

CONSULTATION PAPER RESPONSE - FAMILY LAW AMENDMENT BILL (NO. 2) 2023

Joint Submission:

inTouch Multicultural Centre Against Family Violence
Harmony Alliance: Migrant and Refugee Women for Change

November 2023

inTouch Multicultural Centre
Against Family Violence



HARMONY ALLIANCE
MIGRANT & REFUGEE WOMEN FOR CHANGE

Acknowledgement of Country

We acknowledge the Australian Aboriginal and Torres Strait Islander people as the first inhabitants of this nation and the Traditional Custodians of the land on which we work and live. We pay our respect to their Elders – past, present and emerging. We express our gratitude for the sharing of this land, our sorrow for the personal, spiritual and cultural costs of that sharing and hope that we may move forward together in harmony and in the spirit of healing.

Acknowledgement of Victim-Survivors

We also acknowledge the countless women who have experienced family violence, in particular women from migrant and refugee backgrounds. We recognise the courageous path they have travelled to rebuild their lives and honour their stories which continue to inspire and drive our work.

About inTouch

inTouch Multicultural Centre Against Family Violence (inTouch) has provided person-centred, integrated and culturally responsive family violence services to migrant and refugee communities in Victoria since 1984.

inTouch works across the family violence continuum, providing culturally-informed early intervention, case management, legal and migration assistance, perpetrator programs, post-crisis recovery and enhanced capacity-building across the sector and community through our learning and development and project management teams. We are proud to provide high-level leadership and guidance to all levels of government with our evidence-based policy and advocacy work.

Our services are informed by an integrated *inLanguage, inCulture* delivery model and supported by our diverse workforce, which is comprised primarily of people who are migrants and refugees themselves. Our team's unique understanding of culture and the migration journey allows inTouch to deliver expert, specialist case management to our clients in over 20 languages.

inTouch's services include:

- Case management that encompasses a first-hand understanding of the migration journey and unique cultural barriers women may face when seeking assistance for family violence.
- An integrated community legal centre (**inTouch Legal Centre**) working at the intersection of family and migration law - the first multidisciplinary practice in Australia to provide this inclusive service response.
- inSpire, a post-recovery initiative for victim-survivors, focusing on economic independence, social connection and emotional wellbeing.
- A policy, advocacy and research unit that informs government legislation, service provision and media coverage and is informed by victim-survivors and our client services' team.
- Prevention and capacity-building projects and resource development for multicultural communities and the family violence sector.
- A specialised *inLanguage, inCulture* program, Motivation for Change, that works with men who use violence, focusing on trauma and the impacts of migration.
- A comprehensive suite of Learning and Development modules centred and informed by the experiences of victim-survivors and inTouch's specialist expertise working across the family violence continuum.
- NOOR Family Violence Survivor-Advocates, a group of migrant and refugee victim-survivors who influence policy, service provision and media reporting with lived experience.

For more information, visit www.intouch.org.au email admin@intouch.org.au or call [03 9413 6500](tel:0394136500)

About Harmony Alliance

Harmony Alliance: Migrant and Refugee Women for Change is one of the six National Women's Alliances supported by the Australian Government to promote the views of all Australian women and to ensure their voices are heard in decision-making processes.

Harmony Alliance's purpose is to provide a national inclusive, informed voice on the multiplicity of issues impacting the experiences and outcomes of migrant and refugee women and to enable opportunities for women from migrant and refugee backgrounds to directly engage in driving positive change.

The Harmony Alliance membership comprises over 180 organisations and individuals representing and/or working for the advancement and inclusion of migrant and refugee women, and to enable opportunities for women from migrant and refugee backgrounds and recognise the inherent value of each person, of all backgrounds, genders, ages, abilities, social standings, sexual orientations, or religions. We promote the principles of dignity, equality, autonomy, non-discrimination, and mutual respect.

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Recommendations

1. The legislation should include examples of what amounts to the effect of family violence on contributions. In addition to the examples set out in the WLSA submission (page 11), inTouch and Harmony Alliance suggest the inclusion of:
 - A party who has experienced dowry abuse such as coercion, physical violence or harassment associated with the giving or receiving of dowry at any time before or during the marriage, which has limited or hidden the recognition of the dowry contribution.
 - A party who has experienced visa abuse, limiting their ability to work during or after the relationship whether by restricting their earning capacity or exploiting contributions made through work prohibited under their visa.
2. Consideration should be given as to how the factors that affect contributions, in particular family violence and financial and economic abuse, also affect an individual's ability to demonstrate their contributions for the purposes of the proceedings and the burden of evidence required where these factors are identified.
3. It is proposed that an additional category be added to the 'considerations relating to current and future circumstances' (Section 79(4)) to include the following:
 - if a party is on a temporary visa or is a recently arrived migrant or refugee, the extent to which that creates additional support needs or affects their earning capacity;
 - if a party experiences intersecting disadvantages and the impact of barriers that may limit their opportunities for employment.
4. Guidance should be provided in legislation as to how the just and equitable principle should be applied, recognising an individual's circumstances and disadvantage to prevent homelessness and economic instability.
5. A Bench Book to support the operation of the Act should be developed and include guidance on the requirements to demonstrate family violence has occurred.
6. Further consultation with police and the family violence sector on mis-identification and its application where culpability is not a factor should be considered.
7. In order to ensure the effect of family violence is not underestimated, an initial fixed adjustment to future need should be set as a baseline where family violence has occurred.
8. A Bench Book (per recommendation 5), could provide examples as to how to manage adjustments in favour of the victim survivor.
9. The CCS regulatory framework include culturally responsive education and CPD requirements in relation to family violence.
10. The CCS regulatory framework should provide culturally responsive training and CPD requirements for engaging with clients from refugee and migrant communities.

