



NATIONAL ETHNIC DISABILITY ALLIANCE

NEDA's submission to the Senate Community
Affairs References Committee's inquiry into
the Purpose, intent and adequacy of the
Disability Support Pension.

July 2021.





Submission

Senate Community Affairs References Committee

Submission in response to the inquiry into the
'Purpose, intent and adequacy of the Disability Support Pension'

July 2021

Publishing Information:

National Ethnic Disability Alliance (NEDA) '*Submission in response to Senate Community Affairs References Committee Inquiry into the Purpose, intent and adequacy of the Disability Support Pension*', NEDA. July 2021.

© National Ethnic Disability Alliance, July 2021.

© This work is copyright. Apart from any use as permitted under the Copyright Act 1968, no part may be reproduced without written permission from the National Ethnic Disability Alliance (NEDA). All possible care has been taken in the preparation of the information contained in this document. NEDA disclaims any liability for the accuracy and sufficiency of the information and under no circumstances shall be liable in negligence or otherwise in or arising out of the preparation or supply of any of the information aforesaid.

Contact for this Submission:

Jane Flanagan
National Manager of Systemic Advocacy
National Ethnic Disability Alliance (NEDA)
Email: jane@neda.org.au

Contents

1. About National Ethnic Disability Alliance (NEDA)	4
2. Introduction and General Comments	4
3. CaLD people with disability	6
4. CaLD people with disability and DSP data	9
5. Harsh DSP residency and eligibility requirements	13
Case Study #1: Sam	14
6. DSP Portability and travel restrictions	14
Case Study 2: Lulu	15
7. UN Convention on the Rights of Persons with Disabilities	16
8. Our Recommendations	17

Table 1: Those with a disability by CaLD status by Social Disadvantage (Quintiles) by Income (Deciles).....	8
--	---

Figure 1: Disability Income Distribution	7
Figure 2:2003, 2009 & 2012 SDAC Data on the Workforce Participation and Unemployment rates	9
Figure 3: DSP Growth/Decline from 2012-2021, by Country of Birth	10
Figure 4: Trend line	11
Figure 5: Percentage of people assessed as having a partial capacity to work on Newstart/Jobseeker (2016-2021).	12

1. About National Ethnic Disability Alliance (NEDA)

- 1.1. National Ethnic Disability Alliance (NEDA) is a national Disabled People's Organisation (DPO) governed by¹, and constituted of, Culturally and Linguistically Diverse (CaLD) people with disability.
- 1.2. The key purpose of NEDA is to promote, protect and advance the human rights and freedoms of all people with disability from CaLD, migrant, refugee, and asylum seeker backgrounds.
- 1.3. NEDA's membership is made up of CaLD people with disability. We have individual and organisational membership of CaLD people with disability; our state/territory member organisations are either CaLD DPOs, CaLD disability advocacy organisations or community led disability advocacy organisations with a demonstrated history of working in partnership with CaLD people with disability and their communities.²
- 1.4. NEDA is a founding member of Disabled People's Organisations Australia (DPO Australia), an alliance of four national DPOs. NEDA/DPO Australia receives systemic advocacy funding from the Department of Social Services as a Disability Representative Organisation.

2. Introduction and General Comments

- 2.1. NEDA welcomes the Senate's inquiry into the purpose, intent and adequacy of the Disability Support Pension (DSP). Our members - people with disability from migrant, refugee, and asylum seeker backgrounds - disproportionately experience acute poverty and exclusion compared to other cohorts of people with disability (and people without disability). The DSP is an essential income support payment, that in some part works towards alleviating this hardship.
- 2.2. People with disability from migrant and refugee backgrounds face significant, intersectional barriers to entering and participating in the labour force. As a group, they are repeatedly under-represented in labour force participation rates and over-represented in unemployment figures compared to other persons with disability and persons without disability. The DSP is vital income support for many CaLD people with disability who are unable to achieve financial security through sustained and meaningful employment.

¹ Information pertaining to NEDA's Governance/Board can be found here: <http://www.neda.org.au/about-us/council-board>

² For more information about NEDA's membership visit: <http://www.neda.org.au/about-us/member-organisations>

- 2.3. The reality is that for some people with disability, the barriers to participation are so great that they will be dependent on income support over the long term. The DSP provides for a basic level of social protection and standard of living, with little room for luxuries or savings. In this respect, the DSP partly reflects Australia's obligation under article 28 of the Convention on the Rights of Persons with Disabilities (CRPD).³
- 2.4. The DSP payment is inadequate to support CaLD people with disability, and fails to take into account their experience of extreme social and economic marginalisation. CaLD people with disability are not supported to live in dignity, and fall behind the living standards of the rest of the community.
- 2.5. CaLD people with disability experience significant barriers to:
- accessing and understanding DSP related information; and,
 - successfully applying for the DSP; and,
 - understanding and participating in administration processes and obligations associated with accessing, securing, and maintaining the DSP; and
 - understanding, accessing, and successfully navigating DSP related complaints processes and appeals.

The DSP participant pathway is complex and burdensome; it is structurally designed in a way that is inaccessible and/or onerous for many CaLD people with disability.

