



Submission to the Joint Select Committee on Australia's Family Law System

inTouch Multicultural Centre Against Family Violence

15 January 2020

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About inTouch

inTouch Multicultural Centre Against Family Violence (inTouch) provides integrated, culturally appropriate services to migrant and refugee communities. Over the past 35 years, we have addressed the specific needs of communities and helped over 18,000 women experiencing family violence. In the 2018–19 financial year, inTouch provided services to over 1400 women from 101 different countries, and over 1350 of their children.

We have become a critical piece in Victoria's family violence response system. In 2016, the Royal Commission into Family Violence in Victoria recommended that the government fund inTouch to better support the system in meeting the needs of people from refugee and migrant backgrounds experiencing family violence. As a leading expert with these communities, the reach and impact of inTouch's work has significantly increased.

inTouch works across the family violence continuum, from prevention and early intervention, to crisis intervention, post crisis support and recovery. Our services and programs include:

- An integrated, culturally responsive model based on inLanguage, inCulture case management. Our 18 case managers are highly diverse, offering direct client services in over 20 languages. They have a unique understanding of a client's lived migration experience, cultural influences, and the barriers faced when trying to seek help.
- An in-house accredited community legal centre, the only one of its kind in a specialist family violence service, which provides legal advice, court advocacy and immigration support to inTouch clients.
- Capacity building of specialist and non-specialist family violence providers, and community organisations to better deliver support to refugee and migrant women experiencing family violence. This includes a public training calendar and providing secondary consultations.
- An early intervention program, Motivation for Change, working directly with men from culturally and linguistically diverse communities who use violence towards their families.

Introduction

Government, academic, and private sector research has proven the prevalence of domestic and family violence.¹ From our perspective and expertise as an organisation that provides services to women and children who experience family violence, and from our work with men who use violence, we believe that the family law system does need to improve immensely. These improvements must be guided by statistical data, research and expertise of community groups and agencies, as well the communities and families that we work with. Changes to the family law system must:

- accept the prevalence of family violence in the family law system
- understand and accept the gendered dynamics of domestic and family violence
- provide access, support and representation for all involved in family violence proceedings, particularly those from marginalised communities
- recognise that as it operates currently, the family law system can be used by the perpetrator of family violence to extend the use of power and control beyond the end of the relationship.

Family violence is widespread and it permeates all cultural, age, religious, and socio-economic groups. According to data from the Australian Institute of Health and Welfare (2018), since the age of 15, 1 in 6 women and 1 in 16 men experienced physical and/or sexual violence by a current or previous partner.² Family violence is gendered in that women and children are overwhelmingly the victims and the perpetrators of violence are overwhelmingly men.³ Furthermore, as per the AIHW report:

While national population surveys show that rates of partner violence and sexual violence have remained stable since 2005, total violence from any person has declined significantly over this period. Despite these relatively stable population survey rates, the number of people accessing services due to family, domestic and sexual violence continues to rise: such as police, hospital, child protection and homeless services.⁴

Whilst women are more likely to experience physical “violence from a known person and in their home”, men are more likely to experience “violence from a stranger and in a public place.”⁵

Statistics provide a similar gendered view of other forms of family violence, including emotional abuse, sexual violence, and financial abuse.⁶

¹ World health Organisation. (2017). Violence against women. < <https://www.who.int/news-room/fact-sheets/detail/violence-against-women> >

² Australian Institute of Health and Welfare. (2019). Family, domestic and sexual violence in Australia: continuing the national story 2019. Canberra: AIHW, p ix.

³ Ibid., p 8.

⁴ Ibid., p. ix.

⁵ Ibid., p. 3.

⁶ Ibid., p. 14.

Particular groups of women are overrepresented in these statistics. Aboriginal and Torres Strait Islander women and women with disabilities report to have experienced higher rates of family violence or abuse than the rest of the population. Furthermore, alongside being overrepresented in these statistics, these groups of women and their children face multiple systemic barriers when accessing support services.

Similarly, women from migrant and refugee communities face multiple barriers and levels of disadvantage when they experience family violence. Lack of awareness of Australia's systems and processes, isolation as a result of living in a new country, pressure from faith and community groups, as well as visa status as their subsequent dependence on the perpetrator of violence, places these women in precarious situations.

inTouch case managers and lawyers understand the barriers that migrant and refugee women who are in the family law system experience. We are acutely aware of the structural and systemic barriers these women face. Our recommendations below are directly informed by our expertise and knowledge of the needs of these women and their families.

About this Inquiry

Over 100 peak bodies – including inTouch – co-signed a [joint statement](#) that highlights our view that the current Family Law Inquiry goes against the unanimous views of experts in the family violence sector. National statistics highlight the pervasiveness of family violence, the gendered dynamics of family violence, and the cost to our public systems. Family violence support services, health bodies such as hospitals, and police, provide us with further insight into family violence. Victoria's Royal Commission into Family Violence 2015 – 2016 highlighted the many ways in which various systems and processes involved in family violence and family law were failing the needs of victim-survivors and their children. Furthermore, the Better Family Law Inquiry 2017 provided detailed insights into the interactions between the family law system and family violence was highlighted as an incredibly significant issue.

We believe that extensive resources have already been utilised to understand these issues and we know what is needed to improve the system to protect victim-survivors, their children, and hold perpetrators accountable.

As the case with many other community organisations with expertise in this area, inTouch has limited resources. Our priorities as an organisation are centred on delivering the best services to our clients, to the sector, and our community more broadly.

To ensure inTouch provide a valuable contribution to this Inquiry, we have reviewed and updated our extensive submission for 2017.

List of recommendations

In May 2017, inTouch contributed a detailed submission to the Parliamentary Inquiry into a Better Family Law System to Support and Protect Those Affected by Family Violence. The full submission is attached to this document. We believe the recommendations we made to that Inquiry are equally relevant to the current Joint Select Committee on Australia's Family Law System.

As per the 2017 document, from the perspective of a service that provides services to migrant and refugee women who experience family violence and their children, and works with men who use violence, we make the following recommendations in relation to the family law system. Some of the recommendations we made in 2017 have since been adopted by the federal government. We have removed those from this submission:⁷

1. Information and resources about family violence and family law should be available in languages other than English. This information should be available in Family Court and Federal Circuit Court buildings, and in Magistrates' Courts, hospitals, police stations, maternal and child health care settings, and places of worship.
2. Family Court and Federal Circuit Court registry counters should have signs in languages other than English to enable people with limited English language skills to identify the language they speak and the interpreter they need.
3. Cultural consultants should be employed by the Family Court and the Federal Circuit Court to assist migrant and refugee communities and court staff in their interactions and with issues specific to their matters.
4. Culturally-sensitive legal and non-legal support services should be made available to more migrant and refugee women, particularly in regional and rural areas, to assist them with their family law matters.
5. A risk assessment framework should be developed and systematically employed to identify family violence in all applications before courts exercising jurisdiction under the Family Law Act 1975, which includes parenting, property only, divorce and other applications.
6. The risk assessment framework should take into consideration forms of family violence that are specific to the background of the parties.
7. Legal and non-legal professionals who work in the family law system should receive training in relation to the risk assessment framework so they can adequately assess risk and make appropriate referrals.
8. Relevant child welfare authorities should have lawyers who can appear as amicus curiae in family law proceedings to provide information to the court about investigations conducted by the authority in relation to the wellbeing of the children involved.
9. The number of judges available to hear family law matters should, as a matter of urgency, be significantly increased, as should the resources judges need to perform their role to the best of their ability.
10. The number of family report and s 11 F writers should be significantly increased.
11. Before making consent orders at litigation in cases involving allegations of family violence, judicial officers should be required to ensure that each party has:

⁷ Please note this has been adapted from inTouch 2017 submission.

