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Executive Summary

What do we know generally about this group?

According to the Australian Bureau of Statistics, 67 per cent of recent arrivals speak a language other than English at home. Mandarin, Punjabi, Hindi and Arabic were the most commonly spoken languages other than English for recent arrivals, demonstrating the more recent shifts in Australia’s migration program. In 2014-15, China, India and the Philippines were the third, fourth and fifth biggest source countries of Australia’s overseas-born resident population. Much of the relevant literature is focused on recent arrivals who are Humanitarian Programme entrants. The top five countries of birth for people granted these visas in 2014-15 were Iraq, Syria, Myanmar, Afghanistan and the Democratic Republic of Congo.

What are the key findings regarding this group’s legal needs?

Recent arrivals are considered a vulnerable group which can be susceptible to a range of legal problems, including consumer issues (including credit and debt and unfair contract issues), housing and tenancy, energy and utilities, employment (including discrimination), insurance, driving-related and other infringements and motor vehicle accidents. They also have unique needs in certain areas, eg aged care and family violence. Recent arrivals can be less likely to seek formal assistance and often prefer to look for help inside the family or community. When they do seek legal help, it may not be until a stage of crisis.

What are the barriers constraining this group from accessing justice?

The Australian legal system and certain features of Australian life may be unfamiliar and confusing for recent arrivals, such as concepts of contractual responsibilities as consumers in a competitive marketplace, tenancy obligations or driving laws. Consequently, they may be less likely to identify legal problems, or know how to respond to them. Language and literacy barriers can impede access to legal information and support services and may impact upon individuals’ engagement with the justice system at every stage, from dealing with police to understanding court orders.

A mistrust of authorities and the law can pose a significant barrier for many recent arrivals, especially refugees, given their past histories of persecution. This can prompt some groups to avoid contact with the legal system. Of particular concern is evidence suggesting that mistrust of the Australian legal system actually increases over time. This may stem from initial negative experiences, such as a failure by some police to respond to calls for assistance, and from a lack of cultural competency amongst some legal and justice personnel. Recent research has also highlighted alarming rates at which people from certain backgrounds experience discrimination within the Australian community, including 77 per cent of Sudanese-born respondents.

Fear of reprisal can cause a reluctance to make complaints, such as with respect to landlords. Cultural and religious barriers can preclude recent arrivals from seeking help for particular kinds of legal problems, such as for family law issues or family violence, and a lack of cultural competence amongst some services is also a problem. Many new arrivals lack
financial resources and undertake low income and precarious work. Some can be socially isolated and can lack access to computers and computer literacy.

What are the legal capabilities of individuals within this group?

Given the barriers described above, recent arrivals may have limited legal capability with respect to negotiating Australian laws and the justice system successfully.

Are there critical gaps in services which are necessary to deliver access to justice to this group?

A lack of culturally appropriate and geographically-accessible free legal assistance services has been identified, particularly regarding civil law needs. Concerns exist regarding a lack of free interpreters to help culturally and linguistically diverse (‘CALD’) individuals navigate the justice system. The Judicial Council for Cultural Diversity (‘JCCD’) has also advocated for more resources to support courts to respond effectively to the needs of such communities. Insufficient appropriate social services, such as secure and low-cost housing or access to culturally appropriate women’s refuges, can also undermine justice outcomes.

Are there laws, policies and practices which exacerbate access to justice barriers for this group?

Racial profiling practices amongst some police members have been identified as a particular form of discrimination which can be experienced by certain recent arrival groups, particularly young men of colour. Concerns have also been raised that recent arrivals can be more vulnerable to misleading or illegal door-to-door sales practices and that greater protections may be needed. Residential tenancies legislation has also been identified as an area in which imbalances exist between recent arrival tenants and landlords. Expanded visa cancellation powers have recently driven up legal needs.

What are the costs and consequences if this group cannot access justice?

Unresolved legal problems can result in a range of consequences amongst recent arrivals, depending upon their circumstances, including shame and stress, criminal conviction which undermines future employment possibilities, debt leading to bankruptcy, and a lack of safety. These can lead to negative ongoing settlement outcomes and intergenerational conflict in the longer term.

What measures are effective – what works and why?

*Appropriate and accessible services*

Effective strategies involve locally and culturally sensitive solutions which are based on community partnership, collaboration and leadership. Efforts to build trust amongst recent arrival communities are critically important. This takes time, flexibility and resources to understand the cultural needs and diversity of a community before developing tailored responses. The need for intensive and ongoing legal assistance is consistently emphasised, given the lower levels of legal capability amongst many new arrivals. This also takes time and effort.
Strategies to develop legal literacy amongst new arrivals (and their caseworkers), particularly as part of a two-way educational exchange, can be effective. These can help to familiarise service providers with cultural perspectives, communities’ legal literacy needs and conceptions of the law. Successful examples have included Springvale Monash Legal Services’ experiential workshops with recently arrived young people which complemented a broader independent living skills project.

Developing greater cultural competence within the justice sector is also essential. Certain courts have made progress in this area, such as under the Family Court of Australia’s Multicultural Access and Equity Policy. The JCCD also emphasises the value of taking additional time to assist recent arrivals through court processes, and as well as continuity of assistance, such as through appointing single case coordinators responsible for putting into place the support that litigants need as their cases progress.

The JCCD has drafted national standards to provide courts and tribunals to provide guidance on engaging and working with interpreters to ensure procedural fairness for people with limited English proficiency. Cultural Liaison Officers are important in helping recent arrivals through legal processes.

**Targeted services**

Triage processes to identify recent arrivals early in their engagement with the justice system and refer them to appropriate services are important, including through the pre-trial case management stage in courts. Proactive strategies to reach recent arrivals are often necessary, through networks which are already known and trusted to them, such as migrant resource centres and community leaders. An example of outreach which has successfully reached new clients is Legal Aid NSW and Settlement Services International Inc’s partnership to deliver outreach family, immigration and other civil law services at migrant resource centres across the greater Sydney, Illawarra and Newcastle areas. Community outreach and engagement strategies have also been implemented by some courts and other justice bodies and tools could be developed to further facilitate these strategies.

**Joined-up services**

The merit of holistic responses for recent arrival clients is well recognised. Co-location of services, as well as case management for particularly vulnerable clients, can help to implement such strategies successfully. Integrated responses can also make positive differences within courts, helping to empower clients. An example of a joined-up solution is the Victorian Government’s Refugee Action Program, which works to empower newly arrived refugees to achieve sustainable settlement outcomes in local communities. This encompasses legal awareness seminars as part of a broader programme covering health, housing, employment and training and includes flexible enabling funding and coordinator assistance for community-driven and owned projects.

**Timely services**

Many legal problems faced by recent arrivals are characterised as ‘problems of settlement’ which usually arise within the first years after arrival in Australia, as individuals grapple with an unfamiliar legal framework and language. Delivering community education during this initial settlement phase is critically important. However, new arrivals may also have difficulty
in retaining information provided early in the settlement process, given the many changes in their lives during this time, and additional education strategies are also needed beyond this phase. Successful ‘timely’ responses have involved targeting legal assistance around key events which are likely prompt legal needs such as ‘bring your bills clinics’.

**Innovative approaches**

Flemington Kensington Community Legal Centre’s *Walking Alongside Program* is a unique socio-legal program designed to provide specialised and integrated health and family support to young people of Sudanese and other African migrant/refugee backgrounds who are pursuing police accountability legal actions. The Zelman Cowan Centre at Victoria University delivers a range of innovative programs aimed at increasing migrant communities’ understanding of the law and the legal sector’s engagement with the community.

**Addressing laws, policies and practices**

Examples of successful strategic advocacy include WEstjustice’s ‘bugger off’ letter, which has protected many vulnerable clients from debt enforcement, and Flemington Community Legal Centre’s test discrimination case against Victoria Police for racial profiling and discrimination, which prompted a review by Victoria Police and commitment to a three-year plan to address such concerns.
What do we know generally about this group?

As noted by the Judicial Council on Cultural Diversity (‘JCCD’), Australia is one of the most culturally and linguistically diverse countries in the world.\(^1\) Australia is a nation built on migration, with more than one quarter of its population born overseas, and a further one-fifth having at least one overseas-born parent.\(^2\)

There are now more than 300 languages spoken in Australian households.\(^3\) While, according to 2011 Census data, 81 per cent of Australians aged five years and over spoke only English at home, 67 per cent of recent arrivals\(^4\) spoke a language other than English at home. For recent arrivals, Mandarin, Punjabi, Hindi and Arabic were the most commonly spoken languages other than English, demonstrating the more recent shifts in Australia’s migration program.\(^5\)

While historically, most of Australia’s migrants have come from Europe, increasingly there are more Australians who were born in Asia and other parts of the world.\(^6\) On 30 June 2014, China, India and the Philippines were the third, fourth and fifth biggest birthplace countries of Australia’s overseas-born resident population.\(^7\) Australia’s Migration Programme in the same year consisted of nearly 190,000 comprised three streams, including its:

- Skill stream – allowing for the migration of people with skills and abilities that contribute to the economy (67.6 per cent);
- Family stream – allowing for the permanent entry of people with close family ties in Australia (32.3 per cent); and
- Special eligibility category (0.1 per cent).\(^8\)

Further, its 2014-15 Humanitarian Programme granted nearly 14,000 visas, consisting of an offshore component (80 per cent), and an onshore component (20 per cent).\(^9\) Of the offshore visa component, 54.5 per cent were refugee visas, and 45.5 per cent were special

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\(^*\) This Paper is intended to be read in conjunction with the Introduction and Consultation Questions Paper for the Justice Project which sets out the approach taken, the methodology and overarching consultation questions, as well as how to respond.

\(^1\) Judicial Council on Cultural Diversity (‘JCCD’), *Cultural Diversity within the Judicial Context: Existing Court Resources* (2016), 6.


\(^4\) The ABS defines ‘recent arrivals’ as those who arrived in Australia over the period 2007 to Census Night (9 August) 2011: ABS, above n2.

\(^5\) Ibid.

\(^6\) Ibid.


\(^8\) Ibid, 4.

\(^9\) Ibid.
humanitarian visas. The top ten countries of birth for people granted these visas were: Iraq, Syria, Myanmar, Afghanistan, the Democratic Republic of the Congo, Eritrea, Bhutan, Iran, Somalia and Ethiopia.\textsuperscript{10} The onshore component comprised onshore protection visas.

Australia’s overseas-born population is more likely to live in capital cities (82 per cent in 2011, compared to 66 per cent of all people in Australia).\textsuperscript{11} New South Wales (‘NSW’) and Victoria have higher proportions of people from a non-English speaking background.\textsuperscript{12}

Significantly, much (although not all) of the literature discussed below focuses on the legal needs of recent arrivals who are Humanitarian Programme entrants.

What are the key findings regarding this group’s legal needs?

Recognising its methodological difficulties in measuring the legal needs of people from different backgrounds, including people from CALD backgrounds, the LAW Survey nevertheless reported several relevant findings regarding this group.