- 2.6. We are deeply concerned that many CaLD people with disability who would greatly benefit from the DSP are unable or ineligible to access the DSP as the application process is inaccessible, or because they fail to meet strict eligibility and assessment criteria. This leaves many migrants and asylum seekers with disability at increased risk of financial vulnerability and human rights violations.

³ Convention on the Rights of Persons with Disabilities, United Nations. Available at: <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-28-adequate-standard-of-living-and-social-protection.html>

3. CaLD people with disability

- 3.1. Australia is a diverse nation, with many multicultural communities. One in every four people with disability in Australia is CaLD. CaLD people with disability make a positive contribution to Australia's social and economic life as integral parts of communities, families, organisations and businesses.
- 3.2. People with disability, as a cohort, experience structural and social discrimination that plays out in complex ways in their everyday lives. For CaLD people with disability, this discrimination and disadvantage compound due to barriers arising from the intersection of racism and ableism. Other factors relating to language; culture; migration history, migration experience, visa status, ethnicity, religion, sexism; and LGBTIQ status/es, intersect with disability/CaLD statuses and result in further disadvantage and inequality.
- 3.3. The general barriers faced by CaLD people with disability include (but are not limited to):
- Structural and socio-cultural ableism and racism; and,
 - Lack of accessible information about rights, entitlements, essential services and supports available; and,
 - Lack of culturally and/or disability competent service provision in mainstream and specialist services; and,
 - Lack of access to quality professional accredited interpreting services; and,
 - Prevalence of myths, misconceptions and negative stereotypes about disability, ethnicity, religion, and migration pathways; and,
 - Lack of effective legislative and policy direction, and government interventions.
- 3.4. The impact these barriers have on CaLD people with disability, as a cohort, include:
- Extreme isolation and marginalisation; and,
 - Poverty, financial vulnerability, and limited access to fewer opportunities; and,
 - Reduced capacity to participate in social, economic, political and culture life
- 3.5. For asylum seekers with disability and/or people with disabilities who are on temporary visas, this disadvantage and hardship are profound. Lacking permanent residency means they are prohibited from accessing the DSP (and other income support payments), the NDIS (and other disability support services), and most Government and community-related services supports. This structural exclusion guarantees poverty and extreme marginalisation for this vulnerable group.

