



## **REVIEW OF THE FAMILY LAW SYSTEM**

### **BACKGROUND ON MIGRANT WOMEN'S LOBBY GROUP OF SOUTH AUSTRALIA**

The Migrant Women's Lobby Group of SA (MWLG) is a peak CALD women's group of South Australia that has canvassed the interests, issues and concerns of a range of migrant and refugee women in South Australia since 1984.

Its aim is to ensure equal access to appropriate services, equal representation on decision making bodies and equal participation in all aspects of Australian society for women from non English speaking background.

The MWLG has been active in raising, discussing and addressing issues in relation to accessing information, services and agencies, issues faced by women in the workforce; leadership; unemployment; health; education; advocacy; domestic violence; the legal system and childcare.

Over the years, the MWLG has worked collaboratively with a number of government agencies and services and a range of ethnic organisations.

The MWLG have been a catalyst in setting up MARIA Marvellous Assertive Resourceful women in Action ; several Women's Advisory Committees; MCC Multicultural Communities Council women's committees; several FECCA Federation of Ethnic Communities Council Australia women's subcommittees; ANESBWA Association of Non English Speaking Background Women Australia and Asian Women's Consultative Committee to name a few.

At a national level MWLG has been instrumental in among others establishing Network of Immigrant and Refugee Women of Australia; on behalf of NIRWA, leading a national delegation of immigrant and refugee women to attend the International Women's Day Centenary Launch in Parliament House in Canberra and delivering Young Women's Professional Leadership and Mentoring Training Program in South Australia, New South Wales, Victoria and Western Australia.

The MWLG is a member of the Australian Government Offices for Women funded National Women's Alliances.

We thank you for having given us this opportunity to contribute to the Review of the Family Law System and we address the following points of reference from the perspective of CALD women in general and migrant and refugee women in particular as below.



## QUESTION 6

### **HOW CAN THE ACCESSIBILITY OF THE FAMILY LAW SYSTEM BE IMPROVED FOR PEOPLE FROM CULTURALLY AND LINGUISTICALLY DIVERSE COMMUNITIES?**

Providing information packs on the Australian family law system and family violence to the migrants either at the point of departure from their homeland or upon arrival in Australia will provide them with some essential knowledge of how the system operates in this country.

Such information packs in their own language should include information on the broad definition of family violence in Australia and provide referrals to services to seek help if experiencing violence.

Distributing information packs at community gatherings including festivals and places of worship is also a way of broadening accessibility to the communities.

Expanding accessibility of information on family law system and family violence through multi-cultural community radio stations and television programmes.

To train particularly male community and spiritual leaders to convey to their members on the availability of free legal aid and community support services for legal advice on matters relating to family law and family violence issues.

Advertising the availability of Legal Aid and community support services in various languages for CALD communities to access the family law system through community websites and newsletters.

To provide funding or increased funding for national education programme to raise awareness among all CALD communities on the accessibility of the family law system.

## QUESTION 15

### **WHAT CHANGES COULD BE MADE TO THE DEFINITION OF FAMILY VIOLENCE OR OTHER PROVISIONS REGARDING FAMILY VIOLENCE, IN THE FAMILY LAW ACT TO BETTER SUPPORT DECISION MAKING ABOUT THE SAFETY OF CHILDREN AND THEIR FAMILIES?**

The definition of 'family violence' in section 4AB of the Family Law Act 1975 be broadened to include harmful cultural practices. Therefore it is recommended that, '*dowry, bride price, female genital mutilation, forced and early marriages and other harmful cultural and traditional practices*' be added to the statutory examples of family violence



#### **QUESTION 17**

#### **WHAT CHANGES COULD BE MADE TO THE PROVISIONS IN THE FAMILY LAW ACT GOVERNING PROPERTY DIVISION TO IMPROVE THE CLARITY AND COMPREHENSIBILITY OF THE LAW FOR PARTIES AND TO PROMOTE FAIR OUTCOMES?**

For CALD women particularly those from the Indian subcontinent including the Middle East, dowries are exchanged in their home countries where the marriages take place and after which the new wife arrives in Australia under the husband's sponsorship. More often than not when the marriage breaks down the dowry which runs into thousands of dollars is not included in the asset pool during the calculation of property settlement as it is in their home country in the hands of the mothers in law. This works very much against the wife who is a victim of domestic violence and who generally is evicted from the home by the husband leaving her with absolutely nothing.

It is recommended that a woman's dowry be returned to her and any properties or assets purchased by the husband overseas prior to and during the years of marriage are factored in property settlement. It is also recommended that divorce should not be granted until property settlement is completed to ensure that the wife is provided for.

#### **QUESTION 18**

#### **WHAT CHANGES COULD BE MADE TO THE PROVISIONS IN THE FAMILY LAW ACT GOVERNING SPOUSAL MAINTENANCE TO IMPROVE THE CLARITY AND COMPREHENSIBILITY OF THE LAW FOR PARTIES AND TO PROMOTE FAIR OUTCOMES?**

For CALD women particularly those who are victims of domestic violence and are on visas under the sponsorship of the husband if proper financial provisions are not made to protect them these women would be left in dire straits penniless and homeless.

It is recommended that in this instance the husband is under an obligation to provide spousal maintenance until the wife is able to secure her place in the society in terms of housing and employment.

It is also recommended that regardless of the victim's residency status that victims of family violence from CALD background are provided with legal and other assistance. At the same time it is recommended that the residency status of the perpetrator be reconsidered if there is a conviction of domestic/family violence.



