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Elder Abuse Inquiry

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.

Culturally and linguistically diverse older Australians

Culturally and linguistically diverse older Australians are a diverse group, including people who have lived in Australia for many decades and migrants who have only arrived in Australia in recent years. This cohort is also diverse in relation to country of origin and level of English proficiency.

Almost one in three older Australians were born overseas, with a significant number of these coming from CALD backgrounds. The 2011 Australian Census shows that over 1.34 million Australians aged 50+ years were born in non-English speaking countries, which equated to almost 20% of all Australians aged 50 years and over.

Almost 40% of all migrants from non-English speaking countries are aged 50 years and over, compared to 32.4% of Australia's total population aged 50+ years. This is in part a result of post-war migration trends. In the 'old old' population, 18.5% of the 80+ population living in Australia were born in non-English speaking countries. Approximately 5% of all migrants from non-English speaking countries are aged 80+ years compared to 3.9% of Australia's total population aged 80+ years.

For some CALD populations the issues of ageing and providing assistance to older community members are current realities. For example, 88.4% of all Australians born in Italy and 87.9% of Australians born in Greece are now aged 50 years and over. Those aged 80 years and over account for more than 15% of all Australians born in Latvia, Estonia, Lithuania, Ukraine, Italy, Poland, Slovenia and Hungary compared to 3.9% aged 80+ years for the total Australian population...

English language capacity influences access to and use of services, and this also differs between birthplace groups. More than 70% of people aged 65+ from China and Vietnam do not speak English well compared to less than five per cent of people aged 65+ from the Netherlands and Germany.

The rates of living alone among the 65+ population also vary across groups. Older immigrants from Asian countries, and also Greece, have lower rates of living alone compared to the total CALD population aged 65 and over, while older people from some European countries have higher rates of living alone.¹

FECCA welcomes the Law Reform Commission's recognition that 'older person' is a relative concept and that the perception could vary from person to person based on a number of factors including the cultural understandings and norms.² It is imperative that the definition remain open ended to encompass people who may not fall within the strict understanding of 'older' people but are subjected to abuse.

Elder abuse in culturally and linguistically diverse communities

While there is limited data available, FECCA assumes that the prevalence of elder abuse in CALD communities is similar to prevalence in the general community, however for those from CALD backgrounds the issue is exacerbated by issues particular to their communities. These issues include lack of (or low level of) English language skills, lack of knowledge of services and dependency on family members. Social and/or physical isolation is common; by controlling finances and denying the abused person access to an interpreter for instance, and visa status dependency may be used as a threat.

Migrants are less likely to have superannuation for retirement than people born in Australia as they have worked in Australia for a shorter period of time. The Household, Income and Labour Dynamics in Australia Survey (HILDA) shows that for individuals aged 50-69, 27.6 per cent of those who hold superannuation balances in the bottom 50 per cent of balances are immigrants from a non-English speaking background. Immigrants from English speaking backgrounds make up 11.4 per cent of individuals in the bottom 50 per cent of superannuation balances. Only 7.2 per cent of the top 10 per cent of superannuation balances are held by immigrants from a non-English speaking background.³ Further, as at June 2013, 39.5 per cent of age pension recipients were not born in Australia.⁴ Limited economic security in retirement can make migrants vulnerable to elder abuse.

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

² Australia's Law Reform Commission, *Issues paper: Elder Abuse* (June 2016), 15.

³ Melbourne Institute of Applied Economic and Social Research, *The Household Income and Labour Dynamics in Australia Survey: Selected Findings from Waves 1 to 14* (July 2016), 81.

⁴ Department of Social Services, 'Statistical Paper No 12 – Income Support Customers: A Statistical Overview 2013'.

The literature suggests that culturally and linguistically diverse (CaLD) older people are particularly vulnerable to financial abuse and exploitation due to their dependency on others for translation, financial transactions and services.⁵

Another important issue is reluctance of individuals from CALD backgrounds to report abuse. In many cultures the responsibility of caring for elderly relatives is the responsibility of the family members. Making formal or informal complaints about these care arrangements can be frowned upon in certain communities. Another reason could be the belief that they are faced with abuse due to their own personal failings in instilling family values in children.⁶ Further:

cultural expectations around family privacy may prevent older people from recognising, disclosing, and/or reporting abuse, particularly when it is perpetrated by family members... Fear of being shamed by and excluded from their own communities may prevent these older people from accessing services and assistance.⁷

Australian migration law framework

Parent visas (subclass 103) let parents live in Australia if their child is an Australian citizen, permanent resident or eligible New Zealand citizen who is settled in Australia. The Department of Immigration and Border Protection currently advises that there are long waiting periods of up to 30 years before parent visas are approved.⁸

Contributory parent visa (subclass 143) let parents live permanently in Australia if they have a child who is an Australian citizen, permanent resident or eligible New Zealand citizen settled in Australia. Most applicants must be sponsored by their child. Once granted, this visa allows individuals permanent residence in Australia.

