NEDA

NATIONAL ETHNIC DISABILITY ALLIANCE

Submission

Australian Human Rights Commission

Submission in response to the Current and emerging threats to trans and gender diverse human rights

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This submission is endorsed by Disability Advocacy Network Australia. DANA is the national representative body for a network of independent disability advocacy organisations throughout Australia.

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1 Statement of intersectional expertise

The National Ethnic Disability Alliance (NEDA) is committed to advocating for the diverse intersectional needs of our members, including LGBTIQA+ people with disability from Culturally and Linguistically Diverse (CaLD), migrant, refugee, and asylum-seeking backgrounds. This includes advocating for the protection and advancement of the rights of trans and gender diverse people who experience unique threats to dignity, safety, equality, and liberty.

Since 2020, NEDA work closely with LGBTIQ+ Health Australia (LHA) on the joint initiative *Our Voices Our Lives Our Way* to build the individual and collective capacity of LGBTIQ+ people with disability through self-advocacy and storytelling. In partnership with LHA, NEDA developed the *LGBTIQA+ Disability Resource Hub* which houses an extensive collection of materials of mutual interest and benefit to diverse LGBTIQA+ people with disability.

The project was co-developed with a community of practice, advisory committee and co-design group which prioritised the voices of culturally and linguistically diverse and First Nations trans and gender diverse people with different experiences of disability.

NEDA thanks the Australian Human Rights Commission (AHRC) for the opportunity to advocate federally for the rights of trans and gender diverse people with disability from culturally and linguistically diverse, migrant, refugee, and asylum-seeking backgrounds.

2 About National Ethnic Disability Alliance (NEDA)

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

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]

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 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/

3 Introduction

Trans and gender diverse people face numerous threats to human rights globally and within Australia. NEDA wishes to submit key issues affecting the rights of trans and gender diverse people with disability from CaLD, migrant, refugee, and asylum-seeking backgrounds.

Many of the issues faced by trans and gender diverse people compound at intersections of marginalisation, worsening gaps in social and health outcomes for people experiencing multiple forms of discrimination.

When referring to trans and gender diverse people with disability from CaLD, migrant, refugee and asylum-seeking backgrounds, NEDA acknowledges that this is not one homogenous group. There are countless communities within this demographic umbrella, each requiring tailored and appropriate individual and community supports.

NEDA supports the research and advocacy of Forcibly Displaced Peoples' Network. The 2023 *'Inhabiting Two Worlds At Once'* report showed 24.3% of respondents noted they had a disability, which is almost double the nationwide Australian average[3]. This figure underscores the importance of disability rights advocacy as it intersects with efforts to safeguard and promote the rights of trans and gender diverse people from CaLD, migrant, refugee, and asylum-seeking backgrounds.

The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) recognises the diversity of all people with disability and emphasises the need to incorporate a gender perspective in efforts to promote the full enjoyment of human rights[4]. The UNCRPD highlights the difficult conditions faced by people with disability who are subject to multiple forms of discrimination, recognising that discrimination against *any* person on the basis of disability is a violation of the inherent dignity and worth of the human person[5].

3 Forcibly Displaced Peoples Network. 2023. Inhabiting Two Worlds At Once: LGBTIQA+ Experiences of Settlement. https://fdpn.org.au/survey-lgbtiqa-displacement/ [accessed 9 April 2024]
4 United Nations, 12 December 2006, Convention on the Rights of Persons with Disabilities, https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities [accessed 9 April 2024]
5 ibid

NEDA is particularly concerned with the severe threat discriminatory immigration policies pose to trans and gender diverse people with disability seeking asylum due to a well-founded fear of persecution.

Meaningful and whole-of-government engagement is required to understand the systemic factors contributing to cross-sectoral service gaps for these groups. This includes, but is not limited to, the significant barriers and poor experiences of treatment and care in healthcare, housing, legal and disability services.

Further research is required to better understand the specific needs of trans and gender diverse people with disability from CaLD, migrant, refugee, and asylum-seeking backgrounds. Policy and service mapping should intersectionally address systemic gaps when ensuring safety.

