



**ethnic  
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council of  
victoria**

**Eccv submission on the Guardianship Consultation  
to the  
Victorian Law Reform Commission**

**May 2011**

Ethnic Communities' Council of Victoria (eccv) welcomes the opportunity to present a submission on the Guardianship Review Consultation to the Victorian Law Reform Commission.

Eccv is the state-wide 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.

Eccv membership consists of approximately 200 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.

This submission includes input from the eccv Aged Care Policy Committee whose membership consists of aged care providers in ethnic and multicultural organisations and peak bodies with an interest in ethnic aged care. In addition it incorporates contributions from the Youth Affairs Council of Victoria that works specifically with young people with disabilities from culturally and linguistically diverse backgrounds.

New guardianship laws are needed to reflect Victoria's ageing and multicultural population. Approximately 40 per cent of people over 65 years in Victoria are from a culturally diverse background (Howe 2006). Eccv is concerned that older people from a non-English speaking background, their families and carers do not understand the guardianship laws and the impact on their day-to-day lives.

In addition, community feedback indicates that staff working with culturally diverse clients on guardianship issues often do not consider the cultural values and needs of people from a non-English speaking background.

The focus of this submission is on:

- Increased community education, awareness and information on guardianship laws and related issues targeted at people from culturally, linguistically and spiritually diverse backgrounds;
- Improving the guardianship laws to better protect the interests of people from diverse backgrounds through respectful inclusion of culture, religion and language;

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- Simplifying the terminology to make guardianship laws easier to understand for people from non-English speaking backgrounds.

#### 1. Risky and bad decisions

Current guardianship laws and practices do not adequately consider people's cultural and religious requirements. Eccv believes there is an opportunity to improve the relevant legislation in Victoria. The following case study highlights how Victoria's guardianship and administration laws do not always serve people as well as they should.

#### Case scenario

A 25 year old man, from a Muslim background, with an intellectual disability and autism had guardianship appointed. The application for guardianship was made by Disability Client Services on the grounds that the young person was absconding from home and causing damage to other people's property.

The young person had a complex disability and when the Disability Client Services made the application, there was little regard for his parents' involvement in the decision making. There was a lack of consideration that English was not the family's first language or for the young man's cultural background.

This resulted in the guardianship being imposed, and the young person being removed from his parent's home. As a result he had no access to halal food that was prepared according to his religious requirements. He had no access to workers from a similar cultural background, and there was no one that could work and communicate with him in his first language.

The Youth Disability Advocacy Service assisted the young man by attending VCAT hearings and advocating that his parents would be a more appropriate guardian appointment and that he wanted to return to their family home. This outcome was achieved, and the young man's health and wellbeing improved.

Acknowledgements: Youth Affairs Council of Victoria

Eccv is concerned that many people from a non-English speaking background and with impaired decision-making capacity do not receive adequate culturally relevant support before a guardianship appointment. The case scenario above is a typical example where individuals, their families and carers need culturally relevant information, access and support in order to fully understand the implications of guardianship.

Furthermore eccv believes that, in cases where there is a guardianship review, stronger links are needed between culturally relevant access, information and support processes well before the expiry date of the guardianship review.

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Guardianship legislation needs to ensure that access to interpreter services for non-English speakers, their carers and families is provided so that they can take part in the decision making process.

Eccv stresses the need for a culturally competent approach to a guardianship appointment which requires the case managers and staff involved to have cultural awareness training. Furthermore they should work in partnership with relevant ethnic and multicultural community organisations to better engage with non-English speaking clients and achieve more appropriate culturally appropriate outcomes.

2. Response to Question 3: Do you agree with the Commission's draft general principles for new guardianship laws?

Eccv believes that a person's culture, religion and language should be included in new principles in relation to the guardianship and administration laws. A cultural diversity lens should be applied to the Victorian Law Reform Commission's Terms of References 3b and 3e in the Guardianship Consultation Paper which are:

*b) the need to balance the protection of the interests of an adult with impaired capacity by a guardian or an administrator with the person's exercise and enjoyment of the human rights, such as the right to freedom of choice, association and movement, including consideration of whether the Act strikes the right balance between facilitating action in the best interests of an adult with impaired capacity and the person's rights as expressed in the United Nations Convention;*

*e) the need to ensure that the powers and duties of guardians and administrators established by the legislation are effective, appropriate and consistent with Australia's human rights obligations and the Victorian Charter.*

**Recommendation :**

Eccv recommends that the new guardianship principles should embed the need to protect a person's cultural, spiritual and linguistic preferences.

3. Response to Question 6: re terminology on guardians and administrators.

The adoption of plain language in guardianship laws would assist people from non-English speaking backgrounds to understand their rights and guardianship processes.

