



RESEARCH SYNTHESIS

Women's imprisonment and domestic, family and sexual violence

Purpose

This paper contextualises Australia's National Research Organisation for Women's Safety's (ANROWS's) research on the close links between imprisonment and domestic and family violence (DFV) and sexual violence.

These links are poorly understood, but are crucial in addressing cycles of violence/imprisonment, and providing support services to women who have experienced both violence and imprisonment. The paper is not intended to add to literature addressing lived experience and realities of prison; rather, it draws together existing ANROWS research and recent practice evidence that supports a coherent response to supporting women affected by imprisonment and DFV and/or sexual violence.

ANROWS acknowledges the lives and experiences of the women and children affected by domestic, family and sexual violence who are represented in this report. We recognise the individual stories of courage, hope and resilience that form the basis of ANROWS research.

Caution: Some people may find parts of this content confronting or distressing. Recommended support services include: 1800 RESPECT-1800 737 732 and Lifeline-13 11 14.

Audience

This synthesis is designed for policymakers and practitioners engaging with people affected by domestic, family and sexual violence and imprisonment. It is also relevant for those who are developing policy frameworks addressing domestic, family and sexual violence; imprisonment; housing; mental health; substance use; and related issues.

ANROWS

AUSTRALIA'S NATIONAL RESEARCH
ORGANISATION FOR WOMEN'S SAFETY
to Reduce Violence against Women & their Children

Language

When referring to Aboriginal and Torres Strait Islander peoples and communities in this paper, the term "Indigenous" is retained only where the original text or data did not specify whether reference was being made to Aboriginal and/or Torres Strait Islander peoples or communities.

SUMMARY**KEY ISSUES**

- There are well-established links between women's experiences of domestic, family and sexual violence and imprisonment:
 - High numbers of women in custody have experienced abuse: around 70–90 percent (Johnson, 2004; Justice Health & Forensic Mental Health Network [JHFMHN], 2017).
 - Women can become caught in cycles of imprisonment and experiencing violence: violence increases the risk and effects of imprisonment, and imprisonment increases the risk and effects of violence.
- Provision of accessible, affordable housing is fundamental to addressing both DFV and imprisonment.
- Women in prison who have experienced DFV and/or sexual violence require holistic, consistent care.
- Services and legal responses must be developed to respond to the specific needs of this cohort and create clear pathways to support.
 - Coordinated, wraparound services are necessary for women released from prison who are experiencing DFV and/or sexual violence.
 - Services for women released from prison who are experiencing DFV and/or sexual violence need to operate in ways that do not reinscribe criminality.
- Culturally appropriate responses are imperative to addressing DFV and sexual violence in Aboriginal and Torres Strait Islander communities.
- Increasing judicial understanding of DFV and sexual violence is imperative to fair implementation of sentencing policies.

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SUMMARY**RECOMMENDATIONS FOR POLICY AND PRACTICE**

- Recognise gendered differences when designing and implementing prison policies and programs.
- Place more emphasis on whole-of-family and whole-of-community approaches to family violence interventions, including early intervention for teenagers, in recognition of the effects of intergenerational trauma. For women who have been incarcerated, this focus should include facilitation of reconnection with children upon release and support around parenting.
- Increase the supply of public housing, particularly for Aboriginal and Torres Strait Islander communities.
- Include women with lived experience of imprisonment in service program governance, design and delivery, including through the use of participatory action research to drive pilot programs within community-driven organisations.
- Invest in training and workforce capacity-building in the legal, women's services, alcohol and other drugs and mental health sectors to address discrimination and stigmatisation for women who have been incarcerated.
- Develop, maintain and support interagency connections to address the links between housing, mental health and trauma, and substance use, and their impact on both violence and imprisonment.
- Recognise the importance of continuity of services, case management, pre-release planning and throughcare. These services should be available to those on short sentences or on remand.
- Develop and fund culturally relevant diversion and prison initiatives such as the Kunga Stopping Violence Program, [the Miranda Project](#) or the Sisters Inside diversionary program.
- Recognise 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. This could be done, for example, using the [Social entrapment framework](#).