- a) obtained independent legal advice from a lawyer who has had the opportunity to read the party's court documents and inspect subpoenas and
 - b) had the time to consider the orders between obtaining legal advice and making a final decision, especially in relation to final orders.
12. Interpreters working in a legal setting should be required to be proficient in legal terminology. Resources into interpreting services should be expanded to ensure that all migrant and refugee communities can access interpreters who are proficient in legal terminology during court proceedings.
 13. Interpreters coming into contact with family violence victims in a legal setting should be required to undertake ongoing family violence training.
 14. Incentives should be created to recruit more interpreters in languages for which there is a shortage of interpreters.
 15. Community education initiatives should be undertaken among migrant and refugee communities and faith leaders about family law entitlements and respectful relationships.
 16. In cases involving allegations of family violence, parties should be given the opportunity to enter Family Court and Federal Circuit Court buildings through different entrances.
 17. In cases involving allegations of family violence, all alleged victims of family violence should have access to legal representation.
 18. In Family Court and Federal Circuit Court buildings, security should be present outside as well as inside to deter perpetrators of family violence from approaching victims.
 19. Community legal centres should receive sufficient funding to provide legal assistance and representation to victims of family violence in family law proceedings.
 20. Each Family Court and Federal Circuit Court registry should have easily accessible childcare facilities for those attending a hearing or appointment.
 21. The process to book a secure room and to attend via telephone or video link should be simplified and offered to those who have disclosed a history of family violence throughout the proceedings (rather than requiring arrangements be made for each court event).
 22. Services that provide cultural and emotional support, such as inTouch, should be funded to provide migrant and refugee women with emotional support and appropriate referrals in Family Court and Federal Circuit Court buildings.
 23. Legislative grounds for objecting to a subpoena should include a history of family violence, the safety of the parties and their children, the effect the release of subpoenaed documents could have upon the future therapeutic needs of the victim, and the possibility of information becoming available by way of a letter or report from a doctor rather than a subpoena.
 24. A cross-jurisdictional analysis should be undertaken into ways of adducing evidence that reduce the need for victims to repeat their stories of violence, including where findings of fact have been made in earlier proceedings, with a view to adopting best practice.
 25. The property negotiation process that accompanies marriage breakdown in migrant and refugee communities that practice dowry should be taken into account by judicial officers, such as by:
 - a. issuing injunctions to prevent any dowry-related property demands being made while family law proceedings are under foot or
 - b. adjusting the division of assets in accordance with any dowry-related returns that have already been made.
 26. Family violence should be given greater consideration by the Courts when dividing property upon separation.

27. Family violence should be given greater consideration by the Courts when assessing a party's future earning capacity.
28. Ongoing cultural awareness and cultural competency training should be compulsory for members of the judiciary, court staff, family lawyers, professionals and non-legal service providers who come in contact with refugee and migrant families subject to the family law proceedings, including in relation to culturally-specific forms of family violence, parenting practices and family dynamics.
29. Family Court and Federal Circuit Court staff should check for the existence of family violence intervention orders prior to the first mention and, if an intervention order is in place, provide this information to the judge and the parties.
30. Judicial officers, family consultants and legal practitioners should undertake training on the intersection between immigration law and family law with respect to victims of family violence.
31. There should be a fast track system for applications for parentage test orders that relate to migration applications under the family violence provisions of the Migration Regulations 1994.

In this submission, we will be addressing the Terms of Reference of the current Inquiry by referring to recommendations we made in 2017, as well as the recommendations and findings of the final report from the 2017 Inquiry titled [A Better Family Law System to Support and Protect Those Affected by Family Violence](#) (from here on 'Better Family Law Inquiry 2017').⁸ The recommendations we made in 2017 as well as some of the findings of the Better Family Law Inquiry 2017 are hugely relevant to this current Inquiry.

⁸ Parliament of the Commonwealth of Australia, A better family law system to support and protect those affected by family violence: recommendations for an accessible, equitable and responsive family law system which better prioritises safety of those affected by family violence, (Canberra: Commonwealth of Australia, 2017).

Responses to the terms of reference

The next section of our submission will address the terms of reference specific to this current Inquiry. We will not be addressing every point of the terms of reference. These are the lettered headings below.

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- a) Ongoing issues and further improvements to the interaction and information sharing between the family law system and state and territory child protection systems, and family and domestic violence jurisdictions.
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Immense improvements need to be made to information sharing systems and interactions between the family law system and state and territory child protection systems. These systems need to be more effective in the way that they communicate to protect the best interests of children and victim-survivors of family violence.

We advocate that interactions and information sharing between the family law system and state and territory child protection systems, and family and domestic violence jurisdictions should be based on the findings and recommendations of the 2017 Parliamentary Inquiry. As evidence overwhelmingly suggests, family violence and the needs of victim-survivors and their children must be centred in these discussions, policies and laws. Streamlining information sharing and risk assessment processes have in many ways been adopted in Victorian systems after the Royal Commission into Family Violence in Victoria. The recommendations made by InTouch in 2017 continue to be of relevance to this matter, specifically:

[inTouch \(2017\) Rec 5: A risk assessment framework should be developed and systematically employed to identify family violence in all applications before courts exercising jurisdiction under the Family Law Act 1975, which includes parenting, property only, divorce and other applications.](#)

[inTouch \(2017\) Rec 6: The risk assessment framework should take into consideration forms of family violence that are specific to the background of the parties.](#)

[inTouch \(2017\) Rec 8: Relevant child welfare authorities should have lawyers who can appear as amicus curiae in family law proceedings to provide information to the court about investigations conducted by the authority in relation to the wellbeing of children involved.](#)

Furthermore, we would support the following two recommendations from the final report of the Better Family Law Inquiry 2017:

Recommendation 2

The Committee recommends that the Australian Government progresses, through the Council of Australian Governments, the development of a national family violence risk assessment tool. The tool must be nationally consistent, multi-method, multi-informant

and culturally sensitive and be adopted to operate across sectors, between jurisdictions and among all professionals working within the family law system.⁹

There has been considerable work undertaken around information sharing across Australia. In Victoria, the Multi-Agency Risk Assessment and Management (MARAM) was developed out of the Royal Commission into Family Violence. Establishing some national consistency with best practice in this area would be of great benefit.

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- b) The appropriateness of family court powers to ensure parties in family law proceedings provide truthful and complete evidence, and the ability of the court to make orders for non-compliance and the efficacy of the enforcement of such orders.
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As stated earlier, family violence is a gendered crime where in most cases perpetrators of family violence are men and victim-survivors are women and children. It is our experience that perpetrators of family violence frequently use the court system to influence outcomes based on either incomplete and/or untruthful information. For example, misidentification of victims of family violence as respondents in intervention orders can leave a permanent mark and influence family law proceedings. The gendered nature of family violence means that women are impacted by being misidentified as the primary aggressor/perpetrator disproportionately. Aboriginal and Torres Strait Islander women and women from migrant and refugee communities are at even greater risk of being misidentified as the perpetrator of family violence by police and even in court subsequent court proceedings.¹⁰

We support more resources into the courts to ensure that perpetrators of family violence are held accountable for their actions and that victim-survivors are supported appropriately. For example, more supports need to be in place to avoid victim-survivors from being blamed for 'failing to protect' children and that the focus is instead on holding perpetrators of family violence accountable for choosing to use violence.

