



Settlement Council of Australia

Policy Brief on Domestic Violence

Introduction to SCOA and why position statement was developed

The Settlement Council of Australia (SCOA) represents a broad network of nearly 80 settlement agencies around Australia. Settlement agencies have played a pivotal role in enabling settlement, enhancing integration and ensuring equity across the country. As advocates and service providers, the sector has a unique knowledge of the realities of the settlement experience, over time, across the country, and among hundreds of different ethno-cultural communities.

SCOA has a vision of “an equitable, respectful and inclusive Australia where effective settlement outcomes provide every opportunity to humanitarian entrants and migrants to fully participate in society”. Good settlement outcomes contribute to social harmony, greater productivity, and foster social cohesion.

Given the emerging body of literature on domestic violence in CALD communities, SCOA has recognised the need for a discussion paper in this area as it relates to settlement that can inform its input into the national agenda.

Brief Summary of Issue

People from CALD communities, especially new arrival residents, may share common experiences of unplanned departures, long periods without access to health or education, low levels of language proficiency, different understandings of family violence, lack of familial and social support networks, and dependence on an Australian sponsor. These factors contribute to the disproportionate impact of family violence on those from CALD communities.

The National Action Plan for Australia to Reduce Violence against Women and their Children 2009-2021 acknowledges that immigrant and refugee women are more likely to be murdered as a result of domestic violence.

In May 2012 the Federal Government tabled the Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012 in Parliament. One of the amendments is a proposal

to criminalise forced marriage by including forced marriage as an offence in the Commonwealth Criminal Code.

In June 2012 the Minister for Immigration and Citizenship announced changes to Australia's migration laws to help those experiencing family violence on provisional partner visas with implementation scheduled for November 2012.

There is also a substantial body of work examining issues related to CALD communities and family and domestic violence, including a number of comprehensive literature reviews (Bonar & Roberts 2006). A key feature differentiating much of this work from that of other family violence research, is the challenge to 'universalist' approaches to understanding the experiences of victim/survivors of family and domestic violence. Universalist approaches are described as largely inadequate and fall short of recognising the ways in which the experiences of violence and abuse can be further complicated and mediated through the intersections of systems of domination based on ethnicity, religion, culture, class and nationality (Sokoloff & Dupont 2005).

The intersectional or multicultural domestic violence approach argues that gender inequality is neither the most important nor the only factor that is needed to understand family and domestic violence in the lives of marginalised women. This approach argues that cultural, social and political contexts are important factors in understanding the nature and occurrence of family and domestic violence among CALD populations (Thiara & Gill 2010).

Multicultural perspectives have also emphasised the specific issues for refugee and humanitarian communities, highlighting the inter-relatedness of family and domestic violence with refugee experiences and settlement (Mwaiteleke & Macourt 2001; Rees & Pease 2006). Consequently, it is vital that there is an adequate understanding of both the pre-arrival experience and the challenges of resettlement faced by new and emerging communities in the development of prevention strategies. It is important that these experiences are not represented as causal of family violence but rather as contextual and exacerbating.

SCOA has identified the most significant factors that impact around family violence in migrant and refugee communities as:

- Cultural and religious factors around disclosure
- Barriers to accessing information
- Institutional / structural barriers in service awareness and access
- Lack of knowledge about the legal system

SCOA's Position on the issue

SCOA recognises that without knowledge about legal rights and in the absence of a capacity or confidence to pursue their rights, it is unlikely that legal rights for vulnerable groups and individuals will be realised. Improving awareness and ensuring access to education around rights and entitlements are critical factors in addressing family violence in migrant and refugee communities.

SCOA also welcomes policy and legislative reform that responds to the unique issues that intersect in CALD community responses to family violence. The changes announced in relation to Australia's migration laws to help those experiencing family violence on provisional partner visas will significantly contribute to the protection of vulnerable women.

In relation to the federal government's current Bill to criminalise forced marriage SCOA urges that the distinction be made between the practices of forced marriage and arranged marriage, and that the ensuing impacts of this in legal and service sector responses be recognised and planned for.

Settlement agencies across the country are deeply embedded in migrant and refugee communities and can greatly contribute towards building the links, developing cultural awareness (on both sides) and fostering engagement of newly arrived communities around family violence and Australian laws.

