



Respect, recognition and reward

The critical role of language services for CALD women affected by family violence

**Submission by Professionals Australia
to the Royal Commission into Family Violence
on behalf Translators and Interpreters Australia**



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Foreword

Failure to provide appropriate language services can act as a serious barrier to effective access to health care, to legal services and in turn justice and a proper right of redress, and to government-provided support services for culturally and linguistically diverse (CALD) women affected by family violence.

The consequences of failure in the context of CALD women impacted by family violence can be devastating.

Access to high-quality, accredited and experienced specialist interpreters and appropriate operating protocols have a direct impact on the extent to which support services are effective in responding to the needs of CALD women impacted by family violence.

Professionals Australia thanks you for the opportunity to highlight these issues for the consideration of the Royal Commission.



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Professionals
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Submission

Professionals Australia is an organisation registered under the Fair Work Act 2009 representing over 25,000 professionals including professional engineers, scientists, veterinarians, surveyors, architects, pharmacists, information technology professionals, managers, transport industry professionals and translators and interpreters throughout Australia.

Our translator and interpreter members come from over 80 language groups and across specialisations including courts/legal, health/medical, economics/political, conference, Centrelink/social services, education, tourism, technical, theology, marketing/advertising and commercial business.

Professionals Australia makes this submission to the Royal Commission into Family Violence in response to its call for submissions about systemic responses to family violence, any gaps or deficiencies in current responses and barriers preventing particular groups from benefiting from family violence services.

We are committed to understanding and helping address the barriers to equitable access to services caused by lack of proficiency in the English language for women affected by family violence.

This submission aims to:

- place the imperative to provide interpreters to facilitate access to effective Government service delivery in a legislative/policy context;
- highlight deficiencies in existing language service arrangements which compromise victims/survivors access to legal/court, medical/health and Government-provided support services;
- briefly highlight a selection of significant issues for interpreters working in family violence support settings; and
- make recommendations in the key areas of training and operating protocols and offer a set of initiatives which we believe, if implemented, would help address some of the issues and problems raised.

Terms of reference

This submission predominantly addresses Item 2 of the terms of reference, which is as follows:

Investigate the means of having systemic responses to family violence, particularly in the legal system and by police, corrections, child protection, legal and family violence support services.

More specifically, it addresses the following questions set out in the issues paper:

Tell us about any gaps or deficiencies in current responses to family violence, including legal responses, and

What barriers prevent people in particular groups and communities in Victoria from engaging with or benefiting from family violence services?

Legislative/policy context

The Victorian Government guidelines on policy and procedures in relation to using interpreting services say of the issue of duty of care:

In relation to language services, the government and its funded agencies have a duty to ensure that members of the public understand the information that is being provided to them, and should provide appropriately trained and accredited interpreters when required.¹

The guidelines also say:

'The Multicultural Victoria Act 2011 states that all individuals in Victoria are equally entitled to access opportunities and participate in and contribute to the social, cultural, economic and political life of the state' and that 'Interpreting and translation services are crucial to ensuring this is achieved'.²

The guidelines also refer to the Victorian Charter of Human Rights and Responsibilities Act 2006 and the Victorian Equal Opportunity Act 2012 as additional legislative bases for ensuring appropriate service delivery and access to the relevant language services in order to effect this.

Deficiencies in existing language service arrangements in the family violence setting

The failure of interpreters to observe the confidentiality and impartiality requirements of the AUSIT professional code of ethics³ in the family violence context seriously compromises the access of victims/survivors to the relevant legal/court, medical/health and Government-provided support services

We provide the following examples of what happens when those impacted by family violence do not have access to high-quality specialised interpreting services. These examples show just how serious a barrier the lack of access to high-quality specialised interpreting services can be.