We also strongly advocate more uniform and holistic processes to ensure that family violence is identified as early as possible. The following recommendations from the final report of the Better Family Law Inquiry 2017 are directly relevant to this matter:

Recommendation 5

The Committee recommends that the Attorney-General considers how the Family Court of Australia and the Federal Circuit Court of Australia can improve case management of family law matters involving family violence issues, including:

- the adoption of a single point of entry to the federal family law courts so that applications, depending on the type of application and its complexity, are appropriately triaged, and actively case managed to their resolution in an expedited time-frame;

⁹ Parliament of the Commonwealth of Australia, p. xxix.

¹⁰ No To Violence, NTV Discussion Paper: Predominant aggressor Identification and victim misidentification, (NTV: Melbourne, 2019).

- the implementation of more uniform rules and procedures in the two federal family courts to reduce unnecessary complexity and confusion for families;
- the establishment of formal and expedited referral pathways between state and territory magistrates courts and the federal family courts; and
- the development of a stronger regime of penalties including cost orders to respond to abuse of process, perjury and non-compliance with court orders.¹¹

Recommendation 7

The Committee recommends the Australian Government introduces to the Parliament amendments to the Family Law Act 1975 (Cth) to require a relevant court to determine family violence allegations at the earliest practicable opportunity after filing proceedings, such as by way of an urgent preliminary hearing and, where appropriate, refer to findings made, and evidence presented, in other courts.¹²

Recommendation 8

The Committee recommends that abuse of process in the context of family law proceedings be identified in the list of example behaviours as set out in section 4AB(2) of the Family Law Act 1975 (Cth).¹³

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- d) The financial costs to families of family law proceedings, and options to reduce the financial impact, with particular focus on these instances where legal fees incurred by parties are disproportionate to the objective level of complexity of parenting issues, and with consideration being given amongst other things to banning 'disappointment fees', and:
- i. Capping total fees by reference to the total pool of assets in despite or any other regulatory option to prevent disproportionate legal fees being charged in family law matters, and
 - ii. Any mechanisms to improve the timely, efficient and effective resolution of property disputes in family law proceedings.
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We would support steps taken to simplify family law proceedings and make them more culturally appropriate for migrant and refugee families in particular. Our recommendations from the 2017 submission would help to improve the efficiency of property disputes in family law proceedings. The following recommendations were made in our submission in 2017, which we continue to support and wish to reiterate here:

inTouch (2017) Rec 27: The property negotiation process that accompanies marriage break down in migrant and refugee communities that practice dowry should be taken into account by judicial officers, such as by:

- a) Issuing injunctions to prevent any dowry-related property demands being made while family law proceedings are under way or
- b) Adjusting the division of assets in accordance with any dowry-related returns that have already been made.

¹¹ Parliament of the Commonwealth of Australia, p. xxx.

¹² Ibid., p. xxxi.

¹³ Ibid.

inTouch (2017) Rec 28: Family violence should be given greater consideration by the Courts when dividing property upon separation.

inTouch (2017) Rec 29: Family violence should be given greater consideration by the Courts when assessing a party's future earning capacity.

Furthermore, we would support the following recommendations made by the Better Family Law Inquiry 2017 final report:

Recommendation 14

The Committee recommends that the Australian Government introduces to the Parliament amendments to the Family Law Act 1975 (Cth) to include a requirement for an early resolution process for small claim property matters. This process should involve a case management process upon application to the Court for a property settlement, rather than a pre-filing requirement, which will provide greater certainty and more expeditious resolution.¹⁴

Recommendation 15

The Committee recommends that the Attorney-General:

- develops an administrative mechanism to enable swift identification of superannuation assets by parties to family law proceedings, leveraging information held by the Australian Taxation Office; and
- amends the Family Law Act 1975 (Cth) and relevant regulations to reduce the procedural and substantive complexity associated with superannuation splitting orders, including by simplifying forms required to be submitted to superannuation funds.¹⁵

e) The effectiveness of the delivery of family law support services and family dispute resolution processes

There are a number of ways that family law support services and family dispute resolution processes can become more effective and efficient, particularly in relation to migrant and refugee families who often face multiple barriers when accessing these services.

Specific to our expertise working with migrant and refugee families, please see below the relevant recommendations from our submission to the Better Family Law Inquiry 2017:

inTouch (2017) Rec 1: Information and resources about family violence and family law should be available in languages other than English. This information should be available in Family Court and Federal Circuit Court buildings, and in Magistrates' Courts, hospitals, police stations, maternal and child health care settings, and places of worship.

¹⁴ Ibid., p. xxxi.

¹⁵ Ibid.

inTouch (2017) Rec 2: Family Court and Federal Circuit Court registry counters should have signs in languages other than English to enable CALD women to identify the language they speak and the interpreter they need.

Support services and family dispute resolution processes need to become culturally adaptable to provide relevant and useful services.

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- f) The impacts of family law proceedings on the health, safety and wellbeing of children and families involved in those proceedings
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Family law proceedings can be a difficult time for all those involved, including women, men, children, and their extended families. As per inTouch's submission in 2017, migrant and refugee women face a number of practical issues when attending court for hearings or appointments with family consultants. Attending court and facing the perpetrator of violence can present a very real risk to the woman's safety. The man who uses violence often uses court hearings or scheduled appointments as an avenue to expose the woman to more violence. As per our submission in 2017, the care of children when women attend court is also something that must be addressed. Migrant and refugee women who have been affected by family violence have often been isolated from their community and have few, if any, members of their birth-family here with them in Australia. This means that they are left with little or no support after separation and they often cannot afford private childcare services. It can therefore be a real challenge to attend court.

We would like to reiterate the following recommendations that we made in our 2017 submission in relation to the health, safety and wellbeing of children and families involved in family law proceedings:

inTouch (2017) Rec 16: In cases involving allegations of family violence, parties should be given the opportunity to enter Family Court and Federal Circuit Court buildings through different entrances.

inTouch (2017) Rec 17: In cases involving allegation of family violence, all alleged victim-survivors of family violence should be offered legal representation.

inTouch (2017) Rec 18: In Family Court and Federal Circuit Court buildings, security should be present outside as well as inside to deter perpetrators of family violence from approaching victims.

inTouch (2017) Rec 19: Community legal centres should receive sufficient funding to provide legal assistance and representation to victims of family violence in family law proceedings.

inTouch (2017) Rec 20: Each Family Court and Federal Circuit Court registry should have easily accessible childcare facilities for those attending a hearing or appointment.

inTouch (2017) Rec 21: The process to book a secure room and to attend via telephone or video link should be simplified and offered to those who have disclosed a history of family violence throughout the proceedings (rather than requiring arrangements be made for each court event).

inTouch (2017) Rec 22: Services that provide cultural and emotional support, such as inTouch, should be funded to provide migrant and refugee women with emotional support and appropriate referrals in Family Court and Federal Circuit Court buildings.

g) Any issues arising for grandparent carers in family law matters and family court proceedings

Grandparent carers and other extended family who are playing an active role in caring for family are frequently taking on caring responsibilities informally and may not have access to Centrelink payments associated with being the primary carer for children. This can lead to financial disadvantage and a barrier to accessing support and legal representation.

h) Any further avenues to improve the performance and monitoring of professionals involved in family law proceedings and the resolution of disputes including agencies, family law practitioners, family law experts and report writers, the staff and judicial officers of the courts, and family dispute resolution practitioners

inTouch supports increased resourcing to improve the performance of professionals in family law proceedings, particularly in relation to migrant and refugee populations, different cultural norms and practices, and how these effect family dynamics. There is a lack of knowledge of cultural practices that can impair decision-making at all levels. For example, when police respond to a family violence incident and observe somebody wailing in order to get the police's attention and seek help, it is often interpreted by the police as threatening or a sign of mental health issues. This may have significant effects on the outcome of a woman's family law proceedings.

