

# Creating meaningful access to justice for Culturally and Linguistically Diverse (CALD) women: preliminary investigation into the use of interpreters in family violence matters

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## Serina's Story

*"I just hope that someone can be there who can call me and talk to me in Mandarin and tell me what the process will be. That would be a big help for me. And I hope to have my own interpreter so I don't have to sit near or listen to my husband through the same interpreter.*

*I hope that someone can explain to us what the intervention order is or what the results could be. I don't know how to protect myself. My daughter checked all the information online and found out I could apply for an intervention order. If I'd known that 10 years ago I would've done that then, but instead I endured this for 10 years."*

- Serina<sup>1</sup>

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<sup>1</sup> Names in this report have been changed to protect identity

# Creating meaningful access to justice for Culturally and Linguistically Diverse (CALD) women: preliminary investigation into the use of interpreters in family violence matters

## 1.0 Executive summary

Access to interpreters is key to unlocking real and meaningful access to justice for some women from culturally and linguistically diverse (CALD) backgrounds who have experienced family violence. Interpreters at court are the conduit through which clients with limited English language fluency can understand and be heard. Whether making an application, speaking with lawyers or appearing in court in family violence intervention order (FVIO) matters, women's access to interpreters is critical to ensuring their future safety. Current court practices do not always ensure that every woman who needs an interpreter is provided with appropriate service.

This preliminary investigation identifies barriers experienced by clients and lawyers in relation to the use of interpreters in the FVIO list at Melbourne Magistrates' Court. We spoke with our CALD clients to provide insight into some of the difficulties they face at court. We assessed current practices to identify the gaps and the improvements necessary to provide better standards of service for our clients. Through this investigation we have identified significant gaps in the family violence legal system for CALD women who may not be fluent in English. These gaps include:

- Clients have inadequate access to information in languages other than English
- Courts lack effective policies to guide interpreter bookings in the FVIO list
- Courts do not have, or do not allocate, the resources necessary to provide each client with a dedicated interpreter for each day they are at court.
- Clients are unable to provide effective feedback, independent of the interpreter assisting them at court
- Interpreters at court are not required to undertake court and/or family violence training
- The Victorian Government and Court Services Victoria do not allocate a dedicated funding stream for training or providing specialist family violence interpreters in the Magistrates' Court.

In this preliminary investigation we outline a number of recommendations for stakeholders including government policy makers and administrators, courts and the interpreter services sector. We also recommend that the Victorian Government resource a more comprehensive study to analyse the issue in depth. We call for improvements to family violence interpreter services as part of a broader task to provide multiple, specifically focused solutions to address family violence in CALD communities.

## 2.0 Recommendations

### For Victorian Government:

No.	Recommendation
1	Victorian Government to increase funding and provide a secure funding stream to state courts to adequately resource family violence trained interpreters in Magistrates' Court FVIO lists.
2	Victorian Government undertake a more comprehensive study of this issue, including forward planning and demand forecasting to service emerging language groups when planning investment in specialist services.

### For Victorian Magistrates' Courts:

No.	Recommendation
3	Magistrates' Courts of Victoria provide information for clients in their own language about court services and processes in the FVIO list on its website and at family violence registries.
4	Magistrates' Courts establish best practice protocols for service delivery to CALD clients. These protocols should guide use of interpreters, be publicly available and include: <ul style="list-style-type: none"><li>○ A gender guideline to prioritise female interpreters for female clients in the FVIO list</li><li>○ Policies to guide the booking and use of interpreters at application and hearing stages.</li><li>○ A practice that courts prioritise accredited interpreters with family violence training and incorporate these standards into booking requests for both individual interpreters and agency allocated contracts.</li></ul>

- 5** Magistrates' Courts allocate adequate resources to ensure that each client has a dedicated interpreter for each day of hearing:
- Courts to book an interpreter for each client who requires one, and this interpreter is not shared with other matters or other parties
  - Courts to book interpreters for one whole day per matter.
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- 6** Courts to establish an independent system to collect clients' and lawyers' feedback on interpreting services at court, and utilise feedback to guide future improvements to service delivery.
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- 7** Training for magistrates, court staff and legal professionals in the best practice use of interpreters in family violence lists.
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- 8** These recommendations for best practice be incorporated into state-wide standards, and be included in the Family Violence Bench Book to ensure consistent practices. Magistrates' Court consider issuing a practice direction to address issues regarding the use of interpreters in family violence matters.

