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UN Special Rapporteur on Violence against Women
By email: vaw@ohchr.org

Violence against Culturally and Linguistically Diverse Women in Australia

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 linguistically diverse 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.

Australians from CALD backgrounds are not a homogenous group and encounter different outcomes based on a variety of factors. These can include life experience, length of time since arrival in Australia, migration pathway (e.g. as a refugee) and experience, English language proficiency and socioeconomic status. These aspects have a distinct impact on the wellbeing of people from CALD backgrounds. It is vital that there are targeted policy measures, with adequate resourcing of both policies and programs to ensure access, equity and participation.

FECCA thanks the Special Rapporteur for the opportunity to make a submission on this important issue.

Domestic and Family Violence

According to the Australian National Research Organisation for Women's Safety (ANROWS):

Family violence policy and response systems have not been sufficiently inclusive of immigrant and refugee women's needs and experiences of violence. Immigrant and refugee women have limited access to preventative and early intervention programs across Australia and as a result are over-represented in the crisis response system. While many policy and reform documents have contained statements about diversity,

the lack of follow-through limits the extent to which policy has led to effective gains within immigrant and refugee communities. Furthermore, inadequate funding has been allocated for policy and program implementation that specifically addresses the needs of immigrant and refugee communities.¹

Women from CALD backgrounds who experience family violence are often reluctant to disclose violence due to a range of factors including language barriers, social isolation, mistrust of police and the justice system, shame and stigma associated with seeking help, lack of culturally competent services and immigration status. In some CALD communities, women experience specific forms of family violence including forced marriage, dowry-associated violence, female genital mutilation, and violence from the extended family that are not well understood or recognised by broader Australian society.

The immigration status of women who experience family violence has a significant impact on their experience of that violence and their ability to leave a violent relationship. Research conducted by the inTouch Multicultural Centre against Family Violence showed that visa dependence was one of the main barriers to migrant women accessing legal and justice support for family violence:

Refugee and immigrant women described their dependent visa status as a tool that was used by husbands to threaten and intimidate them, as a factor increasing their vulnerability to violence and impacting on their willingness to seek help.²

In 2016, the Victorian Royal Commission into Family Violence considered the needs and experiences of people from CALD communities who are affected by family violence, including approaches to prevention of violence in migrant communities, raising community awareness and increasing knowledge about family violence. Specific issues relating to access to services were also examined in the Royal Commission's report, including overcoming language barriers and the appropriate use of interpreters.

Definition of domestic and family violence

Legal definitions of domestic and family violence often exclude the types of violence that culturally and linguistically diverse women experience.

In their submission to the Victorian Royal Commission, inTouch Multicultural Centre against Family Violence noted that it has had clients who are unable to claim permanent residency under the family violence exception because the violence against them was perpetrated by a member of their extended family (e.g. parent or sibling in-law), even when their partner was aware of and facilitated the violence.³

The Royal Commission recommended that Victorian statutory definitions of family violence should include examples of forced marriage and dowry-related abuse. The report also recommended that the Victorian Department of Health and Human Services, in collaboration with the Victorian Multicultural Commission, community organisations and other relevant bodies develop a strategy for informing service providers, specialist family violence services and other community organisations about the health impacts of female genital mutilation, emphasising that it can be a form of family violence and a criminal offence.

¹ ANROWS, 'Promoting community-led responses to violence against immigrant and refugee women in metropolitan and regional Australia: The ASPIRE Project', *Landscapes: State of knowledge paper* (Issue 12, 2015), 8.

² inTouch Multicultural Centre Against Family Violence, *"I lived in fear because I knew nothing": Barriers to the Justice System Faced by CALD Women Experiencing Family Violence* (2010), 25.

³ Victorian Government, Royal Commission into Family Violence (March 2016), 111.

