

*Indian Women's Family
Violence Project:
Findings and
Recommendations*

March 2021





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Northern Community Legal Centre would like to acknowledge the Gunung-William-Balluk clan of the Wurundjeri people, part of the Kulin Nation, the traditional owners of the land on which our Broadmeadows office stands. Our catchment extends from Seymour on Taungurung Country all the way to Brunswick on Wurundjeri Country. We acknowledge the legacy of colonial resistance of Aboriginal and Torres Strait Islander peoples and pay respects to Elders past, present and emerging.



Victorian Legal Services
BOARD + COMMISSIONER
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1. INTRODUCTION

This report has been prepared by the Northern Community Legal Centre (NCLC) to summarise the findings from our Indian Women’s Family Violence Project, funded by the Victorian Legal Services Board and Commissioner for two years, commencing in early 2019 and concluding in March 2021.

NCLC’s purpose is to ensure equal access to justice for all in the Melbourne North West region through the provision of legal services, community legal education and law reform initiatives. We prioritise the legal needs of people living with multiple forms of disadvantage and marginalisation including people with mental illness and other forms of disability, victims/survivors of family violence, young people, newly arrived and refugee people, people who are experiencing homelessness and Aboriginal and Torres Strait Islander peoples.

NCLC formed in 2016. In our short duration, NCLC has been able to respond to both emerging and escalating community needs. Our catchment of Moreland, Hume and Mitchell Shire includes suburbs that are home to communities who experience the most structural and systemic disadvantage in Victoria. The keystone to our success has been working closely with grassroots community groups, service providers and networks to develop community-informed strategies in order to respond effectively and sustainably. Our vision is that the people of Melbourne’s North West region have access to justice through free legal information, advice, education and casework assistance.

In Australia, as across the globe, family violence is a pervasive social issue that does not discriminate.¹ It affects all socioeconomic demographic backgrounds and has become a political priority for national and state governments in Australia.² Although family violence does not discriminate, the experience of family violence and the support and response options available vary for different subsets of the population. The Victorian Royal Commission into Family Violence 2016³ acknowledged the different experiences and support options among key groups including migrant and refugee women. The Second Action Plan 2013–2016, as part of the Commonwealth National Plan to Reduce Violence against Women and their Children 2010–2022, recognised that ‘learning more about violence against these groups of women is critical if we are to make violence against all women stop’.⁴

This project recognises that the experience of family violence for Indian women, and for women on temporary visas more generally, has distinct characteristics that compound risk for women and children. These factors include social isolation, limited English proficiency, unemployment, trauma, gender roles, and traditional values and patriarchal beliefs.⁵ Further, the types of violence experienced by culturally and linguistically diverse (CALD) women differ to non-immigrant women, including multi-perpetrator family violence and abuse exacerbated by immigration policy, visa status and the stressors of the migration experience generally.⁶

This project sought not only to enhance our understanding of the experiences of Indian women, but to test the capacity of Victorian law and justice institutions to address or mitigate this risk. In providing wraparound legal support services to Indian women, we sought to demonstrate whether strengthened legal advocacy would improve the safety of our clients or whether systemic barriers would compound or escalate safety concerns. Our findings and recommendations are provided within this report, which we hope will provide a foundational platform for future advocacy and reform.

Throughout this report we have used our clients’ stories to add context and to demonstrate the impact of systemic barriers upon safety and wellbeing. We have used an amalgam of clients’ stories or altered all identifying details to ensure our clients’ rights to privacy.

2. SUMMARY OF KEY FINDINGS AND RECOMMENDATIONS

While some of the recommendations provided within this report are original, arising from the project work of NCLC, we acknowledge that many of our recommendations align with work that precedes this project. In this context, we both add to this body of work and endorse the recommendations that have been asserted by others. Where this is the case, an asterisk () has been included alongside the recommendation to signify NCLC's endorsement.*

1. The complex matrix of marriage, migration and coercive control requires a dedicated community legal response.

Recommendation 1:

That NCLC be funded to provide culturally sensitive wraparound legal services including immigration support for newly arrived vulnerable women who have experienced family violence. This model should be inclusive of immigration legal advice, advocacy and social work support, as well as community engagement and legal education to newly arrived communities.

This model should be replicated across all community legal centres serving catchments with large populations of highly vulnerable and newly arrived migrants.

This funding should be provided as ongoing rather than on a short-term project basis.

2. There is an urgent need for prevention and education strategies targeting newly arrived communities. *

Recommendation 2: *

That the Federal Government provide accessible information for women in different visa classes about their rights to safety and access to support services. This should include predeparture and arrival information for all new arrivals including Australia's definition of family violence and legal redresses. Ongoing information targeting migrant women must be provided using diverse media and communication platforms such as digital social media, television and radio, printed materials and community strategies.

Funding to NCLC, and other Community Legal Centres with migration expertise, should be inclusive of community engagement and education.

3. The intersection between family law and migration law increases risk for Indian women.

Recommendation 3: *

That the Federal Government introduce a permanent visa pathway for survivors of family violence on temporary visas whose Australian citizen or permanent resident children are unable to leave Australia due to a final order under the family law jurisdiction.

4. **The system is failing Indian women when offshore partner visa applications have been lodged.**

Recommendation 4:

That the Federal Government broadens eligibility to the Family Violence Provisions (Schedule 2 of the Migration Regulations 1994 [Cth] [the Regulations]) to other temporary visas, encompassing women who have lodged offshore partner visas, but have arrived in Australia on other temporary visas (such as a visitor visa), and who otherwise meet the Family Violence Provisions.

5. **The role of extended family members as perpetrators of family violence must be recognised within migration law. ***

Recommendation 5: *

That the Federal Government amends the Family Violence Provisions in the Regulations to encompass family violence perpetrated by extended family members, including non-sponsors such as in-laws.

6. **There is an urgent need for cultural awareness and responsiveness training for police and judiciary. ***

Recommendation 6: *

That the Federal and Victorian Governments ensure that comprehensive family violence training be provided to first responders that come into contact with victims/survivors regarding complex forms of family violence including dowry abuse, forced marriage, female genital mutilation, trafficking and servitude, and reproductive coercion.

7. **Current migration law exposes Indian women to unnecessary further disadvantage resulting from perpetrators' behaviour.**

Recommendation 7:

That the Federal Government implements further measures to ensure survivors of family violence have access to alternative migration pathways and do not experience further disadvantage as a result of non-compliance with migration law by the perpetrator.

8. **Work and study rights are critical for women rebuilding their lives after surviving family violence.**

Recommendation 8:

That the Department of Home Affairs adopts clear policy directing delegates to grant applications by victims/survivors of family violence (who have ongoing protection visa applications) for bridging visas with permission to work and study (where the relevant legal criteria are met).



9. **The threat to women returning to India is significant and extreme. Long delays in processing protection visa applications are negatively impacting women and children.**

Recommendation 9: *

That the Department of Home Affairs provides priority processing of protection visa applications for people seeking asylum who have experienced domestic, family and/or sexual violence.

10. **Access to independent financial support and housing are critical to ensuring safety for women and children.**

Recommendation 10a: *

That the Federal Government broadens the eligibility requirements for accessing government support such as crisis payments, income support, rental assistance and Medicare benefits for women on temporary visas who can demonstrate they have experienced family violence.

Recommendation 10b: *

That the Federal and Victorian Governments broaden the eligibility requirements for temporary accommodation, crisis accommodation and public housing for women on temporary visas who can demonstrate they have experienced family violence.



3. ABOUT THE INDIAN WOMEN'S FAMILY VIOLENCE PROJECT

3.1 PROJECT BACKGROUND

The Indian Women's Family Violence Project was initiated following NCLC's increasing engagement with the Indian community in the north-west of Melbourne following the 2015 coronial inquiry into the death of Sargun Ragi, a local Indian-born woman who died at the hands of her husband. In supporting this process, NCLC formed a relationship with Oorja Foundation, a local Indian community-based organisation focused on domestic violence, intergenerational conflict, child safety and elder abuse. In the wake of the coroner's findings, NCLC received a small grant to explore ways of ensuring Indian women could access protections under the family violence system. This led NCLC to further strengthen our relationships with the South Asian communities in Melbourne's north-west, enhancing our understanding of the issues facing many Indian women who leave their homeland for marriages to Indian men residing in Australia.

