



National Ethnic Disability Alliance

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Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600

submitted by email to: nhrap@ag.gov.au

RE: National Human Rights Action Plan, Baseline Study

Dear NHRAP team,

The National Ethnic Disability Alliance (NEDA) is the national peak organisation representing the rights and interests of people from non-English speaking background (NESB) with disability, their families and carers throughout Australia.

NEDA is funded by the Commonwealth Department of Families, Community Services and Indigenous Affairs to provide policy advice to the Australian Government and other agencies on national issues affecting people from NESB with disability, their families and carers.

NEDA would like to take the opportunity to comment on the Baseline Study towards the development of a National Human Rights Action Plan. Our comments are stated below.

If you require further information on these issues, please contact myself at eo@neda.org.au or on 0407 878 933.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Sibylle Kaczorek', written in a cursive style.

Sibylle Kaczorek
Executive Officer

NEDA's submission to the National Human Rights Action Plan, Baseline Study

Introduction

The National Ethnic Disability Alliance (NEDA) is concerned about the minor attention given to the multicultural community as part of the Baseline Study. While migrants are acknowledged within the community group of refugees and asylum seekers, little understanding of life experiences is reflected here.

In line with Australia's commitment to multiculturalism as expressed in the Multicultural Policy: The People of Australia¹ NEDA believes this is an oversight. With this submission, NEDA identifies critical areas that need to be addressed as a matter of urgency to comply with human rights obligation for this cohort, arguably half of Australia's population.

The submission covers recommendations across three of the community groups identified in the Baseline Study; people with disability; refugees, asylum seekers and migrants; and people at risk of experiencing homelessness.

Chapter 1: Protection and promotion of human rights in Australia

Through its members, and constituents, NEDA is aware of numerous instances where people from non English speaking background (NESB) with disability are unfairly denied access to health and disability services, educational opportunities, employment and housing. Often these people express a concern that they have been discriminated against because of *both* their race and their disability.

NEDA is believes that there is little recognition in existing legislation that the experience of discrimination can be complex, and not simply reducible to disability or race discrimination, but must be treated as a combination of both. Given both the diversity of Australia's population, and Australia's historical record in relation to inclusion (both good and bad), there appears to be a strong argument in favor of examining complex forms of discrimination, to ensure maximal protections for all Australians. Currently Australia's legislative structure does not allow for this to occur.

Chapter 3: The human rights experience of specific groups in Australia

People with disability

There has been a failure in quality data collection, analysis and reporting on disability data in regards to population groups. The ABS Census data utilises the most comprehensive data collection with an inclusion of ancestry thus capturing people born in Australia but raised in a linguistic or cultural way that is distinctly different to that of English speaking background people.

The SDAC – Survey on Disability, Ageing and Carers data is limited in its ability on reporting by not applying the ancestry questions.

This means that those born in Australia to parents born overseas are left out of the statistics as people from NESB. Consequently, there is a lack of recognition of the influence parents have on their children, particularly in the first years of their lives.

¹ http://www.immi.gov.au/media/publications/multicultural/pdf_doc/people-of-australia-multicultural-policy-booklet.pdf

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 recognised.

Without dedicated data collection the disproportionate disadvantage experienced by people from NESB with disability cannot be captured and thus cannot be addressed effectively. NEDA has had to do its own data analysis to illustrate this point.²

Better data is essential to guarantee human rights for people from NESB with disability.

The SDAC 2012 is about to be finalised, NEDA has consistently argued that the SDAC needs to be able to capture second generation people from NESB. This is entirely in line with the Multicultural Policy which states:

Work with state and territory governments under the Council of Australian Governments (COAG) to ensure that data collected by government agencies on client services can be disaggregated by markers of cultural diversity, such as country-of-birth, ancestry, languages spoken at home and level of English proficiency. This will feed into the yearly Report on Government Services (ROGS), which is coordinated by the Productivity Commission.

The National Disability Agreement is yet another example where data collection of people from NESB with disability has been acknowledged as a future action.

A footnote within the National Disability Agreement states that data on culturally diverse people will be developed in the future³.

Subject to the development of the data and an agreed method of disaggregation, performance indicators will also identify people with disability from culturally and linguistically diverse (CALD) backgrounds within the measure.

The National Disability Agreement (NDA) commenced on 1 January 2009, and in the two and a half years since, NEDA is not aware of any development of such data.

In line with this lack of inclusion, the National Disability Strategy (NDS) does not include a dedicated strategy, outcomes or targets for people from NESB with disability⁴. This is despite the fact that Australian residents and citizens from NESB with disability demonstrate a significantly lower uptake of services.

