

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 Australian Law Reform Commission (ALRC) to provide a submission regarding the problems with existing responses of the justice system to sexual violence and to provide recommendations for reform particularly in regards to the experiences of migrant and refugee victim-survivors of sexual violence.

There remains a concerning gap between how the Australian Government approaches sexual and other violence against women with insecure visa status, as against the general population. Until this is resolved, this group will continue to face disproportionate harm.

Fundamentally, until meaningful legal reform occurs, key barriers for reporting of sexual violence will remain in place. Women and children with insecure visa status face inaccessibility, a lack of information, and the threat of forced permanent family separation. It is critical, once protections are in place, that appropriate information, support and legal assistance is provided.

Reform must also be undertaken with particular emphasis on co-design, and the contributions of people in affected communities and with lived experience.

These submissions address the following issues identified in the April 2024 ALRC *'Issues Paper - Justice Responses to Sexual Violence'* (ALRC Report):

- Question 3 How can accessing the justice system and reporting be made easier for victim survivors? What would make the process of seeking information and help, and reporting, better? You might consider the kind of information given to victim survivors, the confidentiality of the process, and the requirements of particular groups in the community
- Question 7 What are your ideas for improving police responses to reports of sexual violence? What can be done?
- Question 18 Are you aware of the research about memory and responsive behaviour in the context of sexual violence trauma? Do you have views about that research?
- Question 20 Do you have a view about the other recommendations that have been made (educative videos, mixed juries, judge-alone trials, and education and training)?

- Question 24 Should cross-examination that reflects myths and misconceptions about sexual violence, such as the belief that a ‘rape victim’ would be expected to complain at the first reasonable opportunity be restricted on the ground that it is irrelevant or on any other ground?
- Question 33 Do you support specialised training for judges who conduct sexual offence cases? What issues should that training address?

Intersectionality of barriers facing refugees and people seeking asylum

People from culturally and linguistically diverse backgrounds are part of the cohorts that are overrepresented in sexual assault statistics, however, often there is no specific mention of refugees or people seeking asylum as a sub-cohort at a heightened risk of sexual violence. The failure to specifically consider refugees and people seeking asylum overlooks the intersectionality of the barriers to justice facing this cohort (in particular those with insecure visa status) including those from LGBTQIA+ communities, and people from rural, regional and remote locations.

Refugees and people seeking asylum have often experienced harm perpetrated by authorities in their home country. This fosters a sense of distrust and lack of faith in the police or the justice system thereby discouraging them from engaging with the police or courts.

The migration system does not inspire confidence with perpetrators of family/gender based violence using that lack of protections for this group as a tool to silence victims with visa cancellation or deportation.

Any consideration of reform to the justice system should also consider the overlap with the migration system and corollary reforms that will need to be made in the migration context.

These barriers are further compounded when the victim-survivor is from LGBTIQ+ communities and is a person seeking asylum. There are very few organisations or legal centres that specialise in assisting LGBTIQ+ communities and mainstream organisations often lack the specialised knowledge and skills to understand the nuances and intersection of issues faced by LGBTIQ+ communities.

Moreover, the justice system in Australia has historically operated to the exclusion and detriment of LGBTIQ+ communities. It was only in 1981 that decriminalisation of sex between men came into effect in Victoria and it was only in 2020 that the ‘gay panic’ defence to murder was abolished Australia-wide. This context makes it even more difficult for individuals at the intersection of queer identity and insecure visa status to engage with the justice system in regards to their experiences of sexual violence.

As outlined in St Kilda Legal and Thorne Harbour Health’s joint paper ‘*LGBTIQ Legal Needs Analysis - Reflections on legal need and future planning from our two-year pilot program*’:

LGBTIQ people have complex and unique legal needs, which are compounded by barriers to accessing justice to address their legal needs.² LGBTIQ communities disproportionately experience discrimination, harassment, violence and social exclusion as a result of the gender binary, homophobia, transphobia, biphobia, intersex discrimination, cissexism and heterosexism.³ This contributes to risk factors that increase disadvantage, including experiencing mental illness and homelessness.⁴

LGBTIQ communities face barriers to accessing legal services to address legal need, including a deep mistrust of the justice system, lack of community specific or appropriate services and lack of information about available services. Many people in LGBTIQ communities have overlapping and intersecting identities that increase their level of legal need.⁵ Many LGBTIQ people are also members of other communities, including Aboriginal and Torres Strait Islander communities, multicultural and multifaith communities, people in prison, regional/remote, neurologically diverse, people with lived

experience of disability and/or mental illness, sex workers, senior or young, rainbow families and people living with HIV—all of which cumulatively impact experiences of discrimination, systemic inequity and legal problems...

