



**ethnic
communities'
council of
victoria**

August 2009

**ECCV SUBMISSION TO THE VICTORIAN PARLIAMENT LAW REFORM
COMMITTEE'S INQUIRY INTO POWERS OF ATTORNEY**

1. Ethnic Communities' Council of Victoria (ECCV) welcomes the opportunity to present a submission on Powers of Attorney to the Victorian Parliament Law Reform Committee.

2. 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.

3. ECCV membership consists of approximately 190 organisations that represent groups with an ethnic or multicultural focus, organisations with an interest in these areas, or individuals who support ECCV. The majority of those members are not-for-profit community service organisations. They provide services in areas such as aged care, migration, discrimination, community harmony, employment, education and training, health and community services, law and justice, as well as the arts and culture.

4. ECCV welcomes the Law Reform Committee Inquiry into Powers of Attorney and appreciates the opportunity to provide input on behalf of culturally and linguistically diverse (CALD) welfare and community-based service organisations.

5. By 2011 approximately 38% of people over 65 years in the Melbourne metropolitan area and 2% in the Victorian rural and regional area will be from a CALD background (Howe 2006). ECCV is concerned that CALD seniors have special needs such as lack of English language competence which can impact on their access to information about Powers of Attorney.

Safeguarding abuse of Power of Attorney documents

6. ECCV has received informal feedback from ethnic groups regarding the vulnerability of seniors from Non-English Speaking Backgrounds (NESB) who are socially isolated and lack support.

Case Scenario

A frail and elderly NESB woman whose daughter lived overseas, relied on a neighbour for daily support and shopping trips. She went to the bank every now and then to withdraw money so that she could give the neighbour cash to pay her bills and go shopping to bring her supplies. The neighbour convinced her that he needed a Power of Attorney to pay her telephone bills. He used the Take Control booklet, filled in the forms and took her to her local GP to witness them, against the wishes of her distant daughter.

7. ECCV advocates that the Victorian Government provide culturally and linguistically appropriate information and community education sessions on

Statewide Resources Centre
150 Palmerston Street
Carlton Victoria 3053

t 03 9349 4122
f 03 9349 4967
eccv@eccv.org.au
www.eccv.org.au

ABN 65071572705



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when and how to make an enduring Power of Attorney, and who to appoint especially if the next of kin live interstate or overseas.

8. ECCV recommends multilingual information sessions on who to appoint and on revoking Powers of Attorney.

9. ECCV feedback from its Elder Abuse Working Group sub-committee of the ECCV Aged Care Committee in 2008 and 2009 indicated that family members of frail and elderly NESB seniors have been coerced into signing Powers of Attorney from the Take Control Kit and subsequently lose their life savings. ECCV recommends that appropriate checks be placed on family members who would be appointed as Powers of Attorney.

10. Anecdotal information to ECCV from members of the CALD community indicated that bank personnel sometimes did not accept or recognise the signed "Take Control Kit" Enduring Power of Attorney because the signed page was a separate document from the page that named the nominated Powers of Attorney. ECCV recommends a review of the format of the Take Control documents to ensure signatures are not on separate pages.

11. CALD seniors have higher rates of advanced dementia than the average Australian population because multicultural families tend not to seek aged care services or assistance and as a result avoid early diagnosis. Similarly they are unaware of the need for or ways to arrange enduring Powers of Attorney. Many CALD seniors enter residential care facilities in a crisis situation without Powers of Attorney. As a result a guardian is appointed causing distress and additional burdens to the devoted next of kin.

12. Existing kits such as the "Take Control Kit" contain complex information and instructions and deter CALD seniors and their adult children from making an enduring Power of Attorney. ECCV advocates a simplification of the booklet and availability in other languages.

13. Lack of English language is a barrier to accessing information about Powers of Attorney. ECCV recommends a DVD, a radio information program, and translated material to be made available to the CALD communities in Victoria.

14. Determining when a CALD donor, with limited English has capacity to create a legally enforceable document such as a Power of Attorney and when they lose decision making capacity is fraught with complexity. In a small and emerging community, for example, with few interpreters and none who may be NATTI qualified, the services of an interpreter in assisting the assessment of the person may pose problems for those who may know the interpreter and resist providing personal information. ECCV advocates cultural sensitivity and closer community engagement and education on legal issues and transfer of personal decision making rights to appropriate people. ECCV also advocates

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emphasis on the use of qualified interpreters and cultural sensitivity in tribunal forums such as VCAT.

15. To some CALD communities, particularly humanitarian migrants from non – democratic war torn countries the notion of granting a power of attorney is synonymous with granting rights of abuse. This is particularly evident (albeit anecdotally) amongst the older frail and cognitively challenged CALD people who may not be able to distinguish between the powers of a totalitarian state and powers of attorney granted to someone to guard their interests.

16. ECCV recommends the following safeguards to ensure that power of attorney documents are not abused in the most vulnerable CALD communities with little access to effective interpreters:

- Emphasizing in audiovisual format, such as in a DVD, perhaps even with added theatricality, the process of identifying and addressing abuse of privilege/rights of power of attorney in a Westminster system governed country such as Australia
- Presenting such a DVD to as many vulnerable CALD communities as possible, for example at PAG groups and Senior Citizens Groups.

17. In conclusion , whilst ECCV supports law reforms to streamline and simplify power of attorney documents, it recommends particular attention be paid to access of those documents by those who are most vulnerable and most resistant to having their decision making power transferred to someone they may not trust.

To address this ECCV recommends:

- community education using media technology that communicates most effectively with the most vulnerable, smaller and emerging communities with emphasis on
- sensitivity to cultural appropriateness and levels of language proficiency both in the language of origin and in English.

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