Safety is here defined as the individual's own feeling of security and equitable protection from threat.

4 Key issues

NEDA identifies the following key issues as current and emerging threats to trans and gender diverse people with disability from CaLD, migrant, refugee, and asylum-seeking backgrounds:

- Discrimination and stigma
- Barriers to support, including healthcare, the NDIS (National Disability Insurance Scheme), housing and legal services
- Migration and detention
- Violence and abuse

This list is not exhaustive. NEDA highly recommend that governments, human rights agencies, and regulating authorities take all steps available to research the areas of intersectional needs and ensure the rights of these communities are met.

NEDA recommends that any work concerning trans and gender diverse people with disability from CaLD, migrant and refugee and asylum-seeking backgrounds is carried out in consultation with the relevant Disability Representative Organisations (DROs), individuals and communities.

5 Discrimination and stigma

Trans and gender diverse CaLD people with disability, including those from migrant and refugee backgrounds, face unique intersectional experiences of discrimination and stigma.

NEDA submits to the AHRC that:

- Trans and gender diverse people, people with disability, and people from CaLD backgrounds likely all independently face higher rates of discrimination and stigma than the rest of the population.
- The incidence and severity of discrimination and stigma is likely higher for trans and gender diverse CaLD people with disability, intensifying at intersections of marginalisation.
- Discrimination and stigma are known social determinants of mental health concerns among trans and gender diverse CaLD people with disability.
- The impacts of discrimination and stigma cannot be addressed at one intersection of identity without consideration of the whole person and their environments.
- To ensure lasting change, we must tackle the underlying drivers of discrimination and the ways these are facilitated by formal systems and structures.

6 Barriers to support

Barriers to supports and services for CaLD people with disability significantly impact health and participation in community[6,7.] For trans and gender diverse CaLD people with disability, the same barriers are felt with greater impact. Additional and unique intersectional barriers further impede access to necessary and appropriate supports. Considered efforts to understand systemic gaps and community needs is required to rectify unacceptable experiences of service access, availability, treatment, and care among trans and gender diverse CaLD people with disability.

People with disability from CaLD backgrounds face service and support access barriers. Drivers identified by the Disability Royal Commission (DRC) include lacking awareness, trust of government services, access to information and culturally safe and appropriate services and supports.[8]

Additionally, privacy concerns and negative attitudes toward disability and cultural and linguistic diversity drive access barriers. Services do not feel safe, and delivery often does not take the needs of CaLD people with disability into consideration. Furthermore, lack of representation in the workforce aggravates the limited availability of safe and appropriate supports.[9]

The DRC heard multi-sectoral challenges, across:

- Social support
- Health
- Education

6 National Ethnic Disability Alliance, People with Disability Australia, Federation of Ethnic Communities' Council of Australia. October 2021. *The experiences and perspectives of people with disability from culturally and linguistically diverse backgrounds: joint submission to the royal commission into violence, abuse, neglect and exploitation of people with disability.*

7 Commonwealth of Australia, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. November 2021. *Overview of responses to the experiences of culturally and linguistically diverse people with disability Issues paper.*

8 ibid

9 ibid

- Justice
- Employment
- Migration
- and the NDIS. [10]

DRC research into LGBTQA+ disability experiences report similar areas of disadvantage, discrimination and barriers to service access and supports among trans and gender diverse people[11]. Though the experiences between these groups are different, triple-discrimination at the intersection of trans and gender diversity, disability, and cultural and linguistic diversity likely compounds threats to social and health rights.

Forcibly Displaced Peoples Network (FDPN) examine access and experiences of support services among LGBTIQA+ forcibly displaced people. The report highlights the specific barriers respondents who identified as having a disability and were on temporary visas faced as this made them ineligible for NDIS support.[12] NEDA agrees with FDPN's conclusion that this is a significant concern.

