

10 May 2017

Committee Secretary
Standing Committee on Social Policy and Legal Affairs
Inquiry into a better family law system
PO Box 6021
Parliament House
Canberra ACT 2600

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

The Federation of Ethnic Communities' Councils of Australia (FECCA) is the national peak body representing Australia's culturally and linguistically diverse (CALD) communities and their organisations. FECCA provides advocacy, develops policy and promotes issues on behalf of its constituency to Government and the broader community. FECCA strives to ensure that the needs and aspirations of Australians from diverse cultural and linguistic backgrounds are given proper recognition in public policy.

FECCA supports multiculturalism, community harmony, social justice and the rejection of all forms of discrimination and racism so as to build a productive and culturally rich Australian society. FECCA's policies are developed around the concepts of empowerment and inclusion and are formulated with the common good of all Australians in mind.

Key Message

Family violence (FV) is an issue relevant to courts of all jurisdiction, but is particularly relevant in the context of the Family and Federal Circuit Courts. As increasing attention is focussed on the issue and as awareness of the nature of the associated complications becomes more prevalent, the extent to which FV requires consideration in individual matters increases. Whilst these are matters prescient for proceedings involving all Australians, the complications are exacerbated by the intersecting vulnerabilities experienced by Australians from CALD communities.

Family law proceedings are, by nature, a source of heightened distress. They signal the collapse of the foundation by which parties have often defined themselves and structured all of their arrangements. They are the space where deeply emotional and complicated conflicts reach crisis point. This distress is further heightened when allegations of violence are introduced and where the related issues intersect with criminal and child protection proceedings. Yet further distress is experienced by those for whom language and culture are an issue and the institutional knowledge required to negotiate proceedings is reduced. The additional strain presented by isolation and the absence of support networks can mean a difficult situation becomes catastrophic for some parties.

The interaction between the Family Law system, family violence and the vulnerabilities associated with diminished English literacy, legal literacy and institutional literacy is complex. The most effective means of addressing that complexity is through a well-funded, culturally competent system of legal advice and representation. Strategies must also include provision of accredited translation and interpretation services, a system of referral to well-resourced extra-legal support services and diverse court staff who are trained to recognise the unique factors relating to FV in the context of CALD communities.

Whilst the safety of parties and protection of alleged victims of FV is, and ought be, of priority, it is important to remain cognisant that many of the alleged perpetrators of family violence will also be from CALD backgrounds. Procedural fairness, preserving the integrity of the process and ensuring decisions are made on the most complete and accurate information should remain the court's paramount objective and ought not be sacrificed. Materials, resources and information provision should be extended without assumption to all parties, regardless of whether they are applicant or respondent, alleged victim or perpetrator.

Recommendations

- **The Commonwealth should reconsider its funding arrangements for legal aid services on the basis that current levels are insufficient and create a number of the issues to which this inquiry directs itself, including the issue of cross-examination of victims by alleged perpetrators of family violence.**
- **The Commonwealth should ensure the provision of fully accredited translators in all family law matters where the issue of language is of relevance. For those languages where an absence of accredited translators has been identified, an investment should be made with the goal of ensuring that absence is addressed. The standards proposed by the Judicial Council on Cultural Diversity for working with interpreters should be implemented without delay. Further, in circumstances where full accreditation is unavailable due to the nascent emergence of a particular language, efforts should still be made to ensure appropriate training has been provided in relation to court procedures, protocol and terminology.**
- **All courts should actively include greater diversity as a priority in recruitment. This includes the appointment of judicial officers, registrars, associates, administrative staff and security personnel.**
- **The Family and Federal Circuit Courts should provide cultural awareness and competency training for all staff including judicial officers and associates, legal service providers, registrars and administrative staff. This includes specific awareness training into the violence perpetrated by extended family members, a noted occurrence within some CALD communities.**
- **The family court should provide information sessions for CALD Australians on the procedures, processes and protocols that govern its operations. These sessions should include information on how to access family violence support services; mental health support services; drug, alcohol and gambling support services; and legal advice. Further, all parties coming before the courts should be given information regarding the court's approach to family violence, the definition of the various forms of family violence and the names and phone numbers of support services. This should include information regarding the court's authority to make orders binding 3rd parties. This information should be translated into the parties' preferred languages.**