Migration law

FECCA believes that the Government must remove any obstacles in immigration policy to reporting violence and seeking help for family violence with assurances that women and children will not risk being deported or criminalised if they disclose violence to government, justice or community services.⁴

[I]mmigration policy establishes women's dependency on the family for economic security and residency rights, and often fails to acknowledge the complexity in situations where immigrant women must seek assistance for family violence when the perpetrator is a visa sponsor and/or the primary source of family income. These issues were referenced in many studies, which noted that immigration policies create insurmountable barriers to seeking help for many immigrant and refugee women, or prolong the amount of time women and their children stay with perpetrators.⁵

The family violence exception provides an alternative means of satisfying the requirement of a 'genuine and continuing' spouse needed to obtain permanent residence for individuals applying for a permanent partner visa. Under the *Migration Regulations 1994* (Cth), a woman can be granted permanent residence even if the marriage or de facto relationship on which her immigration status depends has ended, if she can provide that:

- she and/or a member of her family unit (e.g. her child) have been victims of family violence; and
- she was married to or in a de facto relationship with the perpetrator at the time the violence occurred.

A review by the Department of Immigration found that the majority of applicants seeking to rely on the family violence provisions were in genuine need of assistance.⁶

FECCA has recommended that the Government ensure that there are appropriate visa pathways to assist victims of family violence, by:

- broadening the definition of family violence in the *Migration Regulations 1994* (Cth), as recommended by the Victorian Royal Commission into Family Violence, to ensure that a person who experiences violence perpetrated by a family member other than the person's spouse can apply for the family violence exception;
- expanding the family violence exception to cover secondary applicants for onshore permanent visas, and holders of a Prospective marriage (Subclass 300) visa who have experienced family violence but who have not married their Australian sponsor, as recommended by the Australian Law Reform Commission in its 2011 report, *Family Violence and Commonwealth Laws – Improving Legal Frameworks*; and
- amending the evidentiary requirements for the family violence exception to make it easier for women to prove that they have been subjected to violence, as recommended by the Australian Law Reform Commission in its 2011 report, *Family Violence and Commonwealth Laws – Improving Legal Frameworks*.

⁴ ANROWS, 'Promoting community-led responses to violence against immigrant and refugee women in metropolitan and regional Australia: The ASPIRE Project', *Landscapes: State of knowledge paper* (Issue 12, 2015), 42-43

⁵ ANROWS, 'Promoting community-led responses to violence against immigrant and refugee women in metropolitan and regional Australia: The ASPIRE Project', *Landscapes: State of knowledge paper* (Issue 12, 2015), 22.

⁶ *Ibid*, 110.

Secondary holders of 457 visas are of particular concern, as women on this visa type who have experienced family and domestic violence are unable, even after two years of living in Australia, to apply for permanent residency under the family violence provisions.⁷ Their status as a secondary visa holder makes them reliant on their spouse or the primary holder of the subclass 457 visa. A secondary subclass 457 visa holder is only able to remain in Australia if their relationship remains intact, irrespective of their own work or study in the community. This can be used as a method to control and manipulate dependents of the subclass 457 visa holder, particularly where visa holders threaten to withdraw sponsorship.

International students are another cohort who do not have access to migration law support when they experience domestic violence. As a condition of their visa, international students must remain enrolled in their registered course and maintain satisfactory attendance in their course and course progress. Students must also satisfy the requirements for the grant of their visa, for example continue to have sufficient financial capacity to support their study and stay in Australia.⁸ It can be difficult to satisfy these requirements when a student is experiencing violence, which can affect their wellbeing, capacity to participate in their studies and financial situation.

Returning home to their country of origin may not be an option for many migrant women due to the shame and stigma associated with their experience of domestic violence in Australia, or the threat of continued or increased violence on return to their country of origin.

The Government recently introduced the *Migration Amendment (Family Violence and Other Measures) Bill 2016*. The purpose of the changes as they relate to the partner visa program is purportedly to support the *National Plan to Reduce Violence against Women and their Children* by “requiring additional information disclosure by the Australian husband or fiancé applying for an overseas spouse visa”.⁹

The *Migration Amendment (Family Violence and Other Measures) Bill 2016* is currently before the Senate. The Bill seeks to introduce a sponsorship framework, which imposes criteria for qualification as a sponsor, for the sponsored family visa program. Currently, the *Migration Act* only provides a sponsorship framework that applies to the temporary sponsored work visa program. The Bill will extend some aspects of this sponsorship framework to apply to family visas, establishing a framework that:

- Requires the approval of persons as family sponsors before any relevant visa applications are made;
- Imposes obligations on persons who are or were approved family sponsors;
- Provides for sanctions if such obligations are not satisfied; and
- Facilitates the sharing of personal information in accordance with this Division.

