

Victorian Multicultural Commission

# Submission to the Access to Justice Review

Research and Coordination Unit  
March 2016

© Victorian Multicultural Commission, Melbourne

March 2016

For further information on the Victorian Multicultural Commission please go to <http://www.multicultural.vic.gov.au/>

To join our mailing list for regular e-news contact: [info@vmc.vic.gov.au](mailto:info@vmc.vic.gov.au)

## Contents

1. Executive Summary .....	3
1.1 Findings .....	3
1.2 Recommendations .....	4
2. Introduction .....	6
2.1 Victoria’s Growing Diversity .....	6
3. VMC’s interest in Access to Justice.....	6
4. Prevalence of Legal Problems in Victoria’s Diverse Communities .....	7
5. Structure of this Submission .....	8
6. Public Policy Perspectives .....	8
7. Response to Terms of Reference.....	9
7.1 Term of Reference 1: Accessible Legal Information .....	9
Enhancing Access.....	12
7.2 Term of Reference 3: Alternative Dispute Resolution .....	14
7.3 Term of Reference 8: Victoria Legal Aid.....	18
7.4 Term of Reference 9: Self-Represented Litigants.....	21
Appendix 1 .....	24
Appendix 2 .....	26
Works Cited.....	27

## 1. Executive Summary

The Victorian Multicultural Commission (VMC) welcomes the opportunity to make a submission to the *Access to Justice Review*. The VMC has used information provided by members of its Regional Advisory Councils (RACs) and VMC Commissioners to inform this submission.

The functions of the VMC include conducting regular community consultation, undertaking research, informing the development of legislative and policy frameworks, and seeking to ensure that services are delivered to Victoria's diverse communities in a manner that meets their particular needs.

Therefore, improving equal access to justice is critically important for all culturally, religiously and linguistically diverse groups in Victoria (that is, all cultural groups, including people from non-English speaking backgrounds (NESB) and diverse communities), including the most vulnerable migrants, refugees, and asylum seekers.

Members of the eight RACs<sup>1</sup> and ten VMC Commissioners were canvassed in regard to information related to access to justice and asked to respond to eight brief questions<sup>2</sup>, informed by matters raised in the review's Terms of Reference.

### 1.1 Findings

The key findings, informed by the information supplied by RAC members and VMC Commissioners are as follows:

1. The main factors limiting access to legal information included:
  - a. Language and cultural barriers:-
    - i. Limited English and low levels of literacy;
    - ii. Lack of translated materials and interpreters;
    - iii. The further complexity of legal language; and
    - iv. Lack of knowledge or trust in legal services.
  - b. Unfamiliarity with the Victorian legal system
  - c. Difficulties recognising a problem as a legal problem
  - d. Lack of access to computers and computer literacy.
2. Word of mouth, and from family, friends and community leaders was identified as a common mean to access legal information.
3. Overall low levels of awareness of available avenues for alternative dispute resolution in diverse communities throughout the regions.

---

<sup>1</sup> There are eight RACs covering metropolitan, regional and rural Victoria. Refer to this webpage for further detail <http://www.multicultural.vic.gov.au/regional-advisory-councils/about-rac>.

<sup>2</sup> For full details of the questions posed to RAC members and VMC Commissioners please refer to Appendix 1.

4. Barriers to accessing online dispute resolution processes include:-
  - i. Access to, and ability to use technology;
  - ii. Language and literacy; and
  - iii. Digital divide issues (i.e. geographical factors, culture and preference, internet connection issues).
5. The main barriers to accessing Victoria Legal Aid services are lack of awareness and practical understanding of guidelines, timelines and eligibility criteria.
6. Self-representation at Court or Tribunal hearings has led to poor outcomes which in turn have resulted in negative social consequences.

## 1.2 Recommendations

Informed by the key findings the following recommendations are designed to improve access to justice and enhance understanding of legal problems, identify the different services and mechanisms that can be used to help resolve those problems, and alert the review to the particular needs of Victoria's diverse communities.

### **RECOMMENDATION 1 – LEGAL CAPABILITY AND ENHANCING ACCESS**

The VMC recommends that the review:

- Consider the needs of diverse communities and subsets by seeking to improve access to culturally responsive information services to improve the legal capability of diverse communities and facilitate pathways to helpful information.

This could be achieved by:

- Translating all publicly available legal information or self-help resources into community languages and distributing to key community locations such as libraries, community health centres, local Council offices and community legal centres.
- Seeking to coordinate legal assistance to produce and share relevant and up to date legal resources and education programs, tailored to meet the needs of diverse communities and not assuming a 'one-size-fits-all' approach.

### **RECOMMENDATION 2 – COMMUNITY ENGAGEMENT**

The VMC recommends that the review:

- Engages with community leaders and relevant localised community organisations to facilitate access in the delivery of alternative dispute resolution services to diverse community members.

This could be achieved by:

- Providing translated materials or materials in plain English and/or on DVD, providing access to interpreter services, and support strategies to address literacy issues.

- Collaborating with the National Community Hubs Programs to promote outreach services to vulnerable groups, particularly older people from non-English speaking backgrounds and in rural and regional Victoria to increase awareness of alternative dispute resolution.
  - Developing an alternative dispute resolution education strategy for organisations that members of diverse groups commonly turn to for assistance. This should include information about how to make a referral to alternative dispute resolution services.
- Carefully consider the limitations of technology in seeking to reach diverse clients, given the lack of ready access to the internet, lack of requisite skills to use the technology and reluctance to discuss legal issues online.

### **RECOMMENDATION 3 – EARLY ACCESS TO INFORMATION**

The VMC recommends that the review:

- Seek to broaden the reach of Victoria Legal Aid services to engage with Victoria’s diverse communities and make its services more widely known.

This could be achieved by:

- Funding an awareness campaign through local ethnic and community radio stations and media, including print, visual storyboards and online.
- Engaging representative community leaders and equipping them with the capacity to present, distribute and promote resources to their representative communities.
- Strengthening the cultural responsiveness of legal assistance services - particularly important for diverse community members who may be reluctant to engage with Victoria Legal Aid.

