

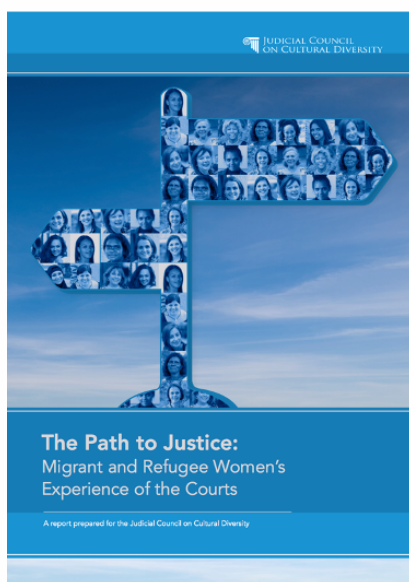
FACTSHEET 8

Barriers to Access to Justice for Migrant and Refugee Women

Australia is one of the most ethnically, culturally and linguistically diverse countries in the world. While Australia benefits enormously from this diversity, it also presents systemic challenges, particularly in relation to issues of access to justice.

In 2015, the Judicial Council on Cultural Diversity (JCCD) held focus groups with women from a range of ethnic, cultural and religious backgrounds. This was the first time that the courts held consultations with migrant and refugee women at a national level. The JCCD also held state roundtables with stakeholders from legal services, settlement services and domestic violence services.

*The Path to Justice: Aboriginal and Torres Strait Islander Women's experience of the Courts*¹ is the report on these consultations.



BARRIERS TO ACCESS TO JUSTICE

Some of the barriers identified affect migrant and refugee women exclusively; others are issues that affect many women experiencing family violence. However, migrant and refugee women may experience these barriers more acutely because of language difficulties, cultural differences and social isolation.

Barriers to reporting family violence

Pre-court barriers were included in the consultation report, as they form a key part of migrant and refugee women's experiences.

Courts have a role to play in rectifying some of these barriers and require an understanding of all barriers so that they may respond appropriately to the needs of migrant and refugee women.

The key pre-court barriers to reporting violence consistently raised during the consultations were:

- lack of legal knowledge and understanding of their rights under the law;
- lack of financial independence;
- insufficient interaction/integration of legal, settlement and domestic violence services;
- the impact of poor police responses;

¹https://jccd.org.au/wp-content/uploads/2021/06/JCCD_Consultation_Report_-_Aboriginal_and_Torres_Strait_Islander_Women.pdf

- the impact of pre-arrival experiences and traumatic backgrounds;
- community pressure on women seeking to protect themselves and their children, including stigmatisation and threat of isolation from the community;
- uncertainty about immigration status and fear of deportation; and
- the cost of engagement with the legal system, such as legal representation fees.

Communication barriers

Language is one of the greatest barriers faced by migrant and refugee women using the court system.

Limited English skills impact on women's ability to engage with the legal system at every stage – dealing with police, engaging support services, completing forms and understanding paperwork, communicating with court staff, participating in court proceedings and understanding court orders.

The provision of professional, appropriate and skilled interpreters is crucial if the legal system is to respond to the needs of migrant and refugee women and ensure that they can fully participate in court processes.

The main issues raised by migrant and refugee women concerning the provision of interpreters were:

- lack of clarity about who is responsible for engaging an interpreter;
- failure to assess the need for an interpreter, or incorrectly assessing need;
- the skill of interpreters being engaged;

- lack of awareness amongst judicial officers and lawyers about how to work with interpreters;
- engaging interpreters who are inappropriate in the circumstances; and
- unethical and poor professional conduct by interpreters.

Barriers to full participation at court

The consultations revealed a range of factors regarding the court experience that posed barriers for migrant and refugee women. These were:

- the intimidating process of arriving at court;
- concerns about safety while waiting at court;
- lack of understanding of court processes;
- difficulty understanding forms, charges, orders or judgements;
- courtroom dynamics, including physical proximity of perpetrator to victim;
- the impact of attitudes and actions of judicial officers, including lack of cultural sensitivity;
- lack of availability of men's behaviour change programs; and
- abuse of court processes by perpetrators.

STRATEGIES TO RESPOND TO BARRIERS

Strategies judicial officers can employ to sensitively respond to barriers faced by migrant and refugee women include:

- building relationships with local settlement service providers, domestic violence service providers, legal services and police;



- working with the Court Cultural Liaison Officer (if the court has one);
- undertaking cultural competence training;
- undertaking family, domestic or sexual violence training and training on trauma-informed practice (where relevant);
- taking measures to help women feel safe in the court environment and when giving evidence, including allowing participation via video-link where available;
- being aware of when an interpreter may be needed and how to request one; and
- undertaking training on working with interpreters.

IMPROVING ACCESS TO JUSTICE

The JCCD drew on the recommendations and findings of the 2015 consultations with migrant and refugee women, and similar consultations with Aboriginal and Torres Strait Islander women, to develop the *National Framework for Improving Accessibility to Australian Courts for Aboriginal and Torres Strait Islander Women and Migrant and Refugee Women*.² An overview of the Framework can be found in [Factsheet: Overview of the National Framework to Improve Accessibility to Australian Courts for Aboriginal and Torres Strait Islander Women and Migrant and Refugee Women](#).

²https://jccd.org.au/wp-content/uploads/2021/06/JCCD_National_Framework.pdf

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