According to the 2016 Census, the Indian community is the second-fastest growing population in Australia and the fastest growing population in Victoria, which has more Indian migrants than any other state. Within metropolitan Melbourne, a large number of the Indian population are living in the north-west and east. Forty percent of Australia's Punjabi-speaking population live in Victoria, and nearly 10% of people living in Craigieburn are Punjabi speakers, making this the most popular suburb for Punjabi speakers in Australia.⁷ In addition to being home to a notable Punjabi community, the City of Hume has the second-highest rate of family violence of all local government areas in the Melbourne metropolitan region.⁸ Considering the large number of Indian migrants, the high rates of family violence in the City of Hume and the large volume of phone calls that Oorja Foundation receive from Indian women requiring assistance, the need for family violence support for Indian women in NCLC's catchment is significant.

This need was further evidenced by the experience of NCLC family violence lawyers who noted that Indian women presenting at our legal service were often recently married and separated, experienced multiple forms of abuse related to their migration status and were often ineligible for services and supports based upon their temporary migration status. Our lawyers raised concerns regarding the lack of supports and isolation experienced by our Indian clients, as they assisted them with multiple and complex legal issues such as family violence intervention orders, where abuse of the system resulted in women being both respondent and applicant, family law matters (parenting arrangements, child support and spousal maintenance), child protection matters, criminal law matters and victims of crime assistance.

In response to these critical concerns, NCLC secured funding from the Victorian Legal Services Board and Commissioner for this two-year project that adds migration law expertise to our team of family violence lawyers and strengthens our referral mechanisms while testing the adequacy of the legal protection system to keep Indian women safe.

3.2 PROJECT STRATEGIES

NCLC utilised funding provided by the Victorian Legal Services Board and Commissioner to employ a project coordinator and a migration lawyer to work alongside our team of family violence lawyers in a wraparound model of service provision responsive to both the legal and non-legal needs of Indian women. To support this integrated response, we implemented legal health checks as part of the intake process, reviewed casework guidelines and intake forms, established a migration law clinic and refined our process for triage, co-case management and coordination. The project also strengthened referral pathways with key agencies including legal services, family violence services, financial support agencies, housing support agencies and culturally specific specialist organisations. Enhanced communication processes across NCLC legal teams ensured successful co-case management.

The project coordinator led the foundational components and maintained oversight of the legal components of the project. During a staff participatory workshop, a program logic and monitoring and evaluation framework were developed to create a shared vision, define project outcomes and plan activities. A literature review was completed to ensure the project had a strong evidence base and built upon existing knowledge. Attempts were made to source secondary data on the experience of Indian women that would inform the project; however, this action was limited by what Kaur and Atkin (2018) refer to as a 'critical gap' in data on family violence and dowry abuse⁹ within migrant and refugee communities in Australia.¹⁰

A Project Advisory Committee was established, consisting of representatives of the court, Victoria Police, family violence and legal services, local parliament, the Indian community and the media, and meetings were held every two months to provide professional inputs into the project and to discuss key emerging issues. The Advisory Committee was critical to the success of the project, increasing referrals, creating linkages, providing expert advice and guidance, and using influence to follow up important matters raised.

During the first year of the project, the project team also included a community development worker from the local Punjabi community who promoted the project and strengthened linkages with Indian communities. To increase the cultural competency of our team, she delivered Indian cultural awareness training as related to family violence and legal practice to our staff. In addition, our migration lawyer delivered migration law training to the legal team to enhance the capacity of the legal team to identify migration issues and make appropriate referrals.

Given the expertise of our staff and high quality of these trainings, and in response to an identified gap in the sector, a professional development forum was conducted to share information, promote resources, strengthen referral pathways and provide networking opportunities. The forum filled to capacity, with over sixty people participating, including police officers, family violence workers, team leaders, case managers, program managers, family support workers, family violence and migration lawyers, consultants, court staff and various community development workers. Topics covered included Indian socioculture that contributes to gender inequality and violence against women, the different types of abuse Indian women face and the barriers they experience seeking professional help in Australia. Through the forum, NCLC raised additional funds for the project that we distributed in the form of gift cards to our project clients who were experiencing financial hardship.

In addition to the forum, we developed and disseminated postcards and educational posters in Indian languages and promoted the new service through mailouts, social media, delivering presentations at sector network meetings and speaking at staff meetings of relevant organisations. We officially launched the project during our Annual General Meeting 2020 and gained some media coverage. We also provided community legal education to services and local community groups. As part of a separate project, NCLC facilitated an Indian women's group in partnership with Oorja Foundation, and these two projects aligned in objectives, ensuring that Indian women experiencing isolation were provided with an opportunity to gain important social support while learning about services available to them.¹¹



We developed a data collection system and custom-built tool to record and analyse the experiences of our Indian clients, their legal issues and outcomes, and the assistance we provided. We compiled case studies to illustrate clients' unique situations, the challenges they face and the various options available to them, and to demonstrate how they have transformed their lives. Through examining our database of client cases, we have identified common themes in Indian women's experiences and gaps in the legal service system and law, which add to their vulnerability. Drawing on these findings, we make recommendations for systemic change to protect Indian women better, keeping them safe from violence. Our rigorous methodology has built a strong evidence base for state and federal policymakers and stakeholders to consider.

A team from Monash University conducted an independent evaluation to ensure the integrity of the project. The review focused on the service delivery outcomes from employing a dedicated migration lawyer, thus providing a model of wraparound legal support, and its scalability and replicability. The review found value in the model that responds to a clear need in the sector and recommended the scope be broadened to support all temporary migrants experiencing family violence. It also recommended reviewing models of best practice in relation to holistic support with the possible inclusion of a case management function working alongside legal assistance. Finally, it recommended long-term funding for this type of service given that it takes time to build awareness and trust of new services.

3.3 LIMITATIONS

This project was ambitious and not without limitations. During the second year of the project, we had to narrow client eligibility requirements as our migration lawyer was at capacity due to the demand. Capacity was further reduced due to the lengthy process involved in preparing protection visa applications, which were required by many Indian clients who were facing extreme risk of serious and significant harm if deported back to India. Although Refugee Legal and the Asylum Seeker Resource Centre assist with protection visa applications, the demand for this type of assistance indicates a gap in the sector where further resources are required.

Due to the two-year limitation period of the project and the prolonged times for processing protection visa applications, we have been unable to make findings in relation to the outcomes of protective visa applications. Despite this, we note that our data demonstrated women were at risk of serious harm.

There was also high demand for information and assistance with property settlement, particularly for women who had left the relationship and had no income. Half of NCLC casework clients received property advice. Property settlement is a resource-intensive and specialist area of law in which NCLC lawyers only have capacity to provide limited advice before referring to a private lawyer for assistance. This is another clear gap in the system as when a client uses a private lawyer, a significant portion of their settlement may be used towards legal fees when dealing with small asset pools.

The COVID-19 outbreak and subsequent restrictions in Victoria throughout 2020 also impacted the project. Like most services, NCLC quickly adapted our mode of service delivery to phone appointments, including the duty lawyer service at Broadmeadows Magistrates' Court. However, we experienced a significant drop in Indian clients entering our service, which increased after restrictions lifted but dropped again during the second lockdown 9 July 2020 to 27 October 2020. The restrictions also limited our ability to reach isolated communities with face-to-face service promotion and community legal education as our women's group transitioned to online platforms and service promotion to the wider Indian community was limited to social media.



There are also limitations in our data. Information was extracted from client files, and the full migration or relationship history of the client was not always evident in the documents. Similarly, information relevant to the legal issue NCLC assisted with was available, but gaps existed in other areas. Given the high volume of 164 clients accessing assistance (double the 80 clients we anticipated to reach at the time of writing our funding submission and later, the monitoring and evaluation framework), and the extensive timeframes involved in concluding migration matters, not all legal cases were complete at the time of data analysis.

3.4 SNAPSHOT OF CLIENTS AND SERVICES PROVIDED

Over the course of the project, NCLC assisted 164 Indian women who ranged in age from 22 years to over 50 years. They were born in various states from across India, the most common being Punjab (54%). The majority of women spoke English very well (42%) or well (44%).