11. inTouch and Harmony Alliance recommend a review of the divorce process with the aim of creating a more streamlined and efficient process that is not restrictive to particular groups, in particular, those with limited English skills.
12. CLCs such as inTouch provide a critical service to highly vulnerable women and require adequate funding and resourcing to continue to more effectively support migrant and refugee women experiencing family violence.

Introduction

inTouch and Harmony Alliance welcome the opportunity to provide a response to the Consultation Paper – Family Law Amendment Bill (No. 2) 2023.

Harmony Alliance and inTouch are working to empower and raise the voices of migrant and refugee women in Australia. Harmony Alliance is a member driven organisation that provides a platform for women from migrant and refugee backgrounds to advocate on issues by combining grass roots participation and strong community voices with institutional research and strong policy advocacy to bring about meaningful change. inTouch has been a member of Harmony Alliance since 2017.

inTouch has been steadfast in our mission to support migrant and refugee women who have endured family violence. We offer comprehensive case management services that acknowledge and address the unique cultural challenges these women often encounter when seeking assistance. The inTouch Legal Centre was established in 2012 and is an integral part of our organisation, that supports our multidisciplinary approach, ensuring that clients receive the comprehensive wrap around supports they need through our integrated service model.

The inTouch Legal Centre provides legal support for migrant and refugee women in family law disputes in both property and parenting matters. We are uniquely placed to comment on and provide feedback on the opportunities and potential implications and impacts of the proposed amendments on migrant and refugee women set out in the Consultation Paper. For this reason, this paper will primarily focus on the issues raised in *Schedule 1 – Property reforms*.

We are pleased to see the direction of these reforms, and the work to ensure the impact of family violence is reflected in property law settlements, which can ultimately strengthen the family law system. However, the success of the proposed reforms outlined in the Exposure Draft is highly dependent on implementation in a system where all professionals are family violence informed.

As the Women’s Legal Services Australia (WLSA) submission states:

More work is required to ensure all professionals within the family law system are family violence informed, trauma-informed, culturally safe, child rights focused, disability aware and LGBTIQ+ aware. This requires regular access to meaningful training developed and delivered by subject-matter and lived-experience experts that is regularly, independently evaluated for its effectiveness, including evidence of improvements in the practice of professionals working in the family law system.¹

Women’s Legal Services Australia (WLSA) submission

inTouch and Harmony Alliance lend its full support to the submission of the WLSA and endorses their recommendations. Within this submission, we provide recommendations in the context of the unique challenges encountered by migrant and refugee women experiencing family violence as they navigate the family law system.

inTouch Legal Centre

Overview

The inTouch Legal Centre is a specialist Community Legal Centre (CLC) utilising an integrative practice model to provide legal advice and representation to clients who are already receiving support from inTouch case managers. Our Legal Centre was established following research funded by the Victoria Law Foundation in 2012, which identified that navigating the justice system is a particularly challenging process for migrant and refugee women who experience family violence.

Referral and intake process

Clients are referred to the Legal Centre through inTouch case management services, ensuring a unique, integrative and multidisciplinary support practice. The structured intake and case management services that precede referrals to the Legal Centre allow for a process that supports clients in their own language and cultural context, and encompasses risk management, safety planning and facilitates referrals to external providers for essential services such as housing, mental health support and financial counselling.

Legal services

inTouch extends its case management and legal services, which are tailored to address cultural and linguistic needs, to women and gender non-binary clients who consent to support from a women's service, are migrants and/or refugees, are aged 18 years and older, reside in Victoria and are currently or continually affected by family violence.²

Given the need to triage and prioritise cases, all clients referred to the inTouch Legal Centre initially receive legal advice through Advice Clinics which include Weekly Advice Clinics, Victims of Crime Clinic, Divorce Clinics and outreach through our Health Justice Partnerships.

Unlike many CLCs, we also provide ongoing legal representation and regularly appear in the Federal Circuit and Family Court of Australia (FCFCOA) in parenting and property litigation matters.

Our expert team of lawyers and migration agent provide the following services:

- protection from family violence through intervention orders
- family law dispute resolution and representation in areas such as parenting, small property settlements, and spousal maintenance
- immigration and visa assistance
- support for Victims of Crime Assistance Tribunal (VOCAT) applications
- divorce clinics, and
- secondary consultations.

¹ Women's Legal Services Australia, *Exposure Draft of the Family Law Amendment Bill (No. 2) 2023* (November 2023) p5.

² The inTouch Legal Centre: Referrals and General Information and Service Guidelines set out the process for client and details on our operation. These documents can be accessed here: https://intouch.org.au/wp-content/uploads/2023/06/inTouch-Legal-centre-referral-guide_WEB.pdf and <https://mail.google.com/mail/u/0/#label/Consulting/FMfcgzGwHLMGkKvKglhcmmHjPdmsQtsz?projector=1&messagePartId=0.1>

Due to the specific needs of our clients and the impacts of language barriers, in addition to providing legal advice and representation in court, inTouch dedicates significant time to assisting clients to navigate, and supporting them to comply with, court mandated courses, demonstrating the breadth and on-going nature of our current service offering.

