait Islanders who offend meant that they were almost invisible in the criminal justice system.⁶⁰ Data collection in relation to Aboriginal and Torres Strait Islander women has become more accurate; however, there is still a tendency for data analysis 'to focus on Aboriginal people or gender as a group, yet rarely the intersection of the two'.⁶¹ The conflation of Indigenous girls and women with other needs groups, alongside the lack of uniformity between jurisdictions, means that collected data might not be comparable and manifests in the lack of evidence-based solutions for Aboriginal and Torres Strait Islander girls and women in the criminal justice system.⁶²

Considering the extensive research which has been conducted in relation to Aboriginal and Torres Strait Islander peoples by government and non-government agencies, the discussion in this review in relation to Aboriginal and Torres Strait Islander women and girls should be read in the context of broader initiatives. The Close the Gap targets are particularly important for courts to consider. There are 17 targets, as follows:

1. Everyone enjoys long and healthy lives.
2. Children are born healthy and strong.
3. Children are engaged in high quality, culturally appropriate early childhood education in their early years.

⁵⁸ Wilson H and Gutierrez L (2014). Does one size fit all? A meta-analysis examining the predictive ability of the level of service inventory (LSI) with Aboriginal offenders. *Criminal Justice and Behavior*, 41: 196-219.

⁵⁹ Day A et al (2018). Assessing violence risk with Aboriginal offenders: Considerations for forensic practice. *Psychiatry, Psychology and Law*, 25: 452-464.

⁶⁰ ALRC, n 18, 350; Aboriginal & Torres Strait Islander Social Justice Commissioner (2005). *Social justice report 2004*, 135.

⁶¹ ALRC, *ibid*, citing Legal Aid WA submission.

⁶² Senate Standing Committees on Finance and Public Administration, Parliament of Australia (2016). *Aboriginal and Torres Strait Islander experience of law enforcement and justice services*, 46-50; Human Rights Law Centre and Change the Record Coalition (2017). *Over-represented and overlooked: The crisis of Aboriginal women's growing over-imprisonment*, 21.

4. Children thrive in their early years.
5. Students achieve their full learning potential.
6. Students reach their full potential through further education pathways.
7. Youth are engaged in employment or education.
8. Strong economic participation and development of people and their communities.
9. People can secure appropriate, affordable housing that is aligned with their priorities and need.
10. Adults are not overrepresented in the criminal justice system.
11. Young people are not overrepresented in the criminal justice system.
12. Children are not overrepresented in the child protection system.
13. Families and households are safe.
14. People enjoy high levels of social and emotional wellbeing.
15. People maintain a distinctive cultural, spiritual, physical and economic relationship with their land and waters.
16. Cultures and languages are strong, supported and flourishing.
17. People have access to information and services enabling participation in informed decision-making regarding their own lives.⁶³

Targets 10 and 11 are of direct relevance to the criminal justice system, but other targets are also key drivers of justice involvement (eg, education, employment, housing, and child protection).

3.3 Special needs and populations

It is well established that girls and women appearing before the courts (and involved in the justice system more broadly) not only have gender-specific needs, but also experience a range of other complex – often intersecting – issues and needs. As the Taskforce acknowledged:

Women coming before courts as accused persons and offenders are likely to have specific needs in relation to domestic and family violence, child caring arrangements, child protection issues, trauma history, economic security and housing. The Taskforce has consistently heard that women should be connected to suitable (in many cases gender-specific) supports at the court stage to better meet their needs, support them in the community and reduce their likelihood of receiving a prison sentence and/or reoffending.⁶⁴

⁶³ See Closing the Gap (nd). *Closing the gap targets and outcomes*. <https://www.closingthegap.gov.au/national-agreement/targets>; Productivity Commission (nd). *Closing the gap review* <https://www.pc.gov.au/inquiries/completed/closing-the-gap-review/report>.

⁶⁴ Women's Safety and Justice Taskforce (2022). *Hear her voice - Women and girls' experiences across the criminal justice system: Report 2, Volume 2*, 539.

This section shines a spotlight on some of the key issues that women and girls appearing before the courts experience. However, these issues must be considered holistically and intersectionally, rather than in isolation.

3.3.1 Victims/survivors of domestic and family violence (DFV) and sexual violence

As set out above, the Taskforce made a number of recommendations to improve the experiences of sexual assault complainants before the courts. Although data on the gender of such complainants are difficult to obtain, it is generally acknowledged that girls and women are more likely to experience such violence. Notably, data from the Australian Bureau of Statistics indicate that 22% of women in Australia have experienced sexual violence by the age of 15, compared with 6% of men.⁶⁵ The recommendations of the Taskforce that relate to victim-survivors of sexual assault are therefore likely to be particularly applicable to girls and women.

The relationship between women's experiences as victims and offenders is discussed elsewhere in this report. The focus of this review is on women who are accused/defendants/offenders, so the extensive literature on the treatment in court of girls and women who are complainants/victims/survivors of DFV and/or sexual violence will not be explored in detail, but some recent developments are noted. The nexus between DFV and sexual violence also needs to be recognised, with evidence before the Victorian Law Reform Commission indicating that upwards of 70% of adult female clients experience sexual violence within the DFV context.⁶⁶ Specialist courts to deal with DFV and sexual violence are discussed further below.

3.3.1.1 DFV

The Journey Mapping Workshop Report prepared for the Domestic Violence Justice Reform Network in the Northern Territory⁶⁷ used insights from interviews with victim-survivors of domestic abuse to reflect on changes that need to be made to the justice system, to better meet their needs. The experiences of victim-survivors were presented along a 'journey map', showing their contact with various parts of the justice system. Possible solutions identified by workshop participants contained common themes of better and more trauma-informed DFV awareness training for judicial officers, court staff, police and lawyers, creating a safer court space for victims (including initiatives, such as having a separate entrance for them) and the need for more expeditious handling of matters, to reduce the court caseload and wait times (including ensuring victims/survivors are informed at all times about the status

⁶⁵ Australian Bureau of Statistics (2023). *Personal safety, Australia, 2021-22*.

⁶⁶ Victorian Law Reform Commission (2021). *Improving the justice system responses to sexual offences*.

⁶⁷ Richmond A for the Domestic Violence Justice Reform Network (2019). *Journey mapping workshop report - Exploring the voices and experiences of victim/survivors of domestic and family violence in the NT justice system*.

of their matter).⁶⁸ Participants expressed a desire for a 'one stop shop' that allows multiple agencies to provide collaborative human-centered linked-up support, information and updates to victims, although this also requires building community confidence in the legal process.⁶⁹ It was identified that engagement needs to be tailored, respectful, use cultural expertise and be in appropriate languages.

Judicial education on DFV is discussed further in Chapter 8 and specialist DFV courts are discussed in Chapter 5. There is also a range of options that can be implemented within the existing court framework, to better respond to DFV victims' needs. In particular, it is important that judicial officers are aware of both the potential for the legal process to be a form of systems abuse by the perpetrator⁷⁰ and the research on the effectiveness of various court processes and outcomes that improve safety for victims. For example, research by the NSW Bureau of Crime Statistics and Research (BOCSAR) indicates that:

- the use of pre-recorded evidence in relation to DFV assault charges that proceed to a defended hearing (one in four cases) raises the probability of a conviction by 25%;⁷¹
- setting the duration of an apprehended DFV order at 24 months, rather than 12 months, significantly enhances victim safety;⁷²
- short prison sentences for DFV offences are no more effective than suspended sentences in deterring future DFV;⁷³ and
- the use of electronic monitoring is effective both in reducing both future DFV offending and imprisonment.⁷⁴

Although not within the courts' control, there is also a range of legal and other support services that can better support DFV victims. For example, the Health Justice Partnership in the Australian Capital Territory (ACT) is a partnership between the Women's Legal Centre, Calvary Public Hospital and child and family centres for to deliver legal support to women affected by DFV. The service is based at the

⁶⁸ Ibid, 9.

⁶⁹ Ibid, 36.

⁷⁰ See eg Douglas H (2018). Legal systems abuse and coercive control. *Criminology & Criminal Justice*, 18: 84-99; Reeves E et al (2023). Incredible women: Legal systems abuse, coercive control, and the credibility of victim-survivors. *Violence Against Women*. <https://doi.org/10.1177/10778012231220370>.

⁷¹ Yeong S and Poynton S (2019). *Can pre-recorded evidence raise conviction rates in cases of domestic violence?* NSW Bureau of Crime Statistics and Research (BOCSAR).

⁷² Teperski A and Boiteux S (2023). *The long and short of it: The impact of apprehended domestic violence order duration on offending and breaches*. BOCSAR.

⁷³ Trevena J and Poynton S (2016). *Does a prison sentence affect future domestic violence reoffending?* BOCSAR.

⁷⁴ Boiteux S and Teperski A (2023). *An evaluation of the NSW Domestic Violence Electronic Monitoring program*. BOCSAR. See also Winter R et al (2021). *Evaluation of Project Vigilance: Electronic monitoring of family violence offenders – Final report*. University of Tasmania. For further recent research on sentencing and DFV, see Bartels L (2023). Sentencing review 2021-22. *Criminal Law Journal*, 47: 56-77.

partner sites (ie, hospital and child-care centres), to help women access legal advice in relation to DFV, care and protection and employment issues.⁷⁵ Part of the impetus for this initiative was that perpetrators of DFV who track their partner's movements would know if women were visiting a lawyer, but not be as suspicious of them at a hospital and/or childcare centre.

Spotlight on the misidentification of women as primary perpetrators of DFV

Many recent reviews and inquiries into women's experiences of the criminal justice system in Australia have raised concerns about the misidentification of female victim-survivors of DFV as primary perpetrators. The mechanisms through which a victim-survivor may be misidentified vary, but a common scenario involves women's use of self-defensive or retaliatory violence against their partner, who is actually the primary perpetrator of abuse. Recent research in NSW demonstrates the high prevalence of misidentification of women who use self-defensive violence as perpetrators. Boxall et al reviewed 150 cases of DFV reported to the police, where a female was listed as the person of interest (POI) and their male partner as the victim. They found that, in 48% of matters, the female's use of violence was immediately preceded by abusive or threatening actions from the male partner or that the female POI was previously involved in a domestic violence incident where they were identified as the victim and their male partner as the POI.⁷⁶

Much of the research examining the issue of misidentification has focused on police decision-making, with less attention being paid to the court process itself.⁷⁷ This omission is notable, considering the important role of the court, as a safety net for identifying and redressing cases of misidentification. There is increasing pressure on the police to lay charges in cases of intimate partner violence, but they are often operating in accordance with incident-focused and gender-neutral policy frameworks. This has meant that the police may lay charges or file for a protection order, with the view that the court will 'sort it out' later, if they have 'gotten it wrong'. However, the court environment is not conducive to redressing misidentification in all situations.

⁷⁵ Women's Legal Centre ACT (nd). *Health justice partnership* <https://wlc.org.au/get-help/our-services-and-programs/hjp/>.

⁷⁶ Boxall H, Dowling C and Morgan A (2020). *Female-perpetrated domestic violence: Prevalence of self-defensive and retaliatory violence*. Australian Institute of Criminology.

⁷⁷ See eg Nancarrow H et al (2020). *Accurately identifying the 'person most in need of protection' in domestic and family violence law*. Australian National Research Organisation for Women's Safety (ANROWS).

In a recent study of duty lawyers in Victoria,⁷⁸ many participants spoke about the impacts of resource constraints and court backlogs on limiting the amount of time that they and the magistrate had to interrogate protection order applications and to identify whether misidentification had occurred. These issues were compounded in situations where the respondent spoke a language other than English and was unable to provide advice to their lawyers and tell them about their experiences of abuse. Duty lawyers also reflected that these resource constraints had contributed to a 'culture of consent' in the courts, where they felt pressure to advise their clients to consent to the order, as a way of expediting matters. In turn, while magistrates are required to review applications, to ensure they are in the parties' best interests, this also occurs within a resource-constrained environment. As a result, there was a belief that the courts are over-reliant on police narratives and would 'rubber-stamp' applications, unless they were contested.⁷⁹

Contested hearings are often the best opportunity lawyers and victim-survivors have to provide evidence to the court that misidentification has occurred and remove the perpetrator label that has been applied to them.⁸⁰ However, duty lawyers reflected that, in some situations, contesting an order may not be in the best interests of their client and so they may advise against it. For example, contested hearings could take a very long time to be scheduled and, in the meantime, interim orders may be put in place, which meant that their clients were already being made to comply with conditions, including exclusion orders. There was also a perception that a contested hearing was having the effect of extending the court process, which could be experienced as traumatising by women, who may just want to consent to the order, so they could avoid court.⁸¹ On the other hand, it was recognised that consenting to an order could also have significant implications for women, which they may not fully comprehend. Again, because of the constraints on the amount of time they had with clients, duty lawyers reflected that they were often unable to fully communicate the implications of consenting to an order to their clients, including that they would be charged with an offence, if they breached. Other research involving interviews with women who have been listed as respondents on protection orders and have been manipulated into breaching the order by their partners indicates that these concerns of duty lawyers appear to be justified.⁸²

⁷⁸ Reeves E (2023). A culture of consent: Legal practitioners' experiences of representing women who have been misidentified as predominant aggressors on family violence intervention orders in Victoria, Australia. *Feminist Legal Studies*, 31: 369-390.

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² Reeves E (2021). 'I'm not at all protected and I think other women should know that, that they're not protected either': Victim-survivors' experiences of 'misidentification' in Victoria's family violence system. *International Journal for Crime, Justice and Social Democracy*, 10: 39-51.

3.3.1.1 Sexual violence

A recent report on specialist approaches to sexual assault proceedings published by the Australasian Institute of Judicial Administration (AIJA)⁸³ identified the following best practice measures:

- *specialist, trauma-informed training* for judicial officers, defence counsel and court staff;
- *providing information and communication*, including:
 - informing the victim-survivor of their rights, in a trauma-informed and timely manner;
 - appointing intermediaries and/or victim advocates, where relevant;
 - reviewing prosecutorial decision-making; and
 - enhanced stakeholder collaboration;
- *victim-survivor needs/safety*:
 - linking victim-survivors to appropriate support services, including culturally appropriate support; and
 - safe court facilities for victim-survivors and court support
- *reducing delays in finalising proceedings*:
 - prompt case scheduling;
 - effective case processing measures, active case management, ground rules hearings;
 - a case coordinator role, to actively manage cases and liaise with parties and judges;
 - for prosecutors: vertical case processing;
- *pre-trial*:
 - special hearings to pre-record cross-examination;
 - the option to use a pre-recorded police interview or recording at a special hearing for the complainant's evidence-in-chief;
- *during the trial*: greater consistency in, availability and use of, special measures currently available, such as:
 - remote evidence (closed-circuit television (CCTV)) facilities;
 - screens;
 - removing wigs and gowns;
 - closed courts;
 - jury directions; and
 - conduct rules designed to reduce the risk of inappropriate questioning; and
- *post-trial*: the availability and use of victim impact statements and alternative sentencing models (eg, civil and restorative justice) and follow-up by prosecutors.

⁸³ George A-J et al (2023). *Specialist approaches to managing sexual assault proceedings: An integrative review*. Australasian Institute of Judicial Administration (AIJA).

A number of these best practice measures align with recommendations by the Taskforce (see [1.1] above).

The *Sexual assault trials handbook* in NSW⁸⁴ covers, amongst other issues:

- the judicial role;
- important general directions in sexual assault trials;
- evidence and procedural considerations;
- the dynamics, impact and consequences of child sexual abuse;
- challenges facing child witnesses: special measures, witness assistance and intermediaries;
- recording evidence and evidentiary issues in child sexual abuse cases;
- adult victims of sexual assault;
- Indigenous women and children;
- juvenile sex offenders;
- online exploitation; and
- the Royal Commission into Institutional Responses to Child Sexual Abuse.

In 2021, the Victorian Law Reform Commission completed an inquiry on improvements to the justice system's response to sexual offences.⁸⁵ One of the recommendations was *mandatory* training for all judicial officers who sit in sexual offence matters. Notably, it was recommended that this training include issues such as:

- the effects of trauma and how to reduce the risk of further trauma;
- identifying and countering misconceptions about sexual violence;
- how to respond to diverse experiences and contexts of sexual violence;
- effective communication with and questioning of victim survivors, including children;
- limits on improper questioning and judicial intervention; and
- alternative arrangements for giving evidence and special hearings for children and people with a cognitive impairment.

Recent research by BOCSAR is worth noting.⁸⁶ This involved an analysis of 75 transcripts from sexual assault trials (with 70 female complainants) and found that procedural reforms designed to improve complainant experience in sexual offence trials (eg, closed court arrangements, complainants being able to give evidence from a remote location, access to a support person) were generally operating as intended.

⁸⁴ Judicial Commission of NSW (2023). *Sexual assault trials handbook*.

⁸⁵ Victorian Law Reform Commission, n 66, Recs 69 and 73.

⁸⁶ Quilter J and McNamara L (2023). *Experience of complainants of adult sexual offences in the District Court of NSW: A trial transcript analysis*. BOCSAR. See also Davies R and Bartels L (2021). *The use of victim impact statements in sentencing for sexual offences: Stories of strength*. Routledge; KPMG & RMIT CIJ (2023). *Exploring justice system experiences of complainants in sexual offence matters: An interview study*. BOCSAR.

Judges and lawyers also mostly adopted respectful modes of communication towards the complainant and were sensitive to the need for breaks and restrictions on questioning a complainant's sexual 'reputation' and past sexual experience were followed in most cases. Nevertheless, many features known to contribute to negative complainant experiences and outcomes persisted, including a focus on the complainant's conduct, and 'rape myths' and stereotypes about how a 'genuine' victim of sexual violence should behave. The authors concluded that:

the reforms of the last 40 years have attempted only modest incursions into the essence of what makes sexual offence trials so traumatic for many complainants, including the adversarial nature of proceedings, the breadth and sensitivity of topics complainants might be asked to address, and the absence of substantive barriers to the evocation of rape myths and stereotypes.⁸⁷

Accordingly, they called for:

- a modified approach to framing the Crown case, with a greater focus on consent as a free and voluntary agreement, reducing reliance on 'real rape' attributes;
- more restrictions on the admissibility of evidence about the complainant and their actions;
- a review of jury directions used in sexual offence trials; and
- introducing ground rules hearings for all sexual offence trials.

There is currently a pilot project underway, in the ACT, Victoria and Western Australia, to 'provide specialised and trauma-informed legal services to victims and survivors, supporting them to participate in the justice system, guided by their own goals in their journey of recovery'.⁸⁸ In Victoria and Western Australia, Aboriginal organisations are partner organisations and all three jurisdictions will deliver wraparound support.

A pilot project in NSW focused on reducing 'the difficulties and stress for child witnesses in matters involving alleged child sexual offences and to improve the accuracy and quality of their evidence without impinging upon the defendant's right to a fair trial'.⁸⁹ This model introduced witness intermediaries, the use of pre-recorded evidence and two specialist judges, to manage the pre-recorded evidence hearings in prescribed child sexual offence matters. There was overwhelmingly positive feedback on all aspects, as well as evidence of matters being dealt with

⁸⁷ Quilter and McNamara, *ibid*, 37.

⁸⁸ Australian Government (nd). *Sexual violence* <https://www.ag.gov.au/crime/sexualviolence>.

⁸⁹ Cashmore J and Shackel R (2018). *Evaluation of the Child Sexual Offence Evidence Pilot - Final outcome evaluation report*. University of NSW, 1.

more quickly. It was recommended that all of the measures be retained and expanded, along with suggestions to improve their operation.

In January 2024, the Federal Government announced that the ALRC would conduct an inquiry into improving the justice experience of victims and survivors of sexual violence. The terms of reference include consideration of:

- laws and frameworks about evidence, court procedures/processes and jury directions;
- policies, practices, decision-making and oversight and accountability mechanisms for police and prosecutors;
- training and professional development for judges, police, and legal practitioners to enable trauma-informed and culturally safe justice responses; and
- alternatives to, or transformative approaches to, criminal prosecutions, including restorative justice and specialist court approaches.⁹⁰

The ALRC is due to report in early 2025.

Some jurisdictions have piloted dedicated court lists for dealing with sexual violence cases. The Taskforce has recommended consideration of the need for a specialist list for sexual violence cases in the District Court and/or a plan to improve court case management of sexual violence cases, to operate as part of the specialist court list. (see [1.1]). To date, there has been mixed support and evidence on the specialist approach for sexual violence cases in Australia.⁹¹ A specialist list was established in each NSW District Court registry in 2007. Although this approach was

designed to ensure efficient management of matters and minimisation of complainant anxiety...submissions suggested “more fundamental reforms are needed to reduce the trauma of giving evidence in a sexual offence trial”.⁹²

Victoria also established a Sexual Offences List in the Magistrates’ Court in 2005 and County Court in 2006. A 2011 evaluation of this program was positive mostly about the process in the Magistrates’ Court.⁹³ However, the Victorian Law Reform Commission was more equivocal in its 2021 report, finding that there had not been a consistent cultural shift, that problematic cross-examination continued, prosecution counsel and judicial officers did not intervene as often as they could, and many education initiatives had abated. Although some stakeholders supported a specialist sexual offences court, to ensure a model that ‘is trauma informed and has the right

⁹⁰ ALRC (2024). *Justice responses to sexual violence*. Media release.

⁹¹ For a comprehensive discussion of the issues, see George et al, n 83, Chapter 4.

⁹² Ibid, 103, citing NSW Law Reform Commission (2020). *Consent in relation to sexual offences*, 28.

⁹³ Success Works (2011). *Sexual assault reform strategy: Final evaluation report*, cited in George et al, *ibid*.

supports for victim survivors',⁹⁴ the Magistrates' Court opposed a specialised list, on the basis that many cases involving sexual offences also include non-sexual matters, so this would result in inefficiency and unfairness to the defendant. The County Court also opposed the specialist court model, noting the risk of burnout for judicial officers and that about half of all trials in that court involve sexual offences. Instead, the Court supported intensive training for judicial officers. Judicial education on sexual violence is discussed elsewhere in this review.⁹⁵

Experiences with specialist sexual violence courts overseas have shown some success. A pilot program in New Zealand, underpinned by best practice guidelines,⁹⁶ found that time to trial was reduced by 30-39%.⁹⁷ However, a number of issues with the pilot were identified, including in relation to the use of technology and varied implementation of victim-centric practices. Nevertheless, the evaluation found that,

the use of separate court entrances and secure waiting spaces, communication assistance, pre-trial meetings with the presiding judge and existing practises [sic] of pre-trial court education visits, assistance from independent victims' advocates and support from [Sexual Violence Victim Advisors] operating within the court, have reduced the risk of secondary victimisation.⁹⁸

There are also a number of specialist sexual violence courts in operation in the US (New York State, Pennsylvania), Canada (combined DFV and sexual violence courts established in Québec in 2022), South Africa and the UK (England and Wales and proposed for Scotland).⁹⁹ As noted, the introduction of specialist court approaches will be considered by the ALRC in its current inquiry.

3.3.2 Caring responsibilities

Caruana et al recently described it as

crucial to understanding many women's experiences of criminal justice system contact is their status as parents. This includes the way in which women come into contact with the criminal justice system in the first place, as

⁹⁴ Victorian Law Reform Commission, n 66, 108.

⁹⁵ Although beyond the scope of the present review, the need for support for judicial officers and other professionals who regularly deal with sexual violence matters is also well established: see eg *Kozarov v Victoria* [2022] HCA 12.

⁹⁶ District Court of New Zealand (2014). *Sexual Violence Court Pilot: Guidelines for best practice*.

⁹⁷ Gravitas Research and Strategy Ltd (2019). *Qualitative evaluation of the Sexual Violence Court Pilot: Report for the Ministry of Justice*.

⁹⁸ Ibid, 3. The role of the advocate is to liaise between the victim-survivor, police, judiciary, prosecution and community organisations and ensure the victim-survivor's safety in court and that their rights are upheld under the legislation: see Slade N (2020). *Literature review on international best court support models for victim-survivors of sexual violence*. New Zealand Ministry of Social Development.

⁹⁹ See George et al, n 83, for further details.

well as the devastating impacts that this contact ultimately has on their capacity to maintain contact with, and care for, their children.¹⁰⁰

The vast majority of women in the criminal justice system are mothers and many also have non-biological children who depend on them.¹⁰¹ This is particularly common for Indigenous women, who often also have caring responsibilities for children of extended family.

As set out above, the Taskforce has made recommendations in relation to taking caring obligations into account on sentencing. However, there are broader issues around women's conflicts between their court and childcare obligations, as they may be unable to attend court or fully engage in the process, whether as defendants, complainants or applications for DFV orders. This in turn has implications for court listings. For example, a report from Western Australia¹⁰² detailed that criminal trials had been aborted because the accused had no one to look after their children. Hearings were vacated and new trial dates were sought. Service providers indicated that some female defendants were concerned about their children or distracted by them, so that they were unable to fully participate in court proceedings or give full and proper instructions to their legal representative. The presence of children in court also has the potential to curtail the court process, as it can cause parties or witnesses to avoid being full and frank when they give their evidence. The report also detailed that children who observe court proceedings can become desensitised to the criminal law process and normalise appearing in court, therefore making it seem like more acceptable behaviour. Alternatively, it is conceivable that, in circumstances where children are brought to court, caring responsibilities could fall to court staff, which is inappropriate due to their lack of qualifications to care for children and their other competing responsibilities.

Western Australia appears to be the only jurisdiction which offers to subsidise the cost of childcare for defendants who are the primary carers for children, by covering the costs of child minding for jurors, witnesses, defendants or litigants who need to attend court and have a child in their care.¹⁰³ The court user is responsible for making the booking with a licensed childcare facility and providing the invoice to the court for payment or receipt of payment to the court for reimbursement. In circumstances where the court user cannot or does not arrange alternative child-minding arrangements, the court has changing facilities, a small parents' room and two witness suites, which provide a quiet space for children.

¹⁰⁰ Caruana et al, n 21, 26.

¹⁰¹ Australian Institute of Health and Welfare (2023). *The health of people in Australia's prisons, 2022*, 58.

¹⁰² Women Lawyers of Western Australia (2014). *Gender Bias Taskforce review report*.

¹⁰³ Supreme Court of Western Australia (nd). *Parents and childminding*
https://www.supremecourt.wa.gov.au/P/parents_and_childminding.aspx?uid=114-2421-09-10.

The report by the Women Lawyers of Western Australia identifies a number of shortcomings with this model and outlines reasons why on-site child-minding facilities are necessary, to ensure women can equitably access and participate in the justice system. Firstly, the report suggests that it may be inappropriate to place a child in childcare, if they are very young, the child is exclusively breastfed and/or has special needs. Additionally, there is an added burden for the court user in finding an appropriately located childcare facility that will accommodate the child short-term and potentially at the last minute. Further, a court user is required to make an advance booking which may not always be possible.¹⁰⁴ Finally, given the high demand for childcare and the legislative restrictions on childcare centres in relation to maximum numbers and carer to child ratio, it is conceivable that it would be difficult for those who require ad-hoc care to secure a place.¹⁰⁵

The child-minding centre at the Family Court of Western Australia¹⁰⁶ is a free service available to parties and support persons attending a Family Court case, the Family Court Counselling and Consultancy Service or the registry counter. It is classed as a creche, as opposed to a licensed childcare centre, because a creche is not subject to the same, more stringent, licensing requirements of a childcare centre. Care periods at the centre are for a maximum of three hours and may resume after a one-hour break. In addition, the service is closed between 1-2pm. Staff are qualified childcare workers and first-aid trained. The centre is equipped with toys, books and games to entertain the children, while the party attends to court business. The child must be signed in and signed out by the same person, who must remain at the court while the child attends the centre. The report indicates that, as at 2014, the facility cared for approximately 1,500 children per year and children were only rarely turned away from the centre.¹⁰⁷ According to the report's findings, the facility is well regarded at the court and by the general public who use it. Attachment 2 to the report includes the following photos of the facilities.¹⁰⁸

¹⁰⁴ Women Lawyers of Western Australia, n 102, 75.

¹⁰⁵ Ibid.

¹⁰⁶ Family Court of Western Australia (nd). *Child minding service*
https://www.familycourt.wa.gov.au/C/child_minding_services.aspx?uid=9346-9236-1086-9827

¹⁰⁷ Women Lawyers of Western Australia, n 102, 76.

¹⁰⁸ Ibid, 106.

Figure 3.2: Images of childcare facilities at Family Court of Western Australia





Another promising initiative is impact, which is a volunteer charity, based in Victoria and providing assistance to women and children fleeing extreme violence. In collaboration with Moorabbin Court, Victoria Police and Emerge, impact set up and facilitated a free professionally managed childcare service for families without access to other childcare options.¹⁰⁹ The service operates on Tuesdays ('Family Violence Day') for court users to access. Due to the success of the program, the court has requested that the program expand to a second day. It appears from their website that the main issue they face in continuing and expanding their service is funding.

In response to women abandoning their attempts to get justice, due to long waits in courtrooms with bored or distressed children, McAuley Community Services for Women established the program *Court Support 4 Kids*.¹¹⁰ These are dedicated spaces for children situated in court buildings, to provide 'support, play and distraction for children, while their mothers focus on getting legal protections in place'.¹¹¹ An evaluation of this program by the RMIT Centre for Innovative Justice (CIJ)¹¹² found that it was very responsive to children's needs and filled a clear gap in court services, by providing child-friendly, and child-focused support for women and children and meeting their basic needs while at court. It was found to be accessible for clients and, in locations where it is highly visible, legal practitioners, court staff

¹⁰⁹ impact (nd). *Court childcare project* <https://www.impactforwomen.org.au/court-childcare-project.html>.

¹¹⁰ McAuley Women and Children (nd). *Court Support 4 Kids* <https://www.mcauley.org.au/story/court-support-4-kids/>.

¹¹¹ McAuley Community Services for Women (2019). *Submission to Royal Commission into Victoria's Mental Health System*, 25-26.

¹¹² RMIT CIJ (2018). *Court Support 4 Kids - Evaluation report*.

and court support services considered it very effective in assisting with the intervention order process and reducing the effects of the process on children. There was also some evidence of workers in the program helping to promote women's needs with court staff and service providers, although this was not consistent across all courts. However, the program needs to be visible and well marketed to legal practitioners, support services and court staff, so that the service can be widely used by women and children who need it.

3.3.3 Children and young people

The Law Council of Australia¹¹³ has identified a range of legal issues that apply to children and young people (CYP), including a lack of financial resources, poor knowledge about their legal rights, uncertainty about the avenues and remedies available to address legal problems, and a perception that the legal system is intimidating, complicated, expensive and biased against them. According to the Law Council of Australia, specific laws and policies that exacerbate access to justice barriers for CYP include:

- the minimum age of criminal responsibility (MACR);
- bail laws and support programs;
- the child protection system;
- policing practices;
- the juvenile justice system;
- fines; and
- institutional sexual abuse.

It is beyond the scope of this review to undertake a comprehensive analysis of youth justice issues, but it is important to recognise that the MACR in Queensland, at 10, is very young by international standards. Some Australian jurisdictions have recently moved to increase it, with the Northern Territory and Australia Capital Territory raising it to 12 (to be followed by an increase to 14, with exceptions, two years later). Victoria has also committed to raising the age to 12, while Tasmania has gone the furthest and committed to an increase to 14, without exceptions. Raising the MACR would naturally reduce the workload of the children's courts. It would also address the over-representation of Aboriginal and Torres Strait Islander CYP.¹¹⁴ In addition, girls account for a relatively large proportion of the youth justice cohort, especially at younger ages. For example, a recent study published by the Australian Institute of Criminology¹¹⁵ found that girls comprised a greater proportion of 10-13 year olds

¹¹³ For a detailed analysis of young people's legal needs, see LCA (2018). *The Justice Project – Children and young people: Final report, Part 1*.

¹¹⁴ Although there is no disaggregation available by age or gender, data from 2021-22 indicate that Indigenous CYP accounted for 49% of defendants finalised in the Queensland Children's Court: Australian Bureau of Statistics (2023). *Criminal courts, Australia, 2021-22*.

¹¹⁵ Baidawi S et al (2024). *Police and children's court outcomes for children aged 10 to 13*. Australian Institute of Criminology.

proceeded against police, compared with children aged 14 years and older (33.5% vs 29.2%; this difference was statistically significant). It would also have significant benefits in relation to people with disability, the Royal Commission into Violence, Neglect and Exploitation of People with Disability recently recommended that '[s]tates and territories that have not already done so should introduce legislation to raise the minimum age of criminal responsibility to 14'.¹¹⁶

Research from the Queensland Sentencing Advisory Council¹¹⁷ reveals that:

- the rate of children who commit offences decreased over time (between 2005-6 and 2018-9);
- remote areas had the highest rate of sentenced children;
- the most common age at time of offence was 17 years;
- Aboriginal and Torres Strait Islander children were over-represented;
- girls accounted for 25% of cases;
- the most common offences were theft, public order offences and unlawful entry, although assaults were more common amongst girls;
- 51% of sentenced children were repeat offenders;
- a reprimand was the most common outcome in the Magistrates Court, but the rate of custodial penalties increased during the period under review;
- probation was the most common penalty in the higher courts; and
- 51% of children sentenced to detention received an order of less than six months.

This report also found that, over the period under review, non-Indigenous girls represented 45% of the population in Queensland and 13% of sentenced cases, while Indigenous girls accounted for 4% of the population and 11% of sentenced cases. Non-Indigenous girls were more likely to appear in court with no prior offending (58%), compared with 41% for Indigenous girls. Similar patterns obtained for subsequent offending. This highlights the need for responses that are both responsive to both culture and gender.

There is a range of issues that need to be acknowledged in relation to girls appearing before the courts. For example, while research from NSW indicates that 60% of young people in custody have experienced child abuse or neglect, girls were nearly 10 times more likely than boys to have experienced three or more occasions of severe child maltreatment.¹¹⁸ There is also established evidence in relation to CYP and disability,¹¹⁹ including that ADHD is relatively more likely to increase

¹¹⁶ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2023). *Volume 8 – Criminal justice system*. Rec 8.22.

¹¹⁷ Queensland Sentencing Advisory Council (2021). *Kids in court: The sentencing of children in Queensland*.

¹¹⁸ Moore E, Gaskin C and Indig D (2013). Childhood maltreatment and post-traumatic stress disorder among incarcerated young offenders. *Child Abuse and Neglect*, 37: 861-870.

¹¹⁹ For discussion, see LCA, *Children and young people*, n 113, 8.

criminal justice involvement for girls than boys.¹²⁰ The so-called ‘school-to-prison pipeline’ also needs to be recognised, with recent Queensland data¹²¹ highlighting the ways that Indigenous children are disproportionately excluded from education.

Most CYP who appear before the courts as defendants do so in the children’s courts.¹²² The RMIT CIJ¹²³ undertook a project on behalf of the Children’s Court of Victoria. The purpose of the project was to create a human-centred design, to improve the experiences of all Children’s court users and encourage collaboration between participants, for better outcomes in the court system. The report identifies several high-level principles, primarily informed by the United Nations *Convention on the rights of the child*,¹²⁴ to inform how courts can adopt and change their practices to better suit the needs of children. As a result, the RMIT CIJ identified specialist children’s court jurisdictions should:

- be child-focused, including:
 - modifying the court to be less formal and intimidating;
 - prioritising the best interests of the child;
 - adopting rehabilitative and reintegrative approaches to support and encourage successful reintegration into society, such as restorative justice approaches; and
 - considering CYP’s trauma history and providing appropriate responses to them and their families
- promote the participation of CYP and families in the court process, including making processes accessible, providing intermediaries if necessary, supporting families and addressing lengthy wait times;
- incorporate problem-solving, collaborative and multidisciplinary practices, which have been shown to be effective and can be implemented in specialty problem-solving and/or mainstream processes;
- be supported by a specialised and trained workforce, due to CYP’s unique developmental needs, calling for continuous training for all relevant staff on issues such as
 - the social and psychological development of children (including current neuroscientific findings);

¹²⁰ Silva D et al (2014). Contact with the juvenile justice system in children treated with stimulant medication for Attention Deficit Disorder: A population study. *The Lancet Psychiatry*, 1(4): 278-285.

¹²¹ Graham L et al (2023). Overrepresentation of Indigenous students in school suspension, exclusion, and enrolment cancellation in Queensland: Is there a case for systemic inclusive school reform? *The Australian Educational Researcher*, 50: 167-201. See also Bugmy Bar Book (2023). *Interrupted school attendance and suspension*. <https://bugmybarbook.org.au/wp-content/uploads/2024/03/BBB-School-Attendance-and-Suspension-chapter.pdf>.

¹²² A small proportion of very serious matters (allegedly) committed by CYP are finalised in the higher courts. CYP also appear in the magistrates’ and higher courts as complainants/victims.

¹²³ RMIT CIJ (2020). *Specialist children’s court approaches*.

¹²⁴ United Nations (1990). *Convention on the rights of the child*.

- new technologies and innovations to assist children's participation in justice systems;
- the special needs of marginalised or minority groups;
- the social and other causes of crime; and
- the concept of best interests and its application in practice; and
- provide culturally-responsive approaches, especially in light of the over-representation of Indigenous CYP.

The RMIT CIJ report highlighted a range of good practices, including a purpose-built court in California with 'home-like' features and 'large interior and outdoor play spaces',¹²⁵ as well as courts with art supplies; judicial officers sitting at the same level and in closer proximity to CYP, which can make them feel more engaged in the court; having toys in the courtroom; the use of family group conferencing in New Zealand;¹²⁶ and the Rangatahi Court model in New Zealand and Teen Court in the US.

Teen Court models¹²⁷ in the US aim to curtail misbehaviour in the school and community, by placing responsibility for offences on the young person. The court bailiff, clerk, jury, prosecutor and defence lawyers are all high school students, who conduct the disciplinary sentencing phase of the proceedings. The idea is that peers best understand problems faced by teens and they are therefore better placed to develop effective ways of redirecting their behaviour and attitudes. An 'offender' must admit guilt to participate in this court process, participation is voluntary and offenders can decide not to continue at any point prior to sentence. The outcome of the hearing does not appear on the young person's criminal record. Evaluations indicate that CYP who use this model gain a greater understanding of the court system and the law, that school attendance and grade performance are improved and that they develop a greater sense of self-worth.¹²⁸ Studies also suggest that children who participate in teen courts are less likely to be re-arrested than other juvenile court participants.¹²⁹

The RMIT CIJ report discussed the benefits of problem-solving and multidisciplinary court models, such as youth mental health courts, family drug treatment courts or incorporating these approaches into mainstream court processes. Evaluations of

¹²⁵ RMIT CIJ, n 123, 19.

¹²⁶ This has been the subject of extensive commentary: see eg Maxwell G et al (2004). *Achieving effective outcomes in youth justice: Final report to the Ministry of Social Development*. Ministry of Social Development; Becroft A (2017). *Family Group Conferences: Still New Zealand's gift to the world*. Office of the Children's Commissioner, Wellington. Similar models now operate in some Australian jurisdictions.

¹²⁷ Judicial Council of California (2021). *Fact sheet: Youth courts*.

¹²⁸ Smokowski P et al (2020). A group randomized trial of school-based teen courts to address the school to prison pipeline, reduce aggression and violence, and enhance school safety in middle and high school students. *Journal of School Violence*, 19: 566-578.

¹²⁹ Hartsell E and Novak A (2022). A comparison of re-arrest outcomes between youth in juvenile drug court, teen court, probation, and dismissed cases. *Crime & Delinquency*, 68: 1819-1846.

youth drug and mental health courts in the US and Canada indicate that these approaches can help to address young people's substance use or mental health needs and reduce reoffending by linking young people with appropriate treatment and support.

In Tasmania, the Specialist Youth Justice Court is a problem-solving court in the Magistrates' Court, where a single magistrate hears all youth matters. There is a generalist list for simple matters and a specialist list, which operates on a 'therapeutic, bail-based approach', especially in cases involving AOD, mental health issues and/or where there is any other particular issue where the court might intervene. The main purpose of this specialist list is to enable the specialist magistrate, to organise support for CYP, where appropriate, via case management by judicial supervision. A range of organisations, such as Save the Children, the Salvation Army and the Department of Education, are involved in developing a plan for the young people. This approach aims 'to try to improve the circumstances of the offender and support them to develop the skills and resilience needed to escape cycles of disadvantage and offending behaviour'.¹³⁰ A 2013 evaluation found that the program met four of its five objectives, as it was able to

demonstrate greater consistency in decision-making about young offenders; ...has harnessed greater psychosocial expertise in youth justice matters, especially with regard to complex cases; it has ensured better coordination of agency services brought to the court; and has seen greatly increased collaborative work among those agencies to develop optimal interventions for the young offenders.¹³¹

However, it did not succeed in improving timeliness for finalising matters. Unfortunately, the evaluation also did not measure whether there was any reduction in recidivism, which was not an objective of the program, or provide any breakdown of data on the basis of gender.

Another program worth noting is the Education Justice Initiative in the Children's Court of Victoria. This is run by the Department of Education and Training, in collaboration with the courts, and is available at multiple locations across Victoria. It is available to CYP aged 10-17 with a criminal or Koori Court matter before a participating court. This program involves someone working with CYP and their family, support person and/or case worker, to link with the most appropriate school, education or training provider and support the person on their education or training

¹³⁰ Stojcevski V (2013). *Magistrates Court Tasmania, Hobart Specialist Youth Justice Court pilot: Evaluation report 6*, cited in LCA (2018). *The Justice Project - Courts and tribunals*. Final Report, Part 2, 100.

¹³¹ Stojcevski, *ibid*, 7, cited in LCA, *ibid*, 101.

pathway.¹³² An evaluation¹³³ found that the program had contact with 47% of the people appearing in the Children's Court during the evaluation period and worked closely with 23% of these. Of those classified as 'full clients' (n=68):

- formal enrolment increased from 51% to 75%;
- attendance increased from 9% to 54%; and
- moderate or high attendance increased from 3% to 42%.