The Senate Standing Committee on Legal and Constitutional Affairs conducted an inquiry into the Bill in late 2016. A number of organisations joined FECCA in raising concerns about the Bill. However the Committee recommended that the Bill be passed by the Parliament.¹⁰

⁷ Holders of the Temporary Work (Skilled) visa (subclass 457) can bring members of their family unit to work or study in Australia. For further information: <https://www.border.gov.au/Trav/Visa-1/457->

⁸ For further information: <https://www.border.gov.au/Trav/Stud/More/Visa-conditions/visa-conditions-students>

⁹ See further:

www.aph.gov.au/Parliamentary_Business/Bills_LEGislation/Bills_Search_Results/Result?bld=r5647

¹⁰ See further:

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/MigrationFamilyViolence/Report

FECCA holds concerns about the effectiveness of the measures in this Bill to assist potential victims of family violence. Family violence is under-reported in Australia.¹¹ Despite initiatives to increase awareness of the crime and improve pathways for women to report violence and access support, many incidents of family violence are not recorded by police, or necessarily result in criminal charges. FECCA questions the effectiveness of the proposed amendments to assist potential victims of family violence, given the difficulties with relying on police checks for evidence of previous behaviour in these circumstances. Further, if the individual who seeks to be a sponsor is a new citizen or permanent resident, it may be difficult to access information about any previous history of violence in their country of origin. Different States and their respective legal systems have different understandings and laws concerning family violence, which may mean that incidents are not recorded by police.

Many individuals apply for a Partner visa onshore, when they are already residing in Australia on another visa. Adding a sponsorship framework to the family visa program may result in additional barriers for visa applicants who are already experiencing family violence, and thus leave them in a position where they are more vulnerable.

In their submission to the Senate inquiry, the Border Crossing Observatory, Monash Gender and Family Violence Focus Program and inTouch Multicultural Centre Against Family Violence said:

We are unclear how these measures 'protect' vulnerable sponsors. We are concerned that these measures are more likely to discourage and/or prevent partner and family visa applications, with the impact of ensuring migrant women who are potentially or currently in violent and abusive relationships remain outside the current framework of support measures including access to the Family Violence provisions.¹²

Family law

The interplay between migration and family law is not well understood by the community. In particular, there is community concern about how this interplay affects women and their children when family breakdown occurs. FECCA's consultations have revealed that many women in Australia on temporary visas fear that after a relationship breakdown or because they leave a relationship due to the domestic violence, they will be forced to leave the country and leave their children (who may have been born in Australia) with their ex-partner. There is limited availability of migration law advice for individuals who are on temporary visas engaging with the family law system.

The Victorian Royal Commission into Family Violence reported:

Some CALD women might also be fearful of separating from their violent partner if they come from a culture in which the father traditionally takes sole custody of the children after a separation. They might fear that their ex-partner will remove the children from Australia or that a court may order that the children live with their father.¹³

¹¹ Victorian Government, *Royal Commission into Family Violence* (March 2016), 47.

¹² Border Crossing Observatory, Monash Gender and Family Violence Focus Program and inTouch Multicultural Centre Against Family Violence, 'Submission to the Senate Legal and Constitutional Affairs Committee: *Migration Amendment (Family Violence and Other Measures) Bill 2016* (3 October 2016).

¹³ Victorian Government, *Royal Commission into Family Violence* (March 2016), 108.

Support services for migrant women experiencing violence

[T]he lack of service provision to an increasingly significant group has the potential to undermine social safety nets and national cohesion. For example, the absence of services provided to women and children on temporary migrants visas who are escaping domestic and family violence has been acknowledged as a concern.¹⁴

Women on temporary visas who experience domestic violence frequently find that they are ineligible for assistance, reinforcing the common threat from their spouse that they will be deported if they report the violence or go to authorities. This group of women often lack the legal rights that enable them to access basic support services including social security, Medicare, legal assistance, refuge at shelters, if violence occurs or is reported. In these circumstances, women are reluctant to leave violent relationships and report the abuse to the police. Without access to women's refuges for crisis accommodation, women must draw on their (often limited) support networks, return to their abusive partner, or return to their country of origin.

