



Federation of Ethnic Communities' Councils of Australia

Submission to the Consultation on the Aged Care Bill 2024

Senate Community Affairs Legislation Committee

3 October 2024



FECCA pays its respects to Aboriginal and Torres Strait Islander Elders past and present and recognise the land we live and work upon was never ceded. FECCA proudly supports the Uluru Statement from the Heart.

FECCA acknowledges that our work on behalf of multicultural Australia has learnt from and been enriched by First Nations peoples and organisations. We are committed to continuing to listen, learn and support First Nations peoples in the journey to a more inclusive soc

Who We Are

The Federation of Ethnic Communities' Councils of Australia (FECCA) is the national peak body representing people from multicultural communities and their organisations across Australia. Through the membership of state, territory, and regional councils, we represent over 1,500 community organisations and their members.

What We Do

For over 40 years, FECCA has proudly worked alongside culturally and linguistically diverse communities, the broader Australian society and government to build a successful, productive and inclusive multicultural Australia where everyone, no matter their background or how long they have lived in this country, can belong equally and reach their full potential.

FECCA draws on the lived experiences of the people and their descendants who have migrated to Australia and the expertise of its extensive and diverse membership to develop and promote inclusive, innovative and responsible public policy that reflects the needs and perspectives of multicultural Australia. We are committed to building a strong, innovative and inclusive nation that harnesses its greatest strength, the diversity of its people.

The FECCA network is FECCA's greatest strength. Through our network we can enhance the capacity of governments to strengthen public policy to meet the needs of the diverse Australian population. FECCA is a proven trusted partner to both communities and government, operating as a sophisticated conduit by mobilising communities to work with government to develop and enrich public policy through community-led expertise and action.

Foreword

The Federation of Ethnic Communities' Councils of Australia (FECCA) welcomes the opportunity to provide inputs to the Aged Care Bill 2024. We at FECCA are proud of our long-standing trajectory advocating for the rights and inclusion of older people from multicultural communities. We see the new Aged Care Act as a historical opportunity for Australia to adopt a modern legislation that is reflective of its increasingly culturally, linguistically and religiously diverse ageing population.

FECCA has high expectations that the Aged Care Bill will incorporate mechanisms to effectively translate the rights-based, person-centred approaches in empowerment and high quality care for all older people, in all their diversity.

For further enquiries, please contact FECCA CEO Mary Ann Baquero Geronimo at
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A Contemporary Aged Care Act for a Multicultural Nation

The Aged Care Bill 2024 (the 'Bill'), introduced to the Australian Parliament on 12 September 2024, represents the most significant step in the aged care reforms and the centrepiece of a modern legal framework for Australia's aged care system.

FECCA, as the national peak body for people from multicultural communities and their organisations across Australia, has a long-established history of listening to older people from various culturally and linguistically (CALD) backgrounds, and working with member organisations and aged care stakeholders, to inform our policy in ageing and aged care.¹ For years, we at FECCA have engaged with the Government and advocated for social policies and services in which culturally safe and culturally appropriate services are part of 'business as usual' in our multicultural nation.

We are extremely pleased to see the rights-based, person-centred approach that the Bill advances. We believe the Statement of Rights and the Statement of Principles set a new parameter to guide Government and aged care service providers, which places human rights and high quality care at the centre of the aged care system. It is particularly positive to see that '*give effect to Australia's obligations under the International Covenant on Economic, Social and Cultural Rights*' has been included amongst the objects of the new Act. This provides us with the assurance that cultural rights, as expression of individual and collective human rights, have been properly valued as of high importance in the new aged care system.

We also welcome the new Support at Home program and the \$4.3 billion investment that will be made to ensure older people can receive high quality care at home. As FECCA has highlighted in many previous opportunities, the emphasis on community-based models of care is well aligned with the preference of older people in multicultural communities, for whom quality in care is often linked to remaining close to family and their social connections.

For the new Aged Care to realise its transformative potential for all older people, without discrimination, it is fundamental that it addresses issues of equity and diversity. As FECCA has articulated in its *National Multicultural Framework*, supported by more than 100 multicultural organisations:²

"A nation that actively recognises the value of its diversity and ensures that everyone, regardless of their culture, ethnicity, language, religion, gender, sexuality, disability, visa status, geography, class, gender identity, or age, has equal rights and opportunities is a nation that puts its best foot forward to being fair and inclusive."