Translation and Interpretation Services

The issue of appropriate language services is of particular relevance in FV matters coming before the courts. A number of concerns regarding communication and the provision of language services in matters involving FV and parties from CALD backgrounds were outlined in a report by the Judicial Council on Cultural Diversity (JCCD).¹ The report noted that '(t)he provision of professional, appropriate and skilled interpreters is therefore crucial if the legal system is to respond to the needs of migrant and refugee women and ensure they can participate fully in court processes.'²

The report further noted the factors preventing the effective provision of language services, including; Lack of clarity about who is responsible for engaging an interpreter; failure to assess the need for an interpreter, or incorrectly assessing need; the skill of interpreters being engaged; lack of awareness amongst judicial officers and lawyers about how to work with interpreters; the need to ensure that interpreters are appropriate for the individual and unethical and poor professional conduct by interpreters.³

To address the issues referred to above, the JCCD prepared in broad consultation, a set of proposed standards for working with translators and interpreters in a curial context.⁴ These standards address the question of responsibility for securing translators and interpreters, accreditation levels and standards, responses to concerns regarding conduct of interpreters and translators and appropriate ways to address issues of culture and gender.

These standards should be adopted to the extent possible in all matters, but where FV is identified as an issue, increased care should be taken to ensure that language factors do not isolate parties from the process.

In order to monitor the effectiveness of the proposed standards they should be subject to review after a period of three years. To facilitate the effective assessment of the standards, courts should consider a comprehensive approach to data management regarding the need, availability, use, performance and effectiveness of interpreters, aggregated by language.

The National Accreditation Authority for Translators and Interpreters (NAATI) has stated an intention to develop specialist legal interpreting certification levels.⁵ In situations where fully accredited translators and interpreters are not available due to the nascence of the language in question, efforts should still be made to ensure that persons wanting to act in that capacity in a courtroom context are provided with training regarding protocol, procedure, terminology and ethics.

Courts should also develop clear mechanism for managing concerns and complaints regarding the conduct of interpretation and translation staff. This should include capacity for court personnel to lodge own-motion complaints and to receive and relay concerns on behalf of parties. NAATI, as the accreditation body, should be the ultimate recipient of complaints regarding language service providers, but courts should maintain protocol for following up complaints and should maintain records regarding the nature, number and form of resolution of complaints it receives.

¹ *The Path to Justice: Migrant and Refugee Women's Experience of the Courts* Judicial Council on Cultural Diversity (2016).

² *Ibid* 29 [2]

³ *Ibid* 6

⁴ *Recommended National Standards for Working with Interpreters in Courts and Tribunals* Judicial Council on Cultural Diversity (December 2016).

⁵ *Ibid* 42 [fn 23]

Cultural awareness

In addition to language factors there are issues of culture which prevent parties from CALD backgrounds from accessing the courts effectively. These include a diminished awareness of both legal rights and obligations and a lack of understanding about court procedures. It is further the case that family violence can manifest itself through means often unfamiliar to Australian courts, for example through extended family. Additionally many parties will come from cultures where the judiciary and other official arms of government are sources of oppression and intimidation.

There are many ways in which to address these issues. First, actively seeking to diversify the workforce should be a priority for all courts in Australia. As jurisdiction to hear family law and related matters expands,⁶ cultural literacy becomes increasingly relevant. This policy of diversity should begin at the apex of the judicial structure. Whilst it is notable and commendable that numbers of female members of the judiciary have increased in recent years, there remains a conspicuous absence of ethno-cultural diversity on Australian benches.⁷ For as long as this continues to be the case the Australian judiciary will struggle with the cultural literacy required to fully understand and respond to family violence as it exists in Australia. A policy of enhanced diversity in the recruitment process should also be adopted across the spectrum for staff in Australian courts. Ensuring that the breadth of cultural diversity represented in the Australian population is reflected in the country's courtrooms is vital. It not only enhances the cultural literacy of the workforce but also serves to reinforce the notion that the courts are institutions tasked with the protection of the rights of all Australians. The importance of this should not be underestimated. Many of the reports note that the process of arriving at court is, in itself, intimidating. Reducing the ethno-cultural homogeneity of the courts' personnel can go some way to addressing this.

