



THE CAUSES AND CONSEQUENCES OF MISIDENTIFICATION ON WOMEN FROM MIGRANT AND REFUGEE COMMUNITIES EXPERIENCING FAMILY VIOLENCE

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Misidentification of the predominant aggressor¹ occurs when police and other areas of the justice system incorrectly identify a victim-survivor of family violence as the perpetrator. This generally occurs when police officers responding to a family violence incident are unsure which party is the affected family member and which is the predominant aggressor, and they “criminally charge or apply for a family violence intervention order... against the ‘wrong’ party.”² Misidentification was considered by the Royal Commission into Family Violence in Victoria as a significant issue. Recommendation 41 advised that changes be made to policing practices to reduce incidents of misidentification.³

Finding accurate statistics on the incidence and frequency in which misidentification occurs in Australia is challenging. According to a paper written by the Women’s Legal Service Victoria in 2018 that reviewed 600 client intake forms, one in ten women who were respondents in police applications for family violence intervention orders had been misidentified.⁴

Anecdotal information of client experiences collected at inTouch indicate that misidentification of the primary or predominant aggressor occurs frequently. We estimate that at least one-third of our clients have experienced misidentification at some point during their engagement with law enforcement and the justice system.

Misidentification can occur for different reasons, and some cohorts are more vulnerable to misidentification than others. Women from Aboriginal and Torres Strait Islander communities, women from migrant and refugee communities, women with disabilities, and individuals from LGBTIQ+ communities are at higher risk of misidentification than the general population.

In a 2017 report by the Queensland Domestic and Family Violence Death Review and Advisory Board, in just under half of all female deaths that were reviewed by the Board, “the woman had been identified as a respondent to a [domestic and family violence] protection order on at least one occasion.”⁵ The review further states that:

“...in nearly all of the [domestic and family violence]-related deaths of Aboriginal people, the deceased had been recorded as both respondent and aggrieved prior to their death. These numbers indicate that a concerning amount of domestic and family violence victims are being recorded as perpetrators.”⁶

This paper focuses specifically on the experiences of misidentification among our clients: women from migrant and refugee backgrounds that have experienced family violence. As will be discussed in this paper, misidentification causes significant and far-reaching harm to victim-survivors of family violence.

About inTouch

inTouch Multicultural Centre Against Family Violence (inTouch) provides person-centred, integrated and culturally responsive family violence services to people from migrant and refugee communities across Victoria. We have assisted over 20,000 women and children experiencing family violence throughout our 37 years of operation, providing a holistic service that centres the experiences of victim-survivors in everything we do.

inTouch works across the family violence continuum, providing culturally-informed early intervention, case management, perpetrator programs, legal advice, crisis recovery and enhanced capacity-building across the sector and community. We are proud to provide high-level leadership and guidance to all levels of government with our evidence-based, victim-survivor informed advocacy and policy work.

Our services include:

- An accredited community legal centre working at the intersection of Family Law and Migration Law
- Learning and development programs for family violence providers and multicultural organisations to build their knowledge and skills when supporting women from refugee and migrant communities
- Case management that encompasses a first-hand understanding of the migration journey and unique cultural barriers women may face when seeking assistance
- Post-recovery initiatives for victim-survivors, focusing on economic independence, social and family connection and emotional wellbeing
- Prevention projects and resource development for migrant and refugee communities
- Programs focusing on trauma and culturally-informed perpetrator intervention.

inTouch is a critical piece in Victoria's family violence response system and an organisation that is growing in size, scope and capacity. We are a unique and vital service, with specialist expertise working with people of migrant and refugee backgrounds. This is reflected in our workforce, which is comprised primarily of people who are migrants and refugees themselves – the inTouch team is from over 20 different countries and communities globally.

This paper has been informed directly through ongoing discussions with our client-facing case management team, our legal centre, staff from Motivation for Change – our perpetrator intervention program, as well as the views of NOOR, our survivor-advocate advisory group.

Why does misidentification occur?