Client profile

Our clients have highly complex and intersectional needs. On a daily basis, we have the privilege of seeing first-hand how our trauma informed, in-culture and in-language legal support enables our clients to navigate the justice system. This unique service delivery not only supports a more effective and efficient process, but also provides a strong foundation for our clients' healing and recovery, ensuring the best possible outcomes for our clients, their children and their communities.

During the 2022-23 financial year, the inTouch Legal Centre demonstrated its commitment to supporting vulnerable women, providing legal support to 701 women, offering the legal resources and assistance they urgently needed. Notably, this included 132 women who successfully obtained permanent residency as a result of family violence provisions.

While the impact of the Legal Centre on women's experiences in addressing family violence cannot be understated, the demographics of our clients underscores the unique challenges and barriers our service faces in delivering these vital supports. Among the women we assisted:

- 86 percent speak a language other than English as their first language, highlighting the importance of providing culturally sensitive and linguistically appropriate services.
- 83 different languages were spoken by inTouch clients in the last financial year, and clients represented people from 100 different counties, demonstrating the diversity of our clients.
- 36 percent reported living with a disability or mental illness, emphasising the need for wrap around supports that adequately take into account these circumstances.
- 44 percent were on temporary visas, demonstrating their vulnerability and lack of stability, driven by the uncertainty about their immigration status.
- 33 percent of inTouch clients overall have lived in Australia for less than 5 years, making it very difficult to navigate a legal system they have limited understanding of.
- 62 percent of our clients are either homeless or at risk of homelessness, underscoring the urgency of addressing housing and stability issues alongside and through legal assistance.
- 88 percent of clients are grappling with severe financial disadvantage and 24.3 percent of our clients had nil income at the point of engaging our service.

These statistics serve as a critical reminder of the role the inTouch Legal Centre plays in addressing the intersecting challenges faced by vulnerable women experiencing family violence within migrant and refugee communities.

Schedule 1: Property Reforms

1. Codifying the property decision making principles

Does the proposed structure of the property decision-making principles achieve a clearer legislative framework for property settlement?

The proposed structure of property decision-making principles will, on the face of the legislation provide additional clarity in determining property settlements.

This is critical to not only ensure the court applies the principles in a just and equitable way, grounded in an understanding of family violence, but also to support negotiations and agreements reached through mediation and alternative dispute resolution, where the vast majority of family law agreements are finalised.

While the structure proposed in the Exposure Draft clearly articulates the decision-making steps for property settlements under the Family Law Act, the application of these steps needs to be considered in contexts where parties may be particularly vulnerable.

The intersectional disadvantages of migrant and refugee women impacts property law decision making

Migrant and refugee women who have experienced family violence and are navigating the family law system often have significant cultural considerations and linguistic barriers that make them highly vulnerable to receiving poor outcomes through property and parenting disputes. These barriers are compounded by economic disadvantage, social inequality, limited understanding of the Australian justice system and isolation in the community.

Many women who inTouch supports do not recognise or understand the family violence they have experienced in their relationships due to cultural norms and lack of support from within communities and Australian systems. In addition, there is significant anxiety and apprehension about the legal process, and many harbour misconceptions that their children may be taken away or that they risk deportation through the process, impacting how they engage in legal proceedings, whether in mediation or through the courts. For these reasons, we see a large number of women that decide not to pursue property law settlements.

Intersectionality is a theory, first introduced by Kimberlé Crenshaw in 1989, and underpins the challenges faced by migrant and refugee women as they navigate the complexities of the family law system. Intersectionality recognises that individuals can experience an intersection of multiple forms of systemic discrimination that produces greater disadvantage for cohorts that do not have the same access to power and privilege as the dominant group.³ In the case of migrant and refugee women, the intersecting factors that determine the disadvantages they face include gender,

³ Position Statement on Intersectionality, 2020, Harmony Alliance: Migrant and Refugee Women for Change. <https://harmonyalliance.org.au/wp-content/uploads/2020/08/Intersectionality-Position-Statement-Final.pdf>

migration status, language barriers, family violence, financial hardship, and in many cases, homelessness, mental illness or disability.

The legal practitioners at inTouch recognise the complex interplay of these factors, providing culturally and linguistically appropriate and trauma-informed support and advice as our clients move through the family law system.

However, within the operation of the family law system, the complex intersection of these factors, are in many instances, used against migrant and refugee women, resulting in property settlements that do not recognise their true contribution to the property pool or the nature of their future needs.

Identifying legal and equitable rights, interests and liabilities to property

While the 'Balance Sheet Step' is established practice in family law property disputes, for migrant and refugee women, particularly those who have been in short relationships or only in Australia for a very limited period of time, ascertaining legal and equitable rights and interests in property can be challenging.

Likewise, in relationships where there has been family violence, including coercive control and financial abuse, or where intersecting disadvantages including language barriers and lack of understanding of Australian systems, mean liabilities may have been incurred without true consent or full understanding of their implications.

Ascertaining respective contributions to the property of the relationship

Migrant and refugee women face significant challenges when attempting to demonstrate their contributions to property in family law proceedings.

Many of inTouch's clients and migrant and refugee women have worked in the home, raising children and supporting their family. However, it is common that due to their migration status, women on temporary visas or with limited work opportunities will work cash-in-hand jobs, with no clear record of their income or how this contributed to the property pool of the parties.

