

# **INQUIRY INTO FAMILY, DOMESTIC AND SEXUAL VIOLENCE**

FORMAL SUBMISSION

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## **NORTHERN COMMUNITY LEGAL CENTRE**

### **Our Submission**

Northern Community Legal Centre (NCLC) welcomes the opportunity to make a Formal Submission to the House Standing Committee on Social Policy and Legal Affairs inquiry into family, domestic and sexual violence.

NCLC is funded to provide legal services under the National Partnership Agreement (NPA), Attorney Generals Department. NCLC is not funded as a family violence response service, however, we focus our limited resources on legal support for the most vulnerable in our community, which includes victims/survivors of family violence who represent over 40% of our clients.

We received a grant from the Victorian Legal Services Board to support Indian family violence victims/survivors with their immigration and broader legal needs, and our submission speaks specifically to the learnings gained through that project.

### **Our Centre**

NCLC operates in one of the fastest-growing and disadvantaged areas of Melbourne and has a significant catchment including the Moreland City Council, Hume City Council, and Mitchell Shire Council with a total population of over 400,000 residents.

NCLC assisted approximately 1,600 community members during the 2019 - 2020 financial year and 8,337 in total since its inception in 2016.

Prior to the spread of COVID-19, NCLC operated from a central office located in Broadmeadows, with outreach services to 12 other sites. Since March 2020, we have transitioned to a remote delivery model, delivering all services by phone or other communication channels.

### **Our Priority Clients**

NCLC is committed to assisting the most vulnerable and disadvantaged members of our community.

These are members of our community who have or are facing multiple systemic barriers to achieving justice in their legal matter including those who are: victims/survivors of family violence, refugees and the newly arrived, young people under 25, those experiencing mental ill-health, disability, or cognitive impairment, homeless, LGBTIQ+ and Aboriginal and Torres Strait Islanders.

NCLC has significantly prioritised service delivery to Indian women who are victims/survivors of family violence through our *Abused and Abandoned: Family Violence in the Australian Indian Community Project*. This project developed from identified evidence-based legal need within our catchments.

NCLC operates in the north-west region of Melbourne, which has experienced a large arrival of Indian immigrants over the past five years.

According to the 2016 Census, the Indian migrant population is the second-highest growing population in Australia and the largest growing population in Victoria, which has the highest number of Indian migrants of any state. Within metropolitan Melbourne, a large number of the Indian population are living in the north-west and east. The main languages spoken at home by India-born people in Australia are Punjabi (102,661), Hindi (98,625) and English (71,137).<sup>1</sup> 40% of Australia's Punjabi speaking population lives in Victoria and nearly 10% of people living in Craigieburn are Punjabi speakers, making this the most popular suburb for Punjabi speakers in Australia.<sup>2</sup>

Further, the Hume Local Government Area has the second-highest rates of incidents of family violence in the Melbourne Metropolitan Area (3,813 family violence incidents recorded by Victorian Police). Additionally, Victorian Legal Aid duty lawyer data indicates that the most common country of origin for those accessing Family Violence Intervention Order duty lawyer service is India.<sup>3</sup>

### **Our Indian Family Violence Project**

Funded by the Victorian Legal Services Board, the *Abused and Abandoned: Family Violence in the Australian Indian Community* project has the following three objectives:

1. To advance the understanding of the complex problem of abuse and abandonment in the Australian Indian community;
2. To identify gaps in the family violence service system and State and Federal laws which add to the vulnerability of Indian women to abuse and exploitation, and;
3. To advocate for effective legal and non-legal protections.

Incorporating enhanced service provision alongside action research, our *Abused and Abandoned: Family Violence in the Australian Indian Community* project was developed in response to concerns raised by NCLC lawyers regarding the complex issues, lack of supports, and isolation experienced by Indian women presenting at our legal service. In particular, they noted that Indian women were often recently married and separated; experienced multiple forms of abuse related to their immigration status; and were often unable to access services. NCLC is aware of seven suicides by Indian women in the north-west metropolitan region in under two years (not counting attempts). This indicates the urgency of systemic reform based upon an evidence-based approach

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<sup>1</sup> Australian Bureau of Statistics, 'Indian-born Community Information Summary' (Commonwealth of Australia, 2018) <<https://www.homeaffairs.gov.au/mca/files/2016-cis-india.PDF>> 2.