**For interpreter services:**

<b>No.</b>	<b>Recommendation</b>
<b>9</b>	That family violence, vicarious trauma and court interpreting training be provided for all interpreters working in courts and family violence sector.
<b>10</b>	Such training be required for all accredited interpreters.
<b>11</b>	Accredited interpreters and court interpreters to be bound by a code of ethics, based on the Australian Institute of Interpreters and Translators (AUSIT) code.
<b>12</b>	In conjunction with courts and government, interpreter services develop training and recruitment incentive programs for interpreters to work in family violence court lists and across family violence sector, including better remuneration and incentives for interpreters to undertake specialist training.

### 3.0 Background

#### *Our services, our clients*

Women's Legal Service Victoria provides legal information, advice, referrals and representation to women across Victoria. We specialise in issues arising from relationship breakdown and violence against women. We also work to

develop and deliver family violence training and education programs and advocate for legal policy and law reform.

We operate a legal advice and representation clinic at Melbourne Magistrates' Court. Our lawyers provide legal advice, representation and referrals for women who have FVIO matters in court that day. Women's Legal Service Victoria witnesses, first hand, the barriers for women who require interpreters for their safety and the safety of their children.

Approximately 41% of our clients at court are from CALD communities. The clients we see at court are from various language groups, predominantly Mandarin, Vietnamese and Hindi. Many of these women require interpreters given the complexities of navigating court processes in a second language. Every day we see the struggle that many of these clients face in achieving real access to justice in the family violence legal system.

### *CALD women in the family violence court system*

CALD women escaping family violence face additional barriers in accessing and navigating the justice system.<sup>2</sup> Newly settled women from CALD backgrounds are at particularly high risk of family violence. Their exposure to particular stressors and vulnerabilities also means they are less likely to seek support.<sup>3</sup>

We take for granted that women will be heard and understood in the family violence legal system. However, for many CALD women who rely on the assistance of interpreting services at the Magistrates' Court, this is not their experience. Our clients identified issues with interpreter services at court, from the interpreter's translation skills to court processes and the way these impact on their experience of seeking the protection of a FVIO.

### *Interpreter services at court*

Interpreters at court provide interpreting services for the client in meetings with duty lawyers, support workers, police, and in the court room. They may also be required to assist registry staff to explain processes or terms of any orders made. Current court practices for booking interpreters and the lack of training in family violence for those interpreters can inhibit access to justice for our clients.

Unsatisfactory interpreter services at court undermine client confidence in the family violence legal system and its capacity to provide appropriate protection. We are concerned that sharing interpreters also raises serious confidentiality and conflict of interest issues for clients. Adjournments can occur when interpreter bookings cannot be extended into the afternoon. Sharing

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<sup>2</sup> InTouch Multicultural Centre Against Family Violence, *Barriers to the Justice System Faced by CALD Women Experiencing Family Violence* (2010) InTouch <<http://intouch.asn.au/wp-content/uploads/2010/11/LegalBarriersReport.pdf>>

<sup>3</sup> Vaughan, C., Davis E., Murdolo, A., Chen, J., Murray, L., Block, K., Quiazon, R., & Warr, D, *Promoting community-led responses to violence against immigrant and refugee women in metropolitan and regional Australia: The ASPIRE Project (State of knowledge paper 7)*, (2015) Sydney: Australia's National Research Organisation for Women's Safety: 31

interpreters also causes delay and increases inefficiencies in resolving matters.

Interpreters without family violence and vicarious trauma training are less capable of providing appropriate services to clients at court. Clients are less able to give instructions to their lawyers and properly receive legal advice. Not understanding, or being understood, ultimately reduces client access to justice.

## 4.0 Methodology

We have used client feedback and our on-the-ground experiences to identify service delivery gaps for our CALD clients as they navigate the family violence intervention order court process. We collected qualitative data and considered the issues raised in the stories of our clients and colleagues. We have extrapolated on data from our clients at Melbourne Magistrates' Courts to identify systems-wide issues for CALD clients. Our findings are consistent with the insights provided by other Victorian community legal centre (CLC) lawyers delivering duty solicitor services and with secondary research undertaken. We have tested our findings with key stakeholders and present this report as the outcome of that preliminary investigation.

We interviewed our clients who used interpreter services at the Melbourne Magistrates' Court over a three month period from July to September 2015. The telephone interviews were conducted with an independent interpreter, taking approximately 20 minutes. Interviews canvassed client experiences of using interpreters at application and hearing stages. Our clients shed light on their experiences of the family violence court system, from seeking information prior to court, and checking in at court registry on the day of the hearing, to getting legal advice from our duty lawyers and going in to the court room to have their matter heard before a Magistrate. We identified thematic issues and recurrent client responses.