¹ FECCA acknowledges that the term culturally and linguistically diverse (CALD) is problematic and not widely embraced by multicultural communities. However, considering that CALD continues to be used in government policies and data collection, it utilises it in this document for consistency.

² FECCA (2023). *Submission into the Multicultural Framework Review*, 13 October, FECCA <https://fecca.org.au/wp-content/uploads/2023/11/2023-10-FECCA-Submission-Multicultural-Framework-Review.pdf>

As identified in the 2021 census, over 51 percent of Australia’s residents were born overseas or had at least one parent born overseas, with almost 1 out of 4 reporting using a language other than English at home. Older people from CALD backgrounds already make up approximately a third of people aged 65 and over, and over the coming years, increased diversity of ethnicity, languages and religion is expected amongst those who will be eligible to receive aged care services:³

“Migration patterns in recent decades have seen a decrease in migrants from Europe and an increase in migrants from Asian regions, including Vietnam, China, and more recently, India, and the Philippines (ABS 2022a). In coming decades, tailoring aged care services to people from these regions and improving diversity data collection methods will be vital to providing quality aged care.” (AIHW 2023, p.1)

In line with these changes, the recently released *Multicultural Framework Review* report, “Towards Fairness - a multicultural Australia for all,” recommended the establishment of “*a dedicated Multicultural Aged Care Unit within the Department of Health and Aged Care to engage and collaborate with multicultural communities to develop a robust, dynamic approach to culturally sensitive aged care.*”⁴

This submission highlights issues that must be prioritised through the new Aged Care Act and the regulatory architecture that supports it so that the new legal framework responds to this historical opportunity to build an aged care system in which the diverse needs and voices of older people are respected. More detailed considerations were provided in the joint submission to the consultation on the exposure draft of the new Act, led by OPAN and COTA Australia and supported by FECCA and other national peak bodies.⁵ Many of the issues raised there remained unaddressed in the current Bill.

Recommendation 1: *The new Act must ensure the terms “culturally safe” and “culturally appropriate” are used with clarity and consistence.*

The Bill contains only one reference to “culturally and linguistically diverse” individuals, made on a Note to s25 (4). Throughout the Bill, references to “culturally safe” and “culturally appropriate” appear are at times together, at times separately, raising confusion around when and to whom these terms are applicable.

The term “culturally safety” has been correctly applied to ensure high quality care for Aboriginal and Torres Strait Islander peoples. However, as indicated in the table below, in s20.b (ix), the term

³ Australian Institute of Health and Welfare (2023). *How do overseas-born Australians use aged care services?* 7 December, AIHW <https://www.aihw.gov.au/reports/aged-care/overseas-born-australians-using-aged-care-services/summary>

⁴ Australian Government. Department of Home Affairs (2024). *Towards fairness - A multicultural Australia for all*. Canberra, Commonwealth of Australia, <https://www.homeaffairs.gov.au/multicultural-framework-review/Documents/report-summary/multicultural-framework-review-report-english.pdf>

“cultural safety” has been excluded. It is fundamental that the legislation clarifies how the term has been used and prevents exclusive interpretations.⁶

Additionally, in s20.b (ix), the term “culturally appropriate” is mentioned generally to cover the diverse life experiences of individuals. FECCA recommends more clarity around the term so that it can preserve its original meaning, with its specific relevance to denote connection with *cultural, ethnic and linguistic characteristics*.

Provision	Current text
S20. b (xiii)	“implementing inclusive policies and procedures, in partnership with Aboriginal or Torres Strait Islander persons, family and community to ensure that culturally safe, culturally appropriate and accessible care is delivered to those persons at all times, which incorporates flexibility and recognises the unique experience of those persons.”
S20.b (ix)	“adapting policy, practices and environments to ensure that services are culturally appropriate for the diverse life experiences of individuals, including by engaging workers with lived experience of diversity.”
FECCA’s suggestion for S20.b (ix)	“adapting policy, practices and environments to ensure that services are culturally safe and culturally appropriate, and are responsive to the diverse life experiences of individuals , including by engaging workers with lived experience of diversity.”