### **RECOMMENDATION 4 –PROVIDING BETTER SUPPORT**

The VMC recommends that the review:

- Considers the specific support required for self-represented litigants from non-English speaking backgrounds. In planning to meet the support needs, data on the characteristics and needs of self-represented litigants is required.

This could be achieved by:

- A routine collection of consistent data on self-represented litigants by courts and tribunals, including demographic characteristics that influence representative status, such as main language other than English spoken at home and proficiency in spoken English.
- The development and implementation of plain English guidelines on other forms of non-lawyer assistance that directly assist self-represented litigants, such as the use of McKenzie friends and migration agents.

## 2. Introduction

The VMC welcomes the opportunity to make a submission to the *Access to Justice Review* (the review), in particular with regard to legal capability and improving access to justice for all diverse communities in Victoria.

The VMC is the voice of Victoria's multicultural communities and is the main link between them and the government. Operating under its remit, as outlined under the *Multicultural Victoria Act 2011* (the Act), the VMC provides independent advice on multicultural affairs to inform legislative and policy frameworks, and service delivery to multicultural communities.

The VMC convenes regular RAC meetings throughout each year. RAC members provide the VMC with a regular flow of information about matters affecting local multicultural communities across Victoria, including settlement, multicultural affairs, service delivery and citizenship.<sup>3</sup>

### 2.1 Victoria's Growing Diversity

Victoria is home to one of the most open and diverse societies in the world, and is also among the fastest growing and most diverse populations in Australia. As a successful and cohesive multicultural state, 26.2% of Victorians were born overseas, representing over 200 countries, 260 languages and dialects, and 135 religious faiths at the time of the 2011 Australian Census of Population and Housing.

The diversity of Victoria's population is increasing. Since the mid-2000s, net overseas migration has made a larger contribution to Australia's population growth than natural increase. In recent years, temporary immigration has increased at a much faster rate compared to permanent immigration, and is now the larger contributor to net overseas migration. Temporary immigration often serves as a pathway to permanent residency.<sup>4</sup>

Data about migration to Australia confirms that the civil justice system plays a substantial role in minimising barriers to accessing the system for an increasing proportion of diverse groups. This includes how people experience, handle and try to resolve legal problems. Improving access requires increasing the capabilities of people of diverse backgrounds seeking to access the system, especially those from NESBs.

## 3. VMC's interest in Access to Justice

The VMC is keen to ensure that Victoria's diverse population and its legal needs are fully considered in the review. Civil dispute resolution should be brought within the reach of all Victorians, including migrants who may be second and third generation migrants, recent migrants, humanitarian refugees and asylum seekers, on the basis of access to justice principles, such as equity, fairness and efficiency.

Victoria Legal Aid's (2011) research on unmet legal need found people from diverse communities face considerable barriers to getting help with their legal problems, including:<sup>5</sup>

- Language and literacy levels

---

<sup>3</sup> RAC members reflect the diversity of Victorian communities and include local residents, service providers and local government representatives.

<sup>4</sup> Productivity Commission, 2015

<sup>5</sup> Victoria Legal Aid, 2011

- Confusion about where to go to get help
- Lack of understanding about the legal system
- Different cultural expectations, experiences and beliefs about family and marriage, the role of the courts and police, and the justice system in general.

Access to justice is a topic raised regularly in RAC meetings by members advocating on behalf of the diverse populations within their local communities. In order to inform this submission the VMC also canvassed members of its eight RACs and VMC Commissioners in relation to access issues in terms of the civil justice system context, including:

- Barriers to legal information
- Recognising legal problem types
- Awareness of alternative dispute resolution processes, including online dispute resolution
- Difficulties in self-representation.

#### **4. Prevalence of Legal Problems in Victoria's Diverse Communities**

In considering the accessibility of the civil dispute resolution system, it is important to understand the nature and extent of legal need in Australia. The Productivity Commission (2014) defined 'legal need' as problems for which a legal remedy exists that parties cannot resolve effectively by their own means. 'Unmet legal need' is defined as legal need that has either gone unaddressed or have been addressed based on inappropriate advice.<sup>6</sup>

NESB is often used as an indicator of cultural and linguistic diversity and can contribute to particular disadvantages in accessing justice. Based on the *Legal Australia Wide (LAW) Survey*<sup>7</sup> data, the Productivity Commission (2014) identified those from a NESB were more likely to experience unmet legal need relative to those whose main language was English.<sup>8</sup>

The LAW Survey found that many disadvantaged or socially excluded groups were particularly vulnerable to legal problems. For example, respondents from a NESB had low rather than high prevalence of legal problems.<sup>9</sup> However, the under-reporting of legal problems reported by people from a NESB may reflect both a failure to recognise legal problems and low capability to access legal remedies. The LAW Survey also found people from a NESB had higher levels of inaction and lower levels of seeking advice when action was undertaken. People taking no action achieved the poorest outcomes.<sup>10</sup>

Therefore, litigants from a NESB require special measures to facilitate their particular needs in terms of access to justice and avenues for legal advice and redress in order to achieve equitable outcomes.

---

<sup>6</sup> Productivity Commission, 2014, 85-86

<sup>7</sup> Legal Australia Wide (LAW) Survey is a comprehensive quantitative national survey of legal need across Australia. See [http://www.lawfoundation.net.au/lif/site/templates/LAW\\_AUS/\\$file/LAW\\_Survey\\_Australia.pdf](http://www.lawfoundation.net.au/lif/site/templates/LAW_AUS/$file/LAW_Survey_Australia.pdf)

<sup>8</sup> Above n 6, 107

<sup>9</sup> Coumarelos, Macourt, People, McDonald, Wei, Iriana & Ramsey, 2012

<sup>10</sup> Ibid



## 5. Structure of this Submission

This submission includes information supplied by RAC members and VMC Commissioners regarding the review's Terms of Reference. This information relates to:-

- Legal needs, including how community members recognise, experience, handle and try to resolve their legal problems;
- Barriers to the accessibility of legal services;
- Awareness of dispute resolution; and
- Self-help actions and obtaining legal assistance.

This submission is structured around the following themes:-

- Accessible legal information
- Alternative forms of dispute resolution
- Legal aid funding
- Safeguarding equality before the law more broadly for people from diverse communities.

