

**NEDA COMMENTS ON  
'AUSTRALIA'S INITIAL REPORT UNDER THE CONVENTION ON THE RIGHTS  
OF PERSONS WITH DISABILITIES'  
ISSUED BY THE OFFICE OF INTERNATIONAL LAW, [crpdreport@ag.gov.au](mailto:crpdreport@ag.gov.au)**

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## **Introduction**

The National Ethnic Disability Alliance appreciates that the Office of International Law is consulting with not-for-profit organisations on the initial report on the United Nations Convention on the Rights of Persons With Disability (UNCRPD).

While NEDA acknowledges that the current Australian government has recently paid a great deal more attention to disability issues than other governments before, and that there are mechanisms to redress disability and racial discrimination, NEDA believes that people from culturally diverse and non-English speaking backgrounds with disability are largely overlooked and systemically discriminated against.

NEDA understands that the report is restricted to sixty pages and thus we will endeavour to make our points as succinctly as possible. We will focus mainly on Articles 18 of the UNCRPD in reference to Paragraphs 106, 187 and 188 of the Australian Government's Initial Report Under the Convention on the Rights of Persons With Disabilities, Anti-Discrimination Legislation (Paragraphs 15-18), Inclusion of the Most Vulnerable Groups (Paragraph 146) and Statistics and Data Sets (Article 31 Paragraphs 222-227).

## **Background**

The National Ethnic Disability Alliance (NEDA) is the national peak organisation representing the rights and interests of people with disability from culturally diverse and non-English speaking backgrounds, their families and carers throughout Australia. NEDA is funded by the Commonwealth Department of Families, Community Services and Indigenous Affairs (FACCSIA) to provide policy advice to the Australian Government and other agencies on national issues affecting the people we represent.

NEDA actively promotes the equal participation of people with disability from culturally diverse and non-English speaking backgrounds in all aspects of Australian society. We manage a range of projects relating to ethnic and disability communities and work closely with our state and territory members to ensure that its policy advice reflects the lived experiences of people from culturally diverse and non-English speaking backgrounds who are living with disability.

The Productivity Commission Report on Government Services 2009 estimates that one in every four people with disability is a person of either first or second generation CaLD, representing approximately 1 million people across Australia. This figure constitutes a quarter of the total population of Australians with disability. People from NESB are the second largest group of people with disability, after women with disability.

Yet despite their relatively high numbers, it is widely reported that people from culturally diverse and non-English speaking backgrounds have a low uptake of services. They are clearly a disadvantaged sub-group of minority groups who are already disadvantaged.

## Right to Enter/Remain in Australia

In Paragraph 106, the Initial Report claims that, 'Persons with disabilities are assessed on the same basis as all other persons seeking to enter Australia'. However, NEDA believes that the Health Assessment contravenes Article 18 of the UNCRPD as it creates unjust barriers for people with disability who apply to migrate to Australia.

In June 2008 NEDA sought legal advice from Barrister Dr Ben Saul, Director, Centre for International Law, University of Sydney, on the consistency between Australia's obligation under the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD) and the *Migration Act 1958* exemption under s 52 of the *Disability Discrimination Act 1992*. The legal advice contained the following findings with regard to the Health Assessment:

1. "Health requirements under migration law are in principle permissible under human rights law in order to safeguard scarce medical resources.
2. However, the current health assessment may give rise to unjustifiable indirect discrimination against refugees and migrants with disability, and thus does not comply with the equal protection obligation under Article 5 of the UN CRPD.
3. Indirect discrimination against refugees and migrants with disability may occur because the threshold of the health test is set too low to adequately balance the interests of non discrimination against people with disability with the preservation of scarce health resources. Thus, in some cases the health assessment may lead to discrimination that is not proportionate to the policy objective of preserving health resources for all Australians.
4. Indirect discrimination against refugees and migrants with disability may also occur because the evidentiary requirements are not sufficiently strong, for example in relation to accurately quantifying the future costs to the community of illness or disability.
5. Finally, indirect discrimination against refugees and migrants with disability may occur by inadequate procedures to take into account an applicant's ability to pay for the costs attributable to their own disability or illness."

