



FAMILY LAW COUNCIL

IMPROVING THE FAMILY LAW SYSTEM FOR CLIENTS FROM CULTURALLY AND LINGUISTICALLY DIVERSE BACKGROUNDS

A report to the Attorney-General prepared by
the Family Law Council

FEBRUARY 2012

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ISBN 987-1-922032-06-5

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TERMS OF REFERENCE

Culturally and Linguistically Diverse clients in the family law system

I request that the Family Law Council consider and advise me by November 2011 on the following issues in relation to Culturally and Linguistically Diverse (CALD) clients of the family law system:

- i. ways in which the family law system (courts, legal assistance and family relationship services) meets client needs.
- ii. whether there are ways the family law system can better meet client needs including ways of engaging clients in the family law system.
- iii. what considerations are taken into account when applying the Family Law Act to clients of these communities.

The Family Law Council should consult with representatives of CALD communities.

Acknowledging the significant progress Council had already made toward the finalisation of the reports and Council's desire to incorporate content from late submissions, the Attorney-General granted an extension for the delivery of the reports until 27 February 2012

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The Family Law Council would like to acknowledge the contribution of Khanh Hoang from the Australian Law Reform Commission for his work on this report relating to family violence and migration law. Council is grateful for his assistance.

EXECUTIVE SUMMARY

This report provides a response to the Attorney-General's request that the Family Law Council (Council) considers the extent to which the family law system meets the needs of clients from culturally and linguistically diverse backgrounds and strategies for improvement in this area.

The Policy Context for the Reference

Australia has one of the most ethnically diverse populations in the world, with a long history of nation-building through immigration. Around 27 per cent of the present estimated resident population of Australia (6 million people) were born overseas,¹ and approximately 16 per cent of the population speaks a language other than English at home.² In the coming years, Australia's population is likely to remain strongly multicultural, multi-faith and multi-lingual, with migration accounting for more than half of our annual population growth.³

Humanitarian entrants are a significant part of this picture. Since July 2006, some 40,500 refugees and humanitarian entrants have been resettled in Australia,⁴ and around 14,000 Humanitarian Program visas are granted each year, including 6,000 refugee visas.⁵ The main source regions for this migration have been Sudan, Iraq, Afghanistan, Burma and other Central and West African countries.⁶ Common experiences for individuals and families in these groups include an unplanned departure, long periods of time in refugee camps, long periods of limited or no access to health or education services and high levels of loss and grief, as well as the traumatic experiences that lead to the decision to flee their country of origin.⁷ Like many women who arrive in Australia on temporary partner visas under the family migration stream, humanitarian entrant and refugee background families are likely to have low levels of English language proficiency.⁸

In recognition of these issues, the Australian Government provides eligible newly arrived entrants with a range of settlement services to assist them to participate socially and economically in the broader Australian community. Services include English language tuition, interpreting and translating services, assistance with approaching health and employment services, and torture and trauma counselling.⁹ Successive Australian Governments have also developed policies aimed at strengthening inclusion for Australians from new and emerging communities, such as the *Access and Equity Framework* which aims to ensure that the design and delivery of government services are based on a sound knowledge of the needs of clients from culturally and linguistically diverse backgrounds.¹⁰

These initiatives have focused on access to a range of government services, particularly in the areas of health, employment, housing, education and family and child support.¹¹ Until recently, relatively little policy attention has been paid to ensuring access to the civil justice system for people from culturally and linguistically diverse backgrounds. In 2009, the Australian Government developed a *Strategic Framework for Access to Justice in the Federal Civil Justice System* (the *Strategic Framework*) which provides

an agenda for reform to support access to justice for all Australians while recognising the diversity of people seeking assistance from the legal system.¹²

Recently, concern about access to culturally appropriate legal services has begun to focus on the family law system.¹³ Existing research shows that the significant settlement challenges facing newly arrived families place strain on relationships, increasing the likelihood of family breakdown and the need for legal and family support services.¹⁴ Recent studies also indicate growing concerns about family violence within new and emerging communities, as changing gender roles within families after settlement in Australia threaten traditional power relations and family stability.¹⁵ Despite these concerns people from culturally and linguistically diverse communities are under-represented as users of family law system services.¹⁶

There has been little investigation to date of the barriers that face people from new and emerging communities in accessing the family law system, and there is limited knowledge of how services in the system are attempting to respond to the needs of families from culturally and linguistically diverse backgrounds, and the challenges they face in doing so. Council's reference was designed to consider these issues.

Approach to Addressing the Terms of Reference

In keeping with the principles of the *Strategic Framework*, Council adopted a solution-focused approach to addressing the Terms of Reference, with an emphasis on identifying positive strategies for access and inclusion, without minimising the evidence of disadvantage to people and families from culturally and linguistically diverse backgrounds.

Given the complexity of the subject matter and the diversity within and across cultural groups, Council aimed to gather information from a variety of sources. In doing so, Council relied on a range of data collection methods. These included a review of relevant literature and recent empirical studies, meetings with community groups and their representatives, consultations with migrant and refugee support organisations and service providers within the family law system, and a review of relevant reported decisions by the family law courts.

Council commenced work on this reference by canvassing views about the needs of people from culturally and linguistically diverse backgrounds generally. Consultations have largely heard concerns of recently arrived rather than more established migrant communities, particularly people who have come to Australia as refugees or humanitarian entrants. In conducting consultations, Council was aware of the time needed to establish trust with people from new and emerging communities, particularly where mistrust of government officials and 'consultation fatigue' feature.¹⁷

Council's investigations in response to this reference highlighted the multiplicity of potential issues that are affected by its terms. It was not possible within the timeframe and the context of the consultations to do justice to this complexity. In this respect, Council's focus has been guided by the priorities articulated by community members and their representatives.

Barriers to Accessing the Family Law System

Before considering how the family law system might better respond to the needs of culturally and linguistically diverse communities, Council considered whether a need for greater access to the family law system by families from these communities exists. In particular, Council considered the possibility that there was a preference among members of these communities to resolve family problems ‘privately’ with the assistance of extended family and community or religious leaders. Similar considerations were explored in relation to legal services, including the possibility that access to family law services is a low priority for newly arrived families, where other needs, such as housing and employment, are more pressing.

The strong view expressed in meetings with community representatives and leaders was that families from new and emerging communities have both family relationship and family law needs, and would like to be able to access the assistance of legal, counselling and family dispute resolution services. Reflecting recent research findings, Council’s consultations show that there are a number of factors associated with the process of resettlement that pose serious challenges to the stability of family relationships. These include the impact of long periods of displacement prior to arriving in Australia, and the stress of adapting to a new environment and changes to family roles and responsibilities, such as the move from a collectivist society to one with a stronger focus on the individual and the nuclear family.¹⁸ A particular concern voiced repeatedly by community members was the high rate of intergenerational conflict within newly arrived communities, which can lead to inter-parent conflict and marriage breakdown. The consultations also confirmed a growing concern within refugee background communities about family violence.¹⁹ Overall, Council’s consultations with community groups support the conclusion of a recent literature review conducted for the Australian Human Rights Commission that family disintegration is ‘one of the most significant causes of distress’ reported by newly arrived families.²⁰ Council’s work on this reference also indicates that while some members of cultural and faith-based communities prefer to use community or religious forms of dispute resolution, a more representative proportion of people from culturally and linguistically diverse backgrounds would access mainstream family law services if the present barriers to their use by these families were addressed.

The material gathered for this reference points to a range of factors that impede the ability of people from culturally and linguistically diverse backgrounds to access the services of the family law system. These include a lack of knowledge about the law and a lack of awareness of available services; language and literacy barriers; cultural and religious barriers that inhibit help-seeking outside the community; negative perceptions of the courts and family relationships services; social isolation; a lack of collaboration between migrant services and the family law system; a fear of government agencies; a lack of culturally responsive services and bicultural personnel; legislative factors; and cost and resource issues.

A range of responses to these needs was suggested during Council’s consultations. These include proposals for community-based legal literacy programs; culturally appropriate counselling services and culturally responsive mediation processes; specialist Family Relationship Centres for families from culturally and linguistically

diverse backgrounds; culturally responsive court processes - including the provision of court-based Community Support Workers and Court Network personnel traineeships to increase the numbers of bilingual and bicultural family lawyers and family dispute resolution practitioners; better integration of settlement services and family law services; and the development of Community Advisory Groups to inform the development and delivery of family law services. Community groups also emphasised the need for both specialist family law services for culturally and linguistically diverse communities and culturally responsive mainstream services, and for partnerships between ethnic-specific organisations and the family law system.

Challenges, Responses and Initiatives within the Family Law System

Council's consultations with service providers indicate the existence of a series of challenges for the family law system in meeting the support needs of people from culturally and linguistically diverse communities. These include the additional time needed to provide meaningful advice to clients who are unfamiliar with the legal norms and processes in Australia, and for whom English is not a first language; the time needed to build trust with communities whose pre-arrival experiences may have engendered a fear of government agencies; the need for flexible service delivery models in organisations that have defined charters and where both court-based and alternative dispute resolution processes are steeped in a history of Western tradition; the difficulties of recruiting staff across the range of culturally and linguistically diverse communities where a relatively small number of professionals from these communities have relevant qualifications; and the challenges of providing a seamless service to clients across a system characterised by fragmentation and where migrant and family law services operate in 'silos'.

However, Council's investigations also revealed a number of successful program initiatives that have been designed to address the barriers noted above. Chief among these is the development of legal literacy strategies, particularly by Legal Aid Commissions and Community Legal Centres, which provide targeted community education programs to newly arrived communities. These programs typically involve partnerships with migrant services, which facilitate access and build trust with local communities, consultations with community leaders to identify legal literacy needs and misperceptions of the law, and a two-way educational exchange, in which service providers are familiarised with the cultural perspectives and support needs of ethnic communities. Included among these strategies are specific programs about family violence and child safety laws, which aim to address the documented frustration of people in newly arrived communities who are informed of the law without being assisted to adapt their understanding of personal relationships or child discipline to their new legal context. A range of agencies across the legal and family relationships sectors have also developed effective visual and audio educational materials in community languages, designed to address the problems of limited English language proficiency and low literacy levels within new and emerging communities.

A second area of service innovation has been the development of co-ordinated and collaborative service delivery strategies. These include partnerships between family law and migrant support services to deliver educational and therapeutic programs (including as part of the Family Relationship Services for Humanitarian Entrants program);²¹ the provision of outreach clinics by Community Legal Services and family

relationships services in community settings; co-location of legal services with community health service providers, who are often the first port of call for people from culturally and linguistically diverse backgrounds seeking help with family problems; employment of Migrant Resource Centre staff within Family Relationship Centres; the establishment of information and referral ‘kiosks’ in Federal Magistrates Court precincts to link litigants with community support services, and the development of service directory ‘roadmaps’ by Family Law Pathways Networks.

A third area of endeavour involves workforce development. While some sectors appear to have few bilingual and bicultural staff, others have created dedicated positions and/or training programs to address this gap, including the provision of scholarships in family dispute resolution and counselling to professionals from culturally and linguistically diverse backgrounds and the employment of Community Liaison Officers and Community Outreach Workers by Family Relationship Centres to engage with local cultural communities.

Other positive responses within the family law system have centred on the development of cultural diversity plans to guide staff engagement with clients from culturally and linguistically diverse backgrounds, the provision of cultural awareness training for staff, and the funding of consultation-based research by family relationships services to gather information about the support needs of local ethnic communities and ways in which these might be addressed.

Successful Practice Models outside the Family Law System

In the course of its consultations, Council became aware of several successful initiatives that have been developed in other service system areas that could provide useful models for the family law system.

A clear message from the consultations and recent literature concerns the importance of collaborating with community representatives to inform the design and delivery of culturally appropriate mainstream services. A successful example of this approach is the *Strengthening Family Wellbeing* model developed by Foundation House in Victoria, which involved the establishment of permanent Community Advisory Groups within new and emerging communities around Melbourne to work directly with mainstream child and family welfare agencies.²²

Another important justice system initiative is the Neighbourhood Justice Centre in Collingwood, Victoria, an area with a significant culturally and linguistically diverse population.²³ The Neighbourhood Justice Centre aims to provide integrated justice and social services by incorporating a suite of on-site service agencies within the court precinct, including a legal aid office, a community legal service, a migrant settlement service, a community health service, a mediation program and a financial counselling service. These agencies provide services to the centre’s clients in a co-ordinated fashion within a therapeutic justice framework. A further central element of the Neighbourhood Justice Centre operation is active engagement with local communities, including a *Talking Justice* outreach program, in which the Neighbourhood Justice Centre court personnel meet regularly with local residents and community leaders to clarify misunderstandings of the law and legal processes.

Council also notes the development of court-based legal education initiatives in other jurisdictions, which could be adapted by the family law courts, including the provision of court tours and presentations to community leaders by judicial officers which aim to improve familiarity with court processes among refugee communities.

Application of the *Family Law Act* to Families from Culturally and Linguistically Diverse Backgrounds

Council collected and examined a sample of 177 judgments decided since 2007 in which issues of cultural diversity were raised. One hundred and sixty seven of these decisions involved parenting disputes decided under Part VII of the *Family Law Act 1975* (Cth) (*Family Law Act*), where there are specific legislative provisions governing the child's 'culture'. Council's review of these cases focused on examining how considerations of culture were taken into account in reaching a decision about the child's best interests.

Council's examination revealed a number of cases that demonstrated a sensitive regard for the child's cultural connections and a well-developed understanding of the migration and settlement context of newly arrived families. There were also many parenting cases in which the parents' cultural background was mentioned but not considered in detail. It was not possible on the facts of the cases to understand this pattern. It may be that the issue was not raised by the parties, or that their legal advisors failed to alert the court to its relevance. In this respect, it may be that there is a need for greater education as to the meaning of section 60CC(3)(g), and its potential role in protecting children's cultural connections.

Council notes in this regard that the preamble to the United Nations Convention on the Rights of the Child (UNCROC) refers to the 'importance of the traditions and cultural values of each people for the protection and harmonious development of the child'. Unlike section 60CC(3)(g), section 60CC(3)(h) of the *Family Law Act* contains specific considerations for children from Aboriginal and Torres Strait Islander backgrounds, which direct decision makers to consider 'the child's right to enjoy his or her Aboriginal or Torres Strait Islander culture (including the right to enjoy that culture with other people who share that culture)'. In light of the principles of equity and equality outlined in the *Strategic Framework*, it may be of benefit for the Attorney-General's Department to consider whether section 60CC(3)(g) appropriately reflects Australia's obligations under the UNCROC.

Conclusions and Recommendations

Council's work on this reference suggests that people from culturally and linguistically diverse backgrounds face a number of barriers in seeking access to the family law system's legal, counselling and family dispute resolution services. Some of these barriers affect clients from other disadvantaged backgrounds, but are exacerbated for families from culturally and linguistically diverse backgrounds, and particularly those in new and emerging communities, by a series of additional impediments, including cultural and linguistic barriers and the need for multiple services. The extensive experience of migrant and refugee services indicates that a failure to address these issues increases the likelihood of family breakdown, intergenerational conflict and mental health problems.

The Department of Immigration and Citizenship provides a range of settlement support services to eligible humanitarian entrant families. However, family breakdown and family violence are not recognised as settlement issues for these purposes, and migrant settlement services – the first point of contact for many humanitarian entrant communities – are not funded to deal with these issues. The family law system's services, on the other hand, which are funded to deal with these issues, were not developed with the needs of culturally and linguistically diverse communities in mind. Council's consultations for this reference suggest that the family law system is not systematically meeting the support needs of people from these communities, resulting in under-utilisation of services and access occurring at the 'higher needs' end of service provision, when issues have reached acute or crisis stage.

Council's consultations reveal that a number of service organisations across the two sectors are working collaboratively with communities and one another to tackle this problem. Many individual legal and family relationships organisations have developed effective engagement strategies and are delivering culturally responsive services to new and emerging communities. However, Council's examination of these issues suggests that a more systematic set of responses is warranted.

Council identified the need for legal education and information programs tailored to the needs of different communities. In relation to both legal and non-legal service providers in the family law system, Council believes there is a need for greater efforts to improve the diversity and cultural competency of service personnel and the cultural responsiveness of services. There is also a need for greater integration, information-sharing and collaboration between the family law system's services and those in the migrant settlement service sector, and for more flexible service designs informed by consultation with ethnic communities. Council further identified a need for a more comprehensive empirical examination of the application of the *Family Law Act* to families from culturally and linguistically diverse backgrounds. An ongoing program of evaluation is also needed to monitor the work in this area and its effectiveness in enhancing access to family law services for people from culturally and linguistically diverse backgrounds.

Recommendations

Recommendation 1: Community Education

- 1.1 The Australian Government works with family law system service providers and migrant support organisations to develop a range of family law legal literacy and education strategies for people from culturally and linguistically diverse backgrounds.
- 1.2 The Australian Government and relevant agencies ensure that public resources that provide information about family law, including online legal information, be provided in a variety of community languages.
- 1.3 The Australian Government and relevant agencies ensure that clear, practical and culturally and linguistically appropriate information about the family law system's services, including the role of services, how to access them and what the client should expect from them, be disseminated through a wide variety of

sources, including settlement services, national peak and lead organisations representing ethnic communities (such as the Federation of Ethnic Communities' Councils of Australia, the Forum of Australian Services for Survivors of Torture and Trauma and the Network of Immigrant and Refugee Women Australia) and mainstream health services.

Recommendation 2: Building Cultural Competency

- 2.1 The Australian Government develops, in partnership with relevant stakeholders, a cultural competency framework for the family law system. The framework should cover issues of culturally responsive practice in relation to people from culturally and linguistically diverse backgrounds. This development should take account of existing frameworks in other service sectors.
- 2.2 Cultural competency among family law system personnel be improved by:
 - 2.2.1 Investing in the development of a flexible learning package (similar to the *AVERT Family Violence Training Package*) that can be adapted across settings and professional disciplines providing both minimum competencies and options for more in-depth development of skills and knowledge and encouraging its use across the sector by making it low cost and flexible in its delivery.
 - 2.2.2 Commissioning the development of 'good practice guides' for culturally responsive service delivery within individual service sectors. Examples might include 'cultural responsiveness in family report writing', 'culturally responsive Children's Contact Centres' and 'family dispute resolution with culturally diverse families'. Guides should be disseminated to individual practitioners through conferences, clearinghouses and national networks.
 - 2.2.3 Building cultural competency into professional development frameworks, Vocational Education and Training and tertiary programs of study across disciplines relevant to the family law system.
 - 2.2.4 Incorporating cultural competency into the core operational processes of all service agencies within the family law system.

Recommendation 3: Enhancing Service Integration

- 3.1 The Australian Government, in consultation with stakeholders, develop strategies to build collaboration between migrant service providers and organisations and the mainstream family law system (courts, legal assistance and family relationship services), including through the establishment of referral 'kiosks' within the family law courts.
- 3.2 The Australian Government provides funding for:
 - 3.2.1 The creation of a 'roadmap' of services for culturally and linguistically diverse families in the family law system
 - 3.2.2 Integration of the 'roadmap' into current government resources and initiatives which include the Family Relationship Advice Line and Family Relationships Online, and
 - 3.2.3 Promoting a greater awareness for culturally and linguistically diverse families of these resources and initiatives.

- 3.3 The Australian Government, Family Relationships Services Australia, the Family Law Section of the Law Council of Australia, and State and Territory family law practitioner associations consider ways to support and improve information-sharing about successful practice initiatives that enhance collaboration, integration and referrals between family law system services.

Recommendation 4: Workforce Development

- 4.1 A range of workforce development strategies be implemented across the family law system to increase the number of culturally and linguistically diverse personnel working within family law system services. Council recommends these strategies include:
- 4.1.1 Scholarships and cadetships for professionals from culturally and linguistically diverse backgrounds to work in the family law system;
 - 4.1.2 Assistance for family relationship services to recruit and retain personnel from culturally and linguistically diverse backgrounds.
- 4.2 The Australian Government provides funding for Community Liaison Officers from culturally and linguistically diverse backgrounds to assist family relationship services to improve outcomes for families and children, including by enhancing the ability of family relationship services to meet the support needs of clients from culturally and linguistically diverse backgrounds in dispute resolution processes.
- 4.3 The Australian Government provides funding for Community Liaison Officers from culturally and linguistically diverse backgrounds to assist the family law courts to improve court outcomes for families and children from culturally and linguistically diverse backgrounds, including by:
- 4.3.1 Assisting family report writers to present relevant cultural information;
 - 4.3.2 Enhancing the ability of the family law courts to meet the support needs of clients from culturally and linguistically diverse backgrounds in court processes.

Recommendation 5: Engagement and Consultation

The Australian Government provides support to courts, agencies and services in the family law system to engage with and collaborate with culturally and linguistically diverse communities in the development, delivery and evaluation of services, including support for the establishment of Community Advisory Groups.

Recommendation 6: Enhancing the use of Interpreters

- 6.1 Training in family law form a specialist component of accreditation for legal interpreters.
- 6.2 The Australian Government and relevant agencies develop a national protocol on the use of interpreters in the family law system. This should include:
 - 6.2.1 Protocols to ensure that clients with language difficulties are made aware of their right to an interpreter, are asked whether they need an interpreter, and are provided with an interpreter if they are identified as in need of one; and
 - 6.2.2 Protocols to guide the sourcing and selecting of interpreters.
- 6.3 The capacity of the family law system be improved by developing regional pools of interpreters with knowledge and understanding of family law derived either from training provided by local agencies or specialist legal interpreter accreditation developed or approved by the National Accreditation Authority for Translators and Interpreters.

Recommendation 7: Legislative Review

The Attorney-General's Department examine whether the provisions of Part VII of the *Family Law Act 1975* (Cth) adequately recognise the role of cultural connection in the development of all children.

Recommendation 8: Research and Monitoring

The Federation of Ethnic Communities' Councils of Australia's annual monitoring of the accessibility and equitability of government services be extended to include issues of access and equity in relation to services of the Australian family law system, including the family law courts and family relationship services.

1. Introduction

This report provides a response to the Attorney-General's request that the Family Law Council (Council) consider the extent to which the family law system meets the needs of clients from culturally and linguistically diverse backgrounds and strategies for improvement in this area.

At the outset, Council acknowledges the considerable diversity within and across cultural groups, including differences of ethnicity, language, religious affiliation, gender, social class, generation, sexuality and political persuasion, and that no one service response will be appropriate to meet the needs of all people. Recent policy developments, most notably the introduction of the *Strategic Framework for Access to Justice in the Federal Civil Justice System*²⁴ (the *Strategic Framework*) and the establishment of the Australian Multicultural Council,²⁵ exist alongside a growing body of research on the support needs and appropriate service responses to facilitate the settlement of families from culturally and linguistically diverse backgrounds.²⁶ The main focus of much of this research has been on recently arrived rather than more established migrant communities, and particularly people who have come to Australia as refugees or humanitarian entrants. Whilst Council commenced its work on this reference by canvassing views about the needs of culturally and linguistically diverse clients generally, its consultations have largely reflected a similar profile, and it is the needs of this group that are the main focus of this report.

Council also acknowledges the homogenising potential in using terminology such as 'culturally and linguistically diverse' (particularly when reduced to the acronym CALD) and 'new and emerging communities'. As Dr Susan Armstrong has noted, the 'language we use to talk about cultural diversity can tend to work against that very objective'.²⁷ However, as these are the terms currently used to inform policy development and service provision in Australia, Council has used them in this report.²⁸

Council is conscious of the power of political authorities to ascribe meaning to cultural minority groups, and the scope for representations of cultural and religious practices to construct culture as 'fixed, homogenous and uncontested among its members', reinforcing oppressive stereotypes and undermining the autonomy of individuals within communities.²⁹ Numerous instances arose during Council's consultations which presented this potential, including discussions of parenting approaches, family violence and religious divorce. As far as possible, Council has aimed to ensure clarity of communication and an understanding of the cultural meanings that the individual members of minority communities it met with ascribed to their own lives and practices.

In exploring the issues raised by the Terms of Reference, Council has endeavoured to consult as widely as possible with relevant communities and their representatives, within the limited timeframe available. In doing so, Council has been reminded of the time needed to establish trust with people from new and emerging communities, particularly where mistrust of government officials and 'consultation fatigue' are features.³⁰ Council is extremely grateful to the organisations and representatives who were willing to facilitate and assist us to meet directly with community leaders and groups.

Finally, Council's investigations in response to this reference have highlighted the multiplicity of potential issues that are affected by its terms. It was not possible within the timeframe and the context of this report to do justice to this complexity. In this respect, as noted above, Council's focus has been guided by the concerns and priorities articulated by community members and their representatives and advocates.

1.1 Policy Context for the Reference

Australia has one of the most ethnically diverse populations in the world, with a long tradition of nation-building through immigration.³¹ At the time of the 2006 Census, one in four Australians was born overseas, 44 per cent were born overseas or had a parent who was, and four million spoke a language other than English (LOTE).³² By 30 June 2010, data on the estimated resident population of Australia (22.3 million people) revealed that 27 per cent of the population was born overseas (6.0 million people).³³ Australians come from over 200 different countries of birth, speak up to 400 different languages and follow more than 100 religious faiths.³⁴ In coming years, Australia's population is likely to remain strongly multicultural, multi-faith and multi-lingual,³⁵ with migration accounting for more than half of our annual population growth.³⁶

Humanitarian entrants and refugees are a significant part of this picture. Since July 2006, some 40,500 refugees and humanitarian entrants have been resettled in Australia,³⁷ and around 14,000 Humanitarian Program visas are granted each year.³⁸ Australia's Humanitarian Program includes two categories of permanent visa: Refugee and Special Humanitarian Program (SHP). The term 'refugee' refers to:

*Any person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his/her nationality and is unable, or owing to such fear, is unwilling to avail himself/herself of the protection of that country.*³⁹

The majority of applicants considered under this category are identified and referred to Australia for resettlement by the United Nations High Commissioner for Refugees (UNHCR). The SHP visa applies to people outside their home country who are subject to substantial discrimination amounting to a gross violation of human rights in their home country. A proposer – who is an Australian citizen, permanent resident or eligible New Zealand citizen, or an organisation that is based in Australia – must support the application for entry under the SHP.

Humanitarian entrants represent the smallest of three broad streams of permanent migration intake in Australia. The other two streams – skilled migrants and family migrants – are generally people with functional English language skills and who, by virtue of their employment skills (in the former category) or their family sponsors (in the latter category), are expected to negotiate Australia's social and economic systems with relatively little assistance from government.⁴⁰ In contrast, humanitarian entrants arrive in Australia having experienced trauma and dislocation from their home country, and do not have the same level of English proficiency as other migrant groups.⁴¹

For these reasons, the Australian Government provides humanitarian entrants with a range of settlement services designed to assist them to participate socially and economically in the broader Australian community. These include English language

tuition through the Adult Migrant Education Program (AMEP), on-site and telephone interpreting and translating through the Translating and Interpreting Service (TIS), and settlement support services through the Humanitarian Settlement Services (HSS) program. The HSS program provides a range of services, including on-arrival reception, assistance with accommodation, assistance to register with Centrelink, Medicare, banks, schools and an AMEP provider, and referral to relevant health and employment services.⁴² Refugee and migrant support agencies also provide short-term torture and trauma counselling⁴³ and a range of capacity building and family support services, including intensive ‘wrap around’ services for young mothers and babies,⁴⁴ and school based education services for young people from refugee backgrounds.⁴⁵

In addition to funding these services, successive Australian Governments have developed policies aimed at strengthening inclusion for Australians from ethnically diverse backgrounds.⁴⁶ In 2010 the Australian Government responded to the Australian Multicultural Advisory Council’s recommendations for new strategies to ‘address the particular needs of vulnerable migrants and refugees’ by committing itself to strengthening its access and equity policies,⁴⁷ and establishing a new Australian Multicultural Council with a research and advisory role to help develop Australia’s multicultural policies.⁴⁸ Together with its *Social Inclusion Agenda* for new arrivals,⁴⁹ the development of a new National Human Rights Action Plan,⁵⁰ and the Department of Immigration and Citizenship’s *Diversity and Social Cohesion Program*,⁵¹ these developments build on earlier multicultural policies dating back to the Whitlam Government.⁵²

Central to this evolution has been increasing recognition of the need to enhance access to government services for culturally and linguistically diverse communities and for culturally responsive service delivery within mainstream services.⁵³ In order to address these needs, the Australian Government has developed an *Access and Equity Framework*, which aims to ensure the development and delivery of programs and services ‘are based on a sound knowledge of the needs, circumstances and cultural and other characteristics of clients’ and foster collaborative service responses between government and migrant communities.⁵⁴ The Federation of Ethnic Communities’ Councils of Australia (FECCA), the peak national body representing Australians from culturally and linguistically diverse backgrounds, has been tasked with monitoring the accessibility of government services by these communities.⁵⁵

These policy initiatives have focused on access to government services generally, particularly in the areas of health, employment, housing and family and child support. Until recently, relatively little policy attention has been paid to ensuring access to the civil justice system for people from culturally and linguistically diverse backgrounds. Research conducted by the Law and Justice Foundation of New South Wales in 2006 showed that while disadvantaged groups are more likely to have legal issues than others, they are less likely to seek the assistance of legal services.⁵⁶ Other recent studies suggest that this may be amplified for refugee and humanitarian entrant families by a series of additional difficulties, including language barriers, racism and a fear of authorities.⁵⁷ In response to these concerns, the Australian Government’s *Strategic Framework* provides an agenda for reform to support access to justice for all Australians, while recognising the diversity of people seeking assistance from the civil justice system.⁵⁸ The principles set out in the *Strategic Framework* are designed to ensure that new initiatives and policy reforms best target available resources to improve

access to justice.⁵⁹ The key principles to be applied by policy decision makers are accessibility, appropriateness, equity, efficiency and effectiveness.⁶⁰

Most recently, concern about the lack of access to legal services for culturally and linguistically diverse communities has begun to focus on the family law system. FECCA's latest consultation report notes that among the 'new issues that have emerged' in the past year were complaints 'about family law practices being culturally insensitive'.⁶¹ Existing research shows that the significant settlement challenges facing recently arrived families place strain on relationships and increase the likelihood of family breakdown and the need for legal and family support services,⁶² and suggests that family law advice is a common area of legal need.⁶³ Recent studies also indicate rising concerns about family violence within new and emerging communities, as changing gender roles within families following settlement in Australia threaten traditional power relations and family stability.⁶⁴ There is also a growing body of consultation-based research suggesting that families with a refugee background are over-represented in child protection notifications.⁶⁵ Despite these concerns, the available data suggests that people from culturally and linguistically diverse communities often struggle to find a visible entry point into the legal system,⁶⁶ and are under-represented as users of Family Relationship Centres.⁶⁷

Since Council explored the interaction of Australian family law and cultural and religious divorce laws in 2001,⁶⁸ the issue of accommodation of religious family law norms has attracted considerable attention in other Western jurisdictions. Reflecting recent developments in Britain and Canada, where the question of legal recognition of religious tribunals has gained momentum,⁶⁹ Australia has also seen increasing debate about this issue.⁷⁰ Over the past decade there has also been growing suggestion of recognition of cultural diversity within Australian courts, including debates about the right of those participating in court proceedings to give evidence wearing a burqa or niqab, and questions about sensitivity to cultural and faith-based practices such as observance of prayer-times.⁷¹ In the family law context, this issue has been coupled with scholarly critiques of the content of the law, which suggests the need for greater recognition of the diversity of family practices,⁷² and by calls for the development of more culturally responsive models of dispute resolution.⁷³

Initiatives across the family law service system have responded to these demands in recent years. The Family Court of Australia (the Family Court) gained considerable experience of engaging with culturally and linguistically diverse clients with the development of its *Living in Harmony Partnership* program, which established relationships with six new and emerging communities in four States in 2004.⁷⁴ Community and women's legal services in Australia also have a long history of engaging with migrant and refugee communities and working collaboratively with migrant settlement service providers, including the development of co-ordinated service delivery approaches across the legal and migrant services systems.⁷⁵ Legal Aid Commissions have been at the forefront of designing legal education programs for culturally diverse communities,⁷⁶ building on the pioneering work of the Legal Services Commission in South Australia.⁷⁷ Family relationships services have also developed a range of locally based partnerships with migrant organisations and communities,⁷⁸ including education strategies and referral practices as part of the Family Relationships Services for Humanitarian Entrants (FRSHE) program.⁷⁹

To date, however, there has been little investigation of the meaning of Australia's cultural diversity for the family law system, or of the gaps in service provision for families from culturally diverse backgrounds. While there is growing evidence that clients from new and emerging communities are disadvantaged when seeking to access legal services, there is limited knowledge of how organisations across the legal and family relationships service sectors respond to these problems, or the challenges they face in doing so. Council's reference was designed to consider these issues.⁸⁰

1.2 Australia's Culturally and Linguistically Diverse Communities

Definitions of cultural and linguistic diversity are broad and often encompass positive understanding and sharing between cultures of differences such as language, dress, traditions, food, societal structures, art and religion.⁸¹ Measures of cultural and linguistic diversity are generally less inclusive, narrowing the concept to those who are either immigrants or refugees from a non-English speaking country. The Australian Psychological Society, for example, defines a person from a culturally and linguistic diverse background as someone meeting one or more of the following criteria:

- whose first language is one other than English
- whose family background involves migration from a non-English speaking country
- who moved to Australia as an immigrant or refugee from a non-English speaking country, or
- who is a child of migrant parents from a non-English speaking country.⁸²

The term has attracted criticism from some quarters for grouping together 'people who are relatively advantaged and disadvantaged'.⁸³ For example, the needs of refugees or humanitarian entrants who have little or no choice about their settlement destination, and who may have spent years living in a refugee camp after fleeing civil war in their home country are likely to be very different to those of migrants who make a conscious decision to relocate to Australia. Further, needs of second or third generation migrant families may also be different to those of families in newly arrived communities. Despite these problematic issues, the term is widely used in research and policy discourse. Within this context, it is generally accepted as a useful category because 'it draws attention to both the linguistic and cultural characteristics of minority ethnic groups' and 'can highlight that any barriers or disadvantages they experience also relate to these two factors'.⁸⁴

Accordingly, after much consultation, Council's report focuses predominantly on the issues and experiences of 'newly arrived communities' and 'new and emerging communities'. Council recognises that similar concerns have been raised about these terms and their tendency to homogenise diversity.⁸⁵ Although the two terms connote different populations – the former encompassing all migrants who have arrived in Australia in the last five years and the latter more narrowly focused on refugee and humanitarian entrants – they are often used interchangeably. There are also many overlaps between newly arrived and established communities. For example, some new arrivals, such as people from Somalia, Eritrea and Ethiopia, are joining communities established 15 years ago. The application of the terms can also be misleading. While the Chin and Karen communities from Burma, whose numbers have increased very quickly over the past 4 to 5 years, are typically referred to as a new and emerging

community, others, like the Sudanese community, are not referred to as such despite settlement and integration being very much an ongoing process. However, as Maria Dimopoulos has noted, these terms, like culturally and linguistically diverse, are widely used by researchers, policy-makers and service providers,⁸⁶ and it is within this context that they are adopted in this report.