As per our 2017 submission:

A lack of cultural-awareness can impact the opinion of key players in court proceedings, including Independent Children's Lawyers (ICL). This is especially true for ICLs who have interviewed older children who have shown a preference towards the perpetrator of family violence. In family court proceedings, this is mistakenly viewed as the mother 'abandoning' her children... These women may not have known they had any rights over their children, but this is not taken into account by the Australian legal system.

In family reports, the lack of awareness among CALD women of their family law entitlements, coupled with the lack of cultural-awareness among family consultants, leads recommendations that not in the best interests of the children. For many CALD women, this process is difficult to understand at best, and can be extremely stressful and traumatic in

other cases. Furthermore, the weight given to family report recommendations means that these misunderstandings can have dire consequences for the women involved.

A lack of cultural-competency can have a serious impact on a lawyer's ability to obtain instructions, a family consultant's ability to formulate appropriate recommendations, and a judge's ability to make orders that are sustainable and in the best interests of the children. The ability of judges to take cultural considerations into account is further hindered by the previously mentioned heavy case load, which is on average 500 cases per judicial officer.¹⁶

We reiterate the following recommendations made in our 2017 submission:

inTouch (2017) Rec 30: Ongoing cultural awareness and cultural competency training should be compulsory for members of the judiciary, court staff, family lawyers, professionals and non-legal service providers who come in contact with CALD families subject to the family law proceedings, including in relation to culturally-specific forms of family violence, parenting practices and family dynamics.

inTouch also supports the following recommendation made by the Better Family Law Inquiry (2017):

Recommendation 25

The Committee recommends that, as a matter of urgency, the Australian Government implements recommendations from both the 2012 Improving the family law system for clients from culturally and linguistically diverse backgrounds report, and the 2016 Families with complex needs and the intersection of the family law and child protection systems – Final Report, as they relate to culturally and linguistically diverse families, including those recommendations addressing:

- community education;
- cultural competency;
- service integration;
- culturally diverse workforce;
- consultation with culturally and linguistically diverse communities in service evaluation;
- interpreters;
- cultural connection for children; and
- family group conferences.¹⁷

¹⁶ inTouch Multicultural Centre Against Family Violence, Submission to the Committee on Social Policy and Legal Affairs in relation to the Parliamentary Inquiry into a Better Family Law System to Support and Protect Those Affected by Family Violence, (inTouch: Melbourne, 2017). Pp. 18 – 19.

¹⁷ Parliament of the Commonwealth of Australia, p. xxxiii.

Conclusion

Significant work and resources have already been allocated to understanding the issues related to family violence and the gaps when it comes to our family law and broader services systems. International and national research reflects the prevalence and gendered nature of family violence. From the Royal Commission into Family Violence in Victoria to the Parliamentary Inquiry into a Better Family Law System to Support and Protect Those Impacted by Family Violence, the issues and the needs of women and children have been repeatedly highlighted.

We believe this current Inquiry must acknowledge the gendered nature of family violence. We also believe this Inquiry must acknowledge the work that has already been done in identifying the needs of the family law system to better support victim-survivors and their children, and hold perpetrators accountable.

inTouch is of the view that adopting the recommendations throughout this submission would enable to government to better protect victim-survivors who come into contact with the family law system.

Appendix



Submission to the Committee on Social Policy and Legal Affairs in
relation to the

**Parliamentary Inquiry into a Better Family Law
System to Support and Protect Those Affected by
Family Violence**

By inTouch Multicultural Centre Against Family Violence

2 May 2017

1.Introduction

inTouch Multicultural Centre Against Family Violence (inTouch) is pleased to contribute to the Parliamentary Inquiry into a Better Family Law System to Support and Protect those Affected by Family Violence.

inTouch provides culturally-appropriate family violence services to Victoria's culturally and linguistically diverse (CALD) communities. As part of its holistic approach to service delivery, inTouch has an in-house legal centre that provides legal services to CALD women in the areas of family violence, family law, child protection, migration and victims of crime compensation. inTouch's lawyers, case managers and migration agent work together to assist clients as they navigate our complex legal system.

In light of its expertise and knowledge, inTouch is well-placed to advise the Committee on Social Policy and Legal Affairs (the Committee) on how the current family law system can be improved to better support and protect CALD women and children who experience family violence.

While CALD women experience the same forms of family violence as mainstream Australian women, CALD women are often unaware that their husbands' behaviour amounts to family violence and is, in many instances, illegal. In addition, they may experience culturally-specific forms of family violence, such as dowry-associated violence, forced marriage, honour killings, female genital mutilation and human trafficking for sexual or domestic servitude. It is also more common for CALD women to live with their husbands' extended family members, and to be subjected to family violence by those family members. The capacity of CALD victims of family violence to seek assistance is often hindered by language and other cultural barriers.

Australia's 2011 Census showed that:

- 26.2% of Victorians were born overseas in more than 200 countries
- 46.8% of Victorians were either born overseas or had at least one parent born overseas
- 23.1% of Victorians spoke a language other than English at home.¹

¹ Victorian Multicultural Commission, *2011 Census: A snapshot of our diversity*, <<http://www.multicultural.vic.gov.au/population-and-migration/victorias-diversity/2011-census-a-snapshot-of-our-diversity>>.

Despite the number of Victorians with CALD backgrounds, few services are able to provide adequate assistance to CALD victims of violence, including in relation to their family law matters. inTouch is yet to receive any Commonwealth funding for the assistance it provides to CALD women engaged in family law proceedings. Among the challenges CALD victims of family violence face when engaging with the family law system are:

- a lack of information in languages other than English
- inadequate translating and interpreting services
- inadequate risk assessment measures
- a lack of appropriate safety measures in court
- a lack of childcare facilities
- inadequate safeguards for self-represented victims of family violence
- inadequate safeguards against self-represented perpetrators of family violence
- inadequate consideration of the consequences of financial abuse and the financial consequences of other forms of family violence
- a lack of cultural competency among family law professionals and other service providers in the family law system
- inadequate consideration of the impact of family law proceedings on the residency status of CALD women.

inTouch's clients are regularly worn down and re-traumatised by these challenges. This submission contains 36 recommendations designed to ensure CALD victims of family violence receive greater support as they seek to resolve their family law matters.² inTouch strongly encourages the Committee to consider the particular needs of CALD victims of family violence in its inquiry and report.

inTouch understands that the Committee is conducting public hearings and would welcome the opportunity to participate in these hearings. Should the Committee wish to meet with inTouch clients who have had first-hand experience of the issues raised in this submission, inTouch would be pleased to facilitate that meeting.

² A list of recommendations is contained in Appendix A.

2. About us

inTouch was established in 1984 as a multilingual support service for CALD women in family violence refuges across Victoria. Today it is a statewide accredited service, providing a range of culturally-appropriate intervention and support services, including legal services, to CALD victims of family violence. Collectively, inTouch staff speak approximately 25 languages. In the last financial year, inTouch staff assisted 1004 women (and 882 accompanying children) with their social, legal and therapeutic needs, and engaged approximately 10,000 CALD community members in family violence prevention initiatives.

We understand that inTouch Legal Centre is the only legal centre in Australia that has family lawyers working together with an immigration agent for the benefit of CALD women who have left a violent relationship. inTouch's migration agent has been recognised as a leader in her field.³

inTouch provides family violence cultural competency training for professionals likely to come into contact with CALD victims of family violence. In the past year, inTouch provided a number of professional development sessions to magistrates at the Judicial College of Victoria, Victoria University's welfare and counselling team, and Monash Multicultural and Settlement Services staff.