The information provided on this form may be disclosed to the school, other education or service providers or other parts of the Department of Education and Training, to support the young person's enrolment and to ensure the young person can be appropriately supported with their education or training pathway.

The principles for good practice in youth justice are discussed further in Chapter 4 and this issue links closely with child protection and youth justice involvement, set out below. It also is crucial that judicial officers and court staff have developmentally appropriate understandings of young people appearing before them, as well as the intersections with gender, culture, disability and other relevant issues (eg, the further implications in RRR areas, for LGBTIQ+ young people etc).

Outside of the courts, a range of services support CYP in the community. For example, Sisters Inside runs a range of programs, including supporting 12-18 year-olds with a mother in prison with education, work, training, family and recreation activities. They also run a weekly art program and Barista Sistas, a social enterprise to help teach coffee-making skills to young Indigenous women.¹³⁴

3.3.4 Prior child protection and/or youth justice involvement

As noted above, this review does not consider in detail the issues that may arise if women involved with the criminal justice system are also involved with the child protection system. However, there is increasing awareness of the overlap between the child protection and youth justice systems. This is especially an issue in relation to Aboriginal and Torres Strait Islander people, with the ALRC noting 'the high rate of removal of Aboriginal children into out-of-home care and the recognised links between out-of-home care, juvenile justice and adult incarceration' and recommending that 'the Commonwealth Government should establish a national inquiry into child protection laws and processes affecting Aboriginal children'.¹³⁵

¹³² Children's Court of Victoria (nd). *Education justice initiative*

<https://www.childrenscourt.vic.gov.au/criminal-division/education-justice-initiative#referring-to-eji>.

¹³³ te Riele K and Rosauer K (2015). *Education at the heart of the Children's Court. Evaluation of the Education Justice initiative*. Victoria Institute for Education, Diversity and Lifelong Learning.

¹³⁴ Sisters Inside (nd). *For young people* <https://sistersinside.com.au/for-young-people/>. See also SHINE For Kids (nd). *Home*. <https://shineforkids.org.au>.

¹³⁵ ALRC, n 18, Rec 15-1.

Baidawi and Sheehan have found that ‘crossover kids’ – CYP involved in both the child protection and youth justice systems – are involved in more serious offending than other CYP. They therefore emphasised the need to ‘prevent, divert and respond to crossover children’s criminal justice contact’.¹³⁶ It is also important and concerning to note that this dataset revealed that girls were nearly three times as likely as boys to report having experienced sexual violence (36% vs 13%) and that first being charged under the age of 14 was associated with an average increase of 47 charges, compared with those charged at an older age.

Research from Tasmania¹³⁷ has also highlighted the links between crossover children and gender: between 2007 and 2020, 25% of all Tasmania Legal Aid youth justice clients were female, but this increased to 37% among crossover children. Furthermore, 52% of the girls under 14 when first charged were crossover children (vs 38% of boys under 14) and girls in both systems had more files than other girls (averages of 3 vs 2). The recommendations from this project included raising the MACR, increased use of diversion, legislative recognition of trauma and introducing lawyers in schools, to educate CYP about the legal system.

The Victorian Sentencing and Advisory Council (VSAC) has also conducted extensive research on ‘cross-over kids’. This research is particularly instructive in relation to girls, finding that Indigenous girls who were either diverted or sentenced and were the subject of a child protection report were more likely than any other cohort (ie, non-Indigenous girls or Indigenous or non-Indigenous boys) to be subject to investigation, substantiation, child protection orders and out-of-home care and were the subject of a higher median number of child protection reports.¹³⁸ A subsequent report from this project¹³⁹ found that girls had more child protection involvement than boys and Indigenous girls who entered the youth justice system early had the highest level of child protection involvement. Girls involved in the youth justice system at a young age (10-13) also experienced more carers, demonstrating significant disruption in their home lives. The final report from this project¹⁴⁰ did not make formal recommendations, but made some important observations that are relevant to the courts, when dealing with young people, especially girls who have been involved in the child protection and youth justice systems (and, later, women involved in the corrections system). In particular, the VSAC noted:

¹³⁶ Baidawi S and Sheehan R (2020). ‘Crossover kids’: *Offending by child protection-involved youth*. Australian Institute of Criminology, 1.

¹³⁷ Tasmania Legal Aid (2021). *Children first: Children in the Child Safety and youth justice system*.

¹³⁸ Victorian Sentencing Advisory Council (VSAC) (2019). ‘Crossover kids’: *Vulnerable children in the youth justice system – Report 1: Children who are known to child protection among sentenced and diverted children in the Victorian Children’s Court*.

¹³⁹ VSAC (2020). ‘Crossover kids’: *Vulnerable children in the youth justice system – Report 2: Children at the intersection of child protection and youth justice across Victoria*.

¹⁴⁰ VSAC (2020). ‘Crossover kids’: *Vulnerable children in the youth justice system – Report 3: Sentencing children who have experienced trauma*.

A court's capacity to consider a child's trauma and child protection history at sentencing depends on the court having access to all relevant information. Current barriers to the holistic consideration of children's 'needs' and 'deeds' include the structural separation of the Children's Court into two divisions, one dealing with child protection matters (the Family Division) and one dealing with criminal justice matters (the Criminal Division). While there are legitimate policy reasons for the separation, a consequence is that children's youth justice and child protection matters may be heard by different judicial officers, and the child may be represented by different legal practitioners. For this reason, a court sentencing a child may not have access to all relevant information about the child's protection history, and a court hearing a child protection matter may not have full information about relevant criminal proceedings.¹⁴¹

The VSAC suggested a number of strategies to address this, including:

- resourcing the expansion of a fully specialised Children's Court to regional areas, with specialised Children's Court locations operating as hubs for supports and services;
- introducing a 'crossover list' that holistically deals with the child protection *and* criminal matters of children who are involved with both systems;
- introducing pre-hearing youth justice family group conferencing, to develop a plan for the child that integrates child protection, health and justice responses to the young person's offending, with provision for the conference to recommend against prosecution, while putting in place supports to address the causes of the child's offending and protecting the young person's rights in criminal proceedings;
- empowering the Criminal Division of the Children's Court to compel case workers to attend court to provide information and/or support a child in cases where the Department of Health and Human Services has parental responsibility for the child and providing resources for case workers to attend such hearings and visit and support children throughout the criminal justice process, including in custody;
- ensuring that sentencing courts are provided with adequate information about a child's protection and trauma history, including strengthening information-sharing between relevant divisions of the Children's Court and having dedicated child protection workers at court to facilitate access to reports about the child's protection history; and
- continuing to improve access to specialised services, assessments and reports, including from allied-health professionals, particularly in regional areas.¹⁴²

¹⁴¹ Ibid, xiii.

¹⁴² Ibid.

There are ‘crossover’ lists in New Zealand, which empower the Youth Court to address issues related to CYP’s offending and trauma issues in the care and protection context at the same time. It has been suggested that this approach

helps the Youth Court to identify possible causes of offending and to facilitate the coordination of effective outcomes, such as dismissing the charges; addressing placement issues; and providing further support to the young person (such as for mental health or substance abuse).¹⁴³

3.3.5 Homelessness

There is extensive research on the legal issues associated with and criminalisation of homelessness.¹⁴⁴ The causes of homelessness include poverty; DFV; child and substance use; mental illness; and imprisonment.¹⁴⁵ Research in Victoria¹⁴⁶ has highlighted the particular challenges women experience in obtaining bail, if they are experiencing homelessness. This research also highlights the ways that both bail decisions and homelessness intersect with women’s experiences of DFV. Similarly, in research on the NSW Children’s Court

magistrates spoke of the difficulties in having to remand children where no viable accommodation options were available, and we observed a number of cases where care children charged with relatively minor offences remained in custody while appropriate accommodation was sought.¹⁴⁷

A range of specialist courts are discussed in Chapter 5. There have also been calls to establish a specialist homeless court (or court list) in Australia.¹⁴⁸ Such courts operate in New Zealand. The New Beginnings Court in Auckland deals with defendants who are homeless and aims ‘to ensure that the necessary social and health supports are provided to address the underlying causes (legal, social and health-related) of the offending and the homelessness while also holding offenders accountable and ensuring that victim’s issues are addressed’. An evaluation did not consider gender issues, but found that the program had reduced reoffending rates (by 66%) and saved on nights in prison and hospital admissions (both by 78%).¹⁴⁹

¹⁴³ RMIT CIJ, n 123, 27 (citation omitted).

¹⁴⁴ LCA (2018). *The Justice Project – People who are homeless*. Final Report, Part 1.

¹⁴⁵ Bugmy Bar Book (2023). *Homelessness*. <https://bugmybarbook.org.au/wp-content/uploads/2023/07/BBB-Homelessness-chapter.pdf>.

¹⁴⁶ Russell, Carlton and Tyson, n 12.

¹⁴⁷ McGrath A, Gerard A and Colvin E (2020). *Care-experienced children and the criminal justice system*. Australian Institute of Criminology.

¹⁴⁸ See eg Murphy L (2019). A specialist homelessness court for Victoria. *Parity*, 32: 35-36; McNamara L et al (2021). Homelessness and contact with the criminal justice system: Insights from specialist lawyers and allied professionals in Australia. *International Journal for Crime, Justice and Social Democracy*, 10: 111-129.

¹⁴⁹ Woodley A (2012). *A report on the progress of the Te Kooti O Timatanga Hou - The Court of New Beginnings*. Point Research Ltd.

The Special Circumstances Court in Wellington, New Zealand works with people whose life circumstances include poverty and homelessness. A 2020 evaluation¹⁵⁰ found that 18% of participants were female, with similar reconviction rates for males and females. The evaluation indicated that participants:

- had engaged with the program and made plans to address the issues underpinning their offending;
- felt respected, treated with courtesy and that the process identified and responded to their individual needs; and
- generally reduced their offending and those who continued to reoffend reduced the frequency of their offending.

However, there were some barriers to change, including the short duration of the program (12 months), lack of services (housing, AOD and mental health) and literacy and disability issues, which meant some participants needed more intensive support. This once again highlights the complex and interwoven nature of these issues and the need for holistic, long-term responses.

3.3.6 Poverty and lack of financial means

In addition to the issues associated with homelessness, there is increasing recognition of the criminalisation of women and girls, due to poverty.¹⁵¹ They may also face additional challenges that impact on their interactions with the courts. This may include lack of access to food, transport and/or clothing suitable for court.

In the sentencing context, there has been a call for a reduction in the imposition of fines for people experiencing financial adversity, in favour of work and development (or similar) orders.¹⁵² This would enable courts within mainstream lists to impose orders involving unpaid work, counselling and/or training, rather than further entrenching the financial adversity which often underpins homelessness. The Human Rights Law Centre and Change the Record have noted:

The Work and Development Order scheme offers a promising alternative to the punitive enforcement of fines against people who cannot pay them. It is a legislated scheme and operates as a collaborative arrangement between the NSW Government, Legal Aid NSW and the Aboriginal Legal Service of NSW/ACT.

Those who cannot pay their fines because of certain vulnerabilities, such as homelessness, mental illness, disability or acute economic hardship, undertake voluntary work, health treatment, education or training, financial

¹⁵⁰ Malatest International (2020). *Evaluation of the Special Circumstances Court, Wellington*.

¹⁵¹ Penal Reform International (2023). *Criminalisation of women due to poverty and status* <https://www.penalreform.org/news/call-for-input-criminalisation-of-women-due-to/>.

¹⁵² McNamara et al, n 148.

counselling, drug and alcohol treatment or a mentoring program. The activities are individualised and respond to issues contributing to offending. ...

The scheme has been evaluated positively, both in terms of reducing reoffending rates, engaging clients in positive treatment and training activities and alleviating the stress associated with unpaid fine debts.¹⁵³

An approach that recognises the financial impact of fines is particularly important, in the context of the current housing crisis¹⁵⁴ and cost-of-living pressures.

The Neighbourhood Justice Centre (NJC) in Melbourne has on-site financial counsellors, who provide support with:

- financial counselling and debt repayment planning;
- referral services;
- advocacy;
- filling out forms;
- information about how to avoid financial pitfalls;
- Centrelink debts;
- utility rates and disconnections;
- fines and warrants;
- repossession of goods and property; and
- obtaining concessions and other entitlements.¹⁵⁵

The NJC also has a safe box with power points, where members of the public can charge their phones if they do not have ready access to electricity, and a café outside the courtroom, where they can obtain a free cup of coffee or tea. Similarly, there is a fruit bowl in the Prisoners Aid office in the ACT courthouse and a budget to buy food for clients in need, to ensure that they do not attend court without adequate food. Discussions with court staff in Far North Queensland indicated that access to drinking water can sometimes be an issue, especially in the heat and for those with health issues. It is therefore important for court facilities to provide ready access to drinking water and, ideally, food, if required.

Dress for Success, which operates in three locations in NSW and provides a free service for

women including transgender women and non-binary people comfortable in a woman's space...to [s]elect a Court appropriate outfit that will make [them] feel

¹⁵³ Human Rights Law Centre and Change the Record, n 62, 39.

¹⁵⁴ Loftus T (2023, August 11). Women facing increased risk of homelessness while on bail and parole, Sisters Inside advocacy group says. *ABC News*. <https://www.abc.net.au/news/2023-08-11/women-on-bail-parole-increased-risk-of-homelessness-qld/102717002>.

¹⁵⁵ Neighbourhood Justice Centre (NJC) (nd). *Financial counselling* <https://www.neighbourhoodjustice.vic.gov.au/find-a-service/support-services/financial-counselling>.

confident for [their] important appearance. Our Stylists will work with [them] to help find a great outfit that looks and feels good. Includes a handbag, accessories, and shoes.¹⁵⁶

In 2016, two students working in the Brisbane Murri Court observed that defendants were sleeping rough or fare evading before court. They established the Transport2Court project, which provided 130 transport cards pre-loaded with \$10, through the Murri Court, Aboriginal Legal Service and Queensland Courts Referral program. They found that the recipients took more than 2400 trips. One of the project's founders, Ms Walters, observed that this meant that they

are topping up the cards and re-using them. These cards have had positive effects on lives, they are being used to attend things like health appointments and supervised visits to children...We want to ensure that paying for public transport isn't a barrier to attending court for anyone.¹⁵⁷

A lack of financial means can also result in challenges accessing legal assistance. Research published by the AIJA, involving 24 days of observation of 19 magistrates in the Victorian courts, found 47% of defendants were unrepresented.¹⁵⁸

3.3.7 Rural, regional, remote

The LCA has expressed concern about the unmet criminal, family and civil legal needs in RRR areas, noting that:

Scarcities of locally available lawyers create conflict of interest problems, imposing additional cost and distance burdens on residents, who need to travel further to find help, or miss out altogether...

While technology will play an increasingly important role in the future of RRR service delivery, RRR residents are more likely to be digitally excluded. Nuanced, evidence-based, and people-centred design approaches are therefore needed to avoid leaving these residents behind, giving due regard to their needs and preferences for ongoing face-to-face legal services...

Specialist courts, and courts adopting therapeutic or problem-solving approaches (and the support services to underpin these latter approaches), should also be more readily available to RRR residents, particularly in smaller towns and more remote areas. Community-based sentencing options are lacking in many RRR areas, resulting in worse sentencing outcomes. These

¹⁵⁶ Dress for Success® (nd). *Suiting* <https://nswact.dressforsuccess.org/programs/suiting/>.

¹⁵⁷ University of Queensland (2016). *Fare system helps vulnerable have their day in court*. Media release.

¹⁵⁸ Antolak-Saper N, Clough J and Naylor B (2021). *Unrepresented accused in the Magistrates' Court of Victoria*. AIJA. See also LCA, *Courts and tribunals*, n 130.

should be expanded, including through accessible, appropriate support services and diversionary programs. While needs vary regionally, interpreters, residential drug and alcohol rehabilitation, mental health, family violence, and safe, secure housing services (including bail accommodation and support) are needed to achieve stronger justice outcomes...

Insufficient regional engagement, in law and policy development has meant that laws and policies can be 'urban centric' and drafted with little consideration to their application in RRR communities. Some laws, such as a mandatory loss of licence for driving offences, can affect RRR communities disproportionately. Meanwhile, RRR communities located across state and/or territory borders have unique difficulties in negotiating complex cross-border legal issues. Measures are required to overcome an urban-centric focus and develop appropriate responses to these RRR-specific issues.¹⁵⁹

Some of the issues that are particularly likely to impact on women are lack of access to transport, health, education and employment and this will be further compounded, if they are isolated as a result of DFV and/or living with disability. Aboriginal and Torres Strait Islander people are more likely than non-Indigenous Australians to live in RRR areas, so are more likely to experience these issues. In the Pathways report, the ALRC noted

the lack of a coordinated service response in regional areas, and a lack of available services, particularly culturally appropriate services for Aboriginal and Torres Strait Islander women.¹⁶⁰

This was echoed in Colvin's research on bail support services in Victoria. Her interviews with defence lawyers and others revealed what she termed 'postcode injustice'. She also identified three sub-themes: children and young people, access to transport; and homelessness. She therefore called for improved resources in these areas, to 'protect the community and reduce the need for unnecessary remand imprisonment'.¹⁶¹

3.3.8 Disability and mental illness

The Law Council of Australia¹⁶² has identified a broad range of contexts in which a person with disability might experience issues with access to justice, including physical barriers; accessible information and communication; negative attitudes and lack of understanding; and lack of critical support services and legal assistance. The

¹⁵⁹ LCA (2018). *The Justice Project – Rural, regional and remote (RRR) Australians. Final Report, Part 1*, 3-4.

¹⁶⁰ ALRC, n 18, 255.

¹⁶¹ Colvin E (2019). Postcode (in)justice: location and bail support services. *Journal of Criminological Research, Policy and Practice*, 5: 307-318.

¹⁶² LCA (2018). *The Justice Project – People with disability. Final Report, Part 1*.

Centre for Innovative Justice has developed a system map to show the complex dynamics in this context, with court issues including ‘person’s ability to follow an order’, ‘prevalence of self-representation’, ‘awareness of judicial officer of accused’s capacity’ and ‘burden on judicial officer to assess person’s condition and needs’.¹⁶³

People with disabilities experience a number of challenges in the criminal justice system that can severely impede their access to justice. They are significantly over-represented in the criminal justice system as both victims and offenders.¹⁶⁴ It is particularly concerning that, amongst people with disability, Indigenous women are the cohort most likely to be victims of crime,¹⁶⁵ reinforcing the intersectional impacts of gender, ethnicity and disability. It is also important to understand that women’s neurodiversity is particularly likely to be underdiagnosed¹⁶⁶ and recognise the links between DFV and acquired brain injury.¹⁶⁷ There is increasing awareness that many young people who are neurodivergent and engaging with the criminal justice system are not getting the support they need when attending court. Neurodivergent individuals often find communication challenging within the courtroom, leaving neurodivergent people at a distinct disadvantage.¹⁶⁸ In addition, recent data on people in prison¹⁶⁹ reveals that women were more likely to report both physical and mental health issues.

The United Nations has established 10 principles for access to justice for people with disabilities, with specific guidelines applicable in the criminal justice context.¹⁷⁰ The *Equality before the law benchbook* includes information about people with disability,¹⁷¹ including data on people with disability, the different types of

¹⁶³ RMIT CIJ (2019). *Supporting justice – System map* <https://cij.org.au/cms/wp-content/uploads/2020/06/supporting-justice-system-map-v14-1.pdf>.

¹⁶⁴ See eg Ringland C, Boiteux S and Poynton S (2022). *The victimisation of people with disability in NSW: Results from the National Disability Data Asset pilot*. BOCSAR; Ringland C, Boiteux S and Poynton S (2023). *People with disability and offending in NSW: Results from the National Disability Data Asset pilot*, BOCSAR; Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, n 116.

¹⁶⁵ Ringland, Boiteux and Poynton (2023), *ibid*.

¹⁶⁶ See eg Murphy B (2018). Neurodivergent women in ‘clouded judgment’ unconscionability cases – An intersectional feminist perspective. *Adelaide Law Review*, 39: 37-64; Bartels L (2022). Paying attention to Attention Hyperactivity Deficit Disorder: An analysis of cases in an Australian Supreme Court. *Criminal Law Journal*, 46: 245-268.

¹⁶⁷ Lansdell G et al (2022). Strengthening the connection between Acquired Brain Injury (ABI) and family violence: The importance of ongoing monitoring, research and inclusive terminology. *Journal of Family Violence*, 37: 367-380. See also RMIT CIJ and Jesuit Social Services (2018). *Recognition, respect and support: Enabling justice for people with an Acquired Brain Injury*.

¹⁶⁸ Clasby B et al (2022). Responding to neurodiversity in the courtroom: A brief evaluation of environmental accommodations to increase procedural fairness. *Criminal Behaviour and Mental Health*, 32: 197-211.

¹⁶⁹ Australian Institute of Health and Welfare, n 101.

¹⁷⁰ United Nations (2020). *International principles and guidelines on access to justice for people with disabilities*.

¹⁷¹ Judicial Commission of NSW (2023). *Equality before the law bench book*. Section 5 - People with disability.

impairments and the impact these conditions can have on a person's functioning and guidance for judicial officers on appropriate language to use when referring to people with disability. It also includes examples of effective communication techniques and suggests adjustments that can be made to court proceedings, to enable people with disability to fully participate in proceedings. The *National DFV benchbook* also includes a section on people with disability and impairment.¹⁷² The Victorian *Disability access benchbook*¹⁷³ 'includes general best practice principles that will assist judicial officers in all courts'.¹⁷⁴ It has detailed provisions on considerations before, during and after hearings, as well as on specific disabilities (eg, acquired brain injury, autism spectrum disorder, cerebral palsy).

The ACT courts employ a disability liaison officer (DLO), who has lived experience of disability, and supports clients with disabilities. The DLO is also part of a community of practice with other DLOs across the justice system (eg, police, prosecution, corrections, legal aid, Aboriginal Legal Service, family violence support). This 'provides direct one to one navigation of the justice system, provides support to individuals and fosters cultural change through internal expertise and advocacy'.¹⁷⁵

In a study that examined the needs of people with severe communication disabilities (also known as complex communication needs or being non-verbal), procedural fairness was identified as a key concern. When identifying how to support people with these difficulties, several accommodations were suggested by international legal experts to enable disabled people to participate more equally in the court system. These included having access to pen and paper, the use of intermediaries, and the use of augmented and alternative communication. In an attempt to prevent a 'one size fits all' model, it was also advised that 'there needs to be a variety of strategies, with each strategy focused on different stakeholders'.¹⁷⁶ Although this research was not gender-specific, it has universal applicability across the court system.

A recent paper on neuro-diverse young adults in the courts in New Zealand¹⁷⁷ has a range of recommendations that are likewise of relevance across the courts. Illustrative examples are included below.

¹⁷² AIJA (2023). *National domestic and family violence benchbook*, [4.4.7].

¹⁷³ Judicial College of Victoria (2016). *Disability access benchbook*.

¹⁷⁴ Ibid, [1.2].

¹⁷⁵ ACT Courts and Tribunal (2021). *ACTCT disability action & inclusion plan*, 8.

¹⁷⁶ White R, Johnson E and Bornman J (2021). Investigating court accommodations for persons with severe communication disabilities: Perspectives of international legal experts. *Scandinavian Journal of Disability Research*, 23: 224-235, 230.

¹⁷⁷ Clasby B et al, n 168.

Table 3.2: Recommendations for court support for neurodiverse people

	Universal supports	Targeted support
Introduction to courtroom	Eg, introduce key individuals in court to young adult (YA); reassure that other individuals are in the courtroom to support other people.	If YA particularly anxious or has experienced previous trauma, give family opportunity to better support them (eg, seated beside them).
Location and physical attributes of the courtroom	Eg, ensure signage is easy-read, with images alongside wording; judges and lawyers should avoid formal clothing.	Eg, provide sensory cushion/reduce lighting where sensory/attention issues.
Engagement with courtroom	Eg, give extra thinking time; praise effort; capture YA's strengths	Eg, develop visual and easy-read materials; avoid saying 'do you understand?'
Engage with multi-disciplinary team	Co-locate services; multi-disciplinary team to include neurodiversity non-government organisations (NGOs), cultural support, AOD services.	Additional support may be required.
Effective communication*	For example, use simple language; avoid metaphors, similes and legal jargon; speak slowly and directly to YA.	Give YA opportunity to contribute; explain stages in the process.
Wellbeing*	Eg, ensure water is available; since some may not have access to food, seek support for snacks to be made available.	Eg, have quiet room outside of court to decompress; ensure trauma-informed education .
Executive functioning supports*	Develop strategies to prevent lost, forgotten or damage items.	Ensure YA has access to computer and in-person support for writing tasks. If possible, think of creative ways for tasks such as RJ that do not involve writing and are suited to those with theory of mind difficulties.
Training	Training for all courtroom staff and judiciary on neurological difficulties (and neurodiversity), how they may present, intersecting factors, behavioural presentations, and establishing support strategies.	Eg, be aware of sensory issues and keep extra materials out of view.

Screening*	Eg, brief screening for all who interact with the justice system, develop repository of support networks for court staff and users.	Link accommodations to screening responses.
------------	---	---

Items indicated with an * have further individualised supports, eg access to communication assistants, where required.

Several Australian jurisdictions have introduced specialist mental health/cognitive disability courts. This model combines judicial monitoring and treatment, to support access to treatment for people, while they are subject to proceedings and supervision.¹⁷⁸ Programs of this nature are currently operating in Victoria, South Australia, Western Australia (including in the Perth Children’s Court)¹⁷⁹ and Tasmania. Victoria has recently committed to expanding its model (the Assessment and Referral Court) across the state in the coming years.¹⁸⁰ Richardson described the Australian evidence base in this context as ‘limited but slowly growing’.¹⁸¹ There have been methodological weaknesses in the evaluations, but they have shown reductions in re-offending, in terms of both frequency and time-to-reoffend, reduced costs and some evidence of improved mental health. Richardson has suggested that future directions in relation to courts of this nature should include:

- understanding that the relationship between mental illness and crime is contextualised;
- trauma-informed approaches, especially in relation to Aboriginal and Torres Strait Islander people; and
- peer support programs incorporated into programs of this nature.¹⁸²

The Royal Commission recently recommended that Queensland (and other jurisdictions)

develop and fund court-based diversion programs for people with disability charged with summary offences in local or magistrates’ courts which:

- are accessible and culturally appropriate, particularly in regional and remote areas;

¹⁷⁸ For an overview, see Richardson L (2019). Mental health courts: Providing access to justice for people with mental illness and cognitive impairments. *Alternative Law Journal*, 44: 100-107. This is to be contrasted with the Queensland mental health court, which determines whether someone is fit to plead: see Queensland Courts (nd). *Mental health court* <https://www.courts.qld.gov.au/courts/mental-health-court>.

¹⁷⁹ Government of Western Australia (nd). *Links* <https://www.mhc.wa.gov.au/getting-help/diversion-support-programs/mental-health-court-diversion-program/links/>. For discussion, including evaluation data, see LCA, *Courts and tribunals*, n 130, 93.

¹⁸⁰ Victoria Legal Aid (2023). *Stopping the cycle of offending for people living with mental health issues or cognitive impairment*. Media release.

¹⁸¹ Richardson, n 178, 104. See also LCA, *Courts and tribunals*, n 130, 91-96.

¹⁸² LCA, *ibid*, 105-106.

- provide support for defendants to access the National Disability Insurance Scheme (NDIS); and
- satisfy service needs, including connecting defendants to appropriate education, housing, employment and other services.¹⁸³

The Justice Advocacy Service in NSW supports people with a cognitive impairment in contact with the justice system. The program is delivered by the Intellectual Disability Rights Service and is available across NSW including rural, regional, and remote locations. The program advocates for clients by providing a support person and advocating for reasonable adjustments. An evaluation of the program¹⁸⁴ found that it was being delivered as intended; most clients (87%) were defendants, 12% were victims and 1% were witnesses. People who received support from the program were more likely to follow their court orders. They were also less likely to be found guilty and more likely to receive a diversionary order. It was determined that, if the program were to be delivered at the full capacity of the current staff and volunteer numbers, with a broad range of benefits captured, every \$1 invested in the program would deliver \$3.37 in return. Furthermore, the greatest economic benefits were increased efficiency in cases (51%) and reduced offending (29%).

There is of course also a need to support victim-survivors with disabilities, especially given that their experiences may not be taken as seriously. A number of the initiatives discussed in this section will be of equal benefit to women and girls who appear before the courts as complainants/victims. The links between their victimisation and disability, especially as a result of DFV and offending, also need to be understood¹⁸⁵ and responded to holistically. The Royal Commission into Violence, Neglect and Exploitation of People with Disability recently noted that '[w]omen and girls with disability and their families told us they were not believed or taken seriously by police when reporting incidents as victims of family, domestic or sexual violence' and 'police often take the word of the perpetrator above that of the woman with disability. In some cases, police misidentified the victim as the perpetrator'.¹⁸⁶ The Royal Commission also commented on 'the importance of trauma-informed approaches and responses to women and girls with disability who are victim-survivors of family and domestic violence'.¹⁸⁷

¹⁸³ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, n 116, Rec 8.21.

¹⁸⁴ Ernst & Young (2021). *Evaluation of the Justice Advocacy Service – Final report for the Department of Communities and Justice*.

¹⁸⁵ See eg Derkley K (2024). Inside stories: A voice for change in recognising disability. *Law Institute Journal* https://www.liv.asn.au/Web/Law_Institute_Journal_and_News/Web/LIJ/Year/2024/02February/A_voice_for_change_in_recognising_disability.aspx

¹⁸⁶ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, n 116, 263.

¹⁸⁷ Ibid, 265.

3.3.9 Substance use

As the RMIT CIJ has noted, '[t]he link between women's justice involvement and substance dependence is a particularly strong one'.¹⁸⁸ In particular, there is extensive research on the relationship between childhood sexual abuse, mental illness, lack of housing – all of which are discussed above – and substance dependence, 'suggesting that substance dependence may be one step on the path from victimisation to offending, rather than a "cause" of offending'.¹⁸⁹ At the same time, women may be less likely to access AOD treatment services, because of experiences such as:

- social stigma;
- discrimination;
- trauma;
- financial issues; and
- custody and childcare concerns.¹⁹⁰

It is now recognised that best practice for addressing substance use issues for women and girls involves a gender-responsive approach.¹⁹¹

In a submission to a parliamentary inquiry on Victoria's criminal justice system, Smart Justice for Women, a coalition of 25 organisations, called for sentencing that takes 'a harm-reduction approach to drug-related offending that prioritises rehabilitative and community-based responses'.¹⁹² Good practice for courts also includes understanding the intersections between substance use and relevant underlying issues, including trauma. It would also be helpful to be familiar with local AOD programs. Helpfully, SMART Recovery, a harm-minimisation program which runs daily free online support meetings, has regular female-only meetings.¹⁹³ SMART also runs dedicated meetings for young, Indigenous and LGBTIQ+ people, alcohol- and gambling-focused meetings, as well as support meetings for family and friends.

3.3.10 Literacy and communication issues

A number of other sections discuss the need for clear and effective communication, especially for young people, people with disabilities and people from CALD

¹⁸⁸ RMIT CIJ, *Leaving custody behind*, n 21, 2.

¹⁸⁹ Ibid.

¹⁹⁰ Alcohol and Other Drug Foundation (nd). *Treatment - The gender divide explained* <https://adf.org.au/insights/substance-misuse-gender-divide-explained/>.

¹⁹¹ See eg Women's AOD Services Network (2016). *Gender responsive model of care*. Network of Alcohol and Other Drugs Agencies.

¹⁹² See eg Smart Justice for Women, n 17, 10.

¹⁹³ SMART Recovery (nd). *Meetings* <https://au.meetings.smartrecovery.org/meetings>.

backgrounds. The ALRC¹⁹⁴ noted that some of the issues that result in Aboriginal and Torres Strait Islander people having difficulties understanding the obligations of their community-based sentences (and, inferentially, other court orders, such as bail), can include:

- poor literacy;
- the use of legal terminology by solicitors and court staff when explaining conditions; and
- lack of plain language and translated material for non-English and Aboriginal and Torres Strait Islander first language speakers.

Where complex legal terms cannot be avoided, especially for people who are unrepresented, the courts may find it helpful to advise them of the *Legal Literate* app,¹⁹⁵ which was developed by the Judicial Council on Cultural Diversity (JCCD) and is a plain English glossary of over 500 legal terms.

Research¹⁹⁶ demonstrates the links between low adult literacy levels and:

- negative interactions with the criminal justice system;
- the over-representation of Indigenous peoples in the justice system; and
- someone's ability to understand their legal rights and obligations and read official documentation, such as court attendance notifications or bail conditions. A failure to appear in court or comply with bail conditions can in turn lead to breaches and additional charges being laid.

In addition to ensuring that court communication and forms are as simple as possible, there is scope for courts to promote participation in literacy programs. For example, the Victorian Drug and Alcohol Treatment Court explicitly refers to literacy training,¹⁹⁷ in addition to judicial monitoring, drug testing, clinical engagement and other features one might usually associate with drug courts.

There is good reason to encourage literacy, as a recent study¹⁹⁸ found that the Literacy for Life Foundation adult literacy campaign, which provided free adult literacy classes to Indigenous adults across six communities in NSW was associated

¹⁹⁴ ALRC, n 18, 255.

¹⁹⁵ Legal Literate App (nd). <https://www.legalliterate.org.au/>.

¹⁹⁶ Wise J et al (2018). *Impact of the 'Yes, I Can!' adult literacy campaign on interactions with the criminal justice system*. Australian Institute of Criminology.

¹⁹⁷ County Court Victoria (nd). *Drug and Alcohol Treatment Court* <https://www.countycourt.vic.gov.au/going-court/criminal-division/drug-and-alcohol-treatment-court>.

¹⁹⁸ Beetson J et al (2022). Impact of a community-controlled adult literacy campaign on crime and justice Outcomes in remote Australian Aboriginal communities. *International Journal for Crime, Justice and Social Democracy*, 11: 56-68. See also Beetson J et al (2022). 'A life changing experience': How adult literacy programs can keep First Nations people out of the criminal justice system. *The Conversation*. <https://theconversation.com/a-life-changing-experience-how-adult-literacy-programs-can-keep-first-nations-people-out-of-the-criminal-justice-system-195715>.

with a decline of nearly 65% in serious offences. Among women involved in the study, the number of offences committed over the course of the study halved, with the largest reductions across the study relating to traffic offences, public order offences and theft. Similarly, the 'Yes! I can!' program – a community-owned and -controlled program that delivered literacy lessons to adults in remote NSW communities – resulted in a substantial reduction in offending, particularly among female participants.¹⁹⁹

3.3.11 Cultural and linguistic diversity

According to the Settlement Council of Australia,²⁰⁰ some of the key barriers to accessing justice for newly arrived Australians from CALD backgrounds include:

- English language and literacy;
- unfamiliarity and cultural difference;
- prejudice, racism and discrimination;
- past trauma; and
- the complexities of the legal system.

The report noted that these issues will be compounded for people from CALD backgrounds who face additional barriers to accessing the justice system, for example, women, people with a disability and those experiencing poverty and/or who are not literate in any language. In particular,

Gender roles and responsibilities can limit CALD women's access to justice. Cultural, religious and family factors may discourage or prevent women from seeking support about family and domestic violence. As a result, situations can reach a crisis point before services are engaged.²⁰¹

The *Trauma-informed courts handbook* recognises the impact of these issues, noting that:

Newly arrived migrants may well have different experiences and understandings of the role of courts. They may not trust a court. Refugees and asylum seekers may have had traumatic experiences of the administration of the law in their own countries. They may have come from countries where the accused in a criminal court does not necessarily enjoy the presumption of innocence. In their country of origin there may have been corruption among judges and/or judges may not generally be regarded as being independent of the government or other State authorities like the

¹⁹⁹ Wise et al, n 196.

²⁰⁰ Settlement Council of Australia (2019). *Access to justice for people from refugee and migrant backgrounds in Australia*.

²⁰¹ Ibid, 10.

prosecution or police. These steps may help judicial officers establish trust and confidence:

- It will be particularly important to explain the process, what will happen, the court's powers and the opportunities which individuals will have to explain their case.
- Through the course of the hearing, carefully monitor that individuals understand the process and feel included in it.
- Demonstrate that the judicial officer is listening and interested in what a party has to say, through proper body language signifying attention and by (where appropriate) reflecting back something the party has said or checking with the party that the judicial officer's understanding of what they have said is correct.
- If a defendant waives a right, a judicial officer needs to ensure it is done knowingly, not because the defendant assumes exercising rights is futile.
- Bear in mind intercultural ways of communication.
- If the individual has mental health difficulties, make the necessary adjustments. This may require particular sensitivity. Bear in mind that such difficulties may not have been diagnosed and that the individual may be unwilling to admit them.²⁰²

The court environment can be confusing for those without a linguistically or culturally diverse background, but for those who are newly arrived in the country or for whom English is a second language, navigating the court process can be an even more complex issue. In the *National framework to improve accessibility to Australian courts for Aboriginal women and migrant and refugee women*, the JCCD recommended providing professional, appropriate and skilled interpreters, if the legal system is to properly respond to these women's needs.²⁰³ They suggest that all courts should create court interpreter policies 'that are publicly available and easily accessible'.²⁰⁴ According to the JCCD, the policies should:

- identify who is responsible for engaging and paying for an interpreter in all cases;
- establish an early process for identifying whether court users need an interpreter;
- establish procedures for ensuring that qualified interpreters are engaged;
- contain a presumption that wherever possible a female interpreter will be booked for a female party;

²⁰² Judicial Commission of NSW (2022). *Trauma-informed courts: Guidance for trauma-informed judicial practices*, 25.

²⁰³ Judicial Council on Cultural Diversity (JCCD) (2021). *National framework to improve accessibility to Australian courts for Aboriginal women and migrant and refugee women*, 18.

²⁰⁴ Ibid.

- provide that separate interpreters should be engaged for applicants and respondents where practicable.²⁰⁵

The JCCD also advised that all courts, if they do not already, should train judicial officers in effective working practices with interpreters and that this would improve the overall experience of women with limited proficiency of English, especially Indigenous women, and migrant and refugee women.²⁰⁶

The *Equality before the law* and *National DFV* benchbooks also include information on people from CALD backgrounds.²⁰⁷ In particular, in the context of DFV, people working in the courts environment should:

- be aware of culturally responsive programs and the intersection between experiences of offending/victimisation and their understandings of behaviours and values;
- adopt trauma-informed practice and acknowledge past trauma;
- reflect on their own biases and assumptions about race, faith and culture, setting these aside,²⁰⁸ and avoid the temptation to interpret communication, behaviour and demeanour in accordance with personal cultural experiences;²⁰⁹ and
- allow space and time for clinical or legal terms to be simplified or explained as needed if the client's preferred language is not English.

It is crucial to recognise that cultural issues are not add-ons, but should be embedded in practice, including by considering cultural norms and definitions of control, power and DFV. When working with DFV perpetrators from CALD backgrounds, responses should be appropriate for the person's cultural, religious and language circumstances.²¹⁰ The following key principles have been identified:

- **culturally responsive practice:** there can be significant barriers for CALD people engaging with mainstream programs, including language, culture and faith;
- **inclusive work:** experiences of violence intersect with understanding of behaviours and values within a culture, faith and language;
- **collaborative practice:** safety is enhanced by working with the whole family; and

²⁰⁵ Ibid.

²⁰⁶ Ibid.

²⁰⁷ AJA, n 172, [4.4.9].

²⁰⁸ See Judicial College of Victoria (2019). *Family violence benchbook*, [5.6.3].

²⁰⁹ See Canadian Legal Information Institute (2020). *Responding to domestic violence in family law, civil protection & child protection Cases*, [19].

²¹⁰ See Judicial College of Victoria, n 208, [5.6].

- **trauma-informed practice:** the experience of torture, trauma and racism in the migration journey cannot be overlooked.

The JCCD also provides a range of fact sheets on interpreters (eg, their role, assessing the need for one, how to conduct proceedings with one) and plain English, as well as on migrant and refugee women. This includes information on barriers to reporting DFV, communication barriers, and barriers to full participation in court. The strategies judicial officers 'can employ to sensitively respond to barriers faced by migrant and refugee women include'²¹¹:

- building relationships with local settlement and DFV service providers, providers, legal services and police;
- working with the Court Cultural Liaison Officer (if relevant);
- undertaking cultural competence training and/or training on DFV/sexual violence and trauma-informed practice;
- being aware of when an interpreter may be needed and how to request one and undertaking training on working with interpreters; and
- taking steps to help women feel safe in the court environment and when giving evidence (eg, using video-link, where available).

It is worth noting that a study on the attitudes of alleged victims and perpetrators in DFV matters to judicial officers²¹² found that, although there was a general perception of procedural fairness, this was lower amongst participants who were born overseas. This suggests that further work may be required to increase confidence in the judiciary among CALD communities. Catholic Care Victoria runs the Justice Education Program,²¹³ in partnership with the Dandenong Magistrates' Court. This involves weekly sessions for people from refugee backgrounds on a range of legal issues, including the police; court system; legal aid; driving information; immigration; social security; family relationships; and mental and physical wellbeing. A 2019 session to 25 women from refugee backgrounds was presented by the Australian Muslim Women's Centre for Human Rights and focused on DFV, including a visit from a magistrate.²¹⁴ Programs of this nature hopefully assist in being trust and perceptions of procedural fairness.

²¹¹ JCCD (nd). *Migrant & refugee women fact sheet*.

²¹² Meyer S and Williamson H (2020). General and specific perceptions of procedural justice: Factors associated with perceptions of police and court responses to domestic and family violence. *Journal of Criminology*, 53: 333-351.