## 6. Public Policy Perspectives

From a public policy perspective achieving equitable access to legal redress, including the right to self-represent, requires a justice system that supports people's agency to act. Agency – the capacity to act and bring about change – is a key concept of the 'capability approach'.<sup>11</sup> It is an approach pertinent to debates about the nature of social exclusion and substantive freedom of choice.

Sen's capability approach is a moral framework that proposes 'capabilities' are the freedoms people have to undertake functionings they 'value and have reason to value'.<sup>12</sup> Focusing on freedom draws attention to social development and the value of empowerment and responsibility. Consequently, public policy imperatives should exist to expand 'the substantive freedoms that people have'.<sup>13</sup>

The aim of the capability approach is to evaluate what people are able to be and do, and an essential aspect to realising this aim is having the freedom to make decisions in matters that affect their lives. Processes that are socially just include the freedom, or social right, to hold others to account.<sup>14</sup> Nussbaum (2003) married this to the language of justice and human rights arguing that 'we should not grant that the society is just unless the capabilities have been affectively achieved'.<sup>15</sup> Institutions and structures need to be procedurally just, to facilitate agency and substantive freedom, and not solely outcome focused.

Some consider that access to justice extends to the capabilities of individuals to deal with their disputes: 'Access to justice should include resilience: reinforcing and enhancing the capacity of people to resolve disputes themselves'.<sup>16</sup> The ability of individual's to take action by themselves can

---

<sup>11</sup> Sen, 1999

<sup>12</sup> Sen, 2009

<sup>13</sup> Above n 11

<sup>14</sup> Alkire & Deneulin, 2009

<sup>15</sup> Nussbaum, 2003

<sup>16</sup> Attorney-General's Department, 2009

have positive impacts on their wellbeing and quality of life. Therefore, the main objectives of the civil justice system should be to improve the wellbeing of all Victorians, including more vulnerable groups and community subsets by:

- Providing access to low cost avenues of dispute resolution and timely resolution of disputes
- Enabling the provision of a range of accessible and easy to navigate legal services that meet the particular needs of communities, including being treated fairly
- Facilitating equal access to justice by promoting affordable services.

\* \* \* \* \*

## 7. Response to Terms of Reference

### 7.1 Term of Reference 1: Accessible Legal Information

#### **Term of Reference 1 – Accessible Legal Information**

The availability of easily accessible information on legal assistance services and the Victorian justice system, including advice on resolving common legal problems.

The VMC notes that the recent Inquiry into ‘Access to Justice Arrangements’ by the Productivity Commission (2014) found legal problems are widespread and people experience a number of barriers in trying to access justice. In particular, the Productivity Commission (2014) noted:<sup>17</sup>

- Those without basic legal knowledge may not recognise the problems they face have legal dimensions and remedy, which can lead to worse outcomes such as failing to take action to resolve their problem or not sourcing appropriate advice;
- Public knowledge of legal assistance services is generally low (except for legal aid); and
- Some people experience difficulty developing legal capability and some groups, particularly those experiencing disadvantage and vulnerability, may require specific assistance and support.

64% of responses by RAC members and VMC commissioners highlighted that most people from diverse backgrounds recognise some types of legal problems, such as:-

- Civil legal problems (21%)

---

<sup>17</sup> Above n 6, 150-155

- Divorce, workplace issues and disputes (e.g. unfair dismissal, redundancy, minimum wages and conditions), dispute with neighbours (e.g. noise, fences and trees), VCAT (e.g. powers of attorney)
- Housing legal problems (18%)
  - Residential tenancy agreements, discrimination in rental markets (e.g. applicant lists, character references etc.)
- Consumer matters (17%)
  - Sales agreements (e.g. door-to-door sales), debt and financial issues (e.g. credit, scams, insurance)
- Family violence (13%)
  - Elder abuse (e.g. financial abuse, neglect etc.)

RAC members and VMC commissioners advised that the nature of a legal problem was strongly influenced by the subjective threshold of individuals to identify a legal problem within the Victorian legal system. Difficulties in both negotiating the legal system and understanding legal language are not unique to diverse communities. However, both language and cultural barriers to recognising and asserting legal rights pose greater barriers for those from a NESB, who may also be used to a different legal system.

For example, RAC members and VMC commissioners suggested the following:-

- 'Due to the environment that they have lived in before makes it hard for our community members to understand and recognise the Australian legal system.'
- 'Many are still influenced by their experience and/or knowledge (as migrants) of the laws and rules of behaviour in their previous society.'
- 'The more related to 'our' traditional legal system, potentially the less likely there would be awareness.'

For many NESB groups, the Victorian legal system differs markedly from that in their country of origin, including past/previous experiences of intimidation, persecution and resulting fear of authorities. Therefore, special measures are required to enable them to have the same level of capability to seek help for their legal problems.

Instances of accessing helpful legal advice and information were cited by RAC members and VMC Commissioners as follows:-

- Community legal centres (CLCs)
- Trusted community leaders, community workers and volunteers
- Referral services from trusted community organisations and service providers (e.g. Australian Greek Welfare Society, Sunraysia Mallee Ethnic Communities Council, Central

Highlands Community Legal Centre, Multicultural Information Place Desk at the Ballarat Library, Ballarat Regional Multicultural Council, and Italian Consulate General)

- Local government (e.g. City of Ballarat Multicultural Community Services Directory)
- Family and friends
- Word of mouth
- Online (e.g. Victoria Legal Aid)
- Multicultural media (e.g. community ethnic radio).

RAC members advised the VMC that people from diverse backgrounds, especially new and emerging communities, tend to seek advice from family and friends, trusted service providers and community leaders. Those community members who do access legal advice experience difficulties in doing so. Common barriers relate to:-

- Language difficulties
- A lack of interpreters and translated materials
- Lack of awareness of legal assistance services and procedures
- Unfamiliarity with the Victorian civil legal system
- Lack of access to computers and computer literacy (diverse community members often rely on public access to computers at the local library, not having personal computers at home).

Language barriers affect substantive freedom to choose appropriate avenues for legal redress. There was a strong consensus among RAC members and VMC commissioners that language barriers present particular difficulties for people from NESB. The lack of access to translated material and low levels of legal knowledge often prevents taking action to resolve legal problems.