During the project period 1 January 2019 to 31 January 2021, we opened 72 files for 47 clients, and an additional 117 clients received our duty lawyer service and/or legal advice and referral to other services. We opened multiple files for one third of Indian clients, and of the clients with open migration files, 60% received assistance or advice about other legal issues.

The 164 Indian clients sought legal assistances with a range of legal problems. They sought legal assistance regarding family violence intervention orders (65%), immigration (52%), property settlement (50%), victims of crime compensation (48%), divorce (41%), breach of family violence intervention order (20%), spousal maintenance (13%), fines/infringements (11%) and child support (9%).

The specific visa temporary migrants hold determines their eligibility for a permanent visa pathway and to government and other assistance such as housing, particularly beyond short-term emergency accommodation. Of our casework clients, the majority arrived on visitor visas (32%) and student visas (23%). This is significant as these clients were ineligible to access residency in Australia on the basis of experiencing family violence. An additional 15% of clients arrived on partner visas, 6% of whom accessed the Family Violence Provisions in the Regulations with legal assistance provided by NCLC. We assisted 17 clients to make protection visa applications, and four clients were assisted to apply for bridging visas with work and/or study rights.

A client's caregiving responsibilities limits their opportunities to work, study, learn English and access services. Around half (48%) of our clients had dependent children. Parenting status and economic dependence on the perpetrator has an enormous impact on women's ability to leave abusive relationships, particularly for women on temporary visas who are ineligible for government welfare benefits.

Although 63% of clients were employed, many were in casual, part-time and insecure work and were earning low income. During the period of NCLC engagement with clients, their income status often fluctuated as they lost work or gained employment, indicating unstable financial situations. In Australia, the poverty line is \$457 per week for a single adult without children.¹² Only 30% of clients reported an income level at the poverty line or above, not considering the cost of their dependent children.

For the purpose of this report, we identified the following themes based upon our casework data. The themes highlight our project findings based upon these client experiences and aligning with our learnings from our literature review and external data sourcing.



4. THEMES

4.1 THE COMPLEX MATRIX OF MARRIAGE, MIGRATION AND COERCIVE CONTROL REQUIRES A DEDICATED COMMUNITY LEGAL RESPONSE

A particular narrative was common to our clients' histories. They had married their husbands in India (73%), the marriage was often arranged by families (only 20% classified as 'love marriages'), they were newly arrived in Australia (50% arrived within the past three years) and their marriage had been short (49% were married less than two years). For 39% of clients, family violence commenced immediately after arriving in Australia, when isolated from families and other social supports, and in 56% of cases, the relationship became abusive within one year. In all cases, the primary perpetrator of violence was the husband/partner.

In India, marriage is often considered a contractual union between two families rather than between individuals. It is common in India for 'arranged marriages' to take place, whereby two families and the bride and groom agree on a union, as opposed to 'love marriages' in which the bride and groom meet independently of their families and sometimes the families disagree with the union.¹³ Non-resident-Indian (NRI) grooms are highly sought after for an arranged marriage for the financial and immigration opportunities they can bring to a family.

Migration can heighten coercive control and, as our data supports, family violence often starts or worsens after couples emigrate. The intersection of gender, ethnicity, culture and migration increases the risk of family violence, leading to devastating impacts compounded by isolation, unfamiliarity and migration status.¹⁴ Chadha (2016) notes that by securing a marriage to an NRI groom, many families forego the usual checks and precautions undertaken prior to reaching a marriage agreement, leading to matches that in other contexts would be considered unsuitable. In recent decades, 'fraudulent intentions and planning by NRI spouses, as they prey upon the weakness of credulous parents in India, is also not unusual'.¹⁵

For some clients, their marriage presented as a transactional exercise executed by extended family, in which the woman had limited control and where family expectations were high. One client was coerced into taking out a loan in India for her partner as a condition of the marriage arrangement. Another client discovered upon arriving in Australia that her husband had rented her a room in a share house where he visited her. The abuse he inflicted included serious physical and sexual violence and, soon after marriage, he abandoned her. Other clients were extorted for money and/or dowry, sex and forced servitude until they eventually left or were forced out of the house. In some cases, our clients felt their ex-partners used them for their migration status, with one husband separating from his Australian citizen wife weeks after obtaining his permanent residency.

Migration abuse is a common form of abuse perpetrated on women from migrant and refugee backgrounds in Australia. Seventy-four percent of Indian clients receiving ongoing assistance from NCLC were temporary visa holders, and 48% of NCLC's Indian clients experienced threats of deportation. Indian women arrived in Australia as dependents on their partners' temporary visas such as a student or work visa, on their own temporary student, work or visitor visa, or holding visas linked to their partners' Australian permanent residency or citizenship. Given the partner visa application process is lengthy and expensive, even if women are married to men with permanent residency or citizenship, many Indian women arrive on temporary visas. This is exemplified by our data: 52% of husband/partners were either Australian permanent residents or citizens, yet only 15% of clients arrived on partner visas.



Several of our clients' former husbands had applied for partner visas for them offshore; however, they arrived in Australia on visitor visas. For one of these clients, her ex-husband had applied for multiple types of substantive visas, all of which were refused, and she arrived in Australia on a visitor visa. Another client arrived in Australia on a student visa, and her husband subsequently applied for an onshore partner visa that was refused. After their relationship broke down due to family violence, her migration options to remain permanently in Australia were extremely limited.

Financial abuse is a common type of family violence, especially pronounced in the Indian experience since traditionally, a woman's wealth is considered to be owned by her husband and his family.¹⁶ Ninety percent of NCLC clients reported financial abuse. This experience is further compounded by dowry arrangements that, although illegal in India, are still commonly practised.¹⁷ Dowry abuse experienced by NCLC clients included threats to kill and threats to harm or kill clients' family members back in India, as well as direct physical, verbal and psychological abuse. Although not always disclosed by clients, 35% of clients reported providing dowry items including money, jewellery, fine clothes, goods and appliances and, in 42% of cases, family violence included demands for additional dowry.

The family violence experienced by NCLC clients was significant and multi-faceted. Our clients experienced physical violence (93%), sexual violence (56%) and forced servitude (50%). High-risk forms of violence were commonly reported: 39% of clients required medical treatment for injuries, 28% reported physical abuse during pregnancy and 28% reported attempted strangulation. All clients reported verbal, emotional and psychological abuse and controlling behaviours. Threats were made to other family members, including family in India (29% of cases).

Amita sought assistance from our family violence duty lawyer service at the Broadmeadows Magistrates' Court after applying for a family violence intervention order (FVIVO) against her abusive Australian citizen husband. While assisting Amita to successfully obtain a FVIVO, our family violence lawyer identified that Amita also required urgent family law and migration law assistance and casework support. Our family violence lawyer developed a safety plan with Amita and linked her with a family violence support service as well as our migration lawyer. She also organised a warm referral to a private family lawyer so that Amita could obtain urgent advice regarding placing a caveat on the family home.

Our migration lawyer assisted Amita to successfully apply under the Family Violence Provisions that allowed her to remain in Australia. While waiting for the Department to determine her application, Amita became extremely overwhelmed as she was facing increasing pressure from her family in India to withdraw her FVIVO and reconcile with her husband, even though she did not feel safe doing so. Our family violence lawyer, migration lawyer, and Amita's family violence support worker were able to work together to ensure that Amita was aware of how withdrawing the FVIVO could impact her and alternatively put in place additional appropriate mechanisms to support her independence.

Providing a holistic wraparound service ensured that Amita was empowered to remain safely living in Australia despite the family pressures she was facing. Within one month of lodging the application, the Department accepted Amita's application under the Family Violence Provisions, providing her with a pathway to permanent residency in Australia regardless of separation from her Australian citizen partner and sponsor.

