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September 2011

**ECCV SUBMISSION TO
THE INQUIRY INTO ACCESS TO AND INTERACTION WITH THE
JUSTICE SYSTEM BY PEOPLE WITH AN INTELLECTUAL
DISABILITY AND THEIR FAMILIES AND CARERS
TO THE LAW REFORM COMMITTEE OF THE PARLIAMENT OF
VICTORIA**

1. Ethnic Communities' Council of Victoria (ECCV) welcomes the opportunity to present a submission to the Inquiry into Access to and Interaction with the Justice System by People with an Intellectual Disability and their Families and Carers
2. ECCV is the statewide peak advocacy body representing ethno-specific agencies and multicultural organisations. 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.
3. ECCV membership consists of approximately 190 organisations that represent groups with an ethnic or multicultural focus, organisations with an interest in these areas, or individuals who support ECCV. The majority of those members are not-for-profit community service organisations. They provide services in areas such as aged care, migration, discrimination, community harmony, employment, education and training, health and community services, law and justice, as well as the arts and culture.
4. ECCV welcomes the Law Reform Committee Inquiry and appreciates the opportunity to provide input on behalf of culturally and linguistically diverse (CALD) welfare and community-based service organisations.

Background

5. The Australian Human Rights and Equal Opportunity Commission (HREOC) has noted that people with a disability, who are from CALD communities are confronted with "multiple layers of discrimination".¹ ECCV aim, in this submission, to highlight the nature of the additional challenges that these individuals face, with relation to the justice system.

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¹ Australian Human Rights Commission, 2000, *On the Sidelines: Disability and People from Non-English Speaking Background Communities*, Australian Human Rights and Equal Opportunity Commission, Sydney:11



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6. According to the HREOC², when it comes to interacting with the justice system, some significant and unique barriers affect people with disabilities (including intellectual disabilities) from CALD communities.

These may include:

- Lack of information about rights and the availability of services in appropriate community languages.
 - Lack of interpreters, or information about interpreter services and rights related to interpreters.
 - Lack of culturally appropriate services.
 - Myths, misconceptions and negative stereotypes about disability and ethnicity in the general community.
 - Prejudice against people with disability from members of their own communities.
7. It has been observed that people with a disability rank highly on indicators for legal need.³ ECCV argue that these indicators also apply to people from CALD communities. The indicators include: the experience of direct and indirect discrimination, ignorance of the processes and avenues for seeking justice, lack of communication skills and lack of access to appropriate advocacy and support services.⁴
8. ECCV submits that, in light of the above, it stands to reason that people who have an intellectual disability and are from a CALD community, will experience an intersection of vulnerabilities and potential discrimination
9. In order to address this intersection of vulnerability ECCV submit that people who have an intellectual disability, who are from CALD communities, require particular and additional measures of support when accessing and interacting with the justice system. The areas in which they require additional support are in keeping with the key issues and themes of this inquiry and include:
- Participants' knowledge of rights
 - Availability of appropriate services and supports
 - Dealings with the police
 - The operation of the courts.

Participants' knowledge of rights

10. Not understanding the law reduces one's understanding of one's rights⁵. Similarly, a lack of awareness regarding the law

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² *ibid*

³ NSW Disability Discrimination Legal Centre Inc., 2009, *Response to A Strategic Framework for Access to Justice in the Civil Justice System*, NSWDDL:3

⁴ *ibid*

⁵ Victoria Legal Aid, 2011, *Cultural Diversity Action Plan 2011-2012*, Victoria Legal Aid Lawyers and Legal Services: 3



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can and does inadvertently result in contact with the police and the courts. It has been observed that many Australians from CALD communities, especially those who are part of recently arrived and emerging communities, find the Australian legal system to be “complex, confusing and overwhelming”.⁶ Many are unfamiliar with, or still learning about, their legal rights and responsibilities under Australian law.