Barriers reported by RAC members and Commissioners include:-

- **Language Barriers**
  - Low literacy levels
  - Lack of access to interpreters (i.e. difficulty in describing their legal problem and/or understanding advice)
  - Issue of translated materials
- **Online Format**
  - Many legal information websites are only available in English and not accessible
  - Lack of familiarity/skill with technology and accessing information by computer
  - Limited access to computers, including no home internet connection

- **Complex Legal System**
  - General unfamiliarity with the Victorian civil legal system
  - Lack of knowledge (legal capability) to navigate the civil justice system and its processes
  - Lack of awareness of available avenues for dispute resolution
  
- **Financial Barriers**
  - Affordability of legal assistance
  - Perception that legal services are available to only those who can afford to protect their legal rights
  
- **Geographic and Social Isolation**
  - Lack of public transport options to seek legal services
  - Isolated and lacking support to access and engage with legal solutions
  
- **Cultural Barriers**
  - Lack of knowledge or trust in legal services
  - Fear of engaging with authorities
  - Reluctance to seek outside assistance for fear of being ostracised by their community
  - Distrust with ‘official’ services
  
- **Legal Capability**
  - Lack of awareness of legal rights and difficulty in recognising a problem as a legal problem
  - Low public knowledge of available legal assistance services and resources in the community

### Enhancing Access

Evidence suggests that diverse community groups and its subsets are likely to benefit from legal information and education strategies that are specifically designed to direct them to appropriate legal advice services.<sup>18</sup> Thus, ensuring that legal information is more accessible to diverse groups and community subsets requires targeted strategies that would provide information, education and advice to meet their specific legal needs and result in increased positive outcomes.

RAC members and VMC commissioners suggested a range of options to make it easier for people from diverse backgrounds to access and navigate the civil legal system, such as to:-

- Utilise local migrant resource centres to provide legal education sessions and legal materials on civil legal issues
  
- Utilise community radio to broadcast legal information to diverse groups in their own language, particularly to reach new and emerging communities

---

<sup>18</sup> Balmer, Buck, Patel, Denvir, & Pleasence, 2010

- Utilise culturally and linguistically diverse communication storyboards as a legal education resource that can be understood by both non-English speakers, those with low literacy skills and also those people who may not be literate in their first language
- Engage local government to develop partnerships with local settlement service providers in order to deliver culturally relevant legal information
- Provide funding streams that improve referral pathways to legal services and deliver legal education resources to new and emerging communities
- Provide greater cultural sensitivity in legal service provision
- Engage multicultural community leaders and ethno-specific organisations
- Consider engaging multicultural liaison officers to facilitate access by diverse community members.

Southern Metropolitan RAC members outlined local schemes operating to identify a person's legal issues and direct the client to an appropriate response. One of the most common ways people from NESBs come to access legal services is by word of mouth, family, friends and community leaders. This indicates that they are best placed to notice legal problems and can act as a gateway to legal services.

For example, in the Greater Dandenong community, South East Community Links<sup>19</sup> have a history of working to facilitate equitable access to justice for people from diverse backgrounds through the 'Refugee Action Program'. This is a Victorian government initiative that focuses on building the capacity of community leaders so that they are better equipped to work with and support community members from a refugee and humanitarian background. This includes responding to information needs, such as providing Legal Aid and Consumer Affairs Victoria information sessions.

RAC members and VMC commissioners indicated that some diverse groups may benefit more from face-to-face advice than from online information or telephone advice. In considering the delivery of outreach of services, the Department of Justice (DoJ) approached the VMC in 2015 seeking information about powers of attorney and understanding in multicultural communities. After consulting RAC members, the VMC advised the DoJ to raise awareness and reduce barriers to making powers of attorney (POA).<sup>20</sup> As a result of the VMC's recommendations, the Office of the Public Advocate obtained a grant from the Victoria Law Foundation that aims to increase the understanding and use of enduring POA in Victoria's diverse communities. The project also aims to build the capacity of bilingual workers, educators and multicultural workers so that they are confident in providing their clients with useful and accurate introductory information about POA.

---

<sup>19</sup> A recent merge of Springvale Community Aid and Advice Bureau and Dandenong Community Advisory Bureau.

<sup>20</sup> See Victorian Multicultural Commission, *Understanding and Use of Power Attorney in Victoria's CALD Communities* at <http://www.multicultural.vic.gov.au/regional-advisory-councils/rac-publications>.

## RECOMMENDATION 1 – LEGAL CAPABILITY AND ENHANCING ACCESS

The VMC recommends that the review:

- Considers the needs of diverse communities and its subsets by seeking to improve access to culturally responsive information services to improve the legal capability of diverse communities and facilitate pathways to helpful information.

This could be achieved by:

- Translating all publicly available legal information or self-help resources into community languages and distributing to key community locations such as libraries, community health centres, local Council offices and community legal centres.
- Seeking to coordinate legal assistance to produce and share relevant and up to date legal resources and education programs, tailored to meet the needs of diverse communities and not assuming a ‘one-size-fits-all’ approach.

\* \* \* \* \*

## 7.2 Term of Reference 3: Alternative Dispute Resolution

### Term of Reference 3 – Alternative Dispute Resolution

Whether and how alternative dispute resolution mechanisms should be expanded so that more Victorians can make use of them.

Access to justice does not merely involve a legal system that supports equal access to formal court processes, but also access to alternative dispute resolution options. Alternative dispute resolution (ADR) includes a wide range of processes of resolving disputes and has significant potential to resolve disputes faster and more affordable for those with limited means. The former National Alternative Dispute Resolution Advisory Council (2003) defined ADR as:<sup>21</sup>

*“an umbrella term for processes, other than judicial determination, in which an impartial person assists those in a dispute to resolve the issues between them. ADR is commonly used as an abbreviation for alternative dispute resolution, but can also be used to mean assisted or appropriate dispute resolution. Some also use the term ADR to include approaches that enable parties to prevent or manage their own disputes without outside assistance”*

<sup>21</sup> National Alternative Dispute Resolution Advisory Council, 2003

ADR covers a broad range of facilitative, advisory and determinative processes that can be tailored to particular legal dispute types and circumstances. Despite the varied definitions of ADR and varied views about what falls within its scope, the Victorian Parliament Law Reform Committee (2009) suggested ADR is commonly understood to refer to processes which:<sup>22</sup>

- Are less structured and outside formal court and tribunal processes
- Normally involve the presence of an impartial and independent third party
- Sometimes involve the third party assisting the other parties to reach a decision or make a decision on their behalf
- Lead to a decision which may be binding or non-binding.