<sup>2</sup> Australian Bureau of Statistics, 'Census', Commonwealth Government of Australia, 2016) <<https://www.abs.gov.au/census>>.

<sup>3</sup> Crimes Statistics Agency, (Crime Statistics Agency, December 2019) <https://www.crimestatistics.vic.gov.au/family-violence-data-portal/download-data-tables>.

to understanding the experiences of Indian women, and the adequacy of our legal system to provide appropriate protections.

The project has enhanced NCLC's capacity to provide legal services through the employment of an Immigration Lawyer who provides free legal advice and casework assistance to Indian women who are victims/survivors of family violence. The Immigration Lawyer works alongside our team of Family Violence Lawyers to provide a wrap-around service model. The project also endeavours to streamline referrals to other services for non-legal supports, such as financial, housing, counselling and family violence case management to provide clients with a holistic response.

This is an innovative model NCLC is piloting, ensuring monitoring, evaluation and improvement for greater effectiveness as the project progresses. We are aiming to demonstrate the value and impact of this holistic service delivery model which has the potential to be scaled up to support women victims/survivors of other ethnicities on temporary visas and to be rolled out across all CLCs.

This project combines service delivery with research. The views represented in this submission have been formulated based on NCLC's experience delivering services and our understanding of the issues which has been consolidated by conducting a thorough literature review of existing relevant research.

## **TERMS OF REFERENCE**

The following Terms of Reference has been developed by the Standing Committee on Social Policy and Legal Affairs in order to inquire into and report on family, domestic and sexual violence, including with a view to informing the next National Plan to Reduce Violence against Women and their Children:

- a) Immediate and long-term measures to prevent violence against women and their children, and improve gender equality.
- b) Best practice and lessons learned from international experience, ranging from prevention to early intervention and response, that could be considered in an Australian context.
- c) The level and impact of coordination, accountability for, and access to services and policy responses across the Commonwealth, state and territory governments, local governments, non-government and community organisations, and business.
- d) The way that health, housing, access to services, including legal services, and women's economic independence impact on the ability of women to escape domestic violence.
- e) All forms of violence against women, including, but not limited to, coercive control and technology-facilitated abuse.

- f) The adequacy of the qualitative and quantitative evidence base around the prevalence of domestic and family violence and how to overcome limitations in the collection of nationally consistent and timely qualitative and quantitative data including, but not limited to, court, police, hospitalisation and housing.
- g) The efficacy of perpetrator intervention programs and support services for men to help them change their behaviour.
- h) The experiences of all women, including Aboriginal and Torres Strait Islander women, rural women, culturally and linguistically diverse women, LGBTQI women, women with a disability, and women on temporary visas.
- i) The impact of natural disasters and other significant events such as COVID-19, including health requirements such as staying at home, on the prevalence of domestic violence and provision of support services.
- j) The views and experiences of frontline services, advocacy groups and others throughout this unprecedented time.
- k) An audit of previous parliamentary reviews focussed on domestic and family violence.
- l) Any other related matters.

## **RESPONSE TO TERMS OF REFERENCE**

NCLC's submission will address Terms of Reference c, d, e, f, and h.

We will respond to the Terms of Reference by broadly addressing the overlapping themes in three parts as follows:

- Prevalence of Family Violence and Overcoming Evidentiary Limitations
- Family Violence and the Experiences of Indian Women
- Policy Responses and Access to Holistic Legal Services

As stated, our response is specifically related to the work we are undertaking concerning Indian women who are victims/survivors of family violence in conjunction with our *Abused and Abandoned: Family Violence in the Australian Indian Community* project.

## PREVALENCE OF FAMILY VIOLENCE AND OVERCOMING EVIDENTIARY LIMITATIONS

### Evidence of Family Violence in Culturally and Linguistically Diverse Communities

The prevalence rate of family violence within Culturally and Linguistically Diverse (CALD) communities in Australia is currently unknown and the prevalence within Indian migrant communities specifically is also unknown.