Similarly, when contributions were initiated while overseas, prior to migrating to Australia, there is often limited recorded evidence to demonstrate contributions whether through income, family support or dowry giving. As demonstrated by our case studies, in many relationships a dowry encompasses a significant contribution that establishes the couple's property pool but can be highly difficult to prove and may not be appropriately recognised by Australian courts.

In short relationships where the woman has only been in Australia a limited period of time, and there are no children, her contribution could be considered to be non-existent in the context of property law contributions, affirming her vulnerabilities and the intersectional challenges she is likely facing through the family law process.

In situations where there is family violence, including coercive control or financial abuse, not only may these factors have limited a woman's opportunity to contribute financially through earning income, it is also important for courts to recognise that this may impact her ability to demonstrate her contribution due to limited access to records, or her own understanding of the contributions that have been made throughout the life of the relationship.

The complex circumstances for migrant and refugee women who have experienced family violence makes it difficult for clients to present clear and compelling evidence of their financial input, underscoring the need for tailored approaches whether through alternative dispute resolution or in the courts that understands their intersectional needs and the unique challenges they face in navigating family law proceedings.

Recommendations:

1. The legislation should include examples of what amounts to the effect of family violence on contributions. In addition to the examples set out in the WLSA submission (page 11), inTouch and Harmony Alliance suggest the inclusion of:
 - A party who has experienced dowry abuse such as coercion, physical violence or harassment associated with the giving or receiving of dowry at any time before or during the marriage, which has limited or hidden the recognition of the dowry contribution.
 - A party who has experienced visa abuse, limiting their ability to work during or after the relationship whether by restricting their earning capacity or exploiting contributions made through work prohibited under their visa.
2. Consideration should be given as to how the factors that affect contributions, in particular family violence and financial and economic abuse, also affect an individual's ability to demonstrate their contributions for the purposes of the proceedings and the burden of evidence required where these factors are identified.

List of factors to assess current and future needs

The principle of removing cross-referencing to spousal maintenance and establishing a list of factors to consider when assessing a party's future and current needs does provide a clearer process, particularly when applied to negotiations that occur outside of court proceedings.

The opportunities and challenges arising from including family violence are explored in more detail in section 3. However as outlined, migrant and refugee women experience further disadvantage throughout family court proceedings and their current and future needs are compounded by the many factors that drive this disadvantage.

We consider that including circumstances that factor in intersectional vulnerability of these women aligns with the inclusion of family violence. This underscores the fact that a holistic understanding of a person's needs and circumstances provides the best foundation for healing and recovery for those who have experienced family violence and ensures the system is better equipped to recognise and respond to their needs in a meaningful way through the property settlement process.

Recommendation:

3. It is proposed that an additional category be added to the 'considerations relating to current and future circumstances' (Section 79(4)) to include the following:
 - if a party is on a temporary visa or is a recently arrived migrant or refugee, the extent to which that creates additional support needs or affects their earning capacity;
 - if a party experiences intersecting disadvantages and the impact of barriers that may limit their opportunities for employment.

2. Just and equitable

Do you agree with the proposed framing of the just and equitable requirement as an overarching consideration through the decision-making steps?

inTouch and Harmony Alliance agree with the proposed framing of the just and equitable requirement as an overarching principle in the decision-making process. However, it must be considered broadly and should not be applied as a threshold requirement to finalising a property settlement, particularly where family violence is involved.

As emphasised by the WLSA submission, in Court or through alternative dispute resolution processes, consideration must be given as to whether it would be just and equitable to severely financially disadvantage a woman in circumstances where she is particularly vulnerable to economic instability. This is particularly relevant for women on temporary visas or who have been in short-term relationships.

As noted above, in the context of contributions, migrant or refugee women who have been in Australia for a limited time and/or have been in a short relationship, particularly where there are no children, may be deemed to have made zero contributions. It should be clear that regardless, it may still be just and equitable for a woman in this circumstance to receive a portion of the property to ensure she does not fall into poverty and/or homelessness as an outcome of the property settlement. The application of the just and equitable principle must also take into account the fact that in circumstances where family violence has occurred, the primary care and financial cost of raising children almost always falls on the victim survivor.

inTouch and Harmony Alliance support the recommendation of WLSA that guidance be provided in the legislation as to how the just and equitable principle should be applied to prevent homelessness and poverty.⁴ In providing this guidance, an intersectional framework⁵ that recognises the compounding factors and systemic disadvantage and discrimination that increase the likelihood and severity of a woman experiencing these outcomes should be applied. This would allow the disadvantages that migrant and refugee women face to be considered and a holistic approach to what is just and equitable applied.

Recommendation:

4. Guidance should be provided in legislation as to how the just and equitable principle should be applied, recognising an individual's vulnerability, to prevent homelessness and economic instability.

⁴ WLSA, p7

⁵ inTouch has developed extensive resources to support intersectional practice. For further information these can be accessed here:

Tipsheet: [Good practice for working with women on Temporary Visas in refuge accommodation](#)

Tipsheet: [Case management checklist for working with women on temporary visas staying in refuge](#)

Tipsheet: [Immigration Resource for working with women on temporary visas](#)

Tipsheet: [Intersectionality in Practice](#)

Tipsheet: [Working with interpreters by phone in a family violence setting](#)

Tipsheet: [Culturally responsive practice with men who use violence](#)

Tipsheet: [Women on temporary visas experiencing family violence](#)

3. Effect of family violence

Do the proposed amendments achieve an appropriate balance in allowing the court to consider the relevance of economic impact of family violence as part of a family law property matter, without requiring the court to focus on issues of culpability or fault?