In 2016, in partnership with Kildonan and other key agencies, inTouch established Melbourne's first Arabic-speaking *Men's Behaviour Change Program*.

In 2013, inTouch Legal Centre collaborated with Monash Health to provide legal services to CALD victims of family violence in various health care settings. Last month, this initiative received the Diversity and the Law Award at the Australian Migration and Settlement Awards.

We would be pleased to provide further information about inTouch, its services and/or its clients if required.

³ In 2015, inTouch's migration agent received a Leading Practitioner Award at the Victorian Homelessness Achievement Awards.

3. Early identification and response

The early identification of, and the provision of assistance to, family's experiencing family violence when they come into contact with the family law system would ensure a more just outcome for the women and children involved, and may ultimately save lives. This is particularly important for CALD women who often wait until crisis point before they leave their partners and have limited awareness of, or access to, community-based family violence support services.

Language and cultural barriers to seeking assistance

A lack of information in languages other than English results in practical barriers for CALD women who try to access information about family violence and/or their entitlements under family law. In addition, many CALD victims of family violence are isolated from their communities, and are actively prevented from speaking to service providers who may assist them. The inability of CALD victims of family violence to access support services, including legal services, is particularly prevalent in country areas. Although inTouch is a statewide service for CALD women, its legal centre has no funding to provide legal services in country Victoria.

When working with CALD communities, it is important to deliver awareness raising initiatives and support services in a culturally sensitive manner. Mainstream service providers are often unaware of culturally-specific forms of family violence, as well as cultural barriers to separation and divorce. As such, they do not often consider these issues when developing legal and non-legal services to support the early identification of, and response to, family violence.

Recommendations

1. Information and resources about family violence and family law should be available in languages other than English. This information should be available in Family Court and Federal Circuit Court buildings, and in Magistrates' Courts, hospitals, police stations, maternal and child health care settings, and places of worship.
2. Family Court and Federal Circuit Court registry counters should have signs in languages other than English to enable CALD women to identify the language they speak and the interpreter they need.

3. Cultural consultants should be employed by the Family Court and Federal Circuit Court to assist CALD women and court staff in their interactions with CALD women, including family consultants.
4. Culturally-sensitive legal and non-legal support services should be made available to more CALD women, particularly in country areas, to assist them with their family law matters.

Poor risk assessment practices

In light of the language and cultural barriers they face when accessing family violence and family law services, it is particularly important for CALD women that a risk assessment framework is developed and systematically employed to facilitate the early identification of, and the delivery of services to, victims of family violence.

At present, the family law system does not adequately screen for the risks associated with family violence. Many legal and non-legal professionals are not aware of, or do not use, the Detection of Overall Risks Screen program.

S In addition, the assessment conducted by child welfare authorities depends on a notification being made, and this is done when the matter is already in court. Upon filing an application or response for parenting orders, a party must file a *Notice of Child Abuse, Family Violence or Risk of Family Violence* and a *Notice of Risk*. If a party correctly indicates that a child is at risk, a notification is sent to child welfare authorities. However, inTouch is aware of many instances in which its clients have not said ‘yes’ the relevant question, with the result being that child protection authorities are not notified even though the content of the notices clearly identifies, or gives rise to a strong suspicion of, family violence.

The current system relies heavily on an individual’s language skills, ability to recognise risk and knowledge of the law. This poses a problem for CALD women who might have limited – if any – English, a lack of knowledge about what constitutes risk, and a lack of awareness about which particular behaviours are perceived to be abusive (including sexual intercourse without consent, for example), or are illegal, in Australia.

Furthermore, even when child welfare authorities are notified and conduct an assessment, they rarely intervene in family law proceedings or provide the information needed to inform the judge about how best to proceed. Although welfare reports have improved substantially, they may still not meet the evidentiary requirements of the family law system.

As mentioned above, these Notices are only completed when a party is filing an initiating application or response in relation to parenting orders. This means there is no system to identify family violence in relation to other matters, such as divorce or property only disputes. This is particularly concerning given the level of financial abuse experienced by CALD women.⁴

Recommendations

5. A risk assessment framework should be developed and systematically employed to identify family violence in all applications before courts exercising jurisdiction under the *Family Law Act 1975*, which includes parenting, property only, divorce and other applications.
6. The risk assessment framework should take into consideration forms of family violence that are specific to the background of the parties.
7. Legal and non-legal professionals who work in the family law system should receive training in relation to the risk assessment framework so they can adequately assess risk and make appropriate referrals.
8. Relevant child welfare authorities should have lawyers who can appear as *amicus curiae* in family law proceedings to provide information to the court about investigations conducted by the authority in relation to the wellbeing of the children involved.

Delays in court proceedings

The early identification of and response to family violence is often hindered by lengthy delays in family law proceedings. While the first return day for non-urgent matters varies from registry to registry, it is often not until at least two months after the date of filing. There are long delays for parties who need to see family report writers or s 11 F writers. Delays in the court listing matters for final hearings are becoming more significant. Parties often wait between 12 and 18 months for matters to be listed for a final hearing. Resolving parenting matters takes even longer, with delays of up to 3 years.

Judges have an extraordinarily high case load, with an average of 500 matters each, and a shortage of staff.⁵ At the National Family Conference in Melbourne in October 2016, the head

⁴ This is discussed further on pages 16–17.

⁵ This is discussed further in inTouch Multicultural Centre Against Family Violence, *I Lived in Fear Because I Knew Nothing: Barriers to the justice system faced by CALD women experiencing family violence*, 2010 <<http://www.intouch.org.au/wp-content/uploads/2016/01/Legal-Barriers-Report.pdf>>.

of the Federal Circuit Court told participants that in the last 10 years, 10 retired judges were not replaced. This is despite a two per cent population increase per year over that time, and a corresponding increase in the number of family law matters. This hinders the ability of judges to identify, and respond to the needs of, family violence victims.

inTouch clients are often stressed and re-traumatised throughout the resolution of their family law matters, with many feeling their lives are on hold while waiting for a resolution. This is particularly true for clients without permanent residency who are reliant on their abusive husbands for their visa status.⁶ Perpetrators of violence against inTouch clients routinely use the family law system as a means to punish their wives for leaving them. For example, perpetrators of violence make applications for time, and then do not follow the orders to do anger management and/or parenting courses, and those unmeritorious applications are not struck out but rather adjourned multiple times.

Recommendations

9. The number of judges available to hear family law matters should, as a matter of urgency, be significantly increased, as should the resources judges need to perform their role to the best of their ability.
10. The number of family report and s 11 F writers should be significantly increased.

⁶ This is discussed further on pages 22–24.

4. Consent orders

CALD victims of family violence often feel pressured to agree to consent orders. This pressure comes from their former partners, extended family members, community members, faith leaders and the family law system itself.

Many of these women have to juggle court proceedings with domestic responsibilities, financial pressures and their children's general care and wellbeing, and they frequently do all of this without any family members in Australia to support them. inTouch clients often agree to unsatisfactory consent orders to avoid further lengthy litigation and the ongoing trauma they experience as a result of their frequent interactions with their abusive ex-partner.⁷

Many parenting consent orders allow for shared-parental responsibility as an application for sole-parental responsibility is often only resolved at final hearing. In situations of ongoing family violence this can be extremely problematic, especially in light of the clear power imbalance between the victim and perpetrator.

Recommendation

11. Before making consent orders in cases involving allegations of family violence, judicial officers should be required to ensure that each party has:
 - a) obtained independent legal advice from a lawyer who has had the opportunity to read the party's court documents and inspect subpoenas and
 - b) had the time to consider the orders between obtaining legal advice and making a final decision, especially in relation to final orders.