**Recommendation :**

Eccv recommends the adoption of Option B: 'adult guardian' and 'financial manager' to assist people from non-English speaking backgrounds to better understand the concepts and processes.

4. Response to Question 10: Do you have any specific ideas about how to better target education about guardianship laws in particular towards culturally and linguistically diverse group?

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People from non-English speaking backgrounds do not have a good understanding of their personal rights or of administration and guardianship laws. It is therefore crucial that they receive culturally appropriate information in languages other than English to empower them in their decision making.

Many people from culturally diverse backgrounds go to ethnic and multicultural community organisations as a first point of contact for support in times of difficulty. These community organisations also have trusted relationships with people from culturally diverse backgrounds.

Many people from predominantly non-English speaking countries have limited English and low levels of literacy. Bilingual ethnic newspapers and ethnic radio are popular avenues for information on rights, health and aged care issues targeted at people from a non-English speaking background.

**Recommendations :**

Eccv recommends community awareness campaigns targeted at ethnic communities via the ethnic media as well as through ethnic and multicultural community organisations that have extensive culturally diversity networks.

Eccv recommends that the production of community education materials about guardianships be presented in a variety of formats such as on-line translated fact sheets, multilingual DVDs and via ethnic radio programs.

5. Response to Question 14: Do you agree with the Commission's proposal to introduce new supported decision-making arrangements?

Eccv agrees with the new supported decision-making arrangements however it is important to ensure that people from non-English speaking backgrounds have access to supporters with an understanding of and respect for their cultural preferences and values.

**Recommendation :**

Eccv recommends that bilingual and bicultural supporters should be available to take on the role of supported decision-making arrangements for people from non-English speaking backgrounds.

6. Cultural consideration of dementia and mental health issues

Eccv advocates for a better understanding by service providers of culturally diverse issues related to the mental health and dementia regarding people from culturally diverse backgrounds to assist with achieving culturally relevant guardianship arrangements. Eccv conducted broad-based community consultations and produced a discussion paper *A Better Way: Mental Health and Aged Care – a Multicultural Perspective* 2011 (pdf copy attached).

That report indicates that mental health and related support services are not well understood in ethnic communities. It drills down to some of the hidden issues in the migrant and multicultural community such as mental

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illness stigma, diverse cultural perceptions and a strong reliance on the extended family.

**Recommendation :**

Eccv recommends that the assessment and appointment of guardianships for non-English speaking clients takes into consideration the culturally diverse aspects of dementia and mental illness.

7. Response to proposed legislative changes to maintain cultural and religious values and environments

The current Guardianship Consultation Paper indicates that legislation in other Australian states seeks to address the importance of maintaining cultural and religious values and environments, but that Victoria's does not (refer *Chapter 5 Guardianship Consultation Paper point 5.82, page 90*).

Eccv would like to see specific Victorian guardianship legislation to protect a person's cultural and religious values and environments based on those used in other states to ensure appropriate diversity support for a person requiring guardianship and administration arrangements.

Eccv advocates that other states be examined for suggestions for legislative change to safeguard cultural and religious preferences and values of people with impaired decision-making as well as to ensure the provision of language services.

Eccv suggests that the following existing legislation in other Australian states provides good working examples for Victorian legislative changes that reflect the consideration of culturally and linguistically diverse preferences for example:-

*New South Wales legislation*

Website reference:

<http://www.legislation.nsw.gov.au/xref/inforce/?xref=Type%3Dact%20AND%20Year%3D1987%20AND%20no%3D257&nohits=y>

*"4. General principles*

*It is the duty of everyone exercising functions under this Act with respect to persons who have disabilities to observe the following principles:*

*(e) the importance of preserving the family relationships and the cultural and linguistic environments of such persons should be recognised"*

*and*

*Queensland legislation*

Website reference:

<http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/G/GuardAdminA00.pdf>

*"15. Appropriateness considerations*

*(1) In deciding whether a person is appropriate for appointment as a guardian or administrator for an adult, the tribunal must*

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*consider the following matters (appropriateness considerations)—*

*(d) whether the adult and person are compatible including, for example, whether the person has appropriate communication skills or appropriate cultural or social knowledge or experience, to be compatible with the adult;”*

**Recommendation :**

Eccv recommends specific guardianship legislation changes that make reference to how a person’s cultural and religious environments and beliefs are taken into account in the form of:

- A preamble, or overriding reference at the start of the legislation, that makes reference to all people’s human rights, including cultural and religious.
- Specific references in legislation that need to consider all people’s human rights, including cultural and religious, when any assessment and appointment of guardianship or administration is made.
- Specific references in legislation that need to consider all people’s human rights, including cultural and religious, when any decisions are made around Guardianship or Administration.

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