

CHILDREN WITH DISABILITY LIVING IN DETENTION

A Response Prepared by the:

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(NEDA)**

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INTRODUCTION

NEDA

The National Ethnic Disability Alliance (NEDA) is the peak body in Australia for people from a non-English speaking background (NESB) with disability, their families and carers.

Role

The overarching aim of NEDA is to advocate at a federal level, for the rights and interests of people from a NESB with disability, their families and carers.

All activities undertaken by NEDA include strong consumer involvement and are 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.

NEDA, because of its cross-sector role (disability and ethnicity), aims to collaborate with and work across a broad range of organisations to represent the interests of people from a NESB with disability. For more information about NEDA, please visit www.neda.org.au.

This Submission

Given the role of NEDA (stated above), this submission will look at the issue of children with disability living in detention from a national perspective, drawing on NEDA's expertise about the intersection of ethnicity and disability and the impact this has on children with disability currently living in detention centres in Australia.

MDAA NSW

State-based NESB-disability advocacy organisations such as the Multicultural Disability Advocacy Association (MDAA) of NSW form the membership of NEDA. NEDA fully endorses the submission lodged with HREOC by MDAA. State-based agencies that provide individual advocacy services, such as MDAA NSW, have first hand experience about the issues facing people from a NESB with disability, their families and carers given their individual advocacy work.

As a peak body, one of NEDA's primary roles is to compile NESB-disability issues from all states and territories to develop a national perspective on issues of importance.

Primary Position

NEDA believes that no child with a disability or their family should be detained when seeking on-shore asylum in Australia.

Not only does this practice contravene international human rights obligations of which Australia is a signatory, but NEDA does not believe that it is in the best interest of any child with a disability to be detained in an environment unequipped to deal with their support needs.

CHILDREN IN DETENTION

DIMIA Statistics

On the 22nd January 2002, NEDA wrote to the Department of Immigration, Multicultural and Indigenous Affairs (DIMIA) requesting information about the children with disability living in detention.

On the 18th February 2002, DIMIA made the following information available to NEDA (**see Appendix 1**):

1. As of the 1st February 2002 a total of 378 children were residing in detention centres on the Australian mainland.
2. As of the 5th February 2002 a total of 16 (or 4.2%) children with disability were residing in detention centres. Children with disability are currently located at Port Hedland, Curtin and Woomera detention centres.
3. The types of disability affecting these children include cerebral palsy, hearing impairment, vision impairment, acute dwarfism, trauma, Perthes disease and cardiac, asthmatic and genetic (including Fragile X) disabilities.

This information reveals that DIMIA has failed to identify children with cognitive and other 'non-visible' disability. NEDA is extremely concerned about the detection of disability amongst all children living in detention and we believe that DIMIA may be underestimating the number of children with disability, particularly those who have experienced torture and trauma within their country of origin.

Apart from the primary disability, these children are highly likely to gain a secondary psychiatric disability due to their incarceration and to the torture and / or trauma experienced in their country of origin. Therefore children with disability living in detention should receive specialised child psychiatric counselling in their own language, via cross-cultural counselors and psychiatrists.

NESB-Disability

People from a NESB with disability experience multiple layers of discrimination – discrimination on the basis of disability and ethnicity. This is no different for children who are from a NESB with disability.

People from a NESB with disability are one of the most disadvantaged and marginalised groups in society. The issues and needs of people from NESB with disability and their families and carers have not been understood or addressed by governments, the community sector and the general population. In NSW alone, three out of four people from a NESB with disability miss out on receiving non- government disability services.

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 2**).

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.

DIMIA's letter to NEDA states that:

all necessary steps are taken to ensure that the needs of these children are met.

At this point in time, NEDA is not convinced that this is happening and we have not seen any evidence to suggest that detention centres have the capacity and expertise to service the needs of children from a NESB with disability.

The assessment process used to determine the type and level of disability of a child living in detention highlights this point. The assessment process (a crucial part of determining the support needs of a child) involves a centre nurse and *may* include a counselor or psychologist – it is unclear whether or not the staff has received additional training in disability and ethnicity. The assessment process fails to include any specialist disability clinical staff such as occupational therapists, physiotherapists, speech pathologists etc.

HUMAN RIGHTS

Convention on the Rights of the Child

All children who enter Australia need to be treated in accordance with the International *Convention on the Rights of the Child (1989)*, to which Australia is signatory.