We discussed the issue with our lawyers and other Victorian CLC duty lawyers working in the family violence court system over this period. We asked them to identify particular experiences and recurrent issues around the provision and use of interpreter services at court. We also sent out an email request seeking feedback on this issue to CLCs across the state and collated the responses.

We consulted with professionals from the interpreting industry and other stakeholders on an informal basis. Our lawyers attended a forum on the issue of interpreters working in the family violence sector hosted by Monash University. We have consulted with, and drawn upon the reports of specialist organisation InTouch Multicultural Centre Against Family Violence (InTouch). Secondary research by way of literature review revealed similar recommendations amid a general lack of specific research into the issue of interpreters working in a family violence court setting in Australia.<sup>4</sup>

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<sup>4</sup> See for example in the European Union context, Del Pozo Trivino et al, *Speak Out for Support* <<http://cuautla.uvigo.es/sos-vics/>>

### *Existing protocols and frameworks for practice*

The Family Violence Bench Book<sup>5</sup> recognises the particular issues faced by CALD clients affected by family violence. It identifies the difficulty of securing interpreters in particular language groups and their lack of family violence training. It also acknowledges the impact of both parties sharing interpreters, or having interpreters booked for an inadequate length of time. Drawing on research conducted by InTouch Multicultural Centre Against Family Violence, it outlines these issues regarding interpreter services as barriers to court processes and legal representation. It recommends judicial consideration of these barriers, and that parties are given the opportunity to understand the court process and any orders, and are referred to relevant legal services.

We reviewed relevant findings of the Judicial Council on Cultural Diversity (JCCD) and the Royal Commission into Family Violence in its Summary and Recommendations.<sup>6</sup> The JCCD recently released a report on migrant and refugee women's experiences of Australian courts, following extensive consultation with organisations working with CALD women and analysis of court practices.<sup>7</sup> The JCCD report likewise raised concerns about the process of engaging court interpreters, the skills of those interpreters and other professionals at court who utilise their services.<sup>8</sup> Their recommendations centre on court procedures and provision of "professional, appropriate and skilled interpreters" for migrant and refugee women throughout the court process, as well as appointment of Court Cultural Liaison Officers at all courts.<sup>9</sup>

The Royal Commission into Family Violence Report (RCFV Report) made specific recommendations regarding interpreter practices and standards at court.<sup>10</sup> The RCFV Report recognises the lack of appropriately trained interpreters available in family violence cases.<sup>11</sup> It calls for the inclusion of family violence training in interpreter courses and accreditation requirements.<sup>12</sup> It further recommends specific funding be allocated for family violence interpreters and that guidelines should be prepared for booking and engaging interpreter services in family violence matters.<sup>13</sup>

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<sup>5</sup> Judicial College of Victoria, *Family Violence Bench Book* (2010 – 2014) Judicial College of Victoria Family Violence Resources <<http://www.judicialcollege.vic.edu.au/eManuals/FVBBWeb/index.htm#34143.htm>>

<sup>6</sup> An overview of existing research into this issue has also been collated by the Association of Professional Engineers, Scientists and Managers, Australia, see APESMA, *The case for change: A report on consequences and costs of failures in the translating and interpreting industry* <[http://www.professionalsaustralia.org.au/translators-interpreters/wp-content/uploads/sites/43/2015/03/The-Case-for-Change\\_EMAIL.pdf](http://www.professionalsaustralia.org.au/translators-interpreters/wp-content/uploads/sites/43/2015/03/The-Case-for-Change_EMAIL.pdf)>

<sup>7</sup> Judicial Council on Cultural Diversity, *The Path to Justice: Migrant and Refugee Women's Experience of the Courts* (2016) <[www.jccd.org.au/publications](http://www.jccd.org.au/publications)>

<sup>8</sup> *Ibid* pp 7, 9, 16-17, 29-36, 54-55.

<sup>9</sup> *Ibid* p7, 9, 53-54.

<sup>10</sup> State of Victoria, Royal Commission into Family Violence: Summary and recommendations, Parl Paper No 132 (2014–16).

<sup>11</sup> *Ibid* p34 Summary and Recommendations

<sup>12</sup> *Ibid* Recommendation 160.

<sup>13</sup> *Ibid* Recommendation 158.

## 5.0 Gaps we identified in the court system

### Tia's Story

Tia made an application for an FVIO against her brother Luke, after putting up with years of verbal abuse and threats. Recently, Luke's behaviour escalated. He demanded money from her, screamed abuse at her when she refused. He pursued her, threatening to beat her. Her family intervened, but they were also fearful of Luke.

