



National Ethnic Disability Alliance  
PO Box 971  
Civic Square ACT 2608  
Email: [rpo@neda.org.au](mailto:rpo@neda.org.au)  
Phone: 02 6262 6867

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Senate Legal and Constitutional Affairs Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
Email: [legcon.sen@aph.gov.au](mailto:legcon.sen@aph.gov.au)

**Re: Inquiry into the Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017**

National Ethnic Disability Alliance (NEDA) welcomes the opportunity to provide our views on the proposed Australian Citizenship Legislation Amendment Bill 2017.

NEDA is a Disabled People's Organisation (DPO) that advocates nationally for the human rights of people with disability from migrant and refugee backgrounds.

NEDA is a founding member of DPO Australia, an alliance of national DPOs, which are organisations constituted and governed by people with disability. Our key purpose is to promote, protect and advance the human rights and freedoms of people with disability by working collaboratively on areas of shared interests, purposes and strategic priorities and opportunities. DPO Australia is made up of First Peoples Disability Network Australia (FPDN); Women With Disabilities Australia (WWDA); National Ethnic Disability Alliance (NEDA); and People with Disability Australia (PWDA).

DPO Australia endorses this submission to this Inquiry.

NEDA is deeply concerned with a number of key changes to the test and requirements for Australian Citizenship presented in the discussion paper. Multiple policy and procedural mechanisms are currently in effect that operate to exclude people with disability from settling in Australia. We would not support any additional measures that either prevent or exclude migrants and refugees with disability from settling in Australian or from gaining Australian citizenship.

## **Pre-existing migration related disability discrimination**

The Convention on the Rights of Persons with Disabilities (CRPD) declares that people with disability have right to nationality on an equal basis with others. Although Australia has ratified the CRPD, it has received criticism from the United Nations (UN) and affiliated reporting mechanisms denouncing policies which amount to migration-related disability discrimination.<sup>1</sup>

For many years, and as part of DPO Australia, NEDA has consistently raised issues of discrimination faced by migrants with disability:

“The Migration Act 1958 is exempt from the Disability Discrimination Act 1992 meaning that potential migrants or refugees with disability who fail to meet the ‘health requirement’ are denied permanent residency on the basis that they are a potential ‘cost burden’ on the Australian tax payer. In 2010, a Parliamentary Inquiry into the migration treatment of disability found that the health requirement unfairly discriminates against people with disability.<sup>2</sup> For those who are granted permanent residency the Social Security Act 1991 bars access to the Disability Support Pension (DSP) for a period of 10 years leading to considerable barriers to social and economic support and participation. These policies are discriminatory; fail to take into consideration the social, economic and cultural contributions that people with disability make to our communities; and undermine the values of inclusion that as a nation we should be seeking to uphold.”<sup>3</sup>

Considering migrants with disability are already discriminated against when applying for Australian permanent residency, NEDA would strongly oppose any additional measures that would further compound this disadvantage, or unfairly prevent migrants or refugees with disability from obtaining Australian citizenship.

## **Appropriate Application of the Disability Discrimination Act**

Although the Australian *Migration Act 1958* is exempt from the *Disability Discrimination Act 1992*, the *Citizenship Act 2007* is not. Subsequently, people with disability applying for Australian citizenship should not be disadvantaged in any way throughout the process. NEDA understands that the current process allows some people with disability to apply for a Citizenship test and/or interview exemption, undertake a ‘standard test with assistance’, or attempt an ‘assisted test’. NEDA welcomes the continued commitment in the Discussion paper to retain the existing exemption arrangements.

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<sup>1</sup> UN Human Rights Council, *Report of the Special Rapporteur on the human rights of migrants on his mission to Australia and the regional processing centres in Nauru (A/HRC/35/25/Add.3)*, 24<sup>th</sup> of April, 2017, Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/098/91/PDF/G1709891.pdf>

<sup>2</sup> Joint Standing Committee on Migration, *Enabling Australia: Inquiry into the Migration Treatment of Disability*, 2010, Available at: [www.aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=mig/disability/report.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=mig/disability/report.htm)

<sup>3</sup> Disabled People’s Organisations Australia, *Submission to the Department of Treasury, ‘Priorities for the 2017/18 Federal Budget’*, January 2017, p.14.

We are concerned, however, that some people with disability applying for Australian Citizenship will not be eligible to apply for a test or interview exemption or a modified test as they will not meet the narrowly defined 'impairment' criteria found within the legislation.

