



22 January 2021

Submission to the VLRC Review: Improving the Response of the Justice System to Sexual Offences

Introduction

inTouch Multicultural Centre Against Family Violence (inTouch) welcomes the opportunity to provide a submission to the Victorian Law Reform Commission (VLRC) inquiry into Improving the Response of the Justice System to Sexual Offences. As a specialist family violence service that works with migrant and refugee clients and their communities, we encounter a number of significant barriers at various points in the justice system in relation to sexual offences.

This submission provides broad responses to some of the key points raised across the VLRC Issues Papers. In particular, we wish to highlight some of the key barriers that migrant and refugee women face when they have experienced sexual violence and assault, and reasons as to why they may not disclose their experiences. By drawing on our expertise working with men from and refugee communities who have used violence, our submission also highlights what we consider to be crucial ways to ensure that offenders are better engaged with the justice system.

About inTouch

inTouch provides integrated, culturally responsive services to migrant and refugee communities. Over the past 35 years, we have addressed the specific needs of communities and helped over 20,000 women experiencing family violence. In the 2019-20 financial year, inTouch provided services to 1311 women from 98 different countries, and 1277 of their children.

We have become a critical piece in Victoria's family violence response system. In 2016, the Royal Commission into Family Violence in Victoria recommended that the government fund inTouch to better support the sector in meeting the needs of individuals from refugee and migrant backgrounds experiencing family violence. The reach and impact of inTouch's work has significantly increased due to this support.

inTouch works across the family violence continuum, from prevention and early intervention, to crisis intervention, post-crisis support and recovery. Our services and programs include:

- An integrated, culturally responsive model based on inLanguage, inCulture case management. Our culturally diverse case managers offer direct client services in over 25 languages. They have a unique understanding of a client's lived migration experience, cultural influences, and the barriers they face when trying to seek help.
- An in-house accredited community legal centre, the only one of its kind in a specialist family violence service, which provides legal advice, court advocacy and immigration support to inTouch clients.
- Capacity building of specialist and non-specialist family violence providers and community organisations to better deliver support to refugee and migrant women experiencing family violence. This includes a public training calendar.



- An early intervention program, Motivation for Change, working directly with men from culturally and linguistically diverse communities who use violence towards their families.
- A recovery program, inSpire, helping women and children move on from experiencing family violence.
- A victim-survivor advisory group called Inspire for Change, comprised of former inTouch clients. This advisory group guides and informs many of our programs, policy and initiatives.

Barriers disclosing and reporting sexual offending in migrant and refugee communities

The barriers to disclosing sexual offending among clients from migrant and refugee communities are varied and range from the systemic and individual. Many times the victim-survivor does not “identify the act as sexual violence, let alone a criminal offence.”¹ This is the case among a cohort of women that inTouch works with. Many clients at inTouch have experienced some form of sexual abuse and violence perpetrated by their current or former partner. It can take some time, trust and education for the client to identify and disclose her experiences of sexual abuse or violence because she has been persuaded or she believes that these acts are part of her duty as a wife and are her obligations as part of the gender roles and dynamics in the relationship. For many, marriage implies consent to sexual relations.²

Another significant barrier to disclosing sexual offending among our client group is the privacy that is accorded to sexual relations. In many non-Western cultures, it is considered taboo to openly discuss sexual relations and sexual violence that has occurred in a relationship – particularly a marriage.³ At inTouch, it can take multiple sessions with a case manager before a client discloses her experiences of sexual violence and abuse. Further, disclosing to a case manager does not always mean the client wants to report the incident/s to police or any other services.

This is also the case for people who have committed sexual offences. inTouch’s Motivation for Change program works with men from migrant and refugee communities who have used family violence. The program is holistic, trauma-informed and uses inTouch’s inLanguage, inCulture service delivery model.⁴ Men who participate in this program are often very reluctant to discuss any intimate or sexual aspects of their relationship.