Individuals applying for a contributory parent visa must secure an assurance of support from their sponsor or someone else.

An assurance of support is a legal commitment to give you financial support so that you do not have to rely on social security payments. The assurance covers you and any family members included in your application.

An assurer must:

- give financial assistance for ten years
- repay any recoverable social security payments you receive in the first ten years of living in Australia
- lodge a bond for each applicant aged 18 years or older:
 - AUD 10 000 – for the main applicant

⁵ Lana Zannettino, Dale Bagshaw, Sarah Wendy and Valerie Adams, 'The Role of Emotional Vulnerability and Abuse in the Financial Exploitation of Older People from Culturally and Linguistically Diverse Communities in Australia' *Journal of Elder Abuse & Neglect* (2015) 27:1, 75.

⁶ Toshio Tataru, *Understanding Elder Abuse in Minority Populations* (1998), 110.

⁷ Lana Zannettino, Dale Bagshaw, Sarah Wendy and Valerie Adams, 'The Role of Emotional Vulnerability and Abuse in the Financial Exploitation of Older People From Culturally and Linguistically Diverse Communities in Australia' *Journal of Elder Abuse & Neglect* (2015)27:1, 77.

⁸ Department of Immigration and Border Protection, 'Parent visa (subclass 103)', <https://www.border.gov.au/Trav/Visa-1/103->

- AUD 4000 – for each adult family member included in in your application.⁹

Parent visa-holders (both subclass 103 and subclass 143) are subject to a two year waiting period for most social security payments and ten year waiting period for age and disability pension payments. The waiting period is not waived if the individual becomes an Australian citizen.

Year	Number of parent (non-contributory) visas granted	Number of parent (contributory) visas granted
2010-11	1,000	7,499
2011-12	2,000	6,502
2012-13	2,150	6,575
2013-14	2,250	6,675
2014-15	1,500	7,175

Data sources: Department of Immigration and Border Protection, *Annual Report 2011-12* and *Annual Report 2014-15*.

The Department of Immigration and Border Protection sets family migration planning levels, which are generally much lower than the number of applicants, thus creating a delay for people being granted family visas including parent visas.

As at 30 June 2012, the pipelines for the Non-Contributory Parent visa was 29,000 with only 2,000 grants in a year while there were 12,000 in the Contributory Parent pipeline with 6,500 grants in a year. Evidently, the caps have slowed the permanent intake of parents very considerably. This difficulty has been met to some extent by the Contributory Parent Temporary Visas (subclasses 173 and 884) that provides for temporary residence of parents. This visa allows parents to live in Australia for two years. The temporary contributory visas are designed primarily as a stepping-stone to the permanent visa but with the costs spread over a longer period in the hope of making the program more accessible.¹⁰

FECCA holds significant concerns about the current migration policy settings, which require the majority of parent visa holders to enter into a relationship of dependence with their family members in Australia. In the context of spousal domestic violence, it has been affirmed that dependent visa status has been used as a tool to threaten and intimidate women, increase the vulnerability of migrant women and impact on their willingness to seek help.¹¹ FECCA considers this to be a risk for migrants on contributory parent visas.

Without access to social security supports, individuals on these visas have limited or no options if there is a relationship breakdown with their children, or they are subject to abuse. These individuals are likely to have limited knowledge of Australian support services, unlikely to have support networks in Australia to turn to in these circumstances, and may be socially

⁹ Department of Immigration and Border Protection, 'Contributory parent visa (subclass 143)', <https://www.border.gov.au/Trav/Visa-1/143->

¹⁰ S Khoo, P McDonald and B Edgar, 'Contribution of family migration to Australia: Report to the Department of Immigration and Citizenship' (2013), 5.

¹¹ Australian National Research Organisation for Women's Safety, 'Promoting community-led responses to violence against immigrant and refugee women in metropolitan and regional Australia: The ASPIRE Project' *Landscapes – State of knowledge paper* (October 2015), 25.

isolated due to language barriers and other factors. Waiting periods for social security payments are a significant barrier to leaving abusive living circumstances and seeking assistance for migrants subjected to elder abuse.