In considering whether and how ADR services provide access to justice, it is important to understand the extent to which individuals and groups within the community are accessing ADR services.

The Productivity Commission (2014) referred to the number, diversity and complexity of ADR services available in Victoria.<sup>23</sup> This complexity creates a threshold issue around describing the objectives of ADR, as well as performance measures regarding ADR outcomes.

Limited awareness and understanding of ADR processes and service providers is a significant barrier to achieving community use of ADR services, at the earliest possible opportunity. RAC members and VMC commissioners advised that only a small number (around 28%) of diverse community members across Victoria are aware of ADR. However, the Productivity Commission (2014) found that there is a lack of data and information on the use of ADR to resolve civil disputes in Victoria resulting in a lack of knowledge about the users of ADR.<sup>24</sup>

Collecting and collating data would assist in identifying unmet need. The VMC suggests that the review considers a need for consistent data collection on the extent to which Victorians, including diverse groups, access ADR services. Identifying need and barriers to accessing ADR services is a first step in seeking to increase service user's understanding.

RAC members and VMC commissioners suggested the following strategies to raise general awareness and education about ADR options in diverse communities:-

- Providing information in a variety of media (e.g. community radio, print, visual storyboards, online) and languages
- Involving community members/leaders in ADR service development (e.g. training workshops, community information seminars)
- Collaborating with local community leaders and ethno-specific agencies to support a coordinated approach that can:
  - Equip community leaders to act as gateway to information about ADR

---

<sup>22</sup> Victorian Parliament Law Reform Committee, 2009

<sup>23</sup> A table setting out the range of organisations and institutions offering ADR to Victorians is at Appendix 2.

<sup>24</sup> See Productivity Commission, 2014



- Disseminate ADR material and resources
- Providing face-to-face advice, including financial information (i.e. associated costs)
- Target materials to specific needs and groups, including women, young people and older people from diverse backgrounds (e.g. advertisements in local community papers and ethnic media, information forums, and distribution of information to multicultural and ethno-specific organisations)
- Establishing local ADR services throughout Victoria, particularly in rural, regional and remote areas
- Delivering culturally responsive ADR services (i.e. use of interpreters).

RAC members and VMC commissioners cited ways to improve mainstream ADR services in order to service multicultural community members through awareness raising strategies that seek to reduce barriers such as community distrust of formal institutions and processes. Similarly, providing culturally responsive services will enable providers to better meet the needs of all clients. This includes having an understanding of the varying needs of diverse groups seeking access to ADR services. It also involves the effective use of interpreters to support the delivery of culturally appropriate and accessible ADR services.

There is a possibility that the use of online technologies could be expanded so that more Victorians can make use of ADR mechanisms. However, there is a risk that online dispute resolution (ODR) may deny access to some vulnerable groups, particularly those from a NESB.

RAC members and Commissioners cited the following barriers related to technology and accessing ODR processes as:-

- Limited English and low levels of literacy
- Limited access to and ability to use technology
- Digital divide issues – geographical factors, culture and preference, internet connection issues
- Generally information online is presented in English
- Concerns of feelings of discomfort, lack of confidence or distrust with ODR processes
- Impression that it would involve substantial financial costs
- Legal and ethical issues, including privacy
- Follow up issues
- Lack of face-to-face advice and/or guidance during an ODR process.

The VMC received a number of responses that highlighted alternative resources or supports that would be required to assist people from NESBs in accessing an ODR process. For example, one RAC member, who is also a local service provider, suggested an ‘any door’ approach, more commonly

referred to as the ‘no wrong door’ principle.<sup>25</sup> The outcomes of the VMC’s service provider forums (2016) found clients often present to one service with multiple needs. For example, service providers come into contact with women experiencing family violence through sexual health clinics and other community programs.<sup>26</sup>

Members of diverse communities may also be particularly vulnerable to referral loss or to follow up a referral as they may lack understanding of the civil legal system in addition to low English language skills. As one RAC member commented, referral loss may occur when a client is unable to ‘follow up a case once lodged’, which can also be a result of inaccessible formats, printed or online, of ADR processes.

Further, specialised services may be required to ensure that diverse client groups can fully utilise ODR as a mechanism to resolve their disputes. RAC members and VMC commissioners also raised the need for interpreter services to be available, including access to immediate phone interpreting, to allow clients from a NESB to fully engage with the ODR process. RAC members suggested outreach training to diverse community members, particularly to older migrants from NESBs who may have lower rates of use of information technology.

## **RECOMMENDATION 2 – COMMUNITY ENGAGEMENT**

**The VMC recommends that the review:**

- **Engages with community leaders and relevant localised community organisations to facilitate access in the delivery of ADR services to diverse community members. This could be achieved by:**
  - **Providing translated materials or materials in plain English and/or on DVD, providing access to interpreter services, and support strategies to address literacy issues.**
  - **Collaborating with the National Community Hubs Programs to promote outreach services to vulnerable groups, particularly older people from NESBs and in rural and regional Victoria to increase awareness of ADR.**
  - **Developing an ADR education strategy for organisations that members of diverse groups commonly turn to for assistance. This should include information about how to make a referral to ADR services.**
  
- **Carefully consider the limitations of technology in seeking to reach diverse clients, given the lack of ready access to the internet, lack of requisite skills to use the technology and reluctance to discuss legal issues online.**

\* \* \* \* \*

---

<sup>25</sup> Above n 16 – ‘No wrong door’ approach involves every legal and non-legal service provider maintaining complete referral networks to ensure that whichever service a client approaches, they can be directed towards appropriate legal assistance.

