

19 February 2017

Parliamentary Joint Committee on Migration
PO Box 6021
Parliament House
Canberra ACT 2600

Inquiry into Migrant Settlement Outcomes

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.

Key Message

Throughout Australia's history migrants have enriched the nation with their contributions to the dynamic culture that has made Australian society the envy of the world. The many thousands of people helping to settle new arrivals have assisted migrants to foster an Australian identity while retaining their own cultural heritage. Cultural expression is paramount to Australia's multiculturalism. It creates strong cultural ties with the world and within Australia

The settlement of newly arrived Australians is a complex, long-term process. It occurs most effectively when aided by grassroots organisations with comprehensive knowledge of the communities they service. Historically, Australia has proved to be a world leader in managing the challenges of this process. Ensuring the continued success of Australia's settlement programs requires an ongoing commitment.

As a prosperous nation Australia has an obligation to accept refugees from across the globe, including from areas marked by war and instability. This includes a responsibility to welcome and help those traumatised by conflict to settle peacefully, productively and to share in the full quality of Australian life.

Priority should be given to maintaining arrangements which provide specialist organisations with the flexibility required to adapt to the unique challenges experienced by the diverse range of communities settling in Australia. Ideal outcomes are often best achieved through

facilitating partnerships between smaller, specialist service providers and more mainstream organisations. Such partnerships ensure that programs are targeted effectively and resources are utilised effectively. A key element of this is communication with individual communities regarding the nature and availability of settlement services.

Australia is home to communities of people who arrive having experienced extraordinary trauma. The effects of such trauma present particular challenges. Where difficulties settling are identified within particular communities, efforts should be made to ensure services are specifically tailored to addressing those difficulties at the source. This is best achieved by organisations with specialist knowledge of those communities through methods that demonstrate engagement, consultation and empathy. Punitive measures marginalise people and communities already struggling to adapt to new ways of living and should be avoided wherever possible. It is critical that stigmatisation of those communities through misrepresentation and misinformation be avoided and strongly countered when it occurs.

Summary of Recommendations

- **Ethno-specific organisations should be resourced to help new arrivals and community members, as a supplement to settlement services.**
- **Capacity for organisations outside the settlement space to collaborate with settlement service providers, to provide holistic support for new arrivals and to transition people from settlement services to other community supports after five years should be developed.**
- **The Federal Government should support a whole-of-government and longer term approach to multicultural policy by developing a national legislative framework on multiculturalism.**
- **Employment is key to successful settlement outcomes. Employment services should be given specific funding and incentives to develop cultural competence and client-centric approaches.**
- **English language services should be structured in recognition of differing levels of competency and the effects of past trauma upon capacity to develop new skills. Time limitations should be abandoned. Further funding should be provided to increase the supply of interpreters in languages for new and emerging communities.**
- **Migration processes should remain wholly non-discriminatory. No further criteria should be applied to assess prospects for migrants.**
- **The protections, both practical and symbolic, offered by the *Racial Discrimination Act* are invaluable for assisting newly arrived migrants to form their Australian identity and for a sense of inclusiveness. No changes to 18C should be considered.**
- **New temporary visas for parents are a welcome addition to the spectrum of means for promoting family reunion. They should operate to supplement, rather than substitute, existing and permanent parent visas.**
- **Individuals in the early stages of settlement should be provided with information in such a way as to ensure an understanding of the availability and portability of the full suite of services.**
- **Where particular communities are identified as experiencing difficulties with aspects of the settlement process, effort should be invested in identifying and resolving those difficulties. Where those difficulties have been misrepresented, effort should be made to ensure correct is available.**
- **Changes to the Migration Act to allow for the deportation of juveniles, or to provide for the detention of juveniles for the purposes of later deportation are unjust, violate Australia's commitment to the international community and should be given no further consideration.**

Multicultural policy, services and supports

Migrants and refugees cannot contribute to our economy and society without effective access to services. Empowering immigrants and allowing them the resources and tools to participate in Australian society is critical in fostering their economic and social contributions. Challenges faced by newly arrived migrants and refugees include navigating government systems, accessing appropriate and affordable housing, learning English, understanding Australian workplace systems and securing employment.

