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Elder Abuse Inquiry – Discussion Paper

The Federation of Ethnic Communities' Councils of Australia (FECCA) is the national peak body representing Australia's culturally and linguistically diverse (CALD) communities and their organisations. FECCA provides advocacy, develops policy and promotes issues on behalf of its constituency to Government and the broader community. FECCA supports multiculturalism, community harmony, social justice and the rejection of all forms of discrimination and racism so as to build a productive and culturally rich Australian society. FECCA's policies are developed around the concepts of empowerment and inclusion and are formulated with the common good of all Australians in mind.

FECCA commends the Australian Law Reform Commission on this important inquiry. However, we are disappointed that the Discussion Paper does not examine issues affecting older people from CALD backgrounds in greater depth.

As set out in FECCA's initial submission to the inquiry, almost one in three older Australians were born overseas, with a significant number of these coming from CALD backgrounds.¹ The 2011 Census indicated 20 per cent of Australians over the age of 65 were born in non-English speaking countries.² On current projections, 30 per cent of the population aged over 65 will be from CALD backgrounds by 2030.³ Given the size of the CALD population in this age group, FECCA believes that addressing issues specifically affecting this cohort is crucial to effectively tackling elder abuse in the wider Australian community.

Key points and recommendations

- FECCA supports the proposal to develop a National Plan to address elder abuse. We encourage the adoption of specific measures to address challenges faced by people from CALD backgrounds and the development of culturally appropriate responses.

¹ FECCA, *Review of Australian Research on Older People from Culturally and Linguistically Diverse Backgrounds* (March 2015), 6-7.

² ABS, *Reflecting a Nation: Stories from the 2011 Census*, 2071.0 - Reflecting a Nation: Stories from the 2011 Census, 2012–2013, accessible at: <http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/2071.0Main%20Features752012%E2%80%93932013?opendocument&tabname=Summary&prodno=2071.0&issue=2012%962013&num=&view=>

³ FECCA, *Review of Australian Research on Older People from Culturally and Linguistically Diverse Backgrounds* (March 2015) 6-7.

- Family agreements in relation to property and expectations of care can take many forms in CALD communities and older people from CALD backgrounds may not understand the legal and practical implications of informal and formal family agreements. There is an assumption by some older people from CALD backgrounds that they will be cared for by their family as they age. However, this understanding is not always shared across generations in a family. FECCA recommends that older people are educated about their rights, provided with access to culturally appropriate advocacy services and with opportunities to confidentially discuss their concerns with legal professionals.
- FECCA recommends adopting measures to ensure professionals working with older people from CALD backgrounds are culturally competent and use culturally appropriate language when delivering services, especially in relation to elder abuse and legal rights.
- It is essential that the recommendations in relation to development of guidelines in the ALRC Discussion paper encompass measures to ensure that older people clearly understand the contents and implications of the documents such as wills, deeds and other property transfers that they are required to sign. Where practical, such information should be provided in the older person's preferred language.
- FECCA opposes the use of restrictive practices in any health or social care setting as use of restrictive practices in any form amounts to abuse. We encourage the adoption of non-invasive methods that uphold basic human rights and dignity.
- FECCA supports the recommendation to develop an elder abuse strategy to prevent, identify and respond to the abuse of older persons is a welcome development including training for Centrelink staff to identify and respond to elder abuse. It is vital that these measures identify the factors that are specific to CALD communities such as communication barriers, lack of access to culturally and linguistically appropriate services and the role and influence of family including the extended family.
- It is disappointing to note that the ALRC report has not addressed issues in relation to migration law frameworks in the context of elder abuse. FECCA strongly encourages the Commission to focus on these issues in depth.
- FECCA reiterates the comments and recommendations in our initial submission about the cost of interpreting needs for consumers of aged care services and highlight the need to incorporate those recommendations in all elder abuse related frameworks.
- FECCA highlights the need to promote the right to complain about aged care services to the Aged Care Complaints Commissioner to older people from CALD backgrounds, including in languages other than English. Many of these resources are currently available on the Aged Care Complaints Commissioner's website. Information and resources should be communicated by multiple mediums including ethnic radio, television, in print and through trusted community organisations.

National Plan to Address Elder Abuse

FECCA supports the Commission's proposal to develop a National Plan to address elder abuse. The National Plan should include specific actions to address elder abuse in CALD communities, and help older people from CALD backgrounds to access support services when they experience elder abuse.

A key component of the National Plan should be to raise community awareness about elder abuse through an information campaign using ethnic media including ethnic radio and ethnic newspapers, to highlight concerns in relation to elder abuse among older CALD Australians. Information should be provided about rights, different types of elder abuse, and how individuals can seek help and also endeavour to address stigma and shame in relation to elder abuse.