Do you agree with the proposed drafting which requires the court to consider the effect of family violence to which one party has subjected the other?

Legal practitioners will be required to have a strong understanding of the dynamics and impact of family violence to appropriately consider its relevance in family law property matters

Whether property matters are settled through mediation or court, all practitioners including lawyers, registrars and judges, will need to have a strong foundational understanding of how family violence plays out and the complex interplay of factors that will have affected a person's ability to contribute financially to the property pool, and the impact on their future needs.

Understanding the dynamics of family violence will be critical to ensure this provision is applied through a trauma-informed and intersectional lens that focuses on how the property settlement determination can play an important role in recovery and healing, rather than re-traumatising victim survivors.

How the impact of family violence is measured and assessed and the long-term impacts that may continue to play out through the life of a victim survivor, need to be carefully considered.

The burden of evidence to demonstrate a party has been subjected to family violence should be clarified

While the court will appropriately not focus on issues of culpability or fault, clarity is needed to ensure the burden of evidence required to demonstrate that family violence did occur in the relationship is appropriate.

For migrant and refugee women, meeting a burden of evidence to demonstrate family violence is particularly challenging. Many women from migrant and refugee backgrounds may not have recognised their experience as family violence and many are reluctant to raise their experience of family violence through family law proceedings. In many cases this is due to their isolation, cultural stigma and lack of community support whereby they do not feel empowered to speak up about the situations they have endured. In addition, many women who have limited experience with and understanding of the legal system, are fearful that their children may be removed if they highlight that they are victim survivors of family violence.

As demonstrated in Case Study 1, our client did not want a Family Violence Intervention Order (FVIO) in place and only the most severe instances of physical abuse resulted in contact with the police. Migrant and refugee women also often have limited or no access to, or engagement with, medical or therapeutic services and supports. This is particularly relevant in cases that require demonstration of coercive control and emotional and financial abuse.

For people experiencing family violence, language barriers can reinforce or entrench legal issues, compounding the challenges they face navigating the legal system. As outlined in the inTouch Position Paper (February 2022)⁶, women who are misidentified as perpetrators of family violence⁷ face a multitude of legal issues including intervention orders, criminal charges for breaching orders and assault charges. The ripple effect for migrant and refugee women, particularly those on temporary visas, is severe, including a reduction in access to services, loss of access to children or implications to their visa status.

Systems abuse is another major factor contributing to misidentification. A form of coercive control, systems abuse in this context occurs when the perpetrator of family violence uses the police and justice system to further abuse the victim-survivor....His intention is to interrupt, challenge or add complexity to judicial and administrative processes and deplete the victim's financial resources, emotional wellbeing and adversely impact her ability to maintain employment or care for children.⁸

It is important to acknowledge that the intervention order system is often used to perpetrate system abuse and respondents to an order may also bring an application alleging they have experience family violence. For inTouch clients, this is a regular occurrence and is often a method used to invalidate claims of family violence made by women in family law proceedings.

In a property law dispute, the consequences of misidentification can be incredibly severe and long-lasting. Consideration must be given as to how the court will ensure mis-identification does not occur when assessing a party as having been subjected to family violence. An understanding of the nature and dynamics of family violence for the judiciary and legal practitioners will be critical, but further engagement with police and the family violence sector on mis-identification is recommended through the implementation of these amendments.

Recommendation:

5. A Bench Book to support the operation of the Act should be developed and include guidance on the requirements to demonstrate family violence has occurred.
6. Further consultation with police and the family violence sector on mis-identification and its application where culpability is not a factor should be considered.

⁶ *The Causes and Consequences of Misidentification on Women from Migrant and Refugee Communities Experiencing Family Violence*, Position paper 2022, inTouch, [inTouch-Position-Paper-Misidentification-February-2022.pdf](#)

⁷ Misidentification of the predominant aggressor occurs when police or other areas of the justice system identify a victim survivor of family violence as the perpetrator.

⁸ inTouch, *The Causes and Consequences of Misidentification on Women from Migrant and Refugee Communities Experiencing Family Violence*, p.3.

Determining the effect of family violence is complex and long-term impacts must be considered

The effects of family violence are long lasting and multifaceted. Family violence can permeate all aspects of an individual's life including employment, emotional wellbeing and mental health and relationships with children, family and community.

As per recommendation 1, the effect of family violence on contributions should be considered broadly and facilitate women to demonstrate their impact without exacerbating current barriers such as migration status or language barriers.

In determining the effect of family violence on future need, a trauma-informed approach that recognises the long-term impacts of family violence must be taken. The resilience of clients at the time of property settlement and their ability to hold down employment or operate with minimal supports cannot be presumed to be the status quo. In effect, it is critical that parties are not 'punished' for their resilience, as many of our clients will maintain several jobs for sheer survival during a separation process.

However, this is not sustainable and does not account for the impact of trauma arising years later which may affect their ability to engage in employment or limit the type of work they are able to do. Employment engagement should not be accounted as a detriment of victim-survivors and as a measure of current or future impacts of family violence. The proposed reforms are a positive step towards promoting recognition of the impact of family violence and ensuring the needs of vulnerable women are accounted for during a property settlement process, however without a meaningful and effective assessment of the effect of family violence, there is a risk that the process can create a further burden on women to demonstrate that they are a victim survivor.

