



**ethnic
communities'
council of
victoria**

Submission to the Review of the Health Services (Conciliation and Review) Act 1987

August 2012

About the Ethnic Communities' Council of Victoria

This submission is made on behalf of the Ethnic Communities' Council of Victoria (ECCV), a statewide peak organisation representing Victoria's culturally diverse and non-English speaking population. On behalf of our 215 member organisations, the ECCV advocates and lobbies all levels of government in areas such as human rights, access and equity, racism, discrimination, employment, education, health and justice. We advocate on any issue that is of concern to our members. In keeping with this, the following submission is made with a view to the specific concerns and needs Victorians of refugee and migrant background and members of culturally and linguistically diverse (CALD) communities.

What should be the key features of Victoria's future health complaints system?

In the interests of our members and stakeholders the ECCV recommend that enhanced accessibility and support become key features of Victoria's future health complaints system.

The ECCV has recently launched a policy paper on entitled: *An Investment Not an Expense: Enhancing Health Literacy in Culturally and Linguistically Diverse Communities*. The ECCV submit that awareness of one's rights and of available supports and services (in healthcare settings) is an important part of health literacy. At present, it would appear that more needs to be done to ensure that CALD Victorians have equal access to services and information.

This can be measured by the significant underrepresentation of CALD clients lodging complaints with the Commissioner.¹

Our research in this area has made it clear that, in order to improve the levels of trust and engagement between CALD people and the healthcare system (including the complaints system), a dual approach is required, an approach that will focus not only on community awareness raising, but also awareness raising among service providers.

Through this submission the ECCV will provide recommendations as to how the Victorian health complaints system can provide enhanced support and increased access to CALD Victorians.

The ECCV Recommend:

1. That enhanced accessibility and support become key features of Victoria's future health complaints system.

What features of the current system should be kept or enhanced?

In principle, the ECCV are satisfied with the purpose, guiding principles and objectives of the current Act.

With that noted, the ECCV submit that the Health Services Commissioner is hampered in her ability to meet these sound purposes, principles and objectives, due to the complexity and inaccessibility of the complaints system, especially for clients who may have language or other barriers. In order that the future complaints system may be more accessible and user-friendly, new strategies are needed. Recommendations for measures and strategies will be provided via this submission.

How can the Act better protect healthcare users?

The ECCV submit that the Commissioner's power to protect consumers would be improved if the Commissioner had the capacity to address public interest issues.

This has the potential to be of great benefit to people from CALD backgrounds for, despite the diversity within this population, many of the access and service issues they encounter are common. For example, the ECCV are aware that many CALD Victorians experience problems when trying to access language services in healthcare settings. Research in this area has revealed that consumers are "often either actively discouraged from using language services or informed that these services were simply not available"². It has also been reported that CALD clients have been actively encouraged to use family members as interpreters, a practice which is not supported by Victorian Government policy pertaining to language services.

¹ Review of the Health Services (Conciliation and Review) Act 1987: Discussion Paper, (June 2012), Victorian Government, Melbourne: 15

² Brough, C., (2006) *Language Services in Victoria's Health System: Perspectives of Culturally and Linguistically Diverse Consumers*, Centre for Culture, Ethnicity & Health, Melbourne. Available [Online]: http://www.ceh.org.au/downloads/final_report.pdf ; Accessed 01/08/12 : 4

The circumstances described above are of serious concern and indicate that it is not uncommon for clients to be misinformed about the availability of interpreters, denied access to interpreters and encouraged to engage in unacceptable practices. This situation gives rise to significant concerns regarding safety, duty of care and informed consent; it also infringes on the rights of the client, as set out by the Australian Charter of Healthcare Rights (2008). This Charter establishes the basic rights and entitlements of all people accessing healthcare in Australia, these being:

- Access
- Safety
- Respect
- Communication
- Participation
- Privacy and
- Comment

Each of the entitlements listed above are contravened whenever a consumer is denied access to an interpreter, or obliged to have someone known to them act as an interpreter.