BACKGROUND

Women in prison in Australia



The number of women in prison in Australia is increasing

In Australia, there was a 10 percent increase in women in prison between 30 June 2017 and 30 June 2018 (Australian Bureau of Statistics [ABS], 2018). This is not a new phenomenon: between 1995 and 2002, the female imprisonment rate increased by 58 percent (ABS, 2004).



Aboriginal and Torres Strait Islander people continue to experience disproportionate contact with, and criminalisation by, the criminal legal system

As at June 2016, nearly 34 percent of women in prison identified as Aboriginal or Torres Strait Islander, despite making up 2 percent of the general population at that time (ABS, 2018). The last 30 years have seen the number of Aboriginal and Torres Strait Islander women in prison more than double (Human Rights Law Centre and Change the Record Coalition, 2017).

Women are more likely to be serving shorter sentences for behaviours classified as minor offences

For example, half the women in prison in Queensland are there for less than three months; and the average stay is less than six months. This was consistent in the 10-year period 2006–2017 (Anti-Discrimination Commission Queensland, 2019).

Studies indicate that Aboriginal and Torres Strait Islander women serve shorter sentences for behaviours classified as minor offences—such as driving infringements and non-payment of fines (Bartels as cited in Stathopoulos, Quadara, Fileborn, & Clark, 2012; see also Bevis, Atkinson, McCarthy, & Sweet, 2020).





A high and growing proportion of women in prison are untried (on remand), and a large proportion of women prisoners are also incarcerated for parole or bail violations

- For example, in New South Wales, women in prison on remand grew from 15 percent in 1993 to 25 percent in 2003 (Corrective Services NSW, 2011).
- A Corrections Victoria forecast indicated that, without reform, by 2023 the number of women on remand in Victorian prisons would outnumber sentenced women (Millar, & Vedelago, 2019). Between 2012 and 2017, the proportion of female prisoners who were unsentenced increased from 23 percent to 39%, and the number of women entering prison on remand increased by 155 percent. In 2017, 88 percent of women entering prison in Victoria were entering on remand, and the most serious charge for almost half of those women related to a property or drug offence (Department of Justice and Community Safety. Corrections Victoria, 2019).
- In Victoria in 2017, two thirds of women whose period of remand ended were released from prison without having served any time under sentence (Department of Justice and Community Safety. Corrections Victoria, 2019).
- In Queensland, as at 30 June 2018, 35% of women in prisons were unsentenced (State of Queensland, 2018), and there was a 59% increase between 2011–12 and 2015–16 of women who entered prison with their most serious offence being a breach of bail conditions (Queensland Productivity Commission, 2019).
- Western Australia saw growth of 150 percent in Aboriginal and Torres Strait Islander women being held on remand from 2009 to 2016 (Government of Western Australia, 2015).
- Aboriginal and Torres Strait Islander women are vastly over-represented in the remand population, often because of insecure housing or employment, or previous convictions (commonly for low-level offending behaviour) (Australian Law Reform Commission [ALRC], 2017).



Service responses for people in prison are largely informed by what we know about incarcerated men, despite gendered differences in events and behaviours that result in imprisonment (Day, Casey, Gerace, Oster, & O’Kane, 2018)

KEY ISSUES

There are well-established links between experiencing domestic, family and sexual violence, and women's imprisonment

High numbers of imprisoned women have experienced abuse

The link between imprisonment and DFV and/or sexual violence is shown in the overwhelming number of women in prison who have experienced abuse. Studies consistently report that a high proportion (around 70–90%) of women in custody have a history of emotional, sexual and/or physical abuse, with key perpetrators being spouses or partners (JHFMHN, 2017; Stathopoulos, Quadara, Fileborn, & Clark, 2012; see also State of Victoria, 2016). Studies of prison populations across Australia have suggested that 75–90 percent of incarcerated Aboriginal and Torres Strait Islander women have been victims of sexual, physical or emotional abuse, with most experiencing multiple forms (Australian Law Reform Commission [ALRC], 2017).

Research has demonstrated that a woman's experiences of violence can be a pathway into the criminal legal system for lower-level criminalised activity (e.g. substance use where criminalised) as well as—much less commonly—crimes of higher severity (e.g. violent offences) (Day, Casey, Gestace, Oster, & O'Kane, 2018). This is supported by ANROWS research which found that alongside trauma, mental health or housing issues precipitated by experiences of violence, trying to get away from violence (driving without a licence) or fighting back (to protect themselves) was a key factor in women's incarceration (Bevis, Atkinson, McCarthy, & Sweet, 2020).