⁶ As described in the Commonwealth Department of Health and Aged Care’s webpage, ‘When working with people from CALD backgrounds it’s important to consider their diverse cultures and beliefs, and provide culturally safe, appropriate and inclusive services.’ <https://www.health.gov.au/our-work/ncsp-healthcare-provider-toolkit/working-with-patients/culturally-and-linguistically-diverse-backgrounds> [Accessed 1 October 2024]. See also ANROWS (2018). *Cultural Safety Principles and Guidelines*. Culturally and Linguistically Diverse Projects with Action Research initiative. Updated 2020, <https://anrows-2019.s3.ap-southeast-2.amazonaws.com/wp-content/uploads/2020/04/20101356/CALD-PAR-Cultural-Safety-2020.1.pdf>

Recommendation 2: *The new Act and rules must ensure that diversity and equity are de facto incorporated across the aged care system.*

This means that the new Act and rules must:

1. *Include, amongst its Objects, to “achieve a more equitable aged care system,” going beyond equitable access.*
2. *Bring the list of diversity from the Note to s22 (4), to the main body of the new Act.*
3. *Under s147 (2), specify that the continuous improvement plans must include diversity and inclusion goals, with regular monitoring and performance reporting against those goals.*
4. *Guarantee free access to language support and inclusive communication for older people from CALD background and/or those experiencing hearing or visual impairment, whenever they need it in their engagement with the aged care system, including but not limited to, access and navigation of the system, aged care services, assessment process, communication about administrative decisions, and complaints.*
5. *In relation to the assessment:*
 - 5.1. *Include an obligation that assessors be trained to provide culturally safe and culturally appropriate assessment; and to proactively inform older people from CALD background and/or experiencing hearing or visual impairment, that language support is freely available.*
 - 5.2. *Require evaluation and public reporting on the adequacy of the single assessment process and the Integrated Assessment Tool for Aboriginal and Torres Strait Islander older people and CALD older people, following one year of its implementation.*
6. *Require that the System Governor report on issues related to equity of access, documenting gaps in services for diverse groups, including for culturally and linguistically diverse older people.*
7. *Require that the System Governor report on whether aged care service providers have gone through the Specialisation Verification process and met the criteria, including for which specific diversity group.*

In consultations FECCA conducted on the exposure draft for the new Aged Care Act early in 2024, the most common concern from stakeholders was the lack of clear provisions that demonstrated that the needs of CALD older people would become part of “core business” in the new system. Whilst there was broad acknowledgement that the Statement of Rights and the Statement of Principles were a positive change, it was unclear how these would be *de facto* translated into practice. For CALD older people, the issue of diversity is directly linked not only to individuals but to systemic barriers that, if addressed, could benefit CALD older people collectively. We highlight below systemic issues that deserve immediate consideration:

Diversity standards and measures

One of the persistent weaknesses of the current aged care system is the lack of consistent, coordinated mechanisms to ensure diversity standards are adopted by aged care service providers, and monitored. The *Aged Care Diversity Framework* offers a strong foundation, but it remains under-utilised, and the strengthened quality standards will not be applicable to all levels of age care services.

We are concerned that, without legal requirements, aged care service providers will continue to hold diversity as a desirable but not priority outcome. At minimum, the Bill could mandate that aged

care service providers include diversity goals as part of their continuous improvement plans, and are held accountable through periodical performance monitoring. There is also opportunity to document the service gaps through the functions of the System Governor.

Access to free and adequate language support

A rights-based, person-centred system can only be enjoyed by the older person if clear, accessible communication is secured. For those with poor proficiency in English or communication impairments, this requires systems and processes to overcome language barriers and to ensure that communication is done directly with the older person as much as possible.

While the Royal Commission heard that translated information and interpreting services throughout care is the responsibility of service providers, the Government has a critical role to play in ensuring this is guaranteed. Moreover, the right to communicate in a language of preference is not restricted to aged care providers but must be secured throughout the whole journey across the aged care system. This means that from support to access My Aged Care through the assessment, administrative decisions, and any redress process, a CALD older person should be able to opt in for language support. This offer must come from the administrative bodies and providers, rather than the current expectation that older people should know that language support is available and ask for it.

Culturally safe and culturally appropriate assessment

The adoption of a single assessment is likely to create a simpler process for older people, but for that process to be equitable, it is fundamental that the new Act addresses the current power imbalance that privileges assessors in relation to the older person. For CALD older people, a person-centred assessment must include:

- An assessment tool that is culturally appropriate and validated;
- Language support available across all stages so that they can engage from a well-informed position, and can express their needs without assumptions by assessors of what these are;
- Assessors with multidisciplinary training, who are culturally competent and skilled to hold conversations that go beyond a simple yes/no or checklists;
- Culturally appropriate mechanisms that enable an older person to participate in their assessment, with flexibility for the assessors to dedicate more time and to avoid the standardized, 'check the box' interviewing style.

