



# The Path to Justice: Migrant and Refugee Women's Experience of the Courts

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A report prepared for the Judicial Council on Cultural Diversity

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### The Path to Justice:

Migrant and Refugee Women's Experience of the Courts  
Report prepared for the Judicial Council on  
Cultural Diversity

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# Foreword

I am very pleased to present this report, *The Path to Justice: Migrant and Refugee Women's Experience of the Courts*.

In 2015, the Judicial Council on Cultural Diversity identified the need to develop a national framework aimed at strengthening the capacity of the Australian court system to provide access to justice for women from culturally and linguistically diverse backgrounds, including Aboriginal and Torres Strait Islander women.

The Council was unanimous that a fundamental part of the process of developing such a framework was giving women, and those who support women through the legal process, the opportunity to be heard by the judiciary. In order to be accessible institutions, courts must be open to feedback from the communities they serve.

To this end, throughout the second half of 2015, migrant and refugee women around Australia were consulted about their experience of going to court and the barriers they faced. Feedback was also sought from a range of legal services, settlement services and family violence services.

This report documents the findings of the consultation process. It is a useful resource for courts and tribunals seeking to better understand the barriers to accessing justice faced by some of the most vulnerable members of society.

The cases coming before our courts increasingly reflect the cultural and linguistic diversity of Australia – this will continue to be the case, with migration expected to contribute significantly to Australia's future population growth.

Courts need to be responsive to these changes. This involves acknowledging and accommodating the different starting places and needs of court users in order to make the system more accessible and equitable. It is a fundamental principle in Australia that no individual should be disadvantaged in the justice system by reason of their sex, race, religion, language, or national or ethnic origin.

It is clear from this report that there is work to be done in order to improve experiences and perceptions of the court system among migrant and refugee women. This is imperative if they are to feel safe and secure when seeking help from the courts.

It is also clear that there is huge diversity within migrant and refugee populations and any court response must accommodate this.

This report and the proposals made in it will be carefully considered by the Judicial Council on Cultural Diversity and will be distributed to judicial officers and court staff around Australia. It is hoped that these proposals will provide a basis for practical and positive change, assisting courts to provide better access to justice for migrant and refugee women.



**The Hon Wayne Martin AC,  
Chief Justice of Western Australia,  
Chair of the Judicial Council on  
Cultural Diversity**

# About The Judicial Council on Cultural Diversity

Australia is one of the most culturally and linguistically diverse countries in the world. The Aboriginal and Torres Strait Islander population is nearing 700,000, or 3 per cent of the total population, while one in four Australians were born overseas. In total, over 300 languages are spoken in Australian households. Some 60 per cent of Australia's future population growth will come from migration.

While Australia benefits enormously from this diversity, it also presents systemic challenges, particularly in relation to issues of access to justice. The Australian legal system was designed at a time when the population it served was more homogenous than it is today.

In 2014, in recognition of this fact, the Council of Chief Justices endorsed the formation of a new advisory body—the Judicial Council on Cultural Diversity (JCCD). The JCCD aims to assist Australian courts, judicial officers and administrators to positively respond to the changing needs of Australian society and ensure that all Australians have equal access to justice.

The JCCD reports to the Council of Chief Justices and provides policy advice and recommendations to it. It is chaired by the Hon Wayne Martin AC, Chief Justice of Western Australia. Membership of the JCCD is predominantly composed of judicial officers from all Australian geographical jurisdictions and court levels. Legal and community bodies are also represented.

The members of the JCCD are:

- **Chief Justice Wayne Martin AC**  
Supreme Court of Western Australia
- **Justice David Berman**  
Family Court of Australia
- **Justice Jenny Blokland**  
Supreme Court of the Northern Territory
- **Dr Bernadette Boss**  
ACT Magistrates Court
- **Judge Helen Bowskill**  
District Court of Queensland
- **Mr Nigel Browne**  
CEO, Larrakia Development Corporation
- **Ms Samantha Burchell**  
CEO, Judicial College of Victoria
- **Ms Maria Dimopoulos**  
MyriaD Consultants
- **Magistrate Anne Goldsbrough**  
Magistrates' Court of Victoria
- **Justice Emiliios Kyrou**  
Court of Appeal, Supreme Court of Victoria
- **Justice Lucy McCallum**  
Supreme Court of NSW
- **Ms Leisha Lister**  
Executive Officer, Family Court of Australia
- **Justice Melissa Perry**  
Federal Court of Australia
- **Professor Greg Reinhardt**  
Director, Australasian Institute of  
Judicial Administration
- **Mr Ernie Schmatt**  
Chief Executive, Judicial Commission of NSW
- **Judge Rauf Soulio**  
District Court of South Australia
- **Judge Josephine Willis**  
Federal Circuit Court of Australia
- **Ms Carla Wilshire**  
Migration Council Australia
- **Justice Helen Wood**  
Supreme Court of Tasmania



# Executive Summary

**The following report is a summary of consultations undertaken by the Judicial Council on Cultural Diversity. As such, the views expressed in the document are those of the women consulted and stakeholders who work with migrant and refugee women. The purpose of the document is to inform the thinking of the Judicial Council on Cultural Diversity in its deliberations on matters relating to access to justice for migrant and refugee women.**

In March 2015, the Judicial Council on Cultural Diversity received funding from the Commonwealth Office for Women to undertake a project aimed at strengthening the capacity of Australian courts to provide access to justice for women facing cultural and linguistic challenges. Recognising that Aboriginal and Torres Strait Islander women and migrant and refugee women are far more likely to enter the legal system at a point of extreme vulnerability, often as a result of family violence or family breakdown, the JCCD chose to place a particular emphasis on access to justice in that context.

The project comprises three elements:

- National consultations;
- Development of a national framework for the courts consisting of best practice guidelines, resources and protocols to be used across Australian courts;
- Advice on training packages for judicial officers and court administrators on gender, culture and family violence.

The first stage of the project involved a national consultation process. The purpose of this was to provide a basis of evidence and knowledge to the JCCD that it could use to inform the development of the framework. Separate consultations were held for issues affecting Aboriginal and Torres Strait Islander women and migrant and refugee women. A separate report has been prepared on the experience of Aboriginal and Torres Strait Islander women.

As part of the migrant and refugee women's consultation process, the JCCD held focus groups with women from a range of ethnic, cultural and religious backgrounds. This was the first time that the courts have held consultations with migrant and refugee women at a national level. The JCCD also held state roundtables with stakeholders from legal services, settlement services and domestic violence services. This report documents the findings from the migrant and refugee women's consultation process and the recommendations for improvement that were made to the JCCD by women and stakeholders.

The focus of the consultations was on women's experience of the court system and the actions that courts themselves can take to improve access to justice. The consultations identified a number of barriers that migrant and refugee women face when they reach court. However, a clear finding was that there are also a number of barriers that migrant and refugee women experience before they ever reach court—and these barriers may result in them failing to seek resolution through the court system.



Some of the barriers identified affect migrant and refugee women exclusively; others are issues that affect many women experiencing family violence. However, migrant and refugee women may experience these barriers more acutely because of language difficulties, cultural differences and social isolation. While some of the recommendations proposed are targeted specifically towards migrant and refugee women, others may be directed more broadly and benefit both migrant and refugee women and women in the wider Australian community. A system that caters to the needs of the most disadvantaged will cater to all using the system.

## Before Court: Barriers to Reporting Family Violence

Pre-court barriers have been recorded in the report, as they form a key part of migrant and refugee women's experiences. Further, courts have a role to play in rectifying some of these barriers and require an understanding of all barriers so that they may respond appropriately to the needs of migrant and refugee women. The key pre-court issues consistently raised were:

- Lack of knowledge of legal rights;
- Lack of financial independence;
- The importance of integrated support services;
- Poor police responses;
- The impact of pre-arrival experiences and traumatic backgrounds;
- Community pressure on women seeking to protect themselves and their children;
- Uncertainty about immigration status and fear of deportation; and
- The cost of engagement with the legal system.

## Communication Barriers: Working with Interpreters

Language is one of the greatest barriers faced by migrant and refugee women using the court system. Limited English skills impact upon women's ability to engage with the legal system at every stage—dealing with police, engaging support services, completing forms and understanding paperwork, communicating with court staff, participating in court proceedings and understanding court orders. The provision of professional, appropriate and skilled interpreters is crucial if the legal system is to respond to the needs of migrant and refugee women and ensure that they can fully participate in court processes.

Despite this, there is serious concern about the provision of interpreters in courts across Australia. The major issues raised were:

- Lack of clarity about who is responsible for engaging an interpreter;
- Failure to assess the need for an interpreter, or incorrectly assessing need;
- The skill of interpreters being engaged;
- Lack of awareness amongst judicial officers and lawyers about how to work with interpreters;
- Engaging interpreters who are inappropriate in the circumstances; and
- Unethical and poor professional conduct by interpreters.

## Attending Court: Barriers to Full Participation

A clear finding from the consultations was that a woman's experience of going to court could positively or negatively impact her overall recovery from the trauma of family violence or family breakdown. Women who had positive experiences at court tended to have made greater progress in the healing process, while those who had negative experiences were still struggling with the experience.

The consultations revealed a range of factors regarding the court experience that posed barriers for migrant and refugee women. These were:

- The intimidating process of arriving at court;
- Safety while waiting at court;
- Lack of understanding of court processes;
- Difficulty understanding forms, charges, orders or judgments;
- Courtroom dynamics;
- The impact of attitudes and actions of judicial officers;
- The need for judicial officers to receive cultural competency training;
- Lack of availability of men's behaviour change programs; and
- Abuse of court processes by perpetrators.

## Building a Successful Framework

It was clear from the consultations that it is important that the framework establishes procedures and mechanisms to monitor its progress and success. Suggestions to ensure that this occurs included:

- Creating procedures and protocols that provide robust guidance to judicial officers and administrative staff;

- Building accountability into the system;
- Improving data collection and IT systems;
- Developing specific ways to measure progress, including:
  - setting key performance indicators and benchmarks;
  - undertaking regular court user satisfaction surveys;
  - establishing complaints mechanisms;
  - undertaking surveys of judicial officers and court staff; and
  - public reporting on progress and changes being made.

The need for a more uniform and systemic approach to the complexity of cultural and linguistic issues in managing access to justice was the strongest theme to emerge from the consultations. A piecemeal approach that neglected the intersection of issues was a particular concern.

## Recommendations and suggestions made for the consideration by the JCCD

1. Judicial officers should maintain an ongoing commitment to building relationships with settlement services, domestic violence services, legal services, and police. This would enable the joint provision of community education forums for migrant and refugee communities, as well as the sharing of expertise among staff.
- 2.1 Magistrates Courts should implement education sessions for women applying for intervention orders to provide them with information about the process.
- 2.2 The Family Courts should re-establish court information sessions for court users about their processes.

3. All courts should introduce Court Cultural Liaison Officers.
4. Courts should invest in comprehensive cultural competency and family violence training for all court staff.
5. All judicial officers should receive cultural competency training. Judicial officers who work in family violence matters should receive additional training in cultural competency within the context of family violence and family breakdown.
6. Courts should improve signage and information available upon arrival at court.
7. Courts should give priority to establishing separate waiting areas for women attending court for family violence matters.
8. Courts should permit women to participate in hearings via videolink and, if this is not available, take other measures to reduce women's stress in the court environment, including when giving evidence.
9. All courts should have court interpreter policies that are publicly available and easily accessible. The policies should:
  - Identify who is responsible for engaging and paying for an interpreter in all cases;
  - Establish procedures to identify when court users need an interpreter;
  - Establish procedures for ensuring that appropriate interpreters are engaged.
10. Courts should run training sessions on court values and expectations for interpreters. They should establish a court interpreter's code of conduct and processes to address instances of unprofessional conduct by interpreters.
11. Judicial officers and lawyers should receive training and guidance about how to work with interpreters.
12. Courts should improve data collection about the cultural, linguistic and gender diversity of their court users.
13. Courts should establish key performance indicators to measure progress against.

# Introduction

Australia is one of the most ethnically, culturally and linguistically diverse countries in the world. The Aboriginal and Torres Strait Islander population is nearing 700,000, or 3 per cent of the total population,<sup>1</sup> and 11 per cent of Aboriginal and Torres Strait Islander people speak an Australian Indigenous language at home.<sup>2</sup> The 2011 Census recorded that over a quarter of Australia's population was born overseas and one fifth had at least one overseas-born parent.<sup>3</sup> There are more than 300 languages spoken in Australian households.<sup>4</sup> Almost half (49%) of longer-standing migrants and 67% of recent arrivals speak a language other than English at home,<sup>5</sup> while 11% of Aboriginal and Torres Strait Islander people speak an Australian Indigenous language at home.<sup>6</sup>

Historically, the majority of migrants in Australia were born in Europe. However, this pattern is shifting, as people are increasingly immigrating to Australia from Asia and other parts of the world.<sup>7</sup> The nature of migration is also changing; temporary migration to Australia has increased, with approximately 1.2 million temporary migrants residing in Australia at any one time.<sup>8</sup>

This diversity is expected to increase, with Australia's Aboriginal and Torres Strait Islander population growing by 2.2 per cent per year<sup>9</sup> and migration anticipated to account for 60 per cent of Australia's future population growth.<sup>10</sup> The Judicial Council on Cultural Diversity (JCCD) was established in recognition of the need for Australia's legal system to be responsive to Australia's growing cultural and linguistic diversity. In a multicultural, multi-lingual and multi-faith society, it is fundamental that strategies are put in place to ensure that all Australians receive equal access to justice.

1 Australian Bureau of Statistics, *Aboriginal and Torres Strait Islander population nearing 700,000*, Media Release, 30 August 2013, <<http://www.abs.gov.au/ausstats/abs@.nsf/latestProducts/3238.0.55.001Media%20Release1June%202011>>.

2 Australian Bureau of Statistics, *Census of a Population and Housing: Characteristics of Aboriginal and Torres Strait Islander Australia*, 2011, cat no. 2076.0, <<http://www.abs.gov.au/ausstats/abs@.nsf/mf/2076.0>>.

3 Australian Bureau of Statistics, *Reflecting a Nation: Stories from the 2011 Census – Cultural Diversity in Australia*, 2012-2013, cat 2071.0, <<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/2071.0main+features902012-2013>>.

4 Australian Bureau of Statistics, *2011 Census Shows Asian Languages on the Rise in Australian Householders*, Media Release – National, 21 June 2012, <<http://www.abs.gov.au/websitedbs/censushome.nsf/home/CO-60>>.

5 Australian Bureau of Statistics, *Reflecting a Nation: Stories from the 2011 Census – Cultural Diversity in Australia*, 2012-2013, cat 2071.0, <<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/2071.0main+features902012-2013>>.

6 Australian Bureau of Statistics, *Census of a Population and Housing: Characteristics of Aboriginal and Torres Strait Islander Australia*, 2011, cat 2076.0, <<http://www.abs.gov.au/ausstats/abs@.nsf/mf/2076.0>>.

7 Australian Bureau of Statistics, *Reflecting a Nation: Stories from the 2011 Census – Cultural Diversity in Australia*, 2012-2013, cat 2071.0, <<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/2071.0main+features902012-2013>>.

8 Migration Council Australia, *More Than Temporary: Australia's 457 Visa Program* (2015) <<http://www.migrationcouncil.org.au/policy/reports/policy-papers/>> 3.

9 Compared with a projected annual growth rate of 1.6 per cent for the total Australian population over the same period: Australian Bureau of Statistics, *Aboriginal and Torres Strait Islander population may exceed 900,000 by 2026*, Media Release, 20 April 2014, <<http://www.abs.gov.au/ausstats/abs@.nsf/products/3E27B260A585DE5D-CA257CC900143EF6?OpenDocument>>.

10 Migration Council Australia, *The Economic Impact of Migration* (2015) <<http://www.migrationcouncil.org.au/policy/reports/the-economic-impact-of-migration-2015-1/>>.

In 2015, the JCCD received a grant from the Commonwealth Office for Women to undertake a project aimed at improving the capacity of courts to provide access to justice for women facing cultural and linguistic challenges. Previous research has identified that two of the areas of greatest legal need for migrant and refugee women are in family law and family violence;<sup>11</sup> accordingly the Council chose to focus on access to justice in that context.

