



Submission to the Royal Commission into violence,
abuse, neglect and exploitation of people with disability

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Contents

About AMPARO	2
Introduction	3
Recommendations	3
Issue 1 Systemic neglect, abuse and discrimination	4
Defining systemic neglect, abuse and discrimination	4
The size and nature of the issue	4
Legal and policy frameworks	5
The NDIS	7
Inconsistent policy settings	7
The first step-accessing free assessment and diagnosis	8
The next step-accessing ongoing disability supports	10
An example of a critical area of need - psychosocial disability	11
Issue 2 Denial of meaningful “choice and control” for CALD community members	12
Provision of information about NDIS in culturally appropriate formats	12
Understanding the right to advocacy	13
Inadequate access to interpreters	13
Unmet targets for CALD communities	14
Culturally inadequate planning processes	14
Younger people with disabilities in nursing homes	15
Conclusion	16
References	17

About AMPARO

AMPARO Advocacy is a small non-profit community based organisation which provides independent, individual and systemic advocacy with and on behalf of vulnerable people from culturally and linguistically diverse backgrounds (CALD) with disability. We welcome this opportunity to provide a submission to the *Royal Commission into violence, abuse, neglect and exploitation of people with disability*.

AMPARO is governed by a voluntary management committee the majority of whom are themselves people from a CALD background with disability and is funded by the Queensland State Government Department of Communities, Disability Services and Seniors, and at the Commonwealth level through the National Disability Advocacy Program of the Department of Social Services and, most recently for a small project by the National Disability Insurance Scheme (NDIS) Commission.

AMPARO Advocacy's vision is for people from a CALD background with disability are accepted and respected as part of the diversity of Australian society, with access to information, services and benefits, so that they can be included, participate and contribute in family and community life.

AMPARO's advocacy addresses issues of social and economic isolation, unfair treatment and discrimination. We represent those who are least able to defend their own interests, and who may not have close family or friends who can support their aspirations or speak on their behalf. The majority of individuals that AMPARO works with are from a refugee background experiencing multiple and complex layers of disadvantage and have generally missed out on accessing specialist disability services, including early intervention for their children. They are often marginalized, and isolated from their own communities and have fallen through the gaps.

Introduction

Following changes to the Australian Government's visa health requirement in 2012, refugee settlement providers noticed an increase in the prevalence and severity of disability amongst refugees. Since 2012 the proportion of refugees coming through the humanitarian settlement services requiring complex case support increased threefold over 5 years (Duell-Piening, 2018). Many of these settlement services were not familiar working with people with disability, and disability services were not familiar with working with refugees.

These development threw further light on the lack of culturally appropriate instruments for assessment of impairment and functioning; issues in providing medical and allied health specialist with any previous diagnosis or relevant history of disability for newly arrived refugees and asylum seekers; difficulties in accessing medical aids and equipment; general lack of cross-cultural competencies and limited skills in working with interpreters across the health and social services sectors; and difficulties in accessing appropriate housing (Refugee Council of Australia, 2016).

With the introduction of the National Disability Insurance Scheme from 2013, the NDIS and the State and Territory jurisdictions began planning for the transfer of resources for disability services across from the States and Territories to the NDIS so that by 2019 most disability supports in Queensland could only be accessed by eligible individuals through the NDIS. Persons with disability who are refugees or asylum seekers on temporary protection visas are not eligible to access the NDIS.

The context within which this is occurring is one in which globally the displacement of people has become endemic, countries are attempting to manage the presentation of non-citizens at their borders, the effect can be brutal (James, 2014) and their living conditions are precarious (Hodge, 2015). This is particularly so for asylum seekers and refugees with disability.

An asylum seeker is a stateless person seeking asylum but not yet accepted by a nation state as a legitimate refugee fleeing persecution. The refugee is a displaced person who is outside their original state of citizenry who is recognised as having been forced to flee. The stages of progression from asylum seeker to refugee are complex and, at different stages in the process, the visa system will bestow different levels of access to liberties and resources.

In this submission AMPARO Advocacy puts forward the case that:

- refugees and asylum seekers with disabilities on temporary protection visas in Queensland are experiencing systemic neglect, abuse and discrimination as they cannot access disability supports through NDIS nor through the programs of the Queensland Government (Issue 1)
- migrants and refugees from culturally and linguistically diverse (CALD) backgrounds who are eligible for the NDIS are being denied meaningful choice and control in accessing disability supports through the NDIA and their partner organisations (Issue 2).