Victim-survivors who have only been in Australia for short periods of time, may be fearful of disclosing sexual offending due to fear of repercussions from within their families and their community. This leads to low levels of reporting of sexual offences. Many of our clients who are temporary visa holders don’t have their family and friendship support networks around them in Australia. Experiencing family violence can be an incredibly alienating experience for these clients. Many clients face being ostracised from their communities for disclosing or reporting family violence. This can also be the case when it comes to disclosure or reporting of sexual violence and offending. Furthermore, as documented by prior research,

¹ Australian Law Reform Commission, The prevalence of sexual violence (Queensland: 2010) <https://www.alrc.gov.au/publication/family-violence-a-national-legal-response-alrc-report-114/24-sexual-assault-and-family-violence-2/the-prevalence-of-sexual-violence/>.

² Natalie Taylor and Judy Putt, “Adult sexual violence in Indigenous and culturally and linguistically diverse communities in Australia” Trends and Issues in Crime and Criminal Justice (Canberra: Australian Institute of Criminology, 2007). Available at <https://apo.org.au/sites/default/files/resource-files/2007-12/apo-nid3020.pdf>.

³ Ibid.

⁴ inTouch, Direct client services delivery model (Melbourne: inTouch 2019). Available at https://intouch.org.au/wp-content/uploads/2019/12/inTouch_DirectClientServicesDeliveryModel_website.pdf.



migration status can be used as leverage to stop the woman from disclosing or reporting the sexual offending.⁵

A major concern for many of our clients is that they won't be believed. Clients may not feel believed by police when they report the offending, and even in the courts. This feeling can be caused by the way that police and judges communicate with the victim-survivor and the process they have to go through to have their stories heard.

Finally, the process of reporting and convicting an offender can take lengthy periods of time. Clients who have experienced family violence and sexual offending need pathways to safety and stability to move on from their experiences. Engaging police and the courts means that their experience will be drawn out and for many clients, this is not feasible. This is also the case for our clients who have claims through the Victims of Crime Assistance Tribunal (VOCAT). Our clients would rather have their matter settled and an outcome decided rather than fully disclose their experience and have it heard over a lengthier period.

Recommendations

The current justice response to sexual offending, for victim-survivors and offenders, exacerbates existing barriers to achieving equitable and fair outcomes. Working with clients from migrant and refugee communities about their experiences of family violence and sexual offending requires a nuanced and culturally responsive approach.

1. More effective use of trained interpreters and readily available, language-appropriate information across the justice system

Language barriers can “prevent CALD women from accessing services and information and can affect decisions to disclose experiences of violence to police.”⁶ Lack of readily available, language-appropriate information across the justice system exacerbates existing barriers. Furthermore, perpetrators of family violence can use the low levels of English language literacy of their partner to further control and coerce.

Ineffective or problematic use of interpreters can cause significant additional harm to victim survivors. The client may be reluctant to discuss the sexual violence with an interpreter due to privacy concerns, particularly if she has been allocated a male interpreter from her community. For some newer and emerging communities, the pool of interpreters is quite small and there can be confidentiality issues in their community. Some police and other workers in the justice system may not be skilled at working with interpreters and may not be facilitating the process effectively enough.

In addition, some interpreters are not skilled at interpreting in a family violence or sexual offences context, and may not interpret the information between the case manager and the client directly. Interpreters therefore require extensive and ongoing training in these areas, and only those highly trained interpreters should be used in the context of sexual offending.

⁵ Marie Segrave, *Temporary Migration and Family Violence: An Analysis of Victimisation, Vulnerability and Support* (Melbourne, VIC: School of Social Sciences, Monash University, 2017)

⁶ Alissar El-Murr, *Intimate Partner Violence in Australian Refugee Communities* (Australian Institute of Family Studies, 2018). Available at <https://aifs.gov.au/cfca/publications/cfca-paper/intimate-partner-violence-australian-refugee-communities/>



2. Culturally-responsive practice embedded across the various stages of the justice system

As well as ensuring effective use of interpreters, culturally responsive practices should be embedded in the justice response to sexual offending for clients from migrant and refugee backgrounds. The role of culture in a person's identity, on their relationship and marriage, and their relationship with their family and community is very important. It is our experience that culturally safe and responsive service provision can be an excellent tool to support women experiencing family violence and forms of sexual abuse and violence. Workers who understand particular cultural expectations, traditions, beliefs, and practices can help to relate more closely to a client and their experience. It is our experience that clients can feel there is little cultural sensitivity in mainstream service provision, and can experience cultural stereotyping,⁷ which can cause them not to engage with services.