Key Recommendations flowing from SCOA's Position

SCOA has identified the following as key areas that need to be addressed and has made recommendations to improve responses to family violence in the settlement sector:

- 1. Settlement of newly arrived communities, information provision and the Australian legal system**

Issue

Language issues, economic difficulties, housing barriers, unemployment and cultural differences can pose problems for some new migrants and refugees to such an extent that the hurdles seem insurmountable (Refugee Council of Australia 2009). Settlement can be impacted by large family groups (housing issues); low literacy and numeracy levels in first language; limited education (as a result of extensive stays in refugee camps); and discrimination and racism, particularly in seeking employment and access to affordable housing (Atem & Wilson 2008). Refugees are particularly vulnerable and can arrive with very specific health problems and language or cultural barriers, making it difficult for them to settle successfully into the community. Some may have been tortured or experienced other trauma either before or during their journey here. Refugee women have often been subjected to extreme levels of sexual and gender-based violence in their home countries and during often extended periods spent in international refugee camps.

It is important that in describing the challenges confronting newly arrived communities, we avoid pathologising refugee and humanitarian entrants. We need to remain aware that the concept of 'refugeehood' within resettlement contexts can end up defining a person above and beyond any other form of identity (Marlowe 2010). Our efforts should ensure the strength and resilience that is characteristic of so many, is not rendered invisible in the process of planning and implementing settlement support programs.

Information provision is a vital component of the settlement program, both prior to and after arrival to Australia. The Australian Cultural Orientation (AUSCO) program is provided to 'refugee and humanitarian visa holders who are preparing to settle in Australia. The program provides practical advice and the opportunity to ask questions about travel to and life in Australia. It is delivered

overseas, before they begin their journey' (Department of Immigration and Citizenship (DIAC) 2010a). There are a range of topics covered during the course, including 'Australian law, values and citizenship'. The extent to which the content and methodology of this orientation program can be enhanced to better support and prepare refugees for the transition into Australian society has led to a review of the program by the Refugee Council of Australia. Consultations undertaken by the council have suggested that the pre-departure information that most humanitarian entrants receive does not serve its purpose effectively.

Despite the range of initiatives available, a recent DIAC submission to a parliamentary inquiry on settlement services and settlement issues highlighted that newly arrived refugee and humanitarian entrants, especially African Australian communities, largely 'lacked an understanding about their legal rights and responsibilities, including in situations where racism, discrimination or domestic violence occurs' (DIAC 2010b).

Razack (1998) has suggested that current approaches to the design and delivery of information, particularly legal information, are didactic and fail to take sufficient account of the importance of cultural contexts in people's learning and integration of new information. Additional complexities include the fact that for some newly arrived communities, the 'law' in their respective countries of origin has been an instrument of oppression and persecution, and hardly a tool for empowerment and protection.

Recommendation

That the provision of Domestic Violence information is improved, culturally appropriate, respectful of the complexities relevant to target communities and offered at critical stages within the settlement journey.

This would include:

- ***Ensuring that Humanitarian Settlement Services acknowledge training on domestic violence as essential to every phase of the settlement program.***
- ***Provision of on arrival training to increase awareness around the Australian legal system and policy framework presented in a manner that highlights common values that inform the law.***
- ***SCOA working in partnership with key stakeholders to develop an interagency approach in relation to accessing and engaging with support systems.***

2. Access to Justice

Issue

The Federal Government's *Strategic Framework for Access to Justice in the Federal Civil Justice System* emphasises the importance of early legal information and advice to help people solve their problems efficiently and effectively, as part of the Federal Government's overall 'access to justice' agenda (Access to Justice Taskforce 2009).

Without knowledge about legal rights and in the absence of a capacity or confidence to pursue their rights, legal advocates posit that it is unlikely that legal rights for vulnerable groups and individuals will be realised. In order to have a right to an effective remedy, knowledge of that right, alongside the capacity and confidence to be prepared to exercise that right when it is threatened or curtailed, are necessary pre-conditions (Curran & Noone 2007).