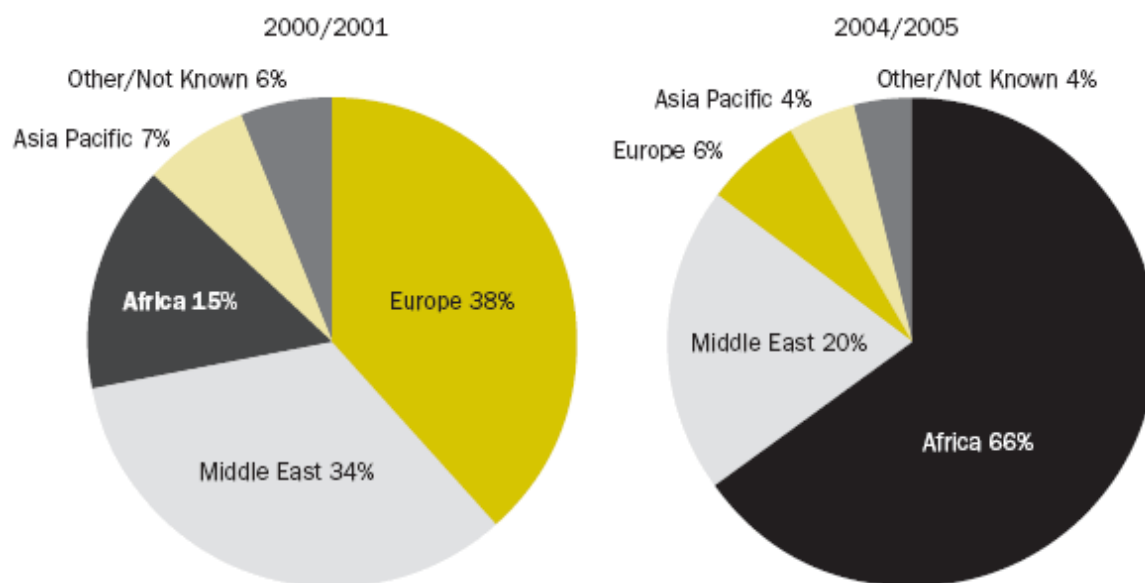
As noted in the previous section, Australia's population is strongly multicultural. Recent data suggest that around 27 per cent of Australia's population was born overseas.⁸⁷ The 2006 census showed that around 14 per cent were born in a country where English was not the main language, and that 16 per cent spoke a LOTE at home.⁸⁸ The main LOTE spoken at home were Italian (10.1% of LOTE speakers), Greek (8%), Cantonese (7.8%), Arabic (7.7%), Mandarin (7%) and Vietnamese (6.2%).⁸⁹ However, there are significant differences in English language proficiency amongst these groups. While only 2 per cent of Italian and Greek speakers aged 25-44 spoke English 'not well or not at all', 18 per cent of Cantonese speaking Australians and 13 per cent of Arabic speaking Australians in this age group identified as not being able to speak English well or at all.⁹⁰

In 2009-10, 107,868 migrants arrived in Australia under the skilled migration scheme (accounting for 44% of all permanent arrivals that year), 60,254 people arrived as part of the family migration stream (accounting for 27% of all arrivals), and 13,770 people arrived under the Humanitarian Program (accounting for 7% of arrivals), including 6003 people with refugee visas.⁹¹ Most of these migrants settled in the most populous States of Australia: in 2009-10, 66,000 migrants settled in New South Wales, 60,400 settled in Victoria and 39,700 settled in Queensland.⁹² However, the highest population turnover due to overseas migration (gross overseas flows in relation to size of the relative population) was in the Northern Territory and Western Australia.⁹³ Australia's migrant populations are concentrated in major urban areas; recent arrivals have higher tendency than more established migrants to live in the capital cities.⁹⁴

The majority of arrivals under the skilled migration scheme were born in the United Kingdom, India, China and South Africa. They are predominantly professionals, technicians and trades workers, and tend to settle in Australia with their spouse and children.⁹⁵ People born in the United Kingdom continue to be the largest group of overseas-born residents, accounting for 5.3 per cent of Australia's total population at 30 June 2010. People born in New Zealand accounted for 2.4 per cent of Australia's total population, followed by persons born in China (1.7%), India (1.5%) and Italy (1.0%).⁹⁶

Over the past decade, however, Australia has seen an increasing number of refugee and humanitarian entrants resettled in Australia, and the main source regions for this migration are Africa and the Middle East.⁹⁷ Between 2001 and 2006, there was a significant increase in the proportion of entrants who came from Africa, the majority of whom were migrants from Southern and Eastern Africa. This shift was reflected in the increase in the proportion of clients seen by services from the Forum of Australian Services for Survivors of Torture and Trauma (FASSTT) who came from Africa, as can be seen below.

Increase in Proportion of FASSTT clients from Africa:

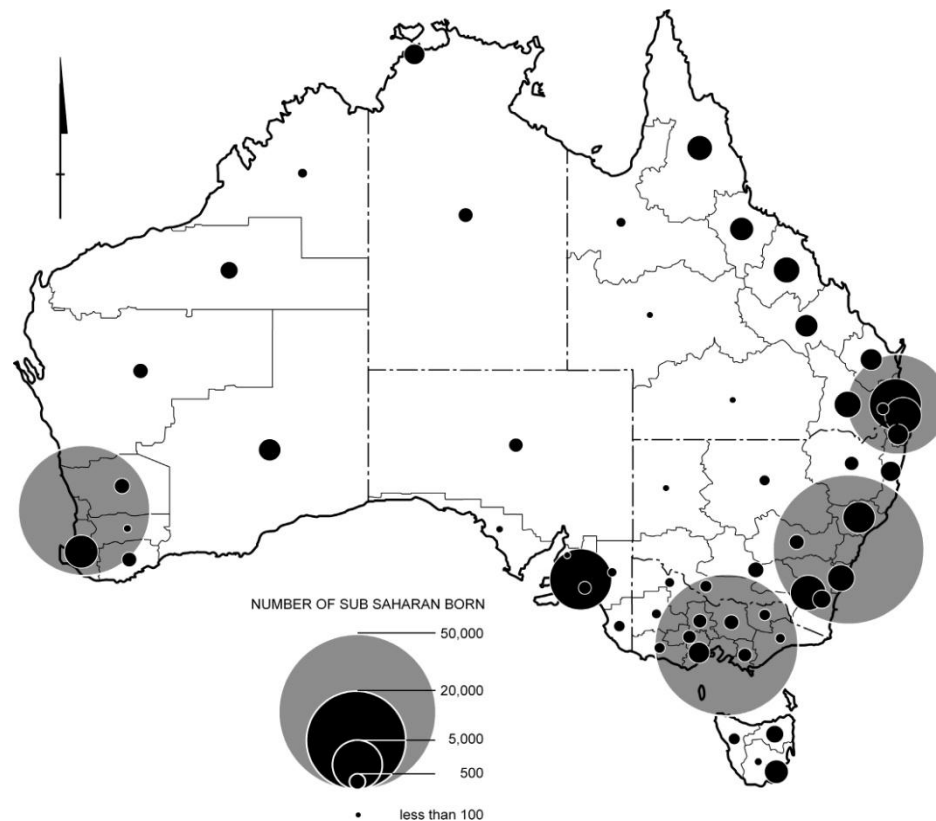


In 2006, African Australians (people living in Australia who were born in Africa) represented 5.6 per cent of Australia's overseas-born population and around 1 per cent of the total population.⁹⁸ By 30 June 2008, children aged 0-14 years living in Australia who had arrived under the Humanitarian Program accounted for almost 1 per cent of all children.⁹⁹ Around one-quarter of these children were Sudanese.¹⁰⁰ Since 2006, Australia has continued to receive large humanitarian intakes from Africa, particularly from Sudan with lesser numbers from Burundi, Liberia, Sierra Leone and the Democratic Republic of Congo, along with refugees and humanitarian entrants from Iraq, Burma and Afghanistan.¹⁰¹

Approximately 60 per cent of African Australians have settled in the capital cities of Melbourne and Sydney.¹⁰² The majority of Australia's Iraq-born population lives in New South Wales (63.1%) and Victoria (26.5%), as do Afghanistan-born Australians (45% in NSW and 31.3% in Victoria) and migrants from Sudan (32.6% in Victoria and 31.4% in NSW). The majority of Burmese-born people live in Western Australia (44.9%) and New South Wales (30.2%). However, the proportion of Australian Africans living in Western Australia (21.4%) was more than double that State's share of the total Australian population (9.9%).¹⁰³ In recent years there have been increased efforts by Federal, State and Local Governments to encourage immigrants to settle in regional areas of Australia, such as Shepparton (where there is a Congolese community) and Mt Gambier (where there is a Burmese community).¹⁰⁴

Australia: Distribution of the Sub-Saharan Africa-born population, 2006

Source: ABS, Table Builder 2006, courtesy of Professor Graeme Hugo's report: *Migration between Africa and Australia: a demographic perspective: Background paper for African Australians: A review of human rights and social inclusion issues* (Australian Human Rights Commission, December 2009).



Some parts of Australia receive relatively small numbers of refugees and humanitarian entrants. In 2010, 165 humanitarian entrants were resettled in the Northern Territory, representing approximately 1.2 per cent of Australia's humanitarian intake.¹⁰⁵ However, these entrants came from 17 different countries including Burma, Bhutan, Afghanistan, Iraq, Iran, the Democratic Republic of Congo, Liberia, Sudan, Togo and Somalia, generating in some cases very small migrant communities. The small number of families living in these communities has particular implications for parents and children when relationships break down, including a high incidence of inter-state relocation.

Australia's new and emerging communities represent not only a diverse range of countries of origin but also a diversity of ethnic groups (including the Chin, Karen, Rohingya, Dinka, Nuer, Shilluk, Azande and Kababish people), languages (including Arabic, Turkish, Farsi, Dinka, Somali, Tigrinya, Dari, Kurdish, Pashto, Assyrian, Nepali, Mong, Hindi and Bhutanese) and religious affiliations (including Islam, Hinduism, Buddhism, Catholicism and Assyrian Apostolic). Like all Australians, the members of new and emerging communities differ according to gender, social class, generation, sexuality and political persuasion.¹⁰⁶

As this level of diversity suggests, it is difficult to do descriptive justice to the complexity of issues involved in examining the present Terms of Reference. In order to convey a sense of some of the key issues facing new and emerging communities with implications for the family law system, a 'snapshot' of Australia's Sudanese community is provided below. Although this case study, taken from the Department of Immigration and Citizenship's *Sudanese Community Profile*,¹⁰⁷ focuses on one particular migrant group, Council's consultations suggest that the experiences and issues described are common to families in many new and emerging communities.

Sudanese Community Profile

Since 2001, as a result of the civil war in Sudan, the vast majority of Sudan-born people arriving in Australia (more than 98%) have been humanitarian entrants and refugees. In the five years from 2001 to 2006, most Sudan-born migrants entered Australia under the SHP, where entrants are 'proposed' by an Australian citizen or permanent resident, and settled close to their family and friends in Australia. The remainder were refugees. The Department of Immigration and Citizenship's settlement figures show that 90 per cent of these migrants initially settled in one of the State or Territory capital cities, predominantly in Victoria and New South Wales. Only 10 per cent of Sudanese arrivals have settled in areas outside a capital city, and these have largely been in regional towns, such as Toowoomba, where there is an already established Sudanese community.

Sudanese Australians reflect a diversity of religious backgrounds and language groups. Of the Sudanese people who arrived in Australia during this period, 83 per cent identified as Christian, 12 per cent as Muslim and 5 per cent identified with another religion or as having no religion. The majority (79%) described their English proficiency as 'nil' or 'poor'. The main languages spoken were Arabic and Dinka. Many, however, were from small ethnic groups who spoke a language with no existing Australian Government 'language code' for recording purposes. As many as 400 languages and dialects are spoken in Sudan.

Many Sudanese people have been living in refugee camps in surrounding countries such as Kenya, Ethiopia and Uganda prior to arriving in Australia, having fled the war in Sudan. Large numbers of Sudanese migrants have lived for many years in camps like Kakuma in northern Kenya, approximately 100 kilometres from the Sudanese border. Most homes in the Kakuma camp, which houses more than 80,000 people in a space of 25 square kilometres, are made of mud brick and constructed by the residents single themselves. Malnutrition is widespread and the quality of education is poor. Apart from some vocational training, further education opportunities are limited. Sexual assault and violence are common, and residents live in fear of violence from other camp residents and from raiders preying on them from outside the camp. Residents are dependent upon the distribution of food aid and there are limited opportunities for them to grow crops or otherwise provide for themselves.

More than 50 per cent of migrants from Sudan arrived as part of a family unit of three or more people, and 20 per cent were part of a family unit of six or more people. Children who arrive in Australia may have been born in the refugee camp and be unfamiliar with any other lifestyle. The stresses of camp life will have added to the trauma many refugees experienced in fleeing their country of birth, and they will face

considerable challenges in adapting to life in Australia, especially if they have been living in a refugee camp for some years. Many former camp residents are unskilled, especially the longer-term residents. Those who do have formal qualifications often find they are not recognised in Australia. Some children are unfamiliar with formal schooling, and moving to a structured environment may be challenging for them. Parents are also unfamiliar with the Australian schooling system, and with engaging with school administration and teachers. Illiteracy is common, particularly among women from rural areas.

Most Sudanese migrants have limited English language skills and require interpreting services. Many who have recently arrived are also unfamiliar with a formal health system and western-style medicine. Traditionally, kinship ties are close in Sudan and involve extended families. Marriages are often arranged and involve payment from the groom's family to the bride's, in cash or property. Traditional Sudanese age and gender roles may also be significantly different from those in Australia, and settlement challenges such as unemployment, differing rates of English acquisition between family members and understanding of Australian laws can cause family friction. A greater sense of freedom in Australia can also cause both inter-generational and gender conflicts within families.

1.3 Family Law in Australia

The Commonwealth Parliament has power under section 51 of the Commonwealth of Australia Constitution Act (the *Constitution*) to legislate for:

- (xxi) marriage; and
- (xxii) divorce and matrimonial causes, and in relation thereto, parental rights and the custody and guardianship of infants.

The first comprehensive use of these powers by the Commonwealth Parliament was the enactment of the *Matrimonial Causes Act 1959* (Cth) (*Matrimonial Causes Act*), which came into operation in 1961, and the *Marriage Act 1961* (Cth) (*Marriage Act*). The *Matrimonial Causes Act* was replaced by the *Family Law Act 1975* (Cth) (*Family Law Act*), which came into operation on 5 January 1976. The *Family Law Act* replaced the list of largely fault-based grounds for divorce, such as adultery and desertion of the marriage,¹⁰⁸ which had been central to the *Matrimonial Causes Act*, with a single no-fault divorce ground based on proof of separation for 12 months.¹⁰⁹ The no-fault principle continues to underpin divorce applications in Australia. The *Marriage Act* provides the courts with jurisdiction to issue a declaration of nullity where a party's consent to marriage was obtained by duress or fraud, or where a party is not of marriageable age.¹¹⁰

The *Family Law Act* also contains frameworks for determining ancillary matters, such as orders relating to children and division of property. Reflecting the terms of section 51 of the *Constitution*, the *Family Law Act* originally dealt with petitions for dissolution of marriage and applications for child custody (as it was then called), child maintenance, spousal maintenance and property division in relation to married couples only. Over the years, its jurisdiction has been extended to include the resolution of disputes about children from unmarried relationships and applications for property division and financial maintenance by cohabiting unmarried couples. As a result of

referrals of power from the Australian States in the 1980s,¹¹¹ the provisions of Part VII of the *Family Law Act*, which deals with parenting orders, were extended in 1988 (and, for Queensland, in 1990) to include all children other than those presently under the care of a State child welfare authority.¹¹²

On 1 July 2006, the *Family Law Amendment (Shared Parental Responsibility) Act 2006* amended the *Family Law Act* to implement a raft of significant changes designed to shift the way disputes over children are resolved. Those changes included a requirement for parties to attempt family dispute resolution before applying for a parenting order, with certain exceptions,¹¹³ a legal presumption of equal shared parental responsibility and, where an order is made for equal shared parental responsibility, consideration of equal parenting time or substantial and significant time with both parents.¹¹⁴ The presumption does not apply where there are reasonable grounds to believe there has been family violence or child abuse.¹¹⁵

A financial settlement regime for separating unmarried couples who have cohabited, broadly mirroring the existing regime for married couples in Part VIII of the *Family Law Act*, was enacted in 2008.¹¹⁶

A number of federal family law matters are not governed by the *Family Law Act*. As a result of the enactment in the late 1980s of the *Child Support (Registration and Collection) Act 1988* (Cth) and the *Child Support (Assessment) Act 1989* (Cth), primary responsibility for monitoring arrangements for the financial support of children post-separation is vested in the Child Support Agency rather than the courts.¹¹⁷

A number of issues affecting families are regulated by State legislation, including child protection, youth offending, adoption, assisted reproductive technologies, and domestic and family violence. Child protection legislation in each State provides the relevant child welfare department with authority to seek the removal of children from their families where there is evidence the child has suffered, or is likely to suffer, significant physical, emotional or psychological harm and the child's parents have not protected or are unable to protect the child from that harm.¹¹⁸ State-based family violence statutes also empower the police to intervene and remove family members (usually the perpetrator) from the family home where one family member has been violent or has threatened the safety of another family member.¹¹⁹

As this indicates, the law governing family relationships in Australia is complex, fragmented and constantly evolving. These characteristics are likely to have implications for its accessibility and comprehensibility to families from culturally and linguistically diverse backgrounds. For example, families who have recently arrived in Australia may not understand the jurisdictional divide between child protection law and the law governing post-separation parenting. Australian family law concepts may also be very different to those of the family's country of origin. As noted, divorce applications in Australia need no proof of marital fault, and may be initiated by either party to the marriage, an approach that is at odds with the law governing divorce in the countries of origin of some culturally and linguistically diverse communities. Further, Australia's family courts are civil jurisdictions with no power to grant or order a religious divorce. The *Family Law Act* frameworks for allocating responsibility for the care of children and altering the parties' interests in their property also involve concepts that may be unfamiliar to families from newly arrived communities, such as 'equal

shared parental responsibility’ for children¹²⁰ and recognition of ‘homemaker’ contributions when dividing property.¹²¹

The *Family Law Act* contains several provisions that specifically refer to the ‘culture’ and ‘background’ of the parties.¹²² These are located in Part VII of the *Family Law Act*, which deals with parenting orders. At present, there is no reference to cultural considerations in the sections of the Act dealing with financial disputes, and the ‘void marriage’ provisions of the *Marriage Act* contain no explicit provisions directing the courts to have regard to the parties’ cultural norms or backgrounds in determining nullity applications.

1.4 The Family Law System

The federal family law system comprises an array of service organisations and professional groups. Key service providers include the family law courts, family relationship services providers (including Family Relationship Centres), Legal Aid Commissions, Community Legal Centres, the Child Support Agency and the private legal profession.

The Family Support Program

The Family Support Program (FSP) is a national program that provides funding to non-government organisations to support families and children, especially those who are vulnerable and in areas of disadvantage. It provides early intervention and preventative family support focusing on family relationships, parenting and family law services to help people navigate life events. It also aims to protect children who are at risk of neglect or abuse. There are two streams under the FSP:

Family and Children’s Services stream funded by the Department of Families, Housing, Community Services and Indigenous Affairs include:

- **Communities for Children Services:** including Indigenous Parenting Support Services to provide prevention and early intervention services to families with children up to age 12 and who are at risk of disadvantage;
- **Family and Relationship Services:** dealing with adult relationship issues, counselling for young people and children, and broader parenting support;
- **Specialist Services:** which have particular knowledge and skills for dealing with vulnerable families affected by issues such as drugs, violence and trauma; and
- **Community Playgroups:** to support parents with young children.

Family Law Services stream funded by the Attorney-General’s Department includes Family Relationship Centres, Family Dispute Resolution, Regional Family Dispute Resolution, Children’s Contact Services, Parenting Orders Program, Post Separation Cooperative Parenting, Supporting Children after Separation Program and Counselling.

The Attorney-General’s Department also funds the Family Relationship Advice Line (FRAL) and Family Relationships Online (FRO) which are national services to support the two streams.

Family Relationship Centres

Family Relationship Centres provide information and advice for families at all stages in their life. The 65 Family Relationship Centres located around Australia can provide families experiencing separation with information, advice and dispute resolution services to help them to reach agreement on parenting arrangements.¹²³ They also play a key role in referring individuals, couples and families to a range of other support services.

The Family Relationship Advice Line and Family Relationships Online

The FRAL is a national telephone service established to assist families affected by relationship or separation issues, and provides free information on family relationship issues and advice on parenting arrangements after separation. It can refer callers to local services, such as Family Relationship Centres, that can provide further assistance. It includes a separate Legal Advice Service which provides families going through separation and workers in FSP post separation services with simple legal advice and information. In addition, the Telephone Dispute Resolution Service provides clients with non face-to-face dispute resolution to help them to reach agreement on parenting arrangements.

The FRO provides information about family relationships and separation, and helps people find services across Australia. It also allows families to find out about a range of services that can assist them to manage relationship issues, including agreeing on appropriate arrangements for children after parents separate.

Family Dispute Resolution Services

Family dispute resolution is defined by the *Family Law Act* as a process conducted by an accredited independent practitioner or practitioners to assist people affected, or likely to be affected, by separation or divorce, to resolve some or all of their disputes with each other.¹²⁴ Examples of family dispute resolution processes include facilitation, mediation, conciliation and negotiation. The aim of family dispute resolution is to assist separating families to resolve disputes in the best interests of their children as an alternative to going to court where this is assessed as a suitable option for the parties. Before proceeding to provide family dispute resolution, the *Family Law (Family Dispute Resolution Practitioners) Regulations 2008* (Cth) (the *FDRP Regulations*) require family dispute resolution practitioners to conduct an intake assessment and be satisfied that family dispute resolution is appropriate.

Since 1 July 2007, it has been a requirement that anyone who wishes to file a court application for parenting orders must first attempt family dispute resolution. There are certain exemptions to this requirement, including where there are reasonable grounds to believe that there has been, or there is a risk of, family violence or abuse of a child, or where the matter is urgent.¹²⁵

Under Regulation 25 of the *FDRP Regulations*, a family dispute resolution practitioner must consider whether it is appropriate for the parties to participate in the family dispute resolution process. This includes being satisfied that neither party's ability to

negotiate freely is affected by a history of family violence, inequality of bargaining power, or by their own or the other party's emotional, psychological or physical health. Parties engaging in family dispute resolution are required to make a 'genuine effort' to resolve their dispute. Once the family dispute resolution process is concluded, either successfully or unsuccessfully, or if a party has declined to participate or the practitioner has determined that it is inappropriate to conduct or to continue family dispute resolution, the practitioner can issue the parties with a certificate under section 60I of the *Family Law Act*.¹²⁶ A certificate under section 60I must be filed with any application for a parenting order unless one of the exemptions applies.¹²⁷

Family dispute resolution services are offered in approximately 150 locations across Australia. There are also 42 regional family dispute resolution services nationally, which are specially designed to meet the particular needs of regional communities, providing a range of services to help separating families resolve disputes and reach agreement on parenting arrangements as well as finances and property.

There are approximately 1550 accredited family dispute resolution practitioners providing services in locations throughout Australia. Approximately 1100 of these provide services in government funded organisations, while 450 are private practitioners (some of whom may also provide services to government funded organisations).¹²⁸

Community Legal Centres

Community Legal Centres are community-based, independent not-for-profit organisations that provide a range of legal and related assistance services to people who are disadvantaged, those with special needs and those whose interests should be protected as a matter of public policy. Community Legal Centres complement services provided by Legal Aid Commissions, Indigenous legal assistance service providers and the private legal profession. Many Community Legal Centres provide generalist legal services to their respective communities. Specialist legal services work in particular areas of law such as child support, credit and debt, welfare rights, disability discrimination, tenancy, or immigration. Other Community Legal Centres provide targeted specialised services to young people, older people, the homeless, women, or to Aboriginal and Torres Strait Islander women and their children.

The Community Legal Centre program provides specific funding for dedicated:

- women's legal services
- Aboriginal and Torres Strait Islander women's legal services
- Indigenous women's projects (attached to Community Legal Centres), and
- rural women's outreach projects (attached to Community Legal Centres).

The women-specific services provide support to women, often providing State-wide services through telephone advice lines. They also undertake community legal education, law reform activities and outreach work. Of the women's services provided, about 45 per cent of matters relate to federal family law.

Legal Aid Commissions

Legal Aid Commissions are independent statutory bodies established under State and Territory legislation. They receive funding from the Australian Government and their respective State or Territory Government to provide legal assistance services, including in relation to family law. In 2009-10 Legal Aid Commissions across Australia approved over 32,000 applications for legal assistance cases in family law matters. Commonwealth funding is provided through the *National Partnership Agreement on Legal Assistance Services (National Partnership Agreement)*.¹²⁹ The *National Partnership Agreement* came into effect on 1 July 2010 and is for a period of four years. The primary function of commissions is to provide legal assistance to people who are unable to afford private legal services. Services provided include:

- community legal education, information, advice and minor assistance (both face-to-face and telephone advice services)
- advocacy, representation, casework and other litigation assistance
- duty lawyer services (immediate advocacy assistance in local courts), including in the Federal Magistrates Court and the Family Court
- the appointment of independent children's lawyers in accordance with requests from the Federal Magistrates Court and the Family Court, and
- family dispute resolution services.

Legal aid services are provided either by salaried lawyers within the commissions, or by private practitioners to whom the commissions refer legal aid clients. Commissions have established guidelines to determine the eligibility of an applicant for legal aid. They also have established priorities for different legal aid matters. Commonwealth service priorities are set out in Schedule A of the *National Partnership Agreement*.

The Private Legal Profession

The majority of people who seek legal advice or representation in relation to family law issues do so from members of the private legal profession. Generally clients pay for this service, but some lawyers in private practice will act for clients who are funded by legal aid or will act on a pro bono basis. Suitably experienced and qualified private practitioners can be appointed as independent children's lawyers in family law proceedings, and this work is funded by legal aid.¹³⁰

Family lawyers will, where appropriate, encourage their clients to reach agreement on family law issues outside of the courts, and may refer clients to other services where this will assist them. Many family law disputes are resolved with the assistance of lawyers acting for each of the parties. If an agreement is reached, lawyers will often prepare an Application for Consent Orders so that the agreement reached is binding and enforceable. Where a dispute cannot be resolved by negotiation, either because of entrenched conflict or because the issues are such that recourse to the courts is to be preferred, lawyers will guide their client through the court process and ensure that their client's case is properly presented. The majority of applications filed in court are resolved during the course of the proceedings with the assistance of the parties' lawyers, but some cases ultimately require judicial determination.

All practising lawyers, whether in private practice or employed elsewhere, are required to undertake continuing legal education. Most States offer specialist accreditation in family law, and accredited specialists have additional ongoing education requirements specific to family law. In order to obtain specialist accreditation, practitioners must

satisfy their professional body that they have substantial experience in family law and must pass a formal assessment of their professional skills and their knowledge of family law practice and procedure.

Legal Assistance Partnerships

The Attorney-General's Department provides funding for collaboration between Family Relationship Centres, Community Legal Centres and Legal Aid Commissions for legal assistance services. The funding enables legal assistance services to provide a range of free services to clients of Family Relationship Centres, including:

- provision of legal information and education to Family Relationship Centre clients on family law
- individual legal advice for Family Relationship Centre clients
- legal assistance before, during and following family dispute resolution as recommended by and in partnership with Family Relationship Centres
- assistance with drafting parenting agreements and consent orders, and
- training and professional development of staff in Family Relationship Centres.

Family Law Pathways Networks

The Australian Government funds Family Law Pathways Networks around Australia. Each Family Law Pathways Network comprises professionals operating within the family law system who focus on information-sharing and networking opportunities in a local area; and develop and maintain cross-sector training to help build stronger working relationships across the family law system.

Under current funding agreements, Family Law Pathways Networks are required to establish and maintain relationships with organisations delivering services to culturally and linguistically diverse clients.

The Family Law Pathways Networks aim to contribute to the family law system by:

- assisting with maintaining appropriate referral mechanisms between locally based organisations operating as part of or alongside the family law system, and
- developing and maintaining a shared understanding of the roles of Family Law Pathways Network members and key organisations operating as part of or alongside the family law system and developing and maintaining awareness of products, services and training available to Family Law Pathways Network members.

The Family Law Courts

The family law courts are the Family Court and the Federal Magistrates Court of Australia. Both courts have jurisdiction in family law matters in all States and Territories except Western Australia, which has its own Family Court, the Family Court of Western Australia.¹³¹ The courts are independent, but cooperate to provide streamlined access to the federal family law system. The Family Court hears appeals and deals with the more complex cases at first instance. The Federal Magistrates Court hears first instance matters under the *Family Law Act*, as well as having jurisdiction in other federal law matters, such as bankruptcy and migration. The Australian Institute of Family Studies evaluation of the family law reforms indicated that by 2008-09, about

14 per cent of applications for final orders in children's matters were made in the Family Court and about 76 per cent in the Federal Magistrates Court.¹³² The proportion of filings for final orders made in the Family Court of Western Australia has remained constant at 10 per cent.¹³³ The Family Court of Western Australia exercises jurisdiction under the *Family Law Act* in relation to nuptial matters and the *Family Court Act 1997* (WA) in relation to ex-nuptial matters. Appeals from this court are heard by the Full Court of the Family Court.

1.5 Approach to Addressing the Terms of Reference

In relation to culturally and linguistically diverse communities the Terms of Reference required the Council to consider:

- i. ways in which the family law system (courts, legal assistance and family relationship services) meets client needs
- ii. whether there are ways the family law system can better meet client needs, including ways of engaging these clients in the family law system, and
- iii. what considerations are taken into account when applying the *Family Law Act* to clients of these communities.

In keeping with the *Strategic Framework* principles, Council adopted a solution-focused approach to addressing these issues, with an emphasis on identifying positive strategies for engagement and inclusion without minimising the evidence of disadvantage to clients and families from culturally and linguistically backgrounds.¹³⁴ Given the complexity of the subject matter and the diversity of relevant communities in Australia, Council aimed to gather information from a variety of sources. In doing so, Council relied on a range of data collection methods, including a review of relevant literature and recent empirical studies, meetings with community groups and representatives, consultations with migrant and refugee support services and service providers within the family law system, and a review of relevant reported decisions by the family law courts.

The Terms of Reference specifically required Council to consult with representatives of culturally and linguistically diverse communities. Council endeavoured to consult as widely as possible, within the timeframe available, with the aim of gathering multiple viewpoints on the issues raised by the Terms of Reference. A list of the consultations, including meetings with community groups, migrant service organisations and service providers within the family law system, is **Appendix A**.

A general call for submissions was posted on the Family Law Council website and specific invitations to make submissions were sent to migrant and family law organisations. A list of the submissions received by Council is **Appendix B**. Council also conducted an extensive literature review, including a review of recent consultation-based studies of new and emerging communities and research on access to justice issues in Australia. A list of **References** is provided at the conclusion of the report.

Included in Council's Terms of Reference is the question 'what considerations are taken into account when applying the *Family Law Act* to clients of [culturally and

linguistically diverse] communities'. Council gathered and analysed a sample of 177 reported cases decided since 2007 that were listed on AustLII and the websites of the family law courts in which an issue of cultural diversity was raised. One hundred and sixty seven of these were contested parenting disputes. The list of cases is **Appendix C**.

Council also sought input from family law practitioners who work with clients from culturally and linguistically diverse backgrounds, by inviting them to participate in an on-line survey. The invitation to participate in the survey was disseminated through the following organisations in August 2011:

- Family Law Section of the Law Council of Australia
- Law Society of New South Wales
- Family Law Section of the Law Institute of Victoria
- Family Law Practitioners Association of Western Australia
- Family Law Practitioners Association of Queensland, and
- Family Law Committee of the Law Society of South Australia.

The survey questions drew on the issues raised in the consultations and submissions and focused on gathering information about practitioners' understanding of the barriers and problems faced by clients from culturally and linguistically diverse backgrounds when interacting with the Australian family law system, and the extent to which these differ from those experienced by clients generally. One hundred and twenty eight practitioners completed the survey, 112 had a predominantly family law practice (family law comprised more than 50% of their work). Most respondents (74%) worked in a legal practice located in a capital city; 21 per cent were based in a regional city and 4 per cent were located in a rural town.

2. Barriers to Access for People from Culturally and Linguistically Diverse Backgrounds

2.1 Newly Arrived Communities and Family Law System Needs

Before considering how the family law system might better respond to the needs of clients from culturally and linguistically diverse backgrounds, Council needed to consider whether a need for greater access to the family law system by families from these communities exists. As noted in Chapter 1, the available data suggest that people from culturally diverse backgrounds are under-represented as users of the family law system's services.¹³⁵ Council needed to consider the possibility that this profile reflects a preference among members of these communities, particularly those who have recently arrived in this country, to resolve family problems 'privately' with the assistance of extended family and community or religious leaders. Similar considerations needed to be explored in relation to legal services, including the possibility that the need for legal advice is a low priority for newly arrived families, where other needs, such as housing and employment, are more pressing.

The strong view expressed in meetings with community representatives and leaders was that families in these communities have both family relationship and family law needs, and would like to be able to access legal, counselling and dispute resolution services. Whilst many people spoke about the important role of extended family and community and religious leaders in helping couples to resolve family problems, and emphasised the importance of culture specific systems of conflict resolution, a key message was that there is a need for people from new and emerging communities to have equality of access to the services of the Australian family law system. As noted in Chapter 1, there are a number of factors associated with resettlement that pose serious challenges to the stability of family relationships, including the impact of long periods of displacement prior to arriving in Australia, and the stress of adapting to a new environment and changes to family roles and responsibilities, such as the move from a collectivist society to one with a stronger focus on the individual and the nuclear family.¹³⁶ A particular concern voiced repeatedly by community members was the high rate of intergenerational conflict within newly arrived communities, which can lead to inter-parent conflict and marriage breakdown.¹³⁷ According to a recent literature review conducted for the Australian Human Rights Commission, family disintegration is 'one of the most significant causes of distress' reported by refugee background families.¹³⁸

The experience of refugee support services suggests that the needs of newly arrived communities 'begin to correlate strongly' with the services provided by mainstream relationship services as families move through the resettlement process.¹³⁹ However, community members and service providers noted that the need for family law services among these communities is common even in the earliest months of resettlement. Council heard that some legal services within the family law system are dealing with increasing numbers of inquiries for information about divorce and separation from families who are still in detention, and from women on temporary partner visas.¹⁴⁰ Recent research also indicates a growing concern within refugee background communities about family violence, as changing gender roles within families following settlement in Australia threaten traditional power relations.¹⁴¹

Although the evidence base on violence against immigrant and refugee women in Australia has been described as ‘seriously lacking’,¹⁴² the intake statistics of some domestic violence services indicate that women from culturally and linguistically diverse backgrounds are over-represented as clients,¹⁴³ and recent studies show that advice about family violence is among the areas of legal need most frequently requested by people from migrant and refugee communities.¹⁴⁴ As noted, Council’s consultations suggest that while some members of cultural and faith-based communities prefer, or feel obliged, to use community or religious forms of dispute resolution (see 2.2.3), there appears to be consensus among provider and community representatives that ‘a more representative proportion’ of people from culturally and linguistically diverse backgrounds would access the family law system’s services if present barriers to their use were addressed.¹⁴⁵

Reflecting on these patterns, community groups emphasised the need for both specialist family law services for culturally and linguistically diverse communities and culturally responsive mainstream services, and for greater education about Australian family law and services as part of the resettlement process. A range of responses to the needs of culturally and linguistically diverse communities was suggested during consultations, including proposals for community-based legal literacy programs, culturally appropriate counselling services and culturally responsive mediation processes, specialist Family Relationship Centres, culturally responsive court processes – including the provision of court-based Community Support Workers and Court Network personnel – traineeships to increase the numbers of bilingual and bicultural family law professionals, better integration of settlement services and family law services and the development of Community Advisory Groups to inform the design of family law services.

2.2 Barriers to Effective use of the Family Law System

The material gathered for this reference points to a range of factors that operate in combination to impede the ability of people from culturally and linguistically diverse backgrounds to access the services of the family law system. These include a lack of knowledge about the law and a lack of awareness of available services, language and literacy barriers, cultural and religious barriers that inhibit help-seeking outside the community, negative perceptions of the courts and family relationships services, social isolation, a lack of collaboration between migrant services and the family law system, a fear of government agencies, a lack of culturally responsive services and bicultural personnel, legislative factors and cost and resource issues.