Evidence considerations

Due to the barriers our clients face in accessing services, we are concerned that migrant and refugee women will struggle showing the impact family violence has had on them, including future impact. For instance, many of our clients struggle to engage with psychologists and/or psychiatrists due to language barriers, isolation, cost of appointments and lack of access to Medicare. Our clients are then disadvantaged because they are not able to provide appropriate expert reports to be used during court proceedings. It is important the courts and practitioners are acutely aware of the challenges migrant and refugee women have when it comes to showing the impact family violence has had on them. For instance, evidence of engagement with specialist family violence services such as inTouch should be given great weight when assessing the impact of family violence. inTouch is a specialist family violence service that supports migrant and refugee women that require support across multiple areas and/or have complex needs.

inTouch has strict eligibility criteria before accepting client referrals. Cultural needs must be explored to ensure the client requires a culturally tailored response, and a risk assessment under the Multi-Agency Risk Assessment and Management Framework (**MARAM**) must be undertaken by a Family Violence Practitioner. Clients are triaged based on the language skills, financial means, immediate risk of family violence or of losing children, risk of deportation or visa deportation and isolation and lack of community supports. Other family violence support services have similar processes and weight should be given to a parties' engagement with such services as evidence of family violence in family law proceedings.

The inSpire program run by inTouch demonstrates the importance of recognising long-term impacts of family violence. inSpire supports women and their children from migrant and refugee backgrounds post crisis with ongoing, integrative supports. This is the only post-recovery program in Australia embedded within a trusted specialist service provider, offering a bridge between family violence and migrant and multicultural communities.⁹ The program is designed to boost confidence, skills and connection, supporting women to build economic independence and social connections. The connection between the provision of legal and support services at the time of crisis and ongoing programs that support healing and recovery provides an insight into how the presentation of a victim survivor at the time of property proceedings may not be reflective of the long-term wrap around engagement truly needed following her experience of family violence.

inTouch and Harmony Alliance support the recommendation in the WLSA submission that suggests amending sections 79(4)(ca) and 79(5)(a) to include family violence to which parties are subjected 'or exposed'¹⁰, in line with the description of family violence in parenting provisions. We note the effect of family violence on children that remain primarily in the care of women who have experienced family violence should also be a factor in considering future needs. The requirement for additional support, including emotional, psychological and mental health care for children who experience family violence must be accounted for in determining future need.

This is demonstrated in Case Study 3 which outlines the delayed effects of family violence on victim survivors.

Recommendation:

7. In order to ensure the effect of family violence is not underestimated, an initial fixed adjustment to future need should be set as a baseline where family violence has occurred.
8. A Bench Book (per recommendation 5), could provide and examples as to how to manage adjustments in favour of the victim survivor.

⁹ inTouch Multicultural Centre Against Family Violence, *Annual Report 2021-22 (2022)* p12.

¹⁰ WLSA, p.9

4. New contributions factors

Do you agree with the proposed amendments to establish a new contributions factor for the effect of economic and financial abuse?

Do you agree with the proposed amendments to establish new separate contributions factors for wastage and debt?

inTouch and Harmony Alliance welcome the proposed amendments of the four additional contribution factors to account for the effect of family violence, financial and economic abuse, debt and wastage on a party's contributions, all of which have an ongoing and lasting impact on the party who has been adversely affected.

Clearly recognising the impact of economic and financial abuse and wastage a woman's contribution is a positive step. For many of inTouch clients, as outlined in Case study 2, the effect and impact of coercive control and financial abuse are compounded by intersectional disadvantage, language barriers and lack of understanding and exposure to Australia's financial and legal systems. Understanding the impact of coercive control on not only contributions, but liabilities will be essential to the effective application of such an amendment.

The National Principles to Address Coercive Control (National Principles) define coercive control as behaviour that is ongoing and systematic and is used as a means to control, dominate, and coerce victim survivors. Its effects are pervasive and traumatic, and often results in reductions in liberty, choice, and autonomy, and increases in fear and isolation.¹¹ The National Principles provide a foundation for consistent understanding and recognition of the impact of coercive control that should be applied in the assessment of contributions.

¹¹ Commonwealth Attorney General's Department, *National Principles to Address Coercive Control* (2023).

Case Studies

Case Study 1: Impact of family violence on determining contributions and identifying future need

Our client was married in India through an arranged marriage, with her family paying a significant dowry. Very early in the marriage our client moved to Australia where she worked various jobs, many which were cash-in-hand, and purchased a house with her husband, with the title in his name only.

Throughout the marriage our client experienced extensive family violence, including financial abuse that was particularly controlling as she had no knowledge of Australian legal or financial systems. After the birth of her son, a significant family violence incident occurred and police attended, however our client refused to obtain an intervention order against her husband as she was concerned about the cultural implications of a separation.

Despite this, after two years of marriage our client separated from her husband, with him being excluded from the family home due to family violence. Family law proceedings were initiated by her husband and have been ongoing for three years. Our client's husband is seeking to take over the matrimonial home as this is the main asset of the marriage. Throughout the period of separation our client paid off the mortgage arrears and all property outgoings as well as holding full custody and sole financial responsibility for their child.

Negotiation and dispute resolution

Our client was at a significant disadvantage throughout negotiations due to her cultural understanding of family violence and divorce, her limited knowledge and experience of Australian systems and her financial vulnerability. Several issues were in dispute and were challenging for our client to demonstrate as she had little evidence in Australia to support her positions.