The Council of Australian Governments (COAG) Advisory Panel on Reducing Violence against Women and Children reported in 2016:

The vulnerability of women without permanent residency is further exacerbated by their inability to access the support services required for independent living (such as income support, affordable housing, Medicare and subsidised public transport) and limited rights to work.

Migration rules and restriction of access to services should not have the effect of encouraging victims of violence to stay in violent relationships in the pursuit of a migration outcome. All victims of violence should be able to easily access the support services they need to help them live independently from perpetrators, regardless of their migration status.¹⁵

Individuals on temporary visas are generally not eligible to access services through Centrelink. Women on spousal visas who can access the family violence exception must wait a minimum of 12 weeks for their visa to change, during which time they have no access to Centrelink payments. Temporary migrants who do *not* have access to the family violence exception to change their visa status are left indefinitely without income and rely on charities or other charitable support to get by. Without access to Centrelink payments, women cannot access a lump sum payment to assist them in times of crisis, for example a special benefit payment.

Domestic violence service providers report that the biggest issue that they are experiencing in relation to migrant women on temporary visas is that these women have no source of income. Without income, women cannot meet their basic needs and the needs of their dependents. Many women on temporary visas return to their abusive partners because of lack of financial resources.

Service providers have reported that women's refuges often limit the number of temporary visa holders that they house at any time due to their inability to pay a small amount of rent to the refuge and the lack of exit options available for women without income. Refuges adopt such policies to ensure viability of the service.

¹⁴ Migration Council Australia, *More than Temporary: Australia's 457 Visa Program*, 30.

¹⁵ COAG Advisory Panel on Reducing Violence against Women and Children (2016), 54.

In April 2016, FECCA coordinated a letter to the Prime Minister, urging the Government to ensure that migrant women on temporary visas are supported when escaping violent relationships through access to a crisis payment, as a minimum. The letter was endorsed by 134 organisations including domestic violence service providers, community legal centres, charities, women's health groups, and multicultural and settlement organisations.¹⁶

Support for women on temporary visas is often more involved than the support provided by services for women who are permanent residents or citizens. This is for a number of reasons, including:

- Language barriers and need for an interpreter;
- Complexity of legal issues across a number of legal areas (criminal, civil, family and migration law);
- Lack of familiarity with Australian systems; and
- Limited support networks.

Domestic violence crisis services have reported that to support these women, they need to provide complex case management which use a significant portion of their resources. It is difficult to deliver the required level of service in a climate where organisational budgets are shrinking.

Many service providers are providing services to temporary visa holders even where their contracts do not extend to this service provision. Many of these service providers are going above and beyond to ensure that these women are supported. However, there must be systemic change as these arrangements are not sustainable and rely on the good will of the community sector.

FECCA supports the following recommendations made by ANROWS:

- Ensure that service design centralises the needs of immigrant and refugee women who experience family violence. All services, whether providing family violence specialist support or other types of community service, must be able to offer culturally appropriate support accounting for the specific risks, vulnerabilities and health consequences experienced by immigrant victims of family violence
- Invest in culturally/ethno-specific family violence services that provide specialist crisis and outreach support to immigrant and refugee women. Many studies have identified the importance of culturally specific family violence specialist service provision in reducing ongoing risks and vulnerabilities. These agencies must be funded to provide bilingual/bicultural support, interact with the family violence system and justice settings, work respectfully with community members' confidentiality and privacy rights, and provide women and children's counselling and men's behaviour change programs that are culturally specific and delivered in community languages.¹⁷

Access to justice and legal support

Legal assistance can be accessed through Legal Aid and/or community legal centres. Many migrant women who have experienced family violence have a complex combination of domestic violence, family and migration law matters that need to be settled. In many cases, women will have to go to multiple lawyers to access the legal advice and support that they need.

¹⁶ See further: <http://fecca.org.au/wp-content/uploads/2016/04/Open-Letter-Australian-Government-must-support-vulnerable-migrant-women-escaping-family-violence6.pdf>

¹⁷ ANROWS, 'Promoting community-led responses to violence against immigrant and refugee women in metropolitan and regional Australia: The ASPIRE Project', *Landscapes: State of knowledge paper* (Issue 12, 2015), 42-43.