⁷ This is discussed further on pages 12–15.

Case Study 1: Family violence victims pressured into agreeing to unfavourable and inappropriate consent orders

A 19-year-old Cambodian woman arrived in Australia on a spousal visa. She had met her fiancé, who was in his 40s, on two previous occasions while he was travelling in Cambodia. Soon after her arrival, she fell pregnant and the family violence began. For the following four years, she was hit, kicked, pushed, sexually violated and sworn at regularly. During this time, she was isolated from her family in Cambodia and her local community, relying solely on her husband. The woman fell pregnant again but left her husband before the second child was born.

When court proceedings commenced, she was represented by a lawyer. Shortly before the final hearing, her lawyer informed her that he could no longer represent her and she was unable to find alternative representation. Suddenly, the woman found herself navigating an unfamiliar court system in a foreign language.

During the negotiation, her ex-partner's lawyer provided her with consent orders. Her case manager helped her to translate the orders but she did not receive legal advice. The power imbalance during the negotiation process – along with her ignorance of her legal rights, fear of further proceedings, and need to pay bills and look after the children – meant that she felt pressured to agree to the orders even though they were not favourable to her or in the best interests of the children. The orders included shared-parental responsibility and allowed her husband to have unsupervised contact with the children.

Since the making of the final orders, her ex-partner's involvement in the children's lives has been sporadic. When he has been in contact with the children or the woman, he has been violent. One of the children, who has witnessed this violence throughout his life, is now perpetrating the same violence against the woman and his mental health has deteriorated to the point of self-harming. Our client is attempting to obtain assistance and support for the child but she requires her ex-partner's consent due to the shared-parental responsibility in the orders. Her ex-partner is refusing to provide consent and is extending the family violence cycle through this unreasonable control.

Five years after the making of final consent orders, the client is seeking to vary the orders, which were not appropriate to begin with.

5. Self-represented litigants

CALD women: language and cultural barriers

Navigating the family law system for self-represented CALD women can be extremely overwhelming as a result of the language and cultural barriers they face.

Information in the Family Court and Federal Circuit Court is not readily available in languages other than English. In addition, the Court relies on written evidence in the form of affidavit material and rarely allows oral submissions, especially at the first mention. This means that important information about family violence may not be put before the court at the first available opportunity, resulting in interim orders that fail to take into account the history of family violence and the risks to those involved.

Even when interpreters are available, they are only able to assist at the hearing itself and not with the preparation of documents. Furthermore, interpreters sometimes exacerbate the problems faced by CALD women in the family law system. Firstly, a lack of female interpreters means that clients are often provided with male interpreters. Many of our clients feel uncomfortable disclosing incidents of family violence, especially sexual assaults, to male interpreters. Secondly, some interpreters struggle to interpret legal words and phrases, and display a lack of nuance and sensitivity when interpreting the client's account of family violence. Thirdly, some interpreters minimise the violence by deliberately failing to interpret all of the information conveyed by the client or pressuring the client to waive her entitlements.

CALD women sometimes agree to orders they may not believe are entirely safe as a result of the pressure placed on them by their broader community and faith leaders. It is well documented that community members and faith leaders play an important role in the lives of migrants and may influence the outcome of family law proceedings. Initiatives designed to increase awareness of family law entitlements and respectful relationships among community members and faith leaders are long overdue.⁸

Most community legal centres do not receive ongoing funding for their lawyers. This contributes to the issue of legal centres not always being able to engage the 'best talent' for

⁸ Family Law Council, Improving the Family Law System for Clients from Culturally and Linguistically Diverse Backgrounds, February 2012, p. 89.

the job. It also means that there is a high turnover of staff, with the lawyers' employment contracts often being shorter than the life of a family law matter. There is a danger that, when a client's initial lawyer can no longer assist the client with their family law matter because the lawyer's employment contract has expired, the client may fall through the gaps as there are not nearly enough community legal centre family lawyers to meet demand.

Case Study 2: Unprofessional and unsafe interpreting services

An inTouch case manager entered a court interview room to assist one of her clients and found her sitting alone with her interpreter, who was himself a perpetrator of family violence.

The case manager had assisted the interpreter's wife for two years with her own intervention order, family law and victims' compensation matters. Over the course of the two years, the interpreter breached his intervention order numerous times.

The case manager expressed her concerns to the registrar, who asked the interpreter to leave. The male interpreter was then replaced with a female interpreter.

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Recommendations

12. Interpreters working in a legal setting should be required to be proficient in legal terminology.
13. Interpreters coming into contact with family violence victims in a legal setting should be required to undertake family violence training.
14. Incentives should be created to recruit more interpreters in languages for which there is a shortage of interpreters.
15. Community education initiatives should be undertaken among CALD communities and faith leaders about family law entitlements and respectful relationships.

CALD women: attending court

CALD victims of family violence face a number of practical issues when attending court for hearings or appointments with family consultants.

Attending court and facing the perpetrator can present a very real risk to the woman's safety. Perpetrators often use court hearings or scheduled appointments to further perpetrate violence. This may be as subtle as a threatening look or abusive remark, or more serious physical violence outside of court. In Melbourne, there is only one entry to the court exercising family law jurisdiction, and quite often a victim and a perpetrator of violence stand in close proximity while waiting for security to check their bags.

While physical safety might be provided through the use of safe rooms, this only assists the woman while inside the court house. Furthermore, many CALD women are not aware of this option, which usually needs to be booked by contacting the registry at least five days in advance.

The current family law system allows parties to request to appear via telephone or video link, however, this request also needs to be made in writing using the prescribed form at least five days prior to the scheduled hearing. Furthermore, the other party must be notified of the request and inform the judge or registrar of their position.

While self-represented litigants are often encouraged to bring a support person or friend to court, the support person or friend is not allowed to assist the judicial officer in the court room. When attending an appointment with a family consultant, it is up to the individual consultant to decide whether the support person or friend should be allowed in the room.

Another practical issue is the care of children when women need to attend court. CALD women who have been affected by family violence have often been isolated from their community and have few, if any, members of their birth-family here with them in Australia. This means that they are left with little or no support after separation. Often they cannot afford private childcare services.

For women with children who do not attend school, it can be a real challenge to attend court as a self-represented litigant. The environment is unfamiliar, all the signs are in English and there is no-one past security to explain to a completely overwhelmed non-English speaking woman with young children where to go and what to do.

An inTouch staff member visited the United States last year and reported that the courts exercising family law jurisdiction have signs in 43 languages around the security and registry areas. These signs provide reassurance to CALD women who are then able to explain what they need in their own language.

For obvious reasons, children are not allowed to sit in the court room. For CALD women with no-one to care for their children, this means they are not able to attend court. There is a risk that orders will be made in their absence or that they will be viewed as disinterested in the proceedings.

Case Study 3: The need for childcare facilities in court



While in America to learn more about best practice in relation to family violence health justice partnerships, an inTouch staff member visited a children's centre inside a family court in New York (pictured).

Run by victims' assistance organisation, Safe Horizon, the children's centre is a free supportive, educational childcare facility for child victims and the children of parties to proceedings and witnesses. The centre, one of six run by Safe Horizon in family and criminal courts across New York, also provides parent education and referrals to services and organisations that assist parents to meet their children's needs.

