NEDA

NATIONAL ETHNIC DISABILITY ALLIANCE

Submission

Department of Home Affairs

Submission in response to the Multicultural Framework Review

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1 About National Ethnic Disability Alliance (NEDA)

1.1 National Ethnic Disability Alliance (NEDA) is a national Disabled People's Organisation (DPOs) governed by and constituted of Culturally and Linguistically Diverse (CaLD) people with disability.[1]

1.2 The key purpose of NEDA is to promote, protect and advance the human rights and freedoms of all people with disability from CaLD, migrant, refugee, and asylum seeker backgrounds.

1.3 NEDA's membership is made up of people with a disability; our state/territory member organisations are either CaLD DPOs, CaLD disability advocacy organisations or community-led disability advocacy organisations with a demonstrated history of working in partnership with CaLD people with disability and their communities.[2]

1.4 NEDA is a founding member of Disabled People's Organisations Australia (DPO Australia), an alliance of four national DPOs. NEDA/DPO Australia receives systemic advocacy funding from the Department of Social Services (DSS) as a Disability Representative Organisation.

1 Information on NEDA's Governance and Board can be found here: http://www.neda.org.au/about-us/council-board

2 Information on NEDA's membership can be found here: https://neda.org.au/membership-organisations/

2 Introduction and general comments

2.1 NEDA welcomes the Australian Government's commitment to reviewing the Multicultural Framework and would like to extend our thanks to the Review Panel for undertaking this necessary work. We are concerned to see that systemic-level disability discrimination in Australia's immigration system has been excluded from the scope of the review, and will elaborate on our concerns within the current submission.

2.2 An estimated one in four Australians with a disability are from CaLD backgrounds.[i] The views and experiences of these CaLD Australians with a disability must be considered in all policy and decision-making, however we often face significant barriers throughout our lives and are left out of decisions that affect us "Nothing About Us Without Us" is the rallying cry of our community, and as such NEDA would like to thank the Review Panel for the opportunity to present a submission.

2.3 NEDA supports the three key principles outlined in the Terms of Reference (ToR) of the Multicultural Framework Review. We welcome the commitment to ensuring all settings are fit for purpose in harnessing the talents of all Australians. NEDA broadly supports the topics considered to be within scope of this Review, and we can see the clear intent to examine and improve cross-government and community collaboration.

2.4 However, NEDA strongly questions the decision to place 'immigration or visa processes, applications, timeframes, outcomes or review' outside of scope. The health requirements set out under the Migration Act 1958 (Cth) and the Migration Regulations 1993 are discriminatory against CaLD people with disability. Any review of the Multicultural Framework would be remiss without a review of the existing discriminatory immigration and visa processes that have already been criticised by the United Nations, and to miss this critical opportunity for reform would be to do a disservice to our multicultural community. Not only does this decision sit in conflict with the key principles of the Review, but it also does not align with the values of multiculturalism and inclusion to which we aspire as a society.

2.5 The current submission will provide recommendations to the Review Panel, the Australian Government and the Department of Home Affairs from the perspective of people with a disability from CaLD backgrounds, their families and carers. In addition, it will also outline key arguments for a broadening of the Review's scope to include immigration legislation and other discrimination which is occurring on a systemic level.

3 Recommendations for the Multicultural Framework Review

3.1 NEDA recommends that the Multicultural Framework Review is holistic, cross-government, and human rights-based at its core. We recommend that the principles of intersectionality be applied throughout the Review so that our shared aspirations for an inclusive and equitable multicultural society are fully realised.

3.2 We implore the Review Panel to reconsider and to include 'immigration or visa processes, applications, timeframes, outcomes or review' and 'immigration compliance or border protection policies or operational settings' within the Review's scope, as these are critical components of ensuring a fair and just multicultural society that cannot be addressed in silos. Multicultural policy must acknowledge and address past and present tensions within Australia's immigration processes and legislation, as well as our ongoing use of immigration detention centres and how this sits in conflict with our national values of inclusion, fairness, dignity and respect.

3.3 NEDA endorses the submission and recommendations made by the Federation of Ethnic Communities Councils of Australia (FECCA) to the Review. We echo the strong call for a National Multicultural Framework that reflects the central role that multicultural organisations have in supporting our diverse society.

3.4 NEDA endorses the relevant work being undertaken through the Australian Human Rights Commission's National Anti-Racism Strategy, and recommends that the Review considers recommendations made by the incipient Disability Royal Commission Final Report, the NDIS Cultural and Linguistic Diversity Strategy, and the principles and priority areas of Australia's Disability Strategy.

3.5 NEDA continues to ask the Australian Government to remove the exemption in the *Disability Discrimination Act 1992* as it applies to the *Migration Act 1958* to ensure that Australia's migration arrangements and treatment of people with disabilities satisfy the equal protection obligations under articles 5 and 18 of the CRPD which Australia has ratified. The Australian Government and Department of Home Affairs must enhance consistency, transparency and administrative fairness for migrants and refugees with disability applying for an Australian visa, and must end mandatory and indefinite detention of asylum seekers as a matter of urgency.