The Victorian Royal Commission reported:

[B]ecause of the complexities of migration law, women might need intensive specialist support to prepare visa applications, and such support is limited and available only in urban areas, compounding the disadvantage CALD women living in rural and regional areas can experience.¹⁸

In 2016, the Judicial Council on Cultural Diversity published a report which examines matters relating to access to justice for migrant and refugee women, *The Path to Justice: Migrant and Refugee Women's Experience of the Courts*. The Judicial Council is an advisory body formed to assist Australian courts, judicial officers and administrators to positively respond to the diverse needs of individuals accessing the justice system. The Council aims to develop a framework to support procedural fairness and equality of treatment for all court users – regardless of their race, colour, religion, or national or ethnic origin.

This report set out a number of recommendations and suggestions for considerations by the Judicial Council, including work that can be undertaken by judicial officers and courts to improve access to justice for migrant and refugee women, including:

- Magistrates Courts should implement education sessions for women applying for intervention orders to provide them with information about the process
- The Family Courts should re-establish court information sessions for court users about their processes
- All judicial officers should receive cultural competency training
- Judicial offices and lawyers should receive training and guidance about how to work with interpreters
- Courts should improve data collection about their cultural, linguistic and gender diversity of their court users.

FECCA supports the work of the Judicial Council on this important issue.

Information for new migrants

FECCA commends the Government on its introduction of 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. The pack aims to address violence against migrant women by providing information about Australia's laws and a women's right to be safe. FECCA considers this an important initiative and congratulates the Government on making the pack available in 46 languages.

Interpreters and Language Services

The Royal Commission into Family Violence heard evidence relating to police practices in relation to interpreters. A number of problems were raised including not using interpreters, not notifying the court of the needs for an interpreter when the police are applying for a family violence intervention order, relying on an interpreter from a different language group and inappropriately using children, people known to the perpetrators the or the perpetrator themselves.¹⁹

The Royal Commission identified issues with the use of interpreters in the court system. The Commission reported the sheer number of applications where an interpreter is needed:

¹⁸ Victorian Government, Royal Commission into Family Violence (March 2016), 110.

¹⁹ Victorian Government, Royal Commission into Family Violence (March 2016), 118.

In 2013-14 there were 1210 cases in which interpreters were requested by applicants and respondents in family violence intervention order applications. The number of respondents requesting interpreters in the Magistrates' Court has nearly doubled since 2004-05 from 235 to 417 in 2013-14. Requests for interpreters for family violence intervention order proceedings now account for about half of the Magistrates' Court total interpreter expenditure.²⁰

The competency of interpreters to work with individuals in circumstances of family violence was questioned by the Royal Commission. As set out by the Magistrates' and Children's Courts:

Competent, ethical and highly skilled interpreters are an essential element in meeting some of the significant safety risks which exist for families from CALD communities living with family violence. An independent governance structure for interpreters, such as an improved accreditation process, would give the court greater confidence.²¹

There is currently no compulsory training in relation to family violence being provided as part of the interpreter accreditation process. Some tertiary institutions and language service providers that FECCA consulted with reported that they do provide such training, however, there is neither a requirement to do so nor a coordinated approach to offering this training.²²

A 2016 South Australian Parliamentary Committee report on domestic and family violence recommended that the South Australian Government investigate the adequacy of current interpreting services for Aboriginal people and those from culturally and linguistically diverse backgrounds experiencing, or perpetrating domestic and family violence

The Victorian Royal Commission into Family Violence recommended:

- that the Victorian Government guidelines on policy and procedures in using interpreting services and the Victoria Police Code of Practice for the Investigation of Family Violence (with training provided to all appropriate levels of the Police) be updated to emphasise the risks of using perpetrators, children and other family members as interpreters, as well as using the same interpreter for both perpetrators and victims;
- for the Magistrates' Court of Victoria to allocate specific funding for family violence interpreters and develop court guidelines for booking interpreters in family violence matters;
- for the Victorian Government to work with National Accreditation Authority for Translators and Interpreters (NAATI) to ensure that accreditation and testing processes and approval of translator and interpreter courses require an understanding of the nature and dynamics of family violence.

In its 2016-17 Budget, the Australian Capital Territory (ACT) Government has committed \$1,223,000 to investment in translation and interpreting services in ACT Courts and Tribunals and family violence specialist services.²³

²⁰ Ibid, 120.