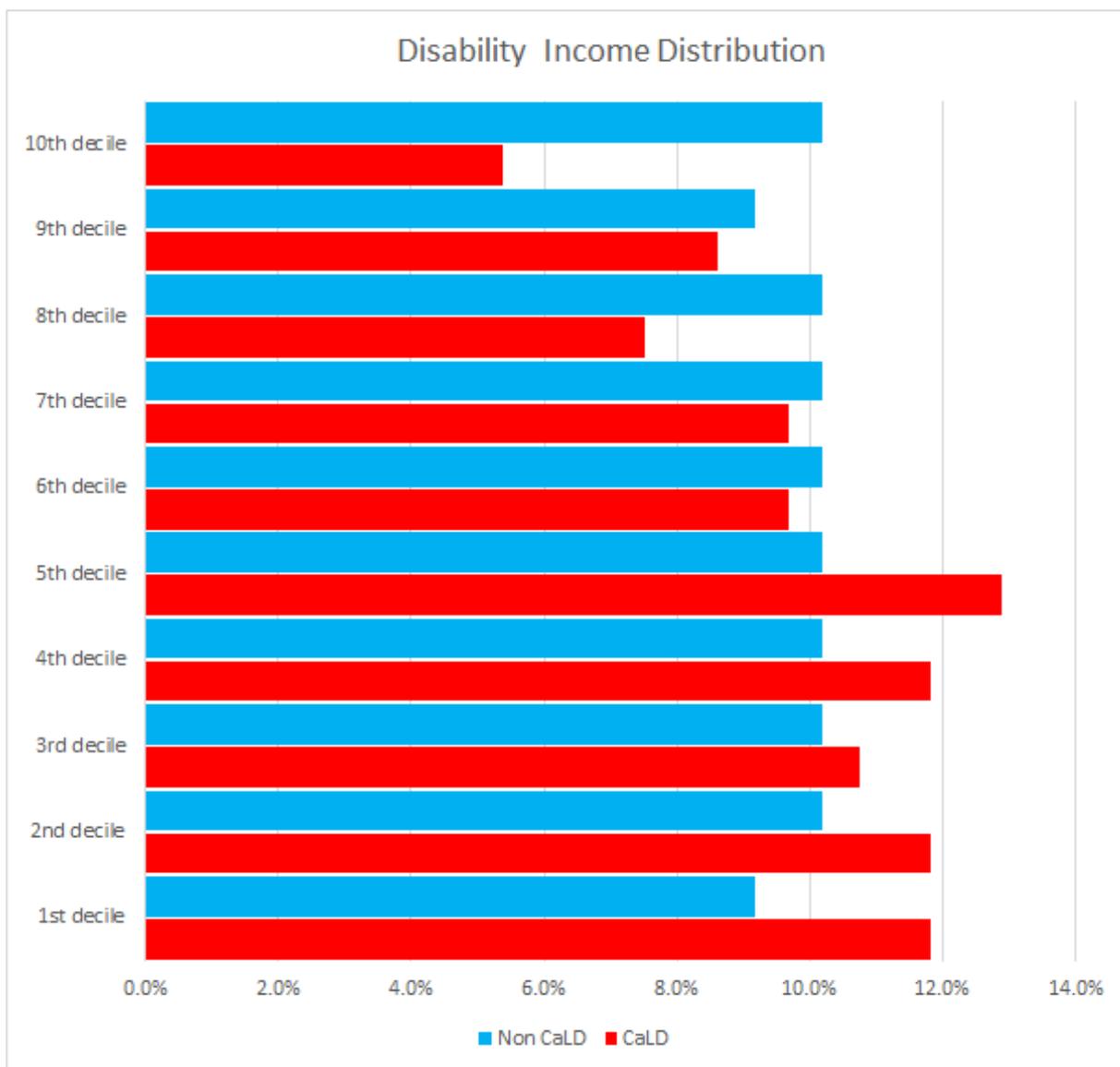


Figure 1: Disability Income Distribution

Source: ABS SDAC 2018 Survey Tablebuilder

*Quintile 1 and Decile 1 represent those with the lowest income and living in the most disadvantaged areas.

- 3.6. Figure 1 and Table 1 speak to this marginalisation, and contains data showing that when compared to non-CaLD people with disability, CaLD people with disability (as a cohort) have lower household income and live in areas of higher disadvantage.

Table 1: Those with a disability by CaLD status by Social Disadvantage (Quintiles) by Income (Deciles)

	CaLD					Non-CaLD				
	Social Disadvantage					Social Disadvantage				
	Quintile 1	Quintile 2	Quintile 3	Quintile 4	Quintile 5	Quintile 1	Quintile 2	Quintile 3	Quintile 4	Quintile 5
10th decile	11.7%	0.0%	28.9%	10.9%	48.4%	10.9%	19.2%	18.5%	24.5%	26.8%
9th decile	10.3%	30.8%	16.0%	27.6%	15.4%	12.7%	18.3%	19.2%	20.8%	29.0%
8th decile	0.0%	37.5%	18.8%	26.6%	17.2%	21.0%	17.5%	20.2%	20.7%	20.6%
7th decile	8.1%	16.9%	36.5%	18.9%	19.6%	20.8%	20.0%	19.0%	17.8%	22.3%
6th decile	36.6%	30.0%	14.1%	4.4%	15.0%	23.2%	18.7%	23.1%	19.8%	15.2%
5th decile	17.3%	18.9%	30.5%	18.9%	14.3%	31.4%	17.8%	19.4%	18.2%	13.2%
4th decile	31.3%	29.5%	16.8%	10.3%	12.0%	35.6%	21.7%	18.4%	14.6%	9.7%
3rd decile	23.6%	34.1%	15.7%	16.6%	10.0%	33.0%	23.7%	18.1%	15.7%	9.5%
2nd decile	19.8%	25.3%	20.2%	11.6%	23.1%	21.3%	20.8%	21.8%	18.1%	18.1%
1st decile	28.3%	25.0%	9.9%	24.0%	12.7%	21.3%	17.7%	23.0%	19.4%	18.6%

Source: SDAC 2018 ABS Survey Tablebuilder

- 3.7. This disadvantage is further understood when examining employment-related statistics of CaLD people with disability. People with disability- generally- have historical and ongoing low labour force participation rates and high unemployment rates.⁴ Available data demonstrate that the unemployment and labour force participation rates are exacerbated further for CaLD people with disability. The Australian Bureau of Statistics (ABS) 2003, 2009 and 2012 Survey of Disability Ageing and Carers (SDAC) demonstrate that CaLD Australians with disability are under-represented repeatedly in labour force participation rates. They are over-represented in unemployment figures when compared to other people with disability and people without disability.
- 3.8. Figure 2 illustrates the higher unemployment rate of CaLD Australians with disability (approx. 70%) compared to people with disability born in Australia (approx. 61%). It further shows CaLD people with disability are underrepresented continually in labour force participation rates (approx. 22%) compared to Australian born people with disability (38%), non-disabled CaLD people (approx. 68%) and non-disabled Australian born people (78%).

⁴ Australian Human Rights Commission, 'Issues paper: Employment Discrimination against Australians with disability, 2015, Available at: <https://www.humanrights.gov.au/our-work/disability-rights/publications/issues-paper-employment-discrimination-against-australians>