The current practice of detaining children with disability is in complete contradiction to this Convention.

Article 23 (1)

Article 23 (1) of the above Convention clearly states that

Parties recognise that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

Detaining any child with a disability works directly against any notion of promoting self-reliance and active participation.

Australian governments, both at a state and Commonwealth level, now recognise on a domestic level that incarcerating children with disability is a harmful practice and there is a move away from large institutional settings to more community based accommodation options. This should be no different for children who are citizens, residents, off-shore refugees or on-shore asylum seekers.

Article 22 (1)

Further more, Article 22 (1) states that

Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

Australia's current practice of detaining children with disability seeking on-shore asylum is in direct contradiction to the very essence of receiving appropriate protection and humanitarian assistance.

ENTERING AUSTRALIA

Current Refugee Policy – Excluding Disability

The Australian off-shore refugee program currently excludes people with disability entering this country due to the requirements of the health assessment that is undertaken. As a result, families that have a child with a disability are unable to enter Australia through the conventional resettlement program and there is also no 'queue' that these families can join.

The only option left available to families with a child with disability is to try and enter Australia as on-shore asylum seekers where they are then detained. It also means that the vast majority of families arriving as on-shore asylum seekers who have children with disability will only ever be eligible for a temporary protection visa which does not allow them to access Commonwealth benefits (i.e. Disability Support Pension, Carers Pension etc) and state-funded services (i.e. advocacy etc).

Commonwealth *Disability Discrimination Act*

Legislative action in a number of countries aimed at safeguarding the rights and dignity of people with disability was given impetus by the:

- growth in disability activism towards the end of the century
- increase of global awareness of human rights
- pressure from international human rights organisations,
- introduction of the International Year of Disabled Persons (IYDP)
- adoption of the United Nations General Assembly of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities in 1994 – a strong moral and political commitment of Governments to take action to attain equalization of opportunities for persons with disabilities.

A United Nations survey of 88 national governments in the 1990's revealed that 80 per cent of states had reformulated their thinking on disability issues and have introduced anti-discriminatory legislation (Priestley 2001).

Australia was one such country that responded to the challenge of promoting and protecting the rights of people with disability through the development of a Commonwealth *Disability Discrimination Act* (DDA) 1992.

Whilst the DDA covers all Commonwealth, State and Territory agencies, it does not

- affect discriminatory provisions in the *Migration Act 1968* or any regulation made under that Act
- render unlawful anything done by a person in relation to the administration of that Act or those regulations.

This effectively means that DIMIA funded and administered agencies, such as the Australasian Correctional Management Pty Ltd (ACM), and activities undertaken relating to the administration of the *Migration Act* are exempt from the DDA.

The exemption of the *Migration Act* from the DDA epitomises the two-tiered value system afforded to people with disability living in Australia on the one hand, and potential migrants with disability on the other. This process also flies in the face of the Federal Government's publicly stated commitment about valuing people with disability.

This exemption actually allows the Australian government to legally discriminate against people with disability in the context of migration and NEDA believes this is extremely problematic in terms of trying to ensure that the needs of children with disability living in detention are met.

NEDA calls on the Federal government to remove the exemption of the *Migration Act* from the DDA and to put a stop to the current inequitable and discriminatory system.

ALTERNATIVES TO DETENTION

MDAA's submission to this inquiry outlines a range of options as an alternative to detention. NEDA endorses the recommendations put forward from MDAA and does not see merit in covering the same ground. NEDA would like to refer HREOC to the MDAA submission where considerable work was done by a range of organisations and individuals to develop viable, less expensive and more humane alternatives to the current detention regime.

Like MDAA, NEDA also supports proposals, such as those put forward by the Refugee Council of Australia, which include a short period of closed detention and then open detention and / or community release.

SUPPORT NEEDS & DETENTION

It has already been established that there are a number of children with disability living in detention in this country. These children have general and specific support needs that must be met in order to maintain their well-being and ensure that they are able to participate meaningfully in all areas of life.

Support Needs (General)

Children with disability have additional support needs, depending on their disability and the level of impairment caused by their disability. Children with disability also experiencing some sort of torture or trauma in their country of origin coupled with the strains caused by the migration process can also develop additional disability (i.e. psychiatric disability).

