

Introduction

Founded in 2001, the Asylum Seeker Resource Centre (ASRC) provides essential services to 7,000 people seeking asylum and refugees in the community in Victoria, in detention nationally, and held offshore. Our services include casework, legal, housing, medical, education, employment and emergency relief. Based on what we witness through our service delivery, we advocate for change alongside refugees to ensure their basic rights are met and they can live in safety and with dignity.

The ASRC's Human Rights Law Program provides specialised legal representation and advice, including through its Gender Clinic, to people seeking asylum whose refugee claims are based on a fear of gender-based violence including family violence (often experienced in Australia as well as in their country of birth), sexual exploitation, abuse or trafficking, or fear of persecution due to their sexual orientation or gender identity. The ASRC's Gender Clinic was established in 2015 and is the only clinic of its kind in Australia. The specialisation of the Gender Clinic within the ASRC's legal program provides particular insight into the complex intersectional challenges in accessing legal, social and economic protection against sexual violence in Australia faced by people seeking asylum and refugees.

The ASRC welcomes the opportunity from the Attorney-General's Department to provide a submission on the development of specialised and trauma-informed legal services for victims and survivors of sexual assault.

Recommendations

- Provide free comprehensive legal assistance to all victim-survivors of sexual assault, including migration advice, prior to their engagement with the criminal justice system (i.e. prior to making a formal report to the police).
- Provide free legal representation to victim-survivors who are protection visa applicants at all stages of the refugee determination process.
- Provide free interpreters for victim-survivors to access legal services and ensure that information is translated into key community languages.
- Provide cultural awareness training for all agencies involved in service delivery.
- Legal services should be co-located with other support services (such as health or social services) or part of multi-disciplinary centres incorporating specialist legal services.
- Ensure that all victim-survivors can access support services, Medicare, work rights, financial assistance (e.g. Status Resolution Support Services payments) and accommodation regardless of their visa status.
- Initiate meaningful legal reform of migration and refugee law to ensure the safety and security of victim-survivors.

Intersectionality of barriers facing refugees and people seeking asylum

Although the Attorney-General's Department notes that people from culturally and linguistically diverse backgrounds are part of the cohorts that are overrepresented in sexual assault statistics, there is no specific mention of refugees or people seeking asylum as a cohort at a heightened risk of sexual violence. The failure to specifically include refugees and people seeking asylum overlooks the intersectionality of the barriers facing this cohort (in particular their insecure visa status) that overlap with barriers facing other cohorts such as people from culturally and linguistically diverse backgrounds, LGBTQIA+ communities, and people from rural, regional and remote locations.

The need for specialised and comprehensive legal representation

Many victim-survivors of violence, who are people seeking asylum or refugees, struggle to access specialist migration legal assistance. Migration advice is essential to ensure victim-survivors are aware of the migration implications of their decision to engage in the criminal justice system on themselves and their loved ones (e.g. consequential visa cancellation, deportation from Australia).

Case Study: Perpetrator's violence results in consequential cancellation of dependent victims' visas

Anvi¹ is a national of India. She travelled to Australia as a dependent on her husband's visa with their three children. A few months after arriving in Australia, their daughter began a relationship with a boy at school. The client's husband discovered this while he was overseas on a business trip. He sent text messages to his wife (our client) threatening to kill her and the children. He also threatened to have them sent back to their home country. When he returned home, he assaulted the daughter and Anvi for not maintaining proper discipline over their children. Anvi's husband was charged with domestic violence offences against his wife and daughter.

As a result of these charges, the Department cancelled his visa under section 116 of the Migration Act on the basis that he posed a risk to an individual or individuals in the Australian community. As his wife and children were dependents on his visa, their visas were automatically cancelled by law under section 140 of the Migration Act. The Department of Home Affairs has contacted Anvi and her children to advise them of their migration options, however currently can only grant them Bridging E Visas while they await the outcome of any subsequent visa application.

Eligibility for any further visas is uncertain, complex and subject to significant delays. Anvi and her family face significant insecurity and hardship while they try to establish a future in Australia.

¹ Names and identifying details have been changed in all case studies to protect client confidentiality.

People struggle to access migration legal advice for a range of reasons. Often their partners control and monitor their movements, making it difficult for victim-survivors to attend appointments without putting themselves at risk. Partners may also control family income, limiting victim-survivors to free legal services, which are in short supply due to drastic cuts to government funding for legal services for people seeking asylum. Also, a legal service may be unable to assist a victim-survivor after separation due to a conflict of interest if they have previously represented the family, which further limits the services available to victim-survivors.