Recommendations

1. That both Australian and State/Territory Governments agree in principle that refugees and asylum seekers with disability currently on temporary visas or with no visas should be given access to specialised disability supports while residing in Australia or its territories.
2. That the Australian Government amend the NDIS Act 2013 to broaden eligibility to include persons on temporary visas.
3. That as an interim, until a national response is developed for provision of specialised disability supports to refugees and asylum seekers through NDIS, State and Territory Governments provide access to all levels and types of specialised disability supports for refugees and asylum seekers currently not eligible under the NDIS due to their residency status.
4. That the NDIS fully review its Cultural and Linguistic Diversity Strategy to improve its effectiveness.

5. That the NDIS extend its National Community Connector Program until participation targets for CALD community participation in NDIS are achieved.
6. That the NDIS review the Memorandum of understanding with TIS National so that NDIS Participants and their family members are able to request a specific interpreter or allow NDIA and providers to access other interpreter services which are able to accommodate requests for preferred interpreters.

Issue 1 Systemic neglect, abuse and discrimination

Defining systemic neglect, abuse and discrimination

Systemic neglect is the failure to provide adequate care, aid or guidance to a person with a disability to the extent that the health, wellbeing and development of the person is significantly impaired or at risk. Systemic abuse is the failure to recognise, provide or attempt to provide adequate or appropriate services, including services that are necessary for the person's daily living, safety and dignity.

Under the United Nations Convention on the Rights of Persons with Disabilities (CRPD) article 8 State Parties are required to combat harmful practices relating to people with disability. Article 28 stipulates the right of people with disability to an adequate standard of living and, in conjunction with article 19, reinforces the right of people with disability to live and participate in the community. Article 16 confers the right to social protection and to be free from exploitation, violence and abuse, more fully addressed by the CRPD Committee's 2016: General Comment No 3 At 31 as the right to be free from economic coercion and abandonment, as well as other forms of mistreatment.

Discrimination on the basis of disability is defined by the CRPD in article 2 as:... *any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field*. For instance, a person from a refugee background with unmet mobility access requirements, who is not able to attend language classes on an equal basis with others who have resettled, is being discriminated against on the basis of disability (Duell-Piening, 2018 p666).

The NDIS legislative framework claims, inter alia, to help fulfil Australia's obligations under the CRPD. Specifically, the National Disability Insurance Act 2013(Cth) s 3(1)(a) explains that the object of the act is to help give effect to Australia's obligations under the CRPD. The ineligibility of people to access disability supports in Australia on the basis that are not permanent residents of a nation appears to be inconsistent with the CRPD which Australia ratified in 2008 and the Optional Protocol to the CRPD which Australia ratified in 2009.

Systemic neglect, abuse and discrimination is occurring in the case of persons with disability who are unable to access specialised disability services and supports through the NDIS or the State Government jurisdiction where they reside, on the basis of their visa status. People with disability seeking asylum who have a Bridging Visa or currently have no visa, people with a Temporary Protection Visa (TPV), and people with a Safe Haven Enterprise Visa (SHEV) or Special Category Visa (SCV) (sub-class 444) are unable to access specialised disability support.

The size and nature of the issue

There are many thousands of asylum seekers living in the community across Australia. Many are on temporary visas. There are approximately 900 asylum seekers living in Queensland on Bridging Visas (BVE) at this time (Refugee Council of Australia, 2020). Other temporary visas include the Temporary Protection Visa (TPV 785) provided for a 3 year duration, a Safe Haven Enterprise Visa (SHEV 790)

provided for a 5 year duration, and a Special Category Visa (Special Class 444) which can continue for as long as the person from New Zealand remains a New Zealand citizen residing in Australia.

Asylum seekers with disability experience multiple disadvantages. They are without the protections of a state of residence. They live in fear of persecution if returned to their country of origin. Their experience of forced departure from their place of habitual residence, and their inability to access disability supports in the country where they seek refuge, compounds impairments and entrenches the experience of disability, hampering any claim to the rights to which they are entitled under the CRPD. Australian research indicates that insecure visa status is associated with poorer mental health (posttraumatic stress disorder and depression), greater suicidality, greater disability and higher incidences of being separated from all members of their immediate family (Nickerson et al., 2019). Where the human right to health services is limited by citizenship, refugees and asylum seekers are placed at risk of long-term health conditions and impairment (Burns, 2017).