There is a growing body of evidence within the literature that suggests that people from new and emerging communities often experience significant barriers to accessing 'justice'. In a comprehensive study on access to justice and legal needs, the Law and Justice Foundation of NSW identified a number of barriers, including the fact that many have very limited knowledge of the Australian justice system and, as a result of their experiences in their country of origin, have limited trust in government agencies (Schetzer, Mullins & Buonamano 2003).

A Victorian report undertaken by the West Heidelberg Community Legal Service examined a range of issues impacting on access to justice for newly arrived Somalis (Koochew 2005). Barriers that were identified included:

- the limited availability of legal information
- language and cultural differences
- a lack of access to interpreters, including issues of confidentiality.

A recent report has particularly emphasised issues for newly arrived African refugees, including their pre arrival experiences of law and authority and their expectations of western legal systems (Springvale Monash Legal Service 2008). The Springvale Community Legal Centre reported that many of their clients, particularly, 'people from non-urban areas in South Sudan are poorly equipped to deal with some of the basic systems and regulations in Australia. They are not aware of Australian laws and the consequences of breaking the law', (p. 15).

The report suggested that many of the legal problems could be addressed by access to information but highlighted that new arrivals often face difficulties accessing information through the usual channels for the following reasons:

- Lack of fluency in spoken English. Many non- English speakers find it difficult to access information by phone because they do not speak or understand English well. Even when a phone interpreter can be provided, it can still be difficult for a person to understand complex information provided through an interpreter, particularly if specialist words are used.
- Lack of literacy in English and inability to access information through written materials. Many clients cannot understand letters from government or legal agencies.
- Unavailability of resources in some African languages and lack of literacy in their mother tongue. Few services provide information in Sudanese languages, such as Dinka and Nuer.
- Over-reliance on others in the community for information. Given the difficulties in accessing the information listed above, many people rely on friends and community leaders for information about how things work in Australia. Unfortunately, there is often inaccurate information circulating within recently arrived African communities.

- Reliance on children for information. It is often the case that the children in a family speak good English, while the parents speak very little. Parents rely on their children to interpret for them.
- High support needs and unrealistic expectations of service providers. Many clients expected to see a lawyer immediately, as soon as they walked through the door, and were frustrated that they had to wait for an appointment.
- Reluctance to seek help where the problem involved family or personal issues.

Specific issues in relation to the legal needs of CALD women were examined in the NSW study, *A Long Way to Equal*, an update of *Quarter Way to Equal: a report on barriers to access to legal services for migrant women* (Women's Legal Services NSW 2007; Young, Wallace & Evans 1994). The report stated that 'As well as the persistent need for better interpreting services, the research revealed that migrant and refugee women's lack of basic information about how to get free legal help continues to be a serious barrier to them knowing and asserting their legal rights' (p. 32). The need for ongoing and strategic community legal education was repeatedly emphasised.

The study also revealed that the 'low levels of literacy among migrant and refugee women in their first language features consistently as a barrier to accessing information about the Australian legal system and where to gain legal assistance. The focus of many services on translating relevant written legal information fails to adequately address the need for non-written information to be made available among migrant populations with low levels of literacy' (p. 32).

The consultations undertaken in the preparation of the *Time for Action* report highlighted similar barriers for immigrant and refugee women and children who experienced violence (National Council to Reduce Violence against Women and their Children 2009).

Recommendations

- ***That community legal education programs with a particular focus on legal rights and access to legal assistance, are delivered on an ongoing basis through settlement services.***
- ***That legal aid services are provided in community locations readily accessible by new arrival communities.***
- ***That legal information and materials are translated using plain language and also made available in alternative formats.***

3. Awareness of laws relating to family and domestic violence

Issue

Feminists and other social theorists have sought to identify and conceptualise concepts of 'justice' in relation to the legal system's response to violence against women. Hudson argues that justice must be 'relational, discursive, plurivocal, rights regarding and reflective' (2003). That is, 'relational'

meaning the need to recognise individuals as part of a network of relationships with the State and the community, and 'reflective' referring to the need for each case to be considered in terms of all its unique circumstances and situated in the wider social context.

The application of these principles within new and emerging communities would necessitate adopting a process of identifying how contextual and socio-cultural challenges impede the ability of individuals (particularly women and children as victims of family violence) and communities to access and achieve justice.

