

Interpreters and translators - Key Literature

Australia

Assafiri, Hana and Maria Dimopoulos, 'The Legal System's Treatment of NESB Women Victims of Male Violence' (Paper presented at the Australian Institute of Criminology Conference, "The Criminal Justice System in a Multicultural Society", 1995).

Abstract: 'This [presentation] considers the way NESB women are perceived and defined in their dealings with the legal system. The authors provide examples which highlight how some magistrates unwittingly perpetuate racist assumptions about the prevalence of domestic violence in ethnic communities.'

Some non-English speaking women's negative experiences of Magistrates are reported, including a woman asked to rely on her daughter to interpret, another woman required to 'act' out the violence, and a failure to address the cultural dissonance experienced by a Croatian woman who was provided with a Serbian interpreter.

Australian Law Reform Commission and New South Wales Law Reform Commission, [Family Violence – A National Legal Response](#), Report 114 (2010).

The Report notes that the provision of interpreters is essential (p74). This conclusion is based on submissions that emphasised the following in regards to reporting, prosecution and pre-trial processes:

- > 'Women from CALD backgrounds also face a range of cultural and systemic barriers—based on language and other issues—including: ... cultural and linguistic communication barriers, such as the lack of information in diverse community languages or of professional interpreters ...' (p1195)
- > 'The Immigrant Women's Support Service highlighted the need for service providers to provide 'relevant information in appropriate community languages' as well as the need for professional interpreters' (p1210).

Barassi-Rubio, Cecilia, '[Working with Interpreters](#)' (2011) 9(4) *Centre for Domestic and Family Violence Research Reader* 15.

Author notes that ‘making a decision about engaging an interpreter should be based on fact rather than assumption...a person may have a reasonable level of conversational English but may find it difficult to understand more abstract information...’ This paper also identifies several helpful points for dealing with interpreters:

- > Ideally the interpreter should be briefed before undertaking the interpreting;
- > Explain your role and make the purpose of the procedure clear;
- > Allow time;
- > Communicate your understanding of what was said;
- > Speak in your normal tone of voice. For example, speaking too slowly or loudly will not ensure better understanding;
- > Use concise and well-constructed sentences;
- > Direct all communication to the person accessing the service. (e.g Ms. Jones please tell me how I can help you today? Instead of: ‘Interpreter please ask Ms. Jones how I can help her today.)
- > Avoid jargon and slang.
- > Always ask the person what is the language they speak. Never rely on physical appearance or accent to identify the language spoken by the person.

Cavallaro, Lisa, *‘I Lived in Fear because I Knew Nothing’: Barriers to the Justice System Faced by CALD Women Experiencing Family Violence* (InTouch Multicultural Centre Against Family Violence, Victoria Law Foundation, 2010).

The primary objective of this research was to identify and explore the barriers faced by Victorian CALD women who have been in situations of family violence and who have accessed or attempted to access the legal system. The methodology comprised three components including: surveys and focus groups with over 50 CALD women, consultations with representatives of 180 service providers and an online survey with 144 individual service providers. Workshops were also conducted to help formulate recommendations.

The use of interpreters is analysed throughout, but see especially:

- > 'Failure to utilise interpreters' (p20), discussing the main 'failings around police intervention' being not using interpreter services;
- > '4.2.2 Barriers to court processes and legal representation: Interpreters' (p21) recounting comments by women and service providers about the lack of access to family violence-trained interpreters in court
- > 'Challenges when working with interpreters' (p23), noting broader issues with accessing 'confidential and competent interpreters with expertise in legal language'
- > '5.2 Overcoming language barriers' (p27) providing an overview of the need for consistent use of interpreters, including by courts.

Cussen, Tracy and Mathew Lyneham, 'ACT Family Violence Intervention Program Review' (Technical and Background Paper 52, Australian Institute of Criminology, 2012).

This report presents the results of the review of the ACT Family Violence Intervention Program (FVIP). The main purpose of the review was to describe the effectiveness of the current program including its governance arrangements' (p xiii). It explores a number of areas including the profile of family violence in the ACT and insider views of the Family Violence Intervention Program. The section 'Experience of family violence' (from p71) is most relevant, briefly identifying some cases where interpreter services would have been beneficial to ensure the victim from a CALD background had full access to the criminal justice system. These include cases where the victims noted that: a statement to the police contained inaccuracies (p74); a police report contained mistakes and should have been made with the presence of an interpreter (p83); the victim's husband 'wasn't given the opportunity for an interpreter' (p89).