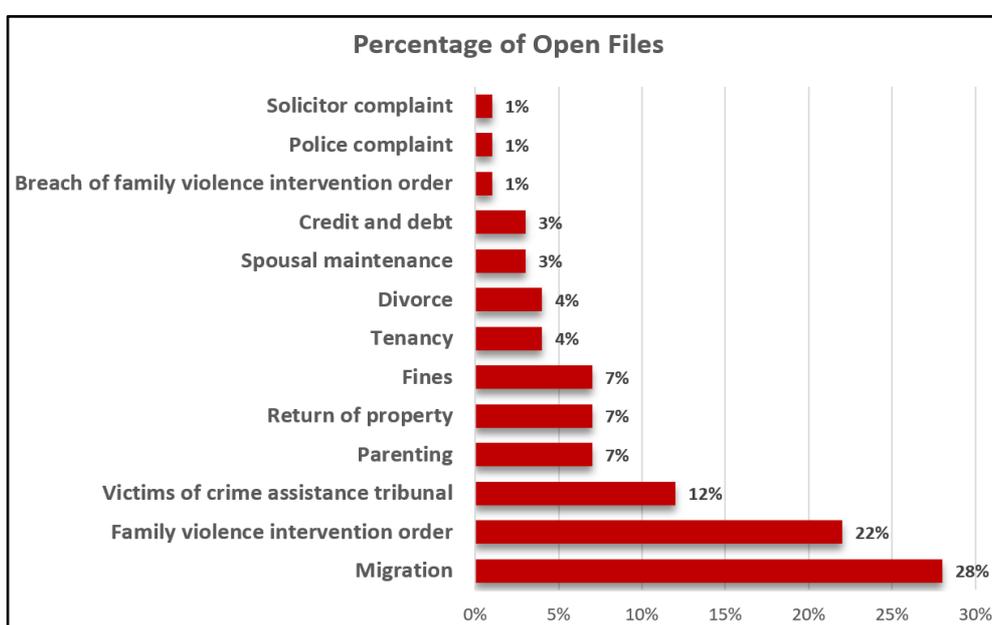
The complex matrix of marriage, migration and family violence requires a specialist response that is ideally delivered by Community Legal Centres due to their strong linkages with local courts, police and family violence services, ensuring a collaborative model of sector support. NCLC is currently the only Community Legal Centre in Victoria with a migration lawyer supporting applications under the Family Violence Provisions and protection visa, and providing general migration advice and referrals.¹⁸



Having a migration lawyer work alongside the duty lawyer service and collaboratively with family violence lawyers ensures better legal outcomes for clients. For example, our migration lawyer was able to liaise with the family violence duty lawyer regarding obtaining adequate judicial evidence to support migration applications.

The use of legal health checks also ensured that we were able to simultaneously address all related legal issues such as debt, fines and family law matters. Many clients were assisted with applying for victims of crime assistance, which was highly beneficial for clients with no income or limited income. The legal expertise that each lawyer brings ensures a holistic approach and a model in which the sum is greater than its parts.

The 47 clients who received ongoing assistance were supported with a range of legal matters. The graph below illustrates the various cross-cutting issues for which we provided substantive legal support for clients (casework).



Given the history that led NCLC to conceptualise this project and our particular experience supporting Indian clients, we piloted our wraparound support model specifically for Indian family violence victims/survivors. However, we recognise that women of many nationalities with temporary migration status experience family violence coupled with migration abuse and have limited options to remain safely in Australia and to access support. In response to the demand from women of other nationalities, we provided migration advice and referrals for women from other South Asian countries. Feedback from service providers also indicates that many women residing in Melbourne’s north-west face similar issues and require migration assistance. The project’s evaluation emphasised the need for specialised support for migration matters, which ideally sits within broader expertise of family law and family violence-related support. It also highlights that there is limited expertise in Victoria and that NCLC was able to contribute an important additional resource to the existing support available. Responding to the demand, NCLC recommends that funding is provided to expand this model of legal migration support for all newly arrived¹⁹ vulnerable women on temporary visas who have experienced family violence, delivered by a small team of migration lawyers.

With migration lawyers strategically based in Community Legal Centres across Melbourne, a community of practice (CoP) could be established providing peer support. Early in the project, we recognised that migration law is a highly specialist and complex area of law and that providing adequate support and supervision to our migration lawyer required specific expertise. Having a small team of migration lawyers working together and across Community Legal Centres would ensure mutual support is available both within centres and across the CoP.



Building trust with a community and learning their values, priorities and barriers takes time.²⁰ This assertion challenges the common requirement to demonstrate immediate outcomes within short-term project-based funding arrangements. Longevity in delivery of high-quality, culturally safe services is critical to building trust with the grassroots stakeholders and the communities we aim to assist. To achieve this, relationship building through community engagement ought to be resourced from the outset with projects funded on an ongoing basis.

Recommendation 1:

NCLC should be funded to provide culturally sensitive wraparound legal services including migration support for newly arrived vulnerable women who have experienced family violence. This model should be inclusive of migration legal advice, advocacy and social work support, as well as community engagement and legal education to newly arrived communities.

This model should be replicated across all Community Legal Centres serving catchments with large populations of highly vulnerable and newly arrived migrants.

This funding should be provided as ongoing rather than on a short-term project basis.

4.2 THERE IS AN URGENT NEED FOR PREVENTION AND EDUCATION STRATEGIES TARGETING NEWLY ARRIVED COMMUNITIES

In addition to service provision in response to family violence, prevention and education strategies within communities are required for a more holistic approach. Currently, newly arrived communities are often unaware of Australian law, their rights and where to seek help. The Australian Government has developed a Family Safety Pack for migrants to Australia including information on Australia's laws regarding domestic and family violence, sexual assault and forced marriage, and a woman's right to be safe, which is available in 46 languages. NCLC commends this initiative; however, it is unclear the extent that this information is passed on and understood by all migrants. Given newly arrived communities in NCLC's catchment are often skilled migrants, students and their dependants, rather than of refugee backgrounds, there is a perceived gap in legal education service delivery.

NCLC has a strong history of delivering community legal education to CALD communities, in concurrence with the delivery of legal advice services, and has deliberately recruited staff who are representative of these communities within our community development team. Considering the importance of community trust in delivering education, we recommend that funding be provided to NCLC, and other Community Legal Centres with immigration expertise, that is inclusive of community engagement and education.

Recommendation 2:

The Federal Government must provide accessible information for women in different visa classes about their rights to safety and access to support services. This should include pre-departure and arrival information for all new arrivals including Australia's definition of family violence and legal redresses. Ongoing information targeting migrant women must be provided using diverse media and communication platforms such as digital social media, television and radio, printed materials and community strategies.

Funding to NCLC, and other Community Legal Centres with migration expertise, must be inclusive of community engagement and education.

4.3 THE INTERSECTION BETWEEN FAMILY LAW AND MIGRATION LAW INCREASES RISK FOR INDIAN WOMEN

Threats of deportation have magnified impact when children are involved. Forty-eight percent of our Indian clients have children and 65% of these children were born in Australia. Fifty-two percent of children are either Australian citizens or permanent residents, compared with only 30% of their mothers.

There are numerous concerns for Indian women participating in family law proceedings in Australia when they do not have permanent residency. A central tenet of the *Family Law Act 1975* (Cth) is that the court must consider the benefits of a child having a relationship with both parents and protecting the child from harm, including family violence. Even if children are Australian citizens, there is no automatic legal right for their mother to remain in Australia. This can translate into situations where the mother has to leave both Australia and her child. As stated by the National Advocacy Group on Women on Temporary Visas Experiencing Violence.

For people holding many types of temporary visas, the migration system does not provide a solution where there is a child born in Australia and the other parent (Australian resident or citizen) wants the child to live long-term in Australia. This can force women to stay with a partner who is violent so that she is not forced to leave Australia without her child.¹

Laxmi married her Indian-born, Australian citizen husband and moved to Australia to join him. She arrived on a visitor visa with the understanding that her partner had applied for a partner visa for her, which was still being processed. During their six-year relationship, Laxmi suffered severe verbal and physical abuse resulting in hospitalisation. Her ex-husband regularly threatened to cancel her visa, demanded dowry payments from her parents and controlled Laxmi's salary. Police charged him with assault, but Laxmi was pressured to return to India to make it difficult for police to proceed with the case and to withdraw her statements. Consequently, the police discontinued the prosecution.