In particular, LAW Survey respondents with a non-English main language reported significantly lower levels of experiencing legal problems than those with English as a main language for most of the problem categories examined.\textsuperscript{13} The Law and Justice Foundation of NSW has indicated that the reasons for this are unclear. On the one hand, it states that people with a non-English main language may have a lower vulnerability to legal problems. However, these lower reporting levels may also be linked to a failure to recognise legal problems, or an unwillingness to admit to these problems, due to limited levels of legal capability or other more pressing needs.\textsuperscript{14}

The recent Victorian Government Access to Justice Review recognised that, in fact, the CALD community constituted a vulnerable group which was particularly susceptible to certain legal problems, in consumer, housing, energy, telecommunications and employment areas.\textsuperscript{15} It was also identified as having unique needs in the areas of aged care and family violence.\textsuperscript{16}

Justice Connect has summarised the legal issues which are commonly faced by recently arrived migrants and refugees as including credit and debt, insurance, tenancy, fines, motor

\textsuperscript{10} Ibid.
\textsuperscript{11} ABS, above n2.
\textsuperscript{13} Forty-three per cent of respondents with a non-English main language, compared to 50 per cent of respondents with English as a main language: Christine Coumarelos, Hugh M McDonald, Suzie Forell and Zhigang Wei, \textit{Collaborative Planning Resource - Service Planning} (Law and Justice Foundation of NSW: 2015), 58.
\textsuperscript{14} Ibid, 58-59.
\textsuperscript{16} Ibid, citing submissions from the Ethnic Communities Council of Victoria and the Victorian Multicultural Commission.
vehicle accidents, loans, and unfair contracts, as well as ‘hidden problems’, such as discrimination based on race, ethnicity and religion. \(^{17}\) Recent arrivals may also be more vulnerable to exploitation at work (as discussed in the Justice Project paper regarding People Who are Trafficked and Exploited people.

In a detailed study in 2009 of refugees and humanitarian arrivals from Africa who engaged with Footscray Legal Centre’s African Legal Service, Fraser identified several frequent legal problems, emphasising that many clients struggled with several legal issues at once. \(^{18}\)

These included:

- driving without a licence or while suspended;
- driving without insurance, thus incurring large debts from car accidents;
- incurring large numbers of driving-related and other infringements, such as parking and speeding or red-camera infringement fines, littering, failing to wear a bike helmet and public transport fines;
- incurring large debts from misuse of utilities, personal loans and contracts entered into with door-knockers;
- legal issues relating to private rental and public housing;
- administrative law issues including appeal of Centrelink decisions, applications to change name or birth date, and applications for citizenship;
- family law issues, including divorce and child contact; and
- intervention order issues. \(^{19}\)

Noting that more African new arrival clients sought legal help for infringements than any other reason, Fraser provided the following case study:

*Mr S has been a taxi driver since he arrived in Australia several years ago. When he started driving taxis, he drove a friend’s taxi. The friend said ‘Don’t bother buying an e-TAG. Give me $50 per week and I’ll make sure that it is always in credit’. Mr S never bought an E-TAG and paid his friend some cash every week.*

*Mr S’s friend did not keep his E-TAG in credit. He nominated Mr S for the CityLink fines that resulted. Over several years, Mr S accrued more than $25,000 in fines.*

*Mr S still drives taxis for a living. He lives in public housing and has 10 children. His wife receives Centrelink benefits. He entered into an instalment payment to pay $200 per month on his fines. He came to the African Legal Service because he could not afford to make these repayments.* \(^{20}\)

Another case study related to housing issues:

*Mrs A lives in private rental accommodation with her four children, all of whom are under the age of 11. When she sought legal assistance she had been without hot water in her*


\(^{18}\) Katie Fraser, Out of Africa and into court: the legal problems of African refugees (Footscray Community Legal Centre: 2009), 7.

\(^{19}\) Ibid.

\(^{20}\) Ibid, 28.
Following this study, Smith and Boi identified that Burmese refugees arriving in the previous three to five years often faced similar legal problems to those experienced by the African recent arrivals. They considered that Burmese refugees were also particularly vulnerable to being subjected to a range of marketing and sales tactics, especially by door-to-door salespeople selling utilities, communications products, life and funeral insurance policies. Berta, Brody and Mackenzie have also highlighted that new arrival communities can be more vulnerable to misleading or illegal door-to-door energy sales practices.

In another study, Berta affirmed that housing issues were of primary concern to emerging refugee communities in Melbourne. She found that refugee tenants were at an extreme disadvantage in navigating the private rental market, and experienced rental market difficulties and homelessness at alarming rates. She cited instances of landlords making bond claims which lacked merit, ignoring repeated requests for repairs, or unfairly evicted tenants, while some real estate agents acted dishonestly and unlawfully.

These studies support more conclusions that recent arrivals, particularly refugees, may not have a strong understanding of some of the complex systems in Australia, particularly regarding driving, contracts to buy goods and services, tenancy, housing, employment and personal loans. This can give rise to ‘complex legal and financial problems in the first few years after arrival in Australia’.

One final area of concern concerns family breakdown and domestic and family violence. In 2012, the Family Law Council highlighted research demonstrating that the settlement challenges facing newly arrived families placed strain on relationships, increasing family breakdown and the need for legal and family support services. This report also flagged growing concerns about family violence within new and emerging communities, which the JCCD further explored in its recent report regarding migrant and refugee women’s experiences of the justice system. This report recognised that such women are far more likely to enter the legal system at a point of extreme vulnerability, often as a result of family

[23] Ibid.
[24] Laura Berta, Gerard Brody and Cynthia Mackenzie, Strangers are Calling! The experience of door-to-door sales in Melbourne’s refugee communities (Footscray Community Legal Centre: 2013), 3.
[25] Laura Berta, Making it Home: Refugee Housing in Melbourne’s West (Footscray Community Legal Centre: March 2012), 67.
[26] Ibid, 3.
[29] Ibid.
violence or family breakdown.\textsuperscript{31} While the evidence was mixed on the prevalence of family violence in migrant and refugee communities, the report’s authors noted that the stresses caused by moving to Australia could increase the risk of family violence.\textsuperscript{32} Further, migrant and refugee women were more likely to experience particular forms of family violence, including abuse by extended family members, abuse related to their immigration status, dowry demands and forced marriage.\textsuperscript{33}

Legal Assistance Indicator

Mirrlees-Black and Randell have developed a ‘need for legal assistance’ (‘NLAS’) indicator which uses census and other data to identify priority disadvantaged clients and the geographic locations in which people have the highest levels of legal need.\textsuperscript{*} One of the indicators that they use provides a proxy measure of legal capability by identifying people who are both low income and are from CALD backgrounds other than Indigenous (NLAS CALD).

Based on the NLAS CALD indicator, the distribution of legal need in Australia is shown in the figure below. The larger the circle, the greater the number of people meeting the criteria. The colour of the regions across Australia indicates the percentage of the population of each region meeting the criteria: the darker the area, the higher the proportion.

\textsuperscript{*} Mirrlees-Black and Randell caution that a number of limitations mean that NLAS counts are likely minimum counts and that they may in particular undercount those most in need of legal assistance services. This is just one source of information that can be utilised to plan legal assistance services Australia-wide: Catriona Mirrlees-Black and Sarah Randell, ‘Need for Legal Assistance Services: Developing a Measure for Australia’, Justice Issues Paper No 26 (Law and Justice Foundation of NSW: 2017), 4.
How do people in this group respond to their legal problems?

The LAW Survey indicated that respondents with a non-English main language were significantly more likely to ignore their legal problems than respondents whose main language was English.\(^{34}\) When they did take action, they were significantly less likely to seek professional advice.\(^{35}\) They also had lower levels of finalising problems.\(^{36}\)

These findings accord with concerns raised in other reports. For example, the JCCD has noted that recent arrivals are less likely to seek timely legal assistance,\(^{37}\) while Fraser has observed a reluctance to pursue rights through formal channels, even with a lawyer’s help.\(^{38}\) The Australian Human Rights Commission noting that this extends to recent arrivals under-reporting their situation as victims of crime.\(^{39}\) The Family Law Council has also highlighted that recent arrivals remain under-represented as users of family law system services.\(^{40}\) Instead, help is often sought inside the family or community, with the formal legal process constituting an ‘absolute last resort’.\(^{41}\) When recent arrivals do seek legal help, it is often when ‘issues have reached acute or crisis stage’,\(^{42}\) as Fraser highlights:

*But we often saw clients from Africa very late in the evolution of their legal problem: the day before a court case; the day after the Sheriff had come around to arrest them for non-payment of fines; or months after debt collectors had started calling to collect the damage owed from a car crash.*\(^{43}\)

What are the barriers constraining this group from accessing justice?

Pakulski and Markowski contend that the most recent wave of migrants into Australia face a more difficult settlement process and pose new challenges arising from:

*…a mass inflow of immigrants and refugees coming increasingly from East and South East Asia (including Afghanistan), from the war-ravaged Middle East, and from destablised parts of Africa. Consequently, they face a more difficult adaptation, partly because of relatively low social resources (skills, knowledge, networks), partly because of wider religious and cultural distance from the host society, partly because of rising...*

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34 29.7 per cent of respondents with a non-English main language took no action, compared to 17.6 per cent of respondents whose main language was English: Coumarelos et al, above n13, 59.

35 Only 36.9 per cent of respondents with a non-English main language sought professional advice, compared to 51.9 per cent of respondents whose main language was English. 33.3 per cent handled the problem without professional advice, compared to 30.5 per cent of people with English as their main language: Ibid.

36 Coumarelos et al, above n12, 146.


38 Fraser, above n27, 11.


40 Family Law Council, above n28, 3.

41 Ibid, 35.

42 Ibid, 86.

43 Fraser, above n18, 11.
Limited legal awareness and unfamiliarity with Australian systems

A limited knowledge of the Australian legal system and how to access legal help is a consistently cited barrier for many recent arrivals in accessing justice. As the JCCD highlights:

Some newly arrived migrants are particularly disadvantaged in a system where defined knowledge of the law is presumed and where ignorance is no excuse. A lack of understanding of Australian law, often fundamentally different to the law of their country of origin, not only increases the likelihood of transgressions, it reduces the overall effectiveness of the justice system.

Many features of Australian life may be wholly unfamiliar to Australia’s new arrival communities. Fraser explains that refugee arrivals may have never rented a house, and may not understand landlord and tenant responsibilities. Many have never dealt with utility companies, and may be unaware that they must pay bills and manage their utilities. Some have never owned a car, and may be unaware of the need for third party insurance or enforcement of infringements. Others may have never had an income, and have difficulty budgeting. Concepts of contractual responsibilities as consumers in a competitive marketplace may also be unfamiliar.

African community leaders have also described the Australian legal system as ‘complex, confusing and overwhelming’. Consequently, recent arrivals may be less likely to identify legal problems, or to know how to respond:

I knew nothing about Australian law, which was why I didn’t know what to do at the beginning.