Tia came to court to seek the protection of an FVIO. Tia spoke little English, and relied on the Thai interpreter at court, who arrived at 10:45am. Her brother also required the interpreter. The duty lawyers from Victoria Legal Aid and WLSV shared the interpreter, trying to prioritise their multiple interpreter matters that day.

In court, the interpreter stood between the parties to interpret for both of them. Tia was fearful of her brother lashing out at her in court, but needed to hear what was being said through the interpreter. Tia's brother did not consent to the FVIO, and the matter was listed for a further hearing in a few months' time. By the time the matter was finished in the courtroom, it was 1:00pm and the interpreter was unable to stay any longer and extend the booking.

Tia had questions about the next court date, and what was expected of her, but was left without the ability to talk with the duty lawyer when the interpreter left. Tia had to leave court uncertain about what had just happened in the courtroom, and what she could expect at the next hearing.

### 5.1 Clients have inadequate access to information in languages other than English

Only some information on the Magistrates' Court website has been translated into languages other than English. Limited information available in other languages results in diminished understanding of court processes and reduced access to services and assistance. Clients described feeling confused by the process, and not understanding the services available at court. Some clients were unaware of, or confused about, the roles of duty lawyer services, court support workers, applicant support workers and Victoria Police civil advocates. Without clear guidance and accessible information, the application process is unnecessarily difficult for CALD clients and reduces their access to meaningful justice.

The family violence court website<sup>14</sup> is a repository of useful information that may not be accessible to many of our CALD clients. This site could be expanded to provide translated materials. Victoria Legal Aid (VLA) has translated their *Safe at home* materials on applying for FVIOs into Arabic, Chinese and Vietnamese.<sup>15</sup> Eastern Community Legal Centre provides a

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<sup>14</sup> <https://familyviolence.courts.vic.gov.au/>.

<sup>15</sup> <https://www.legalaid.vic.gov.au/find-legal-answers/free-publications-and-resources/safe-home-how-to-get-family-violence-intervention-order-english>

video in five languages explaining the FVIO process.<sup>16</sup> The Magistrates' Court could also enable access to these materials by providing links on its website.

**Recommendation: Magistrates' Courts make information accessible about court services and processes for clients in their own languages on the website and at Magistrates' Court family violence registries.**

## 5.2 Courts lack effective policies to guide booking of interpreters

### *Courts lack gender guidelines for interpreter bookings*

Courts routinely book male interpreters for female parties in family violence cases. We are unaware of any protocol to prioritise female interpreters for family violence matters. The majority of the clients we spoke with said they would feel more comfortable with a female interpreter. JCCD roundtable consultations similarly found consensus amongst participants that women should have the option of female interpreters where available.<sup>17</sup>

When clients do not feel comfortable discussing personal information through a male interpreter, they are not able to tell the duty lawyer their story. Clients are unlikely to tell the duty lawyer that they do not feel comfortable with the male interpreter who is interpreting for them. The client and lawyer are less able to discuss sensitive issues such as sexual assault or intimate aspects of the client's relationship. Cultural barriers might inhibit a client from making disclosures through a male interpreter. The duty lawyer is unable to properly understand and assess risks to the client when crucial information is withheld. In turn, this impacts on client access to justice and protection in the family violence legal system.

Our lawyers report instances in which clients are uncomfortable and are not disclosing sensitive information because of the male interpreter. On occasion, interpreter sessions have to be terminated because clients have been unable to go ahead with a male interpreter. This causes further delays at court, and disrupts the client-lawyer interview.

**Recommendation: Magistrates' Courts to prioritise female interpreters for female clients in the FVIO list.**

<sup>16</sup> <http://eclc.org.au/steps2safety>

<sup>17</sup> above n 4 at p34

### *Courts do not consistently provide adequate interpreter services at application stage*

WLSV spoke with clients to better understand their experiences at court when making an application for an intervention order. Clients indicated that they were not sufficiently supported at application stage. One client described having no interpreter to assist with her application, and relying on family members to assist instead. It is not appropriate for children to be required to interpret family violence related content for their parents' FVIO applications. Another client was assisted by her English speaking family violence support worker to make her FVIO application when an interpreter was not available, but observed that *"it was hard as they wrote down different information to what I wanted"*.

The consequence of not having interpreters available at application stage is that the quality of information before the court may not be complete or accurate; this impacts on interim orders and the way in which the matter proceeds through court. The content of applications is used as the basis for interim orders and the allegations to be answered by the other party. Incomplete or inaccurate content in the application can reduce the victim's access to an order for her protection.