Legal representation is also crucial to prevent victim-survivors from being misidentified as perpetrators in the context of family violence. A recently released report by inTouch Multicultural Centre Against Family Violence (inTouch) noted that a third of their clients, who are migrant and refugee women, have experienced misidentification at some point during their engagement with law enforcement and the justice system, noting that migrant and refugee women are more vulnerable to misidentification.² InTouch highlights the prevalence of 'systems abuse' which is a form of coercive control in which perpetrators use the police and justice system to further abuse the victim-survivor often resulting in misidentification.³

In this context, **access to comprehensive legal advice, including migration advice, is essential for people seeking asylum and refugees to safely engage with the criminal justice system and be empowered to make decisions that are in their best interests.**

Legal services which are co-located with other support services (such as health or social services) or multi-disciplinary centres incorporating specialist legal services would be suitable models for the pilot program to address the needs of people seeking asylum and refugees. Also, minimising the number of organisations/legal services that a person seeking asylum must engage with will reduce re-traumatisation by limiting the number of people they must retell their experiences to. Ideally, the same service that provides advice regarding their engagement with the criminal justice system can also represent them with their protection visa application.

In addition, ensuring that legal services are provided in a culturally sensitive manner is critical. This will involve measures such as access to lawyers of the same gender as the victim-survivor, providing access to interpreters, and cultural awareness training for all agencies regarding the sensitivities regarding sexual assault in different ethnic communities.

It is important that the pilot program is run in rural and regional areas as well urban locations given the difficulties that people in remote locations face in accessing legal services. Also, in-person and online services are both required to enhance accessibility, noting that any online services must be translated into key community languages to ensure access to people seeking asylum and refugees.

² InTouch Multicultural Centre Against Family Violence, 'Position Paper – The causes and consequences of misidentification on women from migrant and refugee communities experiencing family violence' (February 2022), p. 1.

³ Ibid, 3.

Lack of access to non-legal support

People seeking asylum are already amongst the most financially insecure and most socially excluded in our community due to their ineligibility for Centrelink and government cuts to the meagre Status Resolution Support Services (SRSS) payments, which have rendered many vulnerable families ineligible. Within this subset, victim-survivors of sexual violence experience increased vulnerability because their access to critical entitlements, such as work rights, Medicare or SRSS, depend on three further factors: the type of bridging visa held by a person seeking asylum; the conditions attached to their bridging visa (e.g. a person is not eligible for Medicare if they do not have the right to work); and often the stage they are at in the refugee status determination process. People's needs based on their experiences of family or sexual violence is not taken into account in determining the conditions on their bridging visas.

Conceringly, many people seeking asylum who are victim-survivors of sexual assault are ineligible for any form of income or housing support and may not even have access to Medicare or emergency accommodation in women's refuges and shelters due to their visa status. As of August 2022, the average time for the Department of Home Affairs to process a Protection visa was 1,076 days.⁴ During this time, victim-survivors of sexual assault must cope with years of living on temporary bridging visas (or sometimes no bridging visa at all) with limited access to basic supports and no certainty about their future.

Case study: Lack of work rights leads to continuing sexual exploitation

Manita is a 26 year old woman from Malaysia. As a child, she was sold into debt bondage by her father to settle a business debt. She suffered physical and emotional abuse for many years as part of that debt bondage arrangement. The Malaysian authorities were unwilling to assist her due to her ethnicity and to corruption. To help her escape this horrific situation, her mother assisted her to travel to Australia on a temporary visa.

She was sent to live with an acquaintance of her mother in regional Victoria where she was forced to work for the family in exploitative conditions. Her passport and other documents were taken from her and an application for a Protection visa was lodged on her behalf without it being adequately explained to her or her being given the opportunity to express her true claims for protection. She was subsequently granted a Bridging C visa with no work rights and, as a result of being unable to lawfully work, remained trapped. After over a year living in these conditions, she fled and obtained work on a fruit farm in regional Victoria, where she faced further exploitation including sexual exploitation. She felt unable to leave this farm and approach authorities or support organisations for assistance due to her immigration status as a person with no right to work, and her fear that authorities would force her to return to harm in Malaysia.

⁴ Refugee Council of Australia, Statistics on people seeking asylum in the community, 17 March 2023, <https://www.refugeecouncil.org.au/asylum-community/5/>.

The housing challenges faced by migrant and refugee communities is compounded by visa insecurity, which results in limited access to crisis or ongoing accommodation, often resulting in women and children experiencing homelessness. Women's safe houses and refuges can only provide accommodation for limited periods and after that, more sustainable accommodation arrangements must be made and usually paid for by the victim-survivor. As many people seeking asylum have no eligibility for government support, no work rights and no other source of income, they have no capacity to pay rent and therefore cannot be readily transitioned out of emergency/short term housing into more durable housing. Because of the difficulties in accessing refuge-type accommodation and their lack of income, many women in this situation end up experiencing homelessness, sometimes also with their children.

In this context, victim-survivors of sexual violence without income are often forced to remain cohabiting with a violent partner, placing both the victim-survivor and often her children at high risk of continuing violence. The problem of having no support and safe housing can also result in breaches of intervention orders creating new legal problems for both parties, which again become problematic, especially if the family end up remaining together in their migration process and the perpetrator is also a person seeking asylum, resulting in possible cancellation on character grounds of any eventual visas they may secure. Breaches of intervention orders due to destitution and lack of support for victim-survivors impacts individuals and also clearly undermines the application of the rule of law as well as the public purpose and utility of intervention orders.