While Laxmi holds a bridging visa, she is not entitled to Centrelink payments or other government support. Laxmi is struggling to support herself and her sons on her current income and would like to return to India; however, she has parenting and property matters ongoing in the Federal Circuit Court, and her sons are on the airport watch list so she cannot leave. NCLC successfully assisted Laxmi to have fines waived on grounds of family violence and provided advice and assistance with a family violence intervention order, migration matters, and family law, specifically parenting, matters. This case demonstrates the uncertain state that Australia's migration and family law system puts women in; Laxmi can neither return to India with her sons nor move forward with a life in Australia with a permanent migration pathway option.

Recommendation 3:

The Federal Government should introduce a permanent visa pathway for survivors of family violence on temporary visas whose Australian citizen or permanent resident children are unable to leave Australia due to a final order under the family law jurisdiction.

4.4 THE SYSTEM IS FAILING INDIAN WOMEN WHEN OFFSHORE PARTNER VISA APPLICATIONS HAVE BEEN LODGED

The introduction of the Family Violence Provisions to the Regulations has ensured that women who are victims/survivors of family violence can continue with their permanent visa applications, even if their relationship has broken down. However, a significant limitation is that the Provisions are only applicable to a limited number of visa categories, one of which is the partner visa.

It is the experience of NCLC that, due to processing times, individuals who have applied for an offshore partner visa sometimes arrive in Australia on a visitor visa prior to the grant of their partner visa (approximately 90% of visitor visas are processed within eight months, whereas 90% of partner visa applications take approximately 22 months).²¹ Individuals who have lodged a partner visa offshore are often separated from their sponsor as many return to Australia due to work commitments. Therefore, sponsors often apply for visitor visas on behalf of their spouse so that they can start their married life together in Australia. However, unbeknown to applicants, arriving in Australia on a visitor visa may result in their partner visa being refused as they are required to be outside Australia to be granted the offshore partner visa. Further, individuals who arrive in Australia on another visa, such as a visitor visa rather than a partner visa, are ineligible to apply under the Family Violence Provisions even if they otherwise meet the criteria. Where a relationship breaks down due to family violence in these circumstances, individuals have very limited migration options as they are unable to engage the Family Violence Provisions to remain in Australia.

Shortly after Anika married her Australian citizen spouse, he had to return to Australia due to work commitments. Not wanting to be separated as they were newly married, Anika's husband applied for a visa for her to travel to Australia. Anika's husband did not tell her what visa he was applying for or what was involved in the visa application process. Anika also never questioned her husband about what visa he had applied for or the process because she trusted him. Whenever her husband asked her to send through documents, she never questioned him and did as he requested. Anika didn't receive any documents directly from the Department in relation to any visa applications as it was all sent to her husband.

Several months later, Anika's husband informed her that her visa application had been successful. Anika subsequently travelled to Australia to be reunited with her husband and start their life as a married couple. Within a few days of Anika arriving in Australia, her husband committed significant family violence against her including repeated physical and sexual abuse. Her husband subsequently abandoned her, and she became homeless.

Anika sought assistance from the migration Lawyer at NCLC. As Anika did not know what visa she had arrived on, the migration lawyer requested information from the Department. It was only upon receipt of these documents that Anika came to know that her ex-husband had lodged a partner visa while she was in India and then subsequently applied for a visitor visa for her to arrive in Australia, including using incorrect information.

Recognising the significant family violence that Anika had suffered, our migration lawyer referred her to NCLC's family violence lawyer who was able to assist Anika to obtain compensation through the Victims of Crime Assistance Tribunal.

Recommendation 4:

That the Federal Government broadens eligibility to the Family Violence Provisions (Schedule 2 of the Migration Regulations 1994 [Cth] [the Regulations]) to other temporary visas, encompassing women who have lodged offshore partner visas, but have arrived in Australia on other temporary visas (such as a visitor visa), and who otherwise meet the Family Violence Provisions.

4.5 THE ROLE OF EXTENDED FAMILY MEMBERS AS PERPETRATORS OF FAMILY VIOLENCE MUST BE RECOGNISED WITHIN THE FAMILY VIOLENCE PROVISIONS

The long-standing patrilineal structures in Indian society are often replicated in Australia in Indian migrant families. For example, where in-laws are also residing in Australia, it is common for the couple to reside with the husband's family. Unlike family violence in Australia, where the broad majority of perpetrators are men, research in South Asia indicates that 33% to 40% of family violence is perpetrated by the wider household, including female in-laws.²² Therefore, for Indian women in Australia, family violence can involve extended family members, and there are often multiple perpetrators of violence. Even in cases where in-laws are residing in India and the couple in Australia, abuse such as incitement of their son to commit family violence, dowry demands and threats are often perpetrated from abroad.²³ The National Advocacy Group on Women on Temporary Visas Experiencing Violence has critiqued various aspects of the Family Violence Provisions including the fact that violence perpetrated by family members other than a sponsoring partner is not recognised, therefore excluding violence that often features in the case of Indian migrants.²⁴

In all NCLC's project cases, the primary perpetrator of violence was the intimate partner. However, in 44% of cases, there was more than one perpetrator, most commonly the mother-in-law (22%) and father-in-law (20%). Ten percent of casework clients applied for a family violence intervention order against a second perpetrator. Respondents included mother-in-law, sister-in-law, brother-in-law and ex-husband's new wife. One client even had a family violence intervention order against a third perpetrator.

Nisha married her Australian permanent resident husband in India, migrating the following year on a visitor visa and now holds a partner visa making her eligible to apply for permanent residency under the Family Violence Provisions. Once Nisha arrived in Australia and began living with her husband and his family, the violence started. She came to realise her new husband was a drug addict, and he became physically and sexually abusive when abusing substances. Nisha's mother-in-law and father-in-law were also verbally, emotionally and psychologically abusive, and provoked her husband to be physically violent towards her. When Nisha did not fall pregnant, the abuse and pressure from her mother-in-law increased as she blamed Nisha for not conceiving a child.

At one stage, Nisha reported the abuse to the police who wanted to charge her husband and her father-in-law with assault; however, Nisha was too scared at the time to go ahead with making a statement.

Eventually, after several years of marriage, Nisha escaped the violence, and the police applied for a family violence intervention order protecting Nisha and her young child from her ex-husband. Nisha also applied for an intervention order to protect herself from her father-in-law. Abusing the system, her ex-husband then applied for an intervention order against Nisha, and all full no-contact intervention orders were granted by the court. Her ex-husband and her father-in-law have breached the intervention order on multiple occasions, and police have initiated a large number of criminal charges related to the breaches.

NCLC provided Nisha with advice on migration, the family violence intervention orders and subsequent breaches, separation, divorce and spousal maintenance. Our family violence lawyer is also assisting her to obtain compensation through the Victims of Crime Assistance Tribunal.

Recommendation 5:

That the Federal Government amends the Family Violence Provisions in the Regulations to encompass family violence perpetrated by extended family members, including non-sponsors such as in-laws.

4.6 THERE IS AN URGENT NEED FOR CULTURAL AWARENESS AND RESPONSIVENESS TRAINING FOR POLICE AND JUDICIARY

Interactions with Victorian Police, and the subsequent referrals that police provided, were the most common way that NCLC clients entered the service system (56% of clients). This exemplifies the critical role of first responders and the importance of that first interaction, which has the potential to reassure women that help is available and facilitates further referrals and ongoing support.

Mistrust of police, judiciary and authority, including government departments such as the Department of Home Affairs (the Department), contribute to Indian women's hesitancy to seek help. These institutions have a poor reputation when it comes to assisting with family violence in India, and women may previously have had poor experiences with authority.

Police responses to family violence in Australia are varied across the criminal justice system and victims/survivors report both positive and negative experiences. Responses have significantly improved with proactive responses and changes in policing protocols including *The Victoria Police Code of Practice for the Investigation of Family Violence*. However, the Victorian Royal Commission into Family Violence identified that:

*The police response to family violence is inconsistent in relation to, for example, risk assessment and management, charging perpetrators for contraventions of intervention orders, and data-recording and data-sharing. Problems associated with cultural norms and attitudes among some police members are also apparent.*²⁵

Police involvement was clear in 80% of cases, and most commonly (in 65% of cases), the client contacted police. The most common police response was to issue a safety notice or family violence intervention order (74% of cases), followed by recording a statement at a police station (57% of cases) and attending an incident (37% of cases). In almost one third of cases, police initiated criminal charges against the perpetrator. Although it is not always clear if clients have reported sexual violence to police, one third of clients who experienced sexual assault stated that they did, and for 80% of these clients, police took a statement. However, in only 20% of cases, the police charged the perpetrator with a criminal offence related to the sexual assault.

