

4 May 2018

The Executive Director  
Australian Law Reform Commission  
GPO Box 3708  
SYDNEY NSW 2001

By email: [familylaw@alrc.gov.au](mailto:familylaw@alrc.gov.au)

Dear Executive Director

## REVIEW OF THE FAMILY LAW SYSTEM: Submission in Response to the Issues Paper

1. The Humanitarian Group is grateful for the opportunity to comment on the Australian Law Reform Commission review of the family law system.

### Background: The Humanitarian Group

2. The Humanitarian Group is a not for profit organisation focused on empowering vulnerable people by providing professional and accessible migration assistance, legal advice and education based in Western Australia. We strive to do this in a way that embraces diversity and strengthens communities. We help people new to Australia from culturally and linguistically diverse (**CALD**) backgrounds, including humanitarian visa holders, asylum seekers, refugees and people who are otherwise disadvantaged in their access to legal services and who are located in Western Australia. Since its inception in 2002, The Humanitarian Group has grown to be a primary provider of specialist legal services to the recently-arrived CALD community in Western Australia.
3. The Humanitarian Group has seen an ongoing and increasing demand for our services. In 2016-2017 we assisted over 3,300 people from 80 different countries, the majority of whom have experienced torture and trauma.<sup>1</sup>

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<sup>1</sup> The Humanitarian Group Annual Report 2016 – 2017.

[Community focused legal services for people new to Australia](#)

## Our services

4. The Humanitarian Group provides specialist immigration and legal services.
  - (a) We assist people seeking asylum to claim protection (including assistance with temporary protection visas), we assist permanent visa holders from humanitarian backgrounds to sponsor or propose family members for Australian visas through our Family Reunion Program and we assist clients seeking administrative review through the relevant administrative tribunals and courts.
  - (b) The Humanitarian Group also provides immigration and general legal advice to victims of family violence from CALD backgrounds through The VOICE Project.
  - (c) In addition, The Humanitarian Group provides a general legal service to clients from CALD backgrounds, including advice in relation to family law issues.
  - (d) Further, The Humanitarian Group provides a wide range of Community Legal Education.
5. Since July 2016, The Humanitarian Group has run The VOICE Project, a Project specifically aimed at addressing the needs of victims of family violence from CALD backgrounds. The core purpose of this Project is to empower vulnerable people by providing professional and accessible migration assistance, legal advice and education regarding family violence. The VOICE Project has been aimed at providing holistic legal education and advice services. It has involved establishing an active collaborative network with refuges and other interagency networks who are involved in assisting individuals affected by family violence from CALD backgrounds.
6. The Humanitarian Group employs seven lawyers/registered migration agents on a part or full time basis. Our staff are assisted by pro bono volunteers. In 2016-17 volunteers recorded over 10,800 hours, which equates to approximately \$1,732,000. Our volunteers included 63 legal and administrative volunteers, 137 bilingual volunteers, 115 pro bono lawyers and 17 internships and placements.

## Our clients

7. The clients whom The Humanitarian Group assists are from CALD backgrounds and face special vulnerabilities.
8. The Humanitarian Group's clients are diverse in terms of culture, religion, level of education, language(s) spoken, levels of skills or qualifications and social or political backgrounds. They may not fall neatly into categories of disadvantage identified by traditional measures, such as region, socio-economic status or local government area. Statistics in relation to the number of people born overseas, income, unemployment rates, and level of education, social housing tenancies, Centrelink benefit recipients and ethnicity are crucial in providing an accurate demographic picture. However, they only tell part of the story for these clients.

9. Our clients also often face particular vulnerabilities<sup>2</sup>:
- (a) They have often come to Australia from backgrounds of torture and trauma.
  - (b) They frequently have limited capacity to understand, speak, or write in English.
  - (c) They commonly come from environments where protection of human rights, enforcement of legal rights and access to justice has not been available to them.
  - (d) There are cultural differences at play which include fear of and resistance to accessing services.
  - (e) They find it particularly difficult to access the Australian legal system and to understand their rights. When they do access the legal system, they experience specific and significant challenges.
  - (f) It is common for this group to additionally suffer from mental health issues, which further compounds the challenges they face.