Eckert, Rebecca, 'Good Practice Principles for Working With Refugee Women Experiencing Domestic Violence' (2013-2014) 54 *Australian Domestic and Family Violence Clearinghouse Newsletter* 11.

This paper identifies several principles of good practice for working with interpreters. Page 12 briefly discusses the need to provide access to appropriate interpreters for refugee women who are survivors of domestic violence. Issues for considerations include: requests for female interpreters; that interpreters not be family members; and that interpreters understand the expectations of their role and need for confidentiality.

Hale, Sandra, 'The Need to Raise the Bar: Court Interpreters As Specialised Experts' (2011) 10(2) *Judicial Review* 237.

Abstract: 'In this paper, [Hale] examines the complexities of the court interpreting process and identifies the key competencies for court interpreters. Apart from a high level bilingual competence, an interpreter requires an understanding of the interpreting process; cross-linguistic differences; the discourse strategies of the courtroom; and the nature of his or her role; as well as the expertise to know when and how to

intervene. [Hale] opines that the responsibility for the quality of court interpreting must lie with all participants in the process and urges systemic improvements, highlighting the pressing need for pre-service specialised court interpreter training.'

Hale, Sandra, 'Breaking through the Language Barrier: Empowering Refugee and Immigrant Women to Combat Domestic and Family Violence through Cultural and Language Training' (Report, University of Western Sydney, 2011).

This project emphasises the need for professional interpreters for women of CALD backgrounds affected by domestic and family violence (p7). It identifies the lack of professional interpreters, particularly female interpreters, for new and emerging languages. The section '3.1.2 Language issues' (from p23-25) is very relevant, noting respondents' views from a discussion group on the difficulties that arise around interpreting in domestic violence contexts. The main issues identified include: 'shortage of interpreters in the relevant languages, the need for female interpreters when domestic violence issues were discussed, the problem with using children to provide language brokerage and the problem with unethical and incompetent interpreters' (pp23). The also analyses a survey of interpreters, including ethical considerations around interpreting for a woman experiencing domestic violence.

Hunter, Rosemary, *Domestic Violence Law Reform and Women's Experience in Court* (Cambria Press, 2008).

- > This research investigates how civil courts hear and understand women's experiences of domestic violence, and examines women's experiences of attempting to tell their stories in those settings, focusing on domestic violence intervention order and family law proceedings in Australia. As part of the research there is some discussion about the use of interpreters in domestic and family violence cases.
- > The difficult context of using interpreters, including their lack of training in domestic violence or being from a small community is noted.
- > The section 'Language Barriers' discusses issues relating to assessing women's need for an interpreter; the availability of interpreters in court (e.g. only be used for particular types of matters due to funding, or magistrates looking for children to interpret); and the difficulties women may have with interpreters even if they are available (e.g. unprofessionalism, issues with confidentiality, women being uncomfortable relating their stories through a third person).

National Council to Reduce Violence against Women and their Children, *Time For Action: The National Council's Plan for Australia to Reduce Violence against Women and their Children, 2009-2021* (2009).

In relation to interpreting and translating in the context of domestic and family violence, this report's recommendations include:

- > 3.3.7 At every point in the service and justice system, ensure services are adequately funded to provide professional interpreting to victims/survivors who are not confident in their English language competency.
- > 3.3.8 Ensure interpreter services for women experiencing violence (including interpreters competent in Auslan) receive training to ensure interpreters understand issues related to sexual assault, and domestic and family violence, and are able to interpret in a sensitive yet impartial manner

The Plan also identifies that continuing barriers to women's access to justice include not having trained interpreters available, or only having one interpreter for both the complainant and defendant (p96); and emphasises the importance of having appropriately screened and selected interpreters for sexual assault and domestic and family violence victims (p139).