The misidentification of perpetrators of family violence by police has been of growing concern nationally.²⁶ The phenomenon has been reported by Women's Legal Service Victoria: through its duty lawyer service at the Melbourne Magistrates' Court, it has observed a notable frequency in the rate at which women are being misidentified as respondents in police applications for family violence intervention orders.²⁷

NCLC has observed instances of misidentification of perpetrators, and family violence intervention orders have been taken out and even criminal charges made against victims/survivors. In one case, the police initiated criminal charges against our client after she threw a piece of fruit at her husband; however, the charges were later dropped. These charges caused our client considerable stress and took time and limited community legal resources to contend. In 15% of cases, our clients were listed as respondents in family violence intervention order matters. None of these applications were dismissed by the court, and either interim or final family violence intervention orders were in place against clients. This indicates that both police applicants and court staff discernment are required when considering family violence intervention orders against women and cross-applications.

In addition to experiences of misidentification, clients disclosed to NCLC that police were unwilling to take information about their family violence intervention order or refused to take statements related to intervention order breaches. Ninety-one percent of clients had an intervention order against the perpetrator, and of these clients, in 36% of cases, the family violence intervention order had been breached.

Our clients usually reported the breach/s to police (93%); however, only 36% of perpetrators reported to the police as having breached an intervention order had been charged with the breach. This indicates that in some cases, the police were unwilling or unskilled in seeking the full history of family violence and pursuing criminal charges for breaches.

Bhavna separated from her husband after eight months of marriage. During her marriage, she endured family violence perpetrated by her husband and in-laws that included physical and sexual violence and dowry abuse. After separating from her husband, she went to the police station to make a report. The officer would not take a report, stating that he did not understand her story about abuse, in-laws and dowry. The police officer informed Bhavna that he would make a referral to a women's health service. As nobody contacted her, Bhavna self-referred to the service who confirmed they had not received a referral from the police.

Around one month later, Bhavna went to the police to request a family violence intervention order and asked to make a report about incidents of violence. The officer who took her statement omitted details about sexual abuse that Bhavna disclosed. Although the police applied for an intervention order on her behalf, an interim intervention order to keep Bhavna safe prior to the court hearing was not granted. Later, when she went to the police station to find out the hearing date, the police officer initially refused to provide the information, and once he eventually did, he told Bhavna that orders were ineffective and that she was best off just staying away from him.

NCLC assisted Bhavna to obtain the family violence intervention order through our duty lawyer service at Broadmeadows Magistrates' Court, and an interim order is now in place. The intervention order was contested by her husband and a directions hearing is scheduled for later this year. Recognising the severe abuse Bhavna endured, our family violence lawyer is also assisting her to obtain compensation through the Victims of Crime Assistance Tribunal. Following submission of this application, NCLC will assist Bhavna to submit an official police complaint.

NCLC had strong Victoria Police attendance at the professional development forum, who provided exceptionally appreciative feedback about the usefulness of the Indian cultural awareness training. We subsequently received requests from Victoria Police members for NCLC to roll out similar training to other police members indicating their thirst to be better informed about cultural issues pertaining to family violence.

Recommendation 6:

That the Federal and Victorian Governments ensure that comprehensive family violence training be provided to first responders that come into contact with victims/survivors regarding complex forms of family violence including dowry abuse, forced marriage, female genital mutilation, trafficking and servitude, and reproductive coercion.

4.7 CURRENT MIGRATION LAW EXPOSES INDIAN WOMEN TO FURTHER DISADVANTAGE AS A RESULT OF PERPETRATORS' BEHAVIOUR

In recognising the prevalence of family violence among temporary visa holders, the Department recently introduced policy to provide some protection to individuals that are victims/survivors of family violence. Currently, the Department's policy is to allow victims of family violence who are dependents on the primary applicant's substantive visa to continue to hold that visa if they have informed the Department that their relationship broke down due to family violence. While such policy is welcomed, it does not provide any safeguards to women who are victims/survivors of family violence that are dependent on their ex-partner's substantive visa in situations where the primary visa holder has not complied with their visa requirements nor migration law more broadly. In these circumstances, if the primary visa holder's visa is cancelled due to their non-compliance, the dependent's visa is also consequentially cancelled, even if they continued to comply with their visa conditions. This is particularly apposite when crimes of family violence can render the primary visa holder non-compliant.

Bina and her two daughters came to seek migration assistance from NCLC after her relationship with her ex-husband broke down due to severe family violence. Bina and her daughters were dependents on her ex-husband's student visa, which entitled her to work rights. As Bina did not have any family or friends in Australia and was not entitled to Centrelink benefits, her entitlement to work ensured that she was able to financially support her daughters and herself.

NCLC was able to assist Bina and her daughters to not only lodge a protection visa application but inform the Department that her relationship had broken down due to family violence. Given that Bina and her daughters were victims of family violence, the Department did not cancel Bina's and her daughters' student visas immediately. This ensured that Bina was able to continue to financially support her daughters and herself.

However, the Department recently notified Bina that her and her daughters' visas were consequentially cancelled due to her ex-husband's non-compliance. Subsequently, Bina and her daughters were granted a bridging visa associated with the protection visa application without permission to work, which meant Bina and her daughters were at risk of becoming destitute and experienced great distress. NCLC was able to quickly assist Bina to lodge an application for a bridging visa with permission to work. Shortly afterwards, the Department granted Bina and her daughters a bridging visa with permission to work.

Considering this, the Department should implement alternative migration pathways that would further protect individuals who are victims/survivors of family violence rather than expose them to further disadvantage in the context of their migration status, thereby compounding the trauma and negative impacts of family violence.

Recommendation 7:

That the Federal Government implements further measures to ensure survivors of family violence have access to alternative migration pathways and do not experience further disadvantage as a result of non-compliance with migration law by the perpetrator.

4.8 WORK AND STUDY RIGHTS ARE CRITICAL FOR WOMEN REBUILDING THEIR LIVES AFTER SURVIVING FAMILY VIOLENCE

In assisting victims/survivors of family violence with their applications to vary the conditions of their bridging visas (associated with protection visa applications), NCLC observed a trend in which Department delegates granted visas with permission to work even though an application was made requesting both work and study rights (and despite a discretion to grant both rights). Our project also observed a trend in which young women, with minimal education and work experience, resettle in Australia as a result of marrying an Australian citizen and find it extremely difficult to secure employment as they lack any qualifications. Given the prolonged processing times for protection visa applications, it is imperative that visa applicants who are victims/survivors of family violence have access to work and study rights while they await a decision from the Department. To gain independence and obtain meaningful work, individuals need to have relevant qualifications. Further, while migration law and policy clearly outline the criteria for the grant of a bridging visa with permission to work (where there is discretion), in relation to the grant of permission to study, it is extremely difficult for applicants to know what information and/or supporting documentation to provide to support an application due to little guidance in law and policy in this area.

Where it is within the discretion of a delegate to grant a bridging visa with permission to work and study to a protection visa applicant, it is imperative that those rights are granted to victims/survivors of family violence to ensure they are able to study for any necessary qualifications towards gaining secure employment.

After Priya married her Australia citizen spouse in India, he applied for a partner visa on her behalf. However, as the partner visa application was taking too long to process, Priya's husband applied for a visitor visa so that she could arrive in Australia sooner and start their life together as a married couple.

Priya trusted her husband as he was an Australia citizen and believed he understood the Australian migration system. However, Priya's husband did not tell her that the partner visa application was an offshore application, which meant she was required to be outside of Australia to be granted the visa. After arriving in Australia, Priya asked her husband about the progress of the visa. Whenever she did, it would result in significant family violence. The family violence became so extreme and frequent that Priya had no choice but to leave the relationship.

