



MDA

**Multicultural Development
Association**

A Review of the Police Powers and Responsibilities Act 2000

Submission by the Multicultural Development Association Inc. (MDA)
17 May 2010

Review of the Police Powers and Responsibility Act 2000

Introduction

The Multicultural Development Association Inc. (MDA) is a lead specialist settlement, advocacy and community development organisation with highly respected credentials in the provision of services to refugees and a strong organisational track record in systemic advocacy for more than 10 years. We are currently part of a consortium with 4 Walls (a community housing provider) and QPASTT (Queensland Program of Assistance to Survivors of Torture and Trauma) which delivers a range of settlement services for refugees and migrants.

MDA's Government and Community Advocacy Team (GCAT) is part of a state wide advocacy network that is largely funded by Multicultural Affairs Queensland (MAQ) through its Community Action for a Multicultural Society (CAMS) program. This network provides advocacy and community development work servicing culturally and linguistically diverse (CALD) communities across the entire state. MDA also engages with a wide number of communities, advocacy networks and working groups which uniquely positions us to identify emerging issues and trends for CALD communities.

In addition to this, MDA's advocacy is further informed by a dual process of data collection through an in-house case management system which allows us to identify key presenting issues for our clients. This is supported by an advocacy incident form which collects case studies of incidents or challenges which our clients are facing on a daily basis. This will be referred to further below in our analysis stage and case studies.

Background

Currently, there are over 34 million refugees of interest to UNHCR¹ with over 11 million² in camps out of which 100,000 are resettled annually. Australia settled over 13,507 in 2008-2009 and has committed to increasing that number to 13,750 in its 2009-2010 intake³. MDA settles close to 1,500 newly arrived refugees and works with over 3500 refugees and migrants annually. The major percentages of MDA's current clients are predominantly from Africa, Asia and the Middle East as charted below.

Caseload cultural identity profile⁴

Nationality	Total Clients	% Clients	Total Cases	% Cases
Burmese (Myanmar)	165	22.21%	39	12.34%
Remainder	98	13.19%	41	12.97%

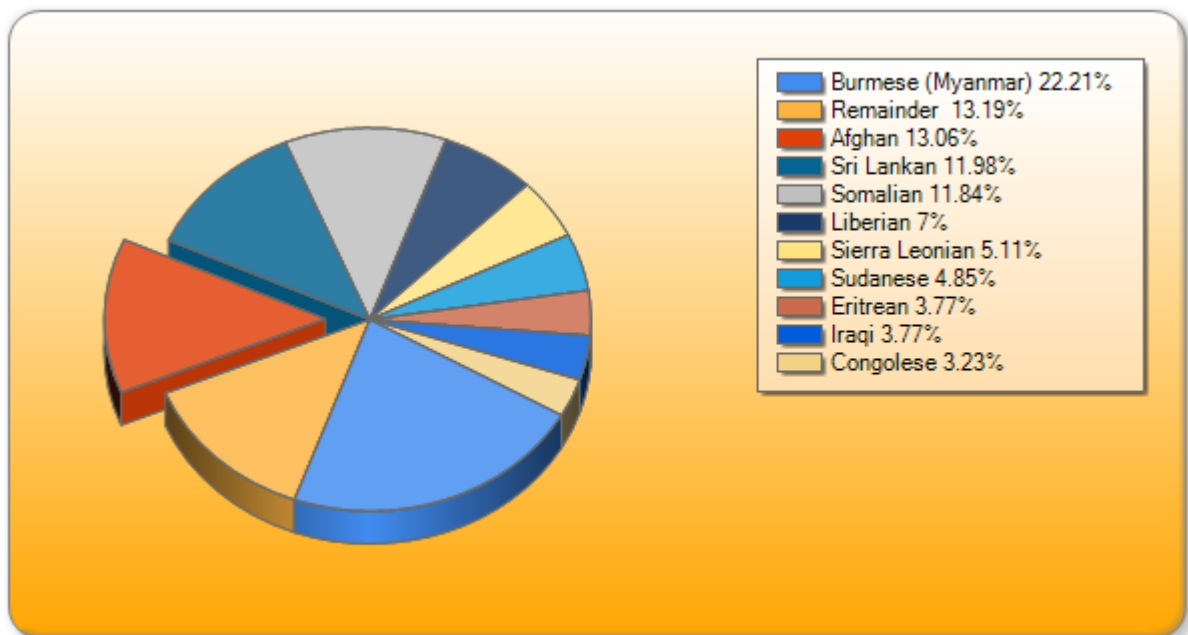
¹ UNHCR, 'Total Population of concern to UNHCR: Refugees, asylum-seekers, IDPs, returnees, stateless persons, and others of concern to UNHCR by country/territory of asylum, end-2008', accessed at <http://www.unhcr.org/pages/4a0174156.html> on 13 May 2010