**Recommendation: Magistrates' Courts consistently provide interpreter services at application stage.**

### *Courts do not provide adequate interpreter services at hearing stage*

When clients arrive at court they check in at court registry. Some of our clients told us they were not offered access to an interpreter. Others did not realise they would benefit from an interpreter until they had difficulty understanding the particular legal terms the duty lawyer was explaining to them. One client refused interpreter assistance because she did not trust that her personal information would be kept confidential in her small community.

Even when a client speaks everyday English, the stresses and complexity of legal language at court can make communicating in English more challenging. In some instances, clients do not feel confident to ask, or do not know that interpreter services are available. Without an interpreter, clients' access to justice and understanding of court process is undermined.

While some clients had support workers to help them secure an interpreter, we agree with our client who said: *"I think every woman who does not speak English very well should have an interpreter."* The court must ensure that appropriate interpreters should be allocated. Clients have been provided with interpreters who speak different languages or dialects, so clients are then required to communicate in their second (or third) language. While this may be preferable to a client having an interpreter from within a small language group who is known to her, it is not necessarily appropriate.

*“I have been three times already, different one [interpreter] first time. That one is from [another country], he probably spoke Cantonese better, so I couldn’t understand him that well, but the second and third spoke the dialect from where I’m from so I could understand them better.”*

- Min

Routine court practices can have major impacts for our clients and on the efficiency with which matters can proceed through court. Best practice protocols could guide court staff and practitioners on booking and using interpreter services. Magistrates, court staff and legal practitioners should receive training and information on using interpreters in family violence matters.

**Recommendation: Magistrates’ Courts establish best practice protocols to guide use of interpreters. These protocols should provide practical ways to recognise and respond to CALD client experiences. These protocols should be available and accessible to court users such as clients and practitioners.**

### 5.3 Courts do not adequately resource interpreter services at court

#### *Sharing interpreters with other parties is an ethical hazard*

The current common practice at some metropolitan Magistrates’ Courts appears to be to book a single interpreter, to interpret for both parties in a family violence matter at preliminary stages. Our clients regularly share the same interpreter as the perpetrator at mentions and directions hearings. Legal advice and negotiations are delayed as clients must wait for the interpreter to speak with the other party when interpreters are shared between parties.

Sharing interpreters also raises questions for CALD women about confidentiality and conflicts of interest, especially in small language groups where the interpreter may be known to the parties. Clients are less confident about the impartiality of interpreters when they are also speaking with the other party. One client told us:

*“I felt that maybe he [the interpreter] had heard something else from [my ex-partner] and may have been biased against me.”*

- Shari

Other CLC duty lawyers also commented on the difficulties of shared interpreters causing delay and reducing trust. Their clients had less trust in the confidentiality and impartiality of the interpreters and the justice system when sharing an interpreter with their ex-partner. They relayed their clients’ discomfort with particular interpreters because of their connections to community. The CLC duty lawyers we spoke to were not aware of any best-practice models utilised at their courts to deal with these issues.

*“The current approach is to prioritise interpreter matters. My view is that this approach does not deal with the conflict/ethical issues that are raised by applicants and respondents sharing one interpreter.”*

*- Gemma, CLC duty lawyer*

In the courtroom, clients must sit in close proximity to the other party in court to share an interpreter. This can be uncomfortable or unsafe for clients. The interpreter usually sits between the parties. Clients tell us how this impacts on their experience of seeking safety through the courts:

*“a few times yes [I had to stand close to the other party in the courtroom], I felt very uncomfortable and scared.”*

*- Meena*

Another client told us:

*“On the hearing day, the interpreter did well talking to the lawyer, but we only had one interpreter for both of us (in court). If not for my daughter, I would have had to sit closer to my ex-husband. The interpreter had to interpret for both of us and both lawyers. Most of the time he interpreted for my ex-husband because he sat closer to him. Yes, from my point of view I wish I could’ve had my own interpreter so I wouldn’t have to be close to my ex-husband to hear as well. I don’t want to see my husband at all so I want to sit far away. My daughter is not a professional and could only whisper to me and summarise afterwards.”*

*- Serina*

Serina did not feel safe sitting near the other party in court, and felt that the interpreter focused on interpreting for the other party. It is less than ideal for clients to have to rely on family to interpret in the courtroom. It is unrealistic that an interpreter to be expected to interpret for both parties simultaneously in the courtroom.

Our lawyers also fear for client safety on occasions where there is a shared interpreter. One of our duty lawyers described a day in court when both parties sat on either side of the interpreter. Both parties were distressed and during the hearing one party became very aggressive. These arrangements put clients and interpreters at risk.