²¹³ Catholic Care Victoria (nd). *Dandenong justice education for refugees* <https://www.catholiccarevic.org.au/news/31/new-community-garden-launched-in-pakenham>; Settlement Council of Australia (2019). *Case study: Justice education program* http://scoa.org.au/wp-content/uploads/2019/03/Justice_Justice-Education-program-by-CatholicCare.pdf.

²¹⁴ Settlement Council of Australia, *ibid*.

3.3.12 LBT and/or gender diversity

The Law Council of Australia has found that ‘LGBTI+ people experience legal needs regarding discrimination, assault and harassment, as well as elevated demand for family law, DFV, end-of-life planning, medical treatment, and administrative law services’.²¹⁵ A recent study with 17 trans and gender-diverse (TGD) people, including 10 transgender women, and 25 lawyers who work with TGD clients, revealed ‘mixed experiences in court’,²¹⁶ including as victims of crime. The article called for wider use of LGBTIQ liaison officers in court, as well as more time to be allocated in court for TGD participants. Another recent article has called for ‘criminal court forms...[to] be reviewed to determine whether the use of gendered pronouns, or the request for identification of sex/gender, is necessary’,²¹⁷ as well as judicial education and additional supports for transgender people involved in the criminal justice system.

The *Equality before the law benchbook* includes sections on ‘lesbians, gay men and bisexuals’²¹⁸ and ‘gender diverse people and people born with diverse sex characteristics’.²¹⁹ These sections include ‘common misconceptions’ and terminology. Practical considerations in court (eg, appearance, language) and directions to the jury and sentencing issues are also discussed. There is explicit guidance that ‘[b]est practice is to always address a person using the name, pronouns and title they wish to use’.²²⁰ The National DFV Benchbook includes a section on LGBTIQ+ people, in the context of DFV. This recognises, for example, that:

LGBTIQ+ people may be less likely to identify the behaviour they experience as violence, and they may be less likely to report the behaviour or seek the help they need for fear of ostracism and discrimination; a negative response from the police and courts; escalating the violence; being ‘outed’; being disbelieved or blamed; or due to personal feelings of shame or embarrassment or a need to protect the perpetrator or the relationship.²²¹

²¹⁵ LCA (2018). *The Justice Project – LGBTI+ people*. Final Report, Part 1.

²¹⁶ Mitchell M et al (2022). Criminalising gender diversity: Trans and gender diverse people’s experiences with the Victorian criminal legal system. *International Journal for Crime, Justice and Social Democracy*, 11: 99-112, 103.

²¹⁷ Genovese E (2023). Administering harm: the treatment of trans people in Australian criminal courts. *Current Issues in Criminal Justice*, DOI: 10.1080/10345329.2023.2231112, 15.

²¹⁸ Judicial Commission of NSW, n 171, Section 8 - Lesbians, gay men and bisexuals.

²¹⁹ Ibid, Section 9 - Gender diverse people and people born with diverse sex characteristics.

²²⁰ Ibid, [9.6.1].

²²¹ AIJA, n 172, [4.4.13].

The Judicial College of Victoria *Family violence benchmark*²²² also provides the following advice:

- be aware of one's own assumptions and biases;
- understand violence in the context of the ongoing trauma and stress associated with minority status, taking a trauma-informed approach to interactions;
- be aware of issues faced by LGBTQ people, without affirming stereotypes or stigmatising people; and
- ensure awareness of appropriate services that are LGBTQ-specific or friendly, to which perpetrators can be referred.

The NJC in Melbourne, discussed further in Chapter 8, was the first justice centre to display the rainbow flag. In recognition of the issues associated with DFV in LGBTIQ+ communities, the NJC has dedicated staff on site for both applicants and respondents, who provide:

- safety planning for the client and their family;
- discussion about immediate and ongoing support needs;
- non-legal information about the court process and outcomes;
- assistance engaging with the court, legal representatives and police;
- referrals to services (eg, mental health, family support, financial counselling, accommodation, LGBTIQ-specific services);
- general support in the lead-up to and on the day of court; and
- some follow-up support after court.

The LGBTIQ DFV *Respondent* Practitioner also provides referrals to behaviour change programs.²²³

²²² See further Judicial College of Victoria, n 208, [5.9.3].

²²³ NJC (nd). *Family violence support services* <https://www.neighbourhoodjustice.vic.gov.au/find-a-service/support-services/family-violence-support-services>.

Spotlight on gambling

Problematic gambling can intersect with the justice system in a range of ways, as:

- it can entrench disadvantage;
- it often co-exists with AOD and mental health issues (and can even constitute a diagnosable mental illness); and
- DFV is three times more likely in families with gambling problems than those without (increased incidence amongst both victims and perpetrators).²²⁴

There is also evidence that it may be more common among some CALD communities.²²⁵

South Australia previously piloted the Gambling Intervention Program in the Adelaide Magistrates' Court, which aimed to reduce gambling urges, improve psychosocial outcomes, and achieve non-custodial sentences on program completion.²²⁶ In 2015-2017, 27 defendants were referred to the program, 48% of whom were female. Although the numbers were small, it is noteworthy that this is higher than for many other programs (eg, AOD), suggesting a significant need for women to obtain support for gambling. Ten participants had their matter finalised in the evaluation period, with nine completing the program. Eight obtained a score of zero on the Gambling Urges Scale and the same number received a suspended sentence. All interviewed stakeholders called for the program to be continued.

Perceived strengths of the program included:

- the high level of collaboration and communication between agencies;
- the gambling treatment component, especially the use of heart rate monitoring to show changes in gambling urges;
- case management to address participants' psychosocial needs during and after the program; and
- the program's potential to raise awareness about problem gambling in the legal profession and broader community.

South Australia's Treatment Intervention Court now addresses the needs of 'people in the criminal justice system who have behavioural conditions, such as substance dependence and *problem gambling* and/or mental health or mental impairment issues, which contribute to their offending'.²²⁷

²²⁴ RMIT CIJ (2020). *Unstacking the odds: Towards positive interventions at the intersection of gambling and crime*.

²²⁵ Diaspora Action Australia (2023). *Gambling harm prevention initiative for women from Vietnamese communities*.

Case study: Dina

Dina is a single mother who has lived in Australia for three years and speaks English as a second language. One day, a client approached her at the end of her work shift and sexually assaulted her. She has felt a lot of shame about what happened and is distrustful of authorities, because of what she had experienced in her home country. Her friends told her it was important to report it to the police, to protect other women, but her family back home says it is wrong to speak about these issues. She has found the legal processes very confusing. Because she has no family to help her with childcare, especially after school and during the holidays, she sometimes has to bring her son with her to court and other related appointments. This has added to her shame, but has also been helpful, because her son has been able to help translate for her. As the case has dragged on, Dina has found it very traumatic. One day in court, she started crying during cross-examination and said she no longer wanted to continue. The judge called an adjournment and arranged for her to have an interpreter in court for the remainder of the trial. She also arranged for the court's cultural liaison officer to provide support to Dina and her son. The prosecutor helped her organise childcare so that she could attend court without having to worry about her son hearing the details of what had happened to her.

²²⁶ Government of South Australia (2017). *Gambling Intervention Program trial: Evaluation report*.

²²⁷ Courts Administration Authority of South Australia (nd). *Treatment Intervention Court* <https://www.courts.sa.gov.au/going-to-court/court-locations/adelaide-magistrates-court/court-intervention-programs/treatment-intervention-court/> (emphasis added).

4. Good practice frameworks and principles

This section sets out the foundational frameworks and principles of good practice in relation to women and girls.

Key points

- A number of good practice frameworks and principles have been developed that should inform court responses to women and girls. These include therapeutic jurisprudence [4.1], trauma-informed practice [4.2] and strengths-based practice [4.3].
- Intermediaries and court-based dog support programs are examples of trauma-informed practice [4.2].
- Adopting a strengths-based approach is a key element for gender-responsive treatment and services, especially in clinical services for women and girls. A strengths-based approach requires seeing women and girls as possessing the strengths and skills necessary for their healing and transformation processes [4.3].
- Being gender-responsive or gender-informed refers to programming that explicitly considers needs that are particularly salient to women. Gender-responsive approaches are trauma-informed and consider the gendered context (or 'pathways') of criminal offending. Guiding principles have been developed to support the effective and appropriate management, supervision and treatment of women and girls in the justice system [4.4].
- On the basis of these principles, best practice in working with justice-involved women is achieved through approaches underpinned by empowerment, meaningful and responsible choices, respect and dignity, supportive environments and shared responsibility [4.4].
- Principles for the delivery of gender-responsive services should be read alongside frameworks developed for young people [4.5] and Indigenous peoples [4.6], to ensure that systems account for the intersecting identities of women and girls in contact with the criminal justice system.

4.1 Therapeutic jurisprudence

Therapeutic jurisprudence (TJ) acknowledges the role of the law as a therapeutic agent: it suggests that legal rules, legal procedures and legal actors such as lawyers and judges can produce either therapeutic or anti-therapeutic consequences.²²⁸ TJ may be seen as a framework within which to examine the operation of legal

²²⁸ Wexler D (1993-1994). An orientation to therapeutic jurisprudence. *New England Journal on Criminal and Civil Confinement*, 20: 259-264.

processes and the behaviour of legal actors to identify their negative and positive impacts on people's wellbeing. By adopting a TJ lens, the legal system can be designed in a way that improves its effectiveness and its ability to contribute to a healthier and more resilient community.²²⁹

A TJ approach adopts a number of principles in order to maximise the positive, therapeutic impact of the law and its processes:²³⁰

- a focus on self-determination, autonomy and active participation for people who come into contact with the legal system;
- procedural justice values, including a focus on the quality of the decision-making process and the quality of how people are treated²³¹
- active judicial involvement and interpersonal skills such as active listening and displays of empathy;
- having an ethic of care;
- emphasising dignity and compassion; and
- interdisciplinary collaboration, to support therapeutic outcomes.

While TJ has now been adopted in a wide range of civil and legal contexts,²³² the 'therapeutic application of the law' in the criminal justice system is perhaps most pronounced in the solution-focused court context. A court that operates under TJ principles is one that considers the emotional and psychological wellbeing of court users. When working with Aboriginal and Torres Strait Islander peoples, it also needs to take into account and adapt to cultural needs and practices.

4.2 Trauma-informed practice

There has been increasing recognition in recent years of the need for the courts to adopt trauma-informed approaches. The reasons for this are set out in the introduction to the handbook recently published by the Judicial Commission of New South Wales (NSW), *Trauma-informed courts: Guidance for trauma-informed Judicial Practices*.²³³

²²⁹ Stobbs N, Bartels L and Vols M (eds) (2019). *The methodology and practice of therapeutic jurisprudence*. Carolina Academic Press.

²³⁰ King M et al (2014). *Non-adversarial justice*. Federation Press, 2nd ed.

²³¹ Factors reflecting high-quality decision making include voice (the person being given an opportunity to be heard) and neutrality (that decisions are made without bias). Factors reflecting high-quality treatment include respect (the person's perception that they were treated with dignity and respect) and trustworthiness (the person's perception that their concerns were genuinely considered). See generally the work of Tom Tyler and colleagues.

²³² King et al, n 230.

²³³ Judicial Commission of NSW, n 202. In the context of trauma-informed sentencing, see McLachlan K (2022). Trauma-informed sentencing in South Australian courts. *Journal of Criminology*, 55: 495-513.

Trauma is highly prevalent in the community. It may be safely concluded that many court participants are trauma survivors and may continue to experience trauma to varying degrees. The experience of trauma among people with substance abuse and mental health disorders, especially those involved with the justice system, is so high as to be considered an almost universal experience. The very nature of legal proceedings, both civil and criminal, has the potential for severe stress for those involved.²³⁴

However, according to McLachlan, in a forthcoming book on trauma-informed criminal justice, '[t]rauma-informed mainstream courts are not yet commonplace'.²³⁵ She has suggested that trauma-informed sentencing in particular is 'smart' justice, cost-effective, person-centred and evidence-based. In addition, she noted that, although trauma does not cause crime, many people who offend have experienced trauma and trauma symptoms may be risk factors for criminality. In addition, crime may cause trauma and the criminal justice system is often traumatic, including for those who work in it. As a result, 'a trauma-informed criminal justice system may improve the experiences of people within it by reducing the risk of additional or future traumatisation and promoting more effective strategies for community safety'.²³⁶

The following are the 'five foundational principles' of trauma-informed care:

1. **Safety** aims to provide effective and consistent physical and emotional safety to service users, when they access services; it is important to ensure service users feel welcome, included and heard by the service provider; and educate users and workers regarding client rights, feedback processes, and protective policies and practices.
2. **Trustworthiness** refers to establishing mutually understood, clear and consistent expectations and boundaries, building a relationship of trust between the service provider and the service user.
3. **Choice** involves providing service users with control about their service preferences, through information, options, and an awareness of their rights and responsibilities.
4. **Collaboration** requires that service users have the opportunity to participate in the planning and shared decision-making around activities and settings related to service provision.
5. **Empowerment** aims to promote the skills-development of service users through a strengths-based approach; and recognises the importance of

²³⁴ Judicial Commission of NSW, *ibid*, 1 (references omitted).

²³⁵ McLachlan K (forthcoming). *Trauma-informed criminal justice: Towards a more compassionate criminal justice system*. Palgrave, 84.

²³⁶ *Ibid*, 188.

individual characteristics, such as culture, history and gender, when designing an effective service to promote change and recovery.²³⁷

Specifically in the sentencing context, McLachlan has suggested that the '4Rs trauma-informed practice framework' requires judicial officers to:

1. **realise** trauma may be present, acknowledge the prevalence of adversity in defendants' lives, and how adversity may result in trauma (eg, impacting brain function, emotional regulation, and ability to read and respond appropriately to social cues);
2. **recognise** specific adversity in a defendant's life and how the resulting trauma has impacted the defendant's functioning and (criminal) behaviour;
3. **respond**, by applying trauma-informed practice principles to the sentencing process and imposing sanctions likely to promote recovery and community safety; and
4. **resist** re-traumatising defendants and others, by working to avoid traumatic triggers throughout sentencing.

McLachlan analysed 448 sentencing remarks from South Australia against this framework. She found that, when the defendant was non-Indigenous and male, the remarks did not generally realise that trauma was present. By contrast, they generally did realise its presence in relation to Indigenous and female defendants and always did in relation to Indigenous women. Judges overtly recognised that trauma-influenced criminal behaviour in 55% of cases involving female defendants and commonly recognised the relationship between trauma and drug use. One or more of the foundational five principles set out above was identified in 67% of examined sentencing remarks, while all five were present in 28% of remarks. Finally, judges sought to resist re-traumatisation by reflecting, more commonly in cases involving women, on the impact of a prison sentence on the defendant's children or family members. McLachlan called for judges to 'be provided with educational material regarding the prevalence and relevance of adversity and resulting trauma in an online, trauma-focused benchbook'.²³⁸ This has since been developed and is discussed further in section Chapter 7.

4.2.1 Intermediaries

As set out above, the Taskforce made a recommendation around the potential expansion of the intermediary scheme (see [1.1]). Intermediaries play a vital role in the court system, particularly for vulnerable, intimidated and traumatised women and girls. Their role is to provide support to witnesses and victims attending court, particularly victim-survivors of sexual assault, individuals with cognitive or

²³⁷ See McLachlan (2022), n 233, citing Kezelman C and Stavropoulos P (2016). *Trauma and the law: Applying trauma-informed practice to legal and judicial contexts*. Blue Knot Foundation.

²³⁸ McLachlan, *ibid*, 505.

communication impairments, and children, in order that they can participate fully in the court process. It is essential that all intermediaries, especially if they are supporting traumatised individuals, have received trauma-informed training and are able to communicate effectively, not only with the witness, but also with the police, the judiciary, prosecutors and court personnel.

The Women's Domestic Violence Court Advocacy Services in NSW provide a specialised domestic and family court support service for victim-survivors and their children. Through partnerships with Local Court staff, court officers, judicial officers, and the NSW Police Force, their role is to ensure that:

- women can participate in the justice process;
- women obtain a fair outcome and the protection they need; and
- the court process is as efficient as possible.²³⁹

In the UK, Independent Domestic Abuse Advocates (IDVAs) are employed by domestic violence and community organisations and can provide support, advocacy and safety planning to those experiencing DFV. They also act as intermediaries for victim-survivors attending court, to help them navigate the court system. In the UK, specialist court IDVAs provide dedicated court support to victim-survivors of DFV. They receive the same training as IDVAs, but with advanced knowledge and experience of the justice process.²⁴⁰

According to Slade, community-based NGOs (eg, Victim Support and Rape Crisis) are primarily responsible for delivering support and advocacy services for victims-survivors of sexual violence in New Zealand.²⁴¹ Victim-survivors who attend court, however, are provided with access to a Court Victim Advisor (CVA) who is attached to the court system and will support them through the court process including 'facilitating their safety in court, and liaising with police, prosecutors, the judiciary and community organisations'.²⁴²

In an attempt to improve their response to sexual violence, the New Zealand Ministry of Justice has, since 2020, also employed specialist Sexual Violence CVAs specifically to support victims-survivors of sexual violence.²⁴³ An 2018 evaluation of the experiences of 39 victims-survivors of sexual violence engaging with CVAs in New Zealand found that largely they appreciated the support they were given, 'both in terms of [the CVA] undertaking administrative functions and also providing

²³⁹ Stiles A (2023). Introducing the Women's Domestic Violence Court Advocacy Services. *Judicial Officers' Bulletin*, 35: 28-29.

²⁴⁰ SafeLives (2021). *Understanding court support for victims of domestic abuse: Mapping the provision of court-related domestic abuse support and advocacy across England and Wales on behalf of the Domestic Abuse Commissioner*, 5.

²⁴¹ Slade, n 98, 7.

²⁴² Ibid, 8.

²⁴³ Ibid.

tangible benefits to them in terms of alleviating some of the anxiety and distress associated with having to give evidence as a victim of sexual violence'.²⁴⁴ Some concerns were raised by some of the service users, including '[p]oor communication between CVAs from different regions, incorrect information being provided resulting in undue stress for one victim-survivor and no alternative allocated when a CVA was unavailable due to family reasons'.²⁴⁵ However, the report notes that this was 'a small group [that] had a less favourable service experience from a CVA'.²⁴⁶

4.2.2 Court support dog programs

Most Australian jurisdictions (NSW, Victoria, Queensland, South Australia, Western Australia, ACT and Federal Circuit and Family Court of Australia (FCFCA)) now use support dogs in at least some of their courts to minimise trauma for participants, especially vulnerable witnesses. Reportedly, their presence contributes to trials running more smoothly, with fewer interruptions, and 'is not just to support witnesses during court but to minimise ongoing trauma by lowering stress levels'.²⁴⁷ Research on court support dogs²⁴⁸ indicates that their role in court can include accompanying witnesses in court proceedings, courtroom support, court orientation visits and jury support. The first full-time court support dog in Australia, Lucy, was recently loaned to the FCFCA as a pilot program. When respondents were surveyed about the pilot, 100% agreed that:

- having a court facility dog in the building was positive;
- they/their client felt supported by the dog's presence; and
- if they/their client attended court again, they would like the ability to request the support of a court facility dog.

It is important to ensure programs of this nature are also available outside major metropolitan centres, to promote equitable access to justice for women and girls living in RRR areas.

4.3 Strengths-based practice

The strengths-based approach is based on the belief that people have existing competencies and resources, can use them to identify and address their own

²⁴⁴ Boyer T, Allison S and Creagh H (2018). *Improving the justice response to victims of sexual violence: Victims' experiences*. New Zealand Ministry of Justice, 58.

²⁴⁵ Ibid, 61.

²⁴⁶ Ibid, 60.

²⁴⁷ Silvester J (2021, May 14). They all love Lucy: How a four-legged friend can help us in court. *The Age*. <https://www.theage.com.au/national/victoria/they-all-love-lucy-how-a-four-legged-friend-can-help-us-in-court-20210513-p57ri5.html>.

²⁴⁸ Morrison J (2018). 'The dog helped them find their words'. Churchill Fellowship Report. This report contains 16 recommendations for program implementation.

concerns, and can be actively involved as co-producers of support and learning. Research shows that:

- strengths-based approaches value the capacity, skills, knowledge, connections and potential in individuals and communities;
- focusing on strengths does not mean ignoring challenges, or spinning struggles into strengths;
- practitioners working in this way have to work in collaboration, helping people to do things for themselves. In this way, people can become co-producers of support, not passive consumers of support; and
- the strengths approach to practice has broad applicability across a number of practice settings and a wide range of populations.

The evidence for strengths-based approaches can be difficult to synthesise, because of the different populations and problem areas examined in the literature. However, there is some evidence to suggest that they can improve retention in substance use treatment programs, improve social networks and enhance well-being.²⁴⁹

The Dilly Bag program, discussed in [5.1] below, adopts a strengths-based approach.

Focusing on each individual's assets, strengths-based practice begins with an assessment that seeks to identify strengths and to engage in collaborative planning. A strengths-based approach is based on six key principles:²⁵⁰

- every individual, family, group and community has strengths, and the focus is on these strengths rather than pathology;
- the community is a rich source of resources;
- interventions are based on client self-determination;
- collaboration is central, with the practitioner-client relationship seen as primary and essential;
- outreach is employed as a preferred mode of intervention; and
- all people have the inherent capacity to learn, grow and change.

Adopting a strengths-based approach is consistent with a focus on desistance. Desistance occurs 'as a result of various turning points and cognitive shifts that occur throughout the life-course, rather than being determined by early risk factors'.²⁵¹ This suggests that interventions should be aimed at deviating offending

²⁴⁹ Pattoni L (2012). *Strengths-based approaches for working with individuals*. Iriss.

²⁵⁰ Saint-Jacques M, Turcotte D and Pouliot E (2009). Adopting a strengths perspective in social work practice with families in difficulty: From theory to practice. *Families in Society*, 90: 454-461, cited in Scerra N (2011). *Strengths-based practice: The evidence*. Uniting Care Social Justice Unit.

²⁵¹ Kazemian L (2021). *Pathways to desistance from crime among juveniles and adults: Applications to criminal justice policy and practice*. National Institute of Justice, 8.

trajectories and accelerating the process of desistance from crime. The evidence on supporting women towards desistance has been summarised as follows:

Overall, the evidence suggests that desistance from crime is not gender neutral. It also shows the need for higher levels of educational attainment and employment training for female offenders; a comprehensive, coherent, holistic, and strengths-based gender-responsive treatment strategy for women suffering from co-occurring mental health, physical, and/or addiction issues; case management services that extend into the community post release; problem-solving and time management skills; housing; health care; and supportive functional social networks both within and beyond the family. This type of comprehensive approach would help female offenders obtain and sustain long-term quality employment, thereby increasing the likelihood of achieving the consequent desistance from crime.²⁵²

Some caution is needed, however, when considering strengths-based approaches among communities that face significant disadvantage. Strengths need to be understood in relation to constraints: a narrow focus on strengths risks portraying individuals and communities as responsible for their own situations, minimising the impact of broader power relations and inequality. This is particularly the case in Indigenous communities around the world. In Australia, a strengths-based approach seeks to understand how the criminal justice system can best support and increase the strength, resilience and wellbeing of Aboriginal and Torres Strait Islander people and their communities²⁵³ (see further discussion below).

4.4 Gender responsivity

Being *gender-responsive* or *gender-informed* refers to programming that explicitly considers needs that are particularly salient to women. Gender-responsive approaches are trauma-informed and consider the gendered context (or ‘pathways’) of criminal offending.²⁵⁴ A gender-responsive approach acknowledges the unique pathways, causes and correlates of offending among females involved in the justice system. Best practice in implementing this approach is founded upon the strengths-based model of intervention programming.

²⁵² Flower S (2010). *Gender-responsive strategies for women offenders: Employment and female offenders: An update of the empirical research*. National Institute of Corrections.

²⁵³ Marchetti E (2017). Nothing works? A meta-review of Indigenous sentencing court evaluations. *Current Issues in Criminal Justice*, 28: 257-276.

²⁵⁴ Gobeil R, Blanchette K and Stewart L (2016). A meta-analytic review of correctional interventions for women offenders: Gender-neutral versus gender-informed approaches. *Criminal Justice and Behavior*, 43: 301-322.

Adopting a strengths-based approach is a key element for gender-responsive treatment and services, especially in clinical services for women and girls.²⁵⁵ A strengths-based approach requires seeing women and girls as possessing the strengths and skills necessary for their healing and transformation processes. It is both 'quintessential to gender-responsive programming and is a distinct approach to correctional programming'.²⁵⁶

The seminal research on the principles underpinning work with justice-involved women and girls is the large body of work of Barbara Bloom, Stephanie Covington and colleagues. In their report for the National Institute of Corrections, *Gender-responsive strategies: Research, practice, and guiding principles for women offenders*,²⁵⁷ they presented a 'new vision': guiding principles for a gender-responsive justice system. To achieve this vision and develop gender-responsive policies, practices, programs and services, the following research findings must be incorporated:²⁵⁸

- an effective system for female offenders is structured differently than a system for male offenders;
- gender-responsive policy and practice target women's pathways to criminality by providing effective interventions that address the intersecting issues of substance use, trauma, mental health and economic marginality;
- criminal justice sanctions and interventions recognise the low risk to public safety presented by the offences that females typically commit; and
- when delivering sanctions and interventions, gender-responsive policy considers women's relationships and their roles in the community.

The importance of a gender-responsive approach is not confined to adult women – it is directly relevant and applicable to girls as well, with the added factor that specialised staff also need to be trained in the developmental stages of female adolescence.²⁵⁹ Further principles in relation to young people are set out below.

Six guiding principles²⁶⁰ address system requirements for the effective and appropriate management, supervision and treatment of women in the justice system.

²⁵⁵ Covington S and Bloom B (2006). Gender-responsive treatment and services in correctional settings. *Women and Therapy*, 29: 9-33.

²⁵⁶ Fedock G and Covington S (2022). Strength-based approaches to the treatment of incarcerated women and girls. In C Langton and J Worling (eds). *Facilitating desistance from aggression and crime: Theory, research, and strength-based practices*. John Wiley & Sons, 7.

²⁵⁷ Bloom B et al (2003). *Gender-responsive strategies: Research, practice, and guiding principles for women offenders*. National Institute of Corrections.

²⁵⁸ Ibid, 75.

²⁵⁹ Bloom B and Covington S (2001). *Effective gender-responsive interventions in juvenile justice: Addressing the lives of delinquent girls*. Paper presented at the 2001 Annual Meeting of the American Society of Criminology, Atlanta, Georgia, November 7-10.

²⁶⁰ Bloom et al, n 257, 76.

Guiding principle 1: Gender – Acknowledge that gender makes a difference

The criminal justice field has been dominated by the rule of parity, with equal treatment to be provided to everyone. However, this does not necessarily mean that the exact same treatment is appropriate for both women and men; well-documented gender differences must be acknowledged. To implement this principle, the following practices are required:²⁶¹

- allocate both human and financial resources to create women-centred services;
- designate a high-level administrative position for oversight of management, supervision and services; and
- recruit and train personnel and volunteers who have both the interest and the qualifications needed for working with women under justice supervision.

Guiding principle 2: Environment – Create an environment based on safety, respect and dignity

Safety, respect, and dignity are fundamental to behavioural change. In order to change their behaviour, women need a (physically and psychologically) safe,²⁶² supportive and therapeutic setting for supervision, with the minimal restrictions required to meet public safety interests. Justice system professionals who work with women must be aware of the significant pattern of emotional, physical and sexual abuse that many have experienced so that the justice setting itself does not re-enact women's earlier experiences of victimisation. To implement this principle, the following practices are required:²⁶³

- conduct a comprehensive review of the institutional or community environment in which women are supervised to provide an ongoing assessment of the current culture;
- develop policy that reflects an understanding of the importance of emotional and physical safety;
- understand the effects of childhood trauma to avoid further traumatising;
- establish protocols for reporting and investigating claims of misconduct; and
- develop classification and assessment systems that are validated on samples of female offenders.

²⁶¹ Ibid, 77.

²⁶² 'Safety' has been variously defined throughout the literature, but there appears to be consensus that a psychologically safe environment is one that takes into account the differences between individuals in terms of a range of characteristics, including (but not limited to) age, race, ethnicity, sexual orientation, gender identity and language. Cultural safety is of particular relevance to cohorts such as Aboriginal women and girls and those from culturally and linguistically diverse communities.

²⁶³ Bloom et al, n 257, 78.

Guiding principle 3: Relationships – Develop policies, practices and programs that are relational

The role of relationships is critical in the lives of women involved in the justice system – promoting healthy connections to family, significant others and the community is a key contributor to successful outcomes for this cohort. Developing mutual relationships is fundamental to women's identity and sense of worth, but justice-involved women and girls frequently suffer from isolation and alienation created by discrimination, victimisation, mental illness and substance use. To implement this principle, the following is required:²⁶⁴

- develop training for all staff and administrators, in which relationship issues are a core theme;
- such training should include the importance of relationships, staff-client relationships, professional boundaries and communication;
- promote supportive relationships among women in the justice system; and
- develop community and peer-support networks.

Guiding principle 4: Services and supervision – Address substance use, trauma and mental health issues

Substance use, trauma and mental health are three critical, interrelated issues in the lives of women and girls involved in the justice system. These issues have a major impact on their experiences in the justice system. Although they are therapeutically linked, these issues historically have been treated separately. Instead, substance use, trauma and mental health issues need to be addressed concurrently through comprehensive, integrated and culturally-relevant services and appropriate supervision. To implement this principle, the following practices are required:²⁶⁵

- service providers need to be cross-trained in three primary issues: substance use, trauma, and mental health;
- resources, including skilled personnel, must be allocated;
- the environment in which services are provided must be closely monitored to ensure the emotional and physical safety of the women being served; and
- service providers and criminal justice personnel must receive training in cultural sensitivity so that they can understand and respond appropriately to issues of race, ethnicity and culture.

²⁶⁴ Ibid, 80.

²⁶⁵ Ibid, 81.

Guiding principle 5: Socio-economic status – Provide opportunities to improve socio-economic conditions

Most justice-involved women are disadvantaged economically and socially; most are poor, under-educated and unskilled and many have never worked or have sporadic work histories. This reality is compounded by their trauma and substance use histories. Improving outcomes requires preparing them through education and training to support themselves and their families, particularly for those who have been subject to family violence and who need to establish a life apart from an abusive partner. To implement this principle, the following practices are required:²⁶⁶

- allocate program resources for comprehensive, integrated services that focus on the economic, social and treatment needs of women. Ensure that women leave custody with provisions for short-term emergency services (such as subsistence, lodging, food, transportation and clothing);
- provide traditional and non-traditional training, education and skill-enhancing opportunities to assist women in earning a living wage; and
- provide sober living space in institutions and in the community.

Guiding principle 6: Community – Establish a collaborative system of community supervision and re-entry

Women face specific challenges as they re-enter the community from custody: in addition to the stigma of having a history of offending, they often face additional burdens such as single motherhood, decreased economic potential, lack of targeted services and programs, responsibilities to multiple agencies and a general lack of community support. In order to succeed in re-entry, women need comprehensive, collaborative, wrap-around services in areas such as mental health, alcohol and other drugs, family violence, emergency food and shelter, education, employment, health, child welfare, transport and recreation. A holistic, multi-disciplinary and culturally sensitive plan needs to be prepared for each woman that draws on a coordinated range of services within her community. This case management approach has been found to work effectively with women, because it addresses their multiple needs. Approaches to service delivery that are based on women's relationships and the connections among the different areas of their lives are especially relevant. To implement this principle, the following practices are required:²⁶⁷

- create individualised support plans and wrap the necessary resources around the woman;
- develop a 'one-stop shop' approach to community services, with the primary service provider also facilitating access to other needed services; and

²⁶⁶ Ibid, 82.

²⁶⁷ Ibid, 83.

- use a coordinated case management model for community supervision.

On the basis of these principles, best practice in working with justice-involved women is achieved in approaches underpinned by:²⁶⁸

- **empowerment:** described as a process through which women gain insight into their situation, identify their strengths and are supported and challenged to take positive action to gain control of their lives;
- **meaningful and responsible choices:** this is based on the view that, with appropriate information, resources and understanding of the implications of their choices, women can make meaningful and responsible choices;
- **respect and dignity:** these accrue from a reciprocal relationship and are most obvious when a person gains self-respect and is able to respond to others;
- **supportive environments:** these are seen as a prerequisite to accessible services, which, in turn, enable the generation of meaningful and responsible choices; and
- **shared responsibility:** this requires that all formal and informal services, ie, government, corrections, community, public and private organisations, have some part to play in supporting women's efforts to participate as contributing members of society.

It is essential that the definition of terms such as gender-responsive are understood by the practitioners throughout the criminal justice system. In a study designed to bridge the gap between academic conceptualization and applied practice,²⁶⁹ Anderson et al emphasised the need to ensure that evidence-based practice is properly applied in courtroom settings. They found ambiguity and a lack of understanding over what a gender-responsive approach entails by courtroom staff and, as such, a need for training to prevent misperceptions was emphasised.

In developing gender-responsive approaches, it is also important to remember the Bangkok Rules,²⁷⁰ adopted by the General Assembly of the United Nations in 2010, which govern the treatment of women prisoners and non-custodial measures for women offenders. The following rules are of particular relevance in the present context:

[W]omen offenders shall not be separated from their families and communities without due consideration being given to their backgrounds and family ties.

²⁶⁸ Convery U (2009). *Addressing offending by women: A literature review*. Northern Ireland Office Statistics and Research Branch, ii-iii214.

²⁶⁹ Anderson V, Hoskins K and Rubino L (2019) Defining gender-responsive services in a juvenile court setting. *Women & Criminal Justice*, 29: 338-354.

²⁷⁰ United Nations (2010). *Rules for the treatment of women prisoners and non-custodial measures for women offenders (Bangkok Rules)*.

Alternative ways of managing women who commit offences, such as diversionary measures and pretrial and sentencing alternatives, shall be implemented wherever appropriate and possible (Rule 58).

Appropriate resources shall be made available to devise suitable alternatives for women offenders in order to combine non-custodial measures with interventions to address the most common problems leading to women's contact with the criminal justice system. These may include therapeutic courses and counselling for victims of domestic violence and sexual abuse; suitable treatment for those with mental disability; and educational and training programmes to improve employment prospects. Such programmes shall take account of the need to provide care for children and women-only services (Rule 60).

When sentencing women offenders, courts shall have the power to consider mitigating factors such as lack of criminal history and relative non-severity and nature of the criminal conduct, in the light of women's caretaking responsibilities and typical backgrounds (Rule 61).

The provision of gender-sensitive, trauma-informed, women-only substance abuse treatment programmes in the community and women's access to such treatment shall be improved, for crime prevention as well as for diversion and alternative sentencing purposes (Rule 62).

Non-custodial sentences for pregnant women and women with dependent children shall be preferred where possible and appropriate, with custodial sentences being considered when the offence is serious or violent or the woman represents a continuing danger, and after taking into account the best interests of the child or children, while ensuring that appropriate provision has been made for the care of such children (Rule 64).

Institutionalization of children in conflict with the law shall be avoided to the maximum extent possible. The gender-based vulnerability of juvenile female offenders shall be taken into account in decision-making (Rule 65).

4.5 Youth justice principles

Addressing offending among people who have entered the youth justice system requires a system that is tailored to their particular needs, characteristics and circumstances. In other words, youth justice systems cannot simply replicate adult criminal justice systems. Ward has identified the '10 Pillars' of youth justice – a 'set of practical imperatives', to inform the design of youth justice systems based on the application of current knowledge.²⁷¹ While these apply to all youth, not just girls, they

²⁷¹ Ward (2020). *10 pillars of youth justice*. Australia & New Zealand School of Government.

are particularly relevant, when considering the unique pathways to offending and trauma histories that are so prevalent among girls who are involved in the criminal justice system. Accordingly, they should be read in combination with (and complement) the six guiding principles set out above:

1. **Treat young people differently to adults:** Effective youth justice systems are designed with the distinct developmental characteristics of young people front and centre. They apply lessons from brain science to produce more successful outcomes. Youth justice systems are not simply smaller versions of adult correctional systems.
2. **Keep young people away from the criminal justice system:** Effective youth justice systems divert most young people away from harmful system contact and direct limited public resources to those who present a serious risk to community safety.
3. **Privilege engagement and relationships:** The most effective workers demonstrate genuine care, warmth, respect, fairness and dependability; without meaningful engagement there is no forum for changing behaviour. The best performing youth justice systems achieve safety and security primarily through relationships, rather than using physical barriers, isolation and restraints.
4. **Collaborate with family and community:** The most effective interventions engage families and significant others in strength-based partnerships. Facilitating strong connections to family, community and country, both individually and systemically, is essential in reducing criminal justice system contact with Aboriginal and Torres Strait Islander young people.
5. **Partner with education:** Once in contact with the justice system, educational initiatives are a vital means of forging positive community links and establishing purposeful, structured activities for young people. They can also provide targeted, place-based responses.
6. **Address trauma and complexity therapeutically:** There is strong evidence that therapeutic interventions are effective at reducing chronic reoffending among young people, but the trauma experienced by many in the youth justice system impedes participation in treatment. A trauma-informed approach is needed to prepare young people to participate in structured programs.
7. **Connect service systems:** Collaboration across service systems is particularly important when working with traumatised, marginalised young people, such as those who have been involved with both youth justice and child protection systems. Effective cross-system coordination is supported by case management approaches.
8. **Invest in restorative approaches:** Restorative practices are particularly useful when embedded in the youth justice system pathway, and can be applied at multiple points such as pre-charge, pre-court or pre-sentence. They increase offender and victim satisfaction with the justice system, can be

delivered quickly and can be used with low-risk cohorts to avoid formal justice responses. By offering an opportunity to involve family and community, restorative practices such as group conferencing can be particularly helpful in engaging Indigenous people in cultural responses.

9. **Tailor responses to different cohorts:** While tailored programs may not always be practical or achievable at an individual level, they are readily delivered at a cohort level. Cohorts with distinct responsivity needs include Indigenous young people, girls and young women, young people with cognitive disabilities or language and learning issues, young people from overrepresented cultural groups and children aged 10-13 years.
10. **Provide safe, structured custodial environments:** The primary operational imperative in custodial youth justice settings is safety. While physical security measures play a role, safety is maximised when young people are engaged and occupied, have positive relationships with staff and experience a transparent system of incentives for good behaviour under a trauma-informed approach.

In addition, Thomas, Liddell and Johns²⁷² have suggested that court-based diversion programs for children and young people (CYP) adopt the following core principles:

- the option is matched to risk level;
- the diversion operates according to evidence-based frameworks and protocols;
- the diversion addresses multiple needs;
- the diversion provides tailored interventions;
- the plan includes the family;
- the program is staffed by highly qualified and well-trained staff; and
- the program incorporates ongoing evaluation.

4.6 Culturally appropriate responses for Indigenous women and girls

The literature consistently recognises self-determination and capacity-building as central to improving justice outcomes for Aboriginal and Torres Strait Islander people. This means that communities must drive decision-making and local knowledge must inform any decisions made that impact Aboriginal and Torres Strait Islander people. In addition, the United Nations Special Rapporteur on Violence Against Women has emphasised the crucial importance of diverting Aboriginal and Torres Strait Islander women from the criminal justice system – particularly those who are mothers – and recommended that state and territory governments amend

²⁷² Thomas S, Liddell M and Johns D (2016). *Evaluation of the Youth Diversion Pilot Program (YDPP: Stage 3)*. RMIT University.

laws that contribute to their unnecessary imprisonment.²⁷³ According to June Oscar's research,²⁷⁴ what Indigenous women want to see is:

- community-led solutions and constructive relations with police;
- cultural competence;
- police liaison officer positions;
- a pro-active diversionary approach;
- justice reinvestment;
- alternative sentencing options;
- resourcing of remote communities;
- cultural representation in courts and legal services; and
- connection to culture, while incarcerated.

Approaches to programs for Aboriginal and Torres Strait Islander women and girls should be culturally safe. Broader systemic issues in relation to racism need to be recognised and addressed. Practitioners working with this cohort of women must also be culturally competent. These concepts have been defined as 'environments that are spiritually, socially and emotionally safe, as well as physically safe for people; where there is no assault, challenge or denial of their identity, of who they are and what they need'.²⁷⁵ Cultural safety is also about:

practitioners and services working to enhance rather than diminish individual and collective cultural identities, and empower and promote individual, family and community wellbeing. Culturally safe service delivery is crucial in enhancing individual and collective empowerment and more effective and meaningful pathways to Aboriginal self-determination.²⁷⁶

There are several key components to ensuring that justice system interventions are culturally appropriate and safe. This means that programs should be:²⁷⁷

- designed, developed and delivered by Indigenous people and organisations where possible. This ensures that approaches are local (tailored to the specific community), holistic (providing legal and family assistance with 'one-stop shop' support and case management) and trauma-informed. Programs

²⁷³ United Nations Special Rapporteur on the Rights of Indigenous Peoples (2017). *End of mission statement by the United Nations Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz, on her visit to Australia*. See also ALRC, n 18, for recommendations around legal reform.

²⁷⁴ AHRC, n 33, [6.2].

²⁷⁵ Williams R (1999). Cultural safety: What does it mean for our work practice? *Australian and New Zealand Journal of Public Health*, 23: 213-214, 213.

²⁷⁶ Walker R, Schultz C and Sonn C (2014). Cultural competence: Transforming policy, services, programs and practice. In P Dudgeon et al (eds). *Working together: Aboriginal and Torres Strait Islander mental health and wellbeing principles and practice*. Commonwealth of Australia, 2nd ed.

