

Committee Secretary
Joint Select Committee on Australia's Family Law System
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FECCA submission regarding the Joint Select Committee on Australia's Family Law System

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 would like to acknowledge the contribution of the Ethnic Communities Council of Western Australia towards this submission.

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 to build a productive and culturally rich Australian society.

FECCA would welcome the opportunity to expand on this submission as required. For enquiries please contact FECCA CEO Mohammad Al-Khafaji at mohammad@fecca.org.au or on (02) 6282 5755.

Recommendations

1. Provision of fully accredited translators in all family law matters when required must be ensured.
2. Cost of engaging an interpreter during family dispute resolution (FDR) should not be charged to the parents.
3. Courts should actively include greater diversity as a priority in recruitment including appointment of judicial officers, registrars, associates, administrative staff and security personnel.
4. Courts should provide cultural awareness and competency training for all staff including judicial officers and associates, legal service providers, registrars and administrative staff.
5. All parties coming before the courts should be given information regarding the court's approach to family violence, the definition of forms of family violence and support services translated into the parties' preferred languages.
6. The funding arrangements for legal aid services should be reconsidered as current levels are insufficient.
7. Legal Aid needs to have more understanding of the complexity involved with refugee and migrant women.

The barriers people from CALD backgrounds face when interacting with the legal system have been well identified. FECCA believes that better coordination would allow for better understanding and approaches to the intersection between family law and migration law. The interaction between the Family Law system, family violence and the vulnerabilities associated with diminished English literacy, legal literacy and institutional literacy is complex. Family law proceedings are a source of heightened distress as they are the space where deeply emotional and complicated conflicts exist. This distress is heightened when allegations of violence are introduced and where the related issues intersect with criminal and child protection proceedings. The additional strain presented by isolation and the absence of support networks can mean a difficult situation for some parties.

The interplay between migration and family law is not well understood by the community. In particular, there is community concern about and how this affects women and their children when family breakdown occurs. FECCA's consultations have revealed that many women in Australia on temporary visas fear that after a relationship breakdown or because they leave a relationship due to the family and domestic violence (FDV), they will be forced to leave the country and leave their children (who may have been born in Australia) with their ex-partner. The availability of migration law advice for individuals who are on temporary visas engaging with the family law system is insufficient and must be addressed.

Women from migrant, refugee, indigenous backgrounds and women with disability are less likely to access support services in case of FDV and family separation for the fear of losing their children. The Australian parent may falsely threaten the migrated parent or the parent with disability that due to her/his visa status or disability, the family court system would not allow her/him to have the custody of the children. The power dynamic in these circumstances risks one party threatening the women that due to their visa status they could be sent back to her originating country. For this reason, migrant specific domestic violence services must be appropriately funded.

Translation and Interpretation Services

The issue of appropriate language services is of particular relevance in FDV matters coming before the courts. There are community concerns about a lack of clarity on 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. Ensuring that interpreters are appropriate, meet ethical standards and are utilised correctly is essential to an accessible system.

Courts should 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.

Cultural awareness

In addition to language factors there are issues of culture which prevent parties from CALD backgrounds 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. 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. 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 FDV 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 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. 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. 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.¹ 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.'²

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.

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 FDV 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.³ 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

¹ 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.

² Ibid

³ See for example: Legal Aid ACT 'Cultural Liaison Unit' <http://legalaidact.org.au/whatwedo/clu/>

liaison officers should be authorised to provide referrals to mental health services, drug and alcohol services FDV support services and accommodation services with ethno-culturally specific issues in mind.

Cost

When families are separated, the family income is usually reduced by half as each parent may move to live in a separate home and pay the costs of rent, utilities and all other living costs with only one income. FDR and going to court are very expensive for parents from migrant and refugee background often isolated and without extended family support. The restrictions on access to legal aid can have a negative effect on those in needs of support. It currently costs upwards of \$500 to see a Family Lawyer for an hour which not many parents can afford, and these costs combined the lack of availability of legal aid services are unjust.

Example A woman from a CALD background left her violent Australian husband and moved out with their child with disability. The husband's parents wanted full custody of the child. They refused to go to the family dispute resolution (FDR) to agree on making parenting / grand parenting plans. Her parents-in-law took her to the Family Court to get full custody of the child and revoke the mother's visa on the basis that the mother did not have the right skills and experience to provide the best care for her child with disability. While the parents-in-law could engage the best lawyers to fight their case, the mother was disadvantaged as the court did not engage an interpreter and she could not afford to get a good lawyer. As her own family live overseas, she had no family supports here either.

Conclusion

Responding to FDV 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.