Recommendations

16. In cases involving allegations of family violence, parties should be given the opportunity to enter Family Court and Federal Circuit Court buildings through different entrances.
17. In cases involving allegations of family violence, all alleged victims of family violence should be offered legal representation.
18. In Family Court and Federal Circuit Court buildings, security should be present outside as well as inside to deter perpetrators of family violence from approaching victims.
19. Community legal centres should receive sufficient funding to provide legal assistance and representation to victims of family violence in family law proceedings.
20. Each Family Court and Federal Circuit Court registry should have easily accessible childcare facilities for those attending a hearing or appointment.
21. The process to book a secure room and to attend via telephone or video link should be simplified and offered to those who have disclosed a history of family violence throughout the proceedings (rather than requiring arrangements be made for each court event).
22. Services that provide cultural and emotional support, such as inTouch, should be funded to provide CALD women with emotional support and appropriate referrals in Family Court and Federal Circuit Court buildings.

Self-represented perpetrators of family violence

Family law proceedings are often used by perpetrators of family violence to continue abusing their ex-partner. This is especially true for perpetrators who are self-represented in the proceedings.

In family law proceedings, a self-represented perpetrator of family violence is able to directly cross-examine their ex-partner. This can be extremely traumatic for those who are forced to recall their history of abuse, and it can result in inaccurate testimony. Perpetrators of family violence are prohibited from cross-examining their ex-partners in family violence intervention order proceedings in Victoria. This prohibition should also be adopted in family law proceedings where allegations of family violence have been made.

Subpoenas are also used by perpetrators of family violence to further control and harass their ex-partners. Currently, a self-represented litigant is able to view the subpoenaed material. It is traumatising for a person affected by family violence when their medical records are subpoenaed, and the perpetrator is able to read intimate details of disclosures made to health practitioners, including mental health practitioners. Any identifying information, such as the name of the doctor or children's school, can present serious safety issues for those who have sought to keep their location hidden from their violent ex-partner.

Recommendations

23. The *Family Law Act 1975* should be amended to prohibit alleged perpetrators of family violence from cross-examining their ex-partners in family law proceedings.
24. Funding should be provided for legal representation of perpetrators as a minimum requirement during cross-examination, as currently occurs through the *Family Violence Protection Act 2008* (Vic).
25. Legislative grounds for objecting to a subpoena should include a history of family violence, the safety of the parties and their children, the effect the release of subpoenaed documents could have upon the future therapeutic needs of the victim, and the possibility of information becoming available by way of a letter or report from a doctor rather than a subpoena.
26. A cross-jurisdictional analysis should be undertaken into ways of adducing evidence that reduce the need for victims to repeat their stories of violence, including where findings of fact have been made in earlier proceedings, with a view to adopting best practice.

6. Financial recovery

Financial abuse is a particularly debilitating form of family violence as it often prevents those affected by family violence from leaving a violent relationship. In our experience, financial abuse is more prevalent in CALD communities, including the practice of dowry and demands for the dowry's return upon the breakdown of the marriage.

Other forms of family violence also have a significant impact on the earning capacity of family violence victims, both during and after the relationship. It is often difficult for CALD women to secure employment after separation on account of limited language skills, a lack of recognition of the qualifications they obtained in their country of origin, etc. Even for CALD women who have lived in Australia for some time, years of family violence can have a lasting impact on their ability to function and develop the skills necessary to secure employment.

Without adequate financial assistance, CALD women may not be able to provide for themselves, their children and their extended families. Financial independence is vital to ensure CALD women and their children do not fall into poverty. Many inTouch clients have returned to their abusive ex-partners because they were unable to provide the basic necessities of life to their children. In some of these cases, inTouch staff held grave fears for the woman's safety. In other cases, child welfare authorities removed the children from the woman's care, and while she too would rather not have returned to her ex-partner, she did not know how else to clothe and feed them.

Financial abuse, and the financial impact of other forms of family violence, are not adequately taken into account by the family law system when deciding how property should be divided.

Recommendations

27. The property negotiation process that accompanies marriage breakdown in CALD communities that practice dowry should be taken into account by judicial officers, such as by:
 - a) issuing injunctions to prevent any dowry-related property demands being made while family law proceedings are under foot or
 - b) adjusting the division of assets in accordance with any dowry-related returns that have already been made.

28. Family violence should be given greater consideration by the Courts when dividing property upon separation.
29. Family violence should be given greater consideration by the Courts when assessing a party's future earning capacity.

Case Study 4: Lack of recognition of culturally-specific forms of financial abuse - the dowry system in Sudanese communities

In Sudanese communities, the groom's family often pays the bride's family a dowry. While the groom traditionally gives a number of cows to the bride's family, in Australia the dowry is converted into money. For example, in Dinka communities, one cow is equal to approximately \$1,000, whereas in Nuer communities, one cow is equal to approximately \$300. Dinka dowry payments are generally between 100 and 200 cows. Nuer dowry payments are generally between 30 and 50 cows.

It is common for the husband to be seen as the owner of all of the property, including his wife and children. This means that when the relationship ends, the dowry must be re-paid to the husband's family. If the dowry is not repaid, the wife remains the property of her husband and is not allowed to remarry.

Deductions are often made for the number of children the couple had together. If there are no children, there will only be deductions if the wife is still a virgin. Generally, the wife will retain six cows for each daughter born, one cow for each son born and five cows if she is still a virgin. Daughters result in a greater deduction because the husband will receive a dowry upon the marriage of his daughters.

Most Sudanese couples expect the children to remain with their fathers. Only children under the age of seven are allowed to stay with their mothers. This means that, where a woman in Australia is not aware of her entitlements under the law, she may feel she has no other choice but to leave the children with her husband.

While the above-mentioned property negotiation occurs regularly in Australia, it is not considered when property is divided within the family law system.

7. Capacity of family law professionals

Despite Australia's culturally-diverse population, family law professionals often display a lack of awareness about different cultural norms and practices, and how these effect family dynamics.

Ignorance of specific cultural practices can impair decision-making at all levels, starting with the response of police to family violence incidents. It is common in some cultures to cause a scene, such as by wailing or pulling your hair, in order to get someone's attention and to seek help. However, such behaviour is often interpreted by police as threatening or a sign of mental illness. This may have significant flow on effects, including in relation to an assessment of the woman's capacity to parent in family law proceedings.

S A lack of cultural-awareness can impact the opinion of key players in court proceedings, including Independent Children's Lawyers (ICLs). This is especially true for ICLs who have interviewed older children who have shown a preference towards the perpetrator of family violence. In Ethiopian communities, it is very common for older children, especially male children, to be 'aligned' with their father. As children are seen as the property of their father in Sudanese communities, it is common for women to leave children with their father. In family court proceedings, this is mistakenly viewed as the mother 'abandoning' her children. These women may not have known they had any rights over their children, but this is not taken into account by the Australian legal system. 7

In family reports, the lack of awareness among CALD women of their family law entitlements, coupled with the lack of cultural-awareness among family consultants, leads to recommendations that are not in the best interests of the children. For many CALD women, this process is difficult to understand at best, and can be extremely stressful and traumatic in other cases. Furthermore, the weight given to family report recommendations means that these misunderstandings can have dire consequences for the women involved.

Case Study 5: Lack of cultural competency among family consultants

A woman who had migrated from Bosnia 10 years earlier attended an appointment with a family consultant. The woman was completely fluent in English and did not anticipate that her cultural background would disadvantage her during her separation from her husband.

Very early in the appointment the family consultant asked her, "What did you feel when you first saw your child?" The client replied, "I thought he was the most beautiful baby in the world." The family consultant replied curtly, "I didn't ask you what you thought, I asked you what you felt."

The client then felt embarrassed and unsure of herself. She was scared that she would be misunderstood. She also felt as though she were being interrogated and found it difficult to open up, including in relation to the violence she had been subjected to by her husband. This resulted in a report that was inaccurate and detrimental to the client.