Given that many people seek help initially from within their own communities, a ‘rumour mill’ of misconceptions about Australian laws can also operate. This can exacerbate,
rather than resolve, their legal issues due to an overreliance on misleading or inaccurate information.\textsuperscript{53}

**Language and literacy barriers**

Low levels of English language proficiency impede access to legal information and support services amongst recent arrivals, particularly women.\textsuperscript{54} Many who are refugees may also have low levels of literacy in their own language.\textsuperscript{55} As the JCCD describes, these may impact upon individuals’ ability to engage with the legal system at every stage: dealing with police, engaging support services, completing forms and understanding paperwork, communicating with legal and court staff, participating in proceedings and understanding court orders.\textsuperscript{56}

This barrier prompts the need for interpreters, as further discussed below. It also means that significantly more time is often needed to explain, understand and negotiate the justice system, with flow-on effects for recent arrivals, communities, lawyers and courts.\textsuperscript{57}

The following case study illustrates the language difficulties experienced by one recent arrival with respect to door-to-door sales negotiations, as well as problematic practices amongst certain sales representatives:

*K’s story*

*She didn’t explain. She just pointed to parts and say sign here. I didn’t understand everything… there was no interpreter. After I sign, they made a phone call and I spoke. It was too many questions, and I told them it's too many questions! I don’t understand, but she just say yes. There was a man then and he didn’t ask me if I understand. Understanding English, that is the problem—they should ask me do you need an interpreter? How can I sign forms if I don’t understand? I told them I don’t understand. But they say it's okay, it’s better, just sign.*\textsuperscript{58}

**Distrust of government authorities and lack of cultural competence**

Mistrust of authorities and the law can pose a significant barrier for many recent arrivals,\textsuperscript{59} particularly refugees, who may have experienced persecution or mistreatment at the hands of the police, courts and governments.\textsuperscript{60} Low levels of trust and confidence in the justice system can prompt some groups to avoid contact with it.\textsuperscript{61} For instance, Burmese refugees

\begin{itemize}
  \item 53 Family Law Council, above n28, 33
  \item 55 Family Law Council, Ibid, 33.
  \item 56 JCCD, above n30, 7.
  \item 57 Family Law Council, above n28, 33.
  \item 59 JCCD, above n30, 15.
  \item 60 Ibid.
  \item 61 JCCD, above n37, 12.
\end{itemize}
who cannot pay debts have been identified as likely to avoid seeking legal help, as the consequence for failure to pay debts is jail in Burma.\textsuperscript{62}

Of particular concern, evidence suggests that mistrust of the Australian legal system amongst migrants actually \textit{increases} over time.\textsuperscript{63} That is, migrants who have spent considerable time in Australia having lower levels of trust than recent arrivals.\textsuperscript{64} This may stem from negative initial experiences with enforcing their rights. For example, the JCCD documented that some migrant women had to report intervention order breaches two or three times before police would respond:

\begin{quote}
An African refugee woman fled from Western Australia to Tasmania to escape her husband. The intervention order was removed, as it was deemed he posed no threat to her from interstate. However, he followed her to Tasmania and she successfully obtained a new intervention order. After the police failed to respond to multiple breaches, the woman became so fearful that she threatened him with a knife. She ended up in prison on remand for attempted assault and her children were placed in foster care.\textsuperscript{65}
\end{quote}

\textbf{Lack of cultural competency within the justice system}

Other arms of the justice system can also contribute to increased mistrust. This is particularly so when some personnel lack ‘cultural competency’ - ‘an awareness of one’s own cultural world view, knowledge of different cultural practices and views, and an understanding that linguistic and cultural differences may affect communication’.\textsuperscript{66} The following example demonstrates how a lack of understanding at the bench, combined with the absence of an interpreter, can affect individuals during court proceedings:

\begin{quote}
A woman from Africa came to Australia as a refugee. She had no literacy in her own language and had experienced significant torture and trauma. In Australia, her partner was physically and sexually abusing her. It took a long time for her to gain the courage to seek assistance.

When she went to court for an intervention order, she was not provided with an interpreter even though she spoke virtually no English. She found the entire process of going to court incredibly intimidating and was unable to look at the judge, which she said irritated him. He demanded that she look at him.

This demonstrated a lack of awareness about the trauma survivors of family violence experience, which, for this woman, added to her previous experiences in her home country. The court process exacerbated her existing trauma and she struggled to recover.\textsuperscript{67}
\end{quote}

\begin{footnotes}
\item[62] Katie Fraser, above n27, 22.
\item[63] JCCD, above n37, 1, citing Scanlon Foundation Social Cohesion Survey (2013).
\item[64] Ibid.
\item[65] JCCD, above n30, 22.
\item[66] Ibid, 44.
\item[67] Ibid, 24.
\end{footnotes}
Discrimination

The Settlement Council of Australia has expressed its unease regarding the levels of discrimination experienced by recent arrivals in Australia, referring to recent research highlighting ‘alarming’ reported incidences of discrimination,\(^\text{68}\) ranging from 39 per cent of Indian respondents, to 77 per cent of Sudanese respondents.\(^\text{69}\) The Settlement Council raised its concerns about the ‘crucial need’ to maintain the strength of provisions in the \textit{Racial Discrimination Act 1975} (Cth) in this regard.\(^\text{70}\) Similar concerns were raised by Muslim and other CALD community leaders.\(^\text{71}\)

Personal barriers

Many refugees have backgrounds of trauma and torture.\(^\text{72}\) Shame and stigma are frequently raised barriers to recent arrivals seeking help,\(^\text{73}\) especially with respect to family law matters.\(^\text{74}\) Fear of reprisal is another factor – for example, recent arrivals can be reluctant to make complaints to landlords about rental properties, because they fear eviction.\(^\text{75}\) Barriers caused by social isolation can also be particularly acute, including amongst refugee women from some Muslim communities.\(^\text{76}\) Many recent arrivals also have low levels of computer literacy, or access to computers.\(^\text{77}\)

Cultural and religious barriers

Cultural and religious barriers can preclude recent arrivals from seeking legal assistance for particular legal problems. For example, concepts of divorce and parenting embodied in Australian family law may not accord with those of families in newly arrived communities, and socio-cultural norms can discourage some individuals from seeking help outside the family for such matters.\(^\text{78}\) Some women come from cultures where it is tradition for children to live solely with their fathers after separation,\(^\text{79}\) and believe that they will ‘never see the


\(^ {69}\) Ibid.

\(^ {70}\) Ibid.

\(^ {71}\) Abbie O’Brien, ‘Vulnerable Australians voice fears over proposed law changes’, SBS (online), 21 March 2017.


\(^ {73}\) Fraser, above n\textit{27}, 22.

\(^ {74}\) Family Law Council, above n\textit{28}, 46.

\(^ {75}\) Fraser, above n\textit{18}, 39.

\(^ {76}\) Family Law Council, above n\textit{28}, 39.

\(^ {77}\) Fraser, above n\textit{27}, 35.

\(^ {78}\) Family Law Council, above n\textit{28}, 35.

\(^ {79}\) JCCD, above n\textit{30}, 15.
kids again if they seek a divorce. Further, many migrant and refugee women do not realise that their experience falls under legal definitions of family violence.

**Limited resources**

Many recent arrivals lack financial resources and perceive that seeking legal advice will be too costly. WEstjustice highlights that they often undertake low income and precarious work, which is characterised by casualization and insecurity. Low educational and literacy levels can make it difficult to find work, while some recent arrivals’ visa status provides them with limited or no work rights.

**Lack of referral from other service providers**

Fraser identified low levels of legal awareness amongst many settlement service providers as a separate barrier, noting that many tend to address recent arrivals’ problems without seeking the assistance of a lawyer. In some cases, this has led to poor outcomes, such as when arrangements for debt repayments have been arranged without regard to the protection of the client’s Centrelink income under law. Poor referrals and collaboration between legal and non-legal services was also raised by the Family Law Council.

**What are the legal capabilities of individuals within this group?**

Owing to the barriers described above, many recent arrivals, particularly humanitarian arrivals, are likely to have limited legal capability levels – the knowledge, skills and readiness to act in relation to legal problems, particularly family and civil law problems. The JCCD describes recent arrivals as generally having ‘low levels of legal literacy’.

**Are there critical gaps in services which are necessary to deliver access to justice to this group?**

The absence of sufficient free legal assistance services offering civil services, particularly those with the cultural competence to respond to recent arrivals’ needs has been identified as a critical service gap. McDonald et al also raise that existing services are not always

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80 McDonald et al, above n44, 52
81 JCCD, above n30, 54
82 WEstjustice, above n54, 18.
83 Ibid, 12.
84 JCCD, above n30, 20.
85 Fraser, above n27, 11.
86 Ibid, 23.
87 Family Law Council, above n28, 40.
88 Coumarelos et al, above n13, 59
89 JCCD, above n37, 11.
90 Fraser, above n18, 16; Allen Consulting Group, Review of the National Partnership Agreement on Legal Assistance Services: Final Report (ACG: 2014) 14, 16; Family Law Council, above n28, 4; JCCD, above n37, 10.
geographically accessible to new arrival clients.\textsuperscript{91} For example, specialised services focusing on recent arrivals’ needs appear to be limited to particular geographic, often urban, areas.

The JCCD has also raised an urgent need for more resources to support courts to respond effectively to the needs of CALD communities, given ongoing challenges in this area. This would help to better understand CALD communities’ engagement with the court system through improved data and monitoring, to build linkages with communities, to support clients and to build internal cultural competency levels.\textsuperscript{92} The Federal Circuit of Australia has recently drawn attention to significant pressures on Court workloads due to increased numbers of migration filings, which by 2016 had grown nearly three-fold in the previous five years. \textsuperscript{93} It noted that migration matters place particular demands on the court, compared to other kinds of matters, given that many migration litigants are self-represented.\textsuperscript{93}

Strong and ongoing concerns exist regarding an absence of free interpreter services to support CALD people, including recent arrivals, to negotiate the justice system.\textsuperscript{94} The JCCD comments that this affects all stages of the legal process, from police responses to final court orders.\textsuperscript{95} Its concerns about interpreters in the court system include:

- a lack of clarity about who is responsible for engaging an interpreter;
- a failure to assess the need for an interpreter, or incorrectly assessing need;
- the skill of interpreters being engaged;
- a lack of awareness amongst judicial officers and lawyers about how to work with interpreters; and
- unethical and poor professional conduct by interpreters.\textsuperscript{96}

The recent Victorian Review recognised that the need for Victorian court interpreters will expand given growing new arrival populations,\textsuperscript{97} as well as differences between Victorian courts in providing interpreters. In the Victorian Magistrates’ Court, interpreters were available in criminal and family violence matters, but concerns remained about an insufficient supply and quality. In the County Court, interpreters were provided for criminal matters, but parties were required to arrange their own interpreters for civil matters.\textsuperscript{98}

A lack of appropriate social services has been identified as undermining recent arrivals’ access to justice. Fraser has pointed towards an absence of secure and low-cost housing as underlying recent arrivals’ reluctance to address tenancy problems, and posing geographical barriers which in turn exacerbate driving and transport problems.\textsuperscript{99} Berta has concurred that this lack of housing, as well as culturally appropriate housing assistance and

\textsuperscript{91} McDonald et al, above n44, ix.
\textsuperscript{92} JCCD, above n37, 2-3.
\textsuperscript{93} Federal Circuit Court, \textit{Annual Report 2015-16} (Commonwealth: 2016), 76, 78.
\textsuperscript{94} Ibid, 2; JCCD, above n30, 16; Fraser, above n18, 24; Family Law Council, above n28, 33-35; Victorian Review, above n15, 492-4.
\textsuperscript{95} JCCD, above n30, 16
\textsuperscript{96} Ibid, 7.
\textsuperscript{97} Victorian Review, above n15, 493.
\textsuperscript{98} Ibid.
\textsuperscript{99} Fraser, above n18, 18.
tenancy advocacy services, leaves refugees disadvantaged in dealing with landlords and agents. A further issue raised by the JCCD is that women on temporary visas have limited access to women's refuges, precluding their ability to escape family violence.