The complex legal needs of LGBTIQ communities are best met by a responsive, informed and specialist integrated service that understands how identities and status influence, interact and compound experiences with the legal system. The legal sector should prioritise meaningful co-design and partnerships, listening, understanding and flexibility, to better address legal need in LGBTIQ communities. An effective response requires collaboration between legal services, non-legal services, peer-led community groups, education and law and policy reform to advance LGBTIQ rights within a fairer system.

Any reforms to the justice system's approach to sexual violence should take into account and address the above intersectionality.

Recommendations

- Reform the legal framework to ensure access to secure status and reporting
 - Recommendation 1:** Ensure pathways to security for victim-survivors of violence across all appropriate visa categories, extending existing limited provisions.
 - Recommendation 2:** Initiate meaningful legal reform of migration and refugee law to ensure the safety and security of victim-survivors (so their visas in Australia are not consequently cancelled upon reporting family violence under section 140 of the Migration Act).
 - Recommendation 3:** Replace Ministerial Direction 110 to ensure it does not undermine attempts to combat family violence and disempower and harm victim-survivors and their families
 - Recommendation 4:** Consideration of visa protections and pathways for victim survivors in such situations is necessary, including for victim survivors to have access to other visa pathways to remain in Australia if the perpetrator is subject to character cancellation and deportation, for example a humanitarian visa place or a workplace protection type visa for those suited.
 - Recommendation 5:** Ensure barriers to security, including discriminatory processes that impact victim-survivors disproportionately (such as the practice of not interviewing claimants, or the presumption against claims raised late), are reformed.
 - Recommendation 6:** Provide free comprehensive legal assistance to all victim-survivors of sexual assault, including migration advice, prior to their engagement with the justice system (i.e. prior to making a formal report to the police).
 - Recommendation 7:** Fund and expand specialist LGBTIQ+ legal services.
 - Recommendation 8:** Provide regular Community Legal Education regarding the justice system and its intersection with the migration system in key languages such as Vietnamese, Malay, Tamil, Arabic.
 - Recommendation 9:** Provide free accredited interpreters for victim-survivors to access legal services and ensure that information is translated into key community languages
- Ensure people working in this space are adequately trained
 - Recommendation 10:** Provide specialist training regarding the impact of trauma on memory and how to question victim-survivors of sexual violence in a trauma-informed manner. This training should be provided to all people involved in the justice system such as judges, defence lawyers, court staff and police.
- Ensure accessibility of reporting and appropriate support
 - Recommendation 11:** Place Culturally and Linguistically Diverse (CALD) community liaison officers in all police stations and courts.
 - Recommendation 12:** Expand the [Court Network](#) service to specialise in assisting victim-survivors of sexual violence to navigate the justice system.
 - Recommendation 13:** Provide cultural awareness training for all agencies involved in service delivery particularly police to avoid mis-identification of victim-survivors.

Recommendation 14: Provide free ongoing mental health support for victim-survivors from refugee and asylum seeking backgrounds who are engaged in the justice system in regards to their experiences of sexual violence in Australia.

Recommendation 15: Mandate the use of accredited interpreting services at the reporting stage.

Recommendation 16: Fund child-care to enable victim-survivors to engage in all stages of the justice system.

Recommendation 17: Provide a mental health support worker to be present in all trials and court proceedings. This must include support workers who are appropriately trained on working with CALD communities.

Recommendation 18: 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.

Recommendation 19: 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.

Improving Access to Justice and Reporting Mechanisms

Barriers created by migration law and policy

Although the scope of this consultation is limited to justice system responses to sexual violence, 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 report violence or leave situations of family violence.¹ 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 (Department), 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, forcing her to have sex with him and only allowing her to work from home.

