

WAGE DETERMINATION FOR PEOPLE WITH DISABILITY

A Submission Prepared by the:

**National Ethnic Disability
Alliance
(NEDA)**

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INTRODUCTION

The National Ethnic Disability Alliance

The National Ethnic Disability Alliance (NEDA) is the national consumer-based peak body for people from a non-English speaking background (NESB) with disability, their families and carers. NEDA follows the Department of Immigration and Multicultural Affairs in its definition of NESB. That is, NESB refers to a person who is either:

- born overseas and whose language or cultural is not English or Anglo Celtic / Saxon
- born here in Australia and the first language or culture of at least one parent is not English or Anglo Celtic / Saxon
- born in Australia with a linguistic or cultural background other than English or Anglo Celtic / Saxon who wish to be identified as such.

This definition encompasses second and possibly third generation NESB.

The overarching aim of NEDA is to advocate at a federal level, for the rights and interests of people from NESB with disability, their families and carers. All activities undertaken by NEDA include strong consumer involvement and is based on the following Objectives:

- 1.) Represent the rights and interests of people from NESB with disability, their families and carers.
- 2.) Advocate on issues impacting on people from NESB with disability, their families and carers.
- 3.) Work towards securing equitable outcomes for people from NESB with disability, their families and carers.
- 4.) Co-ordinate policy advice to the Federal government and relevant peak bodies on the impact of policy and legislation on people from NESB with disability, their families and carers.

As a result of its unique cross-sector role (disability and multicultural affairs), NEDA aims to collaborate and work with a broad range of organisations to represent the interests of people from NESB with disability. This includes working with:

- ethnic organisations and services
- the disability sector and its peak bodies.

Due to its cross sector position, NEDA's role is to bring a disability perspective into ethnic issues, and an ethnic perspective into disability issues. NEDA works across all areas of disability and across all cultural and linguistic groups.

For more information, please visit NEDA's website: www.neda.org.au.

People with Disability & Sheltered Workshops

People with disability, including people from a NESB, are one of the most disadvantaged and marginalised groups in society, susceptible to abuse and exploitation. The complex issues and needs of people with disability have never been adequately understood or addressed by government – past and present.

The conditions present in Sheltered Workshops are far from satisfactory:

- low wages
- poor business and professional practices creating an unhealthy working environment and increasing opportunities for exploitation
- poor service outcomes.

As people with disability, we are continually undervalued for our capacity to contribute to the social and economic development of this country. The continuance of outdated and inappropriate models of service delivery, such as Sheltered Workshops, only serve to perpetuate this devalued status and actually work to entrench negative and misinformed attitudes towards people with disability.

NEDA believe that we, as people with disability, deserve a better deal and we, as people with disability, have waited long enough.

Employment Rights of People with Disability

Article 23 of the United Nations Universal Declaration of Human Rights (of which Australia is a signatory) states that:

- (1) everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment
- (2) everyone, without any discrimination, has the right to equal pay for equal work
- (3) everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection
- (4) everyone has the right to form and to join trade unions for the protection of his interests.

NEDA strongly supports the above rights and believe that people with disability are entitled to:

- meaningful employment
- fair wages
- equal work and professional development opportunities.

The current payment of non award wages to people with disability, by employers that receive Commonwealth employment assistance funding, is both an insult to people with disability and an abuse of the rights of people with disability.

The Cth Disability Services Act, 1986

Of significant concern to NEDA is the fact that Sheltered Workshops (Business Services) do not comply with the Commonwealth *Disability Services Act, 1986 (DSA)*.

Astoundingly, government continues to provide significant amounts of funding (in the millions) to these non-compliant services (**see Appendix 2 for Objects, Principles & Objectives of the DSA**).

The objects, principles and objectives of the DSA 1996 clearly state that people with disability are entitled to service provision that:

- assists in the achievement of positive outcomes such as increased independence and employment opportunities
- ensures the same basic human rights granted to other members of Australian society
- results in the least restriction of rights and opportunities.

However, the very existence of employers who receive Commonwealth employment assistance funding and do not pay award wages to people with disability, clearly contravenes the DSA.

Despite this non-compliance, the government continues to provide money to these services thereby condoning the fact that people with disability work in conditions that are not comparable to other Australians.

NESB-DISABILITY ISSUES

People with disability are routinely marginalised, stigmatised and dehumanised. People with disability from NESB have been further disadvantaged because we experience discrimination on the basis of our disability **AND** our ethnicity.

Past and recent writing about this issue has coined this phenomenon a 'double dose' of discrimination. NEDA believes that this argument is too simplistic. A simple mathematical calculation ('times it by 2') does not encapsulate the complexity of the issues experienced by people from NESB with disability.