<sup>26</sup> Victorian Multicultural Commission, 2016

## 7.3 Term of Reference 8: Victoria Legal Aid

### Term of Reference 8 – Victoria Legal Aid

The resourcing of Victoria Legal Aid (VLA) to ensure that Government funding is used as effectively and efficiently as possible and services are directed to Victorians most in need, including:

- Within the total funding envelope, the types of matters funded by VLA, eligibility criteria for legal assistance and the level of assistance provided
- VLA's current service delivery model, including the use of panel arrangements and internal lawyers, and spending on allied support services

People from diverse backgrounds and their communities, in particular new and emerging communities and people from a NESB may have low awareness of available legal assistance. Access to affordable legal assistance and information can help people from diverse communities by addressing misconceptions, reducing fear of victimisation and building trust in the services which are available.

In June 2012, Victoria Legal Aid (VLA) finalised its formal definition for priority clients as people experiencing one or more disadvantage indicators, including people who experience language or cultural barriers. Of the 85,007 individual clients who accessed one or more of VLA's legal services in 2014-2015, 22% were from a multicultural background, including those who speak a language other than English at home and people born in a non-English speaking country.<sup>27</sup> The VMC found that almost half (48%) of all RAC members and Commissioners canvassed reported that members of their community had sought to access legal aid services.

The Victorian Auditor-General's Office (VAGO) report concluded that VLA is performing its role in delivering legal aid services across Victoria, and prioritising the most vulnerable people based on a sound understanding of key demand drivers and funding risks.<sup>28</sup> However, these services are being delivered in a complex environment of increased demand, levels of need and stretched resources – VLA's current funding is largely based on demand levels from 2008.<sup>29</sup> Therefore, additional government funding certainty is vital to VLA investing in initiatives that will expand access to justice and meet the growing demand of its services.

VAGO (2014) cited factors that limit access to VLA services for people from NESBs including:<sup>30</sup>

- Cultural or language barriers
- Difficulty in contacting VLA and delays in obtaining assistance
- Lack of knowledge of legal rights and how to uphold these

<sup>27</sup> See Victoria Legal Aid, 2015

<sup>28</sup> Victorian Auditor-General's Office, 2014

<sup>29</sup> Ibid

<sup>30</sup> Ibid

- Lack of awareness of VLA's services.

This is consistent with the Social Research Centre's (2014) finding of lower levels of awareness and understanding of legal aid for members of multicultural communities.<sup>31</sup> VAGO (2014) recommended some assessment of the awareness of VLA's services among its priority clients group to ensure VLA's accessibility and responsiveness to this group.<sup>32</sup> The VMC strongly supports this recommendation and suggests that the review considers incorporation of such a mechanism within revisions for the resourcing of VLA to ensure that government funding is directed to Victorians most in need.

VLA explored potential barriers to its services for four key priority client groups facing disadvantage, including those from a culturally, religiously and linguistically diverse background. Specific to diverse communities, the *Access and Equity Audit* (2006) identified the following:<sup>33</sup>

- Lack of awareness of VLA and very limited understanding of legal services as a concept
- Language barriers accompanied by literacy issues, particularly for new and emerging communities
- Lack of trust in legal services
- Inaccurate assumptions about the range of services offered by VLA (beliefs that VLA's focus is only on criminal law and immigration)
- Underestimation of the help VLA can provide in issues regarded as key legal issues for NESB clients (consumer problems, road traffic offences, family law matters).

The VMC found that RAC members and VMC commissioner responses also indicated awareness and timeliness issues affecting access to VLA's services. For example:-

- Tight eligibility criteria and guideline issues (i.e. changes to eligibility criteria has resulted in a number of legal matters that VLA do not assist with)
- Means testing issues (e.g. refused applications for legal assistance based on a person's financial means, including income or assets or both that can compound personal hardship and further escalate legal problems)
- Lack of awareness of available legal assistance
- Timeliness issues (e.g. long wait times)
- Language barriers compounded by complex legal language
- Lack of cultural responsiveness in VLA service provision (e.g. VLA staff not culturally responsive to the communities they work with to provide assistance and advice)
- VLA unable to meet growing demand.

---

<sup>31</sup> Kellard, Compton, Vickers & Fishman, 2014

<sup>32</sup> Above n 28

<sup>33</sup> Above n 5

The VMC commends the recent steps by the VLA to increase awareness of its services and responsiveness to diverse communities such as developing new ‘help cards’ to promote VLA services, specifically targeted at ‘hard-to-reach’ communities and translated into 25 languages,<sup>34</sup> and the development of an interpreters’ policy to ensure best practice across VLA. However, a longstanding challenge remains in relation to people’s access to VLA’s services. The accessibility issues include multiple avenues for service users to make contact with VLA and unclear referral pathways. For example, one RAC member<sup>35</sup> cited work providing referral pathways on behalf of clients to legal assistance commenting, ‘support was crucial in terms of referral information and initial access to legal aid’.

The Productivity Commission (2014) suggested that people who have utilised legal assistance have illustrated how early access to information and advice can lead to the earlier resolution of legal issues. One RAC member expressed the need for VLA to ‘actively promote at the community level’. Similarly, the Social Research Centre (2014) found respondents who speak a language other than English at home were more likely to cite ‘promoting their services to the community’ as requiring priority services.<sup>36</sup>

### RECOMMENDATION 3– EARLY ACCESS TO INFORMATION

The VMC recommends that the review:

- Seek to broaden the reach of VLA services to engage with Victoria’s diverse communities and make its services more widely known.

This could be achieved by:

- Funding an awareness campaign through local ethnic and community radio stations and media, including print, visual storyboards and online.
- Engaging representative community leaders and equip them with the capacity to present, distribute and promote resources to their representative communities.
- Strengthening the cultural responsiveness of legal assistance services - particularly important for diverse community members who may be reluctant to engage with VLA.

\* \* \* \* \*

<sup>34</sup> See Victoria Legal Aid at [http://www.legalaid.vic.gov.au/find-legal-answers/all-publications-and-resources?field\\_item\\_category\\_tid=342](http://www.legalaid.vic.gov.au/find-legal-answers/all-publications-and-resources?field_item_category_tid=342).

<sup>35</sup> Local service provider at the Australian Greek Welfare Society

<sup>36</sup> Above n 31

## 7.4 Term of Reference 9: Self-Represented Litigants

### Term of Reference 9 – Self-Represented Litigants

Options for providing better support to self-represented litigants throughout the Victorian justice system.