Are there laws, policies and practices which exacerbate access to justice barriers for this group?

While attempting to cover the field in this area is beyond the scope of this literature review, some examples of laws, policies, practices and systems which exacerbate justice barriers for recent arrivals are discussed below.

Racial profiling

The Flemington & Kensington Community Legal Centre in Melbourne, which operates the Police Accountability Project located within the centre, highlights its ongoing concerns regarding the experiences of racial profiling by some police of certain new arrival groups (and others, including Aboriginal and Torres Strait Islander peoples). These concerns were also reflected by the Law Institute of Victoria (‘LIV’) in 2013.

Racial profiling is described as the use of race or ethnicity as grounds for suspecting someone of having committed an offence. It is considered a form of systemic discrimination which infringes an individual’s basic human rights. The LIV has highlighted research by Gordon and Henstridge that racial profiling can cause alienation, unnecessary criminalisation, detrimental socio-economic impacts and can inhibit minority groups from reporting crimes and seeking assistance from police. Gordon and Henstridge’s research found that Africans in the Flemington and North Melbourne area were found to be 2.4 times more likely to be stopped by police than other groups between 2005-2008, despite having a lower crime rate. They further noted that Victoria Police had apparently undertaken operations which specifically targeted African youth.

While progress has been made in Victoria, including through the Victoria Police’s commitment to a three year action plan from 2013 to address community concerns about discriminatory policing (as further discussed below), Police Accountability Project reports suggest that ongoing concerns remain. For example, a 2015 report released by the

100 Berta, above n25, 3.
101 JCCD, above n30, 20
105 Ibid.
106 Ibid.
Flemington and Kensington Community Legal Centre suggested that many young men of colour continued to have negative experiences of certain police force members.107 These problems included ‘over-policing’, in which young men of colour reported having been embarrassed in public through unnecessary searching or questioning based on assumptions of guilt and even reportedly assaulted by police, and ‘under-policing’, which the report’s authors considered to be common not only among young men but the CALD community in general.108 One story reported was that a mother had attended the police station three times and had required the presence of community leaders for a police officer to place a missing persons report for her teenage son, who was later found dead by the police.109

Consumer protections

As discussed, Berta, Brody and Mackenzie’s study highlighted that recent arrivals and refugee communities can be more vulnerable to misleading or illegal door-to-door energy sales practices.110 They describe sellers’ breaches of relevant laws, including those regulating unsolicited consumer agreements, prohibitions against misrepresentations, misleading and deceptive conduct and energy-specific consumer protections. They further emphasise that many vulnerable consumers are unable to provide ‘informed consent’ in a door-to-door energy sales context.111 While welcoming consumer affairs bodies’ efforts to combat such sales practices,112 they have called for further action, including through:

- greater collaboration between governments and service providers focusing on issues of settlement, energy and legal assistance;
- trialling ‘do not knock’ areas;
- providing alternative door-to-door sales strategies for vulnerable customers, such as energy market events supported by interpreters and support services; and
- an enhanced energy retailer Code of Conduct.113

In 2011, Footscray Community Legal Centre raised concerns that existing consumer protection regimes may be insufficient to protect refugee and migrant consumers in the communications industry context.114 It stated that complexity of contracts and confusing sales practices had led to many being exposed to debt and stress. It called for better consumer protections and standards by the telecommunications sector, better community servicing and more accessible complaints processes.115

107 The more things change, the more they stay the same: Report of the FKCLC Peer Advocacy Outreach Project on racial profiling across Melbourne (Flemington & Kensington Community Legal Centre: 2015), <http://www.policeaccountability.org.au/research_resources/> (‘The more things change report’).
109 Ibid.
110 Berta, Brody and Mackenzie, above n24, 5; also Curran, above n58, 40.
111 Berta, Brody and Mackenzie, above n24, 1.
112 Eg, by the Australian Competition and Consumer Commission, and Consumer Affairs Victoria: Ibid, 1.
113 Ibid.
114 Footscray Community Legal Centre, Taking Advantage of Disadvantage: Case studies of refugee and new migrant experiences in the communications market (March 2011).
115 Ibid, 7-8.
Housing

In 2012, Berta described problems arising from a significant imbalance between new arrival tenants and landlords as exacerbated by a lack of legislative protections for renters.116 She proposed reform of Victorian residential tenancies legislation with a view to:

- significantly reforming the urgent and non-urgent repairs processes, including penalties for non-compliance;
- introducing mandatory minimum rental standards;
- penalising landlords for issuing eviction notes which are without valid grounds; and
- requiring VCAT applicants to make reasonable enquiries as to respondents’ address for service.117

A comprehensive review of the Residential Tenancies Act 1997 (Vic) is currently occurring, to be completed by early to mid-2018.118

Character test visa cancellation power

Under s 501 of the Migration Act, the Minister or a delegate can refuse or cancel a visa on the basis that the person does not pass the ‘character test’.119 The Migration Amendment (Character and General Visa Cancellation) Act 2014 (Cth), which came into effect in December 2014, significantly broadened the scope of s 501. The expanded test has raised significant concerns given the breadth of the expanded cancellation powers, low cancellation thresholds, and insufficient safeguards involved.120 People who have visas refused or cancelled on character grounds have limited access to independent review. If the decision to refuse or cancel a visa was made by a delegate of the Minister, the person affected can appeal to the Administrative Appeals Tribunal. If the decision was made by the Minister, the person cannot appeal to the Tribunal. The Minister also has the power to set aside decisions made by delegates and the Tribunal in relation to character matters.121

Since this change, there has been a significant increase in visa refusals and cancellations on character grounds. During the 2015-16 financial year, 423 people had their visa application refused and 983 people had their visas cancelled on this basis.122 The number of people in detention due to visa cancellation has also increased, from 115 in October 2013, to 591 by

116 Berta, above n25, 3.
117 Ibid, 4-7.
119 Migration Act 1958 (Cth), s501.
120 Eg, Law Council of Australia, Submission to the Joint Standing Committee on Migration - Inquiry into Migrant Settlement Outcomes, 17 February 2017, 5-6; Legal Aid NSW, Submission to the Joint Standing Committee on Migration – Inquiry into Migration Settlement Outcomes, February 2017, 17.
121 Migration Act 1958 (Cth), ss 500, 501A, 501B, 501BA.
As a result of these visa changes, Legal Aid NSW has recorded 'close to a doubling of advice and minor assistance in this area, predominantly dealing with clients who are in custody or immigration detention', as well as more requests for representation to challenge decisions in the Administrative Appeals Tribunal or Federal Court.\(^\text{124}\)

### What are the costs and consequences if this group cannot access justice?

#### Generally

Fraser has highlighted a range of costs and consequences for recent arrivals when their legal needs are unmet. These include:

- shame and stress;
- legal problems creating a barrier to effective settlement in Australia and barriers to social inclusion;
- potential for a criminal record or conviction, with associated consequences for future employment;
- heightened potential for racial profiling by police; and
- high levels of debt, resulting in financial stress and eventual bankruptcy.\(^\text{125}\)

Berta, Brody and Mackenzie reinforce that negative ongoing settlement outcomes are a critical consequence for recent arrivals if they cannot resolve legal issues successfully.\(^\text{126}\) The Family Law Council has also highlighted that a failure to address family law and violence issues amongst new arrival communities increases the likelihood of family breakdown, intergenerational conflict and mental health conditions, and compromises the safety of migrant women and children.\(^\text{127}\)

Further research suggests that refugee arrivals who try but fail to obtain assistance from public legal services may experience a ‘fresh trauma’ that leads to a general belief that the Australian justice system will not or cannot help them.\(^\text{128}\) The JCCD’s consultations illustrated that the experience of going to court has an impact upon migrant women’s overall recovery from the trauma of family violence and family breakdown. Women with positive experiences at court tended to make greater progress in the healing process, while those with negative experiences were still struggling.\(^\text{129}\)

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124 Legal Aid NSW, Annual Report 2015-16, 42.

125 Fraser, above n18, 8.

126 Berta, Brody and Mackenzie, above n24, 3.

127 Family Law Council, above n28, 86.

128 Pascoe Pleasence, Christine Coumarelos, Suzie Forell, Hugh M McDonald, Reshaping Legal Assistance Services: Building on the evidence base (Law and Justice Foundation of NSW), 139, citing R Hunter, T De Simone and L Whitaker, Women and legal aid: identifying disadvantage – final report (Griffith University and Legal Aid Queensland: 2006).

129 JCCD, above n30, 36.
The Flemington & Kensington Community Legal Centre highlights that the experience of police discrimination amongst young people of colour, including new arrivals, can be profoundly negative. It states that this occurs at a vulnerable stage in young men’s lives, and that they ‘feel a reduced sense of belonging, suffer mental health issues and a longing for a place where they are valued. This creates a world of vulnerability and social isolation’. One research participant stated that:

‘... everybody that saw what was happening just kept walking past because racism is not their business. Even though it should be everybody’s business’.

Self-representation

As previously discussed, there are significant gaps in existing information regarding self-represented litigants, including the proportion who have a CALD background. However, the Victorian Review recently acknowledged evidence suggesting that self-represented litigants were more likely to be from CALD backgrounds, and were also more likely to face some form of disadvantage such as limited English, low income, limited education, disability or family violence. This included the Fitzroy Legal Service’s evidence that:

The disadvantage to a litigant in being self-represented can vary, both having regard to the nature of the legal issue and the particular circumstances of the self-represented litigant. Matters such as literacy, confidence, mental health, trauma and cultural barriers can all contribute to a significantly unequal outcome before the courts.

Berta has emphasised that ‘refugee tenants are extremely disadvantaged as self-represented litigants’, including in forums such as the Victorian Civil and Administrative Tribunal (‘VCAT’). She argues that due to their considerable language and cultural barriers and their limited legal knowledge restrict them from effectively advocating for themselves. She notes that when community legal centres lack capacity to represent a new arrival client, they usually opt not to appear, even despite having received detailed legal advice.

The JCCD has highlighted examples of the particular costs and consequences for CALD family violence victims who lack both representation and interpreters in the court system, such as the following case study:

A woman from Macedonia arrived in Australia six years ago on a student visa. She met her husband on the internet. Not long after she moved in with him, he began physically and sexually assaulting her. When she decided to end their relationship, he transferred all their savings to a separate bank account in his name. She had left all her clothes and possessions at their house and he refused to give them back. She obtained an intervention order. He responded by obtaining an intervention order against her, one of the conditions being that she could only contact him in relation to their son.

130 The more things change report, above n107, 15.
131 Ibid.
132 Victorian Review, above n15, 492.
133 Ibid, 484.
134 Berta, above n25, 25.
135 Ibid.
When she left him, the only thing she took was one of their cars. However, the car was in his name and he was demanding that she return it. He was harassing members of her family, including her elderly uncle. She sent him a text message asking him to stop contacting her family and saying that they could discuss the car when they next saw each other to hand over their son. He reported this to the police and she was charged with breaching the intervention order. She was fined $200. The Magistrate said to her, ‘I hope you learn your lesson and will never do this again’. She was frustrated, as she was made to feel like she was the one in the wrong when it was her husband who had been violent.

