



**ethnic
communities'
council of
victoria**

9 May 2008

ECCV SUBMISSION TO THE PARLIAMENT OF VICTORIA'S LAW REFORM COMMITTEE

Inquiry into Alternative Dispute Resolution

1. The Ethnic Communities' Council of Victoria (ECCV) welcomes the opportunity to provide input to the Law Reform Committee's inquiry into Alternative Dispute Resolution.
2. Established in 1974 as a voluntary community based organisation, ECCV is now a broadly based, state-wide peak advocacy body representing ethnic and multicultural communities across Victoria. For over 30 years, ECCV has remained the principal liaison point between ethnic communities, government and the wider community in Victoria. ECCV has been a key player in building Victoria as a successful, harmonious and multicultural society today.
3. ECCV believes that in a multicultural society, it is necessary for the law and its processes to be continuously adapted so as to remain relevant and equitable to the needs of all peoples and cultures in Victoria. Many Victorians that come from culturally and linguistically diverse (CALD) backgrounds have different understandings and experiences of the law. It is imperative that the legal system is sensitive to and reflect these experiences and ensures that it serves the interests of all Victorians.
4. ECCV further believes that in terms of equitable legal processes, our legal system should ensure the fundamental right of people from CALD backgrounds to access qualified court interpreters whenever they face language difficulties. The Victorian Government and legal authorities should also provide information and resources in community languages so all Victorians have knowledge of and access to the legal system and its applications.
5. ECCV commends the Law Reform Committee's decision to establish a forum discussing issues surrounding CALD communities. Such consultations provide opportunities for CALD communities to have a direct say in shaping service delivery. ECCV believes that using Alternative Dispute Resolutions (ADR) has significant advantages for a client especially if an agreement is reached at an early stage. These advantages include savings in cost and time, less stress and intrusion in lives of the parties and greater flexibility for clients. One of the great advantages is that parties have control over the process avoiding court waiting lists and more formal processes. Another great advantage of ADR is that unlike the court system where everything is on the public record, ADR can remain confidential. People from CALD communities may wish to keep disputes and legal issues private due to cultural stigma and traditional views.

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6. Language difficulties provide the most difficult barrier for litigants from CALD backgrounds. Due to their lack of English language skills, some people may feel intimidated and threatened especially when ADR often involves bringing the parties together, which sometimes can be quite confronting. Culturally, many groups also may not understand or appreciate the whole process because of their experiences back in their home countries.
7. New and emerging communities such as those from the Horn of Africa and the Middle East may also have a distrust of legal systems that can also act as a barrier to the use of legal services. Due to widespread illiteracy many African-Australians are unaware that community legal centres offer free services such as ADR. New and emerging communities may face serious difficulties in obtaining equitable access to justice and many of these difficulties can be attributed to language barriers and a lack of knowledge and awareness of the legal system.
8. As with medical encounters, the issue of fear and potential embarrassment also emerges around legal issues. Again small communities are afraid of accepting interpreters should the interpreter be a member of his or her community, and in such cases the client may feel uncomfortable in discussing sensitive legal matters through such an interpreter. A campaign aimed at new and emerging communities to promote a greater assessment to professional and legal standards interpreters are subject would be beneficial. This would increase new and emerging community members' sense of confidence in approaching and dealing with the legal system and interpreters. While new and emerging communities may be ignorant of Victoria's legal processes, they also remain apprehensive about engaging with the legal system.
9. Legal practitioners need an overall appreciation of the cultural and ethnic backgrounds of their clients. ECCV's understanding is that there are compulsory 'Continuing Development Rules' which all legal practitioners have to comply with. For example, this involves compulsory attendance of a certain amount of seminars and workshops on different topics such as Ethics and Professional Responsibilities, Professional Skills and Practice Management.
10. While the discussion paper mentions the importance and need for up-to-date and continuous training for legal practitioners, ECCV further recommends that all ADR service providers develop a cultural awareness training program for new and existing mediators and arbitrators. Courses and training should involve case studies, group work and visits to community groups. Cross cultural training of legal practitioners would increase cultural sensitivity and knowledge of cultural issues and attitudes.
11. As announced in the 2008-09 Victorian State Budget, the \$8.2 million invested in justice programs over four years under the Refugee Support Strategy should also include opportunities to fund initiatives such as information campaigns and packages, liaising newly arrived communities with Multicultural Liaison Officers and to improve access to ADR services for newly arrived refugee communities. Many refugee communities have never dealt with a systematic legal structure, which creates difficulties accessing the legal system when required. ECCV is concerned that the minimum usage of civil ADR system by some people from refugee and migrant communities may also relate to the lack of knowledge about its existence.
12. ECCV recommends developing positive strategies around community education and awareness as a policy priority. ECCV is of the strong opinion that referral protocols



between ethno-specific agencies and mainstream legal providers could be strengthened. Bringing ethno-specific agencies into the planning framework fosters a direct connection with CALD communities. Successful steps include identifying an ethno-specific agency that has good links with their community to ensure stronger involvement and communication with CALD communities. Multicultural organisations such as Migrant Resource Centres are also very effective at connecting with CALD and refugee communities in this way.

13. An effective communication strategy would be to utilise ethnic radio stations, newspapers, channels SBS and 31 to publicise the existence and advantages of ADR processes and to advertise any information and education seminars run by legal providers. Many CALD communities consider ethnic newspapers and media to be a more important source of information than mainstream media service providers. ECCV recommends that the committee support a CALD communications strategy as a future priority. ECCV strongly supports the NADRAC's recommendation on the establishment of a national ADR information network to facilitate information sharing about dispute resolution techniques in relation to particular groups in society.
14. There is an immediate need for targeted research and collection of data which identifies the civil ADR use by different groups to identify groups and communities that may be missing out. Such data is difficult to access and the Victorian Government should invest resources to enable a clear picture of CALD communities' utilisation of ADR processes to emerge. While some communities appear to have used ADR programs, there is concern that some new and emerging communities may be under represented in the ADR process. Data is needed to determine whether these concerns are accurate.
15. The 2008-09 Victorian State budget announced that the Victorian Government will be investing in the development of low-cost dispute resolutions concluding with a \$17.8 million for ADR initiatives across the state. While ECCV supports the decision to fund judge-led mediation pilots for the Supreme and County Court and expanding services in regional areas, ECCV recommends that the Victorian Government should look into funding the delivery of information packages and fact sheets about ADR for marginalised communities including community education and engagements. The discussion paper stated that the provision of information to marginalised communities will increase their understanding, confidence and participation in ADR services. ECCV believes that the provision of information on the role of mediators and arbitrators, the parties involved and responsibilities of litigants would strengthen the utilisation of these services by CALD communities.
16. In conclusion, ECCV supports the initiatives outlined by the discussion paper but argues that there needs to be a greater focus in developing an awareness and education strategy for CALD communities around existing services and cultural awareness training for mediators and arbitrators. Major work needs to be done to promote ADR processes to people from CALD and refugee communities to ensure they are using these services and the services are meeting their needs.