**The project comprises three stages:**

- National consultations;
- Development of a national framework for the courts consisting of best practice guidelines and resources to be used across Australian courts;
- Advice on training packages for judicial officers and court administrators on gender, culture and family violence.

The JCCD believes that both Aboriginal and Torres Strait Islander women and migrant and refugee women require the development of a framework to modify the existing system so as to enable better access. However, it recognises that Aboriginal and Torres Strait Islander women and migrant and refugee women have different starting points and different access barriers, and that Aboriginal and Torres Strait Islander women in particular face unique challenges.

To appropriately accommodate this, the JCCD conducted separate consultation processes; one focusing on the experience of Aboriginal and Torres Strait Islander women, and one focusing on the experience of migrant and refugee women.

This report outlines the findings from the migrant and refugee women's consultation process. It aims to provide a basis of evidence and knowledge for the JCCD to consider when developing the framework and training packages. A separate report has been prepared on the experience of Aboriginal and Torres Strait Islander women.

## The consultation process

### Consultations with migrant and refugee women

Focus groups and individual interviews were held with migrant and refugee women in Adelaide, Brisbane, Geelong, Hobart, Logan, Melbourne, Mount Gambier, Perth and Sydney. The JCCD partnered with local settlement services, domestic violence services or legal services in each state to identify women who were willing to share their story. Working with these services ensured women could be supported by their caseworker in the consultation and attend at a location that was familiar and comfortable for them. This was the first time that the courts have held consultations with migrant and refugee women at a national level.

Attention was given to ensuring groups included women who had experienced some level of interaction with the court system. The nature and aims of the project was explained to women by the service providers and by the session facilitator. Women were given the opportunity to withdraw at any time if they no longer wished to participate.

In total, over 120 women were consulted. They came from a range of ethnic, cultural and religious backgrounds. Some had been in Australia for only a very short period of time, while others had lived in Australia for a number of years. Women had different visas and residency status and differing levels of English proficiency. Interpreters were engaged when needed. This cross-section of the migrant community ensured that a range of experiences and perspectives were heard.

<sup>11</sup> See, eg, Women's Legal Service NSW, *A Long Way to Equal* (2007), <<http://www.wlsnsw.org.au/a-long-way-to-equal/>> 19; Family Law Council, *Improving the Family Law System for Clients from Culturally and Linguistically Diverse Backgrounds* (2012) <<https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Pages/FamilyLawCouncilpublishedreports.aspx>> 3.

Women were asked a range of questions about their court experience, including any barriers they had encountered, what their legal knowledge was prior to engaging with the legal system, how they were treated throughout the process and any suggestions they had for how courts could improve access to justice for migrant and refugee women.

### Consultations with stakeholders

In addition to the consultations with migrant and refugee women, the JCCD held a series of roundtables. A national roundtable was held in Canberra and was opened by the Hon Robert French AC, Chief Justice of Australia, and Senator the Hon Michaelia Cash. State roundtables were held in Adelaide, Brisbane, Hobart, Melbourne, Perth and Sydney and were opened by judicial officers.

Over 100 stakeholders from legal services, settlement services and domestic violence services participated in the roundtables and the opportunity was given to provide further written feedback. Stakeholders were asked a number of questions, including their perspective on barriers migrant and refugee women face during the court process, examples of strategies they adopted to help migrant and refugee women access the justice system, and suggestions for how courts could improve access to justice for migrant and refugee women.

## Overview of the report

This report consolidates the key themes arising from the consultations and the recommendations that were made to the JCCD. It commences with a review of existing research into barriers that migrant and refugee women face in accessing justice. The report is then divided into the following sections:

- Before Court: Barriers to Reporting Family Violence;
- Communication Barriers: Working with Interpreters;
- Attending Court: Barriers to Full Participation;
- Building a Successful Framework; and
- Recommendations and suggestions for consideration by the JCCD.

The report includes a number of case studies. All stories are anonymous to protect the women's privacy. As the consultations focused on family violence and family law matters, the emphasis of the report is on Magistrates' Courts, the Family Court and the Federal Circuit Court. However, recognising that higher courts engage with many serious and severe family violence related crimes, the report is broadly applicable to all courts.

The JCCD thanks all those who participated in the focus groups and roundtables, particularly the women who shared their stories. It is a testament to their resilience that they were willing to share difficult and highly personal experiences in order to improve the experience of other women in the future.

# Existing Knowledge

Approximately one third of Australian women have experienced physical or sexual violence from someone they know. Women are most likely to experience physical and sexual violence in their home, at the hands of a male current or ex-partner.<sup>12</sup>

In terms of the prevalence of family violence in migrant and refugee communities specifically, previous research has produced mixed results. The Australian Bureau of Statistics has noted that some studies indicate people from non-English speaking backgrounds experience higher levels of violence, while others indicate the rate is lower than, or similar to, the rate among people from English-speaking backgrounds.<sup>13</sup> InTouch Multicultural Centre Against Family Violence research suggests the “incidence of family violence ... is not higher” in migrant and refugee communities. However, it notes that the stresses caused by moving to Australia can increase the risk of family violence.<sup>14</sup>

Previous research has identified that migrant and refugee women experience similar forms of family violence to women in the broader Australian community. However, there are specific forms of family violence that they are more likely to experience or that only they experience.

The following are examples:

- Migrant and refugee women are more likely to move in with their husband’s family after marriage and suffer abuse from their in-laws and other extended family members;<sup>15</sup>
- Migrant and refugee women are vulnerable to abuse related to their immigration status. Such abuse typically involves the perpetrator exploiting a woman’s dependent visa status or lack of knowledge of her visa conditions to maintain power and control by threatening deportation;<sup>16</sup>
- Some migrant and refugee women are subject to dowry demands. This poses a risk of violence if the dowry is considered insufficient;<sup>17</sup>

12 ANROWS, *Violence Against Women: Key Statistics* (14 May 2014) <<http://anrows.org.au/sites/default/files/Violence-Against-Australian-Women-Key-Statistics.pdf>>.

13 Australian Bureau of Statistics, *Defining the Data Challenge for Family, Domestic and Sexual Violence* (2013), cat no. 4529.0 <<http://www.abs.gov.au/ausstats/abs@.nsf/mf/4529.0/>> 13.

14 inTouch Multicultural Centre Against Family Violence, *Barriers to the Justice System Faced by CALD Women Experiencing Family Violence* (2010) <<http://intouch.asn.au/wp-content/uploads/2010/11/LegalBarriersReport.pdf>> 7.

15 inTouch Multicultural Centre Against Family Violence, *Submission to the Royal Commission into Family Violence* <<http://www.rcfv.com.au/Submission-Review>> 15; Department of Social Services, *Hearing Her Voice: Report from the Kitchen Table Conversations with Culturally and Linguistically Diverse Women on Violence Against Women and their Children* (2015) <[http://plan4womenssafety.dss.gov.au/wp-content/uploads/2015/07/cald\\_womens\\_safety\\_report.pdf](http://plan4womenssafety.dss.gov.au/wp-content/uploads/2015/07/cald_womens_safety_report.pdf)> 13; ANROWS, *Promoting Community-Led Responses to Violence Against Immigrant and Refugee Women in Metropolitan and Regional Australia: The ASPIRE Project: State of Knowledge Paper* <<http://anrows.org.au/publications/landscapes/promoting-community-led-responses-violence-against-immigrant-and-refugee>> 18.

16 ANROWS, *The ASPIRE Project: State of Knowledge Paper* <<http://anrows.org.au/publications/landscapes/promoting-community-led-responses-violence-against-immigrant-and-refugee>>19; Department of Social Services, *Hearing Her Voice* <[http://plan4womenssafety.dss.gov.au/wp-content/uploads/2015/07/cald\\_womens\\_safety\\_report.pdf](http://plan4womenssafety.dss.gov.au/wp-content/uploads/2015/07/cald_womens_safety_report.pdf)> 24.

17 Department of Social Services, *Hearing Her Voice* <[http://plan4womenssafety.dss.gov.au/wp-content/uploads/2015/07/cald\\_womens\\_safety\\_report.pdf](http://plan4womenssafety.dss.gov.au/wp-content/uploads/2015/07/cald_womens_safety_report.pdf)> 33; inTouch Multicultural Centre Against Family Violence, *Submission to the Royal Commission into Family Violence* <<http://www.rcfv.com.au/Submission-Review>> 15.



- Migrant and refugee women may be more vulnerable to forms of violence such as forced marriage and female genital mutilation or cutting;<sup>18</sup>
- InTouch Multicultural Centre Against Family Violence reports that it has seen an increase in human trafficking for sexual and domestic servitude in recent years.<sup>19</sup>

Migrant and refugee women seeking to leave violent relationships face multiple barriers. A recent Department of Social Services report notes that, in common with other Australian women, many migrant and refugee women face difficulties “finding affordable accommodation, achieving financial independence, undertaking employment, obtaining legal advice and locating appropriate childcare”.<sup>20</sup>

However, for migrant and refugee women, these difficulties are “exacerbated by factors such as not being able to speak English, having no independent rental history, lower employment rates, lack of transport, and having few friends or family members in Australia who can provide support”.<sup>21</sup> Further, many migrant and refugee women have limited access to public housing, income support and work rights due to their immigration status.<sup>22</sup> This imposes a significant barrier to leaving abusive relationships, as they have limited options to achieve financial independence.

Participants consulted in the Department of Social Services study agreed that “social isolation is a key problem for CALD women in family violence situations”.<sup>23</sup> This manifests in two ways: first, perpetrators may deliberately isolate women from family and friends, reducing potential support systems; second, some women may fear being isolated from their culture and community as a result of leaving a violent relationship.<sup>24</sup> In the latter case, the possibility may deter women from reporting family violence, particularly when they feel removed and disconnected from the broader Australian community.

InTouch Multicultural Centre Against Family Violence also notes that “many CALD women come from countries which do not have legal, financial or emotional support systems like those we have in Australia, and so they have no awareness whatsoever that such support systems exist”.<sup>25</sup> Lacking the knowledge of these support systems, their isolation and dependency upon their partners renders them more vulnerable.<sup>26</sup> In addition, some migrant and refugee women’s ineligibility for government benefits affects the ability of support services to assist them, as there is no funding available to do so.<sup>27</sup>

18 InTouch Multicultural Centre Against Family Violence, *Submission to the Royal Commission into Family Violence* <<http://www.rcfv.com.au/Submission-Review>> 15; ANROWS, *The ASPIRE Project: State of Knowledge Paper* <<http://anrows.org.au/publications/landscapes/promoting-community-led-responses-violence-against-immigrant-and-refugee>> 19.

19 InTouch Multicultural Centre Against Family Violence, *Submission to the Royal Commission into Family Violence* <<http://www.rcfv.com.au/Submission-Review>> 15.

20 Department of Social Services, *Hearing Her Voice* <[http://plan4womenssafety.dss.gov.au/wp-content/uploads/2015/07/cald\\_womens\\_safety\\_report.pdf](http://plan4womenssafety.dss.gov.au/wp-content/uploads/2015/07/cald_womens_safety_report.pdf)> 14.

21 Ibid.

22 Ibid 25-6; ANROWS, *The ASPIRE Project: State of Knowledge Paper* <<http://anrows.org.au/publications/landscapes/promoting-community-led-responses-violence-against-immigrant-and-refugee>> 28; InTouch Multicultural Centre Against Family Violence, *Barriers to the Justice System Faced by CALD Women Experiencing Family Violence* (2010) <<http://intouch.asn.au/wp-content/uploads/2010/11/LegalBarriersReport.pdf>> 23.

23 Department of Social Services, *Hearing Her Voice* <[http://plan4womenssafety.dss.gov.au/wp-content/uploads/2015/07/cald\\_womens\\_safety\\_report.pdf](http://plan4womenssafety.dss.gov.au/wp-content/uploads/2015/07/cald_womens_safety_report.pdf)> 28.

24 Ibid 28-9.

25 InTouch Multicultural Centre Against Family Violence, *Barriers to the Justice System Faced by CALD Women Experiencing Family Violence* (2010) <<http://intouch.asn.au/wp-content/uploads/2010/11/LegalBarriersReport.pdf>> 10.

26 Ibid.

27 Department of Social Services, *Hearing Her Voice* <[http://plan4womenssafety.dss.gov.au/wp-content/uploads/2015/07/cald\\_womens\\_safety\\_report.pdf](http://plan4womenssafety.dss.gov.au/wp-content/uploads/2015/07/cald_womens_safety_report.pdf)> 26.

It is clear from the literature that one of the greatest barriers migrant and refugee women face in accessing justice is a lack of knowledge about Australian law, the operation of the legal system and how to access legal assistance.<sup>28</sup> Four areas of particular concern are:

- There is considerable variability among migrant and refugee communities about conceptions of what family violence is.<sup>29</sup> Some migrant and refugee women demonstrate a nuanced understanding of the types of behaviours that may constitute family violence.<sup>30</sup> However, there is evidence suggesting that others have more narrow conceptions of family violence, limiting it only to physical violence, if that. Sexual, emotional, verbal and financial abuse may be considered outside the reach of the law.<sup>31</sup> These perceptions may be influenced by the fact some countries of origin do not criminalise family violence or, even if it is criminalised, have permissive attitudes to incidences of family violence.<sup>32</sup>
- Some migrant and refugee women may fear and distrust government and other services. This is a particular issue for women from refugee backgrounds, whose pre-migration experiences of police, courts and governments are highly negative.<sup>33</sup>
- There is a lack of understanding of child protection laws in Australia. In particular, there is evidence of a fear among some migrant and refugee communities that interaction with the legal system following family violence may result in children being removed and placed into foster care.<sup>34</sup>
- Australian family law may differ significantly to the law governing family breakdown in the woman's country of origin. The Family Law Council notes that concepts such as no-fault divorce, both parties to the marriage having the right to initiate divorce, and "equal shared parental responsibility" may be unknown in some migrant and refugee communities.<sup>35</sup> This can lead to women staying in abusive relationships.<sup>36</sup> The Department of Social Services has noted that "[s]ome women fear they will lose access to their children if they separate from their violent partner", particularly when they "come from a culture where the father traditionally takes sole custody of the children if the couple separate".<sup>37</sup>

28 See, eg, Special Taskforce on Domestic and Family Violence in Queensland, *Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland* (2015) <<https://www.qld.gov.au/community/documents/getting-support-health-social-issue/dfv-report-vol-one.pdf>> 128; Women's Legal Service NSW, *A Long Way to Equal* (2007), <<http://www.wlsnsw.org.au/a-long-way-to-equal/>> 19; Department of Social Services, *Hearing Her Voice* <[http://plan4womenssafety.dss.gov.au/wp-content/uploads/2015/07/cald\\_womens\\_safety\\_report.pdf](http://plan4womenssafety.dss.gov.au/wp-content/uploads/2015/07/cald_womens_safety_report.pdf)> 15; Family Law Council, *Improving the Family Law System for Clients from Culturally and Linguistically Diverse Backgrounds* (2012) <<https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Pages/FamilyLawCouncilpublishedreports.aspx>> 32.

29 ANROWS, *The ASPIRE Project: State of Knowledge Paper* <<http://anrows.org.au/publications/landscapes/promoting-community-led-responses-violence-against-immigrant-and-refugee>> 20.

30 Department of Social Services, *Hearing Her Voice* <[http://plan4womenssafety.dss.gov.au/wp-content/uploads/2015/07/cald\\_womens\\_safety\\_report.pdf](http://plan4womenssafety.dss.gov.au/wp-content/uploads/2015/07/cald_womens_safety_report.pdf)> 13.

31 Ibid 14-16; inTouch Multicultural Centre Against Family Violence, *Barriers to the Justice System Faced by CALD Women Experiencing Family Violence* (2010) <<http://intouch.asn.au/wp-content/uploads/2010/11/LegalBarriersReport.pdf>> 15.

32 Department of Social Services, *Hearing Her Voice* <[http://plan4womenssafety.dss.gov.au/wp-content/uploads/2015/07/cald\\_womens\\_safety\\_report.pdf](http://plan4womenssafety.dss.gov.au/wp-content/uploads/2015/07/cald_womens_safety_report.pdf)> 15.