The COAG Advisory Panel on Reducing Violence against Women and their Children recommended that the Commonwealth should ensure that migration rules and eligibility requirements for support services do not disempower victims of violence or discourage them from leaving violent relationships.¹² This recommendation was made in the context of discussing female temporary visa holders who experience (largely spousal perpetrated) domestic violence, however FECCA believes that this principle should be extended to all migrants who experience family violence, including elder abuse.

Informed consent

Where there is a lack of cultural understanding, some cultural practices in certain instances could be interpreted as abusive or inappropriate. In many cultures, the head of the family and often the sole decision maker in regards to economic, domestic and social circumstances is an adult man.¹³ In such circumstances, it is important to ascertain whether the other residents within that household understand their situation and are capable of providing informed consent. The individual's capacity to provide informed consent depends on a number of factors including clear understanding of the circumstances, mental and physical capacity to appreciate the complexity of issues and whether they are under any duress. Informed consent must be at the core of any protection framework.

Formal legal measures such as powers of attorney, wills and probates are not adopted in certain communities. The cultural practices in relation to intestate succession are different to Australian norms and according to these practices, property may not devolve to the remaining spouse or next-of-kin. These cultural practices must be understood and not be seen as abuse unless there is evidence or indications to suggest otherwise. Another example is adhering to special dietary requirements based on faith or culture. Certain maintain vegetarian diets on specific days of the week and follow strict diets during certain periods of the year such as Lent or Ramdan. These instances should not be interpreted as deprivation unless the older person is not a willing participant in the religious or cultural activity.

Due to lack of understanding about medical conditions and the stigma associated with ageing, age related mental and physical conditions and disabilities older people from CALD backgrounds could be reluctant to seek help. Many older people from CALD backgrounds, their families and carers tend to access aged care services when they reach a crisis rather than accessing basic services gradually.¹⁴ Lack of appropriate support services can place the older person at higher risk of abuse. Furthermore, there is evidence to suggest that the victims of abuse, especially those who are physically, mentally and sexually abused intimidated by the perpetrators. Tolerance of abuse due to fear could be interpreted as tacit consent in some instances. Therefore, a balanced protection framework should be underpinned by unambiguous and simple guidelines/benchmarks as to the capacity and extent of consent provided by older persons.

¹² COAG Advisory Panel on Reducing Violence against Women and their Children, 'Final Report' (2015), Recommendation 2.4.

¹³ Diana Kendell, *Sociology in our times* (2015: 10th edition), 451.

¹⁴ Slewa-Younan et al, 'Enhancing the lives of older refugees: an evaluation of a training resource' (2016) *International Journal of Mental Health Systems*.

Guardianship and power of attorney

There is a risk that a person who does not speak English well or at all may be taken advantage of, including by a family member or friend who coerces the person into signing agreements giving the family member or friend legal rights.

Safeguards should include:

- An information campaign through ethnic media to raise awareness of this issue among older CALD Australians; and
- Education of legal practitioners about this issue, and the importance of using interpreters for individuals with low English language proficiency to ensure informed consent.

Aged care services

One of the key principles under the National Ageing and Aged Care Strategy for people from CALD backgrounds is the empowerment of older people from CALD backgrounds to have the knowledge and confidence to maximise their use of the aged care system, including having their human rights respected and being free from elder abuse.¹⁵ These principles must be supported with requisite support structures and sustainable funding models.

A robust protection framework to address elder abuse in the aged care system is imperative given the impending changes to the current funding model for aged care related services. After 27 February 2017, the funding model will allow consumers to choose a provider that is suited to them and to direct the funding to that provider. Market-based human services are premised on the existence of informed and empowered consumers. At this stage in time, many users of the aged care system are not yet informed about the services available to them or empowered to make choices and exercise control over service delivery. As such, older people may be exposed to abuse and/or undue influence by their current carers or family members under the new financial structure.

A considerable proportion of older people from CALD backgrounds have limited English language skills. These language issues can be exacerbated as people develop other cognitive impairments. For example, medical professionals have identified a trend among individuals with cognitive impairments such as dementia reverting back to their mother tongue.¹⁶ English is the second or the third language of many older people from CALD backgrounds and communication can become a significant barrier for this cohort.

A carer or staff member's inability to understand or effectively communicate with people from CALD backgrounds due to language barriers may cause tension and frustration between the parties. The inability to communicate effectively with those providing care and family members can result in serious abuses. A number of abuse cases were reported in media recently. One of these instances included the death of an older woman who had a difficulty in communicating with her health care providers. Her son contended that his mother did not speak fluent English and the language barrier may have made it seem like she was not

¹⁵ Department of Social Services, *National Ageing and Aged Care Strategy for People from Culturally and Linguistically Diverse Backgrounds* (2012), 9.