2.2.1 A lack of knowledge of the law and available services

The need for legal education among newly arrived migrant communities in Australia, including information about court processes and domestic violence laws, is now well documented.¹⁴⁶ Recent research in Australia demonstrates that members of culturally and linguistically diverse communities, particularly those from new and emerging communities, have low levels of understanding of Australian legal norms and processes.¹⁴⁷ This is particularly the case for family law issues, where people may be unaware that what they consider to be a private family matter has a legal dimension. A 2007 report by Women’s Legal Service NSW (WLSNSW) noted that, for many migrant and refugee women:

[t]heir lack of understanding of their own legal rights, or rights as a concept, and their preconceived ideas about what the legal system does based on their own past experiences, means that they just don't turn up on the radar for many of our services.¹⁴⁸

This issue is reflected in a new Department of Immigration and Citizenship requirement that asks AMEP providers to include orientation information about Australian law to migrants who qualify for English language tuition. However, there is no requirement that family law material be included, and Council was told that AMEP teachers tend to focus on housing and employment-related legal issues.¹⁴⁹

One area of high demand for information among newly arrived communities is the law governing child protection. A recurring theme in the consultations and literature is the gap between the level of school-based education about the law provided to children and young people and that offered to adults from migrant backgrounds. Consultations suggest that parents who have recently arrived in Australia may be surprised to learn that the subject of parenting is governed by law, and that the cultural approach to disciplining children that informs Australian laws may be very different to that in their country of origin. This is particularly problematic where families have experienced a long history of displacement and are not familiar with the current Western child development understandings that underpin Australian laws.¹⁵⁰

Consultations and research show that even when people from migrant communities are aware that their problem is governed by law, they may have no knowledge of the available services or avenues for obtaining legal assistance, and may not know who to approach for assistance in order to clarify what rights they have.¹⁵¹ One consequence of this quandary is that women from culturally and linguistically diverse backgrounds often turn to non-legal services for advice, such as health professionals who may not be able to provide appropriate referrals or appreciate that the person's problem has a legal aspect.¹⁵²

Research conducted by the Footscray Community Legal Centre concluded that such barriers can lead to women remaining in abusive relationships 'purely because they believe they cannot initiate a divorce'.¹⁵³ Armstrong's research similarly found that a lack of knowledge of the law meant that women from culturally and linguistically diverse communities were often 'scared to divorce or separate from their husband' because of fear that 'the husband would take their kids'.¹⁵⁴ As a consequence, women's ultimate access to legal assistance may be delayed until 'the point of crisis'.¹⁵⁵

A number of stakeholders raised particular concerns regarding the lack of knowledge among new and emerging communities about what constitutes family violence under Australian law, and the role of police in family disputes when violence occurs. Community groups in Melbourne and Darwin explained that misunderstandings of the law had created problems for men in their communities, who had found themselves removed from their homes by police for breaking the law. Reflecting this concern, Ann Reiner argues that refugee background families need to be 'informed about the role of law enforcement officers, what they can and cannot do to or for people, and what rights people have under Australia's legal system'.¹⁵⁶

Community leaders stressed their need for education about the ‘boundaries of behaviour’ that inform Australian laws, so that they can teach this to their communities. However, legal and refugee service workers explained that simply telling people from newly arrived communities ‘what the law is’, is not effective.¹⁵⁷ Education about family law, and particularly family violence laws, needs to include an explanation of the intention behind the law and the kinds of behaviour that are considered unacceptable.¹⁵⁸ Some stakeholders also suggested the benefits of a human rights approach, which focuses on ‘respectful relationships’ and the ‘right to be safe’.¹⁵⁹ Although the Department of Immigration and Citizenship provides orientation information to prospective refugee and humanitarian visa holders, including information about Australian domestic violence laws,¹⁶⁰ the coverage of this topic has been described as ‘insubstantial’, and the educational approach criticized for allowing the issue to become ‘lost in the myriad of topics covered’.¹⁶¹

2.2.2 Language and literacy barriers

Recent research has identified low levels of English language proficiency among members of newly arrived communities as a key obstacle impeding access to legal information and support services.¹⁶² This issue affects access to family law services in a number of ways. For many recently arrived families, no written information about family law is available in their own language.¹⁶³ Refugee background families may also have low literacy levels in their own language, so that even when translated materials exist, the difficulty in accessing information about the law is not alleviated, particularly where legal terms are not adequately explained.¹⁶⁴ Research conducted by the Footscray Community Legal Centre suggests that the inability of clients from newly arrived communities to speak, read or write English fluently can also lead to reliance on inaccurate or misleading information from friends and community members.¹⁶⁵

In addition to these impediments, legal practitioners who responded to Council’s survey indicated that the amount of time they need to spend with a client from a culturally and linguistically diverse background may be significantly greater than the time needed to advise English-speaking clients (see 3.4.1 below), presenting a further, financial, barrier to effective use of the system’s legal services. Representatives from the FECCA and the Victorian Immigration and Refugee Women’s Coalition also noted that issues of social isolation (discussed below at 2.2.5) meant that women from culturally and linguistically diverse backgrounds often have lower levels of English language proficiency than their husbands, making them particularly disadvantaged when attempting to obtain legal assistance.¹⁶⁶

For clients of the family law system, these problems can be compounded by difficulties in obtaining an interpreter who speaks their language, or by having to retell their story multiple times to a different interpreter at each new service and court event.¹⁶⁷ Recent surveys have found that issues of confidentiality can also constrain the use of interpreters for clients from culturally and linguistically diverse backgrounds.¹⁶⁸ This is particularly pertinent for families from new and emerging communities, where sourcing interpreters who speak a specific ethnic dialect can be especially challenging and can expose clients to interpreters who may know the person’s family.¹⁶⁹ A number of consultation participants, including the coordinator of the Arabic Welfare service in Melbourne and members of the Australian Immigrant and Refugee Women’s Alliance (AIRWA), also raised this concern.¹⁷⁰ Another issue of language proficiency affecting access to government services is the pervasive use of ‘jargon’, which can be

intimidating and operate to dissuade clients 'from asking questions or requesting clarity'.¹⁷¹

Concerns about interpreters were also noted by a number of legal practitioners who responded to Council's survey. Whilst many identified the interpreter services at the family law courts as 'very satisfactory' (12%) or 'fairly satisfactory' (44%), some indicated that the quality of interpretation services 'varied' (36%), and a few indicated that, in their experience, these services were 'not at all satisfactory' (8%). Four main reasons were given for the latter responses:

- difficulties in securing an interpreter for court proceedings despite having indicated that one is needed for the client
- interpreters straying into advice-giving
- difficulties with interpreters not understanding legal concepts, and
- culturally inappropriate practices, such as men interpreting for women in matters where this is not culturally appropriate, or having one interpreter for both clients in a family violence case.

The following survey responses illustrate these points:

When we put down the need for interpreter they are not booked in unless we specifically call the court to book one. This should be streamlined. If you state on the form one is required then there should be an interpreter available. When there they are most valuable.

My client (who spoke the language) heard an interpreter giving extensive "advice" to the litigant on the other side; interpreter has strayed into adding extra explanations not only straight interpreting of what I have said; interpreter had difficulty understanding legal concepts and my advice and interpreted something else.

The quality and professional experience of these interpreters varies and many have advised that they have not been trained to a level required for court work.

Men interpreting for women in family court matters in some cultures can make inappropriate comments and fail to give a full interpretation of client's instructions.

My clients are usually women who have suffered DV. The court will provide just 1 interpreter for both parties and my client will feel as though the interpreter is biased. Also in small African communities I have had cases where my client refuses to talk to the interpreter and I eventually discover that the interpreter is related to someone who knows the father.

Similar concerns were also raised in a number of consultations with Community Legal Services. In its submission to Council, WLSNSW outlined case examples where women seeking legal assistance had been disadvantaged by difficulties in accessing an interpreter or where the only interpreter available was from a country that was historically in conflict with the country of the person seeking the provision of interpreter services.¹⁷² The Fitzroy Legal Service noted that while interpreters have to

explain court processes to clients, many interpreters have little or no understanding of court procedure themselves.¹⁷³ Family Relationships Services Australia (FRSA) addressed the specific difficulties that the provision of interpreters can present in the context of the effective delivery of therapeutic family and relationship support. It was noted:

*In newly arrived refugee populations, interpreters are often scarce and may not be trained or accredited. There are also issues of community connectedness, family ties, gender, confidentiality (particularly in smaller language groups) and cultural norms to be considered. Stories abound of interpreters becoming involved, inappropriately in the delivery of service – miscommunicating or misinterpreting the practitioner’s statements, applying cultural or religious judgements, ‘taking sides’ in dispute mediation etc.*¹⁷⁴

Council’s consultations also revealed complaints from migrant service providers about the difficulties experienced by their clients in finding relevant translated information on the websites of the family law courts. Migrant support workers suggested that the information was valuable once located, but was not easy for clients to find.

More generally, a number of concerns about the internet as an information source for newly arrived communities were raised. A recent report published by the Multicultural Centre for Women’s Health notes that the ‘effectiveness of the internet as a communication strategy for immigrant and refugee adults in relation to violence against women is variable’, both because of low literacy levels among migrant groups and financial inability to purchase computers and internet services.¹⁷⁵ The 2006 Census data show that while 48 per cent of the Australian born population has internet access, only 10 per cent of Australians who speak a language other than English had access to the internet.¹⁷⁶

2.2.3 Cultural and religious issues

Cultural barriers have been identified as a factor impeding access to family law services for culturally and linguistically diverse communities.¹⁷⁷ Two aspects of this issue were raised in consultations with Council. The first centred on concerns that the understandings of divorce and parenting embodied in Australian family law may not accord with those of families in certain newly arrived cultural communities (see further at 2.2.12).¹⁷⁸ The second concerns socio-cultural norms which emphasise family privacy and ‘discourage some in ethnic minority families from seeking help outside the family or from mainstream family services’.¹⁷⁹ The latter issue is sometimes referred to in the literature by the term ‘law avoidance societies’, which denotes a cultural perspective in which invoking the legal process is seen as ‘the absolute last resort’.¹⁸⁰

The desire to resolve family problems privately was a strong theme in consultations with migrant community groups and representatives. Participants suggested a hierarchy of preferred dispute resolution avenues for family and relationship problems, with conciliation by extended family as a first step and ‘arbitration’ or mediation by a community or religious leader or community grievance committee in the event that this fails.¹⁸¹ Sudanese community leaders in Melbourne stressed that family cohesion is the main priority for African born families, and that the involvement of external services is seen as likely to lead to divorce rather than reconciliation.¹⁸² Going outside the

community to family law services is regarded as a 'last resort'. As one community member summed up this concern; '[i]f you try to solve family problems out there it gets bigger'. This concern reflects the perception (discussed at 2.2.4) that family relationship services are 'separation' services, rather than relationship building services. In contrast, community-based dispute resolution mechanisms focus on preserving family relationships.

A number of migrant and legal service providers emphasised the potentially oppressive effects of cultural frames around family and community privacy, especially for women. The Footscray Legal Service's *Out of Africa* report indicates that clients of its African Legal Service were often reluctant to report family violence to police as they believed domestic arguments were private matters that should be resolved by extended family members and community elders.¹⁸³ Several submissions also raised concerns about cultural norms that can emphasise privacy at the expense of women's safety.¹⁸⁴ WLSNSW noted similarly in its meeting with Council that some women from culturally and linguistically diverse communities are reluctant to speak to the police because of 'a desire to make sure they do not get a family or community member into trouble', even if the person has been a perpetrator of violence.¹⁸⁵

This concern is supported by the Australian Human Rights Commission's recent consultations with African Australian communities. Its report noted that women from these communities may be reluctant to report domestic violence to male police officers as it 'might be culturally inappropriate for her to share that kind of information with a man'.¹⁸⁶ The submission from the AIRWA similarly reports:

*[A] strong influence on reporting rates and effective engagement with family law systems is cultural perceptions of privacy and family pride. Discussion of family disputes and domestic and family violence in public and with non-family members can be considered inappropriate and potentially damaging to family and community honour and cohesiveness.*¹⁸⁷

The most common solution suggested was for legal literacy programs for culturally and linguistically diverse communities, including education that will 'create greater understanding of the role of police and law enforcement in the community'.¹⁸⁸

Another barrier concerns cultural differences between the parenting practices of some in new and emerging communities and the expectations embedded in Australian child protection laws.¹⁸⁹ Consultations revealed concerns about unwittingly contravening these laws and having children removed into State care. In particular, parents from African communities were concerned about children who had been placed in foster care with non-African families, who were 'losing their culture'.¹⁹⁰ Community representatives and migrant service providers suggested that one result of this concern is that parents in new and emerging communities are afraid to discipline their children.¹⁹¹ It was suggested that a fear of having their children removed has affected the willingness of community members to approach the legal system for help with family problems. As with the issue of family violence, the key recommendation to address this problem was for the provision of education about child protection laws, including education about the boundaries of permissible disciplinary behaviour and 'what parents can and can't do in Australia'.¹⁹²

Consultations and submissions also raised concerns about the intersections of cultural practices and religious understandings of divorce that can operate to deny people from cultural communities the benefits of the Australian family law system's services. The submission from AIRWA noted that some women from faith-based communities, such as some established Muslim communities;

*...who attempt to gain a divorce through the family law courts may have difficulty gaining support and recognition from their families and thus can become significantly isolated and vulnerable.*¹⁹³

AIRWA stressed that:

[T]his example should not be considered reflective of all CALD Muslim women's experience, given the diversity of Islamic practice and belief, rather it should be understood as an emerging issue that service providers in the family law system have identified. It reveals the importance of supporting CALD women and their families through family dispute processes, such as divorce, in a way that takes into account not only the cultural implications but also the intertwining nature of different religious perspectives.

As a response to this problem, AIRWA recommended legal literacy education for religious communities 'in order to create greater understanding and acceptance of certain family law orders and practices, such as Apprehended Violence Orders and divorce'.¹⁹⁴ AIRWA also recommended cultural competency training for family law system personnel which includes 'religious awareness training': *[T]his education should be able to emphasise the diverse nature of religious practices and belief. It should not be predicated on stereotypical assumptions of religious groups and their treatment of women.*¹⁹⁵

The desire for religious leaders to be educated about Australian family law was also raised by a number of community groups and representatives of faith-based communities.¹⁹⁶ Council was told that some religious organisations, such as the Coptic Theological College in Sydney, had started offering training in family law and family counselling to religious leaders. Others, such as the Australian National Imams Council, were said to be considering the idea.¹⁹⁷ Several participants noted that Imams are acknowledging the appropriateness of utilising the skills and knowledge of social workers and child psychologists when parenting arrangements are being made, and supported calls for further assistance in helping religious community leaders to understand Australian family law and the role of social scientists.¹⁹⁸

A related issue raised in several consultations concerned the question of whether there should be State support for Islamic or *sharia* tribunals to deal with family disputes between Muslim couples.¹⁹⁹ The limited number of consultations that raised this issue revealed mixed views about the proposal.²⁰⁰ A recent literature review prepared for the Australian Human Rights Commission on the intersections between law, religion and human rights also revealed a range of views about the creation of a *sharia* based alternative dispute resolution tribunal.²⁰¹ The authors of the review note the 'pluralised character' of contemporary Muslim life in Australia, and the lack of any empirical evidence about the extent to which members of Australia's Islamic communities engage

in or eschew alternative dispute resolution processes in family matters, and recommended that further research be conducted.²⁰²

2.2.4 Inhibiting perceptions of the family law system

A recent evaluation of the Broadmeadows Family Relationship Centre found that there is scepticism within culturally and linguistically diverse communities about accessing mainstream family relationships services because of perceptions that the process will lead to separation and divorce, rather than reconciliation.²⁰³ Council's meetings with members of newly arrived communities and their representatives support these perceptions. Some stakeholders suggested that Family Relationship Centres need to provide a broader range of services, including relationship education, parenting education and men's groups, if they want to attract clients from culturally and linguistically diverse backgrounds.²⁰⁴ Others argued that mainstream family relationships agencies need to work with communities to make their services more culturally appropriate for clients from refugee backgrounds.²⁰⁵

Council's consultations with Family Relationship Centre personnel suggest that they are well aware of these perceptions and the barriers to engagement they present.²⁰⁶ Reflecting these concerns, personnel from the Broadmeadows Family Relationship Centre said that part of their education work with local ethnic communities had focused on allaying fears and correcting perceptions that the service would lead to divorce.²⁰⁷ Carol Makhoul from the Broadmeadows Family Relationship Centre explained:

[C]ulturally, for some cultural groups the emphasis is on reconciliation not ending a relationship, so they're maybe looking for early intervention support services. ... So just letting them know that yes, we can support you with referral and information to services that support you trying to reconcile or strengthen your relationship. ... So breaking down misunderstandings about who we are and what we do and encouraging awareness and letting them know that we are here, even if it's just for a question.

Dr Khairy Majeed, a Senior Cultural Advisor with the Broadmeadows Family Relationship Centre, noted in this regard that there was also a great deal of community mistrust of Family Relationship Centres because of their identification as a government organisation (see also 2.2.9). His own experience suggests that building trust in their service with culturally and linguistically diverse communities is 'a very slow process':

[T]rust takes a lot of time to build with the community, especially with migrant and refugee communities because of the history of their migration process. Especially for refugees who have escaped their countries and the operation of that regime, and when they move here, to build that trust with authorities is a very slow process.

A second inhibiting perception concerns the fear that accessing the family law system will bring families into contact with the police or child protection authorities. Meetings with leaders and representatives of newly arrived communities confirmed the Australian Human Rights Commission's recent finding that community members are reluctant to engage with the legal system because of fear of police interventions that will see the perpetrator or victim removed from the family home.²⁰⁸ Meetings with

community groups also revealed concerns that interaction with the family law system might result in children being removed into foster care.²⁰⁹

The literature indicates that a further common inhibiting perception held by men from culturally and linguistically diverse communities is a belief that the Australian family law system favours women's interests.²¹⁰ The submission from the Top End Women's Legal Service (TEWLS) noted this view:

*[I]t has been our observation that some cultural communities are openly antagonistic to the system of family law in place in Australia. It is perceived, relative to the system with which they are familiar, to be unreasonably pro women and not conducive to justice.*²¹¹

Consultations revealed a view that family law services are not sensitive to the cultural values of culturally and linguistically diverse communities (see also 2.2.7).²¹² A strongly voiced request in the meetings with people from new and emerging communities was for more bicultural family law professionals, including training for lawyers, mediators and counsellors from culturally and linguistically diverse backgrounds and particularly for women lawyers to represent female clients.

2.2.5 Social isolation

A significant barrier to accessing support services is the social isolation of many newly arrived family members.²¹³ A number of recent studies have shown that the combination of the loss of social relationships as result of civil war and displacement and the lack of familiarity with the way of life in Australia can result in 'a strong sense of isolation and loneliness' for migrant and refugee background families.²¹⁴ This was noted in particular during consultations about women. The submission from AIRWA argued that such issues, including the 'social, educational and employment based isolation some women face as a result of their domestic and child care based' roles, operate as barriers to services for women from culturally and linguistically diverse backgrounds.²¹⁵

Recent literature suggests that the problem of social isolation can be especially acute for refugee background women from some Muslim communities. As Reiner explains:

*[F]emale Muslim refugees belong to multiple groups of marginalisation, which can each exacerbate the other. These women must deal with the unique intersection of their experience of being a Muslim, a woman and a refugee. Not only are they dealing with past trauma and looking to find security in their new home, at times they can at times come 'under attack' from other parts of Australian society because of their religious identity. Female Muslim refugees may also experience fundamental differences with mainstream Australian society that can inhibit their integration.*²¹⁶

There appear to be two other types of social isolation that affect families from migrant communities. Consultations with service providers in the Northern Territory indicated a particular concern for women who arrive on a spouse visa and live in rural locations with no relationship to a community of people from their country of origin.²¹⁷ Another form of isolation affecting migrant and refugee women appears to be 'cultural isolation', as a result of 'the strength of CALD family and community solidarity and the

importance of maintaining its honour',²¹⁸ which can inhibit help-seeking outside the community (see also 2.2.3).

2.2.6 A lack of service integration

The information gathered by Council suggests that the nature of the system itself presents families from culturally and linguistically diverse backgrounds with significant barriers to accessing its services. The consultations and survey responses indicate that clients from culturally and linguistically diverse backgrounds are more likely than Australian-background clients to need multiple services to assist them. A problem they face is a lack of service integration.

In the case of newly arrived communities, part of the problem is the lack of systematic collaboration and effective referral procedures between migrant support services on the one hand and legal and relationship support services on the other.²¹⁹ Practitioners from the Spectrum Migrant Resource Centre noted that settlement services are not funded to provide legal advice and that migrant service personnel do not know about family law. They suggested that if clients have legal problems, they try to refer them to legal services, but noted the difficulty in finding bilingual and bicultural lawyers who understand the needs of their clients. The solution, proposed by these stakeholders is greater collaboration between the two sectors.²²⁰

WLSNSW reported that one barrier encountered by immigrant women relates to a lack of consistency in the interaction and referral processes between migrant service providers and legal services, with some clients reporting being 'sent around in circles' between different organisations, often without an understanding of the specific roles of organisations or the relationships between them.²²¹

The Australian Human Rights Commission's report on its consultations with African background communities notes that participants reported finding the Australian legal system 'complex, confusing and overwhelming'.²²² Concerns about the effects of the complex array of services and court events that face clients who enter the family law system were also raised by advocacy services for migrant and refugee women:

*[O]nce you're inside the system - and this isn't just for CALD women but for all people dealing with the Family Court - it's often quite complex dealing with the different registrars, then being sent through to the counselling [service] and then, finally, to the judges, and understanding the whole system can be quite overwhelming for people first entering into the legal rhetoric. And what really needs to happen on just a basic level is — and I know the court has been working very hard to do this, and the legal system over the years — is putting language even more into easy language and explaining the system from the 'get go' of what's going to happen, just making sure that from when clients first enter the system they know all the steps that lie ahead of them and where all their paperwork is going so they don't feel like they're left in the system.*²²³

In a similar vein, Sela Taufu from Multicultural Women's Advocacy ACT said of her service's clients: *[M]any of them don't know where to start and would like a more cohesive way of understanding who to go to and how to navigate the system.*²²⁴

The lack of integration also poses challenges for service providers in attempting to provide a seamless service to culturally and linguistically diverse clients whose family law problem is usually a combination of multiple issues – such as spousal maintenance, visa concerns, obtaining a recovery order, making an application for contact, Centrelink payments and housing needs – that require referrals to a range of different agencies.²²⁵ Some service providers noted that ‘clients are often overwhelmed with the number of appointments with different people’ and fail to turn up for appointments even after a ‘warm referral’.²²⁶ These and other stakeholders suggest that service providers need a ‘roadmap’ of the service system to help navigates clients through ‘what will happen next’, with timeframes to expect and explanations of the different events.

2.2.7 Concerns about cultural responsiveness

Recent research conducted with newly arrived communities in Australia points to a lack of culturally competent personnel as a major barrier to client access to both legal and family support services.²²⁷ Cultural competence in this context includes understanding ‘the issues challenging refugee background families as a consequence of the resettlement/integration processes’.²²⁸

Stakeholders across the two service systems emphasised the need for family law professionals to be ‘culturally competent’. Community Liaison Officers from Family Relationship Centres emphasised the need for family law personnel to understand the stresses that migration places on families, and the impact on refugee background clients of traumatic pre-arrival experiences.²²⁹ Jenni Gough from the FECCA argued that the family law system’s personnel need to have greater regard for the fact that ‘it’s an extreme situation for someone to take their domestic relations into a formal legal setting, and particularly for CALD women and CALD communities’.²³⁰ Migrant Resource Centre staff commented that family law practitioners need to receive education about newly arrived communities and their values, including the differences between the community’s understanding of marriage, divorce and parenting and those reflected in the law.²³¹ Members of AIRWA raised particular concerns about family reports, and the need for family report writers to be culturally competent.²³²

Recent evaluations of two Family Relationship Centres revealed concerns among local culturally and linguistically diverse communities that family dispute resolution practitioners may not ‘be aware of their cultural background, their religion, the differences between new, emerging and established communities, or their experience of displacement, migration or resettlement’.²³³ The reports of these evaluations also noted fears that mainstream service personnel might hold racist and stereotyped views about particular ethnic groups.²³⁴ One problem that was noted in Council’s consultations is that service personnel sometimes generalise the circumstances of clients from ethnic communities according to the client’s cultural or religious background, rather than dealing with ‘the actual lived realities’ of the person’s life.²³⁵

The importance for clients from culturally diverse communities of dealing with bicultural and bilingual staff was also highlighted.²³⁶ It is notable that of the 128 practitioners who responded to Council’s survey for lawyers who work with clients from culturally and linguistically diverse backgrounds, 43 per cent were born overseas or had parents who were born overseas and around half (63 of the 128) spoke a language other than English fluently.

The consultations with migrant services also suggest that some of the family law system's more therapeutic interventions may be culturally unfamiliar to people from new and emerging communities.²³⁷ Community leaders in Broadmeadows praised the work of the Broadmeadows Family Relationship Centre in this regard, which they said had 'taken the initiative' in working with culturally and linguistically diverse communities by employing bilingual and bicultural staff and developing culturally appropriate mediation processes.²³⁸ A number of stakeholders also supported the idea of scholarships for members of culturally and linguistically diverse communities to enable them to work as family dispute resolution professionals within the family law system.²³⁹

Concerns were also voiced in consultations about the lack of ethnic Community Support Workers in the courts to help clients from culturally and linguistically diverse backgrounds navigate their way through the court process.²⁴⁰ It was suggested that the Court Network service, which operates in Queensland and Victoria, should recruit people from culturally and linguistically diverse communities to be used as community educators and support workers. Others argued there is a need for court-based information for culturally and linguistically diverse families about court processes, including information about what will happen and what is expected of them in court. These stakeholders stressed that it is not enough for the courts 'to just provide interpreters'.²⁴¹

2.2.8 Inflexible service delivery models

A general concern in the research literature is the need for a 'flexible model of service delivery that is tailored to the needs of local communities'.²⁴² During Council's consultations this issue was raised, particularly in relation to Family Relationship Centres and the family law courts.

In relation to the former, it was argued by some that the mainstream family relationship sector had 'developed without consideration of the needs of diverse population groups',²⁴³ and that relationship services need to extend their services beyond their existing charters and adapt existing programs to cater for families from refugee and humanitarian backgrounds, so that clients from these communities 'feel welcome, comfortable and respected'.²⁴⁴ A similar issue is described by Armstrong in her report, who notes concerns about the 'cultural fit' of mainstream family mediation processes for people from culturally diverse backgrounds.²⁴⁵ In a related suggestion, Migrant Resource Centre personnel emphasised the importance of offering family relationships services out of business hours, and taking the services 'to the clients'.²⁴⁶

The submission from FRSA recognises these issues, noting that 'the needs of CALD families are often very different and more complex than mainstream families and they are much less likely to access traditional program models based on individual attendance at a service site'.²⁴⁷ Community members and representatives offered several suggestions for reform. A number of participants argued that there should be specialist Family Relationship Centres for culturally and linguistically diverse communities, while others suggested that Family Relationship Centres need to 'work with' communities to develop and deliver services that suit the support needs of new and emerging communities, such as education programs to enhance knowledge of Australia's child protection laws and the expectations of responsible parenting that inform these (see on this, 2.2.4 above), and men's groups.

Concerns were also raised by some stakeholders about the family law courts, including complaints about the location and physical environment of court precincts and the lack of flexibility in court processes to accommodate the needs of clients from new and emerging communities. One community representative noted that for people ‘who do not understand English, the Court is a lost environment’.²⁴⁸

In response to such concerns AIRWA has called for the introduction of ‘discretionary spaces in the family law system to improve access and equity’ for clients from culturally and linguistically diverse communities. AIRWA argues that putting clients ‘in culturally inappropriate and insensitive spaces denies them the right to have their case heard in the best light’.²⁴⁹ AIRWA explains that the term ‘discretionary spaces’ refers to:

*[t]he inclusion and provision of more flexible understandings and arrangements which reflect the diverse cultural experiences and backgrounds of clients accessing family law court systems.*²⁵⁰

2.2.9 Mistrust of government agencies

A further documented barrier to help-seeking by families from migrant and refugee communities is a fear of government authorities, as a result of negative experiences with government agencies prior to arriving in Australia.²⁵¹ The Australian Human Rights Commission’s consultation with African background communities highlighted the impact of pre-arrival experiences on the willingness of refugee and new arrival community members to approach legal services and courts.²⁵² Previous research by Rosemary Hunter and her colleagues found that ‘refugees who have escaped an oppressive government are generally reluctant to invoke government processes in another country’, including applying for legal aid funding.²⁵³ The Final Report of the NSW Legal Assistance Forum Working Group on Access to Justice for Culturally and Linguistically Diverse Communities similarly indicates that refugee background families are likely to ‘have a fear of the law and legal system’,²⁵⁴ while the submission from AIRWA noted that the potential for the presence of male judges to re-traumatise refugee women who have ‘experienced torture and trauma at the hands of a man’.²⁵⁵

Consultations confirmed the existence of these issues for people from refugee backgrounds, particularly in relation to the family law courts and, to a lesser extent, Family Relationship Centres, both of which are clearly badged as government services.²⁵⁶ The Family Court’s report on its engagement work with newly arrived communities acknowledged this problem, noting that community members were initially ‘untrusting’ and ‘deeply suspicious of the Court’s motives’.²⁵⁷

Migrant support organisations suggested a number of ways of addressing these problems, including the presence of ethnic support workers in the courts (see 3.3.2) and familiarisation strategies, such as ‘walking women through the court before they have to go there’.²⁵⁸

2.2.10 Visa dependency

Many migrant and refugee women arrive in Australia on temporary visas.²⁵⁹ During Council's consultations, significant concern was expressed about the vulnerability to violence of women who come to Australia in this way, who must wait up to two years after arriving in Australia before qualifying for Centrelink benefits.²⁶⁰ During this period, the woman's primary contact is typically her sponsor. If the woman is not working, her access to services may be poor, particularly if she has limited English language proficiency. In such circumstances, women may succumb to sponsor threats of deportation and endure violence and other abusive behaviours, such as financial control.²⁶¹ A recent report by the Multicultural Centre for Women's Health suggests that almost half (47.6%) of the immigrant and refugee women accommodated in refuges in Victoria in 2009-2010 were women without permanent residency.²⁶²

Where a person on a temporary spouse visa separates from his or her Australian sponsor due to family violence, issues may arise in relation to the person's migration status. A person may need to access courts or family violence service providers to obtain evidence of family violence for the purposes of invoking the family violence exception under the *Migration Regulations 1994* (Cth), which allows those whose relationships have broken down due to family violence to be considered for permanent residence.²⁶³ This intersection gives rise to the potential for visa-related issues to affect a person's decision or ability to engage with the family law system, or to access legal services required to ensure his or her safety and that of any children. In acknowledgment of this, Women's Legal Centre (ACT & Region) submitted to Council that there is a need for 'the family law system to be able to consider the intersection between family law proceedings and immigration'.²⁶⁴ This concern was also reflected in the Australian Law Reform Commission's (ALRC) recent inquiry into family violence and Commonwealth laws which covered, specifically, migration law.²⁶⁵

Australia's partner visa scheme allows non-citizens to enter and remain in Australia on the basis of their spouse or de facto relationship with an Australian citizen or permanent resident.²⁶⁶ The non-citizen must be sponsored by the Australian citizen or permanent resident.²⁶⁷ As noted above, for those who are married or in a de facto relationship, a partner visa is granted for a period of two years, on the basis that the relationship between the parties is genuine. After this period, if the relationship is still 'genuine and continuing', a person can be granted a permanent visa.²⁶⁸ However, if the relationship breaks down at any time during the probationary period, or if the Australian citizen or permanent resident withdraws sponsorship, the visa holder may have his or her visa cancelled, and may be liable to be removed from Australia.

The submission from AIRWA expressed concern that family violence dynamics, including 'the threat of deportation from sources such as their spouse and host family', may prevent women with temporary partner visas from contacting legal services for assistance, or to otherwise engage with the family law system.²⁶⁹ This is especially so where victims have a sense that they may be forced to leave Australia if their relationship breaks down and their child or children may be left behind with the sponsor. A person may therefore choose to remain in a violent relationship rather than risk being removed from Australia and losing care of their children. The National Council to Reduce Violence Against Women and their Children has recognised this

problem, noting that women ‘who are sponsored by Australian citizens and residents are particularly vulnerable to abuse due to the threat of deportation’.²⁷⁰

Women from culturally and linguistically diverse backgrounds who were consulted for the 2010 InTouch Multicultural Centre Against Family Violence, *Barriers to the Justice System Faced by CALD Women Experiencing Family Violence* (InTouch *Barriers to the Justice System*) study cited visa dependency as a critical concern in accessing legal assistance.²⁷¹ Similar concerns were highlighted by the ALRC in its Discussion Paper and Final Report, *Family Violence and Commonwealth Laws*, and were raised in submissions from TEWLS and immigrant women’s organisations.²⁷² The following explanation by Judith Parker from the United Nations Association of Western Australia in relation to her service’s clients illustrates this point:

*...we have a fairly high percentage of CALD women who are what I call mail order brides. Men have found them on the internet, etcetera, and brought them to Western Australia, married them, they have children and then, particularly when the abuse starts, if the woman tries to get some help often the man holds over them that he will send them back...and the children will stay here...which makes the women very terrified.*²⁷³

2.2.11 Legislative factors

Compounding the cultural barriers discussed above, Council’s consultations suggest that the understanding of family and parenting responsibilities embodied in Australian law and practice may not resonate with families in new and emerging communities.²⁷⁴ The AIRWA submission commented that whilst ‘families and family approaches to breakdown and dispute resolution cannot be considered homogenous’, there is ‘a propensity among many CALD communities to take a collective rather than individualist approach’ to family, that is not adequately recognised by Australian family law.²⁷⁵

*AIRWA acknowledges that the Family Law Act 1975 does not strictly define the notion of family, yet in practice we find that the family law system does not fully or flexibly take into consideration the collective approach of many CALD families and communities.*²⁷⁶

A number of stakeholders canvassed particular issues about the legislation and decision making governing children’s post-separation care. Legal practitioners from the Fitzroy Legal Service noted that the concept of shared care embedded in the *Family Law Act* ‘is inconceivable for new arrivals’, and that it takes a great deal of practitioner time to explain this concept to clients from culturally and linguistically diverse backgrounds.²⁷⁷ The AIRWA submission raised a specific concern about the capacity of shared time orders to facilitate ‘coercive control violence’ against women from newly arrived communities.²⁷⁸ Related concerns were highlighted by a number of migrant organisations about the effect of shared care orders in preventing women from these communities from being able to maintain a safe distance from the perpetrator of violence, particularly where the relevant community is small.²⁷⁹ One submission focused specifically on the issue of relocation applications. Women’s Legal Centre (ACT & Region) submitted that:

*[C]hildren's issues raise all the difficulties of relocation to the country of origin where the mother is most likely to have her support network. Many of our clients have no family support in Australia and they are often living with the husband's family. Post-separation they are living in rented accommodation.*²⁸⁰

Several people raised concerns about the wording and application of section 60CC(3)(g) of the *Family Law Act*, which requires the courts to consider the 'lifestyle and background (including lifestyle, culture and traditions) of the child and of either of the child's parents' when determining the child's best interests in parenting matters. National Legal Aid noted that, as presently drafted, section 60CC(3)(g) does not 'specifically state that a CALD child has a right to enjoy his or her culture as it does for an Aboriginal or Torres Strait Islander child', and does not require decision makers to 'consider the likely impact any proposed parenting order will have on the right to culture'.²⁸¹ Its submission suggests that, as such, it may be that the *Family Law Act* does not appropriately reflect Australia's obligations under the United Nations Convention on the Rights of the Child (UNCROC). In her submission, Armstrong argued that the focus in section 60CC(3)(g) on the child's 'lifestyle, culture and traditions' reflects a narrow western-oriented notion of culture that runs the risk that only 'exotic' cultures will be considered by judicial officers and that attention will not be given to the multiple cultural worlds a child may inhabit'.²⁸²

Concerns about the law governing property settlements were also raised in several submissions and consultations. Women's Legal Services Victoria noted problems in practice resulting from the lack of understanding of dowry in Australian law, submitting that 'contributions by the wife's family are excluded from consideration in property settlement because gifts including cash gifts are often given to the husband's family, not to the husband'.²⁸³

Two submissions focused on the application of the law of nullity by the courts. Professor Patrick Parkinson commented that 'in my view, the law as currently interpreted takes into account only secular and western concepts of marriage which are discordant with the values and beliefs of many CALD communities'.²⁸⁴ Discussing nullity applications in cases of marriage by deception, Parkinson noted that:

*[M]ost of the cases, but not all, have involved people from non-English-speaking backgrounds who have strong religious convictions concerning the indissolubility of marriage, and [the present] narrow view of the law of nullity has certainly had a disproportionate impact on CALD communities.*²⁸⁵

Parkinson's submission argues that the approach taken by the courts 'fails to recognise the importance attached to marriage, and the cultural stigma of being a divorced woman, in some cultures and faith communities'.²⁸⁶ The submission from the Women's Legal Centre (ACT & Region) supports Parkinson's view that for women from culturally and linguistically diverse backgrounds, 'annulment may be a more satisfactory course' than divorce, because of the cultural stigma attached to divorce, and suggests the need for amendments to the *Marriage Act*:

...such as legislating a definition of duress to recognise coercion of the type that sometimes occurs for CALD women. This would impact on applications for

nullity – Marriage Act 1961 section 23(1)(d)(i) – which would be of practical assistance to women who find themselves in these situations.