The focus of the negotiations was on contributions made by each party. Our client's husband had been in Australia longer and on the face, appeared to have contributed more towards the purchase of the property. However, our client had contributed through income earned from cash-in-hand jobs and through her dowry. Providing evidence of this contribution was incredibly challenging, and required extensive forensic examination of bank transactions to prove, something which is not usually available to most clients in such vulnerable positions.

Family violence was not considered during the negotiation nor in the family court, with the focus only on percentage contributions, with no broader circumstances considered. While our client had eventually taken out an intervention order against her husband, because this was without admission, it was not considered sufficient evidence to demonstrate family violence in negotiations. Further our client's husband took out an intervention order against her to try to 'cancel out' any argument of family violence on his part.

Future need and child support

During the extended period of property negotiation, our client worked three jobs to pay for the mortgage and support her child. These jobs included child care worker, uber driver and cleaner, meaning she was working around six days a week, excessively long hours. This was only sustainable because a family member came to live in Australia with her and care for her son.

Ultimately her determination and resilience were used against her, with the income from her jobs used to diminish her demonstration of future need and enable her former husband to reduce his minimal child support contributions further.

Case Study 2: The delayed effects of family violence on victim survivors

Our client and her two children have moved 23 times to get away from her abusive ex-husband. However, each time they move cities or suburbs, he would find them. There is currently a police-applied full-exclusion Final Family Violence Intervention Order against the husband, listing our client and the children as protected persons.

Due to the constant moving, our client has not been able to have a meaningful relationship with her counsellors to examine the significant effects of coercive control, verbal abuse and physical abuse, has had on her mental health and wellbeing. It is disempowering and retraumatising when she has to relay her story over and over again each time she moves. It also requires her to build trust with each new counsellor so that our client can feel safe to be vulnerable with her story.

From time to time, our client would be triggered by a court event or something that is said within her community in support of her ex-husband. The anxiety and depression she experiences are debilitating, and she is not able to work for months at a time.

This means that she is unable to get paid work and is reliant on government assistance to pay the rent and look after the children, as her ex-husband is not providing any financial support, including child support.

Key lessons

The impact of family violence is not linear. Victim survivors experience the effects of that violence differently and at different times. However, what is consistent is that the long-term effects of family violence are lingering and do not end when a court matter finishes.

It is important for practitioners and the judicial system to understand what is family violence and its effects, which last long after the incident has occurred. Family violence is not an isolated incident. It usually starts with coercive control and gaslighting. Further, this case illustrates the potential evidentiary burden on our client in proving the impact of family violence. Due to the barriers our clients face in accessing services, we are concerned that migrant and refugee women will struggle to have the evidence such as expert reports to show the impact family violence has had on them including future impact. For this reason, Courts and practitioners need to take a broad approach that recognises family violence dynamics when assessing the impact of family violence and consider evidence directly from our clients and domestic and family violence services, including specialist family violence services like inTouch.

Finally, victim survivors should not be punished for being resilient at the time of court proceedings, as often the case they are being strong to protect and support their children. Just as family violence is not an isolated incident, so too should our approach to looking at the deep impact family violence has on victim survivors.

Case study 3: Impact of family violence trauma on property negotiations

Our client was referred to the inTouch Legal Centre for assistance with Intervention Order and property matters multiple times throughout the process of her divorce. Despite having private lawyers, the trauma and fear from the extensive family violence she experienced throughout her marriage made it difficult for our client to engage effectively in the legal process and she struggled to give instructions and understand legal advice when emotionally heightened from her experiences.

Our client was greatly affected by the family violence from her husband during the marriage and the financial deceit that has been exposed throughout the divorce proceedings.

Our client had an adult son from a previous marriage and one child of the marriage. Throughout the marriage, her husband accrued debts of over \$120,000 that she was not aware of, in addition to the mortgage over the home, which was purchased in his name only. The debts accrued through his failure to pay utilities and a Centrelink debt in our client's name that accrued due to the husband's provision of incorrect information.

There are a number of caveats over the property and our client was desperate to remain in the home. Through extensive negotiations, inTouch have reached an agreement whereby her son will take over the mortgage, avoiding the need to initiate litigation.

Key learnings

This case has been through multiple lawyers and required extensive resources and commitment from the highly experienced, trauma-informed lawyers at inTouch in order to reach a resolution. The trauma of family violence made it almost impossible for our client to engage in legal processes and the financial control and abuse throughout the marriage meant she had no access to information on her financial situation.

This case highlights the need for professionals within the family law system to be meaningfully trained in and understand family violence so the rights and wellbeing of clients can be effectively represented, regardless of their trauma or other barriers that limit their ability to engage effectively in proceedings.

Considerations for Implementation

As outlined, inTouch and Harmony Alliance are broadly supportive of the proposed legislative amendments in the Exposure Draft, however the success and potentially positive impact on the lives of women experiencing family violence will sit with the implementation.

All victim survivors have experienced significant trauma and there is a need to ensure that the process of raising family violence in family court proceedings is done carefully and is supportive of their journey towards healing and recovery, and not another opportunity for perpetrators to use the system to abuse. Likewise, the burden of evidence to demonstrate family violence has occurred must be sufficiently balanced to avoid mis-identification, while ensuring victim survivors are not required to fruitlessly retell their stories.

Ultimately education and Continuing Professional Development (CPD) requirements for all lawyers practicing family law (at a minimum) and ongoing training for legal practitioners is essential. This must include not only an understanding of the dynamics and nature of family violence, but the impact on victim survivors, how it affects their processing of information, how they may be triggered through the legal process and what happens when post-traumatic stress disorder (PTSD) from the family violence arises.