11. Sector consultation on this issue has revealed that many people from CALD communities struggle to locate and understand legal advice and information in Australia.
12. Being unable to access justice related information in community languages has been identified as a major issue for people from CALD communities. In seeking accessible information, many people come to rely on other sources of information, such as friends and other community members. Information from such sources may not be reliable and may not be in keeping with the individual's best interest.
13. This has serious implications for people from CALD communities, who have an intellectual disability. This impacts their knowledge regarding their individual rights and responsibilities under Australian law. It also further marginalises them and those who care for them (who are in most cases part of the same ethnic community).
14. It is vitally important that accessible information be made readily available to those from CALD communities, however it is also crucial that the rights of those with intellectual disabilities are better promoted, in order to overcome the stigma and prejudice that often surrounds those with intellectual disabilities.
15. It has been found that

Prejudicial attitudes and misconceptions regarding disability present in broad society are equally evident in non-English speaking background communities. At times they may even appear more entrenched. Lack of educational opportunities to address such attitudes; adherence to some traditional beliefs that negate the rights of people with disabilities; and the sheltered and isolated nature of some communities could all contribute to the preservation of myths about disability.⁷

16. Evidence shows that, in many cultures, the stigma related to intellectual disability can act as a disincentive to seeking information regarding the rights of individuals with an intellectual disability.⁸ This works to further isolate these individuals and those who care for them. It stands to reason that, if rights knowledge is to be increased, the stigma that

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⁶ Australian Human Rights Commission, 2010, *In Our Own Words. African Australians: A Review of Human Rights and Social Inclusion Issues*:40

⁷ Australian Human Rights Commission, 2000:34

⁸ Action on Disability in Ethnic Communities (ADEC), *Annual Report 2009/2010*: 14



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surrounds those with intellectual disabilities needs to be reduced.

17. Furthermore, knowledge regarding legal rights and responsibilities can be inhibited, in CALD communities, by communication and language barriers. In addition to this, information regarding the legal rights and responsibilities of those with intellectual disabilities needs to overcome these communication barriers, as well as attitudinal problems related to intellectual disabilities.

Recommendations

18. ECCV recommended that the Victorian Department of Justice develop CALD community knowledge campaign that includes:
 - 18.1. Liaising with local ethnic community organisations and state peak bodies in order to promote information regarding legal rights and responsibilities.
 - 18.2. Providing written, audio and visual legal/rights information in community languages.
 - 18.3. Utilising ethnic radio, website and television media to promote rights awareness.
 - 18.4. Producing non-English versions of all rights information and policy documents
 - 18.5. Increasing and promoting the use and availability of professional interpreter services and ensuring that people are aware of their legal rights regarding this service.
 - 18.6. Training those who work within in the justice system in the use of professional interpreting and translating services.
 - 18.7. Providing cultural sensitivity training within the justice system, to raise awareness regarding the particular needs of people from CALD communities, who have an intellectual disability.
 - 18.8. Displaying in-language rights and responsibilities information in community centres, migrant resource centres, libraries, clinics, train stations and other places where people with intellectual disabilities, their families and carers, are likely gain exposure. It is crucial that information regarding the role of the Independent Third Person (ITP) program is included here.
 - 18.9. Providing ITPs with cultural sensitivity and interpreter usage training.

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18.10. Co-locating community legal services and migrant resource centres. This has been found to be an effective strategy for enhancing knowledge of rights and responsibilities. When accompanied by joint information sessions, this has been found to “help build awareness of legal issues and also meant that community members were more likely to feel comfortable about accessing the service if a legal issue did arise”.⁹

18.11. Providing more and better rights based information to those arriving in Australia. Written information needs to be supplemented with face-to-face information, from settlement workers, English language teachers and community leaders.

Availability of Appropriate Services and Supports

19. Consultation with the disability advocates has revealed that access to legal services and supports can be difficult for people from CALD communities. This can be due to language barriers, lacking knowledge regarding available services and concerns regarding the cultural appropriateness of the services offered.
20. Difficulties with English, spoken or written, combined with a lack of interpreters in clients’ languages and with “unfamiliarity with rules and regulations and occasional fear of authority are likely to make disability services [and legal services] inaccessible to [CALD] clients”.¹⁰
21. It has been observed that people with intellectual disabilities, their families and carers often end up on “referral-roundabouts”¹¹ when they interact with the justice system. The term “referral-roundabout” seeks to encapsulate the experience that many are confronted with when they attempt to engage with service providers, only to find that they are repeatedly referred from one service to another. It has been observed that referral roundabouts have a profound effect on people with a disability given the physical, communication and attitudinal barriers they may face when accessing services”.¹² ECCV is concerned that this difficulty may be exacerbated when compounded with the challenges of being from a CALD, or newly arrived community.
22. Advocates in the disability and multicultural sectors note that people from CALD communities often experience difficulties accessing affordable legal assistance, or demonstrate a lack of knowledge regarding the availability of free legal advice, or legal aid. This often leads to attempts to self-represent, which is not always in the individuals best interest.¹³