Situating the experiences of family violence invariably requires a closer examination of the cultural and social meanings attached to such experiences by people from new and emerging communities. This would also require an exploration of cultural-legal understanding. Applying cultural-legal analysis, the Springvale Community Legal Centre identified major differences in relation to law and its regulation of 'family' within Sudanese customary law and within Australian family law:

There are many differences between Australian family law and South Sudanese customary law. The many and varied tribal groups in South Sudan have differing customary law and practices regarding the family. South Sudanese Victorians will not be familiar with a homogenous and what might be perceived as intrusive legal system (Springvale Monash Legal Service 2008, p. 49).

Legislation inherently expresses assumptions and viewpoints that guide the implementation of legislation and social policy. For example, the Law and Justice Foundation of NSW report stated that:

Family law focuses on the narrowly defined 'nuclear family' and does not pay sufficient regard to the diversity of family structure that exists in a multicultural community. It is also seen as failing to recognise the importance of cultural values and cultural identity (Schetzer, Mullins & Buonamano 2003).

The notion that law is 'cultural' is critical in ensuring contextual and effective community legal education programs for newly arrived communities. The literature suggests that legal cultures can best be examined by reference to fundamentally different legal systems or by comparing the legal systems in newly arrived people's countries of origin (Cotterrell 2006).

It is not uncommon for members of newly arrived communities to have vastly different experiences of what 'justice' is and how a legal system works... The court system itself, as a concept, is unfamiliar to some sections of the community, who may not understand the delay between the 'crime' and the judgement or punishment (Victorian Equal Opportunity and Human Rights Commission 2008, p. 8).

Traditional dispute resolution processes, known as the Chiefs' or Elders' courts or councils – depending on the particular ethnicity/identity of the community – are a common feature of many legal systems, particularly within African and Asian countries (Nyamu-Musembi 2003). In these situations, the dispute is referred to the Chiefs' or Elders' court or council, with the victim, offender and other members of the community involved in the proceedings/ mediation. Some commentators have referred to these courts as examples of 'restorative justice' (Peters 2004). Whilst some commentators see these as prototypes of desirable, culturally-tailored dispute-resolution mechanisms, others have strongly argued that the use of extra-judicial methods to address gender-

based violence is inappropriate and may amount to a violation of human rights for women and children who are victims of interpersonal violence (Nyamu-Musembi 2006).

The experiences of the legal system in one's country of origin invariably shape expectations in one's new country and this is particularly pertinent to issues relating to family conflict and violence within familial contexts. The Springvale Monash Legal Services report on South Sudanese communities, for example, highlighted that clients had conveyed that in cases of family violence, 'a couple may separate temporarily to enable time for reconciliation, although in cases where physical violence continues, the aggressor may be confronted by elders, or by members of their own or their spouse's family' (p. 56).

Some members of new and emerging communities are, therefore, advocating for greater integration within the Australian legal system of more 'traditional' and 'alternative approaches' to addressing family violence within their communities (Juma 2005). More recently, concepts such as restorative justice have been identified by some as being more aligned with principles of customary 'lore' and culture.

A lack of understanding of legal remedies, such as injunctive orders and their application to family violence incidents has also been identified as an issue of major concern. Consultations conducted with African clients as part of a study commissioned by the Footscray Community Legal Services explored a range of sources of confusion about family violence protection orders and identified the following (Fraser 2009, p. 45):

- 'a belief that domestic arguments are a private matter that could and should be resolved by family members and community elders, and a corresponding reluctance to seek intervention orders
- a consequent lack of understanding of police powers to seek an intervention order on a person's behalf
- lack of understanding about intervention orders as a distinct and separate proceeding from criminal proceedings
- lack of understanding of intervention orders as a serious legal procedure
- lack of understanding of the consequences of an intervention order and the consequences of breaching it'.

The study suggested a range of consequences of this confusion which may include (Fraser 2009, p. 45):

- 'people not complying with intervention orders, because of a lack of understanding of the consequences of a breach
- people becoming reluctant to report family violence to police, because they do not want police to take out an intervention order on their behalf
- people seeking to resolve family violence through family and community networks, rather than seeking intervention orders
- people not reporting breaches of intervention orders to police'.