2.2.12 Cost and resource issues

A number of reports on access to justice for culturally and linguistically diverse clients have noted the perceived cost of legal services as a barrier to access.²⁸⁷ The submission to Council from the TEWLS notes that whilst the cost of legal services

*...is not exclusive to the CALD and Indigenous communities, it does impact these clients in circumstances where they do not qualify for Legal Aid under their means test, but are unable to afford private legal representation in family law disputes. These women often fall within the gaps. TEWLS assist in filling the gaps, however we are only able to assist in court matters in only limited circumstances due to the lack of available resources, the levels of expertise required and the complexity of the matter.*²⁸⁸

TEWLS also commented that the lack of legal aid for property settlements ‘compromises CALD women’s access to their entitlements in an entirely unfamiliar system, where English is their second language and they hold little or inaccurate knowledge about the wealth of the family’.²⁸⁹

Service sector personnel also raised concerns about their ability to provide a quality service to culturally and linguistically diverse clients because of the resource-intensive nature of this work. Many of the legal practitioners who responded to Council’s survey (71%) indicated that providing legal advice to culturally and linguistically diverse clients generally takes more time than it does for other clients due to factors such as cultural differences, language and literacy issues, difficulties in conveying Australian family law concepts and court processes and correcting misconceptions of the law.

Within the family relationships services sector, providing specialist services for people from ethnic background communities is particularly resource-intensive. In its submission, FRSA explained that responding to ‘the unique relationship needs and issues’ of culturally and linguistically diverse clients ‘can require a substantial whole of organisation commitment, specific expertise and significant investment of time and resources’.²⁹⁰ Specially adapted programs, such as the successful family violence behavioural change program run by Sunshine Family Relationships Service for local Vietnamese men (described in 3.1.5), have involved a significant time investment in engaging with and training members of the Vietnamese community to become group facilitators.

Sixty one percent of the legal practitioners who responded to Council’s survey identified that they do legal aid work. Fifty two percent of these practitioners indicated that more than half of their clients from culturally and linguistically diverse backgrounds are legally aided. The provision of legally aided work was cited by survey respondents as one of the two main reasons that clients from culturally and linguistically diverse communities used their practice (the other being the presence of bilingual lawyers). Thirty two and a half percent of practitioners in the survey sample also indicated that they provide legal advice services to organisations representing culturally and linguistically diverse communities, usually on a pro-bono basis.

2.3 A Microcosm of Client Experience?

A common theme that Council heard during its consultations with service providers within the family law system was that many of the barriers that inhibit clients from culturally and linguistically diverse backgrounds from successfully engaging with the system similarly affect other clients from low socio-economic and disadvantaged backgrounds. In light of this, Council's survey of legal practitioners included a specific question addressed to this issue. Respondents were asked to identify which if any of a list of factors created difficulties for clients from culturally and linguistically diverse backgrounds. Respondents were then asked whether the same difficulties also affected their other clients and to provide explanations for their answer.

Of the 123 who responded to this question, 59 per cent indicated that some but not all of the problems they had identified as inhibiting access to the family law system for clients from culturally and linguistically diverse backgrounds also affect other clients. However, many of these practitioners indicated that while the problems may be similar – such as a lack of understanding of court processes – the effects of these problems are usually exacerbated for clients from migrant backgrounds by language and literacy issues and cultural barriers. Culturally and linguistically diverse clients were also identified as being more likely than other clients to need multiple services. The following are examples of the explanations provided by practitioners in response to this question:

[I]t's difficult enough for a non-CALD client to fill in a legal form and try to understand it but it is even more difficult when one does not understand the language let alone the legal jargon.

Difficulty understanding the law and court processes and knowing how to access services applies to many clients, but these problems are magnified for CALD clients.

Local clients tend to be less over-awed because they are familiar to the culture in which the system functions.

3. The Family Law Service System: Responses and Challenges

This chapter describes some of the ways in which the services and organisations of the family law system (the family law courts, legal assistance and family relationship services) presently approach the needs of clients from culturally and linguistically diverse communities, and some of the challenges facing service providers in seeking to address the barriers outlined in Chapter 2. Council's examination of these issues makes no claim to comprehensiveness or representativeness. Rather, it reflects the information provided in the submissions received by Council and its consultations with service organisations and community groups.

3.1 Legal Literacy Programs

As outlined in Chapter 2, Council's consultations support the findings of earlier research that a major barrier to effective use of the family law system's services for newly arrived communities is a lack of understanding of Australian family law and a lack of awareness of legal and family relationships services. As noted, these problems may be compounded by negative perceptions of the family law system and concerns about the cultural competency of service personnel. Perhaps the strongest message Council received in its meetings with community groups was about the need for 'two-way education' – for communities to be provided with information about Australian law and for the system's professionals to learn about the communities' family customs and support needs.

In response to these issues, a number of family law system services have developed targeted Community Legal Education programs in collaboration with newly arrived and established migrant communities. The main Community Legal Education programs that Council is aware of involve partnerships between migrant and refugee support services and Legal Aid Commissions, Community Legal Services and family relationship services. These initiatives are consistent with the Australian Government's *Strategic Framework*, which aims to overcome social exclusion by improving access to information about the law and awareness of services among disadvantaged communities.²⁹¹ They are also consistent with the Council of Australian Governments' *National Partnership Agreement*, a key feature of which is a strong focus on prevention services, and which encourages collaboration between legal and other service providers.²⁹²

Common elements of these programs include:

- preliminary consultations with local communities to identify specific legal information needs and misconceptions of the law
- collaboration with community members at all stages, including, in some cases, the establishment of a permanent community reference group
- partnerships between migrant services and legal services and other local community organisations
- incorporation of information about the concepts of 'responsible parenting' and 'healthy relationships' that inform the law in Australia and comparisons with understandings and laws in the community's country of origin, and

- a two-way learning exchange for service providers and migrant communities.

3.1.1 Consultation with communities

The FECCA has emphasized the desire by migrant and refugee communities to be actively involved in addressing their legal education needs.²⁹³ In order to properly design Community Legal Education programs that respond to the particular information needs of local communities, Legal Aid Commissions in several States initiated consultations with community leaders and conducted community forums to clarify their concerns and misunderstandings about the law and determine the best educational strategy for addressing those issues.

An example is the *CALD Families Project*, a joint initiative of the Northern Territory Legal Aid Commission and the Melaleuca Refugee Centre, which delivers legal education focused on family law to refugee and migrant communities in the Northern Territory.²⁹⁴ The project team for this project developed a permanent reference group of members from local refugee and newly arrived communities who assist with the ongoing identification of their community's legal information and support needs and help promote the legal information sessions.²⁹⁵ The reference group also plays a role in raising the project team's awareness of cultural issues they need to be conscious of in working with culturally and linguistically diverse communities.²⁹⁶

Another example is Victoria Legal Aid's *Family Harmony* legal education sessions, conducted with the Congolese, Burundi, Sudanese and Afghanistan communities in Shepparton in 2010.²⁹⁷ These sessions followed a request from community leaders to provide information on family law, with a particular emphasis on child protection and parenting responsibilities. The program, which aimed to raise awareness of the law within the communities, involved an active partnership between Victoria Legal Aid, local service providers, and leaders and representatives of the communities.

3.1.2 Partnering with migrant services

Central to the success of the relevant Community Legal Education programs that Council is aware of is a partnership between legal services and migrant services, which facilitates access to local communities and helps to build trust between service providers and community members. An example of these partnerships is the collaborative delivery of Community Legal Education workshops to Muslim communities in Victoria by the Australian Muslim Women's Centre for Human Rights (AMWCHR) and Community Legal Centres in Melbourne (including the Fitzroy Legal Service and the Broadmeadows Community Legal Centre) and Victoria Legal Aid. These workshops typically consist of a series of sessions, with the first focused on providing information about why law is relevant to family disputes and who makes law in Australia. During this session community education personnel from AMWCHR assist legal service practitioners to identify the community's legal needs and misunderstandings of the law. Subsequent sessions focus on providing information about the law in Australia and available legal support services. Sessions are interactive and learning is scenario-based, with scenarios provided by legal services based on typical cases involving culturally and linguistically diverse communities. The workshops use bilingual legally trained professionals as facilitators. Interpreters from the community provide simultaneous summaries, placing the information in cultural context. Workshops are held at a community venue that is easily accessible by public transport, and food, child care and music are provided. Community leaders and services

in the local area, such as local doctors and infant health centres, are asked to advertise the workshops.

3.1.3 Court-led community legal education

As noted in Chapter 2, Council's consultations highlighted the importance for clients from culturally and linguistically diverse communities of explaining how the family law courts work. The Australian Human Rights Commission's report on African Australian communities showcased a number of positive court-based initiatives that have been established outside the federal family law system, including court tours organised by the Victorian Magistrates Court.²⁹⁸ These tours are run by the Magistrates Court of Victoria as part of the Victorian Government's *Community Bilingual Educators Program*, which aims to improve legal literacy within refugee communities.²⁹⁹ As part of this program, the Melbourne Magistrates Court is opened on Saturday mornings several times throughout the year to provide leaders from newly arrived communities with a courtroom tour and a presentation by one of the court's Magistrates on how the court works. A key component of the tour is an explanation of Federal and State laws governing family violence and family law. The program gives community leaders a greater understanding of the court processes, so that they are able to improve awareness of the Australian legal system within their communities.

There are also examples of effective judicial outreach in the criminal justice area that could provide models for the family law system. One such initiative is the *Talking Justice* outreach program run by the Neighbourhood Justice Centre in Victoria. As part of this program, the Neighbourhood Justice Centre Magistrate meets regularly with local residents and community leaders outside the courtroom to listen to their concerns and address misunderstandings of the law and legal process. A recent example of this outreach work involved a series of *Talking Justice* meetings at local housing estates, in which Magistrate Fanning explained the various factors that must be taken into account by the courts when sentencing an offender to people in the community. Feedback given after these meetings demonstrated that people had a better understanding of the sentencing process and appreciated spending time with a judicial officer from the court.³⁰⁰

3.1.4 A learning exchange

The consultations with services that provide Community Legal Education to newly arrived communities suggest that an indirect impact of involvement in these programs is a greater appreciation by service system personnel of the needs of clients from culturally and linguistically diverse backgrounds and how to accommodate them. As one legal service participant noted, '[i]t's not just conveying legal information. It's about getting to know the community'.

This kind of learning exchange is central to the community education forums organised by the Broadmeadows Family Relationship Centre and the Broadmeadows Cultural Consultative Group. The Cultural Consultative Group, which includes representatives from the local Turkish, Greek, Iraqi, Assyrian and Kurdish communities, meets on a quarterly basis and aims to assist the Family Relationship Centre personnel to develop a greater understanding of migrant and refugee communities' approaches to families and relationships. With the help of this group, the Broadmeadows Family Relationship

Centre organises community education forums which provide information about Australian law, as well as forums for local legal practitioners where the focus is on explaining the communities' cultural practices and raising issues of concern to people from the communities. A recent example of the former was a community breakfast forum on the Hague Convention on International Child Abduction, where legal practitioners and International Social Services personnel provided information about the law and addressed questions from parents about travelling overseas with children and concerns about child abduction. An example of the latter was a one day forum called *Family Relationships in Diverse Cultures*, which involved a number of speakers from different cultural backgrounds, including Muslim and Indian communities, talking about marriage, divorce and child custody within their cultures.³⁰¹

The Community Legal Education team at Victoria Legal Aid also noted a range of broader learning outcomes for Victoria Legal Aid staff and other service organisations involved in their *Family Harmony* sessions, including the subsequent employment of Community Liaison Officers by the Department of Human Services to work with newly arrived communities.³⁰²

3.1.5 Family violence prevention strategies

A number of organisations in the family law system have developed education programs that are specifically designed to respond to the concerns identified in Chapter 2 about police and legal responses to family violence, and the desire of communities to participate in addressing the problem of violence against women in their community. An example is the *Vietnamese Men's and Family Violence Group* behavioural change program run by the Sunshine Family Relationship Service. The program involves a partnership between Relationships Australia Victoria, InTouch Multicultural Centre Against Family Violence, Kildonan Uniting Care, Djerriwarrh Community Health Centre and Foundation House. Three of these agencies (Relationships Australia Victoria, Kildonan and Djerriwarrh) contributed a percentage of their funding to establish the program and to pay InTouch Multicultural Centre Against Family Violence to project manage the program, form a community reference group and train two Vietnamese-speaking facilitators. Referrals to the program come from a diverse range of services, including legal practitioners, community organisations and the courts. The program is now in its third year of operation.

The existing literature suggests that an important feature of an effective family violence prevention program with culturally and linguistically diverse communities is the need to integrate an explanation of the differences between Australian laws on family violence and the laws in the community's country (or countries) of origin, as a way of highlighting 'the rationale for the approach adopted within the Australian legal system'.³⁰³ This factor was also highlighted by a number of organisations with whom Council consulted, which had incorporated this approach into their Community Legal Education work with culturally and linguistically diverse communities. An example is the Northern Territory Legal Aid Commission's legal education module on *Domestic and Family Violence*, whose *Information for facilitators* notes that:

[M]any of the people from newly arrived and migrant communities who we have spoken to are surprised when they learn of the many different behaviours that are defined as domestic violence under NT law.

This factor was also raised by migrant and refugee service providers, who highlighted the importance of clarifying the kinds of behaviour and circumstances in which interpersonal conflict is considered unlawful in Australia, and the legal consequences of such behaviour.

3.1.6 Education about parenting and family relationships and the law in Australia

The 2010 FECCA Report highlights the need to fashion legal education for culturally and linguistically diverse communities to include practical tools. The report cites people who are frustrated after being ‘informed of Australian laws about child abuse and neglect without having been equipped or assisted to adapt traditional child rearing and discipline practices to this new context’.³⁰⁴ A further identified area of need is for information about the ‘cultural’ ways in which family relationships, parenting and family violence are understood and articulated in Australian law.³⁰⁵ Research conducted by the InTouch Multicultural Centre Against Family Violence found that many of the women from culturally and linguistically diverse backgrounds they surveyed had a misconstrued sense of what constitutes family violence, limiting the definition to physical violence and not identifying other forms of abuse such as verbal, emotional, financial, sexual and controlling behaviours as family violence.³⁰⁶ These views are supported by Council’s consultations with ethnic service providers and community groups.

A recent parenting program in Melbourne was designed to address some of these concerns.³⁰⁷ The African Migrant Parenting Program run by the Spectrum Migrant Resource Centre in 2008 focused on refugee families from the Democratic Republic of Congo, Burundi, Liberia and Sierra Leone. The program consisted of 8 educational sessions designed to enhance effective parenting and help parents from these communities understand their children’s needs within their new cultural, social and legal environment. The sessions were delivered by qualified African parenting educators and co-facilitated by experts with a background in psychology and experience in family counselling. Sessions dealt with issues of child development as understood in Australia and covered relevant legal issues, such as corporal punishment and family violence.

Another agency that runs regular parenting education classes for migrant communities is Arabic Welfare in Melbourne. Its *Family Learning Together* program, provided to refugee and humanitarian entrant families from Arabic-speaking backgrounds, is designed to help families negotiate intergenerational and parenting conflict issues that can arise during the resettlement process, including improving parent-child communication. Based at local schools, it is run over 8-10 sessions. Parallel programs are initially run for parents and for children separately, followed by a joint session for the whole family. According to the Coordinator of Arabic Welfare, Amal El-Khoury, the program has been highly successful and the service has received a number of requests to run similar programs at other local schools.³⁰⁸ However, two challenges were noted. Firstly, El-Khoury noted that it is difficult to attract fathers to attend these classes, and that there is often a high attrition rate among the men. Secondly, she noted the need for increased funding for this program in order to properly cater for the growing number of refugee background families in the region.

Victoria Legal Aid reported that its *Family Harmony* sessions with African background families in Shepparton had raised the awareness of Victoria Legal Aid staff about the extent to which parents in newly arrived communities are afraid to discipline their children, because of concerns about child protection notifications, highlighting for them the need to incorporate information about the legal expectations of parenting in Australia into their education, and the ways in which this might differ from expectations in the community's country of origin.³⁰⁹

Service providers who work closely with newly arrived communities, however, cautioned against conveying a message that families from refugee background communities, who have parented their children through civil war and resettlement, are not responsible parents,³¹⁰ or fuelling stereotypes of ethnic communities as tolerant of violence against women.³¹¹ As one stakeholder explained, the emphasis in education strategies needs to be on giving families with long term histories of displacement 'access to contemporary thought on child development and non-violent relationships':

*[R]efugee background families are in a process of transition, and communities don't know the child development concepts or values about sexual assault in marriage that Australian family law is based upon. The community would benefit from an approach that engaged people around the law and deepening their understanding in terms of both how it functions and the intent behind specific laws. A big issue for people coming with long term histories of displacement is that they often have no reference points for many of the services and structures that they receive information about, which makes just providing information a relatively ineffective strategy.*³¹²

A related issue that was raised by community groups concerned the intergenerational conflict that can be created by the knowledge gap between children and parents in relation to their understanding of Australian socio-legal values, and the need to match the school-based education provided to children with equivalent information for parents (see 2.2.1). One Arabic community leader noted that he had tried unsuccessfully to persuade a local secondary school to offer evening classes for parents to this end. Several community representatives supported the idea of a 'whole of family' community based educative approach to the law, in which the community is actively engaged in the design work.

3.1.7 Legal education for non-legal service providers

As discussed in Chapter 2, the first port of call for many people from culturally and linguistically diverse backgrounds seeking legal assistance is a health professional (see 2.2.1). This pattern suggests the importance of providing information about the law and the family law system's services for community health centres, maternal and child health clinics and general practitioners, especially bilingual doctors. Council notes a recent program established by the North Melbourne Legal Service to reduce violence against women by providing education about the law to community health practitioners. A number of migrant and legal service providers consulted expressed a desire to extend their work in this way, but noted the difficulty of engaging medical practitioners because, as one organisation explained, 'they are so time poor'.³¹³

One initiative developed by the Fitzroy Legal Service to fill this gap is a guidebook resource entitled *Between a Rock and a Hard Place*, which was designed to enhance community service providers' knowledge of the legal system and increase the capacity of non-legal service providers to support clients with legal problems, including family law issues.

3.1.8 Visual and audio tools

In response to increasing evidence that written materials are not generally effective for culturally and linguistically diverse communities, because of the limited literacy skills of many members of newly arrived communities, service organisations across the family law system have changed their approach to providing information about family law. This shift has seen services move away from translating their standard printed materials into community languages to developing a broader range of visual and audio tools, such as DVDs, visual-based information pamphlets, online materials and community radio programs.

An example is *Raising Children in Australia DVD for parents of young children from African Backgrounds* produced by Foundation House in Victoria, which shows African Australians speaking about their experiences of parenting in Australia.³¹⁴ Another recent visual Community Legal Education tool is *Building Strong Families – A guide for new migrants to Australia*, produced by Relationships Australia Victoria.³¹⁵ The DVD shows migrant families speaking about their experiences of settling in Australia and negotiating the service system, and is available in English, Arabic, Burmese, Dari, Dinka, Farsi, Haka Chin, Karen, Nepali and Tamil. A more recent example is the *AVERT Family Violence Training Package*, produced by the Australian Government, which includes educational scenario-based video presentations about family violence in migrant and newly arrived families.³¹⁶ Of particular note is the NSW Law Access website, which provides information about the law, including family law issues, in an audio file format in a wide range of community languages.

Translated written materials remain important, however, as do easy to understand information sheets in English. Legal Aid NSW publishes two family law brochures, *Working out what's best for my children* and *Family law frequently asked questions*, in Arabic, Chinese, Korean, Spanish, Turkish and Vietnamese, while Victoria Legal Aid publishes a pamphlet in English entitled, *Young people – when are they old enough in Victoria?*, which provides information for migrant families about when children are legally allowed to leave school, obtain employment and receive Centrelink payments. This information sheet was designed on the basis that although many members of newly arrived communities have low literacy levels, often at least one member of the extended family network can read plain English well.³¹⁷

Community radio is also an important medium for disseminating information about the law to migrant communities. The AMWCHR provides legal education for Arabic speaking communities on SBS and 3CR community radio programs, using interviews with bi-lingual lawyers to explain the law and address common concerns and misunderstandings.

3.2 Service Integration Strategies

As discussed at 2.2.6, consultations revealed concerns that access to the family law system for families from culturally and linguistically diverse backgrounds is inhibited by the fragmented and ‘overwhelming’ nature of its service landscape,³¹⁸ and suggest an urgent need to improve integration of services across the system. They also suggest the need for clear and accessible information for clients and service providers about the range of services available and what they provide, including information about family dispute resolution and court processes and the timing and reason for various events.

In recent years there have been increasing efforts to foster collaborative practices across the family law service system, including partnerships with migrant services. However, as the FRSA submission notes, successful collaboration involves a ‘more complex set of activities’ than simply ‘fostering good will between agencies’.³¹⁹

3.2.1 Referral relationships

Research conducted by the Law and Justice Foundation of New South Wales in 2006 found that non-legal services such as community health services are often the first point of contact for socially and economically disadvantaged people with legal problems, and can act as a referral pathway to legal services.³²⁰ Council’s consultations confirmed this pattern, and suggest that positive relationships between health and legal services can provide an effective pathway into the family justice system for people from culturally and linguistically diverse backgrounds.

However, they also suggest that more needs to be done to foster effective referral relationships with migrant settlement services. Legal practitioners who responded to Council’s survey identified migrant support services as the least common referral source (19%) for clients from culturally and linguistically diverse backgrounds. More common sources of referral were ‘existing clients’ (57%), ‘other lawyers’ (48%), and ‘domestic violence services’ (38%).

The survey responses and consultations raise two issues affecting successful referrals to legal services from migrant support services. Firstly, the legal practitioner survey responses indicate that clients from culturally and linguistically diverse communities are frequently legally aided, and that practitioners who work with these clients tend to be those who do legal aid work and /or undertake pro bono work for family law clients. Secondly, Council’s consultations with migrant services indicate that referrals to mainstream family law services are usually based on the reputation of specific staff members. As one stakeholder explained, ‘For CALD communities the focus is on the individual workers, not the service’.³²¹

A highly successful referral strategy that has been running for 11 years in Melbourne’s Western suburbs is the Greek Legal Information Referral Service. This service, provided by the Australian Greek Welfare Society, provides a free evening legal advice service to low income families. Around one third of the matters dealt with by the service, which is staffed by Greek-speaking volunteer solicitors, concern family law issues.³²²

3.2.2 Partnerships between migrant services and family relationships services

Council learned that a number of family relationships services have established successful partnerships with migrant organisations to deliver specific programs to identified communities. One such partnership brought together Relationships Australia NSW and the Northern Sydney Central Coast Multicultural Health Service, who joined forces to run a project focused on supporting parents and adolescents from Sydney's Tibetan community in 2010.³²³ Another example is a partnership between Youth and Family Service, a mainstream family relationship service located in Logan City, Queensland, and Assisting Collaborative Community Employment Support Service Inc., a refugee and migrant settlement service, to help newly arrived migrant and refugee communities learn about Australian family law through a 'Healthy Family Relationships Program', which focused on family relationship and family violence issues.³²⁴

A number of successful partnerships have also been established through the FRSHE program. This Department of Families, Housing, Community Services and Indigenous Affairs initiative, located within the Family Relationship Service Program, offers specially designed advice, support and assistance services to newly arrived migrants who have come to Australia under the Humanitarian Program.³²⁵ One partnership created as part of this initiative is the *Strength to Strength* program run by Relationships Australia WA and the Association for Services to Torture and Trauma Survivors in Western Australia, which provides specialist domestic violence responses and counselling support to humanitarian entrant families.³²⁶

Council also heard about successful partnerships that have been designed to provide Migrant Resource Centre clients with family counselling services. One such partnership was developed four years ago between Relationships Australia NSW and the Hills Holroyd Parramatta Migrant Resource Centre, allowing refugee background clients from African, Afghani and Iraqi communities to receive counselling for family breakdown, intergenerational conflict and mental health issues.³²⁷

Whilst these targeted community projects have been highly successful, a number of Family Relationship Centres that Council consulted described difficulties in maintaining an ongoing working relationship with migrant services. Migrant Resource Centres who were consulted by Council provided similar descriptions of the difficulties with their relationships with Family Relationship Centres. Migrant support services tended to explain these difficulties in terms of the views expressed by some culturally and linguistically diverse community representatives that the western therapeutic orientation of the family relationships services in the family law system is not a 'comfortable fit' for many families from newly arrived communities. Some also noted community perceptions that associate Family Relationship Centres with divorce and family breakdown (see 2.2.4).

Other stakeholders in both sectors pointed to the impact of funding purpose limits on their work with clients. This issue was acknowledged by FRSA in its submission to Council:

*[T]he relationship between specialist (migrant) services and mainstream (family relationships) services can be challenging. Specialist services frequently report difficulties referring CALD families into mainstream services and programs. Similarly, mainstream programs report difficulties accommodating families with significant language and cultural barriers without ongoing support and engagement from specialist services which is not always available. One of the difficulties observed by FRSA is that both specialist and mainstream services are funded for relatively narrow functions and constrained by lack of resources and prescriptive output requirements which limit their capacity to allocate the resources needed to work together to meet complex needs, particularly where this requires substantial investment in program integration.*³²⁸

3.2.3 Partnerships between migrant services and legal services

Council's consultations with Migrant Resource Centres revealed a strong desire for greater collaboration with legal service providers. The Hills Holroyd Parramatta Migrant Resource Centre explained the benefits of partnerships with legal services in terms of creating 'a single access point for the family law system' for newly arrived communities and 'breaking down the silos' that currently characterise the system.³²⁹ According to the Sunshine Spectrum Migrant Resource Centre, collaboration with legal services also 'helps to provide migrant services workers with a level of familiarity with legal service providers and provides a pathway for CALD clients who have difficulty opening up to people they do not know and trust'.³³⁰ However, as noted in Chapter 2 (at 2.2.6), some settlement service providers complained that they have difficulty finding bilingual lawyers for their clients, while others, including AIRWA members, noted the need to use lawyers who are willing to do legal aid or pro bono work.

At present, the main area of service collaboration appears to be in the provision of legal education programs to migrant and refugee communities (see 3.1), and the provision of Community Legal Centre outreach clinics within migrant services (see 3.2.4).³³¹ An example of the former is a three-way collaborative endeavour between the Australian Greek Welfare Society in Melbourne, the Moreland Community Legal Centre and the Chadstone Family Relationship Centre. This 2009 initiative involved a series of forums that provided legal information and referrals to support services for Greek grandparents around Melbourne were concerned about access to grandchildren following parental separation.³³²

Another example is the partnership between the Migrant Resource Centre and the Legal Services Commission of South Australia, which developed a legal education kit to improve understanding of family law among culturally and linguistically diverse communities in South Australia.³³³ A similarly targeted partnership has recently been established between National Legal Aid and the Adult Migrant English Service (AMES), to produce *What's the Law?*, a national legal education package for recent arrivals that can be used in the AMEP and other community legal settings.³³⁴

3.2.4 Co-located services

The Australian Human Rights Commission has suggested that co-location of legal and health or other non-legal services is 'a particularly effective way' of reaching out to

newly arrived communities.³³⁵ Apart from building awareness of what legal services provide, the Commission found that co-location ‘meant community members were more likely to feel comfortable about accessing the service if a legal issue did arise’.³³⁶ An example of the benefits of this approach is the Whittlesea Community Legal Centre in Victoria, which is located in the same community centre as the local Maternal and Child Health service, with which it has close links, providing opportunities for safe on-the-spot referrals of women from new and emerging communities for legal advice.

Another example of successful co-location has been the establishment of outreach clinics by Community Legal Centres within community health services premises, such as the range of outreach clinics run by WLSNSW at Women’s Health Centres in Western Sydney - at Penrith, Liverpool, Blacktown and the Immigrant Women’s Health Centre in Fairfield. Solicitors from WLSNSW attend these centres once a fortnight, providing a free legal advice clinic on site. This enables cross-referrals and permits anonymity of service delivery for women from culturally and linguistically diverse communities for whom cultural barriers may inhibit legal help-seeking. A similar initiative by the North Melbourne Legal Service has recently received funding to establish an outreach legal assistance program in the Royal Women’s Hospital in Melbourne.

3.2.5 Integrated service models

Council’s consultations suggest that an integrated service approach is a particularly successful collaborative model for engaging culturally and linguistically diverse communities. Council notes three successful examples of this approach in this section.

The Family Relationship Centre Broadmeadows involves the integration of service expertise from the family relationships and migrant services sectors. This Family Relationship Centre is operated by a consortium of three organisations, including two family relationships sector organisations (MacKillop Family Services and Relationships Australia Victoria) and the Spectrum Migrant Resource Centre. Two staff members from the Spectrum Migrant Resource Centre are employed by the Family Relationship Centre, including a Senior Cultural Advisor who brings an awareness of cultural and migration issues and connections to local community leaders to the Family Relationship Centre. As a result of this integration, the Family Relationship Centre has been able to develop a local Cultural Consultative Group, which consists of professionals from various cultural backgrounds who work with people from the local communities. The group meets at the Family Relationship Centre on a bi-monthly basis to discuss issues and share information about the needs of families from the local ethnic communities (see 3.1.4). The incorporation of personnel from the Migrant Resource Centre into the Family Relationship Centre has enhanced the centre’s provision of culturally appropriate services, including culturally specific conflict resolution avenues, and its ability to engage with families from culturally and linguistically diverse communities in the catchment population.

The second example is an initiative located at the Dandenong registry of the Federal Magistrates Court. The Federal Magistrates Court component of the ‘Dandenong Project’ commenced on 1 January 2010.³³⁷ Designed to ‘deliver justice in a way that better meets the needs of litigants in the Dandenong region’, an area with a substantial refugee population, the project emphasises interaction between the court and

community-based services in order to better support family law litigants. According to the Chief Federal Magistrate, the key focus of the Dandenong Project is on ‘trying to get all the helping groups together in the one place with the court’.³³⁸ Central to the model is a docket system of case management, in which the Federal Magistrate who is allocated responsibility for the case actively manages the matter from beginning to end. As part of this responsibility, on the first court date the Federal Magistrate will link the litigants to suitable community organisations for support and therapeutic assistance. Representatives from one of the local Family Relationship Centres or the Family Mediation Centre are in attendance to provide information about alternative dispute resolution programs, counselling services and contact centres. A second aspect of this initiative is a help-desk managed by the Victorian Family Law Pathways Network, modelled on the Geelong Family Relationship Centre Collaboration Project established at the Geelong Federal Magistrates Court in 2009.³³⁹ A recent evaluation of the Dandenong help-desk, which surveyed 43 legal representatives and 40 representatives from post separation services, suggests that it has improved the level of information provision and referrals to post-separation services for court clients.³⁴⁰

Whilst not part of the federal family law system, the third example provides a template for a more comprehensive court-centred ‘one stop shop’ model of integrated service delivery. This is the Neighbourhood Justice Centre, located in Collingwood, Victoria, an area with a significant culturally and linguistically diverse population.³⁴¹ The Neighbourhood Justice Centre incorporates a court precinct with on-site client services, and aims to provide integrated justice and social services to deal with disadvantage and conflict in the local area.³⁴² Located on the same premises are a Magistrates Court with jurisdiction to hear criminal matters, Children’s Court matters and minor civil matters involving local residents, a client services team that provides assessment and referral services to people involved in the Centre’s justice processes, and a variety of justice and social service agencies including Victoria Legal Aid, a community legal service, a migrant settlement service, a restorative justice group conferencing program, a community health service, a community mediation service and a financial counselling service. These agencies provide services to the centre’s clients in an integrated and coordinated fashion within a framework of therapeutic justice. The Neighbourhood Justice Centre was also designed to operate on a neighbourhood level. Central to its operation is active community engagement and a strong presence in community development and cultural activities with the diverse communities in Yarra, including regular meetings of local community groups on-site.

3.2.6 Service roadmaps

As noted in Chapter 2 (at 2.2.6), service providers complained that clients from culturally and linguistically diverse backgrounds find the family law system complex and confusing, and suggested the need for a ‘roadmap’ of the service system to better assist clients. While not specifically designed with the needs of clients from culturally and linguistically diverse backgrounds in mind, the Victorian Family Law Pathways Network has developed a *Network On A Stick*, a free directory of Victorian organisations offering services to clients of the family law system that is pre-loaded onto a USB stick. The *Network On A Stick* was developed to meet the needs of practitioners in the family law sector, providing a brief overview of each service type, divided by region, which has information about where the service is located and contact details.

A similar initiative that was designed for parents rather than service providers is the Victorian Court Network's *Children's Court Shoulder Bag*. The *Shoulder Bag*, which could be adapted for use in the family law system, aims to make the court less intimidating for parents and children who come to court by providing court users with a non-legal step by step plain English guide to the children's court processes.

3.3 Workforce Development

The discussion in Chapter 2 indicates that a lack of culturally responsive services and bicultural personnel have impeded effective use of the family law system for clients from culturally and linguistically diverse backgrounds, and suggests the need for greater capacity building initiatives and workforce development efforts.

Workforce diversity is a key strategy in building a more culturally responsive service sector. It is difficult to determine the current workforce profile of the family law service system. As noted in Chapter 1, the 2006 Census data show that around 14 per cent of Australians were born in a country where English was not the main language, and 16 per cent speak a LOTE at home.³⁴³ The Family Court's workforce data indicate that as at June 2008, only 4 per cent of its employees came from a non-English-speaking background.³⁴⁴ A workforce mapping project of the family and relationship services workforce in 2009 reported that 15 per cent of the FRSP-funded workforce identified themselves as being from a culturally and linguistically diverse background.³⁴⁵ The submission provided by National Legal Aid indicates that the proportion of staff in individual Legal Aid Commissions who identify as coming from a culturally and linguistically diverse or non-English speaking background range between 10.5 per cent (Legal Aid ACT) and 20.4 per cent (Legal Services Commission, South Australia).³⁴⁶

Although these data rely on different measures (discussed further at 3.8), they suggest the need for greater efforts to recruit bilingual and bicultural staff in some areas of the system. During consultations, Council was informed about a number of initiatives that have been designed to address this issue, and to improve the cultural responsiveness of the service system.

3.3.1 Scholarship initiatives

Several consultation participants suggested there is a need for greater diversity in the appointment of professional staff, including as independent children's lawyers and family consultants, so as to provide a more culturally appropriate response to children and parents from culturally and linguistically diverse backgrounds. Some also suggested the need for appointment processes that encourage lawyers from culturally and linguistically diverse backgrounds to apply for judicial office. Other stakeholders, including community groups that Council met with, strongly supported a scholarship scheme to train people from ethnic communities to become qualified lawyers and family dispute resolution practitioners. Similar recommendations were made by migrant services about the need for family relationships services to have bicultural counsellors and psychologists, and for scholarships to be made available by government to ensure people from culturally and linguistically diverse backgrounds are trained in these areas. This type of initiative was also supported by a number of legal services, including National Legal Aid and Women's Legal Centre (ACT & Region).