Discrimination occurs on an individual and a systemic level. Due to the high level of social control experienced by people with disability, the discrimination faced is often institutional. People from NESB, in particular those with a disability and recent migrants, experience highly regulated environments where much of the discrimination is systemic.

There are many barriers facing people from NESB with disability including:

- lack of accessible information and knowledge about essential services
- lack of culturally appropriate services
- discrimination in service provision
- complexities of disability when coupled with a NESB means service providers relegate people to the 'too hard basket'
- myths, misconceptions and negative stereotypes about disability and ethnicity in the general community
- prejudice against people with disability from members of their own communities
- government's emphasis on rationalist economics and competition principles rather than social cohesion.

Racial Discrimination

MYTH	FACT
Disability is the major concern – NESB factor does not matter.	For people from NESB with disability, disability and ethnicity are inter-related.

The Reality

It has been the experience of NEDA and its members that that this is definitely not the case. We believe that discrimination relating to both ethnicity and disability is interdependent and does not follow any logical order of preference as the case studies below demonstrate.

Lastly, if ethnicity did not play a role in the provision of services to people with disability, the figures of service usage in relation to ethnicity would be comparable to those in the general community. The fact that there are so many Anglo-Australians and so few people from NESB in services shows that ethnicity does matter.

Disability Discrimination

MYTH	FACT
People from a NESB do not need support because they look after their own.	People from NESB with disability face discrimination from their own communities. People from NESB with disability need support.

Reality

The prejudicial attitudes and misconceptions regarding disability that are present in mainstream society are equally evident in NESB communities. Whilst there are differences in the perception of disability amongst different ethnic groups, the relative degree of stigma attached to disability appear similar across NESB and English-speaking communities.

Factors Affecting Attitudes

Experience of disability varies as much within families as it does within a culture. The factors which have been found to affect family responses to disability across cultures, include:

- levels of education
- access to information in community languages
- socio-economic status
- length of residence
- access to medical information
- cultural factors such as questions of blame, honour, shame, status, marriageability and religious beliefs resulting in acceptance or guilt and the expectation of extended family rather than institutional care
- rural or urban upbringing.

By and large, NESB communities have missed out on education campaigns about people with disability because those conducting these campaigns have failed to seek out or consult with NESB communities.

At the same time there have been consultations with people from NESB with disabilities, but those consultations have not resulted in concrete strategies.

Isolation

People with disability and their carers from NESB are often stigmatised and isolated because of attitudes and misconceptions prevalent in their own communities and in the broader community.

Many migrant families with a member with a disability tend to socialise less and have fewer contacts with other people, often only people who accept the disability.

Beneath this isolation lies a migration process that is a traumatic and isolating experience. Relatives, friends, social and support networks are no longer available and are difficult to establish in a new country.

There is also a high level of mistrust towards Governments amongst many migrant communities, based on negative experiences with Governments in the country of birth.

The lack of support networks has particularly adverse impacts on women caring for their children in communities where there is an enormous stigma attached to disability.

Access to Services

Objective 5 of the *Disability Services Act*, 1986 states that:

Programs and services should be designed and administered so as to meet the needs of people with disabilities who experience a double disadvantage as a result of their sex, ethnic origin, or Aboriginality.

However, in Australia, **three out of four** people from a NESB with disability miss out on receiving Commonwealth funded disability services. This is in addition to the current unmet need for people with disability in general (**see Appendix 1**).

This figure stands despite genuine efforts made by many to redress this appalling situation. This figure points towards the need to seek systemic solutions to the whole disability services system, involving all stakeholders.

Many services seem unable to accommodate linguistic and cultural diversity because:

- Ethnic communities tend to be overlooked when considering the 'target group'
- Staff need continual accredited, quality training in cultural difference, diversity and disability, and in particular, the nature and reality of the person's experiences
- The disability services system has not adopted even the most basic mechanisms for people from NESB such as the use of interpreters or the publication of material in languages other than English. Poor language skills prevent carers from accessing services so they have less opportunity to develop their personal, social or professional capabilities
- There are insufficient strategies and practices to ensure that people from NESB with disability and their families and carers participate in decision-making
- The myth of extended family support is still subscribed to by both service providers and funding bodies resulting in fewer services for NESB communities.