Women can become caught in cycles of abuse and imprisonment

Imprisonment can be experienced as a form of abuse

Prisons directly replicate a woman's previous experiences of DFV. That is, prisons "are built on an ethos of power, surveillance and control" (Covington & Bloom, 2004)—these are the very same tactics used by perpetrators of DFV (Day et al., 2018). In the ANROWS report *The forgotten victims: Prisoner experience of victimisation and engagement with the criminal justice system: Research report ("Forgotten victims")*, the experience of incarceration for women was described as "a continuation of repeated physical abuse and chronic emotional stress previously experienced in their interpersonal relationships" (Day et al., 2018, p. 42).

This is highlighted by comments from a prison service provider who reflected:

It keeps the cycle going. A woman who's been abused in the community by a partner and then ends up in prison is then abused by the system and then is abused by the male prison officers and strip searched by the prison officers. It goes on and on and on ... (Quoted in Day et al., 2018, p. 59)



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As indicated in the quote, women who have experienced DFV and/or sexual violence are likely to be re-traumatised by prison practices such as strip-searching—on this example, it has been suggested that technology such as body-scanning is more effective and less invasive (Government of Western Australia, 2019; Grewcock & Sentas, 2019; Stathopoulos et al., 2012).

Imprisonment perpetuates cycles of violence/imprisonment—individually and intergenerationally

Having been imprisoned exacerbates vulnerability to DFV upon release. A former chief inspector of UK prisons has argued that prisons can “train” women to be compliant with violent perpetrators through expected obedience (Hattenstone & Allison, 2016). And this can be lethal—a recent study found that women released from prison are 16 times more likely to die from violence than women of the same age in the general population (Willoughby, Tibble, Spittal, Borschmann, & Kinner, 2020).

Women who experience the effects of DFV are also more likely to return to prison, which continues the cycle (Centre for Innovative Justice; Inside Access; Mental Health Legal Centre as cited in State of Victoria, 2016, p. 240).

Additionally, cycles of violence and imprisonment have intergenerational impacts. A 2018 census of people in prison in Australia found that the majority of women in the criminal legal system are mothers (Australian Institute of Health and Welfare [AIHW], 2018). For women in particular, family breakdown is exacerbated by the smaller number, and inaccessible locations, of women's prisons (Kilroy, 2016). Children of incarcerated mothers are more likely to be in out-of-home care, often permanently, and children in out-of-home care are more likely to have contact with the Australian criminal legal system (Dowell, Mejia, Preen, & Segal; Millar & Dandurand; Paynter as cited in AIHW, 2018). The intergenerational impact of imprisonment—and child removal—is particularly pronounced for Aboriginal and Torres Strait Islander women (ALRC, 2017).

Provision of accessible, affordable housing is fundamental to addressing both domestic and family violence and imprisonment

DFV is the leading driver of homelessness for women and children in Australia (Cripps & Habibis, 2019). In turn, homelessness raises the risk of DFV.

The intersection between homelessness and imprisonment is also strong. People entering prison in Australia are around 66 times more likely to be homeless than people in the general community (women and men are equally likely to report homelessness before prison) (AIHW, 2018). A recent ANROWS study,

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Kungas' trauma experiences and effects on behaviour in Central Australia (Bevis et al., 2020), reviewed case histories of women who had been involved in a prison support program, the Kunga Stopping Violence Program (KSVP). The client file audit revealed that none of the 53 women had been living in private housing prior to incarceration.

Lack of housing is a problem that continues post-release due to a lack of public housing stock, supported accommodation and transitional housing (Bevis et al., 2020): more than half of people leaving prison expect to be homeless upon release (AIHW, 2018). Studies have demonstrated that Aboriginal and Torres Strait Islander women are the least likely of any group within prisons to be able to find appropriate accommodation upon release from incarceration—particularly where they have dependent children (ALRC, 2017). A study of NSW and Victorian Aboriginal and Torres Strait Islander women released from prison between 2001 and 2003 found that none of the women were able to find stable family accommodation and half were still homeless nine months after release (ALRC, 2017).