Research regarding the provision of language services indicates that this experience is not uncommon. If a healthcare organisation has failed to provide interpreting services to one client, it is likely that they have also failed to provide this service to others. As such, if an individual complains to the Commissioner, stating that that he/she was not provided with a credentialed interpreter, it would be worth considering the implications of this complaint, beyond the individual case. Such an occurrence is unlikely to be a 'one-off' and may be taken as indicative of a larger systemic flaw in the practice of that organisation, a flaw which places the organisation in contravention of the Australian Charter of Health Care Rights.

Any complaint regarding the denial of a credentialed interpreter in a healthcare setting fits with following criteria of public interest (as put forth by the Discussion Paper):

- The circumstances outlined in the complaint are likely to effect a significant number of people (i.e. all people who attend this service and require an interpreter)
- The circumstances impact on certain population groups (i.e. CALD Victorians)
- The complaint is indicative of a systemic flaw or deficiency in policy or procedures (as set out by the Australian Charter of Health Care Rights)

The Discussion Paper notes that CALD consumers appear to have a "low propensity"³ to complain and the ECCV is concerned that this may have the effect of allowing health organisations to continue with practices such as those outlined above. CALD consumers will be better protected if the Commissioner is empowered to act, on the basis of an individual complaint, to take action on broader systemic issues, in the public interest.

The ECCV submit that the Australian Capital Territory provides a good model for matters that are of public interest. This model provides the capacity for Commissioner-initiated consideration for matters of public interest (even in situations where no complaint has been received, or a complaint has been withdrawn). The ECCV believe that this capacity would assist the Commissioner to be more responsive to the experiences of CALD consumers, who, as noted, are less likely to lodge and carry through with formal complaints.

³ *Review of the Health Services (Conciliation and Review) Act 1987: Discussion Paper*, (June 2012), Victorian Government, Melbourne: 15

The ECCV submit that, for reasons outlined above, the Commissioner should have the capacity to independently initiate inquiries and investigations into broader healthcare issues. As detailed in the Discussion Paper, in other Australian jurisdictions, an investigation or inquiry may be carried out even where a complaint has not been formally made, if the following criteria are fulfilled:

- If there is a matter of public interest or safety,
- Where question may arise as to the practices of a provider, or the appropriateness of the care and treatment received by clients.

Given the under-representation of CALD complainants, this capability would allow the Commission to investigate issues that may specifically affect CALD clients, without having to have received formal complaints from the clients themselves.

As mentioned previously, the ECCV has recently undertaken research regarding health literacy in CALD communities. Health literacy has been defined as “the degree to which individuals have the capacity to obtain, process and understand basic health information and services needed to make appropriate health decisions”.⁴ CALD Australians have been identified as an ‘at-risk’ group for low-health literacy. It has been found that only 33 per cent of people born overseas have adequate or better health literacy.⁵ This figure drops to 27 per cent for those who have lived in Australia for less than five years.⁶ This makes CALD Victorians more vulnerable to being exploited, or mistreated by unscrupulous practitioners. In light of this, the ECCV submit that CALD consumers would be better protected if the Health Services Commissioner were provided with enhanced powers to take action against “incompetent, impaired or unethical providers”⁷ and those who engage in “exploitative, predatory and illegal behaviour”.⁸

Recent legislative reforms in New South Wales provide a good model for reform in this area. The ability of the Health Care Complaints Commission of New South Wales to regulate unregistered practitioners (and those practicing outside their area of registration) via a statutory code of conduct would be beneficial in the Victorian context. As in New South Wales, the Victorian Health Services Commissioner should be able to issue court enforceable prohibition orders and issue public statements regarding practitioners who breach this code. As in New South Wales, a register of prohibition orders should be publically available and breaches should be considered a criminal offence. It is vital that any code of conduct include strong measures to ensure access and equity for CALD consumers.

In addition to the above, enhanced power to publically ‘name’ providers for poor practice would allow the Victorian Health Services Commissioner to better protect consumers. As is noted in the Discussion Paper, at present, the Health Services Commissioner can publically name a provider in an annual report, or in a report to Parliament. Although this is a good way of bringing issues to public light, it also limits the Health Service Commissioner’s capacity to respond to urgent issues, which may impact on consumer and public safety. The ECCV is impressed with the powers given to the Commissioner in the Australian Capital Territory⁹ and submit that this provides a good model for Victoria. This model allows the Commissioner to give a copy of an investigation report to anyone he/she thinks should receive it and

⁴ U.S. Department of Health and Human Services. (2000). *Healthy People 2010* (2nd ed.) [with *Understanding and Improving Health* (vol.1) and *Objectives for Improving Health* (vol. 2)]. Washington, DC: U.S. Government Printing Office, as cited in, U.S. Department of Health and Human Services, Office of Disease Prevention and Health Promotion, (2010). *National Action Plan to Improve Health Literacy*. Washington DC.