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⁹ Australian Human Rights Commission, 2010: 45

¹⁰ Australian Human Rights Commission, 2000:11

¹¹ NSW Disability Discrimination Legal Centre Inc., 2009:3

¹² ibid

¹³ Australian Human Rights Commission, 2010:40,45



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23. The federal government's findings that "cost can be a significant barrier to justice"¹⁴ becomes all the more concerning when we consider the fact that most migrants will need to meet the 10-year permanent residence requirement in order to receive the Disability Support Pension. This greatly increases their risk of financial hardship and makes them less likely to be able to shoulder the costs that can be associated with justice. All of the above can have a negative impact on those from CALD communities who have an intellectual disability, as well as those who care for them.
24. Furthermore, the provision of services and supports to this group can be inhibited by financial barriers, knowledge gaps and barriers to accessibility. As a result, those from CALD communities, who have an intellectual disability, are less likely, when interacting with the justice system, to be aware of the services and supports available to them. This is true too of their families and carers.
25. The Access to Justice Taskforce has found that "people do not understand legal events, what to do or where to seek assistance."¹⁵ This impedes access to appropriate support services.

Recommendations

26. The ECCV recommends that the Victorian Department of Justice and related service providers implement the following strategies:
 - 26.1. Free and low-cost legal services be better promoted and explained to CALD communities.
 - 26.2. Service and support information be made readily accessible in community languages, in print, online and in audio-visual formats.
 - 26.3. That information related to available services and supports be promoted and displayed in community centres, migrant resource centres, libraries, clinics, train stations and other places where people with intellectual disabilities, their families and carers, are likely gain exposure.
 - 26.4. That free and low-cost legal services be better promoted and explained to CALD communities.
 - 26.5. That interpreters are available to those approaching justice services and support agencies and that interpreter availability and usage is adequately promoted.

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¹⁴ Access to Justice Taskforce, Attorney-General's Department, *A Strategic Framework for Access to Justice in the Federal Civil Justice System: A Guide for Future Action*, September 2009, Australian Government:10

¹⁵ op cit: 4



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- 26.6. That interpreters be bound by and aware of confidentiality and privacy agreements. This is important for the confidence of those who are part of small communities, where available interpreters may also be part of the local community
- 26.7. That service and support staff be trained in the proper and required use of professional interpreting and translating services
- 26.8. That cultural sensitivity training is provided to services and support staff within the justice system
- 26.9. That awareness be raised among service and support staff regarding the particular cultural sensitivities and other needs of people from CALD communities who have an intellectual disability.
- 26.10. That those who arrive in Australia are provided with comprehensive and accessible information regarding the legal services and supports that are available to them in Australia.

Dealings with the Police

27. There has been much recent research into the interactions that occur between those from CALD communities and the police. Within these communities, those with intellectual disabilities are impacted by these dealings and the attitudes they promote within the community, both negative and positive.
28. Much of the available information regarding police interactions with those from CALD communities highlights the importance, and at times lack, of mutual trust, confidence and understanding, between the police and the communities they are expected to serve and protect.
29. The lack of trust regarding police and authority figures can be quite pronounced for those who have come in Australia, having experienced war, unrest, repressive governments, compromised rule of law and unresponsive legal systems in their country of origin.¹⁶ Police officers may not always be aware of this fact, or understand how to interpret the attitudes and behaviours that result.
30. Many young people from emerging communities have described the experience of being over-policed and have expressed a lack of confidence in the police force, as well as a belief that they are racially targeted by police in their area¹⁷This lack of confidence in the police also appears to result in under-

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¹⁶ Victoria Legal Aid, 2011:3

¹⁷ Dolic, Z., 2011, *Race or Reason? Police Encounters with Young People in the Flemington Region and Surrounding Areas*, A Report Prepared for the Flemington and Kensington Community Legal Centre



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reporting from victims of crime.¹⁸ Such attitudes and experiences undoubtedly have an impact on those with intellectual disabilities and those who care for them, especially in terms of seeking assistance from and reporting incidents of concern to the police.