One of the barriers to recruiting staff across the diversity of culturally and linguistically diverse communities has been the relatively small number of professionals from these communities with legal and social science qualifications and the required post-graduate qualifications. In order to overcome this barrier a small number of successful initiatives have been implemented to provide professionals from culturally and linguistically diverse backgrounds with scholarships or traineeships in family dispute resolution and counselling. One such initiative in New South Wales, which commenced in 2009 using Attorney-General's Department funding, is offered by UnitingCare Unifam and its Registered Training Organisation, the Institute of Family Practice. Unifam's scholarships, worth in the order of \$10,000 each, have developed a number of professionals from culturally and linguistically diverse and Aboriginal and Torres Strait Islander communities for the family dispute resolution and counselling sectors, equipping them with the qualifications and the competencies required, as well as, through placements, some experience towards being ready to work as family dispute resolution practitioners or counsellors in the family law system.

Another example of this kind of initiative is the Culturally and Linguistically Diverse Family Dispute Resolution Practitioner Traineeship program developed by Legal Aid NSW in 2010. As part of this program, ten lawyers from Vietnamese, Spanish, Arabic, Chinese, Indian, African and Pakistani communities were awarded traineeships by Legal Aid NSW to undertake training to become family dispute resolution practitioners. They were selected for their diverse backgrounds and their existing strong links within their own communities. Legal Aid NSW partnered with Uniting Care Institute of Family Practice to deliver the training program which met accreditation standards and was tailored to the Legal Aid NSW model. These practitioners will become accredited family dispute resolution practitioners which will allow families from culturally and linguistically diverse backgrounds to participate more effectively in legal aid dispute resolution conferences.

More recently, the Attorney-General's Department has provided funding to FRSA to develop a framework for family dispute resolution scholarships for Indigenous and culturally and linguistically diverse students. The objective will be to increase the number of Aboriginal and Torres Strait Islander and culturally and linguistically diverse people undertaking training to obtain family dispute resolution qualifications.

A similar strategy by the Legal Services Commission of South Australia in 2006 provided 15 scholarships for people from culturally and linguistically diverse backgrounds to undertake a TAFE level Law for Community Workers course.³⁴⁷

Another initiative that effectively broadens the pool of ethnic family dispute resolution practitioners is the Supporting Traditional African Mediators Project (STAMP). STAMP was designed by the Western Region Health Centre in Melbourne in collaboration with members of the justice system and a number of African background communities to provide training support to community leaders who perform a conflict resolution role within their communities. Western Region Health has recently received a major grant to develop a family violence training package for these community leaders to enhance their ability to promote safe outcomes for families.

3.3.2 Community Support Workers and Community Liaison Officers

Council's meetings with community groups revealed a strong desire for Community Support Workers to help guide clients from culturally and linguistically diverse backgrounds through the service system and court processes. A key suggestion was for the creation of a community advisor workforce by providing community members with education about the legal system so that they could provide advice and support to their community, including attending court with clients. The ability of these workers to speak to clients in their own language appealed to participants. Consultations with service providers from the migrant services sector suggested that Community Support Workers could also assist service personnel who in working with the client.³⁴⁸

An existing model for this role is the Counsellor Advocate position created by Foundation House in Victoria, which has counterparts in other FASSTT organisations in other States. The role of the Counsellor Advocate is to mitigate the trauma experienced by migrant and refugee clients in traversing the system, for example, by limiting the number of times they have to repeat their story by themselves.³⁴⁹ The role recognises the complexity and confusing nature of the system for clients from migrant and refugee backgrounds and responds to the evidence that it takes an extreme situation for a member of these communities to approach the formal legal system (see 2.2.7). Counsellor Advocates are qualified psychologists, social workers and occasionally nurses, who help clients to deal with their internal worlds as well as guide them through the system and help them achieve a practical outcome. The Queensland Program of Assistance to Survivors of Torture and Trauma also employs special Counsellor Advocates for children.

The Court Network service, a court-based support service operating in the Dandenong and Melbourne Registries of the Family Court and the Brisbane Commonwealth Law Courts, provides an information support and referral service to people involved in family law proceedings. This includes assisting in arranging access to interpreting services and other relevant support services for court clients from culturally and linguistically diverse backgrounds. However, in Council's consultation with Sudanese community leaders in Melbourne, concerns were raised about the lack of any African-background Court Network personnel. The recommendation of this group was that Court Network services should employ people from culturally and linguistically diverse communities to help support community members who use the courts.

A number of Family Relationship Centres have created a dedicated community development position, such as a Community Liaison Officer or Community Outreach Worker, to engage local culturally and linguistically diverse communities. For example, the four Family Relationship Centres run by Relationships Australia Victoria each have a Community Liaison Officer from one of the local migrant communities. These Community Liaison Officers noted that these positions have a dual benefit, acting as a bridge between communities and family law services and enhancing the cultural awareness of service personnel.³⁵⁰

Victoria Legal Aid has also recently received funding from the Legal Services Board to increase knowledge of family violence laws among new and emerging communities in

Victoria by recruiting a network of community liaison workers who will work with organisations that deliver services to these communities.

3.4 Engagement Strategies

Armstrong's recent research examined the work of two Family Relationship Centres situated in Western Sydney, in localities that are characterised by high levels of cultural, linguistic, ethnic and religious diversity and socio-economic disadvantage. A key focus of the research was examining what Family Relationship Centres can do to enhance their services for people from culturally and linguistically diverse communities. The clear message coming from this research is that to enhance access to Family Relationship Centres for families from these communities, it is essential to actively engage with communities, and particularly with their service provider gatekeepers and community leaders, in a meaningful way. The report notes that this engagement is likely to be a time consuming, challenging and slow process. However, Armstrong argues that engagement is essential for building trust between service providers and communities, for encouraging mutual learning and for developing reciprocal referral pathways.³⁵¹ Kerry Walker, the Director of the Neighbourhood Justice Centre, described a similar community development methodology for enhancing access to justice and social services by local cultural communities, highlighting the importance of providing practical help to establishing trust.³⁵²

The submission from FRSA notes that developing culturally appropriate service models 'often requires a community development approach in which an organisation will work with community leaders to first understand the cultural needs and diversity of needs prior to developing tailored responses'.³⁵³ This approach can provide a way for family relationships services and the family law courts to engage directly with local culturally and linguistically diverse communities and challenge the negative perceptions and mistrust described in Chapter 2 (at 2.2.4 and 2.2.9).

Council is aware of a number of successful engagement strategies that have developed trusted working relationships between family law system services and new and emerging communities. One model discussed already involves partnerships between legal and migrant services to engage new and emerging communities in the development of legal literacy programs (see 3.1). As noted above (3.1.4), the consultations with legal service providers who provide legal education programs to migrant and refugee communities suggest that an indirect impact of this work is a greater appreciation by service system personnel of the needs and values of families from culturally and linguistically diverse communities.

The value of engagement activities in building relationships and cultural awareness among service system personnel is also highlighted by the Family Court's *Living in Harmony Partnership* project, which saw the Family Court build relationships with six new and emerging communities in 2005. The 2008 report of this project, *Families and the law in Australia*, notes that, among other things, the Family Court's engagement with these communities enhanced its training programs for staff 'about differences of ethnicity, culture, religion and social behaviours that may affect the Court's processes', and increased 'their understanding of the impact that Australian family law has on communities' understanding of the process of separation and divorce'.³⁵⁴ This work saw Family Court personnel from 4 States attend community forums to provide information about family law as well as procedural information about court processes. The Family Court's report indicates that the communities particularly valued the involvement of the

judiciary in these forums, and suggests that this ‘greatly increased trust and confidence in the sincerity of the consultations’.³⁵⁵

A number of family relationships sector staff also pointed to the trust-building benefits of outreach work. As noted in Chapter 2.2.4, perceptions of Family Relationship Centres as ‘separation services’ have inhibited families from culturally and linguistically diverse backgrounds from approaching their services, and managers were conscious of the need to build trust with local communities. One example of successful trust-building through community outreach was provided by the Bankstown Family Relationship Centre, which described its outreach program with a local ‘Older Men’s Group’. Through this program, the Family Relationship Centre was able to build a relationship with the group which led to Family Relationship Centre staff being invited to provide the men with information that they could use to help their families.

3.5 Community Consultation

As described in Chapter 2, concerns about cultural responsiveness and inflexibility of service models have been identified as key barriers impeding access to the family law system by new and emerging communities (at 2.2.7 and 2.2.8). In response to these problems, the consultations and submissions to Council’s reference suggest the need for a collaborative approach to program design, where the development and delivery of services are informed by consultation with local communities.

A highly successful example of this approach is the *Strengthening Family Wellbeing* model developed by Foundation House in Victoria. This model involved the establishment of gender balanced 14 member Community Advisory Groups within three new and emerging communities to work directly with mainstream service providers to develop culturally responsive services. The approach was informed by an understanding that the family relationships sector did not have the capacity to provide significant levels of direct service support to refugee background families, and that simply ‘pushing these families into the sector would produce poor outcomes’.³⁵⁶ The model established networks between six family relationships services and 40 community leaders from the Karen, Afghan and Sudanese communities around Melbourne. The Community Advisory Groups comprise seven men and seven women from each community, who are paid a stipend to participate in three hour monthly meetings. Once they were selected and established, the Community Advisory Groups undertook an analysis of their community’s family support needs, and were linked by Foundation House to the mainstream family relationship service that most closely correlated with the issues they identified. The Community Advisory Groups then created a job description for a Community Access Worker to work three days per week in each agency. Two positions were created for each service, one for a man and one for a woman. The diagram below illustrates this model.

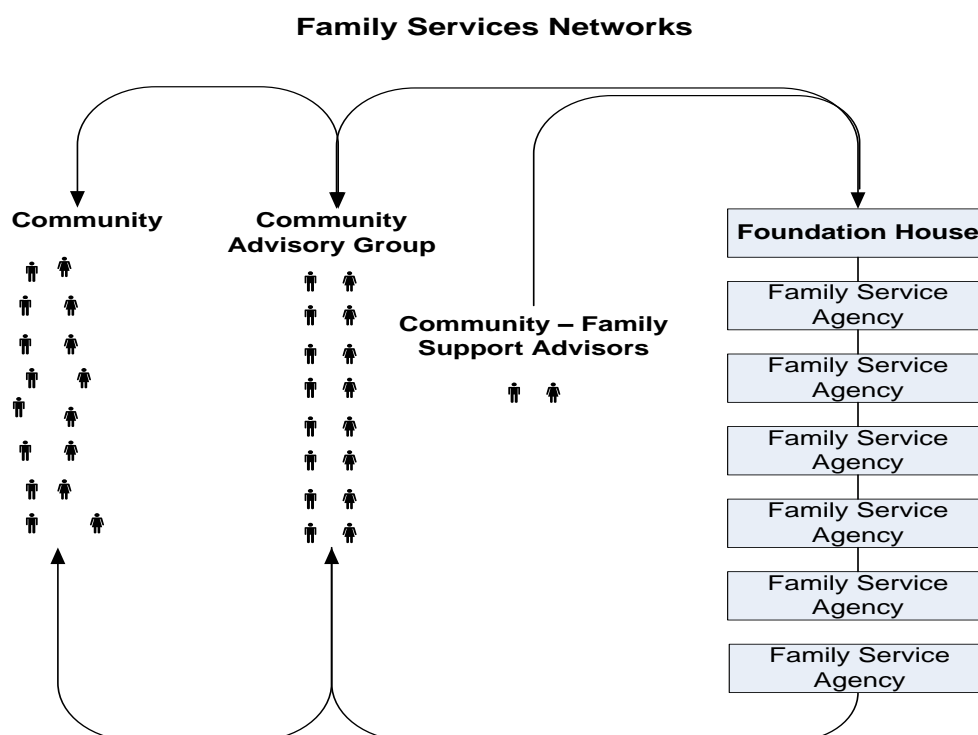


Diagram from Foundation House's *Strengthening Family Wellbeing* strategy

Consultations with Foundation House personnel revealed a number of key principles underpinning the successful establishment of these advisory groups. Firstly, it was suggested that identifying appropriate advisors needs to be done with an established profile in mind. In the case of the *Strengthening Family Wellbeing* strategy, this was men and women who had children or who were the primary carers of children and young people, who were 'not captured by a sense of culture clash but rather had a good foot in both the host and root culture of the particular community'.³⁵⁷ Secondly, Council was advised that having well developed Terms of Reference and being prepared to negotiate this with the advisory group once formed was critical. Thirdly, the 'compensation payment' of \$60 per person per meeting was considered to be an important acknowledgment 'that people's time has a value' and vital to ensuring continued participation by group members. The manager of the program explained; '[W]e needed to address the issue that consumers often don't have the resources to stay engaged in this kind of consumer participation strategy for the time needed for effective capacity building to take place'. He recommended that engagement endeavours by family relationships services need to be supported by 'sufficient resource allocation' to pay people from the community 'on a consultancy basis'.

3.6 Flexible Service Delivery Models

It is clear from Council's meetings with stakeholders that in addition to building cultural competence and workforce diversity, enhancing access to the family law system for people from culturally and linguistically diverse backgrounds will require organisations to adopt flexible service delivery approaches. A number of initiatives aimed at addressing this need have been considered by different organisations in the system, including the development of cultural diversity plans and practical engagement work designed to immerse service staff in a grounded knowledge of local communities and their needs. However, consultations suggest that modifying existing service

delivery approaches to meet the needs of culturally and linguistically diverse clients presents a number of challenges for organisations in the sector.

3.6.1 Additional time

A common theme in the consultations and submissions from service providers was the additional time needed to provide legal advice and dispute resolution services to clients from culturally and linguistically diverse backgrounds. The submission from National Legal Aid notes:

*[P]roviding legal assistance and representation to CALD clients requiring the use of [an] interpreter, generally requires a larger commitment of resources than for non-CALD clients. More time is usually required for appointments and additional meetings/conferences may need to be scheduled.*³⁵⁸

Council's survey of legal practitioners supports this view. Of the 128 practitioners who responded to Council's survey, 71 per cent indicated that additional time is required to provide advice to clients from culturally and linguistically diverse backgrounds. A range of explanations reflecting the barriers described in Chapter 2 was provided for this. In particular, practitioners identified cultural differences, language barriers, a lack of understanding of Australian legal concepts and processes, and a reticence to provide information because of a fear of authorities and 'getting into trouble', as reasons for needing additional time to work with clients from culturally diverse backgrounds. The following responses illustrate the explanations provided by these practitioners:

Extra time is needed if the person is not fluent in English and even when they are, some specialised words will need explanation. Where an interpreter is needed it takes longer. Time is necessary often to address perceptions about what the justice system may be able to deliver or not as the case may be depending on the client's length of time in Australia and experience of Australian law. The nature of the adversary nature of court proceedings is one aspect that needs to be explained. There may be additional issues of which law applies, obtaining documents from overseas, issues around removal of children from the jurisdiction, threats of cancelling visas, social support for isolated and vulnerable women, etc.

Interpreters, support workers, the process has to be explained to a few different people sometimes. It also takes longer as they generally have a limited or no understanding of the Australian legal system at all.

Language barrier, time to ensure they understand, time to compare their legal system with ours - as they draw on their knowledge and culture, time to explain differences and why, time to often repeat things to ensure they understand.

Lack of understanding of Australian family law principles and difficulties accepting same, ie, no fault divorce and property settlements based on no consideration of fault. Some non CALD [clients] also don't understand this but I find it particularly difficult to get CALD clients to accept that that is the law. Also obviously translation services take longer to explain things.

There is often more time because some cultures have very traditional gender divides and clients can find it difficult to understand how contributions [to property] are assessed in particular where a wife has been home full time with children and a husband has worked.

Language and unfamiliarity with Australian law and legal system mean there is a greater need for certainty that advice is understood.

[More time is needed] to ensure that the description of the facts is accurate in view of the language barriers. To make sure that their case is not prejudiced by the language difficulties.

Family law system in Australia is different from clients' countries or origin. Further, clients from a CALD backgrounds (due to the lack knowledge of English), often trust/believe/confused/relying on info from family/friends which are not always correct. Therefore, need more time to explain and clarify their concerns.

The need for additional time was also raised by other service provider groups within the family law system, including community legal sector lawyers and family relationships services personnel. Contributing factors noted by these stakeholders included extra time to explain the differences between understandings of family relationships in the context of Australian law and those in the client's home country, working with interpreters, including extended family members and community support people in dispute resolution processes, and the need for 'warm' referrals.

3.6.2 Cultural diversity policies

A further aspect of the development of culturally responsive service delivery concerns the need for organisational policies directed at meeting the support needs of diverse client groups. The Family Court's *National Cultural Diversity Plan*, developed by the Family Court's National Cultural Diversity Committee in 2004, provides a principled framework for approaching this issue.³⁵⁹ The Family Court's *National Cultural Diversity Plan* was developed on the basis of a number of initiatives, including an access and equity audit of the Family Court's services in 2001 and a national roundtable conference jointly hosted by the Family Court and the Australian Multicultural Foundation in 2003. The *National Cultural Diversity Plan* incorporates seven guiding principles designed to ensure the Family Court's compliance with its cultural diversity agenda, including:

Principle 1: *A commitment to identifying and addressing barriers that impede equal access to Court services. These barriers may exist in the physical environment of the Court, the way staff provide services and the Court processes themselves.*

Principle 3: *A commitment to ensuring that information about the Court is widely available across the community in suitable formats and delivered in culturally appropriate ways. This includes recognition of the need for freely available quality interpreter and translation services to clients.*

Principle 6: *A commitment to providing appropriate and ongoing education to Court judicial officers and staff on the needs of clients from diverse cultural and linguistic backgrounds and the adoption of a partnership approach with community agencies in the delivery of such programs.*

Principle 7: *A commitment to creating opportunities for feedback from clients, community agencies and stakeholder groups as a critical element in the design and review of all aspects of service delivery.*

In accordance with these principles, the Family Court has aimed to improve its provision of information to, and communication with, culturally and linguistically diverse clients; develop innovative approaches to information distribution and community education for culturally and linguistically diverse communities, such as training community workers about the Family Court and its services; and introduce cultural diversity training for all staff, including judicial officers.

The operation of Family Relationship Centres is also governed by client service delivery principles which require that, in designing and delivering their services, Family Relationship Centres need to consider a range of issues affecting clients from culturally and linguistically diverse backgrounds, including:

- how best to engage and communicate with ethno-specific groups in their area
- cooperative arrangements with local services
- means to overcome language and cultural barriers, particularly with regard to service delivery and client feedback
- how to make optimum use of interpreters
- adaptations to the service design model to accommodate specific cultural needs, for example, about the participation of extended family members, and
- a strategy to provide access for clients outside business hours.³⁶⁰

3.6.3 Structural challenges

Council's consultations with representatives from migrant services revealed concerns about the appropriateness of dispute resolution services at Family Relationship Centres for families from culturally and linguistically diverse communities. As noted in Chapter 2, these concerns centred on perceptions of the essentially western therapeutic orientation of the services provided by Family Relationship Centres, as well as perceptions of them as 'government' services. A number of organisations acknowledged these problems, noting that Family Relationship Centres had been established quickly around a set service delivery model with little time to consider the needs of culturally and linguistically diverse clients.

A number of stakeholders agreed that there was a need for more flexibility in both service design and delivery of family relationships services, including approaches that support work with wider family and facilitate the provision of services within culturally and linguistically diverse communities, rather than in office accommodation. In particular, the submission from FRSA notes that successful models of service delivery for culturally and linguistically diverse clients '*tend to be those delivered through a community development model involving group work and outreach support rather than individual counselling or family therapy*'.³⁶¹

The success of the Broadmeadows Family Relationship Centre and its relationship with the Broadmeadows Cultural Consultative Group in engaging families from the range of local culturally and linguistically diverse communities demonstrates the capacity for flexibility of the Family Relationship Centre model. The need for a more ‘comfortable’ multicultural physical environment in Family Relationship Centres and the family law courts was also raised as an issue by both community groups and service providers. A good example of improving the environmental design of Family Relationship Centres is the Broadmeadows Family Relationship Centre, which displays cultural memorabilia and signage in multiple languages to create a welcoming environment for culturally and linguistically diverse clients, while the Neighbourhood Justice Centre in Melbourne provides a similar model of a multicultural court precinct.

3.7 Working with Interpreters

A barrier identified as impeding access to legal assistance services by culturally and linguistically diverse communities is the limited availability of adequate and competent interpreting services (see 2.2.2). Without effective means of communication, clients from culturally and linguistically diverse backgrounds have difficulty in accessing information, advice and services and finding an entry point into the legal system. The use of interpreters in courts and tribunals has been the subject of extensive reviews, including the recent national survey undertaken by Professor Sandra Hale: *Interpreter policies, practices and protocols in Australian Courts and Tribunals A National Survey* (the Hale Survey). Many of the themes which emerged from the findings of this survey are reflected in the consultations and submissions to Council and extend beyond the specific focus of interpreters in the courts and tribunal context.

The first entry point to the family law system is often via a Community Legal Centre or a Family Relationship Centre. WLSNSW outlined specific case examples where clients seeking legal assistance have been disadvantaged by the difficulty in accessing an interpreter or where the only interpreter available was from a country that was historically in conflict with the country of origin of the client seeking the provision of interpreter services.³⁶²

A consistent theme which has emerged in this reference is the need for targeted legal training of interpreters. The potential for cross-cultural misunderstandings can be compounded when interpreters come with their own cultural norms, experiences and perceptions about the family law system. The limited availability of interpreter courses which include a component for specialist training for interpreting in the legal sector, and in particular, in aspects of the family law system, was highlighted by many.³⁶³ One strategy Council was told about involved legal practitioners from the Fitzroy Legal Service providing education about Community Legal Centres and court procedure to interpreters as part of the ‘Community Interpreting Course’ at Monash University.³⁶⁴

Council’s survey of family law practitioners who work with clients from culturally and linguistically diverse backgrounds asked practitioners ‘How satisfactory do you find interpreter services at the family law courts?’ The majority of legal practitioners who responded to this question indicated that the interpreter services at the family law courts were ‘fairly satisfactory’ (44%), while a small number suggested they were ‘very satisfactory’ (12%). Only 10 respondents (8%) indicated that the services were ‘not at all satisfactory’, while 45 respondents (36%) said that the quality of the service ‘varies’.

As noted at 2.2.2, respondents who were dissatisfied with the interpreter services at the family law courts identified a number of problems, including a failure by the courts to book an interpreter despite a practitioner having identified the client's need for one, interpreters not understanding the legal issues involved that they are required to translate, hearings involving domestic violence concerns where a male interpreter is appointed for a female witness and interpreters from small communities where the interpreter is known to the families of the parties. This range of issues reflects the concerns that were raised with Council in its consultations with other service providers. The issues of confidentiality and a lack of legal knowledge by interpreters were particularly emphasised by organisations that represent clients from culturally and linguistically diverse backgrounds.

The Hale Survey includes recommendations to require all interpreters who work in courts and tribunals to complete formal legal interpreting training, as well as a recommendation that National Accreditation Authority for Translators and Interpreters (NAATI) introduce a specialist legal interpreter accreditation and the establishment of a national register of qualified legal interpreters.³⁶⁵

The family law courts each have interpreter and translator policies and procedures which provide that 'as far as practicable' interpreters used for court work should be accredited to a minimum standard of NAATI Level 3.³⁶⁶ Where a Family Court client attends the court registry and appears to need assistance in understanding information, court registry staff are encouraged to use the services of a staff member who is familiar with the client's first language, if available. When not available, the Family Court's policy is that the court will provide an interpreter at its expense.

The FRSA submission suggests that different considerations apply in the context of family and relationship services, where the use of interpreters is not a straightforward language translation exercise. The effective delivery of therapeutic family and relationship support depends on good communication and the development of a rapport between the practitioner and the client. The presence of an interpreter can complicate this and needs to be carefully managed. For more established migrant groups, qualified and experienced interpreters can be used. In newly arrived refugee populations, interpreters are often scarce and may not be trained or accredited. However, as in the case of legal services, there are also issues of community connectedness, family ties, gender, confidentiality (particularly in smaller language groups) and cultural norms to be considered. FRSA noted instances of interpreters becoming involved, inappropriately, in the delivery of service, miscommunicating or misinterpreting the practitioner's statements, applying cultural or religious judgements, and 'taking sides' in dispute mediation. The FRSA submission also suggests that interpreters can become traumatised by stories told by clients who have experienced torture or trauma and/or can become stressed by client anger or grief, and argues that managing interpreters can be 'a complex task that requires skills, local knowledge and confidence'.³⁶⁷

3.8 Data Capture Issues

Council's consultations with legal and family relationship service providers reveal a need for more accurate data collection strategies in regards to clients from culturally and linguistically diverse backgrounds. The consultations suggest that current data collection methods used by some service providers involve narrow classifications of cultural diversity, which inhibit accurate reflections of the number of culturally and linguistically diverse people accessing services.³⁶⁸ For example, some organisations use place of birth to classify clients, which fails to recognise later generation clients from culturally and linguistically diverse backgrounds.³⁶⁹

Family and relationship services collect and report client data using the FRSP Online system administered by the Department of Families, Housing, Community Services and Indigenous Affairs. This system requires clients to sign a consent form and provide information about themselves and their family. FRSA in its submission notes that service providers report that clients from culturally and linguistically diverse backgrounds are more likely to refuse consent or have difficulty with the consent form and thus make up a more substantial proportion of the unregistered client population. Around one third of clients were unregistered in 2008-09 and 2007-08. An evaluation of the pilot program FRSHE pilot program found that just 10 per cent of clients supported were 'registered' clients on FRSP Online. The evaluators, Urbis, recorded the following:

*[R]eports provided by FaHCSIA to the evaluation indicate that in the 2006-07 period 366 clients were recorded on the system as registered clients and a further 246 were recorded as unregistered. In addition a further 906 people were recorded as having participated in community development programs and activities.... On the basis that the pilot figures are accurate, under 10% of clients who could qualify as 'registered' have been recorded.*³⁷⁰

FRSP Online is in the process of transitioning to de-identified client data. This will potentially reduce the number of unregistered clients. Future reports may therefore provide a more accurate indication of the proportion of clients from diverse backgrounds.

The FRAL offers a TIS for callers whose primary language is not English. In the Centrelink Status Report for the period 1 March to 2011 30 June 2011, 80 callers from 17 different primary languages used the TIS service.³⁷¹

As these examples suggest, measures of cultural diversity across the family law system continue to be problematic, with some data capture systems restricted to linguistic diversity, which fail to record clients from diverse cultural and religious backgrounds who have English fluency, while others fail to capture second generation clients from culturally and linguistically diverse backgrounds.

4. Application of the Family Law Act in Contested Cases

Included in Council's Terms of Reference is the question 'what considerations are taken into account when applying the *Family Law Act* to clients of [culturally and linguistically diverse] communities'. A review of 177 judgments decided since 2007 indicates that issues of cultural diversity are most concentrated in parenting cases, where there are specific legislative provisions governing the child's 'culture'.³⁷² Of the 176 judgments, 166 concerned parenting disputes decided under Part VII of the *Family Law Act*.

As noted at 2.2.11, Council received several submissions which raised concerns about the courts' approach to contested disputes concerning a range of non-parenting issues, including nullity applications and financial disputes involving dowries or gifts from parents. Given the small number of reported cases on these issues, Council was not able to explore these complaints empirically as part of this reference, and recommends that further consideration be given to this issue by the Attorney-General's Department (see Chapter 5).³⁷³ This chapter focuses on the sample of cases that dealt with parenting issues.

The objects and principles of Part VII of the *Family Law Act* are set out in section 60B. Section 60B(2)(e) provides that, subject to the child's best interests,

children have a right to enjoy their culture (including the right to enjoy that culture with other people who share that culture).

Section 60B(3) expands on the content of that principle in relation to Indigenous children. It provides:

For the purposes of subparagraph (2)(e), an Aboriginal child's or Torres Strait Islander child's right to enjoy his or her Aboriginal or Torres Strait Islander culture includes the right:

- (a) to maintain a connection with that culture; and*
- (b) to have the support, opportunity and encouragement necessary:*
 - (i) to explore the full extent of that culture, consistent with the child's age and developmental level and the child's views; and*
 - (ii) to develop a positive appreciation of that culture.*

The child's 'best interests' are the paramount consideration for the court when deciding a parenting dispute.³⁷⁴ The *Family Law Act* provides guidance to judicial officers in determining a child's best interests in section 60CC. Its provisions require the courts to consider a range of matters, including the child's views³⁷⁵ and any family violence involving the child or a member of the child's family.³⁷⁶ Section 60CC(3)(g) provides specific guidance of relevance to Council's reference. This section directs judicial officers to consider the '*... lifestyle and background (including lifestyle, culture and traditions) of the child and of either of the child's parents*'.

This is supplemented by sections 60CC(3)(h) and 60CC(6), which set out specific guidance in relation to Aboriginal and Torres Strait Islander children.

60CC(3)(h) if the child is an Aboriginal child or a Torres Strait Islander child:

- (i) the child's right to enjoy his or her Aboriginal or Torres Strait Islander culture (including the right to enjoy that culture with other people who share that culture); and
- (ii) the likely impact any proposed parenting order under this Part will have on that right;

60CC(6) For the purposes of paragraph (3)(h), an Aboriginal child's or a Torres Strait Islander child's right to enjoy his or her Aboriginal or Torres Strait Islander culture includes the right:

- (a) to maintain a connection with that culture; and
- (b) to have the support, opportunity and encouragement necessary:
 - (i) to explore the full extent of that culture, consistent with the child's age and developmental level and the child's views; and
 - (ii) to develop a positive appreciation of that culture.

An analysis of the sample of cases decided since 2007 shows that consideration of a child's or parent's 'background' or 'culture and traditions' assumed significance in a range of circumstances, including disputes about care time arrangements, relocation cases, travel application matters, and cases where a parent sought orders requiring the other parent to encourage a child to understand his or her culture or religion by being involved in extra-curricular activities such as attending a cultural or religious school to learn a language and/or to acquire cultural knowledge.

Council's approach to interrogating these cases focused on three questions:

1. What considerations of culture or background in the case were important for the court?
2. How did the judicial officer take these factors into account in reaching his or her decision?
3. What, if any, orders did the court make regarding the child's upbringing on the basis of these considerations?

The analysis highlighted a number of issues concerning the application of the *Family Law Act*, including the role of cultural identity in promoting the child's wellbeing, the treatment of evidence about the migration and settlement context of the parents' dispute, and issues concerning the preparation of Family Reports pursuant to section 62G of the *Family Law Act*.

However, in many of the judgments in the sample the child's or the parents' cultural background was mentioned but not dealt with further in any detail. There are a number of possible reasons for this pattern. The most obvious explanation is that no issue of culture or background was raised by the parties. Another possible explanation proposed by some academic commentators is that this absence might reflect a failure by the courts to identify the relevance of cultural context to the child's best interests.³⁷⁷ Another suggestion put to Council is that legal practitioners are not systematically alerting the courts to the issue. Council was not able to test these explanations as part of

this reference, and the reason for the lack of engagement with the issue of the child's cultural background in these cases remains unclear. It may be that greater education or professional development about the meaning of this provision is required.

Council's examination of the cases in which the issue of a child's or parent's cultural background was a central element of the decision process revealed that some judicial officers have a sensitive and well-developed understanding of the concerns raised by culturally and linguistically diverse communities and their representatives during consultations for this reference, including an understanding of the social context affecting recently arrived refugee background families. These cases also highlight the multi-faceted and fact specific nature of contested parenting disputes, where the issue of culture is only one of several factors the judicial officer is required to consider, and where other issues, such as the risk of harm to a child from exposure to family violence or the young age of a child, may assume greater significance. Several cases also support the concerns raised by some stakeholders that there may be a need to enhance the cultural competency of family consultants and family report writers. The following sections provide case examples that illustrate these issues.

4.1 Cultural identity and children's wellbeing

In 2007, Amber Chew argued that the importance of culture to children's identity deserved stronger recognition in the *Family Law Act*.³⁷⁸ Chew suggested that in contrast to the provisions governing the cultural needs of Australia's Indigenous children, section 60CC(3)(g) does not facilitate consideration of cultural identity.³⁷⁹ In support of her case for strengthening the legislative emphasis on 'the role of cultural connections in the development of all children', Chew drew on child development and sociological research to argue that exposure to cultural beliefs and traditions offers children a 'narrative of community identity', from which they can derive 'self-worth and personal value'.³⁸⁰ In a similar vein, Shauna Van Praagh has argued that interaction with others who share the same cultural background as the child engenders a sense of belonging and community,³⁸¹ while Ya'ir Ronen suggests that cultural identity is critical to children knowing 'who they are':

*[S]elf-definition can never take place in a vacuum. A child knows who they are only within a specific familial and community context ... A familial and communal environment ... affords them a clear understanding of who they are and helps to give meaning to their life ... The child's family and community are their starting points in life.*³⁸²

As Chew notes, the existing literature thus indicates that knowledge of their cultural connections affects a child's ability to enjoy a 'healthy identity and self-esteem'.³⁸³ On this basis, she suggests the need for the *Family Law Act* to provide greater recognition and support for this factor for all children.³⁸⁴ The submission from National Legal Aid raises a similar point on the basis of Australia's obligations under the UNCROC, suggesting that consideration be given to greater legislative recognition of the importance of cultural values for children.³⁸⁵ An example of this kind of legislative recognition is found in section 5(f) of the *Care of Children Act 2004* (NZ):

Section 5 *Principles relevant to child's welfare and best interests*

The principles referred to in section 4(5)(b) are as follows:

- (a) the child's parents and guardians should have the primary responsibility, and should be encouraged to agree to their own arrangements, for the child's care, development, and upbringing:
- (b) there should be continuity in arrangements for the child's care, development, and upbringing, and the child's relationships with his or her family, family group, whānau, hapu, or iwi, should be stable and ongoing (in particular, the child should have continuing relationships with both of his or her parents):
- (c) the child's care, development, and upbringing should be facilitated by ongoing consultation and co-operation among and between the child's parents and guardians and all persons exercising the role of providing day-to-day care for, or entitled to have contact with, the child:
- (d) relationships between the child and members of his or her family, family group, whānau, hapu, or iwi should be preserved and strengthened, and those members should be encouraged to participate in the child's care, development, and upbringing:
- (e) the child's safety must be protected and, in particular, he or she must be protected from all forms of violence (whether by members of his or her family, family group, whānau, hapu, or iwi, or by other persons):
- (f) the child's identity (including, without limitation, his or her culture, language, and religious denomination and practice) should be preserved and strengthened.**

(Emphasis added)

As noted, Council's examination of the reported parenting cases in which the child's cultural identity was a central concern for the court in determining appropriate parenting orders highlights the fact that parenting matters are determined on their own facts, by considering the advantages and disadvantages of the parties' competing proposals, and that the issue of culture is only one of the factors the judicial officer is required to consider. In a number of cases other issues have assumed greater importance than the child's cultural background, such as the risk of harm to a child from exposure to family violence, the young age of a child and his or her need to establish a relationship with the non-primary carer. The following cases illustrate this point.

***Naylor & Tauchert* [2008] FMCAfam 455**

This case was a decision of the Federal Magistrates Court in Adelaide. It involved a contested application for parenting orders in relation to a five year old child. The girl,

referred to as K in the judgment, had been only 15 months old when the parents separated, and her mother had been her primary carer since that time. The father, who was Nigerian by birth, had recently married a Nigerian woman and wanted to spend more time with his daughter. His application sought orders for the child to live with him and the mother on a week about basis. The mother was Australian born. The father acknowledged that he had spent little time with his daughter under the existing arrangements, but argued that he wanted to be more than a 'weekend Dad' and, in particular, that he wanted his daughter to enjoy her Nigerian heritage. The mother wanted the existing regime, whereby the father spent alternate weekend time with the child, to continue. The Federal Magistrate made orders increasing the father's time with his child but rejected his application for equal time. Two competing considerations were important to this decision: the child's young age and her right to enjoy her Nigerian cultural heritage.