² Ibid, Table 22, 'Refugees, asylum seekers, internally displaced persons (IDP), returnees (refugees and IDPs), stateless persons and others of concern to UNHCR by region 2007-2008'.

³ DIAC, 'Fact Sheet 60 – Australia's Refugee and Humanitarian Program', accessed at <http://www.immi.gov.au/media/fact-sheets/60refugee.htm> on 13 May 2010.

⁴ MDA CSNET in-house case management system, data current as at 13 May 2010.

Afghan	97	13.06%	81	25.63%
Sri Lankan	89	11.98%	74	23.42%
Somalian	88	11.84%	23	7.28%
Liberian	52	7.00%	14	4.43%
Sierra Leonian	38	5.11%	8	2.53%
Sudanese	36	4.85%	7	2.22%
Eritrean	28	3.77%	9	2.85%
Iraqi	28	3.77%	15	4.75%
Congolese	24	3.23%	5	1.58%
Totals	743	100%	316	100%



We are grateful for the opportunity to share our working knowledge of the issues that affect CALD communities. We hope that this will assist in informing the review and the Queensland Police Service (QPS) about daily challenges people from CALD communities, especially new and emerging communities, face in accessing the police.

The issues that are raised in this submission are predominantly ones that effect successful settlement for many new arrivals in Queensland. For the majority of refugees who arrive in Australia, their journey is one that involves the following: fleeing war-torn homelands, experiences of persecution in regards to their beliefs or status in their communities, presenting with torture and trauma issues and many have spent protracted years in refugee camps awaiting resettlement. For some refugee groups, the time spent in a camp constitutes the majority of their living years.

Therefore, many face significant barriers in settling into their new life, and the needs and challenges they face are often very complex settlement needs. At the outset, the settlement process is often complicated by language, cultural and social barriers.

MDA would like to acknowledge the significant investment of solid resources by QPS in building effective relationships with CALD communities through its Cultural Advisory Unit. Particular note should be given to the hard work of Police Liaison Officers (PLOs) and Cross-Cultural Liaison Officers (CCLO's) as well as QPS run events such as the Refugee World Cup which has gone a long way in building valuable relationships and engendering trust on both sides.

However, MDA would like to highlight some instances that demonstrate a clear breakdown in procedures when dealing with CALD communities; this again is particularly pertinent for new and emerging communities. It is hoped that the evidence based case studies will assist in providing clear examples where improvements can be made.

Our response will follow the recommended question format in the invitation to comment on the Review of the *Police Powers and Responsibilities Act 2000* (herein after referred to as the Act). Following these points, MDA will also offer some other points which have been recognised as areas where gaps have been identified between policy and practice which would assist the QPS respond more effectively to CALD communities.

Do you consider the current safeguards ensure fairness to, and protect the rights of, persons against whom police officers exercise power under this Act?

The consistent and appropriate use of formal interpreters for the QPS when engaging with CALD communities is a reoccurring point of concern for MDA. We would like to make the point that there is only specific reference in the Act to the use of interpreters under the sections which relate to indictable offences⁵ and in matters relating to performing forensic procedures⁶. However, our concerns relate directly to how such information and evidence was collected, along with the adequacy and legitimacy of such evidence, if an interpreter was not employed at an earlier point of the policing process.

There are numerous instances of incidents where the provision of interpreters prior to or at different points of a formal investigation is poorly understood or not employed at all. The following case studies demonstrate how not providing interpreters can impact on individuals and unfairly prejudice clients accessing justice.