## Introduction

10. This submission reflects the knowledge and experience of The Humanitarian Group. It focuses on the experiences of new arrivals to Australia, including those with backgrounds of torture and trauma. It also focuses particularly on victims of family violence from CALD backgrounds.
11. The Humanitarian Group will respond to the questions raised in the Issues Paper as follows:
- Question 1** What should be the role and objectives of the modern family law system?
  - Question 2** What principles should guide any redevelopment of the family law system?
  - Question 3** In what ways could access to information about family law and family law related services, including family violence services, be improved?
  - Question 6** How can the accessibility of the family law system be improved for people from culturally and linguistically diverse communities?
  - Question 15** What changes could be made to the definition of family violence, or other provisions regarding family violence, in the *Family Law Act 1975* (Cth) to better support decision making about the safety of children and their families?

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<sup>2</sup> Taylor, Natalie and Putt, Judy "Adult sexual violence in Indigenous and culturally and linguistically diverse communities in Australia" *Trends & Issues in criminal and criminal justice*, No 345, September 2007, Australian Government, Australian Institute of Criminology; Ghafournia, Nafiseh, "Battered at home, played down in police: Migrant women and domestic violence in Australia", *Aggression and Violence Behavior*, 16 (2011) 207-213; Dimopoulos, Maria "Implementing Legal Empowerment Strategies to Prevent Domestic Violence in New and Emerging Communities" *Australian Domestic & Family Violence Clearinghouse*, Issues Paper 20, November 2010; Sawrikar, Pooja and Katz, Ilan "Enhancing family and relationship service accessibility and delivery to culturally and linguistically diverse families in Australia", *Australian Family Relationships Clearinghouse: AFRC Issues* No 3, 2008; Vaughan, C., David, E. Murdolo, A., Chen, J., Murray, L., Quiazon, R., Block, K., & Warr, D (2016). Promoting community-led responses to violence against immigrant and refugee women in metropolitan and regional Australia. The ASPIRE Project: Research report (ANROWS Horizons 07/2016). Sydney: Australia's National Research Organisation for Women's Safety.

- Question 31** How can integrated services approaches be better used to assist client families with complex needs? How can these approaches be better supported?
- Question 33** How can collaboration and information sharing between the family courts and state and territory child protection and family violence systems be improved?
- 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?
- Question 44** What approaches are needed to promote the wellbeing of family law system professionals and judicial officers?

## Question 1: What should be the role and objectives of the modern family law system?

### To provide culturally appropriate and competent responses to participants of the family law system

12. The *Review of the Family Law System Issues Paper* ('Issues Paper') correctly identifies that the Objectives and Principles that drove the *Family Law Act 1975* (Cth) require revising and modernising.<sup>3</sup> The Objectives and Principles need to reflect the demographic changes and current needs of family law system participants.
13. The 2016 Census showed that nearly half (49%) of Australians had either been born overseas or one or both parents had been born overseas<sup>4</sup>. Of the 118,401 divorces in Australia in 2016, 8,119 happened in situations where both participants were born in the same country overseas and 13,294 in situations where both participants were born overseas but in different countries.<sup>5</sup> With 46,604 divorces in total in 2016, this means that almost half (45.94%) of divorces affect couples born outside of Australia.
14. Whilst England and New Zealand continue to be the next most common countries of birth after Australia, these are followed by China, India, Philippines and Vietnam.<sup>6</sup> Within the Humanitarian stream of migrant intake, the top five countries of origin in 2016 were Iraq, Syria, Myanmar, Afghanistan and Democratic Republic of Congo.<sup>7</sup> With such a breadth and depth of different cultures and languages participating in the family law system it is essential

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<sup>3</sup> Review of the Family System: Issues Paper p 16.

<sup>4</sup> Australian Bureau of Statistics, *Media Release*  
<http://www.abs.gov.au/ausstats/abs@.nsf/lookup/Media%20Release3#>

<sup>5</sup> Australian Bureau of Statistics, *Marriages and Divorces in Australia*  
<http://www.abs.gov.au/ausstats/abs@.nsf/mf/3310.0>

<sup>6</sup> Australian Bureau of Statistics, *Migration Summary*  
<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Latestproducts/3412.0Main%20Features12015-16?opendocument&tabname=Summary&prodno=3412.0&issue=2015-16&num=&view=>

<sup>7</sup> Department of Home Affairs, *'Discussion Paper on the Humanitarian Programme'*  
[https://www.homeaffairs.gov.au/ReportsandPublications/Documents/discussion-papers/discussion-paper-humanitarian-programme\\_2017-18.pdf](https://www.homeaffairs.gov.au/ReportsandPublications/Documents/discussion-papers/discussion-paper-humanitarian-programme_2017-18.pdf)

that the family law system is able to adapt and respond with cultural competency and appropriateness.<sup>8</sup>

15. Within the rest of this submission, The Humanitarian Group will address different ways in which the cultural responsiveness of the family law system can be improved.