²⁷⁷ ALRC, n 18, 296-301.

should be well-resourced and consistent, supported by staff who are trained in cultural awareness, and designed around Indigenous understandings of health (which includes mental, physical, cultural and spiritual health), as well as an understanding that land is central to wellbeing;

- trauma-informed, especially in the case of Indigenous women, to accommodate their needs and experiences of trauma, abuse and family violence; and
- focussed on practical skills, address offending behaviours and provide case management, including through-care that offers support and assistance beyond the end of a sentence. Programs to provide practical assistance might include those which focus on basic literacy and numeracy, trauma and grief, and loss. Others might involve practical needs, such as accommodation, finances and employment, as a way of addressing social and welfare concerns, such as improving social connections and ameliorating poverty. Targets of programs to address offending behaviours might include substance dependency, emotional intelligence, intergenerational trauma, family violence, accommodation and positive thinking.

The need for a trauma-informed and culturally appropriate approach is especially acute in designing and delivering strategies to address offending among Aboriginal and Torres Strait Islander women and girls, whose offending takes place within a context of intergenerational trauma, family and sexual violence, child removal, mental illness, disability and poverty. Accordingly, responses need to take into account the multiple and layered nature of the disadvantage. The ALRC noted that Aboriginal and Torres Strait Islander women appear to engage most effectively with an intersectional approach that recognises their needs both as women and Aboriginal and Torres Strait Islander people. It recommended:²⁷⁸

Programs and services delivered to female Aboriginal offenders within the criminal justice system—leading up to, during and post-incarceration—should take into account their particular needs so as to improve their chances of rehabilitation, reduce their likelihood of reoffending and decrease their involvement with the criminal justice system. Such programs and services, including those provided by NGOs, police, courts and corrections, must be:

- developed with and delivered by Aboriginal women; and
- trauma-informed and culturally appropriate.

An example of such a program is the Kunga Stopping Violence Program, based in Alice Springs. This program works with Aboriginal women who have been incarcerated for alleged violent offences, to provide pre-release and throughcare support. The Australian National Research Organisation for Women's Safety

²⁷⁸ Ibid, 358.

(ANROWS) research report *Kungas' trauma experiences and effects on behaviour in Central Australia*²⁷⁹ is instructive, regarding the importance of using a multidisciplinary lens to identify and respond to Aboriginal women's experiences in the justice system. The report was formulated, after undertaking interviews with clients and a stakeholder workshop, to identify how services could better meet Aboriginal women's specific needs. A major theme identified was the communication disconnect between Aboriginal and Torres Strait Islander women accessing the criminal justice system and the complexities of the system itself. For support to be meaningful, it needs to be accessible and understood. For many in Central (and other parts of) Australia, English is not a first language, but any communication with police, legal services or service providers is dominated by English.²⁸⁰ The culmination of trauma and operating in a second language was identified as a source of frustration and misunderstanding among participants. A further communication barrier identified was shame, which prevents Indigenous women from seeking assistance or can also serve as a motivation to withhold the whole story to police or the court. The women interviewed identified that, even when they were trying to communicate their experiences and distress, they were often not heard or dismissed. The practice reform recommendations coming out of this report included:

- holding educational sessions for lawyers, judicial officers and community corrections staff about the safety implications of placing women on conditions, when in a DFV relationship;
- allocating more time to communicating with and listening to Aboriginal and Torres Strait Islander women in the legal system; and
- increasing police and judicial officers' understanding of the impact of trauma and how this affects a woman's ability to provide evidence.²⁸¹

Another common theme throughout the report was that service providers should be collaborative and transparent, to ensure that knowledge is shared and treatment or solutions are holistic and appropriate.

The concept of wise practice has emerged from the international Indigenous research and community development literature. It explicitly recognises the diversity that exists among Indigenous peoples and their communities, the complexity of Indigenous peoples' lived experiences, and the varied environments in which programs for Indigenous peoples are delivered. Rather than adopting a static model of best practice, wise practice is 'characterised as being contextual, grounded in local knowledge and culture, and valuing a strengths-based approach'.²⁸² A wise

²⁷⁹ Bevis M et al (2020). *Kungas' trauma experiences and effects on behaviour in Central Australia*. ANROWS.

²⁸⁰ Ibid, 7.

²⁸¹ Ibid, 9.

²⁸² Wesley-Esquimaux C and Calliou B (2010). *Best practices in Aboriginal community development: A literature review and wise practices approach*. The Banff Center. cited in Queensland Government

practice perspective supports the design and implementation of programs that prioritise the unique needs of the target group. In the context of Aboriginal and Torres Strait Islander people, wise practice recognises Indigenous knowledge as a robust source of information.

The Queensland Government Statistician's Office has published a set of four interconnected 'wise practice' principles (WPPs),²⁸³ to inform the design and implementation of tertiary criminal justice programs for Aboriginal and Torres Strait Islander people. Programs that implement strategies to support the wise practice principles enable the development of reciprocal and collaborative relationships with Indigenous people and communities, implementation of place-based programs that consider local context and delivery of culturally appropriate and culturally safe programs. The WPPs are to be considered alongside general evidence-based practice for criminal justice programs, such as addressing complex criminogenic factors with an integrated, holistic response delivered by multiple services.

WPP1: Support Indigenous ownership, engagement and oversight

Strategies used to support Aboriginal and Torres Strait Islander community ownership, engagement and oversight of programs include building relationships with the Aboriginal community throughout program delivery and establishing program governance or reference groups with Aboriginal and Torres Strait Islander representation. This approach ensures that programs are place-based and responsive to the needs of the local community.

Consultation refers not only to developing relationships with community Elders and leaders, but also to consulting with the broader community, including potential program participants. Regular meetings with governance or reference groups enables input into ongoing program delivery, including progress towards achieving program objectives and responsiveness to emerging local needs and issues.

WPP2: Value, respect and strengthen Indigenous authority and capacity

Strategies used to value, respect and strengthen Aboriginal and Torres Strait Islander authority and capacity include the incorporation of traditional Aboriginal and Torres Strait Islander authority into program implementation, as well as building capability through the employment and ongoing professional development of Indigenous program staff.

Including Elders and Respected Persons as program support staff or facilitators embeds accountability to their cultural authority and has a positive impact on participant engagement. This is particularly evident in evaluations of Indigenous

Statistician's Office (2021). *Wise practice for designing and implementing criminal justice programs for Aboriginal people*, Queensland Treasury, 7.

²⁸³ Queensland Government Statistician's Office, *ibid*.

sentencing courts and custodial programs. The use of local Aboriginal and Torres Strait Islander staff in programs also improves accessibility for participants and contributes to the cultural competence of non-Indigenous program staff.

WPP3: Commit to cultural competence

Strategies used to support culturally competent program design and implementation include providing cultural competency training for people involved in program delivery, building partnerships with culturally competent organisations to support program delivery, and seeking guidance from cultural advisors in program design and implementation. Programs can be delivered by non-Indigenous staff, if they have the right mix of skills and appropriate cultural competence, though Aboriginal and Torres Strait Islander people are often best placed to provide this training due to their unique knowledge and experiences.

Training can include information on the unique issues and stressors faced by Indigenous people who offend and the central role that community and culture can play in supporting improved outcomes. Partnering with culturally competent organisations to deliver programs supports implementation, especially for programs aiming to implement a coordinated multi-agency response to offending. The involvement of cultural advisors plays a similar function, supporting culturally competent program delivery by people unfamiliar with the community.

WPP4: Provide culturally sensitive program delivery

Strategies used to support culturally sensitive program delivery include facilitating cultural connection and expression, supporting a culturally welcoming program experience, incorporating opportunities for peer emotional support, adapting program content and communication, involving Aboriginal and Torres Strait Islander people in program implementation, and acknowledging impacts of colonisation and participant experiences of grief and victimisation.

Programs that facilitate cultural connection and expression are those which support the social and emotional wellbeing of Aboriginal and Torres Strait Islander participants by enabling opportunities for connection to land, country and cultural heritage. They incorporate cultural activities into program implementation and support the development of family and community connections. The use of Indigenous languages for program or facility names, as well as cultural artefacts and protocols in program interactions, can support a culturally welcoming experience provided the cultural knowledge is obtained in a respectful way. Seating arrangements that reduce power imbalances between program staff and participants also creates a more welcoming experience.

The use of peer emotional support facilitates healing, learning and self-disclosure, particularly through yarning circles and gendered spaces. Culturally sensitive

program delivery is also supported by adapting content to ensure materials are culturally relatable and address variation in English proficiency, and by recognising that participants may have ongoing experiences of trauma, grief and victimisation due to the impacts of colonisation. This is particularly important in programs for Aboriginal and Torres Strait Islander women.

Programs that incorporate such strategies support feelings of security, inclusivity and respect for participants, promoting positive social connections and a greater willingness to engage with the program.

Considering the prevalence of trauma among Aboriginal and Torres Strait Islander prison populations, courts are at the coalface of influence and have potential to be instrumental in healing. The Healing Foundation²⁸⁴ provide the following principles, which should be used to guide healing trauma at a community level:

- trauma should be understood in the broader context of historical and continuing colonisation and the forced separation of children from their families;
- Aboriginal and Torres Strait Islander people have the knowledge and skills to resource healing from trauma;
- healing involves reconnection to culture and traditions, including ceremony;
- healing provides a safe place for people to share their stories, gain and sustain hope, develop their sense of identity and belonging, be empowered and seek renewal;
- healing attends to the needs of both survivors *and* perpetrators;
- healing is an ongoing journey to restore and sustain physical, social, emotional and spiritual wellbeing;
- healing is most effective when designed, developed and delivered by Aboriginal and Torres Strait Islander people with and for their own communities; and
- Aboriginal and Torres Strait Islander people have shown great resilience over the generations and building on these strengths is critical.

²⁸⁴ Aboriginal Healing Foundation (2016). *Restoring our spirits, reshaping our lives: Creating a trauma aware, healing-informed response to the impacts of institutional child sexual abuse for Aboriginal people*. Discussion paper, 3.

Case study: Kirra

Kirra is a smart 16-year-old girl from Ngurupai in the Torres Strait. She has always loved school and wants to work as a nurse, to help her mob stay strong. She has been living on the streets and, when possible, staying with friends for most of the last year, to avoid her sexually abusive step-father. Two teachers know about her situation and support her, by bringing her food. Both have said that they need to report her to the authorities, but she has managed to convince them that this wouldn't help her. She catches up on sleep and study around school and washes her clothes in the toilets. Kirra is resourceful and takes only what she needs to get by. Usually, she is able to talk her way out of trouble, but she recently had a bit of a run-in with an aggressive shop assistant and police officer and was charged with theft, assault police and resist arrest. Kirra is used to taking care of herself and doesn't want anyone to get involved, but has been assigned a lawyer, a deadly Larrakia man, who seems to really care about her. While they are waiting for Kirra's matter to come to court, he explains the support services that are available. He helps her organise Centrelink payments, put in paperwork for independent living, talk to the school about what is going on and get her adjustments on her schoolwork. He also takes her to a health clinic for a comprehensive check-up and takes her shopping for new clothes. She is now wondering whether she should study law, instead of nursing and hopes she'll get a chance to talk to the magistrate herself, when her matter gets to court.

5. Pre-court support and diversion

Key points

- There is a strong evidence base to support investment in diversion schemes for justice-involved women and girls [5.1].
- Women's community services and centres in the UK were originally designed to support women serving community-based sentences. However, it has been suggested that the key features of the model may be relevant to diversionary schemes aimed at women. This includes the provision of relationship-based support that takes a non-judgemental and respectful approach, seeking to understand women's whole lives [5.1].
- Community Justice Groups play a key role in the Queensland justice landscape, engaging with Aboriginal and Torres Strait Islander communities in a variety of ways [5.2].
- Little attention has been given to the application of restorative justice (RJ) to women and girls as defendants. While some researchers have advocated for broader use of RJ as a way of giving them a voice, some evidence suggests that girls who participate in RJ feel stigmatised because their offending is a transgression of gender norms, and shame. For girls, shame often exacerbates feelings of self-blame and can be associated with previous negative experiences such as abuse or victimisation [5.3].

5.1 Community-based programs for girls and women

The Taskforce recommended 'expanding the suitable, gender-specific services that support women being sentenced to community-based orders rather than short periods of imprisonment' (Rec 127; see [1.1]). As the focus of this review is on initiatives *within* the court context, it is beyond its scope to conduct a comprehensive review of the community-based initiatives that aim to divert women *from* court. Nevertheless, some examples and principles will be presented in this section.²⁸⁵ In the Queensland context, we particularly note the important role of *Sisters Inside*, which delivers a range of programs to women and girls, both in prison and the community.²⁸⁶ The following recommendations from Smart Justice for Women²⁸⁷ are also worth noting:

²⁸⁵ We also recognise the outstanding work of a range of organisations, including community-based stakeholders, Aboriginal and Torres Strait Islander legal services and legal aid organisations and women's legal and other community legal services.

²⁸⁶ For discussion, see Sisters Inside, n 10; Sisters Inside (nd). *Programs and services* <https://sistersinside.com.au/programs-services/>.

²⁸⁷ Smart Justice for Women, n 17.

- responsive supports at the first risk of criminalisation;
- accessible and sustained supports, to reconnect with community and prevent reoffending, including ‘universal access to a therapeutic, trauma-informed model of case management’²⁸⁸; and
- supports that are safe and respectful of the needs of women who are engaged with the criminal justice system.

It can of course be a challenge for courts to be aware of programs that are locally available and would be suitable for addressing the needs of women and girls appearing in court. In this context, it is helpful to note that the Keeping Women Out of Prison Coalition has suggested that all pre-sentence reports should

include details of women’s family circumstances, such as any dependants and any mental health or domestic abuse issues. They should also set out locally available gender-informed community sentencing options, so that courts are aware of the full range of options for sentencing and for diverting women from custody.²⁸⁹

Women’s community services and centres emerged in the UK, in acknowledgment of the need for women-specific approaches. Originally designed to support women serving community-based sentences, it has been suggested that their key features may be relevant to diversionary schemes aimed at women, as they provide:²⁹⁰

- values-driven, gender and trauma-informed approaches, which recognise and respond to clients’ high incidence of trauma;
- relationship-based support that takes a non-judgmental and respectful approach, seeking to understand women’s whole lives;
- services provided in women-only spaces;
- holistic, tailored and multi-agency support – a ‘one stop shop’ that deals with all of a woman’s needs, rather than requiring her to go to many different agencies; and
- empowerment, strengths-based and co-produced, empowering women to support each other and take an active role in the service.

The Centre for Justice Innovation in the UK has developed a resource on pre-court diversion for women that identifies the evidence on effective practice, including the following lessons:²⁹¹

- while women represent only a small number of people in the justice system, there is a strong case for investing in diversion schemes for women. Women’s

²⁸⁸ Ibid, 39.

²⁸⁹ Keeping Women Out of Prison Coalition (2020). *Diversion from custody*, 2.

²⁹⁰ Whitehead S and Waters R (2020). *Pre-court diversion for women: Evidence and practice briefing*. Centre for Justice Innovation, 3.

²⁹¹ Ibid, 1-2.

offending – most commonly non-violent acquisitive crime – is typically suitable for diversion. Women committing low-level offences are less likely than men to re-offend and criminalisation is more damaging to women's rehabilitation than for men;

- women's diversion schemes should include a supportive, voluntary intervention. Women in the justice system are typically vulnerable, with a high prevalence of need, including trauma, substance misuse and mental health. Appropriate support with these issues will play an important role in reducing re-offending, but care should be taken not to 'overdose' women with overly intensive interventions or put women who choose not to engage at greater risk of justice system involvement than their offending warrants;
- diversion interventions for women should be integrated into support in the community. Women's needs are often complex and will not be resolved within the scope of a light-touch diversion intervention. Rather, the intervention should be used to help women with complex needs to access ongoing community support. However, given the barriers which some women may face in accessing services, it is important that this goes beyond simple signposting and includes support up to the point where a client has formed a relationship with a new service;
- diversion interventions for women should be gender-informed. While a brief diversion intervention will not offer the same opportunities for relationship-building as a women's centre has in a community sentence (discussed elsewhere in this review), it should still draw on the evidence of effective practice in working with women and seek to respond to the full range of women's needs in a safe, supportive and non-judgemental way; and
- diversion should be responsive to the complex realities of women's recovery. Many women who offend face multiple and complex needs which can include deep-seated trauma. It is unrealistic to expect that a single diversion intervention will lead to instant behaviour change. Recovery is complex and takes time. Women should not be automatically limited to one chance of diversion, even where they have not fully complied.

A wrap-around, strengths-based approach in Australia is the Community Restorative Centre (CRC) Miranda Project in NSW. Run by women, for women, the Miranda Project has two specialist workers and provides support such as casework, group activities, access to victims counselling and connections with key services.²⁹² Based on the successful model of women's centres in the UK,²⁹³ the Miranda Project is an innovative, gender-specific approach to crime prevention targeting women with complex needs who are at risk of offending and re-offending. Miranda works with women who have past and present experiences of DFV and trauma who are in the

²⁹² Community Restorative Centre (CRC) (2017). *Throughcare and reintegration: What constitutes best practice in community based post release? A Community Restorative Centre Submission*.

²⁹³ Scott S and Frost S (2019). *Why women's centres work: An evidence briefing*. The Tavistock Institute.

community preparing for court or serving a community-based sentence or parole. It also supports women in custody who are on remand, applying for bail, or preparing for court and sentencing hearings.

The Miranda model relies on specialised case workers co-located with an existing women's service, plus an arts and activities program open to all women. The drop-in model and social and recreation aspects of the Miranda Project enable the women to slowly build trust and rapport, as a step towards seeking support. Staff work in partnership with housing providers and women's health and support services to offer guidance across identified areas of risk and need such as substance misuse, financial support and emotional self-regulation. It therefore acts as a 'one-stop shop' for people with complex needs.²⁹⁴

At the end of 2018, of the 54 clients who had received case management in the previous year, only three (6%) had returned to or entered custody. According to the CRC, 'given the current 41% recidivism rate among women in custody, this shows the efficacy of specialist community support'.²⁹⁵ A formal evaluation showed that clients successfully remained in the community, with:

- improved housing stability and financial management;
- engagement in counselling and mental health support, including for survivors of violence;
- support on children and family issues; and
- increased general safety.²⁹⁶

Another example of this sort of gender-specific, holistic approach is the Living Free Project in Victoria, a multi-modal, place-based response to support girls at risk of justice involvement and young women in early contact with the justice system. The project works with two main cohorts:²⁹⁷

- **girls aged 10-17, who have been reported missing, at risk of justice involvement or at risk of sexual exploitation.** With this group, the focus is on increasing safety, managing risks and addressing dynamic criminogenic risk factors that may bring these girls into contact with the justice system as a victim or offender; and
- **women aged 18-30, in early contact with the justice system.** These women are supported to address the multiple and complex needs that have contributed to their contact with the justice system. The project provides advocacy for women to improve their justice outcomes, whilst simultaneously

²⁹⁴ Ibid.

²⁹⁵ CRC (2019). *Miranda Matters*. May, Issue 11.

²⁹⁶ CRC (2020). *Miranda Matters*. July, Issue 14.

²⁹⁷ Abbott L, Shafaei A and Planigale M (2023). *Living Free Project: Evaluation report 2023*. TaskForce Community Agency.

working to reduce their likelihood of further contact with the justice system. The project provides flexible long-term outreach support and links women to specialist services and supports.

The Living Free Project provides integrated responses that address multiple areas of need at the same time. It provides a person-centred model of service delivery, understanding and responding to each participant's strengths, challenges and goals. Responses are tailored, based on participants' presenting needs; they take into account the individual's readiness and are not bound by inflexible eligibility criteria and processes of engagement. Support is provided primarily on an outreach basis and can last from a few weeks to a year or more. This flexible model is underpinned by foundational principles of assertive engagement, holistic support, supported care coordination and family inclusive practice.

The project is guided by a tiered response model, including brief intervention, service coordination, intensive case management, group-based psycho-social activities and family work. The tiered response is based on presenting needs and services already engaged. Where acute needs present and the potential participant has capacity to engage, a supported referral is made to the most appropriate service. If there are other agencies already involved, the Living Free Project engages with the participant and services to gain a deeper understanding of gaps in existing service delivery. The Living Free team may provide support directly, help to coordinate the care team or identify the supports necessary to fill any gaps. This approach allows for the most efficient use of the resources of the Living Free Project and other community based services and ensures that participants are not under- or over-served. The model of care allows participants to step up and down in their care, while extensive pathways established by the team support sustainable community-based connection alongside and then after the participant exits the project.

The key direct service modalities used within the Living Free Project include:

- brief intervention to coordinate care and link participants to support;
- intensive outreach-based case management for in-depth support;
- group-based psycho-social activities, such as soft-skills for work readiness, boxing, creative arts, sexual and interpersonal health, AOD harm reduction;
- family work;
- advocacy for women to improve justice outcomes and service access;
- mentoring (delivered through a partnership with Women and Mentoring);²⁹⁸ and
- legal assistance and legal health checks (delivered through Living Free's partnership with a community legal centre).

²⁹⁸ This has been the subject of a separate positive evaluation: see Clapp C and Rosauer K (2021). *Women and Mentoring evaluation*. Lirata Consulting.

A 2023 evaluation of the Living Free Project found positive outcomes across a number of domains:²⁹⁹

- reduced justice system involvement, as only 8% of participants offended while participating in the project;³⁰⁰
- improved court outcomes:
 - all of the women who were on remand at the time of referral received bail; strong relationships with legal practitioners operating in the local magistrates' court enabled prioritised responses for those in custody;
 - many women received reduced sentences, with letters of support describing the steps they were taking to address the issues related to their offending potentially being considered at sentencing;
- effective connections to other services, including AOD, DFV, legal and medical services, mental health, housing and family support;
- improvements in housing situation: the proportion in unstable housing dropping from 36% at referral to 15% at closure;
- re-engagement in education and increased social connection; and
- improved health and wellbeing, including enhanced emotional and behavioural regulation and reductions in AOD use and risk of DFV and sexual health issues.

The evaluation concluded that there are eight key elements of the Living Free Project that contribute to its success:³⁰¹

1. **Gender lens** – evidence-based lens on girls and women supports the development of the team's specialist skills and expertise and provides a focus for partnership development and advocacy.
2. **Partnerships and service coordination** leverages the knowledge, resources and services of many different agencies to deliver integrated services and address community needs.
3. **Open, streamlined referral process** – the flexible and accessible 'no wrong door' approach provides maximum opportunity to engage with girls and women in need, in a timely manner.
4. **Assertive and persistent engagement** – the proactive, persistent engagement and ability to provide a consistent presence over time reaches girls and women who would otherwise lack support.
5. **Relationship-based support** – non-judgmental relationships and rapport create an experience of genuine care and a safe context, in which underlying needs and issues can be addressed.

²⁹⁹ Abbott, Shafaei and Planigale, n 296, 20-39.

³⁰⁰ The evaluation notes a number of caveats around the quality of the quantitative data, so does not provide definitive conclusions about the project's impact on recidivism: *ibid*, 22.

³⁰¹ *Ibid*, 58.

6. **Accessible service delivery** – flexible outreach-based approach to service delivery helps make support accessible to participants where and when they need it.
7. **Flexible person-centred model including intensive case management** – tiered model able to offer a variety of service components enables support to be tailored to participants' individual needs.
8. **Combination of individual support, groupwork and systemic change work** – complementary streams of work reinforce each other, to create long-term change.

The evaluators suggested that each of these elements makes an important contribution to the project's ability to achieve positive outcomes and removal of any of these elements would compromise its success.

The Alternative to Custody (ATC) program in Mparntwe/Alice Springs is a residential program for Indigenous women at risk of offending or reoffending, who have been diverted, mandated by courts, police or others or self-referred.³⁰² The program provides women with access to a suite of professional programs, based on their needs, delivered in a culturally safe environment. The purpose is to ensure that participants are equipped to minimise their risk of having further contact with the criminal justice system. Through mandated requirements to access necessary support services, women develop greater awareness of self and personal triggers that contribute to offending.³⁰³ As part of the program, women participate in weekly financial and legal sessions delivered by the local women's legal service.

Evaluation of the program indicated that participants reported increased confidence in understanding legal terminology and referred some of their own family members for advice from the service.³⁰⁴ The report also reviewed the negative unintended consequences of the ATC program, which provides useful insight into the importance of managing expectations for participants and maintaining a trauma-informed treatment model. Some participants had expectations that the ATC staff could provide access to services, such as housing, which were beyond their control.³⁰⁵ Participants reported being 'sick of talking about our trauma all the time' and having to repeat their personal stories to different service providers. To avoid this, the report recommended establishing processes for sharing relevant information and collaborating on case management among service providers.³⁰⁶ This highlights the need for joined-up service provision and reducing the need for women to retell their experiences to multiple service providers, which can be retraumatising.

³⁰² Pandanus Evaluation (2022). *Alice Springs Alternative to Custody program evaluation report*.

³⁰³ Ibid, 18.

³⁰⁴ Ibid, 21.

³⁰⁵ Ibid, 25.

³⁰⁶ Ibid, 27.

Another program for Indigenous women is the Dilly Bag program. This is an intensive cultural strengthening program delivered by the Aboriginal Family Violence Prevention and Legal Service in Victoria. The program works with women on community-based orders, to assist them with recovery from trauma through building cultural strength and experiences. The women share stories, while participating in group activities such as games or creating crafts, like beading and weaving.³⁰⁷ Due to the highly personal nature of the topics discussed, the program accepts a limited number of participants.³⁰⁸ The aim of the program is to increase self-esteem and improve emotional, physical and spiritual wellbeing to reduce the women's risk of being subject to family violence.³⁰⁹ The program was established to fill a gap in the therapeutic programs available for Indigenous women which provide culturally appropriate opportunities to heal. The program emphasises the pivotal role of Indigenous women, as leaders and nurturers in their communities.³¹⁰ *Dilly Bag: The journey* is an adaptation of the Dilly Bag program, which includes overnight accommodation for the duration of the program and gives participants a safe space to remain focused on the objects and purposes of the program and build friendships.³¹¹

An external evaluation of the program indicates that the program produces overwhelmingly positive results. The program was found to successfully bring Aboriginal and Torres Strait Islander women together to achieve:

- enhanced participant self-esteem and well-being;
- strengthened friendships/relationships/connections within the community and increased community networks, and strengthened individual participant resilience and the community's ability to address family violence;
- increased participant knowledge and understanding of family violence; and
- increased participant awareness of support and legal services, both specific for Aboriginal and Torres Strait Islander peoples and mainstream.³¹²

Participants reported immediate boosts to their confidence and felt empowered by the program. The evaluation also found that the participants felt a renewed or enhanced connection to their culture and tradition, throughout the program.³¹³ Participants reported significant changes to their decision-making capacity which in turn led to more positive living arrangements, changes to custody arrangements for

³⁰⁷ Aboriginal Family Violence Prevention & Legal Service Victoria (2014). *Evaluation report of the Aboriginal Family Violence Prevention and Legal Service Victoria's Early Intervention and Prevention Program*, 4.

³⁰⁸ Ibid.

³⁰⁹ ALRC, n 18, 369.

³¹⁰ Ibid, 370, citing National Family Violence Prevention & Legal Services Victoria, Submission 77.

³¹¹ Ibid.

³¹² Aboriginal Family Violence Prevention & Legal Service Victoria, n 306, 11.

³¹³ Ibid, 23.

children and improved personal care.³¹⁴ Follow-up gatherings of participants after the conclusion of the program exemplified the lasting effects of the program, which included maintaining friendships with women in the program, re-establishing contact with family and prioritising self-care.³¹⁵

5.2 Community Justice Groups

The Queensland Government funds Community Justice Groups (CJGs) as a vehicle for community empowerment and self-determination. They are established through a process of community-based planning, with members often being Elders and Respected Persons. Since the mid-1990s, CJGs have worked to address deep-rooted justice issues by supporting Indigenous people involved in the youth and adult justice systems.³¹⁶ As of 2021, there were 40 such CJGs throughout Queensland.³¹⁷

In practice, these groups perform a wide 'array of functions in the community, both directly and indirectly related to the criminal justice system'.³¹⁸ This work includes the following:

- prevention activities, including education and awareness and programs that address the underlying causes of offending. Many CJGs use their enhanced funding for youth programs such as camps, cultural mentoring and activities to build pride and self-esteem;
- early intervention, such as pre-court diversion by police to CJG dispute resolution; and
- helping people in custody or under community supervision, including transitioning from custody to community.

Within the court system, CJGs seek to:³¹⁹

- increase Aboriginal and Torres Strait Islander communities' knowledge and skills in relation to the criminal justice system;
- assist local courts, when dealing with Aboriginal and Torres Strait Islander people;
- sensitise the justice system to the needs and cultural values of Aboriginal and Torres Strait Islander peoples;
- advocate for appropriate changes to the criminal justice system through court-based initiatives; and

³¹⁴ Ibid, 12.

³¹⁵ Ibid, 24.

³¹⁶ Limerick M (2002). Indigenous Community Justice Groups: The Queensland experience. *Australian Law Reform Commission – Reform Journal*, 4(80): 15-21.

³¹⁷ Myuma Group (2021). *Phase 1 Report: Evaluation of Community Justice Groups*.

³¹⁸ Ibid, 7.

³¹⁹ KPMG (2010). *Evaluation of the Community Justice Group program: Final report*.

- develop skills and competencies in relation to court operations.

In their court-related work, CJG members prepare bail and sentencing submissions, attend court sittings, support victims and offenders through the court process and refer them to legal services, provide cultural advice and community input on justice-related issues and support the operation of Queensland's Murri Courts. An early evaluation of the CJG program found that it had widespread support among Indigenous community leaders, community-based service providers and justice system stakeholders – that CJGs assist people coming into contact with the justice system with practical assistance and support and by 'advising the courts on relevant cultural and community factors for consideration during sentencing'.³²⁰ At the same time, however, its quality, effectiveness and efficiency were severely constrained by inadequate resourcing, poor governance arrangements and weak data quality.

A subsequent evaluation considered the implementation of the CJG program to identify whether program inputs were adequate and appropriate to enable CJGs to deliver their intended outputs to make a difference for Aboriginal and Torres Strait Islander communities. It also examined CJG outputs, resulting in the following conclusions:³²¹

- CJGs and agencies such as police see significant value in CJG work in early intervention and pre-court diversion. There is scope in the system for them to be even more involved in early intervention initiatives, such as mediation and peacemaking, diversion from police to cautioning (for both youth and adults), and diversion to restorative justice conferencing;
- magistrates greatly value CJGs' contributions in court, particularly their work 'behind the scenes' to help people address their underlying issues. For example, CJGs made 2,640 referrals in 2020-21 to services such as men's groups, women's groups, yarning circles and DFV counselling;
- the work of CJGs contributes to reducing the number of Aboriginal and Torres Strait Islander people in custody by supporting bail applications, ensuring court attendance and providing cultural and community information to the court to support the consideration of non-custodial penalties;
- there is scope for more work with people in custody and supporting people in community corrections. There is also more to be done in assisting with reintegration after custody, particularly in terms of engaging parolees in appropriate programs; and
- in terms of their broader work, the evaluation notes the 'considerable scale and value' of CJG work around providing community support, advocacy and access to social justice.

³²⁰ Ibid, 4.

³²¹ Myuma Group, n 316.

The evaluation concluded that ‘CJGs appear uniquely placed to take a person-centred, cultural strength-based approach that helps people with complex needs to navigate an often very disjointed service system’.³²² It noted the unique worldview within which CJGs operate:³²³

CJGs’ work is person-centred and community-driven in responding to people’s urgent needs, and not limited to service parameters or funding agreements. CJGs express a broad conception of their role as enabling ‘social justice’ in service to their community. In describing their work in assisting people involved in the criminal justice system, they tend to position this within a more holistic conception that they are working with people across all aspects of their lives and wellbeing. This seems to reflect a difference in worldview from the way staff of non-Indigenous service providers might see their work, which focuses to a greater extent on organisational boundaries and functions.

Phase 2 of the CJG evaluation found that the core function of CJGs – supporting Aboriginal and Torres Strait Islander people in courts – remains central under the refocused CJG model. The three elements of CJGs’ court functions are the support to Indigenous people to understand and participate in the court process, the cultural advice regarding a person’s circumstances that courts may take into account to make culturally appropriate bail and sentencing decisions, and the referrals of offenders and victims to agencies and services that can assist them with underlying issues.³²⁴ The evaluation found a high level of demand for court support from CJGs, with ‘a significant proportion’ of people appearing in the court receiving support.³²⁵ Cultural reports made by CJGs in relation to bail or sentencing were particularly valued by court stakeholders and Indigenous participants. They were said to make the most valuable contribution to improving court outcomes in both mainstream and Murri Courts when:

- the CJG has a good understanding of what the court needs in a cultural report;
- the CJG staff and members have the capacity and confidence to provide quality cultural reports;
- the CJG acts impartially on behalf of all families in the community;
- Elders and respected persons are involved in the process;
- there are local programs and support available and these are communicated to the court by the CJG; and

³²² Ibid, 8.

³²³ Ibid, 9.

³²⁴ Myuma Group (2023). *Evaluation of Community Justice Groups: Phase 2 report, 2022*, 14.

³²⁵ Ibid.

- there is a willingness by the court to accept and value the input from the CJG.³²⁶

Murri Court stakeholders noted that the key enablers for successful outcomes were strong relationships between the court and CJG staff and members, genuine connection with participants, and a process that encourages honesty and accountability around offending behaviour.³²⁷ Among community members, there was a high degree of satisfaction with the support provided by CJGs, with reports that the CJG helped them understand the court process, helped the court understand the cultural issues involved, and made sure they were treated more fairly.

There are 18 discrete or remote Aboriginal and Torres Strait Islander communities where the Domestic and Family Violence Enhancement (DFVE) operates, ‘to develop local, culturally appropriate responses to DFV’.³²⁸ At these sites, CJGs provide support by explaining domestic violence orders to participants, providing advice to the courts, assisting parties with variations to orders, and referring people to programs or support.³²⁹ Community members who had been supported in court by the CJG’s DFV workers were positive about the help they received – 45% were very happy and 39% were happy, while only 4% were unhappy. For DFVE projects, the most important success factors were found to be: strong networks and partnerships with services needed by DFV clients; taking a holistic, whole-of-family approach to DFV; and being empowering rather than overly directive with clients.³³⁰ The evaluation noted:³³¹

CJG DFV staff saw their role as especially important in addressing the problem of unworkable conditions on [domestic violence] orders – especially ‘no contact’ conditions – which they see as exacerbating problems for Indigenous families without properly addressing the underlying issues. CJGs consider their responses to DFV to be more culturally appropriate and holistic, by working with whole family units involving men, women and children, rather than just working with victims or perpetrators in isolation.

5.3 Restorative justice

The term restorative justice (RJ) applies to procedures that operate as an alternative to, or in addition to, the criminal justice process. They focus on victim healing,

³²⁶ Ibid, 15.

³²⁷ Ibid.

³²⁸ Ibid, 6.

³²⁹ Ibid, 15.

³³⁰ Ibid, 17.

³³¹ Ibid, 15.

holding the offender to account, community restoration, repairing harm and loss, and repairing damaged relationships.

Restorative justice processes are flexible and can take many forms, such as an exchange of letters or some engagement between the victim and a representative of an institution, but most commonly they involve conferences between victims and perpetrators. They may be an alternative to or complement conventional criminal court proceedings and can therefore take place at different points in the criminal justice process, including before charge, trial or sentencing, or after sentencing. However, they are commonly used as a diversion from the court process, especially for CYP.

5.3.1 Restorative justice in Queensland

In Queensland, RJ conferences are available for both adults and CYP who offend, although processes vary for the two cohorts. Adult RJ conferencing does not have a legislative framework and the Taskforce made recommendations in relation to this.³³²

RJ conferencing in relation to CYP is governed by the *Youth Justice Act 1992* (Qld) and is available in relation to all offences, including sexual offences. The aim of these conferences is to achieve reparation for the harm done to the victim and for the offender to take responsibility for their actions.³³³ Referrals to this process can be made by police or by a court and for some offences the court must consider a referral to RJ. A referral to RJ can also be a condition of a child's sentence. Where the conference doesn't proceed or it doesn't result in completion of the agreement the matter is returned to the referring authority. A 2018 evaluation of RJ conferencing for CYP in Queensland found that 77% of those who completed a conference either did not reoffend or showed a decrease in the magnitude of their reoffending. Both victims and offenders reported high levels of satisfaction with the process.³³⁴

5.3.2 Key lessons from similar programs in other jurisdictions

Despite the widespread acceptance and implementation of RJ practices in both juvenile and adult systems in Australia and beyond, little attention has been given to the application of this approach to women and girls as defendants. While some researchers have advocated for broader use of RJ as a way of giving women and

³³² Three members of the team for this project are undertook other research for the Department of Justice on this issue: see Rossner M et al (2024). *Adult Restorative Justice Conferencing in Queensland: Research on best practice and expansion*. ANU.

³³³ Women Safety and Justice Taskforce, n 64, 385.

³³⁴ Queensland Government (2018). *Twelve-month program evaluation: Restorative Justice Project*, 8.

girls a voice,³³⁵ others have urged more caution. Hodgson³³⁶ undertook qualitative research with girls who had participated in restorative justice conferencing. She found several issues to consider:

- **Stigma:** Girls are stigmatised for their offending behaviour, as it breaches gender norms and expectations. This stigma may affect both their self-esteem and the ways that others respond to them during the conference. Experiences of stigma may also have implications for feelings of shame about offending and how these feelings are experienced.
- **Shame:** Shame is considered to be an integral element underpinning RJ conferencing, but the stigma of transgressing gender norms by offending affects girls' experiences of shame. There is no opportunity during conferencing to address and contest transgressions of femininity, so no opportunity to reject the stigma attached to their identity. The shame associated with the conference could therefore end up exacerbating the stigma that girls feel.
- **The negative implications of shame:** Girls internalise shame differently to boys, which exacerbates feelings of self-blame for their offending. Feelings of shame could also be associated with previous negative experiences such as abuse. This could potentially lead to destructive strategies to cope with emotional pain brought on by shame, such as self-harm.

This research suggested that girls who participate in RJ processes have reported feeling stigmatised because their offending is a transgression of gender norms and shame. Shame can prevent an individual from reoffending and provide them with the opportunity to repair the harm caused by their offending though for girls, shame often exacerbates feelings of self-blame and can be associated with previous negative experiences such as abuse or victimisation in their formative years.

Osterman and Masson pointed out that the high levels of complexity seen among justice-involved women can affect the RJ process in a number of ways, including the need to deal with multiple and concurrent issues in the women's lives, as well as the higher presence of pre-existing relationships between offender and victim. Their research highlighted both potential gendered benefits and risks of restorative justice. Benefits included a more engaged involvement in the process, with higher levels of communication and readily available empathy than men. In contrast, risks related particularly to concerns about shame, guilt, mental health and stereotypical ideals of appropriate female behaviour, with a deterioration in mental health being identified

³³⁵ Verrecchia P (2009). Female delinquents and restorative justice. *Women & Criminal Justice*, 19: 80-93.

³³⁶ Hodgson J (2019). *Offending girls and restorative justice: The relevance and rationale of gender-specific provision*. Centre for the Study of Crime, Criminalisation and Social Exclusion. <https://ccseljmu.wordpress.com/2019/01/14/offending-girls-and-restorative-justice-the-relevance-and-rationale-of-gender-specific-provision/>.

as a particular gendered risk. The legacy of female victimisation experiences thus presents significant concern for restorative justice practices.³³⁷

While research has shown that conferencing is no less successful in reducing re-offending than the courts for both Aboriginal and non-Aboriginal participants, evidence is mixed on compliance with conferencing requirements among Aboriginal youth.³³⁸ Despite the lack of strong evidence for its effectiveness with Aboriginal and Torres Strait Islander people, youth justice conferencing has been seen as an opportunity to involve Elders and community members in a cultural response to offending by young people. For example, the Tiwi Islands Youth Diversion and Development Unit provides culturally appropriate formal and informal diversionary programs for Tiwi youth – usually first-time offenders – focusing on developing their attachment to family, community and school and ensuring that young people get access to required supports. Participants are given the opportunity to participate in a youth justice conference and are supported by a range of cultural interventions to address risk factors for offending. The program has been described as a best practice example of youth diversion.³³⁹ An early evaluation of the program found that only 20% of participants had contact with police in the 12 months after starting the program and concluded that it was ‘useful in reconnecting young people to cultural norms and ... directly addressed the factors that contribute to offending behaviour’.³⁴⁰

Another form of RJ is seen in the Iwi Justice Panels in New Zealand. This initiative was developed in a partnership between Iwi leaders and government agencies. The panels are for Māori people aged 17 and above who commit low-level offences and have accepted responsibility for their offence. They are focused on education, prevention and accountability, providing the person with a wide range of community-based support and other tools (such as referral to a driver training program) to address the underlying causes of their offending. Participants are ‘tried’ by a panel of kaumatua (Elders), underpinned by Māori customs and worldviews. The panel also involves those who have been affected by the offending, including community members and local Iwi representatives. It is often convened on a marae (traditional community meeting place). The participant is encouraged to develop a plan to repair the harm caused, which is expected to be completed within three months. If the plan is completed, the case is considered resolved; if not, it proceeds to prosecution. An analysis of police data found that, while Iwi Panel participants did not have lower

³³⁷ Osterman L and Masson I (2018). Restorative justice with female offenders: The neglected role of gender in restorative conferencing. *Feminist Criminology*, 13: 3-27.

³³⁸ Cunneen C (2019). *Self-determination and the Aboriginal Youth Justice Strategy*. University of Technology Sydney.

³³⁹ Royal Commission into the Protection and Detention of Children in the Northern Territory (2017). *Report - Volume 2B*, citing Stewart J et al (2014). *Indigenous youth justice programs evaluation*. Australian Institute of Criminology.