Case study 1

On 21 January 2010, Police attended and investigated 2 incidents of assault and home invasion of 2 Rohingya families and did not use an interpreter. An MDA caseworker attended one site and advocated strongly for police to call an interpreter. After repeated and insistent requests the police officer relented and asked the caseworker for processes of how to obtain interpreter. At this station, the police said they were

⁵ Section 233, Chapter 15, Division 6

⁶ Section 512, Chapter 17, Part 8

not familiar with the procedure for getting an interpreter and had to get authority from many levels above.

Case study 2

On 22 Jan 2010, an MDA caseworker accompanied a Rohingya client to a police station to report a serious assault. As a police officer from another station had already attended the scene (and the station was closed at the time of incident) the police were not willing to take a statement or to arrange for an interpreter. The caseworker advocated strongly for the client to be able to lodge a statement as she could not walk due to the nature of the injuries sustained. In anticipation that the police would have significant trouble getting an interpreter at a later stage and the fact that the client would not be able to return on her own to make a statement, the case worker brought a cultural support worker for language support. At this insistence, the police officer finally agreed to take a statement.

Case study 3

On 21 March 2010, an MDA caseworker requested a meeting with a constable on behalf of the client to enquire about follow up procedures after an alleged assault. The attending constable cites problems with communicating with the client because he does not speak English. The caseworker presses the constable to engage an interpreter but the request was refused because the use of interpreters would not be approved for a meeting if used to 'just to clarify an issue'.

Case study 4

On 21 March 2010 a police officer contacted an MDA caseworker in relation to a client who has a number of very serious outstanding legal charges pending. The police officer and the principal of the school at which the incident occurred were using a 10 year old to interpret with the client to discuss and begin the investigation process of a serious matter, instead of engaging a qualified interpreter. The police officer refused to engage an interpreter citing issues of funding and that interpreters could only be used for major incidents and interviews.

Case study 5

On 11 May 2010, a client of MDA needed to make a complaint to the police due to an incident involving stealing and trespassing on their property. The police did not use an interpreter and refused to do so when taking the complaint.

An analysis of the cases above clearly demonstrates that the use of interpreters is required at all stages where police are required to liaise with people who have barriers to communication, not just in serious instances. Under specific guidelines for assessing the need for an interpreter in the Queensland Government Language Services Policy, it clearly states that⁷:

It may be difficult to assess whether a client needs an interpreter. The ability to converse in English does not necessarily indicate that a person comprehends the English spoken by doctors, nurses magistrates, lawyers, police officers etc or that the person understands written English. If there is any doubt as to a person's ability to communicate in and comprehend English, an interpreter should be engaged.

⁷ Ibid, p9

MDA believes that this point is most important in the interaction between CALD community members and the justice system, most often represented by QPS. It is a concerning omission that means that important evidence or information can be lost or misinterpreted, which could have very serious consequences for the outcome of a person's right to natural justice.

It also highlights the fact that understanding the process of how to access interpreters is patchy and ad hoc across stations.

What this also means for many refugee and migrant communities is that it enforces the feeling that they are not able to trust in the police as law enforcers to provide support and assistance. For many refugee communities, the issue of trust in figures of authority is a complicated one. Many of our clients have fled from oppressive and at times violent regimes which have meted out enforcement through its police or military arms. The association with authority for many of our clients does not automatically engender trust and respect, but rather fear and apprehension.

Are there provisions of other Acts that contain similar powers and responsibilities of police officers when investigating offences and enforcing the law and should these provisions be consolidated in the PPRA?

MDA recognises that the interaction between the Act, the *Domestic and Family Violence Protection Act 1989* and the *Child Protection Act 1999* have multiple areas where interaction can and does occur. MDA is aware of a number of incidences where the lack of clear legislative direction regarding the use of interpreters in the response to domestic and family violence, and child protection matters has had negative consequences for CALD community members.

We acknowledge that there are qualified agencies in respect to domestic violence and child protection who will have detailed knowledge of the relevant issues. MDA refers all clients presenting with domestic violence issues to relevant organisations like the Immigrant Women's Support Service (IWSS) who work with women and children from CALD backgrounds.