Self-represented litigants (SRLs) come from diverse cultural, linguistic and socioeconomic backgrounds and they need different forms and degrees of assistance. There is no common definition of an SRL and multiple terms are often used to describe an SRL, including ‘unrepresented litigant’, ‘litigant in person’, or ‘pro se litigant’. For the purposes of this report, the VMC considers an SRL as a person (or business) seeking to resolve a dispute without a lawyer and who act and speak for themselves. The main barriers for SRLs from NESBs in understanding and exercising their right to self-represent are cultural and language barriers.

There is limited evidence on reasons for self-representation and almost no qualitative data about the experiences of SRLs.<sup>37</sup> Data collected on SRLs is generally limited to numbers and types of matters.<sup>38</sup> SRLs either choose, or may be forced by circumstances (e.g. limited financial means to afford legal representation), to represent themselves. Evidence suggests that the cost of legal representation is beyond the reach of many ordinary Victorians and a growing number of individuals with legal problems cannot afford to hire a private lawyer.<sup>39</sup>

Information offered by RAC members and VMC commissioners suggests that a small proportion (32%) of its community members have represented themselves at a court or tribunal hearing. Evidence also suggests that SRLs tend to come from culturally and linguistically diverse backgrounds.<sup>40</sup>

Some respondents suggested that self-representation can also have social consequences for the litigant, and may lead to negative outcomes. One RAC member advised the VMC that this caused ‘great stress for the individual and social and mental health issues’. This finding is consistent with a qualitative study of SRLs in Canada (Macfarlane 2013) that found SRLs experienced a range of negative consequences such as instability and loss of employment caused by the amount of time required to manage their case, and social and emotional isolation as the case became increasingly complex and overwhelming.<sup>41</sup>

Lack of knowledge about laws and procedures is common among SRLs, and poorer outcomes may be related to difficulties with negotiation and understanding, as well as compliance with court

---

<sup>37</sup> Richardson, Sourdin & Wallace, 2012

<sup>38</sup> Ibid

<sup>39</sup> Ibid

<sup>40</sup> Dye, 2004

<sup>41</sup> Macfarlane, 2013

procedures.<sup>42</sup> RAC members advised that negative outcomes experienced by community members included spending more time in hearings, detrimental outcomes, and prolonged processes.

RAC members provided the following comments regarding the difficulties faced by their community members who are SRLs:-

- Long time required to manage their case particularly when they have English as a second language
- Difficulty understanding procedural requirements, including preparation of court forms and documents
- Difficulty understanding the complexity of the law and court procedures
- Limited English language skills
- Lack of confidence to effectively self-represent
- Difficulty understanding the concept of evidence
- Lack of available interpreters
- Lack of support assistance or representative.

Some recent improvements to support effective self-representation include increased assistance and written information for SRLs, development of self-help services (including internet-based resources and online videos) and legal aid funding for certain types of hearings.<sup>43</sup> However, information needs to be tailored to reflect the changing circumstances of litigation and the diverse needs of SRLs, including translating more information into other languages. A number of RAC members reported to the VMC that support assistance would be most helpful to SRLs in their communities.

Comments relating to the benefit of non-legal support for SRLs included:

- ‘accessibility to professional guidance/support’;
- ‘guidance during the process’;
- a ‘support person’;
- ‘someone to guide’; and
- ‘a support person to assist in self-representation’.

The VMC suggests that the review considers more broadly the range of options available for SRLs, including the role of a *McKenzie friend*<sup>44</sup> - a non-lawyer representative to accompany an SRL to provide moral support and general assistance, particularly for SRLs from a non-English speaking or migrant background.

---

<sup>42</sup> Hunter, Genovese, Chrzanowski & Morris, 2002

<sup>43</sup> Above n 37

<sup>44</sup> Following the name of the English case *McKenzie v McKenzie* [1970] 3 All ER 1034, a McKenzie friend is a lay assistant to sit with the self-represented party, take notes, give advice and make suggestions during a hearing.

## RECOMMENDATION 4—PROVIDING BETTER SUPPORTS

The VMC recommends that the review:

- Considers the specific support required for SRLs from NESBs. In planning to meet the support needs, data on the characteristics and needs of SRLs is required.  
This could be achieved by:
  - A routine collection of consistent data on SRLs by courts and tribunals, including demographic characteristics that influence representative status, such as main language other than English spoken at home and proficiency in spoken English.
  - The development and implementation of plain English guidelines on other forms of non-lawyer assistance that directly assist SRLs, such as the use of McKenzie friends and migration agents.



## Appendix 1

### Access to Justice Review Questions for Regional Advisory Council (RAC) Members and Victorian Multicultural Commission (VMC) Commissioners

In order to gain information from the regions to inform this submission the VMC posed the following questions to RAC members who were asked to provide their responses to the questions by close of business on Tuesday 12 January 2016.

#### Accessible Legal Information

Information about legal assistance services, the justice system and common legal problems will only be useful if the community knows that the information exists and can actually understand it.

1. Do the members of your community recognise a legal problem when it arises?
  - a) If so, do they know how to get helpful information (i.e. seek information online, community legal centre, local library, etc.)?
  - b) Do you have any suggestions that would make it easier for members of your community to seek information and/or help to solve their legal problems?
2. What would be some of the barriers to the people in your community finding out information? Provide example/s.
3. What are the most common legal problems experienced by people in your community (e.g. consumer issues, crime, housing issues, etc.)?

#### Alternative Dispute Resolution

Alternative Dispute Resolution (**ADR**) is now used widely across a diverse range of civil law areas, including commercial disputes, neighbourhood disputes and consumer disputes. ADR has a number of advantages compared to court-based dispute resolution methods.

4. Do the members of your community know about Alternative Dispute Resolution (ADR) and that it is available to them?
  - a) If so, what would you suggest to improve ADR?
  - b) What can be done to improve knowledge and awareness of the availability and benefits of ADR within your community?
5. What would be some of the barriers to the people in your community accessing an online dispute resolution process?
  - a) If so, what alternative resources or supports would be required to assist them?

#### Self-Represented Litigants

The High Court has held that individuals have the right to self-represent and individuals are free to exercise that right in all Australian courts. Self-represented litigants who come from diverse cultural, linguistic and socio-economic backgrounds need different forms and degrees of assistance.