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 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.

¹ 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>>.

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.

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 family face significant insecurity and hardship while they try to establish a future 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) (the Act) which renders them inaccessible by the majority of victim-survivors on temporary visas experiencing family violence;
- Consequential visa cancellation under s 140 of the Act which results in a victim-survivors visa being cancelled due to family and sexual 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. Currently, there is a heavy-handed approach to cancellation that doesn’t centre the victim-survivors view and may leave them without support. This has resulted 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.

The ability for any reforms to the justice systems response to sexual violence will be undermined and hindered if corollary reforms as outlined in the recommendations above are not made to the migration system. These reforms in turn will improve access to the justice system and reporting will be made easier for victim survivors.

The lack of specialised and comprehensive legal representation

Many victim-survivors of family and sexual 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 justice system on themselves and their loved ones particularly where the perpetrator of the sexual violence is a family member or spouse (e.g. consequential visa cancellation, deportation from Australia).

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. These barriers apply equally to accessing legal advice and assistance in regards to the justice system.

Legal representation is also crucial to prevent victim-survivors from being misidentified as perpetrators in the context of family and sexual 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 justice system and be empowered to make decisions that are in their best interests. This will enhance access to the justice system and make reporting easier for victim survivors.

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 to address the needs of people seeking asylum and refugees. Health-justice partnerships create safe spaces for victim-survivors to access information about the justice system while minimising the risk that the perpetrator will become aware of the engagement. Also, reducing 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 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 reforms are applied 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.

Lack of access to non-legal support

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.

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.

Concerningly, 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 31 March 2023, the average time for the Department of Home Affairs to process a Protection visa was 793 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.

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, children and queer communities 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. Safe housing options for queer communities are even more limited particularly for transgender individuals. 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 and people from queer communities 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 their children at high risk of continuing violence.

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

In addition, insecure housing places people at greater risk of sexual violence and prevents them from engaging with the justice system. The problem of having no support or 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.

A victim-survivors ability to report sexual violence and engage with the justice system is undermined by the inadequate and insufficient support and service provisions available. It is essential **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.** This in turn will enhance access to justice when applied in conjunction with the other recommendations proposed in these submissions.

Improving Police and Court Responses to Sexual Violence

Memory and Responsive Behaviour - Credibility Assessments in the Migration Context

A person's experience of sexual violence in either their home country or Australia, can be a core component of their claims for protection and often the only evidence available is the victim-survivor's testimony. As such, the Department, the Administrative Appeals Tribunal (Tribunal) and the Immigration Assessment Authority (IAA) are tasked with assessing the credibility of an applicant's experience of sexual violence. To our knowledge, minimal training is provided to the Department, Tribunal and IAA regarding the impact of sexual violence on the memory. Assessments are often fraught with misconceptions and unwarranted assumptions about how a victim-survivor should behave, what they should remember and when they should report their experiences to the authorities. This flawed thinking is based on the same myths and misconceptions about the impact of trauma on memory and responsive behaviour that historically have underpinned the justice system.

Research referred to in the ALRC Report regarding memory and responsive behaviour in the context of sexual violence, is similar to the research regarding the impact of trauma on the memory when conducting a protection assessment.

Often applicant's representatives will draw a decision maker's attention to expert evidence such as reports by psychologists, forensic psychologists, counsellors and psychiatrists regarding the applicant's mental health. Decision makers have been seen to discount the report either on the basis that the report was written based on instructions from the applicant for the purpose of their migration matters, or on the basis of the decision maker's own assessment of how the applicant presented on the day of the hearing. While expert evidence could have a significant role to play in dispelling myths and misconceptions in trials, clear guidance on the weight and necessity of the evidence is required, if such evidence is to be beneficial for the applicant.

Applicants in interviews and hearings with the Department and Tribunal undergo hours of questioning regarding their experiences of harm and their fear upon return to their country of origin. Often applicants are asked to provide significant details around experiences of sexual violence. This process more often than not is re-traumatising for the applicants due to the manner and duration of the questioning. Similar to the justice context, questions are often based upon myths and misconceptions regarding memory and responsive behaviour.