31. ECCV wish to highlight the importance of Multicultural Liaison Officers in bridging this gap in trust and understanding. ECCV submits that, contrary to moves to restructure this program, this program should be continued and expanded.
32. Regarding communication and language barriers, when it comes to dealings with the police, it has been found that miscommunications between the police and those from CALD communities, who often lack knowledge regarding the law, can and do lead to negative interactions.
33. ECCV believes that it is essential that a professional interpreter always be present when those from CALD communities are interviewed by the police. Although this may be assumed to be standard practice, participants in a HREOC study of African Australian's engagement with the justice system gave examples of occasions where interpreters had not been present in situations involving the police.¹⁹ Such occurrences do little to assure communities that the police have their best interests at heart and contribute to lacking confidence and trust in the police.
34. ECCV advocates that in situations where a person from a CALD community has an intellectual disability, an ITP, should always be present during police interviews. As detailed in the previous section, it is the ECCV's recommendation the ITP present has undergone cultural sensitivity training.
35. When consulted on issues regarding the police, CALD community members express the view that some law enforcement officials, particularly police and sheriffs, demonstrate little cultural awareness.²⁰ This contributes to the lack of rapport that can exist between CALD communities and the police. Again, this affects this relationship that exists between the police and CALD community members with an intellectual disability, as well as those who care for them.
36. The ECCV advocates that Victoria Police be trained to be culturally sensitive to the CALD communities they will encounter. It is essential that they also understand the potentially traumatic pre-arrival experiences of community members and the way that this may influence community responses to police.
37. Victorian Police must also be trained in order to be responsive to the special needs, vulnerabilities and rights of those from CALD communities who have an intellectual disability.

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¹⁸ Australian Human Rights Commission, 2010:40

¹⁹ Australian Human Rights Commission, 2010:41

²⁰ op cit: 42



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38. ECCV also supports the recent recommendations made by the Flemington and Kensington Community Legal Centre that police need to be provided with education regarding and impacts of racial and religious profiling, and that they participate in anti-racism training and ongoing integrity testing regarding attitudes towards racial and religious minority groups.
39. ECCV is confident that improved relationships between CALD communities and the police can serve to improve the safety and assurance of those from CALD backgrounds who have an intellectual disability, as well as those who care for them.

Recommendations:

40. The ECCV recommend that the Victorian Government:
 - 40.1. Provide the resources necessary to continue and expand the projects associated with the Multicultural Advisory Unit
 - 40.2. Strengthen cultural awareness training for police with regard to the rights, needs and vulnerabilities of CALD community members. This should include training that is particularly focused on the needs, rights and vulnerabilities of CALD community members who have an intellectual disability.

The Operation of the Courts

41. For many people from CALD communities, the courts are perceived as “intimidating” and it has been noted that the legal language used in courtrooms can make proceedings difficult for such individuals to understand.²¹ This can create a great deal of anxiety for those with an intellectual disability who need to attend court, as well as for their families and carers.
42. In light of this, ECCV supports the expansion of recent awareness building initiatives aimed at new and emerging CALD communities. These include moot courts organised by the Victorian Magistrates Court, community group visits to courts and tribunals and presentations by judges and court officials to community meetings. These programs have been found to be effective in reducing anxiety related to court interactions. As was expressed by a project participant during a community consultation in Victoria:

“The judge showed us the court room and she showed us how the court works. We all got a chance to sit in the witness box and understand more about how the court does things. This is good

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²¹ Australian Human Rights Commission, 2010:44



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because I don't feel frightened of the court anymore²²

43. ECCV also recommends that professional interpreters be made available to all people from CALD communities when they participate in court proceedings. Although this may be assumed to be standard practice, participants in a HREOC study of African Australian's engagement with the justice system gave examples of occasions where court hearings at local and magistrates courts had proceeded, even in the absence of an interpreter²³
44. ECCV advocates that courts be more 'user friendly' to those who may have limited English. Anecdotally, those attending courts have reported a shortage of non-English signage and support personnel. This has a direct impact on the interactions that people from CALD communities, who have an intellectual disability have with the courts. This is true too of their families and carers, who are most likely to be from the same ethnic group.
45. It is important that court personnel interacting with people from CALD communities who have an intellectual disability, are aware of their cultural and other needs and sensitivities, as well as those of their families and carers.