⁵ Australian Bureau of Statistics, *Australian Social Trends* 4102.0, June 2009

⁶ *ibid*

⁷ *Review of the Health Services (Conciliation and Review) Act 1987: Discussion Paper*, (June 2012), Victorian Government, Melbourne: 28

⁸ Australian Health Ministers Council 2011, Options for regulation of unregistered health practitioners, as cited in *Review of the Health Services (Conciliation and Review) Act 1987: Discussion Paper*, (June 2012), Victorian Government, Melbourne: 29

⁹ *Review of the Health Services (Conciliation and Review) Act 1987: Discussion Paper*, (June 2012), Victorian Government, Melbourne: 48

permits the Commissioner to publically name a non-compliant provider (on the Commission's website, in a newspaper, or in their annual report).

The ECCV Recommend:

That reforms to the Health Services (Conciliation and Review) Act:

2. Include provisions that allow the Victorian Health Services Commissioner greater powers to deal with public interest issues.
3. Include provisions that allow the Victorian Health Services Commissioner to independently initiate inquiries and investigations into broader healthcare issues (removing the requirement for ministerial approval).
4. Include provisions that allow the Victorian Health Services Commissioner to carry out an investigation or inquiry, even where a complaint has not been formally made, if the matter is considered to place public interest or safety at risk.
5. Incorporate the features of the Health Care Complaints Commission of New South Wales with regard to the regulation of unregistered practitioners.
6. Include provisions that allow the Victorian Health Services Commissioner to publically name a provider for poor practice, in line with the model provided by the Australian Capital Territory.

What controls should be placed on the powers of the Commissioner to protect healthcare users?

The ECCV advise that, in order to best protect healthcare users, the enhanced powers described above should be provided on the understanding that improper disclosure of information and reports will be considered an offense.

The ECCV Recommend:

That reforms to the Health Services (Conciliation and Review) Act:

7. Include an offence for the improper disclosure of information by the Victorian Health Services Commission

How can the Act provide a more accessible, efficient and effective complaints handling system?

With regard to creating greater service accessibility, the ECCV submit that the Victorian Government should consider the New Zealand Health and Disability Advocacy Service (NZHDAS) model. This model has had great success in achieving local resolution of complaints, via the provision of independent, specialist advocates, offering support to complainants. A service such as this in Victoria would assist people from CALD communities to better understand the complaints system, as well as their rights and options and would hopefully encourage increased communication between CALD communities and the Health Services Commission. As is noted by the Discussion Paper there are certain subgroups within the Victorian population who are statistically less likely to complain about services. Sub-populations identified as having a low propensity to complain include the socioeconomically disadvantaged, elderly people and people from certain cultural backgrounds¹⁰ (it is also worth noting that many CALD Victorians may experience more than one of these characteristics, which may compound their adversity and their reluctance to complain). As is also noted by the Discussion Paper, during 2010-2011 only 2 per cent of complainants requested an interpreter and Greek was the most regularly requested language.¹¹ This may indicate that most complaints are coming from fairly established migrant cohorts and that new and emerging communities face more considerable barriers than those who may have more familiarity with the Victorian health system and their rights in this context. The NZHDAS includes a specialist advocacy service for refugee and migrant groups, which the ECCV believe would be extremely valuable to CALD Victorians. It is conceivable that the underrepresentation of CALD complainants is linked to the fact that the current Health Services Act does not provide for this manner of support.