**Recommendation: Magistrates’ Courts develop best practice protocols for booking an interpreter for each client who requires one, and that this interpreter is not shared with other parties.**

### *Disruption of sharing interpreters with other courts*

It is a regular practice at Melbourne Magistrates’ Court for a single interpreter to be booked for multiple matters in a single morning. For example, a

Mandarin interpreter may be booked for both a criminal matter and a family violence matter.

Sharing one interpreter for both criminal and family violence matters in different court rooms means the interpreter may not be available to the parties in the family violence matter for an adequate amount of time necessary to obtain legal advice.

*“I arrived there at 9:00am; the interpreter came at 11:00am. He explained that he had another assignment downstairs, so came right after. I understand that the court really needs more interpreting resources.”*

- Maria

Booking interpreters for multiple matters in different court rooms and different lists inevitably causes delay. The interpreter must go between rooms to assist clients, sometimes across different levels and occasionally between different court buildings. In one matter that our duty lawyer acted in, the interpreter was booked to interpret in both a family violence matter on level 6 in the Magistrates’ Court and a criminal matter in the County Court across the street. The interpreter had to move between buildings, limiting the amount of time they were available in the family violence matter.

**Recommendation: Magistrates’ Courts develop best practice protocols for booking an interpreter for each client who requires one, and that this interpreter is not shared with other matters.**

### *The trouble with half-day bookings*

*“I think that the interpreter should be booked for a whole day and not only half.”*

-Milla

At mentions and directions hearings, the practice at Melbourne Magistrates’ Court is that a single interpreter (per language group) is booked until 1:00pm.

It is essential for CALD women who require an interpreter to have access to interpreter services throughout the FVIO process. Having an interpreter does make the process of receiving legal advice, giving instructions and negotiating outcomes more complex and time consuming. Currently, interpreter matters are prioritised by duty lawyers seeking to resolve those matters by 12:00pm. The matter must be heard in court and the orders be interpreted to parties before the interpreter booking expires at 1:00pm.

Time pressure on negotiations means CALD women can be ‘rushed through’ the process. At best, it means they are seen relatively quickly, but there is a risk that less time results in less thorough consultation and poorer outcomes for our clients. It can mean less time available for duty lawyers to take detailed instructions, give advice and negotiate with the other side. It can also mean

that people may not comprehensively understand the orders being made to protect them.

It is possible to seek an extension of the interpreter booking for matters that are unresolved by 1:00pm. However, this request cannot be made directly by the duty lawyer and there is no guarantee that any interpreter will be available to extend the booking. Clients have been left without interpreters after 1:00pm when bookings cannot be extended and another interpreter cannot be located at short notice. This often results in additional adjournments and causes further delay to the court process. Our duty lawyer rooms do not have speaker phones, further limiting the lawyer's ability to explain outcomes to clients whose interpreters have left court at 1:00pm, by accessing a phone interpreting service.

We recognise the work being done in the family violence court system across the state by other CLC duty lawyers. Our counterparts described similar experiences regarding interpreters. They reported that half-day bookings are a problem, increasing time pressure and reducing negotiation time: *"this means added pressure on lawyers, and results in clients who don't understand the process and don't feel properly heard in court"*. They described to us the frustration of magistrates having to deal with unresolved matters when interpreters had already left, and the delays this causes in their courts.

At contest hearings interpreters are booked for each party as whole day bookings. Interpreters are not, however, provided for witnesses. If a witness requires an interpreter, the party calling that witness is responsible for covering the cost. Many of our clients lack the resources to do so.

Inadequate interpreter bookings result in unnecessary delay and adjournments, increasing systemic inefficiency and undermining client access to fair, timely court outcomes.

**Recommendation: Magistrates' Courts to book interpreters for each party or witness who requires one, for one whole day per matter.**

#### 5.4 Clients and their lawyers cannot give effective feedback

There is currently no system in place for collecting client feedback about interpreter services at court. Speaking to our CALD clients uncovered issues about which we were previously unaware. An independent system of client feedback will make court and interpreter services more accountable and responsive to our clients' needs.

On occasion, interpreters have made additional comments to what is said by the duty lawyer. The lawyer may be aware that a conversation is occurring between the interpreter and client that goes beyond the scope of what was said by the lawyer to the client. However, if the interpreter makes additional comments to the client, the lawyer will not necessarily be aware. One client

told us that the interpreter at court had added their own commentary to what the duty lawyer said:

*“After she interpreted, she warned me that I must tell truth and must not lie. I’m not sure if it’s protocol, but I didn’t know why she said that. If the interpreter could explain to me that it’s protocol to say that, I would feel better.”*

- Ana

Without investigating these issues, client concerns go unheard and inconsistent, or inappropriate, practices go unchecked.