Housing instability increases vulnerability to DFV and/or sexual violence. For example, as a service provider in *Forgotten victims* explained,

People need an address in order to be eligible for parole and then the address might not be a safe address for them. They're going to go there, yeah. They're going to go there rather than stay in prison, aren't they? (Quoted in Day et al., 2018, p. 71)

Housing instability is also an indicator of the likelihood of returning to prison (State of Victoria, 2016), particularly for Aboriginal and Torres Strait Islander women (ALRC, 2017). In the above study in New South Wales and Victoria, over two thirds of the women (68%) returned to prison within nine months (ALRC, 2017). Without adequate housing, Aboriginal women may be forced into homelessness, making them particularly vulnerable to violence and to police interference, harassment and re-arrest for public order offences (ALRC, 2017) or for breaching parole conditions (Bevis et al., 2020).



Housing instability is also an indicator of the likelihood of returning to prison.

Women in prison who have experienced domestic and family violence and/or sexual violence require holistic, consistent care

It is known that trauma, mental illness and substance use have complex impacts on the nature of both women's victimisation and pathways to contact with the legal system (Australian Medical Association [AMA], 2012; Mitra-Kahn, Newbiggin, & Hardefeldt, 2016; Day et al., 2018; Stathopoulos et al., 2012). It also means that there are high numbers of women in prison experiencing trauma, mental illness or substance use. For example, female prison entrants are more likely to report recent illicit drug use than male entrants (AIHW,

2018). Further, two in three women in prison have a history of a mental health condition (AIHW, 2018); around 86 percent of Aboriginal and Torres Strait Islander women in prison have a diagnosed mental health condition (Human Rights Watch, 2018).

The interplay of these issues also often takes place within, and is exacerbated by, a context of poverty, unemployment, or social isolation, which again expands the range of ways in which a woman might come into contact with the legal system (Quadara & Stathopoulos, 2014). It also impacts requirements for support while in prison (and on release). Addressing mental health and trauma for Aboriginal and Torres Strait Islander women, for example, requires an understanding that trauma is compounded by historic and current forms of colonialism (including overt and covert racism), interruption of cultural practices, and disadvantage (Bevis et al., 2020).¹

Services in prison are inadequate for addressing these complex needs. Fundamentally, short periods of imprisonment and high numbers of women on remand means that many women in prison do not have access to any services at all (Stathopoulos et al., 2012). Further, the material conditions of prison can make it difficult to run any type of therapeutic sessions—they could be interrupted and/or ended at any time, without warning—and frequent and rapid transfers compromise the ability for meaningful healthcare (AMA, 2012).



Services and legal responses must be developed to respond to the specific needs of this cohort and create clear pathways to support

Services for women who have experienced both imprisonment and violence must offer highly specialised responses that do not replicate or exacerbate harm. This is a cohort with complex needs and addressing systemic causes as well as the resulting symptoms (such as substance use) is required.

Coordinated, wraparound services are necessary for women released from prison who are experiencing domestic and family violence and/or sexual violence

In *Forgotten victims*, both service providers and incarcerated women stressed the lack of resources and services available to women who had left prison; this included a lack of coordination between services and women not having been empowered to access help independently on release (Day et al., 2018). Service providers explained how this systemic failure affects a woman's ability to transition out of prison:

¹ Trauma is not a *risk factor* for imprisonment, but instead is a factor that should determine needs (see Hannah-Moffat as cited in Stathopoulos et al., 2012).

The coordination between the agencies involved in the woman's life is really, really critical. Models often for these women that are . . . well it's up to her to make the move actually . . . are not necessarily the most effective because when women leave prison and go back into the community it's a really overwhelming experience. (Quoted in Day et al., 2018, p. 69)

The report stressed the difficulty of having to abruptly move from enforced dependency in prison to independence post-release.

Further, some women are denied gender-specific services because their criminal record makes them ineligible for some programs. For example, a residential rehabilitation service may not take in a woman on release from prison. This is a vital support pathway due to the nexus of risk around drug use, DFV and imprisonment. Drugs and alcohol are used as a means of self-medicating, and can also be a barrier to seeking help for or reporting DFV. This drug use then becomes a major factor in the initial arrest of women—either for illicit drug offences or for criminalised activity committed under the influence of drugs, as a means to support drug use, or due to coercion by an abusive partner (Day et al., 2018). Denial of services such as these due to a criminal record serves to entrench cycles of violence and imprisonment.