MDA believes that the Act should make a clearer point about the use of interpreters across all interaction between QPS staff and CALD communities, particularly in the interaction between the above mentioned pieces of legislation.

Do you consider the powers and responsibilities of police officers are consistent and standardised?

As mentioned above, the case studies highlight the fact that the use of interpreters is highly inconsistent. While active engagement with PLOs and CCLOs from the Metro

North and Metro South Police regions occurs regularly with MDA, there appears to be a gap in a formalised and planned approach to producing and disseminating information to all QPS staff about the use and necessity of accessing interpreting services. Similar inconsistencies have been raised by members of the CAMS network across the State.

MDA believes that a strategy should be implemented in regards to the clarification for QPS in the terms of engagement and implementation of interpreters when engaging with CALD community members. Consistent with this is the requirement in section 440 of the Act⁸ which states that the commissioner is required to issue all staff with up to date lists of interpreters.

Further information that may assist QPS is country specific information, as well as language and cultural requirements for CALD populations in their area or region. MDA recognises several reasons as to why there is a clear difference in interpreter usage across the state:

- Lack of information flows between Federal and State Departments in areas where new and emerging communities are settling regarding the changing community demographics of regions;
- Engagement between key service providers - MDA is often limited to CCLO's and PLO's rather than to the wider QPS;
- Optional cross-cultural training for police officers and the recruitment process of QPS which does not attract a diverse range of CALD background individuals to the service may be further influences.

Do you consider police officers have all powers necessary for effective modern policing and law enforcement?

Considering the diversity of Queensland's population, MDA believes that for QPS staff to be able to adequately meet the needs of CALD communities; compulsory and continued quality cross-cultural competency training must be provided as part of the training for all QPS recruits. The power of knowledge and understanding around CALD communities' needs would ensure more effective policing and law enforcement throughout our communities.

As noted throughout this submission, a clear understanding on when to engage an interpreter, as well as training on the processes for doing so, are fundamental for police officers as well as all PLO's to effectively meet the needs of all Queenslanders.

Do you, as a community member, understand the nature and extent of the powers and responsibilities of police officers as provided by the Act?

Despite MDA's position as a non-government organisation, the formal processes and mandatory points of interpreter usage in the work of QPS is unclear. Many of MDA's

⁸ Chapter 15: Division 8, section 440

clients experience great frustrations when attempting to insist on interpreter use, only to be met with different information to what they are told during their settlement and orientation process.

MDA notes the hard work of the CCLOs and PLOs in building valuable relationships with CALD communities and informing them of their rights and the powers and responsibilities of police officers. However, to ensure that the interaction between CALD communities and QPS staff is clearly understood by all parties; MDA believes broadening engagement strategies to a wider range of operational QPS staff would be of great benefit.

Recommendations

MDA would like to offer the following recommendations to the review of the Act.

Recommendation 1

The Act needs to clearly mandate the need for formal interpreter usage in numerous potential scenarios, namely; in earlier stages of investigation, when police officers are attending potential domestic and/or family violence situations and any circumstance where a CALD community member, without sufficient English proficiency, would be at a disadvantage or at risk of increased distress because of a lack of language skill.

Recommendation 2

Cultural Advisory Unit Policy Officers need to engage with key multicultural agencies, such as MDA, on a regular basis to ensure information supporting policy development is reflective of the circumstances CALD communities are facing daily. MDA recommends the creation of a reference group between key CALD stakeholders, QPS operational staff and policy officers.

Recommendation 3

The Act needs to be reflective of the significant impact policing can have on CALD communities. Simple measures, such as consistent and appropriate interpreter usage and cultural competency training, can greatly improve the outcomes of interaction between QPS and CALD communities.

MDA hopes to see that the review of the PPRA is reflective of the continuing growth in Queensland's multicultural population and recognises the value of such measures in ensuring that QPS contributes to and represents a fair and modern Queensland justice system.

We look forward to further contributing to the review process of the Act and welcome any opportunity to further contribute to or be part of implementing solutions or recommendations, such as those put forward in this submission.