The Figures

1999

The 1999 Department of Family and Community Services Disability Services Census shows that:

- 93 per cent of consumers were born in English-speaking countries
- only **4 per cent** were born in a country where languages other than English are spoken

1998

The 1998 Department of Family and Community Services Disability Services Census shows that:

- 93 per cent of consumers were born in English-speaking countries

- only **4.1 per cent** were born in a country where languages other than English are spoken

1997

The 1997 Department of Family and Community Services Disability Services Census shows that:

- 93 per cent of consumers were born in English-speaking countries
- only **3.6 per cent** were born in a country where languages other than English are spoken

The Trend

The continuing trend is that the **figures continue to remain the same for people from NESB with disability.**

NEDA urges the Commonwealth to take some immediate action to rectify this appalling situation.

The issue of accessing government-funded services is perhaps one of the primary issues facing people from NESB with disability.

Information Provision

Access to information is often the first step towards people participating in the community. Access to information means, in effect, access to opportunities and therefore choices to participate in the community.

Like all people from NESB, people from NESB with disability and their families and carers experience increased difficulties in accessing services because of the lack of resources made available for interpreters and translations.

Services such as the Translation and Interpreting Service (TIS) and the Ethnic Affairs Commission language services have increasingly adopted the user pays principle, severely restricting the number of free or subsidised on-site and telephone interpreting sessions available to people and non-profit service providers.

The costs for language services are mostly unbudgeted, resulting in:

- a reduction in community services for people with disability from NESB
- the provision of inappropriate information
- the overall increase in the use of family members and other relatives as interpreters, in violation of standards such as confidentiality, dignity, privacy, etc.

A MODEL FOR WAGE DETERMINATION

Supported Wage System (SWS)

NEDA believes that all people with disability in all employment settings, should receive award-based wages.

NEDA believes that corollary to non-discrimination, wage determination must be anchored on the principles of equality and fairness –principles that are constituted in the fundamentals of human rights. Equality is measured by the similar treatment with everyone else in the workplace, and fairness on the basis of what one deserves for a productive work.

NEDA, therefore, argues that the wage determination mechanism adopted for people with disability must be linked to award wages. NEDA will not support any wage determination mechanism that is not linked into the award wage.

NEDA supports the application of the SWS to Sheltered Workshops (business services).

It is our view that people with disability deserve the best pro-rata award wage assessment mechanism available – at this point in time, the SWS is such a mechanism. The SWS is currently the only acceptable pro-rata award based wage assessment instrument. In line with Caucus, NEDA believes that the SWS must become a national system that is applied in both the industrial relations framework and the Standards framework of the DSA.

NEDA does not support the creation of a new wage assessment mechanism.

It is our view that to create an entirely new system of wage assessment would result in:

- a waste of time – people with disability have waited long enough
- a waste of but resources – the funds would be better spent implementing the SWS.

Recommendation 3 of the recent SWS review stated that:

FaCS modify the guidelines and associated mechanisms of the SWS to enable its adoption in Section 13 Business Services.

Like Caucus, NEDA fully concurs with this recommendation. We believe that it is crucial for the employees currently situated in Sheltered Workshops have immediate access to the SWS. This is the **only way** employees with disability can benefit from the fairness and safeguards extended to employees with disability in the open employment market.

Advantages of SWS

The advantages of the SWS include:

- the existence of an independent assessment process
- safeguards against exploitation for people with disability working in Sheltered Workshops

- direct links to the award system of wages and the industrial relations framework which also requires the use of award benchmarks for measurement
- the provision of minimum and fair wages to people with disability
- the availability of accredited assessors
- the existence of administrative and monitoring systems that were developed by experts in the industrial relations sector
- compliance with the DSA.

The Issue of Superannuation

Whilst the issues of wage determination and assessment are significant to people with disability, there is also the issue of superannuation.

NEDA believes that each business service must make compulsory superannuation payments on behalf of their employees irrespective of the fact that an employee's earnings may fall below the superannuation threshold.

In order for the above to take place, government must make up the shortfall between productivity based wages and the minimum award wage where it is deemed that an employer's profit margins are inadequate to meet this requirement.

NEDA takes the position that employees need to be remunerated in two principal forms: actual earnings + conditions and benefits including superannuation upon retirement. Therefore, the issue of superannuation rates becomes crucial within the context of wages and employee rights.

In addition, there are particular disabilities such as Downs Syndrome in which a person's aging process is more rapid than someone without such a disability. For workers with this type of disability, the issue of adequate superannuation payouts becomes even more pressing.

A Culturally Competent Assessment Tool

Primarily, assessment tools for people with disability leave out consideration of ethnicity and culture. NEDA is concerned that the current Supported Wage Assessment Tool (SWAT) does not contain anything about the cultural diversity of people with disability.

It is also the understanding of NEDA that the Commencement (pre-employment) Assessment Tool and the Maintenance Assessment Tool (after 12 months of employment) connected with the Case-base funding trials contain little, if anything at all, about culture / ethnicity.

