



Peninsula
Community
Legal Centre

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Submission

Victorian Legislative Assembly Legal and Social Issues Committee Inquiry into Support for Older Victorians From Migrant and Refugee Backgrounds

November 2021



About Peninsula Community Legal Centre

The Peninsula Community Legal Centre (PCLC) is an independent, not-for-profit organisation that has been providing free legal services to Melbourne's south eastern communities since 1977.

In addition to its general legal services, the Centre operates specialist programs in family violence, family law, fines, and tenancy. We also undertake community legal education, community development and public advocacy activities. Our clients overwhelmingly experience disadvantage. Our priorities include people on low income, people with disabilities, those experiencing elder abuse, family violence, homelessness and other vulnerable groups.

Of particular relevance to this review, PCLC operates in a region which has some of the largest elderly populations and migrant and refugee communities in Victoria. The increasing demand for elder law services in the region led the Centre to launch a specialist legal clinic for older people in early 2021. At the same time we also launched a special community legal education project for culturally and linguistically diverse (CALD) women in response to an increase in CALD family violence clients. The Centre has considerable experience in elder abuse cases.

Background

PCLC welcomes this opportunity to contribute to the Committee's Inquiry into the service needs of older Victorians from migrant and refugee backgrounds.

Our submission focuses on older Victorian's access to justice and legal services, in particular the barriers they face and their unmet legal needs, including elder abuse. We will provide examples of our clients' experience with case studies, some of which are individual client cases and others examples of types of cases that we commonly see. We will also make a number of recommendations based on our client's experiences, some of which have been made in previous access to justice reviews by ourselves and others.¹

Access to Justice

There is currently a crisis in access to justice in Australia. Every year, more than 8 million Australians have legal problems but only half are able to get the legal help they need. An ever-increasing number of Victorians cannot afford a private lawyer but do not qualify for legal aid, leaving them with few options to obtain the legal assistance they need. Community legal centres would normally fill this gap but due to a chronic lack of funding are unable to meet the level of demand for their services.

Older people suffer a distinct disadvantage in access to justice in Australia. The evidence shows that older people face particularly strong barriers to gaining legal assistance and

¹ E.g Law Council of Australia. (August 2018). The Justice Project. Final Report

achieving satisfactory resolution of their legal problems compared to other Australians. This is an even greater problem for older people from CALD backgrounds.²

For example, while PCLC operates in a region with some of the highest number of migrants in the state - the City of Casey has the most overseas born residents – and some of the highest numbers of older people - the Mornington Peninsula has the second largest older population in Victoria - only 3% of our clients are over 65 years old and from CALD backgrounds.

Barriers to Accessing Legal Services

While the older culturally and linguistically diverse population of Victoria is not homogenous, the main barriers to older CALD people accessing legal services identified in the research³ and supported by PCLC's experience with its clients are:

- high costs and resource issues;
- a lack of knowledge about the law/their legal rights and available services;
- language and literacy barriers/difficulties in accessing interpreter services;
- social isolation;
- cultural and religious barriers that inhibit help-seeking outside the community or affect ability to communicate effectively outside the community;
- higher reliance on family, friends, community for information and delegation of information seeking to their children;
- negative perceptions/mistrust of government agencies and services;
- a lack of culturally responsive services and bi-cultural personnel;
- technological barriers, particularly for telephone and web based services;
- past trauma; and
- complexity and multiplicity of legal issues affecting older people.

Legal Needs of Older Culturally Diverse People

The legal needs of older persons are varied and affected by many factors, including stage of life, age, cultural and linguistic background, socio-economic circumstances, health, and geographic location. Many legal problems experienced by older persons are age-related and are a manifestation of the complex process of ageing. As the aging population grows, the legal needs of older persons are expected to rise.⁴

Some of the most common legal issues faced by PCLC's older clients (from both CALD and Anglo-Australian backgrounds) include:

- Substitute decision-making and end of life issues e.g. powers of attorney, wills
- Elder abuse e.g. financial, emotional, psychological and physical

² Susannah Sage-Jacobson, Access to Justice for Older People in Australia. Ageing and the Law.(2015)

³ e.g. Family Law Council. (February 2012). Improving the Family Law System for Clients from Culturally and Linguistically Diverse Backgrounds. Canberra: Commonwealth of Australia.