³⁴⁰ Stewart et al, *ibid*, vii.

rates of post-panel offending, compared with a group of matched controls,³⁴¹ their re-offending was 'minor' and caused significantly less harm. The researchers therefore concluded that the Iwi Panels offer 'an effective alternative justice resolution process'.³⁴²

Overall, it appears that the evidence on these RJ processes is mixed, with limited research in relation to female participants and no research on the effectiveness of such programs for Aboriginal or Torres Strait Islander girls and women. As noted above, Report 2 made a number of recommendations to expand RJ in Queensland.

³⁴¹ See Walton D, Martin S and Li J (2020). Iwi community justice panels reduce harm from re-offending. *Kōtuitui: New Zealand Journal of Social Sciences Online*, 15: 75-92.

³⁴² Ibid, 90.

Case study: Sarah

After they had been together for many years, Sarah came out to Lisa as a transwoman. Lisa refused to accept this and continued to use Sarah's dead name and deny her access to her gender-affirming medication. She threw Sarah's clothes on the street and changed the locks on their house. Sarah couch-surfed with friends and slept in her car for about a week, but was desperate to get her gender-affirming medication, so she broke a window to get back into the house. Lisa then called the police and said she was the victim of male-perpetrated DFV. The police initiated an intervention order, with Lisa as the applicant and Sarah as the respondent (using Sarah's dead name). Sarah was also charged with property damage and resisting arrest. When the matter came to court, the magistrate initially used Sarah's dead name and incorrect pronouns. Sarah was very upset and didn't know how to speak up for herself about this. Fortunately, the magistrate then remembered to use Sarah's correct name and pronouns. He also remembered that the court had recently organised training on LGBTIQ+ issues and, with the consent of all parties, adjourned the matter, so that the organisation that provided the training could attend court and provide input. He ultimately dismissed the case, after Lisa and Sarah decided to work through their issues together.

6. Specialist court programs

Key points

- Although there is strong evidence supporting the use of specialist courts in Queensland and internationally, it is unclear what impact the model has for women and girls specifically. Similarly, it appears that many models are not underpinned by gender responsiveness principles.
- Issues with bail and remand are a significant driver of women's imprisonment. Some bail support programs seek to address this, by adopting a rehabilitative focus, to support defendants with issues across a range of areas, such as mental health, housing instability and unemployment [6.1].
- Most of the literature on drug courts does not focus on gender, but some research has highlighted the need for gender-responsive approaches [6.2].
- Current models of Indigenous courts across Australia have a tendency to broadly brush all participants as Indigenous, without delving deeper into where they are from. The pathway to offending for many in the justice system involves histories of removal from their mob and culture; it is only when those lines can be reformed that people can heal [6.3.1].
- There are a number of DFV courts, with positive evaluation of the Queensland model. The objective of this model is to take a nuanced approach to the unique dynamics of DFV and provide targeted support to victims. However, they continue to run the risk of secondary victimisation and procedural injustices. These issues can undermine women's confidence in the justice system and prevent them from seeking help [6.4].
- There are several examples of women's and girls' courts operating internationally, including Hawaii and the UK. Although very few of these models have been evaluated, the evidence which is available is very encouraging and indicates that they support reductions in reoffending and other social and health benefits [6.5].

There is no one definition that encompasses specialist courts of this nature, commonly known as problem-solving, problem-oriented or solution-focused courts.³⁴³ However, common features include specialisation, collaborative intervention, accountability through judicial monitoring and fostering a procedurally

³⁴³ For a recent overview of the evolution of such courts in Australia, see Schaefer L and Egan E (2022). Problem-solving courts. In M Camilleri and A Harkness (eds), *Australian courts: Controversies, challenges and change*. Palgrave.

fair, less adversarial court environment.³⁴⁴ Programs of this nature generally aim to address root causes of criminal behaviour, by addressing practical and psychological barriers to reduce recidivism.³⁴⁵ They are generally underpinned by TJ principles. There is also a clear overlap with trauma-informed practice, discussed in the previous section. As the Judicial Commission of NSW has noted,

Being trauma-informed may also facilitate the proper application of therapeutic jurisprudence techniques in solution-focused courts such as drug courts, mental health courts and family violence courts, First Nations sentencing courts.³⁴⁶

Despite support for this model, Schaeffer and Egan recently outlined a number of concerns, including: blurred boundaries; pressured participation; 'slippery' sentencing,³⁴⁷ in the event of a breach; inequitable access, which is a particular concern in rural and remote areas; assessment and treatment; and case coordination. They also suggested that

Problem-solving courts must develop ways to increase participation and completion rates for Indigenous Australians and other groups that are overrepresented in forensic populations. These courts will also need to consider how to support 'non-traditional' perpetrators and victims, such as female intimate partner abusers, male victims and those from diverse cultural and linguistic backgrounds.³⁴⁸

To similar effect, the Taskforce expressed concern that:

some specialist court models have been developed for the majority male cohort of offenders, and may incorporate insufficient consideration to the needs of women in their design and operation. While generic non-gendered approaches to alternative courts and court support programs may enable wider roll-out, these models also need to be suitable for women offenders.³⁴⁹

The motivation for this literature review is to inform implementing a recommendation by the Taskforce in relation to a range of court-based programs and specialist court models operating in Queensland: the Court Link integrated court referral and support program (Court Link); Queensland Drug and Alcohol Court (QDAC); Murri Court; and Specialist Domestic and Family Violence Court. In this chapter, we therefore present

³⁴⁴ Lightowlers C and Benefer N (2022). Assessing the viability of problem-solving courts for criminalised women. In I Masson and N Booth (eds), *The Routledge handbook of women's experiences of criminal justice*. Routledge, 257.

³⁴⁵ Ibid.

³⁴⁶ Judicial Commission of NSW, n 202, 22.

³⁴⁷ Schaefer and Egan, n 342, 204.

³⁴⁸ Ibid, 209-10 (references omitted).

³⁴⁹ Women's Safety and Justice Taskforce, n 64, 539-540.

an overview of the research on these programs in Queensland and the lessons to be learnt from similar programs in Australia and overseas.

6.1 Pre-sentence/bail support programs

Issues with bail and remand are a significant driver of women's imprisonment.³⁵⁰ Recent data from the Australian Bureau of Statistics³⁵¹ indicate that 81% of women received into custody in the September 2023 quarter were unsentenced, compared with 79% of men. Five years earlier, the figures were 73% for both cohorts. There is therefore an urgent need for gender-responsive programs that support women to remain in the community, rather than being remanded into custody. This is particularly important, given the downstream risks of further imprisonment, with research from the VSAC indicating that time spent on remand increases the likelihood of a prison sentence subsequently being imposed.³⁵²

Research from Victoria³⁵³ draws on interviews with criminal defence and duty lawyers to explore how police and court responses to criminalised women can exacerbate their systematic exclusion and increase their risk of remand and entrapment in longer-term cycles of imprisonment, namely:

- the denial of bail to women without access to housing;
- intervention orders precluding women from housing;
- DFV-related isolation and control disadvantaging women's bail applications;
- police pursuing other matters when called to respond to DFV incidents;
- police 'misidentification' of the predominant aggressor in DFV; and
- a perception of women as less 'innocent' or 'deserving' of protection if they are already criminalised.

The authors found that, collectively, these factors 'highlight systemic problems and biases in the bail and remand process and in legal responses to DFV more broadly',³⁵⁴ with particularly adverse impacts for Aboriginal and Torres Strait Islander women. A submission to a parliamentary inquiry on Victoria's criminal justice system, made on behalf of 25 organisations,³⁵⁵ called for a number of changes in relation to women and bail, including legislative reform, changes to police practices and:

- adopting a gendered and culturally-appropriate approach to determining 'risk' to community safety that takes into account the specific disadvantage and marginalisation experienced by women; and

³⁵⁰ Russell, Carlton and Tyson, n 12.

³⁵¹ Australian Bureau of Statistics (2023). *Corrective services, Australia - September 2023 quarter*, Table 21.

³⁵² VSAC (2020). *Time served prison sentences in Victoria*.

³⁵³ Russell, Carlton and Tyson, n 12.

³⁵⁴ Ibid, 108.

³⁵⁵ Smart Justice for Women, n 17.

- ensuring women are not refused bail, due to homelessness or a lack of social and affordable housing.

Some of these suggestions can be facilitated through bail support programs. Pre-sentence diversion at the court stage also offers defendants the opportunity to participate in a relevant program, often during a formal deferral of sentence. With some programs, successful completion can lead to defendants receiving a reduced sentence, a conviction and discharge, or even a dismissal or discharge without conviction. These schemes often attempt to deal with the underlying causes of offending, adopting a rehabilitative focus to support people with issues across a range of areas, such as mental health, housing instability and unemployment.

6.1.1 Court Link bail support program

Court Link³⁵⁶ is a bail support program in the Queensland Magistrates Court. It involves integrated court assessment, referral and support. It aims to help participants by connecting them with treatment and support services to address housing, employment, AOD, health and other social needs. Its objective is to provide support and help to people in line with their level of risk of re-offending, needs, and willingness and ability to receive help. It has been operating since November 2017 and is currently available in 11 locations. The program's values are:

- maximising the therapeutic effects of the law by adopting processes and procedures to maximise a person's wellbeing;
- providing more intense services to those at highest risk of reoffending and with needs that have not been addressed;
- taking into account an individual's unique characteristics, including their cultural identity, cognitive abilities and gender (emphasis added); and
- tailoring services including referrals, to take into account each participant's needs as well as their values, strengths, preferences and context.³⁵⁷

The Court Link program operates under the following values:

- therapeutic effect of the law;
- needs-based services;
- responsive and individualised service;
- collaborative approach; and
- maintaining program integrity.³⁵⁸

³⁵⁶ See Queensland Courts (nd). *Court Link* <https://www.courts.qld.gov.au/services/court-programs/court-link>.

³⁵⁷ Deloitte Access Economics (2023). *Final outcomes and impact evaluation report - Evaluation of Court Link*, 30.

³⁵⁸ Ibid, 30-31.³⁵⁹ Ibid.

In 2023, Deloitte completed an outcome and impact evaluation of Court Link, which found that it had achieved significant results for participants in relation to improving their lives and wellbeing and reducing the seriousness and frequency of their offending.³⁵⁹ Specifically, the data suggested that Court Link reduced offending by approximately 14 offences per participant, with the treatment group also committing less serious offences than the control group. In addition, the time to reoffend was longer (138 vs 90 days). The report concluded that there 'is good evidence that the program contributes to cost-savings to the criminal justice system'.³⁶⁰

During the evaluation period (October 2017-October 2022), there were 4,241 referrals to the program, representing 3,499 individuals (16% of people were referred to the program at least twice). Women accounted for 27% of people referred to the program; of these, 31% were Aboriginal and/or Torres Strait Islander (31%), 94% were born in Australia, all spoke English at home and did not have a Grade 12 (or above) education. Only 1% of female participants were culturally and linguistically diverse. Women were 1.6 times more likely than men (OR=1.59, $p<0.001$) to be admitted to case management, despite accounting for 32% of referrals to Court Link.

The evaluation determined that the program

provides support that is responsive to all population groups (eg, Aboriginal people, Culturally and Linguistically Diverse people, Lesbian, Gay, Bisexual, Transgender, Queer and all other gender identities and sexual orientations (LGBTQIA+) people, *women*, people with a disability).³⁶¹

It was also noted that Court Link had recently sought the inclusion of a specialist women's case manager (as part of the Women's Early Intervention Service pilot funded by Office of Women), in response to a recommendation from the Taskforce (see discussion above), and that Court Link officers refer interested participants to women's yarning circles.

Nevertheless, it was recommended that the Department of Justice:

strengthen the capability of Court Link to deliver accessible services that respond to the individual needs of participants, including Aboriginal people, LGBTQIA+ people, people with disability, *women*, and people from culturally and linguistically diverse backgrounds and young adults.³⁶²

³⁵⁹ Ibid.

³⁶⁰ Ibid, 13.

³⁶¹ Ibid, 86 (emphasis added).

³⁶² Ibid, 9 (emphasis added).

6.1.2 Key lessons from similar programs in other jurisdictions

Several other Australian jurisdictions operate similar pre-sentence diversionary programs that seek to address the underlying issues associated with offending. The Magistrates' Early Referral Into Treatment (MERIT) program has been operating in NSW since 2000 and focuses on people with substance use issues. It has been the subject of positive evaluations.³⁶³ In 2009, Martire and Larney³⁶⁴ found that female defendants were referred to MERIT in similar proportions to their appearance in court and were as likely to be accepted onto the program as men. However, they were less likely to complete the program (61% vs 66%) and this difference was statistically significant. In addition, women had higher levels of drug dependence and poorer health. They were also significantly more likely than men to be unwilling to take up the offer of participating in MERIT. Among program completers, women and men showed equivalent gains over time. This included significant improvements in drug dependence and psychological distress, as well as general and mental health. The authors recommended focusing on ways to attract and retain female participants, as a priority for ongoing program development. In 2009, an Aboriginal practice checklist was prepared for MERIT.³⁶⁵ This includes a range of culturally-informed practices, including that:

- all female clients are screened for domestic violence and all staff are aware of the procedures to support clients;
- the relevant agency maintains a comprehensive resource guide to services for Indigenous women;
- clients' health needs and risks are routinely discussed during the assessment process (eg, housing, family and social support, sexual and mental health, gambling); and
- all programs offered to Indigenous clients have been assessed as culturally appropriate. If not, clients are offered a separate program (eg, Aboriginal women's groups).

Where applicable, it may be beneficial for these programs to be delivered by or in collaboration with Aboriginal-controlled organisations.

The Victorian Court Integrated Services Program (CISP) provides a coordinated, team-based approach to assessment and treatment, linking people with services such as drug and alcohol treatment, crisis accommodation, disability services and mental health support, providing a holistic, wrap-around approach to addressing defendants' multiple and complex needs. An initial risk assessment allows people to

³⁶³ See Local Court NSW (nd). *The Magistrates Early Referral Into Treatment (MERIT) program - Publications* <https://localcourt.nsw.gov.au/sentencing--orders-and-appeals/sentencing-in-criminal-cases/diversion-programs/the-merit-program/publications.html#Research2>.

³⁶⁴ Martire K and Larney S (2009). *Women and the MERIT program*. NSW Government.

³⁶⁵ Aboriginal Health and Medical Research Council of NSW (2009). *Aboriginal practice checklist - A cultural assessment tool for MERIT teams*.

be streamed into three separate program levels to target people at different levels of risk and need. This streaming allows for the intervention level to be matched with individual needs.³⁶⁶ Where a person identified as Indigenous is considering engaging with the County Court's CISP, their assessment includes a discussion of access to Aboriginal cultural support.³⁶⁷

Evaluations have found that CISP clients report improvements in health and wellbeing and, compared with defendants at other court venues, have a significantly lower rate of reoffending. A benefit-cost analysis of CISP estimated a benefit-cost ratio ranging from 1.7 to 5.9.³⁶⁸ CISP was initially offered only in the Magistrates' Court jurisdiction as a bail support program. Since 2021, CISP has been available in the County Court of Victoria for people seeking bail, bail variation, a plea of guilty or deferral of sentence. However, a 2013 report by the Victorian Equal Opportunity and Human Rights Commission found that 'Koori women appear to underuse mainstream pre-sentence programs such as [CISP]... If there were Koori-specific CISP services, Koori women's utilisation rates would improve'.³⁶⁹ This reinforces the need for approaches that are both gender-responses and culturally appropriate.

A recent submission to a Victorian parliamentary inquiry on Victoria's criminal justice system recommended

[i]ncreas[ing] opportunities for women to engage in pre-charge and diversionary programs, including gender-informed and culturally appropriate programs and making diversion available at the instance of a Magistrate without the need for the consent of police or prosecutors.³⁷⁰

As noted above, there have already been both positive findings in relation to Court Link's accessibility for women and steps taken to enhance this. In this context, it is important that police and/or prosecutors do not unnecessarily restrict women's access to such programs.

The *Pathways to Justice* report suggested that bail support programs are pivotal to ensuring that Aboriginal and Torres Strait Islander people are not refused bail because they require additional support such as housing or rehabilitation

³⁶⁶ Gelb K (2009). *Solution-focused interventions for drug-related offending*. Department of Justice and Attorney-General.

³⁶⁷ County Court of Victoria (nd). *Court Integrated Services Program (CISP) Pilot Aboriginal support* <https://www.countycourt.vic.gov.au/going-court/criminal-division/court-integrated-services-program>.

³⁶⁸ PriceWaterhouseCoopers (2009). *Economic evaluation of the Court Integrated Services Program (CISP) - Final report on economic impacts of CISP*. Victorian Department of Justice.

³⁶⁹ Victorian Equal Opportunity and Human Rights Commission (2013), n 47, 2.

³⁷⁰ Smart Justice for Women, n 17, 11.

assistance.³⁷¹ Bail support programs ordinarily constitute informal networks delivered by community legal centres or other NGOs.

There is also a range of programs that seek to increase the likelihood of women obtaining bail. For example, the Sisters Inside Decarceration Program

support[s] women being held in police watch-houses and/or appearing in court to improve their likelihood of a successful bail application. This includes ensuring women's access to suitable and stable housing, legal representation, community-based services and support. We also offer advocacy with police, court authorities to optimise the likelihood of a successful bail application. They may also provide post-release support via outreach to enable women to continue to meet their bail (or parole) conditions.³⁷²

In its submission to the Taskforce,³⁷³ Sisters Inside indicated that, in 2020, it supported 51 women in Brisbane in this program, 62% of whom were granted bail.

Sisters Inside also runs the Yangah Program, which seeks to reduce the number of 10-17 year old girls being held on remand. Workers aim to improve the likelihood of a successful bail application, by ensuring girls' access to safe and secure accommodation, community-based services and support, legal representation and individual and family support.³⁷⁴ In 2020, the program worked with 58 girls, 78% of whom obtained and/or maintained bail. None of these girls returned to custody that year.³⁷⁵

6.2 Drug courts

QDAC commenced in the Brisbane Magistrates Court in January 2018. There is an extensive body of literature on the operation and effectiveness of drug courts. This section summarises relevant lessons elsewhere on gender and drug courts.

6.2.1 Key lessons from similar programs in other jurisdictions

Although evaluations of other Australian drug courts have generally been positive, in terms of recidivism, health and other benefits, they have not focused on gender.³⁷⁶

³⁷¹ ALRC, n 18, 177.

³⁷² Sisters Inside (nd). *For women* <https://sistersinside.com.au/for-women/>.

³⁷³ Sisters Inside, n 10.

³⁷⁴ Sisters Inside, n 134.

³⁷⁵ Sisters Inside, n 10.

³⁷⁶ Kornhauser R (2018). The effectiveness of Australia's drug courts. *Australian & New Zealand Journal of Criminology*, 51: 76-98. Cf Rossner M et al (2022). *ACT Drug and Alcohol Sentencing List: Process and outcome evaluation final report*, which recommended expanding the range of treatment-based options for women.

Gallagher et al's study about the experience of African-American female participants in drug courts in the US is instructive, as it aimed to identify the strengths and weaknesses of the current model in assisting female participants to graduate. The first strength identified was that the drug court judge was often an advocate of motherhood and understood the demands of raising children while meeting the requirements of drug court. Some participants noted that the judge worked with their parenting schedule and that they felt supported as a parent, even when they may have faced setbacks. Participants noted that they felt the judge genuinely wanted them to succeed in the program. This finding may not be universal to all drug courts and is likely predicated on the individual judge, their interpersonal skills and experiences in communicating with women.³⁷⁷ The participants in the study described that in their experience drug courts could be more gender-responsive. Based on the findings of the study, to support women better it is important that they be referred to female-only recovery groups. Participants noted that they did not feel comfortable discussing vulnerable topics, such as their complex histories of trauma, in therapy group sessions comprising mostly men.³⁷⁸ The men were described as dominating the group. Some participants suggested that they should be able to choose if they wanted to attend group therapy, individual therapy or support groups and that one-on-one counselling of female participants should be conducted by a female counsellor.³⁷⁹ These changes may increase female participants' comfort levels and desire to discuss and receive treatment for trauma symptoms in a peer-support setting. The study also identified that women may be more hesitant than men to enter into treatment orders for a variety of reasons, including because they are primary caregivers, pregnant, fear being reported to the child welfare system and the possibility of having their children being removed from their care.³⁸⁰ These concerns were heightened for African American women, who are at greater risk of imprisonment, being single mothers or having their children removed from their care than white women.³⁸¹

Gallagher et al noted that few studies have focussed on female drug court participants; studies that have included female participants have often failed to report gendered differences.³⁸² This study is limited in that the findings were based on a single drug court and its judge; it is unclear whether the findings are only relevant to African American women or other women of colour also. Nonetheless, the study is still valuable in identifying strengths and weaknesses for women participating in drug courts more broadly.

³⁷⁷ Gallagher J et al (2019). Drug court through the lenses of African American women: Improving graduation rates with gender-responsive interventions. *Women & Criminal Justice*, 29: 323-337, 332.

³⁷⁸ Ibid, 331.

³⁷⁹ Ibid.

³⁸⁰ Ibid, 324.

³⁸¹ Ibid, 325.

³⁸² Ibid, 325.

6.3 Indigenous courts

Most Indigenous courts operate in the sentencing context, although the ACT Galambany Court has recently established a dedicated bail list. As discussed further below, there are also some examples of culturally appropriate DFV courts for Indigenous participants.

Indigenous sentencing courts were developed as a way of providing culturally appropriate and meaningful criminal justice responses for Indigenous people. Bringing together the defendant, respected community members and criminal justice system representatives in a non-adversarial environment, these courts aim to address the needs of the community by encouraging the person to take responsibility for their actions. Most such courts use elements of restorative justice and culturally appropriate practices to inform sentencing, with some also allowing deferral of sentence to enable participation in court-monitored treatments and programs.³⁸³ Versions of these courts have been implemented across Australia, in the US, Canada and New Zealand.

6.3.1 Murri Court

In Queensland, Murri Court is available in both the Magistrates Court and Children's Court for adult and youth (aged under 18) Aboriginal and Torres Strait Islander defendants. The program includes a women's group. Anecdotal reports suggest that Murri Court engagement with participants includes practical issues, such as arranging food and providing a calendar, with upcoming court dates marked. There has also been a project to facilitate access to plans under the NDIS, with very favourable results: none of the nine participants who received NDIS plans reoffended.³⁸⁴

Ipsos conducted an evaluation of views 'at the coalface' – from Elders, defendants, legal practitioners and judicial officers.³⁸⁵ During the evaluation period, 27% of participants were female. Of these, 55% were aged 18-34, while 6% were aged under 18. The evaluation found a range of perceived benefits, with participants identifying that:

- Murri Court had led to reunification of families, a desire for self-improvement and character change, the acquisition of employment/training and licences, and a reinvigorated respect for community, culture and Elders;

³⁸³ Ooi E and S Rahman S (2022). *The impact of the NSW Youth Koori Court on sentencing and re-offending outcomes*. BOCSAR.

³⁸⁴ Carers Qld (nd). *Bridging the gap: how the Murri Court is working with Carers Queensland to support people to access the NDIS* <https://carersqld.com.au/bridging-the-gap-how-the-murri-court-is-working-with-carers-queensland-to-support-people-to-access-the-ndis/>.

³⁸⁵ Ipsos (2019). *Evaluation of Murri Court - prepared for the Queensland Department of Justice and Attorney General*.

- most Murri Court participants believed that the program had helped them avoid deviant and criminal behaviour. They felt that this was achieved through mentoring, having to appear before Elders and Respected Persons, as well as the magistrate, access to rehabilitative options, and the prompting of reflection and awareness;
- Murri Court had helped defendants to take personal responsibility for their offending and increased their awareness of how their behaviour affected victims and their community. The presence of Elders and Respected Persons and the open dialogue with the court were seen as key in facilitating this;
- by offering referrals to support services and a less intimidating court experience, Murri Court was said to facilitate improvement in the quality of life and psychological and physical health of Aboriginal and Torres Strait Islander participants; and
- the cultural safety of Murri Court improved participant engagement with the court process, although it did not necessarily improve understanding of the process overall.

In addition, 22% of participants expressly indicated that they benefited ‘from cultural services including Men’s and Women’s Groups’.³⁸⁶ A segment analysis found that women were under-represented in the cohort who were ‘staying on track’ (about 15% of this cohort), compared with a third of the ‘chance to change’ and ‘needing support’ cohorts (gender was not mentioned for the first cohort, ‘feeling strong’).

Murri Courts often refer participants to health checks.³⁸⁷ This free annual comprehensive health check, available to all Aboriginal and Torres Strait Islander people at Indigenous medical services and bulk-billing clinics, seeks to identify whether someone is at risk of illnesses or chronic conditions.³⁸⁸ If any health concerns are identified at the check-up, the person is referred to a care coordination team or for follow-up with a nurse or allied health practitioner. Reportedly, two-thirds of people who had such a health check had a follow-up appointment, confirming the level of health issues in this population.³⁸⁹ A recent review of adult corrections in Victoria indicated that these health checks are being implemented in all Victorian custodial settings. The review recommended more comprehensive, regular and culturally safe access to health checks and a holistic approach to health, wellbeing and rehabilitation for Aboriginal and Torres Strait Islander girls and women, as well as for those in custody.

³⁸⁶ Ibid, 55.

³⁸⁷ See Ipsos (n 385).

³⁸⁸ See eg Australian Government (nd). *715 health check* <https://www.health.gov.au/news/715-health-check>.

³⁸⁹ Cultural Review of the Adult Custodial Corrections System (2022). *Safer prisons, safer people, safer communities*.

According to the advice provided by an Elder, participants appreciate the concern about their wellbeing and report back on any health issues identified. Care must of course be taken to ensure that a failure to undertake the health check does not result in a punitive response by the court. The approach currently adopted in at least one Murri Court should be trialled more widely, in consultation with local communities and Aboriginal-controlled health organisations.

It is important to acknowledge the diversity of the Aboriginal and Torres Strait Islander population in Queensland. The current models of Indigenous courts in Australia have a tendency to broadly brush all participants as Indigenous, without delving deeper into where they are from. The pathway to offending for many in the justice system involves a history of removal from their mob and their culture; it is only when those lines can be reformed that people can heal.

Women's yarning or talking circles are gender-specific bail programs in Murri Courts in Queensland. As part of the Murri Court program, a defendant is required to attend numerous therapeutic bail programs, which can last between three months and one year prior to the court finalising their sentence. If bail is granted to an accused person, the judicial officer often imposes conditions requiring them to attend programs and complete activities while on conditional liberty. Bail conditions imposed in the Murri Court process include standard conditions, such as health checks, rehabilitation and curfew conditions. They also often require defendants to attend programs organised by 'cultural services' and arranged by the Community Justice Group, such as women's yarning circles. One of the roles of bail conditions is to protect the community; equally important is giving the accused an opportunity to rehabilitate while their matter is progressing through the courts.³⁹⁰

Women's yarning circles are spaces to facilitate discussion between Indigenous participants and respected Elders and community members. 'Yarn' refers to a meeting or discussion that has specific protocols depending on the community or the relationship in which the yarn occurs.³⁹¹ For Aboriginal and Torres Strait Islander people, yarning is the process of storytelling, sharing cultural wealth and gathering information. Yarning circles aim to create an Indigenous-centred space where Elders and respected community members can create rapport with women who come before the criminal justice system and provide them with the social and cultural support they require.³⁹² Defendants are also given the opportunity to learn and gain support from other defendants, which also creates an environment where they keep each other accountable. The topics that arise during women's yarning circle vary,

³⁹⁰ Radke A (2018). Women's yarning circles: A gender-specific bail program in one Southeast Queensland Indigenous sentencing court, Australia. *Australian Journal of Anthropology*, 29: 53-69, 61.

³⁹¹ Yunkaporta T (2009). *Aboriginal pedagogies at the cultural interface*. PhD thesis, James Cook University, xiii.

³⁹² Radke, n 390, 63.

including issues around childcare, welfare, foster care, racism, colonisation, religion and connections to the stolen generations. CJG members often encourage women in these groups to research their family's history.³⁹³

Yarning circles are integral to creating rapport between people who offend and CJG members. Due to the subject matter discussed, these circles play an important role in determining an appropriate sentence. Elders and respected persons describe these programs as building the participant's sense of 'cultural responsibility'.³⁹⁴ The Elders are alive to issues of how class and hierarchy can contribute to the person coming before the criminal justice system.³⁹⁵ However, these programs may discriminate against defendants who identify as belonging to the LGBTIQ+ community. As Radke noted,

for defendants whose gender does not align with their sex, these bail programs can potentially exclude people who identify as gender fluid. In the Murri Court, defendants have diverse identities and often belong to various communities in Southeast Queensland. Recreating a binary between men and women in bail programs can potentially further discriminate against defendants who identify as belonging to the LGBTIQ+ community.³⁹⁶

6.3.2 Key lessons from similar programs in other jurisdictions

The Law Council of Australia has described Indigenous sentencing courts as a 'measure to increase cultural sensitivity across the justice system, in the interests of equal justice'; this is 'particularly important in regional, rural and remote areas, as a local presence and knowledge enables the courts to respond appropriately to court users and their communities, foster community engagement, and combat mistrust of the justice system'.³⁹⁷ Reducing recidivism is just one of several objectives of Indigenous sentencing courts; if they are able to strengthen the informal social controls that exist in Aboriginal and Torres Strait Islander communities, Indigenous sentencing courts may have a crime prevention value that cannot be quantified through immediate changes in the risk of reoffending for individuals. Indeed, Indigenous sentencing courts have both community-building and offending-centred aims.³⁹⁸ For example, qualitative data gathered from defendants found that circle sentencing was commonly seen as having a 'dramatic influence on offenders beyond

³⁹³ Ibid, 55.

³⁹⁴ Ibid, 60.

³⁹⁵ Ibid, 64.

³⁹⁶ Radke, n 390, 65.

³⁹⁷ LCA, *Courts and tribunals*, n 130, 5.

³⁹⁸ Marchetti, n 253.

reoffending in relation to substance abuse, employment and family relationships'.³⁹⁹ According to the ALRC,⁴⁰⁰ effective Indigenous sentencing courts:

- involve active participation by the defendant and the community;
- provide individualised case management for the defendant and wrap-around services that address criminogenic factors;
- are culturally appropriate and competent; and
- are led by relevant Aboriginal and Torres Strait Islander organisations in their design, implementation and evaluation.

There do not appear to be any evaluations of the effectiveness of such courts specifically in relation to women and girls. However, recent evaluations have found positive impacts for Indigenous people generally. An evaluation of the NSW program found that circle sentencing was associated with significant reductions in incarceration and recidivism, even after adjusting for defendant and case characteristics.⁴⁰¹

Similarly, an evaluation of the Youth Koori Court in NSW⁴⁰² found a 40% reduction in the probability of receiving a juvenile control order among participants than among people whose matter had been finalised via the standard Children's Court process. The researchers concluded that their results were promising and pointed to a beneficial role for such alternative case management processes for Aboriginal young people. They suggested that the following unique features of the Youth Koori Court contribute to its impact:

- the magistrate has access to substantially more information about the young person, particularly their risk factors and prospects of rehabilitation;
- sentences are deferred for up to 12 months to allow a case management plan to be developed and for the young person to participate in programs or services to address factors relating to their offending; and
- participants are therefore able to demonstrate their commitment to behavioural change and their willingness to build connections with their culture and community.

Marram-Ngala Ganbu (meaning 'we are one' in Woiwurrung language) is a Koori family hearing day, held every week at Broadmeadows Children's Court in Victoria.⁴⁰³ While this list is tasked with family law and protection order matters, many of the principles and practices of the initiative are arguably transferable to any

³⁹⁹ Anthony T and Crawford W (2013). Northern Territory Indigenous community sentencing mechanisms. *Australian Indigenous Law Review*, 17: 79-99, 91.

⁴⁰⁰ ALRC, n 18.

⁴⁰¹ Yeong S and Moore E (2020). *Circle sentencing, incarceration and recidivism*. BOCSAR.

⁴⁰² Ooi and Rahman, n 383.

⁴⁰³ Arabena K et al (2019). *Evaluation of Marram-Ngala Ganbu, prepared for the Children's Court of Victoria*.

Indigenous court list. The list was established through an Aboriginal-focused design and implementation process, with the aim of providing more effective and culturally appropriate processes and outcomes for Aboriginal families involved in child protection proceedings. To have matters listed in Marram-Ngala Ganbu, the children must be Indigenous and the matter must be case managed by an appropriate child protection office.⁴⁰⁴ The design of Marram-Ngala Ganbu is such that all participants, including the judicial officer, sit around an oval table, to discuss the matter. Matters always begin with an Acknowledgement of Country by the magistrate and with specific recognition of the intergenerational effects of the Stolen Generations.⁴⁰⁵ The oval table has a possum-skin cloak at the centre, created by Koori children from the region; the room is also decorated with gum leaves painted by Aboriginal and Torres Strait Islander children (see Fig 6.1). A Koori Services Coordinator coordinates the listings and provides information and referrals to relevant services; a Koori Family Support Officer is also available to help families to navigate the court process.⁴⁰⁶ The details of the Koori services coordinator, including a mobile phone number, are easily accessible online, as is a video produced about the evaluation of Marram-Ngala Ganbu (discussed below).

Figure 6.1: Image of courtroom in Marram-Ngala Ganbu program



Source: Arabena et al 2019

⁴⁰⁴ Children's Court of Victoria (nd). *Marram-Ngala Ganbu (Koori family hearing day)* <https://www.childrenscourt.vic.gov.au/family-division/marram-ngala-ganbu-koori-family-hearing-day>.

⁴⁰⁵ See eg Stanley C (2022). *2020 Churchill Fellowship To investigate community-led responses and innovative approaches to the criminal justice system – US, Canada*, 35.

⁴⁰⁶ Children's Court of Victoria, n 404.

Marram-Ngala Ganbu operates on a case management system, spearheaded by Aboriginal Elders and respected people from the community to ensure that participants feel supported through all stages of the process. The Koori Services Coordinator has the role of creating strong relationships with the families of the children to ensure that the parties are prepared for matters, court orders are complied with and appropriate referrals to services are made.⁴⁰⁷ The list employs a case docketing system, which operates by allocating one magistrate to a matter, ensuring continuity in approach and in turn, saving court time and resources. On the court day, the Koori Services Coordinator and Family Support Officer will meet the family outside and assist them through security, explain the court process and advocate for extended family to attend the listing.⁴⁰⁸ Following the listing, they follow up with families and provide support to comply with orders and provide administrative support to assist with paperwork.⁴⁰⁹ These support officers act as a link between the families, their lawyers and support services, and often provide cultural advice and competency training for court staff to ensure the environment is safe and secure for Aboriginal and Torres Strait Islander people.

An evaluation of Marram-Ngala Ganbu was conducted in 2019 and yielded positive results.⁴¹⁰ Over 400 Koori families had been supported through the court process. The evaluation found that CYP involved in this process reported strong positive feelings as a result of their participation in the list. They felt supported and more relaxed being in court, rather than feeling 'out of place', because their voices were being heard.⁴¹¹ It is important that courts dealing with child protection, welfare and juvenile justice proceedings in relation to Aboriginal and Torres Strait Islander children provide this space for listening, given that Indigenous people contextualise these issues 'by the history of colonial intervention aimed at disrupting Aboriginal family life'.⁴¹² The report speculated that a long-term outcome based on early indicators is that young people feel more connected to their family, culture and community.⁴¹³ The evaluation speculated that, with increased cultural connections, more Indigenous children were being placed in Indigenous kinship care and families were more likely to stay together.⁴¹⁴ Anecdotal evidence from children involved in the evaluation indicated that after being provided family history information from a Koori Family Support Officer, they felt more part of their community. Further, some young people reported more engagement with school due to advocacy and support from

⁴⁰⁷ Arabena et al, n 403, 23, 25.

⁴⁰⁸ Ibid.

⁴⁰⁹ Ibid.

⁴¹⁰ Ibid, 3.

⁴¹¹ Ibid, 35.

⁴¹² Cunneen C and Libesman T (2016). Postcolonial trauma: The contemporary removal of Indigenous children and young people from their families in Australia. *Australian Journal of Social Issues*, 35: 99-268, 103.

⁴¹³ Ibid.

⁴¹⁴ Ibid, 38.

the family support officer.⁴¹⁵ A key finding for families involved in the list was that they were included without judgement and were therefore more likely to attend court regularly and actively participate.⁴¹⁶ The ongoing relationship with the Koori Services Coordinator, Family Support Officer and being able to speak directly to the magistrate in a welcoming environment eases anxiety for families involved in the process both within and outside the courtroom.

The Rangatahi Court model⁴¹⁷ in New Zealand operates like a youth court, but follows Maori cultural processes. They are designed to help young people and their families become more closely involved in the youth justice process. To participate in the proceedings, the participant must admit guilt to the charges they are facing. A Family Group Conference is then held, to plan for how the participant can take responsibility for their behaviour. This conference involves multidisciplinary teams that collaborate in holistically supporting the needs of participants and their families.⁴¹⁸ A typical hearing at a Rangatahi Court will start with a pōwhiri (welcome/calling) of manuhiri (visitors) onto the marae. The participant then receives a talk from respected Elders. During court, participants are expected to learn their traditional greeting and tribal identity. It is important to note that the same laws and consequences apply as they would in youth court, but the sentence is decided by the judicial officer, in consultation with Elders, who participate in the process. Evaluation has shown that participants and their families are very positive about the process,⁴¹⁹ although more recent research has also identified some concerns.⁴²⁰

Court-based diversionary support schemes offer a potential mechanism for reducing high levels of Indigenous incarceration. While most are mainstream, some are specifically designed for Aboriginal and Torres Strait Islander people. The effectiveness of mainstream programs such as CISP is well established; their effectiveness for Aboriginal and Torres Strait Islander people is, however, contested. This may be due in part to the way in which the effectiveness of problem-solving criminal justice programs is typically measured, in which attention is drawn to how criminogenic needs have been resolved and whether people have ceased criminal activity. As an evaluation of the Murri Court noted:⁴²¹

This is a difficult measure to apply to Aboriginal and/or Torres Strait Islander offenders in recognising the entrenched systemic inequality they

⁴¹⁵ Ibid, 35.

⁴¹⁶ Ibid.

⁴¹⁷ Youth Court of New Zealand (nd). *About Youth Court: Rangatahi courts & Pasifika courts* <https://www.youthcourt.govt.nz/about-youth-court/rangatahi-courts-and-pasifika-courts/>.

⁴¹⁸ RMIT CIJ, n 123, 2, 4.

⁴¹⁹ Davies L and Whaanga J (2012). *Evaluation of the early outcomes of Nga Kooti Rangatahi: Final Report – Submitted to the Ministry of Justice*. Kaipuke Consultants.

⁴²⁰ Jessep M (2022). *‘Stuff the transactional shit’: Learning through the lived experience of the Rangatahi Court*. Unpublished Masters thesis, University of Canterbury.

⁴²¹ Ipsos, n 385, 8.

experience and the subsequent criminogenic needs this produces. In light of this, it can be said that courts can only do so much to contribute to desistance of Queensland Aboriginal and/or Torres Strait Islander people.

To be effective, diversionary initiatives need to include well-resourced, culturally appropriate rehabilitation programs that address the underlying causes of offending in a holistic fashion.

The Australian Human Rights Commission has recommended expanding the use of Aboriginal and Torres Strait Islander courts, including specialist family violence and trauma-informed courts. There are already some examples of DFV matters being dealt with in a culturally safe way for Indigenous people. The Barndimalgu Court in Western Australia hears DFV matters involving Indigenous people. According to the Australian Human Rights Commission, this approach

works to break the cycle of family violence and reduce rates of imprisonment due to family violence related convictions. When an Aboriginal person is arrested on a family violence charge, they are sent to a supervised court process (Barndimalgu Court) and have the opportunity to participate in a 20-week program to address their violent behaviour. On successful completion of the program, perpetrators may be granted a community sentence rather than having to go to prison. The project is supported by the Geraldton Aboriginal Justice Agreement local justice forum, which provides voice from the Geraldton Aboriginal community to the Departments of the Attorney-General and Corrective Services.⁴²²

Victoria has undertaken a pilot project,⁴²³ where contravention of DFV orders can be heard in Koori Court and clients are supported by staff from Djirra, 'a place where culture is shared and celebrated, and where practical support is available to all Aboriginal women and particularly to Aboriginal people who are currently experiencing family violence or have in the past'.⁴²⁴ Another program in the Magistrates' Court of Victoria, Umalek Balit, which means 'give strength' in Woiwurrun, is a 'dedicated Koori family violence and victim support program that is designed to address the specific barriers faced by Aboriginal and Torres Strait Islander people when attending court and interacting with the justice system'.⁴²⁵

⁴²² AHRC, n 33, 161.

⁴²³ State of Victoria (nd). *Family violence orders in Koori Courts* <https://www.aboriginaljustice.vic.gov.au/the-agreement/aboriginal-justice-outcomes-framework/goal-31-the-needs-of-aboriginal-people-are-2>.

⁴²⁴ Djirra (nd). *Who we are* <https://djirra.org.au/who-we-are/>.

⁴²⁵ Magistrates' Court of Victoria (nd). *Koori community working with court to improve family safety* <https://www.mcv.vic.gov.au/news-and-resources/news/koori-community-working-court-improve-family-safety>.