The advice further concluded the following in reference to the '10 years qualifying Australian residence' specified by the *Social Security Act 1991* (s94) in order to access the Disability Support Pension (DSP)

1. "The 10 year waiting period for the Disability Support Pension interferes with human rights to an adequate standard of living and to social protection under article 28 of UN CRPD, the right to health under article 25 of UN CRPD and may in certain circumstances be contrary to inhuman and degrading treatment provisions in article 15 of UN CRPD."

The complete advice can be downloaded from the Publications page of NEDA's website: [www.neda.org.au](http://www.neda.org.au)

While NEDA commends the recent changes to the Disability Support Pension, outlined in paragraphs 187 and 188, we note that there are still no positive changes to assist migrants with disability in the first 10 years of their stay in Australia. This of course means that they are also unable to access the programs that cover disability related extra financial costs outlined in paragraphs 190-192.

For Australia to truly comply with Article 18 of the UNCRPD, NEDA strongly recommends:

- Application of Disability Discrimination Act (DDA) to Migration Act
- Withdrawal of the interpretive declaration made upon ratification of the United Nations Convention on the Rights of Persons with Disabilities pertaining to the health requirements for non nationals
- Application of DDA to Social Security Act - No waiting periods for Disability Support Pension (DSP)

### **Anti-Discrimination Legislation (Paragraphs 15-18)**

NEDA acknowledges that there are provisions to safeguard people from culturally diverse and non-English speaking backgrounds and people with disability, such as the racial Vilification Act 1975 and the Disability Discrimination Act 1992. However, these provisions require individuals to speak up and make complaints, yet many people from culturally diverse and non-English speaking backgrounds do not have the skills or confidence to make their voices heard. Some States and Territories have advocacy organisations who specifically support people from culturally diverse and non-English speaking backgrounds with disability, but not all. All Australian states and territories should have an advocacy body that fights for the rights and interests of people from culturally diverse and non-English speaking backgrounds with disability.

Moreover, Australia's discrimination system does not adequately accommodate for those experiencing double discrimination due to their disability as well as their race. A claim must be made under the Disability Discrimination Act or the Racial Vilification Act and thus the issues are not sufficiently addressed. The intersection of disability and ethnicity does not create layers of discrimination; rather, the impact is exponential and can precipitate new barriers to resources, opportunities and capabilities. To take an example, a person who has a disability and has limited English proficiency can be ostracised by his/her own ethnic or linguistic group because of his/her disability and also excluded by peers with disability due to his/her lack of English.

## **Inclusion of the Most Vulnerable Groups (Paragraph 146)**

People from culturally diverse and non-English speaking backgrounds with disability are among the most vulnerable groups in Australia. Yet they are largely overlooked in many government and non-government research, reports and consultations, including this consultation on the Australian Government's Initial Report Under the UNCRPD.

While the Dept of Immigration and Citizenship (DIAC) runs an extensive Telephone Interpreter Service (TIS) the cost of this service prevents many organisations from using it. Even organisations in the medical sector, for whom the service is free of charge across Australia, refuse to utilise the service as it is not promoted widely and many are unaware that it is free. In the disability sector, many organisations are now becoming aware of the TIS but the cost of subscription can prevent organisations from utilising it. The Queensland State government provides funding to organisations to use the TIS but this does not occur in many other Australian States and Territories.

It is not just language that prevents people from accessing services, culture also plays an important role. People from some cultures will require more support than those from other cultures. For example, girls and women with disability in some cultures may be perceived to be highly vulnerable and receive more intensive protection from their family. Such high level of protection can become oppressive as it may limit the person's learning and social development. Culturally competent support and service providers can reach out to these families and assist in the liberation of the female member with disability. However, culturally competent support and service providers are rare as cultural competence and disability training across Australia is highly inconsistent.

