



Inquiry into Disability Care and Support
Productivity Commission
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Joint Submission to the Productivity Commission Inquiry into Disability Care and Support

Dear Committee Secretary,

The National Ethnic Disability Alliance (NEDA) is the national peak organization 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, Housing Community Services and Indigenous Affairs (FaHCSIA) to provide policy advice to the Australian Government and other agencies on national issues affecting people from NESB with disability, their families and carers.

People with Disability Australia Incorporated (PWD) is a national disability rights and advocacy organisation. PWD exists within the international human rights framework and provides a number of activities, which include individual, group and systemic advocacy, complaints handling, information, education and training.

PWD's activities are supported by substantial grants of financial assistance from the Commonwealth and New South Wales Governments, as well as a growing number of corporate and individual donors.

Attached is a joint submission developed between NEDA and PWD on common issues of concern as they relate to the rights of non-residents.

We hope that the Inquiry will give favourable attention to the recommendations of this submission.

If further information is required on this submission, please contact Sibylle Kaczorek

Yours sincerely

Sibylle Kaczorek
Executive Officer, NEDA

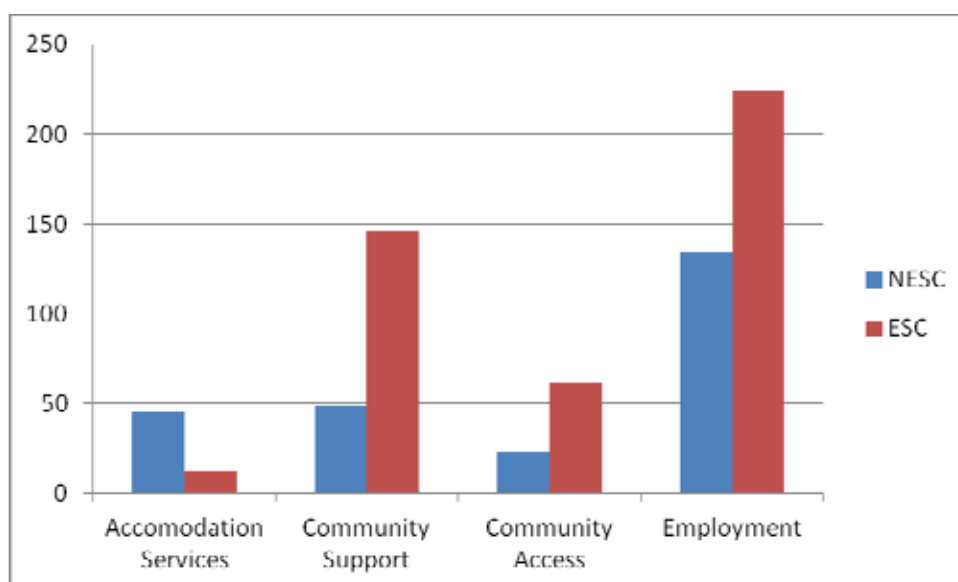
Therese Sands
Executive Director, PWD

Introduction

The Productivity Commission have proposed a substantial change to the funding and delivery of support services to people with disability in Australia through a National Disability Insurance Scheme (NDIS). While many details of the scheme remain unresolved, there is evidence of strong support for the scheme from people with disability and service providers.

A national insurance scheme has the potential to provide entitlements to groups that currently face difficulty accessing services. ABS data suggests that 23.7% or 1 in 4 people with disability are from a Non English Speaking Background (NESB). People from NESB with disability make an active contribution to all aspects of Australian life. However there is evidence that people from NESB with disability do not utilise support services available to other people with disability, and as a result face barriers to full social and economic participation (see Chart 1).¹

Chart 1: Participation in Disability Services by Country of Birth per 1000 Potential Population.



Source: 2010 *Productivity Commission Report on Government Services*

The proposed NDIS should aim to respond positively to the needs of NESB consumers. However the Productivity Commission draft report makes no substantive recommendations that aim at improving participation and outcomes for these consumers.