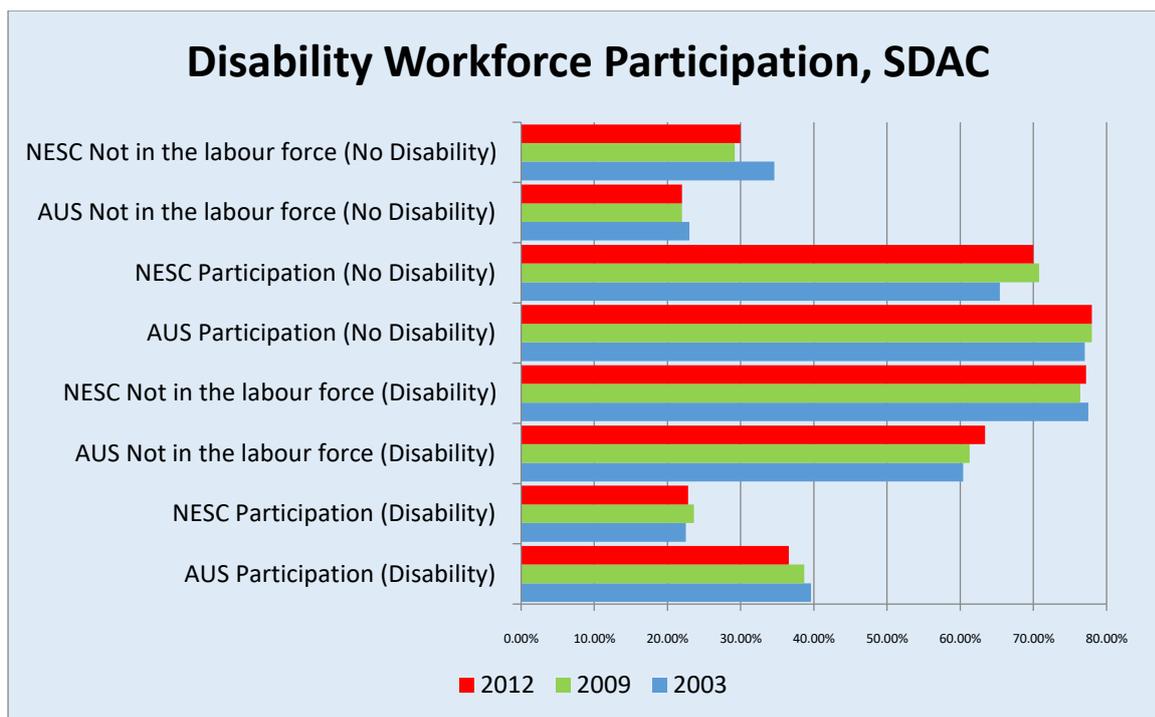


Figure 2: 2003, 2009 & 2012 SDAC Data on the Workforce Participation and Unemployment rates

(For people with disability and people without disability, by birthplace. AUS= Australian Born, NESC: Born in a Non-English-Speaking Country)

3.9. The available data (and our members experiences) tell us that CaLD people with disability experience significant hardship and social/economic disadvantage compared to other people with disability (and people without disability). The barriers to obtaining financial security and escaping poverty are real. It is evident that, CaLD people with disability as a cohort, would substantially benefit from accessing and receiving DSP payments.

4. CaLD people with disability and DSP data

4.1. We do not have a comprehensive quantitative understanding of CaLD people with disability and the DSP, as much of the data is not publicly available. What information is publicly available defines and analyses ‘CaLD’ statuses poorly.

4.2. There is no nationally agreed or consistent definition of ‘CaLD’. Subsequently, data processes and systems typically only narrowly capture some aspects of CaLD identities, if at all. For example, ‘Country of Birth’ is the only ‘CaLD’ data identified and publicly available regarding the DSP. Necessary identifiers such as ‘primary language/s spoken at home’, ‘ethnicity/ies’, ‘parent/s place of birth’, ‘religious identification’, and ‘visa class’ have been omitted from data collection. Therefore, our ability to understand CaLD related DSP statistics is stifled significantly.

4.3. Publicly available DSP data does show us the following:

- a. Based on the loose definition of country of birth (only), there were 110,104 persons born in non-Main-English Speaking Countries (MESC) in March 2021. This number represents 14.6% of all persons receiving DSP.⁵ NEDA is perplexed by this percentage. We believe this figure to be inaccurate a significant under-estimation of the actual prevalence of CaLD DSP recipients mainly due to Australian born CaLD people not being picked up by DSP data. We would expect a more accurate figure to be around 20%.⁶