“They didn't listen to me; they didn't believe me”

Women from migrant and refugee backgrounds are disproportionately impacted by misidentification for several reasons. Misidentification occurs when a victim-survivor's account of an incident has not been properly heard, understood, or believed. This can be most commonly attributed to the methods employed by police officers when investigating an incident. Although police are required to engage interpreters when language barriers are identified, we are aware that there are many occasions in which this does not occur. Often family members or even the perpetrator is asked to act as an interpreter between law enforcement and the victim survivor. Many reports also indicate that victim-survivors feel that police officers have simply not taken the time to listen to the client.

In some instances of misidentification, police have misconstrued the visible emotional distress of the client as an indication of violent behaviour or aggression. Similarly, if the victim-survivor has used

some form of aggression or self-defence in response to the abuser, the officer has perceived this to be indicative of her role as the perpetrator of violence in the relationship.

In all of these situations, the victim-survivor's account of the incident has not been accurately represented or reported to law enforcement.

"I was new to the country. I didn't even know where the police station was. When I called the police they did not come. They called me at 1pm, after the incident at 9am when I called them. Before police helped me, the perpetrator went to the police station and made a complaint about me." NOOR Member.

"I think it's also a situation where the police don't believe the woman because she doesn't speak English well and she's on a visa. Maybe it's a bit of racism? She isn't the 'right kind' of victim. Her abuser is savvy, speaks fluent English, and knows how to work the system. One of my clients had suffered so much at the hands of her boyfriend. She finally called the police. When they arrived she was absolutely beside herself – she kind of felt this relief that they were there and was able to really express herself. She was wailing and grabbing her thighs, yelling in her language. Her boyfriend told the police that she was crazy. They didn't even try to speak to her. Instead they just arrested her." inTouch Case Manager.

Systems abuse

Systems abuse is another major contributing factor to misidentification.⁷ A form of coercive control, systems abuse in this context occurs when the perpetrator of family violence uses the police and justice system to further abuse the victim-survivor. For example, he may seek "to control the victim before, during or after separation" by making numerous "applications and complaints in multiple systems" in relation to protection orders, breaches, parenting, divorce, property, child and welfare support, and "other matters".⁸ Sometimes, men have responded to her intervention order with a cross-application, hiring legal representation and using his knowledge and resources in Australia to portray her as the abuser and an unfit mother. His intention is to interrupt, challenge, or add complexity to "judicial and administrative processes" to deplete the victim's financial resources, emotional wellbeing and adversely impact her ability to "maintain employment or care for children."⁹

inTouch case managers and lawyers describe numerous instances in which perpetrators have manipulated and used systems in this way.

Furthermore, women who are recent arrivals to Australia may not be familiar with laws and legal processes in Australia. Subsequently, this can make them more vulnerable to systems abuse as well as misidentification. In inTouch's experience, this vulnerability increases for women who are temporary visa holders experiencing family violence. It is common for this cohort of women to also experience visa abuse – when the perpetrator of family violence uses the victim-survivor's visa status as a tool to continue to assert his power and control over her.

Case Study

Mai is an international student living in Melbourne with her partner Arthur.

Arthur was abusive and violent towards Mai. Mai didn't disclose the violence to any of her friends or family, nor did she report it to the police. Arthur had convinced her that if she did report it, he could have her deported.

One afternoon, Arthur and Mai had an argument. Arthur punched Mai in the face and pushed her hard into the wall. Mai pushed him back and scratched his arm. She ran to the phone and called the police.

When the police arrived, Mai was very distressed. She was screaming and crying. Arthur calmly told the police that Mai had assaulted him and showed the scratch marks to the officers.

Mai was removed from the home.

Fear and distrust of police

Many women are apprehensive to report the violence to the police when it first occurs because she is hopeful that the relationship may improve, or because she does not want her partner to get in trouble with the police. Furthermore, many people are fearful or distrustful of police due to negative experiences with law enforcement in their home country.

Case Study

Petra is in Australia on a bridging visa awaiting the outcome of a partner visa application. Her partner Dominic is sponsoring her. They have a 1-year-old child together. Dominic is very abusive, using physical and emotional violence against Petra. Petra has very limited English.