33 Ibid 21; Family Law Council, *Improving the Family Law System for Clients from Culturally and Linguistically Diverse Backgrounds* (2012) <<https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Pages/FamilyLawCouncilpublishedreports.aspx>> 43; Women's Legal Service NSW, *A Long Way to Equal* (2007) <<http://www.wlsnsw.org.au/a-long-way-to-equal/>> 30.

34 Family Law Council, *Improving the Family Law System for Clients from Culturally and Linguistically Diverse Backgrounds* (2012) <<https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Pages/FamilyLawCouncilpublishedreports.aspx>> 32, 38-9; Women's Legal Service NSW, *A Long Way to Equal* (2007) <<http://www.wlsnsw.org.au/a-long-way-to-equal/>> 20.

35 Family Law Council, *Improving the Family Law System for Clients from Culturally and Linguistically Diverse Backgrounds* (2012) <<https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Pages/FamilyLawCouncilpublishedreports.aspx>> 22-3.

36 Ibid 32.

37 Department of Social Services, *Hearing Her Voice* <[http://plan4womenssafety.dss.gov.au/wp-content/uploads/2015/07/cald\\_womens\\_safety\\_report.pdf](http://plan4womenssafety.dss.gov.au/wp-content/uploads/2015/07/cald_womens_safety_report.pdf)> 32.

Immigration status is another major barrier to migrant and refugee women reporting family violence and taking action in the courts, as many fear losing their right to remain in Australia if they do so.<sup>38</sup> Research conducted by the Women’s Legal Service NSW found that many migrant and refugee women do not understand their immigration status and have “misconceptions and misunderstandings” about their rights.<sup>39</sup> Further, many women do not know where to find out about their rights and feared that making inquiries would result in losing their right to remain in Australia.<sup>40</sup>

Research indicates that perpetrators of family violence frequently use women’s uncertainty about their immigration status as a form of intimidation and control.<sup>41</sup> Some migrant and refugee women do not feel that returning to their country of origin is an option, due to the possibility of community disapproval of the relationship breakdown, potential violence, and/or the fear of losing custody of their children.<sup>42</sup> Therefore they feel unable to end the relationship and report the violence.

A consistent barrier identified in the literature is the lack of provision of interpreters for migrant and refugee women.<sup>43</sup> This affects all stages of the legal process—from police responses to final court orders. Common issues identified include:

- A single interpreter being used for both parties in an intervention order case, which is both impractical and poses safety issues for the woman;<sup>44</sup>
- Booking interpreters for insufficient periods of time;<sup>45</sup>
- Lack of understanding among interpreters of legal issues, legal terminology and court procedures;<sup>46</sup>
- Issues with availability of interpreters, particularly in small language groups and languages spoken by new and emerging communities;<sup>47</sup>
- Asking people to interpret for the victim who are inappropriate in the circumstances, e.g. the perpetrator, family members, friends, and children;<sup>48</sup>

38 Ibid 25. See also Women’s Legal Service NSW, *A Long Way to Equal* (2007) <<http://www.wlsnsw.org.au/a-long-way-to-equal/>> 29; ANROWS, *The ASPIRE Project: State of Knowledge Paper* <<http://anrows.org.au/publications/landscapes/promoting-community-led-responses-violence-against-immigrant-and-refugee>> 22; inTouch Multicultural Centre Against Family Violence, *Barriers to the Justice System Faced by CALD Women Experiencing Family Violence* (2010) <<http://intouch.asn.au/wp-content/uploads/2010/11/LegalBarriersReport.pdf>> 17-18.

39 Women’s Legal Service NSW, *A Long Way to Equal* (2007) <<http://www.wlsnsw.org.au/a-long-way-to-equal/>> 29. See also Department of Social Services, *Hearing Her Voice* <[http://plan4womenssafety.dss.gov.au/wp-content/uploads/2015/07/cald\\_womens\\_safety\\_report.pdf](http://plan4womenssafety.dss.gov.au/wp-content/uploads/2015/07/cald_womens_safety_report.pdf)> 25; ANROWS, *The ASPIRE Project: State of Knowledge Paper* <<http://anrows.org.au/publications/landscapes/promoting-community-led-responses-violence-against-immigrant-and-refugee>> 22; inTouch Multicultural Centre Against Family Violence, *Barriers to the Justice System Faced by CALD Women Experiencing Family Violence* (2010) <<http://intouch.asn.au/wp-content/uploads/2010/11/LegalBarriersReport.pdf>> 17-18.

40 Women’s Legal Service NSW, *A Long Way to Equal* (2007) <<http://www.wlsnsw.org.au/a-long-way-to-equal/>> 29.

41 ANROWS, *The ASPIRE Project: State of Knowledge Paper* <<http://anrows.org.au/publications/landscapes/promoting-community-led-responses-violence-against-immigrant-and-refugee>> 24. See also Department of Social Services, *Hearing Her Voice* (2015) <[http://plan4womenssafety.dss.gov.au/wp-content/uploads/2015/07/cald\\_womens\\_safety\\_report.pdf](http://plan4womenssafety.dss.gov.au/wp-content/uploads/2015/07/cald_womens_safety_report.pdf)> 25.

42 Department of Social Services, *Hearing Her Voice* <[http://plan4womenssafety.dss.gov.au/wp-content/uploads/2015/07/cald\\_womens\\_safety\\_report.pdf](http://plan4womenssafety.dss.gov.au/wp-content/uploads/2015/07/cald_womens_safety_report.pdf)> 25.

43 See, eg, Special Taskforce on Domestic and Family Violence in Queensland, *Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland* (2015) <<https://www.qld.gov.au/community/documents/getting-support-health-social-issue/dfv-report-vol-one.pdf>> 293; Women’s Legal Service NSW, *A Long Way to Equal* (2007) <<http://www.wlsnsw.org.au/a-long-way-to-equal/>> 11.

44 Women’s Legal Service Victoria, Submission: Improving the Family Violence Legal System – Royal Commission into Family Violence (2015) <<http://www.rcfv.com.au/Submission-Review>> 31; inTouch Multicultural Centre Against Family Violence, *Barriers to the Justice System Faced by CALD Women Experiencing Family Violence* (2010) <<http://intouch.asn.au/wp-content/uploads/2010/11/LegalBarriersReport.pdf>> 21.

45 inTouch Multicultural Centre Against Family Violence, *Submission to the Royal Commission into Family Violence* <<http://www.rcfv.com.au/Submission-Review>> 38-9.

46 Women’s Legal Service NSW, *A Long Way to Equal* (2007) <<http://www.wlsnsw.org.au/a-long-way-to-equal/>> 24.

47 Department of Social Services, *Hearing Her Voice* <[http://plan4womenssafety.dss.gov.au/wp-content/uploads/2015/07/cald\\_womens\\_safety\\_report.pdf](http://plan4womenssafety.dss.gov.au/wp-content/uploads/2015/07/cald_womens_safety_report.pdf)> 39.

48 Special Taskforce on Domestic and Family Violence in Queensland, *Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland* (2015) <<https://www.qld.gov.au/community/documents/getting-support-health-social-issue/dfv-report-vol-one.pdf>> 294.

- Interpreters acting unethically and attempting to influence or pressure the victim.<sup>49</sup>

The above demonstrates that there has been a degree of research into barriers migrant and refugee women face in accessing justice; however, aside from widespread recognition of issues with providing suitable interpreters, there has been very little research into the barriers faced once women reach the court system.

One study that was undertaken by inTouch Multicultural Centre Against Family Violence in 2010 consulted widely with migrant and refugee women and service providers. It found that "women's discontent with the legal system was highly influenced by the negative experiences they had in the courtroom" and that "in addition to language barriers, court processes presented the biggest challenges to women when it came to accessing help".<sup>50</sup> The confusion of going to court, combined with the lack of emotional support and lengthy delays, meant migrant and refugee women could "easily become discouraged by the experience and withdraw prematurely".<sup>51</sup>

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49 Department of Social Services, *Hearing Her Voice* <[http://plan4womenssafety.dss.gov.au/wp-content/uploads/2015/07/cald\\_womens\\_safety\\_report.pdf](http://plan4womenssafety.dss.gov.au/wp-content/uploads/2015/07/cald_womens_safety_report.pdf)> 40.

50 inTouch Multicultural Centre Against Family Violence, *Barriers to the Justice System Faced by CALD Women Experiencing Family Violence (2010)* <<http://intouch.asn.au/wp-content/uploads/2010/11/LegalBarriersReport.pdf>> 21.

51 *Ibid.*

# Key Issues

## Before Court: Barriers to Reporting Family Violence

The focus of this project is on the actions courts themselves can take to improve the experience of women using the court system. However, in consultations with migrant and refugee women and stakeholders, a number of issues were consistently raised that do not directly involve the courts, but still have significant impacts upon whether a migrant and refugee woman is able to access justice.

It is important to document these barriers, as they form a significant part of the reason why many migrant and refugee women never reach court. The usage of the justice system is a concern of the courts and they have a role to play in rectifying some of these barriers. Further, it is crucial that judicial officers and court staff are aware of the difficulties faced by many migrant and refugee women before they reach court; the barriers they have overcome give context to their experience and may inform actions the court can take to ensure procedural fairness.

The key issues that were consistently raised were:

- Lack of legal knowledge and understanding;
- Lack of financial independence;
- The importance of integrated support services;
- Poor police responses;
- The impact of pre-arrival experiences and traumatic backgrounds;
- Community pressure on women seeking to end relationships;
- Perpetrators threatening the woman's family living overseas;
- Uncertainty about immigration status and fear of deportation; and
- The cost of engagement with the legal system.

## Legal knowledge and understanding

### Understanding family violence

In its 2010 report, the Australian Law Reform Commission noted that “[t]here is no single nationally or internationally agreed definition of family violence”.<sup>52</sup> It is acknowledged that States and Territories have undertaken reviews of their family violence laws and that definitions of family violence, although not identical, are now more similar across jurisdictions.

To take one example, the *Family Law Act* defines family violence as “violent, threatening or other behaviour by a person that coerces or controls a member of the person’s family ... or causes the family member to be fearful”.<sup>53</sup> It identifies several behaviours which may be family violence, including assault, sexual assault, repeated derogatory

<sup>52</sup> Australian Law Reform Commission, *Family Violence - A National Legal Response* (ALRC Report 114), 11 November 2010, para [5.6], <<https://www.alrc.gov.au/publications/family-violence-national-legal-response-alrc-report-114>>.

<sup>53</sup> *Family Law Act 1975* (Cth) s 4AB(1).

taunts, damage to property, unreasonable denial of financial autonomy, unreasonable withholding of financial support, and prevention of the victims from making social and cultural connections.<sup>54</sup>

Many migrant and refugee women reported not realising that their experience falls under legal definitions of family violence. While many recognised that physical assault is wrong, many more did not realise that sexual assault, financial control, forced social isolation and other behaviours outlined above also constituted family violence. Even the recognition of physical assault as illegal was limited among some groups, with women thinking that some level of violence was acceptable and normal within a marriage and that the law could do nothing to intervene. Stakeholders noted that migrant and refugee women who have experienced torture and trauma are especially vulnerable to minimising the comparative impact of family violence in their lives.

### Understanding the role of the justice system

The belief that the law had no role to play in family relationships was common amongst women interviewed. Many women stated that they saw the law as something available for only the most serious matters; they believed their experiences did not meet that threshold. It was often reported that a prevalent fear amongst women in their communities is the belief that going to court makes them criminals; many did not appreciate the role of victims in the justice system.

Many women struggled to adapt to the idea of law having a protective function. Refugee women in particular have come from societies in which the law and legal institutions cannot be trusted; it is difficult to adapt to a system that is protective in function. Migrant and refugee women's lack of awareness of their right to seek protection contributes to them suffering in abusive relationships for long periods of time.

In particular, women commonly recognised that one of the challenges they face living in Australia is their lack of family support. For example, one Burundian woman noted that in her country the families of a married couple play a large role in preventing and stopping spousal abuse by acting as mediators. If the abuse does not stop, then the family will support the woman through separation.

However, many migrant women are one of the first in their extended families to immigrate to Australia and have left behind the support network that would otherwise act as an intermediary group. Some women expressed difficulty in using the legal system when they considered social and family-supported solutions to be more appropriate.

As a result, violence can escalate, with women not knowing who to seek help from and being unaware of their legal rights. They often wait until the situation has reached crisis point before they reach out to others or others intervene for them.

### Fear of child removal

Another major reason why migrant and refugee women will not report family violence is because of a fear that their children will be taken away from them if they do so. The reasons for this included:

- Women believed that authorities would deem they had been bad mothers because they had not protected their children from violence;
- Some women came from cultures where it is tradition for fathers to have sole custody of children after separation;
- Women on temporary visas feared they would be deported while their children remained in Australia; and
- Many women had no understanding of child protection law, leading to confusion and fear about what might happen if they came into contact with government authorities.

<sup>54</sup> Family Law Act 1975 (Cth) s 4AB(2).

## Education is key

Women and stakeholders agreed that it is important to provide information to women about Australian law, legal rights and sources of assistance. They consistently raised the importance of translating information into other languages. However, it was noted that this alone is rarely enough, as many migrant and refugee women have low literacy levels in their own language and not all languages have a written form.

Humanitarian arrivals receive legal education sessions within the first 12 months of arrival, however such sessions are minimal. Moreover, many women and stakeholders expressed concern that women may not retain this information, given they are undergoing so many changes in their lives at the time and the information may not seem to be relevant to them at the point they receive it.

The following suggestions were made about how to improve legal knowledge amongst migrant and refugee women:

- **Community education forums should be held, and judicial officers and police officers should attend.** These forums would demonstrate to women that courts are accessible, and that police can be trusted to respond with respect to women's complaints. It would also be educational for judicial officers and police officers to engage directly with the people who are affected by their decisions.
- **New migrant women should receive continuing education about family violence and the law.** This would ensure that by the time the information needs to be used, women are knowledgeable about their rights and the services available to help them.
- **New migrant men should receive continuing education about family violence and the law.** Many women advised that men are often unaware, or resistant to the idea, that their actions are illegal. Further, many women also indicated that they wanted to keep their family together or were afraid of losing their

only source of financial support. Ongoing education may assist women by making men more aware of the consequences of their harmful behaviours.

## Financial dependence

A major barrier inhibiting migrant and refugee women from leaving violent relationships is their lack of financial independence. Almost all women reported that the family violence they had experienced included financial abuse. They identified their dependence upon their partner as a factor that delayed or prevented them leaving their relationships, or that led their friends to stay in, or return to, abusive relationships.

Although many women experiencing family violence suffer financial abuse, there are particular issues that make migrant and refugee women more vulnerable to it. Further, these barriers may make it more difficult for them to leave the relationship. The common issues identified were:

- Language barriers and/or lack of familiarity with Australian workplace norms, making it difficult to gain employment;
- Lower education levels, including illiteracy—this made it difficult to find work, as well as to independently manage finances;
- Visa status with limited or no work rights;
- No access to Centrelink;
- For women on temporary visas, limited access to women's refuges.<sup>55</sup>

Common stories emerged. Women reported being forced to redirect their wages or Centrelink payments to their husband's bank account. Women who did not work or receive Centrelink benefits had no independent income and reported being denied financial support by their partners.

<sup>55</sup> Work rights and access to Government funded services and payments are tied to visa class categories. Some categories, including temporary work visas and bridging visas, do not entitle the holder to access to support services or, in some states, access to free schooling for dependent children.



Women emphasised that their partners exploited their increased vulnerability arising from their limited English skills, limited social and family networks, and lack of knowledge of Australian law and support services.

Women often felt that they had no options—if they left their partners they would be homeless and without income. This was of even greater concern for women with children. While this is a common experience for all women in similar situations, the experience of migrant and refugee women is exacerbated by the factors outlined above.

#### Case study 1

A woman from Papua New Guinea related how she had returned to her husband, as she could not afford to look after her children without him. She had poor English skills and no family in Australia. As she was a dependent on a 457 visa, she had no capacity to access Centrelink. As a temporary migrant, she was also unable to gain a place in a women's refuge. The lack of support left her feeling that she had no choice but to continue living in a violent relationship.