### A family law system that provides safe engagement for victims of family violence

16. The Humanitarian Group supports the development of a family law system that provides safe engagement to all victims of family violence. CALD victims of family violence face particular vulnerabilities. Responsiveness to CALD victims of family violence is intrinsically linked with the provision of a culturally appropriate and competent family law system.
17. The final report from the *Parliamentary Inquiry into the family law system to support and protect those affected by family violence* 'A better family law system to support and protect those affected by family violence', noted that, "[m]ultiple submissions recognised that people from CALD backgrounds are underrepresented in the family law system, and are less likely to seek help for issues regarding family violence".<sup>9</sup>
18. The following considerations should be borne in mind when considering the impact of family violence on victims from CALD backgrounds:<sup>10</sup>
  - (a) Strategies aimed at prevention and early intervention are the best strategies to protect women and children.
  - (b) Victims of family violence from CALD backgrounds have often come to Australia from environments where protection from family violence is not available or recognised. It is important to ensure that these victims are aware of the protections available to them and have access to those protections.
  - (c) Victims of family violence from CALD backgrounds are less likely to receive the supports that they need than those from other groups.
  - (d) Victims of family violence from CALD backgrounds face a lack of ready access to interpreters and to culturally sensitive support services.
  - (e) Victims from CALD backgrounds lack knowledge about their rights and the law.
  - (f) Victims from CALD backgrounds often have distrust of the police and court systems and fear poor responses to requests for assistance.
  - (g) CALD victims face cultural pressures and traditions including social isolation and difficulties in obtaining assistance from outside close knit communities.
  - (h) CALD victims are often subject to threats of deportation.

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<sup>8</sup> The Humanitarian Group acknowledges that the objective of a cultural competent family law system is equally applicable to participants from an Aboriginal and Torres Strait Islander cultural background.

<sup>9</sup> Review of the Family System: Issues Paper p 241.

<sup>10</sup> See The Humanitarian Group (then known as CASE for Refugees) Submission to the Finance and Public Administration References Committee: Domestic Violence in Australia.

19. Within the rest of this submission The Humanitarian Group will address different ways in which the family law system can provide safe engagement for victims of family violence, particularly those from a CALD background.

## **Question 2: What principles should guide any redevelopment of the family law system?**

### **A family law system that reflects the diversity of Australian families**

20. In tangent with the objective of providing a culturally appropriate and competent response to participants of the family law system, a modern family law system should be guided by recognition of the great diversity of Australia families, not only in cultural diversity but in family structure, able-ness and location. Such a principle embeds the idea that diversity is normal and expected, engendering a more flexible and suitably robust family law system.

### **All participants in the family law system understand and can access family law legal information and advice**

21. The Issues Paper correctly identifies that ensuring that the family law system is accessible to all families who require its services is a critical element of ensuring access to justice.
22. The ALRC also goes on to ask what changes could be made to the family law system to allow family disputes to be resolved more affordably.
23. We note that such a principle necessitates a review of the current services available to clients who are unable to afford to pay for legal services. This is particularly relevant to new arrivals to Australia without sufficient resources to fund legal advice.
24. Accessibility also arises when the resources available for clients are ethnocentric and poorly suited to use by non-mainstream participants such as CALD clients. These areas will be discussed further below but often arise in online information and lodgement services, or face to face services that fail to provide interpreting accessibility.

### **Trauma informed**

25. The Humanitarian Group supports the principle of a trauma-informed family law system.<sup>11</sup> Such a principle acknowledges the toll that family conflict and disintegration has on many participants of the family law system. A trauma-informed family law system will also be more responsive to the needs of victims of family violence, children impacted by family conflict and clients from CALD backgrounds who experience torture and trauma before arrival in Australia.

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<sup>11</sup> The Humanitarian Group supports the definition of ‘trauma informed practice’ as defined in the Issues Paper as the ‘provision services in a way that is ‘based on acknowledging and understanding how trauma affects people’s lives and their service needs’... (and) this approach as being ‘informed by an understanding of the particular vulnerabilities and “triggers” that survivors of complex trauma experience’.