²¹ Ibid.

²² FECCA, *Australia's Growing Linguistic Diversity: An opportunity for a strategic approach to language services policy and practice* (2016), 24.

²³ ACT Government, 'Budget 2016-17: Safer Families Statement' (June 2016)

<http://apps.treasury.act.gov.au/budget/budget-2016-2017/fact-sheets/domestic-violence>

National Plan to Reduce Violence against Women and their Children

FECCA was pleased that the recently released Third Action Plan (2016-19) of the *National Plan to Reduce Violence against Women and their Children (2010-22)* included actions focusing on migrant women, including:

- Ensuring that migration rules and eligibility requirements for support services do not disempower victims of violence or discourage them from leaving violent relationships
 - o developing appropriate visa arrangements for temporary residents who are experiencing violence
 - o revising eligibility requirements to enable more victims of violence to access support; and
 - o working with service providers to improve access of temporary residents to support services

- Supporting community-driven initiatives to prevent and respond to diverse and complex forms of violence against women and improve community awareness of these forms of violence
 - o providing leadership training to young people from culturally and linguistically diverse backgrounds to drive attitudinal change in their communities; and
 - o building the capacity of community and faith leaders to reject, prevent and respond to violence.

- Enhancing services in the family law system for families experiencing, or at risk of experiencing violence, including integrating legal and social support services to better support groups that face additional barriers to accessing the family court system, such as women from culturally and linguistically diverse backgrounds.

- Progressively designing, trialling and evaluating innovative models of perpetrator interventions across community and correctional settings to understand what works for different groups, including tailored initiatives to be targeted at culturally and linguistically diverse men.

Racial Discrimination

FECCA notes that culturally and linguistically diverse women in Australia experience intersecting racial and gender-based violence.

Research by a range of organisations has indicated that racism is still prevalent in our society, and that racial discrimination and vilification have serious harmful effects on the health and wellbeing of individuals and communities. Racial hatred and vilification can lead to emotional and psychological harm. It also reinforces other forms of discrimination and isolation.²⁴ FECCA is particularly concerned about increasingly hostile attitudes toward Muslim Australians and other specific minority groups in Australia.

The Scanlon Foundation has found that the reported experience of discrimination on the basis of 'skin colour, ethnic origin or religion' has significantly increased from 15 percent in 2015 to 20 percent in 2016. This is the highest recorded rate over the nine Scanlon Foundation surveys.²⁵

Mission Australia's Annual Youth Survey found that just over one quarter of young people had experienced unfair treatment or discrimination in the past twelve months. Race or

²⁴ <https://www.humanrights.gov.au/glance-racial-vilification-under-sections-18c-and-18d-racial-discrimination-act-1975-cth>

²⁵ Scanlon Foundation, *Mapping Social Cohesion: The Scanlon Foundation surveys 2016* (2016).

cultural background was reported by over 30 percent of these respondents as the reason that they were unfairly treated or discriminated against. About half of the young people surveyed had witnessed someone else suffering unfair treatment or discrimination in the last twelve months, and the discrimination that they witnessed was most commonly on the basis of race or cultural background (58 percent).²⁶

Marginally higher rates of racial discrimination are reported by women (39 per cent) than men (35 per cent), except among third generation Australians (women 16 per cent, men 26 per cent).²⁷

Muslim Women are often the targets of Islamaphobia because of their visibility, wearing hijab or other forms of cover. Muslim women report higher incidence of discrimination than men (29 per cent for women and 19 per cent for men). The Islamic Women's Welfare Council has reported:

Racism against Muslim women has a pervasive and persistent cyclical pattern, characterised by quiet periods of everyday racisms and incivility, which are interrupted by sharp rises in racism after international incidents of Muslim-related terrorism.²⁸

The South Sudanese community report high levels of discrimination and racism in Australia; no other birthplace group reports experiences discrimination at the rate that this community does. Nearly 80 per cent of South Sudanese women surveyed by the Scanlon Foundation reported that they had experienced discrimination.²⁹ The Scanlon Foundation has remarked:

It seems that differences of skin colour are a significant issue for many Australians, for whom there has been little interaction with very dark skinned people. Dark-skinned African immigrants are a pioneer group, involved in a transition and adjustment process.³⁰

The Parliamentary Joint Committee on Human Rights is currently undertaking an inquiry into freedom of speech in Australia, with a particular focus on section 18C of the *Racial Discrimination Act* (RDA). FECCA has opposed attempts to amend and weaken section 18C by removing the words "insult" and "offend".