The Australian Bureau of Statistics 2016 Personal Safety Survey (PSS), found one in three Australian women (34.2%) has experienced physical and/or sexual violence perpetrated by a man since the age of 15,<sup>4</sup> however, data broken down by ethnicity is unavailable. Similarly, systems used by the Magistrates Court and Victoria Police are unable to produce relevant data broken down by ethnicity/country of origin, language spoken, age, residency, or visa status. Victoria Police report on the number of domestic violence incidents and Intervention Order applications, however current data does not report on the ethnicity of victims or perpetrators. NCLC acknowledges the efforts currently being made by the Magistrates Court to improve data collection and the revised LI7 (Victoria Police Family Violence Report) which includes ‘country of birth’.

Although family violence does not discriminate, the experience of family violence and the support and response options available vary for different subsets of the population. The Victorian Royal Commission into Family Violence (VRCFV)<sup>5</sup> acknowledged the different experiences and support options among key groups including immigrant and refugee women. The Second Action Plan 2013-2016, as part of the Commonwealth National Plan to Reduce Violence against Women and their Children 2010–2022, recognised that “learning more about violence against these groups of women is critical if we are to make violence against all women stop”.<sup>6</sup>

Kaur and Atkin draw attention to the “critical gap” in data to understand family violence and dowry abuse<sup>7</sup> within migrant and refugee communities in Australia. They explain that “without clear data from police, courts, hospitals, domestic violence services, prison, and women’s refuges, it is very difficult to gauge the prevalence rates of family violence amongst Indian communities”.<sup>8</sup>

It’s critical that we better understand the prevalence and nuances of family violence within different communities in Australia in order to prevent it and respond effectively.

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<sup>4</sup> Our Watch, ‘Quick Facts’ (Our Watch, 2020) <<https://www.ourwatch.org.au/quick-facts/>>.

<sup>5</sup> Victorian Royal Commission into Family Violence, ‘Royal Commission into Family Violence: Summary and recommendations’ (Parl Paper No 132, State of Victoria 2016).

<sup>6</sup> Commonwealth of Australia, Department of Social Services, ‘Second Action Plan 2013-2016: Moving Ahead of the National Plan to Reduce Violence against Women and Their Children 2010-2022’ (Commonwealth of Australia 2013) 23.

<sup>7</sup> The practice of dowry-related to money, property, goods, or other gifts that are transferred by a person to their partner's family before, upon, or after marriage. Dowry abuse can include coercive demands for larger gifts or increased cash payments from a woman and her family. These demands can be accompanied by acts of violence toward the woman and her family or other acts of abuse to force compliance of demands.

<sup>8</sup> The Senate Legal and Constitutional Affairs References Committee, ‘Practice of dowry and the incidence of dowry abuse in Australia’ (Commonwealth of Australia 2019) 64.

## **Our Indian Family Violence Victim/Survivor Clients**

NCLC assisted 135 Indian family violence victims/survivors with casework, legal advice and duty lawyer services between January 2019 and July 2020. These matters have been complex and the family violence experienced by our clients has been horrific.

As a small community organisation, our data collection system is limited. Significant operational amendments have been made to improve our data collection. The narrow focus of our project has required this level of focus on the tracking of family violence experienced by Indian women who access our services, however, many services of like size would not have the incentive to undertake the same monitoring. We also recognise that our systems have limitations and our data, like that of State and Federal sources, should not be viewed in isolation.

## **FAMILY VIOLENCE AND THE EXPERIENCES OF INDIAN WOMEN**

### **Forms of Family Violence**

Rates of family violence are extremely high in India. It's estimated that 40% of Indian women experience abuse from their partners.<sup>9</sup> This high rate is attributed to the deep-rooted male patriarchal role and long-standing cultural norms that subordinate women throughout their lifespan. Marriage in India is often considered a contractual union between two families, rather than between individuals. Concepts of inequality present in India are widely accepted and culturally sanctioned within Indian communities living in Australia. Newly arrived Indian brides are particularly vulnerable since coercive control is heightened with migration and family violence often starts or worsens after couples immigrate. The intersection of gender, ethnicity, culture, and immigration increases the risk of family violence which can have even more devastating impacts due to isolation, unfamiliarity, and migration status.