Multicultural and settlement organisations play a significant role in helping transition migrants from their home countries to Australian life, and this is of key importance for fostering their latent contributory powers.¹ A survey administered by Dr Graeme Hugo revealed that 'community' was very important to newly arrived migrants as a resource, especially if the community in which they are resettled in is ethnically akin to their origin.² Hugo's research demonstrates that ethnic communities are an important source of support to newly arrived immigrants and his findings reveal that a majority of settled immigrants had a strong network of friends within their ethnic community. This further shows the significant social capital that settled immigrants contribute to their community. When asked whether they had helped or mentored newly arrived migrants, 90 per cent of those sampled provided at least one of the forms of assistance.

FECCA has highlighted the challenges faced by ethnic, religious and national communities in Australia in their work to support new arrivals.³ These challenges include:

- **lack of accessibility of funding opportunities;**
- **limited availability of information**
- **language barriers;**
- **difficulty understanding eligibility criteria and addressing selection criteria;**
- **availability of resources;**
- **competing against established organisations; and**
- **lack of compatibility between funding priorities and community needs.**

Ethno-specific organisations should be resourced to help new arrivals and community members, as a supplement to settlement services. FECCA also notes that there should be capacity for organisations *outside* the settlement space to collaborate with settlement service providers, to provide holistic support for new arrivals and to transition people from settlement services to other community supports after five years.

National Legislative Framework of Multiculturalism

The fundamental principle of multiculturalism needs to be embedded not just in government policy, but also in the political system, through a whole-of-government approach to multicultural affairs, which recognises and values cultural, religious, racial and linguistic diversity. FECCA notes that Multicultural Acts are in place in some States.

¹ Mwanri, L., Kiros, H. and Masika, J. 'Empowerment as a tool for a healthy resettlement: a case of new African settlers in South Australia' *International Journal of Migration, Health and Social Care* Vol 8, No 2 (2012) [88]

² G Hugo, 'Economic, social and civil contributions of first and second generation humanitarian entrants', Department of Immigration and Citizenship (May, 2011).

³ FECCA, 'Improving access to funding for new and emerging communities' (October 2015), <http://fecca.org.au/wp-content/uploads/2015/11/Improving-access-to-funding-for-NEC-communities.pdf>

Settlement Services

Government funded settlement services can be provided to eligible migrants in their first five years of life in Australia. As settlement can be a life-long process, time limits are inappropriate.

The effectiveness of settlement services can be enhanced by providing information to community, religious leaders, General Practitioners and other prominent community members about any changes to settlement services. Rural and regional settlements can have benefits for both migrants and host communities, but can also present unique challenges and may require additional appropriate resources.⁴

Familial and community ties are vital aspects of the settlement process and migrants may move to different States and Territories to be close to their family or community members. However, due to conflicts between ethnic or religious groups, the settlement process can be difficult for certain migrants.

... African people especially, from the same county, there are tribal fights within the community. So, mum didn't really feel connected with [name of the tribe] community in Adelaide. She felt that there were still tensions there because she wasn't from [name of the tribe] that everyone was from. So she wanted a fresh start, so she decided to go away from everybody and she ended up in Horsham.⁵

Community consultation participant, Ballarat

When individuals move they may get 'lost' from the settlement program and certain elements of settlement including health services, such as maternal and child services, language training and other social supports.⁶ Information about portability of supports must be provided to these individuals at the initial stages of settlement.

Other services

Recently arrived migrants often have difficulty accessing mainstream services because of a lack of cultural competency, lack of access to interpreters, and other barriers. These communities need access to specialist services, for example, drug and alcohol services and health services, which have particular expertise in the experience of refugees and other recently arrived migrants. Information sharing is a key role of local ethnic, religious and national community organisations. This should also include information about various support systems such as the National Disability Insurance Scheme (NDIS), mental health services and supports for carers.

It is important to provide a range of information to migrants because of the difference between support services and service structures in Australia and the countries of origin of many migrants.

⁴ Vasse, K., and Manderson, L. 'Regionalizing Immigration, Health and Inequality: Iraqi Refugees in Australia' *Journal of Administrative Sciences* Vol 2 (2012) [47]-[62]

⁵ FECCA and Refugee Councils of Australia Community Consultation, Ballarat (10 November 2016).

⁶ Riggs et al 'Accessing maternal and child health services in Melbourne, Australia: Reflections from refugee families and service providers' *BMC Health Services Research* 12 (2012) [117].