Dominic has told Petra that if she reports the family violence, he will have her deported and keep their child in Australia. He keeps Petra confined to the home most days and doesn't allow her to earn an income. Petra feels trapped – she does not want to lose her child.

One day, the police attended their home after neighbours heard screaming and what sounded like glass breaking. When the police attended, Dominic started to cry and told them that Petra had been violent towards him. The police did not call an interpreter and Petra did not understand what was happening. Petra was arrested and removed from the home.

“When I’m working at court in outreach, if I see a respondent who is a woman and who is obviously from a migrant or refugee background, I go up to her and have a quick chat. Most of the time, she’s been misidentified by the police as the perpetrator.” inTouch Case Manager.

“I was very scared of going to the police here. Because back in my home country, police are not seen in a positive way. We have a tradition where if you have been to the police station, when you come back home you do a cleanse with water. Because it’s believed to bring you a lot of negativity. So, when I finally went to the police station here, I was very scared. When I spoke to an officer, they didn’t take me seriously. It was very off-putting.” NOOR Member.

What are the consequences of misidentification?

Misidentification can have far-reaching, detrimental impacts on the lives of women who experience it. Being misidentified in situations of family violence can result in a loss of trust in the police and the justice system. Women who have been misidentified will be much more hesitant to contact police for assistance if or when family violence reoccurs in the future.

“Police scare me now... I needed to be protected [but] I don’t feel like they protected me.”¹⁰

Misidentified women can face a multitude of legal issues, including intervention orders, criminal charges for breaching intervention orders and assault charges. This can lead to reputational damage, reduction in access to services, and loss of engagement with child protection services, leading some women to lose access to their children. For temporary visa holders, these impacts can be more severe, putting their visa status in jeopardy and limiting their access to support services. Migrant women may not have family or support networks in place.

“When a client is misidentified, we have to go through so much to fix it. Different systems don’t catch up to each other. The MARAM [family violence risk assessment] doesn’t update, the police systems don’t update, child protection doesn’t update. We have to go through all the systems to fix it. It’s very difficult for us and for the client.” inTouch Lawyer

Attending court as a temporary visa holder or someone who has only recently arrived in the country, can have a significantly detrimental outcome for the client. inTouch's clients often attend court without legal representation and have not been given the opportunity to properly explain their side of events and have the misidentification corrected. It is also not uncommon for the victim-survivor to agree to the terms of the intervention order, without challenging the order or applying for a cross application, if she doesn’t understand the process or have the correct legal assistance or resources.

“They don’t believe us. They think we are doing it for the visa.” NOOR Member

When misidentification occurs, it can take considerable time and resources to identify the issue and correct it. There are several different bureaucratic and legal processes that need to be followed through a range of channels, including child protection. Furthermore, police administration cannot remove the status of perpetrator from a woman's record, even when it's been proven that misidentification occurred.

The impacts of COVID-19

COVID restrictions and the Victorian lockdowns during the pandemic have further disadvantaged clients who have been misidentified. Hearings in Victoria have been largely held remotely since the beginning of the pandemic. Many Family Violence Intervention Order hearings were adjourned for significant periods of time. The delays in legal processes as well as remote court hearings exacerbated communication barriers and prolonged the opportunity to have misidentification corrected. Additionally, legal assistance was limited in many ways, particularly during the early stages of the lockdowns, when many community legal centres experienced prolonged service interruptions. Our clients were more isolated than ever during these challenging periods, and found it more difficult to express themselves and report their experiences.

Recommendations

These recommendations are made with view to improve outcomes for women from migrant and refugee communities who have experienced family violence.

1. Police must appropriately engage interpreters when there is a language barrier.

Victoria Police's policies require that police members use interpreters when they attend incidents where there is a language barrier. Anecdotal information provided to inTouch by clients indicates that this process is not always adhered to.

To ensure that police receive all the facts of a situation it is critical that they always engage an independent interpreter and take the time to ensure that all parties have had an opportunity to be heard and understood.

2. Ongoing and regular training on how to better work with interpreters and cultural awareness for police, court staff, and other critical services.

