

30 August 2021

Commissioners
Royal Commission into Violence, Abuse,
Neglect and Exploitation of People with Disability

By email: DRCEnquiries@royalcommission.gov.au

Dear Commissioners

Responses to Issues Paper on the experiences of culturally and linguistically diverse people with disability

1. Women's Legal Service NSW (**WLS NSW**) thanks the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability for the opportunity to comment on *Issues Paper: The experiences of culturally and linguistically diverse people with disability*.
2. WLS NSW is a specialist accredited women-led community legal centre that aims to achieve access to justice and a just legal system for women in NSW. We seek to promote women's human rights, redress inequalities experienced by women and to foster legal and social change through strategic legal services, community development, community legal education and law and policy reform work. We prioritise women who are disadvantaged by their cultural, social and economic circumstances. We provide specialist legal services relating to domestic and family violence, sexual assault, family law, discrimination, victims support, care and protection, human rights and access to justice.
3. The purpose of this submission is to provide our responses to some of the questions in the Issues Paper, in particular questions 6, 7 and 11 based on our experience of working with women from culturally and linguistically diverse backgrounds (**CaLD**) with disability.



Question 6: What barriers do culturally and linguistically diverse people with disability face when reporting violence, abuse, neglect or exploitation or making a complaint? What might help address these barriers?

Question 7: What should governments, institutions and the community do to encourage reporting and ensure effective investigations of violence against, and abuse, neglect and exploitation of culturally and linguistically diverse people with disability?

Question 11: How accessible are services for culturally and linguistically diverse people with disability in different settings, for example, justice, health, education. What sort of culturally appropriate supports and services should be made available?

Difficulties experienced by CaLD women with disability in navigating through various systems and processes in Australia

Role of specialist CaLD services and disability support

4. We frequently provide legal advice and information to CaLD women with disability who have experienced violence, abuse, neglect and exploitation about the reporting system and the legal process in Australia. Our clients report to us that fear of the unknown processes and any possible consequences of reporting violence creates barriers for them in seeking early assistance and support.
5. We acknowledge the availability of some resources in various languages regarding reporting violence and abuse and the court process in Australia. We believe that this measure alone is not sufficient to encourage CaLD women with disability to report violence, abuse, neglect and exploitation.
6. Establishment of additional CaLD specific services and programs within existing services should be considered to address the needs and issues specific to CaLD women with disability and to encourage women to report the violence and abuse they have experienced or are currently experiencing.
7. One example of a culturally specific program that has been operating successfully for over twenty years is WLS NSW's statewide First Nations Women's Legal Program. The program delivers a culturally safe service to First Nations women, including regular engagement with First Nations communities across NSW. The program is guided by an Aboriginal Women's Consultation Network which meets quarterly to ensure delivery of culturally safe service. The members include regional community representatives and the First Nations Women's Legal Program staff. We believe that development of programs similar to the First Nations Women's Legal Program's model for CaLD women with disability should be considered to not only encourage reporting of violence but also to provide culturally safe, emotional, social and legal support.
8. Many CaLD women with disability have reported feeling overwhelmed when they finally report the violence and abuse perpetrated against them. Women are often left to navigate the system alone despite barriers and difficulties. These barriers include but are not limited to language barriers and access barriers. They have to report violence and abuse to the police, make a formal statement, cooperate with the police, attend court and provide further written and oral evidence. Many women have reported having to relocate or make urgent upgrades to the security of the premises they were living in with the perpetrator.

9. For women with children, we have observed that they experience added difficulty of having to also navigate through the family law system. Women may need to obtain legal advice, seek legal representation through legal aid or a community legal service if eligible or find a private family lawyer, mediate if safe and possible regarding the care of her children and if agreement cannot be reached, she may need to proceed to the family court. Based on our experience, women who are able to receive support from specialist services and an interpreter have the best outcomes in their cases.
10. However, we have observed that there is lack of availability of CaLD specific support workers and disability support workers to support CaLD women with disability through the labyrinth of the reporting system and the legal processes.

Case scenario

Maha* contacted our service seeking assistance due to domestic violence and abuse perpetrated against her by her husband including sexual coercion and sexual assaults. Maha is the primary carer of young children and has a psychosocial disability. Maha initially attended a police station and reported the violence and abuse which led to the police applying for an Apprehended Violence Order for her protection.

Police asked Maha to make a detailed statement and Maha became highly anxious about having to make detailed reports. Maha expressed needing additional emotional support to make her statement and attend court for Apprehended Violence Order proceedings. Maha expressed a desire for a specialist legal service which also has a specialist support worker or disability support worker with easy access to an interpreter, to assist her in navigating the police and court system. We believe that her experience through the legal system including reporting would have been less daunting and stressful if she had access to a CaLD specific support worker and a disability support worker.