**Recommendation: Courts to establish an independent system to collect client feedback on interpreting services at court.**

## 6.0 Gaps we identified in the interpreter services sector

### 6.1 Interpreter training is inadequate

Currently, there is limited specialist training available for family violence interpreters. There are no specific professional development requirements for interpreters working with family violence victims. The majority of CALD clients we spoke with said they would prefer interpreters at court who had received family violence training. Family violence and vicarious trauma training may assist interpreters to better engage with clients when discussing sensitive or distressing material.

Interpreting in family violence matters presents a range of challenges for interpreters. Firstly, working with victims of trauma is a specific, learned skill. Understanding the dynamics of family violence and the ways in which information is communicated by a person experiencing trauma is essential when interpreting for traumatised clients. Interpreters without family violence training may have trouble providing appropriate services to victims of family violence.

Interpreters without family violence training have criticised clients for leaving their abusive partners and altered the information provided by clients in court about their experiences of family violence. In a court context the impact of this is significant, and leaves clients without a full access to the protective powers of the court. Clients face worse outcomes at court and their safety is placed at risk when interpreters do not understand the dynamics of family violence.

Secondly, the issue of vicarious trauma is as relevant to interpreters, as it is to any other professionals working with victims of family violence. As such, interpreters require the tools necessary to manage stress and trauma that arises from working with family violence victims.

Interpreters without training in family violence and vicarious trauma may struggle to support victims. Interpreters themselves must manage the personal impact of working with distressing subject matter. As a highly specialised area of interpreting, family violence court interpreting requires ongoing training and professional support. Provision of family violence and vicarious trauma training will equip the interpreting sector to avoid the pitfalls of family violence interpreting.

Thirdly, a sound understanding of complex legal language, the terminology used in family violence matters and the intervention order court process also promotes the ability of an interpreter to work in a high pressured, court based setting. Clients rely on interpreters to accurately transmit complex information into their mother tongue, and are best serviced by interpreters with a sound understanding of the subject at hand.

Court interpreting is an elective part of the interpreting course curriculum, not a specialist course. Monash University introduced a short course on gender-based violence interpreting in May 2016.<sup>18</sup> We would welcome industry-wide training in family violence, vicarious trauma and court interpreting for interpreters who work in the family violence court system.

**Recommendation: Interpreters in the family violence legal system receive family violence and vicarious trauma training in addition to specialised court interpreting training.**

## 6.2 Interpreter accreditation is inadequate

National Accreditation Authority for Translators and Interpreters (NAATI) is the statutory body responsible for accreditation and standard-setting in interpretation and translation services. NAATI is jointly owned by state, territory and federal governments. As such, NAATI has a key role to play in improving standards of, and access to, interpreter services.

Language services providers are largely unregulated. Larger providers such as VITS or On-Call, for example, contract accredited interpreters. Small independent providers contract interpreters with a wide range of qualifications and/or experience. State and federal governments should engage with NAATI to ensure better standards are set for NAATI accreditation and service providers generally.

A 2012 report<sup>19</sup> commissioned by NAATI as part of a project to improve its model recognises the limitations of current training and accreditation

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<sup>18</sup> See: <http://artsonline.monash.edu.au/translation-interpreting/family-violence-and-interpreting/>

<sup>19</sup> University of NSW 'Improvements to NAATI testing: Development of a conceptual overview for a new model for NAATI standards, testing and assessment' 30 November 2012 <<https://www.naati.com.au/PDF/INT/INTFinalReport.pdf>>

processes in a legal context where material is highly specialised. Accreditation is not consistently available for emerging language groups.

The Australian Institute of Interpreters and Translators (AUSIT) is the industry's professional body and provides a code of ethics to guide members. This code is endorsed, but not adopted by NAATI.<sup>20</sup> Accreditation without ethical standards is inadequate, especially in a family violence court context.

**Recommendation: That family violence, vicarious trauma and court interpreting training be requisite for all accredited interpreters. Accreditation programs and continuing professional development to set ethical and professional standards for court interpreting.**

### 6.3 Courts need to review their interpreter standards

Interpreters operating in the family violence court system are not currently required to undertake family violence or court interpreting training. Some court interpreting courses are available. To date, family violence training is not specifically designed for people working in the interpreting and translating industry.

Courts may have reduced capacity to nominate a preferred interpreter when booking interpreter services through an agency. Agency prioritisation of credentials, experience, family violence training or gender vary. Court prioritisation of interpreters who have completed family violence training would be strong incentive for interpreters to undertake such a course.