¹ The 2010 *Productivity Commission Report on Government Services* identifies that people born in a non English Speaking Country are significantly less likely to receive Accommodation, community support, respite, community access and employment services than those born in English speaking Countries (see Chart 1). The labour force participation rate for people born in a non English Speaking Country with a profound or severe core activity restriction is 11.5%, roughly half that for people born in an English Speaking Country (ROGS 2010).

Rights Obligations

Australian legislation and policy, including a long term care and support scheme, must meet international human rights obligations. In 2010 the Australian Government launched a National Human Rights framework, which contained new provisions for additional parliamentary scrutiny, and a commitment to processes to ensure compliance with human rights obligations for new parliamentary bills.

The Australian government has identified seven key multilateral treaties that it is party to:

- The International Covenant on Civil and Political Rights (ICCPR)
- Convention on the Rights of the Child (CRC)
- Convention Against Torture (CAT)
- The International Covenant on Economic, Social and Cultural Rights (ICESCR)
- Convention on the Elimination of All Forms of Racial Discrimination (CERD)
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- Convention on the Rights of Persons with Disabilities (CRPD)

Australia's obligations under the CRPD are of particular relevance to the design of a long term care and support scheme, with a number of Articles in the Convention – as detailed below, offering direction for promoting inclusion and non discrimination for people from NESB with disability.

Convention on the Rights of Persons with Disabilities (CRPD)

CRPD was ratified on the 18 July 2008, sending a powerful message for the recognition of the rights of people with disability in Australia. Ratification of CRPD created an opportunity to address areas of Australian law and policy that were inconsistent with the internationally agreed rights of people with disability, and a framework for the design of new policy / legislation effecting people with disability. CRPD also provides guidance on how to improve the responsiveness of policy and legislation to people from NESB with disability. The following articles are of particular relevance to the design of a long term care and support scheme.

- *Article 3 (d): Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity.* A long term care and support scheme must be flexible in responding to human diversity, not only in terms of impairment but also in relation to culture, language, race, and faith.
- *Article 5 (1): All persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.* A long term care and support scheme must promote equality before the law in relation to culture, language, race and faith.
- *Article 5 (2): Prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.* The law must actively protect people with disability from discrimination on the basis of culture, language, race, and faith. Non discriminatory access to entitlements and services is also reinforced by Article 2 of the *International Covenant on Economic, Social and Cultural Rights* ("The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.")

- *Article 30 (4): Persons with disabilities shall be entitled, on an equal basis with others, to recognition and support of their specific cultural and linguistic identity, including sign languages and deaf culture.* A long term care and support scheme must enable people with disability to maintain their cultural and linguistic identities. This is reinforced by Article 27 of the *International Covenant on Civil and Political Rights* (“In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language”).

Convention on the Elimination of All Forms of Racial Discrimination (CERD)

CERD is of particular relevance to guaranteeing protections and non discrimination people from NESB with disability in the design and delivery of a long term care and support scheme. In particular:

- *Article 2 (c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists.* A long term care and support scheme must not promote racial discrimination or create racial division.
- *Article 5 (iv): ...States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the ...right to public health, medical care, social security and social services.* CERD imposes a specific obligation to non discrimination on the basis of race or ethnicity upon the provision of social services.

Other Obligations

In so far as a women and children from NESB will be entitled to services under a long term care and support scheme, both the Convention on the Rights of the Child (particularly the non discrimination provisions in Article 2) and the Convention on the Elimination of All Forms of Discrimination against Women (the non discrimination provisions in Article 1) apply here. In so far as recently arrived refugees may be eligible for services through a long term care and support scheme, the “same treatment” obligations of the *Convention and Protocol in Relation to the Status of Refugees* appears applicable, including the relevant social security obligations in Article 24.

Rights for Non-Residents

Proposal: Extend NDIS eligibility to certain non permanent residents.

Background

The Productivity Commission proposes a blanket exclusion arguing that this position is in line with current policy:

As is usual for most taxpayer-funded services in Australia, the NDIS would not provide individualised funding for people who are not permanent Australian residents (13n; see also 3.15).

