NEDA

NATIONAL ETHNIC DISABILITY ALLIANCE

Submission to the Productivity Commission inquiry into Australia's Migrant Intake

"Submission to the Productivity Commission inquiry into Australia's Migrant Intake".

June 2015

National Ethnic Disability Alliance Inc.

Nadimul Haque Mandal
Research and Policy Officer

Website: www.neda.org.au

About Us

The National Ethnic Disability Alliance Inc. (NEDA) is the only national peak organisation representing the rights and interests of people from culturally and linguistically diverse backgrounds (CaLD) and/or non-English speaking backgrounds (NESB) with a disability, their families and carers throughout Australia. NEDA is a member of the Australian Cross Disability Alliance and reports directly to Government as a national peak.

NEDA advocates at the Federal level for the rights and interests of people from CaLD and/or NESB communities with a disability, their families and carers so that they are able to participate fully in all aspects of social, economic, political and cultural life; and provide policy advice to the Government and other relevant agencies to secure equitable outcomes for people from CaLD and/or NESB communities with a disability, their families and carers.

NEDA also works collaboratively and builds partnerships with other key organisations within disability and/or multicultural sectors.

NEDA endorses the submission prepared by the Federation of Ethnic Communities' Councils of Australia (FECCA) and supports all recommendations therein.

NEDA's Position

The National Ethnic Disability Alliance (NEDA) thanks the Australian Government and the Productivity Commission for their invitation to stakeholders to make a submission to the 'Migrant Intake into Australia' inquiry. NEDA welcomes this inquiry with hope that it will be a rewarding opportunity to examine current policies and systems, and to identify future options that will facilitate policy and legislative changes ensuring a fairer system for all, including people with disabilities from culturally and linguistically diverse (CALD) and non-English speaking backgrounds (NESB).

NEDA believes there is scope for the varying positions to be incorporated within Australia's migration policies to create better outcomes for those people from CALD and NESB communities living with disabilities and their families**.** NEDA believes that Australia's approach to migration and disability, via successive Governments, has been and still is discriminatory towards those applicants living with disabilities.

Australia's Disability Discrimination Act 1992[1] (DDA) aims to eliminate discrimination against persons on the ground of disability and to establish rights of persons in line with those afforded to non-disabled individuals.

[1] Disability Discrimination Act 1992 http://www.comlaw.gov.au/Details/C2013C00022

Additionally, by signing and ratifying the UN Convention on the Rights of Persons with Disabilities **(**UNCRPD)[2] the Government of Australia states a recognition of the right to equality and non-discrimination towards individuals living with disability, and therefore commits to ensure and promote the full realisation of their human rights.

Nonetheless, Australia's current migration policies continue to explicitly discriminate against people with disability, and thereby contradict its signing and ratifying commitment to human rights, along with the national commitment to the UNCRPD; by doing this Australia attempts to sit on both sides of the fence, ratification without commitment to the principles.

Article 18 of the UNCRPD argues that State Parties will recognise the rights of persons with disabilities to liberty of movement, freedom to choose their residence and to a nationality, on an equal basis with others. This right includes the right to acquire and change nationality without discrimination on the basis of disability, and the right not to be subjected to immigration proceedings or other processes which might restrict liberty of movement. By exempting the immigration law from the commitments of DDA and the UNCRPD, Australia is denying people living with disability the opportunity to migrate to Australia.

The social or human rights based model of "disability" identifies systemic barriers, negative attitudes and exclusion by society as the main contributory factor in ***disabling*** people.[3] The 'outdated' medical model of disability depends on a functional analysis of the body, and sees "disability" as a broken machine to be fixed in order to conform with normative values of society. UNCRPD and Australia's own DDA both recognise that the reasons for disability are not located in the individual, but in a society, culture and economy that continue to fail to meet the needs of people who live with disability.

People who seek to migrate to Australia are currently subject to the health requirement following the *Migration Act 1958*. Disability, therefore, is viewed though this 'health' lens. On the basis of the result of a health examination, the migration system classifies and catalogues people in concrete categories.

