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Committee Secretary

Senate Community Affairs Legislation Committee

Parliament House

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**Submission to the Inquiry into the Aged Care Legislation Amendment
(Royal Commission Response No. 2) Bill 2021**

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 has over 20 member organisations that cover each State and Territory and are deeply linked to diverse communities across Australia's major cities and country towns. FECCA has had a longstanding presence in policy and advocacy on ageing and aged care issues faced by CALD Australians. Since 2021, FECCA is leading the implementation of the EnCOMPASS: Multicultural Aged Care Connector Program in partnership with more than 20 local multicultural and ethnospecific organisations.

FECCA convenes the Positive Culturally and Linguistically Diverse (CALD) Ageing Network (PCAN). PCAN's purpose is to provide wider representation and support the development of informed policy positions on what constitutes ageing well for older people from CALD backgrounds in Australia. PCAN members represent voices of CALD older persons, their carers, community organisations, service providers, and researchers.

Recommendations:

1. The Aged Care Legislation Amendment (Royal Commission Response No. 2) Bill 2021 is passed with reconsideration given to Schedules 3. and 5.
2. A clear governance support transition plan is developed for ethnospecific and multicultural approved providers to ensure that CALD specialist service capability is not lost.
3. Schedule 3., and other related schedules, are amended to adopt an alternative and less punitive approach of a care worker regulation scheme which embeds skills and training standards and ongoing professional development.
4. A CALD workforce sub-plan of the National Aged Care Strategy / 2022–25 Workforce Planning Strategy and Framework is developed in meaningful collaboration with a broad range of stakeholders to recognise comparable qualifications and experience from overseas among others.

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Discussion

FECCA recognises the Aged Care Legislation Amendment (Royal Commission Response No.2) Bill 2021 as a critical step toward the implementation of the Final Recommendations of the Royal Commission into Aged Care Quality Safety.

On balance, FECCA supports the Bill and welcomes the commitment of the Commonwealth to implementing the reforms of the Aged Care Royal Commission. The amendments proposed are reflective of key Royal Commission recommendations and demonstrate commitment to improving quality of care for older people.

The amendments foreshadow more comprehensive reforms in subordinate legislation. FECCA notes that the impact and appropriateness of these amendments, for example the expansion of the Serious Incident Reporting Scheme to Home Care, will be determined by their operationalisation in subordinate legislation.

Although overall we support the Bill, FECCA holds concerns regarding Schedules 3. and 5. FECCA recommends reconsideration of Schedule 3. and that Schedule 5. be amended only with a plan for additional support to multicultural and ethnospecific providers to maintain the availability of culturally responsive care.

Schedule 5.

Schedule 5. introduces new governance requirements for governing bodies of approved providers and governance reporting responsibilities. FECCA is supportive of these amendments to strengthen approved provider governance and believes this is critical for improving care outcomes for older people.

Older people of CALD backgrounds are an increasingly significant proportion of the population, making up approximately a third of people aged 65 and over. As noted by the Aged Care Financing Authority, cultural diversity among older people seeking care is changing and increasing.¹ As of June 2019, at least 1 in 4 home care consumers were CALD older people and 1 in 5 among residential care and home support consumers.

People from CALD backgrounds are not a homogenous group, and their experiences of the aged care system vary widely. The experience of an older person, born overseas and with limited English proficiency, is vastly different to that of second-generation migrants born in Australia, whose primary language is English.

Yet as the number of CALD older people increases, it is increasingly important that the aged care sector is equipped to deal with the diversity of their needs as part of their core business. FECCA is concerned that the Royal Commission has not sufficiently recognised or responded to this emerging need.

To improve care outcomes for older people of CALD backgrounds, FECCA argues that there is a need for balancing strengthening governance arrangements with transitional support for multicultural and ethnospecific providers delivering culturally responsive care. Alongside

¹ *Eighth report on the Funding and Financing of the Aged Care Sector July 2020*, available at <https://www.health.gov.au/resources/publications/eighth-report-on-the-funding-and-financing-of-the-aged-care-industry-july-2020>, accessed 31 March 2021.

amendments to reporting and governance requirements, FECCA believes there must be a transitional support plan for ethnospecific and multicultural providers to improve their governance to support these services to stay viable where possible.

As their populations have aged, many ethnic communities have self-organised to provide aged care services for their older people. FECCA recognises that the smaller and community-based nature of these services has led in some instances to severe governance failures with negative consequences for their older people. However, where possible, there is a need to future-proof specialist services and safeguard the specialist skills and expertise they provide in a new aged care program.² According to the National Ageing Research Institute (NARI), “[e]thno-specific aged care is preferred by many CALD people as it provides older people with the benefits of culturally familiar language, food, and activities”.³ It is FECCA’s belief that CALD specialist services are critical to better care outcomes for CALD older people.

In FECCA’s consultations with consumers, researchers, and providers in the sector in early 2021, the need for governance support has been identified as important for the transition of multicultural and ethnospecific providers to the new aged care program. FECCA recommends that Schedule 5. amendments are implemented alongside a clear governance support and transition plan, which ensures that CALD specialist service capability is maintained where possible to allow the ongoing provision of culturally tailored and responsive care.