Services for women released from prison who are experiencing domestic and family violence and/or sexual violence need to operate in ways that do not reinscribe criminality

Women who experience both victimisation and incarceration face compounded barriers to help-seeking, including stigma and discrimination (Day et al., 2018). For women who have been criminalised, that imposed status acts as a barrier. Concerns about, or experiences of, not being believed due to a dual status as both victim and “offender” can drive reluctance to seek help (Bevis et al., 2020; Day et al., 2018). Fear of police was common among the women in *Forgotten victims*: “There was no way in hell I was going to the cops, I was on parole. At the end of the day, I was the one with the criminal record, not him.” (Quoted in Day et al., 2018, p. 27) Additionally, there is evidence of a lack of action by police when women are viewed as criminals rather than victims (State of Victoria, 2016).

Kungas' trauma experiences and effects on behaviour in Central Australia found that criminal legal interventions can leave Aboriginal or Torres Strait Islander women at higher risk of, and from, abuse. Women leave prison with conditions placed upon them as part of parole, conditional release or as a suspended sentence. As a result, they become “legally compromised”: women from the KSVP spoke of reluctance to access service providers, hospitals and police when in need of help in case this resulted in a breach of their conditions (Bevis et al., 2020).² Abusive partners are aware of the dilemma the women face and can use it to their advantage.



Women leave prison with conditions placed upon them ... [women] spoke of reluctance to access service providers, hospitals and police when in need of help in case this resulted in a breach of their conditions.

² This is on top of the already existing barriers to meeting court-mandated requirements, such as a lack of transport, dealing with immediate crises and homelessness (Bevis et al., 2020).

Misunderstanding domestic and family violence contributes to women's imprisonment

A recent ANROWS study of the trial of a woman charged with killing her abusive husband found that outdated understandings of intimate partner violence resulted in the woman's use of defensive force being classed as "unreasonable" and therefore not as self-defence (Tarrant et al., 2019). It meant, for example, instead of consideration (before or during the trial) of realistic safety options available to the woman, or of broader structural inequities in her life and how these impacted her ability to act otherwise, she was characterised as "failing" to utilise safety options that were assumed to be accessible, safe and possible (Tarrant et al., 2019). 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.

Culturally appropriate responses are imperative to addressing domestic and family violence and sexual violence in Aboriginal and Torres Strait Islander communities

DFV in Indigenous communities "needs to be understood as both a cause and effect of social disadvantage and intergenerational trauma" (Cripps & Habibis, 2019, p. 10). The Victorian Equal Opportunity and Human Rights Commission (VEOHRC) summarised:

Family violence and other stressors manifest across the life cycle, and across generations. This cycle is typified by periods in prison, which entrenches trauma, family breakdown, contact with child protection and out-of-home care systems, homelessness, family violence, substance misuse and mental health episodes. Our research found that these inform further contact with the criminal justice system, post-release breakdown, reoffending and reimprisonment. (VEOHRC as cited in State of Victoria, 2016, p. 240)

Addressing violence against Aboriginal and Torres Strait Islander women will "address one of the key underlying drivers of women's offending, which should in turn lead to less women in the justice system, both as victim[s]/survivors and offenders" (Human Rights Law Centre & Change the Record Coalition as cited in ALRC, 2017, p. 353).

An increasing issue contributing to women's imprisonment is the misidentification of the predominant aggressor

Once a woman gets an intervention order, what we're finding is that then when that intervention order's breached that woman's being arrested. Next time ... the next woman's never going to apply for an intervention order. We're creating this criminalisation of victims, which is senseless. A woman who's a victim, how can she stop that man coming into her home if he's more powerful than her and dominating her? She rings the police and calls for help. They come and they arrest them both. I don't understand that. [Interviewer: It just entrenches people in the system?] It just entrenches them and then it just becomes hopeless. [Interviewer: And people learn ...] In the end they don't ring. (Quoted in Day et al., 2018, p. 61)

Evidence is growing of the inappropriate and increasing use of domestic violence law against victims of violence (predominantly women) who use violence in self-defence, often resulting in cross-applications for domestic violence orders (DVOs) and cross-orders made by courts. This is an issue because breach of a DVO is a criminal offence, and women charged with a breach risk imprisonment.