SA lack of cultural-competency can have a serious impact on a lawyer's ability to obtain instructions, a family consultant's ability to formulate appropriate recommendations, and a judge's ability to make orders that are sustainable and in the best interests of the children. The ability of judges to take cultural considerations into account is further hindered by the previously mentioned heavy case load, which is on average 500 cases per judicial officer.

7

Recommendation

30. Ongoing cultural awareness and cultural competency training should be compulsory for members of the judiciary, court staff, family lawyers, professionals and non-legal service providers who come in contact with CALD families subject to the family law proceedings, including in relation to culturally-specific forms of family violence, parenting practices and family dynamics.

8. Intervention orders

While family law is a matter for the federal government, family violence intervention orders are a matter for state governments. This creates practical issues for CALD victims of family violence who have to navigate both systems.

Many CALD women struggle to understand the state system for obtaining an intervention order, including that they are civil proceedings not criminal. When they are then asked to navigate the family law system, they have difficulties understanding why they need to once again discuss their history of family violence and prove their allegations before the court. This is particularly difficult when intervention orders were made by consent and there was no finding of fact in relation to family violence.

Our clients report that intervention orders are often not recognised or are minimised when discussing allegations of family violence in the family court system.

S In addition, women moving from one Australian state to another are forced to register the intervention order for it to be applicable in the second state. The new intervention order will then generally have to be served on the respondent, disclosing the woman's new state in the process.⁹ This creates safety risks for women who are trying to escape the perpetrator of family violence.

7

Recommendations

31. A national approach to family violence intervention orders should be established with a register of orders that is easily accessible to relevant personnel across Australia, including within courts exercising family law jurisdiction.
32. Once issued within one jurisdiction, family violence intervention orders should operate across all Australian states and territories.
33. Family Court and Federal Circuit Court staff should check for the existence of family violence intervention orders prior to the first mention and, if an intervention order is in place, provide this information to the judge and the parties.

⁹ See s178 of the *Family Violence Protection Act 2008*

Case Study 6: Lack of coordination between intervention order and family law systems

A 30-year-old woman was living with her partner and their two-year-old son. She was in contact with a local family violence agency as her partner had become verbally abusive and controlling.

The woman was on medication following major surgery but was otherwise healthy, both physically and mentally. She was able to work part-time while her partner, who was on Newstart Allowance, took care of their child. Her partner was a regular marijuana user and occasionally sold it.

The client became increasingly scared of her partner and, on the advice of the local family violence service, obtained an interim family violence intervention order. The father contested the making of a final order.

The woman left the house with their son and moved in with her brother. The woman's ex-partner applied in the Federal Circuit Court for a recovery order claiming the client was not capable of taking care of the child as a result of her medication and mental health issues.

The matter was listed urgently in court. The woman denied her ex-partner's claim that she was unable to care for their child, and that she had made false allegations of family violence to prevent her ex-husband from spending time with the child. The recovery order was made with the father obtaining live with orders, and the matter was set to return to court in six months.

The client was not able to obtain legal assistance from a duty lawyer due to a conflict of interests and incurred significant legal expenses to obtain private representation. She was finally able to get limited time with the child at the second hearing. The matter is still ongoing and the child remains with his father.

9. Impact on residency status

Within the overarching topic of the inquiry, that being how the family law system should be improved to better protect people affected by family violence, inTouch wishes to bring to the Committee's attention the significant impact of family law proceedings on the residency status of migrant victims of family violence.

Many CALD women migrate to Australia on spousal or partner visas. Some of these women report remaining in an abusive relationship for fear of deportation. This can have a negative impact on these women when they seek parenting orders as they are perceived to have been unwilling to behave protectively towards their children. A woman's inability to leave in these circumstances may also lead to speculation regarding the truth of her claims of family violence.

Women on spousal or partner visas who are able to leave their abusive relationship but wish to remain in Australia face numerous difficulties securing a permanent visa under the family violence provisions of the *Migration Regulations 1994*.

These difficulties include when a woman's former partner refuses to recognise paternity of their child, or when he falsely alleges to the Department of Immigration and Border Protection that their relationship was not genuine. In our experience, many men deny paternity or make false allegations regarding the nature of their relationship in order to continue to control and otherwise abuse their ex-partners.

When paternity is denied but the father refuses to do a parentage test, or when false allegations are made as to the nature of their relationship, a woman's only option is to initiate family law proceedings. The first hurdle that many CALD women face is the financial cost of initiating proceedings and of the test itself. There is hardly anyone to fund court proceedings for parentage test applications apart from a woman herself.

Even after an application for a parentage test is filed with the Court, delays in proceedings¹⁰ may affect the woman's visa application. In those circumstances, inTouch's migration agent plays a fundamental role in liaising with the Department to explain the delays. However, many women in this position do not have the benefit of a migration agent. This can have a

¹⁰ This is discussed further on pages 6–7.

detrimental effect on her visa application, including by resulting in a refusal to issue the visa and deportation.

Training for family law professionals, and communication between the Court and the Department, would greatly assist family violence victims with insecure residency status who are involved in the family law system.

Recommendations

34. Judicial officers, family consultants and legal practitioners should undertake training on the intersection between immigration law and family law with respect to victims of family violence.
35. There should be information sharing between the Family Court and Federal Circuit Court and the Department of Immigration and Boarder Protection.
36. There should be a fast track system for applications for parentage test orders that relate to migration applications under the family violence provisions of the *Migration Regulations 1994*.

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Case Study 7: The impact of delays in family law proceedings on visa applications made under the family violence provisions

A young woman arrived in Australia on a spousal visa through an arranged marriage. The family violence began as soon as she arrived in Australia. Initially she was subjected to emotional and psychological abuse, with her husband deciding when she could leave the house, where she could go and with whom. He was controlling and jealous, and he threatened to kill her if she were to be unfaithful. This controlling behaviour soon escalated to physical violence.

Shortly after their first child was born, the woman was told by her husband to return to their country of origin to look after his elderly parents. From the moment she arrived in her country of origin with her child, her husband ceased all communication with her. The woman and child then returned to Australia, and when she visited to her former home, she found her belongings in the street.

The woman later discovered that her husband had accused her of cheating and was now denying paternity of the child. He had also reported her to the Department of Immigration and Border Protection alleging that the relationship was not genuine and the child was not his. This meant that she was facing deportation. She was fearful of being sent back to their country of origin as she knew women often face prosecution and violence when there are allegations of adultery, even if they are not proven.

inTouch's migration agent assisted this woman to apply for permanent residency under the family violence provisions. While she was granted a temporary visa, in order to obtain a permanent visa she needed to prove that she had been in a genuine relationship and that her ex-husband was the father of their child. In this regard, the Department required a DNA test.

As a result of significant delays in the family law system, it took approximately eight months to obtain a parentage test order from the Court. The test has now proved that her former husband is the father of the child and this evidence was recently provided to the Department.

Until the Department has assessed the evidence, the woman will remain on a temporary visa. For the past eight months she has not been able to access fundamental services and benefits like housing and Centrelink, and this will continue until she obtains a permanent visa. This, along with her limited knowledge of English and her need to care for a small child without any family support, means that she is unable to work, receive an income or secure accommodation for her and her child.

10. Conclusion

This submission provides valuable evidence of the experiences of CALD women and children affected by family violence across Victoria.

inTouch is of the view that adopting the recommendations throughout this submission would enable the government to better protect family violence victims who come into contact with the family law system.

inTouch urges the government, and the Courts, to use the valuable opportunity afforded by the Inquiry to improve the lives of women and children who have experienced family violence.

SUBMISSION 2017