In considering the child's best interests and the parents' proposals, the Federal Magistrate noted that the parents' households and backgrounds were 'very different' and that the child had inherited 'a rich cultural tradition from both her father and her mother' which she was entitled to enjoy.³⁸⁶ In considering his obligation to have regard to the child's background and culture within section 60CC(3)(g), the Federal Magistrate noted that cultural background 'is important to children' because it 'provides them with a sense of identity'.³⁸⁷ His Honour then went on to note that the mother on her own admission had 'no direct knowledge or experience of Nigeria, never having visited there' and that accordingly, 'the father can be the only source, for K, of information about her Nigerian background'.³⁸⁸ In particular, the Federal Magistrate noted the importance of K's Nigerian culture to her 'sense of identity', especially as she was likely to be identified as 'part of a visible minority group' in Australia:

140. ... K is likely to be an obviously African child and, as such, part of a visible minority, within the Australian mainstream. In such circumstances, it will be difficult for the mother to maintain K's sense of identity, as a part-African child. Inevitably it would seem inevitable that more of this responsibility will devolve upon the father and Ms N, who share K's Nigerian orientation.

141. It is frequently said that children of mixed racial inheritance require strong role models, within their cultural orientation, to protect them from the corrosive consequences of exposure to racism, which sadly, even in these more enlightened times, is often said to remain endemic. The best such role models are most usually the child concerned's parents.

The Federal Magistrate concluded that these 'are considerations which favour the time K spends with her father being extended'.³⁸⁹ However, as against these considerations, the Federal Magistrate placed weight on the family report writer's opinion that

... shared parenting on a week about basis is not yet a viable option given the child's age, lack of bonding, and general history of the situation', and his recommendation that 'K is still not ready developmentally nor emotionally to spend more than overnight or weekend stays with her father, and that to force the matter is not in the best interest of the child nor in the longer term development of a better relationship between daughter and father'.³⁹⁰

Another recent case in the sample which focused on the child's identity and which illustrates the balancing of different 'best interests' factors is *Edelman and Ziu (No.2)*.

Edelman and Ziu (No.2) [2010] FamCAFC 236

This case concerned the living and care arrangements for a six year old boy whose mother was Chinese-born and father Australian. The parents had met on the internet and the mother had moved to Australia to marry the father in 2002. The parties separated in 2008 when the child was five. Since separation the boy had lived with each parent on an equal shared care week about basis in a northern NSW town, L. The mother, Ms Ziu, had another child, F, who lived in Brisbane, and the mother had been alternating weeks living in L with the parties' child and Brisbane with F. Ms Ziu sought orders for the child to live predominantly with her in Brisbane, and during school terms spend three weekends in four with the father. The father wanted the existing arrangement to continue, or alternatively to be the child's primary carer.

The Federal Magistrate made orders in accordance with the mother's application, that is, for the child to live during school term with the father for two weekends in each three weekend cycle and to live with the mother at all other times. These orders were upheld on appeal. Two main considerations influenced the Federal Magistrate's decision: concerns about the father's parenting capacity, particularly his 'rigid' parenting style, and the importance of the maintaining the child's connection to his Chinese cultural heritage. After considering these factors, the Federal Magistrate concluded that:

[W]hilst [the child] has been raised in Australia, it is nevertheless important to him that he have the opportunity and ability to maintain contact with his mother's cultural heritage. I do not consider that the father is likely to promote that aspect of [the child's] development.³⁹¹

The latter conclusion was based largely on evidence given by the father that he was concerned that if the mother was given primary caregiver responsibility, the child would be 'immersed' in Chinese culture to the extent that we would 'lose his English skills' and 'suffer disadvantage', including a loss of his Australian culture.³⁹² The Federal Magistrate found on his assessment of the parties' evidence and proposals, he saw 'greater benefits for [the child] in the mother's approach to his cultural identity', which would provide him with 'a strong connection to both communities', than the father's approach,³⁹³ concluding that the child 'would have a more balanced exposure to both his Chinese and Australian cultures if he lived in the mother's household rather than the father's household'.³⁹⁴

4.2 Understanding the migration context

Consultations highlighted the need for culturally responsive services within the family law system. Cultural competency in this respect includes an understanding of the migration and settlement background of newly arrived families and an understanding of the barriers that exist for immigrant and refugee women in terms of seeking assistance outside the community, which can place women at increased risk with respect to violence (see 2.2.3).³⁹⁵ As Susan Rees and Bob Pease discuss, 'intimate partner violence is usually at its highest point when communities are in transition, when women begin to

assume non-traditional roles or enter the workforce, or are less able to fulfil their culturally expected roles as providers and protectors'.³⁹⁶ With respect to refugee background women, issues such as past trauma and fear of authorities also need to be considered (see 2.2.9).³⁹⁷

The examination of reported judgments revealed several recent cases which illustrate a sensitive appreciation of these issues in parenting decisions. One such case is the 2008 decision of *Toliver & Molina*.

***Toliver & Molina* [2008] FMCAfam 43**

This case involved an application for parenting orders for children aged 4 and 6 years old at the time of the hearing in the Federal Magistrates Court. The children had been born in a refugee camp in Tanzania, where their parents had fled from the war in the Democratic Republic of Congo. The parents had arrived in Australia as refugees in 2005 and settled in Adelaide. They separated in 2006 when the mother and children moved secretly from Adelaide to Melbourne with help from a local Migrant Resource Centre. The mother alleged that this secrecy was necessary because the father had been constantly violent towards her and the children. The father, however, argued that the mother had been manipulated by women who work at the Migrant Resource Centre who shared the mother's Tutsi background.

The case was essentially a relocation matter. The father, Mr Toliver, sought the return of the children to Adelaide to be placed in his care. In support of this position he argued that it was 'culturally inappropriate for the two children to remain in the mother's care'.³⁹⁸ His position was that if the children remained living with their mother, then Congolese custom dictated that he could no longer regard them as being his children, and that he would not visit them in Melbourne 'under any circumstances'.³⁹⁹ Ms Molina, on the other hand, asserted that the children were happy and doing well in Melbourne and that it would be detrimental to their welfare if they were compelled to be returned to the care of their father who had seriously abused them in the past.⁴⁰⁰ She argued that were she ordered to return to Adelaide, she 'would be subjected to intense pressure, from both the father and the wider Congolese community, to return to the previously abusive relationship she had had with the father', and that her safety 'would be seriously compromised'.⁴⁰¹

The Federal Magistrate noted that the case involved issues 'of some cultural complexity and sensitivity', including the possibility that if the mother's argument was accepted, 'the children will lose their paternal relationship or at best it will be seriously undermined'.⁴⁰² In the end, His Honour concluded that 'the best interests of the children will be served if they remain living with their mother in Melbourne and that she should have parental responsibility for them'.⁴⁰³ The main factors affecting this outcome were the mother's allegations of family violence and her fears for the safety of her children and herself if she were ordered to return to Adelaide. In considering the mother's allegations, and the lack of corroborating evidence for them, the court had regard to the circumstances surrounding the parents' migration from their country of origin and settlement in Australia:

153. Mr Toliver quite rightfully points out that there is little independent corroborative evidence to support Ms Molina's allegations that he is a violent

and abusive person. This is so. He also points out that he brought his family from Tanzania to Australia to protect them from harm, and, as such, he is unlikely to subject them to harm himself. He also said that violence against women was inimical to his culture and religion.

154. Ms Molina has never made a complaint of violence, at Mr Toliver's hands, to the police. Nor has she ever applied for a domestic violence order. Such things are a frequent feature of proceedings in this court, even when the violence complained of is at the lower end of the scale. In addition, Ms Molina is unable to provide any specific medical evidence to indicate that she has received treatment in respect of any of the assaults of which she complains.

155. I do not think that the absence of any of these categories of evidence should cause me to discount Ms Molina's evidence. **In this regard, I must examine the cultural and social context of the parties.** They have been in Australia for only a short period of time. Their respective level of English, on their arrival, was at best rudimentary but most likely non-existent. Ms Molina had few friends and it seems none outside of the Congolese community in Adelaide. She had no one to whom she could easily turn.

156. In addition, Mr Toliver sees himself as the undisputed head of his household. This was my impression and it was also Dr Kennedy's [the family report writer]. In such circumstances, it is hardly surprising that there is a lack of an independent record supporting Ms Molina's claims.

157. In addition, many, if not all of the mother's complaints of violence and abuse occurred behind closed doors. As such, they were beyond independent verification and due to what I consider to be a pronounced power imbalance between the parties, it was likely to be difficult for Ms Molina to make a complaint about them to someone in authority. Indeed, it is not beyond the bounds of possibility that Ms Molina was unaware that such behaviour was beyond ordinary social norms within Australia.

(Emphasis added)

His Honour went on to accept the mother's assertion that 'her Central African identity make[s] her highly visible in Adelaide and, as such, members of the Congolese community in Adelaide are likely to pressure her to return to the father',⁴⁰⁴ and the family report writer's assessment that there 'was no proper basis on which the parties concerned could exercise joint parental responsibility for their children or parent the children in a joint manner'.⁴⁰⁵ He also found that the mother would be able to provide the children with 'an appropriate African role model' and exposure to people 'in both the African migrant community in Melbourne as well as the wider community' in Australia, so that their African cultural identity would be protected.⁴⁰⁶ Accordingly, he refused the father's application for return of the children and made orders for the mother to have parental responsibility and care of the children in Melbourne.

4.3 Acculturation and enculturation

The stakeholder consultations for this reference reinforced the importance of recognising that identification with a particular culture, and understanding and acceptance of cultural norms, can vary considerably between family members and across generations. In particular, they suggest the need to be conscious of the uneven process of acculturation within migrant families, and the tendency for attachment to the

practices and values of the ‘home’ culture to diminish more quickly among children and young people than for their parents.⁴⁰⁷ It is also important to understand that the rate of one parent’s acculturation with respect to the dominant culture may differ from that of the other parent, which can generate substantial conflict between parents around approaches to child rearing and discipline.⁴⁰⁸

Conflict may also arise after separation where the child’s parents come from different cultural backgrounds. Sometimes a parent who is worried about a child losing their connection to their non-Australian cultural heritage may seek orders requiring the other parent to encourage the child to participate in positive enculturation activities, such as attendance at language or religious schools. The cases suggest that judicial officers are well acquainted with these applications, and that a range of factors affect the decision making process and outcomes. The following case provides an example.

***Liepins & Liepins* [2008] FMCAfam 85**

This case involved an application for parenting orders in respect of two boys, aged nine and eight at the time of the hearing. The parents agreed that they should share parental responsibility for the children and agreed on an equal time care arrangement. Their only dispute concerned a disagreement about the boys’ cultural upbringing. In particular, the parties were in dispute about the issue of the children’s attendance at Latvian school. The father’s paternal and maternal grandparents had both emigrated to Australia from Latvia following the Second World War, and he, like his father, had grown up speaking Latvian in the home. The Federal Magistrates Court noted that the father’s childhood had been ‘deeply imbued with Latvian cultural influences’.⁴⁰⁹

The father wanted his sons to attend Latvian school on weekends. The problem was that the mother, with whom the boys lived half of the time, was no longer inclined to encourage their attendance while they lived with her. Her evidence was that whilst she shared an interest in Latvian culture when she was married to the father, her interest had ‘faded’ with the end of the marriage, and she had stopped taking them to Latvian school on the weekends.⁴¹⁰ The father sought orders requiring the mother to ensure their attendance while they were in her care. In support of his application he relied on section 60CC(3)(g), arguing that learning the Latvian language and enjoying Latvian cultural activities such as folk songs and dances, had been ‘a significant factor in shaping his identity’,⁴¹¹ and that his sons would not ‘assume any proper knowledge of Latvian culture’ without ‘continuity of exposure’ to ‘things Latvian’.⁴¹²

In dealing with this matter the Federal Magistrate had regard to a number of factors, including the fact that the boys were ‘fourth generation’ Australians on their father’s side,⁴¹³ that they were ‘thoroughly immersed in the mainstream English-speaking culture of Australia’ and that their parents’ mutual aspiration for them was that they would become ‘tertiary educated professionals’.⁴¹⁴ His Honour also noted that the boys were ‘not part of a minority group within Australian society which is struggling to assert itself’.⁴¹⁵ Summing up the question of culture, the Federal Magistrate found that this was a case in which the children’s ‘sense of identity is not under threat or in a state of flux. They know who they are’.⁴¹⁶ In those circumstances, His Honour determined that the question of maintaining the children’s connection their Latvian heritage assumed less importance than their need for containment of their parents’ conflict,

which the Federal Magistrate found would be exacerbated if he were to order the mother to take the boys to Latvian school against her will.

As this suggests, recognition of a child's acculturation to the dominant Australian culture can sometimes be in tension with the need for positive enculturation of children. The judicial officer in this case recognised that the latter will assume greater significance in situations where the child is from a minority cultural background that is 'in special jeopardy of social exclusion and silencing',⁴¹⁷ which was not the case in *Liepins*.

4.4 Family Reports

The family law courts are often assisted by the preparation of family reports by family consultants or external family report writers pursuant to section 62G of the *Family Law Act*. In many cases involving a parent or parents from culturally and linguistically diverse communities the issue of maintaining the child's cultural identity is not contentious, particularly where both parents come from the same cultural background. However, in other cases the issue is central to the dispute. Some of the cases examined by Council suggest that there may be a need to enhance the cultural competency of family consultants and family report writers in relation to such cases. The observations by family consultants of parents with a child often form a significant aspect of their overall assessment. If a cultural norm or context is not appreciated by the family report writer, any conclusion drawn as to an observation may be flawed. Many interviews and observations are also conducted through the assistance of interpreters which pose practical difficulties for family consultants, who may miss important nuances. This problem is further compounded when parents and children speak in their own language in a way that cannot be reliably interpreted by someone who does not share that language, leaving the consultant unable to follow the observation in the same way that he or she would be able to do if the whole process was conducted in a language in which the family consultant was fluent.

There is little in the literature to give family report writers specific guidance. However, the literature on culture indicates that 'certain aspects of a person's cultural identification may be a factor in how he or she relates to the evaluator and how his or her behaviour in the family may be interpreted'.⁴¹⁸ While family report writers cannot become experts on all cultures, they can recognise the importance of being able to understand a person's perspective on family and child issues, if that perspective is shaped by cultural influences. It is important that family report writers are aware of and sensitive to the considerable variation across cultures with respect to customs and beliefs that influence family processes and structures, including customs and beliefs about marriage and divorce, gender roles and responsibilities, family hierarchies and spousal equality and child rearing practices.⁴¹⁹

However, although it is important for family consultants to be sensitive to culturally and linguistically diverse family issues, it is equally important to avoid stereotypical understandings. Consistent with section 60B(2)(e) of the *Family Law Act*, report writers must recognize the importance of cultural identification and heritage as part of the child's emerging self-narrative when presenting opinions and recommendations to the courts. The following case provides an example of a judicial officer who believed that this had not occurred in relation the report prepared in that matter.

Trejo & Meraz [2011] FMCAfam 91

This case involved an application by the father in respect of three children who were 13, 10 and five years old at the time of the hearing. Both parents were refugees from Southern Sudan. The Federal Magistrate noted that ‘the Sudanese culture has some significant differences to mainstream Anglo-Celtic Australian culture’ and that this was ‘highly relevant to understanding and giving a context to the evidence of parties’.⁴²⁰ In particular, he noted that their cultural background had ‘real bearing on the evidence given by these parents and by [the family report writer] Mr P’.⁴²¹ In particular the Federal Magistrate identified:

41. It is suggested for instance in Mr P’s report that Mr Trejo was somewhat aloof and standoffish, (to use my words and to paraphrase that portion of his report), during observations with the children. At paragraph 44 of the report it indicates:

- *The children entered the observation room without obvious greeting of acknowledgement of their father. [X] and [Y] quickly sat at the table and engaged in a board game together. They packed up a game a short time later following [Z]’s attempts to join them. Mr Trejo appeared restrained in his endeavours to engage with his children and chose to stand through the observation in spite of a number of opportunities to sit with his children and engage in their play. While Mr Trejo spoke with the children in English through the course of the observation, and the children responded, there appeared to be no significant conversation arising from these verbal interactions.*

42. That, if observed of a mainstream white Anglo-Saxon couple in observation sessions for preparation of a report would strike a very strange tone indeed. It would suggest some real lack of affection or interaction, perhaps some morbidity of the parent, particularly noting that the observation session was part of a forensic exercise, of which both parents would have been aware, to assist this Court in assessing the appropriate outcome for these children. But if one places that within the cultural context of a parent for whom there is a divide between not only male and female gender roles, but age divisions and the role of a parent is not to be on the same level as and sitting at the table on the same plane as his children, it may well be viewed in a different an entirely appropriate light and I do so.

5. Conclusions and Recommendations

Recent research confirms that the process of resettlement in Australia places significant pressures on family relationships, and suggests that family members in new and emerging communities may be at heightened risk of family breakdown and family violence.⁴²² In working on this reference, Council heard that clients from culturally and linguistically diverse backgrounds who need the assistance of the family law system are faced with a series of barriers in seeking to access its services. Some of these barriers affect clients from other disadvantaged backgrounds, but are often exacerbated for families from culturally and linguistically diverse backgrounds, and particularly those in new and emerging communities, by a series of additional impediments, including cultural and linguistic barriers and the need for multiple services. The extensive experience of migrant and refugee services and human rights organisations indicates that a failure to address these issues increases the likelihood of family breakdown, intergenerational conflict and mental health problems, and compromises the safety of migrant women and children.⁴²³

The Department of Immigration and Citizenship provides a range of settlement support services to eligible humanitarian and refugee background families.⁴²⁴ However, family breakdown is not recognised as a settlement issue for these purposes, and migrant settlement services – the first point of contact for humanitarian entrant communities – are ‘neither resourced nor funded to deal with issues of family violence’.⁴²⁵ The family law system’s services, on the other hand, which are funded to deal with these issues, were not developed with the needs of culturally and linguistically diverse communities in mind.⁴²⁶ Council’s consultations for this reference reflect the findings of recent evaluations which indicate that mainstream organisations are not systematically meeting the support needs of people from these communities, resulting in under-utilisation of services and access occurring at the higher needs end of service provision, ‘when issues have reached acute or crisis stage’.⁴²⁷ The consequence is that family members from new and emerging communities are falling in the gap in the services offered by specialist migrant support organisations and the family law system. With close to 14,000 new humanitarian entrants settling in Australia each year, it is critical that this service gap is addressed.

Consultations revealed a number of organisations across the two sectors that are working collaboratively with communities and one another to tackle this problem. There are also a number of legal and family relationships services that are delivering successful community education programs to migrant and refugee communities, and a range of organisations that have made concerted efforts to develop the capacity and diversity of their workforce and engage with newly arrived communities. These include the provision of traineeships for bicultural family dispute resolution practitioners and the recruitment of Community Liaison Officers by family relationships and legal aid agencies (see 3.3), the development of joint legal literacy strategies by legal and migrant support services (see 3.1), the collaborative delivery of therapeutic services by family relationships and refugee organisations under the FRSHE program (see 3.2.2) and the co-location of legal and health services (see 3.2.4); the active engagement initiatives of the Family Court (see 3.4) and the development of an integrated services model at the Dandenong Federal Magistrates Court (see 3.2.5); and the establishment of Community Advisory Groups by refugee services such as Foundation House to inform

the design of culturally appropriate services by family and child welfare agencies (see 3.5). However, Council's examination of the issues raised by this reference suggests that a more systematic set of responses is warranted.

According to the framework used by Dimopoulos, legal empowerment involves four strategic domains:

1. Cultural (providing legal literacy and education to marginalised communities)
2. Structural (providing culturally competent services for marginalised groups)
3. Law reform (changing the law to recognise and support marginalised groups)
4. Application (monitoring and documenting discrimination).⁴²⁸

These domains were reflected in the broad themes identified by Council as the requirements that would need to be addressed to make the family law system more accessible and responsive to the needs of people from culturally and linguistically diverse backgrounds. Council identified the need for legal education and information programs tailored to the needs of different communities. In relation to both legal and non-legal service providers in the family law system, Council believes there is a need for greater efforts to improve the level of diversity and cultural competency of service personnel and the cultural responsiveness of services. There is also a need for greater integration, information-sharing and collaboration between the family law system and migrant settlement services, and for more flexible service designs informed by engagement and consultation with culturally and linguistically diverse communities. Council further identified a need for a more comprehensive examination of the extent to which the *Family Law Act* recognises the diversity of families living in Australia and ensures equality of treatment of children's cultural heritage and identity. An ongoing program of evaluation is also needed to monitor the work in this area and ensure its effectiveness.

In considering recommendations to address these needs, Council was guided by the Australian Government's *Access and Equity Framework*, which aims to foster collaborative service responses between agencies and between government and migrant communities,⁴²⁹ the *National Partnership Agreement*, which encourages partnerships between legal and other service providers and prioritises prevention services,⁴³⁰ and by the principles of the *Strategic Framework* (see Chapter 1.1).⁴³¹ Council also notes that the recommendations contained in this report are consistent with those in other recent reviews, including the 2011 *Access and Equity Report* of the FECCA, the Armstrong and Balvin evaluations of Family Relationship Centres, the InTouch *Barriers to the Justice System* study of the barriers faced by women from culturally and linguistically diverse backgrounds, and the Australian Human Rights Commission report on social inclusion and African Australian communities.⁴³²

In putting forward its recommendations, Council acknowledges the challenges facing service organisations within the family law system, including problems with current data capture measures (see 3.8), the need for additional time to work effectively with non-English speaking clients (see 2.3 and 3.6.1), and issues of resourcing and constraints on service type and design (see 2.2.12 and 3.6.3). It also notes that responsibility for many of the concerns raised by this reference lies outside the family law system, and that barriers to accessibility and equity are not unique to the justice system. As such, the shaping of responses to clients from culturally and linguistically

diverse communities may benefit from further exploration of the experiences and initiatives of other service sectors, such as the health system.⁴³³

Council also acknowledges that there are several areas where further research is required to allow for better policy responses, which were beyond the scope of this reference, including empirical evidence of the incidence of violence against immigrant and refugee women in Australia⁴³⁴ and research on ‘new models of interaction’ between cultural communities and family law services.⁴³⁵ Council supports the suggestion by AIRWA that future empirical research in family law be disaggregated by non-English speaking background.⁴³⁶

5.1 Legal Literacy Strategies

There is significant need for information about the law to be disseminated to culturally and linguistically diverse communities. The consultations and the submissions received by Council have revealed some excellent work in this respect is occurring in parts of the system. However, it is clear that more needs to be done. Given the constant arrival of new migrants from non-English speaking backgrounds, an ongoing sustainable program to improve the legal literacy of people from culturally and linguistically diverse communities is warranted. This includes the provision of information to newly arrived migrants and refugees about Australia’s family violence laws and the protections for women who experience violence in Australia.⁴³⁷ Appropriate federal funding is essential to support this work.

Council’s consultations with stakeholder groups raised a number of questions about how to ensure migrant communities receive useful information that is empowering and comprehensible, and these issues would benefit from further investigation. Council’s work revealed some indicators and specific issues for consideration in this regard. These include indications that the internet has limited effectiveness as a mechanism for providing information to new and emerging communities as many migrant and refugee background families cannot afford computers or internet access and may have low literacy levels. However, Council is aware of online resources that appear to have been successful in providing accessible legal information in community languages, such as the NSW Law Access site, which provides information in an audio-file format (see 3.1.8). The consultations also suggest the need to situate information about the law and family law services within a comparative context – including information about how Australian law differs from that in a person’s home country – and to incorporate education about the concepts of relationships, parenting, and behavioural boundaries that underpin the law in Australia and the role of police and the courts. There is also a need to explain the intention of Australian laws.

Community groups also stressed the need for legal education programs for parents in newly arrived communities that ‘match’ the school-based education about the law and legal rights and concepts provided to children. Two suggested strategies for improving information dissemination that warrant further exploration are the possibility of a ‘whole of family’ approach to education for newly arrived communities about the law as it affects families in Australia, and a greater emphasis on the provision of education about family law as part of the settlement services program, including through the AMEP.

The successful legal literacy programs described in Chapter 3 suggest that the use of community reference groups is a critical element of these strategies. Involvement of community leaders and representatives is needed to clarify concerns and misunderstandings about the law, and to determine the best educational strategy for addressing these issues and facilitate the promotion of information sessions. Inclusion of immigrant and refugee men and women will be particularly important in designing family violence prevention programs.⁴³⁸ An established model for this approach is the *CALD Families Project* run by the Northern Territory Legal Aid Commission and Melaleuca Refugee Centre (see 3.1.1).

Other issues for consideration include the need for non-legal service providers, such as settlement service staff, community health workers and maternal and child health personnel, to have information about family law and family law services. A recently funded example of this strategy is a program run by the North Melbourne Legal Service to reduce violence against women by providing education about the law to community health practitioners (see 3.1.7). However, the consultations suggest that medical professionals are likely to have little time to attend legal literacy training courses. In light of this, resources such as the *Between a Rock and a Hard Place* guidebook, developed by the Fitzroy Legal Service to enhance community service providers' knowledge of the legal system, may provide a useful model for improving the capacity of non-legal services to support clients with family law problems.

A further consideration raised by Council's work on this reference concerns the importance of court staff, including judicial officers, participating in legal education strategies for newly arrived communities, including the provision of education about court processes to community leaders. The work done by the Magistrates Court of Victoria as part of the Victorian Government's *Community Bilingual Educators Program*, and the *Talking Justice* outreach program run by the Neighbourhood Justice Centre, provide examples of effective judicial outreach that could provide models for the family law system (see 3.1.3). Council also notes the pioneering work of the Family Court in this regard (see 3.4).

Dimopoulos argues that for community legal education to be effective in securing access to legal services, it must do more than merely transfer information.⁴³⁹ The literature suggests that the measure of a successful legal education strategy is that it will provide the community with a framework of understanding through which they can engage in the elements of the justice system which are relevant to them. Most importantly, it will generate accurate expectations in the community of what the law can and should achieve. Based on its successful engagement work with a number of culturally and linguistically diverse communities, the Legal Services Commission of South Australia has produced a 'Best Practice Guide' to legal literacy programs. The guide emphasises the importance of identifying the community's education needs and designing both the content and delivery of educational programs 'in collaboration with key stakeholders', of being sensitive to diversity within communities and customising processes to the cultural, linguistic and educational backgrounds of participants, and of being 'committed to long term, evolving and collaborative relationships' with communities.⁴⁴⁰

The highlighted Community Legal Education programs described in Chapter 3.1 reflect these elements. The apparent success of programs like the *CALD Families Project* run

by the Northern Territory Legal Aid Commission and the Melaleuca Refugee Centre, the *Family Harmony* sessions run by Victoria Legal Aid and the scenario-based community education work of the AMWCHR in generating a discussion with culturally and linguistically diverse communities around highly sensitive areas of the law, including concerns about violence against women, indicates that the use of non-confronting and accessible formats of legal education, including a ‘storytelling’ approach, is an effective way of raising awareness about Australian family law and the family law system’s services within these communities. The programs also emphasise the need to engage with culturally and linguistically diverse clients through community representatives and leaders in order to build trust, over time.

Recommendation 1: Community Education

- 1.1 The Australian Government works with family law system service providers and migrant support organisations to develop a range of family law legal literacy and education strategies for people from culturally and linguistically diverse backgrounds.
- 1.2 The Australian Government and relevant agencies ensure that public resources that provide information about family law, including online legal information, be provided in a variety of community languages.
- 1.3 The Australian Government and relevant agencies ensure that clear, practical and culturally and linguistically appropriate information about the family law system’s services, including the role of services, how to access them and what the client should expect from them, be disseminated through a wide variety of sources, including settlement services, national peak and lead organisations representing ethnic communities (such as the Federation of Ethnic Communities’ Councils of Australia, the Forum of Australian Services for Survivors of Torture and Trauma and the Network of Immigrant and Refugee Women Australia) and mainstream health services.

5.2 Building Cultural Competence

FECCA’s 2011 *Access and Equity Report* notes that linguistic and literacy barriers and inadequate systems knowledge are just some of the compounded barriers that face consumers from culturally and linguistically diverse backgrounds in seeking to access services, and that efforts to address these issues need to be complemented with capacity-building strategies within the service system, including cultural competency training for system personnel.⁴⁴¹ The Australian Government’s *Access and Equity Framework* requires the design and delivery of government services to be ‘based on a sound knowledge of the needs, circumstances and cultural and other characteristics of clients’.⁴⁴² There are a number of initiatives in the family law system that have been designed to address this issue, including the appointment of Cultural Advisors and Community Liaison Officers and the delivery of cultural awareness training to staff.

Council’s consultations and the recent evaluations of Family Relationship Centres by Armstrong and Balvin show clearly that there is a need for the current levels of cultural competence to be enhanced across the family law system. In particular, Council endorses FECCA’s recommendation for a system-wide cultural competency policy, and

supports its view that service personnel should be given cultural competency training to assist families from culturally and linguistically diverse backgrounds in negotiating conflict.⁴⁴³

A number of recent reports have highlighted the importance of cultural competency training for individuals and organisations ‘seeking to foster constructive interactions between members of different cultures’,⁴⁴⁴ and for achieving national multicultural policy objectives.⁴⁴⁵ The Urbis evaluation of the FRSHE program found that cultural competence was the ‘single most identified “pre-condition” to being effective’ when working with families from culturally and linguistically diverse communities.⁴⁴⁶ However, there is no clear and common understanding of what effective cultural competency training should involve.⁴⁴⁷ Recent critiques of the concept have criticised the emphasis on skills training, arguing instead that the central element of culturally competent practice should be an attitude of critical awareness.⁴⁴⁸ FECCA suggests that there is ‘a need for a more sophisticated understanding of what constitutes concepts such as cultural competency’, and argues that it should encompass ‘structured shifts in attitude and behaviours amongst service providers from all backgrounds’.⁴⁴⁹

The 2006 *Effectiveness of Cross-Cultural Training* report, based on a national study of the effectiveness of cross-cultural training in the Australian public and community sectors, defines a culturally competent individual as:

*... one who recognises the importance of acknowledging the individuals in an encounter first and foremost, before applying any generalised knowledge of the cultural differences between their supposed groups. A cross-culturally competent person will also be one who comprehends key cultural values but recognises the limits of their knowledge and competence.*⁴⁵⁰

Council’s consultations for this reference suggest there is a particular need for cultural competency training for personnel who work with migrant and refugee women. In support of this, a recent report by the Women’s Centre for Health Matters recommends that service providers who work with culturally and linguistically diverse women need to be more sensitive, skilled, and well informed about issues facing women from new and emerging communities.⁴⁵¹ Similar concerns about ‘culturally competent care and guidance’ for migrant women affected by domestic violence, including sensitivity to the implications of certain court orders and parenting arrangements, were raised by AIRWA and women’s legal services.⁴⁵²

The *Effectiveness of Cross-Cultural Training* report also highlights the benefits of cross-cultural training to those working with interpreters. The Report found cross-cultural training was able to increase the ability to work effectively with interpreters as such cooperation requires an ‘understanding of cultural variables in discourse patterns and communication styles, values and beliefs regarding disclosure, hierarchy and so on.’⁴⁵³ The Armstrong report concludes that ‘cultural awareness is a necessary starting point for better understanding clients’ cultural frameworks and orientations to help-seeking’, and that it is also ‘important for avoiding cultural transgressions and for suggesting what questions to ask or issues to explore in a professional setting’.⁴⁵⁴

Another area of particular need for cultural competency training highlighted during Council’s reference concerns family reports. As the submission from AIRWA notes,

there is no current process to ensure that the family law courts and their clients receive family reports and other expert assessments that are culturally sensitive.⁴⁵⁵

The literature on culture indicates that ‘certain aspects of a person’s cultural identification may be a factor in how he or she relates to the evaluator and how his or her behaviour in the family may be interpreted’.⁴⁵⁶ It is, therefore, important to ensure best practice approaches for family consultants and family report writers in working with clients from culturally and linguistically diverse backgrounds. This includes sensitivity to:

- the considerable variation across cultures with respect to customs and beliefs that influence fundamental family processes and structures, including customs and beliefs about marriage and divorce, gender roles and responsibilities, family hierarchies and spousal equality and child rearing practices;⁴⁵⁷
- issues of acculturation, including the potentially varied understandings and levels of acceptance of cultural norms between family members and across generations;
- the particular vulnerability of immigrant and refugee women to family violence because of the various barriers to seeking help that exist for women in newly arrived communities;⁴⁵⁸ and
- the various cultural and religious factors that may affect conflict analysis, conflict management and conflict resolution for families from new and emerging communities.

The consultations, submissions and reported cases confirm the importance of cultural sensitivity in conducting interviews, formulating professional opinions and ensuring culturally appropriate reports, and suggest that family report writers and family consultants could benefit from training and assistance in this regard.

In line with the Australian Government’s *Access and Equity Framework*, FECCA has recommended that cultural competency be incorporated into the core operational processes of all service agencies.⁴⁵⁹ The FRSA submission to Council’s reference calls for national coordination of cultural competency training for the family law sector, in order to reduce costs, increase participation and access and allow training to be tailored to the specific needs of the family law sector.⁴⁶⁰

A number of cultural competency frameworks have been produced for specific service sectors in recent years. These include the National Health and Medical Research Council’s *Cultural Competency in Health Guide*, which provides a four-dimensional model for increasing cultural competency in the health sector.⁴⁶¹ The relevant dimensions are:

- Systemic – requiring effective policies and procedures, mechanisms for monitoring and sufficient resources;
- Organisational – ensuring a workplace culture is created where cultural competency is valued as integral to core business and supported;
- Professional – over-arching the other dimensions, cultural competence at this level requires education and professional development and the development of specific competence standards to guide the working lives of personnel;
- Individual – focused on maximising culturally responsive attitudes and behaviours and supporting individual workers to work with diverse communities.⁴⁶²

In Council's view, a similar framework to guide the development of culturally responsive practice in the family law system is warranted. Council also supports the recommendation of Family Relationships Services Australia for Federal Government support and national coordination of this endeavour.

Recommendation 2: Building Cultural Competency

- 2.1 The Australian Government develops, in partnership with relevant stakeholders, a cultural competency framework for the family law system. The framework should cover issues of culturally responsive practice in relation to people from culturally and linguistically diverse backgrounds. This development should take account of existing frameworks in other service sectors.
- 2.2 Cultural competency among family law system personnel be improved by:
 - 2.2.1 Investing in the development of a flexible learning package (similar to the *AVERT Family Violence Training Package*) that can be adapted across settings and professional disciplines providing both minimum competencies and options for more in-depth development of skills and knowledge and encouraging its use across the sector by making it low cost and flexible in its delivery.
 - 2.2.2 Commissioning the development of 'good practice guides' for culturally responsive service delivery within individual service sectors. Examples might include 'cultural responsiveness in family report writing', 'culturally responsive Children's Contact Centres' and 'family dispute resolution with culturally diverse families'. Guides should be disseminated to individual practitioners through conferences, clearinghouses and national networks.
 - 2.2.3 Building cultural competency into professional development frameworks, Vocational Education and Training and tertiary programs of study across disciplines relevant to the family law system.
 - 2.2.4 Incorporating cultural competency into the core operational processes of all service agencies within the family law system.