A blanket exclusion of non permanent residents from NDIS care and support services would potentially exclude a number of people from receipt of services, including asylum seekers and people with accepted refugee status, individuals including children waiting for a long stay visa to be approved, and people on work or study visas (and their family members) who might be otherwise making strong social and economic contributions to Australia.

Current policy

Australian Government legislation currently prevents non permanent residents from accessing disability services funded under Section 21 of the *Disability Services Act 1986*. Eligibility criteria also disqualifies some non permanent residents from accessing income support in Australia, including the ten year eligibility period that currently applies to the Disability Support Pension. While these exclusions are features of current Government policy, they are potentially at odds with Australia's international obligations, including in relation to CRPD. It is certainly significant that that CRPD does not provide grounds for discrimination on the basis of residency, and would appear at odds with the equality and non discrimination obligations in Article 5. There are other concern areas in relation to excluding non residents from disability entitlements that are yet to be tested in Australian law. For example, NEDA's advice in relation to the ten year waiting period for the Disability Support Pension found that it interferes with CRPD obligations under Articles 28, 25 and 15, relating to standard of living and social protection, health and inhuman or degrading treatment.

Leaving aside the compatibility of current policy with respect to international obligations, it is not clear that blanket exclusion exists for non permanent residents in the receipt of taxpayer funded services in Australia (as per the Productivity Commission assertion in the draft report). Speaking broadly, taxpayer funded social infrastructure in Australia does not discriminate on the basis of residency. Many tax payer funded services and infrastructure, such as public transport services, roads and public parks, do not attract differential charging on the basis of visa status. In some state and territory based jurisdictions there is provision within policies for access to services by non residents, such as in the case of public schooling.

Medicare eligibility is perhaps the most directly applicable comparator to the proposed NDIS, not only because of the relationship between the two insurance schemes, but also because of the universal entitlement objectives of the scheme. Currently Medicare offers services to a variety of non residents including:

- some asylum seekers and people granted refugee status;
- people who have applied for a permanent resident visa (except for a parent visa) if they have a visa authorising their stay in Australia and have permission to work, or their parent, spouse or child is an Australian citizen or holds an Australian permanent resident visa;
- people who are from a country where Australia has negotiated a reciprocal arrangement that allows for access to Medicare services.

At a minimum, it would seem reasonable for a NDIS to provide a similar level of protection to the above non permanent resident groups.

Children with Disability

Persons with disability under 18 years of age who are not recognised as permanent residents are in a potentially vulnerable situation with regard to access to appropriate supports.

For example excluding non permanent resident minors from eligibility to early in life early intervention services could potentially lead to less beneficial outcomes in relation to access to education and work for these individuals and could lead to higher public expenditure costs should these individuals become residents of Australia. Excluding non resident children with disability from early intervention services would also be contrary to the obligations imposed by Article 7 (1 and 2) of CRPD, which emphasise the need for children with disability to enjoy rights on an equal basis with others, and the need for States parties to recognise the best interests of the child as their primary consideration. Similarly, excluding persons with disability under 18 years of age who are not recognised as permanent residents from support services enabling them to participate in education on an equal basis would be contrary to the CRPD obligation in Article 24 2 (c and d), which stresses the need for all children with disability to receive the supports they need in order to attain an effective education.

Asylum Seekers

Individuals with disability who have escaped their own country and apply to the Australian Government for protection as a refugee are currently not offered eligibility under the proposed NDIS.

Currently the Australian Government offers the following services to asylum seekers:

- health and welfare services, including limited financial assistance, through the Asylum Seeker Assistance Scheme)
- temporary eligibility for Medicare.

In line with recent changes, the Australian Government is also moving to provide education services to children. Provision of NDIS support services to asylum seekers with disability would be consistent with existing provided Government supports.

The Australian Government pursues a policy of mandatory detention for asylum seekers. After 2008 there was a shift of policy which focused on quicker processing for asylum seekers, a no detention policy for children, the increased use of community based detention and community based immigration housing, and use of extended facility based detention for “unlawful non-citizens who present unacceptable risks to the community” and “unlawful non-citizens who have repeatedly refused to comply with their visa conditions.” Asylum seekers with disability in detention should be entitled to care and support services, in line with the Australian Government's “Key immigration detention values” - eligibility for NDIS would be a simple way to guarantee consistency and fairness for these individuals.