* Not her real name.

Addressing language barriers

11. CaLD women with disability face significant language barriers.
12. It is imperative that interpreters engaged in interpreting and translation in matters involving sexual, domestic and family violence and abuse have specialist training in sexual, domestic and family violence and abuse and disability awareness. Training should be developed and delivered by domestic and sexual violence specialists, by disability experts and by CaLD experts.
13. Without access to highly skilled interpreters with relevant training, women's evidence such as in an Apprehended Domestic Violence Order proceeding could be misinterpreted and misconstrued, possibly leading to a woman's credibility being undermined, thus compounding trauma.
14. It is vital that police and other agencies have access to sexual, domestic and family violence and trauma informed interpreters, including outside business hours.
15. Women should be offered a choice where possible about the gender of interpreters and there should be flexibility to refuse an interpreter and have another one assigned if the interpreter is known to them or the perpetrator.

16. Interpreters should also be trained in methods to ensure accuracy while at the same time not stemming the flow of a conversation. In our experience, communicating through an interpreter is not an easy process. Speakers are required to break up their sentences to allow for direct and accurate interpreting. This method may have the benefit of ensuring accuracy. However, it is not a natural way of conversing, and it is likely to lead to breaks in the speaker's thought process. Such process creates difficulties for CaLD women with disability as their cognitive capacity is likely to be placed under significantly more pressure from having to adjust to such unnatural communication process whilst reporting traumatic details of violence and abuse in a state of crisis. Interpreters should be trained in different ways to interpret for CaLD people with disability, especially when reporting violence, abuse, neglect and exploitation. Methods such as interpreters taking detailed notes whilst a woman is reporting the violence and abuse would assist in allowing the woman to explain it in her own time without the constant breaks.
17. Further resourcing of interpreters is needed to ensure that sufficient numbers of highly skilled interpreters are available across language groups and genders. Lack of availability of interpreters in some languages prevent CaLD women with disability from being able to make a report when they feel safe and ready to do so.
18. Consideration should also be given to the establishment of a referral pathway by the Translating and Interpreting Service National for CaLD people with disability who need an interpreter in languages that are not available through the Translating and Interpreting Service. For example, a referral pathway by developing a system of referring CaLD people with disability who are needing interpreters not available through the Translating and Interpreting Service to other private interpreting and translating services should be considered. In addition, any fees and costs associated with the service provided to CaLD people with disability by private interpreting and translating services should be borne by the Translating and Interpreting Service, so they are received free of charge.

Policing of sexual, domestic and family violence and abuse

19. The experience of a woman's first report of violence to police has a significant impact on her likelihood of reporting and seeking help in the future. Further, continued positive reporting experiences will likely lead to encouraging women to make more reports of violence in the future.
20. We acknowledge the work of the many police responding to sexual, domestic and family violence and abuse on a daily basis. The role of a first responder is critical. It is demanding and stressful work and comes with heavy responsibilities. It is work that can help save lives. Given 40% of the work of police in NSW is focused on responding to domestic abuse all police must be adequately supported to effectively respond to domestic abuse.
21. The experiences of many of our clients, some of which are highlighted in this submission, suggests however that police are not adequately supported in their work.
22. We are also concerned by the ongoing impacts of institutionalised and systemic racism, including in police, particularly on First Nations communities, as well as on refugee and migrant communities.
23. Several CaLD women with disability have reported to us that police failed to take their report of violence seriously. For some women, they reported that they had to seek assistance through a counselling service and/or the Department of Communities and Justice for support in reporting and applying for an Apprehended Violence Order.

24. Women have frequently told us that when they do report the violence and abuse to police their experiences of violence and abuse are often minimised by police and insufficient action is taken.
25. Women have also reported the difficulty they experienced in reporting breaches of an Apprehended Violence Order and the lack of adequate response by the police despite the reports of multiple breaches by the alleged perpetrator.
26. CaLD women with disability have also reported to us that when they attempt to report violence to police, police have failed to provide them with an interpreter, support staff or a private space. Women are less likely to report sensitive materials such as sexual violence at the front desk of a police station. Women should be provided with an option of speaking with a female police officer in a private space.
27. Women with disability, including CaLD women with disability, should be able to access a specialist support worker or disability support worker who can support them when they report violence and abuse to police. Access to professional, sexual, domestic and family violence and trauma informed interpreters, including outside business hours and police participation in ongoing training in effectively using interpreters is also important.
28. Several women have also reported that when they attend a police station to report the violence and abuse perpetrated against them, police directed them to another police station. On occasions, the next police station has directed them to another police station to report the violence and abuse.
29. We question why police are unable to accept a report of sexual, domestic and family violence and abuse at the first police station to which a survivor presents. There needs to be greater accountability of policing of sexual, domestic and family violence and abuse.
30. The *NSW Police Force Multicultural Policies and Services Plan 2017-2020*¹ refers to having 33 multicultural community liaison officers (**MCLOs**) in 25 Local Area Commands. It is important to have male, female and gender diverse MCLOs as gender may be a barrier to CaLD women with disability in disclosing sexual, domestic and family violence and abuse. It is also essential for MCLOs to receive regular training in sexual, domestic and family violence and abuse and trauma informed practice and disability awareness.
31. Increase in awareness by the police of barriers faced by CaLD women with disability is needed, as is increased support for women in navigating through the reporting and the legal systems. Resources written in plain language, in a range of languages and available in disability accessible formats should be developed and widely distributed. CaLD women with cognitive or psychosocial disabilities should be provided with additional support in understanding their rights and protection orders as their disability may prevent them from understanding all the information given by the police.