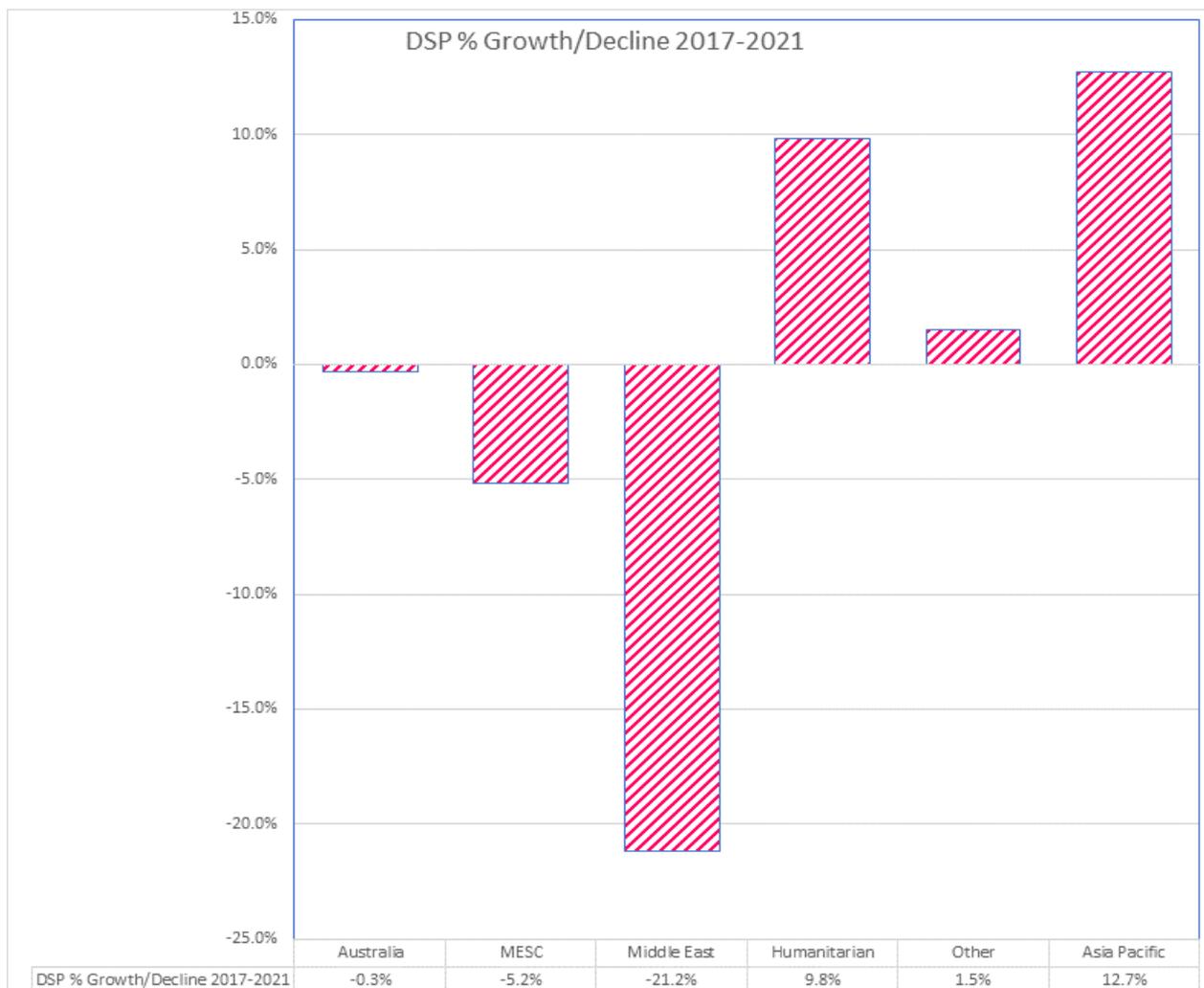


Figure 3: DSP Growth/Decline from 2012-2021, by Country of Birth

⁵ Department of Social Services, Disability Support Pension Data, March 2021.

⁶ Average figure, 40-64 aged group: Survey for Disability, Ageing and Caring (SDAC, severe and profound 2003-2018).

- b. The overall proportion of CaLD people with disability on the DSP has declined from 15.6% in 2017 to 14.6% in 2021 (Figure 3). Arguably, this demographic change is due to
- 1) Australia’s migration intake/patterns; and,
 - 2) ageing cohorts of people with disability. There appears to be a demographic transition from those who came out in the 1960s (post-war migrants – possibly shifting to the aged care pension) to those born in the 1980s in the Asia-Pacific region and ‘humanitarian visa’ related countries (see Fig.3).
- c. Although we do not have data about the DSP recipient migration pathway or visa class, NEDA would expect to see an over-representation of humanitarian entrants on the DSP. Need for Assistance figures from the integration of the 2016 census and the settlement database informs us that approximately one in 10 humanitarian visa holders would have a disability that is likely to be assessed as meeting DSP assessment and eligibility criteria.⁷ The disabilities from humanitarian visa holders will be trauma-related, either psychosocial or physical. In addition, some will have an early-onset disability (disabilities acquired from birth or early childhood). However, there is insufficient administrative data available to get a detailed profile for this cohort.
- d. As the population ages, there will be proportionally more people on DSP than on other income support payments (i.e. Jobseeker or Youth Allowance). This especially applies to those aged over 45. This is not surprising considering disability prevalence increases with age.