She was unrepresented in the Magistrates Court and was not provided with an interpreter. As she did not feel confident speaking English, she found the process of representing herself in court to be highly intimidating and difficult. She was also unrepresented in the Family Court. She felt that, because she could not speak English and could not understand the legal terminology being used, she had being ‘tricked’ into accepting interim orders in the Court that she did not fully understand.  

What measures are effective – what works, and why?

Much work has been done to overcome the barriers in accessing justice for recent arrivals. The following describes some recent key strategies undertaken, noting, however, that relatively few evaluations of this work appear to exist.

Appropriate and accessible services

Developing trust and community engagement

WEstjustice emphasises that for CALD groups including recent arrivals, the most effective strategies involve locally and culturally sensitive solutions which are based on community partnership, collaboration and leadership. This involves trust-building strategies, engaging with community leaders and other organisations working closely with recent arrivals, and recognising such strategies take time, particularly for refugees who are wary of police and government authorities. WEstjustice states that:

\[
\text{The value of face-to-face contact cannot be understated. It enables us to build relationships and empower individuals through knowledge. It also means we can connect to people who do not have access to telephones and the internet, but also for people who have low literacy, poor English skills or are unfamiliar with new technology.}
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Pleasence et al also underline the importance of trust-building as a critical first step with CALD communities, particularly humanitarian arrivals, given that many individuals are unlikely to disclose their circumstances and seek help until they feel secure in doing so.

\[\text{136 JCCD, above n30, 48.}\]
\[\text{137 WEstjustice, above n54, 10.}\]
\[\text{138 Ibid, 11.}\]
\[\text{139 Ibid, 10.}\]
\[\text{140 Pleasence et al, above n128, 138.}\]
The Family Law Council has reinforced active and meaningful community engagement as critical to build mutual trust and understanding between services and communities, and to foster individuals' willingness to connect with the justice system.\(^\text{141}\) This requires a community development approach which aims to understand the cultural needs and diversity of a community prior to developing tailored responses. Again however, it acknowledged that this can be a time-consuming, challenging and slow process.\(^\text{142}\)

JCCD stakeholder research has also recently highlighted that migrant women’s satisfaction with court processes has been linked, in the clear majority of cases, not to whether they received the outcome they sought. Rather, it was linked to how accessible courts and court processes were, how women were treated and whether they felt listened to.\(^\text{143}\) These findings have led to recommendations that:

- judicial officers should maintain an ongoing commitment to building relationships with settlement services, domestic violence services, legal services and police, in order to enable the joint provision of community education forums for migrant and refugee communities, as well as the sharing of expertise among staff;\(^\text{144}\)

- Magistrates and Family courts should implement education sessions for court users about their processes; and

- all courts should introduce Cultural Liaison Officers.\(^\text{145}\)

Developing legal literacy

A fundamentally important strategy involves helping recent arrivals to increase their ‘legal literacy’, or awareness and understanding of Australia’s legal and justice system, through targeted community education programs for newly arrived communities.\(^\text{146}\) Such programs are often more effectively delivered in partnership with migrant resource centres or settlement services.\(^\text{147}\) They are considered particularly effective when provided as part of a ‘two-way’ educational exchange,\(^\text{148}\) in which service providers are familiarised with cultural perspectives, communities’ legal literacy needs and conceptions of the law.

Forell and McDonald, reviewing the high proportions of Legal Aid NSW’s community legal education sessions which are delivered to new arrival communities, suggest that these form an important tool, both to build understanding of legal issues and to facilitate trust-based relationships.\(^\text{149}\) They recommend that community education is best directed towards such

\(^{141}\) Family Law Council, above n28, 66.
\(^{142}\) Ibid.
\(^{143}\) JCCD, above n30, 35-36.
\(^{144}\) Ibid, 52.
\(^{145}\) Ibid, 52-53.
\(^{146}\) Family Law Council, above n28, 49; JCCD, above n37, 12-15.
\(^{147}\) McDonald et al, above n44, viii.
\(^{148}\) Ibid.
communities as a stepping stone to seeking legal assistance, rather teaching clients to resolve legal problems themselves, given their generally low capability levels.\(^ {150}\)

These authors further emphasise the critical role of educating caseworkers who work with recent arrivals, as well as communities.\(^ {151}\) As a recent example, Victoria Legal Aid has trained 137 staff from AMES Australia, Australia’s largest provider of settlement services for recent arrivals, under its \textit{Settled and Safe} program, which aims to increase awareness of family law and family violence and assist newly emerging populations to adjust to Australian life and laws.\(^ {152}\)

Special consideration should be given to the mode in which community education is delivered, given that recent arrivals may have limited English skills, and sometimes literacy in their own language. As well as face-to-face education, carefully-targeted audio-visual materials can be effective.\(^ {153}\) Springvale Monash Legal Service provides the following example of targeted community education:

\begin{quote}
\textit{Springvale Monash Legal Service has been working in partnership with AMES to deliver a community development project to young people enrolled in the AMEP program every term. The project was developed as newly arrived community members are prone to experience a range of legal problems as they embark on their settlement journey in Australia. Often issues are experienced because they are not aware of their legal rights and responsibilities, nor are they familiar with the operation of the Australian legal system. The project was designed to complement and support the development of independent living skills by newly arrived young people, encompassing the ways the law impacts on daily life at particular points in their resettlement journey.}

Through experiential workshops, young people build their knowledge about their rights and responsibilities, increase their capacity to access appropriate legal assistance and expand their knowledge on the different ways a lawyer can assist with problems that do not involve the police or the courts. More than 150 students have participated in the project, and evaluation of the program in Term 2, 2015, found that 95 per cent of those who responded to the evaluation reported that they knew where they could seek assistance for legal issues. Students have sought legal advice from the service for a range of matters, and have shared their knowledge with their peers who have also engaged with the service.\(^ {154}\)
\end{quote}

As discussed above, the JCCD has also recently emphasised the need for judicial officers and courts to become more active in the joint provision of community education and engagement with recent arrivals.

\section*{Developing cultural competence}

\begin{flushright}
\begin{itemize}
\item \(^ {150}\) Ibid.
\item \(^ {151}\) Ibid, 7.
\item \(^ {153}\) WEstjustice, above n54, 11-12.
\item \(^ {154}\) Springvale Monash Legal Service Inc, Submission to the Department of Justice and Regulation: Access to Justice Review, 5.
\end{itemize}
\end{flushright}
Developing greater cultural competence within the justice sector is also considered essential to overcome recent arrivals' barriers to accessing justice.\textsuperscript{155} It includes developing culturally appropriate services, and implementing cultural competency staff training – including to overcome unconscious bias within the profession - as well as cultural diversity workplace and workforce development policies.\textsuperscript{156}

JCCD reports identify that significant progress has been made on this issue by certain courts. For example, the Family Court of Australia and Federal Circuit Court of Australia’s national Multicultural Access and Equity Policy seeks to improve community education and legal literacy, build cultural competence amongst staff, enhance service integration and enhance interpreter use.\textsuperscript{157} Several jurisdictions also now have judicial bench books promoting equality before the law, which provide statistics and information about the different values, cultures, disadvantage and barriers of CALD groups, and guidance regarding how such information should be taken into account.\textsuperscript{158} However, the JCCD notes that engagement in this area is sporadic and lacking coordination, and that additional commitment and resources are needed.\textsuperscript{159}

Delivering culturally competent services goes beyond training and guidance. The JCCD recently considered how courts could offer more culturally competent responses to migrant and refugee women experiencing family violence issues, in light of the barriers identified through its consultations. It recommended a raft of changes including:

- giving priority to establishing separate waiting areas for women attending court for family violence matters
- improving signage and information available upon arrival at court;
- introducing Cultural Liaison Officers and education strategies;
- permitting women to participate in hearings via videolink where available (or taking other measures to reduce women’s stress, including when giving evidence).\textsuperscript{160}

As well as assisting new arrivals through the legal process (see discussion below), Legal Aid ACT’s Cultural Liaison Officers (‘CLOs’) have played an important role in building cultural competency amongst its staff. Following a 2016 survey regarding staff needs in this area, its CLOs conducted staff training sessions on ‘Islam 101’ and ‘Women and Islam’. This training was positively received, as well as that provided to ACT community legal centre and community worker staff. Other CLO initiatives aimed at building staff cultural competency included a diversity newsletter highlighting key events for CALD people, a Harmony Day staff diversity project and Refugee Week staff events.\textsuperscript{161}

\textsuperscript{155} Ibid; Family Law Council, above n28, 52-53, 62, 90; JCCD, above n37, 3.
\textsuperscript{156} Family Law Council, above n28, 62-63.
\textsuperscript{157} JCCD, above n1, 80.
\textsuperscript{158} Eg, NSW and WA: Ibid, 39, 90.
\textsuperscript{159} Ibid, 6.
\textsuperscript{160} JCCD, above n30, 53-56.
\textsuperscript{161} Legal Aid ACT, \textit{Cultural Liaison Officers Progress Report (2017)}, provided to the Law Council by Legal Aid ACT.
There have been particular calls for increased cross-cultural and anti-racism training for police personnel in light of concerns about racial profiling, as discussed above.\textsuperscript{162}

**Intensive support**

Given the low levels of legal capability of many recent arrivals, the need for intensive and ongoing legal services is consistently emphasised.\textsuperscript{163} For example, WEstjustice highlights the ‘importance of particularly vulnerable groups such as newly arrived or illiterate clients needing more assistance from a CLC or other legal adviser’,\textsuperscript{164} as illustrated by the following case study:

*Pavel is a newly arrived refugee. He does not speak much English and cannot write. He got his first job as a cleaner. He often worked 12 or 14 hour shifts but was only paid for five hours’ work each shift. He was also paid below the minimum pay rate. Pavel came to our Centre because he had not been paid his last two weeks’ pay. A community worker had tried to assist Pavel to complain to the Fair Work Ombudsman, but because they didn’t know what to complain about, the complaint was closed. WEstjustice helped Pavel make a new complaint to the Fair Work Ombudsman and negotiated with his employer to receive back payment. We later learned that Pavel assisted two of his friends to negotiate back pay and legal pay rates going forward.*\textsuperscript{165}

Springvale Monash Legal Service’s case study below supports the view that intensive services are needed to assist recent arrivals, including in relation to pursuing small claims:\textsuperscript{166}

*‘Hamza’ is a young migrant who has been in Australia for a couple of years. Hamza has skills in basic tiling, rendering and plastering work and has registered a sole proprietary business in the hope of finding sub-contract work.

Hamza answered an advertisement on Gumtree seeking tilers for small sub-contracting work and was put in touch with Paul. Paul explained the job and hired Hamza to complete it as a sub-contractor. Paul agreed to pay him a fixed amount for the job. Hamza was also to be reimbursed by Paul for the building supplies and other items to he needed to purchase to complete the job.

Hamza completed the work and invoiced Paul. Paul made numerous excuses as to why he could not pay Hamza including that the owner had not paid him and therefore he could not pass it on. Hamza contacted the owner and the owner confirmed he was happy with the job and had paid Paul some time ago.