Canada has various forms of Indigenous courts and sentencing circles. In addition, when an Indigenous person is to be sentenced in any Canadian court, the court *must* be presented with a ‘*Gladue* report’. This is taken from the name of the case in which the Supreme Court of Canada held that judges must take a different approach to sentencing Aboriginal people. In particular, the background considerations regarding the distinct situation of Aboriginal people in Canada encompass a wide range of unique circumstances, including the systemic or background factors that may have played a part in the offending and the types of sentencing procedures and sanctions that may be appropriate for the person, because of their particular Aboriginal heritage or connection. To achieve this, evidence is presented at the sentence hearing about the person’s Indigenous background. These ‘*Gladue* reports’ include details of the person’s life circumstances, as an Indigenous person, and relate current circumstances to appropriate sentencing procedures and sanctions. Although their use continues to be the source of significant appellate court commentary in Canada, the ALRC proposed that they be adopted in Australia (see further discussion below). *Gladue* reports have been found to ‘draw concrete connections between the intergenerational impacts of colonialism (residential schools, community displacement, child apprehensions) and the person in court for sentencing’.⁴²⁶ However, more recent commentary has criticised

the gender-neutral nature of the *Gladue* analysis, especially, as overrepresentation is growing more quickly among Indigenous women than men. The [legislative] analysis set out in *Gladue* ignores intersectionality: for Indigenous women, the systemic experiences of colonialism is [sic] compounded by, and inseparable from, gender inequality. The interaction between gender and Indigenous identity means that sentencing approaches that remedy the over incarceration of Indigenous women do not fit neatly into the dichotomy of “traditional” and “western” ...⁴²⁷

Some of the gender-specific implications of *Gladue* that have been highlighted are similar to issues applicable to Indigenous women in Australia, namely, parenting, displacement, violence and poverty.⁴²⁸

6.4 Domestic and family violence courts

DFV matters appear before the courts in a range of ways – applying for a protection order in the civil jurisdiction is the primary response to DFV. Breach of such orders is a criminal offence. Domestic violence courts, also known as specialised domestic violence or family violence courts, are designed to respond to cases related to DFV

⁴²⁶ ALRC, n 18, [6.72].

⁴²⁷ Department of Justice Canada (2017). *Spotlight on Gladue: Challenges, experiences, and possibilities in Canada’s criminal justice system*, 34.

⁴²⁸ Ibid, citing Cameron A (2008). *R v Gladue: Sentencing and the Gendered Impacts of Colonialism*. In J White (ed), *Moving toward justice: Legal traditions and Aboriginal justice*. Saskatchewan Institute of Public Policy.

in a comprehensive and coordinated way. Their objective is to take a nuanced approach to the unique dynamics of DFV and provide targeted support to victims. They take an integrated approach, often collaborating with external agencies and community organisations, while prioritising victim safety and offender accountability.

It is important to highlight that DFV courts continue to run the risk of secondary victimisation and procedural injustices. Attention was drawn to this in a study on Brazil's domestic violence courts, which found that women experienced victim-blaming by judges, lawyers and police officers, insufficient support, insufficient protection measures, and inadequate legal assistance.⁴²⁹ These issues can undermine women's confidence in the justice system and prevent them from seeking help. As such, it is crucial to address these issues, to provide a more supportive and nuanced system that prioritises the needs of victim-survivors.

The structure and ways of functioning of DFV courts can vary across jurisdictions, as they are tailored to the specific needs and resources of the community in which they are situated. We look at some examples of DFV courts below.

6.4.1 Queensland Specialist DFV Court

The Queensland Specialist DFV Court operates in Southport, Townsville, Beenleigh, Mount Isa, Brisbane, Cairns and Palm Island. The specialist DFV courts are working towards the coordination of civil and criminal matters in each location. In locations where these matters are coordinated, dedicated magistrates hear both criminal and civil DFV related matters (i.e., civil applications and criminal matters in the same callover). The program provides:

- a dedicated magistrate with specific training, knowledge and experience in DFV matters;
- a court coordinator from the Department of Justice and Attorney-General, who oversees court operations and the continuous improvement of the model, including stakeholder engagement;
- a specialist DFV court registry, where specialist court staff are trained to offer support and information to people experiencing DFV;
- dedicated prosecutors;
- duty lawyers to provide advice and representation for both parties;
- court support workers for the person experiencing DFV;
- support/liaison workers for respondents; and
- access to DFV perpetrator programs.⁴³⁰

⁴²⁹ Rosenblatt F et al (2023). Secondary victimisation, procedural injustices, and machismo: the experiences of women who access Brazil's not-so-specialised domestic violence courts. *International Journal of Comparative and Applied Criminal Justice*, 47: 167-184.

⁴³⁰ See Queensland Courts (nd). *Specialist Domestic and Family Violence Court* <https://www.courts.qld.gov.au/courts/domestic-and-family-violence-court>.

The program involves collaboration between stakeholders including the Queensland Police Service, Legal Aid Queensland, Queensland Corrective Services, Victim Assist Queensland and other non-government service providers who are funded by the Office for Women and Violence Prevention, Department of Justice and Attorney General, the Department of Children, Youth Justice and Multicultural Affairs, and other non-government service providers who deliver critical support to people involved in DFV proceedings. The program is also supported in most jurisdictions by CJGs, which assist Aboriginal and Torres Strait Islander people involved in DFV court proceedings. This may include support such as transporting people to and from court for their appearances, linking them with programs and ensuring they understand the court process and any orders made.

The final evaluation of the Southport component of this program was released in 2022. It found that the program was fulfilling its purpose to ensure a coordinated, respectful and fair response to DFV across the human services sector, prioritising the safety of the victim and their children, holding perpetrators accountable and promoting changes in attitudes and behaviour. The evaluation also found that the program:

- was implemented in line with international best practice;
- connected victims and perpetrators with social supports;
- was cost-effective; and
- strengthened the evidence base, with a systems perspective.⁴³¹

Nevertheless, a recent reflection by a practitioner in this court indicated that some of the key challenges with the model have included:

- the broad eligibility criteria for accessing the specialist court leading to substantial increases in case numbers, workloads and file complexity (which contributed to staff burnout, placed pressure on resources, and affected the ongoing sustainability of the model);
- complexity and confusion, particularly for victims, in navigating the legal processes (combination/intersection of both civil and criminal proceedings in Queensland) and limited support available to assist; and
- limited availability of specialist DFV support services to assist persons attending court.⁴³²

These and other issues were ultimately resolved, with the success of the program being attributed to two factors. The first was the establishment of a weekly stakeholder meeting with representatives from each agency and the dedicated DFV magistrates to discuss issues, challenges, failures or successes in the way the

⁴³¹ ARTD Consultants (2021). *Southport Specialist Domestic and Family Violence Court: Process and outcomes evaluation 2017-2021*. Queensland Department of Justice and Attorney-General.

⁴³² Daniels E (2022). Practitioner perspective: A reflection on problem-solving courts in Australia. In M Camilleri and A Harkness (eds), *Australian courts: Controversies, challenges and change*. Palgrave.

model was operating and developing. The second was the clear commitment to 'continuous improvement' and 'innovation'.⁴³³ The following were identified to ensure the future sustainability of the model:

- adequate resourcing and ensuring programs are not 'person-based' or relying upon goodwill to function;
- the ongoing need for clarity about the model and its core elements;
- the need for the model to reflect diversity, be accessible to people from all cultural backgrounds and diverse groups, and to be able to translate notions of 'best practice DFV', including in regional areas and Aboriginal and Torres Strait Islander communities; and
- clarity around the concept of 'success', particularly in relation to the goal of perpetrator accountability.

6.4.2 Key lessons from similar programs in other jurisdictions

Although each Australian state and territory has a dedicated DFV court, none appears to be as comprehensive as the Queensland model. According to the Law Council of Australia,⁴³⁴ the advantages of a specialised jurisdiction of this nature are:

- enabling judicial officers working in the area to gain and develop specific knowledge that helps victims navigate the system;
- attracting those with an interest and aptitude in the area of DFV work, who can influence systemic change;
- enabling education and other resources to be focused on a smaller group, to deliver more immediate results and improved outcomes;
- promoting more consistent interpretation and application of laws;
- identifying and solving problems more efficiently and effectively;
- greater integration and efficiency in case management, which may produce savings elsewhere in the system (eg, child protection involvement);
- developing and promoting best practice, which can then be implemented in the mainstream system;
- better outcomes in terms of victim satisfaction and safety; and
- improving offender accountability, behaviour and engagement with the justice system.

Specialist Domestic Abuse Courts (SDACs) are well established in the UK. A recent review of the SDAC model by the Centre for Justice Innovation elicited the following core elements of SDACs and what worked to create impact:

- **domestic abuse cases are grouped into a single hearing**, overseen by magistrates or a district judge and dedicated court staff, who receive training

⁴³³ Ibid, 218.

⁴³⁴ LCA, *Courts and tribunals*, n 130, 102.

in domestic abuse issues and apply this training in court and decision-making on bail, protective orders and sentences;

- **court coordinators track each case** and help the relevant criminal justice agencies to stay informed on case developments. They also access and share information on the risks to the victim, so they are able to make appropriate safeguarding decisions;
- **victim-survivors are supported during the process by a specialist independent domestic abuse advocate (IDVA)**, who has specialist knowledge of the criminal justice system. The IDVA provides emotional support and explains the criminal justice system, assists with safety planning throughout proceedings and provides updates about case hearings;
- **there is an emphasis on making special provisions for victim-survivors to minimise the fear of threat or intimidation** (eg, a separate entrance and video links or screens inside the court);
- **working in partnerships is key to the model**, which unites disparate actors under a structure of governance and multi-agency protocols, to provide a coordinated and consistent approach. This enables busy and strained services to work together and keep the experience of the survivor at the centre of the process; and
- **regular court management steering and operational groups** discuss court practice, to improve coordination and accountability between key statutory and non-statutory agencies.⁴³⁵

The importance of dedicated court support for victim survivors of domestic violence was also highlighted in a report by the Domestic Abuse Commissioner for England and Wales,⁴³⁶ which mapped the provision of court-related domestic abuse support and advocacy across England and Wales. It emphasised the need for dedicated court support for victim survivors, especially IDVAs, and recommended that they be formally recognised by the judiciary and Ministry of Justice, with funding allocated for dedicated criminal and family court IDVAs. The report advised on the importance of specialist trauma-informed training for all dedicated court support services and recommended that these services, especially the provision of IDVAs, be recognised as integral to the court system and be considered as equally important to other professionals providing support to women attending court.⁴³⁷

⁴³⁵ Centre for Justice Innovation (2023). *Problem-solving courts: A guide to practice in the United Kingdom*, 21.

⁴³⁶ Domestic Abuse Commissioner (2021). *Understanding court support for victims of domestic abuse*.

⁴³⁷ Ibid, 34.

6.5 Special lists for women and girls

As set out above, the Taskforce recommended piloting a women's list within the Court Link program operating within the Queensland Magistrates Court. Beatrice⁴³⁸ has made the case for establishing a specialist women's list in the Magistrates' Court of Victoria – the Victorian Women's Court (VWC) – based on TJ principles, to address the criminogenic risk factors unique to women. As detailed above, the vast majority of women who offend are also victims of crime, with complex histories of trauma. Crucially, Beatrice observed that:

While it is acknowledged that not every woman offender is necessarily also a victim, the paternalistic nature of the traditional justice system does not naturally lend itself to principles of feminist jurisprudence. It is not a productive use of court resources, nor is it appropriate, for the court to determine whether a woman's experiences meet a pre-determined threshold for suffering before she is permitted to access the VWC. This notion is inconsistent with the therapeutic, feminist and inclusive principles which underpin the VWC...As such, participation must be made accessible to any person who identifies as female and has been charged with a summary offence or an indictable offence to be tried summarily.⁴³⁹

Beatrice proposed a model which requires participants to commit voluntarily to the program, to ensure effective participation. She also proposed that, while many specialist courts require a guilty plea from the accused person to participate, granting the court the 'jurisdiction to hear contested matters would allow for a greater depth of services and interventions rather than exposing women to the social, family and economic challenges associated with a guilty plea or criminal conviction'.⁴⁴⁰ In addition, Beatrice suggested that the women's list could sit regionally in existing community infrastructure, to service a larger number of women and reduce feelings of intimidation that may come when attending a traditional courtroom, as well as extending its reach.⁴⁴¹ In order to create a safe environment, she suggested that the court be entirely staffed by women (to the extent possible).

Victoria has also seen the development of an integrated Court Support Program (CSP) for women. This was part of a broader project, which advocated for systemic reform in relation to women in the justice system and included women with lived experience of the justice system in its leadership group. Together, these components comprised the *Women transforming justice* (WTJ) pilot project. An evaluation by the RMIT CIJ⁴⁴² found that the CSP had improved legal outcomes for most women

⁴³⁸ Beatrice, n 28.

⁴³⁹ Ibid, 44.

⁴⁴⁰ Ibid, 46.

⁴⁴¹ Ibid, 45.

⁴⁴² RMIT CIJ (2020). *Women transforming justice - Final evaluation report*.

accessing the program; 76% of WTJ clients were granted bail at their first application. Clients were also supported with their non-legal needs by the WTJ case manager, including intensive outreach and practical supports, such as transport to and from appointments, food and phone vouchers, help finding housing and advocacy for referrals to other services. However, for the CSP to be effective, it was suggested that there be funding for:

- dedicated, intensive and assertive outreach, to ensure the capacity to be highly responsive to referrals;
- the establishment of a dedicated housing pathway;
- the provision of, or connection with, longer, ongoing support, to help women to transition from a short-term crisis response to a longer-term response;
- strengthened cultural safety for Indigenous and CALD clients;
- strengthened capacity to respond to child protection issues, with resources dedicated to addressing the connection between women's contact with the criminal justice system and their experiences of trauma, DFV, homelessness and having their children removed
- exploring the feasibility of integrating a peer support component into the service delivery model; and
- increased funding for brokerage, essentials (eg, food, clothes and transport), to help women maintain bail.⁴⁴³

These lessons align with many of the observations elsewhere in the review and are likely to be instructive, if a dedicated women's list is established in Queensland, as well as reinforcing the need for holistic, long-term and practical approaches.

Discussions with a former Chief Magistrate who had established several TJ courts indicated support for a specialist list for women and/or girls and suggested that there would be no legal impediment to also including child protection and any other legal matters. This would ensure all relevant matters in the lives of the women and girls appearing before the court could be addressed in a holistic way, with comprehensive support.

Several states in the US have implemented specialist girls' courts that aim to address gender issues for young females who offend, particularly in relation to underlying problems, such as histories of trauma that have led to offending. Girls' courts can take a variety of forms, such as girl-only dockets to years-long court-based programming.⁴⁴⁴ They have different eligibility criteria, targeting girls with various levels of risk, but they are unified by a commitment to gender-responsive principles: relationship continuity, promotion of safety and empowerment of girls.

⁴⁴³ Ibid, 9-10.

⁴⁴⁴ Sherman F and Balck A (2015). *Gender injustice: System-level juvenile justice reforms for girls*. National Crittenton Foundation and National Women's Law Center.

Continuity of case involvement with the court is typically provided through a single judge, who hears and follows all cases involving girls. Judges may oversee regular group meetings, at which girls report their progress, sometimes with their peers or families in attendance. The court's authority is also used to respond to or sanction program violations. Some courts employ a consistent workforce of court personnel, prosecutors, public defenders and probation officers, all of whom have both relationships with the girls who appear in court and knowledge of gender-responsive services in the community. Girls' court programming might be located within the court, run by probation, or delivered through referrals to community-based organisations. Common components are family engagement, therapy (individual, group and family), specialised probation officers, peer support and a competency-building approach.⁴⁴⁵

Few girls' courts have been evaluated and there are concerns that they may net-widen, expanding the reach of the formal juvenile justice system to minor offences that would not normally lead to court involvement. Concerns have also been raised about the potential for increasing the use of detention and extending case processing time and the intense scrutiny of formal probation supervision. In addition, girls' courts isolate girls' services within courts, potentially making re-entry more challenging; courts that use community-based, rather than court-based programming may best help girls establish long-lasting supportive relationships within their communities.⁴⁴⁶

Hawai'i's Girls' Court was established in 2004 and became a permanent program in 2017. Its core values are:

- honouring female experience;
- maintaining ethical standards;
- nurturing strengths;
- building relationships;
- connecting with community;
- instilling hope;
- healing;
- competency development;
- adopting a holistic view; and
- accountability.⁴⁴⁷

One interesting feature of the program is a monthly 'Girl Circle', where

each girl tak[es] turns talking and listening to one another respectfully about their respective concerns and interests at that moment in their lives. In a

⁴⁴⁵ Ibid.

⁴⁴⁶ Ibid.

⁴⁴⁷ Hawai'i Girls' Court (nd). *About* <https://www.girlscourthawaii.org/about>.

purposely developed safe environment, the girls use role playing, drama, journaling, poetry, dance, drawing, collage, and other activities as a means of self-expression. Staff (including the probation officers) introduce gender-specific topics that relate to the girls' lives, such as being a girl, trusting themselves and friendships, developing healthy body images, setting goals, understanding healthy sexuality, understanding addiction, and learning skills to make good life decisions.⁴⁴⁸

An evaluation of Hawai'i's Girls' Court found that reoffending was reduced by over 90% (vs a comparison group, both n=70). There was also a 90% decrease in absconding ('runaways') and 252% fewer days on the run and reduced drug use. This was coupled with improved academic achievement, awareness of healthy relationships and family relationships.⁴⁴⁹ However, during the year of programming, participants had more shelter admissions and shelter days and admissions to and days in detention than their non-Girls' Court peers.⁴⁵⁰ The authors concluded that the program 'did yield positive results...[and] appears to be a promising specialized court whose replication should be encouraged...particularly impressive is the fact that Girls Court was able to successfully foster an environment in which similarly situated girls openly encouraged one another to avoid making harmful choices'.⁴⁵¹

There are several women's specialist courts in the UK (in Merseyside, Aberdeen, Manchester and Peterborough)

as models for diverting women away from prison and enhancing compliance with community order requirements...[and] offer a model for improved partnership and collaborative working across services to address women's needs as well as allowing for gender- and trauma-informed practices to be embedded in court and probation practices'.⁴⁵²

Unfortunately, there has been limited evaluation of these programs.⁴⁵³ The Women's Review Court (WRC) at Merseyside in the UK is a women's-only list which aims to support women on suspended or community sentences, by preventing the escalation of difficulties the women might have in complying with court orders.⁴⁵⁴ The aim of the court is to identify and address challenges women face during the period of their sentence, in an effort to prevent breaches which can trigger a prison sentence. The staff and judicial officers at the court are all female and are specially trained to work

⁴⁴⁸ Davidson J, Pasko L and Chesney-Lind M (2011). 'She's way too good to lose': An evaluation of Honolulu's Girls Court. *Women & Criminal Justice*, 21: 308-327, 312.

⁴⁴⁹ Ibid.

⁴⁵⁰ Ibid.

⁴⁵¹ Ibid, 324.

⁴⁵² Lightowlers and Benefer, n 344, 257.

⁴⁵³ Ibid, 258.

⁴⁵⁴ Ibid.

with women. The court has a women's only pathway to the review court, which includes features such as allocating female pre-sentence report-writers to all women heard at the program.⁴⁵⁵ This helps to ensure that appropriate sentences for women are recommended to judicial officers. Women who receive sentences with imposed conditions to be served in the community are invited to participate in the WRC, to review their progress against their treatment orders.⁴⁵⁶ The WRC adopts a TJ approach, using a coordinated, multi-agency support system. The court is exclusively focused on review hearings for women serving their sentence in the community. The all-female closed court environment offers a secure setting, conducive to transparency between participants and the judicial officer.⁴⁵⁷ Women are encouraged to be open about challenges they face in meeting the requirements of their sentences and the WRC treats them in a holistic way to assist them in completing the sentence.⁴⁵⁸ The WRC is an informal court with no judicial power; the success of the court is in diverting women away from custody and ensuring compliance with orders.⁴⁵⁹ The 'buy-in' model of the court, where participants express willingness to comply with the requirements of their sentence is a crucial success factor.

In order to find long-term solutions to women's offending and reduce recidivism, Greater Manchester implemented a Whole System Approach (WSA) to women who offend. This approach aims to provide gender-responsive joined-up support to women at three key stages throughout their criminal justice journey: at arrest, sentencing and upon release from prison. Central to this approach was the establishment of Manchester Women's Court, which began operating in 2014 and targets women who have offended and have multiple and complex needs, including those with addiction, mental health issues and/or unstable housing.⁴⁶⁰ In addition, nine women's centres were established, to act as support 'hubs' to women who offend. Women's needs are assessed, as part of their pre-sentence process and, based on the results, probation officers have the option to refer the case to the problem-solving court, as part of a woman's pre-sentence report. Women are allocated a key worker from one of the nine women's centres across the Greater Manchester area. A tailored package of support is then provided, through collaboration with the woman, her key worker, probation officer and any other community and voluntary sector agencies involved. As part of their sentence, women must attend their local women's centre on a regular basis, where they are able to 'access wrap-around support, including advice and guidance on a wide range of

⁴⁵⁵ Ibid.

⁴⁵⁶ Ibid.

⁴⁵⁷ Manning C (2019, February 28). Merseyside's deputy police commissioner welcomes women-only review court. *Wirral Globe*. <https://www.wirralglobe.co.uk/news/17465913.merseysides-deputy-police-commissioner-welcomes-women-only-review-court/>.

⁴⁵⁸ Lightowlers and Benefer, n 344.

⁴⁵⁹ Ibid.

⁴⁶⁰ Centre for Justice Innovation, n 435, 15.

issues including substance misuse, domestic violence, family and parenting support, debt and benefits, and housing'.⁴⁶¹ In some instances, court reviews can also be conducted remotely, so participants can attend from the women's centre. Reviews are informal and adopt an asset-based approach.⁴⁶²

An evaluation of the WSA⁴⁶³ found lower reoffending rates (17% vs 30% nationally), although there were issues with data quality. There were also 'challenges in establishing the problem solving court element of the approach'.⁴⁶⁴ Despite these limitations, the evaluators identified that the benefits of engaging with the women's centres included

improved feelings about their self in terms of feeling valued, less shame and guilt and improved confidence; improvements in health, both mental health and physical health from reducing alcohol or drug use and reduced isolation; and developing practical skills through education, employment or volunteering opportunities.⁴⁶⁵

More generally, Lightowlers and Benefer identified that intersectional considerations, the consistent provision of services and wider need for sentencing reform are ongoing challenges for specialist women's courts in the UK.⁴⁶⁶ Despite the lack of evaluation of this model in the UK, the Centre for Justice Innovation⁴⁶⁷ has developed the following implementation lessons:

1. **Target women at risk of custody:** Problem-solving courts for women should primarily target those at risk of short custodial sentences. They should guard against net-widening in relation women who may have complex needs but whose offending is not serious enough for them to be at risk of custody (for example, women facing fines or community orders).
2. **Avoid 'overdosing':** The sentence conditions set by the court need to avoid creating overly burdensome orders that women with multiple needs will find difficult to complete. The conditions should also seek to address the complex needs of women involved in the criminal justice system, including their experience of trauma and abuse.
3. **Ensure judicial continuity:** This is important to help foster relationships that support the development of concrete goals, increasing self-esteem and engagement and holding individuals and agencies to account. Establishing a

⁴⁶¹ Ibid.

⁴⁶² Ibid.

⁴⁶³ Kinsella R et al (2018). *Whole system approach for women offenders - Final evaluation report*. Manchester Metropolitan University.

⁴⁶⁴ Ibid, 7.

⁴⁶⁵ Ibid, 43.

⁴⁶⁶ Ibid, 260.

⁴⁶⁷ Centre for Justice Innovation (2021). *Problem-solving courts for women: An evidence & practice briefing*.

process for ensuring judicial consistency should be considered prior to implementation.

4. **Support practice through training:** Additional training would be required for judiciary and court staff involved in specialist sittings to support the use of trauma-informed approaches.
5. **Adopt a non-adversarial approach:** Review hearings should be less formal and less adversarial, to encourage the women to engage in the process; collaborative approaches to goal-setting will maximise the perceived fairness of the process.
6. **Promote partnership working:** Effective collaboration between statutory and voluntary sector organisations within the justice sector and beyond in a multi-agency approach is essential to ensuring that individuals receive appropriate interventions and supervision, as well as access to the necessary community treatment and support services. Robust resourcing is integral to delivering these approaches effectively.
7. **Operate within a gender-responsive framework:** Women's problem-solving courts work well when they form part of a wider whole systems approach to women's offending, which seeks to be responsive to the distinct needs of women in the justice system every stage of the criminal justice system and prioritises diverting women from the system, where possible.

Case study: Anne

Anne, a Quandmooka woman from Southeast Queensland, was on bail awaiting the finalisation of her matters through the Murri Court. Anne is homeless and the conditions of her bail include that she live at a women's-only hostel and engage in a women's yarning circle. Anne refused to stay at the women's-only hostel and continued to sleep rough. During her first yarning circle, Aunty Kath spoke to Anne about the fact that she risked being breached and remanded in custody, if she failed to comply with her bail conditions. Anne told Aunty Kath that she did not want to stay at the women's hostel, because she did not want to be separated from her partner, who was also homeless and a major support to her during the Murri Court process. Aunty spoke with the housing support worker and found emergency accommodation for Anne and her boyfriend in a hostel. Anne's bail condition was varied, so that she could live with her boyfriend at a mixed-gender hostel.

7. Education for judicial officers and other relevant stakeholders

Key points

- There are two main forms of judicial education in Australia: formal training and benchbooks.
- There are four Australian organisations that provide judicial education programs on an ongoing basis, although there is also case-by-case training and the smaller courts may also organise their own judicial training [7.1].
- Upcoming and recent workshops include training on sexual assault hearings; DFV; gender issues; Indigenous cultural awareness; young people; mental health and disability; visits to prison; bail; community corrections; and parole [7.1].
- There are a number of benchbooks and handbooks available to guide judicial practice. Of particular relevance to practice involving justice-involved women and girls is the *Trauma-informed courts: Guidance for trauma-informed judicial practices handbook*. Other relevant benchbooks focus on equality before the law; DFV; sexual assault trials; children; and interpreters [7.2].
- The Taskforce recommended consideration of developing a sexual assault benchbook. Guidance on the development of such a resource could be obtained through a review of the NSW Judicial Commission's *Sexual assault trials handbook*, which was most recently updated in 2023 [7.2.4].
- The Bugmy Bar Book provides recent research that legal practitioners and the judiciary can use in sentencing and other matters about a range of areas of disadvantage. Chapters include information on topics such as childhood sexual abuse, exposure to AOD use and DFV, homelessness, parental incarceration, various mental health conditions, as well as a range of issues relevant to Aboriginal and Torres Strait Islander people [7.3].

The Taskforce recommended 'encouraging judicial officers to participate in professional development about gendered issues and trauma-informed practice relevant to the experiences of women and girls as accused persons and offenders' (Rec 119; supported in principle). The Taskforce also made a number of recommendations in relation to professional development for other professionals who engage with women and girls. The Law Council of Australia has also observed that

Culturally aware courts and tribunals are key features of an accessible, responsive and fair justice system. To develop greater cultural awareness, courts and tribunals must be resourced to provide ongoing training and education to justice system personnel. Cultural competency training can

ensure that justice system personnel, including the judiciary, court officers, legal profession, corrections staff and police, are able to identify and respond to the cultural needs of different people interacting with the justice system. Such training is relevant across several areas, including with respect to Aboriginal people, LGBTI+ people, people experiencing family violence and people with disability.⁴⁶⁸

In recognition of the need for a holistic approach, Russell, Zhou and Franich have called for training for lawyers on how to effectively address or engage with complex needs outside of legal need, including identifying where and how DFV victimisation might be relevant to women's criminal legal matters,⁴⁶⁹ while ANROWS has highlighted the need to '[r]ecognise the link between DFV and sexual violence and behaviours that lead to contact with the criminal justice system, particularly in judicial decision-making, including sentencing'.⁴⁷⁰ The importance of doing so was emphasised in the strongest terms: 'If courts continue to mischaracterise and misunderstand the nature of DFV, we will continue to see rates of women in prison rise, as their lethal or non-lethal use of defensive force is mischaracterised'.⁴⁷¹

There are two main forms of judicial education in Australia: formal training and benchbooks. This section highlights some examples that are of most relevance to women and girls appearing before the courts. We recognise, however, the paucity of evaluation of the impact of such material.

7.1 Judicial training

There are four Australian organisations that provide judicial education programs on an ongoing basis, although the smaller courts may also organise their own judicial training. The programs for 2024 listed on the Judicial College of Victoria (JCV)⁴⁷² and National Judicial College of Australia (NJCA)⁴⁷³ websites include workshops on:

- sexual assault hearings (JCV, NJCA);
- FV matters (JCV, NJCA);
- Indigenous cultural awareness (JCV);
- cognitive impairment and forensic disability services (JCV);
- personality disorders and complex trauma (JCV); and
- visits to prison, community corrections and the parole board (JCV).

⁴⁶⁸ LCA, *Courts and tribunals*, n 130, 5.

⁴⁶⁹ Russell, Zhou and Franich, n 15, 7.

⁴⁷⁰ ANROWS (2020). *Women's imprisonment and domestic, family and sexual violence*, 2.

⁴⁷¹ Ibid, 10.

⁴⁷² Judicial College of Victoria (nd). *2024 education prospectus*
<https://www.judicialcollege.vic.edu.au/resources/2024-education-prospectus>.

⁴⁷³ National Judicial College of Australia (nd). *Judicial education program*
<https://www.njca.com.au/judicial-education-programs/>.

At the time of writing, the Judicial Commission of NSW⁴⁷⁴ did not list any upcoming events for 2024, but its 2023 events included the Ngara Yura Program, which ‘aims to increase awareness among judicial officers about contemporary Aboriginal social and cultural issues, and their effect on Aboriginal people in the justice system’⁴⁷⁵ and a webinar on trauma-informed practice and the Family Violence List. The Australasian Institute of Judicial Administration does not have any upcoming events listed. Its most recent training was a 2022 conference on Indigenous youth justice and the recordings from this conference remain available on the website.⁴⁷⁶ This included topics such as:

- brain development, foetal alcohol spectrum disorder, disability and intergenerational trauma;
- raising the age of criminal responsibility;
- culturally appropriate diversionary programs and the significance of culture to well-being, healing and rehabilitation;
- Indigenous youth courts and *Gladue* reports;
- bail laws;
- girls in custody and gender diversity; and
- vulnerable witness/intermediary orders.

Two additional organisations are worth noting:

- the Australian Judicial Officers Association:⁴⁷⁷ although the details of its 2024 colloquium are not yet available, its 2023 event included consideration of Maori, Koori, youth, drug and other ‘sectoral’ courts;⁴⁷⁸ and
- the Judicial Council on Diversity and Inclusion, which also delivers training on culturally-responsive practice, unconscious bias and intersectionality and working with interpreters, on a case-by-case basis.⁴⁷⁹

7.2 Benchbooks and handbooks

There are a number of benchbooks and handbooks (guides) available to guide judicial practice. Some are technical guides to a jurisdiction’s legislation and case law, while others provide more information about relevant research on issues explored in this review. This section summarises the most relevant guides that have

⁴⁷⁴ Judicial Commission of NSW (nd). *Continuing judicial education* <https://www.judcom.nsw.gov.au/education/>

⁴⁷⁵ Judicial Commission of NSW (nd). *Ngara Yura program* <https://www.judcom.nsw.gov.au/education/ngara-yura-program/>.

⁴⁷⁶ See AIJA (nd). *AIJA Indigenous Youth Justice Conference 2022* <https://aija.org.au/aija-indigenous-youth-justice-conference-2022/>

⁴⁷⁷ Australian Judicial Officers Association (nd). *Home* <https://www.ajoa.asn.au/>.

⁴⁷⁸ Australian Judicial Officers Association (nd). *Colloquium* <https://www.ajoa.asn.au/colloquium/5-8-october-2023-auckland/>.

⁴⁷⁹ JCCD (nd). *Training* <https://jcdi.org.au/training/>.

been published (or updated) since 2019, although we also note the Supreme Court of Queensland's *Equal treatment benchbook*,⁴⁸⁰ the *Aboriginal benchbook for Western Australian courts*⁴⁸¹ and *Solution-focused judging benchbook*.⁴⁸²

7.2.1 Trauma-informed practice

The *Trauma-Informed Courts: Guidance for Trauma-informed Judicial Practices*⁴⁸³ handbook details the history of trauma-informed practice and description of trauma. Importantly, this section cites the work of Emeritus Professor Judy Atkinson AM, a Jiman and Bundjalung woman, to explain intergenerational, transgenerational and collective trauma from an Indigenous perspective. The handbook next outlines the impacts of trauma, including that '[t]he physical nexus between trauma and behavioural/psychological problems that can consequently manifest is well documented'.⁴⁸⁴ References are provided to relevant case law and legislation and the implications this can have for prosecutors, as well as for children's development.

The handbook articulates how and why to embed a trauma-informed practice, suggesting that being a trauma-informed judicial officer will:

- help defuse the stressful courtroom environment parties/witnesses/defendants, and minimise the risk of re-traumatisation for judicial officers, legal practitioners and court staff;
- recognise that the effects of overwhelming stress may impede a traumatised witness giving evidence, as their evidence and conduct may appear 'discursive, episodic, unreliable and even mendacious';⁴⁸⁵ and
- enhance the likelihood that fair processes and justice will be achieved.

In addition, the handbook adapts the Substance Abuse and Mental Health Services Administration principles for the courtroom, as follows:

1. **Safety:** throughout the courtroom, all participants feel physically and psychologically safe;
2. **Trustworthiness and transparency:** operations and decisions are conducted with transparency with the goal of building and maintaining trust with all court participants;

⁴⁸⁰ Supreme Court of Western Australia (2016). *Equal treatment benchbook*. 2nd ed. This includes material on women.

⁴⁸¹ Fryer-Smith S (2008). *Aboriginal benchbook for Western Australian courts*. 2nd ed. AIJA. This includes material on women.

⁴⁸² King M (2009). *Solution-focused Judging Benchbook*. AIJA. This includes material on women.

⁴⁸³ Judicial Commission of NSW, *Trauma-informed courts*, n 202. In the context of trauma-informed sentencing, see McLachlan K (2022). Trauma-informed sentencing in South Australian courts. *Journal of Criminology*, 55: 495–513.

⁴⁸⁴ Judicial Commission of NSW, *ibid*, 10.

⁴⁸⁵ *Ibid*, 22.

3. **Peer support:** peers are understood as individuals with lived experiences of trauma; peer support and mutual self-help are key vehicles for establishing safety and hope;
4. **Collaboration and mutuality:** importance is placed on partnering and levelling the power differences in the courtroom;
5. **Empowerment, voice and choice:** the courtroom fosters a belief in the primacy of the people served, in resilience; and
6. **Cultural, historic and gender issues:** the courtroom actively moves past cultural stereotypes and biases (eg based on race, ethnicity, sexual orientation, age, religion, gender); leverages the healing value of traditional cultural connections; incorporates policies, protocols, and processes that are responsive to the racial, ethnic and cultural needs of individuals served; and recognises and addresses historical trauma.⁴⁸⁶

These principles are foundational to ensuring that the courts meet the needs of the girls and women appearing before them. As part of trauma-informed practice, judicial officers⁴⁸⁷ (and, inferentially, other relevant staff), should also be aware:

- of the impact that experiences of trauma may have on the experience of the court process. Engaging with law enforcement agencies and the courts may exacerbate or prolong the trauma some victims have experienced (eg, lack of legal representation or interpreter services, giving oral evidence, being cross-examined or present in court with the perpetrator, or having to repeatedly return to court for hearings may contribute to re-victimisation or secondary abuse through the court system. They should mitigate any adverse consequences associated with court processes, where reasonably practicable and resources permit;
- that memory and recall may be affected by trauma; and
- of the risks of vicarious trauma and take active steps to minimise it.

In addition, they should be attuned to ‘what has happened’ to a person rather than ‘what is wrong’ with a person, to make sense of behaviour and responses that may otherwise seem perplexing and/or counter-productive.

Some further examples of trauma-informed practice are set out in Table 1⁴⁸⁸:

⁴⁸⁶ Ibid, 23.

⁴⁸⁷ Ibid, 23-24.

⁴⁸⁸ Ibid, 27-28.

Courtroom experience	Reaction of trauma survivor	Trauma-informed approach
Court officer handcuffs an individual without warning.	Anxiety about being restrained; fear about what is going to happen.	Tell the court officer and individual you intend to remand them. Explain what is going to happen and when. "The officer is going to walk behind you and you will be handcuffed."
Judge remands one drug court participant for having a positive test but not another. They are both in the courtroom at the same time.	Concern about fairness; feeling that someone else is getting special treatment.	Explain for first participant, sobriety is a proximal goal and for second it is not. Compare time in the program and progress in treatment. Explain gaol is a last resort and you hope participant will not give up on recovery.
Individuals who are agitated or "acting out" are required to wait before speaking to the judge.	Increased agitation; anxiety; acting out.	Provide scheduling information so participants know what will be expected of them and when. Prioritise those who appear before you and when. Those who are especially anxious may have the most trouble waiting and be more likely to act out.
"Your test came back dirty."	"I'm dirty." "There is something wrong with me."	"Your drug screen showed the presence of drugs." "Your drug test was positive."
"Did you take your meds today?"	"I'm a failure. I'm a bad person. No one cares how the drugs make me feel."	"Are the medications your doctor prescribed working well for you?"
"You didn't follow the contract. You're going to gaol. We're done with you. There is nothing more we can do."	"I'm hopeless. Why should I care how I behave in gaol? They expect trouble anyway."	"Maybe what we've been doing isn't the best way for us to support you. I'm going to ask you not to give up on recovery. We're not going to give up on you."
"I'm ordering you to get a mental health evaluation."	"I must be crazy. There is something wrong with me that can't be fixed."	"I'd like to refer you to a doctor who can help us better understand how to support you."

The handbook also highlights the impact of trauma on the following groups, some of whom are a particular focus of this literature review:

- **DFV**, in relation to both **adults** and **children**; in relation to the latter, information is provided on the impacts this can have in relation to homelessness; impaired learning, behaviour and wellbeing; impaired physical health; and trauma behaviours, such as substance use and self-harm;
- **child sexual abuse** and the implications this can have for revictimisation;
- **First Nations people**;⁴⁸⁹
- **children in OOHC**;⁴⁹⁰
- **migrants, refugees and asylum seekers**, who are described as ‘among the most vulnerable groups within our society’;⁴⁹¹
- **victims of sexual harassment**, with explicit consideration the need for gender-responsiveness;
- **people with disabilities**, who are recognised as being more vulnerable to experiencing violence; and
- **LGBTQI people**, who have a higher risk of experiencing traumatising events, problems and discrimination.

In addition, the handbook discusses the use of vulnerable witness provisions, which may ‘help to ameliorate the impact of trauma on witnesses, in particular by ensuring that witnesses perceive that the court prioritises their safety’.⁴⁹² Examples here include the use of CCTV, alternative seating arrangements, screens, support persons, the admission of pre-recorded out-of-court representations to police and evidence given via audio-visual link.

Furthermore, the handbook highlights that:

There is a broad consensus that many people who engage with mainstream institutions are trauma survivors and that their trauma experiences shape their responses to those they engage with in an institutional setting. Further, mainstream institutional responses may re-traumatise individuals with PTSD, complex trauma, mental health problems, addictions and social disadvantage, particularly in the criminal justice system. Many struggle to obtain treatment and gain equal access to justice.⁴⁹³

⁴⁸⁹ See also Edwige V and Gray P (2021). *Significance of culture to wellbeing, healing and rehabilitation*.

⁴⁹⁰ Judicial Commission of NSW, *Trauma-informed courts*, n 202, 18.

⁴⁹¹ Ibid.

⁴⁹² Ibid, 25.

⁴⁹³ Ibid, 30.

7.2.2 Equality before the law benchbook

The Judicial Commission of NSW updated its *Equality before the law benchbook*⁴⁹⁴ in October 2023. This contains a wealth of material, some of which is discussed elsewhere in this review. The sections of most relevance to this review are:

- equality before the law;
- First Nations people;
- people from CALD backgrounds;
- people with a particular religious affiliation;
- people with disabilities;
- CYP;
- women;
- lesbians, gay men and bisexuals;
- gender-diverse people and people born with diverse sex characteristics;
- self-represented parties;
- older people; and
- trauma-informed courts.

The section on women⁴⁹⁵ contains the following information:

- introduction, including population demographics;
- socio-economic factors and gender disadvantage, including education and employment;
- sexual harassment;
- intersectional discrimination;
- violence against women, including:
 - terminology and statistics;
 - cultural and social attitudes to DFV;
 - coercive control;
 - technology-facilitated abuse;
 - female genital mutilation/cutting;
 - sexual assault;
 - incels and manosphere-related misogynist violence;
- women and criminal law, including females who offend and sentencing;
- practical considerations;
- further information or help; and
- further reading.

⁴⁹⁴ Judicial Commission of NSW, n 171.

⁴⁹⁵ Ibid, Section 7.

7.2.3 National DFV benchbook

There are a number of state and territory benchbooks that deal with DFV, including in Queensland.⁴⁹⁶ However, the most comprehensive, dealing with many aspects of DFV, is the *National DFV benchbook*, published by the AIJA.⁴⁹⁷ This includes sections on:

- relevant case law;
- terminology:
 - understanding DFV, including physical, sexual, reproductive, economic, financial, emotional, psychological, cultural, spiritual, social, animal, systems and dowry abuse, as well as damaging property and exposing children to DFV;
 - coercive control;
 - protection orders; and
 - parties;
- the dynamics of DFV, including:
 - myths and misunderstandings;
 - vulnerable groups, including:
 - women;
 - people with children;
 - CYP;
 - older people;
 - pregnant people;
 - people with disability, impairment and mental illness;
 - people from CALD backgrounds;
 - Aboriginal and Torres Strait Islander people
 - people living in RRR communities
 - people affected by substance use;
 - people who are LGBTQIQ;
 - people with poor literacy skills; and
 - victims as (alleged) perpetrators;
- fair hearing and safety, including:
 - victim experiences of court processes;
 - safety and protection of victims and witnesses;
 - legal representation and self-represented litigants;
 - interpreters and translators;
 - support person in court;
 - referral to support services;
 - timely decision-making; and
 - trauma-informed judicial practices;

⁴⁹⁶ Magistrates Court of Queensland (2023). Domestic and Family Violence Protection Act 2012 *Benchbook*. Office of the Chief Magistrate. 11th ed.