Financial abuse is a common type of family violence, but it is especially pronounced in the Indian experience since traditionally a woman's wealth is seen to be owned by her husband and his family. Women's economic dependence impacts on their ability to leave violent relationships, particularly for women on temporary visas, where few other options are available. This is particularly the case when women don't have work rights and are ineligible for government welfare benefits. The experience of financial abuse is further complicated by dowry arrangements, which although illegal in India, is still commonly practiced. In 26% of NCLC's casework, clients have disclosed dowry abuse perpetrated by their partners, in-laws, or both. Dowry abuse has included threats to kill and threats to harm or kill clients' family members back in India.

Immigration abuse is recognised as a common form of abuse perpetrated on immigrant and refugee women in Australia. Indian women may arrive as dependents on their partner's temporary visas such as a student or work visa, on their own temporary student, work or visitor visa, or as partners of their Australian permanent resident or citizen husband. Given that the

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<sup>9</sup> A. Kalokhe, D.C. Rio, R. Stephenson, N. Metheny, A. Paranjape & S. Sahay, 'Domestic Violence against Women in India: A Systematic Review of a Decade of Quantitative Studies' (Paper 12(4), *Global Public Health: An International Journal for Research, Policy and Practice*, 2017) 499.

partner visa application process is lengthy and expensive, even if women are married to men with permanent residency or citizenship status, many Indian women arrive on temporary visa categories. It is the experience of NCLC that many women are unaware of what visa they currently have while awaiting the outcome of partner visa applications lodged offshore, onshore, or in some cases, not lodged at all. Perpetrators take advantage of their partner's fragile immigration position, misguiding and controlling their legal immigration status. Abusers may use threats of deportation to prevent their abused partners from seeking help or reporting abuse. Threats of deportation are particularly alarming if it would mean separation from children. In 59% of NCLC's immigration cases, perpetrators threatened to cancel our clients' visas or deport them back to India.

The long-standing patrilineal structures in Indian society are also often replicated in Australia in Indian migrant families. In circumstances where in-laws are also residing in Australia, it's common for the couple to reside with the husband's family. Unlike family violence in Australia, where the broad majority of perpetrators are men, research in South Asia indicates that 33-40% of family violence is perpetrated by the wider household, including female in-laws.<sup>10</sup> Therefore, for Indian victims/survivors in Australia, family violence can involve extended family members and there are often multiple perpetrators of violence. Of our ongoing casework with Indian family violence victim/survivor clients, 31% disclosed abuse perpetrated by mother, father, brother, or sisters-in-law. One client has Intervention Orders in place against her ex-partner and her brother and sister-in-law. In another case, the police applied for an Intervention Order against our client's ex-partner and mother-in-law. And in a third case, our client was physically abused by her in-laws during her pregnancy.

## **Impact of Services and Economic Independence on Escaping Family Violence**

### ***Experiences of Indian Women in Australia***

Indian victims/survivors of family violence experience a multitude of barriers to safety which are intensified by their immigration status.

Migrants encounter economic, systemic, informational, cultural and language barriers to accessing support and services and will often feel trapped in abusive relationships. Although a large number of Indian women who migrate to Australia, speak English well, others have limited or no English language skills and some are illiterate which severely hampers their options to access support services. At NCLC, 26% of our Indian family violence casework clients required an interpreter.

### ***Social Isolation, Social Stigma, Family Pressures***

Social isolation is also an issue NCLC has observed in most cases of Indian women accessing our service. In the most extreme cases, we have seen clients who have been abandoned in Australia following their marriage breakdowns making them homeless as they are without any social or family supports.

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<sup>10</sup> S. Anitha, A. Roy & H. Yalamarty, 'Disposable Women: Abuse, Violence and Abandonment In Transnational Marriages' (University of Lincoln, 2016) 17.

Isolation limits the acquisition of knowledge about legal rights and services and leaves abused wives with nobody to contact for help. Purposely keeping a wife isolated is a common form of abuse strategically enforced by a perpetrator.