Training to improve the ability of police, court staff and other services such as child protection to better work with migrant and refugee communities is critical in order to improve systems and address misidentification. Training to better work with interpreters as well as cultural awareness training should be embedded in both initial curriculum for these workers as well as ongoing professional development. Working with interpreters requires the development of specific communication skills. Cultural awareness training requires that programs are embedded to understand nuances around family relationships in diverse cultures. Without understanding the cultural nuances police and court staff can make presumptions and judgements of parties based on stereotypes. This contributes to misidentification. Cultural attitudes and norms have a significant impact on the way that people respond to and deal with police. Further, culture plays an integral part in the way that people present their emotions and communicate in emergencies.

3. Trauma-informed practices should be embedded into policing of family violence.

As recognised by the Victorian Government's own policies, "an unsafe response can escalate and compound trauma, resulting in additional harm."¹¹ This also extends to policing practices. More than ever, our community has become dependent on law enforcement in the response to family violence- it

is critical that this response is appropriate and helpful. There may be better outcomes when law enforcement who attend incidents of family violence have trauma-informed skills and practices, and therefore have a better understanding of the situation and the incident.

4. Where a respondent is from a group that is considered “higher risk” of misidentification, police and the courts should take additional steps to investigate and ensure that misidentification has not occurred.

Particular groups in our community are at higher risk of being misidentified by the police and/or the courts. A new policing and court policy should require additional processes for respondents who are from these groups, to ensure that misidentification has not occurred. These additional processes should be developed in consultation with specialist family violence services and groups and may include a further file or case review by a specialist family violence police officer or consultation with an appropriate specialist family violence service.

5. A single point in the system to correct misidentification.

Misidentification can take a significant amount of time to rectify. The changes need to be made at several points including the police reports, court documentation, intervention orders, child protection workers and the Multi-Agency Risk and Management Framework (the MARAM). This is labour intensive and for those who have not been able to secure legal assistance or representation, it is a very challenging process. Misidentification causes other serious issues for the victim-survivor in the long term – such as potential criminalisation.

A single point or division in police and justice systems where misidentification can be noted and overturned would improve outcomes for these victim-survivors significantly.

¹ Predominant aggressor refers to the “person who is exerting the greatest amount of harm and control over their partner or family member through any number of abusive behaviours including physical and sexual violence, threats, intimidation, emotional abuse, stalking and isolation. Predominant aggressors are also known as ‘primary aggressors’ in some literature.” Taken from NTV, Discussion Paper: Predominant Aggressor Identification and Victim Misidentification, (Melbourne: NTV, 2019) p4.

² Ellen Reeves, “I’m not at all protected and I think other women should know that, that they’re not protected either”, *International Journal for Crime, Justice and Social Democracy*, 10/2 (2021), p2.

³ State of Victoria, Royal Commission into Family Violence: Report and recommendations, Vol III, Parl Paper No 132 (2014–16).

⁴ Women’s Legal Service Victoria and Monash University, Policy Paper 1: “Officer She’s Psychotic and I Need Protection”: Police Misidentification of the ‘Primary Aggressor’ in Family Violence Incidents in Victoria, (Melbourne: Women’s Legal Service Victoria, 2018) <https://www.womenslegal.org.au/~womensle/wp-content/uploads/2021/04/MisID-Policy-Paper.pdf>.

⁵ Australia’s National Research Organisation for Women’s Safety (‘ANROWS’) Accurately identifying the “person most in need of protection” in domestic and family violence law: Key findings and future directions (Research to policy and practice, 23/2020), (Sydney: ANROWS, 2020), p3.

⁶ *Ibid.*, p3.

⁷ Reeves, p4.

⁸ National and Domestic Violence Benchbook, 3.1.11: Systems Abuse, (2021) <https://dfvbenchbook.aija.org.au/understanding-domestic-and-family-violence/systems-abuse/>.

⁹ *Ibid.*

¹⁰ Women’s Legal Service Victoria and Monash University.

¹¹ Victorian Government, Framework for Trauma Informed Practice (2019) <https://engage.vic.gov.au/framework-trauma-informed-practice>.

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**If you are experiencing family violence and need immediate support,
please call 1800 RESPECT on 1800 737 328**



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