However, Centrelink's Job Seeker Classification Instrument (JSCI) does contain elements that relate to culture and the JSCI considers ethnicity in the context of being a barrier to employment.

The disability services system has been designed around an Anglo-Saxon framework. As a result, assessment tools are steeped within Anglo-Saxon concepts and values. For instance, being able to understand and speak English well is taken as a sign of competence.

NEDA would be willing to work with government and services to ensure that the SWAT is an appropriate assessment tool for people from a NESB with disability that takes into consideration factors such:

- cultural background

- language needs
- religious beliefs and customs
- migration experience etc.

Culture differences must also be considered when designing benchmarks for wage determination. NEDA would support mechanisms that take into account the fact that the workplace in Australia is culturally diverse.

CONCLUSION

The current payment of non award wages to people with disability, by employers that receive Commonwealth employment assistance funding, is unacceptable and requires immediate redress.

NEDA supports and strongly recommends:

the extension of the SWS to all employees with disability who receive Commonwealth funded disability employment assistance.

People from a NESB with disability experience multiple layers of disadvantage due to our disability and our ethnicity. NEDA is concerned that the current Supported Wage Assessment Tool (SWAT) does not contain anything about the cultural diversity of people with disability.

NEDA strong recommends that:

relevant stakeholders work with NEDA to ensure that the current SWS, including SWAT, is culturally competent and therefore appropriate for people from a NESB with disability.

APPENDIX 1

Statistics

Different Definitions

There is very limited data available about people from NESB with disability. When attempting to analyse what available data there is, the different definitions used when referring to 'NESB' create many problems.

Below are NEDA's calculations of people from NESB with disability missing out on Commonwealth funded disability services in Australia.

Language Other than English (LOTE) spoken at home - A Partial Definition of NESB

The Australian Bureau of Statistics (ABS) and most government departments, including the NSW Ageing and Disability Department (ADD), define NESB as a person who is either:

- born overseas in a non-English speaking country
- speaks a language other than English (LOTE) in the home.

NB: THIS DOES NOT INCLUDE 2nd GENERATION NESB.

The 1996 ABS statistics show that:

- 15.5% of the Australian population are people who speak a LOTE (language other than English) at home [**ABS, 1996 Census**].

From these figures, NEDA estimates that 15.5% of all people with a disability living in Australia speak a LOTE at home.

The 1998 statistics show that:

- 19% of the population in Australia has a disability [**ABS, 1998 Disability, Ageing and Carers: Summary of Findings**].

Using this information, NEDA estimates that 2.9% of the population or 568,385 people in Australia have a disability and speak a LOTE¹.

The Department of Family and Community Services latest data suggests that:

- 6.2% of consumers of Commonwealth funded disability employment services speak a LOTE at home. [**Dept of Family and Community Services, Disability Services Census, 1998**].

¹ 19% x 19.3 million (2001 projected pop'n of Australia) = 3,667,000 people. 15.5% x 3,667,000 (people with disability in NSW) = 568,385 which = 2.9% x pop'n of Australia.

Thus, from the information provided above it can be concluded that:

2 out of 3 people who speak a LOTE at home with disability miss out on receiving Commonwealth funded disability employment services.

NESB - A Complete Definition

NEDA follows the Department of Immigration and Multicultural Affairs (DIMA) in its definition of NESB. That is, NESB refers to a person who is either:

- born overseas and whose language or culture is not English or Anglo-Celtic / Saxon
- born here in Australia and the first language or culture of at least one parent is not English or Anglo-Celtic / Saxon
- born in Australia with linguistic or cultural background other than English or Anglo-Celtic / Saxon who wish to be identified as such.

NB: THIS INCLUDES 2nd, AND POSSIBLY 3rd GENERATION NESB.

The ABS statistics show that:

- 41% of the population were either born overseas (English speaking + non-English speaking countries) or have one or both parents born overseas (English speaking + non-English speaking countries)
- 60% of those born overseas or with one or both parents born overseas come from a non-English speaking background [**ABS, 1996 Census**].

Using this information, NEDA estimates that 24.6% of the population of Australia are people from a NESB². Thus, 24.6% of all people with a disability living in Australia are from a NESB.

As mentioned previously, 19% of the Australian population has a disability. Thus, NEDA estimates that 4.6% of the population or 902,082 people in Australia are from a NESB with a disability³.

Utilising the limited definition of LOTE (16.8% of population) and adding 7% to account for 2nd and 3rd generation NESB it can be concluded that:

3 out of 4 people from a NESB with disability miss out on receiving Commonwealth funded disability employment services.