### Question 3: In what ways could access to information about family law and family law related services, including family violence services, be improved?

26. The issues discussed below are of paramount importance in ensuring access to the family law system generally and family violence services in particular.

#### Access to interpreters

27. There continues to be a general lack of access to and use of interpreters within the family law system.<sup>12</sup> This inhibits people's ability to understand their rights and the required processes within the family law system. The implications of lack of use of interpreters for victims of family violence can be particularly damaging as victims of family violence can already face a number of barriers in disclosing the presence of family violence. An inability to explain a family violence situation due to lack of interpreting services places another significant barrier in their path. The consequence of this is to increase the danger to CALD victims of family violence who are then unable to receive support services and safety planning assistance.
28. Whilst government departments often produce Language Policies that support the use of interpreter services, in The Humanitarian Group's experience, these policies are not embedded pervasively within the day to day practice within different services. Staff working across departments and services can vary in their competency and comfort level of working with interpreters. A client's outcomes when accessing family law services can hinge upon chance encounters with staff who may or may not be willing to use an interpreter in their interaction with them.

#### Competent use of interpreters

29. As well as improving access to interpreters, it is vital that those who work within the family law system are trained in the competent use of interpreters. This includes being aware of factors such as the specific role of the interpreter and managing boundaries, gender relevancy and confidentiality issues.
30. It is also important to recognise that a person's requirement for interpreter services may change as discussions become more technical, or emotional. A person who appears to have sufficient English may still benefit from an interpreter in explaining complex matters, when technical language is being used or when under strain and stress.

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<sup>12</sup> Ojelabi, Lola et al "A cultural assessment of family dispute resolution: Findings about cultural appropriateness from the evaluation of a family relationship centre", *Journal of Family Studies* (2012) 18(1): 76-89; Armstrong, Susan "Enhancing access to family dispute resolution for families from culturally and linguistically diverse backgrounds", *Australian Institute of Family Studies, AFRC Briefing*, 18 (2010) 1-23.

### CASE STUDY: Interpreters in Court

Mai-ling\* attended The Humanitarian Group with court documents she received after attending a court mediation session after separating from her husband. Mai-ling and her husband had one daughter and Mai-ling understood that the mediation was to discuss care of their daughter. Mai-ling was born in China and speaks Mandarin as her first language.

Her English proficiency is usually very good but Mai-ling arrived quite distressed at the appointment because she had not understood the proceedings in the mediation. She had felt the mediator used very technical language, spoke very quickly and when she had said she did not understand, started to speak at her loudly but did not offer an interpreter. She felt the mediator was on her husband's side as they both laughed at the same things at certain times and talked about the football before the mediation began. The mediator also mispronounced her daughter's name throughout the meeting.

Mai-ling became more upset as the mediation went on and at the end did not understand what was explained to her about the outcome.

#### Information in other languages

31. There is currently limited availability of vital information and forms in other languages. This includes online lodgement forms and information sheets. This creates language and technological barriers to CALD clients' access to the family law system, often in an environment where responses to enquiries are directed to online resources.
32. The Humanitarian Group also has experience working with clients that are illiterate in any language and there is currently no facility or recognition of the difficulties for these clients in accessing family law services where even filling out initial intake forms for services is impossible.

#### Funding for community legal centres

33. It is impossible to speak of access and engagement to information and advice for family law system participants and not point out that the limited funding available for those accessing the family law system diminishes people's ability to engage with the system, either due to not being unable to access legal advice, or as a result of poor participation as a self-represented litigant.
34. The Productivity Commission Inquiry Report into Access to Justice confirmed the importance of adequate and predictable funding for legal assistance providers and the need for more extensive resources to meet the needs of disadvantaged Australians.<sup>13</sup>

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<sup>13</sup> Productivity Commission, Inquiry Report: Access to Justice Arrangements, 3 December 2014.



35. This impact is felt even more with victims of family violence who often suffer financial control whilst in an abusive relationship, and suffer extreme financial hardship upon leaving the relationship. These victims of family violence rely heavily on community legal centres for advice on restraining orders, rights and responsibilities in relation to children, parenting orders and to access equitable financial settlements.
36. Assistance with so-called 'simple' applications, such as divorce applications, is rarely available in the community legal sector. The view is taken that applicants should be able to self-manage straight forward processes. Yet this is often not the case for CALD clients who have limited English language or literacy. Further, a simple application can quickly become very complicated when it involves service of documents overseas or recognition of overseas documents.
37. A family law system that genuinely aims to improve access to information and related services, particularly to vulnerable and otherwise disadvantaged clients, necessitates increased funding to community legal centres.