NEDA is not convinced, despite assurances by DIMIA (**see Appendix 2**), that Australian detention centres are capable of adequately meeting the needs of these children. The assessment process of the disability alone (outside any cultural needs) is completely inadequate and additional issues raised below highlight the unmet need of children with disability living in detention. The lack of expertise and support only serve to compound the existing level of disability and in the long term, mean higher costs due to higher support needs.

What is desperately needed for children with disability living in detention is individually tailored and support as opposed to stop-gap crisis management which can not produce sustainable outcomes. The best outcome for children with disability will be achieved through addressing their individual needs via specific intervention programs that are incorporated into their daily routine which include the education of their care-givers.

Support Needs (Specific)

Children with disability have the same needs as all children but their disability means that they have additional needs such as:

- **Accessible facilities** – in its letter to NEDA, DIMIA stated that most detention centres contain non-medical facilities and services such as sports programs and activities, education, play equipment for children etc. Whatever facilities and services that are made available to detained children, children with disability are most unlikely to access many of them as they have not been made accessible. Therefore, children with disability living in detention do not have the same opportunities as children without disability to interact and participate meaningfully – an important part of their social and physical development.
- **Aids and Equipment** – without suitably modified aids and equipment (i.e. mobility aids), children with physical disability will be prevented from developing independent living skills and in the long-term, will require greater levels of support. Modified equipment is an essential component of developing the skills and independence of children with disability. Without this equipment, additional resources, support and assistance will be required in the future as these children will miss out on early learning experiences and may remain dependent on adult care-givers to undertake basic tasks (i.e. toileting, feeding etc). Appropriately equipping children not only enhances functioning but also reduces the risk of future physical complications.

- **Detention Centre Staff** – according to DIMIA, a range of medical personal are employed at the some detention centres. NEDA has seen no evidence to suggest that these staff receive accredited and up-to-date specialised disability and cultural diversity training which is essential to ensure that staff are equipped to meet the needs of children with disability living in detention. NEDA urges the Commonwealth to involve people with expertise in these areas in the management of children with disability.
- **Early intervention** – there is ample evidence available documenting the benefits of early intervention and evidence has shown that early intervention can reduce the chance of and, in some cases, prevent developmental problems. Early intervention can also result in more children having a chance to experience a ‘meaningful’ life, can reduce costs and improve the quality of parent, child, and family relationships. The Commonwealth government itself recognizes the importance and benefits of this service (please visit www.facs.gov.au).
- **Education** – NEDA is extremely concerned about the level of education that children with disability are receiving. NEDA has received numerous e-mails stating that on average, a child is receiving only 2 hours of education per day. This is completely inadequate in terms of meeting the learning needs of children with disability. Children with disability, particularly those with cognitive disability, require a program for that is designed to meet their specific needs to ensure that they are equipped with basic life skills and enough independence during their transition into the community. Without this, children with disability will require additional support and assistance which means additional costs.

POST DETENTION

NESB Families / Carers

The prejudicial attitudes and misconceptions regarding disability present in Anglo- Australian communities 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 appears similar across NESB and Anglo-Australian communities.

By and large, NESB communities have missed out on education campaigns about disability because those conducting the campaigns have failed to target and reach NESB communities. At the same time, there have been consultations with people from NESB with disability, but unfortunately the consultations have not resulted in the development of concrete strategies.

Isolation

People from NESB with disability and their carers are often stigmatised and isolated because of attitudes and misconceptions prevalent in their own communities and in the Anglo-Australian community. Many migrant families with a member with a disability tend to socialise less, and have fewer contacts with other people, often only with people who accept disability.

Beneath this isolation lies a migration process which 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, often based on negative experiences with governments in their country of birth and particularly if they have been detained for a period of time in this country.

The lack of support networks has a particularly adverse impact on women carers, especially those in communities where there is an enormous stigma attached to disability.

Crisis Point

Excessive responsibilities are carried by families and carers from NESB with multiple layers of disadvantage – disability, poverty, disruption to the family as a result of migration, diminished support networks and lack of sufficient and appropriate services.

In general, NESB families carers only seek help when they are at crisis point and not before. As there are often no services involved in the carers lives, the earlier warning signs of 'burn out' remain undetected and many GPs are not well informed about programs and support available for carers. Thus doctors cannot act as a go-between for services and carers.