After more excuses from Paul, Hamza eventually approached him about payment and was threatened with physical violence. Springvale Monash Legal Service assisted Hamza with a small claims application at VCAT for the monies owed to him. Hamza had very little understanding of English and the legal system. Hamza was successful with his*

\textsuperscript{162} The more things change report, above n107, 19.
\textsuperscript{163} Eg WEstjustice, above n54, 43.
\textsuperscript{164} Ibid, 31.
\textsuperscript{165} Ibid.
\textsuperscript{166} Springvale Monash Legal Service Inc, above n154, 7-8
Effectively helping recent arrivals through the justice system can involve investments of time, given that clients often have limited English, low literacy levels and a poor understanding of the Australian legal system. The value of taking additional time to help is reinforced by the following example recorded by the JCCD:

An Indonesian woman who had experienced family violence was positive about the court system and largely attributed this to the assistance she received from the registrar at the Magistrates Court. He had taken the time to explain to her how long it would take him to prepare her application for an intervention order and informed her that she would meet with the magistrate after that. This simple act of explaining the process to the woman, rather than having her wait without any information, as many other women reported, led to her feeling empowered throughout the process and contributed to her positive feelings about the legal system.168

The JCCD has also affirmed the value of continuity of assistance as an important factor in reducing the stress of navigating through court processes for CALD litigants.169 For example, it has referred to the Family Court of Australia’s practice in appointing a single case coordinator to manage the administration of the case through to its conclusion. This case officer has responsibility for identifying and putting into place the support that CALD litigants need as their cases progress, including interpreters, support by community organisations and information about family law court processes.170

Interpreters and support workers

Recognising the pressing need for clarity regarding interpreters in courts and tribunals, the JCCD has recently taken significant steps in this area by developing draft Australian National Standards for Working with Interpreters in Courts and Tribunals for public consultation (‘the Standards’).171 The Standards aim to provide courts and tribunals with guidance on engaging and working with interpreters to ensure procedural fairness for people with limited or no English proficiency. They include minimum (or baseline) standards that must be complied with by courts in all circumstances, and optional (or aspirational) standards, to be met if funding and other circumstances permit.172 The Standards are directed to courts and tribunals, judicial officers, interpreters and members of the legal profession. Following public consultation, they will be launched nationally during 2017. It is uncertain whether sufficient resourcing will be available to implement the Standards. Further, they are not intended to address interpreter gaps with respect to other elements of the justice system – including recent arrivals’ interactions with police and legal assistance services.

167 Ibid.
168 JCCD, above n1, 38.
169 JCCD, above n37, 16-17.
170 Ibid.
172 Ibid.
Additionally, various agencies have responded to the need for community support and liaison workers to help guide CALD clients through the justice system. As discussed, Legal Aid ACT provides CLOs to assist newly arrived migrants through each stage of the legal process, provide information and arrange referrals to appropriate agencies, while 33 Multicultural Officers currently work from 25 police stations across NSW. As discussed, the JCCD has recently highlighted the need for CLOs in all courts.

Over approximately seven months, Legal Aid ACT’s CLOs provided non-legal support to 390 clients from 50 countries, conducted 21 community education sessions, 61 stakeholder engagement meetings, and 73 outreach sessions. An example of a positive outcome achieved for one client is below:

**Case Study: Life after Domestic Violence**

**Background**

OC was experiencing domestic violence, her ex-husband limited her access to education, employment and controlled the household income to the extent she was denied her human rights. He also insulted her, emotionally abused her and limited her contact with her mother.

OC contacted the CLO after leaving the house and separating from her husband. OC had no accommodation and no income and cared for a 5 year old daughter. OC was threatened by her ex-husband that she would not be able to access the legal system on the basis that he was in a stronger position and has an income.

**Support provided**

The CLO arranged for her to get legal advice on domestic violence orders, family law and property settlement. The CLO also assisted her to apply for legal assistance.

The CLO liaised with First Point, ACT Women’s Information and Referral Service and DVCS to find her emergency accommodation. The CLO contacted Centrelink and assisted OC to access a Centrelink payment. The CLO also arranged migration advice for OC.

The CLO referred OC’s daughter to counselling as she was struggling with the new situation and was affected by her experience with the domestic violence. The CLO assisted OC to access the ACT government return to work grant to undertake some study.

**Outcome**

OC is studying to become a childcare educator and is planning on pursuing further studies to become a preschool educator.

OC is living with her daughter at a refuge waiting on a housing ACT property, her daughter is doing very well at school.
OC has legal representation and is planning to – in the long run – apply for her mother to come live with her in Australia.\textsuperscript{177}

Flexible responses

The Family Law Council has championed the adoption of flexible service delivery approaches for recent arrivals. These approaches take into account the need for additional time to respond to clients' needs, to respond to specific, local community circumstances and to deliver services through a broader community engagement and development model.\textsuperscript{178}

Targeted services

The significance of triage models in identifying new arrival or CALD clients early in their engagement with the justice system, and referring them to appropriate services has been stressed.\textsuperscript{179} For example, the JCCD has described the pre-trial case management stage as of particular importance, as this offers courts the opportunity to identify whether a person identifies as CALD, identify the need for interpreter services, understand their unique needs and circumstances, and refer litigants to any appropriate support services.\textsuperscript{180}

Proactive strategies to reach recent arrivals are also important given their lesser likelihood of identifying legal problems or knowing how to respond. An increasing emphasis has been placed by legal assistance services on fostering networks with sources which are already known and trusted by recent arrivals,\textsuperscript{181} such as migrant resource centres and community leaders (see Innovative approaches below).\textsuperscript{182}

These strategies include developing tools to help ‘problem noticers’ to identify and refer legal problems amongst recent arrivals. For example, LawRight’s (formerly QPILCH’s) Legal Health Check tool, which is aimed at community workers assisting vulnerable clients, includes a tailored set of questions aimed at identifying recent arrivals’ legal needs across key areas including money troubles, unpaid fines and crimes, housing, relationships and employment issues.\textsuperscript{183} The Centre for Advocacy, Support and Education for Refugees has emphasised the need for specially trained staff to undertake such legal health checks, given the myriad of legal issues and the complex barriers, including backgrounds of trauma, which refugees have often experienced.\textsuperscript{184}

Outreach

A key example of an outreach service which was designed to provide more accessible legal services to CALD groups experiencing disadvantage and limited access to legal assistance

\begin{flushleft}
\textsuperscript{177} Ibid.
\textsuperscript{178} Family Law Council, above n28, 68-78.
\textsuperscript{179} WEstjustice, above n54, 22; JCCD, above n37, 16.
\textsuperscript{180} JCCD, above n37, 16-17.
\textsuperscript{181} WEstjustice, above n54, 17; Springvale Monash Legal Service, above n154, 5; 12; McDonald et al, above n44, 12.
\textsuperscript{182} McDonald et al, above n44, 13.
\textsuperscript{184} CASE, above n72, 2.
\end{flushleft}
is the recent partnership formalised between Legal Aid NSW and Settlement Services International Inc (SSI).\textsuperscript{185} Under a Memorandum of Understanding (MoU), outreach family law and civil law (including specialist immigration law) clinics operated at 10 separate Migrant Resource Centre (‘MRC’) locations and three suburban Legal Aid NSW centres across the greater Sydney area, Illawarra and Newcastle.

An evaluation of the partnership’s first year found ‘compelling evidence of the SSI Partnership as an effective pathway to clients from diverse cultural backgrounds, including those newly and recently arrived in Australia’.\textsuperscript{186} Evaluation author Dr Hugh McDonald commented that ‘the beauty of this model of service is that it’s taking services into the locations where people with problems can go and obtain services from a trusted location’.\textsuperscript{187}

Under the model:

Solicitor in charge Ruth Pilkinton said she helped a domestic violence victim from South East Asia who had previously been unable to access help because her husband had controlled her movements. ‘But he allowed her to come into the migrant resource centre so she was able to come and talk to me,’ Ms Pilkinton said. ‘We were able to problem-solve how she was going to deal with that situation and protect her and her child. He [the husband] was actually sitting outside in the car with the young child’.\textsuperscript{188}

In particular, the results showed that:

- eighty-eight per cent of assistances provided through the SSI Partnership were to clients born in non-English speaking countries, compared to 17 per cent of other outreach assistances and 24 per cent of assistances provided in Legal Aid offices generally;
- SSI Partnership assistances comprised only 2.5 per cent of all Legal Aid NSW assistances in the project year, but they comprised 21 per cent of all assistances provided to people who had been in Australia for one or two years;
- the average number of years that clients had been in Australia was significantly less for SSI Partnership assistances (seven years) than for other outreach (18 years) or Legal Aid offices (17 years);
- the SSI Partnership assistances successfully reached new client groups, with significantly few clients already knowing about Legal Aid (38 per cent of SSI Partnership clients, compared to 73 per cent of matters dealt with at Legal Aid offices); and
- 42 per cent of clients found out about the clinic through a MRC worker, while 25 per cent were repeat clients, and 21 per cent were referred by another agency, family member or friend.\textsuperscript{189}

\textsuperscript{185} McDonald et al, above n44.
\textsuperscript{186} Ibid, 21.
\textsuperscript{187} Mohamed Taha, ‘Hundreds of migrants call on lawyers for free help in Sydney’s west; Lawyers working in migrant resource centres in Sydney have helped hundreds of new arrivals obtain legal assistance that would otherwise be difficult to access’, ABC (online), 10 December 2014, https://search-proquest.com.virtual.anu.edu.au/docview/1634597892?accountid=8330
\textsuperscript{188} Ibid.
\textsuperscript{189} McDonald et al, above n44, viii-ix.
The placement of specialist immigration outreach services in South West and Western Sydney locations under the partnership also increased the overall number of immigration assistances provided by Legal Aid NSW. This suggested the appropriate targeting of services to CALD clients who were residing in these locations.

The evaluation provided confirmation that the benefits of the SSI Partnership for clients, MRCs and Legal Aid NSW outweighed the costs. These benefits included improving access and equity for a very disadvantaged group, enhancing knowledge and understanding of the legal system, and increasing client ability to contribute productively to the community.

Additional service challenges were, however, identified in trying to reach clients about issues that are more culturally sensitive, such as family law matters. However, the benefits of doing so are illustrated in the following case study:

*I had one client who has no English whatsoever, has two little children, one is about 11, one is about four of five, so the older one is not that young. What the father essentially told her was that, ‘Because we want to separate, I’m going to take one of the children and you can take the other’. And so she hasn’t seen [one] child at all for two years…. She believed that this is the way that the Australian system works – where you divide everything 50-50. And so she came to me wanting a divorce… at the end of the session – because I started asking her questions about the living arrangements for the children – she told me that the 11 year old she hasn’t seen in a very long time. That’s when I gave her advice about what options are available for her to at least spend time with her son. And she was in tears. She didn’t know that that was an option available to her. She didn’t know that all the property that was under his name that she would be entitled to [claim]… basic things that we take for granted… She was in complete tears. She couldn’t believe that there was a possibility that she was going to see her son.*

In evaluating the SSI Partnership, McDonald et al identified a number of key features as instrumental to its success. These included having a clear and realistic purpose, a mutual commitment to the partnership, and recognition of its value, the complementary expertise between services which supported a shared ‘holistic’ approach, and the development of trusted relationships between solicitors and MRC staff.

The development of agreed MoU terms and conditions, baseline needs analysis, the peak organisational relationship between the bodies, work of the Steering Committee and shared commitment to evaluation also underpinned the SSI Partnership’s success. However, a critical message emphasised by McDonald et al was that an outreach model of this kind requires ongoing commitment and resourcing to support the collaboration required to sustain relationships and services at outreach locations.

