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Law Council of Australia
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Submission to the Justice Project: A national Blueprint for Justice for All

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 strives to ensure that the needs and aspirations of Australians from diverse cultural and linguistic backgrounds are given proper recognition in public policy.

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 welcomes the invitation from the Law Council of Australia to provide feedback on the *Justice Project: A National Blueprint for Justice for All* to ensure equality before the law for all Australians, including those who experience significant disadvantage.

Recommendations

FECCA recommends:

- That funding be secured for accredited translators and culturally competent staff interacting with CALD Australians to ensure equitable access and outcomes in legal processes.
- That cultural awareness and competency training should be provided for all staff involved with courts as well as others involved in the justice system and processes, including judicial officers and associates.

- That all courts should focus on increasing diversity as a priority in recruitment. This includes the appointment of judicial officers, registrars, associates, administrative staff and security personnel.
- That government should be encouraged to develop a cohesive, inclusive civics education strategy ensuring increased awareness and knowledge of Australia's legal and judicial systems and processes.
- That clear mechanisms and channels should be developed for managing concerns and complaints in justice settings. These should be accessible in a range of languages.
- Online information on justice processes must be given in Languages Other Than English (LOTE) and via means such as a LOTE specific telephone line. Written and online material must be easily accessible in plain English using symbols or images to facilitate effective and swift communication. Accurate translations should also be provided for all written and online materials.

Key Message

ABS Census data from 2016 indicates that nearly half (49%) of all Australians were either born overseas or had at least one parent who was born overseas and more than one-fifth (21%) of Australians spoke a language other than English (LOTE) at home. For Australians born overseas approximately 60% spoke a LOTE at home.

FECCA is concerned with the intersection of multiple factors of vulnerabilities and disadvantage because CALD populations also make up other groups identified by the Law Council in this project as being particularly disadvantaged (for example, recent arrivals, people with disability, living in remote or rural areas, youth, and those who have been trafficked).

Interacting with the justice system is frequently a distressing and stressful experience for anyone. For Australians with one or more vulnerability factor such as a lack of institutional knowledge, or low English language proficiency, this distress is magnified. For CALD Australians there maybe multiple stress points in any interaction with the justice system and a lack of appropriate support, information or access can result in catastrophic outcomes for individuals and their families. FECCA commends any attempt to address the vulnerabilities of CALD Australians within the structures, processes and institutional practices of the justice system.

FECCA applauds the Law Council for its detailed consultations with vulnerable groups and for putting their needs on the agenda. As mentioned in the consultation papers, issues facing vulnerable groups include mistrust of authorities, language and literacy barriers, unfamiliarity with Australian systems, as well as a lack of cultural competency within the justice system.

FECCA wishes to emphasise that these are barriers that many of Australia's CALD population experience, including those who are not recent arrivals. The Justice Project must take into consideration that within each of the vulnerable groups identified by the Justice Project there will be people from CALD backgrounds facing the same challenges.

In particular FECCA would like to emphasise the intersections of being elderly and being from a CALD background. CALD older people are disadvantaged heavily as they age due to low levels of English proficiency, poor health literacy levels, poor understanding of aged care and aged care services, reliance on family members for support and minimal to no understanding of guardianship and power of attorney practices which can exacerbate the incidence of elder

abuse. Elder abuse amongst CALD communities can be a hidden practice and safeguards need to include:

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

We would encourage the Justice Project to ensure that the complexity of disadvantage is taken into consideration in the development of a national blueprint.

Australians from CALD backgrounds can face multiple complications when interacting with the law. The issue of appropriate language services is one the most significant issue for CALD populations who may have low English language literacy, legal literacy and institutional literacy. Appropriate and qualified interpreters with experience in legal settings may not always be readily available and this can make responding to specific needs of CALD populations difficult as is ensuring equitable access to justice outcomes.

A report by the Judicial Council on Cultural Diversity (JCCD) has noted that the factors preventing the effective provision of language services, include:

- a lack of clarity about who is responsible for engaging an interpreter
- failure to assess the need for an interpreter, or incorrectly assessing need
- the skill of interpreters being engaged
- lack of awareness amongst judicial officers and lawyers about how to work with interpreters
- the need to ensure that interpreters are appropriate for the individual, and,
- unethical and poor professional conduct by interpreters.¹

A lack of awareness of both legal rights and obligations and a lack of understanding about court procedures often hinders CALD populations in accessing the justice system effectively. Further, some CALD Australians have migrated from countries where the judiciary and other official arms of the government are sources of oppression and intimidation, leading them to mistrust and disengage with the justice system. This disengagement can create serious consequences for individuals, their families and communities.

Many of Australia's CALD communities can struggle with access to online services and processes, including where to find information on legal processes as well as who to contact when support in legal matters is needed. Lack of accessible information services in plain English (or appropriate translations) can make it difficult for many of Australia's CALD population to access the justice system.

Online information on justice processes must be given in Languages Other Than English (LOTE) and via means such as a LOTE specific telephone line. Written and online material must be easily accessible in plain English using symbols or images to facilitate effective and swift communication. Accurate translations should also be provided for all written and online materials. The knowledge of, and access to, mechanisms of complaint is an important aspect of ensuring that CALD Australians have equitable access to the justice system. Once again, FECCA reiterates the need to ensure that these are culturally competent, inclusive and available in a range of languages.

¹ *The Path to Justice: Migrant and Refugee Women's Experience of the Courts* Judicial Council on Cultural Diversity (2016).

FECCA would encourage the Law Council in its development of a blueprint to take into consideration the need for increased diversity of staff who work within the justice system. The recruitment of a diverse and culturally competent workforce who can adeptly manage and respond to the needs of CALD Australians should be a matter of priority so as to break down barriers in perception, and access, for CALD Australians.

Conclusion

In conclusion, FECCA wishes to congratulate the Law Council for initiating the Justice Project and for examining the justice system from a people-centred perspective. FECCA also applauds the Law Council of Australia for examining these barriers from a range of perspectives with input from vulnerable groups themselves as well as advocacy organisations working on their behalf. Finally, FECCA wishes to congratulate the Law Council of Australia for providing essential information in an accessible format such as the easy-read document explaining the project with images and symbols.

FECCA emphasises that access to language services and improved cultural competence of all those working in the justice system are vital in ensuring equitable outcomes for CALD Australians. Funding for resources that will facilitate access to justice for Australia's CALD population must be ensured. Funding arrangements that focus on available legal aid and enable the capacity of people to participate fully is essential.

FECCA appreciates the opportunity to make a submission on the *Justice Project: A National Blueprint for Justice for All*. We would welcome the opportunity to provide further comment and encourage you to contact FECCA Senior Policy and Project Officer, Dr Alia Imtoul at alia@fecca.org.au, FECCA Director, Dr Emma Campbell at emma@fecca.org.au, or (02) 62825755.