NEDA is aware of several instances where the lack of support and services has led to carers suffering extreme burn out and being admitted to hospital, whilst the person they care for, ended up in residential care or in a nursing home.

Carers from NESB usually end up incurring a disability themselves – commonly physical and mental health problems – as a result of the pressures involved with caring for a person with disability whilst juggling a range of other responsibilities.

Educating NESB Families and Carers

NEDA recommends that families and carers of children with disability living in detention receive education and training about disability and the disability service system to ensure that they are equipped with an adequate level of knowledge about disability when they leave the detention centre and have to care for their children alone. Without this, families are left to negotiate the maze of bureaucracy and services alone, without the aid of interpreters.

TPV's

The majority of the people who apply for refugee status when placed in detention centres are currently granted refugee status and given Temporary Protection Visas (TPV). TPV's exclude people from accessing a range of services and entitlements available to those granted Permanent Protection Visas.

No Entitlements

TPV holders are not entitled to access the full range of social security benefits such as the Disability Support Pension and the Carer's Pension and the 'Special Benefit' amount granted to TPV holders is actually less than the Newstart Allowance. TPV holders are also not eligible for employment assistance or English language programs.

For children with disability, this means that they cannot access specialist training and employment programs. Without these skills, children with a disability who are TPV holders are almost certain of facing a future of unemployment. This situation highlights the ineffectiveness of the TPV as it ensures the cost of unemployment and under utilization of skills will be transferred to the broader community. It makes no sense to deprive TPV holders, many of whom will receive refugee status, access to basic training and services.

As TPV holders have no right to family reunion, this combined with the ineligibility for a range of services, means that any care which might need to be undertaken for the child with the disability is largely being provided by one person (usually the mother).

TPV holders are also unable to access case management offered to other refugees by settlement services is that other services, often small, under-funded ethno-specific community based services, have to spend huge amounts of time trying to procure specialist and affordable services to assist children with a disability.

Lack of Clarity

Overall there is a lack of clarity about what TPV holders are and are not eligible for in each of the states and territories. NEDA was unable to find any information from DIMIA documenting the service entitlements for TPV holders in each state and territory.

If children with disability are unable to access basic and essential disability services and support there is not only a high cost to them in terms of their opportunities and options but also a greater cost to the broader community – in most cases this will be absorbed by the States and Territories, not the Commonwealth.

RECOMMENDATIONS

Primary Recommendations

1. That all children with disability and their families be removed from Detention facilities immediately and placed in more appropriate community-based accommodation.
2. That the Federal government to remove the exemption of the *Migration Act* from the *Disability Discrimination Act*.
3. That the recommendations for alternatives to detention put forward by the Multicultural Disability Advocacy Association of NSW and the Refugee Council of Australia be adopted.

Secondary Recommendations

The recommendations below are not valued less by NEDA than those above. Our primary position is that all children with disability and their families be removed from detention centres. However, should the practice of detaining on-shore asylum seekers continue, NEDA then makes the following recommendations in an attempt to ensure that children with disability arriving in this country have their needs met.

4. That children with disability living in detention receive specialised child psychiatric counselling in their own language, via cross-cultural counselors and psychiatrists.
5. That all facilities and programs within detention centres be made accessible to all children with disability.
6. That appropriate aids and equipment be given to children with disability living in detention.
7. That all detention centre staff undergo accredited and up-to-date specialised disability and cultural diversity training.
8. That the assessment process of children with disability be completely revised and that early intervention be made available to all children with disability.
9. That all children living in detention receive basic and essential levels of education and that children with disability, particularly those with cognitive disability, require a program for that is designed to meet their specific needs.
10. That families and carers of children with disability living in detention receive education and training about disability and the disability service system before being released into the community.
11. That the Federal government reconsider and revise the entire system of Temporary Protection Visa's particularly the lack of entitlements and the inability to reunite with family.
12. That the Federal government produce information clearly documenting the service entitlements for TPV holders in each state and territory.

APPENDIX 1: DIMIA LETTER

APPENDIX 2: UNMET NEED

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 the number of people from NESB with disability living in Australia and the rate at which we miss out on receiving services in Australia.

LOTE

LOTE stands for *Language Other Than English* spoken in the home.

A Partial Definition

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 and 3rd generation NESB.

How Many?

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.

Access to Services

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

NESB stands for *Non-English Speaking Background*.

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.

How Many?

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.

Access to Services

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].**

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

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.