#### **CASE STUDY: Funding Restrictions**

Pau\* was referred to the Humanitarian Group from a women's refuge where she had been staying for some weeks. Pau had recently received a notification of intention to cancel her visa from the Department of Home Affairs.

Pau came to Australia on a partner visa but had to leave her partner after one year because of his violence to her. Her partner subsequently informed the Department of Home Affairs about the separation and Pau had a limited timeframe to respond to them. Pau was considering returning to her husband, despite the danger, because she also feared returning to Thailand.

The Humanitarian Group was able to provide Pau with advice and assistance with her visa options. Pau was referred to a generalist community legal centre for ongoing assistance with restraining order and divorce matters because The Humanitarian Group did not have sufficient resources to assist Pau with her general legal matters. Pau was not able to obtain advice about a financial settlement because no free service was available to her.

Pau received a negative decision on her visa application. She re-attended The Humanitarian Group for assistance with requesting a review of the decision. Due to funding restrictions The Humanitarian Group could provide information and limited advice but was unable to represent Pau in her review application.

### **Question 6: How can the accessibility of the family law system be improved for people from culturally and linguistically diverse communities?**

#### **Culturally sensitive support services**

38. Cultural competence is the ability to understand, communicate with and effectively interact with people across cultures. Cultural competence encompasses: being aware of one's own

world view, developing positive attitudes towards cultural differences and gaining knowledge of different cultural practices and world views. In regards to the family law system, cultural competency includes recognising that the Australian family law system is uniquely Australian and concepts, rights and processes which are taken for granted by mainstream Australia are not necessarily understood by people from other cultures.

39. New arrivals have limited access to information about the legal system upon their arrival in Australia.
40. Individuals who enter through the Offshore Humanitarian Program receive some limited education on their basic rights and responsibilities in Australia as part of the Humanitarian Settlement Program.<sup>14</sup> This initial training on arrival would benefit from significant expansion to ensure that people have a thorough understanding of their legal rights and responsibilities, including the rights available to victims of family violence.<sup>15</sup>
41. Further, refugees who are granted Temporary or Permanent Protection visas onshore do not receive any legal education. Similarly, those who arrive on prospective marriage or partner visas also receive no legal education. This leaves people ill-equipped and easily confused when family law issues arise. It can also leave people unprotected when victims of family violence are unaware there are legal protections against family violence in Australia, and are not aware of the availability of support services.

#### CASE STUDY: Legal Rights in Australia

Maria\* arrived in Australia from the Philippines to marry her husband Brian.\* Maria has been in Australia for 7 years and has three children. Maria attended The Humanitarian Group after a referral from a hospital social worker.

Maria was a victim of domestic violence since the beginning of her marriage. Her husband told her that he had the power to get her deported from Australia at any time and that the children would stay with him in Australia. Maria never received any information on her rights in Australia on her arrival and her husband's controlling behaviour meant she had very little contact with anyone outside the family home.

The Humanitarian Group was able to confirm Maria's status as a permanent resident of Australia and provide information that leaving her marriage would not affect Maria's residency status. We were also able to provide information on applying for citizenship. Maria was referred to a Multicultural Women's Advocacy Service who assisted her and her children with refuge accommodation and applying for a restraining order against her husband.

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<sup>14</sup> Department of Human Services 'Humanitarian Support Program Fact Sheet'

[https://www.dss.gov.au/sites/default/files/documents/02\\_2018/hsp\\_factsheet\\_-\\_february\\_2018\\_0\\_0.pdf](https://www.dss.gov.au/sites/default/files/documents/02_2018/hsp_factsheet_-_february_2018_0_0.pdf)

<sup>15</sup> Australian Human Rights Commission, *In our own words – African Australians: A Review of Human Rights and Social Inclusion* (June 2010) 28-30.

## Intersection of legal areas

42. As a Community Legal Centre that offers advice on a range of legal areas, The Humanitarian Group is often able to respond to the various different legal issues clients face. We have capacity to recognise intersections of legal areas when they arise, even in situations where clients themselves may not understand the connection between, for example, family law and migration law. Particularly for CALD clients these are not uncommon scenarios.
43. It is important that the family law system is able to recognise when clients are facing a multitude of different legal issues across jurisdictions and to provide a culturally competent service that supports such clients.