⁴ Law Council of Australia. (August 2018). The Justice Project. Final Report

- Health related issues e.g. advanced health care directives
- Accommodation and housing e.g. rights of renters and aged care residents
- Grandparenting issues e.g. access/caring arrangements
- Fines and traffic issues e.g. motor vehicle accidents, traffic related fines

The COVID pandemic has exacerbated some of these common legal problems. For example, there was a 59% increase in elder abuse presentations at local hospitals in Frankston/Mornington Peninsula during 2020 – 2021 compared to the pre-COVID period. PCLC has also seen an increasing number of evictions affecting older people in the wake of COVID renter protections being lifted in March 2021, particularly older women.

In our experience, older people are often reluctant to complain about issues affecting them. Coupled with many older culturally diverse people's distrust of the legal system, and the limitations of the law in addressing their legal problems, we note that there is a danger that many of the legal needs of older people may be largely hidden from legal and non-legal service providers, courts, and complaint handling bodies.

The following case studies illustrate some of the barriers and challenges that make it difficult for older culturally diverse Victorians to navigate the legal service system and have their problems successfully resolved.

Language Barriers

Limited English language proficiency impedes access to legal information and advice services for many older migrants and refugees. A low level of English proficiency may impact upon individuals' ability to engage with the legal system at every stage: dealing with police, engaging legal and other support services, completing forms and understanding paperwork, communicating with legal and court staff, participating in proceedings and understanding court orders.

The limited availability of free and appropriately qualified interpreter services to support CALD people to negotiate the justice system is well known and has been raised in numerous inquiries and reviews.⁵ There is a direct link between language difficulties and miscarriages of justice. A 2009 study found that appeals on the basis of incompetent interpreting had increased by 27.7% between 2007 and 2008.⁶

PCLC's CALD clients commonly face problems with interpreters which at best can involve costs in terms of money, time, and logistical arrangements, and at worst result in injustice, invasion of privacy and even threats to client safety.

The importance of free, professional and appropriately-skilled interpreter services for CALD people who need free legal services cannot be overstated.

⁵ E.g. Department of Justice and Regulation (Victoria), Access to Justice Review (2106) 492-4

⁶ Hayes, A., & Hale, S. Appeals on incompetent interpreting, *Journal of Judicial Administration*, 20, 119-130m (2010).

CASE STUDY

60 year old Sanja and her husband came to Australia with their three teenage children 15 years ago. A few years later another child was born in Australia.

Sanja was the victim of serious family violence over a number of years both in her country of origin and in Australia. Sanja and the children eventually fled the relationship. Four years later, Sanja's husband applied to the Federal Circuit Court for parenting orders in relation to the youngest child despite not having seen his wife or children since they had fled the home.

Sanja does not speak English and has required the assistance of an interpreter at all stages of the legal process.

At a child inclusive conference ordered by the court, Sanja and her child struggled to communicate as the interpreter could not speak their dialect properly.

Despite the father's history of family violence, the court ordered that the husband have supervised time with the child due to some of the misunderstandings that had arisen from the poor interpretation. The child was misunderstood to have indicated he was "missing" his father during a video interview with the family consultant, resulting in the independent children's lawyer insisting on supervised contact time with the child despite our client's protests, which again were not adequately interpreted.

Due to her limited English Sanja was unable to communicate her concerns about the father's violent history with the supervisor of the contact time with the child. It took 5 contact visits between the child and the father, where he became increasingly intimidating and threatening, before the supervisor grasped the situation and refused to continue the contact visits.

The entire family law process was very confusing for Sanja, including why supervised contact had been ordered in the first place when she had clearly indicated that neither she nor the child could understand the family consultant during the interviews that led to the contact order. She did not feel that the legal system was protecting her or her child.

PCLC assisted Sanja to obtain a Family Violence Intervention Order against her violent ex-husband as well as orders giving Sanja full parental responsibility and prohibiting her ex-husband from having contact with the child.

Cultural Issues

PCLC's older CALD clients often experience cultural differences which compromise their understanding of and access to the justice system. Cultural differences can affect their understanding of the law and the consequences of legal proceedings, as well as what they perceive (or fail to perceive) to be a significant legal issue that can be dealt with by legal expertise.

Cultural and linguistic differences can also influence how migrants and refugees behave in legal settings such as courts or with representatives of the legal system such as the police. These cultural differences can add to the complexity of the already confusing legal system for many of our clients.

CASE STUDY

Kusal is a 72 year old who came to Australia as a refugee. Kusal was involved in a 3 car accident when a car suddenly braked in front of him. While Kusal was able to stop in time, the car behind him rammed his stationary car into the vehicle in front.

The police issued Kusal with a fine and licence demerit points as they thought that he had run into the car in front due to a failure to maintain a safe distance, even though it was clear from the damage to Kusal's own car that it had been rammed from behind.