Mental health

An estimated 45,000 people who are survivors of torture and trauma have settled in Australia during the last decade⁷ and it is likely that many future arrivals will have also experienced trauma and torture. Due consideration must be given to the specific needs of this cohort, including access to culturally appropriate mental health services. FECCA reiterates the need for the Australian Government to provide targeted funding for a national multicultural mental health structure. The structure must provide an informed, representative and legitimate leadership that will ensure that mental health reforms achieve positive outcomes for culturally and linguistically diverse individuals and communities.⁸

Employment services

Employment is key to successful settlement outcomes. The mainstreaming of employment services, and removal of specialist services, has had a significant impact on the equity of experience with respect to employment services for refugee and other CALD job-seekers. Job-seekers, particularly refugees, are often inappropriately assessed as 'job-ready' and thus receive limited assistance from their *jobactive* provider. It is noted that people seeking asylum are only eligible for Stream A (the lowest level of support) despite their often high needs. The Refugee Council has received widespread negative feedback about how providers are responding to the needs of refugee job-seekers, including that services are ineffective in helping refugee and humanitarian entrants to find employment.⁹

Community members have reported that employment services are generally not client-centred and therefore not effective in identifying and responding to their diverse pool of clients. Employment services are driven by the service rules and what the service provider wants to prioritise and deliver, instead of being driven by consumers and their expressed needs. Further, the requirement to attend an employment service provider regularly can also be unduly onerous, interfering with commitments including caring responsibilities, study, and work. Communities reported that employment service providers have a tendency to ignore their client's previous skills and did not provide information about how they can have their previous work experience and skills recognised so that they can work in these areas.

There appear to be limited incentives for *jobactive* providers to invest the time and resources required to assist vulnerable CALD job-seekers to find and secure employment. Because of the market-based nature of employment services, providers are disincentivised from offering adequate assistance to highest-needs consumers. The social and economic costs of failing to provide opportunities for employment to vulnerable migrants are significant and have been well documented.¹⁰

⁷ The Forum of Australian Services for Survivors of Torture and Trauma (FASSTT), The case for specialist mental health services for refugee survivors of torture and trauma, *Australian Mosaic*, FECCA, Issue 41 (2015), p. 30.

⁸ See further: FECCA and National Ethnic Disability Alliance, *MHiMA Project Consultation: Joint submission from the Federation of Ethnic Communities' Councils of Australia and the National Ethnic Disability Alliance*, 2016, accessible at: <http://fecca.org.au/wp-content/uploads/2016/02/MHiMA-project-submission-to-MHA.pdf>

⁹ Refugee Council of Australia, 'Jobactive: Refugee community and service provider concerns' (April, 2016).

¹⁰ Sue Onley and Wilma Gallet, 'Social service future dialogue – Issues in market-based reform of human services: Lessons from employment services' (4 July 2016), <http://www.powertopersuade.org.au/blog/social-service-futures-dialogue-issues-in-market-based-reform-of-human-services-lessons-from-employment-services/4/7/2016>

Skills Recognition

Difficulties with obtaining recognition of skills and qualifications earned overseas are frequently cited by migrants as a major barrier to accessing employment in Australia. Consultations conducted by FECCA have revealed that many service providers and community members believe that there is not enough information about how to have overseas qualifications recognised. Additionally, the costs of this recognition can be prohibitive, particularly to refugees. Another key issue for humanitarian entrants, especially those from small and emerging communities, is that they may be unable to demonstrate previously held qualifications due to their inability to bring documents from their country of origin.¹¹ The provision of face-to-face information and advice on overseas qualifications recognition must be a focus of settlement and other multicultural service providers. A recent Ethnic Communities' Councils of Victoria discussion paper also covers issues like the availability of education and training, such as bridging courses, to help migrants make the most of their previous experience and up-skill and ideas for the provision of advice on overseas qualifications.¹²

Queensland Government offers free qualification assessments for those who hold a completed post-secondary school qualification from overseas and currently live in Queensland.¹³ The Queensland Government Overseas Qualification Unit also organise seminars to educate people from migrant backgrounds about qualification and skills recognition. A similar model can be adopted nationally to assist people with overseas qualifications.

Concerted efforts must also be made to work with relevant employer peak bodies and professional licensing and accreditation bodies to improve the process of overseas qualification recognition.

Language

Learning English

English language proficiency is fundamentally linked to the opportunity for new immigrants and refugees to fully participate in Australian society.