Reports from the System Governor

As evidenced in the implementation of the *National Disability Insurance Scheme*, the challenges posed by thin markets are not only related to geographical areas, but disproportionately impact Aboriginal and Torres Islander people, and culturally and linguistically diverse communities. As equitable access is one of the objects of the new Act, it is fundamental that the System Governor documents in their reports, market gaps and shortage of services for those individuals with diverse needs.

Recommendation 3: *The new Act and rules must enable an aged care workforce that is well trained, culturally competent and valued.*

This means the new Act and rules must:

1. *Under the Statement of Principles, s25.6 (b), include an item as follows: 'safely report incidents of discrimination in workplace, including racism.'*

2. Require services providers to offer trainings on cultural competency, anti-racism, and trauma-informed practices to all staff and management.

A fundamental factor for the successful implementation of the vision outlined in the new legislation is a skilled, well-trained, diverse and valued aged care workforce. It is critical that the new Aged Care Act sends a clear message that the workforce will not only be accountable to provide high quality care, but that they will be supported to do so, with dignity and respect.

As FECCA highlighted in its response to the Royal Commission into Aged Care Quality and Safety's final report, the aged care workforce has increasingly relied on workers from CALD backgrounds, especially migrants. The increasing participation of migrants in the aged care workforce has been largely driven by the decline in Australian citizens and permanent residents working in the care sector, despite growing present and projected demand. However, whilst in the past, migrants tended to be under permanent visa, Australia has relied more and more on migrants under temporary visa to fill out the gap in the local care workforce.

Temporary migrants face increased vulnerabilities which have been further exposed during the COVID-19 pandemic, including: experiences of racism (both from other workers and from consumers and/or their families), insecure work conditions (such as temporary or limited and variable hours of work, poor understanding of entitlements under relevant awards, and higher risk of experiencing exploitation); 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 their position description or appropriately remunerated; and lack of access to social protections such as Medicare, amongst others.

Retention and sustainability of the aged care workforce is essential for the success of the aged care reform. That cannot be achieved without acknowledging the role that migrants have as aged care workers. These bilingual and bicultural workers bring invaluable skills and cultural knowledge and often hold higher qualifications from overseas that remain unrecognised in Australia. Beyond CALD workers, for the workforce in general, investment in qualification and retention will be key to see the aged care reform translated into concrete, positive changes in how older people experience aged care services. In addition to more technical training, training around cultural competency, anti-discrimination and anti-racism, and trauma-informed service delivery, must be mandatory and delivered on a regular basis by all service providers.

Recommendation 4: *The transitional arrangements must include a clear plan for the transition of smaller providers and ethno-specific providers into the new system.*

Some ethnic communities, and particularly the more established ones, have self-organised to provide culturally appropriate aged care services for their older people. Many of these services employ bilingual/bicultural workers who are better placed to build trusting relationships with clients. In a system where CALD older people often find themselves facing lack of choice of culturally appropriate aged care services, the transitional arrangements must ensure that smaller providers who offer high quality of care and person-centred services to CALD older people support, can continue to operate.

Enabling equity across the new aged care system

Whilst the shift towards a rights-based approach is commendable, its translation into practice will largely depend on enforceable mechanisms that ensure service providers will uphold those rights, and aged care consumers that have the knowledge, skills and confidence to navigate the new system, and to demand their rights.

For many older people from CALD backgrounds, this emphasis on individual rights and advocacy is challenging. For those who were born overseas and are not familiar with government-funded aged care services, education on the aged care system is essential. There is consistent evidence around the barriers CALD older people and their carers face, including lack of knowledge about the Australian aged care system, lack of language support, difficulties to access My Aged Care, amongst others. Moreover, when they are not familiar with the notion of self-advocacy for their individual rights, transitioning into a system that relies on individuals speaking up and using formal complaint mechanisms, can be quite confronting.

Ultimately the new Aged Care Act will only be deemed better if the positive changes it envisions are inclusive of all older people in their diversity, without discrimination. For CALD older people, this requires specialised knowledge, targeted support and ongoing investment. Beyond the new Act, FECCA recommends:

- The allocation of government funding for free education initiatives to support CALD older people and their carers to understand the Australian aged care system, with emphasis on building their knowledge and confidence, and understanding of their rights.
- The establishment of a Multicultural Aged Care unit within the Department of Health and Aged Care, as proposed in the final report to the national *Multicultural Framework Review*, to coordinate currently fragmented actions and increase specialised knowledge;
- The establishment of CALD-specific navigation services to support older people to access and navigate aged care services.