This may particularly be the case for people with a psychosocial disability, intellectual disability, autism or learning disability. Issues around cultural conceptualisations of disability, and disability disclosure are also influencing factors and need to be considered. NEDA is aware of cases where applicants with disability have been denied an exemption even though they have provided comprehensive and compelling professional medical evidence that supports their request.

NEDA urges the Government to improve the current exemption process by enhancing the consistency, transparency and administrative fairness for applicants with disability.

### **Concerns with changes to the English language requirement**

NEDA believes the proposed amendment in the Bill that seeks to increase the language requirement so applicants are to demonstrate a 'competent' level of English is discriminatory, as it directly favours people with disability from English-speaking countries. We are of the strong belief that level of English proficiency should not be a determinant in assessing a person's ability to contribute to the social, economic and political life of Australian Society. Australia's social fabric has been strengthened by generations of migrants who have struggled to speak English.

Migrants or refugees with disability who are ineligible for test/interview exemptions or modifications will be required to demonstrate their English language 'competency'.

This disadvantages applicants with disability who experience intersecting barriers to access and inclusion and who have low levels of social and economic participation. Taking into consideration migrants and refugees with disability are navigating the complexities of their settlement experience whilst being subject to reinforcing and compounding disadvantages that stem from disability, language and cultural related factors, it becomes apparent how, as a group, they would have very limited opportunities to develop English language proficiencies.

For example, we know that people with disability from migrant and refugee backgrounds are continually underrepresented in labour force participation rates in Australia and have much higher unemployment rates compared to Australian born people with or without disability.<sup>4</sup>

Additionally, these measures are particularly unfair for migrant or refugee women with disability undertaking caring or domestic responsibilities within the home as they are at heightened risk of isolation and may have even less opportunity to participate in social and economic activities within their communities.

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<sup>4</sup> *Joint FECCA & NEDA Submission to the Australian Human Rights Commission's 'Willing to Work' Inquiry*, Dec 2015, Available at: <http://www.neda.org.au/index.php/latest/202-neda-fecca-dec-2015?showall=&start=3>

## **Increasing the General Residency Requirement**

NEDA is concerned with the discussion paper proposal to increase the general residency requirement so applicants must demonstrate four years of continual permanent residence in Australia prior to being eligible for citizenship. This will have detrimental impacts on some migrants and refugees with disability, and their families.

In many instances applicants with disability have already been living in Australia for many years some working or studying and making vital social and economic contributions to their local communities.

Citizenship provides people with privileges, rights, and protections that are not afforded to non-citizens, such as the right to vote and be a part of Australian democracy and politics; the right to be employed in particular roles; the right to access financial assistance for educational opportunities; the right to access consulate support while overseas; the right to ease of travel; and protection from deportation.

NEDA believes that the proposed residency requirement will adversely affect some non-citizens with disability and their families who are convicted of a crime and at risk of deportation. This raises quite specific human rights and moral concerns, especially for people with psychosocial or intellectual disabilities, who have lived years or decades in Australia, identify as an Australian, and have immediate family and support networks residing in Australia.

## **Widening Ministerial Discretion**

The proposed change to give the Minister power to overturn citizenship decisions made by the Administrative Appeals Tribunal (AAT) is of significant concern. The AAT is an independent body established to review administrative decisions and has a fundamental role in protecting rights. Providing the Minister executive power to overturn decisions made by the AAT judiciary is an abrogation of fundamental rights; it disregards administrative fairness and places people with disability, and their families, at considerable risk of being victims of politics.

## **Recommendation:**

The changes to Australian Citizenship contained in the Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017 ought not to be adopted.

NEDA would be happy to provide further information regarding our views. We thank you for the opportunity to provide input into this process. For further enquiries please contact NEDA's Senior Research & Policy Officer Jane Flanagan at: [rpo@neda.org.au](mailto:rpo@neda.org.au)

Yours sincerely

**National Ethnic Disability Alliance (NEDA)**

## Endorsing Organisations



**Advocacy for Inclusion**



**Amparo Advocacy Inc**



**DANA**

Disability Advocacy  
Network Australia

**Disability Advocacy Network Australia**



Disabled  
People's  
Organisations  
Australia

**Disabled People's Organisations Australia**



**Ethnic Disability Advocacy Centre**



**Multicultural Disability Advocacy  
Association of NSW (MDAA)**



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creating solutions  
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**The Advocacy and Support Centre  
(TASC)**