English language learning should be made available to migrants and refugees until they reach written and oral English proficiency. It is also important to recognise that not all migrants will be able to achieve fluency in English, as illustrated by the 'Building a New Life in Australia' longitudinal study.¹⁴

Those who do reach a functional level of English may still need to use an interpreter or translated materials for particular circumstances, for example where there is more technical language (such as in health and legal settings) and in stressful or emotional situations. Language services are also needed for older migrants as they age and revert to their original language.¹⁵

¹¹ Ethnic Communities Council of Victoria, 'Qualified but not Recognised' (2014).

¹² Ibid.

¹³ See further: Queensland Government, <https://training.qld.gov.au/training/osqrecognition>

¹⁴ De Maio J, Silbert M, Jenkinson R, & Smart, D. (2014). *Building a New Life in Australia: Introducing the Longitudinal Study of Humanitarian Migrants*. Family Matters, 94, 5-14. Melbourne: Australian Institute of Family Studies.

¹⁵ FECCA, *Australia's Growing Linguistic Diversity: An opportunity for a strategic approach to language services policy and practice* (2016), 11-12.

English language ability

FECCA opposes proposals to standardize English language requirements for all new citizens, on the basis that such proposals would potentially disadvantage and exclude some people who have much to offer to Australian society, including:

- People who have experienced a very disrupted education in their country of origin, are illiterate in their own language, or who speak a language which is an oral language only;
- Older people;
- People living with disabilities that make learning another language challenging;
- People coming from countries of origin where English is not spoken or taught;
- Refugees who have experienced torture, trauma and/or long periods of displacement due to war or civil unrest. For many, post-traumatic stress makes learning another language very challenging;
- New migrants working long hours to support their families who cannot access English classes during working hours;
- Parents with young children and carers of other family members, including family members with a severe or profound disability, who cannot access classes unless other can pick up their caring responsibilities. These carers are predominantly women.

Adult Migrant English Program (AMEP)

The Government should be commended on its efforts, to improve the delivery of AMEP. FECCA hopes the changes will help to reduce the social exclusion experienced by new immigrants and refugees as a result of limited English language proficiency.

The goal of AMEP is to give people the English language skills that they need to settle well in Australia, not simply the skills they need to secure employment. These include English for everyday activities such as banking and shopping, navigating government and community services and many other regular activities. Community members and service providers are concerned that the AMEP may become more employment-focused and its settlement component undermined.

AMEP currently lacks sufficient flexibility and funding to cater to the diverse needs of learners accessing the program. Migrants and refugees come to Australia with vast differences in their levels of literacy, numeracy, education and English language proficiency. Notwithstanding the recent changes the current structure of the AMEP needs to be further tailored to give migrants and refugees the best possible opportunity to become proficient in English.

FECCA welcomes the recent inclusion of an expansion of the hours available to AMEP students in the draft service provider instructions. As feedback from our members and during FECCA community consultations has shown, the strict 510 hour limit is often insufficient for newly arrived community members to develop an adequate level of English. The announcement of AMEP Extend, which provides an additional 490 hours to eligible students, is welcome news. We congratulate the Government for responding to feedback from the community on this issue.

The new streaming system for AMEP is a positive step in recognising the various skills and backgrounds which people come to Australia with, however FECCA has a number of concerns with the changes, including:

- the Social Stream does not recognise the additional needs of many recently arrived migrants and refugees, nor the expertise of the teacher. Language teaching is a specialised field requiring knowledge of Teaching English as a Second Language (TESOL) methodology gained through post graduate TESOL qualifications and teaching experience;
- the requirement that student with mutual obligation requirements with Centrelink must be enrolled in the Pre-Employment stream undermines the goal of the Social Stream to support those with additional needs. A large number of newly arrived people will have mutual obligation requirements, meaning that they will be ineligible for the social stream, even if they have significant difficulties in learning English. This includes clients illiterate in their own language and with no English proficiency;
- provisions for child care do not appear to meet the needs of parents attending AMEP classes, for example by not taking into account travel times.

FECCA recommends that:

- qualified TESOL teachers remain in the Social Stream, with a possibility of employing bi-cultural workers to support students with particularly low English skills
- remove the requirement that those with mutual obligations be in the pre-employment stream, and instead an assessment of need is implemented to ensure those who need it most are placed in the Social Stream

FECCA welcomes the development of work experience within the programme, including SLPET. However, we believe that work experience placements need adequate safeguards to ensure they are valuable and meet the aims of the program.