Based on the reporting of the Productivity Commission on Government Services⁵ in 2008-2009, people born in a Non English Speaking Country were approximately 2-4 times less likely to receive support services than people born in English Speaking Countries.

Unfortunately, the final report by the Productivity Commission on long term disability care and support equally fails to identify a dedicated strategy for people from NESB with disability⁶.

² NEDA, 2010, What does the data say?, <http://www.neda.org.au/page/publications.html>, accessed 18/8/10

³ http://www.dhcs.act.gov.au/_data/assets/pdf_file/0019/103942/National_Disability_Agreement.pdf

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http://www.fahcsia.gov.au/sa/disability/progserv/govtint/nds_2010_2020/Documents/National_Disability_Strategy_2010_2020.pdf

⁵ <http://www.pc.gov.au/gsp/reports/rogs/2011>

⁶ <http://www.pc.gov.au/projects/inquiry/disability-support/report>

Based on fifteen years of representing the multicultural disability community, NEDA is confident that this cohort of people will not have their human rights met unless dedicated strategies are put in place.

In addition, NEDA notes that free access to interpreters allows people from NESB to engage with services and organisations in a meaningful way as access to information and informed decision making are central to social inclusion. This is not the case in Australia, especially as it relates to disability services; however it is critical for upholding human rights.

Repeatedly people from NESB including those with disability have articulated that 510 hours of free English classes are insufficient to allow people to articulate themselves independently, especially if disability slows down the learning process.

Recommendations

- 1 The SDAC 2012 and onwards, at a minimum, to include the collection of data of country of birth of both parents.
- 2 The National Disability Agreement to report on first and second generation people from NESB with disability.
- 3 The National Disability Strategy and a future National Disability Insurance Scheme to include a dedicated strategy, outcomes and targets for people from NESB with disability.
- 4 The Australian Government to provide free interpreting services to people from NESB with disability.

Refugees, asylum seekers and migrants

On Ratification of the UN Convention on the Rights of Persons with Disabilities (CRPD) Australia also noted its reservations stating:

Australia further declares its understanding that the Convention does not create a right for a person to enter or remain in a country of which he or she is not a national, nor impact on Australia's health requirements for non-nationals seeking to enter or remain in Australia, where these requirements are based on legitimate, objective and reasonable criteria.⁷

Any assessment of human rights must acknowledge that the Australian Government deliberately exempts the Disability Discrimination Act 1992 (Cth) from the Migration Act 1958 (Cth) and the Social Security Act 1991 (Cth).

The effects of this exemption are discriminatory as migrants are required to wait for 10 years before they become eligible for the Disability Support Pension (DSP); this in effect makes them ineligible for other programs of support. NEDA is currently supporting a woman in her pursuit of a legal challenge of breach of human rights as per article 25 UNCPRD. This woman is experiencing a lesser quality of life due to her increased costs for medical assistance due to her being barred from accessing the DSP and subsequent health care concessions.

The effects of the Migration Act exemption means, that people with disability, or with disability within their family are effectively excluded from migrating to Australia.

⁷ UN, Declarations and Reservations: Australia, <http://www.un.org/disabilities/default.asp?id=475>, accessed 18/8/10

Independent legal advice obtained by NEDA in 2008⁸ noted:

- Health requirements under migration law are in principle permissible under human rights law in order to safeguard scarce medical resources.
- 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.
- 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.

The legal advice further noted;

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.

For Australia to truly comply with human rights obligations as per UNCRPD, the following changes are required.

Recommendations

- 5 Application of Disability Discrimination Act 1992 (Cth) to the Migration Act 1958 (Cth)
- 6 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.
- 7 Application of Disability Discrimination Act 1992 (Cth) to Social Security Act 1991 (Cth)

People at risk of experiencing homelessness

The Government's White paper on Homelessness is silent on people for NESB.

Despite numerous submission by NEDA, the Australian Institute of Health and Welfare has so far failed to include people from NESB, second and subsequent generations in its data collection on homelessness in Australia.

NEDA believes that until there are sufficient measures developed to ensure all aspects of ethnicity and disability are effectively recorded the method proposed by ABS will not reflect the diversity of the Australian community experiencing homelessness adequately.

Recommendation

- 8 Inclusion of data on ethnicity and disability in all homeless data collections to inform strategies, programs and service delivery.

⁸ NEDA, 2008, Refugees and Migrants with Disability and the United Nations Convention on the Rights of Persons with Disabilities, http://www.neda.org.au/page/refugees_and_migrants_with_disability.html, accessed 19/8/10