⁴⁹⁷ AIJA, n 172.

- evidence;
- protection orders, including:
 - managing application proceedings;
 - conditions; and
 - breaches;
- perpetrator interventions;
- responses in criminal proceedings, including:
 - bail;
 - evidence;
 - sentencing, including:
 - specific considerations for Indigenous people;
 - listening to victims; and
 - options
- family law proceedings, including:
 - FCFCA Family Violence Best Practice Principles; and
 - jurisdiction of state/territory courts; and
 - prevalence of DFV in the family law system; and
- case studies setting out victim experiences.

7.2.4 Sexual assault trials handbook

The Taskforce recommendation consideration of a sexual assault benchbook (see [1.1]. The NSW Judicial Commission developed such a benchbook in 2008 and most recently updated in 2023.⁴⁹⁸ In addition to items specific to NSW (eg, legislative provisions), it includes links to research on:

- legal issues, such as evidence, the judicial role and procedural considerations; and
- non-legal issues, including:
 - the dynamics, impact and consequences of child sexual abuse;
 - child sexual abuse and the criminal law
 - institutional child sexual abuse;
 - investigation and interviewing children in child sexual abuse cases;
 - challenges facing child witnesses: special measures, witness assistance and intermediaries;
 - recording evidence and evidentiary issues in child sexual abuse cases;
 - adult victims of sexual assault;
 - First Nations women and children
 - juvenile sex offenders;
 - online exploitation; and
- information on the Royal Commission into Institutional Responses to Child Sexual Abuse.

⁴⁹⁸ Judicial Commission of NSW (2023). *Sexual assault trials handbook*.

7.2.5 Children

As set out above, the *Equality before the law*, *National DFV* and *Sexual assault trials* benchbooks all include sections on children. Some jurisdictions also have dedicated benchbooks for their children's courts.⁴⁹⁹ Another benchbook worth noting is the AIJA's *Benchbook for children giving evidence in Australian courts*.⁵⁰⁰ It includes chapters on:

- sexual abuse of children and their experience of the justice system;
- child development, children's evidence and communicating with children;
- courts, children's evidence and children's coping skills;
- the judicial role in child sexual abuse cases and preparation for trial;
- particular procedures for children giving evidence;
- other trial issues: expert evidence and summing-up; and
- a suggested 'script' to use in special hearings with children or cognitively impaired witnesses.

7.2.6 Interpreters

Finally, the JCCD's *Interpreters in criminal proceedings: Benchbook for judicial officers*⁵⁰¹ provides information on:

- assessing the need for an interpreter;
- interpreting in matters where a witness or defendant appears via audio-visual link;
- explaining the role of the interpreter;
- sample directions to the jury;
- cultural assumptions, stereotypes, and subconscious bias; and
- an in-court checklist.

7.3 Bugmy Bar Book project

In *Bugmy v The Queen*,⁵⁰² the High Court determined that a defendant's background of deprivation should be taken into account in sentencing, subject to the defendant being able to 'point to material tending to establish that background'. However, the Court held it would be 'antithetical to individualised justice' for courts to take judicial notice of the systemic background of deprivation of Indigenous people who offend.⁵⁰³ In its *Pathways to Justice* report,⁵⁰⁴ the ALRC examined *Bugmy* and the relevant

⁴⁹⁹ See eg Queensland Courts (2020). *Youth justice benchbook*. This is quite technical and does not make any reference to girls or gender.

⁵⁰⁰ AIJA (2020). *Benchbook for children giving evidence in Australian courts*.

⁵⁰¹ JCCD (2022). *Interpreters in criminal proceedings: Benchbook for judicial officers*.

⁵⁰² (2013) 249 CLR 571. For discussion of the decision, see eg ALRC, n 18, 194-196.

⁵⁰³ *Bugmy*, *ibid*, [41].

⁵⁰⁴ ALRC, n 18.

case law, legislation and practice in Australia and Canada, as well as stakeholder submissions. As a result, the ALRC recommended that:

- sentencing legislation should provide that, when sentencing Aboriginal and Torres Strait Islander offenders, courts take into account unique systemic and background factors affecting Aboriginal and Torres Strait Islander peoples (Rec 6-1); and
- state and territory governments, in partnership with relevant Aboriginal and Torres Strait Islander organisations, should develop and implement schemes that would facilitate the preparation of 'Indigenous Experience Reports' for Aboriginal and Torres Strait Islander offenders appearing for sentence in superior courts (Rec 6-2); and options for the presentation of information about unique systemic and background factors that have an impact on Aboriginal and Torres Strait Islander peoples in the courts of summary jurisdiction, including through Elders, community justice groups, community profiles and other means (Rec 6-3).

The *Bugmy* Bar Book represents an important step towards implementing Rec 6-3. It involves chapters summarising key research about the impacts of experiences of disadvantage and strengths-based rehabilitation. At the time of writing, the Bar Book comprised chapters on:

- acquired brain injury;
- childhood sexual abuse;
- COVID-19 risks and impacts on prisoners;
- cultural dispossession;
- early exposure to alcohol and other drug abuse;
- exposure to DFV;
- foetal alcohol spectrum disorder;
- hearing impairment;
- homelessness;
- impacts of imprisonment and remand in custody;
- incarceration of parents and caregivers;
- interrupted school attendance and suspension;
- low socio-economic status;
- out-of-home care;
- refugee background;
- significance of Sorry business and funeral attendance;
- social exclusion;
- Stolen Generations and descendants; and
- unemployment.

As Judge Beckett of the NSW District Court, a member of the Bar Book Committee, has noted, '[f]or some time, members of the judiciary have sought assistance from the parties in sentence proceedings in respect of the preparation and the tender of

evidence that established an offender's background'.⁵⁰⁵ However, it is intended that the materials can be used not only in sentencing, but other contexts, such as bail, mental health diversionary applications and civil practice areas.⁵⁰⁶ For example, in *R v Vincent*,⁵⁰⁷ Yehia J observed, before granting bail:

16. The applicant relies upon the **Bugmy Bar Book** Chapter titled 'Impacts of Imprisonment and Remand in Custody' ("the Chapter"). Research shows that imprisonment has negative impacts on the physical and mental health of incarcerated individuals, and these impacts persist after release. Other documented impacts of imprisonment include loss of housing, barriers to employment, and significant negative impacts on families and communities, which may affect families and communities in different ways.
17. The family and community impacts of incarceration are more pronounced for Aboriginal and/or Torres Strait Islander Peoples, particularly women. Loss of culture and disconnection from Country and community due to imprisonment may have adverse impacts on the social and emotional well-being of Aboriginal and/or Torres Strait Islander Peoples incarcerated.
18. Even short periods of incarceration, including remand, can have a wide-ranging detrimental impact and may be linked with subsequent contact with the criminal justice system. The Chapter refers to research which shows that people who receive non-custodial penalties are significantly less likely to be re-convicted, even within the next 12 months, than those who receive sentences of imprisonment...
22. The Bugmy Bar Book research is a useful resource which has assisted the Court in understanding the impact of remand in custody, even for short periods. The research lends context to the material that has been tendered on behalf of the applicant which relates directly to her individual circumstances and background. The impact of incarceration on First Nations Peoples, and, in particular, First Nations women should never be under-estimated.

This example demonstrates how the information in the *Bugmy Bar Book* provides an accessible source of information for judicial officers on a range of issues that apply to girls and women appearing before the courts.

⁵⁰⁵ Beckett S (2020). Judicial note about the *Bugmy Bar Book* Project. *Judicial Officers' Bulletin*, 32: 47, 47-48.

⁵⁰⁶ Bugmy Bar Book (nd). Home <https://bugmybarbook.org.au>.

⁵⁰⁷ [2023] NSWSC 8 [16]-[18] (Yehia J), citing NSW Public Defenders (2022). *The Bugmy Bar Book-Impacts of imprisonment and remand in custody*, 1, 10, 14, 17. See now Bugmy Bar Book (2023). *Impacts of imprisonment and remand in custody* <https://bugmybarbook.org.au/chapters/imprisonment/>.

Case study: Sam

Sam suffers from cerebral palsy and experienced bullying by other girls in the mainstream school she attended. Eventually, after one bad incident, the police were called, and the case came to court. As a vulnerable person, Sam was granted special measures and was due to give evidence during the trial over a video-link from a room within the court building. However, the defendants attempted to intimidate Sam in the public corridor, which hugely distressed her and made her fearful of the court process. Sam told the prosecution lawyer that she no longer wanted to go ahead with the case. As a result, the lawyer asked the magistrate if Sam could give pre-recorded evidence, to be used in the trial process. This was granted, which meant Sam did not have the fear of seeing the defendants during the trial, either in or out of court and the case could still proceed.

8. Court design and administration

Key points

- The principles of universal design are important in the court context and many initiatives that benefit women and girls will also yield benefits for all court users.
- Trauma-informed court design aims to create courtrooms that are sensitive to the unique needs of people attending court, prevent re-traumatisation and promote healing [8.1].
- The Judicial Council on Cultural Diversity has developed the *National framework to improve accessibility to Australian courts for Aboriginal women and migrant and refugee women*, to promote women's safety in court [8.1].
- Western-style court buildings can exacerbate how court procedures contribute to Indigenous overrepresentation in the criminal justice system. As such, consideration has been given to ways in which Australian courthouses can be adapted to be more appropriate for Indigenous people and reduce anxiety among users. Emerging principles for place-based court design have started to be developed, including engaging local Indigenous communities in the design process and ensuring the space is relevant to the pertinent Indigenous nation/s [8.1.1].
- The implementation of due process in court is an important aspect of ensuring women and girls' fair and equitable access to justice. The Law Council of Australia has made a number of suggestions about court practices to promote access to justice, including courts and tribunals being sufficiently resourced to avoid delays [8.2]. Other suggestions include simplifying court forms and improving access to support services.
- The use of technology may improve access, especially for women and girls with disabilities or limited financial means and/or those living in remote areas. However, research has also identified challenges, for example, with virtual courts [8.2].

This chapter highlights some good practices in relation to court buildings and administration. Just as adapting buildings for wheelchair use makes them more accessible to people with crutches, canes, bicycles, prams, wheeled bags etc, the benefits of adopting these initiatives will of course extend beyond women and girls to

all court users. In this context, it is important to remember the principles of universal design,⁵⁰⁸ namely:

1. **Equitable use:** The design is useful and marketable to people with diverse abilities, eg:
 - provide the same means of use for all users: identical whenever possible; equivalent when not;
 - avoid segregating or stigmatising any users;
 - provisions for privacy, security, and safety should be equally available to all users; and
 - make the design appealing to all users.
2. **Flexibility in use:** The design accommodates a wide range of individual preferences and abilities, eg:
 - provide choice in methods of use;
 - facilitate the user's accuracy and precision; and
 - provide adaptability to the user's pace.
3. **Simple and intuitive use:** Use of the design is easy to understand, regardless of the user's experience, knowledge, language skills or concentration level, eg:
 - eliminate unnecessary complexity;
 - accommodate a wide range of literacy and language skills;
 - arrange information consistent with its importance; and
 - provide effective prompting and feedback during and after task completion.
4. **Perceptible information:** The design communicates necessary information effectively to the user, regardless of ambient conditions or the user's sensory abilities, eg:
 - use different modes (pictorial, verbal, tactile) for redundant presentation of essential information;
 - maximise 'legibility' of essential information; and
 - provide compatibility with a variety of techniques or devices used by people with sensory limitations.
5. **Tolerance for error:** The design minimises hazards and the adverse consequences of accidental or unintended actions, eg:
 - provide fail-safe features; and
 - discourage unconscious action in tasks that require vigilance.
6. **Low physical effort:** The design can be used efficiently and comfortably and with a minimum of fatigue, eg minimise repetitive actions and sustained physical effort.
7. **Size and space for appropriate use:** Appropriate size and space is provided for approach, reach, manipulation and use, regardless of user's body size,

⁵⁰⁸ RL Mace Universal Design Institute (nd). *Universal design principles*.
<https://www.udinstitute.org/principles>.

posture, or mobility, eg provide adequate space for the use of assistive devices or personal assistance.

8.1 Architecture and design

Different court buildings and their facilities can provide a wide range of experiences for people using them. There may be long waits in queues, before the court user can access the building, courts' security procedures can be intimidating and, once inside, there may be inadequate signage or information, meaning the court user is not clear about what to do or where to go. Additionally, in some court buildings, there are no safe spaces for complainants/witnesses to wait, away from the defendant and their supporters. These types of issues can greatly increase anxiety levels, before the witness has even entered the courtroom and may result in re-traumatisation.

According to Cossins and Rowden, 'physical settings, like court environments, need to be welcoming and safe spaces for trauma survivors to avoid triggering re-traumatisation'.⁵⁰⁹ Trauma-informed court design aims to create courtrooms that are sensitive to the unique needs of people attending court. They are designed to prevent re-traumatisation and promote healing. Approaches should take into account concerns around accessibility, safety, privacy and Indigenous considerations. As the RMIT CIJ noted in its report on children's courts,

[t]hese design features are important because they create a more informal, comfortable and familiar environment for children and families attending court, with the intention of lowering the anxiety they may be feeling about the day, and of keeping children entertained during waiting periods. The design also takes account of the fact that children and young people require age-appropriate activities and entertainment.⁵¹⁰

An example of a courthouse built with trauma-informed design in mind is the Thunder Bay Courthouse in Ontario. This is considered to be ground-breaking in its design, with the inclusion of non-threatening spaces that are a purposeful move towards a less oppressive court building. Thunder Bay features an accessible route to the main entrance, signage that includes Braille, tactile lettering, and large font sizes, with high-contrast lettering for easier reading.⁵¹¹ Other features include wide corridors and aisles, height-adjustable lecterns and witness boxes, and barrier-free jury and witness boxes.⁵¹²

⁵⁰⁹ Cossins A and Rowden E (2021). The child sexual assault trial: Reconceptualising the design of court spaces according to trauma-informed principles. In K Duncanson and D Henderson (eds), *Courthouse architecture, design and social justice*. Taylor Francis Group, 148.

⁵¹⁰ RMIT CIJ, n 123, 19.

⁵¹¹ Sweet C (nd). *The Thunder Bay courthouse*. Ontario Ministry of the Attorney-General, 45.

⁵¹² Ibid, 30.

Generally, Cossins and Rowden have found that women and girls can experience a 'lack of consistency in the spaces and facilities provided in different courthouses throughout Australia'.⁵¹³ For example, remote witness facilities (RWFs) that are intended to provide a 'safe and separate space'⁵¹⁴ can vary considerably and some RWFs may simply be a room off a publicly accessed hallway/corridor where there is a risk of the witness coming into contact with the defendant and/or their supporters. As such, Cossins and Rowden emphasised the need for RWFs to have 'breakout' spaces (toilets and kitchenettes), especially in cases involving allegations of child sexual assault. Court officers advised that successful RWFs require:

careful planning of the remote room itself and its adjacent spaces which should contain self-contained waiting areas, kitchen facilities, and bathrooms, all of which require secure entry, are not publicly accessible, and can comfortably accommodate child witnesses, their family, and other supporters. These spaces should be stocked with toys and games, as well as teaching aids such as small-scale models of a courtroom, and wigs and gowns for children to try on in order to familiarise themselves with the courtroom.⁵¹⁵

All courts should be safe environments for women and there should be safety measures in place, in order to ensure this. The *National framework to improve accessibility to Australian courts for Aboriginal women and migrant and refugee women* was developed by the JCCD.⁵¹⁶ This considered the issue of arrival at court, which can often be intimidating for women. The JCCD noted that 'there is often insufficient information available' for women 'about where to go for assistance and how to determine when and where their matter will be heard'.⁵¹⁷ Given this, it was suggested that:

Courts should consider improving the signage and information available upon arrival at court. In addition to improving directional signs and having court staff available to assist people upon arrival at court, courts could consider translating signage into community languages in areas with high Aboriginal populations and/or high migrant and refugee populations.⁵¹⁸

In addition, the JCCD noted that:

Aboriginal women and migrant and refugee women have reported significant concerns about waiting in the same area in the court as the alleged

⁵¹³ Cossins and Rowden, n 509, 152.

⁵¹⁴ Ibid, 152.

⁵¹⁵ Ibid, 153.

⁵¹⁶ JCCD, n 203.

⁵¹⁷ Ibid, 20.

⁵¹⁸ Ibid.

perpetrator, highlighting their experience of men using this time to intimidate and harass them.⁵¹⁹

As such, consideration should also be given to ensuring that girls and women have safe spaces to sit away from defendants and their supporters, while they wait for their case to be heard. As the JCCD noted, courts should ‘give priority to establishing separate waiting areas for women attending court for family violence matters’, emphasising how this would ‘greatly assist in alleviating women’s stress at court’.⁵²⁰ The JCCD also suggested that all courts ‘should consider investing in security and safety measures’.⁵²¹

8.1.1 Indigenous considerations

Western-style court buildings can exacerbate how Western-style court procedures contribute to an overrepresentation of Indigenous people engaging in the criminal justice system.⁵²² As such, consideration has been given to ways in which Australian courthouses can allow Aboriginal and Torres Strait Islander people to ‘engage meaningfully with court processes and reduce anxiety felt by Indigenous users’.⁵²³ Indigenous courts often include Indigenous artwork and participants usually sit in a circle, with the judicial officer on the same level as the defendant and Elders, creating a more equal power dynamic.

The first Australian courthouse to adopt Indigenous design principles was the South Australian Port Augusta complex, which includes

a depiction of Arkurru, the powerful and feared bearded Spirit Serpent of the Flinders Ranges Dreaming lies. Arkurru’s head sits under the front verandah with his beard protruding as geometric shapes from under the verandah screens. His elliptical eye appears as a pattern in the cement and nearby a high cone shape symbolizes its tail breaking the ground outside the building. The presence of Arkurru acts a symbol and as a guide which leads people to the main entrance.⁵²⁴

The Kununurra Courthouse in Western Australia was also designed to reflect Indigenous architecture. For example, it includes an outside area, where families and groups can gather, while a case is heard. This also allows ‘court staff to visually

⁵¹⁹ Ibid, 19.

⁵²⁰ Ibid.

⁵²¹ Ibid, 20.

⁵²² Grant E and Hook M (2021). Reimagining spaces for Indigenous justice. In K Duncanson and D Henderson (eds), *Courthouse architecture, design and social justice*. Taylor Francis Group, 11.

⁵²³ Murphy J, Grant E and Anthony T (2021). Indigenous courtroom and courthouse design in Australia. In K Duncanson and D Henderson (eds), *Courthouse architecture, design and social justice*. Taylor Francis Group, 77.

⁵²⁴ Anthony T and Grant E (2016). Courthouse design principles to dignify spaces for Indigenous users: preliminary observations. *International Journal for Court Administration*, 8: 43-59, 47.

supervise people occupying these areas, and to provide culturally appropriate support and intervention if required'.⁵²⁵ The building was designed to create close links with Country and over 20 Aboriginal artists 'were engaged to create artworks under the theme of "law and culture"...For example, a carved timber handrail at the base of the stairs depicts two intertwined snakes, suggesting two systems of law, working harmoniously'.⁵²⁶

The Thunder Bay example in Canada was discussed above. It also includes a conference area, which emulates a roundhouse or healing lodge and an Aboriginal Conference Settlement Room, to accommodate extended families and community organisations.⁵²⁷ This area includes a consulting room, a spiritual room, and a Native Court Worker Office. Both the Thunder Bay and Kununurra courthouses aim to provide an environment that is more inclusive and less intimidating to Indigenous people, 'by using a design schema that includes careful siting, consideration of Aboriginal socio-spatial preferences, and designing the building to a human scale with connectivity to the external surroundings'.⁵²⁸

Figure 8.1: Kunamurra courthouse



Source: Anthony and Grant 2016: 53

⁵²⁵ Sweet, n 5112, 22.

⁵²⁶ Anthony and Grant, n 524, 53.

⁵²⁷ Sweet, n 511, 22.

⁵²⁸ Grant and Hook, n 522, 20.

Figure 8.2: Port Augusta Court Complex



Source: Anthony and Grant 2016: 48

According to Anthony and Grant,⁵²⁹ the emerging principles for place-based court design are:

- engaging local Indigenous communities in the design process;
- relevance to the pertinent Indigenous nation/s;
- providing for heterogeneous Indigenous groups;
- recognising the importance of access and vision of external spaces;
- accommodating Indigenous needs in internal spaces;
- being responsive to intra-Indigenous relationships;
- security and comfort for Indigenous users; and
- accommodating Indigenous users living with disability and chronic health conditions.

⁵²⁹ Anthony and Grant, n 524, 54.

Spotlight on the Neighbourhood Justice Centre

Australia currently has one community justice court, the NJC in Yarra, Melbourne. This model is multi-jurisdictional, with the Magistrates' Court, criminal division of the Children's Court and Victims of Crime Tribunal operating in the one facility. In addition, there are a range of on-site services, including mental health, housing, women's services, homelessness, financial support, AOD and DFV, as well as support for Indigenous, LGBTI, and refugee and migrant communities.⁵³⁰ The NJC adopts an embedded specialist services model, which:

- provides clients with a single point of entry: a referral to one is a referral to any and all. This saves people from repeating the story of their circumstances over and over and reduces the number of meetings clients and case-workers need to attend;
- saves clients travel. For people whose lives are chaotic, simpler treatment pathways lead to better outcomes;
- means clients are engaged and have plans in place, before they leave the building. For people going through the court, this rapid triage approach can be a significant turning point;
- means case-workers can more easily transition clients from the NJC to appropriate services in their community, without disrupting treatment progress. This helps clients navigate the social services sector;
- provides a multidisciplinary team approach, with treatment plans that everyone agrees and understands; and
- ongoing support: if there is a delay getting a client into community-based support, the NJC supports the client until the gap is filled.⁵³¹

There are also quiet rooms for victim-survivors of DFV, which 'give women a place to meet their lawyers, complete paperwork, and wait for court' and 'include sound-proof play areas, so children are in mum's sight but out of earshot of adult conversations'.⁵³² Women can be escorted by security to, from and around the building and can enter the building via a security-protected private entrance.

There is a children's playroom on site, as well as a community room, which can be used for women's groups. Other examples of activities for women have included a playgroup for mothers and children from culturally and linguistically diverse communities and an art display in partnership with the Somebody's Daughter Art Program.

⁵³⁰ NJC (nd). *What we do* <https://www.neighbourhoodjustice.vic.gov.au/about-us/our-story/what-we-do>.

Research by the Australian Institute of Criminology⁵³³ found that those who proceeded through the NJC:

- had a 25% lower rate of reoffending than at other comparable magistrates' courts;
- were three times less likely to breach community corrections orders; and
- had lower breach rates for intervention orders.

The Law Council of Australia has also noted that the NJC

represents many key aspects of successfully responding to the justice needs of people experiencing disadvantage. It employs outreach strategies, joined-up services, therapeutic justice and problem-solving approaches, and offers timely and tailored responses to individuals' needs.⁵³⁴

8.2 Court administration

The implementation of due process in court is an important aspect of ensuring women and girls' fair and equitable access to justice and the Taskforce made a recommendation around improving court efficiency (see [1.1]). The Law Council of Australia⁵³⁵ has made a number of suggestions about court practices, to promote access to justice, including that:

- courts and tribunals must be sufficiently resourced, to avoid delays;
- efficiency and fairness often depend on ready access to legal assistance;
- active case management and triage can facilitate efficiency and fairness;
- the financial cost of accessing justice through the court and tribunal system is high;
- accommodating different communication needs is necessary, to ensure procedural justice (eg, use of plain English, interpreters, flexible processes for people with complex communication needs);
- courts and tribunals should be accessible, in terms of disability access, geographic location and physical safety;

⁵³¹ NJC (nd). *Embedded specialist services* <https://www.neighbourhoodjustice.vic.gov.au/learn-visit/our-model/embedded-specialist-support-service>.

⁵³² NJC (nd). *Community justice in architecture* <https://www.neighbourhoodjustice.vic.gov.au/learn-visit/our-service-innovation/community-justice-in-architecture>.

⁵³³ Ross S (2015). *Evaluating neighbourhood justice: Measuring and attributing outcomes for a community justice program*. Australian Institute of Criminology.

⁵³⁴ LCA, *Courts and tribunals*, n 130, 99.

⁵³⁵ Ibid.

- developing greater cultural awareness and competency across the justice sector is essential:
 - ongoing education and cultural competency training of justice system personnel is required;
 - positive measures to welcome diversity should be encouraged;
 - specialist courts and court programs can be an effective way of enhancing cultural sensitivity across the justice system;
 - the availability of a range of bail and sentencing options is critical to ensuring a culturally sensitive justice system;
 - a face-to-face local presence is important for fostering respect for the law and combating mistrust of the justice system;
 - technology can produce time and cost savings, but should complement, not replace, face-to-face proceedings; and
 - online courts and tribunals are developing, but further research and evidence is required;
- therapeutic, diversionary and problem-solving approaches:
 - TJ is critical to addressing disadvantage and improving the quality of justice;
 - TJ underpins the work of specialist, problem-solving courts and court lists;
 - courts should have ready access to alternative sentencing options, culturally responsive diversion programs and integrated support services; and
 - trauma-informed and recovery-orientated approaches are increasingly considered an important feature of therapeutic justice; and
- fragmentation of the court system can be improved, by connecting jurisdictions and increasing information-sharing and collaboration.

Many of these issues are discussed in more detail elsewhere in this review. Since April 2021, the Adelaide Magistrates Court has implemented an early resolution court model to expeditiously deal with some summary offences.⁵³⁶ Whilst this model is not targeted at women, addressing issues in relation to delays may have benefits, in the context of caring responsibilities and reducing additional anxieties around uncertain court outcomes. The process aims to shorten the time between the alleged offending and appearing in court and provide important information to accused people, before coming to court. People who are not arrested may receive a phone call from the police, advising them of their court dates and time and the nature of the offences they are charged with. The summary of evidence will be emailed or posted to the person, which can then be taken to a lawyer to obtain legal advice.

⁵³⁶ Courts Administration Authority of South Australia (nd). *Early Resolution Court*
<https://www.courts.sa.gov.au/going-to-court/preparing-for-court/early-resolution-court/>

The JCCD has made the point that, if Australian courts are to be 'fair, effective and efficient, it is essential that all court users understand the processes in which they are participating, and are able to contribute fully to proceedings'.⁵³⁷ The JCCD has suggested that education sessions could be introduced in magistrates' courts for women applying for intervention orders, including information on:

- how to apply for an intervention order;
- what terms are included in an intervention order;
- varying the standard terms of an intervention order;
- how the hearing for an intervention order will proceed;
- the roles of people in the courtroom;
- reporting a breach of an intervention order; and
- the effect of a breach of an intervention order.

It was also suggested that courts might consider holding specific educational sessions for Indigenous and migrant and refugee women that could include Indigenous and migrant and refugee women respectively speaking about their own experiences of the legal system.

Ensuring forms can be read and understood by girls and women with low literacy levels, Indigenous women and women from CALD backgrounds is also crucial for promoting their participation and engagement in the legal process. In order to help women better understand the purpose and content of court forms, the JCCD stated that courts should:

develop and maintain brochures on their services in plain English and ensure that forms are also written in plain English. In addition, courts should consider translating information into key community languages to ensure greater outreach.

Other recommendations include that forms should avoid legal jargon and complex terminology, cultural advisors could be engaged in the development of forms to ensure accuracy and cultural sensitivity and, for those with low literacy levels, visual aids could be used to convey information. Burkell⁵³⁸ suggested that forms should contain an explicit reference to any associated guide where the user can consult instructions on how to complete the form.⁵³⁹ Furthermore, where areas of a form are to be completed by the court, words to the effect of 'office use only' or 'to be filled in by court' should be used, to make it clear which sections should not be completed. This will save time for members of the public and court staff. Forms should also

⁵³⁷ Ibid.

⁵³⁸ Salyzyn A et al (2017). Literacy requirements of court documents: An under-explored barrier to access to justice. *Windsor Yearbook of Access to Justice*, 33: 263-301.

⁵³⁹ Ibid, 288.

avoid the use of abbreviations, for example, the use of the word 'number' instead of 'no'.

The JCCD suggested that courts should:

develop and maintain brochures on their services in plain English and ensure that forms are also written in plain English. In addition, courts should consider translating information into key community languages to ensure greater outreach.⁵⁴⁰

The JCCD also noted the long periods of time women often have to wait at court for their hearing and suggest that this time could be used to play educational videos in waiting areas. They also make the suggestion that a resource list could be given to all Indigenous and migrant and refugee women with information about:

- the role of community legal centres and legal aid and information about how to contact them;
- court processes;
- victim assistance, DFV and primary healthcare services;
- women's refuges;
- housing support;
- Centrelink;
- Indigenous services;
- multicultural women's and settlement services; and
- immigration advice.⁵⁴¹

Much of the discussion in the review is about the need for a range of support services to support women and girls. Clearly, it is not the role of the courts to provide all these services, but they can bring these services to the attention of those that need them and, at times, use their authority to encourage or mandate engagement. There is also a need for better coordination and liaison between services, for example, to organise the timing of release from custody at times that will minimise the negative consequences for girls, women and their families. In some instances, additional resources and services in the courts are required. For example, international research indicates that prison visitation reduces the risk of reincarceration by 26%.⁵⁴² Despite this, most incarcerated people in Australia do not get any visitors. Recent Australian research on prison visits⁵⁴³ revealed that the family members of people imprisoned for the first time found the justice system very

⁵⁴⁰ JCCD, n 203, 17.

⁵⁴¹ Ibid, 17.

⁵⁴² Mitchell M et al (2016). The effect of prison visitation on reentry success: A meta-analysis. *Journal of Criminal Justice*, 47: 74-83.

⁵⁴³ Ryan N and Ryan N (2024). Most prisoners never receive visitors, and this puts them at a higher risk of reoffending, *The Conversation* <https://theconversation.com/most-prisoners-never-receive-visitors-and-this-puts-them-at-a-higher-risk-of-reoffending-222157>.

difficult to navigate. The family members interviewed for that project suggested that, when a person is sent to prison for the first time, there should be a *visits liaison officer* in court, to provide support after sentencing. In addition, a visitation information support pack could be provided to family members, immediately after sentencing (if in court) or by post. This would require additional liaison between the courts and corrections, but potentially yield significant benefits for women, girls, their families and broader society.

The needs of people with a disability are discussed elsewhere in this review. Courts need to ensure they have appropriate accommodations in place in response. Principle 3 of the United Nations principles and guidelines on access to justice for people with disabilities states that all states ‘shall provide gender and age-appropriate individualized procedural accommodations for persons with disabilities’.⁵⁴⁴ In terms of communication, they advise the inclusion of ‘technical and other support necessary for parties, witnesses, claimants, defendants and jurors [...] to ensure their full participation’ in the justice process.⁵⁴⁵ This includes the use of assistive listening systems and devices that enhance sound, making it easier for people with hearing impairments to understand speech.⁵⁴⁶ The device commonly used in courtrooms is a hearing loop, which allows hearing devices to connect directly to the courtroom audio system, providing hearing-impaired people with equal access to spoken information and proceedings. Communicourt, which supports people with communication difficulties to have equal access to legal proceedings, considers hearing loops to be largely helpful, but finds that the availability of equipment and technical problems can be problematic.⁵⁴⁷ As such, it is advisable to arrange a courtroom equipped with a hearing loop prior to the commencement of proceedings and test the equipment before use.

One quite significant development has been the use of technology in courts that allows physical courtrooms to become virtual. The future of virtual courtrooms holds significant potential to improve access to justice, by creating more equitable processes. For example, virtual courts can eliminate geographical constraints, allowing women and girls in RRR areas, with limited financial means and/or with a disability to participate, without having to travel long distances. There are also safety and confidentiality benefits, in that vulnerable witnesses can avoid the risk of physical contact with the defendant.

⁵⁴⁴ United Nations, n 170, 15.

⁵⁴⁵ Ibid, 16.

⁵⁴⁶ Ibid.

⁵⁴⁷ Communicourt (nd). *Our purpose and values* <https://www.communicourt.co.uk/about-us/our-purpose-and-values/>.

Despite these benefits, as Rossner, Tait and McCurdy⁵⁴⁸ acknowledged, there are some significant challenges to the design and delivery of virtual courts. For example, participants may be required to sit in front of a neutral backdrop in a private quiet space. However, ‘court participants do not always have access to a private space or a neutral background’, potentially creating a barrier to equal access to justice.⁵⁴⁹ Adequate internet speed or the availability of devices may also be an issue for some participants. In order to address this, Rossner, Tait and McCurdy suggested that, for some hearings, ‘it may be more appropriate to use public facilities outside the home, such as community legal centres or “justice hubs”’.⁵⁵⁰

Preparation of witnesses and how they are acknowledged during the hearing are also key considerations in ensuring their comfort and engagement. Rossner, Tait and McCurdy suggested that ‘small modifications to the court ritual, such as expanded introductions, acknowledgments, and breaks, can help orientate participants and promote effective participation’.⁵⁵¹

There is also a risk that a virtual court may appear to be less formal, convincing or authoritative than a physical court. In a UK video hearings pilot, several participants felt that their hearing felt less formal than they had imagined a physical court would be.⁵⁵² More positively, however, they also noted that this had ‘helped to reduce their anxiety and stress’.⁵⁵³ Addressing these challenges requires a combination of technological advancements, evaluation, feedback and training, to ensure that virtual courts are an effective alternative to traditional courtrooms.

It is beyond the scope of this review to consider in depth the role of technology and the courts, in the context of women and girls. Clearly, the use of technology can be both a help and a hindrance. For example, despite concerns about poorer outcomes when appearing by audio-visual link, BOCSAR research⁵⁵⁴ has shown that this has no impact on defendants’ access to bail. The District Court of Western Australia has also recently provided new technology, where interpreters can sit in a dedicated room outside the courtroom and observe a witness and provide them with interpretation directly, via a set of headphones.⁵⁵⁵ The use of apps also holds both

⁵⁴⁸ Rossner M, Tait D and McCurdy M (2021). Justice reimaged: Challenges and opportunities with implementing virtual courts. *Current Issues in Criminal Justice*, 33: 94-110, 103.

⁵⁴⁹ Ibid, 103.

⁵⁵⁰ Ibid, 105.

⁵⁵¹ Ibid.

⁵⁵² Ibid, 106.

⁵⁵³ Ibid.

⁵⁵⁴ Kim M-T (2021). *Estimating the impact of audio-visual link on being granted bail*. BOCSAR.

⁵⁵⁵ Gething M and van Heerden S (2021). Technology in the court in its 50th year. *The Law Society of Western Australia* https://issuu.com/lswa/docs/2021april_brief_lowres/s/12038669.

promise and problems.⁵⁵⁶ In NSW, the AVOW app is a free app for people with an apprehended domestic violence order, which can ‘help users better understand and comply with their [order] conditions and prepare for court’,⁵⁵⁷ while YourCase is an app ‘to help survivors of family violence navigate the court experience in Victoria’.⁵⁵⁸ As with the use of artificial intelligence in the courts,⁵⁵⁹ technological developments have the potential to play an important role, but the research discussed in this review reinforces that responses to women and girls also need to be relational and holistic.

⁵⁵⁶ For discussion, see Taylor H, van Rooy D and Bartels L (2023). Digital justice: A rapid evidence assessment of the use of mobile technology for offender behavioural change. *Probation Journal*, 70: 31-51.

⁵⁵⁷ NSW Government (nd). AVOW <https://dcj.nsw.gov.au/children-and-families/family-domestic-and-sexual-violence/support-programs/avow.html>.

⁵⁵⁸ Portable (nd). *Portable releases YourCase App to help family violence survivors* <https://portable.com.au/articles/yourcase-app-helping-family-violence-survivors>.

⁵⁵⁹ Bell F et al (2022). *AI decision-Making and the courts: A guide for judges, tribunal members and court administrators*. AIJA.

Case study: Jessica

Jessica has a lengthy history of substance use and trauma. She has been in and out of prison most of her adult life and her four children have all been taken into state care. She has now decided to participate in the local drug court program. She appreciates the intensive case management, but finds it hard to start developing trusting relationships. She returns two positive urine tests in her first few months in the program and returns to custody for a week. Over the next 18 months, the treatment team helps Jessica access public housing after she leaves the residential rehabilitation facility. They also help her get three of her children back from care and protection and her eldest child starts to visit regularly. It emerges that some of her children were born in violent relationships and she feels she did not have much knowledge or control over her reproductive choices. The treatment team arranges for her to attend a family planning clinic and she chooses to have a long-acting reversible contraceptive device fitted. By the end of the program, she has stabilised her mental health issues and is working in a local café as a cook. She brings in cupcakes she has baked for the graduation program. Everyone is beaming when the judge tells Jessica she is so impressed by everything she has achieved and that her children should be really proud of their mum.

References

Abbott L, Shafaei A and Planigale M (2023). *Living Free Project: Evaluation report 2023*. TaskForce Community Agency.

Aboriginal & Torres Strait Islander Social Justice Commissioner (2005). *Social justice report 2004*.

Aboriginal Family Violence Prevention & Legal Service Victoria (2014). *Evaluation report of the Aboriginal Family Violence Prevention and Legal Service Victoria's Early Intervention and Prevention Program*.

Aboriginal Healing Foundation (2016). *Restoring our spirits, reshaping our lives: Creating a trauma aware, healing-informed response to the impacts of institutional child sexual abuse for Aboriginal people*. Discussion paper.

Aboriginal Health and Medical Research Council of NSW (2009). *Aboriginal practice checklist - A cultural assessment tool for MERIT teams*.

ACT Courts and Tribunal (2021). *ACTCT disability action & inclusion plan*.

Alcohol and Other Drug Foundation (nd). *Treatment - The gender divide explained* <https://adf.org.au/insights/substance-misuse-gender-divide-explained/>.

Allison F (2016). *Justice reinvestment in Katherine: Report on initial community consultations*.

Allison F (2018). *Justice reinvestment in Cherbourg: Report on initial community consultations*.

Anderson V, Hoskins K and Rubino L (2019). Defining gender-responsive services in a juvenile court setting. *Women & Criminal Justice*, 29: 338-354.

Anthony T and Crawford W (2013). Northern Territory Indigenous community sentencing mechanisms. *Australian Indigenous Law Review*, 17: 79-99.

Anthony T and Grant E (2016). Courthouse design principles to dignify spaces for Indigenous users: preliminary observations. *International Journal for Court Administration*, 8: 43-59.

Antolak-Saper N, Clough J and Naylor B (2021). *Unrepresented accused in the Magistrates' Court of Victoria*. AIJA.

Arabena K et al (2019). *Evaluation of Marram-Ngala Ganbu, prepared for the Children's Court of Victoria*.

ARTD Consultants (2021). *Southport Specialist Domestic and Family Violence Court: Process and outcomes evaluation 2017-2021*. Queensland Department of Justice and Attorney-General.

Australasian Institute of Judicial Administration (2023). *National domestic and family violence bench book*.

Australasian Institute of Judicial Administration (nd). *AJJA Indigenous Youth Justice Conference 2022* <https://aija.org.au/aija-indigenous-youth-justice-conference-2022/>.

Australasian Institute of Justice Administration (2020). *Bench book for children giving evidence in Australian courts*.

Australian Bureau of Statistics (2023). *Corrective Services, Australia - September 2023 quarter*.

Australian Bureau of Statistics (2023). *Criminal courts, Australia, 2021-22*.

Australian Bureau of Statistics (2023). *Personal safety, Australia, 2021-22*.

Australian Government (nd). *715 health check* <https://www.health.gov.au/news/715-health-check>.

Australian Government (nd). *Justice reinvestment* <https://www.ag.gov.au/legal-system/justice-reinvestment>.

Australian Government (nd). *Sexual violence* <https://www.ag.gov.au/crime/sexualviolence>.

Australian Human Rights Commission (2020). *Wiyi Yani U Thangani (Women's voices): Securing our rights, securing our future - Report*.

Australian Institute of Health and Welfare (2023). *The health of people in Australia's prisons, 2022*.

Australian Judicial Officers Association (nd). *Colloquium* <https://www.ajoa.asn.au/colloquium/5-8-october-2023-auckland/>.

Australian Judicial Officers Association (nd). *Home* <https://www.ajoa.asn.au/>.

Australian Law Reform Commission (2017). *Incarceration rates of Aboriginal and Torres Strait Islander peoples*. Discussion Paper.

Australian Law Reform Commission (2017). *Pathways to justice - Inquiry into the incarceration rate of Aboriginal people*.

Australian Law Reform Commission (2024). *Justice responses to sexual violence*. Media release.

Australian National Research Organisation for Women's Safety (2020). *Women's imprisonment and domestic, family and sexual violence*.

Baidawi S and Sheehan R (2020). 'Crossover kids': Offending by child protection-involved youth. Australian Institute of Criminology.

Baidawi S et al (2024). *Police and children's court outcomes for children aged 10 to 13*. Australian Institute of Criminology.

Baldry E et al (2006). Ex-prisoners, homelessness and the state in Australia. *Australian & New Zealand Journal of Criminology*, 38: 20-33.

Bartels L (2022). Paying attention to Attention Hyperactivity Deficit Disorder: An analysis of cases in an Australian Supreme Court. *Criminal Law Journal*, 46: 245-268.

Bartels L (2023). Sentencing review 2021-22. *Criminal Law Journal*, 47: 56-77.

Beatrice M (2021). A problem-solving approach to criminalised women in the Australian context. *Alternative Law Journal*, 46: 41-46.

Beckett S (2020). Judicial note about the *Bugmy Bar Book Project*. *Judicial Officers' Bulletin*, 32: 47.

Becroft A (2017). *Family Group Conferences: Still New Zealand's gift to the world*. Office of the Children's Commissioner, Wellington.