5.3 Enhancing Service Integration

The Australian Government's *Access and Equity Framework* encourages collaborative approaches to managing issues arising from Australia's cultural and linguistic diversity, including collaboration within and between agencies to identify and address issues relating to cultural diversity, through publicising good practice, sharing information, coordinating programs and collaborating on projects.⁴⁶³ Towards this end, FECCA has recently recommended that settlement service providers establish a culture of information sharing within the sector and with other organisations and service providers who work with clients from culturally and linguistically diverse communities.⁴⁶⁴

The consultations, submissions and survey responses by family law practitioners indicate that people from culturally and linguistically diverse backgrounds are likely to need multiple services to assist them, and suggest that service providers across the family law system have difficulty trying to provide clients with a seamless service (see 2.2.6). One aspect of this for newly arrived communities is the lack of systematic

collaboration between migrant settlement services and the family law system, and the need to develop working relationships and referral pathways between these sectors. The research suggests that issues of intergenerational conflict, marriage breakdown and family violence within new and emerging communities in Australia may be intimately connected with the refugee and settlement experience, and cannot be dealt with in isolation from this context.⁴⁶⁵ The Urbis evaluation of the FRSHE program suggests that enhancing access to family support services for people in new and emerging communities requires mainstream service organisations to establish ‘intimate networks’ with settlement and ethno-specific support services.⁴⁶⁶

A second aspect of the ‘silo’ problem revealed during Council’s consultations concerns the fragmented and multi-service nature of dispute resolution within the family law system. Despite measures developed under the *National Partnership Agreement*, which encourages collaboration between legal and other service providers, there remains a need for greater collaboration between family law system services. In addition to this concern, the consultations revealed a need and desire for greater information-sharing about effective initiatives. The FRSA submission noted in this regard that:

*[S]ome family relationship services deliver quality services to highly diverse communities very successfully, but there have been limited opportunities to acknowledge this and identify examples of good practice.*⁴⁶⁷

The various initiatives outlined in Chapter 3.2 of this report illustrate some of the range of effective strategies to address these problems, including the establishment of outreach clinics by Community Legal Centres within community health and migrant services (see 3.2.4); the establishment of court-based integrated service models, such as the Federal Magistrates Court’s *Dandenong Project* (see 3.2.5); the management of the Broadmeadows Family Relationship Centre by a consortium that includes the Spectrum Migrant Resource Centre, as well as employment of a Senior Cultural Advisor from the Spectrum Migrant Resource Centre who brings to the work of the Family Relationship Centre an awareness of cultural and migration issues and connections to community leaders (see 3.2.5); the development of the *Network On A Stick* service ‘roadmap’ by the Victorian Family Law Pathways Network and the Shoulder Bag initiative of the Victorian Children’s Court which provides court users with a non-legal step by step plain English guide to the court processes (see 3.2.6).

Council also notes the implementation of holistic therapeutic justice service models in other jurisdictions that could provide an effective model for the family law courts, such as the Neighbourhood Justice Centre in Victoria, which provides a court-centred ‘one stop shop’ model of service delivery that includes a variety of justice and social service agencies within the court precinct (see 3.2.5). The FECCA has recently recommended that value be added to government services by moving away from the ‘individual centred models’ of service delivery that presently characterise the Australian service system, which are a poor fit for clients from culturally and linguistically diverse backgrounds, and developing ‘more holistic models of support and service’.⁴⁶⁸ The Neighbourhood Justice Centre service model offers a successful example of this approach.⁴⁶⁹ Council’s view is that this approach to service integration could be developed within the family law courts by rolling out and adapting the Dandenong Federal Magistrates Court’s referral helpdesk model to include representatives of migrant settlement and ethno-specific support services. Such an approach would also

address the desire expressed by community groups to see a more diverse multicultural environment within the courts (see 2.2.8).

Recommendation 3: Enhancing Service Integration

- 3.1 The Australian Government, in consultation with stakeholders, develop strategies to build collaboration between migrant service providers and organisations and the mainstream family law system (courts, legal assistance and family relationship services), including through the establishment of referral ‘kiosks’ within the family law courts.
- 3.2 The Australian Government provides funding for:
 - 3.2.1 The creation of a ‘roadmap’ of services for culturally and linguistically diverse families in the family law system;
 - 3.2.2 Integration of the ‘roadmap’ into current government resources and initiatives which include the Family Relationship Advice Line and Family Relationships Online; and
 - 3.2.3 Promoting a greater awareness for culturally and linguistically diverse families of these resources and initiatives.
- 3.3 The Australian Government, Family Relationships Services Australia, the Family Law Section of the Law Council of Australia, and State and Territory family law practitioner associations consider ways to support and improve information-sharing about successful practice initiatives that enhance collaboration, integration and referrals between family law system services.

5.4 Workforce Development

The submissions and consultations point to the need for greater inclusion of bicultural and bilingual personnel in the family law system, and the potential benefits of this approach for improving access to and the cultural responsiveness of services.⁴⁷⁰ The Armstrong Report argues that this is a critical component of successfully engaging with culturally and linguistically diverse communities for family relationships services. It recommended that family relationships services include cultural liaison or facilitator positions and the employment of bicultural staff. While it cautioned that the ‘presence of staff from the same cultural backgrounds, particularly small communities, might also heighten anxiety and raise concerns about confidentiality’, on the whole its community consultations confirmed that exhibiting cultural diversity within service providers will send a positive message ‘that the organization value(s) cultural diversity’.⁴⁷¹

FRSA recommended that ‘special purpose funds be developed’ for this purpose.⁴⁷² Others, including community groups in Melbourne, suggested that the Court Network service should recruit people from culturally and linguistically diverse communities to be used as community educators and to help support community members who use the courts (see 3.3.2). National Legal Aid suggested that there is a need to ‘consider alternative accreditation pathways’ for workers from culturally and linguistically diverse communities, including recognition of prior learning and relevant practice.⁴⁷³ Community leaders also supported a scholarship scheme to train people from their communities to become qualified professionals, including lawyers, counsellors, family dispute resolution practitioners and police officers. Several Attorney-General's

Department funded initiatives of this kind have been established in relation to family dispute resolution practitioners, including a scholarship program run by UnitingCare Unifam and a traineeship scheme for legal practitioners offered by Legal Aid NSW (see 3.3.1). Council recommends that further schemes of this nature be funded by the Attorney-General's Department.

Recommendation 4: Workforce Development

- 4.1 A range of workforce development strategies be implemented across the family law system to increase the number of culturally and linguistically diverse personnel working within family law system services. Council recommends these strategies include:
 - 4.1.1 Scholarships and cadetships for professionals from culturally and linguistically diverse backgrounds to work in the family law system;
 - 4.1.2 Assistance for family relationship services to recruit and retain personnel from culturally and linguistically diverse backgrounds.
- 4.2 The Australian Government provides funding for Community Liaison Officers from culturally and linguistically diverse backgrounds to assist family relationship services to improve outcomes for families and children, including by enhancing the ability of family relationship services to meet the support needs of clients from culturally and linguistically diverse backgrounds in dispute resolution processes.
- 4.3 The Australian Government provides funding for Community Liaison Officers from culturally and linguistically diverse backgrounds to assist the family law courts to improve court outcomes for families and children from culturally and linguistically diverse backgrounds, including by:
 - 4.3.1 Assisting family report writers to present relevant cultural information;
 - 4.3.2 Enhancing the ability of the family law courts to meet the support needs of clients from culturally and linguistically diverse backgrounds in court processes.

5.5 Engagement and Consultation

Council's consultations suggest the need for a greater emphasis on engagement with migrant and ethnic communities, and for a collaborative consultation-based approach to the design and development of culturally responsive family law services. These perspectives are supported by a number of recent research reports.

The Urbis evaluation of the FRSHE program found that to be effective, mainstream family relationships services 'must be located in the heart of settlement areas' and invest time in engaging with community leaders.⁴⁷⁴ The Armstrong report argues similarly that the key to enhancing access to their services for Family Relationship Centres lies in developing positive relationships, and working in partnership, with community and religious leaders.⁴⁷⁵ Armstrong acknowledges the difficulties in achieving this, but argues that effort is 'essential for building trust between service providers and communities, for encouraging mutual learning and for developing reciprocal referral pathways, and is likely to reap returns in the long term'.⁴⁷⁶

Council's consultations suggest that many organisations across the family law system have been successful in building trusted relationships with local communities through outreach and engagement activities. These include the Family Court's *Living in Harmony* partnership initiative (see 3.4) and the development of collaborative educational and therapeutic programs by family relationships services within the FRSHE program (see 3.1.6 and 3.2.2). A number of initiatives outlined in Chapter 3 also support recent reports which highlight the benefits of community advisory and reference groups for informing the design of programs and services for culturally and linguistically diverse communities, including legal literacy projects (see 3.1.1 and 3.5). Council is also aware of several important initiatives in other jurisdictions that could provide engagement models for the family law system, including the use of the court precinct by the Neighbourhood Justice Centre to foster relationships with local communities by hosting community meetings (see 3.2.5), and the Neighbourhood Justice Centre's judicial outreach seminars (see 3.1.3).

The latest FECCA *Access and Equity Report* recommends that the way forward for government services is to work with community members to inform policy and program changes, and calls for the representation of culturally and linguistically diverse communities 'at all levels of service design, implementation and evaluation'.⁴⁷⁷ The Australian Human Rights Commission report also recommends collaboration 'between mainstream providers and ethnic community representatives' as the most effective path to development of culturally appropriate services.⁴⁷⁸

A best practice model in this regard is the *Strengthening Family Wellbeing* Community Advisory Group model developed by Foundation House in Victoria, which is discussed in Chapter 3 (see 3.5). This model, which established standing advisory groups within four newly arrived communities in Melbourne, emphasises the importance of carefully selecting advisory group members with an established profile in mind, having well developed Terms of Reference to guide the group's responsibilities, and providing financial compensation for people's time.⁴⁷⁹

The 2011 FECCA report notes that many service designs are currently made 'without consultation' with culturally and linguistically diverse, and that 'as a result the services do not have adequate uptake from communities that need them the most'.⁴⁸⁰ Council's view is that more needs to be done to support existing initiatives and to assist other services in the family law system to work collaboratively with new and emerging communities.

Recommendation 5: Engagement and Consultation

The Australian Government provides support to courts, agencies and services in the family law system to engage with and collaborate with culturally and linguistically diverse communities in the development, delivery and evaluation of services, including support for the establishment of Community Advisory Groups.

5.6 Enhancing the use of Interpreters

One of the barriers identified as impeding access to legal assistance and family support services for culturally and linguistically diverse communities is the lack of adequate and competent interpreting services. Without effective means of communication clients from non-English speaking backgrounds have difficulty in accessing information, advice and services and finding an entry point into the legal system.

The InTouch *Barriers to the Justice System* study for women from newly arrived communities called for ‘a commitment by the police, legal representatives and the courts to apply more consistency in the use of interpreters,’ and argued that there needs to be rigorous training for interpreters on ‘appropriate interpreting techniques and on the issues of family violence and legal concepts’.⁴⁸¹

The use of interpreters in courts and tribunals has been the subject of extensive review, including the Hale survey (see 3.7). In its report, *A Long Way to Equal*, WLSNSW recommends that efforts be made to recruit and train more women interpreters and more interpreters in new and emerging community languages.⁴⁸²

The Hale Survey recommends requiring all interpreters who work in courts and tribunals to complete formal legal interpreting training, a recommendation that NAATI introduce a specialist legal interpreter accreditation, and the establishment of a national register of qualified legal interpreters.⁴⁸³ These recommendations are supported by Council. In view of the difficulties identified it is considered there is a need for more targeted interpreter training for those involved in the family law system.

The submission from AIRWA also identified the need for protocols that ‘assure clients are aware of their right to an interpreter, asked whether they need an interpreter and, if need be, provided with an interpreter’,⁴⁸⁴ while the FRSA suggested that ‘there may be value in building on generic resources, such as FRSA’s 2005 Practice Guide for Working with Interpreters’.⁴⁸⁵

Recommendation 6: Enhancing the use of Interpreters

- 6.1 Training in family law form a specialist component of accreditation for legal interpreters.
- 6.2 The Australian Government and relevant agencies develop a national protocol on the use of interpreters in the family law system. This should include:
 - 6.2.1 Protocols to ensure that clients with language difficulties are made aware of their right to an interpreter, are asked whether they need an interpreter, and are provided with an interpreter if they are identified as in need of one; and
 - 6.2.2 Protocols to guide the sourcing and selecting of interpreters.
- 6.3 The capacity of the family law system be improved by developing regional pools of interpreters with knowledge and understanding of family law derived either from training provided by local agencies or specialist legal interpreter

accreditation developed or approved by the National Accreditation Authority for Translators and Interpreters.

5.7 Legislative issues

The consultations and submissions raised concerns about a number of current legislative provisions and legal issues and their impact on family law system clients from culturally and linguistically diverse backgrounds. These included concerns about the law of nullity and the implications of gifts and property arrangements with extended family for litigated financial disputes (see 2.2.11). Council was not able to investigate these concerns empirically within the context of its data set of reported judgments, as 167 of the 177 of cases elicited by Council's review involved a parenting dispute under Part VII of the *Family Law Act*. However, Council considers that further investigation of these issues is warranted.

The consultations and submissions also revealed significant concerns about the impact of visa dependency on migrant women who arrive in Australia on temporary partner visas and are subjected to family violence or threats of violence by their sponsor (see 2.2.10). Council notes that this issue is the subject of a recent report by the ALRC.⁴⁸⁶ The ALRC has proposed that the Australian Government collaborate with migration service providers, community legal centres and industry bodies to ensure that culturally appropriate information about legal rights and the family violence exception in the Migration Act are provided to visa applicants prior to and on arrival in Australia (Rec. 20-6). Council supports this proposal.

A number of submissions and consultations raised concerns about the effect of the shared parenting provisions of the *Family Law Act* on women from migrant and refugee backgrounds,⁴⁸⁷ and emphasised the importance to newly arrived communities of their children's cultural identity, including concerns about intergenerational conflict and the loss of children's connection to their cultural community. As noted in Chapter 4, Council's review of the reported parenting cases revealed a number of cases that demonstrated a sensitive regard for children's cultural identity needs and a well-developed understanding of the migration and settlement context of newly arrived families. However, Council was unable to draw any empirically sound conclusions about the impact of the legislation or its interpretation on litigants from culturally and linguistically diverse backgrounds, as there were many parenting cases in which the child's and parents' cultural background was mentioned but not dealt with further in any detail. It was not possible on the face of the judgments to discern the explanation for this pattern. It may be that the issue was not raised by the parties, or that their legal advisors failed to alert the court to its relevance. Council believes that there may be a need for greater public and professional education as to the meaning and importance of section 60CC(3)(g).

In its submission, National Legal Aid noted that, as presently drafted, section 60CC(3)(g) does not 'specifically state that a CALD child has a right to enjoy his or her culture as it does for an Aboriginal or Torres Strait Islander child', and queried whether the Act 'appropriately reflects Australia's obligations under the UNCROC'.⁴⁸⁸ In light of the principles of accessibility, equity and equality outlined in the *Strategic Framework*, Council's view is that it may be of benefit for the government to consider whether equal legislative recognition of the importance of cultural connection for all children is needed.

Recommendation 7: Legislative Review

The Attorney-General's Department examine whether the provisions of Part VII of the *Family Law Act 1975* (Cth) adequately recognise the role of cultural connection in the development of all children.

5.8 Research and Monitoring

In Council's view, an ongoing program of evaluation is needed to monitor the work in this area and ensure its effectiveness. However, Council acknowledges the experience of many new arrival communities of 'consultation fatigue'.⁴⁸⁹ For this reason, we recommend that information gathering about accessibility and cultural responsiveness within the family law system be incorporated into existing government consultations with culturally and linguistically diverse communities.

As noted in Chapter 1, the FECCA has been tasked with monitoring the accessibility of government services by people from culturally and linguistically diverse communities through annual consultations with ethnic communities and reports to government (see 1.1). A key goal of this process is to reduce disadvantage and social exclusion by gathering 'qualitative grassroots information about the accessibility and equitability' of services to consumers from culturally and linguistically diverse backgrounds that can be used by government agencies to inform and strengthen the implementation of the *Access and Equity Framework*.⁴⁹⁰

FECCA's consultations have generally focused on five broad areas of Australian Government service delivery: employment, settlement services, housing, health and family and child services, and involve liaison with relevant government agencies, such as the Department of Health and Ageing, the Department of Employment, Education and Workplace Relations, the Department of Immigration and Citizenship and the Department of Families, Housing, Community Services and Indigenous Affairs.⁴⁹¹ In light of the submissions and consultations conducted for this reference, Council believes that government should support the extension of FECCA's Access and Equity consultations to incorporate examination of the experiences of people from culturally and linguistically diverse communities in relation to the services of the Australian family law system, including legal services, the family law courts and family relationships services. Council acknowledges that this extension may require FECCA to re-shape their consultation method to allow for separate meetings with men and women, given the sensitive nature of the subject matter and the issues of privacy noted in Chapter 2, and that this will require additional resources from government.

Recommendation 8: Research and Monitoring

The Federation of Ethnic Communities' Councils of Australia's annual monitoring of the accessibility and equitability of government services be extended to include issues of access and equity in relation to services of the Australian family law system, including the family law courts and family relationship services.

ENDNOTES

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² Australian Bureau of Statistics, *Migrants, 2006 Census of Population and Housing, Australia* (Cat No 34150DS0018) (2007).

³ Australian Bureau of Statistics, 'Migration in Context', *Migration Australia 2009-10* (Cat. No 3412.0) (2011).

⁴ Refugee Resettlement Advisory Council, 'Challenges Facing Refugee Families: Briefing Paper Reflecting Issues of Concern to RRAC', 2011 (copy provided to the Family Law Council).

⁵ Department of Immigration and Citizenship, *Annual Report 2009-2010*, at 100 and 444. <<http://www.immi.gov.au/about/reports/annual/2009-10/pdf/diac-annual-report-2009-10-full-version.pdf> [accessed 23 September 2011]>.

⁶ Refugee Resettlement Advisory Council, above n 4.

⁷ Urbis, *Evaluation of the Family Relationships Services for Humanitarian Entrants Initiative* (Department for Families, Housing, Community Services and Indigenous Affairs, 2007), at 2.

⁸ Department of Immigration and Citizenship, 'Who are our clients?', <<http://www.immi.gov.au/living-in-australia/delivering-assistance/government-programs/settlement-policy/who-are.htm>> [accessed 4 October 2011].

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¹² Australian Government Attorney-General's Department, *A Strategic Framework for Access to Justice in the Federal Civil Justice System* (September 2009).

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¹⁷ Australian Human Rights Commission, above n 15, 33.

¹⁸ E. Pittaway and C. Muli, *The settlement experiences of refugees and migrants from the Horn of Africa* (The Centre for Refugee Research, UNSW, 2009), at 39; A. M. N. Renzaho and S. Vignjevic, 'The impact of a parenting intervention in Australia among migrants and refugees from Liberia, Sierra Leone, Congo, and Burundi: Results from the African Migrant Parenting Program' (2011) 17(1) *Journal of Family Studies* 71, at 72; A. W. Reiner, *Background paper for African Australians: A review of human rights and social inclusion issues – Literature review* (Australian Human Rights Commission, January 2010), at 31.

¹⁹ Australian Human Rights Commission, above n 15, 33; InTouch Multicultural Centre Against Family Violence, above n 15, 5.

²⁰ Reiner, above n 18, 49.

²¹ See Urbis, above n 7.

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- ²³ Neighbourhood Justice Centre, *Evaluating the Neighbourhood Justice Centre in Yarra (2007-2009)* (Victorian Government Department of Justice, February 2010).
- ²⁴ Australian Government Attorney-General's Department, above n 12.
- ²⁵ See Australian Multicultural Council, <<http://www.amc.gov.au/>> [accessed 23 September 2011].
- ²⁶ See in particular, Australian Human Rights Commission, above n 15; InTouch Multicultural Centre Against Family Violence, above n 15; Dr S. Armstrong, above n 16; Australian Muslim Women's Centre for Human Rights, *Muslim Women, Islam and Family Violence: A guide for changing the way we work with Muslim women experiencing family violence* (2011); Dimopoulos, above n 16; Fraser, above n 14.
- ²⁷ Dr S. Armstrong, *Enhancing access to family dispute resolution for families from culturally and linguistically diverse backgrounds*, Australian Family Relationships Clearinghouse Briefing Paper 18 (April 2011), at 2.
- ²⁸ Ibid; Dimopoulos, above n 16, 2.
- ²⁹ Australian Muslim Women's Centre for Human Rights, above n 26, 31.
- ³⁰ Australian Human Rights Commission, above n 15, 33; InTouch Multicultural Centre Against Family Violence, above n 15.
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- ³³ Australian Bureau of Statistics, above n 1.
- ³⁴ See Department of Immigration and Citizenship, *Living in Australia: A National Action Plan to Build on Social Cohesion, Harmony and Security*, <http://www.immi.gov.au/living-in-australia/a-multicultural-australia/national-action-plan/nap.htm#e> [accessed 23 September 2011], and Dimopoulos, above n 16.
- ³⁵ Department of Immigration and Citizenship 2009, *Fact sheet 15 – Population projections*.
- ³⁶ Australian Bureau of Statistics, above n 3.
- ³⁷ Refugee Resettlement Advisory Council, above n 4.
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- ³⁹ *United Nations Convention Relating to the Status of Refugees 1951*, Article 1.
- ⁴⁰ Department of Immigration and Citizenship, above n 8.
- ⁴¹ Ibid.
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- ⁴³ See The Forum of Australian Services for Survivors of Torture and Trauma (FASSTT), above n 9.
- ⁴⁴ See Melaleuca Refugee Centre, *2010-2011 Annual Report* (2011), at 22.
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- ⁴⁸ Australian Multicultural Council, above n 25.
- ⁴⁹ Australian Government, *A Stronger, Fairer Australia* (2009); Australian Government, *Overview of the Social Inclusion Agenda*, <<http://www.socialinclusion.gov.au/SIAGENDA/Pages/Overview.aspx>>. The Social Inclusion Agenda services for new arrivals include the Adult Migrant English Program (AMEP), the Integrated Humanitarian Settlement Strategy (IHSS), and the Translating and Interpreting Service (TIS).
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- ⁵¹ <<http://www.harmony.gov.au/dscp/>>. Note that responsibility for the National Action Plan to Build on Social Cohesion, Harmony and Security, which was originally coordinated by the Department of Immigration and Citizenship, was transferred to the Australian Human Rights Commission as of 1 July 2010: <<http://www.immi.gov.au/living-in-australia/a-multicultural-australia/national-action-plan/>> [accessed 23 September 2011]
- ⁵² Australian Muslim Women's Centre for Human Rights, above n 26, 25. For a description of this history, see Armstrong, above n 16, 28.

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- ⁵⁴ Australian Government, above n 10, 14-15.
- ⁵⁵ Federation of Ethnic Communities' Councils of Australia (2010), above n 11; Federation of Ethnic Communities' Councils of Australia (2011), above n 13.
- ⁵⁶ Law and Justice Foundation of New South Wales, *Justice Made to Measure: NSW Legal Needs Survey in Disadvantaged Areas* (2006), 27-29. These findings mirror the results of similar research in the United Kingdom: see for example, H. Genn, *Paths to Justice: What People Do and Think About Going to Law* (1999).
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- ⁵⁸ Australian Government Attorney-General's Department, above n 12.
- ⁵⁹ Ibid 61.
- ⁶⁰ Ibid 62-63.
- ⁶¹ Federation of Ethnic Communities' Councils of Australia (2011), above n 13, 8.
- ⁶² Refugee Resettlement Advisory Council, above n 4.
- ⁶³ Fraser, above n 14, 7; Women's Legal Services NSW, above n 14, 19.
- ⁶⁴ Australian Human Rights Commission, above n 15, 33; InTouch Multicultural Centre Against Family Violence, above n 15, 6, 5; The Australian Muslim Women's Centre for Human Rights, above n 26, 14-15.
- ⁶⁵ Australian Human Rights Commission, above n 15, 31; Dimopoulos, above n 16.
- ⁶⁶ InTouch Multicultural Centre Against Family Violence, above n 15.
- ⁶⁷ Armstrong, above n 27, 4; Balvin, et al., above n 16.
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- ⁷⁰ See A. Black, and K. Sadiq, 'Good and Bad Sharia: Australia's mixed response to Islamic Law' (2011) 34(1) *University of New South Wales Law Journal* 383.
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- ⁷⁴ See Family Court of Australia & Department of Immigration and Citizenship, *Families and the Law in Australia: The Family Court Working Together with New and Emerging Communities* (2008).
- ⁷⁵ Women's Legal Resources Centre, *Quarter Way to Equal: A Report on Barriers to Access to Legal Services for Migrant Women* (1994); Women's Legal Service NSW, above n 14.
- ⁷⁶ See Northern Territory Legal Aid Commission, *CALD Families Project Report* (2009); A. Costi, *Family Harmony sessions for the newly arrived communities: Report and preliminary evaluation* (Victoria Legal Aid, 2011).
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- ⁸⁵ See Dimopoulos, above n 16, 2.
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- ⁸⁸ Office of Multicultural Interests, 'Australia overview', *The People of Western Australia – Statistics from the 2006 Census*, <http://www.omi.wa.gov.au/omi_diversity_statistics.cfm>, at 1 [accessed 13 October 2011].
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- ⁹⁰ *Ibid* 48.
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- ⁹² Australian Bureau of Statistics, 'Net overseas migration', *Migration Australia 2009-10* (Cat. No 3412.0) (2011).
- ⁹³ *Ibid*.
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- ⁹⁵ Reiner, above n 18, 8.
- ⁹⁶ Australian Bureau of Statistics, above n 1.
- ⁹⁷ Refugee Resettlement Advisory Council, above n 4.
- ⁹⁸ Australian Human Rights Commission, above n 15, 3.
- ⁹⁹ Australian Institute of Health and Welfare, *A Picture of Australia's children 2009* (Australian Institute of Health and Welfare, Canberra, 2009, Cat. no. PHE 112), at 7.
- ¹⁰⁰ *Ibid*.
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- ¹⁰² The Forum of Australian Services for Survivors of Torture and Trauma (FASSTT), above n 9; G. Hugo, 'Migration between Africa and Australia: A demographic perspective', Background paper for *African Australians: A review of human rights and social inclusion issues* (2009), at 62.
- ¹⁰³ Hugo, above n 102, 63.
- ¹⁰⁴ *Ibid*; Reiner, above n 18, 52.
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- ¹⁰⁶ Dimopoulos, above n 16, 2.
- ¹⁰⁷ Department of Immigration and Citizenship, *Sudanese Community Profile* (March 2007) <http://www.immi.gov.au/living-in-australia/delivering-assistance/government-programs/settlement-planning/_pdf/community-profile-sudan.pdf> [accessed 3 October 2011].
- ¹⁰⁸ The grounds for divorce were set out in *Matrimonial Causes Act 1959* (Cth), s 28.
- ¹⁰⁹ Which could be satisfied even if both parties had continued to live under the one roof during that time: *Family Law Act 1975* (Cth), ss 48, 49(2).
- ¹¹⁰ *Marriage Act 1961* (Cth), s 23.
- ¹¹¹ Other than Western Australia.
- ¹¹² *Family Law Act 1975* (Cth), s 69ZK. The section provides certain exceptions to this limitation.
- ¹¹³ *Family Law Act 1975* (Cth), s 60I(1).
- ¹¹⁴ *Family Law Act 1975* (Cth), s 61DA and 65DAA.
- ¹¹⁵ *Family Law Act 1975* (Cth), s 61DA(2).
- ¹¹⁶ The regime implemented references of power given by NSW, Victoria, Queensland and Tasmania over the period 2003 to 2006. Following a later South Australian reference in December 2009, the regime commenced, for South Australian unmarried couples, on 1 July 2010.
- ¹¹⁷ The Family Court retains power to make orders for the maintenance of children over 18 years if the provision of maintenance is necessary to enable the child to complete his or her education or because of a mental or physical disability of the child: *Family Law Act 1975* (Cth), s 66L.
- ¹¹⁸ See for example, *Children, Youth and Families Act 2005* (Vic), s 162.
- ¹¹⁹ See for example, *Family Violence Protection Act 2008* (Vic).

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- ¹²⁰ *Family Law Act 1975* (Cth), s 61DA.
- ¹²¹ *Family Law Act 1975* (Cth), s 79(4)(c).
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- ¹²⁴ *Family Law Act 1975* (Cth) s 10F.
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- ¹²⁸ Data provided by Attorney-General's Department: October 2011.
- ¹²⁹ Council of Australian Governments, *National Partnership Agreement on Legal Assistance Services* (July 2010), <http://www.federalfinancialrelations.gov.au/content/national_partnership_agreements/Other/Legal_Assistance_Services_NP.pdf>
- ¹³⁰ Legal Aid NSW Annual Report for 2009-2010 reported that 44.3% of legal aid services in NSW were provided by private lawyers.
- ¹³¹ Some aspects of jurisdiction under the Family Law Act may be exercised by local courts: s 69J.
- ¹³² R. Kaspiew, M. Gray, R. Weston, L. Moloney, K. Hand, and L. Qu, *Evaluation of the 2006 family law reforms* (Australian Institute of Family Studies: 2009), at 304-305.
- ¹³³ *Ibid* 305.
- ¹³⁴ See 'Guiding principles', Australian Human Rights Commission, above n 15, 10; Australian Government Attorney-General's Department, above n 12, especially 153-155.
- ¹³⁵ Armstrong, above n 27, 4; Balvin, et al., above n 16, 5-6.
- ¹³⁶ Pittaway and Muli, above n 18, 39; Renzaho and Vignjevic, above n 18, 72; Reiner, above n 18, 31.
- ¹³⁷ Amal El-Khoury, Arabic Welfare, 16 June 2011; Broadmeadows Cultural Consultative Group, 13 October 2011; Sudanese Advisory Group meeting, 7 October 2011; Federation of Ethnic Communities' Councils of Australia CALD Women's Equity and Access Forum, Metro Migrant Resource Centre, Campsie, 23 March 2011; African Women's Group meeting, Neighbourhood Justice Centre, 16 September 2011.
- ¹³⁸ Reiner, above n 18, 49.
- ¹³⁹ Foundation House, above n 22, 7.
- ¹⁴⁰ Consultation with the NT Legal Aid Commission, 12 August 2011.
- ¹⁴¹ Australian Human Rights Commission, above n 15, 33; InTouch Multicultural Centre Against Family Violence, above n 15, 5.
- ¹⁴² C. Poljski, *On Her Way: Primary Prevention of Violence Against Immigrant and Refugee Women in Australia* (Multicultural Centre for Women's Health, 2011), at 32.
- ¹⁴³ The Australian Muslim Women's Centre for Human Rights, above n 26, 14-15.
- ¹⁴⁴ Australian Human Rights Commission, above n 15, 28; Fraser, above n 14, 17; Northern Territory Legal Aid Commission, above n 76; Dimopoulos, above n 16, 15; Women's Legal Service NSW, above n 14, 19; NSW Legal Assistance Forum (NLAF), *Working Group on Access to Justice for Culturally and Linguistically Diverse (CALD) Communities Final Report* (2009), at 4.
- ¹⁴⁵ Armstrong, above n 27, 10.
- ¹⁴⁶ Fraser, above n 14; Australian Human Rights Commission, above n 15, 28; InTouch Multicultural Centre Against Family Violence, above n 15, 8.
- ¹⁴⁷ Australian Human Rights Commission, above n 15, 28; Women's Centre for Health Matters Inc, *Report on Completion of the CIT funded project Cultural Awareness Training for ACT Women's Services (including Project Evaluation)* (2010), at 4; NSW Legal Assistance Forum (NLAF), above n 144, 6; InTouch Multicultural Centre Against Family Violence, above n 15, 16.
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- ¹⁴⁹ Consultation with Katie Fraser, Project Coordinator, National Community Legal Education Strategy for New Arrivals, ACT Legal Aid.
- ¹⁵⁰ Chris Pierson, Manager, Services Innovation Program, Foundation House; Renzaho and Vignjevic, above n 18.
- ¹⁵¹ See Women's Legal Service NSW, above n 14, 19.
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- ¹⁵³ Fraser, above n 14, 43.

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- ¹⁵⁶ Reiner, above n 18, 19.
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- ¹⁶⁰ Department of Immigration and Citizenship, *Fact Sheet 67 – The Australian Cultural Orientation (AUSCO) Program*, <<http://www.immi.gov.au/media/fact-sheets/67ausco.htm>>
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- ¹⁶² See example, Australian Human Rights Commission, above n 15, 32; Women's Legal Service NSW, above n 14, 22.
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- ¹⁶⁴ Women's Legal Service NSW, above n 14, 22; Costi, above n 76, at 4; Australian Human Rights Commission, above n 15, 29; Vivi Genramanos-Kautsouadis, Australian Immigrant and Refugee Women's Alliance NSW, Family Law Council Teleconference, 22 June 2011.
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- ¹⁶⁶ Jenni Gough, Federation of Ethnic Communities Council of Australia, Family Law Council Teleconference, 22 June 2011; Melba Marginson, Victorian Immigration and Refugee Women's Coalition, 25 January 2011.
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- ¹⁶⁸ R. Brewer, *Culturally and Linguistically Diverse Women in the Australian Capital Territory Enablers and Barriers to Achieving Social Connectedness* (Women's Centre for Health Matters Inc, 2009) at 22.
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- ¹⁷⁴ Family Relationship Services Australia, Submission to the Family Law Council, *Improving the Family Law System for Clients from Culturally and Linguistically Diverse backgrounds*, April 2011.
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- ¹⁷⁶ Office of Multicultural Interests, above n 88, 46.
- ¹⁷⁷ Kaspiew et al., above n 132, 52.
- ¹⁷⁸ Jenny Semple and Despina Haralambopoulos, South Eastern Region Migrant Resource Centre, 27 May 2011.
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- ¹⁸⁰ Dimopoulos, above n 16, 14.
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- ¹⁸² Sudanese Advisory Group meeting, Fitzroy Learning Centre, 7 October 2011.
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- ²⁰⁶ Gai Campbell, Greensborough Family Relationship Centre, 14 February 2011; Carol Makhoul and Khairy Majeed, Broadmeadows Family Relationship Centre, 24 January 2011; Ross Butler, Bankstown Family Relationship Centre, 8 April 2011; Paulo Kwajakwan, Berwick Family Relationship Centre, 5 May 2011.
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- ²⁸¹ National Legal Aid, Submission to the Family Law Council, *Improving the Family Law System for Clients from Culturally and Linguistically Diverse backgrounds*, November 2011, at 22.
- ²⁸² Dr Susan Armstrong, Submission to the Family Law Council, *Improving the Family Law System for Clients from Culturally and Linguistically Diverse backgrounds*, 26 July 2011, 9.
- ²⁸³ Zione Walker, Women's Legal Service Victoria, 20 January 2011; Legal Services Commission South Australia, above n 211, 5; Women's Legal Centre (ACT & Region), above n 218, 10.
- ²⁸⁴ Professor Patrick Parkinson, *Improving the Family Law System for Clients from Culturally and Linguistically Diverse backgrounds*, 10 November 2010, 2.
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- ³¹² Ibid.
- ³¹³ Sultan Cinar, Australian Muslim Women's Centre for Human Rights, 9 August 2011.
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- ³²⁴ Family Relationship Services Australia Submission, above n 174, 14.
- ³²⁵ Australian Government, *Family Relationship Services for Humanitarian Entrants*, <http://www.familyrelationships.gov.au/BrochuresandPublications/Documents/FRSP_bro5_v3.pdf>
- ³²⁶ Urbis, above n 7, 31.
- ³²⁷ Melissa Monteiro, The Hills Holroyd Parramatta Migrant Resource Centre, 29 April 2011.
- ³²⁸ Family Relationship Services Australia Submission, above n 174, 14-15.
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- ³³⁰ Wambui Thirimu, Sunshine Spectrum Migrant Resource Centre, 25 May 2011.
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- ³³² Tina Douvos-Stathopoulos, Deputy Director, Australian Greek Welfare Society Inc., 15 November 2011.
- ³³³ Legal Services Commission of South Australia, above n 77.
- ³³⁴ National Legal Aid Submission, above n 281, 13-14.
- ³³⁵ Australian Human Rights Commission, above n 15, 32.
- ³³⁶ Ibid.
- ³³⁷ Federal Magistrates Court of Australia, *The Dandenong Project: A family law initiative* (December 2009), 'Foreword'.
- ³³⁸ Chief Federal Magistrate John Pascoe, 23 August 2011.

³³⁹ See G. Dimopoulos, *'Walking the Talk' of Integrated Service Delivery: Evaluation of the Federal Magistrates Court (Victoria) – Geelong Family Relationship Centre Collaboration Pilot Project* (Victorian Family Law Pathways Network, 2009).

³⁴⁰ D. Absler, *Dandenong project: Information & Referral Service Evaluation Report* (Victorian Family Law pathways Network, November 2010).

³⁴¹ The Neighbourhood Justice Centre is located in the City of Yarra. 27% of the Yarra population was born overseas.

³⁴² Neighbourhood Justice Centre, *Evaluating the Neighbourhood Justice Centre in Yarra (2007-2009)* (Victorian Government Department of Justice, February 2010), at 28.