190 Immigration assistances were increased by 65 per cent compared to the previous six months: Ibid.
191 Ibid. x.
192 Ibid. ix.
193 Family solicitor interviewee, Ibid, 53.
194 Ibid, ix
195 Ibid. x.
196 Ibid, xi.
Beyond legal assistance services, the JCCD has emphasised the value of courts implementing outreach strategies with newly arrived communities as an important mechanism in overcoming mistrust of the justice systems.\(^{197}\) It states that:

*Community engagement through outreach programs can provide hands-on experience in how the judicial system works, and how disputes are resolved in a democratic society. Bringing community groups into the courts, or encouraging judicial officers to regularly engage with settlement programs is important in building inclusive and informed courts. Proactive outreach programs can enhance existing community relations committees, which have been found to reactive, have limited reach and may be slow to respond to need.*\(^{198}\)

A recent JCCD review highlighted a number of community outreach strategies being implemented by courts and other justice bodies. For instance, the South Australian Courts Administration Authority (CAA) employed a full-time Courts Education Manager as an outreach teacher who regularly visited and hosted workshops and tours of courts with young migrant students. Moreover, judicial officers gave talks to community groups, including a judge who attended a soccer match to address young migrant people trackside about the work of the court.\(^{199}\) However, this review highlighted that such engagement was ‘sporadic’ and could be strengthened significantly nationwide, as ‘courts are likely missing out on significant opportunities to embed an understanding of their role within CALD communities’.\(^{200}\) The JCCD has recommended that a toolkit for community engagement be developed to help courts orient themselves outwards, to include all CALD communities, through outreach and consultation programs.\(^{201}\)

**Joined-up services**

The merit of joined-up and holistic responses to recent arrivals' needs, noting that these often encompass multiple, inter-related legal and non-legal needs, is well recognised.\(^{202}\) As discussed, this involves both legal and non-legal services building strong partnerships, collaborations, and referral mechanisms. The SSI Partnership outreach model above forms an example in this regard, with McDonald et al commenting that co-location, as well as case management for particularly vulnerable clients, can help to successfully implement such strategies.\(^{203}\) Integrated service delivery – for example, local community legal education which is linked directly to advice and further assistance where required – has also been recommended.\(^{204}\)

The Law Council has called for more integrated and better resourced settlement services which would allow people from migrant backgrounds to access information and referral pathways for legal services, education, healthcare, language and social services in the one

\(^{197}\) JCCD, above n37, 1.
\(^{198}\) Ibid, 3.
\(^{199}\) JCCD, above n1, 63.
\(^{200}\) Ibid, 6.
\(^{201}\) JCCD, above n37, 3.
\(^{202}\) Family Law Council, above n28, 57; JCCD, above n30; Victorian Review, above n15, 175.
\(^{203}\) Law Council of Australia, above n120, 2.
\(^{204}\) Coumarelos et al, above n13, 63-64
It notes that an integrated service model for migrants has recently been recognised by the Victorian Auditor General, while the Australian Commonwealth Government has also committed to such a model in the National Settlement Framework. Integrated responses can also make a positive difference within courts. For example, the JCCD has supported greater interaction between legal, settlement and domestic violence services to share expertise, make appropriate referrals and better support migrant women experiencing family violence through the court process, referring to the following case study:

A woman in her mid-20s from the Dominican Republic left her relationship of three years following ongoing domestic violence. Unlike the majority of women consulted, she was fluent in English and had no communication difficulties. In addition, she was able to access a wide range of services to support her decision to leave her partners. She gained a place at a women’s refuge. She also received assistance from a support worker at court, who spent a significant amount of time helping her draft her application for an intervention order, as well as her application for legal aid, which she received. She was successful in obtaining an intervention order that met her needs. Overall she found the court process to be ‘empowering’ and attributed this to the extensive support she had received from a range of people and services. This demonstrates the importance of integrated support.

Another interesting example of a joined-up, holistic and integrated solution for newly arrived communities is the Victorian Government’s Refugee Action Program (‘RAP’). This initiative, which is managed by its Settlement Coordination Unit, works to empower newly arrived refugees to achieve sustainable settlement outcomes in local communities, through better access to services and community driven solutions.

The RAP incorporates the delivery of Rights and Responsibilities Seminars, which provide information on laws, legal systems and engaging in democratic institutions. Legal awareness seminars, including by Legal Aid, the Department of Justice and Consumer Affairs Victoria, form one component of a much broader programme covering health, housing, employment and training sessions.

A significant portion of RAP funding is ear-marked as community ‘enabling funding’, which can be used for a wide range of capacity-building activities and community-driven projects. This enables communities to determine in collaboration the means and methods by which they are supported and empowered. The RAP emphasises the importance of collaboration and coordination between service providers and stakeholders, to coordinate and leverage external resources to better address community needs.

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205 Law Council of Australia, above n120, 2.
207 Family Law Council, above n28, 57; JCCD, above n30, 27.
209 Ibid.
211 Ibid, 1.
A 2012 evaluation found that the RAP was highly valued by staff and refugee communities, and enhanced refugees’ knowledge and skills for life in Australia. It found that refugees’ settlement outcomes were improved by overcoming isolation and facilitating employment and training opportunities. This evaluation was, however, qualitative, as the RAP lacked clear outcome data supporting quantitative assessments.

Factors cited as critical to the RAP’s success included:

- the role of the RAP coordinator as ‘a bridge to the community,’ helping refugees to navigate Australia’s complex systems and processes, and providing a focal point of access to communities by service providers;
- its flexible approach, which accommodated changing community needs; and
- its emphasis on building community capacity and creating community-owned solutions.\(^{212}\)

However, factors hindering its success included: the timeframe of funding cycles; personnel changes; shifting community priorities, managing mixed expectations and limitations of reach. Key lessons drawn from the evaluation reinforced the value of flexible approaches, the time taken to build community development approaches, and the importance of better data collection and reporting.

The RAP approach is noteworthy for its particularly holistic and flexible approach, which draws legal service providers into a broader, coordinated pool of community services. However, as discussed, hard data is lacking regarding its effectiveness.

**Timely services**

The kinds of legal problems faced which are often faced by recent arrivals have been characterised as ‘problems of settlement’: problems which usually arise within the first years after arrival in Australia, as recent arrivals seek to establish themselves.\(^{213}\) They ‘arise in part because recent arrivals in new communities lack the background cultural knowledge that most Australians take for granted, and the language skills to learn about Australian systems’.\(^{214}\)

Given these findings, the need for community education to be delivered during this initial settlement phase is critical as an early prevention strategy for recent arrivals.\(^ {215}\) This thinking underpins many of the legal literacy programs discussed above. However, the JCCD has recently cautioned that recent arrivals may have difficulty in retaining information provided early in their settlement process, given the many changes in their lives during this time, and that additional ongoing education is needed beyond this phase.\(^ {216}\)

Outreach programs, such as the SSI Partnership above, as well as Legal Health Checks conducted by community service providers, constitute another form of ‘timely’ responses for

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212 Ibid.
213 Fraser, above n18, 7.
214 Ibid.
215 Fraser, above n18, 9; JCCD, above n37, 7.
216 JCCD, above n30, 20.
recent arrivals as they create more accessible, and earlier pathways to legal help through services which they trust and frequent.

Timely responses for this group also involve basing legal assistance around events and life transitions which are likely to result in legal need. One example concerns the potential for family breakdown during the settlement phase. Another example focuses on the likelihood of debt and contractual difficulties in the initial settlement years. ‘Bring your bills’ clinics run by community legal and pro bono clinics focus on increasing recent arrivals’ understanding of their contracts, as well as providing help to dispute bills and cancel contracts, and to access financial hardship programs where appropriate. The following case study from Justice Connect demonstrates the positive benefits of such assistance:

Kiruparajan, a Tamil migrant from Sri Lanka, arrived in Auburn, Sydney, two and a half years ago. As with any new migrant, adjusting to life in a new country, with a new language and new customs, proved challenging. But the process of getting a phone with which to call home should not have been one of those challenges.

Access to a phone is crucially important for recent arrivals to Australia looking to stay in contact with loved ones back home or to seek employment in their new home. Unfortunately, some phone companies brazenly and blatantly exploit the linguistic and cultural challenges some new migrants face upon arrival.

When ‘Kirupa’ signed his two year contract, it was clear he could not understand the sales representative. He was not provided with a clear explanation about what his contract meant, or an interpreter to explain it to him. He began using his phone, thinking his monthly bill was in fact a one-off, pre-paid expense. Seven months later, he found himself facing a phone bill of over $2,500. Unemployed and reliant upon a small amount of government financial support, the instalments were well beyond what he could afford. Not only was he stressed by this large debt, he was concerned about how it was going to affect his credit rating.

Seeking help, he was put in touch with Justice Connect MOSAIC, whose pro bono lawyers worked with Kirupa to help him explain his situation to the telecommunications company. After much discussion, the company agreed for the debt to be fully waived in exchange for the return of the mobile phone. Kirupa was thrilled. Empowered by the legal help he received Kirupa now educates people in his community about the legal pitfalls facing new migrants and where to go when they get into trouble.

Innovative approaches

The Flemington Kensington Community Legal Centre’s Walking Alongside Program is a unique socio-legal program, designed to provide highly specialised and integrated health and family support to young people of Sudanese and other African migrant/refugee backgrounds who are clients of the Flemington Kensington Community Legal Centre and are pursuing police accountability through often long-running legal actions.

218 Ibid, 24.
The program aims to improve the health, legal and justice outcomes for clients, their families and communities by providing holistic, empowering and culturally appropriate, individual and community based responses to clients in conjunction with legal support and advocacy.220

The Youth Engagement Officer works with these young people to support them in their own systemic advocacy work. The Youth Engagement officer also supervises the Peer Advocacy Outreach Team. This expands the Walking Alongside Program with a team of young peer-advocacy workers who provide outreach, mentoring and critical support to other young people from diverse backgrounds who have experienced, or are at risk of experiencing, social exclusion and disadvantage.221

A 2015 evaluation of the Walking Alongside Program by Liddell and Johns, while involving a small sample size, indicated that most of the program’s objectives were being met.222 The young engagement officers were recognised for their unconditional care and positive regard for the young people and their families, and their ability to work collaboratively with other services to provide holistic case management.223 The professionals involved reflected a deep understanding of the client group and the importance of ‘walking alongside’ them. They believed that without the youth engagement officer, many clients would not have pursued or continued with their police accountability cases. Participants felt that the youth engagement officer helped them to feel more empowered and confident to pursue their rights.224 All those interviewed, including the clients, felt that the Walking Alongside Program should be replicated in other community legal centres. However, they were concerned that there was insufficient time and funding for the youth engagement officer position.225

In another example, the Sir Zelman Cowen Centre at Victoria University in Melbourne demonstrates how university law schools can work with industry, government and multicultural communities to enhance both the community’s understanding of the law, and the legal sector’s engagement with the community.226 The centre provides legal education, training and research, specialising in law and cultural diversity. Its initiatives include:

- the first International Faith-Based Governance and Dispute Resolution Conference, an interfaith gathering of leaders which will be held in December 2017;
- an Aspire program for young high-achieving Muslim women, to help them become leaders and influencers in their communities;
- community governance programs, to help community leaders and organisations understand and adhere to best practice in governance. These include capacity building programs for community leaders on current issues such as family violence and faith-based dispute resolution training;


221 Ibid.

222 Liddell and Johns, above n219, 5

223 Ibid.

224 Ibid, 5-6.

225 Ibid, 6.

• community LEAP into Law school education programs, to help high school students, particularly from low-socio-economic communities across Victoria, to pursue legal related studies and careers; and

• training for the Australian and international legal sector.