Cross-sectoral service mapping with an intersectional focus is required to support people from diverse backgrounds to safely navigate complex systems comprised of both mainstream and targeted services.

10 ibid

11 Hill, A. O., Amos, N., Bourne, A., Parsons, M, Bigby, C., Carman, M., & Lyons, A. (2022). *Violence, abuse, neglect, and exploitation of LGBTQA+ people with disability: a secondary analysis of data from two national surveys*. Melbourne, Australia: Australian Research Centre in Sex, Health and Society, La Trobe University.

12 Forcibly Displaced Peoples Network. 2023. *Inhabiting two worlds at once: report into LGBTIQA+ settlement outcomes.* https://fdpn.org.au/survey-lgbtiqa-displacement/. [accessed 9 April 2024]

7 Migration and detention

Trans and gender diverse people with disability face several threats to human rights through experiences of migration and detention. NEDA supports the work of FDPN[13] in advocating for the rights of forcibly displaced trans and gender diverse people and building the capacity of settlement services and related supports for this cohort.

Many trans and gender diverse people seek asylum due to a well-founded fear of persecution in their home countries related to being a member of a particular social group. Australia is party to the 1951 Refugee Convention, which imposes an obligation on member states to offer protection in these circumstances.[14] For those with disability, this safeguarding of liberty of movement and nationality is undermined by discriminatory immigration laws, particularly exemptions within the *Migration Act 1958* from the *Disability Discrimination Act (DDA) 1992.*[15]

This systemic loophole in the protection of fundamental rights poses a severe threat to the rights of trans and gender diverse people with disability from CaLD backgrounds. DROs have long advocated for legislative reform to the *Migration Act 1958* to ensure the protection of migrants and refugees with disability.[16] NEDA submits that mapping threats, service gaps and supports needed to safeguard the rights of trans and gender-diverse people with disability will substantially benefit from collaboration with relevant disability representative organisations, individuals, and communities.

NEDA wishes to highlight several additional issues currently facing trans and gender diverse people with disability in migration and detention.

13 ibid
14 UN High Commissioner for Refugees (2012). Guidelines on the International Protection No. 9: Claims to refugee status based on sexual orientation and/or gender identity within the context of Articles 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees. *https://www.unhcr.org/au/media/unhcr-guidelines-international-protection-no-9-claims-refugee-status-based-sexual-orientation* [accessed 11 April 2024]
15 Disability Rights Now. (2019). Australian Civil Society Shadow Report to the United Nations Committee on the Rights of Persons with Disabilities: UN CRPD Review 2019. https://dpoa.org.au/wp-content/uploads/2019/08/CRPD-Shadow-Report-2019-English-PDF.pdf. [accessed 10 April 2024]
16 ibid

Experiences of discrimination during immigration processes related to:

- Lack of education, competency, training, and awareness among immigration officials, staff, and protocol in relation to gender diversity.
- Insufficient competency, training, awareness and accessibility in immigration policy and procedures in relation to disability.
- Denial of requests for correct gender to be listed on documents for trans and gender diverse people with disability, including visas.
- Discrimination, lack of safeguarding and regulation, and chronic misgendering in trans and gender diverse experiences of migration and detention contributing to poor mental health outcomes and significant trauma.

Lack of safety for trans and gender diverse people with disability in detention centres:

- Intersectional identity-based stigma, discrimination, and violence at intersections of gender diversity and disability.
- Repeated misgendering contributing to emotional trauma.
- Inaccessible and unsafe environments for people with disability leading to psychological, social, and physical injury.
- Poor access to healthcare leading to psychological, social, and physical injury.

Inadequate or inappropriate settlement options:

- Trans and gender diverse people with disability from CaLD backgrounds are often treated as homogenous groups by settlement services. This can lead to being placed in housing with the same ethnic or cultural group, despite experiencing discrimination and stigma based on gender identity and expression.[17]
- Experiences of people with disability in settlement are under-researched and under-supported as precise needs remain insufficiently identified.