Kusal was very softly-spoken and polite and found it difficult to contradict the incorrect assumptions (and possible racism) of the police because to do so in his culture and country of origin was considered unacceptable. While he maintained his innocence, both cultural and linguistic barriers prevented him from successfully communicating what had actually happened.

Rather than pay the fine and demerit points for something that wasn't his fault, Kusal elected to have the matter brought to court. He was charged with 'Failing to Maintain a Safe Distance Behind Another Vehicle.' The police brief made no mention of any other cars being involved other than Kusal's car and the one in front.

PCLC was able to present the correct facts of the accident and successfully negotiated with Victoria Police for the charges to be dropped. PCLC also assisted Kusal to ensure the proper resolution of the insurance claims by correctly establishing liability for vehicle repair.

CASE STUDY

Aida is a 70 year old woman who migrated to Australia 20 years ago. She has no English language skills.

Aida received a speeding fine when her niece, who was a passenger in the vehicle, experienced a medical emergency. Based on her daughter's recommendation and with her daughter's assistance Aida requested the police to conduct an internal review of the fine. She did not obtain legal advice. Victoria Police rejected the request for an internal review and confirmed the decision to issue the fine. Based on her daughter's advice, Aida then applied to have the matter heard in court, again without obtaining legal advice. The fine was withdrawn and issued as a criminal charge instead. It was only then that Aida's daughter assisted her to contact PCLC for legal advice, five days before the court hearing.

Aida felt shame and embarrassment about the criminal charge and insisted that she did not want any male interpreters to be used in her dealings with PCLC's lawyer. Apparently her family knew a number of male interpreters from her immediate community and Aida was worried that if she got one of these interpreters "everyone would soon know her business" including the nature of her niece's medical emergency. As it was difficult to find a female interpreter the appointment had to be rescheduled a number of times and was delayed for several days.

PCLC was able to assist Aida in having the charges withdrawn, partly due to the fact that had Aida obtained legal advice before the internal review, she would have had sufficient grounds to successfully argue that 'exceptional circumstances' existed at the time of the offence. The charge was also withdrawn on the grounds that Aida had been disadvantaged by virtue of her limited language skills and her dependence on a family member who was not qualified to help her navigate through her legal options in responding to the infringement.

Lack of Knowledge About Legal Rights, Lack of Translated Legal Resources

Many of PCLC's older CALD client's knowledge of key legal issues of relevance to them is very low, particularly those with lower incomes and wealth. Few legal information resources are translated into other languages and most legal services websites are not made available in other languages. In addition, the websites and other digital information sources are often difficult for older people to navigate.

Of particular concern is research indicating a near complete lack of knowledge about substitute decision-making among many older people from a CALD background, leading to an extremely limited uptake of enduring powers of attorney and advanced health

directives.⁷ This problem is even worse for older CALD women who are not used to handling financial and other family affairs.

CASE STUDY

Maria is an 84 year old widow who has been living in an aged care facility since the death of her husband.

Maria's social worker was contacted by Maria's bank as the bank was concerned about her financial position and possible abuse of a power of attorney held by her son. The social worker made an appointment for Maria with a lawyer from PCLC.

Maria said that her son had suggested that she create the power of attorney so that her son could assist her with financial matters after her husband died. Maria had no knowledge about powers of attorney and had never considered setting one up before her son's suggestion. Maria's son had facilitated the process of creating the power of attorney due to her limited English skills.

Maria said that she did not really know what her son had been doing in relation to her financial affairs as he did not discuss them with her. She was worried about him because he had been behaving strangely of late. Since the bank had contacted her social worker Maria was worried about whether she had made the right decision to give her son power of attorney. She feared that he might take all of her money and she would have nothing to leave to her daughter. Maria thought that once the power of attorney had been signed it could not be changed.

PCLC's lawyer advised Maria about powers of attorney and that they can easily be changed. Maria decided to revoke the power of attorney with PCLC's assistance.

Elder Abuse

PCLC has seen a steady rise in the number of older people affected by elder abuse in recent years. Most commonly PCLC's elder abuse cases involve an adult child pressuring, deceiving or being physically and emotionally abusive of their ageing parent.

In our experience, older people from CALD backgrounds are particularly vulnerable to abuse because:

- They are often socially isolated and unwilling to disclose mistreatment for cultural reasons/fear of social stigma associated with abuse;

⁷ Legal Information Needs of Older People. Law and Justice Foundation of NSW. 2004

- language and literacy barriers can make them dependent on others for translation and information, including assistance with their finances and paying bills, making them particularly vulnerable to financial abuse.
- dependent family visas can make them vulnerable to threats of deportation/migration abuse.