We recommend that these safeguards include:

- a limit on the number of work experience participants that a business can host in a year;
- a contact person for the work experience participant, who checks on their progress and is readily accessible if they need assistance;
- provision of easily understood information to work experience participants about their rights in the workplace;
- close monitoring of outcomes of the programme by the Department of Education and Training;
- a requirement for businesses engaged in hosting work experience participants to receive training in cultural competence; and
- ensuring the contact person providing direct support to work experience participants has the support of/works in partnership with specialist organisations with knowledge of refugee and migrant experience.

FECCA notes that a careful balance needs to be struck to ensure that the settlement component of AMEP is maintained. Undermining the settlement focus of the AMEP could in turn undermine the development of language skills essential for successful settlement, and thereby undermine the capacity of new arrivals to navigate life in Australia. FECCA strongly emphasizes the need for asylum seekers to be able to access the AMEP.

Language services

FECCA emphasises the importance of providing quality language services to all migrants:

Language services can enhance individuals' access to social services, assisting to alleviate isolation and leading to better connection with the community. They provide opportunities for those with limited English proficiency to actively participate in society and enhance their confidence and self-determination. The benefits are even more significant for refugees and

humanitarian entrants. Many in this group have already suffered from trauma such as war, natural disaster or torture, possibly causing depressive and anxiety disorders and Post-Traumatic Stress Disorder.¹⁶ Difficulty communicating with others—particularly when accessing services and supports—can exacerbate these health conditions. Conversely, the ability to use one’s own language to communicate via an interpreter can reduce these psychological effects.

Many new migrants and refugees experience a lack of community participation that can lead to lack of self-esteem and independence. A sense of belonging in society is important to realising social cohesion, as identified by the Scanlon-Monash Index of Social Cohesion.¹⁷ Language barriers were nominated as an obstacle to a sense of belonging according to a survey conducted in Blacktown, Sydney, and Mirrabooka and Balga, Perth.¹⁸ A sense of belonging can be improved by providing language services to the population with limited English proficiency to engage in the community, and facilitate equitable access to social services as underpinned by the Australian Government *Multicultural Access and Equity Policy: Respecting diversity. Improving responsiveness*. Under this policy, government agencies commit to meeting the diverse needs of Australians to achieve equitable outcomes, recognising that cultural diversity principles should be incorporated into the application of program and service delivery.¹⁹

FECCA’s report, *Australia’s Growing Linguistic Diversity: An opportunity for a strategic approach to language services policy* (2016) sets out a national, multi-jurisdictional framework underpinned by a number of elements to both increase supply of interpreters in new and emerging community languages and demand for language services in those languages.

Migration Processes

Well-resourced settlement and multicultural sectors, along with culturally competent and specialist services, support migrants to integrate and contribute to Australian society.

FECCA advocates for an immigration policy which is wholly non-discriminatory. This includes a non-discriminatory migration approach in assessing humanitarian visa applications irrespective of the time and mode of arrival.

Availability of family reunion

The availability of family reunion is important for successful settlement. Family reunion relates to core human rights principles around the rights of Australians to live with their family members. Further, family separation can have pervasive impact on individuals and their capacity to participate and direct their own futures. Family separation is a barrier to settlement and must be a crucial consideration for the design and provision of settlement services, particularly for people from a refugee background.²⁰ Many people are forced to

¹⁶ Laurence J. Kirmayer, Hannah Kienzler, Abdel Hamid Afana and Duncan Pedersen, ‘Trauma and Disasters in Social and Cultural Context’ in C. Morgan and D. Bhugra (eds), *Principles of Social Psychiatry* (John Wiley and Sons, Ltd, 2nd edition), 162-170.

¹⁷ *Ibid*, 10-11.

¹⁸ Justine Dandy and Rogelia Pe-Pua, report prepared for Joint Commonwealth, State and Territory Research Advisory Committee, ‘Research into the Current and Emerging Drivers for Social Cohesion, Social Division and Conflict in Multicultural Australia’ (2013), 51.

¹⁹ FECCA, *Australia’s Growing Linguistic Diversity: An opportunity for a strategic approach to language services policy* (2016), 5-6, accessible at: <http://fecca.org.au/wp-content/uploads/2016/09/feccalanguagesreport.pdf>

²⁰ Wilmsen, B. ‘Family Separation and the impacts on refugee settlement in Australia’ *Australian Journal of Social Sciences* Vol 48 No 2 (2013)

choose between being separated from their family or staying in Australia on a temporary visa without access to services while they wait lengthy periods for their substantive visa to be processed and finalised.