Schedule 3.

Schedule 3. allows the Aged Care Quality and Safety Commissioner to make and enforce a Code of Conduct for personal care workers. The Code of Conduct will apply to workers, providers and governing persons, and the Commissioner will have powers to make civil penalty orders and banning orders against those in breach of the code, including workers, providers, or governing persons. The civil penalty for breaching the Code of Conduct would be 250 civil penalty units (\$55,500) and can be ordered against workers, providers, or governing persons.

The 2020 Aged Care Workforce Census found that the number of direct care workers in Residential Aged Care (RAC) from CALD backgrounds is 35% of the total direct care RAC workforce. This is a significant increase from 26% in 2016, which may in part be attributed to the inclusion of casual/contractor staff in the 2020 census figures.⁴

Australia’s migrant care workers are on average younger, more likely to be women and have a higher level of formal qualifications (though not necessarily relevant to their employment in frontline care) than their Australian born peers. The increasing number of migrant aged care workers has been largely due to the decline of permanent residents or Australian citizens participating in the care workforce (including aged care and disability). There have always been significant numbers of overseas born workers in the sector, but in the past, these tended to be permanent migrants with full rights and protections of people with citizenship or permanent visa status.

² *National Ageing Research Institute Submission to the Royal Commission*, 2019, available from: <https://www.nari.net.au/Handlers/Download.ashx?IDMF=ec148bf2-6d0f-43bc-9a41-bb550da44e6c>, accessed 18 October 2021.

³ Ibid.

⁴ *2020 Aged Care Workforce Census Report*, available from: <https://www.health.gov.au/sites/default/files/documents/2021/10/2020-aged-care-workforce-census.pdf>, accessed 18 October 2021.

Temporary migrants face intersecting conditions which increase their precarity and marginalisation within the workforce. These include conditions which restrict their economic security and employment options, including:

- having no access to social protections such as Medicare or income support,
- poor understanding of entitlements under relevant awards, and
- restricted working hours.

At the same time, temporary migrants may experience poor working conditions within the aged care sector, including:

- inadequate training and support in the requirements of the job,
- limited opportunities for professional development,
- occasional requirement to act as informal interpreters without language skills being part of a position description or appropriately remunerated, and
- experience of racism or discrimination (both from other workers and from recipients of aged care services and/or their families).

These poor working conditions coupled with economic insecurity which may prevent the seeking of alternative employment, increase temporary workers' marginalisation, precarity and risk of exploitation.

FECCA notes that this combination of precarious conditions means that CALD aged care workers, particularly those on temporary visas, may have relatively little power in their workplaces. As such, the adherence of these workers to a Code of Conduct may be difficult or impossible where the operating environment created by provider organisation and their governing persons is poor to begin with. Punitive measures such as banning orders and civil penalty orders of \$55,000 are exploitative where aged care workers may have little control over their working conditions. FECCA is particularly concerned about the impact of such measures on aged care workers who are already experiencing significant economic insecurity. FECCA is opposed to a civil penalty order which treats marginalised workers, providers and governing persons as having the same agency and liability for poor care outcomes.

Such measures may also have the perverse impact of further disincentivising employment in the aged care sector amid a need for significant expansion of the sector to respond to the ageing population and Royal Commission recommendations. This would ultimately lead to poorer care outcomes for older people, which is the opposite outcome to the intention of the Royal Commission and its recommendations.

FECCA also notes that most aged care workers identify as women, including as many as 86% of the RAC workforce.⁵ This reflects gender norms around care, in which women predominate in caring industries which are also ascribed lower social value and remuneration. Such economic insecurity is associated with an increased risk of gender-based violence. Women on temporary visas may be at increased risk of gender-based violence due to the way in which visa conditions can be a tool for perpetrating violence and a lack of available support services.⁶ As a result, applying punitive economic measures to a women-dominated workforce with a

⁵ 2020 Aged Care Workforce Census Report, available from: <https://www.health.gov.au/sites/default/files/documents/2021/10/2020-aged-care-workforce-census.pdf>, accessed 18 October 2021.

⁶ Path to Nowhere: Women on Temporary Visas Experiencing Violence and Their Children, 2018, available from: <https://awava.org.au/wp-content/uploads/2018/12/National-Report-on-Women-on-Tempo...3-compressed.pdf>, accessed 18 October 2021.

significant proportion of workers on temporary visas therefore runs the risk of increasing violence against migrant women.

Rather than an enforceable Code of Conduct and related pre-employment screening, FECCA recommends that Schedule 3., and other related schedules, are amended to adopt an alternative and less punitive approach of a care worker regulation scheme which embeds skills and training standards and ongoing professional development.

FECCA further believes that, if the increasing dependence on a migrant aged care workforce is acknowledged, serious consideration must be given to ensure that those workers are properly supported and trained. These can be addressed if a CALD workforce sub-plan of the National Aged Care Strategy / 2022–25 Workforce Planning Strategy and Framework is developed in meaningful collaboration with a broad range of stakeholders to recognise comparable qualifications and experience from overseas among others.

FECCA would welcome the opportunity to discuss any aspect of this submission further. Please don't hesitate to contact us at .

Yours sincerely,

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Chief Executive Officer

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