



# NATIONAL ETHNIC DISABILITY ALLIANCE

## **Migrants with Disability and the 10 Year Qualifying Residence Period for the Disability Support Pension**

*NEDA Submission to the Review of Australia's  
Future Tax System*

October 2008



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## **Forward**

The National Ethnic Disability Alliance (NEDA) welcomes the Australian Government's initiative in fundamentally reviewing Australia's tax and transfer system.

In this submission NEDA addresses an issue of fairness in transfer arrangements affecting migrants with disability.

Migrants with disability are subject to a 10 year qualifying residence period for the Disability Support Pension. Based on NEDA's work with members, advocates and service providers, NEDA is aware that the qualifying period creates significant hardship for affected migrants who are unable to access an appropriate form of income support, or access the social support entitlements that would otherwise apply to other people with disability. Further, based on legal advice, NEDA believes the qualifying period is discriminatory, and is at odds with the recently ratified United Nations Convention on the Rights of Persons with Disabilities.

NEDA has provided a submission to The Pension Review highlighting a range of issues affecting people from non English Speaking Background with disability and the social security system. This submission compliments NEDA's Pension review submission, by focusing on the issues that arise from the 10 year qualifying period for the Disability Support Pension.

# 1. Summary

Migrants with disability, particularly people non English Speaking Backgrounds (NESB), can experience acute poverty and exclusion. People from NESB with disability often face additional barriers to entering the labour force, difficulty obtaining support services, and additional forms of discrimination related to their race, ethnicity or religion. It is important to note that people from NESB with disability are a significant grouping in today's multicultural Australia: one in every four people with disability is a person of either first or second generation NESB, representing approximately 1 million people across Australia

This submission addresses a key issue for migrants with disability in Australia: namely, the ten year qualifying residence period that applies to the Disability Support Pension.

Migrants with disability granted visa status (except for those immigrating on humanitarian grounds) must wait ten years before being eligible for the Disability Support Pension (DSP). Eligibility for DSP affects eligibility for other programs, such as essential disability services and equipment. As a result, migrants with disability are unable to access appropriate financial support, or a range of services and support that are available to other Australian residents with disability.

Legal advice released by NEDA in July 2008 suggests that the ten year qualifying period for the Disability Support Pension is at odds with the obligations of the recently ratified United Nations Convention on the Rights of Persons with Disabilities. In NEDA's view, the ten year qualifying period for the DSP is both unfair and discriminatory.

**NEDA calls on the Australian Government to abolish the ten year qualifying period for the Disability Support Pension.**

## 2. Background

### 2.1 About NEDA

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 (FACSI) 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 actively promotes the equal participation of people from NESB with disability in all aspects of Australian society. It manages a range of projects relating to NESB and disability communities and works closely with its state and territory members to ensure that its policy advice reflects the lived experiences of people from NESB with disability. In states and territories where no NESB-disability advocacy agency exists NEDA undertakes development work to establish a structure that can support people from NESB with disability, their families and carers.

NEDA estimates that one in every four people with disability is a person of either first or second generation NESB, representing approximately 1 million people across Australia.

### 2.2 Defining NESB and Disability

NEDA uses the term *Non-English Speaking Background* in preference to *Culturally and Linguistically Diverse Background* as those from an English speaking background are encompassed by the latter term and they are not part of NEDA's constituency. NEDA contends that coming from a linguistic and cultural background other than Anglo-Australian can be a great social barrier and a source of discrimination in Australia. The intention of using NESB is not to define people by what they are not but to highlight the inequity people experience due to linguistic and cultural differences. NEDA also uses the term *people from NESB with disability* rather than *people with disability from NESB* as we consider cultural background (not disability) an appropriate means of developing social identity.

NEDA maintains that disability is a social construct and arises when a society's infrastructure is not developed to ensure all individuals, regardless of capacity or impairment, can fully participate in society. Thus NEDA refers to *people with disability* rather than *people with disabilities* to underline that disability is not a characteristic of an individual but a consequence of a society designed (whether

consciously or inadvertently) to exclude many of its citizens from equal participation.

### **2.3 General Barriers Faced by People from NESB with Disability**

It is the reality of people from NESB with disability in Australia to encounter on a daily basis the grossly entrenched disability and racial discrimination within the disability and mainstream communities and disability discrimination within their own cultural groups. People from NESB with disability encounter the following barriers:

- lack of accessible information informing about rights, entitlements, essential services and supports structures available;
- lack of culturally competent service provision in mainstream and specialist services;
- lack of interpreters and resources to meet needs;
- prevalence of myth, misconceptions and negative stereotypes about disability and ethnicity;
- lack of effective legislative and policy direction and government intervention.

The impacts on people from NESB with disability, their families and carers include:

- extreme isolation and marginalisation;
- financial vulnerability and fewer opportunities;
- reduced capacity to participate in social, economical, political and cultural life;
- carer burn-out due to lack of appropriate support.