### CASE STUDY: Intersection of Legal Areas

Anetta\* came from Columbia to marry her Australian boyfriend on a prospective marriage visa. Shortly after their marriage, her husband physically assaulted her one night and neighbours called the police. Her husband later apologised and attributed his behaviour to being drunk. With support from a friend, Anetta sought legal advice from a solicitor at The Humanitarian Group about her migration status if she left her husband. The solicitor explained the available options and discussed safety planning with Anetta. Anetta chose at this stage to return to her husband after he had promised to stop drinking.

Anetta returned for further assistance some months later after her husband's violence had continued and then escalated when Anetta found out she was pregnant. She was provided with assistance with visa options and applying for a violence restraining order.

Whilst Anetta had provided information on some incidences of violence in the relationship, the solicitor was aware that Anetta appeared very easily triggered, highly fearful and became extremely distressed during interview discussions. The solicitor took time to build up trust with Anetta and create a safe environment. Anetta went on to disclose further aspects of abuse in her relationship including sexual, psychological and emotional abuse over a longer period of time and to a greater extent than previously related. Anetta was referred to a family violence counselling service.

Anetta was unaware that sexual assault within her marriage was a crime and with support from her counsellor and her friend, she decided to report her husband's sexual assaults against her to the police. These court matters took some time to progress but her husband was eventually found guilty in respect to some of the charges. Anetta returned to The Humanitarian Group as her husband had received a suspended sentence and had recently begun proceedings to have contact with his child. The Humanitarian Group provided family law advice and information on criminal injuries compensation.

## **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?**

### **Consistent definitions of family violence**

44. The definition of family violence can differ vastly in different legislation including the *Family Law Act 1975* (Cth), the *Migration Regulations 1994* (Cth), in state and territory family violence legislation and in the criminal law.
45. Whilst most definitions offer a reasonably comprehensive definition of family violence, The Humanitarian Group advocates for a broad definition and the adoption of a common understanding of across jurisdictions.
46. It is further noted that victims of family violence from CALD backgrounds are often the subject of threats of deportation or visa cancellation from their partners. Such clients can feel particularly vulnerable in family violence situations due to fears about the impact on their migration status if they leave the relationship. This type of coercion and threat is often not recognised as a category of legally recognised family violence.

## **Question 31: How can integrated service approaches be better used to assist client families with complex needs? How can these approaches be better supported?**

### **Hub models of collaboration**

47. The Humanitarian Group works extensively in a collaborative manner with other support services and finds that Hub models are integral to providing holistic professional and safe services for families with complex needs.
48. Accessible, holistic support is crucial to address legal and migration issues against a context of language barriers, cultural differences, and backgrounds of torture and trauma, in conjunction with other potential issues, such as mental health, homelessness and reliance on income support. A lack of access to services can result in family breakdown, intergenerational conflict and mental health issues, which in turn prevent people from being able to make positive contributions to the community.
49. The Humanitarian Group provides legal advice within a 'Hub' outreach model for generalist law, family law and family reunion matters. A second 'Hub' outreach model services the needs of temporary protection visa holders.
50. The Humanitarian Group recommends the Hub model as an integrated service approach that works exceptionally well to support the needs of complex clients. It ensures a more immediate response to issues that arise and prevents clients being directed to separate locations for assistance with different services. It also provides the opportunity for individual services to be supported by each other and professionally develop their skills.
51. The Humanitarian Group recommends that any change to the family law system explores the benefits of an integrated approach to service delivery and how such an approach benefits clients.

### **Question 33: How can collaboration and information sharing between the family courts and state and territory child protection and family violence systems be improved?**

52. An issue that arises in the context of CALD and other clients who are vulnerable due to significant traumatic exposure is that engaging with different systems requires the repeated repetition of details of traumatic situations.
53. For example, when clients are engaged with family court, child protection and family violence systems, there is a request and expectation that clients repeat the details of their traumatic experiences to different providers. This can clearly be re-traumatising for the client.
54. This situation can also raise legal difficulties for clients who are expected to remember in judicial settings details of their traumatic experiences with a level of specificity and recall that is often not realistic for trauma survivors (and involving events that may have occurred sometime in the past). A consequence of this is that credibility issues can arise due to perceived inconsistencies.
55. Whilst confidentiality remains a paramount duty for any legal advice provider, it is often lack of action on collaborative practices, rather than a client's unwillingness for their information to be shared, that prevents notification between services providers. With informed consent, it is often relieving for clients to have their agreed information shared between relevant providers rather than having to explain and re-tell their stories over again to different people.