After her visitor visa expired, Priya contacted the Department to follow up on the progress of her partner visa application, learning that it had been refused. As Priya was an unlawful non-citizen, she applied for and was granted a bridging visa that was only valid for a few weeks and with a condition that she apply for a substantive visa before the bridging visa ceased.

Our migration lawyer was able to assist Priya to successfully lodge a protection visa application. The Department then granted Priya another bridging visa but which had no work or study rights.

NCLC assisted Priya to lodge an application for a bridging visa with permission to study and work. Priya wanted to work in the IT industry and had found an organisation that would pay the course fees required for her to upskill prior to employment. As part of the application, our migration lawyer attended an interview with Priya and provided submissions regarding Priya's need to study and work. The Department acknowledged that Priya was in significant financial hardship and granted Priya a bridging visa with work rights. However, the Department did not exercise its discretion to grant Priya study rights.

Recommendation 8:

That the Department of Home Affairs adopts clear policy directing delegates to grant applications by victims/survivors of family violence (who have ongoing Protection visa applications) for bridging visas with permission to work and study (where the relevant legal criteria are met).

4.9A THE THREAT TO WOMEN RETURNING TO INDIA IS SIGNIFICANT AND EXTREME

Within Indian society, women are usually blamed for the end of their marriage, and the stigma and discrimination associated with divorce for women impacts their physical and mental health, economic wellbeing, ability to raise children and vulnerability to exploitation and abuse. Since women are perceived as the binding force in the family, they are also considered responsible for whatever went wrong in the marriage.²⁸ Amato (1994) describes the principle of *pativratty* in which a woman devotes herself completely to her husband and sacrifices her own needs for those of her family.²⁹ Accordingly, when a marriage ends, people perceive it to be the wife's fault.

Family pressure plays a big part in a woman's response to family violence, whether it be staying in or returning to an abusive relationship, disclosure to outsiders or response to protection measures instigated by police. A 'culture of silence', combined with family pressure, often compels victims/survivors to revoke or vary intervention orders and not to pursue criminal justice interventions.³⁰ This is indicated in NCLC's client data. For clients that had family violence intervention orders in place, 19% varied the intervention order to have more contact with the respondent. Twenty-six percent of clients experienced pressure from her family to stay in or return to the relationship, and 22% of clients experienced the same pressure from her husband's family.

The high number of protection visa applications this project has assisted (85% of clients assisted with migration casework) indicates the very real fear of serious harm women feel about returning to India after a failed marriage. Apart from fears related to the perpetrator, commonly women felt that as divorced women, often single mothers, with no male protection, they were at high risk of sexual and physical violence from men in the community who view women of failed marriages as easily accessible. Our clients felt they were unable to seek protection from Indian authorities as family violence is considered a private matter and perceived that police themselves are abusive towards women who seek help in India. Research supports this finding that separated and divorced women in India are regularly subjected to sexual harassment with little recourse.³¹ Sexual harassment of divorcees in public places and the workplace is one reason that divorced women live with their natal families and find it difficult to be economically independent. Even within the home, they are more vulnerable to sexual harassment from distant relatives and family friends.

NCLC clients raised a range of concerns for safety if returning to India. One client's family had disowned her since her marriage was a 'love marriage'. They did not agree to the match and said they would have nothing more to do with her. She was afraid her extended family would kill her for bringing shame to the family, and her ex-husband's family have threatened to kill her because she has taken legal action against her ex-husband in Australia, a common concern among most clients. In one case, our client's brother-in-law had criminal connections throughout India, making it impossible for her to relocate. In another case, our client's ex-husband had taken out life insurance in her name, covering suicide. She was afraid her ex-partner would have her murdered so he could claim the money, making it look like suicide. Another client had been disowned by her family for entering into a de facto relationship and having children outside of marriage. She is afraid to return to India as her ex-partner is now in India. His parents are arranging his second marriage, and they do not want people to know that he already has children.



There were many other reasons cited for fear of returning to India including:

- threats from parents, including death threats;
- threats from the in-laws, also including death threats, particularly for taking legal action in Australia against their ex-partners;
- being unable to rely upon protection from their own family in India;
- being unable to access mental health care in India to treat trauma-related conditions stemming from the abuse they have endured;
- concerns that their in-laws will commence false proceedings against them in India as revenge, especially families that are well-connected and powerful within their communities;
- concerns that wealthy in-law families will be able to bribe authorities, so they will not be protected; and
- that the in-law's family will continue to inflict harm or even kill them for not providing sufficient dowry.

However, the National Advocacy Group on Women on Temporary Visas Experiencing Violence (2018) point out that in the protection visa assessment process:

- evidence of family violence is often assessed arbitrarily and fails to recognise the complex dynamics of family violence;
- decision-makers frequently fail to follow their own policy guidance on the assessment of family violence claims;
- judicially determined evidence from Australian courts is not treated as conclusive evidence of family violence that has occurred in Australia;
- decision-makers frequently do not consider a foreign state's capacity to provide effective protection from family violence in practice; and
- significant processing delays of several years compound the stress and trauma of women at risk of or experiencing family violence.³²

NCLC has been unable to make a recommendation regarding these findings as the short-term nature of the project, coupled with lengthy processing times, means that our clients' applications are yet to be resolved.

4.9B LONG DELAYS IN PROCESSING PROTECTION VISA APPLICATIONS ARE NEGATIVELY IMPACTING WOMEN AND CHILDREN

Women who are victims of family violence and who have applied for protection visas are waiting up to five years for the Department to decide their visa application. The prolonged delay in processing protection visa applications leaves women in limbo, often with significant ties to Australia by the time the application is processed. This has a highly detrimental effect on women as well as children, many of whom have experienced family violence and are impacted by trauma. Often, in the time that it takes for the Department to finalise their protection visa applications, children have commenced schooling, developed support networks and identify Australia as their home. Consequently, if the Department does not find that protection obligations are owed, these children risk being forced to return to a country where they have never lived nor have any connections. They also may be at serious risk from harm if violence is perpetrated upon their mother back in India as the primary caregiver. Additionally, this may result in children being separated from and therefore unable to have a meaningful relationship with their father in circumstances where the father resides in Australia. This outcome is also at odds with the Australian family law system, which recognises the paramount consideration to be the best interests of the child.

Recommendation 9:

That the Department of Home Affairs provides priority processing of protection visa applications for people seeking asylum who have experienced domestic, family and/or sexual violence.

4.10 ACCESS TO INDEPENDENT FINANCIAL SUPPORT AND HOUSING ARE CRITICAL TO ENSURING SAFETY FOR WOMEN AND CHILDREN

One of the key barriers to safety experienced by NCLC clients was the ability to be financially independent of their partners, recognising that financial abuse was experienced by every NCLC client that we assisted throughout this project. Financial stability and access to housing are inextricably interlinked and are a core concern for women on temporary visas, who are dependent on their partner for financial support and ineligible for Centrelink benefits. Without this in place, women will invariably return to unsafe relationships due to the lack of viable alternatives. This situation is compounded when women have limited or no work rights. Thirty-three percent of NCLC clients reported no income, and only seven clients were eligible for Centrelink benefits.

Access to crisis accommodation, refuges and other forms of social housing becomes extremely limited for women with no income, who create bottlenecks within a system designed for short-term stay. This concern was highlighted by the Victorian Royal Commission into Family Violence:

While women without permanent residency can access refuges and emergency or transitional accommodation, their inability to move into long-term housing (as they are ineligible) may place a refuge in a situation where they have to refuse to accommodate women because there is no certain pathway beyond the refuge.³³

The Victorian statewide crisis response service **Safe Steps** also reported:

Over 80% of the women and children accommodated in its emergency accommodation units have not been able to enter a refuge because they lack permanent residency and that these people remain in crisis accommodation twice as long as other residents.³⁴

In addition to the difficulties women experience in accessing private rental due to lack of income, their experience is compounded by having a lack of rental history, having few family and friends to assist and not being able to provide referees to support their housing applications.