## The importance of integrated support services

A positive theme that emerged throughout the consultations was the important role that support services play in assisting women. However, stakeholders suggested that it would be beneficial if there was greater interaction between legal, settlement and domestic violence services to share expertise. This would ensure the highest level of support for migrant and refugee women experiencing family violence or family breakdown. In particular, it was noted that case workers need to be trained to understand the operation of the legal system to assist them to make appropriate referrals and better support women through the court process. It was suggested that talks from judicial officers would assist in strengthening support systems by providing greater information about legal processes.

#### Case study 2

A woman in her mid-20s from the Dominican Republic left her relationship of three years following ongoing domestic violence. Hers was one of the positive stories heard in the consultations.

Unlike the majority of the women consulted, she was fluent in English and so had no communication difficulties. In addition, she was able to access a wide range of services to support her decision to leave her partner. She gained a place at a woman's refuge. She also received assistance from a support worker at court, who spent a significant amount of time helping her draft her application for an intervention order, as well as her application for legal aid (which she received).

She was successful in obtaining an intervention order that met her needs. Specifically, in response to threats from her ex-partner to send nude photographs to her family and friends and publish them online, the Magistrate included conditions prohibiting her ex-partner from contacting anyone on her social networking sites or publishing photos or making comments about her on the internet.

The only barrier she felt she had experienced was not having the financial means to pay for services, as she was made redundant during the legal process. Further, her ex-partner had agreed to accept the order and the conditions but only if it was for one year instead of two. She agreed to this as she was advised she may be liable for his legal fees if she did not which was not necessarily true.

Overall, however, she said she found the court process to be "an empowering experience" and attributed this the extensive support she had received from a range of people and services. This demonstrates the importance of integrated support.

## The impact of police responses

In every consultation with women and stakeholders, the impact of police responses to family violence and their enforcement of intervention orders were raised. It was recognised that many police officers play a positive role in encouraging and supporting women to report family violence. However, there were also many negative stories of police behaviour. Although this is not something the courts can remedy, it is important to document. It provides part of the explanation for why women are reluctant to involve the law in resolving family violence matters and why many have little trust in the legal system's ability to protect them.

### Examples of negative behaviour included:

- **Failing to engage an interpreter**

Women reported instances of police asking the perpetrator to interpret for the woman. This is a clear conflict of interest. It endangers women, as they are highly unlikely to disclose details of abuse in such a situation and, even if they do, the perpetrator is unlikely to interpret correctly.

Women also told of neighbours or the family of the perpetrator being asked to interpret. This poses risks for the woman, as the stand-in interpreter may not interpret correctly and may deliberately fail to reveal what the woman has said to the police. The woman may also not feel comfortable disclosing what has happened to a neighbour. Any differences between what the interpreter tells police and what the woman later tells the court may negatively impact upon her credibility in court and detract from her ability to obtain an intervention order.

- **Lack of understanding of the impact of culture upon communication**

There were also reports of police officers who were unaware that different cultures may communicate in different ways.

For example, some languages do not modulate as much as English, giving the impression to a native English speaker that the woman is not emotionally affected. Conversely, some women reported that police officers perceived them to be exaggerating when they reported family violence because of their communication style.

- **Failure to enforce intervention orders**

Women across the country expected that they would have to report breaches of intervention orders at least two or three times before police would respond. Many stated that they felt they received no support from the police when they called to report violence, so they chose to remain silent. If police did not respond appropriately, reporting violence made the situation far worse and contributed to men feeling at liberty to continue the harassment and abuse, in contravention of the court order.

The impact of negative experiences with police can have detrimental effects for women in migrant and refugee communities, particularly smaller ones, as information and rumours can spread quickly and influence other women not to seek help. There is a need for police officers, judicial officers and service providers to provide an effective counter-narrative, emphasising that negative experiences should not occur and that work is being done to improve responses.

### Case study 3

An African refugee woman fled from Western Australia to Tasmania to escape her husband. The intervention order was removed, as it was deemed he posed no threat to her from interstate. However, he followed her to Tasmania and she successfully obtained a new intervention order. After the police failed to respond to multiple breaches, the woman became so fearful that she threatened him with a knife. She ended up in prison on remand for attempted assault and her children were placed in foster care.

#### Case study 4

An Indian woman came to Australia after an arranged marriage. The husband's family complained about the dowry. She was physically abused, treated like a slave, was not allowed to go anywhere by herself and had no control over her finances, as her pay was directed to his bank account. He monitored her phone calls and attended all doctor's appointments with her, telling the doctor she could not speak English. This woman developed severe depression and anxiety and was self-harming. She was hospitalised as a result.

For a long time, she was scared to even approach the police, but she eventually went to the police station to apply for an after hours interim intervention order. She asked for an interpreter, as she felt more comfortable speaking in her own language due to her high level of stress. However, she was told she could not have one because it was too late at night. The police officer took short notes and wrote that she had suffered no physical abuse despite her having given examples of it.

Two days later, she was told that the Magistrate would not grant the order, as there was no direct threat. While she did later obtain an intervention order, she remained traumatised by her experience with the police and their poor response. She expressly stated that she felt that Indian women were not treated properly because they are not citizens or permanent residents and "because they are brown". She had previously thought that Australia's legal system was good and fair, but now believed it was not.

#### Positive police responses

Although there were a number of negative stories about the police, positive examples also came through. They demonstrate the impact that good policing has upon a woman's ability to leave a violent relationship.

#### Case study 5

A Croatian woman who immigrated to Australia less than three years ago had been experiencing physical, emotional and financial abuse for almost that entire period of time. One night her partner attempted to strangle her. After she tried to defend herself, he called the police to complain that she had assaulted him.

When the police arrived, she did not complain about the violence. However, the policewoman noticed her bruises and asked her about them. The woman was encouraged to apply for an intervention order and was supported throughout the process. She had previously been afraid to report the abuse, as her husband had told her nobody would believe her since she could not speak English.

She emphasised that she was very fortunate that the policewoman had seen what was happening and helped her, as otherwise she would not have had the courage to leave the relationship.

### Case study 6

A woman from China met her Australian husband on the internet several years ago. She was a peasant and he financially supported her and her family. He made several visits to China and they married in 2013. She arrived in Australia in late 2014. After only a few days he began physically and sexually abusing her. He gave her very little money and isolated her. She spoke barely any English.

One night after he had seriously beaten her she called the police. She was put in touch with a women's refuge and assisted to apply for an intervention order. When she went to court she was desperate to see her husband but the police stopped her in order to protect her.

She received an intervention order. Although this woman was still very traumatised by the experience, she was grateful that the police and the court had given her so much support. It is unlikely that without this she would have been able to leave her husband.

## Impact of pre-arrival experiences

Many stakeholders raised the effect that a history of torture and trauma has upon women experiencing family violence. As noted above, women from refugee backgrounds may be less likely to identify their experience as problematic and recognise that they need support and assistance. Further, their prior experience of government authorities may be negative, making it difficult to transition to trusting government institutions to provide protection from violence.

Stakeholders noted that, as a result, it is more difficult for these women compared to non-traumatised women to seek help from the police and legal system. Those who do enter the legal system are often wary of people in positions

of authority and reluctant to disclose too much information. As one stakeholder stated, courts need to be aware that women who are traumatised may fail to turn up to court for their hearing because of their fear of authority and their partner. She went on to advise that court staff need to be accepting of this reality and not punish women for this, as that only adds to the trauma.

For migrant and refugee women lacking a basic familiarity with the Australian legal system, the formality of proceedings is intimidating, as is being in the same room as their partner.<sup>56</sup> Further, women are often not provided with interpreters in court proceedings.<sup>57</sup> Women told how the stress of being questioned or involved in proceedings in their non-native language was incredibly stressful. These issues were exacerbated for women from traumatic backgrounds, impacting on their capacity to give evidence.

### Case study 7

A woman from Africa came to Australia as a refugee. She had no literacy in her own language and had experienced significant torture and trauma. In Australia, her partner was physically and sexually abusing her. It took a long time for her to gain the courage to seek assistance.

When she went to court for an intervention order, she was not provided with an interpreter even though she spoke virtually no English. She found the entire process of going to court incredibly intimidating and was unable to look at the judge, which she said irritated him. He demanded that she look at him.

This demonstrated a lack of awareness about the trauma survivors of family violence experience, which, for this woman, added to her previous experiences in her home country. The court process exacerbated her existing trauma and she struggled to recover.

<sup>56</sup> See 'Going to Court' for more discussion of this point.

<sup>57</sup> See 'Communication Barriers: Working with Interpreters' for more discussion of this point.

## Community pressures

Some migrant and refugee women live in communities where divorce is stigmatised. Women reported that those who seek divorce and/or intervention orders against their partners are often ostracised and shunned for breaking up the family. The risk of this often deters women from reporting family violence until it has reached a situation of crisis point. It can also result in an increased risk that they will withdraw their application.

The threat of being isolated from family and cultural community is especially challenging for migrant and refugee women, as they are living in a new country where their cultural community is often their only source of support. Many women stated how important it was for them to be able to communicate in their own language and with people from the same cultural background, as it helped ease the transition to life in Australia. Further, many women raised the importance of family in their cultures. They stated that the prospect of being ostracised from their family was unthinkable and this was a major reason why they had been reluctant to leave their partners.

For example, one refugee woman told how she tried to avoid her community because of judgment about her family situation. However, she found it to be immensely difficult because she was homesick and wanted to speak her own language and be with people from her own culture. This tension was expressed by many participants; they recognised the negative influence their community could have upon their wellbeing, but were understandably reluctant to disassociate themselves from it. These considerations were reported to be of even greater concern for women living in regional and rural areas. They often had smaller cultural community networks and so were unable to find alternative support systems that understood their language and background.

At the Melbourne roundtable, several participants raised a program run at the Victorian Magistrates' Court as an example of good practice. Women who seek to withdraw their intervention order applications have contact with an Applicant Support Worker or a lawyer and have the process and law explained to them. Further, at the Sunshine Magistrates' Court, Indian women are referred to a survivors of family violence group for additional support.

These programs help women understand the effect of an intervention order and make an informed choice about whether to continue their application. It was suggested that it would be beneficial to implement similar programs at other Magistrates' Courts across Australia.

### Case study 8

A woman from Burundi had received an intervention order and was satisfied with the outcome. Afterward, she came under an extraordinary amount of pressure from her community. She was told she had brought shame upon her family and must go back to her husband. She returned to court with family members and female elders, who spoke on her behalf and requested the intervention order be lifted. She felt powerless to stop this and accepted what was said. The order was removed, the husband returned and the violence escalated.

### Case study 9

A woman came to Australia from India after an arranged marriage. She was living with her in-laws and was physically abused by her husband and sister-in-law, who complained that the dowry was unsuitable. She was also financially and socially isolated.

At one point she became pregnant and was excited at the prospect of starting a family. She thought it would help her relationship with her husband. However, he did not want the child and demanded she have an abortion that she did not want. When she went to the doctor she planned to tell him of her opposition so that he could stop it. However, her husband went to her counselling appointment with her and told the doctor she couldn't speak English and he had to translate. She felt powerless to do anything and proceeded with the abortion.

This woman believed she had no choice but to stay with her husband, as the stigma of divorce is so high in India. Nobody in her family had ever been divorced and her family advised her she should stay with him and try to be a better wife. She was told that if she divorced she would ruin her siblings' marriage prospects. Eventually, the violence became so bad that her cousin's wife called the police. The woman was furious that she had done this, as she was convinced that her life would be destroyed if she reported her husband for the abuse and sought a divorce. She also did not believe the law could help her.

Eventually she was assisted to apply for an intervention order. She provided a significant amount of medical evidence to support her claims of violence. Despite this, the Magistrate decided in favour of her husband, stating that if her cousin had known about the violence he would have reported it; as he hadn't, she must have exaggerated it. This ignored the pressure she was facing not to report violence and her belief that she simply had to try to "be a better wife" to stop the abuse.

As a result of her court experience, this woman has gone on to advise other women that the legal system cannot help them.

The complexities of family, culture and violence are significantly heightened for migrant and refugee people who also identify as Lesbian, Gay, Bisexual, Transgender, Queer or Intersex. Power dynamics and perceived gender experiences are firmly grounded in traditional conceptions of familial roles and gender identities. Power dynamics between couples of the same gender are often difficult to comprehend. As a result, in certain communities, LGBTQI couples can face simultaneous manifold points of discrimination from community and family members who view violence from a traditional cultural framework.

## Immigration status

A major concern of migrant and refugee women experiencing family violence is that they will lose their right to remain in Australia if they report the abuse. Many women reported their partners had exploited this fear and manipulated them by threatening to deport them if they reported the violence or left the relationship. There were also examples given of some community leaders actively encouraging this fear. Even women who had gained citizenship or permanent residency were fearful of this, demonstrating the need for strong education about legal rights to counter misconceptions of the law.

For women without permanent residency, their right to remain in Australia independent of their partner is less concrete. It will depend upon their visa subclass and whether they are eligible to apply for permanent residency on the basis of the family violence provisions.<sup>58</sup> There is a widespread lack of awareness about these provisions among women who are eligible to apply. The consultations heard many stories of women who had a right to remain in Australia feeling powerless to leave relationships because of their ignorance of their rights.

Women who are ineligible to apply for permanent residency on this basis are particularly vulnerable, as they have a legitimate concern that if they report the violence and end the relationship they will be deported. Their only option is to apply for a new visa, which is both difficult and expensive.

Stakeholders repeatedly raised this group of women as a group of particular concern, as they may not feel that returning to their home country is an option. This could be for a variety of reasons; most often because of a legitimate fear of being shunned by their family and community for divorcing. Women in this situation may choose to stay in abusive relationships out of fear of the alternative.

### Case study 10

An Indonesian woman migrated to Australia with her seven-year-old son so that she could live with her Australian husband. In Indonesia she had run a successful business and had a degree as an industrial engineer. When she arrived in Australia her husband began sexually, financially, psychologically and socially abusing her. He would make her speak English on phone calls to her family so that he could monitor what she said.

After he refused to take her son to hospital for urgent medical treatment because it was too expensive, she left him and sought help from a refuge. She lived in a regional area and was advised to travel to the nearest city and apply for an intervention order there. During the time taken to apply for the intervention order, her husband repeatedly threatened to have her deported, made threats against her life and attempted to track her down.

She was successful in her application for an intervention order and her lawyer advised her of her right to apply for permanent residency. She had not been aware of the family violence provisions. She had feared being deported before she had been able to obtain a divorce, given that it is difficult to obtain a divorce across two countries.

<sup>58</sup> Women who entered Australia on a partner visa and have applied for permanent residence can still be considered for permanent residence following the end of the relationship if their partner committed family violence. They must be able to provide evidence of the family violence and demonstrate that the relationship was genuine. See Department of Immigration and Border Protection, *Fact Sheet – Family Violence Provisions* <<https://www.border.gov.au/about/corporate/information/fact-sheets/38domestic>>.



Some women reported a view amongst some judicial officers that a claim of domestic violence was an indicator that the woman was making a fraudulent claim in order to engage the domestic violence provisions, even if she was only a matter of weeks away from obtaining a permanent spousal visa. This is contrary to the evidence, which indicates that the vast majority of applicants have genuine claims.<sup>59</sup>

At the national roundtable, one stakeholder raised the issue of the number of migrant and refugee women who are being trafficked into Australia on spousal visas for sexual slavery and servitude. She noted that it is necessary to provide greater education for social workers and courts about this problem to encourage safe disclosure and that it is particularly important to be mindful of how visa status will affect a woman's willingness to disclose such abuse.

### Costs inhibiting legal representation

A major barrier to women approaching the legal system is the cost involved. The issue of the cost of accessing justice is well documented and recognised with respect to all participants in the legal system.<sup>60</sup> While Legal Aid and community legal centres are able to provide assistance to low income earners, many people earn too much to qualify but not enough to be able to afford the cost of a lawyer.

Many women consulted expressed frustration at having to represent themselves in court. This is an intimidating experience for anyone unfamiliar with the legal system. However, the disadvantages of being unrepresented in court are exacerbated for migrant and refugee women, who often do not speak English as their first language and are

unfamiliar on even a basic level with the legal system. Further, many women reported that while they were unrepresented, their partners had the funds to hire lawyers. This added to their feeling of intimidation, as they felt (and likely were) disadvantaged as a result.