In partnership with the Islamic Council of Victoria and the Scanlon Foundation and in an Australian first, the Centre recently delivered a 12 week training program to imams over 12 weeks regarding aspects of commercial law, family law and marriage and divorce. This program was developed to support Victorian imams in their quasi-judicial role on the Islamic arbitral body, the Mejlis, and to support them to engage and advocate on behalf of their communities with governments, courts and the legal profession.227

At the same time, the partnership piloted a grassroots training program for 20 Muslim women from CALD backgrounds, with participants trained as peer-to-peer supporters of other women within their communities needing information and assistance with family law, including family violence issues. Pilot funding was extended in 2017 for the women to organise ‘Home Gatherings’ for members of their communities, with Her Project Inc, a young leadership group for Muslim women in Australia. The aim is to facilitate a ‘ripple effect’, where information on family, violence prevention and gender equality is exchanged in a safe space. Her Project Inc co-founder Kauthar Abdulalim states of this initiative that:

‘These are issues that are universal, not just specific to the Muslim community but we feel as Muslim women it’s our duty to empower our own community because we speak their language, we understand the culture, we know how difficult it can be sometimes’228

Addressing laws, policies and practices which exacerbate access to justice barriers

An example of timely and strategic legal intervention which has assisted recent arrivals is WEstjustice’s ‘bugger off’ letter.229 This letter describes the financial and personal circumstances of a client and argues that it would be in the creditor’s interest to save time and expense of litigation by waiving the debt owed to it. The letter relies on s12 of the Judgment Debt Recovery Act 1984 (Vic) protecting a vulnerable client’s income from enforcement of a debt, and has proven effective with insurance, utility and telecommunications companies, banks, debt collection agencies and even private individuals. It is widely used by financial counsellors and community lawyers.230 WEstjustice recently noted that this letter had saved vulnerable clients over one million dollars in outstanding debts over a nine year period.231

228 Margaret Burin, ‘Muslim women unite to encourage daughters to have healthy relationships,’ ABC (online), 26 April 2017, <http://www.abc.net.au/news/2017-04-26/muslim-women-encourage-daughters-to-have-healthy-relationships/8468192>.
229 WEstjustice, above n54, 27.
230 Ibid.
231 Ibid.
Buchanan\textsuperscript{232} discusses various examples demonstrating how systemic advocacy by community legal centres has resulted in positive change. These include Flemington and Kensington Community Legal Centre’s efforts to tackle racial profiling and racial discrimination by police against African and Afghan Australians in Flemington and surrounding neighbourhoods, Victoria, including through its Police Accountability Project. The centre brought a test discrimination case against Victoria Police in the Australia Federal Court on behalf of 17 victims. This was settled out of court, but the outcome included securing agreement from Victoria Police to commission an independent review of its training and practices. Following this inquiry, Victoria Police released its \textit{Equality is Not the Same} report in 2013, which committed to a three-year action plan to address community concerns about discriminatory policing. As a result, Victoria Police: introduced requirements for police to provide receipts to individuals who are stopped, as an accountability mechanism; introduced new training for all members regarding dealing with vulnerable groups; and established a broad community reference group network, as well as a Chief Commissioner Human Rights Advisory Committee. Flemington and Kensington Community Legal Centre worked to ensure that community voices and experiences were central to the reforms, and has continued to hold regular community meetings to monitor the police action plan’s progress.\textsuperscript{233} However, despite this progress, there have been recent concerns raised regarding whether these changes have had a lasting impact, and calls for ongoing action.\textsuperscript{234}

Another example highlighted by Curran\textsuperscript{235} and Buchanan\textsuperscript{236} is the work undertaken by Footscray Community Legal Centre on exploitative taxi driver conditions. The centre established the Taxi Driver Legal Service in 2011, as taxi drivers (mostly refugees or newly arrived migrants on low incomes) were seeking help for unique and complex legal problems. The centre identified several systemic issues, including that drivers were exposed to serious financial risk every time they drove, because most taxis were not properly insured. The drivers’ status as bailees, rather than employees, also meant that they were subject to a range of serious problems associated with poor pay, legal entitlements and work safety. The centre worked to document these problems and recommend reforms. Many of its recommendations were included in a subsequent Victorian Government taxi industry inquiry report, and were implemented by the Victorian Government. Consequently, taxi drivers’ agreements now include certain implied terms, including compulsory insurance covering taxi drivers for third party liability, drivers receive a greater share of fares earned and have greater leave entitlements. Footscray Community Legal Centre has established that over time, the changes to insurance arrangements alone will protect drivers and owner-drivers in up to 1000 motor vehicle accidents per year, and will remove up to 100 civil debt cases per year from the courts.\textsuperscript{237}

\begin{footnotesize}
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\item[232] Liana Buchanan, ‘Community Lawyers, Law Reform and Systemic Change: Is the End in Sight?’ in Asher Flynn and Jacqueline Hodgson (eds), \textit{Access to Justice and Legal Aid: Comparative Perspectives on Unmet Legal Need} (Hart: 2017), 141.
\item[233] Ibid, 143-144.
\item[235] Curran, above n58, 37-39.
\item[236] Buchanan, above n232, 144-145.
\item[237] Ibid.
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Finally, and Curran\textsuperscript{238} and Buchanan\textsuperscript{239} highlight Consumer Action Law Centre’s Do Not Knock campaign, which it launched in response to concerns regarding door-to-door sales targeting of vulnerable people, including new arrival and refugee communities. Consumer Action developed and distributed a ‘Do Not Knock’ sticker for people’s houses, provided consumer information, liaised with industry and regulatory agencies, lodged complaints and contributed to law reform proposals. The campaign resulted in the successful prosecution of two large energy companies by the Australian Competition and Consumer Commission. It led to three energy companies in Victoria ceasing selling door-to-door and a Federal court ruling that the ‘Do Not Knock’ sticker amounted to a request to leave a property.\textsuperscript{240} By 2013, over 300,000 ‘Do Not Knock’ stickers had been distributed across Australia.\textsuperscript{241}

What are the knowledge gaps?

Several gaps exist regarding information about recent arrivals and their access to justice in Australia. As a general comment, Berta has previously noted that ‘academic and quantitative research in this area is scarce and would be of great utility’.\textsuperscript{242} Many of the reports relied upon above have been produced outside the academic sector. Further, much of the available literature focuses on issues and activities in the South-Eastern jurisdictions. Less information appears to be available regarding other jurisdictions.

As previously discussed, the LAW Survey did not survey people without landlines. This may have excluded many recent arrivals, noting that during the settlement period, many may be living in transient housing arrangements and may be less likely to have fixed telephone lines. A specific survey into recent arrivals’ legal needs and responses to their legal problems may be warranted.

The JCCD has previously highlighted the lack of information about the knowledge, perceptions and attitudes of many CALD communities toward the courts and justice system, recommending that a comprehensive survey be undertaken in this regard.\textsuperscript{243} The JCCD highlights that it is critical for courts and other justice system mechanisms to better understand diverse communities’ perspective, if they are to address issues of trust and improve access to justice.\textsuperscript{244} This research could also delve deeper into the 2013 Scanlon Foundation Social Cohesion Survey finding that migrants’ trust in the legal system in Australia declines as they stay longer in Australia.\textsuperscript{245} It would be worthwhile to confirm this finding and to explore its underlying reasons.

\textsuperscript{238} Curran, above n58, 29-34.
\textsuperscript{239} Buchanan, above n232, 147-148.
\textsuperscript{240} Ibid, citing Australian Competition and Consumer Commission v AGL Sales Pty Ltd [2013] [2013] FCA 1030.
\textsuperscript{241} Ibid, citing Consumer Action Law Centre.
\textsuperscript{242} Berta, above n25, 11.
\textsuperscript{243} JCCD, above n37, 2.
\textsuperscript{244} Ibid.
The JCCD has also supported an analysis being undertaken of the cost of interpreting services, and its impact on access to justice.\textsuperscript{246} Given the critical role of interpreters, this would be an important piece of work which would complement the JCCD’s current efforts in establishing national interpreter standards.

The JCCD’s recent findings regarding migrant and refugee women have emphasised the need to ensure better accountability within the justice system. This incorporates the need to improve data collection regarding the cultural, linguistic and gender diversity of users, and developing specific ways to measure progress, including:

- setting key performance indicators and benchmarks;
- undertaking regular user satisfaction surveys;
- establishing complaints mechanisms;
- undertaking surveys of judicial officers and court staff; and
- public reporting on progress and changes being made.\textsuperscript{247}

The Family Law Council has also previously identified a need for more accurate data collection strategies with regards to CALD groups, including recent arrivals,\textsuperscript{248} a finding which applies to legal assistance services, as well as courts. Data is lacking with respect to the characteristics of self-represented litigants, including those with CALD/new arrival backgrounds, and their outcomes in courts and tribunals. Data which would support more empirical evaluation of innovative measures adopted is also needed.

The need for further research and inquiry into the practices and experiences of racial profiling amongst new arrival groups and other people of colour, including Aboriginal and Torres Strait Islander peoples, has also been identified as a priority knowledge gap.\textsuperscript{249}

**Possible priorities for discussion**

The above material suggests that priority actions with respect to recent arrivals include ensuring that:

- *free legal assistance services*, particularly those providing assistance with civil and family matters, are readily available to new arrival communities. These should be sufficiently funded to ensure that they are delivered in a culturally appropriate manner, are easily accessible and delivered through trusted mechanisms including through outreach and joined-up strategies. They also need to be flexible enough to meet local and emerging needs, to build strong collaborations and trust-based relationships with critical non-legal services such as settlement services and new arrival communities. Education and training which empowers recent arrivals and their caseworkers is also important, supported by intensive and ongoing assistance where needed. Performance measures should allow the necessary time to respond effectively to new arrival

\textsuperscript{246} JCCD, above n37, 2.
\textsuperscript{247} Ibid, 49.
\textsuperscript{248} Family Law Council, above n28, 87.
\textsuperscript{249} The more things change report, above n107, 19.
communities. Services should be encouraged to engage in systemic advocacy which aims to benefit these communities.

- **courts and tribunals** are sufficiently resourced to respond effectively to the needs of CALD communities. This would seek to understand CALD communities’ engagement with the court and tribunal system through better data and monitoring, to build linkages with communities, service providers including settlement services, to develop outreach and education strategies, to support clients through court processes, including through investments of time to explain processes and outcomes, to work more effectively and appropriately with interpreters, and to build internal cultural competency levels.

- professional, appropriate and skilled interpreters are readily available and free to recent arrivals who cannot afford them, at all levels of the justice system, having regard to the JCCD’s Standards.

- key non-legal services are supported with resources and training to collaborate closely with legal services, spot issues and refer clients where necessary;

- underlying social supports, such as low-cost, secure housing for recent arrivals, are readily accessible;

- key data gaps identified above are addressed;

- evaluation of innovative measures can be undertaken; and

- laws, policies and practices causing concerns with respect to new arrivals, particularly with respect to racial profiling by some police members, consumer protections, housing and visa cancellation powers, are addressed.