Ostapiej-Piatkowski, Beata and Annabelle Allimant, 'Best Practice Considerations when Responding to People from Cald Backgrounds, Including Refugees, with Mental Health Issues and Experiences Of Domestic And Sexual Violence' in Zannettino, Lana, et al (eds), *Improving Responses to Refugees with Backgrounds of Multiple Trauma: Pointers for Practitioners in Domestic and Family Violence, Sexual Assault and Settlement Services* (Practice Monograph 1, Australian Domestic and Family Violence Clearinghouse, 2013). (from p14)

This chapter notes best practice considerations that should be followed by practitioners when using interpreters with people from CaLD backgrounds, including the need to use professional interpreters, respond to gender requirements, and be aware of potential issues where the interpreter and client are from a small community (p18).

Wakefield, Shellee, and Annabel Taylor, '[Judicial Education on Family Violence: State of Knowledge Paper](#)' (State of Knowledge Paper 2, Australia's National Research Organisation for Women's Safety Landscapes, June 2015).

Abstract: 'The experience in court of domestic and family violence matters may be particularly difficult for people from vulnerable communities and magistrates have the challenging task of responding to people with various needs. For example, one issue for many migrant women participating in court procedures is the need to have access to interpreters. A lack of proficiency in English language becomes an obstacle when providing evidence in court, communicating, and understanding information or advice on legal rights, and understanding obligations and consequences (Erez and Hartly, 2002; Schetzer, Mullins, and Buanamano, 2002). To ensure meaningful understanding of legal matters, interpreters may be provided. However, these interpreters may be known to the women and this may lead to women fearing community shame associated with domestic and family violence, which in turn deters them from accessing the legal system (Women's Legal Services Australia, 2014).' (p14)

Also notes Ptacek's research on p16, which advised that providing interpreters can improve the hospitableness of the court experience for immigrant women, consequently empowering them; and Braun and Clarke's study which found a number of judicial officers surveyed had noted linguistic barriers (and lack of interpreters) as a major issue for domestic violence victims from diverse backgrounds (p22).

International

Beutz, Molly, et al, *Government Response To Domestic Violence Against Refugee and Immigrant Women In The Minneapolis/St. Paul Metropolitan Area: A Human Rights Report* (Minnesota Advocates for Human Rights, 2004).

The discussion in this report is based on more than 150 interviews with judges, lawyers, prosecutors, public defenders, advocates, probation officers, immigration officials, medical service providers, interpreters, and child protection employees in the Minneapolis/St. Paul metropolitan area (USA) about their engagement with battered refugee and immigrant women. Of particular relevance at pp145-146 the report provides some key points about interpreters:

- > Courts should consider appointing two interpreters, one for each party, in civil and criminal proceedings involving domestic violence;
- > Ensure that documents provided or sent by the court to limited English proficient individuals are translated into the appropriate languages.
- > In criminal cases where either party has limited English proficiency, request information regarding interpretation services available to both the offender and the victim at the time of arrest, during the investigation and throughout the pre-trial proceedings. To the extent they are relying on such information for their decisions regarding risk analysis, bail evaluation and release of offenders, judges should assess whether interpretation services were adequate during those stages.
- > In both civil and criminal cases, during court appearances where interpreters are present, begin court

proceedings with a statement of the interpreter's proper role in the courtroom.

- > Take steps to be aware of possible interpreter bias in domestic violence cases. Such steps should include asking interpreters about their experience and possible conflicts in the case prior to any appearance or hearing. If bias is detected, judges should immediately disqualify the interpreter for purposes of the proceeding.
- > Use female interpreters whenever possible when requested in domestic violence cases involving limited English proficient women.
- > Require interpreters appointed to interpret at protection order hearing to remain available to interpret the order at the time it is issued, so that the interpreter may translate the order for limited English proficient parties and facilitate the correction of mistakes or the elimination of confidential information included in the order.

Erez, Edna, and Carolyn Hartley, 'Battered Immigrant Women and the Legal System: A Therapeutic Jurisprudence Perspective' (2003) 4(2) *Western Criminology Review* 155.

In part of this essay the USA based authors consider 'Interpreters, Immigrant Battered Women and the Justice System' (from p159). They analyse a number of relevant issues for Immigrant Battered women who do not speak English. Issues include the need to rely on family, friends or community members when seeking out help, who may not be well-informed about woman battering or may collude with the abuser. Similarly, relying on children can be problematic if they are uncooperative or feel their loyalties are being divided, or where it endangers those children where the abuser views assistance as collusion. It also illustrates issues that may arise where there is a lack of professional, unbiased interpreters, and police are therefore required to act on incomplete information and sometimes the account of the abuser.