A campaign targeting people from CALD backgrounds, to raise awareness in relation to legal rights, avenues to seek support and the like should form part of the national plan to address elder abuse. As recommended by Ethnic Communities Councils of Victoria (ECCV) such a campaign should be developed through a co-design process and by directly working in partnership with CALD community members, their organisations and service providers.⁴ It may include communicating key messages through ethnic and multicultural media outlets, and would be mindful of culturally appropriate use of language and the need for information to be provided in preferred language of different groups.⁵

FECCA is also supportive of the proposal to commission a national prevalence study of elder abuse. The prevalence study should include disaggregation of ethnic background, level of English language skills, visa status, financial situation and living situation (eg living with family). The inclusion of these factors will assist to build an evidence base about the prevalence of elder abuse in CALD communities. Strategies would also need to be put in place to ensure that CALD communities are adequately and proportionately represented in the study. These strategies could include engaging older people and their families through community networks, ethno-specific community organisations, and provision of other supports such as language services and transport.

Family Agreements

The definition of 'family' in 'assets for care' matters needs to be broad enough to encompass the different cultural understandings of 'family'. For example, in some cultures the term 'family' may mean the extended family.

A multitude of agreements (both written and verbal) may exist within CALD families that contain elements of 'assets for care' such as agreements and cultural practices in relation to property succession, informal trusts and so on. The parties to the agreement may not necessarily understand that they are a party to a contract or the consequences of entering into an agreement of this nature in the Australian legal and social context.

In certain communities, the family home or proceeds of the sale of family home or other significant assets pass to a particular child, for example the eldest son. Although there is no agreement between the parties, there may be a cultural expectation that the son will take

⁴ ECCV, *Australian Law Reform Commission Inquiry into Protecting the Rights of Older Australians from Abuse Submission*, August 2016, accessible at: http://www.eccv.org.au/library/V2.ECCV_reponse_to_elder_abuse_inquiry_by_Australian_Law_Reform_Commission.pdf

⁵ Ibid

care of the elderly parents. Sufficient safeguards must be in place to protect the interests of CALD older people where children may not honour such informal family agreements or where cultural traditions around inheritance and caring are not accepted or agreed upon between siblings or the wider family.

It is also essential to ascertain whether the older person had capacity to understand the circumstances and consent to entering into a formal or informal family agreement. Capacity includes the mental/physical capacity as well as language proficiency of the older person.

The Discussion paper considers a number of different legal solutions to address disputes in relation to family agreements. However, many people, including older people from CALD backgrounds will not resort to using legal remedies due to various reasons including shame and stigma in highlighting family disputes, lack of awareness about the services and fear that informing others about the issues will result in children getting into trouble with authorities.

Access to, support with and information about Australian complaint and legal mechanisms including alternative dispute resolution (ADR) mechanisms should be made easily available, in community languages as far as possible.

Many people from CALD backgrounds may not access information and services online, thus, information about family agreements, legal implications and remedies or dispute resolution mechanisms must be provided through a number of channels including ethnic media such as ethnic radio and newspapers, through community and religious leaders, ethno-specific and mainstream seniors clubs, general practitioners and at cultural events.

For many people from CALD backgrounds, their children are the only family that they have in Australia. Even if they have other friends and family, they may not divulge information about abuse due to social and cultural stigma or due to safety concerns. FECCA recommends giving due consideration to these factors when developing strategies to protect vulnerable older people from CALD backgrounds in Australia to prevent further abuse, marginalisation or social isolation.

Wills

The Discussion paper recommends a review of the existing guidelines for legal practitioners in relation to the preparation and execution of wills and other planning documents (proposal 9-1). FECCA recommends that the guidelines include the importance of using interpreters for individuals with low English language proficiency to ensure informed consent. The guidelines should make it clear that the use of family members and friends as 'interpreters' is not supported by policy in Australia.

There are different cultural understandings of and misinformation on inheritance and wills across CALD communities. When reviewing the guidelines for legal practitioners in relation to the preparation and execution of wills and other advance planning documents under proposal 9-1, it is important to incorporate guidelines to ensure that legal practitioners have the capacity to understand and reflect cultural traditions in relation to inheritance and to explain the implications of these traditions in the Australian context. Services should be delivered in culturally sensitive ways while at the same time providing advice in the best interests of the client. Although it is not possible for legal and other professionals to understand all cultural nuances in different cultures, it is important that they undergo continuous training in relation to cultural competency.

The person making a will, codicil, powers of attorney or any form of transfer of property or vesting of rights, must clearly understand the content of the instrument they are required to sign. Most of these documents use technical jargon that the person making a will may not be

familiar with. Thus, the respective professionals who are involved in drafting these documents must ensure that the individuals understand the content of the document and facilitate meeting the translation or interpreting needs of older people from CALD backgrounds.

Social Security

FECCA supports proposal 10-1 for the Department of Human Services to develop an elder abuse strategy to prevent, identify and respond to the abuse of older persons in contact with Centrelink, and proposal 10-4 for Centrelink staff to be trained further to identify and respond to elder abuse.