### 3. Poverty and Hardship for People from NESB with Disability

#### 3.1 Migrants and Poverty

Migrants and refugees are often over represented within low income groups in Australia, with some migration groups experiencing long term financial disadvantage. For example 36.5% of humanitarian entrants have a household income that falls in the lowest quintile of all earners Australian Bureau of Statistics General Social Survey 2006).

Migration outcomes tend to be better for people from English Speaking Countries. People Born in non English speaking Countries are likely to have lower incomes than people born in English Speaking Countries / Australia: for example around 48% of people born in non English Speaking Countries have a weekly income less that \$400; where approximately 31% of people born in Australia are in the same group.

English proficiency also has a bearing on poverty outcomes for migrants. Around 60% of people from born in a Non English Speaking Country with low English proficiency have an income level less than \$400 per week (ABS Migrants, 2006 Census of Population and Housing).

#### 3.2 Employment Outcomes for Migrants

In general some migrants face barriers to accessing employment. Although unemployment rates are generally comparable to the general population for Skilled and Family Visa holders, Humanitarian entrants face additional barriers to getting work (see Table 4)

**Table 3: Labour Force Status by Visa Category**

	Skilled	Family	Humanitarian
Employed Full-time	66.4	42.7	34.7
Employed Part-time	14.5	20.5	22.7
Unemployed	4.2	4.0	11.7

Source: Australian Bureau of Statistics, General Social Survey 2006.

The barriers faced by some migrants to accessing employment will also broadly affect people from NESB with disability.

#### 3.3 Labour Force Participation for People from NESB with Disability

Labour force participation indicates the proportion of people who are actively looking for work or who have a job.

It is acknowledged that labour force participation rates for people with disability in general are poor – nationally at 18.4%, compared to 76.4% for people without a profound / severe core activity restriction.<sup>1</sup>

However the labour force participation rates for people born in a non English Speaking Countries are substantially worse than for those born in English speaking Countries (see Table 1). Labour force participation for people born in a Non English Speaking Country with disability is approximately half that of people born in an English Speaking Country with disability (11.5% and 20.1% respectively).

**Table 2: Labour force participation for people with a profound or severe core activity limitation 2006 (per cent)**

	<i>NSW</i>	<i>Vic</i>	<i>Qld</i>	<i>WA</i>	<i>SA</i>	<i>Tas</i>	<i>ACT</i>	<i>NT</i>	<i>Aust</i>
ESC	19.5	19.9	19.0	24.0	21.2	15.8	33.8	23.3	20.1
NESC	12.0	9.4	12.9	15.6	10.6	13.7	20.4	17.8	11.5

Source: Productivity Commission *Report on Government Services*, Table 14.41.

### 3.4 Employment Rate for People from NESB with Disability

The employment rate provides an indication of the number of people of working age (15-64) who have a job of some kind (at least 1 hour or more per week).

Once again, it is acknowledged that the employment of rate for people with disability in general is lower than that for the population as a whole. The Productivity Commission observes that: “nationally, the estimated employment rate of people aged 15–64 years with a profound or severe core activity limitation in 2006 (86.6 per cent) was below the rate for people without a profound or severe core activity limitation (94.7 per cent).”<sup>2</sup>

As indicated in Table 2, the employment rate for people born in a non English Speaking Country (82.3%) is significantly below that of people born in an English Speaking Country (87.1%).

**Table 2: Employment Rate for people with a profound or severe core activity limitation, 2006 (per cent)**

	<i>NSW</i>	<i>Vic</i>	<i>Qld</i>	<i>WA</i>	<i>SA</i>	<i>Tas</i>	<i>ACT</i>	<i>NT</i>	<i>Aust</i>
ESC	86.1	86.6	85.9	90.4	89.0	87.6	91.4	91.4	87.1
NESC	79.3	82.7	84.0	90.2	84.6	78.3	83.5	85.7	82.3

<sup>1</sup> Productivity Commission *Report on Government Services*, Table 14.38

<sup>2</sup> Productivity Commission *Report on Government Services*, 14.61



Source: Productivity Commission *Report on Government Services*, Table 14.41.

The above data indicates that the unemployment rate for people from NESB with disability is above 17.5%, or more than three times higher than the general population. .

### **3.5 Experiences of Poor Cultural, Linguistic and Social Inclusion**

The experience of social, cultural, linguistic and religious inclusion for people from non English Speaking backgrounds, will impact upon employment outcomes for all people from NESB, particularly incidences of racism and discrimination, anti immigration sentiments and Islamaphobia.

All migrants face these obstacles - for example, a recent longitudinal study of skilled migrants found that “more than 40 per cent arrivals thought that there was either a lot of racism or at least some racism in Australian society.”<sup>3</sup> Further people from NESB tend to not score as well on typical measures of social cohesion, for example feelings of safety and trust; and ability to call on friends and neighbours for support.<sup>4</sup>

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<sup>3</sup> Commonwealth of Australia, “New Migrant Outcomes” August 2007

<sup>4</sup> Australian Bureau of Statistics, *General Social Survey* 2006.