Section 18C provides important protection against racially motivated attacks, including hate speech, against members of Australia's CALD communities. The RDA attempts to strike a balance between the right to freedom from racial vilification and right to freedom of expression.

FECCA has consulted our members who, in turn, have received feedback from the communities that they represent on the importance of Section 18C. Community members have reported that by amending or repealing 18C of the RDA, the Government would be sending a message to the community that current levels of racism are acceptable.

FECCA believes that the current racial vilification provisions in the RDA set clear limits and establish accountability under the law for racist remarks and speech inciting racial hatred.

²⁶ Mission Australia, *Annual Youth Survey* (2016), 10.

²⁷ Scanlon Foundation, *Australians Today* (2016), 68.

²⁸ El Matrash and Dimopoulous, *Race, faith and gender: Converging discriminations against Muslim women in Victoria. The ongoing impact of September 11, 2001. A summary report on racism against Muslim women* (2008), Islamic Women's Welfare Council of Victoria, 13.

²⁹ Scanlon Foundation, *Australians Today* (2016), 63.

³⁰ *Ibid*, 72.

This is critical to ensuring equality and the elimination of intolerance in Australia's culturally diverse society.

The 2014 debate on this issue was extensive and does not need to be re-opened. There was an overwhelming community response against changes to the Act, with thousands of community members and their organisations expressing alarm that the then proposed repeal of 18C would strip protection from the most marginalised members of our society and threaten social cohesion in Australia.

Asylum Seekers

FECCA strongly opposes offshore processing of asylum seekers, boat turn-backs, and the denial of asylum seekers who arrive by boat and are found to be refugees the right to be resettled in Australia.

Numerous Parliamentary and Departmental inquiries have documented the inhumane treatment of asylum seekers in Australia's Regional Processing Centres.³¹ Civil society³² and human rights bodies³³ have also published a number of reports, and the treatment of asylum seekers in offshore processing centres has been a topic of interest in the media.³⁴ This treatment often has a specific impact on women, with reports of sexual assault and harassment, and inadequate healthcare particularly for pregnant women.

Amnesty International has reported:

For women and children outside the Refugee Processing Centre, sexual assault is [a] serious risk, and Amnesty International received credible testimonies about numerous incidents of gender-based violence.³⁵

A Senate Select Committee, assessing evidence presented to it in 2015, stated: "The inability for vulnerable women and children to be removed from unsafe situations is clearly at odds with best practice that would apply in an Australian domestic context".³⁶

With growing global needs for refugee resettlement, FECCA believes that Australia should stand by our moral and international obligations and provide refugee resettlement, as well as ensuring and contributing to protecting peace and security globally.

³¹ For example: P Moss, *Review into Recent Allegations Relating to Conditions and Circumstances at the Regional Processing Centre in Nauru*, Final report, Department of Immigration and Border Protection (6 February 2015); Senate Select Committee on the Recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru, *Taking responsibility: conditions and circumstances at Australia's Regional Processing Centre in Nauru* (August 2015); Senate Standing Committee on Legal and Constitutional Affairs, *Conditions and treatment of asylum seekers and refugees at the regional processing centres in the Republic of Nauru and Papua New Guinea*, Interim report, (5 May 2016).

³² For example: Amnesty International, *Island of Despair: Australia's 'Processing' of Refugees on Nauru* (2016);

³³ For example: UNHCR, UNHCR monitoring visit to the Republic of Nauru' (7-9 October 2013); Australian Human Rights Commission, *The Forgotten Children: National Inquiry into Children in Immigration Detention* (2014).

³⁴ For example: the Guardian (Australia), *Nauru Files: Cache of 2,000 Leaked Reports Reveal Scale of Abuse of Children in Offshore Detention*, released August 2016.

³⁵ Amnesty International, *Island of Despair: Australia's 'Processing' of Refugees on Nauru* (2016), 34.

³⁶ *Ibid*, 100.