Misidentification of the predominant aggressor

32. CaLD women with disability regularly report to us that they have been incorrectly identified by the police as the primary/predominant aggressor when they are in fact the person most in need of protection. In the absence of an interpreter, police may turn to the alleged perpetrator to obtain an initial account of what has occurred. Alternatively, police may seek an account from both parties including without an interpreter when one is needed. Some women observe it is their experience that

¹ NSW Police Force & NSW Government, *Multicultural policies and services plan 2017-2020*, June 2017, access at: https://www.police.nsw.gov.au/__data/assets/pdf_file/0004/507253/MPSP_Plan_Document_2017_Condensed_D23.pdf

the police may give greater weight to the perpetrator's version of events when he has a higher level of proficiency in English.

33. Many women defending AVOs, including CaLD women, also report that when police have been called after a violent incident, they felt that their version of events was not viewed as credible compared with the other party, due to the circumstances of their heightened stress and anxiety.
34. WLS NSW undertook a review of our 2010 casework with women defendants to AVOs, publishing our findings in our 2014 paper, *Women Defendants to AVOs: What is their experience of the justice system?*² In the majority of cases where women were defending AVOs, the other party's complaint related to a single incident only. In several of these cases injuries to the other party could be indicative of self-defence, such as scratching or biting on the arm or hand.
35. Research shows that men are more likely to minimise and mask their violence. Women minimise the impact of violence perpetrated against them and are more likely to disclose when they have used violence.³ This is also reflected in our experience. The 2015-17 *Domestic Violence Death Review Report* emphasises the importance of considering the context and history of domestic violence and abuse rather than looking at incidents in isolation.
36. Police must also be aware of the manipulative tactics used by some male perpetrators as a way of further controlling CaLD women with disability. Women report that they believe the other party deliberately initiated AVO proceedings as a further mechanism of controlling their behaviour, by giving them the ability to threaten them with reports to police in the future. Fear is compounded if women have a precarious visa status.
37. We have also received reports from women where police have applied for an Apprehended Domestic Violence Order against both the primary/predominant aggressor and the person most in need of protection. Thorough investigation is necessary to identify the primary aggressor and seek necessary orders to protect the person most in need of protection by applying for only one Apprehended Violence Order against the primary aggressor.
38. Police must be guided by the *Code of practice for the NSW Police Force responses to Domestic and Family Violence (CoPDFV)*⁴ especially when a report of violence is made by CaLD women with disability. The CoPDFV states that when police receive reports of domestic and family violence, it will investigate all domestic and family violence incidents coming to their notice by gathering background information and physical evidence, including pictures, video recording, clothing and statements from all victims/witnesses. It also specifically states that "Police will be diligent in ensuring they do not pre-empt the outcome of any of the stages before conducting their investigation". Every verbal or written report of violence made by CaLD women with disability should be taken seriously and a proper investigation must be conducted to ensure that one of the most marginalised groups within our society are protected from any further incidents of violence, abuse, neglect or exploitation.

² Julia Mansour, *Women Defendants to AVOs: What is their experience of the justice system?* (Women's Legal Service NSW, Sydney, 2014).

³ Michael Flood, "He hits, she hits: assessing debates regarding men's and women's experiences of domestic violence." *Family Matters*, Autumn 2012, p 114.

⁴ NSW Police Force & NSW Government, *Code of practice for the NSW Police Force responses to Domestic and Family Violence*, 1 June 2018 access at: https://www.police.nsw.gov.au/_data/assets/pdf_file/0016/165202/Code_of_Practice_for_the_NSUPF_response_to_Domestic_and_Family_Violence.pdf

39. We also recommend ongoing training in the correct identification of the predominant aggressor and person most in need of protection with a focus on risk assessment aimed at identifying the predominant aggressor and the context and history of violence.