This problem included family law proceedings, as well as family violence matters. At one session, women discussed how expensive it was to obtain a lawyer for family law matters. Many women reported deciding it was not worth it but then having difficulty representing themselves in court and feeling that they had been taken advantage of in proceedings. They were disappointed that they could not receive legal advice from legal aid or community legal centres.

## Communication Barriers: Working with Interpreters

The 2011 Census recorded that more than 300 languages are spoken in Australian households.<sup>61</sup> There are considerable variations in languages spoken at home between States and Territories, and between cities, regional and remote areas.

Nationally, 76.8% of Australians speak only English at home. The remaining top twenty most frequently spoken languages were: Mandarin (1.6%), Italian (1.4%), Arabic (1.3%), Cantonese (1.2%), Greek (1.2%), Vietnamese (1.1%), Spanish (0.5%), Hindi (0.5%), Tagalog (0.4%), German (0.4%), Korean (0.4%), Punjabi (0.3%), Macedonian (0.3%), Croatian (0.3%), Turkish (0.3%), French (0.3%), Indonesian (0.3%), Filipino (0.3%) and Serbian (0.3%). Twelve per cent of Australians speak other languages.<sup>62</sup>

59 Australia's National Research Organisation for Women's Safety, "Promoting community-led responses to violence against immigrant and refugee women in metropolitan and regional Australia: The ASPIRE Project: State of Knowledge Paper" (October 2015) 23.

60 Productivity Commission, *Access to Justice Arrangements Inquiry*, 2014, <<http://www.pc.gov.au/inquiries/completed/access-justice/report>>.

61 Australian Bureau of Statistics, *2011 Census shows Asian Languages on the Rise in Australian Households* (21 June 2012) <<http://www.abs.gov.au/websitedbs/censushome.nsf/home/CO-60>>.

62 Australian Bureau of Statistics, *Census Fact Sheet: Languages Spoken at Home* <<http://www.abs.gov.au/websitedbs/censushome.nsf/home/mediafactsheetsfirst?opendocument&navpos=620>>.

Among migrants, almost half (49%) of long-term residents and 67% of recent arrivals speak a language other than English at home.<sup>63</sup> The 2011 Census found that 655,379 people who spoke a language other than English at home reported that they spoke English not well or not at all. These 655,379 people were dispersed over more than 40 different language communities of different sizes ranging from Sinhalese (2,691 speakers who did not speak English well) to Mandarin (comprising 78,342 people who did not speak English well).<sup>64</sup>

Consistent with previous research, this study identified limited English language proficiency as one of the biggest barriers migrant and refugee women face when interacting with the legal system. Women with limited English language skills are at a distinct disadvantage when dealing with police, engaging support services, completing forms and understanding paperwork, communicating with court staff, participating in court proceedings and understanding court orders. The provision of professional, appropriate and skilled interpreters is therefore crucial if the legal system is to respond to the needs of migrant and refugee women and ensure they can participate fully in court processes.

At every stakeholder roundtable and consultation with migrant women, the issue of interpreting in court was raised as a serious concern.

The following were the key issues cited:

- Lack of clarity about who is responsible for engaging an interpreter;
- Failure to assess the need for an interpreter, or incorrectly assessing need;
- The skill of interpreters being engaged;
- Lack of awareness amongst judicial officers and lawyers about how to work with interpreters;

- The need to ensure that interpreters are appropriate for the individual woman, having particular regard to:
  - The gender of the interpreter;
  - The importance of maintaining confidentiality; and
  - Having separate interpreters for applicants and respondents; and
- Unethical and poor professional conduct by interpreters.

## Responsibility for engaging an interpreter

Stakeholders frequently expressed concern about the lack of clarity surrounding who is responsible for engaging an interpreter. Specifically, stakeholders sought greater information about when the court will arrange and provide an interpreter. They noted that there is currently very little publicly available information about court interpreter policies. Further, the information that is available is often difficult to locate.

This feedback reflects previous research, which found that there is no uniformity across jurisdictions about the availability of guidelines for engaging interpreters and the contents of any guidelines.<sup>65</sup>

The lack of clarity and publicity surrounding responsibility for engaging an interpreter is highly problematic. Women reported not knowing who to approach to arrange for one to be provided, as did support workers who were consulted. This was particularly an issue for self-represented women.

<sup>63</sup> Australian Bureau of Statistics, *Reflecting a Nation: Stories from the 2011 Census – Cultural Diversity in Australia, 2012-2013*, cat 2071.0, <<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/2071.0main+features902012-2013>>.

<sup>64</sup> Department of Immigration and Border Protection, *The People of Australia Statistics from the 2011 Census*, (Commonwealth of Australia, 2014) <<https://www.border.gov.au/ReportsandPublications/Documents/research/people-australia-2013-statistics.pdf>>

<sup>65</sup> Sandra Hale, *Interpreter Policies, Practices and Protocols in Australian Courts and Tribunals: A National Survey* (Australasian Institute of Judicial Administration, 2011) xii. Note also that the Judicial Council on Cultural Diversity is in the process of developing a national protocol on interpreting and translating in court, which will establish uniform processes across Australia.

Stakeholders also reported that, even when courts had guidelines stating that they would provide interpreters in intervention order applications, interpreters were not consistently engaged. Again, this accords with previous research.<sup>66</sup> The prevailing consensus was that courts, registry staff and lawyers engage in a process of burden shifting, including to avoid the cost of paying for an interpreter.

The consultations heard numerous stories of women with limited English skills who had sat through court proceedings with no understanding of what was occurring and with no one in the courtroom with them who recognised this. An inability to fully participate in proceedings has clear implications for procedural fairness, as well as a woman's ability to understand and act upon what has happened in court. Many women reported finding courts to be difficult institutions to navigate; a failure to accommodate linguistic diversity heightens these pre-existing feelings of isolation and disconnect and undermines the potential for courts to be accessible to all.

## Assessing the need for an interpreter

A closely related issue is identifying women who need an interpreter. Participants at all roundtables noted that there are rarely any processes in place to identify the need for an interpreter in advance of a hearing. As a result, women frequently attend court without an interpreter having been booked. Stakeholders reported that courts adopt one of three responses to this:

- **The case is adjourned to allow an interpreter to be arranged.** This is the best case scenario, as it ensures the woman will be able to participate and understand what is happening in court. However, it is still problematic because it delays resolution of the matter. Attending court is a traumatic process and women

consistently expressed frustration at the time taken to resolve matters. Delays due to a failure to assess the need for an interpreter contribute to ongoing trauma, as well as disillusionment with the legal system's responsiveness.

- **The case proceeds without an interpreter.** The risks of this are self-evident. Women are excluded from participating and the isolation further undermines confidence in the justice system.
- **A friend or family member is asked to interpret.** The risks of this will be discussed below.<sup>67</sup>

Stakeholders and women noted it is commonly assumed that if a woman speaks a basic level of English she does not need an interpreter in court. However, the ability to speak or understand basic English is different to the ability to communicate effectively in a courtroom context.

Legal language and proceedings are complex and difficult to understand for anyone unfamiliar with court; non-native English speakers are at an even greater disadvantage. For them to understand and be understood in court requires language which may be outside the range of their English skills. Further, women in court for family violence or family law matters are in a situation of high emotional stress. This makes it more difficult for migrant and refugee women to communicate in English and having to do so creates an added pressure.

<sup>66</sup> Sandra Hale, *Interpreter Policies, Practices and Protocols in Australian Courts and Tribunals: A National Survey* (Australasian Institute of Judicial Administration, 2011) xii.

<sup>67</sup> See 'Interpreter skill'.

### Case study 11

The woman from India in case study 9 had a reasonable level of fluency in English. She requested an interpreter in the final hearing for her AVO application, as she was required to give evidence and did not feel confident doing so in English.

Her lawyer told her she would not be able to have an interpreter, as she had not requested one previously. He believed that as the Magistrate had seen she could speak English, he would not permit her to use an interpreter and her husband would challenge the need. This was unlikely to be true and raises concerns of miscommunication from lawyers about the engagement of interpreters, which can have a detrimental impact upon a women's safety.

The woman was highly distressed by not having an interpreter. She felt she had not been able to communicate properly because of the pressure she was under. She would have been more confident and comfortable speaking her own language.

This case study illustrates the lack of clarity around whose responsibility it is to determine need for an interpreter, as well as the consequences of not using an interpreter early in the proceedings. The system needs to be responsive to the views of the victim, and accommodate what she has learnt from her earlier experience of court proceedings.

Some roundtables raised the issue that there appears to be a perception amongst some judicial officers and lawyers that it would give an applicant an unfair advantage in a hearing if they were permitted to use an interpreter even though they appeared to have adequate English skills.

In addition to raising the difficulties non-native English speakers face when communicating in a courtroom context, the participants noted that

this view misconstrues the nature of interpreting—even with highly qualified interpreters, a person gains no unfair advantage from communicating through an interpreter. Rather, an interpreter helps ensure full participation in the hearing and equal access to the law. As one stakeholder stated, "it is better to err on the side of caution; if in doubt, an interpreter should be used".

Stakeholders were also keen to emphasise that an interpreter benefits everyone in the courtroom, not only the person with limited English proficiency, by facilitating clear communication and minimising the risk of miscommunication.

In light of these considerations, there was consensus across the roundtables that courts need to establish clear guidelines clarifying who is responsible for engaging an interpreter and identifying the need to do so. This would include detailing the responsibilities of all those involved in court proceedings (lawyers, applicants, respondents, court staff and judicial officers), including identifying who is ultimately responsible and accountable for determining whether an interpreter is required.

### Interpreter skill

NAATI is the body responsible for setting and monitoring the standards for the translating and interpreting profession in Australia. It does this through a credentialing system. NAATI accredits interpreters at a number of levels, according to their proficiency and skill. These include the following:<sup>68</sup>

- **Professional interpreter:** This is the minimum level recommended by NAATI for interpreters undertaking court work.
- **Paraprofessional interpreter:** This represents a level of competence in interpreting for the purpose of general conversations.

<sup>68</sup> NAATI, "Outline of Credentials" (October 2010) <[www.naati.com.au/PDF/Misc/Outlines%20of%20NAATI%20Credentials.pdf](http://www.naati.com.au/PDF/Misc/Outlines%20of%20NAATI%20Credentials.pdf)>.

- **Interpreter Recognition:** This is an acknowledgement that at the time of the award the applicant has had recent and regular work as an interpreter, but no level of proficiency is specified. To be granted NAATI Recognition, the applicant must provide proof of English proficiency and complete an introductory NAATI workshop or related activity. There is no NAATI testing at this level. Recognition is available in any language in which NAATI does not offer accreditation testing.

There are 51 languages in which interpreters are available at Professional level and 110 languages where interpreters are available at Paraprofessional level.

Stakeholders reported widespread concern about the competency of interpreters engaged to work in court. The following were the major concerns raised:

- **Courts are not required to engage the most qualified interpreter available.** Roundtables in all states noted that, even where professional interpreters are available, they are often not employed. Instead, the job may be given to a paraprofessional interpreter, a NAATI-recognised interpreter, or even a person with no accreditation.
- **There are many languages, particularly in new and emerging communities, in which no interpreters are available.** Stakeholders were of the view that there is a pressing need for clear guidelines to be developed for judicial officers and court staff about who can interpret in cases where no interpreters are available and what steps must be taken to ensure the women involved receive a fair hearing.
- **Some judicial officers demonstrate a lack of awareness about the skills necessary for interpreting.** There were numerous stories from women and stakeholders about women being told a support worker or a friend could interpret for them. This ignores the specialist skills required of an interpreter, the specialised legal language of the courtroom, and the training and

experience needed to be able to interpret in a court setting.

- **Some judicial officers are asking children or other relatives to interpret.** This is particularly inappropriate in cases involving family violence, as women may be reluctant to fully disclose the circumstances of their abuse to a relative, especially children. There is a significant risk of traumatising children who are placed in such a role.

Many stakeholders also found it problematic that there is no specialist legal interpreting qualification in Australia and that there is no requirement for interpreters to undertake training about working in legal settings. Every roundtable raised the difficulties faced by interpreters who are required to interpret unfamiliar legal terminology, particularly given that interpreters are rarely given any information about the case prior to its commencement.

It was recognised that interpreters need more guidance and training about interpreting in court. Suggestions were made about how this could be done, including:

- Legal interpreting training and skills recognition, including interpreting in family and domestic violence matters;
- At the national roundtable, it was noted that NAATI accredited interpreters are required to undergo professional development training. It was suggested that the courts could run training sessions on court values and expectations for interpreters and NAATI could create Continuous Professional Development points for registration. This could assist in aligning interpreter practice to court expectations.
- At the NSW roundtable, it was noted that the Community Relations Commission has produced two useful resources—“Legal Glossary for Interpreters”<sup>69</sup> and

<sup>69</sup> Community Relations Commission, *Legal Glossary for Interpreters* (November 2010), <[http://www.crc.nsw.gov.au/\\_data/assets/pdf\\_file/0015/18042/Legal\\_Glossary\\_For\\_Interpreters.pdf](http://www.crc.nsw.gov.au/_data/assets/pdf_file/0015/18042/Legal_Glossary_For_Interpreters.pdf)>.

"The Use of Interpreters in Domestic Violence and Sexual Assault Cases"<sup>70</sup>. It was suggested that greater attention should be given to existing resources such as these and the possibility of replicating them in other jurisdictions.

In terms of ensuring quality interpreting, the Melbourne roundtable noted how beneficial it had been to have a full-time Vietnamese interpreter at Sunshine Magistrates Court. Court staff are confident in his ability and employing him full-time ensures that he is available when needed. It was suggested that it would be beneficial to replicate this model in other courts located in areas where particular language groups are concentrated.

## Working with interpreters

Stakeholders suggested that a major barrier to effective interpreting in court is that some judicial officers and lawyers are unaware of how to work with interpreters. They emphasised that it is important that judicial officers and lawyers receive training and education about working with interpreters, for they bear responsibility for ensuring that interpreters understand the language being used in court.

Suggested steps that judicial officers and lawyers can take to ensure effective communication include:

- Explaining unfamiliar legal terminology;
- Ensuring the interpreter feels able to seek clarifications when necessary;
- Speaking clearly, at a reasonable pace, and in short and simple sentences; and
- Providing briefings in advance.<sup>71</sup>

Several examples were given in the consultations of judicial officers chastising interpreters for taking too long to interpret or for engaging in conversation with witnesses to clarify meaning. Stakeholders emphasised that judicial officers, lawyers and court staff need to recognise that proceedings involving an interpreter will take longer than proceedings without one and accommodations need to be made for that fact.

Further, there needs to be greater understanding that interpreters do not interpret literally and they may need to seek clarification from the witness or self-represented litigant to do their job to the best of their ability. There was agreement that greater training, education and resources would assist all participants in the court system to work more effectively with interpreters and thereby improve the experience for migrant and refugee women.

<sup>70</sup> Community Relations Commission, *The Use of Interpreters in Domestic Violence and Sexual Assault Cases* (June 2002) <[http://www.crc.nsw.gov.au/about\\_crc/publications/documents/interpreters\\_domestic\\_violence](http://www.crc.nsw.gov.au/about_crc/publications/documents/interpreters_domestic_violence)>.

<sup>71</sup> For more information on guidelines for magistrates and judges on working with interpreters in courts, see Sandra Hale, "Guidelines for Magistrates and Judges on Working with Interpreters in Court" and "Guidelines for Lawyers on Working with Interpreters in Court" available at <[http://ausit.org/AUSIT/About/Ethics\\_\\_\\_Conduct/Best\\_Practices/AUSIT/About/Best\\_Practices.aspx](http://ausit.org/AUSIT/About/Ethics___Conduct/Best_Practices/AUSIT/About/Best_Practices.aspx)>.

## Ensuring appropriate interpreters are engaged

### Gender-specific interpreters

Both women and stakeholders raised the fact that many migrant and refugee women do not feel comfortable working with a male interpreter in family violence matters, as they find it difficult to disclose the full details of sexual assault, rape and other forms of abuse to a male. Further, some women stated that they associated male interpreters with the perpetrator and believed they would side with the perpetrator and not correctly interpret what they say.

There was consensus across the roundtables and focus groups that women should be given the option of having a female interpreter when available.