With adequate funding, specialist family violence services like inTouch are well placed to deliver this training which will help to mitigate the harm imposed by family violence and support people with recovery and healing through the family law proceedings.

Finally, we agree with the WLSA position that any training should be developed in consultation with lived-experience experts that is regularly independently evaluated for its effectiveness. One such group is inTouch's NOOR Family Violence Survivor Advocates (**NOOR**),¹² which was created in 2018 as part of the response to the Victorian Royal Commission into Family Violence. NOOR's purpose is to platform the voices of migrant and refugee women who have experienced family violence and is the only group in Australia to do so.

¹² [NOOR Survivor-Advocates - inTouch](#)

Schedule 2: Children's contact services

inTouch and Harmony Alliance lends its full support to the WLSA submission and endorses their recommendations in relation to Children's Contact Services (CCS).

In addition, we would like to highlight the specific challenges our clients face when having to engage with CCS. All inTouch clients are migrant and refugee women who are victim survivors of family violence. In addition, 44 percent of our clients were on temporary visas and 33 percent have lived in Australia for less than 5 years. As a result, our clients have real difficulty navigating the legal system including understanding the purpose of CCS and how they function in practice which results in distrust.

Many of inTouch's clients have had a poor experience with Australian authorities including police and as such, often have difficulty placing trust in institutional settings and systems, and do not want to leave their children at CCS. This often has the effect of making our client appear to be difficult, protective and resistant to their children having a meaningful relationship with their fathers. Our clients often say that they struggled to communicate with staff at CCS including that the staff do not understand their cultural background. This experience in return is used against our clients during the parenting negotiations and proceedings.

In our experience, this is often indicative that the staff at CCS are not culturally responsive which negatively impacts engagement with migrant and refugee women. CCS should be adequately resourced to receive culturally responsive training with a focus on domestic and family violence to effectively engage with migrant and refugee women. This must include an understanding of the dynamics and nature of family violence, the impact on victim survivors, how it affects their processing of information and how they may be triggered through the legal process.

Therefore, we reiterate that our recommendation above in relation to education and CPD requirements for all lawyers be extended to CCS staff. This must include an understanding of the dynamics and nature of family violence, the impact on victim survivors, how it affects their processing of information and how they may be triggered through the legal process. We further recommend that the proposed regulatory framework for CCS include specific training for engaging with clients from migrant and refugee communities.

Recommendation:

9. The CCS regulatory framework should provide specific education and CPD requirements in relation to family violence.
10. The CCS regulatory framework should provide culturally responsive training and CPD requirements for engaging with clients from refugee and migrant communities.

Schedule 3: Case management and procedure

Part 2 of Schedule 3: Amending the requirement to attend divorce hearings in person and delegations

Do you have any comments on the proposed amendments for divorce hearings?

inTouch and Harmony Alliance lends its full support to the WLSA submission and endorses their recommendations in relation to divorce hearings.

Similarly, we would also like to take this opportunity to raise issues regarding the divorce application process that migrant and women face when seeking to divorce.

We have highlighted above the barriers migrant and refugee women face when engaging with court processes. This is particularly evident when our clients go through the divorce application process, which is complicated with numerous procedural steps. We see a high demand for legal representation in this area of law. However, we are a small CLC with limited resources and are not able to meet this legal need. As a legal service, we have had to prioritise assisting the following clients:

- Clients who are in immediate danger/risk of violence
- Clients who are in immediate danger/risk of losing their children
- Clients whose children are in danger
- Clients who are at risk of deportation or visa cancellation, and
- Clients who are isolated and/or have limited supports in the community.

Divorce Clinics

Given the sheer demand for our legal assistance in obtaining divorce, we have created Divorce Clinics which are run every 2-3 months. Due to the volume of clients, we assist women to complete the online application process in a group setting. We provide computers, organise interpreters and assist clients to understand what documents they need to gather to obtain divorce. Many of our clients are separated under one roof and we assist clients to prepare affidavits. We have also created Divorce Checklists which we have translated in eight different languages. These checklists assist with our clients' understanding of what documents they need to bring to the Divorce Clinic.

We find that about half of our clients are able to follow the divorce process, serve the documents and attend the divorce hearing via telephone after the Divorce Clinic. However, about half of the clients that attend our Divorce Clinics require intensive ongoing assistance after the divorce application is lodged. This includes serving the documents and lodging the affidavit of service online. The fact that the Court does not provide interpreters makes it impossible for many of our clients to engage with the court process. In one instance, the Court asked whether a client was able to bring a friend or neighbour to interpret. As noted above, many of our clients have recently migrated to Australia and in this particular instance, the client did not have anyone that could interpret for her. She was dependent on inTouch to organise and pay for an interpreter for the hearing.

Obtaining a divorce is an important process for victim survivors of family violence and without assistance many victim survivors from migrant and refugee communities would be unable to do so.

Recommendation:

11. inTouch and Harmony Alliance recommend there is a review of the divorce process with the aim of creating a more streamlined and efficient process that is not restrictive to particular groups, in particular those with limited English skills.
12. CLCs such as inTouch provide a critical service to highly vulnerable women and require adequate funding and resourcing to continue to more effectively support migrant and refugee women experiencing family violence.

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**If you are experiencing family violence and need immediate support,
please call 1800 RESPECT on 1800 737 328**