Recommendations:

46. The ECCV recommends that the Victorian Department of Justice provide resources to:
 - 46.1. Increase the training, education and support that is provided to judges, magistrates, lawyers, Court Network volunteers and other relevant personnel, in order that they may better understand the particular issues that relate to those who live at this intersection of vulnerabilities, as well as those who care for them.
 - 46.2. Provide prominent signage in court and tribunal buildings to clearly indicate, via the National Interpreter Symbol, the availability and location of interpreters

Other Key Issues for Consideration

47. The ECCV submits that, to ensure just and equitable outcomes for people from CALD communities who have an intellectual disability, the justice system needs to ensure that certain elements of the criminal justice system are culturally sensitive and can offer equal opportunities for offenders who are at this intersection of vulnerabilities.

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²² ibid
²³ op cit:41



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48. ECCV is concerned about the potentially negative impact of the courts' over-emphasis on a person's history of contact with Disability Services. This information makes up part of the Client Overview Report which often accompanies the Justice Plan for an accused person with an intellectual disability. According to the 2007 Disability Services Criminal Justice Practice Manual, such information can "help the court in determining whether the person will participate in the services recommended in the justice plan".²⁴The Client Overview Report notes the "time, frequency, intensity and nature"²⁵ of the persons prior connection to Disability Services. Also provided is information regarding the person's demonstrated "motivation and reliability" when working with Disability Services.
49. The ECCV is concerned that the potential compliance and motivation of people from CALD communities with an intellectual disability may be misrepresented by this over-emphasis on personal client history. This is mainly due to the fact that people from CALD communities face significant barriers to accessing disability services and are not as likely as other Australians to seek out such support, or to be aware that it is available. For example, it has been found that people born in a non-English speaking country are 4 times less likely to receive accommodation support services, 2.5 times less likely to receive community support services, 2.5 times less likely to receive community access services, 3 times less likely to receive respite services and 2 times less likely to receive employment services.²⁶ According to the National Ethnic Disability Alliance (NEDA), people from CALD communities are underrepresented in all disability services funded under the Commonwealth State/Territory Disability Agreement.²⁷
50. According to NEDA²⁸, this under representation is due to:
- A lack of information in community languages informing people of their rights, entitlements, essential services and support structures available.
 - A lack of culturally competent service provision in mainstream and specialist services
 - A lack of access to interpreters due to a lack of funding
 - Lack of effective legislative and policy directions and government intervention
51. As a consequence of the above, people from CALD communities who have an intellectual disability, as well as their carers and families, are further marginalised and isolated. ECCV recommends that this be taken into account by the

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²⁴ Disability Services Division, Victorian Government Department of Human Services, 2007, *Disability Services Criminal Justice Manual 2007*: 9

²⁵ *ibid*

²⁶ National Ethnic Disability Alliance, 2003, *Access to Disability Services for People from Non English Speaking Backgrounds with Disability*, NEDA Fact Sheet 2, Available : http://www.neda.org.au/files/fact_sheet_disability_services_utilisation.doc Accessed 26/8/2011

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²⁸ *ibid*



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courts and that it be understood that, as far as people from CALD communities are concerned, a lack of history with Disability Services does not necessarily indicate a lack of willingness, but often a lack of knowledge and confidence.

52. ECCV also recommends that prison facilities which are specifically intended for those with intellectual disabilities are equipped in order to offer individualised programs, resources, educational, counselling and other opportunities to those from CALD backgrounds. This includes the Marlborough Unit at Port Phillip Prison, and specific units within the Dame Phyllis Frost Centre and centres that are managed by Youth Justice Custodial Services.
53. ECCV also recommend that and that corrections staff, particularly the State Forensic Services Disability Prison Services Coordinator and Disability Service/Youth Justice Custodial Senior Adviser, be trained in order that they may be more sensitive to and aware of the needs of CALD individuals.
54. In the interest of equity it is important that, when a person from a CALD community who has an intellectual disability comes in to contact with the criminal justice system, those who he/she deals with are able to understand the complexities of their circumstances, this includes judges and magistrates, DCS workers, Court Network volunteers, legal representatives, parole boards and others whom the individual will rely upon for justice and information.

References

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