Common types of elder abuse cases dealt with by PCLC include an adult child or relative who:

- physically threatens or harms the older person or causes damage to their property, often after they have moved in with the older person due to drug or alcohol dependence, mental health issues or homelessness
- misuses their powers as an appointed attorney to transfer property and assets to themselves or others
- forges an older person's signature on legal documents
- uses their access to the older person's bank accounts for a specific reason (such as to pay bills) but then uses the money for themselves
- pressures or emotionally blackmails the older person to sign over property/assets

In many of our elder abuse cases involving older CALD people, clients have often been reluctant to take legal action against the perpetrator due to a deliberate choice to seek out other types of resolution to the problem. Many want the abuse to be resolved but still hold concerns for the perpetrator, particularly if it is their child. They often feel an obligation to protect and care for their adult child and believe that taking legal action might risk relationship breakdown with the child.

This can make it very difficult for legal services to assist people experiencing elder abuse and illustrates the bluntness of the law as an instrument to remedy this sensitive and complex problem. In our experience, any intervention to address elder abuse needs to take into account the importance to the older person of emotional connections with family, community and culture.

CASE STUDY

Mr. G is an 84 year old widower who migrated to Australia in the 1950s.

Mr. G's 64 year old daughter is his only child. She has been living in a demountable housing unit in Mr. G's back yard for 9 years. The housing unit was supplied by DHHS and installed under a lease agreement with Mr G and his wife. They agreed to this arrangement as they were very worried about their daughter's drug use and mental health issues and wanted her to have somewhere safe to live.

Since the death of his wife Mr. G felt that his daughter was increasingly taking advantage of him. She had recently forged Mr. G's signature so that she could receive a carer's pension even though she was doing nothing to care for him. She often called him old and crazy and threatened to put him in a nursing home and move into his house. She occasionally stole money, used his car without permission, and had recently contacted Mr. G's bank in a failed attempt to apply for an extension to his mortgage.

Mr. G wanted to sell his house to purchase a smaller more manageable property but could not do so due to the demountable unit in the backyard. At Mr. G's request DHHS had provided his daughter with a notice to vacate the unit but his daughter was refusing to leave.

PCLC advised Mr. G that his daughter's behaviour amounted to elder abuse. He could apply for a Family Violence Intervention Order to exclude her from his property and from having contact with him, or apply for a safe contact order that would allow her to remain at the property but would prohibit the abusive behaviour.

Neither of these legal options appealed to Mr. G. as he still loved his daughter and did not want to do anything that might involve the police or risk his daughter being charged with a criminal offence. He also did not want to exclude her from the property and leave her homeless. He was also concerned that an application for a safe contact order might have the opposite effect and escalate her abusive behaviour.

Ultimately PCLC assisted Mr. G to successfully negotiate with DHHS to find an alternative rental unit for his daughter and to remove the demountable unit from his property - although this was not really a "legal" process. The case demonstrates the gap in legally supported options and processes for those suffering elder abuse who do not wish to pursue a Family Violence Intervention order or police involvement. There are few clear legally supported options available to assist people in this situation. Other options need to be developed, such as a legally supported family mediation service, which would allow the parties to arrive at solutions in a controlled, safe and legally supported environment.

CASE STUDY

Mrs. P is a 68 year old migrant who was referred to PCLC's family violence duty lawyer at the Frankston Magistrate's court.

Mrs P's oldest adult son had moved back into the family home after he lost his job and could no longer afford his rent. Mrs. P's son had become depressed after repeated job application rejections and had started to use drugs.

Mrs P was at court because the police had been called by a neighbour to attend her property during a recent disturbance involving her older son. The incident occurred when Mrs P's son had asked for money to buy a new phone. Mrs P questioned whether he really wanted the money for a phone as she thought he really wanted to buy drugs, causing him to become verbally aggressive and abusive. When Mrs P's younger son tried to calm the situation and offered to go with his brother to buy the phone for him, her older son retaliated by kicking in the front windowpane. Mrs. P tried to calm him down but he raised his fist and threatened to punch both his mother and younger brother. He then punched a hole in the wall right above his mother's head and left the premises in a state of rage.

The police applied to the court for a family violence intervention order prohibiting the son from contact with Mrs P and excluding him from the family home.