6. Have any members of your community represented their own case in a legal matter?
  - a) If so, did they face particular difficulties?
  - b) How did this effect the outcome?
  
7. What tools, strategies and policy options would be of most help to self-represented litigants from your community?

### Victoria Legal Aid

8. Have members of your community applied for legal aid to help with a legal problem?
  - a) If so, what was the outcome? (i.e. successful/not successful?) Please provide details, including any challenges or barriers experienced.

Summary of Responses from RAC Members and VMC Commissioners		
Number of Responses by Region		
North West: 2	Eastern: 1	Loddon Mallee: 4
Southern: 6	Gippsland: 2	Hume: 2
Barwon South West:	Grampians: 3	VMC Commissioners: 5
Total Number of responses received: 25		

## Appendix 2

**Table 1: Alternative Dispute Resolution Service Providers in Victoria<sup>45</sup>**

Victoria	
<b>Courts and Tribunals</b>	<ul style="list-style-type: none"> <li>▪ Supreme Court of Victoria</li> <li>▪ County Court of Victoria</li> <li>▪ Magistrates' Court of Victoria</li> <li>▪ Victorian Civil and Administrative Tribunal</li> <li>▪ Children's Court of Victoria</li> </ul>
<b>Government Departments and Statutory Bodies</b>	<ul style="list-style-type: none"> <li>▪ Victoria Legal Aid Family Dispute Resolution Service</li> <li>▪ Victorian Equal Opportunity and Human Rights Commission</li> <li>▪ Health Services Commissioner</li> <li>▪ Consumer Affairs Victoria</li> <li>▪ Legal Services Commissioner</li> <li>▪ Dispute Settlement Centre of Victoria</li> <li>▪ Accident Compensation Conciliation Service</li> <li>▪ Victorian Small Business Commissioner</li> <li>▪ Commissioner for Privacy and Data Protection</li> <li>▪ Disability Services Commissioner</li> <li>▪ Ombudsman Victoria</li> <li>▪ Building Advice and Conciliation Victoria</li> <li>▪ Freedom of Information Commissioner</li> <li>▪ Mental Health Complaints Commissioner</li> <li>▪ MoneyHelp</li> <li>▪ EnergySafe Victoria</li> <li>▪ Independent Broad-based Anti-corruption Commission</li> <li>▪ Victoria Police Professional Standards Command</li> </ul>
<b>Industry Providers</b>	<ul style="list-style-type: none"> <li>▪ Energy and Water Ombudsman (Victoria)</li> <li>▪ Public Transport Ombudsman (Victoria)</li> </ul>
<b>Private Providers and Professional Bodies</b>	<ul style="list-style-type: none"> <li>▪ Law Institute of Victoria</li> <li>▪ The Victorian Bar</li> <li>▪ Victorian Association for Dispute Resolution</li> </ul>

<sup>45</sup> This table is adapted from Department of Justice and Regulation (2016), *Background Paper: Alternative Dispute Resolution*, 11-13.

## Works Cited

- Alkire, S., & Deneulin, S. (2009). The Human Development and Capability Approach. In S. Deneulin, & L. Shahani, *An Introduction to the Human Development and Capability Approach* (pp. pp.22-48). London: Earthscan.
- Attorney-General's Department 2009, *A Strategic Framework for Access to Justice in the Federal Civil Justice System*, Canberra.
- Balmer, N., Buck, A., Patel, A., Denvir, C. and Pleasence, P. 2010, *Knowledge, capability and the experience of rights problems*.
- Coumarelos, C., Macourt, D., People, J., McDonald, H.M., Wei, Z., Iriana, R & Ramsey, S 2012, *Legal Australia-Wide Survey: Legal Need in Australia*, Law and Justice Foundation of New South Wales.
- Dye, M 2004, *An Evaluation of Services for Self-Represented Litigants in the Federal Magistrates Court*, Canberra, Federal Magistrates Court of Australia.
- Hunter, R., Genovese, A., Chrzanowski, A & Morris, C (2002), *The Changing Face of Litigation: Unrepresented Litigants in the Family Court of Australia* (Research Report), Law and Justice Foundation.
- Kellard, K., Compton, S., Vickers, N & Fishman, A (2014), *Victoria Legal Aid: Community Research*, The Social Research Centre, North Melbourne.
- Macfarlane, J. (2013), *The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants*, May, Canada.
- National Alternative Dispute Resolution Advisory Council (2003), *Dispute Resolution Terms: The use of terms in (alternative) dispute resolution*, 4, viewed on 25 January 2016, <https://www.ag.gov.au/LegalSystem/AlternateDisputeResolution/Documents/NADRAC%20Publications/Dispute%20Resolution%20Terms.PDF>
- Nussbaum, M (2003), 'Capabilities as Fundamental Entitlements: Sen and Social Justice', *Feminist Economics*, 9(2-3):33-59.
- Productivity Commission (2014), *Access to Justice Arrangements*, Inquiry Report No. 72, Canberra.
- Productivity Commission (2015), *Migrant Intake into Australia*, Draft Report, Canberra.
- Richardson, E., Sourdin, T & Wallace (2012), *Self-Represented Litigants: Literature Review*, Australian Centre for Court and Justice System Innovation, 14.
- Sen, A (1999), *Development as Freedom*, Oxford University Press, Oxford.

Sen, A (2009), *The Idea of Justice*, Harvard University Press, Cambridge, USA.

Victoria Legal Aid (2011), *Cultural Diversity Action Plan 2011-2012*, at <https://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla-cultural-diversity-action-plan.pdf>.

Victoria Legal Aid (2015), *Annual Report 2014-2015*, at <http://annualreport.vla.vic.gov.au/our-clients>.

Victorian Auditor-General's Office (2014), *Access to Legal Aid*, Victorian Government Printer.

Victorian Multicultural Commission (2016), *Meeting Community Needs: A Report on the Victorian Multicultural Commission Forums for Service Providers 2015*, Intended for Release April 2016.

Victorian Parliament Law Reform Committee (2009), *Final Report of Inquiry into Alternative Dispute Resolution and Restorative Justice*, Victorian Government Printer.