In addition to diversifying the courts' personnel, priority should be given to enhancing the cultural competence of staff. This too should begin at the apex of the court structure. Judicial officers empowered with an understanding of cultural context are better placed to control proceedings to prevent cultural factors from negatively impacting proceedings and to ensure that support staff are informed about relevant issues of which to be aware. This would be a positive development but is unlikely to be sufficient. All staff should be provided with cultural awareness training.

Cultural competency involves having an awareness of one's own cultural worldview, knowledge of different cultural practices and views, and an understanding that linguistic and cultural differences may affect communication. Further, it involves the ability to recognise one's own cultural assumptions and stereotypes and avoid letting them negatively influence perceptions.⁸ For judicial officers this means awareness of 'forms of violence that are more likely to be or, in some cases, may only be, experienced by migrant and refugee women; specific issues relating to marriage and divorce; and different communication styles.'⁹

Beyond judicial staff, ensuring that all personnel are trained to appropriately identify cultural issues as well as to appropriately communicate with parties from CALD backgrounds will assist in reducing the distress caused by the process of attending court and negotiating the various steps in finalising a matter.

⁶ See for example *Family Law Amendment (Family Violence and Other Measures) Bill 2017* (Cth)

⁷ Nedim, U. 'Diversity of Australian Magistrates and Judges' 05 December 2015; see also Mack, Kathy and Roach Anleu, Sharyn, *The National Survey of Australian Judges: An Overview of Findings* (2008). *Journal of Judicial Administration*, Vol. 18, No. 1.

⁸ Above n2 44 [2].

⁹ *Ibid.*

For legal practitioners consideration by the various Law Societies should be given to developing either specific courses of cultural awareness as required Continuing Professional Development (CPD) or cultural awareness elements as modules forming part of CPD events such as those on Family Law, Criminal Law and Care and Protection Law training.

Referral and Information Provision.

In addition to providing court personnel with information and training regarding cultural issues, consideration should be given to providing the public with information regarding court procedures, protocol and terminology. The court registries should consider holding public information sessions on subjects such as courtroom etiquette, the completion and lodgement of forms, the roles of courtroom personnel and services available beyond the courtroom such as FV support services, counselling providers and legal service providers. These sessions should incorporate cross cultural understandings and sessions should, where possible, be tailored to address the related factors

In some jurisdictions legal aid commissions now employ specific cultural liaison officers to assist clients from CALD backgrounds to negotiate the process.¹⁰ Whilst this is a positive development it is insufficient to address the volume of CALD persons presenting to the court in family matters. Courts should consider employing cultural liaison officers to assist all CALD parties without reference to their role in proceedings. Further court staff, including cultural liaison officers should be authorised to provide referrals to mental health services, drug and alcohol services FV support services and accommodation services with ethno-culturally specific issues in mind.

Conclusion

Responding to domestic violence in the Family Law system is likely to remain an ongoing and evolving process, especially in the context of the specific challenges presented by CALD communities' unique experience of family violence. FECCA submits that in order to ensure that process is effective for all Australians the provision of: properly accredited translation and interpretation staff; cultural awareness training for all court personnel and information and referral procedures is vital. Further, diversity in judicial appointments should be considered a priority in all jurisdictions. The Commonwealth have a unique opportunity to lead by example in this regard and FECCA urges it to do so.

FECCA appreciates the opportunity to contribute to the national conversation of improving the family law system and would welcome the opportunity to provide further comment should the community find it beneficial for us to do so. Please contact the Director at emma@fecca.org.au.

Thank you

¹⁰ See for example: Legal Aid ACT 'Cultural Liaison Unit' <http://legalaidact.org.au/whatwedo/clu/>