Our research on health literacy has made it clear that, in order to improve levels of trust and engagement between CALD people and the healthcare system, a dual approach is required, an approach that will focus not only on the community awareness raising (discussed with relation to question six), but also on cultural awareness raising among service providers. The ECCV consistently promotes the importance of cultural competency training, especially amongst those providing vital government and health related services to multicultural Victorians. This extends to those who work in the health complaints system. It is important that those who work with complainants are supported in the workplace via training, resourcing and overarching organisational and departmental commitments to providing all consumers with high quality and equal communication and care. In order for advocates to be of most assistance, it is vital that they receive cultural competency training to increase their capacity to support and respond to the needs and concerns of CALD clients. This needs to include training around the proper engagement of interpreters and sensitivity to the fact that, especially among smaller and more recently arrived communities, privacy concerns may necessitate the use of telephone, or other forms of remote interpreting.

At present, Victorians seeking to lodge complaints are required to confirm the details of their complaint in writing. This creates a clear obstacle for many CALD community members, who may experience language and literacy barriers. It should be noted that, if the Commissioner determines that there is good reason to eschew this requirement, a complaint may be given

¹⁰ *Review of the Health Services (Conciliation and Review) Act 1987: Discussion Paper*, (June 2012), Victorian Government, Melbourne: 15

¹¹ *ibid*

orally. In principle this flexibility is positive; however in practice it may act as a deterrent to would-be CALD complainants, who may perceive that 'special' arrangements are being made in order for them to submit their complaint. Research indicates that a great number of CALD people feel humiliated when attention is drawn to their limited English language proficiency or literacy (which may be limited in English as well as in preferred language). This is demonstrated by the reticence that many community members demonstrate with relation to working with an interpreter. It has been shown that many CALD individuals are reluctant to request an interpreter, due to feeling "embarrassed or uncomfortable"¹² or out of a fear that they will be perceived as burdensome, or as "a drain on government resources".¹³ It is likely that this kind of reticence could feed into a reluctance to seek, or make a case for, alternative complaint lodgement processes. In light of this, it is important that different methods of complaint lodgement be offered to all complainants and be equally accessible at all times, not just when individual circumstances demand. New Zealand offers a good practice model for this, whereby consumers can make complaints orally or in writing, to the Commissioner or to an advocate.¹⁴

The ECCV Recommend:

That reforms to the Health Services (Conciliation and Review) Act:

- 8.** Provide for a complainant support and advocacy service, based on the New Zealand Health and Disability Advocacy Service (NZHDAS) model.
- 9.** Include provisions that will allow consumers to lodge complaints orally or in writing, (with equal ease) to the Commissioner or to an advocate, in line the New Zealand model for receiving health complaints.
- 10.** Ensure that advocates and others working in the health complaints system are provided with cultural competency training.

How can the Act best support health care users and providers to understand and navigate the health complaints system?

As detailed above, a specialist advocacy service would greatly assist CALD Victorians to navigate and understand the health complaints system. As has been identified by the Discussion Paper, CALD Victorians demonstrate a reluctance to engage with the complaints system. The ECCV submit that it is vital to introduce measures that will encourage more adequate reporting and more robust communication between the Health Services Commission and CALD communities. With a view to this, the ECCV advise that more work needs to be done to ensure that CALD Victorians are aware:

- of the standard of care they have a right to expect in Victorian healthcare settings
- of the complaints system, how it works and the role it plays protecting consumers

¹² The Victorian Foundation for Survivors of Torture, (2012), *Exploring barriers and facilitators to the use of qualified interpreters in health: Discussion Paper April 2012*: 42. Available online at: <http://www.foundationhouse.org.au/announcements/discussion-paper-feedback-sought> : Accessed 20/08/2012

¹³ *ibid*

¹⁴ *Review of the Health Services (Conciliation and Review) Act 1987: Discussion Paper*, (June 2012), Victorian Government, Melbourne:43

- of the circumstances in which a complaint should be made
- that ongoing, culturally responsive support is available to complainants

CALD consumers may not always be familiar with their rights in the healthcare context and with the characteristics and quality of the service that should be provided to them. This is particularly the case with more recently arrived migrants and those who may not have experience with comparable healthcare services and standards of quality. Knowledge regarding rights can be further inhibited by language and literacy barriers. As such, if the level of care received is substandard, CALD consumers may not always be aware of this fact, or of the fact that they have grounds and options for making complaint.