Barriers may be heightened for women due to their multiple caregiver responsibilities, which limit their opportunities to work, study, learn English and access services. In 65% of our Indian family violence casework matters, clients have children.

### ***Navigating Service Systems and Deficient Supports***

Many Indian women do not know their rights in Australian society, who to contact for help, what services are available, or how to navigate complex Australian social, judicial and government systems and support services, particularly women who are newly arrived. It is evident from our work with clients that many were previously unaware of their rights under Australian law and find the system overwhelming, intimidating and confusing.

Economic dependence on the perpetrator has an enormous impact on women's ability to leave an abusive relationship. There is a lack of welfare support in the form of safety-net payments and financial support, community services, emergency accommodation, public housing, and health services, are particularly inaccessible for those on temporary visas. These women are often unable to access any income due to ineligibility for Centrelink, having limited or no work rights, as well as childcare responsibilities. Of NCLC's Indian family violence casework clients, 41% had no income, 41% were employed, 14% were receiving government entitlements and 3% received an income from another source. Few are accessing Centrelink payments and clients who are employed are likely to be under-employed in the casual workforce and financially insecure.

Access to crisis accommodation, refuges and housing is of particular concern for Indian women. Most crisis accommodation services currently limit the number of places for women with no income or exclude them altogether. When they are accepted, women in this category tend to stay longer leading to fewer vacancies for new referrals since they have very limited medium- and longer-term housing options until their permanent residency visa is granted. A number of our clients were made homeless after either being abandoned by their husbands or fleeing violence and are unable to access services due to their visa status. Most clients face financial hardship because they have limited or no work rights and they cannot access Centrelink payments.

Mistrust of police, judiciary, and authority including government departments, such as the Department of Home Affairs, contribute to Indian women's hesitancy to seek help. These institutions have a poor reputation when it comes to assisting with family violence in India and women may previously have had bad experiences with authority. Police responses in Australia are varied across the criminal justice system and victims/survivors report both positive and negative experiences. NCLC has observed instances of misidentification of perpetrators, and Intervention Orders have been taken out and even criminal charges made against victim/survivors. Clients have disclosed the unwillingness of police to provide information about their Intervention Order or refusal to take statements related to Intervention Order breaches.

## **POLICY RESPONSES AND ACCESS TO HOLISTIC LEGAL SERVICES**

### **Australian Immigration Policy Frameworks for Family Violence Victim / Survivors**

#### ***Family Violence Provisions: The Narrow Pathway for Migration***

The Family Violence Provisions (FVP) allows women who are holders of a partner (subclass 100) visa and/or have applied or currently hold a partner (subclass 820), partner (subclass 801) visa, or Distinguished Talent (subclass 858) visa to continue with their visa application and subsequently apply for permanent residency in Australia, even though their relationship with their Australian citizen sponsor has ended as a result of family violence.

In order to successfully engage the FVP, women need to establish two criteria as assessed by the Department of Home Affairs (the Department):

1. there was a genuine and continuing relationship between the Australian citizen sponsor and affected women at one point in time, and;
2. relevant family violence occurred during the course of that genuine relationship, evidenced by either judicially determined or non – judicially determined evidence.

Meeting the requirement to demonstrate a genuine and continuing relationship can be difficult for Indian women who are subject to arranged or forced marriage and have not known their partner for a substantial period of time. Demonstrating that family violence occurred during the relationship can also be challenging for Indian women because women do not have the support mechanisms or understanding of systems to access medical services or social supports. This means that women have often not disclosed family violence or sought assistance, including but not limited to obtaining an Intervention Order.

Whilst the Department allows women that have arrived in Australia as holders of partner visas or have lodged an onshore partner visa application to continue with their application even though the relationship has broken down, there is a significant limitation to the current FVP. Given the long processing times of offshore partner visa applications, often Australian citizen husbands will apply for a visitor visa for women, which often gets approved quicker and prior to the partner visa application being finalised. These women subsequently arrive in Australia on a visitor visa and suffer significant family violence. Unfortunately, these women are unable to utilise the current FVP, even though an offshore partner visa application was lodged, as they did not enter Australia on a partner visa. This is contrary to onshore partner visa applications in which the FVP can be utilised by women who have applied for this visa and a decision is yet to be made.