Recommendations

- ***That awareness programs are made available for policy makers, service providers and the legal sector to illustrate differences around the experiences of the legal system in one's country of origin and how these shape expectations of Australia's legal system, particularly in relation to issues of domestic violence. This would involve an exploration of cultural-legal understandings and relevant cultural and social meanings.***
- ***That tailored community legal education programs are informed by the notion that law is cultural and highlight common values around justice when illustrating differences in legal rights and obligations between Australia's legal system and that of peoples' country of origin.***
- ***That further research is undertaken to develop responses around family law which are inclusive and respectful of traditional practice but adhere to Australian laws.***

4. Criminalisation of forced marriage

Issues

On 30 May 2012, the Federal Government tabled the Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012 in Parliament. One of the amendments is a proposal to criminalise forced marriage by including forced marriage as an offence in the Commonwealth Criminal Code.

The new offences specifically criminalise the actions that bring about a forced marriage and apply irrespective of whether further abuses occur within the marriage, such as rape and assault. Specifically, the offences target conduct involved in:

- causing a person to enter a forced marriage
- marrying a person who is not entering the marriage freely.

The proposed amendments will not directly affect Australia's visa requirements. Nevertheless, one challenge visa officers face is dealing with cases of suspected forced marriage where the victim is unwilling or unable to speak out. If forced marriage is a criminal offence, the visa officers will have the added option of referring serious concerns to the AFP for investigation.

It would be useful for the Australian Government to review how well current legislation is working in other countries that have adopted similar legislation, and how its efficacy can be improved, before adopting new standalone legislation in Australia that may make it even harder to protect victims and prosecute perpetrators. Many who support criminalisation believe that, since forced marriage is an infringement of human rights, the State has a legal obligation to protect victims and punish perpetrators. However, for criminalisation to be effective, a distinction would need to be made between the practices of forced marriage and arranged marriage. This is far from simple. Sufficient training for criminal justice professionals and jury members involved in forced marriage cases would have to be provided to ensure these distinctions are clear.

Overseas experience suggests that it is not clear that making forced marriage a stand-alone criminal offence would ensure a deterrent effect. In communities where forced marriage is prevalent, self-interest is often considered secondary to the need to fulfil obligations to one's extended family and the wider community: many communities originate from clans and tribes where loyalty to the clan takes precedence over all other relationships.

However, treating a complex issue resulting from an interaction of individual, familial, social and economic factors as being solely a function of culture also raises the risk of further vilifying already disadvantaged groups. This has been evidenced by past attempts to engage immigrant women on the issue of violence against women which has often been perceived as demeaning their cultural heritage and assumptions that they have no ethical framework.

There exists no sound data on the true incidence of forced marriage, especially of young women. The Australian Muslim Women's Centre for Human Rights have highlighted that *"This isn't necessarily due to the community's 'hidden practices' but is associated with the complex nature of social phenomena."* Complex social phenomena require research which can be developed through greater government investment which is currently lacking.

SCOA support the government's criminalisation of forced marriage, as distinct from arranged marriages, but including this in legislation on sexual trafficking is problematic and creates a significant barrier to raising community awareness. Such measures are far better placed within existing family violence legislation and also embedded within violence against women policy frameworks. This approach would directly inform community education programs and promote community ownership enabling change at grassroots levels with a far greater potential for sustainability.

Recommendations

- ***That an extensive research study on forced marriages legislation be undertaken to learn from application in international contexts. This research should be undertaken in a manner that respects CALD communities and seeks their participation and contributions.***
- ***That community education programs around Australian law embed a clear distinction between arranged and forced marriages.***
- ***That cultural competency training and educational resources are developed for police and the legal sector to enhance awareness and understanding.***
- ***That support for victims of forced marriage is consistent across systemic and frontline levels.***