## 4. Ten Year Qualifying Period for Disability Support Pension

In Australia all migrants (except for those immigrating on humanitarian grounds) have to wait two years before they can access income support.

However migrants with disability, including their carers, have to wait for the “10 years qualifying Australian residence” specified by the *Social Security Act 1991* (s94) in order to access the Disability Support Pension (DSP).

### 4.1 A Barrier to Social and Economic Participation

For most people who come to Australia, including adults with disability, getting a job is one of the first priorities. People expect to find work in their chosen field within a short time after arrival, but this can be frustrated if qualifications and experience are not recognised here, if English language skills need further development, or if employers focus on what can't be done rather than what can. Many people in these circumstances accept any job offered and some have difficulty finding a job at all.

The 10 year exemption for the Disability Support Pension creates potential financial difficulties for migrants with disability, particularly if they are unable to achieve financial security through employment. The DSP is payed at a higher rate than other forms of support, and therefore offers more appropriate coverage of some of the costs of disability than other entitlements, such as the Newstart allowance.

Because of the lengthy waiting periods, migrants with disability are often not entitled to services or income support when they are most needed. This creates enormous financial and emotional strain for people with disability and their families and makes it very difficult for families to cope and get ahead.

Although the ten year qualifying period should not apply to humanitarian entrants, the policy indirectly impacts on some refugees who have migrated to Australia under a family reunion or skilled migration program, but had previously escaped war or trauma.

#### Case Study

Shalini\* was accepted into New Zealand under the Humanitarian program and then migrated to Australia to be reunited with another family member. She has post traumatic stress disorder and severe depression as a result of her experience of trauma. Although Shalini has limited English proficiency, Centrelink

have not provided her with a translated explanation for why she was not eligible for the Disability Support Pension and so over the years has constantly struggled to understand why she has not be eligible to apply for: for example, she has thought that the authorities must not believe she has a disability. When Welfare to Work changes were implemented, Shalini was transferred from a sickness benefit to Newstart Allowance which required her to actively look for work and lodge an application every two weeks to receive the allowance. As a result of advocacy she was assessed and placed on a Personal Support Program which meant she could meet the requirements of this program by attending counseling. However this program is due to finish soon and she will still have another 6 months before her 10years is up. This is very emotionally and financially stressful for Shalini every time there is a change and she is faced with new requirements that she will have difficulty meeting.

*\*Not person's real name.*

#### **4.2 A Barrier to Services**

Many people with disability use government funded support services to enable social and economic participation. In many cases, access to appropriate, affordable support and equipment is a pre-requisite for gaining and holding on to employment and education.

Eligibility for this pension is the usual prerequisite for access to essential disability services such as post-school programs, including community participation and transition to work programs, and essential disability services such as some accommodation support services.

An effect of the exclusion of recent migrants with disability from DSP eligibility is a limitation on access to important services and equipment that are vital to maintaining independence, participation and wellbeing.

#### **4.3 UN Convention on the Rights of Persons with Disabilities**

On the 18 July 2008, Australia ratified the United Convention on the Rights of Persons with Disabilities (CRPD). The treaty was the culmination of more than a decade of work by domestic and international civil society organisations, and represents a historic step forward for the disability rights movement.

Australian ratification sends a powerful message for the recognition of the rights of people with disability in Australia. Ratification of CRPD is also an opportunity to address areas of Australian law and policy that were inconsistent with the internationally agreed rights of people with disability, including in relation to migration issues.

In early 2008 NEDA sought legal advice on the consistency between the UN CRPD and key issues affecting migrants and refugees with disability. The findings of this legal advice were published in July 2008 in the NEDA report

*Refugees and Migrants with Disability and the United Nations Convention on the Rights of Persons with Disabilities.*

The report found a clear inconsistency between the 10 year waiting period for the DSP and the UN CRPD. In particular the report found that:

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.

NEDA believes that modest reforms to social security law would ensure consistency between the provisions of the UN CRPD and relevant laws pertaining to migrants with disability and receipt of appropriate income support.

## **6. Conclusion and Recommendation**

This submission tackles provides an overview of the forms of hardship, poverty and exclusion faced by many or people from NESB with disability, and the barriers faced by recent migrants with disability to accessing appropriate support.

NEDA has presented information in relation to the ten year qualifying period for the Disability Support Pension in this submission. NEDA believes that the issue is of such significant importance – in terms of both current law’s lack of fairness and the community hardship it generates – and requests that the qualifying period for the pension be considered as a component of the investigation. NEDA notes that there remains a question mark in relationship to the compatibility of the current qualifying period for the DSP with the recently ratified UN Convention on the Rights of Persons with Disabilities.

Removing the qualifying period will undoubtedly impose long term future costs on the Australian Government and the community as a whole, in the form of increased transfer payment costs for migrants with disability who will be eligible for the Disability Support Pension. NEDA believes that these potential costs would be affordable and would be outweighed by the increased fairness and inclusion experienced by community members who already facing often overwhelming barriers to participation.

### **Recommendation**

NEDA calls on the Australian Government to abolish the ten year qualifying period for the Disability Support Pension.