NEDA also has statistical evidence to demonstrate the vulnerability of people from culturally diverse and non-English speaking backgrounds with disability. Table 1 shows from the 2006 Census, the disparity between people from a culturally and linguistically diverse (CaLD) background when compared to people from a non-CaLD background for those who need assistance in the labor force. Among those who are employed, comparatively fewer people from CaLD backgrounds with disability are in employment than people from non cald backgrounds with disability. These figures indicate that people from culturally diverse and non-English speaking backgrounds with disability are clearly disadvantaged, even over their non-CaLD counterparts with disability. If there was equality in employment practices the number of persons employed would be approximately 10,772 persons not the 7,705 persons recorded. When we examine those from a non-cald background, the reverse situation exists. There is an employment gap where the cald proportion is 16% whilst it should be 22.4%, which is the figure for people from non-CaLD backgrounds with disability. This implies that there are relatively fewer persons from a cald background obtaining employment. Those seeking employment and those not in the labour force have similar distributions of approximately between 20 and 23 %. Overall, these figures demonstrate that people with disability in Australia are highly disadvantaged, but those from culturally diverse and non-English speaking backgrounds are at a

greater disadvantage. This in turn, has knock-on effects on housing, health and other aspects of life.

**Table 1: People From CaLD Backgrounds V People From Non-CaLD Backgrounds in the Labor Force**

LFSP Labour Force Status \* ANC1P Ancestry 1st Response Cross-tabulation

LFSP Labour Force Status		ANC1P Ancestry 1st Response		Total
		CALD	Non Cald	
Employed	Count	7,705	40,400	48,105
	Expected Count	10,772	37,333	48,105
Not in labourforce	Count	126,293	423,242	549,535
	Expected Count	123,056	426,479	549,535
Unemployed	Count	1,419	5,678	7,097
	Expected Count	1,589	5,508	7,097
Total	Count	135,417	469,320	604,737

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	1258.430a	2	.000
N of Valid Cases	604,737		

New Zealander, Scottish, Australian, Welsh, British, nec (includes Falkland Islander), Canadian, British, nfd, American, Channel Islander, Manx, Irish and English

Non Cald  
Table  
generated  
using ABS  
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2009

Source: Brian Cooper, Faculty of Health Sciences, University of Sydney 2008.

## **Statistics and Data Sets (Article 31 Paragraphs 222-227)**

NEDA has had to conduct its own research as successive Australian Governments have not pursued the need for solid data collection of people from culturally diverse and non-English speaking backgrounds.

In the Survey of Disability, Ageing and Carers (SDAC) ethnicity is inadequately recorded. Only information about the place of birth is collected. This means that those born in Australia to parents born overseas are left out of the statistics. There is thus a lack of recognition of the huge influence parents have on their children, particularly in the first years of their lives. Thus, for example, children born in Australia to parents born overseas, can still experience isolation due to their cultural diversity or lack of English proficiency, but they may not be able to receive the support they require as their plight is not recorded and recognized.

Better data is essential to guarantee human rights for people from NESB with disability. Without the data, it cannot be demonstrated that the life outcomes for people from NESB f

### **Conclusion**

As can be seen in this paper, people from culturally diverse and non-English speaking backgrounds with disability are among the most vulnerable and disadvantaged group in Australia. They are not adequately captured in the Australian statistics and anti-discrimination legislation does not sufficiently cover their challenges. Moreover, contrary to Article 18 of the UNCRPD and to Paragraphs 106, 187 and 188 of the Australian Government's Initial Report Under the Convention on the Rights of Persons With Disabilities.

NEDA hopes that the final Initial Report Under the UNCRPD will acknowledge the issues of people from culturally diverse and non-English speaking backgrounds with disability.