Beetson J et al (2022). 'A life changing experience': How adult literacy programs can keep First Nations people out of the criminal justice system. *The Conversation*. <https://theconversation.com/a-life-changing-experience-how-adult-literacy-programs-can-keep-first-nations-people-out-of-the-criminal-justice-system-195715>.

Beetson J et al (2022). Impact of a community-controlled adult literacy campaign on crime and justice Outcomes in remote Australian Aboriginal communities. *International Journal for Crime, Justice and Social Democracy*, 11: 56-68.

Bell F et al (2022). *AI decision-Making and the courts: A guide for judges, tribunal members and court administrators*. AIJA.

Bevis M et al (2020). *Kungas' trauma experiences and effects on behaviour in Central Australia*. ANROWS.

Bloom B and Covington S (2001). *Effective gender-responsive interventions in juvenile justice: Addressing the lives of delinquent girls*. Paper presented at the 2001 Annual Meeting of the American Society of Criminology, Atlanta, Georgia, November 7-10.

Bloom B, Owen B and Covington S (2003). *Gender-responsive strategies: Research, practice, and guiding principles for women offenders*. National Institute of Corrections.

Boiteux S and Teperski A (2023). *An evaluation of the NSW Domestic Violence Electronic Monitoring program*. BOCSAR.

Boxall H, Dowling C and Morgan A (2020). *Female-perpetrated domestic violence: Prevalence of self-defensive and retaliatory violence*. Australian Institute of Criminology.

Boyer T, Allison S and Creagh H (2018). *Improving the justice response to victims of sexual violence: Victims' experiences*. New Zealand Ministry of Justice.

Bugmy Bar Book (nd). *Home*. <https://bugmybarbook.org.au>.

Bugmy Bar Book (2023). *Homelessness*. <https://bugmybarbook.org.au/wp-content/uploads/2023/07/BBB-Homelessness-chapter.pdf>.

Bugmy Bar Book (2023). *Impacts of imprisonment and remand in custody* <https://bugmybarbook.org.au/chapters/imprisonment/>.

Bugmy Bar Book (2023). *Interrupted school attendance and suspension*. <https://bugmybarbook.org.au/wp-content/uploads/2024/03/BBB-School-Attendance-and-Suspension-chapter.pdf>.

Cameron A (2008). *R v Gladue: Sentencing and the Gendered Impacts of Colonialism*. In J White (ed), *Moving toward justice: Legal traditions and Aboriginal justice*. Saskatchewan Institute of Public Policy.

Canadian Legal Information Institute (2020). *Responding to domestic violence in family law, civil protection & child protection Cases*.

Carers Qld (nd). *Bridging the gap: how the Murri Court is working with Carers Queensland to support people to access the NDIS* <https://carersqld.com.au/bridging-the-gap-how-the-murri-court-is-working-with-carers-queensland-to-support-people-to-access-the-ndis/>.

Caruana C et al (2021). *Leaving custody behind: Foundations for safer communities and gender-informed criminal justice systems - Issues Paper*. RMIT CIJ.

Cashmore J and Shackel R (2018). *Evaluation of the Child Sexual Offence Evidence Pilot - Final outcome evaluation report*. University of NSW.

Catholic Care Victoria (nd). *Dandenong justice education for refugees* <https://www.catholiccarevic.org.au/news/31/new-community-garden-launched-in-pakenham>.

- Centre for Justice Innovation (2021). *Problem-solving courts for women: An evidence & practice briefing*.
- Centre for Justice Innovation (2023). *Problem-solving courts: A guide to practice in the United Kingdom*.
- Children's Court of Victoria (nd). *Education justice initiative* <https://www.childrenscourt.vic.gov.au/criminal-division/education-justice-initiative#referring-to-eji>.
- Children's Court of Victoria (nd). *Marram-Ngala Ganbu (Koori family hearing day)* <https://www.childrenscourt.vic.gov.au/family-division/marram-ngala-ganbu-koori-family-hearing-day>.
- Clapp C and Rosauer K (2021). *Women and Mentoring evaluation*. Lirata Consulting.
- Clasby B et al (2022). Responding to neurodiversity in the courtroom: A brief evaluation of environmental accommodations to increase procedural fairness. *Criminal Behaviour and Mental Health*, 32: 197-211.
- Closing the Gap (nd). *Closing the gap targets and outcomes* <https://www.closingthegap.gov.au/national-agreement/targets>.
- Colvin E (2019). Postcode (in)justice: location and bail support services. *Journal of Criminological Research, Policy and Practice*, 5: 307-318.
- Committee for Economic Development of Australia (eds) (2022). *Double jeopardy: The economic and social costs of keeping women behind bars*.
- Communicourt (nd). *Our purpose and values* <https://www.communicourt.co.uk/about-us/our-purpose-and-values/>.
- Community Restorative Centre (2017). *Throughcare and reintegration: What constitutes best practice in community based post release? A Community Restorative Centre Submission*.
- Community Restorative Centre (2019). *Miranda Matters*. May, Issue 11.
- Community Restorative Centre (2020). *Miranda Matters*. July, Issue 14.
- Convery U (2009). *Addressing offending by women: A literature review*. Northern Ireland Office Statistics and Research Branch.
- Cossins A and Rowden E (2021). The child sexual assault trial: Reconceptualising the design of court spaces according to trauma-informed principles. In K Duncanson and D Henderson (eds), *Courthouse architecture, design and social justice*. Taylor Francis Group.

County Court of Victoria (nd). *Court Integrated Services Program (CISP) Pilot Aboriginal support* <https://www.countycourt.vic.gov.au/going-court/criminal-division/court-integrated-services-program>.

County Court Victoria (nd). *Drug and Alcohol Treatment Court* <https://www.countycourt.vic.gov.au/going-court/criminal-division/drug-and-alcohol-treatment-court>.

Courts Administration Authority of South Australia (nd). *Early Resolution Court* <https://www.courts.sa.gov.au/going-to-court/preparing-for-court/early-resolution-court/>.

Courts Administration Authority of South Australia (nd). *Treatment Intervention Court* <https://www.courts.sa.gov.au/going-to-court/court-locations/adelaide-magistrates-court/court-intervention-programs/treatment-intervention-court/>.

Covington S and Bloom B (2006). Gender-responsive treatment and services in correctional settings. *Women and Therapy*, 29: 9-33.

Cultural Review of the Adult Custodial Corrections System (2022). *Safer prisons, safer people, safer communities*.

Cunneen C (2019). *Self-determination and the Aboriginal Youth Justice Strategy*. University of Technology Sydney.

Cunneen C and Libesman T (2016). Postcolonial trauma: The contemporary removal of Indigenous children and young people from their families in Australia. *Australian Journal of Social Issues*, 35: 99-268.

Daniels E (2022). Practitioner perspective: A reflection on problem-solving courts in Australia. In M Camilleri and AHarkness, *Australian Courts: Controversies, challenges and change*. Palgrave.

Davidson J, Pasko L and Chesney-Lind M (2011). 'She's way too good to lose': An evaluation of Honolulu's Girls Court. *Women & Criminal Justice*, 21: 308-327.

Davies L and Whaanga J (2012). *Evaluation of the early outcomes of Nga Kooti Rangatahi: Final Report – Submitted to the Ministry of Justice*. Kaipuke Consultants.

Davies R and Bartels L (2021). *The use of victim impact statements in sentencing for sexual offences: Stories of strength*. Routledge.

Day A et al (2018). Assessing violence risk with Aboriginal offenders: Considerations for forensic practice. *Psychiatry, Psychology and Law*, 25: 452-464.

Deloitte Access Economics (2023). *Final outcomes and impact evaluation report - Evaluation of Court Link*.

Department of Justice Canada (2017). *Spotlight on Gladue: Challenges, experiences, and possibilities in Canada's criminal justice system*.

Derkley K (2024). Inside stories: A voice for change in recognising disability. *Law Institute Journal* https://www.liv.asn.au/Web/Law_Institute_Journal_and_News/Web/LIJ/Year/2024/02February/A_voice_for_change_in_recognising_disability.aspx.

Diaspora Action Australia (2023). *Gambling harm prevention initiative for women from Vietnamese communities*.

District Court of New Zealand (2014). *Sexual Violence Court Pilot: Guidelines for best practice*.

Djirra (nd). *Who we are* <https://djirra.org.au/who-we-are/>.

Domestic Abuse Commissioner (2021). *Understanding court support for victims of domestic abuse*.

Douglas H (2018). Legal systems abuse and coercive control. *Criminology & Criminal Justice*, 18: 84-99.

Dress for Success® (nd). *Suiting* <https://nswact.dressforsuccess.org/programs/suiting/>.

Dudgeon P (2017). Trauma in the Aboriginal and Torres Strait Islander population. *Australian Clinical Psychologist*, 3: 19-30.

Easteal P et al (2022). A jurisdictional collision? Responses to family violence and family law in the ACT. *Alternative Law Journal*, 47: 23-29.

Edwige V and Gray P (2021). *Significance of culture to wellbeing, healing and rehabilitation*.

Ernst & Young (2021). *Evaluation of the Justice Advocacy Service – Final report for the Department of Communities and Justice*.

Family Court of Western Australia (nd). *Child minding service* https://www.familycourt.wa.gov.au/C/child_minding_services.aspx?uid=9346-9236-1086-9827.

Federal Court and Family Court of Australia (nd). *Family violence* <https://www.fccoa.gov.au/fl/fv/orders>.

Federal Court and Family Court of Australia (nd). *Lighthouse* <https://www.fccoa.gov.au/fl/fv/lighthouse>.

Fedock G and Covington S (2022). 'Strength-based approaches to the treatment of incarcerated women and girls', In C Langton and J Worling (eds). *Facilitating*

desistance from aggression and crime: Theory, research, and strength-based practices. John Wiley & Sons Ltd.

Flower S (2010). *Gender-responsive strategies for women offenders: Employment and female offenders: An update of the empirical research*. National Institute of Corrections.

Fryer-Smith S (2008). *Aboriginal benchbook for Western Australian courts*. 2nd ed. AIJA.

Gallagher J et al (2019). Drug court through the lenses of African American women: Improving graduation rates with gender-responsive interventions. *Women & Criminal Justice*, 29: 323-337.

Gelb K (2009). *Solution-focused interventions for drug-related offending*. Department of Justice and Attorney-General.

Genovese E (2023). Administering harm: the treatment of trans people in Australian criminal courts. *Current Issues in Criminal Justice*, DOI: 10.1080/10345329.2023.2231112.

George A-J et al (2023). *Specialist approaches to managing sexual assault proceedings: An integrative review*. AIJA.

Gething M and van Heerden S (2021). *Technology in the court in its 50th year. The Law Society of Western Australia*
https://issuu.com/lswa/docs/2021april_brief_lowres/s/12038669.

Gobeil R, Blanchette K and Stewart L (2016). A meta-analytic review of correctional interventions for women offenders: Gender-neutral versus gender-informed approaches. *Criminal Justice and Behavior*, 43: 301-322.

Government of South Australia (2017). *Gambling Intervention Program trial: Evaluation report*.

Government of Western Australia (nd). Links <https://www.mhc.wa.gov.au/getting-help/diversion-support-programs/mental-health-court-diversion-program/links/>.

Graham L et al (2023). Overrepresentation of Indigenous students in school suspension, exclusion, and enrolment cancellation in Queensland: Is there a case for systemic inclusive school reform? *The Australian Educational Researcher*, 50: 167-201.

Grant E and Hook M (2021). Reimagining spaces for Indigenous justice. In K Duncanson and D Henderson (eds), *Courthouse architecture, design and social justice*. Taylor Francis Group.

Gravitas Research and Strategy Ltd (2019). *Qualitative evaluation of the Sexual Violence Court Pilot: Report for the Ministry of Justice*.

Gutierrez L, Helmus L and Hanson R (2017). *What we do and don't know about risk assessment with offenders of Indigenous heritage*. Public Safety Canada.

Hartsell E and Novak A (2022). A comparison of re-arrest outcomes between youth in juvenile drug court, teen court, probation, and dismissed cases. *Crime & Delinquency*, 68: 1819-1846.

Haslam D et al (2023). *The prevalence and impact of child maltreatment in Australia: Findings from the Australian Child Maltreatment Study: Brief Report*. Queensland University of Technology.

Hawai'i Girls' Court (nd). About <https://www.girlscourthawaii.org/about>.

Hidderley L et al (2022). *Engendering justice: The sentencing of women and girls in Queensland*. Queensland Sentencing Advisory Council.

Hodgson J (2019). *Offending girls and restorative justice: The relevance and rationale of gender-specific provision*. Centre for the Study of Crime, Criminalisation and Social Exclusion. <https://ccseljmu.wordpress.com/2019/01/14/offending-girls-and-restorative-justice-the-relevance-and-rationale-of-gender-specific-provision/>.

Human Rights Law Centre and Change the Record Coalition (2017). *Over-represented and overlooked: The crisis of Aboriginal women's growing over-imprisonment*.

Impact (nd). *Court childcare project* <https://www.impactforwomen.org.au/court-childcare-project.html>.

Ipsos (2019). *Evaluation of Murri Court - prepared for the Queensland Department of Justice and Attorney General*.

Jessep M (2022). *'Stuff the transactional shit': Learning through the lived experience of the Rangatahi Court*. Unpublished Masters thesis, University of Canterbury.

Judicial College of Victoria (2016). *Disability access bench book*.

Judicial College of Victoria (2019). *Family violence bench book*.

Judicial College of Victoria (nd). *2024 education prospectus* <https://www.judicialcollege.vic.edu.au/resources/2024-education-prospectus>.

Judicial Commission of NSW (2022). *Trauma-informed courts: Guidance for trauma-informed judicial practices*.

- Judicial Commission of NSW (2023). *Equality before the law bench book*.
- Judicial Commission of NSW (2023). *Sexual assault trials handbook*.
- Judicial Commission of NSW (nd). *Continuing judicial education*
<https://www.judcom.nsw.gov.au/education/>.
- Judicial Commission of NSW (nd). *Ngara Yura program*
<https://www.judcom.nsw.gov.au/education/ngara-yura-program/>.
- Judicial Council of California (2021). *Fact sheet: Youth courts*.
- Judicial Council on Cultural Diversity (2021). *National framework to improve accessibility to Australian courts for Aboriginal women and migrant and refugee women*.
- Judicial Council on Cultural Diversity (2022). *Interpreters in criminal proceedings: Benchbook for judicial officers*.
- Judicial Council on Cultural Diversity (nd). *Migrant & refugee women fact sheet*.
- Judicial Council on Cultural Diversity (nd). *Training* <https://jcdi.org.au/training/>.
- Justice Taskforce: Discussion Paper 1 – Options for legislating against coercive control and the creation of a standalone domestic violence offence*.
- Kazemian L (2021). *Pathways to desistance from crime among juveniles and adults: Applications to criminal justice policy and practice*. National Institute of Justice.
- Keeping Women Out of Prison Coalition (2020). *Diversion from custody*.
- Kezelman C and Stavrolpoulos P (2016). *Trauma and the law: Applying trauma-informed practice to legal and judicial contexts*. Blue Knot Foundation.
- Kim M-T (2021). *Estimating the impact of audio-visual link on being granted bail*. BOCSAR.
- King M (2009). *Solution-focused Judging Bench Book*. AIJA.
- King M et al (2014). *Non-adversarial justice*. Federation Press, 2nd ed.
- Kinsella R et al (2018). *Whole system approach for women offenders - Final evaluation report*. Manchester Metropolitan University.
- Knudsen A and Roth L (2023). *Reducing incarceration of Aboriginal people: Challenges and choices*. Parliament of NSW.

Kornhauser R (2018). The effectiveness of Australia's drug courts. *Australian & New Zealand Journal of Criminology*, 51: 76-98.

Kozarov v Victoria [2022] HCA 12.

KPMG (2010). *Evaluation of the Community Justice Group program: Final report*.

KPMG & RMIT CIJ (2023). *Exploring justice system experiences of complainants in sexual offence matters: An interview study*. BOCSAR.

Lansdell G et al (2022). Strengthening the connection between Acquired Brain Injury (ABI) and family violence: The importance of ongoing monitoring, research and inclusive terminology. *Journal of Family Violence*, 37: 367-380.

Law Council of Australia (2018). *The Justice Project - Courts and tribunals*. Final Report, Part 2.

Law Council of Australia (2018). *The Justice Project – Children and young people: Final report, Part 1*.

Law Council of Australia (2018). *The Justice Project – LGBTI+ people. Final Report, Part 1*.

Law Council of Australia (2018). *The Justice Project – People who are homeless. Final Report, Part 1*.

Law Council of Australia (2018). *The Justice Project – People with disability. Final Report, Part 1*.

Law Council of Australia (2018). *The Justice Project – Rural, regional and remote (RRR) Australians*. Final Report, Part 1.

Law Council of Australia (2018). *The Justice Project* <https://lawcouncil.au/justice-project/about-the-project>.

Legal Literate App (nd). <https://www.legalliterate.org.au/>.

Lightowlers C and Benefer N (2022). Assessing the viability of problem-solving courts for criminalised women. In I Masson and N Booth (eds), *The Routledge Handbook of Women's Experiences of Criminal Justice*. Routledge.

Limerick M (2002). Indigenous Community Justice Groups: The Queensland experience. *Australian Law Reform Commission – Reform Journal*, 4(80): 15-21.

Local Court NSW (nd). *The Magistrates Early Referral Into Treatment (MERIT) program – Publications* <https://localcourt.nsw.gov.au/sentencing--orders-and-appeals/sentencing-in-criminal-cases/diversion-programs/the-merit-program/publications.html#Research2>.

Loftus T (2023, August 11). Women facing increased risk of homelessness while on bail and parole, Sisters Inside advocacy group says. *ABC News*. <https://www.abc.net.au/news/2023-08-11/women-on-bail-parole-increased-risk-of-homelessness-qld/1027170>.

Longbottom M and Porter A (2021). *Submission to the Women's Safety and Justice Taskforce: Discussion paper 1 – Options for legislating against coercive control and the creation of a standalone domestic violence offence*.

Lynch S et al (2013). *Women's pathways to jail: Examining mental health, trauma, and substance use*. Bureau of Justice Assistance.

Magistrates Court of Queensland (2023). *Domestic and Family Violence Protection Act 2012 Benchbook*. Office of the Chief Magistrate. 11th ed.

Magistrates' Court of Victoria (nd). *Koori community working with court to improve family safety* <https://www.mcv.vic.gov.au/news-and-resources/news/koori-community-working-court-improve-family-safety>.

Malatest International (2020). *Evaluation of the Special Circumstances Court, Wellington*.

Malvosio C et al (2022). *Adverse childhood experiences and trauma among young people in the youth justice system*. Australian Institute of Criminology.

Manning C (2019, February 28). Merseyside's deputy police commissioner welcomes women-only review court. *Wirral Globe*. <https://www.wirralglobe.co.uk/news/17465913.merseysides-deputy-police-commissioner-welcomes-women-only-review-court/>.

Marchetti E (2017). Nothing works? A meta-review of Indigenous sentencing court evaluations. *Current Issues in Criminal Justice*, 28: 257-276.

Martire K and Larney S (2009). *Women and the MERIT program*. NSW Government.

Maxwell G et al (2004). *Achieving effective outcomes in youth justice: Final report to the Ministry of Social Development*. Ministry of Social Development.

McAuley Community Services for Women (2019). *Submission to Royal Commission into Victoria's Mental Health System*.

McAuley Women and Children (nd). *Court Support 4 Kids* <https://www.mcauley.org.au/story/court-support-4-kids/>.

- McGrath A, Gerard A and Colvin E (2020). *Care-experienced children and the criminal justice system*. Australian Institute of Criminology.
- McLachlan K (2022). Trauma-informed sentencing in South Australian courts. *Journal of Criminology*, 55: 495–513.
- McLachlan K (forthcoming). *Trauma-informed criminal justice: Towards a more compassionate criminal justice system*. Palgrave.
- McNamara L et al (2021). Homelessness and contact with the criminal justice system: Insights from specialist lawyers and allied professionals in Australia. *International Journal for Crime, Justice and Social Democracy*, 10: 111-129.
- McNeill F et al (2012). *How and why people stop offending: Discovering desistance*. Iriss.
- Meyer S and Williamson H (2020). General and specific perceptions of procedural justice: Factors associated with perceptions of police and court responses to domestic and family violence. *Journal of Criminology*, 53: 333-351.
- Mitchell M et al (2016). The effect of prison visitation on reentry success: A meta-analysis. *Journal of Criminal Justice*, 47: 74-83.
- Mitchell M et al (2022). Criminalising gender diversity: Trans and gender diverse people's experiences with the Victorian criminal legal system. *International Journal for Crime, Justice and Social Democracy*, 11: 99-112.
- Moore E, Gaskin C and Indig D (2013). Childhood maltreatment and post-traumatic stress disorder among incarcerated young offenders. *Child Abuse and Neglect*, 37: 861-870.
- Morrison J (2018). *'The dog helped them find their words'*. Churchill Fellowship Report.
- Murphy B (2018). Neurodivergent women in 'clouded judgment' unconscionability cases – An intersectional feminist perspective. *Adelaide Law Review*, 39: 37-64.
- Murphy J, Grant E and Anthony T (2021). Indigenous courtroom and courthouse design in Australia. In K Duncanson and D Henderson (eds), *Courthouse architecture, design and social justice*. Taylor Francis Group.
- Murphy L (2019). A specialist homelessness court for Victoria. *Parity*, 32: 35-36.
- Myuma Group (2021). *Phase 1 Report: Evaluation of Community Justice Groups*.
- Myuma Group (2023). *Evaluation of Community Justice Groups: Phase 2 Report, 2022*.

Nancarrow H et al (2020). *Accurately identifying the 'person most in need of protection' in domestic and family violence law*. ANROWS.

National Judicial College of Australia (nd). *Judicial education program* <https://www.njca.com.au/judicial-education-programs/>.

Neighbourhood Justice Centre (nd). *Community justice in architecture* <https://www.neighbourhoodjustice.vic.gov.au/learn-visit/our-service-innovation/community-justice-in-architecture>.

Neighbourhood Justice Centre (nd). *Embedded specialist services* <https://www.neighbourhoodjustice.vic.gov.au/learn-visit/our-model/embedded-specialist-support-service>.

Neighbourhood Justice Centre (nd). *Family violence support services* <https://www.neighbourhoodjustice.vic.gov.au/find-a-service/support-services/family-violence-support-services>.

Neighbourhood Justice Centre (nd). *Financial counselling* <https://www.neighbourhoodjustice.vic.gov.au/find-a-service/support-services/financial-counselling>.

Neighbourhood Justice Centre (nd). *What we do* <https://www.neighbourhoodjustice.vic.gov.au/about-us/our-story/what-we-do>.

Ney B, Ramirez R and Van Diemen M (2012). *Ten truths that matter when working with justice involved women*. National Resource Center on Justice Involved Women.

NSW Government (nd). AVOW <https://dcj.nsw.gov.au/children-and-families/family-domestic-and-sexual-violence/support-programs/avow.html>.

NSW Law Reform Commission (2020). *Consent in relation to sexual offences*.

NSW Public Defenders (2022). *The Bugmy Bar Book - Impacts of imprisonment and remand in custody*.

Ooi E and S Rahman S (2022). *The impact of the NSW Youth Koori Court on sentencing and re-offending outcomes*. BOCSAR.

Osterman L and Masson I (2018). Restorative justice with female offenders: The neglected role of gender in restorative conferencing. *Feminist Criminology*, 13: 3-27.

Pandanus Evaluation (2022). *Alice Springs Alternative to Custody program evaluation report*.

Pattoni L (2012). *Strengths-based approaches for working with individuals*. Iriss.

Penal Reform International (2023). *Criminalisation of women due to poverty and status* <https://www.penalreform.org/news/call-for-input-criminalisation-of-women-due-to/>.

Portable (nd). *Portable releases YourCase App to help family violence survivors*
<https://portable.com.au/articles/yourcase-app-helping-family-violence-survivors>.

PriceWaterhouseCoopers (2009). *Economic evaluation of the Court Integrated Services Program (CISP) - Final report on economic impacts of CISP*. Victorian Department of Justice.

Productivity Commission (nd). *Closing the gap review*
<https://www.pc.gov.au/inquiries/completed/closing-the-gap-review/report>.

Queensland Courts (2020). *Youth Justice Benchbook*.

Queensland Courts (nd). *Court Link* <https://www.courts.qld.gov.au/services/court-programs/court-link>.

Queensland Courts (nd). *Mental health court*
<https://www.courts.qld.gov.au/courts/mental-health-court>.

Queensland Courts (nd). *Specialist Domestic and Family Violence Court*
<https://www.courts.qld.gov.au/courts/domestic-and-family-violence-court>.

Queensland Government (2018). *Twelve-month program evaluation: Restorative Justice Project*.

Queensland Government (2022). *Response to the report of the Queensland Women's Safety and Justice Taskforce, Hear her voice: Report 2*.

Queensland Government Statistician's Office (2021). *Wise practice for designing and implementing criminal justice programs for Aboriginal people*, Queensland Treasury.

Queensland Sentencing Advisory Council (2021). *Kids in court: The sentencing of children in Queensland*.

Quilter J and McNamara L (2023). *Experience of complainants of adult sexual offences in the District Court of NSW: A trial transcript analysis*. BOCSAR.

Radke A (2018). Women's yarning circles: A gender-specific bail program in one Southeast Queensland Indigenous sentencing court, Australia. *Australian Journal of Anthropology*, 29: 53-69.

Reeves E (2021). 'I'm not at all protected and I think other women should know that, that they're not protected either': Victim-survivors' experiences of 'misidentification' in Victoria's family violence system. *International Journal for Crime, Justice and Social Democracy*, 10: 39-51.

Reeves E (2023). A culture of consent: Legal practitioners' experiences of representing women who have been misidentified as predominant aggressors on

family violence intervention orders in Victoria, Australia. *Feminist Legal Studies*, 31: 369-390.

Reeves E et al (2023). Incredible women: Legal systems abuse, coercive control, and the credibility of victim-survivors. *Violence Against Women*.
<https://journals.sagepub.com/doi/10.1177/10778012231220370>.

Richardson L (2019). Mental health courts: Providing access to justice for people with mental illness and cognitive impairments. *Alternative Law Journal*, 44: 100-107.

Richmond A for the Domestic Violence Justice Reform Network (2019). *Journey mapping workshop report - Exploring the voices and experiences of victim/survivors of domestic and family violence in the NT justice system*.

Ringland C, Boiteux S and Poynton S (2022). *The victimisation of people with disability in NSW: Results from the National Disability Data Asset pilot*. BOCSAR.

Ringland C, Boiteux S and Poynton S (2023). *People with disability and offending in NSW: Results from the National Disability Data Asset pilot*. BOCSAR.

RL Mace Universal Design Institute (nd). *Universal design principles*.
<https://www.udinstitute.org/principles>.

RMIT Centre for Innovative Justice (2018). *Court Support 4 Kids - Evaluation report*.

RMIT Centre for Innovative Justice (2019). *Supporting justice – System map* <https://cij.org.au/cms/wp-content/uploads/2020/06/supporting-justice-system-map-v14-1.pdf>.

RMIT Centre for Innovative Justice (2020). *Specialist children's court approaches*.

RMIT Centre for Innovative Justice (2020). *Unstacking the odds: Towards positive interventions at the intersection of gambling and crime*.

RMIT Centre for Innovative Justice (2020). *Women transforming justice - Final evaluation report*.

RMIT Centre for Innovative Justice (2021). *Leaving custody behind: A fact sheet on drivers and alternatives to women's incarceration*.

RMIT Centre for Innovative Justice (2021). *Leaving custody behind: A fact sheet on drivers and alternatives to women's incarceration*.

RMIT Centre for Innovative Justice and Jesuit Social Services (2018). *Recognition, respect and support: Enabling justice for people with an Acquired Brain Injury*.

Rosenblatt F et al (2023). Secondary victimisation, procedural injustices, and machismo: the experiences of women who access Brazil's not-so-specialised

domestic violence courts. *International Journal of Comparative and Applied Criminal Justice*, 47: 167-184.

Ross S (2015). *Evaluating neighbourhood justice: Measuring and attributing outcomes for a community justice program*. Australian Institute of Criminology.

Rossner M et al (2024). *Adult Restorative Justice Conferencing in Queensland: Research on best practice and expansion*. ANU.

Rossner M et al (2022). *ACT Drug and Alcohol Sentencing List: Process and outcome evaluation final report*.

Rossner M, Tait D and McCurdy M (2021). Justice reimagined: Challenges and opportunities with implementing virtual courts. *Current Issues in Criminal Justice*, 33: 94-110.

Royal Commission into the Protection and Detention of Children in the Northern Territory (2017). *Final report*.

Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2023). *Volume 8 – Criminal justice system*.

Russell E, Carlton B and Tyson D (2022). 'It's a gendered issue, 100 per cent': How tough bail laws entrench gender and racial inequality and social disadvantage. *International Journal for Crime, Justice and Social Democracy*, 11: 107-121.

Russell E, Zhou H, Franich G (2022). *Gendered injustice: The policing and criminalisation of victim-survivors of domestic and family violence*. Fitzroy Legal Service.

Ryan N and Ryan N (2024). Most prisoners never receive visitors, and this puts them at a higher risk of reoffending, *The Conversation* <https://theconversation.com/most-prisoners-never-receive-visitors-and-this-puts-them-at-a-higher-risk-of-reoffending-22215>.

Saada Saar M et al (2015). *The sexual abuse to prison pipeline: The girls' story*. Georgetown University Law Center.

SafeLives (2021). *Understanding court support for victims of domestic abuse: Mapping the provision of court-related domestic abuse support and advocacy across England and Wales on behalf of the Domestic Abuse Commissioner*.

Saint-Jacques M, Turcotte D and Pouliot E (2009). Adopting a strengths perspective in social work practice with families in difficulty: From theory to practice. *Families in Society*, 90: 454-461.

Salyzyn A et al (2017). Literacy requirements of court documents: An under-explored barrier to access to justice. *Windsor Yearbook of Access to Justice*, 33: 263-301.

Scerra N (2011). *Strengths-based practice: The evidence*. Uniting Care Social Justice Unit.

Schaefer L and Egan E (2022). Problem-solving courts. In M Camilleri and A Harkness (eds), *Australian courts: Controversies, challenges and change*. Palgrave.

Scott S and Frost S (2019). *Why women's centres work: An evidence briefing*. The Tavistock Institute.

Senate Standing Committees on Finance and Public Administration, Parliament of Australia (2016). *Aboriginal and Torres Strait Islander experience of law enforcement and justice services*.

Settlement Council of Australia (2019). *Access to justice for people from refugee and migrant backgrounds in Australia*.

Settlement Council of Australia (2019). *Case study: Justice education program* http://scoa.org.au/wp-content/uploads/2019/03/Justice_Justice-Education-program-by-CatholicCare.pdf.

Shepherd S, Luebbers S and Dolan M (2013). Identifying gender differences in an Australian youth offender population. *SAGE Open*, April-June: 1-12.

Sherman F and Balck A (2015). *Gender injustice: System-level juvenile justice reforms for girls*. National Crittenton Foundation and National Women's Law Center.

SHINE For Kids (nd). *Home*. <https://shineforkids.org.au>.

Silva D et al (2014). Contact with the juvenile justice system in children treated with stimulant medication for Attention Deficit Disorder: A population study. *The Lancet Psychiatry*, 1(4): 278-285.

Silvester J (2021, May 14). They all love Lucy: How a four-legged friend can help us in court. *The Age*. <https://www.theage.com.au/national/victoria/they-all-love-lucy-how-a-four-legged-friend-can-help-us-in-court-20210513-p57ri5.html>.

Sisters Inside (2021). *Women and girls' experience of the criminal 'justice' system - Response to Discussion Paper 2, Women's Safety and Justice Taskforce*, Queensland.

Sisters Inside (nd). *For women* <https://sistersinside.com.au/for-women/>.

Sisters Inside (nd). *For young people* <https://sistersinside.com.au/for-young-people/>.

Sisters Inside (nd). *Programs and services* <https://sistersinside.com.au/programs-services/>.

Sisters Inside (nd). *Response to Discussion Paper 2, Women's Safety and Justice Taskforce, Queensland* https://www.womenstaskforce.qld.gov.au/data/assets/pdf_file/0004/692662/wsjt-submission-dp2-sisters-inside.pdf.

Slade N (2020). *Literature review on international best court support models for victim-survivors of sexual violence*. New Zealand Ministry of Social Development.

Smart Justice for Women (2021). *Submission to the inquiry into Victoria's criminal justice system - Reducing the criminalisation of women in Victoria*.

SMART Recovery (nd). *Meetings* <https://au.meetings.smartrecovery.org/meetings>.

Smokowski P et al (2020). A group randomized trial of school-based teen courts to address the school to prison pipeline, reduce aggression and violence, and enhance school safety in middle and high school students. *Journal of School Violence*, 19: 566-578.

Social Exclusion Task Force (2009). *Short study on women offenders*. Ministry of Justice (UK).

Stanley C (2022). *2020 Churchill Fellowship To investigate community-led responses and innovative approaches to the criminal justice system – US, Canada*.

State of Victoria (nd). *Family violence orders in Koori Courts*. <https://www.aboriginaljustice.vic.gov.au/the-agreement/aboriginal-justice-outcomes-framework/goal-31-the-needs-of-aboriginal-people-are-2>.

Stewart J et al (2014). *Indigenous youth justice programs evaluation*. Australian Institute of Criminology.

Stiles A (2023). Introducing the Women's Domestic Violence Court Advocacy Services. *Judicial Officers' Bulletin*, 35: 28-29.

Stobbs N, Bartels L and Vols M (eds) (2019). *The methodology and practice of therapeutic jurisprudence*. Carolina Academic Press.

Stojcevski V (2013). *Magistrates Court Tasmania, Hobart Specialist Youth Justice Court pilot: Evaluation report*.

Success Works (2011). *Sexual assault reform strategy: Final evaluation report*.

Supreme Court of Western Australia (2016). *Equal treatment benchbook*. 2nd ed.

Supreme Court of Western Australia (nd). *Parents and childminding* https://www.supremecourt.wa.gov.au/P/parents_and_childminding.aspx?uid=114-2421-09-10.

Sweet C (nd). *The Thunder Bay courthouse*. Ontario Ministry of the Attorney-General.

Tasmania Legal Aid (2021). *Children first: Children in the Child Safety and youth justice system*.

Taylor H, van Rooy D and Bartels L (2023). Digital justice: A rapid evidence assessment of the use of mobile technology for offender behavioural change. *Probation Journal*, 70: 31-51.

te Riele K and Rosauer K (2015). *Education at the heart of the Children's Court. Evaluation of the Education Justice initiative*. Victoria Institute for Education, Diversity and Lifelong Learning.

Teperski A and Boiteux S (2023). *The long and short of it: The impact of apprehended domestic violence order duration on offending and breaches*. BOCSAR.

Thomas S, Liddell M and Johns D (2016). *Evaluation of the Youth Diversion Pilot Program (YDPP: Stage 3)*. RMIT University.

Trevena J and Suzanne Poynton S (2016). *Does a prison sentence affect future domestic violence reoffending?* BOCSAR.

United Nation Human Rights Special Procedures (2020). *International principles and guidelines on access to justice for persons with disabilities*.

United Nations (1990). *Convention on the rights of the child*.

United Nations (2010). *Rules for the treatment of women prisoners and non-custodial measures for women offenders (Bangkok Rules)*.

United Nations (2020). *International principles and guidelines on access to justice for people with disabilities*.

United Nations Office on Drugs and Crime (2020). *Toolkit on gender-responsive non-custodial measures*.

United Nations Special Rapporteur on the Rights of Indigenous Peoples (2017). *End of mission statement by the United Nations Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz, on her visit to Australia*.

University of Queensland (2016). *Fare system helps vulnerable have their day in court*. Media release.

Van Voorhis P (2013). *Women's risk factors and new treatments/interventions for addressing them: Evidence-based interventions in the United States and Canada*.

Participants' papers of the 153rd International Senior Seminar, United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders, Tokyo, Japan.

Van Voorhis P et al (2010). Women's risk factors and their contributions to existing risk/needs assessment: The current status of a gender-responsive supplement. *Criminal Justice and Behavior*, 37: 261-288.

Verrecchia P (2009). Female delinquents and restorative justice. *Women & Criminal Justice*, 19: 80-93.

Victoria Legal Aid (2023). *Stopping the cycle of offending for people living with mental health issues or cognitive impairment*. Media release.

Victorian Equal Opportunity and Human Rights Commission (2013). *Unfinished business: Koori women and the justice system*.

Victorian Law Reform Commission (2021). *Improving the justice system responses to sexual offences*.

Victorian Sentencing Advisory Council (2019). 'Crossover kids': *Vulnerable children in the youth justice system – Report 1: Children who are known to child protection among sentenced and diverted children in the Victorian Children's Court*.

Victorian Sentencing Advisory Council (2020). 'Crossover kids': *Vulnerable children in the youth justice system – Report 2: Children at the intersection of child protection and youth justice across Victoria*.

Victorian Sentencing Advisory Council (2020). 'Crossover kids': *Vulnerable children in the youth justice system – Report 3: Sentencing children who have experienced trauma*.

Victorian Sentencing Advisory Council (2020). *Time served prison sentences in Victoria*.

Walker R, Schultz C and Sonn C (2014). Cultural competence: Transforming policy, services, programs and practice'. In P Dudgeon et al (eds). *Working together: Aboriginal and Torres Strait Islander mental health and wellbeing principles and practice*. Commonwealth of Australia, 2nd ed.

Walton D, Martin S and Li J (2020). Iwi community justice panels reduce harm from re-offending. *Kōtuitui: New Zealand Journal of Social Sciences Online*, 15: 75-92.

Ward (2020). *10 pillars of youth justice*. Australia & New Zealand School of Government.

- Wesley-Esquimaux C and Calliou B (2010). *Best practices in Aboriginal community development: A literature review and wise practices approach*. The Banff Center.
- Wexler D (1993-1994). An orientation to therapeutic jurisprudence. *New England Journal on Criminal and Civil Confinement*, 20: 259-264.
- White R, Johnson E and Bornman J (2021). Investigating court accommodations for persons with severe communication disabilities: Perspectives of international legal experts. *Scandinavian Journal of Disability Research*, 23: 224-235.
- Whitehead S and Waters R (2020). *Pre-court diversion for women: Evidence and practice briefing*. Centre for Justice Innovation.
- Widom C and Osborn M (2021). The cycle of violence: Abused and neglected girls to adult female offenders. *Feminist Criminology*, 16: 266-285.
- Williams R (1999). Cultural safety: What does it mean for our work practice? *Australian and New Zealand Journal of Public Health*, 23: 213-214.
- Wilson H and Gutierrez L (2014). Does one size fit all? A meta-analysis examining the predictive ability of the level of service inventory (LSI) with Aboriginal offenders. *Criminal Justice and Behavior*, 41: 196-219.
- Winter R et al (2021). *Evaluation of Project Vigilance: Electronic monitoring of family violence offenders – Final report*. University of Tasmania.
- Wise J et al (2018). *Impact of the ‘Yes, I Can!’ adult literacy campaign on interactions with the criminal justice system*. Australian Institute of Criminology.
- Women Lawyers of Western Australia (2014). *Gender Bias Taskforce review report*.
- Women’s AOD Services Network (2016). *Gender responsive model of care*. Network of Alcohol and Other Drugs Agencies.
- Women’s Legal Centre ACT (nd). *Health justice partnership* <https://wlc.org.au/get-help/our-services-and-programs/hjp/>.
- Women’s Safety and Justice Taskforce (2021). *Hear her voice - Addressing coercive control and domestic and family Violence in Queensland: Report 1*.
- Women’s Safety and Justice Taskforce (2022). *Hear her voice - Women and girls’ experiences across the criminal justice system: Report 2, Volume 1*.
- Women’s Safety and Justice Taskforce (2022). *Hear her voice - Women and girls’ experiences across the criminal justice system: Report 2, Volume 2*.

Women's Safety and Justice Taskforce (nd). *A wide-ranging review of the experience of women across the criminal justice system (2021-2022)*

<https://www.womenstaskforce.qld.gov.au>.

Woodley A (2012). *A report on the progress of the Te Kooti O Timatanga Hou - The Court of New Beginnings*. Point Research Ltd.

Yeong S and E Moore (2020). *Circle sentencing, incarceration and recidivism*. BOCSAR.

Yeong S and Poynton S (2019). *Can pre-recorded evidence raise conviction rates in cases of domestic violence?* BOCSAR.

Youth Court of New Zealand (nd). *About Youth Court: Rangatahi courts & Pasifika courts* <https://www.youthcourt.govt.nz/about-youth-court/rangatahi-courts-and-pasifika-courts/>.

Yunkaporta T (2009). *Aboriginal pedagogies at the cultural interface*. PhD thesis, James Cook University.

Appendix A: Rapid evidence assessment protocols

Databases	Scopus ProQuest Criminal Justice database Social science database PubMed UK Home Office (current and archived publications) Google Scholar Campbell Collaboration
Type of literature	Scholarly journals Reports Dissertation/Theses Books Book chapters Conference papers/proceedings
Timeframe	2019-2023 (inclusive)
Language	English
Reviewed	Peer-reviewed and non-peer reviewed
Methods	Qual, quant, literature reviews and opinion pieces
Search terms	<p>Target cohort Wom?n OR female OR mother OR girl* OR gender diff* OR gender-responsive OR gender-specific OR Indig* OR Aborigin* OR disabil* OR trans* OR drug OR dependence AND Court AND</p> <p>Perpetrator/victim/defendant/witness search terms perpetrator* OR offend* OR accuse* OR defendant OR victim* OR witness OR crim* AND</p> <p>Criminal justice system and research terms bail OR remand OR specialist OR sentenc* OR support* OR pilot OR program* OR trial OR evaluation OR impact OR intervention OR service OR meta-analysis* OR review OR diversion OR problem*</p>