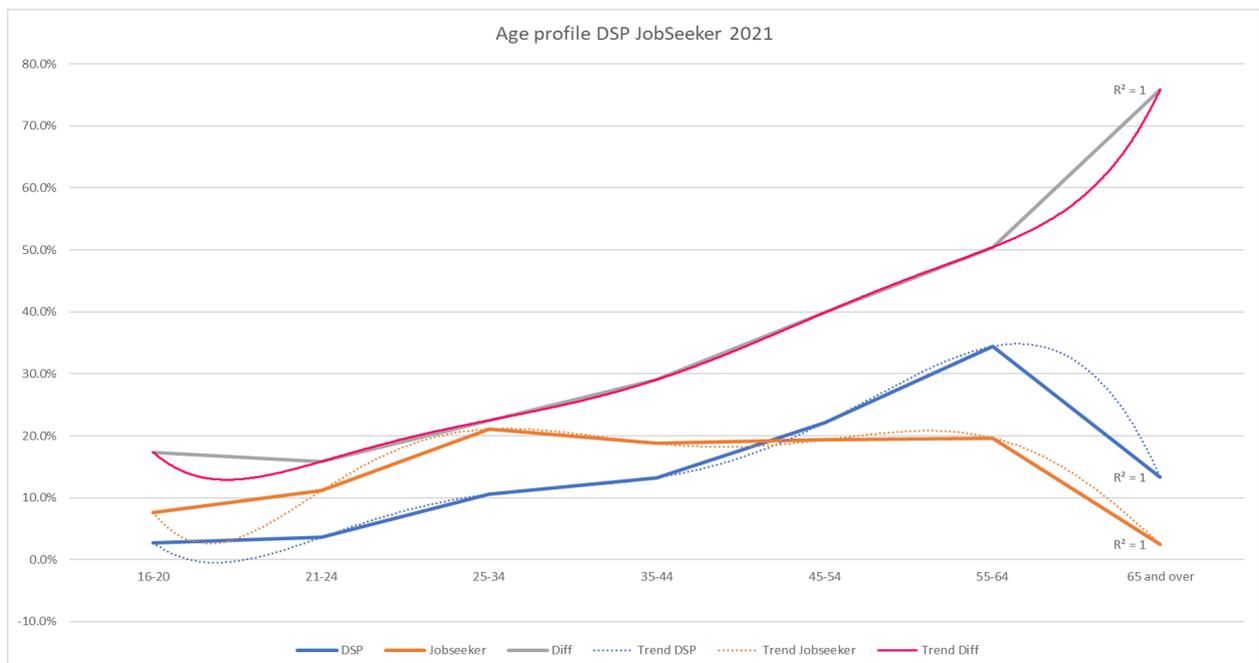


Figure 4: Trend line

⁷ Australian Bureau of Statistics Australian Census and Migrants, 2016, a Core Activity Need for Assistance by Visa Type Accessed 21 July 2021

Figure 4 shows there will be more people on DSP than on Jobseeker.⁸ It presents the percentage of people assessed as having a partial capacity to work on Newstart/Jobseeker (2016-2021).⁹

- e. Changes to DSP eligibility over the last number of years has resulted in more people with disability being shifted to Newstart and Jobseeker payments, who historically would have been eligible to receive the DSP (see Figure 4).

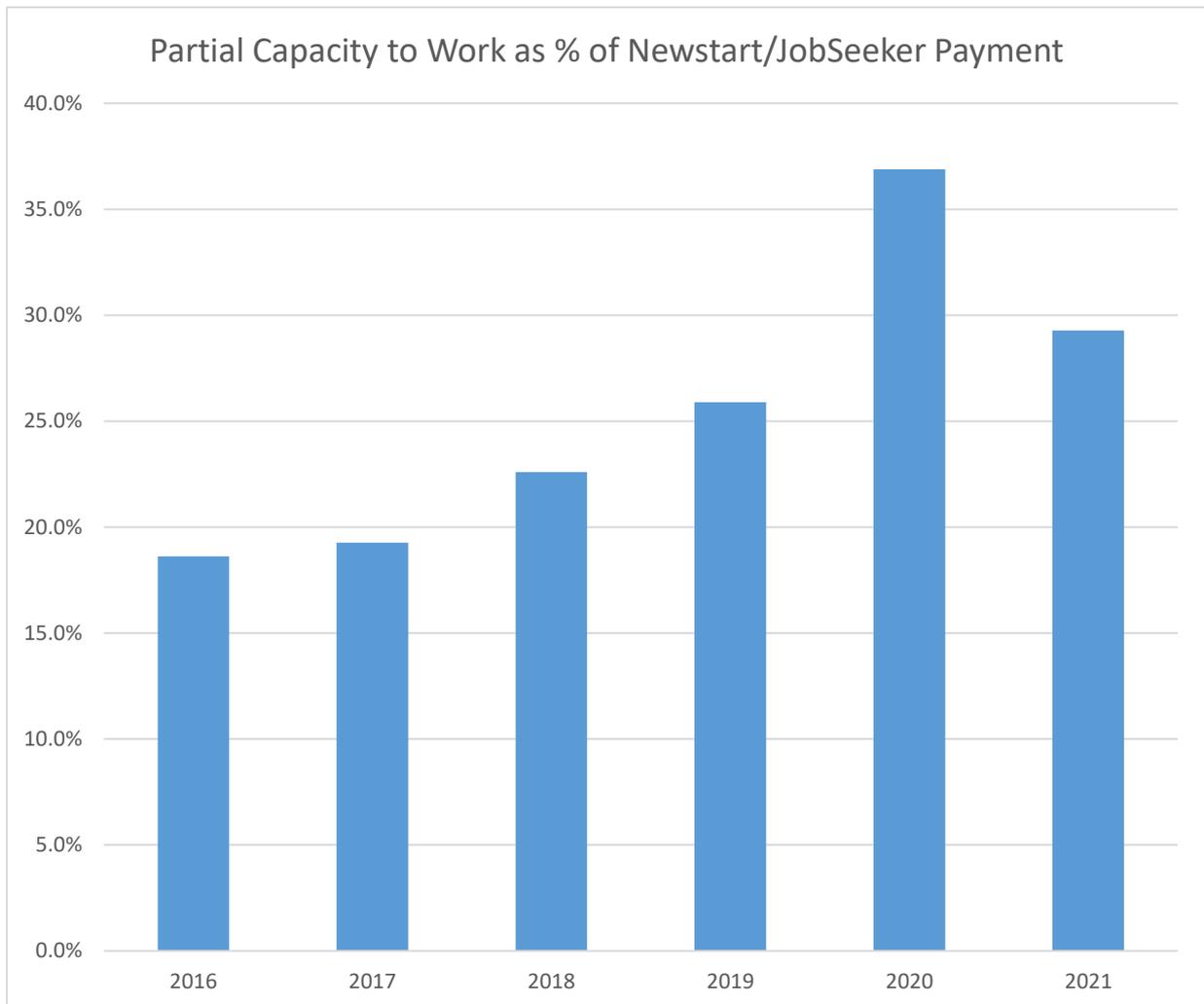


Figure 5: Percentage of people assessed as having a partial capacity to work on Newstart/Jobseeker (2016-2021).¹⁰

⁸ Department of Social Services, *Disability Support Pension Data*, March 2021.