Heena first met her husband on their wedding day, and a few weeks after the wedding, her husband returned to Australia. Not long afterwards, Heena arrived in Australia on a visitor visa to begin her married life. While Heena was happy for the first few weeks of marriage, when her in-laws arrived, she began to experience abuse. Her in-laws treated Heena like a slave, Heena was not allowed to work outside of the home, and her husband became verbally and physically violent. Whenever Heena spoke up for herself, her husband would physically assault her in front of his parents. After less than one year of marriage, Heena's husband tried to strangle her, and she fled the house and went to the police. The police applied for a family violence intervention order to protect her, and she moved interstate to remain safe.

Heena submitted a protection visa application, without assistance from a lawyer, as she was afraid to return to India. NCLC's migration lawyer later assisted Heena to update her statement of claims for protection and submitted it to the Department.

Although Heena's bridging visa allowed her to work, she was unable to secure employment and was ineligible for government support. Heena was facing extreme financial hardship and was unable to pay her rent. NCLC provided referrals for material aid and financial assistance and, through short-term aid provided by multiple agencies, she has been able to make some rental payments; however, her longer-term tenancy situation remains problematic. Given Heena's ex-partner was working in a secure professional job, our family violence lawyer assisted Heena to negotiate with her husband for spousal maintenance.

Recommendation 10a:

That the Federal Government broadens the eligibility requirements for accessing government support such as crisis payments, income support, rental assistance and Medicare benefits for women on temporary visas who can demonstrate they have experienced family violence.

In Australia, abandonment within the context of marriage is generally not considered a form of family violence; however, in transnational marriages, 'abandonment itself constitutes a form of violence against women'.³⁵ Abandonment is a widespread global phenomenon in which Indian women migrate only to be subjected to family violence and abandoned either in their home country or abroad. Of NCLC cases, 18% of our clients were either abandoned by their ex-partners or forced out of the house and made homeless. Many of these women will be ineligible for family violence crisis and refuge accommodation in Victoria as their level of risk is deemed lower when a former partner does not want the relationship to continue.

The impacts of abandonment and lack of access to stable accommodation were evident in our client group. Fifty percent of clients were living alone or with their children, 24% were staying with family or friends and 9% were living in crisis accommodation. The majority of clients were either renting, staying with family or friends, or in temporary accommodation, with only 12% living in a property either jointly owned or in the ex-partner's name.

The inability of women on temporary visas experiencing violence to access income and safe housing can negatively impact parenting proceedings in the family law courts in other ways. The court will consider whether the parent can provide safe accommodation and adequately support their children when determining parenting arrangements. Lack of income and housing support puts women on temporary visas at a disadvantage, especially if they are also recovering from trauma due to the violence. Due to the lack of appropriate migration pathways and support for women on temporary visas, some women choose to stay with a partner who is violent for fear of being separated from their children and out of concern for their children's safety.³⁶

Jasmine and her husband were arranged to be married in India and first met on their wedding day. After marrying, Jasmine discovered her new husband was unemployed and had alcohol and gambling addictions. He constantly asked for money from Jasmine's parents who had already spent a large amount of money on the wedding and dowry. Jasmine experienced physical abuse from both her husband and parents-in-law when she couldn't provide more money from her family.

A couple of years later, the family moved to Australia. Jasmine arrived on a student visa and started studying. The abuse continued. Jasmine experienced serious physical and sexual assaults on a regular basis, was deprived of food, had her movements constantly tracked and her husband often threatened to return her to India. Jasmine became very depressed with suicidal ideation and attempted an overdose. Eventually, her mother-in-law threw her out of the house making her homeless.

Jasmine reported the violence to the police who applied for a family violence intervention order to protect her from her ex-partner. Abusing the system, her mother-in-law and ex-partner then applied for family violence intervention orders against Jasmine. Her ex-partner also initiated criminal charges against Jasmine that were later withdrawn.

Jasmine has limited work rights associated with her student visa and works various low-income jobs to support herself, along with completing her full-time studies. She is not eligible for Centrelink payments, and her financial situation is constantly precarious, with Jasmine living below the poverty line. While initially Jasmine was able to access temporary accommodation, she has since been homeless, staying with friends and moving every couple of months. The stress of her situation has overwhelmed Jasmine to the point where she is struggling with her full-time study. NCLC is continuing to assist Jasmine with legal advice in relation to her visa conditions and ongoing referrals for support, as well as a Victims of Crime Assistance Tribunal application that has recently been successful and awarded compensation at the highest rate. This outcome will greatly benefit Jasmine, considering her difficult financial position.

Recommendation 10b:

That the Federal and Victorian Governments broaden the eligibility requirements for temporary accommodation, crisis accommodation and public housing for women on temporary visas who can demonstrate they have experienced family violence.



5. CONCLUSION

The experiences of NCLC clients demonstrate the layers of trauma to which women on temporary migration visas are routinely exposed. While some provisions have been made by the Australian Government for women on temporary visas experiencing family violence, these provisions are so narrow in scope that a significant cohort fall through the gaps and continue to be retraumatised through their experience of seeking assistance — assistance which is often denied. While family violence is pervasive across all cultures and ethnic groups, for women from India, experiences of trauma are heightened by practices and norms related to dowry, marriage arrangements, community expectations regarding the woman's role in ensuring marital success, the role of extended family members in perpetuating abuse and the considerable consequences for women when their marriages end due to violence. Our project demonstrates that even with legal advocacy, Australian justice institutions are limited in the protection they provide by failing to recognise how these factors limit a woman's agency and subsequent choices. In many instances, Australian laws and policies not only fail to protect but further exacerbate the level of risk and distress experienced by migrant women and their children.

The recommendations within this report mirror the findings of other studies conducted within Australia, which have in turn informed the advocacy platform of the National Advocacy Group on Women on Temporary Visas. NCLC would like to acknowledge the important work that preceded this project, which was critical in informing our model of project delivery. The fact that these issues continue to resurface points to perpetual systemic abuse that continues to contribute to the harm. While Australia has often extolled the value of International students and visitors to our economy, governments at both a state and commonwealth level also have a responsibility to ensure that women on temporary visas are entitled to live free from violence in accordance with the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW). This responsibility includes providing adequate funding for agencies to respond to their legal and non-legal needs.

A key finding of this project is that demand for legal assistance for women on temporary visas far outstrips current resources. With the conclusion of NCLC's limited project funding, these resources will be further narrowed as NCLC will no longer have capacity to offer specialised migration advice and assistance. We strongly urge consideration of the benefit of adding migration law expertise to the existing expertise community legal centres hold so that the provision of free legal support is available to holistically respond to the needs of women on temporary visas, working in partnership with police, courts and specialist family violence agencies.

While the stories relayed throughout this report are sometimes despairing, the women whose stories we tell demonstrate incredible fortitude and strength, often managing to overcome the many obstacles they face through sheer determination. We would like to acknowledge their courage and resilience and thank them for allowing NCLC to share their stories in the hope of influencing change for women and children arriving on our shores in years to come.

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- ⁹ The practice of dowry related to money, property, goods or other gifts that are transferred by a person to their partner’s family before, upon or after marriage. Dowry abuse can include coercive demands for larger gifts or increased cash payments from a woman and her family. These demands can be accompanied by acts of violence towards the woman and her family or other acts of abuse to force compliance of demands.
- ¹⁰ Kaur & Atkin (n 1).
- ¹¹ This was part of our sister project *Toward Equality 2020 and Beyond*, funded by a grant from Communities for Children.
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¹⁸ Four Melbourne-based Community Legal Centres have Immigration Agents, however they are primarily assisting with offshore refugee and family visa applications. InTouch Multicultural Centre Against Family Violence has an Migration lawyer who assists with Family Violence Provisions applications only. Given that InTouch services all of Victoria, there is a waitlist to access immigration support.

¹⁹ Having arrived in Australia within five years.

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²¹ Average processing times are accurate as of the time of this publication (March 2021). Source [Global visa processing times \(homeaffairs.gov.au\)](https://www.homeaffairs.gov.au/global-visa-processing-times)

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³³ State of Victoria 2016 (n 3).

³⁴ State of Victoria 2016, page 52.

³⁵ Anitha, Roy & Yalamarty (n 22).

³⁶ National Advocacy Group on Women on Temporary Visas Experiencing Violence (n 24).