The Department of Immigration and Border Protection advises that there is approximately a 30 year wait before visa grant consideration for Parent (non-contributory) visa applications.²¹ There is a delay of up to 50 years for people applying for remaining relative and aged dependent relative visa applications.²²

The associated costs with the Contributory Parent visas are significantly higher than the ones for Non-Contributory visas as they are required to pay higher visa application charges and to make a substantially higher contribution to their health and welfare costs. Disadvantaged families, families with relatives overseas who are solely dependent on their support and people with disabilities or other medical conditions who want to bring over their carer find it almost impossible to sponsor their relatives or carers to come to Australia.

The Productivity Commission has found that the Australian community enjoys a number of benefits from parent visa holders, including economic social and cultural benefits.²³ FECCA disagrees with the Commission's conclusion that these benefits are largely obtained by the sponsors and visa holders, and not by unrelated members of the Australian community.²⁴

The Federal Government has recently announced that it will be introducing a new temporary sponsored parent visa, which will be valid of up to five years.²⁵ FECCA welcomes this announcement, however holds concerns about some aspects of the proposal as detailed in our submission to the Department of Immigration and Border Protection Discussion Paper.²⁶ In particular, it is important that the introduction of the new temporary visa for parents does not result in the removal or reduction of other (more permanent) parent and family visas.

Health requirement

Under section 5(1) *Migration Act 1958* read with Migration Regulations 1998, applicants (and their family) need to meet a health requirement. This test also applies to people with disabilities and the *Migration Act* is exempted from the *Disability Discrimination Act 1992*. FECCA has advocated for a human rights based, equitable migration process which does not discriminate against people with disability.

Currently when an applicant or a family member of an applicant is unsuccessful in obtaining a visa due to a disability, in almost all cases they appeal to the Migration Review Tribunal and as the last resort appeal to the Minister of Immigration and Border Protection requesting ministerial intervention. Relying on ministerial intervention for individual cases is discriminatory, expensive, and time consuming, requiring the resources of many community organisations to be directed to individual advocacy. We urge the Government to adopt a

²¹ DIBP, 'Parent Visa Queue', <https://www.border.gov.au/Trav/Brin/Fami/Capping-and-queuing/Parent-visa-queue> (accessed 16 February 2017).

²² DIBP, 'Other Family Visa Queue' <https://www.border.gov.au/Trav/Brin/Fami/Capping-and-queuing/Other-family-visa-queue> (accessed 16 February 2017).

²³ Productivity Commission, *Migrant Intake into Australia* (2016), 472 – 476.

²⁴ *Ibid*, 477.

²⁵ Department of Immigration and Border Protection, *Introducing a new temporary visa for parents: Discussion paper* (September 2016), accessible at: <https://www.border.gov.au/ReportsandPublications/Documents/discussion-papers/discussion-paper-introducing-tem-visa-parents.pdf>

²⁶ FECCA, 'Introducing a temporary visa for parents: DIBP discussion paper' (31 October 2016), <http://fecca.org.au/wp-content/uploads/2016/11/FECCA-submission-Introducing-a-temporary-visa-for-parents.pdf>

more sustainable approach in granting visas to individuals with disabilities similar to the net benefit approach for the assessment of visa applications.

Racism and Discrimination

Migrants better integrate into a society that is welcoming and free from discrimination.

Research by a range of organisations has indicated that racism is still prevalent in our society. Racial hatred and vilification can lead to emotional and psychological harm. It also reinforces other forms of discrimination and isolation.²⁷

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.²⁸

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 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).²⁹

Recent research has found that a heightened level of discrimination is experienced by Indigenous Australians, Muslim women and migrants from South Sudan.³⁰ Hostile behaviour to Muslim women wearing head covering, discrimination based on differences of skin colour, the degree of distancing and hostility were highlighted in this report.

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. 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.

National Anti-Racism Strategy

The National Anti-Racism Strategy was developed through a partnership led by the Australian Human Rights Commission. The primary awareness raising and engagement activity within the National Anti-Racism Strategy is the *Racism. It Stops With Me* campaign, which aims to:

1. Ensure more Australians recognise that racism is unacceptable in our community;
2. Given more Australians the tools and resources to take practical action against racism; and
3. Empower individuals and organisations to prevent and respond effectively to racism.