Additionally, the scope of this protection for family violence victims/survivors is too narrow in that it also excludes other women on a number of other ineligible temporary visas from securing an avenue for permanent residency. NCLC has seen Indian women who have been subjected to family violence who have arrived on tourist and student visas and have subsequently been unable to engage the FVP. For those on tourist visas, there is limited time to obtain legal assistance and

determine legal options and women who do not understand their visa status risk by remaining in Australia unlawfully.

### **Protection Visas: The Limited Migration Pathway with Significant Implications and Delays**

Women that are unable to rely on the FVP often have very limited migration pathway options. Generally, such women have the only option of applying for a protection visa. In order to be eligible for a protection visa, women must show that they either meet the definition of a ‘refugee’ or that they are owed complementary protection. The Department is required to consider whether women are owed protection obligations under both circumstances.

Section 5H of the Migration Act 1958 (Cth) provides that a refugee is a person who is “outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country”. Therefore, women need to show that they would face a real chance of serious harm due to their race, religion, nationality, political opinion, or membership of a particular social group if they were forced to return to their home country.

Additionally, women must also show that they are unable to relocate safely within their home country or modify their behaviour to avoid the harm and are unable to obtain State protection from the harm they fear.

Further, women will be considered to be owed complementary protection if “as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm” (Section 36(2)(aa) of the Migration Act 1958 (Cth)). Accordingly, women need to show that there is a real risk of significant harm if they are forced to return to their home country. ‘Significant harm’ includes being arbitrarily deprived of her life, death penalty, torture, cruel or inhuman treatment or punishment and degrading treatment or punishment (Section 36(2A) of the Migration Act 1958 (Cth)). Further, it must be proven that the applicant cannot reasonably relocate within their country, that the State will not be able to offer protection and that the real risk of significant harm is faced by the woman specifically rather than the population generally.

The National Advocacy Group on Women on Temporary Visas Experiencing Violence point out that in the protection visa assessment process:

- evidence of family violence is often assessed arbitrarily and fails to recognise the complex dynamics of family violence;
- decision-makers frequently fail to follow their own policy guidance on the assessment of family violence claims;
- judicially determined evidence from Australian courts is not treated as conclusive evidence of family violence that has occurred in Australia;

- decision-makers frequently do not consider a Foreign States' capacity to provide effective protection from family violence in practice, and;
- significant processing delays of several years compound the stress and trauma of women at risk of or experiencing family violence.<sup>11</sup>

There are additional implications for women who are dependent on their ex-partner's visa and subsequently apply for a protection visa. In these cases, the family violence victims/survivors are generally issued with a bridging visa which does not come into effect until their subsequent visa expires. However, if their ex-partner's visa is cancelled by the Department due to the ex-partner's non-compliance with the visa conditions, then these women's visas are also consequentially cancelled, essentially making the women unlawful. Currently, it is the Department's policy not to cancel women's visas if they are dependent on their ex-partner's visa if they can show their relationship broke down due to family violence. Further, the limitation of Department policy also has a detrimental effect on women's visa options and further increases their vulnerability. Women that are dependent on their ex-partner's visas not only can lawfully remain in Australia but often have work and study rights, which allows them to independently support themselves without relying on their ex-partner. However, when their dependent visa is subsequently cancelled due to the primary applicant's non-compliance, not only do they become unlawful, which limits their visa pathway options, victims/survivors may also lose their work and study rights. Although women can subsequently apply to have their work and study rights reinstated, it is at the discretion of the Department, which can result in women losing employment or study opportunities whilst the Department makes its decision. This policy should also be extended to ensure that, in situations where women can show that they are victims of family violence, a victim/survivor's visas and existing visa conditions will not be consequentially cancelled simply because their ex-partner has not complied with their visa requirements.