Failure to interpret impartially/non-judgementally and refrain from intervening

*The Centre receives complaints by migrant women that interpreters are 'aggressive', 'distort their words', and cause them distress by asking them to repeat embarrassing or personal details in police interviews.*⁴

An interpreter 'told the woman's husband the address of the women's shelter - she thought the woman was lying and therefore her husband needed to know'.⁵

An interpreter 'tried to convince the woman to reconcile with her husband'.⁶

Interpreters 'criticised women for taking legal action'.⁷

There is evidence of a female interpreter who interrupted a therapeutic counselling session to advise a client that, according to the Koran, women must obey their husbands' sexual demands.⁸

The use of accredited interpreters who are aware of their obligations under the professional code of ethics to remain impartial, and to refrain from being judgemental or intervening in any way is critical.

Failure to interpret accurately and without omission

Interpreters are required by the code of ethics to interpret accurately and without omission. This includes being comfortable interpreting using sexually explicit terms.

There is an example of an interpreter in Queensland who would not use the words 'penis' or 'vagina' in a sexual assault proceeding.⁹

It is not uncommon that interpreters tell victims they should withdraw or purposely fail to accurately interpret for them. [Anonymous source, Information provided to Professionals Australia, 2015]

The use of accredited interpreters who are aware of their obligation to interpret accurately under the professional code of ethics is critical.

Failure to provide independent interpreting services

Use of same interpreter for victim/survivor and perpetrator

I have had direct experience of perpetrators interpreting for the victim/survivor, and interpreters interpreting for both victim/survivor and perpetrator. I was booked for a 'mediation meeting' where family violence was discussed. My non-English-speaking client

was the male. When I got there I was told I would interpret for both parts (male and female) if necessary. The woman was distressed at first not knowing why her ex-partner had an interpreter booked. She believed she was at a disadvantage (I had the impression she thought I would be 'on his side') and therefore feared of the possible outcome of this meeting. [Anonymous source, Information provided to Professionals Australia, 2013]

In my experience, agencies may try to provide female interpreters in domestic violence cases but police often request a male due to the perpetrator's aggression. This suggests the same interpreter is being used for both victim/survivor and perpetrator. [Anonymous source, Information provided to Professionals Australia, 2013]

Service providers reported that interpreters 'are not well trained in family violence [...] and are unable to either accurately interpret matters or on occasions have been aggressive to victims'. The research found that women were left with a great sense of fear and unwillingness to disclose their experiences of family violence when only one interpreter is booked for both her and the perpetrator¹⁰. The study concludes by recommending consistent use of interpreters and that these 'need to be rigorously trained in appropriate interpreting techniques, [...] on the issues of family violence'¹¹, and 'confidentiality issues'¹². [Research undertaken by inTouch Multicultural Centre Against Family Violence (2011)]

Interpreters should never be put in the position of being asked to interpret for both victim/survivor and perpetrator as it seriously compromises their obligations under the professional code of ethics to act with impartiality. Perpetrators should at no stage be permitted to interpret for the victim/survivor.

Use of family members as interpreters

There are instances of children having to interpret for their mothers and having to listen and interpret about violence and sexual assault encounters. Also, there is evidence of women not disclosing these events to protect their children from listening to them. [Anonymous source, Information provided to Professionals Australia, 2013]

The use of children or family members represents a serious breach of privacy for victims/survivors of family violence. The interpreter providing professional services in a family violence situation clearly needs to be at arms' length from the family.

Use of interpreters themselves involved as offenders in domestic violence cases

I am aware of instances where the interpreters engaged to provide interpreting services in a domestic violence case are themselves offenders - submitting a police check every three years to agencies is not enough. [Anonymous source, Information provided to Professionals Australia, 2013]

The use of an interpreter who is convicted of a family violence-related offence potentially represents a conflict of interest and a serious compromise to the requirement for impartiality under the professional code of ethics.¹³

Use of interpreters known to victim/survivor

Emerging language and smaller or remote communities often have fewer numbers of interpreters available and it is not uncommon for the victim/survivor to know the interpreter. This creates issues of confidentiality and impartiality.

These examples show the extraordinarily serious consequences when the confidentiality and impartiality requirements of the professional code of ethics are breached.

Failure to provide an interpreter

While this submission details some of the problems which may arise when interpreters *are* provided, it is important to highlight the fact that the failure to provide an interpreter is one of the most critical barriers to effective access to support services for CALD women in the family violence context.