## **QUESTION 22**

### **SMALL PROPERTY CLAIMS**

#### **HOW CAN CURRENT DISPUTE RESOLUTION PROCESSES BE MODIFIED TO PROVIDE EFFECTIVE LOW-COST OPTIONS FOR RESOLVING SMALL PROPERTY MATTERS?**

It is submitted that mediation or the requirement in section 60I of the Family Law Act be extended to issues relating to property settlement apart from children's issues. In the event parties are unable to reach a settlement then upon the issuance of the section 60I certificate parties could proceed to the Federal Circuit Court with a limit on the financial jurisdiction for small property matters.

It is further submitted that for refugee and migrant women particularly victims of family violence the mediator/facilitator is from similar culture or have the cultural competency to deal with these parties. Also that assets and properties of CALD victims accumulated or are located in their homeland including with extended families such as dowry be returned to the bride or form part of the asset pool.

## **QUESTION 23**

#### **HOW CAN PARTIES WHO HAVE EXPERIENCED FAMILY VIOLENCE OR ABUSE BE BETTER SUPPORTED AT COURT?**

Victims of family violence from the CALD communities experience greater challenges in navigating the complex legal system particularly in courts impeded by language limitations, family and community pressure to remain in the marriage or else face isolation. Court liaison officers or social workers from the relevant culture should be made available to support them in the courts so that in addition to family violence they are not further overwhelmed by the intimidating environment of the court building, judicial officers and the legal professionals.

It is also recommended that in matters involving family violence allegations that a CALD victim be always legally represented.



## QUESTION 28

### **SHOULD ONLINE DISPUTE RESOLUTION PROCESSES PLAY A GREATER ROLE IN HELPING PEOPLE TO RESOLVE FAMILY LAW MATTERS IN AUSTRALIA? IF SO, HOW CAN THESE PROCESSES BE BEST SUPPORTED, AND WHAT SAFEGUARDS SHOULD BE INCORPORATED INTO THEIR DEVELOPMENT?**

Online dispute resolution process would extend accessibility of family law system and achieving agreements to an even wider section of the community. Currently dispute resolution services are provided on a face to face appointments, telephone or video conference by various family dispute resolution services.

In addition to the existing services it is recommended that family law information is made easily available online in simple English. Parties who are separating and seeking legal advice could access this information and negotiate an agreement between them. In the event they are unable to arrive at an agreement parties should be able to access an online mediator who will facilitate the process. Should an agreement be reached the mediator should link the parties to an Application for Consent Orders on the particular online website to formalise the agreement.

With the presence of an online mediator if one party is bullied into participating in the process or if there is element of abuse the mediator would play an important role in filtering such issues.

## QUESTION 30

### **SHOULD FAMILY INCLUSIVE DECISION-MAKING PROCESSES BE INCORPORATED INTO THE FAMILY LAW SYSTEM? HOW COULD THIS BE DONE?**

A non adversarial decision making process where appropriate involving families may be more effective for parties from CALD communities than an adversarial judicial system. Historically mediation through elders in CALD families or communities has been the approach taken to resolve disputes when parties separate. This process allows the child's extended family members to participate and offer assistance towards the care arrangement of the children. In addition this process should also be used to resolve issues relating to property settlement.

It is recommended that the mediator/ facilitator of this family inclusive decision-making process should ideally be of the same cultural background as the parties involved. If so he or she should have better appreciation of the cultural concerns of the parties and be well equipped to facilitate the discussion to a possible resolution. Moreover a family inclusive process allows parties to be directly involved in decision making and if an agreement is achieved there is a higher possibility of compliance and success than orders imposed by a judge with no direct input by the parties.



#### QUESTION 41

**WHAT CORE COMPETENCIES SHOULD BE EXPECTED OF PROFESSIONALS WHO WORK IN THE FAMILY LAW SYSTEM? WHAT MEASURES ARE NEEDED TO ENSURE THAT FAMILY LAW SYSTEM PROFESSIONALS HAVE AND MAINTAIN THESE COMPETENCIES?**

For victims of domestic violence, the police are the first point of contact. It has been reported that some Indian female victims have been turned away by police for lack of awareness of coercive dowry demands by the perpetrators that resulted in the violence. Therefore ongoing cultural competency training for police officers particularly those working in the family violence unit is of utmost importance.

Similarly it will be of great benefit to parties from CALD communities if professionals who work in the family law system namely lawyers, family consultants, and social workers appreciate the various cultures and be able to act in their best interests.

The court staff is the first point of contact for a CALD client in the court process. A well-informed and trained staff of various cultures would be of great assistance in helping a CALD party particularly a victim of family violence in navigating a complex court process. This is particularly where the victim of domestic violence is an immigrant, new to the country, has limited or no English and feels totally lost and overwhelmed caught in the web of a foreign system.

#### QUESTION 42

**WHAT CORE COMPETENCIES SHOULD BE EXPECTED OF JUDICIAL OFFICERS WHO EXERCISE FAMILY LAW JURISDICTION? WHAT MEASURES ARE NEEDED TO ENSURE THAT JUDICIAL OFFICERS HAVE AND MAINTAIN THESE COMPETENCIES?**

Cultural competency training should be provided for judicial officers so that they appreciate the various cultures and their practices to have a better understanding of the dynamics of the family violence when making a determination in court proceedings.

Such cultural training should be continuous particularly in relation to new and emerging communities. It is recommended that in addition to ongoing training an App be provided with brief background of the various cultures to enable a judge to easily access whenever needed particularly during proceedings in the court.