Unlike the justice system's approach to cross examination, no legislative reforms have been introduced to restrict or guide the conduct of the Department delegate or Tribunal member. Both the Department and Tribunal have however issued guidelines on working with vulnerable persons including those that have experienced sexual violence. The Tribunal's 2018 Guidelines on Vulnerable Persons state that:

Common symptoms which follow the experience of traumatic events are anxiety symptoms, dissociative symptoms, poor attention and concentration, memory problems, depressive symptoms, suicidal ideation, physical symptoms (digestive, cardiopulmonary, sexual problems, chronic pain), symptoms characteristic of post traumatic stress disorder, and behavioural problems including risk taking behaviours and addictive behaviours

The following symptoms and effects may manifest during the conduct of hearings and influence an applicant's ability to participate:

- *Poor attention, poor concentration and distractibility which may be the result of intrusive recollection of events, generalised fear and emotional arousal, or depression. Anger and hostility towards Members may occur which are the result of over- reactivity to reminders of traumatic experiences, poor control of emotions, sensitivity to feeling that one is not believed, protection against shame and guilt, anxiety and distrust of people in authority.*
- *Memory difficulties which can manifest as extremely vivid recollection of some details alongside amnesia for other detail. This may lead to apparent inconsistencies and/or inability to present a chronologically intact account. These difficulties may be the result of any of the aforementioned factors - intrusive recollection of events, generalised fear, avoidance or depression, protection against shame and guilt.*
- *Hesitancy to disclose due to fear of reliving experiences, shame, guilt, or anger about having to prove experiences of violence or injustice.*
Emotional distress due to intrusive memories/images of traumatic experiences, grief, shame or guilt.
- *Some effects may be more pronounced if exposure to traumatic events has recently occurred (such as traumatic events in detention and/or there has been recent bad news about safety of family members) or personal circumstances at the time of review are very stressful.*

However, these Guidelines are not enforceable and outside of the costly and lengthy litigation process which often yields inadequate outcomes, there is no recourse should the decision maker fail to take them into consideration. Applying this to the justice system, it will not be sufficient to simply provide resources to the relevant parties for consideration regarding the impact of trauma on memory or how to engage with victim-survivors of sexual violence in a trauma-informed manner. **Any legislative reforms or provision of relevant guidelines, must be accompanied by regular training on these issues and should be legally enforceable with tangible consequences for failing to adhere to such measures.** We therefore support the **implementation of specialised training for police, judges, prosecutors and defence lawyers who conduct sexual offence cases.** Such training should include academic and scientific resources regarding the impact of trauma on memory and should highlight and dispel myths regarding response behaviour. This training should also consider how the intersection of visa insecurity and membership of CALD communities and/or queer communities impact a victim-survivors memory and response behaviour.

Interpreting Services

In regards to potential issues surrounding the use of interpreters in the justice system, in the migration system we are faced with the unavailability of accredited female interpreters in several key languages. In addition, despite the accreditation, some interpreters will refuse to interpret topics relating to sexual violence experienced by queer communities or sex workers. Anecdotally, clients that have been involved with the migration and justice system have advised us that they were unaware of various supports available as all court forms are in English meaning that they were unaware of the availability of interpreters for court hearings in the justice system context and therefore attending hearings without an interpreter. We refer to the recent publication by Northern Community Legal Centre and the Australian Muslim Women’s Centre for Human Rights regarding the barriers faced by migrant and refugee women in accessing family violence intervention orders which notes that:

Migrant and refugee women face significant challenges when independently engaging with the online application and pre-court information forms, as they are only available in English, are excessively long, and use complicated language and legal terms. When women seek support from police or courts, they are often being turned away and re-directed back to the online forms. Consequently, migrant and refugee women are experiencing delays in obtaining legal protections or disengaging from the processes entirely. .

Conclusion

The issues discussed above elucidate flaws and issues within the migration system that are at times analogous to issues manifesting in the justice system. The above discussion reveals learnings from the inadequacies of the migration system in its treatment and lack of protection for victim-survivors of family violence and it highlights that reforms to the justice system cannot happen in isolation. In order for the justice system to adequately respond to sexual violence experienced by refugee and migrant communities, it is essential that corollary reforms be made to the migration system.

We welcome any further opportunities to speak to the issues outlined in these submissions.