Women who are victims of family violence who have applied for a protection visa are waiting for up to five years for the Department to decide on their visa application. For these women, their primary protection claim is that their ex-partner, and sometimes their in-laws, have committed family violence against them, and accordingly they have an Intervention Order in place. However, in the 5 years it is taking the Department to decide on these protection visa applications, the extreme family violence risk has passed, and the Intervention Order is likely to have expired. This then makes it extremely difficult for women to prove why Australia owes them protection obligations, resulting in their protection visa application being refused. The unnecessary long delays in the Department making a decision appears to be a tactical move to delay any potential successful outcomes. If processing times were reduced, more applications would be successful.

Additionally, the prolonged delays in processing protection visa applications has a significantly detrimental effect on women, particularly those with young children. Often in the time that it takes for the Department to finalise their protection visa applications, children have commenced schooling, assimilated into society and identify Australia as their home. Consequently, if the

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<sup>11</sup> National Advocacy Group on Women on Temporary Visas Experiencing Violence, 'Path to Nowhere: Women on Temporary Visas Experiencing Violence and Their Children' (National Advocacy Group on Women on Temporary Visas Experiencing Violence, 2018).

Department does not find that protection obligations are owed, these children risk being forced to return back to a country where they have never lived or have any connections. Additionally, this may result in children being separated from and therefore unable to have a meaningful relationship with their father, in circumstances where the father resides in Australia. This outcome is at odds with the Australian family law system which recognises the paramount consideration to be the best interest of the child.

### **Holistic Legal Support Model**

Our project was informed by the demographics of our community and also the experiences of NCLC's Family Violence Lawyers and Management Team in identifying:

- Limitation of cultural awareness within the community legal services sector
- Limitation of pro bono immigration services in generalist community legal centres
- Limitation of wrap-around family violence legal services linked to immigration services

In turn, we have developed a key service model that has been specifically constructed to attend to the complex legal and immigration needs of Indian women who are victims/survivors of family violence. A case management component has also been adopted focusing on the social needs and actively facilitating external referrals to appropriate support services.

To ensure that we are accessible to the most at-risk women, we have promoted our service within the community by spreading awareness about the project to service and stakeholders through postcards and posters printed in Punjabi, Hindi and English language, disseminated widely in hard copy and through electronic and social media. Our team includes a multi-lingual Punjabi community worker who has informed community members about the project through existing and newly established networks. As a result, for our immigration clients, we are often the first contact point into the service system.

Additionally, we facilitated an educational forum to assist services to better identify and respond to family violence within the Indian community. The forum included Indian cultural sensitivity training, along with immigration, family violence, and family law training for family violence support services and stakeholders. The Victoria Police response was overwhelmingly positive with requests to roll out similar training to other police members indicating a thirst to be better informed about cultural issues pertaining to family violence.

We have assisted 135 Indian family violence victims/survivors with casework, legal advice and duty lawyer services between January 2019 and July 2020.

The provision of legal advice and assistance has largely been for the following legal matter types:

- Immigration
- Family Violence Intervention Orders

- Family Law – Divorce
- Family Law – Parenting
- Family Law – Property
- Tenancy
- Victims of Crime Assistance Tribunal Applications

Our data confirms that many of our clients have multiple legal issues that have been triaged and assessed by our Immigration and Family Violence Lawyers. Cross referrals for advice are actioned as a priority within our centre. Casework assistance is also prioritised. In circumstances where legal casework is not required, case management triage is still undertaken to determine if social needs are being met, and referrals to support services are made accordingly.

Our internal triage and cross-referral pathways between the Project Team and the Legal Team have been extensively considered and tested. A best practice model has now been formalised.

The importance and success of our wrap-around model is demonstrated in the number of clients that have been assisted with multiple needs. In summary, 71% of the clients we are assisting with immigration matters have also been provided with assistance or advice about other legal needs. For other Indian victims/survivors of family violence that accessed the service for other legal matters, 33% have been provided with immigration advice.

To assist with facilitation of our referrals to other services for non-legal support, we are currently conducting an audit of existing services to find out if they can assist women on temporary visas. Generally, most organizations will make a case-by-case assessment regardless of visa status. We recognise that there are significant processes and hurdles to simply identifying eligibility for services. We hope to mitigate this in our additional case management work.

The following case study highlights the importance of this service model and demonstrates why such a model can and should be replicated for other CALD communities where there is a high prevalence of family violence.