It is essential that the Victorian Government Guidelines in relation to assessing the need for an interpreter are enforced to ensure interpreters are provided where needed and, in turn that systemic responses in the family violence context are as effective as possible.¹⁴

Issues for interpreters working in the family violence setting

Lack of specialised training

The need for specialised training to work in often difficult family violence settings is a critical issue for interpreters.

Vicarious/secondary trauma

Interpreting in the context of family violence-related circumstances including torture and trauma/sexual assault crisis centres and women's refuges is potentially distressing or traumatising so the issue of vicarious or secondary trauma for interpreters is a real one.

Need for confidentiality

I have witnessed women disclose violence in a community-based pain management counselling session, a home visit for an Occupational Therapist evaluation, and a maternal health home visit after birth. There is no way I can disclose these instances because it could put the individuals in serious danger and I'm bound by strict rules of confidentiality. [Anonymous source, Information provided to Professionals Australia, 2015]

Interpreters should be provided with specialised training and support to deal with the unique issues such as these that arise in the family violence context.

Recommendations

Training

Training for interpreters working in family violence-related areas, and training of professionals in the use of interpreters in legal/court and medical/health settings are both critical.

General training for those working in family violence-related areas

- Provide training in cross-cultural awareness for all those in family violence related areas including judges, doctors, police, social workers, community workers and interpreters themselves.¹⁵ A significant obstacle to good practice is “when key players, i.e. police, social workers, community workers, do not take the time or see the need for [this kind of] training”;¹⁶
- Provide training in awareness that male violence is a crime,¹⁷ equal opportunities practice and legislation¹⁸ and the principles of gender equality as enshrined in legislation;¹⁹
- Provide training on the needs and experiences of women service users,²⁰ including the fact that women affected by family violence are a diverse group with diverse needs. They include “migrant women, women asylum seekers, refugees, disabled women, women living in institutions, lesbians, prostitutes, trafficked women” and others.²¹ Because women’s experience of male violence can “be influenced by a number of .. external factors such as race, age, sexual orientation, religious beliefs, ethnic origins”²², they may experience multiple forms of discrimination, and training in diversity awareness is therefore critical.

Specialised training for interpreters working in family violence-related areas

- Provide general training as described above, and in addition:
- Identify suitable interpreters for specialist training on issues of violence against women;²³ particularly women to ensure an adequate supply of female interpreters where this is requested;
- Provide Government support for the training of specialist interpreters in the area of family violence out of the pool of specialist health and legal interpreters;
- Reiterate the particular need for confidentiality and non-judgemental/impartial interpreting in the family violence area in line with the interpreter’s obligations under the professional code of ethics;
- Reiterate the particular need to refrain from intervening or expressing personal opinions when interpreting in the family violence context in line with the interpreter’s obligations under the professional code of ethics;
- Reiterate the particular need to interpret accurately in line with the interpreter’s obligations under the professional code of ethics;
- Ensure specialist interpreters are comfortable with the use of sexually explicit terms;²⁴
- Provide training in the ‘effects of secondary traumatisation’;²⁵ and
- Ensure financial incentives are built into the accreditation system to encourage interpreters with the appropriate backgrounds to upgrade their skills and undertake further specialist training.

Specialised training for those who engage interpreters in family violence-related settings

The specific training and initiatives required will depend on the setting (for example, court/legal, medical/health) and a full discussion is beyond the scope of this submission. In general terms, we concur with the Victorian Government Guidelines on Policy and Procedures set out in the publication “Using Interpreting Services”.²⁶

Training for those who engage interpreters would include as a minimum:

- how to assess the need for an interpreter as set out in the guidelines across Government and agencies to ensure an interpreter is provided if needed;
- the need to engage accredited interpreters as a minimum (because of the particular need to observe the professional code of conduct in family violence settings);

- the need to engage accredited female interpreters with experience and specialist training in interpreting in family violence-related situations wherever possible;
- the need to ensure separate interpreters are provided for the victim/survivor and perpetrator; and
- the need to ensure the perpetrator is never permitted to interpret for the victim/survivor.