Mrs P wanted to support her son to receive treatment and rehabilitation and was concerned that a full no contact order would prevent her from providing meaningful support to him. She was nonetheless concerned about her son's drug use and feared that he might be capable of further violence when under the influence of drugs.

With PCLC's assistance the court agreed to impose a drug and alcohol exclusion order, which allowed Mrs P to support her son during his rehabilitation but also provided additional protections to mitigate the risk posed by her son if he was to have relapse.

Data/Information Gaps

Elder abuse is notoriously under-reported, and there is very limited information available about elder abuse among migrant and refugee communities in Australia. There is currently no official data collection on elder abuse or family/domestic violence among people from culturally and linguistically diverse backgrounds.

For example, PCLC is a member of the Frankston Mornington Peninsula elder abuse network, which recently obtained data from VicPol on family violence for the region. The data indicates a 38% increase in family violence against people aged 60+ between 2016 - 2020, but contains no information on the cultural background of those affected.

There is also very limited research on how elder abuse is experienced in CALD communities.

This is a significant gap in our knowledge given that Australia is an increasingly ageing and multicultural society, with 1 in 3 people over 54 having a CALD background and 15.7% of Australians aged 65 and over.

Best Practices

Elder Law/Elder Abuse Specialist Services Within Community Legal Centres

Due to increasing demand, in early 2021 PCLC introduced a specialised elder law service which runs one day a month from its Rosebud office. The service is staffed by one of PCLC's family violence lawyers with expertise in elder abuse and a volunteer partner from a private law firm with expertise in elder law matters. Demand for this service far exceeds the number of appointments we are able to offer.

There is currently a lack of specialist legal services for older people and inadequate expertise with respect to elder law issues among the legal profession. Elder abuse issues in particular require suitably expert lawyers to identify the problem and provide appropriate advice. Seniors Rights Victoria is a specialist community legal centre that provides the kind of specialist service that is required, but is not sufficiently resourced to meet the level of demand across the state. It is therefore critical that more community legal centres are properly resourced to provide specialist legal advice and support for older people, including tailored support for older CALD people.

Community legal centres have strong links to the local community and regularly work in partnership with other community organisations. As a result they provide a trusted place-based service for vulnerable groups within the community.

Specialist elder law services within community legal centres provide a best practice model of service delivery for older CALD Victorians. More funding for these services is required.

Victoria Police Financial Abuse Trial

Another best practice is the financial elder abuse trial led by Victoria Police.

PCLC is actively involved in the trial currently running on the Mornington Peninsula which brings together VicPol, government agencies, community organisations, and banks to raise awareness and share insights on the complex issues involved with financial elder abuse. A key aim is to provide a coordinated and collaborative response to cases of financial abuse that are identified.

Similar initiatives that aim to coordinate and join-up service delivery to respond to the complex, interlinked issues involved with elder abuse are required.

Conclusion

Older people, particularly those from culturally diverse backgrounds, face strong barriers to gaining legal assistance and achieving satisfactory resolution of their legal problems compared to other Australians. Australia's increasingly ageing, multicultural population means that these problems will only increase over time. It is therefore critical that all levels of government devote more resources to better address the legal service needs and challenges faced by older migrants and refugees.

RECOMMENDATIONS

1. Community legal centres should be properly resourced to provide specialist advice and support services for older persons, including tailored support for CALD groups, on legal issues of relevance to them, in particular elder abuse.
2. Legal aid means and assets tests should be relaxed and grants of legal aid in civil law matters expanded to more appropriately meet the needs of all older persons, including culturally diverse groups.
3. A central referral service should be established for older people to obtain basic information about their legal rights and where to obtain legal assistance and other support services that can assist them to uphold their rights.
4. More resources need to be invested to provide free, appropriately skilled interpreter services to assist older culturally diverse people without means in their interactions with legal assistance services and the justice/court system.
5. Information about the law, particularly regarding key legal issues experienced by older people such as substitute decision-making and end of life issues, should be provided in a range of languages, as well as Easy English, and should be made available in a range of accessible modes (radio, audio-visual, printed and online material).
6. Key actors in the legal and justice system, such as police, legal assistance services and police, should be properly resourced to increase their cultural competence and cultural diversity. This should include measures such as the employment of cultural or community liaison officers to build trust with CALD communities.
7. Legal and justice data collection should be improved to better capture the cultural and linguistic diversity of users as well as their outcomes, particularly in the area of family violence and elder abuse.
8. More research needs to be conducted to address gaps in evidence about older culturally diverse people, their legal needs and their experiences of the justice system, as well as their experiences of elder abuse.