⁹ *Ibid.*

¹⁰ Department of Social Services, *Disability Support Pension Data*, March 2021.

- f. NEDA is deeply distressed that many CaLD people with disability are denied the social protection the DSP can provide. We believe an adequate safety net must be available to all who need it, and it must provide for an acceptable standard of living comparable to the rest of the community. The tightening of DSP eligibility and assessment criteria means this safety net is denied to people who desperately need it, those who face significant and complex barriers to economic participation. Denying the DSP to people with disability, particularly CaLD people with disability, plunges them into poverty, homelessness and ill-health. While governments have significantly reduced the number of people receiving the DSP, this has not translated into increased employment and economic security for people with disability.¹¹

5. Harsh DSP residency and eligibility requirements

- 5.1. In Australia, all migrants (except those with permanent residency from humanitarian backgrounds) have to wait several years before accessing income support. Basic eligibility related residency requirements associated with income support vary depending on the type of payment.
- 5.2. DSP eligibility requirements dictate that a person must be an Australian citizen, an Australia permanent visa holder or a protected Special Category visa (SCV) holder. They must have lived in Australia for ten years as an Australian resident (five years must be continuous) to be eligible to apply for the DSP.¹²¹³
- 5.3. For most people who come to Australia, including adults with disability, securing employment is one of the first priorities. People expect to find work in their chosen field within a short time after arrival. However, this can be stifled if qualifications and experience are not recognised, if English language skills need further development, or due to cultural and structural barriers to employment associated with people's disability and migrant statuses.
- 5.4. If migrants with disability are unable to achieve financial security through employment, the 10-year residency requirement for the DSP further denies them any form of basic social protection. The DSP is paid at a higher rate than other forms of income support and therefore offers more appropriate coverage of some of the costs associated with disability than other entitlements, such as the Newstart allowance.

¹¹ Australian Civil Society Shadow Report to the United Nations Committee on the Rights of Persons with Disabilities (2019) in response to the List of issues prior to the submission of the combined second and third periodic reports of Australia [CRPD/C/AUS/QPR/2-3]. Compiled by the Australian Civil Society CRPD Shadow Report Working Group, July 2019. Available at: <https://www.neda.org.au/publications/rights-people-disability-routinely-ignored-new-report>

¹² Social Security Act 1991, Available at: <https://www.legislation.gov.au/Details/C2018C00007>

¹³ Services Australia, 'Information you need to know about your claim: Disability Support Pension', Available at: <https://www.servicesaustralia.gov.au/sites/default/files/2016/12/ci022-1701en.pdf>

- 5.5. As a result of these long waiting periods, migrants with disability are denied access to vital services or income support often when they are most needed. This waiting period creates numerous financial and emotional hardships for CaLD people with disability and their families and places them at significant risk of abject poverty.

Case Study #1: Sam

Sam* is a long-term Australian permanent resident and has high support needs associated with their psychosocial disability, physical disability and related chronic fatigue, all stemming from experiences of conflict-related trauma.

These conditions also made it hard for Sam to maintain long-term employment. Sam had been living in Australia for nine and a half years and wanted to apply for DSP. His application was rejected because he left Australia for a month to visit his country of origin due to a family emergency four years prior.

This travel made him ineligible for the DSP as this was counted as breaking the “continuing resident” DSP criteria. Thus, he was effectively told he had to begin another waiting period of 8 – 9 years to the date he came back into Australia or wait another four years before being eligible for the DSP again.

This denial of basic income support impacted substantially on Sam’s everyday life.

**real name not provided*

6. DSP Portability and travel restrictions

- 6.1. Many complex rules are determining if, how long for, and under what circumstances people may continue to receive DSP payments while travelling outside of Australia.¹⁴
- 6.2. DSP recipients will still receive DSP payments if they leave Australia temporarily but for a period of up to 28 days (accumulative, within 12 months). This harsh portability restriction directly disadvantages Australians born overseas, as they are often required to travel long distances to maintain important ties with their families and places of birth. These measures effectively punish CaLD people with disability for having familial bonds across time and vast distances and subject them to financial hardship and emotional suffering.¹⁵

¹⁴ Department of Human Services, ‘Travelling outside of Australia and the DSP’, Available at: <https://www.servicesaustralia.gov.au/individuals/services/centrelink/disability-support-pension/how-manage-your-payment/travel-outside-australia>

¹⁵ NEDA & FECCA Joint Submission, ‘Payment Integrity Bill 2017’, Available at: <https://www.neda.org.au/publications/neda-fecca-joint-submission-social-services-legislation-amendment-payment-integrity>

Case Study 2: Lulu

Lulu* a CALD woman with vision impairment on the Disability Support (Blind) Pension, had her payments cancelled while visiting family overseas for longer than 28 days. Lulu's DSP was non-means tested, and the 28 days' rule did not apply to her situation.