For several decades, NEDA has consistently voiced opposition to these policies within migration processes; for generations these systems have disempowered people with disabilities as they view them as being helpless 'unworthy' burdens.

NEDA, disappointingly so, is aware of countless cases of the rejection of visas because of the failure to satisfy the health requirements by applicants with a disability or applicants with an immediate family member who live with disability.

[2] United Nations Convention on the Rights of Persons with Disabilities http://www.un.org/disabilities/convention/conventionfull.shtml

[3] Sheldon, A 'One World, One People, One Struggle? Towards the global implementation of the social model of disability', *The Disability Press*, Centre for Disability Studies, University of Leeds, 2005 http://disability-studies.leeds.ac.uk/files/library/Barnes-EMW-Contents.pdf

Though disability is an evolving concept resulting from the interaction between persons with disability and the attitudinal and socio-environmental factors that may impede their full and effective participation in society, it is unacceptable to see the Government department of an advanced western democracy keep continuously treating people with disability as a cost 'burden' of Australia's health system. This cost-benefit measurement is discriminatory and determines the worth of a person by their 'impairments'.

NEDA strongly condemns the automatic refusal of residency visa applications because of *'imperfections'* of applicants, including children, with disabilities.

When considering Australia is a party to human rights treaties which consider disability as a social relationship and not a characteristic of individuals with 'impairments', it is NEDA's opinion that classifying and conceptualising individuals as 'burden' because of a person's disability, and the subsequent refusal of their migration to Australia, is fundamentally dehumanising and discriminatory.

NEDA urges the Federal Government to facilitate policy and legislative change in line with Australia's commitment as a party to the UNCRPD. We also believe public health risks and disability cannot be assessed and judged through the same lenses for determining eligibility.

NEDA acknowledges immigration policies have historically been motivated by the economic needs of the country. The operation of the health rules in migration law involve no process for decision makers to undertake a cost-benefit analysis of persons with disabilities. It forces decision makers to assume that disability will result in certain costs, thus leaving decision makers with little or no scope to exercise choice or discretion. It is difficult to rationally and fairly assess the costs associated to a person who lives with a disability.

NEDA believes there are significant difficulties and impossibilities in fairly assessing future costs associated with disability over a person's lifetime, and there is significant room for interpretation in this process. In an enabling and inclusive society, a person with disability has possibilities and chances of emerging as a leader, contributor and human resource for the country equal to that of people living without disabilities. The essentialised notion and fixed categorisation of a person with disability as a future burden to Australia's health system is brutal.

NEDA has urged the Government of Australia to bring about policy and legislative changes that incorporate the inclusion of the holistic advantages and benefits of welcoming an immigrant, including economic and social contribution of people with a disability and their families seeking to migrate, into the process of determining migration eligibility.

Under the proposed 'net benefit approach' the benefits migrants with disabilities and their families bring to Australia would be considered against the cost of an individual's healthcare. NEDA believes this approach would be a step in the right direction. This process is not seen as ideal by NEDA as it still continues to measure people with a disability against a formula and breaks them down to an equation of cost against perceived contribution.[4]

We emphasise the importance of considering the holistic contribution of a person with disability, their inherent equality and their human worth beyond an economic assessment of the *possible* cost of their disability.

NEDA holds the view that the Australian Government reviews the Disability Discrimination Act 1992 with particular reference to the section 52 i.e. migration exemption, through the assessment of its legal implications for migration administration. This process should involve a wide variety of stakeholders including people with disabilities, their organizations and other key partners as a means of creating a more fair and equitable system that upholds the rights of people living with disabilities.

Lastly, NEDA recommends that the Government remove the exemption of the Migration Act 1958 from the Disability Discrimination Act 1992. We believe the principles of non-discrimination and human rights must be applied directly and in full to the operation of the Migration Act 1958.

[4] Inman, M 'Migrant disability bias 'remains', *The Canberra Times*, Nov 4 2012 http://www.canberratimes.com.au/act-news/migrant-disability-bias-remains-20121103-28rib.html