Stakeholders commented that for some language groups there are more male interpreters than there are female and that male interpreters generally have higher qualifications. This demonstrates that there is currently a tension between engaging an interpreter of the highest professional standard and engaging an interpreter who is gender-appropriate. As a result, many stakeholders emphasised that there is a need for more female interpreters at the professional level. Bilingual women should be encouraged to undertake interpreter training in order to ensure the supply of interpreters matches the needs of people requiring interpreters.

### Maintaining confidentiality

Another issue frequently raised in consultations was that interpreters are frequently booked despite knowing the victim and/or the perpetrator. This occurs frequently in new and emerging communities, where there are less interpreters available and where the communities tend to be smaller and concentrated in certain geographic areas. In smaller cities and regional areas,

the possibility of one of the parties knowing the interpreter was of even greater concern, given migrant and refugee communities are living in what are already small geographical areas.

Knowing the interpreter is a significant barrier for migrant and refugee women accessing justice, as they can be anxious that the interpreter will breach confidentiality and tell their story to their community. There were several reports of this having happened to women or their friends. As was explained above, migrant and refugee women often face significant pressure from their communities to withdraw their application and may be isolated if they do not.

The prospect of an interpreter breaching confidentiality heightens women's emotional stress in court and may result in them not disclosing the full details of the violence or not proceeding with their application at all. This has the potential to undermine their case. Even if women do not fear a breach of confidentiality, they are understandably reluctant to disclose such personal details to a known member of their community.

Service providers reported a number of different ways that they attempt to counter this problem, including:

- Using interpreters from different suburbs, different parts of the state, or in particularly serious cases, from interstate;
- Confirming with the woman before the hearing whether she knows the interpreter and is happy to proceed with that interpreter;
- Using the Translating and Interpreting Service (TIS National)<sup>72</sup>—however, it was noted that not all services are funded sufficiently to access it and it can be difficult to use in the courtroom, although examples of this occurring were raised.

<sup>72</sup> TIS National is an interpreting service provided by the Department of Immigration and Border Protection for people who do not speak English and for agencies and businesses that need to communicate with their non-English speaking clients. The TIS National immediate phone interpreting service is available 24 hours a day, every day of the year for the cost of a local call for any person or organisation in Australia who needs an interpreter. See <<https://www.tisnational.gov.au/en/About-TIS-National>>.



**Case study 12**

A migrant woman in Queensland who was applying for an intervention order attended the first hearing and discovered that she had been assigned an interpreter who was a member of her community. Accordingly, she was reluctant to make a full disclosure about the violence she had experienced and left feeling that she had not clearly explained what had happened, to the detriment of her case.

When she went to court for the final hearing, she expected that she would have a chance to tell the full story. Through the new interpreter, she explained to the Magistrate what had happened at the previous hearing, but was told that the Magistrate had heard everything that needed to be heard. The woman was not granted an intervention order and she left feeling that she had not been given a fair hearing.

**Separate interpreters for applicants and respondents**

According to stakeholders, it is very common across the country to use the same interpreter for the victim and the perpetrator. This practice means that women have to sit in close proximity to the perpetrator, with only the interpreter separating them. Given that many women experience fear and intimidation being in the courtroom at the same time as the perpetrator, this practice is highly problematic from a safety perspective.

Further, it is difficult for interpreters to interpret the hearing for both parties, both ethically and practically. Stakeholders reported that interpreters focus on interpreting the orders for the perpetrator, but often lack the time to do the same for the woman. This practice excludes women from participating fully in the hearing and leaves them with little comprehension of what has occurred.

There was unanimity across roundtables and focus groups that this practice is inappropriate and should never occur—if both parties require an interpreter, two interpreters should be engaged.

**Issues of unprofessional conduct by interpreters**

There were concerning reports at all roundtables and focus groups about interpreters engaging in highly unprofessional conduct. Examples included:

- Pressuring women to withdraw their applications;
- Telling women they were bringing shame on their family and community;
- Deliberately misinterpreting what was being said; and
- Breaching confidentiality by telling others about the proceedings (giving credence to the women's fears outlined above).

Stakeholders reported that this behaviour mainly occurred with male interpreters, emphasising the importance of providing female interpreters whenever possible. However, there were some examples of female interpreters behaving similarly, demonstrating that no situation is risk-free. Both accredited and non-accredited interpreters were said to have engaged in this unprofessional behaviour.

This behaviour is difficult to address. Unless there is another person in court who can speak the same language (for example, a bilingual support worker) it can be difficult to detect. Judicial officers in attendance at the roundtables expressed concern that they would have no way of knowing that it is occurring.

There is a lack of regulation of interpreters in court. Interpreters who are members of the Australian Institute of Interpreters and Translators Inc. (AUSIT) are bound by its code of ethics, which includes provisions relating to confidentiality, competence, impartiality and accuracy.<sup>73</sup>

<sup>73</sup> AUSIT, "Code of Ethics and Code of Conduct" (November 2012) <[http://ausit.org/AUSIT/About/Ethics\\_\\_\\_Conduct/Code\\_of\\_Ethics/AUSIT/About/Code\\_of\\_Ethics.aspx](http://ausit.org/AUSIT/About/Ethics___Conduct/Code_of_Ethics/AUSIT/About/Code_of_Ethics.aspx)>.



However, roundtable participants noted that there is little enforcement of this in a court setting. Examples were given of interpreters who had acted unprofessionally in the past being employed again and again by the court, because there were no processes in place to report unprofessional conduct or to ensure that such an interpreter was listed as unsuitable for family violence court interpreting, or court interpreting in general. Judicial officers indicated that they would value further guidance about whom to report concerns or breaches to and how appropriate judicial action can be taken.

Some courts do take steps to seek feedback about interpreters and this practice should be pursued more widely. For example, the Multicultural Liaison Officer at the Melbourne Magistrates Court receives feedback about interpreters from various parties and takes steps to address issues raised.

Stakeholders suggested that interpreters should be required to sign a court interpreter's code of conduct and that processes be put in place to ensure that interpreters who have engaged in unprofessional conduct in the past receive additional training or not be permitted to interpret in court again. It was also suggested that interpreters should be given training relating to sexual assault and domestic violence matters to help them prevent their own prejudices from influencing the interpreting process. It was thought that courts could offer this, in conjunction with interpreter agencies in order to set clear expectations.

## Attending Court: Barriers to Full Participation

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Going to court is a daunting process. Courts are unfamiliar and intimidating environments. For women who have experienced family violence and family breakdown, there are additional emotional stresses that make the prospect of going to court especially daunting; the systemic barriers faced by migrant and refugee women exacerbate these factors further.

A clear finding from the consultations was that the experience of going to court had an impact upon women's overall recovery from the trauma of family violence and family breakdown. Women who had positive experiences at court tended to have made greater progress in the healing process, while those who had negative experiences were still struggling with the experience.

The impact of a negative experience is not just felt by the woman herself; it has a broader impact in the community. Many of the women who had negative experiences reported telling other women in their community that the legal system cannot help them and will only cause more trouble. As detailed above, migrant and refugee communities already face multiple barriers to accessing the legal system—statements from women that the courts do not help adds another and, in the circumstances, very persuasive, barrier. Courts have a key role to play in providing a counter-narrative.

Interestingly, women's satisfaction with court processes was, in the clear majority of cases, not linked to whether they received the outcome they sought. Rather, it was linked to how accessible the courts and court processes were, how women were

treated and whether they felt listened to. This reflects previous international research, which indicates that if courts improve their accessibility, confidence in the system will improve—regardless of whether people achieve the outcomes they have sought.

The following were the issues women and stakeholders frequently raised:

- The intimidating process of arriving at court;
- Safety while waiting at court;
- Lack of understanding of court processes;
- Difficulty understanding forms, charges, orders or judgments;
- Courtroom dynamics;
- The impact of attitudes and actions of judicial officers;
- The need for judicial officers to receive cultural competency training;
- The lack of availability of men's behaviour change programs;
- Abuse of court processes by perpetrators.

## Arriving at Court

Stakeholders and women consistently noted how intimidating it is to arrive at court. This is the case for the majority of women experiencing family violence or family breakdown. Their feelings of emotional stress are increased by the unfamiliarity of the court environment. For migrant and refugee women, this is further heightened by not being able to understand its language and culture.

On arriving at court, a number of factors may contribute to increased feelings of stress. Court buildings and associated security processes are intimidating and buildings are often crowded with people. Courts have little signage directing people where to go for assistance or court staff available to assist. Women reported how difficult it is for them to ascertain where to seek help and how to determine when and where their matter will be heard.

Stakeholders and women made the following suggestions to improve the experience of migrant and refugee women arriving at court:

- Improving directional signs;
- In areas with high migrant populations, translating signage into community languages;
- Having court staff greet people attending court and direct them to an appropriate source of assistance.

Stakeholders emphasised that court and security staff need to receive cultural competency and family violence training. In addition to an increased focus on training, it was also suggested that courts should actively seek to employ more culturally and linguistically diverse staff. They reported that staff are not always included in training programs, despite having a significant amount of interaction with migrant and refugee users of the court system. There was consensus that all court staff should be aware of the particular needs and experiences of migrant and refugee women so that they can ensure they respond appropriately. It was thought this would improve the experience of migrant and refugee women arriving at court.

The need for this was evidenced by a number of stories shared by women at the consultations. One case worker told of the difficulties for migrant and refugee women in proving their identity, as a common tactic adopted by perpetrators is to steal the woman's passport to prevent her leaving. This particular caseworker knew of at least five cases in the past six months in Queensland where this had raised difficulties for women when making applications. She noted that it is important for registrars to be aware of this possibility so that they can respond appropriately and with sensitivity. Similarly, several women related stories of registrars demonstrating a lack of sensitivity to their situation, which had negatively impacted upon their perception of the legal system.

However, the impact of positive experiences was also evident and demonstrates the worth of investing in training.

### Case study 13

An Indonesian woman who had experienced family violence was positive about the court system and largely attributed this to the assistance she received from the registrar at the Magistrates Court. He had taken the time to explain to her how long it would take him to prepare her application for an intervention order and informed her that she would meet with the magistrate after that. This simple act of explaining the process to the woman, rather than having her wait without any information, as many other women reported, led to her feeling empowered throughout the process and contributed to her positive feelings about the legal system.

Stakeholders also emphasised the importance of making courts accessible institutions for migrant and refugee women who have a disability. People from migrant and refugee backgrounds with a disability face not only multiple barriers, but also compounding barriers to accessing justice. Disability services and measures put in place are often not culturally and linguistically appropriate and cultural and linguistic barriers can prevent migrant and refugee people with a disability from identifying points of assistance. Stakeholders noted that barriers at the court level added to the earlier barriers to leaving a relationship that some migrant and refugee women with a disability face, including dependency on their carers, lack of financial independence and lack of access to appropriate support services.

## Safety at court

A clear finding from the consultations was that there are significant safety concerns for women at court. More specifically, women are often made to wait for their hearing in the same spaces as the perpetrator. Countless stories were told of men using this time to intimidate and harass women.

This situation was often compounded by the fact that migrant and refugee women are often completely alone when they go to court, either because their community does not approve of their actions or they have been kept socially isolated by their partners and do not have any friends to support them in court. In contrast, it was reported that the perpetrator is often surrounded by family and friends.

This heightens the isolation felt by women. Further, for women from close-knit communities, it emphasises the isolation and exclusion they will likely face if they proceed with their application.

Safety is a particular concern in rural and regional courts because their small size can make it very difficult for women to escape the attention of the perpetrator. There are rarely any safe spaces available for them to wait in private. Further, many smaller courts do not have the security screening processes that larger courts have.

Even in larger courts where there are designated waiting areas for women, there were reports that these are not being used. One stakeholder described the Magistrates Court as “like a cattle shed, everyone waiting together to go in”. Women stated that the lack of safe spaces made them feel threatened and frightened to go to court, as they feared what their partners might do. Further, even being in the same space as them contributed to their ongoing trauma.

**Case study 14**

A woman from Mauritius had arrived in Australia 4 years ago on a student visa. Her partner was on a spousal visa. She was financially dependent upon him and socially isolated. She was not allowed to talk to her family without him in the room, nor was she permitted to have a car or get a job. She had few friends in Australia and was afraid that she would not get any help from services because she was not an Australian citizen or permanent resident. Eventually she sought help from a domestic violence service who helped her apply for an intervention order.

When she went to the Magistrates Court there was no separate area for her to wait in. She waited outside the courtroom and was continually harassed, threatened and intimidated by her husband. She was fortunate to have a court support worker and a legal representative to support her and help her find an alternative space to wait in, otherwise it is likely she would have continued to wait in a dangerous and traumatic environment.

After the hearing her lawyer had to ask the police to provide a police escort to accompany her out of the court building because her husband was waiting for her outside the entrance. Not realising that she had left, he waited there for several hours. He has since continued to breach the intervention order.

**Understanding court processes**

A clear finding from the consultations was that many women had been unaware of what was happening at court, leaving them disoriented, stressed and vulnerable.

One woman emphasised how important it is to educate women attending court about their rights and how the hearing will proceed. She was a migrant from the Philippines who spoke English with a high degree of proficiency. She stated that

when she applied for an intervention order she had to keep asking for more information at every stage. She knew to ask questions (and had the English skills to do so), but believed that most women would not have known or have felt confident to do so and would be disadvantaged as a result.

Similarly, stakeholders consistently suggested that women need support at court to explain the processes. It was suggested that this could take the form of court information sessions. A number of participants noted that the Family Courts previously required every person who was attending the court to attend an information session, which explained what would happen in the courtroom. Stakeholders and women thought that the provision of such sessions would greatly assist in making women feel more comfortable with the court process.

**Difficulty understanding forms, orders or judgments**

Both women and stakeholders expressed concern that women had difficulty filling in court forms. Community legal services, in particular, frequently raised the complexity of forms as a significant issue. They noted that self-represented litigants and women with limited English skills were particularly vulnerable and were at risk of not including crucial information in their applications for intervention orders.

It was felt that court forms could be simplified and better expressed in plain English, with tips to help women complete the application. Further, it was suggested that explanations in community languages would assist some women with the process, noting that not all women are literate in their spoken language.

There was also consensus that court orders and judgments need to be explained in plain English to the parties involved to avoid confusion. This is particularly important when one or both parties do not speak English well. Further, as noted, interpreters and translators should be used where required.

### The need to equip support workers with legal knowledge

Stakeholders noted that migrant and refugee women who are self-represented often ask their caseworkers from domestic violence or settlement services for assistance in filling out court forms or to provide support in court. However, many caseworkers expressed concern that they are often equally uncertain about court processes or what information is required in court forms. This makes it difficult to help their clients.

Caseworkers stated that they would appreciate the opportunity to receive education about the legal system to enable them to provide more support to migrant and refugee women. They suggested this could cover legal terminology, what information is required in forms and how court proceedings are run.

### Courtroom dynamics

Many women noted that one of their biggest concerns about going to court was the prospect of having to sit in the same courtroom as the perpetrator and having to give testimony in front of him. Stakeholders consistently raised this as a reason why women will not take their case to court. They noted that the legal process often further traumatises survivors of family violence, as they are required to retell their story at multiple points; having to do so in front of the perpetrator heightens the stress involved.

A strong finding from the consultations was a consistent view that courts should permit remote witnessing on a more regular basis for survivors of family violence. This would allow women to sit in a separate room or even building and participate in the hearing via video link. This would reduce the stress of attending court and make the space more accessible for migrant and refugee women.

Stakeholders noted that there appears to be reluctance by some judicial officers to use such technology in the courtroom. At the national roundtable participants discussed the concern that women participating via video link may, in effect, be isolated from proceedings and may not be able to hear all that is said against them or on their behalf.

Stakeholders did not feel that this fear was borne out in practice. Further, it was agreed that while the ideal standard for a fair hearing may involve all parties in the courtroom all the time, there is a need to balance this against the hearing proceeding in the first place. It was also emphasised that a hearing will not be fair if one party is so traumatised by being in the room that they cannot participate in the process.