4 Immigration and structural discrimination

4.1 The *Migration Act 1958* is exempt from the *Disability Discrimination Act 1992* (section 52). All applicants for a visa for permanent or temporary migration to Australia must meet Australia's health requirement, but this requirement views disabilities and health conditions purely through the financial cost that a person's 'condition' may place on the Australian community. Migrants are required to undergo health examinations and must go through a lengthy health waiver process if they are found ineligible. A migrant's family members may also have to meet the health requirement, even if they are not migrating to Australia. Although the health requirements have been relaxed since the 1st of July 2019, the underlying discriminatory nature and practice of the migration process continues to impact negatively on people with disability and health conditions applying for Australian visas.[ii]

4.2 Article 18 of the UN Convention on the Rights of Persons with Disabilities (CRPD) states that Australia and other States Parties must recognise the rights of people with disability to '*liberty of movement, to freedom to choose their residence and to a nationality, on equal basis with others'*.[iii] This includes that people with disabilities acquire and change a nationality and are not deprived of their nationality arbitrarily or on the basis of a disability. Australia is not currently meeting its obligations under the CRPD. Article 5 of the CRPD also sets out the rights of equality and non-discrimination of people with a disability, stating that *'States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds*.'[iv] In their Concluding Observations (2019), the UN Committee expressed concern over current practices and strongly recommended that Australia review and amend migration laws and policies to ensure people with disabilities do not face discrimination in any of the procedures relating to migration and asylum, which included removing the exemption in the *Disability Discrimination Act 1992* to certain provisions of the *Migration Act 1958*.[v]

4.3 The process of applying for a visa, undergoing mandatory health checks, and other procedures associated with migration have been reported to impact significantly on the wellbeing of CaLD people with disability. On top of long wait times associated with the visa application process, the precarious nature of their visa (and uncertainty if they have a future in Australia) are known to cause anxiety and distress to applicants.[vi] Structural discrimination is a key driver of violence, abuse and neglect, as illustrated by evidence presented to the *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability*.[vii]

4.4 Migrants bring with them their diverse perspectives, cultural histories, and experiences both during and leading up to their entry into Australia. If the first interaction that CaLD people have with Australia and our systems is one of evaluation and exclusion, it follows that these negative experiences will carry through into their settlement within Australia. We must ensure that Australia's migration arrangements and treatment of people with disabilities satisfy the equal protection and right to choice of nationality and obligations under articles 5 and 18 of the CRPD which Australia has ratified. The human rights of CaLD people, including CaLD people with disabilities, must be realised and protected if we are to continue to enjoy the social and economic benefits of a multicultural society.

5 Conclusion

5.1 NEDA would again like to thank the Review Panel and the Department for the opportunity to make a submission, and we hope that the Panel will consider our recommendations to the Multicultural Framework Review. We welcome and look forward to ongoing collaboration with CaLD people with disability throughout the course of the Review.

[i] NEDA, PWDA, FECCA. (2021). The Experiences and Perspectives of People with Disability from Culturally and Linguistically Diverse Backgrounds: NEDA, PWDA and FECCA's joint submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. https://pwd.org.au/wp-content/uploads/2021/12/DRC-CALDReport211102-NEDA-PWDA-FECCA-Low-Res-1.pdf

[ii] NEDA. (2022). Factsheet: An overview of Australia's migration health requirements and how they impact on people with disability and/or health conditions. https://neda.org.au/wp-content/uploads/2023/06/migration-disability-factsheet-english.pdf

[iii] United Nations Convention on the Rights of Persons With Disabilities. (2006). Article 18 – Liberty of movement and nationality. https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-18-liberty-of-movement-and-nationality.html

[iv] United Nations Convention on the Rights of Persons With Disabilities. (2006). Article 5 – Equality and non-discrimination. https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-5-equality-and-non-discrimination.html#:~:text=States%20Parties%20shall%20prohibit%20all,against%20discrimination%20on%20all%20grounds.

[v] UN Committee. (2019). Concluding Observations: UN Report on Australia's Review of the Convention on the Rights of Persons with Disability (CRPD). https://www.afdo.org.au/wp-content/uploads/2019/09/UN-Outcomes-Report-on-Australia.pdf

[vi] People With Disability Australia (2021). The Experiences and Perspectives of People with Disability From Culturally and Linguistically Diverse Backgrounds. https://pwd.org.au/the-experiences-and-perspectives-of-people-with-disability-from-culturally-and-linguistically-diverse-backgrounds-joint-submission-to-the-disability-royal-commission-by-pwda-neda-and-fecca/

[vii] Disability Royal Commission. (2022). Public hearing 29: The experience of violence against, abuse, neglect and exploitation of people with disability from culturally and linguistically diverse communities. https://disability.royalcommission.gov.au/public-hearings/public-hearing-29-experience-violence-against-abuse-neglect-and-exploitation-people-disability-culturally-and-linguistically-diverse-communities