Conclusion

Successful settlement of humanitarian entrants and migrants creates a multitude of benefits for all community members. Settlement agencies play a pivotal role in ensuring those settling fully participate in society. A series of recommendations have been provided in this policy briefing to improve responses to family violence in the settlement sector. CALD communities' have unique experiences prior to and throughout the settlement process that impacts upon their understandings of family and domestic violence. These experiences create challenges that contribute to a higher risk of family violence. A multicultural perspective is needed to assist in formulating strategies to prevent domestic violence in these communities. SCOA has identified significant factors impacting family violence in CALD communities including cultural and religious factors around disclosure, barriers to accessing information, institutional and structural barriers in service awareness and access and lack of knowledge about the legal system. Improving knowledge, awareness and access to legal rights is key to addressing family violence amongst these communities. The recommendations contained in this report seek to address these factors and support better settlement outcomes. They include improving settling communities knowledge of the Australian legal system and domestic violence in the Australian context throughout the settlement process, ensuring this information is accessible and culturally appropriate, educating those formulating and providing this information to ensure they are aware of cultural differences in understanding of law and implementing institutional and legislative changes such as the criminalisation of forced marriage but within an appropriate cultural context.

Issue 1: Settlement of newly arrived communities, information provision and the Australian legal system
<u>Recommendation:</u>
<i>That the provision of Domestic Violence information is improved, culturally appropriate, respectful of the complexities relevant to target communities and offered at critical stages within the settlement journey. This includes:</i>
<ul style="list-style-type: none"> ➤ <i>Ensuring that Humanitarian Settlement Services acknowledge training on domestic violence as essential to every phase of the settlement program.</i>
<ul style="list-style-type: none"> ➤ <i>Provision of on arrival training to increase awareness around the Australian legal system and policy framework presented in a manner that highlights common values that inform the law.</i>
<ul style="list-style-type: none"> ➤ <i>SCOA working in partnership with key stakeholders to develop an interagency approach in relation to accessing and engaging with support systems.</i>
Issue 2: Access to Justice
<u>Recommendations:</u>
<ul style="list-style-type: none"> ➤ <i>That community legal education programs with a particular focus on legal rights and access to legal assistance, are delivered on an ongoing basis through settlement services.</i>
<ul style="list-style-type: none"> ➤ <i>That legal aid services are provided in community locations readily accessible by new arrival communities.</i>
<ul style="list-style-type: none"> ➤ <i>That legal information and materials are translated using plain language and also made available in alternative formats.</i>
<ul style="list-style-type: none"> ➤ <i>That awareness programs are made available for policy makers, service providers and the legal sector to illustrate differences around the experiences of the legal system in one's country of origin and how these shape expectations of Australia's legal system, particularly in relation to issues of domestic violence. This would involve an exploration of cultural-legal understandings and relevant cultural and social meanings.</i>
<ul style="list-style-type: none"> ➤ <i>That tailored community legal education programs are informed by the notion that law is cultural and highlight common values around justice when illustrating differences in legal rights and obligations between Australia's legal system and that of peoples' country of origin.</i>
<ul style="list-style-type: none"> ➤ <i>That further research is undertaken to develop responses around family law which are inclusive and respectful of traditional practice but adhere to Australian laws.</i>
Issue 3: Awareness of laws relating to family and domestic violence
Recommendations:
<ul style="list-style-type: none"> ➤ <i>That awareness programs are made available for policy makers, service providers and the legal sector to illustrate differences around the experiences of the legal system in one's country of origin and how these shape expectations of Australia's legal system, particularly in relation to issues of domestic violence. This would involve an exploration of cultural-legal understandings and relevant cultural and social meanings.</i>
<ul style="list-style-type: none"> ➤ <i>That tailored community legal education programs are informed by the notion that law is cultural and highlight common values around justice when illustrating differences in legal rights and obligations between Australia's legal system and that of peoples' country of</i>

origin.
➤ That further research is undertaken to develop responses around family law which are inclusive and respectful of traditional practice but adhere to Australian laws.
Issue 4: Criminalisation of forced marriage
<u>Recommendations:</u>
➤ <i>That an extensive research study on forced marriages legislation be undertaken to learn from application in international contexts. This research should be undertaken in a manner that respects CALD communities and seeks their participation and contributions.</i>
➤ <i>That community education programs around Australian law embed a clear distinction between arranged and forced marriages.</i>
➤ <i>That cultural competency training and educational resources are developed for police and the legal sector to enhance awareness and understanding.</i>
➤ <i>That support for victims of forced marriage is consistent across systemic and frontline levels.</i>

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