²⁷ For further information: <https://www.humanrights.gov.au/glance-racial-vilification-under-sections-18c-and-18d-racial-discrimination-act-1975-cth>

²⁸ Scanlon Foundation, *Mapping Social Cohesion: The Scanlon Foundation surveys 2016* (2016).

²⁹ Mission Australia, *Annual Youth Survey* (2016), 10.

³⁰ Scanlon Foundation, *Australians Today*, (2016), 71.

The National Anti-Racism Strategy was evaluated in June 2015. The evaluation found:

[T]he Commission has done ‘a lot with a little’ by creating a network of partners and supporters taking action against racism and encouraging communities to use the campaign to support their individual and organisation efforts... With greater resources, more could have been achieved, such as broader reach and great systemic change. However, our approach has been to share responsibility and resources and to use our status and leadership to encourage and support local initiatives.³¹

Adequate resourcing of the campaign would achieve much better, more comprehensive community reach and awareness, as well as outcomes with regards to tackling discrimination, racial and religious intolerance.

Social engagement of youth migrants

This inquiry directs itself to questions regarding settlement outcomes for newly arrived migrants, with particular attention paid to “*social engagement of youth migrants, including involvement of youth migrants in anti-social behaviour such as gang activity, and the adequacy of the Migration Act 1958 character test provisions as a means to address issues arising from this behaviour.*”

Committee Chair the Hon Jason Wood MP, Member for La Trobe made the following comments in a statement to the media:

Recent events in Victoria show that youth migrants experiencing social marginalisation are getting involved in gang activity,” Mr Wood said. “It is timely that we examine the adequacy the settlement services, and consider whether mechanisms such the Migration Act 1958 character test are useful for addressing issues arising from social marginalisation and disengagement.

Recent events in Victoria

Recent incidents involving juveniles in Melbourne have attracted the attention of media outlets and have, subsequently, created concern amongst the general public. Much of the concern is the result of significant misinformation. It is useful, before addressing some of the genuine issues arising as a result of those incidents, to correct some of the inaccuracies.

The Apex ‘Gang’ and Sudanese youth

It has been widely reported in the media that recent juvenile crime in the Melbourne Metropolitan Area can be largely attributed to a gang referring to itself as Apex, primarily constituted by young persons of Sudanese origin.

The Australian Institute of Criminology provides the following as a composite set of characteristics of a youth gang:

- A self-formed, complex association of youths (aged 12-24 and predominantly male) united through mutual interest, the members of which (customarily numbering in excess of 25) maintain regular, ongoing contact;
- Formalised structure and organisation maintained through strong inter-group solidarity and loyalty;

³¹ Australian Human Rights Commission, *National Anti-Racism Strategy and Racism. It Stops with Me: Summary Evaluation and Future Direction* (June 2015), 11.

- Identifiable leadership and rules;³²

It is clear from reports by both police and associates of 'Apex' that these characteristics do not apply and that the term gang does not accurately reflect the manner in which Apex operates.³³ It is a loose association with no structure, no rules, no leadership and no real inter-group solidarity or loyalty. Applying the term gang is not only inaccurate it is inflammatory and creates an unnecessarily apprehensive community response because of the related connotations. This is further relevant in relation to comments made by the Minister for Immigration, addressed in detail below.

Ethno-cultural membership

A number of media outlets have referred to Apex as a Sudanese gang, or a gang of African youths. Deputy Commissioner Andrew Crisp, however, notes that the ethno-cultural make-up of Apex is far more diverse than reports imply, stating "we are seeing those of African background, we are seeing Pacific Islands youth, and we are seeing those of a very strong Anglo (Saxon) background and some others thrown in as well."³⁴ This is commensurate with research indicating that the correlation between ethnicity and anti-sociality are misunderstood and reported inaccurately.

Media reportage in Australia has a history of falsely targeting African, and particularly Sudanese, migrants. False reportage, confirmed by the Australian Communications and Media Authority, "fuelled racism, distorted and inflated facts and demonised Africans."³⁵ Adequate support must be provided to the small organisations working to counteract the negative perceptions perpetuated by large media organisations.