¹⁶ Peter V. Rabins, Constantine G. Lyketsos, Cynthia D. Steele, *Practical Dementia Care* (2006: 2nd edition), 91.

cooperating with the nurses and carers.¹⁷ This incident demonstrates the potentially dangerous consequences of communication barriers. There is a clear need for multilingual workers in these institutions and the staff and/or carers should be provided with appropriate training on cultural sensitivity and competency.

Although the cost of the interpreting needs of the consumers of aged care services during the negotiation stage is borne by the Department, currently, the consumer has to pay for the cost to have the Home Care Agreement translated into their first language if required and any other recurring language costs not related to the agreement.¹⁸ This is inequitable and costly for the consumer. For example, FECCA was informed that the quotation to have the Home Care Agreement translated for one consumer was about AUD 3,000 when the home care package was approximately AUD 14, 000. This creates a precarious situation where consumers enter into agreements either without fully comprehending the contents of the contract, or unable to revisit the clauses contained in the Agreement at a later stage to decide on future steps as they are unable to understand the contents. This presents major risks for both consumers and providers.

Consumers also pay for the costs of an interpreting costs needed for the delivery of their aged care services from their home care package. This is a significant access and equity issue for older people from non-English speaking backgrounds, and may result in individuals deciding to forego language services to maximise the services that they can purchase with their package. The lack of access to appropriate language services may contribute to under reporting of incidents of abuse and neglect. This is a systemic issue that could contribute to further marginalisation of already vulnerable older people from CALD backgrounds.

Older people from CALD backgrounds living in aged care facilities and similar accommodation settings are more vulnerable to abuse from other residents and/or carers due to fear of authority and fear of not being believed. Individuals from these backgrounds are often not in a position to make complaints, do not understand the complaint procedure or are afraid to make complaints as it may make their situation worse. These barriers contribute to the underreporting of these horrific incidents of abuse and neglect of people in institutional settings.

People who are unaware of the Australian legal system, policies and procedures, especially those coming from a migrant or refugee background, may live under the misconception that neglect and restraints used by aged care settings or institutions are the accepted norm or that such wrongful acts are authorised by Australian law. These include the freedom to exercise religious observances, right to request adherence with special dietary requirements and the like. It is imperative that older people and their family members are aware of their rights and the legislative frameworks relating aged care facilities and services.

It must not be assumed that all users of aged care services are already aware of their right to complain about a service. In certain countries making complaints against services rendered by other agencies, especially government agencies, is not a cultural norm. This is particularly important for migrants as laws and procedures in their country of origin are likely to be different to those in Australia. Measures taken to protect older people from abuse must

¹⁷ Johanna Menagh, 'Home care examined after 75yo Perth woman died with infected pressure wounds', ABC News, (4 July 2016) <http://www.abc.net.au/news/2016-07-04/inquest-into-death-of-perth-woman-maria-niceforo-kincaire/7567784> (accessed 11/08/2016).

¹⁸ Translation and Interpreting Services for Home Care Packages Factsheet, https://www.dss.gov.au/sites/default/files/documents/04_2015/final_fact_sheet_-_provider_-_translating_and_interpreting_service_tis_2_april_2015.pdf

ensure that older people from CALD backgrounds are aware of and have access to culturally appropriate services, including using translation and interpreting services where appropriate.

Older victims of abuse, especially those with language and cognitive barriers are more likely to be comfortable discussing incidents of violence with people who understand and appreciate their language and culture. Family members who do become aware of abuse may not be familiar with the avenues available to obtain assistance and report the abuse. Measures adopted to empower older people to make complaints, provide feedback on services, and report abuse must involve their family members, friends and communities.

Older people who make complaints about the maltreatment may be subjected to further abuse. If the older person is living with the extended family or in the community, making a complaint about another person living within the same household or close proximity can result in isolation or abuse by the others. If the person is in residential care settings, they may face similar issues at the hands of the other carers or residents in the aged care settings. Therefore, it is important to explore opportunities of providing alternative and appropriate accommodation for those who make complaints.

The National Disability Insurance Scheme (NDIS)

The *National Disability Insurance Scheme Act* stipulates that the applicants must be under the age of 65 years to be eligible for Scheme.¹⁹ Section 29 of the Act provides that a person ceases to be a participant of the launch of the NDIS if that person enters a residential care setting. People who are participants in NDIS before turning 65 are able to remain in NDIS after they turn 65 rather than revert to the broader aged care system. However, if they decide to receive services under the aged care system, they cannot revert back to the NDIS. Considering the contributory costs under the aged care structure, it is likely that people with disability over 65 years will remain with the NDIS.