## CASE STUDY

Amita sought assistance from NCLC's Family Violence Duty Lawyer Service at the Broadmeadows Magistrates' Court after applying for an Intervention Order against her abusive Australian citizen husband.

Whilst assisting Amita to successfully obtain an Intervention Order, our Family Violence Lawyer not only identified that Amita was isolated with no friends or family in Australia, but that she also required urgent family law and immigration law assistance as well as casework support. Our Family Violence Lawyer promptly conducted a safety plan with Amita, before ensuring that she was linked in with a family violence support service as well as with the Immigration Lawyer at Northern Community Legal Centre. Our Family Violence Lawyer also organised a warm referral to a private family lawyer so that Amita could obtain urgent advice regarding placing a caveat on the family home.

Our Immigration Lawyer was able to advise and assist Amita to successfully engage the family violence provisions. During this process, our Immigration Lawyer was able to obtain a complete copy of Amita's file from the Department of Home Affairs ('the Department'), lodge an application on Amita's behalf to engage the family violence provisions, correspond directly with the Department in regards to the application as well as assist Amita to obtain further information requested by the Department, including an Australian Police Check.

Whilst waiting for the Department to determine her application, Amita became extremely overwhelmed as she was facing increasing pressure from her family in India to withdraw her Intervention Order and reconcile with her husband even though she did not feel safe doing so. Our Family Violence Lawyer, Immigration Lawyer, and Amita's family violence support worker were able to work together to advise Amita of the importance of an Intervention Order for her safety as well as the implications of withdrawing her application and the impact this would have on her immigration matter. Providing a holistic wrap-around service ensured that Amita was supported and empowered to continue with her immigration application, despite the family pressures she was facing.

Within one month of lodging her application, the Department accepted Amita's application to engage the family violence provisions and allowed her to continue with her Partner Partner Visa even though she was no longer in a relationship with her Australian citizen sponsor.

## RECOMMENDATIONS

### Prevalence of Family Violence and Overcoming Limitations

- The Australian government must establish a nationally consistent data collection system that includes demographics on ethnicity/country of origin, language spoken, age, and residency or visa status. This system will collect data on:
  - Prevalence of family violence
  - Number of applications for Family Violence Intervention Orders and breaches
  - Police response data on family violence incidents
  - Protocols must require police and courts to ensure that the questions in relation to cultural data are asked and recorded to ensure full data is available
  - Presentations of family violence victims/survivors at hospitals
  - Victims of crime assistance provided to family violence victims
  - Immigration data including applications for family violence provisions and protection visa applications

### Family Violence and the Experiences of Indian Women

- The Federal government must broaden the eligibility requirements for accessing government support such as crisis payments, social security and Medicare benefits and public housing for women on temporary visas who can demonstrate they have experienced family violence
- There must be greater State and Federal funding for crisis accommodation to support women with no income
- The Federal government must provide accessible information for women in different visa classes about their rights to safety and access to support services. This should include pre-departure and arrival information for all new arrivals including Australia's definition of family violence and legal redresses. Ongoing information targeting immigrant women must be provided using diverse media and communication platforms such as digital social media, television and radio, printed materials and community strategies

- There must be more training provided to stakeholders, especially first responders who come into contact with victim/survivors, about the cultural nuances of family violence so they can better identify and respond accordingly

### ***Policy Responses and Access to Holistic Legal Services***

- The Federal government must expand the visa categories under the Family Violence Provisions of the Migration Regulations to include student, visitor, and other non-partner visa categories
- The Federal government must amend the definition of family violence pertaining to the Family Violence Provisions as perpetrators of family violence can include any family members, including non-sponsors such as in-laws
- The Department of Home Affairs must review processing times for protection visa applicants who are/have experienced family violence to ensure that claims are processed whilst the risk is still present
- The Department of Home Affairs must ensure that women experiencing family violence do not have their visas consequentially cancelled because their ex-partner has not complied with their visa requirements
- There must be greater State and Federal funding for culturally sensitive wrap-around services that combine immigration, family violence, and other legal support, together with case management to assist women on temporary visas with their range of issues