In many respects this is a health literacy issue and needs to be addressed via community based awareness raising programs that emphasise healthcare rights, service standards and the existence and function of the complaints mechanism. Ethno-specific and multicultural organisations are well placed to provide such programs to community groups, in partnership with the Health Services Commission. The ECCV has undertaken considerable research and consultation around the question of how best to provide information to CALD communities. We have found that the site of information provision is of utmost importance, with the local ethno-specific or multicultural organisations being identified as the first port of call for many CALD Victorians seeking information with regard to supports and services. These organisations have established rapport and trust with their constituents and are ideal mechanisms for engaging community interest and raising awareness.

It needs also to be noted that, even when CALD consumers are entirely aware of their rights in the healthcare context, they may not be aware of the complaints mechanism and, if they are, may be deterred by the complex nature of this process. Community based awareness raising can assist with this, as can the provision of complaints advocates, who have undergone training in cultural competence.

In order to assist in overcoming barriers with relation to literacy and language, all information should be available in a variety of in-language formats, including audio-visual materials. In addition to this, all resources should be created in partnership with community organisations, to ensure that the message being sent will resonate with the community concerned.

Based on the feedback we receive from our members and stakeholders, the ECCV have great confidence in ethno-specific community radio broadcasts and consider them to be one of the most effective and accessible ways of communicating with CALD communities. Community specific broadcasts and programs have a wide listenership and are capable of crossing geographical, age, gender and social boundaries, as well as literacy barriers. The ECCV recommend that the Health Services Commission utilise this tool in order to raise CALD community awareness. Once again, our research and consultation regarding this platform has revealed that messages need to be specifically tailored to each community and that they need to be developed in partnership with community representatives, in order to ensure that they will resonate and have the desired impact.

The ECCV Recommend:

- 11.** That ethno-specific and multicultural community organisations be resourced in manner that will allow them to undertake community based awareness raising programs with regard to rights in healthcare, service standards and the availability of a supported complaints process.
- 12.** That awareness raising resources be provided in community languages and in a variety of formats, to accommodate differing literacy levels.
- 13.** That the Health Services Commission utilise ethno-specific radio broadcasting and other media in order to provide service information to CALD audiences.
- 14.** That all resources be produced in consultation with communities, to ensure that messages are culturally specific, appropriate and resonant.

How can the Act best support continuous quality improvement across the health system?

A well-functioning complaints mechanism is one of the key methods by which quality improvement across the health system can be supported. Consumer feedback is a vital measure of where practices may be falling short and where additional resourcing and action is needed. If the complaints system is made more accessible and if people are made more aware of the mechanism itself (including when and how it should be engaged) the Health Services Commission will have access to the data needed to ensure high standards and continuous improvement. It is vital that CALD Victorians be better encouraged and empowered to register their feedback, so that health service providers may be made more accountable, in terms of the access and treatment they provide to CALD clients. The recommendations made in this submission provide a framework for this.

Are there any issues not covered in the discussion paper that should be addressed?

The ECCV would like to reiterate the fact that the underrepresentation of CALD community members as complainants is indicative of the following:

- CALD consumers may not be aware of the complaints mechanism
- CALD consumers may not always have a full understanding of their rights in the healthcare context and of when they should complain
- CALD consumers may be unsure of how to engage with the complaints system
- CALD consumers may find the system to be complicated, unresponsive, unsupportive and inaccessible

This access, awareness and support issues align with recent sector research and discussion regarding health literacy. The ECCV has recently launched a paper on the issue of health literacy in CALD communities and we have attached a copy to this submission.

An Investment Not an Expense: Enhancing Health Literacy in Culturally and Linguistically Diverse Communities was recently launched by the Victorian Minister for Health and Ageing, the Hon. David Davis and puts forth recommendations that centre on improving health literacy via enhanced accessibility and support. We submit that the Expert Panel consider this policy paper and the recommendations therein when considering strategies for reform, with a view to better understanding the issues that exist between health services and CALD communities, as well as the measures that may be taken to bridge gaps in communication and engagement gap.

The ECCV appreciate the opportunity to contribute to this reform process and ask that you not hesitate to contact us, should you wish to discuss this submission further.

Please direct any enquires to:

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Yours Sincerely,



Joe Caputo

Chairperson