The NDIS has not been in operation for long, thus it is difficult to identify specific issues in relation to abuse under Scheme.

FECCA notes that the NDIS was rolled out nationally on 1 July 2016 and the national Quality and Safeguarding Framework has not yet been released. The current State and Territory based safeguarding mechanisms may not be sufficient to protect people who are vulnerable to abuse. It is critical that the NDIS Quality and Safeguarding Framework be finalised and implemented as soon as possible.

Use of restrictive practices

Restrictive practices involve the use of interventions and practices that have the effect of restricting the rights or freedom of movement of a person with disability. These primarily include restraint (chemical, mechanical, social or physical) and seclusion.²⁰ FECCA does not support use of restrictive practices and encourages the adoption of non-invasive methods that uphold basic human rights and dignity.

Australia is bound by a number of international conventions including the United Nations *Convention against Torture and Cruel or Inhuman and Degrading Treatment and Punishment* (CAT) and the United Nations *Convention on the Rights of Persons with*

¹⁹ *National Disability Insurance Scheme Act* 2013 (Cth), s. 22.

²⁰ Australian Law Reform Commission, *Equality, Capacity and Disability in Commonwealth Laws : Discussion paper* (2014), 195.

Disabilities (CRPD). Under these conventions, Australia has a non-derogable obligation to ensure that people with disability are not subject to torture and other cruel, inhuman or degrading treatment or punishment. In 2013, the Special Rapporteur on Torture, Juan Méndez stated that it was “essential that an absolute ban on all coercive and non-consensual measures, including restraint and solitary confinement of people with psychological or intellectual disabilities, should apply in all places of deprivation of liberty, including in psychiatric and social care institutions.”²¹

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. An approach adopted by the Department of Communities, Child Safety and Disability Services of Queensland Government on ‘positive behaviour support’ to reduce and eliminate the use of restrictive practices can be examined further and improved and can be adopted as a transition measure in ending the use of restrictive practices altogether.²²

Health services

Appropriate, high quality language services facilitate healthcare access regardless of cultural or linguistic background, consistent with the international human rights standards recognising the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.²³ Using quality language services, including interpreters and translated material, allows mutual understanding of health concerns, diagnoses and medical procedures between patients and health professionals.

General Practitioners (GPs) are often in a position to identify signs of abuse and refer patients to appropriate support services. When seeing patients with limited English proficiency, GPs should ensure that they use appropriate language support to facilitate accurate communication.

The use of family and friends as ‘interpreters’ is not supported in policy because of problems associated with accuracy of interpreting, confidentiality and conflicts of interest. However, studies and FECCA’s community consultation show that family members are regularly used as interpreters. Having a relative present (who may be a perpetrator of abuse) and acting as an interpreter can act as a deterrent where older people want to disclose abuse, or may result in inaccurate information being relayed by the relative to the doctor.

Individuals who are not proficient in English may prefer to communicate through a relative or a friend, in view of the interpreter’s gender or cultural background, the individual’s lack of understanding of the availability of services or of the risks associated with not engaging an interpreter. It is crucial that non-English speakers are informed and empowered to use language services.

²¹ Juan E. Méndez. “*Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.*” 2013. A/HRC/22/53. See further: Open letter to the Australian Law Reform Commissioner by University of Sydney and People with Disability Australia dated 14 July 2015.

²² Positive Behaviour Support, Department of Communities, Child Safety and Disability Services, Queensland Government, <https://www.communities.qld.gov.au/disability/key-projects/positive-behaviour-support> (accessed 15/08/2016).

²³ *International Covenant on Economic, Social and Cultural Rights.*

Key considerations

Migration law and frameworks

- 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 assurors
- 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.

Aged care

- Promotion of 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.
- Clarify the roles of the three key agencies in addressing elder abuse (both individual and systemic issues): the Aged Care Complaints Commissioner, the Australian Aged Care Quality Agency, and the Department of Health.

National Disability Insurance Scheme

- Finalise and implement the NDIS Quality and Safeguarding Framework as soon as possible.

Community awareness

- Employ an information campaign through ethnic media to raise awareness of elder abuse among older CALD Australians. Information should be provided about rights, different types of elder abuse, and how individuals can seek help.
- Education of legal practitioners about elder abuse, particularly in the context of guardianship and power of attorney, and the importance of using interpreters for individuals with low English language proficiency to ensure informed consent.
- Implement a national communication strategy, in collaboration with the community sector, which addresses the lack of awareness among non-English speakers about the importance and benefits of engaging credentialed interpreters, the availability of fee-free interpreting, and the risks of not utilising professional language services and involving family members and friends.