Although accredited interpreters are usually preferred for court bookings, not all interpreters at court have specialist legal interpreting training. When accredited interpreters are unavailable, paraprofessional interpreters or unaccredited practitioners with experience are engaged. The court faces difficulties in securing interpreters for newer language groups. Some languages are difficult to service, for example, Vietnamese interpreters are in high demand.

Interpreters without adequate training and accreditation standards are not properly equipped to discharge their responsibilities to interpret accurately and ethically to the court and client. Without proper standards set for court interpreters, clients and practitioners cannot be confident of the professional conduct of court interpreters. The JCCD report details incidents in which interpreters have not had necessary skills to provide interpreting services, or have acted unprofessionally in the role.<sup>21</sup> Unethical conduct highlighted

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<sup>20</sup> Australian Institute of Interpreters and Translators, *AUSIT Code of Ethics*(2012)

<[http://ausit.org/AUSIT/About/Ethics\\_\\_\\_Conduct/Code\\_of\\_Ethics/AUSIT/About/Code\\_of\\_Ethics.aspx](http://ausit.org/AUSIT/About/Ethics___Conduct/Code_of_Ethics/AUSIT/About/Code_of_Ethics.aspx)>

<sup>21</sup> above n 5 pp 28 - 36

includes pressuring women to withdraw intervention order applications, deliberate misinterpreting and breaching confidentiality.<sup>22</sup>

**Recommendation 1: Courts prioritise accredited interpreters with family violence training, and incorporate these standards into booking requests for both individual interpreters and agency allocated contracts.**

**Recommendation 2: In conjunction with courts and government, interpreter services develop training and recruitment incentive programs for interpreters to work in family violence court lists and across the family violence sector, including better remuneration and incentives for interpreters to be better trained.**

## 7.0 Gaps we identified in funding

There are too few interpreters available with adequate court interpreting training. There are even fewer with family violence training. Properly resourcing family violence interpreters and booking them for each person for a whole day hearing will require further funding commitment from the Victorian Government. The recommendations we make require courts and governments to commit human and capital resources to give CALD women better access to justice.

Investment in properly trained interpreter services is essential for our CALD clients and requires commitment from the Victorian Government to provide adequate funding, as well as proper allocation of these funds by Court Services Victoria (CSV) to the Magistrates' Courts administering these services. A secure funding stream must be established to ensure ongoing provision of services and should be specifically allocated in the budget for Magistrates' Courts.

Relatively low-cost administrative changes at Magistrates' Courts around booking processes can also have a significant impact on our clients who speak English as a second language. These changes may require investment in a committee tasked with developing these guidelines and the processes to implement necessary changes.

*"We'd also like to see better funding for and training of interpreter services at court in the FVIO list and a policy of requesting same-sex interpreters."*

*- Alex, CLC duty lawyer*

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<sup>22</sup> Ibid p 35

The Victorian Royal Commission into Family Violence recommended that the Victorian Government prepare forecasts of the expected future demands for family violence services.<sup>23</sup> Forecasting will guide planning for service delivery and the anticipated need for specialist services. We further recommend that this forecasting extend to family violence in CALD communities specifically, and consider the demands for interpreter services in particular populations, including emerging language groups.

**Recommendation: That the Victorian Government increase funding and provide a secure funding stream for specially trained interpreters in Magistrates' Courts FVIO lists.**

## 8.0 The way forward

Our clients' ability to understand court process and be heard throughout is central to their agency and experience of seeking protection through the courts. Simply put, our clients feel safer, and appreciate that they can access justice, through an interpreter speaking their first language:

*"I was a bit afraid because I was thinking how could I end up going to court? The interpreter was fair and objective... I hope that every interpreter is as good as the one I had"*

- Dina

Preliminary inquiries into the experiences of duty lawyers and CALD clients in the FVIO list at MMC highlight clear several issues which impact on these clients' access to justice, and may inhibit a client from simply understanding, or being understood at court. These courts could better respond to CALD clients' needs by implementing processes to make whole-day bookings for individual interpreters, prioritise interpreters with appropriate qualifications and family violence training, provide female interpreters for female parties, and implement a system for feedback to improve service and accountability.

From an industry perspective, inconsistent qualifications, a lack of gendered violence training and the complexities of interpreting in a specialised court context challenge current professional standards and client confidence in interpreter services. Specialist training in legal interpretation and family violence would provide strong grounding for more consistent interpreter standards. An industry-wide code of ethics binding all interpreters is also essential.

We call on the Magistrates' Courts of Victoria, Government and interpreter services providers to adopt our recommendations as best practice in responding to the needs of CALD women experiencing violence.

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<sup>23</sup> Above n 9, see RCFV Chapter 41 and Recommendation 223.

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