The civil DVO system is particularly likely to enmesh Aboriginal and Torres Strait Islander people within the criminal legal system (Cunneen, 2010; Nancarrow as cited in Douglas & Fitzgerald, 2018). In a review of DVOs in Queensland, Douglas and Fitzgerald (2018) found that a disproportionate number of Aboriginal and Torres Strait Islander people are:

- named on DVOs
- named as respondents where the application was police-initiated (rather than privately applied for)
- charged with contraventions of DVOs
- given custodial sentences as a result of contraventions: 69 percent of women who were sentenced to serve a period of imprisonment for a contravention of a DVO in the 2013–2014 year were Aboriginal and Torres Strait Islander women, despite accounting for 3.3 percent of all Queensland women in 2011.

The links between DFV and imprisonment are exceptionally complex for Aboriginal and Torres Strait Islander women. In a context of colonisation, the criminal legal system is not always an appropriate response to DFV. For Indigenous women, the criminal legal system is a direct source of harm to themselves and their families, by enforcing separation (e.g. through incarceration) and failing to understand women's obligations to family and community (Nancarrow as cited in Day et al., 2018). The legal system can also be a site of both systemic and individual discrimination for women accused of violence: the women interviewed in the KSVP spoke of multiple layers of discrimination and judgement across all sectors of law enforcement systems (police, courts and prisons) (Bevis et al., 2020). The women reported being judged for defending themselves, and keenly felt that they were not heard or believed by police, lawyers or the court.

A criminal legal intervention does not usually involve the necessary support to allow a woman who has experienced violence to heal or rebuild her life. For example, in prison, programs dedicated to dealing with family violence and sexual assault are typically designed with English-speaking populations in mind, and therefore are not always available to Indigenous women (Day et al., 2018). If culturally specific programs aren't offered, there is unlikely to be consideration of, for example, loss of connection to one's culture; separation, displacement and abandonment; coping with discrimination; identity issues and being bicultural; and reconnecting with spirituality (see Day et al., 2018). Further, for many women, time away in prison and residential rehabilitation has not changed the difficult circumstances they faced prior to incarceration and will continue to navigate after their release (Bevis et al., 2020).

Successful program example: The Kunga Stopping Violence Program

The Kunga Stopping Violence Program (KSVP) is a voluntary throughcare program for Aboriginal women³ run in the Alice Springs Correctional Centre. The program works specifically with women who have an alleged history of violent offending.

The KSVP provides pre-release support to Aboriginal women in the prison, including a four-week violence-reduction, trauma-specific course, and provides post-release support for at least 12 months. The KSVP has successfully assisted in areas such as safety planning, medical treatment, employment and training, housing, mentoring, drug and alcohol rehabilitation, family reunification, legal assistance and court support.

The KSVP's "educaring" approach is a "trauma-specific blend of Aboriginal traditional healing activities and Western therapeutic processes. It uses experiential

learning to enable participants to explore their individual and community transgenerational trauma" (Atkinson, Nelson, Brooks, Atkinson, & Ryan, 2014, pp. 298–299). The KSVP works on understanding behaviours as trauma responses, and facilitates the use of trauma-specific recovery tools to support the women to focus on their resilience and to build on their strengths.

The KSVP is an example of the kind of program the courts could use as a diversionary option while women are on remand and after sentencing. The educational package delivered through the KSVP could also be delivered outside of prison. Some of the women could be skilled to run such a program in their communities, in partnership with the KSVP, after they have undertaken a residential program. Aboriginal women can be skilled up to do this work, where developing skills and healing—educaring—can happen at the same time.

³ To date all KSVP participants have been Aboriginal and not Torres Strait Islander.

FURTHER RESOURCES

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FORTHCOMING RESEARCH

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ANROWS acknowledges the Traditional Owners of the land across Australia on which we work and live. We pay our respects to Aboriginal and Torres Strait Islander Elders past, present, and future, and we value Aboriginal and Torres Strait Islander histories, cultures, and knowledge. We are committed to standing and working with Aboriginal and Torres Strait Islander peoples, honouring the truths set out in the [Warawarni-gu Guma Statement](#).

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