² 41% x 19.3 million (2001 projected pop'n of Australia) = 7,913,000. 60% x 7,913,000 = 4,747,800 which = 24.6% x pop'n of Australia.

³ 24.6% x 3,667,000 (people with disability in Australia) = 902,082 which = 4.6% x pop'n of Australia

APPENDIX 2

The Disability Services Act, 1986

Objects

The objects of this Act are:

- (a) to replace provisions of the *Handicapped Persons Assistance Act 1974*, and of Part VIII of the *Social Security Act 1947*, with provisions that are more flexible and more responsive to the needs and aspirations of persons with disabilities;
- (b) to assist persons with disabilities to receive services necessary to enable them to work towards full participation as members of the community;
- (c) to promote services provided to persons with disabilities that:
 - (i) assist persons with disabilities to integrate in the community, and complement services available generally to persons in the community;
 - (ii) assist persons with disabilities to achieve positive outcomes, such as increased independence, employment opportunities and integration in the community; and
 - (iii) are provided in ways that promote in the community a positive image of persons with disabilities and enhance their self-esteem;
- (d) to ensure that the outcomes achieved by persons with disabilities by the provision of services for them are taken into account in the granting of financial assistance for the provision of such services;
- (e) to encourage innovation in the provision of services for persons with disabilities; and
- (f) to assist in achieving positive outcomes, such as increased independence, employment opportunities and integration in the community, for persons with disabilities who are of working age by the provision of comprehensive rehabilitation services.

In construing the objects and in administering this Act, due regard must be had to:

- (a) the limited resources available to provide services and programs under this Act; and
- (b) the need to consider equity and merit in accessing those resources.

Principles

- 1.) People with disabilities are individuals who have the inherent right to respect for their human worth and dignity.
- 2.) People with disabilities, whatever the origin, nature, type, and degree of disability, have the same basic human rights as other members of Australian society.
- 3.) People with disabilities have the same rights as other members of Australian society to realise their individual capacities for physical, social, emotional and intellectual development.

- 4.) People with disabilities have the same right as other members of Australian society to services which will support their attaining a reasonable quality of life.
- 5.) People with disabilities have the same right as other members of Australian society to participate in the decisions which affect their lives.
- 6.) People with disabilities receiving services have the same right as other members of Australian society to receive those services in a manner which results in the least restriction of their rights and opportunities.
- 7.) People with disabilities have the same right of pursuit of any grievance in relation to services as have other members of Australian society.

Objectives

- 1.) Services should have as their focus the achievement of positive outcomes for people with disabilities, such as increased independence, employment opportunities and integration into the community.
- 2.) Services should contribute to ensuring that the conditions of the every-day life of people with disabilities are the same as, or as close as possible to, norms and patterns which are valued in the general community.
- 3.) Services should be provided as part of local co-ordinated service systems and be integrated with services generally available to members of the community, wherever possible.
- 4.) Services should be tailored to meet the individual needs, and goals of the people with disabilities receiving those services.
- 5.) Programs and services should be designed and administered so as to meet the needs of people with disabilities who experience a double disadvantage as a result of their sex, ethnic origin, or Aboriginality.
- 6.) Programs and services should be designed and administered so as to promote recognition of the competence of, and enhance the image of, people with disabilities.
- 7.) Programs and services should be designed and administered so as to promote the participation of people with disabilities in the life of the local community through maximum physical and social integration in that community.
- 8.) Programs and services should be designed and administered so as to ensure that no single organisation providing services shall exercise control over all or most aspects of the life of a person with disabilities.
- 9.) Organisations providing services, whether those services are provided specifically to people with disabilities or generally to members of the community, should be accountable to those people with disabilities who use their services, the advocates of such people, the Commonwealth and the community generally for the provision of information from which the quality of their services can be judged.
- 10.) Programs and services should be designed and administered so as to provide opportunities for people with disabilities to reach goals and enjoy lifestyles which are valued by the community generally and are appropriate to their chronological age.
- 11.) Services should be designed and administered so as to ensure that people with disabilities have access to advocacy support where necessary to ensure adequate participation in decision-making about the services they receive.

- 12.) Programs and services should be designed and administered so as to ensure that appropriate avenues exist for people with disabilities to raise and have resolved any grievances about services.
- 13.) Services should be designed and administered so as to provide people with disabilities with, and encourage them to make use of, avenues for participating in the planning and operation of services which they receive and the Commonwealth and organisations should provide opportunities for consultation in relation to the development of major policy and program changes.
- 14.) Programs and services should be designed and administered so as to respect the rights of people with disabilities to privacy and confidentiality.