If audio-visual technology is not available, several stakeholders suggested simple and non-expensive ways of helping make women more comfortable in the courtroom and reduce their risk of re-traumatisation. These included:

- Giving women the opportunity to visit the courtroom prior to their case being heard so that they can familiarise themselves with the environment;
- Seating women in the courtroom in a place where they cannot see the perpetrator;
- When giving testimony, separate women from the perpetrator by a screen to reduce the possibility of his presence intimidating the woman into not being able to give full evidence;
- Allowing women to be accompanied by support workers;
- Closing the court to the public to minimise the pressure exerted by the presence of community members and ensure the woman feels safe that the full details of her experience will not become widely known in her community.

## Judicial attitudes and actions

A major factor cited by women that affected their perceptions of the court system was how the judicial officer treated them at their hearing. Negative experiences had a profound impact upon whether they thought the legal system is equitable and accessible to migrant and refugee women, while positive experiences empowered the women and led to better perceptions of the legal system. Many of the negative experiences recounted reflected poor understandings of the dynamics of family violence, while others related more specifically to particular issues faced by migrant and refugee women.

A clear consensus arising from the roundtables was that court business should be organised to ensure cases are always heard by judicial officers who have received appropriate training in family violence and cultural diversity. Some jurisdictions have already implemented this, although it was noted that even in those jurisdictions there is still room for improvement in terms of judicial responses.

The following case studies provide some examples of the negative and positive experiences of migrant and refugee women and judicial officers that were cited in the consultation process.

### Case study 15

A Vietnamese woman came to Australia in 2008 after marrying an Australian man. There was a high level of violence in the relationship from very early on. Her husband had threatened to kill her, her children and her family in Vietnam if she left him. She had no idea of her legal rights and was unaware the police would be able to help. After years of abuse, she reported it to the police and received an interim intervention order. At this time she was living in a women's refuge.

At the final hearing, she was not provided with an interpreter. A support worker from the refuge accompanied her. The Magistrate asked her where the interim order was issued, as her address was not on it. She was having difficulty understanding the questions and asked her support worker for help understanding. At this point, the Magistrate became angry that the support worker was there. He looked the woman in the eye and demanded to know where she was living. This was extremely dangerous as her husband was in the courtroom. The addresses of women's refuges are confidential to keep women safe. The woman felt pressured to tell him and the next day her husband turned up at the refuge to harass her.

Her husband accused her of stealing \$500,000 from him and the police prosecutor said she had to give her bank details over to be checked, which she did. During the hearing the woman felt that the Magistrate was judging her because her husband was much older than her. She felt she was treated as a thief. In the end, she was granted a one-year intervention order on condition that she give her wedding ring back to her husband.

The woman still lives in a women's refuge and only feels safe because her husband does not know where she is living. She was traumatised by the entire experience of going to court and stated that under no circumstance would she seek help from the legal system again.

The difficulty in keeping women's addresses confidential was identified as an issue by many women and stakeholders consulted. One caseworker told how her client's solicitor did not understand why her address had to be kept confidential. The solicitor said that the Family Court needed to know where the child was living. The woman had been to court for family violence and her husband had tracked her down on several occasions. The caseworker had to be emphatic that, for safety reasons, the client could not agree to an order that she notify her husband within 7 days of moving. This demonstrates the need for greater education of both the judiciary and the legal profession about family violence.

#### Case study 16

A Sri Lankan woman came to Australia in March 2000 on a spousal visa with her Sri Lankan husband. She was involved in Family Court proceedings for over 2 years. Her ex-husband accepted in his submissions that he had been violent. She believed that their son would benefit from maintaining a relationship with his father and was willing to allow them to spend time together to facilitate this. She was very frustrated because, during proceedings, the Judge had told her that she needed to trust her ex-husband. She thought this was not a fair comment given the history of family violence. Further, it had given her ex-husband a significant degree of power over her: he would use the Judge's comments and authority to influence her by reminding her to "remember what the Judge said" and trust him.

This demonstrates the effect that statements by judicial officers can have upon power dynamics between a separating couple and the role statements can play in perpetuating family violence if they are not carefully considered.

The opposite is also true. Stakeholders and women constantly argued that judicial officers should be more willing to use their authority to influence the behaviour of abusive partners. Women valued it when judicial officers sent clear messages to men that family violence is unacceptable. They believed that men are more likely to listen to this authority. Further, as community leaders are not always supportive of women leaving situations of family violence, it is important to demonstrate to women that the legal system is supportive of their claims and make clear to men that their behaviour is unacceptable.

To give an example, one woman was emphatic that one positive aspect of her court experience was the Magistrate's behaviour. She was highly intimidated by being in the same courtroom as her husband, who would not stop looking at her, which was adding to her distress. The Magistrate said to him—"Don't look at her, look at me". The woman stated that she was "so happy" to hear the Magistrate say that, as it was the first time a woman had raised her voice to him and it confirmed that his behaviour was wrong.

Another woman had been reluctant to separate from her husband despite severe violence. She found the Magistrate to be very supportive, as he took the time to emphasise to her that her husband was causing her severe harm, that she did not have to live in a violent relationship and that she had a right to be protected from him. This had led to her having a positive view of the legal system.



**Case study 17**

A woman moved to Australia from Sri Lanka in February 2014 on a spousal visa. Her husband was Australian. The violence began immediately after she arrived. He also sponsored her mother to come to Australia, and began abusing her as well. They were kept as prisoners in his house. They eventually managed to seek help from a neighbour who called the police.

The women could not find emergency accommodation because of their visa type, so the police told them they had no option but to go back to the husband's house. The police told her they would apply for a non-urgent intervention order. They were told to stay in Sydney for the first court appearance in 5–6 days. The woman contacted her sister who lived in Brisbane and she arranged for them to stay in a hostel for that time. After the first mention, they moved to Brisbane.

The woman kept in touch with the police officer about the intervention order. She was told she did not need to go to NSW for the second mention date. After that she did not hear anything more from the police. When she followed up, she was told her application had been withdrawn—as she was no longer under NSW jurisdiction, she didn't need an intervention order.

The woman sought advice from a community legal centre, which advised her that the third requirement for an intervention order—that it is necessary and desirable—was not met and therefore she would be unlikely to be granted one. She wanted to continue with the application, as she was still concerned about her safety and was suffering from anxiety and panic attacks.

Before the hearing, her husband's solicitor sent her a letter telling her to withdraw the application and pay his legal costs. She was determined to continue with the application. She was unrepresented at the hearing and was accompanied by a court support worker from a women's refuge. In contrast, her husband had a solicitor and a barrister.

The Magistrate gave her 45 minutes to read the husband's submissions and asked the court support worker to help her understand the information. The Magistrate asked her for her version of events. He told her he could not grant her an intervention order, as although they had a genuine relationship and there had been domestic violence, there was no evidence that she needed the order—her husband had no connections to Queensland, they had no children and there was no property settlement outstanding. He proposed that her husband sign an undertaking for one year instead.

She was given time to contact the Women's Legal Service to discuss this and also to discuss it with the court support worker. When she went back into court, she asked the Magistrate what would be in the undertaking and it was explained to her. She was told that if her husband breached it, an intervention order would be made.

Although the woman did not get the outcome she was seeking, she was treated with respect throughout the process and extra steps were taken by the Magistrate to accommodate her needs. She felt she had been given an opportunity to understand the legal process and, most importantly, to be heard. Overall she was satisfied with the experience she had in the legal system.

In addition to this, many women reported that it is necessary for judicial officers to ensure that they explain the order in full to both the applicant and the respondent. Further, they noted that it would be beneficial if more details were given about the next court date and it was explained what would happen then. Many women stated that they knew when they next had to attend court, but turned up not knowing that it was the date of the full hearing. It was noted that better explanations of the process was a small step that judicial officers could take that would reduce the stress of women attending court.

### The need for judicial officers to receive cultural competency training

Many stakeholders who had been involved in supporting or representing clients through the legal process repeatedly noted that it appeared some judicial officers have not received sufficient cultural competency training. Cultural competency involves having an awareness of one's own cultural worldview, knowledge of different cultural practices and views, and an understanding that linguistic and cultural differences may affect communication. Further, it involves the ability to recognise one's own cultural assumptions and stereotypes and avoid letting them negatively influence perceptions of others.

Stakeholders consistently raised three issues of particular concern that judicial officers should be aware of: forms of violence that are more likely to be or, in some cases, may only be, experienced by migrant and refugee women; specific issues relating to marriage and divorce; and different communication styles.

### Unique forms of violence

Women and stakeholders reported that, while some of the experiences of family violence by migrant and refugee women are broadly similar to those experienced by women in the wider

Australian community, there are also different experiences. They emphasised the importance of judicial officers understanding this and being alert to the possibility of these experiences when deciding cases.

The following types of family violence were emphasised:

- **Violence related to immigration status.**

It was very common for women to have experienced threats of deportation as means of maintaining control.<sup>74</sup>

- **Threats to family overseas.**

Many women reported that it is very common for men to make threats against the woman's family who live overseas if the woman reports the violence to police or seeks a divorce. Their inability to protect their family otherwise meant some women chose to remain in violent and abusive situations.

- **Multi-perpetrator family violence.**

Migrant and refugee women reported that the perpetrators of family violence were often not limited to their husbands, but also sisters-in-law, brothers-in-law and parents-in-law. They believed courts have a very limited understanding of this type of extended family violence. Many women stated they had been successful in obtaining intervention orders against their husbands, but were unable to obtain them against their in-laws, leaving them without full protection from abuse.

- **Dowry-related family violence.**

The practice of paying a dowry involves the transfer of money, goods or property from a bride or her family to her husband upon their marriage. A related custom—the bride price— involves the reverse: as a condition of their marriage, the husband or his family makes a payment to the wife or her family. These customs occur in a number of cultures, although the name given varies according to country.

<sup>74</sup> See discussion in 'Before Court: Barriers to Reporting Family Violence'.

Throughout the consultation process, women and stakeholders told many stories of dowry-related violence—where women were abused, ostensibly with the excuse that the dowry paid was not high enough. They suffered from a range of behaviours, including physical, sexual, psychological and financial abuse. Some women were abused in an attempt to coerce their families to pay more, while others were abused as punishment for not paying enough.

Women whose marriages had involved the payment of a dowry often felt trapped in the relationship, as their families had paid a considerable amount to secure the marriage. Some families had even accrued significant debts in order to afford the dowry. The women's cultures also often stigmatised divorce. The combination of these factors made it very difficult for women to leave their husbands, no matter how bad the violence.

Women whose husbands had paid a bride price also reported significant issues of related violence. They said their husbands believed that the payment meant they had bought them and could do whatever they wanted. Women similarly felt trapped in these relationships.

- **Female genital mutilation (FGM), human trafficking and forced marriage are increasing in prevalence across Australia.** While an anti-FGM campaign has gained significant media attention, the incidence continues to rise. Forced marriage and human trafficking were both raised in the consultations as factors that influenced vulnerability and issues that judicial officers needed to be given further awareness training on.

## Marriage and divorce

A number of issues relating to marriage and divorce for migrant and refugee women and men were raised in consultations, including:

- **Reports of men forcing their wives to obtain a legal divorce, but remaining religiously married.** This allowed the men to remarry, both legally and under religious law, and therefore have multiple marriages.
- **Men leaving their wives in Australia and moving overseas before obtaining a divorce.** As it is difficult to arrange a divorce across two countries, women remained married without the prospect of divorce in the foreseeable future. Further, many women stated that men were leaving the country with the express purpose of avoiding paying child support.
- **Women were often unaware of the legal requirements for divorce in Australia and their rights to child support and property settlement.** For example, one woman told how she believed that her husband had legally divorced her by stating that he divorced her in the presence of an imam. She did not realise that an application for divorce needed to be filed.
- **Some migrant and refugee women face issues of documentation with respect to their marriages.** For example, refugee women may not have any proof of their marriage due to the circumstances in which they fled their home country. Other women may have married in a religious ceremony but never legally married. As a result, their relationship could be treated as a de facto relationship, something many found offensive. Women across the country expressed a desire for greater support to help them navigate the process of separation.

### Communication in court

A common issue raised by women was how difficult they found it to give evidence in court about family violence, particularly sexual assault. Three issues in particular were raised:

- Open courtrooms, which contribute to fears of social isolation and stigmatisation by permitting the presence of community members who may be critical of the woman for going to court;
- Cultural barriers to discussing sexual assault, particularly in the presence of males;
- The presence of the perpetrator.

Stakeholders reported that women's reluctance to give evidence meant they often underplayed the extent of the violence, sometimes to the detriment of their case succeeding.

They also noted that women's discomfort with the situation often manifested in body language that was read by judicial officers as undermining their credibility or as being disrespectful; there were reports of women being chastised for this. Stakeholders related stories of clients criticised by judicial officers who considered women were not being sufficiently respectful, as they would not look the judicial officer in the eye. However, in many cultures, it is considered impolite and rude to look a person of authority or a member of the opposite sex in the eye—respect is demonstrated by keeping one's eyes downcast. Stakeholders consistently emphasised the importance of cultural competency training for judicial officers so that differences between cultures are known and migrant and refugee court users are not disadvantaged because of their different communication styles.

### Referrals to men's behavioural change programs

Men's behaviour change programs are aimed at educating and rehabilitating perpetrators of family violence. They are run by trained facilitators and seek to teach men how to accept responsibility for their violent and controlling behaviour and make changes to it. The programs are intended to operate as part of a strong integrated community response against family violence and abuse of intimate partners and children.<sup>75</sup>

Participation in men's behaviour change programs may be voluntary. However, it may also be court-ordered as part of an interim order in family law proceedings, an intervention order, the perpetrator's bail conditions, or the sentencing for an offence. Many women expressed a desire for greater use of these programs for their partners, as they did not always want the relationship to end; they just wanted the violence to stop.

Some stakeholders expressed concern that men's behaviour change programs should not be seen as the solution to every relationship that involves violence and noted that participation can pressure women to withdraw their applications. However, the majority of stakeholders and women agreed that such programs are beneficial if there is appropriate oversight, including by a court, and women continue to be supported.

<sup>75</sup> For a detailed analysis of perpetrator programs and opportunities for courts, see Centre for Innovative Justice, *Opportunities for Early Intervention: Bringing Perpetrators of Family Violence into View* (March 2015) <<http://mams.rmit.edu.au/r3qx75qh2913.pdf>>.

There were two issues repeatedly raised by women and stakeholders during the consultation process with respect to men's behaviour change programs:

- **General availability:** There is a huge demand for these programs. Stakeholders noted that there are regularly long waiting periods before men can be assessed as to their suitability for participation. Once assessed, there will be another waiting period before they can access the program. This undermines the utility of the program and the likelihood of the intervention succeeding, as it is no longer an early intervention.
- **Specific availability for migrant and refugee men:** Most men's behaviour change programs require English language proficiency as a condition of participation. Stakeholders expressed concern that this excludes participation by migrant and refugee men who do not speak English well or at all. Some programs have been developed specifically for migrant and refugee men in their native language; however, the demand for these also exceeds supply. Stakeholders agreed that it is also important to develop culturally appropriate programs involving migrant and refugee instructors that allow particular issues relating to culture, settlement and pre-arrival experiences to be addressed in addition to the usual topics in the program.

## Abuse of court processes

Many women and stakeholders reported instances of men abusing court processes in order to maintain power and control over women. It is a fundamental principle of fairness that respondents are given an opportunity to respond and have the case against them tested. However, abuse of the process has hugely detrimental effects upon women—they can be required to retell their story to different Magistrates, court staff and lawyers, which increases the risk of re-traumatisation. Further, the delay in resolution impacts upon the time it takes for them to heal and recover.

For migrant and refugee women, abuse of court processes are especially stressful, given the additional stresses they encounter going to court. Several women who had experienced this issue stated that the combination of community isolation and lengthy court proceedings had made the situation particularly difficult to cope with. Further, women on temporary visas may face issues with renewing their visas while waiting for resolution of their cases.

Women reported a number of different forms of abuse of court processes. Common examples included failing to appear in court, seeking adjournments, or appealing decisions, even where the merits of the appeal were weak. One woman related how she had attended seven court hearings in one year to finalise her intervention order, because her ex-partner had successfully sought numerous adjournments. Returning to the theme of actions judicial officers can take to improve the experience of women in court, the Magistrate in her case had acknowledged the impact it had on her to have to keep returning to the court on so many occasions. The woman was appreciative that this had been recognised.