Sexual coercion

40. In our advice and casework experience, many women, including CaLD women, experience sexual coercion perpetrated by their intimate partners.
41. For example, one CaLD woman with disability reported to us that she was a victim-survivor of severe domestic violence and abuse for a long period of time which was marked by extreme control and coercion. She attended multiple police stations to report the sexual violence. However, the police failed to recognise the coercion and control, including sexual coercion.
42. When she attended the police station, the woman was highly distressed due to her disability and the language barrier, yet police proceeded to interview the woman without an interpreter. Without the assistance of a professional, sexual, domestic and family violence and trauma informed interpreter there is a risk that victims-survivors in distress do not properly understand what is happening or the questions that are being asked which may be used to undermine their credibility if the matter goes to court. This compounds their trauma.
43. There is also a need for the strengthening of specialisation in a trauma informed response throughout the criminal justice system.
44. In the US and Canada, in recognition of the neurobiological impact of trauma on the brain, best practice in investigation and prosecuting sexual offences now includes the specialist sexual assault investigator conducting “*only a brief initial interview when a victim-survivor first reports a sexual assault*”. This is followed up with a longer interview several days later “*when the victim has had time to sleep and consolidate her memories of the traumatic experience*”.⁵ Further, given how memory is coded, “*the primary emphasis of the sexual assault police interview should therefore be on the sensory, emotional memories that the victim has encoded and remembered rather than expecting the victim to give a narrative with a chronology.*”⁶

Increased accountability of policing of sexual, domestic and family violence and abuse

45. There must be more transparent accountability mechanisms with regular audits of policing of sexual domestic and family violence and abuse and “*accountability frameworks to address systematic racism*”.⁷ Greater self-reflection within police is vital, as are steps taken to address barriers to reporting domestic violence and abuse to police arising from bias and prejudice. More women, including First Nations women, refugee and migrant women, women with disability and non-binary, trans and gender diverse people need to be recruited, supported and retained in leadership positions within the police.
46. Police training about sexual, domestic and family violence and abuse needs to be developed and delivered with significant input from and co-facilitation with sexual, domestic and family violence and

⁵ Haskell, L. and Randall, M *The Impact of Trauma on Adult Sexual Assault Victims, Canada: Justice Canada*, 2019 p19 access at: https://www.justice.gc.ca/eng/rp-pr/jr/trauma/trauma_eng.pdf

⁶ *Ibid*, p2.

⁷ Australian Human Rights Commission, *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report*, 2020, p 103 (105) accessed at: https://humanrights.gov.au/sites/default/files/document/publication/ahrc_wiyi_yani_u_thangani_report_2020.pdf

abuse experts, cultural safety experts, disability experts, non-binary, trans and gender diverse experts and specialist legal services with a greater focus on the nature and dynamics of domestic and family violence and abuse and perpetrator tactics, challenging victim-blaming attitudes, trauma informed practice, cultural safety, disability awareness and conscious and unconscious bias. A co-responder model with police and specialist sexual, domestic and family violence and abuse workers working side-by-side will also enhance the response to domestic and family violence and abuse. Police, like everyone, need to be supported to identify and act on compassion fatigue, burnout and vicarious trauma.

47. We strongly believe regular random auditing of the policing of sexual, domestic and family violence and abuse cases will further increase confidence in policing of sexual, domestic and family violence and abuse as it does not just rely on those who are willing to make a complaint. Such audits can highlight gaps in police responses and identify steps which can be taken to improve policing and ultimately, the safety of victim-survivors of such violence and abuse. They would increase trust in police because they signal that police take seriously their responsibilities and are interested to reflect and improve practices where it is required.
48. In the face of the coronial inquests into the deaths of Jack and Jennifer Edwards who were killed by their father, we continue to recommend regular random auditing of the policing of sexual, domestic and family violence and abuse.⁸

If you would like to discuss any aspect of this submission, please contact Cecilia Lee, Solicitor or Liz Snell, Law Reform and Policy Coordinator on 02 8745 6900.

Yours faithfully,

Women's Legal Service NSW

Philippa Davis
Principal Solicitor

⁸ Women's Legal Service NSW, Community Legal Centres NSW and Domestic Violence NSW, Media Release: "Coronial inquest highlights police failings in responding to DV – an urgent inquiry into police response to DV is required", 16 September 2020 accessed at: <https://www.wlsnsw.org.au/wp-content/uploads/Joint-Media-Release-Inquiry-into-policing-of-SDV-160920-fw.pdf> ; Coroner's Court NSW, *Inquest into the deaths of John, Jack and Jennifer Edwards*, 21 April 2021 accessed at: https://coroners.nsw.gov.au/content/dam/dcj/ctsd/coronerscourt/documents/findings/2021/Inquest_into_the_deaths_of_John_Jack_and_Jennifer_Edwards_-_findings_of_State_Coroner_dated_7_April_2021.pdf
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