Some older people from CALD backgrounds have limited English language ability, including those who revert to their mother-tongue due to dementia. The Centrelink policies and practices referred to in proposal 10-2 (requiring Centrelink staff to speak directly with persons of Age Pension age who are entering into arrangements with others that concern social security payments) should make reference to a requirement to use qualified and credentialed interpreters for communication with clients who do not have adequate English language skills.

Centrelink communications clarifying the roles and responsibilities of all participants to arrangements with persons of Age Pension age that concern social security payments (proposal 10-3) must be in accordance with the Government's *Multicultural Access and Equity Policy*, for example by providing easy to understand information in plain English and community languages.

FECCA supports the Commission's recommendation to train Centrelink staff to identify and respond to elder abuse. This training should encompass different forms of elder abuse, including abuse perpetrated by members of a person's extended family. Centrelink staff should also be trained to recognise the specific risks to older people from CALD backgrounds, for example a family member withholding language services and insisting that they interpret instead.

Aged Care

Under the United Nations *Convention against Torture and Cruel or Inhuman and Degrading Treatment and Punishment* (CAT) Australia has a non-derogable obligation to ensure that people are not subject to torture and other cruel, inhuman or degrading treatment or punishment. There is increasing international recognition among health and human rights organisations that torture and other cruel, inhuman or degrading treatment or punishment in care and support contexts is widespread, especially for marginalised groups, such as older people in supported care.⁶ This potentially encompasses practices of treatment and support such as the use of restrictive practices and forced medical treatment, including in aged care settings.⁷ In 2013 Special Rapporteur on Torture produced a comprehensive overview of the obligations of States Parties with respect to prevent torture and other cruel, inhuman or degrading treatment or punishment within the context of health and social care institutions.⁸

It is essential that an absolute ban on all coercive and non-consensual measures, including restraint and solitary confinement of people with psychological or

⁶ See further: University of Sydney and People with Disability Australia, Submission to the ALRC Equality, Capacity and Disability in Commonwealth Laws Inquiry, p.2.

⁷ Ibid

⁸ Juan E. Méndez. "Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment." 2013. A/HRC/22/53.

*intellectual disabilities, should apply in all places of deprivation of liberty, including in psychiatric and social care institutions.*⁹

FECCA does not support use of restrictive practices and encourages the adoption of non-invasive methods that uphold basic human rights and dignity. We believe that these measures will further marginalise and have severe implications on people from CALD backgrounds as they are often unaware of their rights, have difficulty communicating with authoritative bodies, care providers and may even assume that use of restrictive practices as an accepted norm. As set out in FECCA's initial submission, attempts to identify a reasonable and appropriate model of restrictive practices would provide legitimacy to the employment of these measures; therefore, the discussion should focus on developing a framework that prevents the use of restrictive practices.

In relation to complaints handling mechanisms, Proposal 11-1 of the Discussion paper recommends establishing a reportable incidents scheme which requires approved aged care providers to notify the aged care commissioner of reportable incidents and the internal investigation process. Proposals 11-10 and 11-11 refers to an 'official visitor' scheme with functions including ability to inquire into and report on upholding of the rights of care recipients, adequacy of information provision including advocacy services and complaint mechanisms and concerns around abuse and neglect.

FECCA supports these proposals and recommends providing broader powers to official visitors overseeing these processes to take immediate action such as removing the person subjected to abuse or neglect from the premises, implementing procedures to prevent contact between the care recipient and the current care giver to ensure safety of the older person or persons. Similar to other professionals, these official visitors should be culturally sensitive and have capacity to accommodate specific needs of CALD communities including their linguistic needs.

Given the complex and the constantly evolving nature of aged care policies and laws, including those in relation to safeguarding and protection mechanisms, advocacy services are critically important for people from CALD backgrounds. There are no substantial proposals in the Discussion Paper in relation to advocacy services, despite the detailed discussion highlighting the need for advocacy services of priority population groups under the section on Aged Care. FECCA recommends adopting more meaningful measures to enhance access to culturally appropriate advocacy services.

Migration law and frameworks

FECCA is disappointed that the Discussion Paper does not mention the need for migration law and frameworks. In its 2011 inquiry, *Family Violence and Commonwealth Laws*, the Commission dedicated a significant portion of the report to migration. FECCA believes that migration is as relevant to the issue of elder abuse, and should therefore be examined by the Commission in further detail.

In its submission, FECCA made the following recommendations:

- Ensure that migration rules and eligibility requirements for support services do not disempower victims of elder abuse or discourage them from leaving abusive relationships and situations
- Implement a specific exemption to the social security waiting period for contributory visa holders who are victims of elder abuse or otherwise not supported by their sponsors or assurers

⁹ Ibid

- Provide a support pack to individuals receiving their parent or contributory parent visa, including information on what to do and where to go if the person should find themselves in crisis due to elder abuse and needing to leave the family home. This could be modelled on the Family Safety Pack which is included in relevant grant letters by the Department of Immigration and Border Protection for men and women coming to Australia on a Partner visa, Student visas and Temporary Work (subclass 457) visas.