#### **CASE STUDY: Holistic Service Delivery**

Abdel\* is from Sudan. He fled the armed conflict in Sudan and arrived in Australia in 2004.

Abdel started employment as a factory worker soon after arriving so that he could support himself and his orphaned family members overseas. The Humanitarian Group assisted Abdel to apply for a partner visa to bring his wife to Australia. Abdel and his wife have made friends with other members of the community and attend community events on a regular basis.

Abdel encountered problems when applying for Australian citizenship and again sought assistance from The Humanitarian Group. Abdel failed the citizenship test three times because, although he could speak English, he could not read or write. We assisted in arranging referrals for Abdel to obtain support from community organisations and to attend English classes in order to pass the test.

Abdel's story demonstrates how people can become active members of the community when they receive the holistic support they need to address migration and legal issues.

## **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?**

### **Working with interpreters and cultural competency**

56. As previously discussed, The Humanitarian Group strongly recommends the inclusion of cultural competency training and working with interpreter training.
57. Generally working with interpreters training can be provided at initial employment and does not require ongoing training. We would promote the compulsory introduction of working with interpreter training within the family law court system.
58. Cultural competency training is often provided initially as short session workshops but is also an important aspect of ongoing professional development. The Humanitarian Group supports the inclusion of cross-cultural competency not only as a training requirement but also a performance indicator within job descriptions. This provides the opportunity and mandate for family law system professionals to continue to develop their cultural competency and demonstrate through their performance appraisal positive interactions and outcomes with culturally diverse participants.

## **Question 44: What approaches are needed to promote the wellbeing of family law system professionals and judicial officers?**

59. The Humanitarian Group promotes two concepts already discussed in regards to the wellbeing of family law system professionals and judicial officers.
60. The first is the importance of trauma-informed systems. The introduction of trauma-informed systems not only provides more considered and appropriate response to the participants of the family law system, it also provides a framework for the professionals responding to traumatised people to understand their own emotional well-being and institute measures to manage vicarious trauma and burn-out on an individual level. Trauma-informed systems also review and re-organise organisational systems to acknowledge the impact of trauma and provide professional support measures to mitigate the impact of vicarious trauma and burn-out.<sup>16</sup>
61. The second returns to the issue of sufficient funding. The wellbeing of family law system professionals both within the judicial system and other related support services including legal services that provide assistance to vulnerable and disadvantaged clients, cannot manage the wellbeing of their staff when there are not the resources available to provide the required services. Individual and organisational measures to support staff cannot bear the weight of systemic issues that arise when the need for services is much greater than the funding available to deliver services. This leads to unmanageable workloads, long waiting lists, increased exposure to distressed and frustrated participants and hopelessness about

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<sup>16</sup> For a discussion of Trauma Informed Care and Practice (TICP) see the Mental Health Coordinating Report 2013 at [http://www.mhcc.org.au/media/32045/ticp\\_awg\\_position\\_paper\\_v\\_44\\_final\\_07\\_11\\_13.pdf](http://www.mhcc.org.au/media/32045/ticp_awg_position_paper_v_44_final_07_11_13.pdf)

the efficacy and meaning of work. These are all experiences likely to contribute to vicarious trauma and burnout.

## Recommendations

62. The Humanitarian Group supports the need for:

- ▶ Culturally appropriate and competent responses to participants of the family law system that includes improved access to interpreting services
- ▶ A family law system that provides safe engagement for victims of family violence and takes into account the particular issues facing victims of family violence from CALD backgrounds
- ▶ Improved access to the family law system for CALD clients including multi-lingual resources and culturally sensitive responses
- ▶ Trauma-informed approaches throughout the family law system
- ▶ Increased funding to community legal centres to provide services to vulnerable and disadvantaged clients

Please do not hesitate to contact us should you require any additional information.

Yours sincerely



Kathy Bogoyev  
Principal Solicitor and Migration Agent (MARN: 1462786)  
**The Humanitarian Group**

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\*Client's real names have not been used in case studies. Case studies are amalgamations of de-identified common client scenarios.