Other women told of legal proceedings that had involved the Magistrates Court, Federal Circuit Court and Family Court and had taken years to resolve, or had still not yet been resolved. One woman's husband had sought leave to appeal to the High Court.

A common abuse of process was perpetrators applying for and being granted intervention orders against their victims and then misleading women into breaching them. The women were then fined for minor breaches, while the men's behaviour went unpunished. Migrant and refugee women may be particularly vulnerable to this, given their unfamiliarity with the legal system and limited English skills.

**Case study 18**

A woman from Macedonia arrived in Australia six years ago on a student visa. She met her husband on the internet. Not long after she moved in with him, he began physically and sexually assaulting her. When she decided to end their relationship, he transferred all their savings to a separate bank account in his name. She had left all her clothes and possessions at their house and he refused to give them back. She obtained an intervention order. He responded by obtaining an intervention order against her, one of the conditions being that she could only contact him in relation to their son.

When she left him, the only thing she took was one of their cars. However, the car was in his name and he was demanding that she return it. He was harassing members of her family, including her elderly uncle. She sent him a text message asking him to stop contacting her family and saying that they could discuss the car when they next saw each other to hand over their son. He reported this to the police and she was charged with breaching the intervention order. She was fined \$200. The Magistrate said to her: "I hope you learn your lesson and will never do this again". She was frustrated, as she was made to feel like she was the one in the wrong when it was her husband who had been violent.

She was unrepresented in the Magistrates Court and was not provided with an interpreter. As she did not feel confident speaking English, she found the process of representing herself in court to be highly intimidating and difficult. She was also unrepresented in the Family Court. She felt that, because she could not speak English and could not understand the legal terminology being used, she had been "tricked" into accepting interim orders in the Court that she did not fully understand.

**Case study 19**

A woman from Greece had four children with her ex-husband. After their relationship ended, he took the house, all their money and refused to pay child support. She met a new partner who she saw as her saviour. She opened a café that became very successful and he stole money from it. He physically abused her, sometimes in front of the children. He also verbally abused her children.

One night he seriously beat her and made threats against her and her children's lives. She managed to escape and run outside onto the street, where a passer-by helped her and called the police. When the police arrived, they listened to his version of events first. They then came to her and said he had accused her of hitting him, which she had done in self defence. The police asked her if she wanted to press charges against him but told her that if she did, he would likely press charges against her. She said she was made to feel that she had done something wrong.

The police applied for an intervention order against him, which was granted. She later applied to vary the order, at which point her husband applied for one against her that would prohibit her from contacting him or driving past his ex-wife's house. The magistrate wanted them both to consent to an intervention order against the other without admission and said that if they did, he would grant the orders for a two-year period. She did not want to consent to the intervention order against her because she had not done anything wrong and did not feel she should be inconvenienced because he had lied. She said that the magistrate was frustrated by this and "angry". He told them they would have to go to a contested hearing and waste their money on that, but they were not permitted to appear unless they both obtained legal representation. At the time of the consultations, the contested hearing had yet to occur.

# Building a successful framework

A clear finding from the consultations was the importance of the framework establishing procedures and mechanisms to monitor progress and success. As one stakeholder stated, “there is no point developing a framework if there is a massive implementation gap”.

Stakeholders consistently emphasised that the number of women reporting family violence is increasing. This is already leading to an increased demand for services, with consequent resource pressures. Every area of the justice system, from policing to the court system, is experiencing stress. It is crucial to respond effectively and fairly, so that women feel safe to leave abusive relationships. The challenge is to consider how processes and procedures can be improved, thereby improving public trust and confidence in the courts.

A number of suggestions and factors to consider were made, including:

- The need to ensure accountability within the system;
- The need to improve data collection and IT systems;
- Specific ways to measure progress, including:
  - Setting key performance indicators and benchmarks;
  - Undertaking regular court user satisfaction surveys;
  - Establishing complaints mechanisms;
  - Undertaking surveys of judicial officers and court staff; and
  - Public reporting on progress and changes being made.

## Ensuring accountability

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The importance of managing responsibility and accountability within the system was consistently emphasised by stakeholders. It is necessary to establish clearly defined responsibilities for each member of court staff, to ensure that the needs of court users are being appropriately met. For example, as previously described, clear guidelines as to who is responsible for booking interpreters and assessing interpreter need would be beneficial in improving access to justice for migrant and refugee court users.

Further, courts with clearer accountability would be better placed to implement a system of quality control for interpreters and other experts employed to work in court. This would avoid situations frequently cited by stakeholders, for example, interpreters or family report writers continuing to be hired to work in court, despite histories of poor performance or misconduct.

In addition, stakeholders raised the necessity of ensuring an effective flow of information between court administrators and judicial officers about the needs of court users, in particular any issues that may arise in specific cases concerning linguistic and cultural diversity.



## Improving data and IT systems

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Stakeholders consistently raised the collection of data as a significant issue. Currently, many courts do not collect data on the cultural and linguistic diversity of their court users. This inhibits the ability of the court to fully understand and respond to the needs of court users. It was proposed that the following information should be collected:

- Whether the person is from a non-English speaking background;
- Country of origin;
- Length of time in Australia.

This information would enable courts to tailor their responses to the needs of migrant and refugee court users in particular locations, thereby improving the accessibility of the courts. For example, directional signs at particular Magistrates Courts could be translated into other languages in areas with high populations of court users from non-English speaking backgrounds.

In order to ensure that data collected can be used to make improvements, it is necessary for courts to have well developed IT and information management systems. This is also necessary to manage the responsibilities and accountabilities of those working within the court. Many stakeholders raised the poor state of IT in many courts as a significant issue that inhibits the effective functioning of the courts. Moreover, the proposed merger in administration and funding of the Family Court and Federal Circuit Court with the Federal Court would mean that IT services across the board would have to be modified.<sup>76</sup>

## Measuring progress

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There was agreement amongst stakeholders that indicators and benchmarks needed to be established, so that progress can be measured against them. These targets must be measurable, not simply stated in aspirational terms. Examples were given of areas that could be the focus for targets. These included:

- The number of requests for interpreter assistance which were met, and what standard of qualifications the interpreter had;
- The number of information documents that have been translated into other languages;
- The number of judicial officers undertaking judicial education programs;
- The number of staff participating in education and training;
- How judicial officers and staff rated the provision and quality of education;
- Court user satisfaction levels; and
- Ratings of the accessibility and usability of the court's website.

These examples covered both quantitative and qualitative indicators. Courts have traditionally focused primarily on quantitative measures of performance. However, stakeholders noted that it is crucial that qualitative assessments are considered as part of the framework. Rather than focus on factors such as the time taken for a case to proceed to full hearing, indicators need to consider how the women felt during the process.

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<sup>76</sup> Courts Administration Legislation Amendment Bill 2015 (read primer here: <https://www.familylawsection.org.au/news/101-courts-administration-legislation-amendment-bill-2015>)

A suggestion frequently raised was that courts could begin undertaking court user satisfaction surveys. These can be used to measure satisfaction with the court experience including, for example, whether the user found the court to be accessible and fair. The emphasis is on how the user feels about the court experience, rather than whether they were satisfied with the outcome they received. This accords with research, which was reflected in the consultations, demonstrating that perceptions of the court system are influenced more by a fair process than a favourable outcome.<sup>77</sup>

It was suggested that the surveys could be used initially to assess satisfaction levels and later to measure progress against the initial results. There are existing methodologies for these surveys.<sup>78</sup> The surveys could be directed at migrant and refugee women specifically, or targeted at a more general court user level.

In addition, stakeholders noted that some courts have complaints and feedback mechanisms and that it would be beneficial if courts established these in all jurisdictions. These mechanisms could cover the conduct of court staff, quality of administrative processes and conduct of judicial officers. They would not cover judicial decisions. Providing an accessible and immediate means for court users to raise issues they experienced at court allows for timely feedback and an avenue for people to express their grievances.

Finally, there was consensus that an important part of the framework should be public reporting on progress achieved, changes made in response to surveys and feedback and areas that have been identified for further attention. An emphasis on transparency fosters public trust and confidence in the courts to be responsive institutions.

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77 International Framework for Court Excellence, 2<sup>nd</sup> edition, March 2013 <<http://www.courtexcellence.com/Resources/The-Framework.aspx>> 10.

78 See, eg, County Court Victoria, *Understanding Our Court Users: Court User Satisfaction Survey, Report, 2012* <<https://www.county-court.vic.gov.au/publications/understanding-our-court-users-0>>; Family Court of Australia and Federal Magistrates Court of Australia, *Family Law User Satisfaction Survey, Results 2011* <<http://www.family-court.gov.au/wps/wcm/connect/fcoaweb/about/news/family-law-survey>>.

# Recommendations and suggestions for consideration by the JCCD

Stakeholders and women made the following recommendations and suggestions for consideration by the Judicial Council on Cultural Diversity and the Australian court system more broadly.

1. [Judicial officers should maintain an ongoing commitment to building relationships with settlement services, domestic violence services, legal services, and police. This would enable the joint provision of community education forums for migrant and refugee communities, as well as the sharing of expertise among staff.](#)

The JCCD consultations indicated that a major barrier to migrant and refugee women reporting family violence is a lack of knowledge of their legal rights and avenues to assistance. The legal knowledge of migrant and refugee women could be improved if various service providers, police, court staff and judicial officers jointly provided community education forums. Such forums would also assist in demonstrating that the courts are accessible.

Further, stakeholders suggested that caseworkers need more training to understand the operation of the legal system. This would assist them to make appropriate referrals and better support women through the legal process. Better linkages between judicial officers, court staff and service providers would be beneficial in building this knowledge base.

- 2.1. [Magistrates Courts should implement education sessions for women applying for intervention orders to provide them with information about the process.](#)

Women stated that they had little knowledge of the process of applying for an intervention order and what an intervention order meant. There were women who withdrew their application following community pressure and other women who did not know about the possibility of altering the standard conditions of intervention orders.

Court information sessions would assist women to understand the process. They would be beneficial for migrant and refugee women in particular, as they face additional pressures during family violence matters stemming from community pressure, immigration status and language barriers.

- 2.2. [The Family Courts should re-establish court information sessions for court users about their processes.](#)

Similar court information sessions would be beneficial in the Family Courts. Stakeholders consistently noted that the Family Courts previously required every person who was attending court to attend an information session, which explained what would happen in the courtroom. The provision of such sessions would greatly assist in making women feel more comfortable with the court process and understand what is happening.

### 3. All courts should introduce Court Cultural Liaison Officers

Court Cultural Liaison Officers could assist women by: helping them complete paperwork; advising them of where to go at court and when; providing information about processes; arranging interpreters; facilitating the use of audio-visual technology; coordinating access to support services; and explaining intervention orders.

### 4. Courts should invest in comprehensive cultural competency and family violence training for all court staff.

Court staff are the main point of engagement for migrant and refugee women with the court system. It is therefore fundamental that all staff are trained to understand the needs of migrant and refugee court users so they can ensure they respond appropriately.

### 5. All judicial officers should receive cultural competency training. Judicial officers who work in family violence matters should receive additional training in cultural competency within the context of family violence and family breakdown.

One of the major factors that impacted upon women's perceptions of the justice system was the treatment they received from judicial officers. Of concern is that there were a number of judicial officers who demonstrated poor understanding of the particular needs of migrant and refugee women or of the dynamics of family violence. Greater judicial education would assist in rectifying this.

### 6. Courts should improve signage and information available upon arrival at court.

Women reported finding the process of arriving at court to be highly intimidating. They noted that they were uncertain about where to go for assistance and how to determine when and where their matter would be heard.

It would be beneficial to improve directional signs and to have court staff available to assist people upon arrival at court. This could include translating signage into community languages in areas with high migrant populations and translating court brochures.

### 7. Courts should give priority to establishing separate waiting areas for women attending court for family violence matters.

Women reported significant concerns about waiting in the same area as the perpetrator. Countless stories were told of men using this time to intimidate and harass women. Separate waiting areas would greatly assist in alleviating women's stress at court.

### 8. Courts should permit women to participate in hearings via video link and, if this is not available, take other measures to reduce women's stress in the court environment, including when giving evidence.

Many women found it highly stressful to attend court and be in the same room as the perpetrator. There is a risk of further traumatising survivors of family violence, particularly women who have traumatic backgrounds. Allowing women to participate in the hearing via video link would reduce women's stress and enable them to participate more fully.

If video link technology is not available, courts should take measures such as:

- Giving women the opportunity to visit the courtroom prior to their case being heard so that they can familiarise themselves with the environment;
- Seating women in the courtroom in a place where they cannot see the perpetrator;
- When giving testimony, separate women from the perpetrator by a screen to reduce the possibility of his presence intimidating the woman into not being able to give full evidence;

- Allowing women to be accompanied by support workers;
- Closing the court to the public to minimise the pressure exerted by the presence of community members and ensure the woman feels safe that the full details of her experience will not become widely known in her community.

9. All courts should have court interpreter policies that are publicly available and easily accessible. The policies should:

- **Identify who is responsible for engaging and paying for an interpreter in all cases;**
- **Establish procedures to identify when court users need an interpreter;**
- **Establish procedures for ensuring that appropriate interpreters are engaged.**

There was considerable confusion among stakeholders and women about who is responsible for engaging an interpreter and consensus that courts, registry staff and lawyers engage in a process of burden shifting. This left many women without access to an interpreter, undermining their ability to participate in court proceedings and compromising procedural fairness.

Further, there are few processes in place to identify the need for an interpreter in advance of a hearing. Many women arrived at court without an interpreter having been arranged, meaning their hearing had to be adjourned or would proceed without an interpreter, despite one being needed for effective communication.

Clear policies outlining who is responsible for engaging an interpreter and identifying the need to do so would greatly assist in ensuring women are able to participate in court processes. Policies should detail the responsibilities of all involved in court proceedings (including lawyers, applicants, respondents, court staff and judicial officers),

as well as identifying who is ultimately responsible and accountable for determining when an interpreter is needed. They should also include the need to ensure interpreters are qualified, gender-appropriate, unknown to the person requiring an interpreter, and that separate interpreters are engaged for applicants and respondents.

10. Courts should run training sessions on court values and expectations for interpreters. They should establish a court interpreter's code of conduct and processes to address instances of unprofessional conduct by interpreters.

Stakeholders noted that there is no specialist legal interpreting qualification in Australia and no requirement for interpreters to undertake training about working in legal settings. Interpreters need more guidance and training about interpreting in court and the provision of training sessions would assist in aligning interpreter practice to court expectations.

There is a lack of regulation of interpreters in court and, on the whole, a lack of consequences for unprofessional conduct. Consultations raised many examples of interpreters engaging in unprofessional conduct and being engaged again and again by courts because there were no processes in place to report unprofessional conduct or to ensure that an interpreter was listed as unsuitable for family violence court interpreting, or court interpreting in general.

The establishment of a court interpreter's code of conduct would provide court-specific ethics guidance to interpreters. A complaints feedback mechanism and the provision of training for interpreters who have engaged in misconduct would assist in ensuring that interpreters employed for court interpreting are the highest standard.

**11. Judicial officers and lawyers should receive training and guidance about how to work with interpreters.**

Effective courtroom communication is a shared responsibility between judicial officers, lawyers and interpreters.

Judicial officers and lawyers have an obligation to take steps to ensure that interpreters understand the language being used in court. Greater education would assist all participants in the court system to work more effectively with interpreters and thereby improve the experience of migrant and refugee women.

**12. Courts should improve data collection about the cultural, linguistic and gender diversity of their court users.**

There is a lack of information about court users. Courts should begin collecting information about their users, including whether the person is from a non-English speaking background, their country of origin, and length of time in Australia. This would assist courts to ensure they are responsive to the needs of their users.

**13. Courts should establish key performance indicators to measure progress against.**

Focus areas could include:

- The number of requests for interpreter assistance which were met, and what standard of qualifications the interpreter had;
- The number of information documents that have been translated into other languages;
- The number of judicial officers undertaking judicial education programs;
- The number of staff participating in education and training;
- How judicial officers and staff rated the provision and quality of education;

- Court user satisfaction levels;
- Ratings of the accessibility and usability of the court's website.

There should be public reporting on the progress made. An emphasis on transparency fosters public trust and confidence in courts.