Culturally-responsive service provision, such as bilingual or multilingual family violence service practitioners, can help to understand the issues that clients from migrant and refugee communities face. For example, being able to relate to cultural practices around gender norms, dowry, or the relationships between extended family members. As discussed previously, in some cultures, there are strong notions of privacy and silence in regards to family relationships.⁸ These are critical concepts for many of our clients and a lack of understanding in mainstream services can lead to the exacerbation of barriers.

Such culturally-responsive practice is also effective when working offenders. An evaluation of our Motivation for Change program that works with perpetrators showed that clients felt a sense of ease and belonging working with facilitators and case managers who are from the same cultural background. The program unpacks cultural practices and views in a way that is nuanced and helps to challenge the behaviour of the men by other men from their own culture. This is also effective in discussing and addressing behaviours that may be considered taboo in their culture. For example, case managers from the same cultural background as their clients have developed effective strategies to discuss sexual violence and abuse with their clients, in ways that overcome previously stigmatised conversations, whilst holding the men accountable and not-colluding. As stated in the evaluation report:

"[...] the program incorporated shared cultural norms, including facilitators belonging to the two cultural groups. For example, South Asian participants connected over shared family rituals such as marital contracts, which is not possible in mainstream groups. This in turn eased group dynamics, so much so that participants had to be 'pushed out the door' at the conclusion of the group."⁹

3. Improved relationships between police and victim-survivors

Women from migrant and refugee communities who experience family violence and sexual crimes face a multitude of barriers to seeking support and safety. Lack of knowledge of Australian systems makes women more vulnerable to having negative experiences with support services, migration and legal systems. For example, women are often misidentified as the perpetrator or primary aggressor in situations of family violence.¹⁰ That is, police misidentify the woman (victim-survivor) as the respondent in a family violence

⁷ inTouch, "I lived in fear because I knew nothing" – Barriers to the Justice System Faced by CALD Women Experiencing Family Violence (Melbourne: inTouch, 2010). Available at <https://intouch.org.au/wp-content/uploads/2018/11/Barriers-Justice-System-Faced-CALD-Women-Report.pdf>

⁸ Alissar El-Murr, Intimate Partner Violence in Australian Refugee Communities (Australian Institute of Family Studies, 2018). Available at <https://aifs.gov.au/cfca/publications/cfca-paper/intimate-partner-violence-australian-refugee-communities>

⁹ Deloitte and Family Safety Victoria, Evaluation of new community-based perpetrator interventions and case management trials: Final evaluation report (Melbourne: Family Safety Victoria, 2019), p48.

¹⁰ Madeleine Ulbrick and Marianne Jago, 'Policy Paper 1 'Officer she's psychotic and I need protection': Police misidentification of the 'primary aggressor' in family violence incidents in Victoria (Melbourne: Women's Legal Service, 2018).



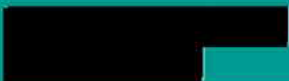
intervention order. The risk of being misidentified is even greater amongst migrant and refugee women, as well as Aboriginal and Torres Strait Islander women.¹¹ Our case work also reflects this to be a frequent issue among our client group. This can lead to criminalisation of victim survivors of family violence. Further, some victim survivors have been coerced or deceived into undertaking criminal activity by their partner, as part of the cycle of power and control.

Police must strengthen their response to family violence to ensure it is responsive to the experiences of migrant and refugee women. It is our view that despite policy directives and laws that govern policing, the police response to family violence can be insufficient. It is common at inTouch to hear from clients that despite reporting breaches of intervention orders, police have failed to arrest and prosecute the perpetrator.

Police must undergo extensive, ongoing training to work better with victim survivors of family violence from migrant and refugee communities. Police must use interpreters more frequently and effectively. They must ensure that they properly understand the experiences and needs of the victim survivor. Particular sensitivity and care must be taken when it comes to sexual offending, which will require a culturally responsive approach from the police. In this way, police must collaborate with victim survivors more effectively.

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¹¹ No To Violence, NTV Discussion Paper: Predominant Aggressor Misidentification and Victim Misidentification (Melbourne: 2019), p8.