Specific recommendations about training/initiatives in the court/legal context are set out in Appendix 1 for consideration.

Operating protocols

The following protocols in family violence-related support services would support good practice:

- Reiterate the process for *Assessing the need for an interpreter* as set out in the Victorian Government Guidelines across Government and agencies to ensure an interpreter is provided if needed;
- Use accredited interpreters as a minimum standard;
- Use accredited female interpreters with experience and specialist training in interpreting in family violence-related situations wherever possible;
- Ensure separate interpreters are provided for the victim/survivor and perpetrator;
- Ensure perpetrator never interprets for victim/survivor;
- Provide relevant documents, forms and information in first language of victims/survivors;
- Require disclosure of relevant charges (domestic abuse, sexual assault or child abuse) for those interpreting in family violence cases;
- Require disclosure of any prior acquaintance in interpreting situations involving emerging languages, and/or smaller and remote communities; and
- Require agencies to provide access to support and ongoing training for those who experience vicarious/secondary trauma “in order to minimise the personal impact of the distressing or traumatic incidences they are called upon to interpret”.²⁷

Initiatives

We respectfully suggest that the Victorian Government consider the following initiatives:

National protocol

Lead the establishment of a national protocol on specialised training for, and working with interpreters in family violence contexts.

Women-only interpreting services

Consider supporting the development of women-only interpreting services for use in family violence-related contexts.

Scholarships to support interpreter training

Consider funding interpreter scholarships for women in emerging languages and/or remote communities where there may be a shortage of female interpreters available.

Update guidelines

Consider updating the “Using Interpreting Services” guidelines or developing new guidelines specific to the family violence setting.

Contract for the provision of language services

Consider including a commitment to observing guidelines and/or protocols in contractual terms when the contract for the provider of language services to Government is next negotiated.

In summary

Our intention in this submission was to show:

- the extent to which the failure to provide high-quality specialised interpreting services operates as a barrier to effective service delivery for CALD women in the context of family violence;
- that the way interpreting services in the family violence context are currently delivered results in significant costs in human/social terms across the health, legal, government support settings; and
- that effective systemic responses may be seriously compromised by interpreters not being provided or, when provided, failing to comply with their obligations under the professional code of ethics.

The material confirms that there is a clear and urgent need for change in this critical area.

A note about the translating and interpreting industry

As the union representing translating and interpreting professionals, Professionals Australia is working closely with practitioners, business, government and professional bodies with a view to creating a sustainable, competitive, fit-for-purpose and efficient language services industry.

In particular, we work closely with AUSIT, the professional association representing translators and interpreters and administers the code of ethics.

The Office of Multicultural Affairs and Citizenship (OMAC) is currently leading stakeholder discussions.

In the medium to long-term, we hope this work will positively impact the operating environment for our members, lead to systemic improvements which will create incentives and appropriate recognition and reward for specialist training and, in turn, bring about improvements to the quality and consistency of interpreting services.

While a comprehensive discussion of the problems that currently exist in the industry is beyond the scope of this submission, we refer you to our two key publications as background:

Lost in Translation: Barriers to building a sustainable Australian translating and interpreting industry

This document is available at <http://www.professionalsaustralia.org.au/translators-interpreters/wp-content/uploads/sites/43/2015/03/Lost-in-Translation-issuu.pdf>.

The Case for Change: Consequences and costs of failures in the translating and interpreting industry

This document is available at http://www.professionalsaustralia.org.au/translators-interpreters/wp-content/uploads/sites/43/2015/03/The-Case-for-Change_EMAIL.pdf.