Contribution to youth crime

Victoria Police Assistant Commissioner Bob Hill head of Taskforce Tense, formed to address juvenile gang-related activity in Melbourne, stated 'We have clear evidence that the majority of people charged don't have anything to do with Apex'.³⁶ These statements were confirmed by Acting Commander Peter De Santo, who said 'It's not all Apex. Everybody is running around saying "it's Apex, it's Apex". We've got this type of offending across the whole broader community'.³⁷

The above paragraphs make clear three facts relevant to the terms of this inquiry. They are:

- 1) Apex is mistakenly perceived as being a gang in any traditional sense of the word. There is no organisation or association; no structure which can be dismantled by targeted measures.
- 2) Particular ethno-cultural minorities such as Sudanese youths are mistakenly perceived as being disproportionately involved in Apex, and
- 3) Apex is mistakenly perceived to be responsible for a disproportionate number of crimes committed by juveniles throughout the City of Melbourne.

³² Australian Institute Of Criminology *trends & issues in crime and criminal justice* No. 167 'Young People and Gangs' Perrone, S and White, R.

³³ Wood, M 'For gangs with a social media presence like Apex, there's no such thing as bad publicity' *The Conversation* 13 January 2017

³⁴ Wallace, R. 'At the Apex of a crime wave in Melbourne' *The Australian* 2 December 2016

³⁵ Joint Standing Committee on Migration 'Inquiry into Multiculturalism in Australia. *Chapter 3: The anti-racism framework and multiculturalism*' 18 March 2013

³⁶ Mills, T. 'Deporting Apex gang members 'inherently racist', legal groups say' *The Age* 28 April 2016.

³⁷ Mills, T. 'It's not all Apex': Almost 200 arrested as police tackle carjackings, aggravated burglaries' *The Age* 30 June 2016.

Proposals to amend the 'Character Test' Provisions of the Migration Act

In comments to the media, the Immigration Minister indicated that proposed changes to section 501 of the Migration Act were being considered. The details of those proposals have yet to be made clear. However, FECCA strongly opposes any attempts to apply provisions under section 501 to juveniles. To do so would represent an unjustifiably punitive outcome.

Section 501: The provisions of the 'character test'

Presently the *Migration Act*³⁸ (the Act) provides, under section 501, for cancellation of, or refusal to issue, a visa if the minister suspects that a 'person does not pass the character test'³⁹ and that person 'does not satisfy the Minister that the person passes the character test.'⁴⁰ For the purposes of the Act and relevant to this inquiry a person does not pass the character test if:

- (6) (b) *the Minister reasonably suspects:*
- (i) *that the person has been or is a member of a group or organisation, or has had or has an association with a group, organisation or person; and*
 - (ii) *that the group, organisation or person has been or is involved in criminal conduct;*

The act does not provide a definition of 'criminal conduct'. It does not require convictions, prosecutions or even charges for the purposes of meeting the 'criminal conduct' test. The Australian Border Force Commissioner indicated in comments to the media "The character test...should be used in extraordinary circumstances."⁴¹ The Commissioner declined to give details about what constituted 'extraordinary circumstances'.⁴² Victoria Police claim to have already "made some referrals in respect to that age (under 18) group for consideration".⁴³ These statements were made in conjunction with comments by the Immigration Minister to the effect that:

one of the things that [Federal MP] Jason Woods' committee is having a look at at the moment: whether, for example, the bar could be lowered from 18 to 17 or 16, or whatever the case might be

It is of significant concern to FECCA that Australia is considering the deportation of children.

If the provisions intended for use in this circumstance are those relating to membership or association of a '*group or organisation*' then the observations above relating to the structure of Apex take on some significance. It is unlikely that the manner in which much of the activity is conducted would fit any definition of group or organisation. It is further unlikely that any definition of 'membership' or 'association' would encapsulate the kind of behaviour the government seeks to address unless applied in absurdly broad terms.

FECCA submits that it is inappropriate and ineffective to consider amendments to s501 of the *Migration Act* to provide for the deportation or long term detention of juveniles in immigration facilities for the purposes of later deportation in relation to the perception of migrant youth involvement in anti-social activity.

³⁸ 1958 (Cth)

³⁹ Subsection (1)

⁴⁰ Subsection (2)

⁴¹ Above n5.

⁴² Ibid.

⁴³ Wright, P. and Brown, M. 'Victorian children committing serious crimes referred to Border Force for deportation' ABC News 19 Jan 2017 <http://www.abc.net.au/news/2017-01-19/child-criminals-referred-to-border-force-for-deportation/8193344>