³⁴³ Office of Multicultural Interests, above n 88.

³⁴⁴ Family Court of Australia, *Workforce Diversity Plan 2009-2011*, at 5-6.

³⁴⁵ Family Relationship Services Australia Submission, above n 174, 18.

³⁴⁶ National Legal Aid Submission, above n 281, at 15.

³⁴⁷ Legal Services Commission of South Australia, above n 77, 11.

³⁴⁸ Jane Brock, Immigrant Women's Speakout Association; Northern Territory service providers forum, NT Legal Aid, 12 August 2011.

³⁴⁹ Paris Aristotle and Chris Pierson, Foundation House, 20 June 2011

³⁵⁰ Nur Osman, Greensborough Family Relationship Centre, Paulo Kwajakwan, Berwick Family Relationship Centre, and Chenai Mupotsa, Sunshine Family Relationship Centre, 5 May 2011.

³⁵¹ Armstrong, above n 27.

³⁵² Kerry Walker, Neighbourhood Justice Centre, 28 June 2011. See also Family Relationship Services Australia Submission, above n 174, 12.

³⁵³ Family Relationship Services Australia Submission, above n 174, 16.

³⁵⁴ Family Court of Australia & Department of Immigration and Citizenship, above n 74, 3 and 45.

³⁵⁵ *Ibid* 5.

³⁵⁶ Foundation House, above n 22, 6.

³⁵⁷ Chris Pierson, Foundation House.

³⁵⁸ National Legal Aid Submission, above n 281.

³⁵⁹ See Family Court of Australia, 'National Cultural Diversity Plan 2004-2006' (2004).

³⁶⁰ Family Relationship Services Guidelines, Appendix C. Operational Framework for Family Relationship Centres, <http://www.fahcsia.gov.au/sa/families/progserv/FRSP/contractual_arrangements/Documents/frsp_guidelines/app_c.htm>

³⁶¹ Family Relationship Services Australia Submission, above n 174, 9.

³⁶² Women's Legal Services NSW Submission, Case studies 7 and 8, 5-6.

³⁶³ Consultation with Fitzroy Legal Service and NAATI highlighted the lack of interpreter courses with specialist training for interpreting in the legal sector.

³⁶⁴ Belinda Lo, Fitzroy Legal Service, 26 May 2011.

³⁶⁵ S. Hale, *Interpreter policies, practices and protocols in Australian Courts and Tribunals A national survey*, Recommendations 3, 5 and 6, at 15 (xv).

³⁶⁶ See for example, Family Court of Australia, *Interpreter and Translator Procedures*, CEO Policy: 2007/01, at [7.3].

³⁶⁷ Family Relationships Services Australia Submission, above n 174, 20.

³⁶⁸ Belinda Lo, Fitzroy Legal Service, 26 May 2011; Romany Amarasingham, Relationships Australia Victoria, 2 February 2011.

³⁶⁹ Romany Amarasingham, Relationships Australia Victoria, 2 February 2011.

³⁷⁰ Urbis, above n 7.

³⁷¹ Family Relationship Advice Line Submission, 26 September 2011.

³⁷² Note that this sample excludes cases involving Aboriginal and Torres Strait Islander children.

³⁷³ Of the 10 non-parenting cases in the sample, only one case involved a disputed dowry (*Singh & Singh*) and one case involved an application for a decree of nullity (*Kreet & Sampir*). A list of the non-parenting cases and disputed issues is in Appendix C.

³⁷⁴ *Family Law Act 1975* (Cth), s 60CA.

³⁷⁵ *Family Law Act 1975* (Cth), s 60CC(3)(a)

³⁷⁶ *Family Law Act 1975* (Cth), s 60CC(3)(j).

³⁷⁷ A. Chew, 'Judicial Consideration of Culture in Child-related Proceedings under the *Family Law Act 1975* (Cth)' (2007) 21(2) *Australian Journal of Family Law* 173, at 190.

³⁷⁸ *Ibid*.

³⁷⁹ Ibid, 188.

³⁸⁰ Ibid, 176, 188. See also L. Fishbayn, 'Litigating the right to culture: Family law in the new South Africa' (1999) 13 *International Journal of Law Policy and the Family* 147, at 149.

³⁸¹ S. Van Praagh, 'Religion, Custody and a Child's Identities' (1997).

³⁸² Y. Ronen, 'Redefining the Child's Right to Identity' (2004) 18 *International Journal of Law Policy and the Family* 147, at 154.

³⁸³ Chew, above n 378, 178.

³⁸⁴ Ibid, 190.

³⁸⁵ National Legal Aid Submission, above n 281, 22.

³⁸⁶ Naylor & Tauchert [2008] FMCAfam 455, 32.

³⁸⁷ Naylor & Tauchert [2008] FMCAfam 455, 101.

³⁸⁸ Naylor & Tauchert [2008] FMCAfam 455, 139.

³⁸⁹ Naylor & Tauchert [2008] FMCAfam 455, 146.

³⁹⁰ Naylor & Tauchert [2008] FMCAfam 455, 57.

³⁹¹ Edelman and Ziu (No.2) [2010] FamCAFC 236, 61.

³⁹² Edelman and Ziu (No.2) [2010] FamCAFC 236, 80.

³⁹³ Edelman and Ziu (No.2) [2010] FamCAFC 236, 65.

³⁹⁴ Edelman and Ziu (No.2) [2010] FamCAFC 236, 30.

³⁹⁵ Australian Muslim Women's Centre for Human Rights, above n 26, 15-19; InTouch Multicultural Centre Against Family Violence, above n 15, 15-24; Pittaway and Muli, above n 18, 65.

³⁹⁶ S. Rees and B. Pease, 'Refugee Settlement, Safety and Wellbeing: Exploring Domestic and Family Violence in Refugee Communities' (Immigrant Women's Domestic Violence Service, 2006).

³⁹⁷ A. Versha and R. Venkatraman, *You Can't Hide It – Family Violence Shows: Family Violence in New & Emerging Refugee Communities* (The Centre for Refugee Research, UNSW, 2010), at 36.

³⁹⁸ Toliver & Molina [2008] FMCAfam 43, 8.

³⁹⁹ Toliver & Molina [2008] FMCAfam 43, 15.

⁴⁰⁰ Toliver & Molina [2008] FMCAfam 43, 9.

⁴⁰¹ Toliver & Molina [2008] FMCAfam 43, 14.

⁴⁰² Toliver & Molina [2008] FMCAfam 43, 17 and 303.

⁴⁰³ Toliver & Molina [2008] FMCAfam 43, 301.

⁴⁰⁴ Toliver & Molina [2008] FMCAfam 43, 183.

⁴⁰⁵ Toliver & Molina [2008] FMCAfam 43, 209.

⁴⁰⁶ Toliver & Molina [2008] FMCAfam 43, 280-281.

⁴⁰⁷ Renzaho and Vignjevic, above n 18.

⁴⁰⁸ This issue was raised in a number of Council's meetings with community groups.

⁴⁰⁹ Liepins & Liepins [2008] FMCAfam 85, 84.

⁴¹⁰ Liepins & Liepins [2008] FMCAfam 85, 88 -90.

⁴¹¹ Liepins & Liepins [2008] FMCAfam 85, 86.

⁴¹² Liepins & Liepins [2008] FMCAfam 85, 119.

⁴¹³ Liepins & Liepins [2008] FMCAfam 85, 117.

⁴¹⁴ Liepins & Liepins [2008] FMCAfam 85, 118.

⁴¹⁵ Liepins & Liepins [2008] FMCAfam 85, 129.

⁴¹⁶ Liepins & Liepins [2008] FMCAfam 85, 131.

⁴¹⁷ Ronen, above n 382, 152.

⁴¹⁸ R. Vasquez, 'Cultural issues in Evaluations', Chapter 9 in P. Stahl, *Complex issues in Child Custody Evaluations* (Sage Publications, 1999), at 154-155.

⁴¹⁹ Ibid.

⁴²⁰ Trejo & Meraz [2011] FMCAfam 91, 34.

⁴²¹ Trejo & Meraz [2011] FMCAfam 91, 40.

⁴²² Pittaway and Muli, above n 18, 39; Renzaho and Vignjevic, above n 18, 72; Reiner, above n 18, 31; Versha and Venkatraman, above n 397, at 17.

⁴²³ Foundation House, above n 22, 5; Versha and Venkatraman, above n 397, at 56; InTouch Multicultural Centre Against Family Violence, above n 15, 7, 24-25; Australian Human Rights Commission, above n 15, 9.

⁴²⁴ See Chapter 1.1.

⁴²⁵ Versha and Venkatraman, above n 397, 17.

⁴²⁶ Foundation House, above n 22, 5.

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- ⁴²⁷ Federation of Ethnic Communities Councils of Australia, above n 13, 8; InTouch Multicultural Centre Against Family Violence, above n 15, 16, 25.
- ⁴²⁸ Dimopoulos, above n 16.
- ⁴²⁹ Australian Government, above n 10, 14-15.
- ⁴³⁰ Council of Australian Governments, above n 129.
- ⁴³¹ Australian Government Attorney-General's Department, above n 12, 62-63.
- ⁴³² Federation of Ethnic Communities' Councils of Australia, above n 13, Recommendations 1, 2 and 5; Armstrong, above n 16, 18; Balvin, et al., above n 16, ii-viii; InTouch Multicultural Centre Against Family Violence, above n 15, 26-29; Australian Human Rights Commission, above n 15, 9, 40.
- ⁴³³ See for example, National Health and Medical Research Council, *Cultural Competency in Health: A guide for policy, partnerships and participation* (December 2005); McGill University, Division of Social and Transcultural Psychiatry, *Development and Evaluation of Cultural Consultation Services in Mental Health* (2011), <<http://www.mcgill.ca/tcpsych/publications/report/final/>>
- ⁴³⁴ Poljski, above n 142, 32.
- ⁴³⁵ Federation of Ethnic Communities' Councils of Australia, above n 13, Recommendation 60.
- ⁴³⁶ Australian Immigrant and Refugee Women's Alliance Submission, above n 187, 31.
- ⁴³⁷ See on this, National Plan to Reduce Violence against Women and their Children, Strategy 1.3.
- ⁴³⁸ Poljski, above n 142, 63.
- ⁴³⁹ Dimopoulos, above n 16, 1 and 16.
- ⁴⁴⁰ Legal Services Commission of South Australia, above n 77, 12. See also S. Churchman, 'Community Legal Education the Last Ten Years - Socrates revisited' (1987) 12 *Legal Service Bulletin* 198.
- ⁴⁴¹ Federation of Ethnic Communities' Councils of Australia, above n 13, 11 and 14.
- ⁴⁴² Australian Government, above n 10, 14.
- ⁴⁴³ Federation of Ethnic Communities' Councils of Australia, above n 13, 14 and 20.
- ⁴⁴⁴ Women's Centre for Health Matters Inc, above n 147, 2.
- ⁴⁴⁵ Bean, above n 53, 2.
- ⁴⁴⁶ Urbis, above n 7, 30.
- ⁴⁴⁷ See M. Furlong and J. Wight, 'Promoting "Critical Awareness" and Critiquing "Cultural Competence": Towards Disrupting Received Professional Knowledges' (2011) 64(1) *Australian Social Work* 38.
- ⁴⁴⁸ Ibid 39.
- ⁴⁴⁹ Federation of Ethnic Communities' Councils of Australia, above n 13, 6.
- ⁴⁵⁰ Bean, above n 53, 28.
- ⁴⁵¹ Women's Centre for Health Matters Inc, above n 147, 3.
- ⁴⁵² Australian Immigrant and Refugee Women's Alliance Submission, above n 187, 7, 17-18; Women's Legal Services NSW Submission, above n 172; Women's Legal Centre (ACT & Region) Submission, above n 218.
- ⁴⁵³ Bean, above n 53, 27.
- ⁴⁵⁴ Armstrong, above n 16, 59.
- ⁴⁵⁵ Australian Immigrant and Refugee Women's Alliance Submission, above n 187, 27.
- ⁴⁵⁶ Vasquez, above n 418, 154-155.
- ⁴⁵⁷ Ibid.
- ⁴⁵⁸ Rees and Pease, above n 396.
- ⁴⁵⁹ Federation of Ethnic Communities' Councils of Australia, above n 13, 14.
- ⁴⁶⁰ Family Relationship Services Australia Submission, above n 174, 18.
- ⁴⁶¹ National Health and Medical Research Council, above n 433.
- ⁴⁶² Ibid 30.
- ⁴⁶³ Australian Government, above n 10, 15.
- ⁴⁶⁴ Federation of Ethnic Communities Councils of Australia, above n 13, 18.
- ⁴⁶⁵ Urbis, above n 7, ii; Foundation House, above n 22.
- ⁴⁶⁶ Ibid ii and 29-30.
- ⁴⁶⁷ Family Relationship Services Australia Submission, above n 174, 12.
- ⁴⁶⁸ Federation of Ethnic Communities' Councils of Australia, above n 13, 6.
- ⁴⁶⁹ Neighbourhood Justice Centre, above n 342.
- ⁴⁷⁰ Australian Immigrant and Refugee Women's Alliance Submission, above n 187, 25.
- ⁴⁷¹ Armstrong, above n 16, 69.
- ⁴⁷² Family Relationship Services Australia Submission, above n 174, 16.
- ⁴⁷³ National Legal Aid Submission, above n 281, 22.

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- ⁴⁷⁴ Urbis, above n 7, ii and 29-30.
- ⁴⁷⁵ Armstrong, above n 16, 103.
- ⁴⁷⁶ Ibid.
- ⁴⁷⁷ Federation of Ethnic Communities' Councils of Australia, above n 13, 8.
- ⁴⁷⁸ Australian Human Rights Commission, above n 15, 33.
- ⁴⁷⁹ Chris Pierson, Foundation House. See also Poljski, above n 142, 43.
- ⁴⁸⁰ Federation of Ethnic Communities' Councils of Australia, above n 13, 13.
- ⁴⁸¹ InTouch Multicultural Centre Against Family Violence, above n 15, 8.
- ⁴⁸² Women's Legal Services NSW, above n 14, 8.
- ⁴⁸³ Hale, above n 366, Recommendations 3, 5 and 6.
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- ⁴⁸⁵ Family Relationship Services Australia Submission, above n 174, 19.
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- ⁴⁸⁷ Australian Immigrant and Refugee Women's Alliance Submission, above n 187; Women's Legal Services NSW 172.
- ⁴⁸⁸ National Legal Aid Submission, above n 281, 22.
- ⁴⁸⁹ Dimopoulos, above n 16, 16.
- ⁴⁹⁰ Federation of Ethnic Communities' Councils of Australia (2010), above n 11, 26; Federation of Ethnic Communities' Councils of Australia (2011), above n 13, 6.
- ⁴⁹¹ Federation of Ethnic Communities' Councils of Australia, above n 13, 68.

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- Relationships Australia Victoria, *A state of inclusion: How Relationships Australia Victoria is helping diverse communities* (Relationships Australia Victoria, 2010).
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Appendices

Appendix A: Consultations

The following persons and organisations were consulted in relation to the Family Law Council's Reference.

Anglicare Northern Territory Refugee and Migrant Settlement Service

- Mary Willems (Coordinator) – 12 August 2011

Arabic Society of Victoria

- Samir Mourad (Chairperson) – 13 October 2011

Australian Arabic Welfare

- Amal El-Khoury (Director) – 16 June 2011

Australian Greek Welfare Society Ltd

- Tina Douvos-Stathopoulos (Deputy Director) – 15 November 2011

Australian Human Rights Commission

- Morlai Kamara (Policy Officer, Community Engagement Team) – 10 May 2011
- Marai Katsabanis (Policy Officer, Race Discrimination Team) – 10 May 2011
- Alison Aggawal (Director, Sex and Age Discrimination Team) – 10 May 2011
- Katie Kiss (Director, Social Justice Team) – 10 May 2011
- Emilie Priday (Senior Policy Officer, Social Justice Unit) – 10 May 2011

Australian Immigrant and Refugee Women's Alliance (AIRWA) ACT

- Anastasia Kaldi (Manager) – 22 June 2011

Australian Immigrant and Refugee Women's Alliance (AIRWA) NSW

- Vivi Genramanos-Kautsouadis (Coordinator) – 22 June 2011

Australian Muslim Women's Centre for Human Rights (AMWCHR)

- Joumanah El Matrah (Executive Director) – 11 May 2011
- Sultan Cinar (Legal Literacy Coordinator) – 9 August 2011

Bankstown Family Relationship Centre

- Ross Butler (Manager) – 8 April 2011

Berwick Family Relationship Centre

- Paulo Kwajakwan (Community Liaison Officer) – 5 May 2011

Broadmeadows Family Relationship Centre

- Carol Makhoul (Team Leader, Family Dispute Resolution) – 24 January 2011
- Dr Khairy Majeed (Senior Cultural Advisor) – 24 January 2011

Darwin Community Legal Service

- Jess Flynn (Outreach Worker) – 12 August 2011

Family Court of Australia

- The Hon Justice Nahum Mushin – 23 May 2011
- The Hon Justice Margaret Cleary – 23 May 2011
- Dinh Tran (Registrar, Parramatta Registry) – 21 June 2011
- Leisha Lister (Executive Advisor to the Chief Executive Officer) – 9 September 2011

Federal Magistrates Court

- Chief Federal Magistrate John Pascoe – 23 August 2011
- Steve Agnew (Acting Deputy Chief Executive Officer) – 19 September 2011

Federation of Ethnic Communities' Councils of Australia (FECCA)

- Jenni Gough (Policy Officer) – 22 June 2011
- Padma Menon (Director) – 1 November 2011

Fitzroy Legal Service

- Belinda Lo (Legal Project Officer) – 26 May 2011

Foundation House (The Victorian Foundation for the Survivors of Torture)

- Paris Aristotle (Director, and Chair of the Family Working Group of the Refugee Resettlement Advisory Council) – 20 June 2011
- Chris Pierson (Manager, Services Innovation Program) – 20 June 2011

Greensborough Family Relationship Centre

- Gai Campbell (Senior Manager) – 14 February 2011
- Nur Osman (Community Liaison Officer) – 5 May 2011

Immigrant Women's Speakout Association of NSW

- Jane Brock – 22 June 2011

Immigrant Women's Support Service QLD

- Raquel Aldunate – 22 June 2011
- Cecilia Barrasi – 22 June 2011

Legal Aid ACT

- Katie Fraser (Project Coordinator, National Community Legal Education Strategy for New Arrivals) – 20 September 2011

Legal Aid NSW

- Kylie Beckhouse (Director of Family Law) – 29 April 2011
- Sally Lord (Manager Family Dispute Resolution) – 29 April 2011

Migrant Resource Centre of South Australia

- Cynthia Caird (Manager, Adelaide Migrant Resource Centre) – 14 November 2011

Migrant Women's Lobby Group South Australia

- Maria Johns – 22 June 2011

Multicultural Women's Advocacy ACT

- Sela Taufa – 22 June 2011

Muslim Women Association Inc. (NSW)

- Maha Krayem Abdo (Executive Officer) – 28 April 2011

Neighbourhood Justice Centre

- Jodi Cornish (Community Engagement Coordinator) – 2 June 2011
- Damian James (Senior Registrar) – 2 June 2011
- Kerry Walker (Director) – 28 June 2011
- Athieng Majak (Community Engagement Coordinator) – 16 September 2011

Northern Territory Department of Child and Family Services

- Karen McLoughlin-Goldstraw (Youth Services Coordinator, Social Inclusion Policy and Program Development) – 12 August 2011

Northern Territory Family Relationship Centre

- Christina Dewhirst (Director, Post Separation Services) – 12 August 2011

Northern Territory Legal Aid Commission

- John Jablonka (Multicultural Educator) – 12 August 2011
- Rebecca Sharkey (Barrister & Solicitor) – 12 August 2011
- Jaquie Palavra (Managing Solicitor, Family Law Section) – 12 August 2011
- Melanie Robinson (Community Legal Education Officer) – 12 August 2011
- Chloe Coleman-Hearty (Family Dispute Resolution Coordinator) – 12 August 2011
- Michael Powell (Barrister & Solicitor) – 12 August 2011

Relationships Australia (Victoria)

- Romany Amarasingham (Senior Community Projects Officer: Diversity and Social Inclusion) – 5 May 2011
- Dr Andrew Bickerdike (Chief Executive Officer) – 17 August 2011

South Eastern Region Migrant Resource Centre, Dandenong

- Jenny Semple (Chief Executive Officer) – 27 May 2011
- Despina Haralambopoulos (Head of Settlement Services) – 27 May 2011

Sunshine Family Relationship Centre

- Chenai Mupotsa (Community Liaison Officer) – 5 May 2011

Sunshine Family Relationship Service

- Robyn McIvor (Manager) – 13 July 2011

Sunshine Spectrum Migrant Resource Centre

- Wambui Thirimu (Settlement Services Coordinator) – 25 May 2011

The Hills Holroyd Parramatta Migrant Resource Centre

- Melissa Monteiro (Director) – 13 April 2011

Top End Women's Legal Service (TEWLS)

- Adrienne Walters (Senior Solicitor) – 12 August 2011

United Nations Association Western Australia

- Judith Ann Parker – 22 June 2011

Victoria Legal Aid

- Monica Ferrari (Community Legal Education Manager) – 1 February 2011
- Angela Costi (Community Legal Education Coordinator) – 1 February 2011
- Sabina Crawley (Legal Resources Coordinator) – 1 February 2011
- Judy Small (Director of Family, Youth & Children's Law) – 25 January 2011

Victorian Family Law Pathways Network

- Jill Raby (Convenor) – 16 September 2011

Victorian Immigration and Refugee Women's Coalition

- Melba Marginson (Executive Officer) – 25 January 2011

Women's Legal Services NSW (WLSNSW)

- Janet Loughman (Principal Solicitor) – 10 May 2011
- Edwina MacDonald (Law Reform and Policy Coordinator) – 10 May 2011
- Cecilia Lee (Solicitor) – 10 May 2011
- Louisa Stewart (Solicitor) – 10 May 2011

Women's Legal Service Victoria

- Zione Walker-Nthenda (Law Reform and Policy Lawyer) – 20 January 2011
- Joanna Fletcher (Executive Officer) – 20 January 2011

COMMUNITY FORUMS

- Federation of Ethnic Communities' Councils of Australia CALD Women's Equity and Access Consultation, Metro Migrant Resource Centre, Campsie (23 March 2011)
- The Hills Holroyd Parramatta Migrant Resource Centre Roundtable Discussion on Domestic and Family Violence, Parramatta (13 April 2011)
- Community Forum, Multicultural Council of the Northern Territory, Darwin (12 August 2011)
- African Women's Group meeting, Neighbourhood Justice Centre, Collingwood (16 September 2011)
- Sudanese Advisory Group meeting, Fitzroy Learning Centre, Fitzroy (7 October 2011)
- Broadmeadows Cultural Consultative Group Meeting, Broadmeadows (13 October 2011)

INDIVIDUALS

- Dr Susan Armstrong (Faculty of Law, University of Western Sydney)
– 23 March 2011
- The Hon. Alastair Nicholson (Former Chief Justice, Family Court of Australia)
– 18 May 2011
- Haisam Farache (Solicitor, Lidcombe; Imam at the Lakemba Mosque)
– 28 April 2011
- Dr Ghena Krayem (Sydney Law School, University of Sydney) – 7 June 2011
- Dr Eric Jarvis (Director, Cultural Consultation Service, McGill Centre for Transcultural Psychiatry) – 20 April 2011
- Dr Shakira Hussein (Postdoctoral Research Fellow, National Centre of Excellence for Islamic Studies, The University of Melbourne) – 22 August 2011
- Waleed Aly (School of Political & Social Inquiry, Monash University)
– 14 October 2011

Appendix B: Submissions

Submissions were received from the following persons and organisations in response to the Family Law Council's Terms of Reference.

- Australian Immigrant and Refugee Women's Alliance – 8 July 2011
- Dr Susan Armstrong, University of Western Sydney – 26 July 2011
- Family Relationship Advice Line – 26 September 2011
- Family Relationships Services Australia – April 2011
- National Accreditation Authority for Translators and Interpreters – 7 October 2011
- National Legal Aid – 7 November 2011
- Professor Patrick Parkinson, Sydney Law School – 17 November 2010
- Top End Women's Legal Service Inc. – 30 May 2011
- Women's Legal Centre (ACT & Region) – 30 June 2011
- Women's Legal Services NSW – 12 July 2011

Appendix C: Cases

Children's Cases

King and Smith and Anor [2010] FMCAfam 690
U and N [2010] WASCA 106
W and R [2006] FamCA 25
State Central Authority and Peddar [2008] FamCA 519
Beazley and Andreoplis [2009] FamCA 567
Adams & Adams (No. 8 - Final Orders) [2007] FamCA 1083
Elsbeth and Peter [2006] FamCA 1385
Hunt and Theophane [2009] FamCA 1053
Oyer and Pedru [2010] FamCA 577
Quoc and Quoc [2007] FamCA 1126
Edelman and Ziu (No.2) [2010] FAMCAF 236
Cholos and Totolos [2010] FMCAfam 1161
Sheldon and Weir (No.3) [2010] FMCAfam 1138
H & H [2003] 30 Fam LR 264
S & W [2010] FMCAfam
Trejo & Meraz [2011] FMCAfam 91
Cholas & Totolos [2010] FMCAfam 1161
P & F [2005] FMCAfam 395
Athanastos & Athanastos [2011] FamCA 66
Gin & Hing [2011] FamCA 19
Hiroma & Hiroma [2011] FamCA 75
Kadar & Doumani [2007] FamCA 632
Addington & Koldsjor [2008] FamCA 143
Cadena & Beltran [2010] FMCAfam 1165
Meillier & Mellier [2011] FAMCAfam 178
Yilmaz & Yilmaz [2010] FMCAfam 791
State Central Authority v Quang FCA [2010] FamCA 231
Sacrinity and anor & Wolodzko and anor [2010] FamCA 1258
Pillai & Doshi (No 2) [2011] FamCA 36
Pardij & Girsinka [2008] FamCA 3
O'Keefe & O'Keefe [2009] FamCA 382
Director General, Department of Community Services v D [2007] NSWSC 762
Macri & Macri [2010] FMCAfam 662
King-Raine & Raine [2010] FamCA 10
Brookhurst & Brookhurst [2010] FamCAFC 26
Nineth & Nineth (No 2) [2010] FamCA 1144
Miller & Lenton [2010] FMCAfam 983
Mehra & Bose [2011] FMCAfam 263
Gaudet & Tibert [2011] FMCAfam 233
Tarak & Khaled [2009] FamCA 17
Valencina & Piero [2009] FamCA 935
Department of Human Services & Mallory [2010] FMCAfam 818
Marta & Marta [2009] FamCA 1380
Lu v Fotheringham [2009] FamCA 580
Lewis & Hing [2011] FamCA 30
Lucero & Lovell [2009] FMCAfam 990

Pohan & Kueffer [2009] FamCA 1040
Alexander & Hooper [2007] FamCA 1074
Amador & Amador [2008] FMCAfam 1407
Avery v Shunpike [2010] FMCAfam 1131
Aviva & Bentoin [2010] FamCA 1222
Bachmeier & Foster [2011] FamCA 86
Bolton & Athol [2009] FamCA 10
Bosley & Keeble [2010] FMCAfam 886
C & B [2007] FMCAfam 539
Caravaggio & Caravaggio [2011] FamCA 254
Cohan & Cohan [2007] FamCA 1059
D & C [2007] FMCAfam 392
Dupleix & Duroc [2008] FamCA 262
El'Akmar & El'Akmar [2007] FamCA 1075
Geary & Groves [2010] FamCA 1024
Geriakakis & Geriakakis [2008] FamCA 1277
Heilig & Cabiness [2011] FMCAfam 97
Hemiro & Sinla [2009] FamCA 181
Henderson & Pyke [2009] FMCAfam 962
Hutchins & Blaney [2010] FamCA 1110
Jackey & Lyone (No 2) [2008] FamCA 1052
Koliris & Keneas [2009] FamCA 761
Krum & Krum [2011] FMCAfam 65
Lachlan & Lachlan [2008] FamCA 455
Maeraegh & Salter (No.2) [2010] FamCA 1191
Marmara & Baccar [2010] FamCA 593
McAuliffe & Davies [2010] FMCAfam 1481
Minahan & Balfour [2008] FMCAfam 90
Murray & Bussell [2010] FMCAfam 40
Neal & Garnett [2009] FMCAfam 1139
Nhan & Vuong [2010] FMCAfam 989
Ni & Zhang [2008] FamCA 1100
Noirot & Lamereaux [2008] FamCA 786
Nouhra & Clements [2010] FMCAfam 342
Ori & Okonkwo [2008] FamCA 434
Prantage & Prantage [2010] FamCA 1198
Purcell & Smith [2010] FamCA 1203
Rangan & Chopra [2007] FMCAfam 755
Releheb & Adaab [2009] FamCA 910
Renovic & Bennett [2007] FamCA 1553
Ruzic & Jelenich [2009] FMCAfam 896
Savina & Camilleri [2009] FMCAfam 943
Seaford & Seaford [2007] FamCA 1460
Smith & Smith [2008] FamCA 528
Stojanovski & Stojanovski [2007] FamCA 1442
Taybor & Anderson (No. 2) [2009] FamCA 923
Thomason & Malhotra [2010] FamCAFC
Toan & Tirri [2007] FamCA 704
Tourna & Tourna [2010] FMCAfam 584
Tran & Ferguson [2009] FamCA 1026

Turner & Marijke [2009] FamCA 1342
Udall & Oaks [2010] FMCAfam 1482
Wadmal & Amrita (No. 2) [2008] FamCA 1062
Wang & Jong [2009] FamCA 1150
Wheldon & Dinh [2010] FamCA 740
Wilcox & Wilcox [2010] FMCAfam 966
Wilson & Carter [2008] FMCAfam 349
Wong & Wei (No 2) [2009] FamCA 1177
Zabini & Zabini [2009] FMCAfam 963
Agia & Arruti [2008] FMCAfam 1188
Bahl & Brandon [2010] FMCAfam 630
Benelong & Elias [2009] FamCA 1312
Berrios & Berrios [2010] FMCAfam 1276
Faure & Simons (No. 2) [2011] FamCAFC 110
Simons & Faure [2011] FamCA 317
Ferrier & Blythe [2010] FMCAfam 773
Fournier & Noelle [2007] FamCA 875
Friscioni & Friscioni [2010] FamCAFC 108
Goodner & Jeppesen [2009] FamCA 1052
Gupta & Gupta [2010] FamCA 1030
Hannigan & Sorraw [2010] FamCA 807
Huang & Darling [2010] FMCAfam 1400
Keele & Nesci [2010] FMCAfam 1318
Kirshaw & Trowell [2011] FamCA 7
Liepins & Liepins [2008] FMCAfam 85
Lunn & Carpenter [2009] FamCA 466
Mayne & Sowden [2009] FMCAfam 83
Naylor & Tauchert [2008] FMCAfam 455
Sabens & Tadkin [2010] FMCAfam 481
Scoskinski & Szok [2008] FamCA 438
Sherrin & Sherrin [2007] FamCA 1475
Toliver & Molina [2008] FMCAfam 43
Auber & Wagram [2007] FamCA 1286
Bletch & Douglas (No 2) [2008] FamCA 165
C & G [2007] FMCAfam 308
Mickenburg & Coventry [2008] FamCA 978
Abood & Khouri [2010] FMCAfam 900
Alfonso & Alfonso [2010] FMCAfam 1304
Champness & Hanson [2009] FamCAFC 96
Clovelly & Clovelly (No 3) [2010] FamCA 684
Dale & Mills [2009] FamCA 1068
Dennison & Wang [2010] FamCAFC 182
Wang & Dennison (No 2) [2009] FamCA 1251
Faber & Madina [2010] FamCAFC 224
Flamel & Flamel [2009] FMCAfam 1262
Flamel & Seto [2009] FMCAfam 895
Garde & Homer [2011] FamCA 39
Grandhouse & Grandhouse [2010] FamCA 921
Jamal & Maalouf [2008] FMCAfam 1406
Karras & Karras [2008] FMCAfam 1370

Milford & Bicksall [2009] FamCA 888
Mulvany & Lane [2009] FamCAFC 76
Mulvany & Lane [2008] FMCAfam 473
Samworth & Grady [2010] FMCAfam 750
Sony & Hansell (No 2) [2008] FamCA 810
SS & AH [2011] FamCA 8
Vadisanis & Vadisanis [2009] FamCA 1385
Creagh & Davis [2008] FamCAFC 12
Raymond & Ryde [2009] FMCAfam 301
Rossi & Rossi [2008] FMCAfam 1098
Rowell & Keogh [2009] FMCAfam 395
Kahlil & Tahir-Ahmadi [2011] FamCA 521
Kane and Sackett [2011] FMCAfam 468
Lowe and Barry and Anor [2011] FamCA 625
Abdoo and Essey [2011] FMCAfam 722
Aubrey and Ellerby [2011] FMCAfam 535
Marci and Marci [2010] FMCAfam 662
Mohammed Salah and Gastana [2011] FamCA 440
Romero and Chavez [2011] FamCA 387
Farleigh and Wills and Ors [2011] FamCA 431

Non-parenting Cases

Azari & Azari [2007] FamCA 1265 (disputed property in Turkey)
Singh & Singh [2010] FMCAfam 949 (disputed dowry)
Tian and Fong [2010] FamCAFC 255 (findings of credit in relation to a non-English speaking witness)
Abdoo & Abdoo [2010] FMCAfam 1117 (disputed property in Iran)
Nowland & Oxley [2010] FMCAfam 1492 (declaration of validity of marriage)
Gull & Gull [2008] FamCA 183 (disputed assets in India)
Kapoor & Kapoor [2010] FamCAFC 113 (consideration of whether Australia was an inappropriate forum)
Oltman & Harper (No. 2) [2010] FamCA 1360 (declaration of validity of marriage)
Kreet & Sampir [2011] FamCA 22 (declaration of nullity)
Madley & Madley and Anor [2011] FMCAfam 1007 (order restraining removal of child from Australia to Lebanon for arranged marriage)

Appendix D: Functions and membership of the Family Law Council

The Family Law Council is a statutory authority that was established by section 115 of the *Family Law Act 1975*. The functions of Council are set out in sub-section 115(3) of the *Family Law Act 1975* which states:

It is the function of the Council to advise and make recommendations to the Attorney-General, either of its own motion or upon request made to it by the Attorney-General, concerning -

- (a) the working of this Act and other legislation relating to family law;
- (b) the working of legal aid in relation to family law; and
- (c) any other matters relating to family law.

Members of the Family Law Council (as at December 2011):

Associate Professor Helen Rhoades (Chairperson)

Ms Nicola Davies

Mr Clive Price

Federal Magistrate Kevin Lapthorn

Justice Garry Watts

Dr Rae Kaspiew

Mr Jeremy Culshaw

Ms Elizabeth Kelly

The following agencies and organisations have observer status on the Council (with names of attendees):

Australian Institute of Family Studies – Professor Lawrie Moloney

Australian Law Reform Commission – Ms Sara Peel

Child Support Agency – Ms Debbie Hayer

Family Court of Australia – Registrar Angela Filippello

Family Law Courts (Family Court of Australia and Federal Magistrates Court) –
Ms Pam Hemphill

Family Court of Western Australia – Magistrate Annette Andrews

Family Law Section of the Law Council of Australia – Ms Amanda Parkin

Federal Magistrates Court – Ms Adele Byrne

Family Relationships Services Australia – Ms Samantha Page

The Culturally and Linguistically Diverse Clients Committee:

Associate Professor Helen Rhoades (Convenor)

Ms Nicola Davies

Federal Magistrate Kevin Lapthorn

Mr Jeremy Culshaw

Ms Amanda Parkin

Ms Samantha Page

Ms Sara Peel

Ms Pam Hemphill

Ms Adele Byrne

Secretariat:

Ms Sarah Teasey and Mrs Kim Howatson (Attorney-General's Department)

Research Assistants:

Ms Naomi Pfitzner, Ms Rebecca Apostolopoulos and Ms Laura Morfuni