17 Forcibly Displaced Peoples Network. 2023. *Inhabiting two worlds at once: report into LGBTIQA+ settlement outcomes.* https://fdpn.org.au/survey-lgbtiqa-displacement/ [accessed 9 April 2024]

NEDA submits further research and service mapping is required to understand current and emerging threats to trans and gender diverse people with disability experiencing migration and detention. This must be conducted through extensive and meaningful engagement with trans and gender -diverse refugees with disability.

8 Violence and abuse

Trans and gender diverse people with disability from CaLD, migrant, refugee and asylum-seeking backgrounds experience violence and abuse at alarming rates. The disproportionate prevalence of this violence indicates that reasonable standards of protection are not being met.

The Disability Royal Commission Research Report into violence, abuse, neglect and exploitation of LGBTQA+ people with disability identified LGBTQA+ young people with disability from multicultural backgrounds experienced harassment and assault at higher rates than their Anglo-Celtic counterparts.[18]

The report highlights adults with a disability from multicultural backgrounds reported higher rates of social exclusion, verbal abuse, sexual assault and harassment based on their gender identity.[19] This is a significant finding, indicating the likelihood that gender diverse people with disability from CaLD backgrounds are not adequately protected by governments from violence, discrimination and harassment related to intersections of disability, ethnicity, culture, and gender diversity.

NEDA submits that identity-based violence prevention cannot compartmentalise interventions into discrete units of victim identity. Addressing systemic gaps in protection requires whole-of-government, multi-sectoral commitment to primordial prevention that is foundationally intersectional.

18 Hill, A. O., Amos, N., Bourne, A., Parsons, M, Bigby, C., Carman, M., & Lyons, A. (2022). *Violence, abuse, neglect and exploitation of LGBTQA+ people with disability: a secondary analysis of data from two national surveys*. Melbourne, Australia: Australian Research Centre in Sex, Health and Society, La Trobe University.
19 ibid

9 Conclusion

NEDA thanks the AHRC for the opportunity to make a submission, and we hope that relevant authorities consider the issues raised. We welcome and look forward to ongoing collaboration to intersectionally map and address current and emerging threats to trans and gender diverse people with disability from CaLD, migrant, refugee, and asylum-seeking backgrounds.

References

Commonwealth of Australia, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. November 2021. *Overview of responses to the experiences of culturally and linguistically diverse people with disability Issues paper.*

Disability Rights Now. (2019). Australian Civil Society Shadow Report to the United Nations Committee on the Rights of Persons with Disabilities: UN CRPD Review 2019. https://dpoa.org.au/wp-content/uploads/2019/08/CRPD-Shadow-Report-2019-English-PDF.pdf. [accessed 10 April 2024]

Forcibly Displaced Peoples Network. 2023. Inhabiting Two Worlds At Once: LGBTIQA+ Experiences of Settlement. https://fdpn.org.au/survey-lgbtiqa-displacement/ [accessed 9 April 2024]

Hill, A. O., Amos, N., Bourne, A., Parsons, M, Bigby, C., Carman, M., & Lyons, A. (2022). *Violence, abuse, neglect, and exploitation of LGBTQA+ people with disability: a secondary analysis of data from two national surveys*. Melbourne, Australia: Australian Research Centre in Sex, Health and Society, La Trobe University.

National Ethnic Disability Alliance, People with Disability Australia, Federation of Ethnic Communities' Council of Australia. October 2021. *The experiences and perspectives of people with disability from culturally and linguistically diverse backgrounds: joint submission to the royal commission into violence, abuse, neglect and exploitation of people with disability.*

UN High Commissioner for Refugees (2012). Guidelines on the International Protection No. 9: Claims to refugee status based on sexual orientation and/or gender identity within the context of Articles 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees. *https://www.unhcr.org/au/media/unhcr-guidelines-international-protection-no-9-claims-refugee-status-based-sexual-orientation* [accessed 11 April 2024]

United Nations, 12 December 2006, Convention on the Rights of Persons with Disabilities, https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities [accessed 9 April 2024]