

10 December 2021

Regulatory Alignment Across Care and Support
Australian Government

**Submission to the Consultation on the draft
Care and Support Sector Code of Conduct**

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

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

FECCA appreciates the opportunity to provide the following response:

1. Do you support the inclusion of the seven elements drawn from the NDIS Code?
2. If not, why not?
Yes
3. Are there any other elements that should be included in the draft Code?
4. If so, what elements should be included and why?

The draft Code should include elements of diversity specifically, cultural competency. The final report of the Royal Commission on Aged Care Quality and Safety highlighted the need for diversity to be 'core business'. An explicit reference to diversity and discrimination is critical.

Ageing and aged care is subject to significant cultural, ethnic and linguistic diversity across both the people using and providing services. On one hand, older people of culturally and linguistically diverse (CALD) backgrounds are an increasingly significant proportion of the population, making up approximately 1 in 5 people aged 65 and over (2016 Census). On the

other hand, the aged care workforce has significant diversity. Half of Personal Care Assistants (PCAs) are born overseas, 42 percent of whom are from non-main English-speaking countries. About 37 percent of Aged Care and Disabled Carers are born overseas, compared to 20 percent of the total workforce (UNSW: *Markets, migration and the work of care in Australia*).

Given this demographic and workforce trends, FECCA recommends that the code of conduct include the following as an 8th element:

“act with respect for diversity in ethnicity, gender, language and religion of people being provided care, supports and services”.

5. Is the language proposed in the draft Code relevant across the care and support sector?

6. If not, what language is preferred and why?

The proposed language, ‘people being provided with care, supports and services’ and ‘care, supports and services’ are appropriate.

In developing the future detailed guidance document, FECCA recommends that the term ‘people with special needs’ should not be used when referring to the various diverse groups in aged care.

The term ‘people with special needs’ does not recognise the systemic barriers that prevent older people from CALD and other diverse backgrounds from engaging with the aged care system. The experience of systematic discrimination is different in impact than that of a lack of services and must be recognised as such.

7. At a high level, what should be covered in the detailed guidance to support providers and workers to adhere to the Code in the aged care and/or veterans’ care context?

An overarching diversity framework and a cultural framework, specifically, must be embedded in the detailed guidance which will link to the recommended 8th element: “act with respect for diversity in ethnicity, gender, language and religion of people being provided care, supports and services”.

Its sub-elements will specify workers providing culturally-appropriate and competent care and providers ensuring workers have the necessary training and competence on diversity and cultural competency. Training around culturally competent care, supports and services must be part of the core curriculum. They are often downgraded in the current training curriculum for care, supports and services workers, and cultural competence training is often not prominent in the ongoing professional development of health care professionals.

Another critical sub-element is the recognition for language support as a universal human right and that the provision of translating/interpreting services is fundamental to upholding this right.

Access to language services is critical to the quality of life of older people from linguistically diverse backgrounds. The provision of language services is currently focused on the assessment and entry point to aged care services, rather than throughout their care. At a minimum, people with linguistic diversity in ageing must be able to 1) understand information about My Aged Care, types and referral of care services, and their rights; 2) make informed

choices about their care, including giving informed consent, throughout their care; and 3) be understood when accessing services and providing feedback. Many older people from CALD backgrounds, revert to their first language as they age, particularly older people with dementia.

8. What considerations are relevant to enforcing the Code in the aged care context?

Recently, the Aged Care Legislation Amendment (Royal Commission Response No. 2) Bill 2021 was passed in the Senate. Schedule 3 allows the Aged Care Quality and Safety Commissioner to make and enforce a Code of Conduct that will apply to workers, providers and governing persons, and the Commissioner will have powers to make civil penalty orders and banning orders against those in breach of the code, including workers, providers, or governing persons.

In its current form, the civil penalty for breaching the Code of Conduct in aged care would be 250 civil penalty units (\$55,500) and can be ordered against workers, providers, or governing persons.

FECCA would like to note Australia's increasing dependence of the care, supports and services sector on migrants who are overseas born, on various temporary visas, including international students, and nurses or care workers. Temporary migrants face intersecting conditions which increase their precarity and marginalisation within the workforce. These include conditions which restrict their economic security and employment options, including having no access to social protections such as Medicare or income support, poor understanding of entitlements under relevant awards, and restricted working hours.

At the same time, temporary migrants may experience poor working conditions within the aged care sector, including inadequate training and support in the requirements of the job, limited opportunities for professional development, occasional requirement to act as informal interpreters without language skills being part of a position description or appropriately remunerated, and experience of racism or discrimination (both from other workers and from recipients of aged care services and/or their families).

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

FECCA notes that this combination of precarious conditions means that CALD aged care workers, particularly those on temporary visas, may have relatively little power in their workplaces. As such, the adherence of these workers to a Code of Conduct may be difficult or impossible where the operating environment created by provider organisation and their governing persons is poor to begin with.

Punitive measures such as banning orders and civil penalty orders of \$55,000 are exploitative where aged care workers may have little control over their working conditions. FECCA is particularly concerned about the impact of such measures on aged care workers who are already experiencing significant economic insecurity. FECCA is opposed to a civil penalty order which treats marginalised workers, providers and governing persons as having the same agency and liability for poor care outcomes.

9. What considerations are relevant to enforcing the Code in the veterans' care context?

To meet the needs of veterans from different cultural, ethnic and linguistic backgrounds, there needs to have an overarching framework in the Code with an intersectional lens for veterans from CALD backgrounds.

Enforcing the Code should be supported by care, supports and services workers and delivered by people with cultural expertise and knowledge of the system in practice for veterans with limited English proficiency (LEP). It is important to develop language access services that are designed to ensure effective communication between English-speaking providers and those veterans with LEP.

The lack of comprehensive and comparable data in the veterans' care, supports and services area make it difficult to build an integrated picture of veterans' health and welfare. These data gaps include the ability to understand the health and welfare needs and outcomes CALD background veterans, and how they compare with those of the broader veteran population.

Currently, there is no single data source that provides a comprehensive picture of veterans' health and welfare in Australia. As well, Australian research has focused on the health of veterans, with limited evidence on welfare issues such as homelessness, employment, education, income and crime (AIHW 2018. *A profile of Australia's veterans*).

FECCA believes a comprehensive and consistent data system for the health and welfare of CALD veterans would need to be established to inform the research on their care, supports and services needs.

10. What other intersections need to be considered as part of the implementation of the Code?

FECCA would also like to note that most aged care workers identify as women, including as many as 86% of the RAC workforce (2020 Aged Care Workforce Censuses Report). This reflects gender norms around care, in which women predominate in caring industries which are also ascribed lower social value and remuneration. Such economic insecurity is associated with an increased risk of gender-based violence.

Women on temporary visas may be at increased risk of gender-based violence due to the way in which visa conditions can be a tool for perpetrating violence and a lack of available support services (AWAVA report: *Path to Nowhere: Women on Temporary Visas Experiencing Violence and Their Children*). As a result, applying punitive economic measures to a women-dominated workforce with a significant proportion of workers on temporary visas therefore runs the risk of increasing violence against migrant women.

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

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

FECCA would welcome the opportunity to discuss any aspect of this submission further. Please don't hesitate to contact us at ceo@fecca.org.au or on (02) 6282 5755.

Yours sincerely,



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Chief Executive Officer

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