Upon returning home to Australia, Lulu called Centrelink and asked for her DSP to be reinstated. Lulu was told that her diagnosis was too old and that Centrelink needed a new diagnosis from her ophthalmologist or Optometrist. Lulu was frustrated: her treating Ophthalmologist had died 30 years earlier, and the hospital did not keep her records.

Lulu was told to go online and complete her part of the DSP application form and print out the forms that needed to be completed by the treating doctor, get it completed and take it back to Centrelink. Unfortunately, the online forms were not accessible with her assistive technology. When she went to the Centrelink office to ask for help, Lulu was given a lengthy printed version of the standard DSP application form to complete.

Lulu asked Centrelink staff if they could provide the application form in either Braille or electronically via email. But she was told that she was being treated equally as everyone else by being given a form in print format and that they cannot provide it to her in alternative formats.

Lulu was confused as to why her DSP payments were cancelled while overseas, and Centrelink could not ascertain the reason, either. Lulu was informed that Centrelink had made a mistake cancelling her DSP payments while she was overseas, and all they had to do was reinstate it on their records.

Lulu called many ophthalmologists, but most were not interested in completing the application. One ophthalmologist wanted \$400.00 to complete her forms (which she could not afford). Lulu eventually found an optometrist who kindly completed her forms with her directions even though they had never met before. The Optometrist had no idea of the cause of her blindness or the diagnosis. She took the completed forms back to Centrelink, and her DSP was reinstated immediately.

**real name not provided.*

7. UN Convention on the Rights of Persons with Disabilities

- 7.1. In 2008, Australia ratified the Convention on the Rights of Person with Disabilities (CRPD). The CRPD is a historical document that guides on the basic rights and freedoms afforded to people with disability. Notably, the document offers principles that inform international policy and law-making in accordance with the rights of people with disability.
- 7.2. NEDA has sought legal advice on the consistency between the UN CRPD and several areas of concern regarding Australian legislation and policy.¹⁶ One question we specifically sought advice was concerning the ten years qualifying period for the DSP and “*whether Section 7 (5) of the Social Security Act 1991 (Cth) discriminates against migrants with disabilities in a manner inconsistent with article 28 of the Disabilities Convention*”.

A summary of this advice is as follows:

The ten years 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.

- 7.3. The UN CRPD Committee also views the residency criteria as disability discrimination, concluding Australia ‘needs to remove the ten-year qualifying period’ to be in keeping with CRPD expectations.¹⁷
- 7.4. Generally, CaLD people with disability and their representative organisations are never provided with the opportunity of co-designing, co-creating, co-implementing or co-evaluating important policy that directly affects them. The DSP directly affects CaLD people with disability. Government/s should establish co-design mechanisms to operationalise participation principles and ensure CaLD people with disability directly inform and influence DSP-related policy and practice. This is in keeping with Australia’s expectations set out in the CRPD.¹⁸

¹⁶ Legal advice was provided by Barrister Dr Ben Saul, Director, Sydney Centre for International Law. Full advice can be found at:

National Ethnic Disability Alliance, Refugees and Migrants with Disability and the United Nations Convention on the Rights of Persons with Disabilities’, 2008, Available at: http://www.neda.org.au/sites/default/files/2017-11/2008_07_refugees_and_migrants_with_disability_and_un_crpd.pdf

¹⁷ Committee on the Rights of Persons with Disabilities, *Concluding observations on the combined second and third period reports of Australia*, 15 Oct 2019, Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fAUS%2fCO%2f2-3&Lang=en

¹⁸ See principles of participation set out in Article 2, Article 33, ‘*Convention on the Rights of Persons with Disabilities*’, United Nations.

8. Our Recommendations

- 8.1. The Australian Government develops a mechanism to work with CaLD people with disability, and their representative organisations, to proactively dismantle barriers to DSP claims, and assessment and complaint processes.
- 8.2. The Government needs to ensure CaLD people with disability access and understand DSP related information on an equal basis to others. CaLD people with disability need adequate access to Government staff (in-person and via the phone), access to accurate English Easy Read factsheets and explainers, access to appropriately translated LOTE Easy Read, adequate access to qualified professional interpreting supports, usable and accessible websites and mobile apps, among other things.
- 8.3. The Government should reset claims eligibility and assessment criteria to ensure a fair and realistic approach, where CaLD people with disability who are unable to secure long-term and meaningful employment are entitled to receive the DSP.
- 8.4. The DSP base rate is increased, and indexing allowances maintain this increase in line with average male weekly earnings. This will ensure CaLD people with disability are afforded an adequate standard of living and social protection.
- 8.5. The Government should abolish the ten-year qualifying period as this DSP residency requirement has been found to be discriminatory.
- 8.6. The Government should establish fairer DSP travel and portability criteria to ensure Australians with disability who have families overseas are not disadvantaged by such harsh restrictions.
- 8.7. The Government should improve its DSP related data collection regarding CaLD status/es. CaLD definitions should be revised to ensure it comprehensively captures and reflects the diversity of CaLD experiences.