Case study: Lack of support results in continued cohabitation with perpetrator and breaches of orders

Leila experienced violence by her husband before they came to Australia. She travelled to Australia in 2013 after her husband abducted their two children to Australia and hid her passport. She reunited with her husband in Australia and they lodged a joint protection visa application, but as a result of family violence the relationship broke down. The joint protection visa application was refused, and Leila and her former husband lodged separate review applications at the Administrative Appeals Tribunal.

A 2015 family law order granted Leila with primary responsibility for her children. At the end of 2019, Leila moved back in with her former husband because she could not afford to support herself and her two children. She and her former husband now live together in breach of the family law order.

As soon as Leila moved in with her ex-husband, she informed the Department of Home Affairs and Centrelink of her change in residential address, as she is obligated to do under the Migration Act. She informed Centrelink that she had not reconciled with her ex-husband, but was purely living under the same roof as him out of necessity in order to meet her living expenses. As a result, Leila's SRSS payments were cut off because she was deemed to be part of her former husband's family unit and supported by his salary. Now Leila cannot afford to look for new independent accommodation, and has a bag packed ready if she needs to flee the home

with her children again. Because Leila was previously receiving SRSS payments, she also does not have work rights on her bridging E visa.

Barriers created by migration law and policy

Although the scope of this consultation is limited to the provision of legal services, it would be remiss not to highlight that many of the barriers facing sexual assault survivors, who are refugees and people seeking asylum, are a direct consequence of migration law and policy. The lack of coherence in federal government policy which seeks to provide better protection, especially to women and children, from sexual violence, yet conversely creates migration law systems which make victim-survivors of sexual violence more vulnerable to such abuse due to their visa status. Such incoherence cannot be addressed unless overarching national goals to effectively tackle sexual violence are prioritised above conflicting migration-related goals.

It is well established that the risk of serious violence increases when victim-survivors attempt to leave situations of family violence.⁵ A potential consequence of current migration law and policy is that victim-survivors may face increased violence if they attempt to make a report to the police or the Department of Home Affairs, as the perpetrator will be aware of the potential negative implications for their visa status. Also, the fear of family separation against their will and visa implications for the victim-survivor and their loved ones may prevent them from reporting incidents to the police.

Case Study: Impact of family breakdown caused by family violence on victims' visa status

Mya is a Burmese woman married to Kyl, a stateless Rohingya man. They fled Myanmar and arrived in Australia by sea and are seeking asylum. Kyl started verbally abusing and controlling Mya, not letting her see her friends and only allowing her to work from home. The violence worsened and became physical in nature.

Mya approached our office seeking advice about the implications for her protection application and her future visa status if she seeks an intervention order or separates from her husband. Mya is ethnic Burmese and has significantly weaker claims for protection than her Rohingya husband. Under current law, her protection visa application is more likely to be refused if she separates from her husband as she will no longer be considered a dependent on his application, and will not be granted a visa when he is granted a visa. Instead, she would need to put forward her own claims and be able to establish that she is owed protection in her own right. There would be a higher chance that Mya and her children's visa applications will be refused, and that the process will be subject to delays.

Also, even if Mya stays with Kyl and seeks an intervention order requiring him to cease his violence towards her, or if he were to breach this order, this could trigger a process where the

⁵ Victorian Government, 'Evidence-based risk factors and the MARAM risk assessment tools', <<https://www.vic.gov.au/maram-practice-guidesfoundation-knowledge-guide/evidence-based-risk-factors-and-maram-risk>>.

Department of Home Affairs may seek to cancel her husband's visa on character grounds due to him having breached the intervention order or committed offences of family violence against her. If his visa is cancelled, her visa, and her children's visas will also be cancelled even though she has been the victim of these crimes.

Mya decides that she will stay in the violent relationship and not seek an intervention order in order not to jeopardise her visa status in Australia.

Highlighted below are some aspects of Australia's current migration laws and policies, which create insurmountable barriers and disincentives for victim-survivors on temporary visas to seek safety from violence:

- The narrow scope and application of the existing family violence provisions of the *Migration Act 1958* (Cth) which renders them inaccessible by the majority of victim-survivors on temporary visas experiencing family violence;
- Consequential visa cancellation which results in a victim-survivors visa being cancelled due to family violence perpetrated by the primary visa holder;
- A lack of protection against the risk of weaponisation of visa status and misidentification as a tool of violence against victim-survivors.
- Broad powers under Direction 99 to cancel or refuse visa applications on the basis of having engaged with family violence without centering the voices of victim-survivors and even when there are strong countervailing circumstances, resulting in victim-survivors being less likely to report violence; and
- Department of Home Affairs' processes regarding protection visa applications are not trauma-informed and often place victim-survivors at risk of harm from perpetrators.