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Appendix 1

- Recommendations about training/initiatives in the court/legal context

In the legal/court context, the United Nations Entity for Gender Equality and the Empowerment of Women (2011) released the following suggestions for working with the justice sector to end violence against women and girls.²⁸ We note with concern that there are some suggestions listed that would contravene the AUSIT code of ethics and at no stage do we endorse those items (for example, the items suggesting that interpreters should be trained to explain protections offered, the sentence imposed, etc. or creating a group of volunteer interpreters) but we present the extract in full for information purposes:

Establish and expand language-accessible services

Ministries should prioritize language-accessible services and interpretation in the justice sector. Language barriers should be fully addressed in court processes: Language barriers can be insurmountable for victims of violence. Ministries should support the provision of signs and interpreters in court buildings and for all cases involving violence against women. The following strategies will increase access to justice for women and girls:

- Install signage in court facilities in local languages with picture signs for women with low or no literacy.
- Use language identification cards to identify the language of women and girls who approach court services.
- Provide court documents, forms, and necessary information in local languages.
- Provide interpreters for all court hearings. This may be costly, but it is fundamental to increasing access to justice.
- Train interpreters to explain the protections offered, the sentence imposed, and victim options for input, restitution, and compensation.
- Train interpreters in issues of violence against women. Publish standards of conduct for interpreters in cases of violence against women.
- Establish a licensing procedure for interpreters in cases of violence against women so that qualified interpreters may be accessible to court administrators.
- Train interpreters to work with disabled victims.
- Provide brochures and posters on court information in relevant local languages. Utilize input from women's NGOs in developing these brochures and posters.
- Develop volunteer interpreter programmes with proper training for court work.
- Publish laws and court decisions in all local languages. This may also be costly but is essential to gain public trust in an open and impartial judicial sector.
- Provide videos in common local languages to explain the court process to survivors. This will help the survivor know what to expect and make the court process less intimidating.
- Educate on cultural differences as well as language differences.

An additional set of recommendations for court interpreters to ensure best practice interpretation for survivors of all types of violence against women and girls:

1. Implement testing, training, and monitoring procedures which assess interpreter proficiency as well as understanding of legal and ethical obligations.
2. Provide interpreters with specialized training in issues of domestic violence, sexual assault, and child abuse. Emphasize the link between confidentiality and victim safety. Teach interpreters how violent offenders may use the court process to intimidate and threaten survivors.
3. Train interpreters on the effects of secondary traumatization and provide them with supervision and support.
4. Train judges and lawyers on effective use of interpreters and how to monitor interpreters for bias on issues such as domestic abuse or sexual assault.
5. Require interpreters to undergo background checks to identify any history of domestic abuse, sexual assault, or child abuse. Question them before each case on possible conflict of interest (Huelgo et al., 2006).

We also endorse the recommendations set out in Professor Sandra Hale's "Interpreter Policies, Practices and Protocols in Australian Courts and Tribunals: a National Survey".²⁹ Recommendations are as follows:

- Recommendation 1: That all courts and tribunals always give preference to the best-qualified interpreters.
- Recommendation 2: That all interpreters be required to state their qualifications at the commencement of proceedings.
- Recommendation 3: That all interpreters who work in courts and tribunals complete formal legal interpreting training.
- Recommendation 4: That special legal interpreting training scholarships be established.
- Recommendation 5: That NAATI introduce a specialist legal interpreter accreditation.
- Recommendation 6: That a national register of qualified legal interpreters be established.
- Recommendation 7: That lawyers, tribunal members and judicial officers receive basic training on how to effectively work with interpreters.
- Recommendation 8: That interpreters be provided with adequate working conditions in the court or tribunal.
- Recommendation 9: That interpreters be provided with background information and materials where available, before the case, in order to adequately prepare for their assignment.
- Recommendation 10: That two interpreters be used to work as a team for long trials.
- Recommendation 11: That differential pay rates be implemented according to qualifications.
- Recommendation 12: That interpreters be booked and paid for a minimum of a full day at court, and a minimum of half a day for tribunals, regardless of the actual duration of the case.
- Recommendation 13: That more transparent contracting practices be implemented.
- Recommendation 14: That better feedback mechanisms be established for judicial officers, tribunal members and interpreters.
- Recommendation 15: That a national register of interpreting experts be established.
- Recommendation 16: That a national protocol on working with interpreters in courts and tribunals be established.

References

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