Temporary Business Migrants (457)

Australia has increasingly approved temporary visas for migrants in business sponsorship programs for periods of up to 4 years (457 visas). Excluding temporary visa holders from receipt of NDIS services has the effect of:

- a) excluding individuals with disability from the support services that are available to others in order to fully participate in Australian society, and preventing the full contribution of skills and experience that the individual may offer; and

- b) excluding family members (including children) from entitlement, and therefore making it untenable for potential migrants with family members with disability from migrating to Australia for a short term.

Access Economics estimated in 2008/09 that every 1000 employer supported visa holders contribute between \$12m to \$13m in fiscal revenue to the Australian Government (Access Economics, 2008) It can be anticipated that the broader social and economic contribution of this group to Australia's prosperity is significantly higher.

The Productivity Commission estimate at the high end of the range that the NDIS will cost \$12.8bn per annum to provide long term care and support to 360,000 people (equating to approximately 1.6% of the Australian population), or an average of \$35,000 per person. If this rate of support need held consistent for temporary work visa holders – that is, there would be 16 people with disability who might be eligible for the NDIS per 1000 migrants – and the types of impairment and support need were also consistent, the cost of providing services for this group would be \$560,000pa, a very small proportion of the \$12-13m in annual fiscal revenue earned per 1000 temporary work visas.

This suggests that extension of NDIS eligibility could be reasonably accommodated by the Australian Government. Given that these short term work visa categories exist due to a skill shortage in Australia, it would be in the interest of Australia to support such a position.

Student Visas

International students make a strong social and economic contribution to Australia. The Department of Immigration and Citizenship estimates that at the end of 2010 there were approximately 291 204 international student visa holders in Australia. Excluding students from access to disability support services has the effect of reducing opportunity for international students with disability to participate on an equal basis with other students, by individualising the cost of social support for these individuals .

There appears to be a lack of Australian evidence on the economic contribution of international students to the Australian economy. However international evidence suggests that Australia would enjoy a strong fiscal and economy wide surplus as a result of the total economic contribution of students, both through fees and through general spending. A UK study by the All Party Parliamentary Group on Migration observed that “the direct value of international students alone to the UK economy (including fees and off-campus spend) was calculated by the British Council in 2007 to amount to nearly £8.5 billion per year” (APPG, March 2011). There were 325,985 international students in the UK in 2007/8 (UK Council for International Student Affairs), a total figure which is not radically dissimilar to the Australian International student co-hort.

This suggests that extension of NDIS eligibility to international students could be reasonably accommodated by the Australian Government. Aside from the strong social justice reasons for providing support to international students with disability – including meeting relevant human rights obligations – it is worth noting that ensuring care and support for student visa holders with disability would increase the attractiveness of tertiary study in Australia for prospective overseas students.

Given recent poor press Australia has received in relation to racially motivated attacks against international students (and the subsequent decline in attractiveness of Australian universities for some international students), a proactive policy that attempts to attract students with disability may counteract these effects.

Reciprocal Arrangements

As stated above, Australia currently maintains reciprocal health care agreements, which allow some non permanent residents to utilise Medicare services. Similarly, Australia has negotiated reciprocal social security agreements with a number of countries, again ensuring that some individuals residents are able to access benefits where they can demonstrate residency in an agreement country.

There would be a strong case for the Australian Government to negotiate reciprocal agreements with nations that have similar social insurance schemes, not only to benefit non-residents in Australia, but to guarantee coverage overseas for Australian residents. The latter would assist Australian residents with disability to better take advantage of international opportunities available to other Australians, such as study and work abroad.

Recommendations

1. That the NDIS be made available to:

- Asylum seekers and persons granted refugee status
- All children should be eligible regardless of residency status
- Individuals who have applied for permanent residency.
- Temporary Business Sponsored Migrants (457 holders)
- International students

2. That the Australian Government should take steps to establish reciprocal care and support agreements to enable eligible non residents to utilise NDIS services, and guarantee coverage for Australian residents with disability overseas.