Legal and policy frameworks

Human rights of people with disability

As signatories to the CRPD, nation states are not only obliged to reflect the principles of the Convention but to ensure that, as far as practicable, their own legislation and policy is informed by the Convention. It is a benchmark against which to assess its own laws and policies (O’Sullivan and Ferri, 2020). Based on well-established principles of treaty interpretation, it has been shown that the universal reach of the CRPD reinforces that refugees have all the rights protected by the Convention and that these rights are not limited by national status (Crock et al., 2012). O’Sullivan and Ferri propose that the CRPD principle of accessibility implies that accessibility is unconditional and that there is no argument for excluding asylum seekers from the protection of rights enshrined in the Convention (O’Sullivan and Ferri, 2020 pp283-285).

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Crock and colleagues conclude that there is no reason why, in theory, failure to provide appropriate disability supports to refugees and asylum seekers cannot amount to a violation of human rights; and that the question that parties to the CRPD need to ask is whether provision of reasonable accommodations imposes a disproportionate or undue burden on their resources (Crock et al., 2012). Lack of government resources can be too easily claimed and should be carefully considered in light of a country’s commitment to human rights.

there is no reason why, in theory, failure to provide appropriate disability supports to refugees and asylum seekers, and especially to children, cannot amount to a violation of human rights

International law is not binding until it is transposed into Commonwealth law and until then administrative interpretations and practices determine the rights and entitlements of Australian residents (Rubenstein and Field, 2017). For example, some may argue that the treatment of asylum seekers in Australia is “overreach of executive discretion” (Triggs, 2016 p13), and some may have the view that the legal restrictions on asylum seekers’ access to care and supports is motivated by Government’s desire to deter asylum seekers (Bozorgmehr et al., 2017).

NDIS legislation does not reflect fully the human rights enshrined in the CRPD, ICESCR and the CRC.

The issue of citizenship

Australia's National Disability Strategy 2010-2020 states that "All governments are committed to a national approach to supporting people with disability to maximise their potential and participate as equal **citizens** in Australian society" (Australian Government, 2011). In the National Disability Strategy 2020-2030 Position Paper published by the Department of Social Services there appears a significant shift in the statement "It is... proposed that the word "citizen" in the existing vision (2010-2020) is changed to "members of the community". The new National Disability Strategy for 2020-2030 will steer towards more inclusive and accessible communities for all of its members.

The apparent disjuncture between human rights and citizenship rights is also a complex but key issue. Most Australian legislation does not discriminate between citizen and non-citizen Australian residents, although certain statutory rights are limited to citizens (Rubenstein and Field, 2013 pp81-82). Rubenstein and Field also point out that common law rights and protections carry obligations of body politic to vulnerable individuals. Whilst the interpretation of the *Australian Citizenship Act 2007 (Cth)* together with immigration policies push through with the determination to exclude certain classes of temporary Australian residents from access to services and supports offered to citizens and permanent residents, Australia is likely acting in breach of its commitments to human rights conveyed by the CRPD.

As well as the human rights contained in the CRPD, fundamental human rights are also contained in other international instruments which Australia has ratified, namely the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (CRC), ratified by Australia in December 1975 and December 1990 respectively. The ICESCR protects the rights of all people to access social security (Art 9) and to enjoy the highest standard of physical and mental health (Art 12).

Multicultural policy setting

Released in 2017 by the Department of Social Services was the Australian Government's *Australia's Multicultural Statement* (Australian Government, 2017). Effectively a reiteration of many preceding multicultural policy statements since the 1970s in Australia, it promotes shared values that have driven the creation of a successful multicultural society: respect, equality and freedom. These shared values and the stated abhorrence of discrimination are considered to be the drivers of future Australia. The Multicultural Statement makes it clear that this future is for Australian citizens, for temporary migrants who come to Australia to contribute to our economic development and who may apply to stay or return home, and for humanitarian entrants. The Government states that it is committed to helping humanitarian entrants to build a better life. This appears carefully stated so as not to apply to the unauthorised refugees and asylum seekers. Intuitively, one would assume that a nation built on values of respect, equality and freedom would transpose and uphold those values across all its policy settings. Maintaining a two-tiered disability system with lesser services for refugees and asylum seekers compared to the host community is not cost-effective (Brolan et al., 2012) and it is not consistent with the stated values of multiculturalism. We need to look for the greater potential for equity through the integration of all groups into existing services available to the host population.

Human rights of children

In the Universal Declaration of Human Rights childhood is entitled to special care and assistance. The CRC protects the human rights of children:

- not to be discriminated against on the basis of national origin, disability, birth or other status (Art 2);
- to survival and development (Art 6)
- to live free of injury, abuse, neglect or negligent treatment, or maltreatment (Art 19)
- when seeking refugee status receives appropriate assistance in the enjoyment of human rights set out in this and other human rights instruments (Art 22)

- experiencing mental or physical disability to enjoy conditions which support the child's development and participation (Art 23)
- to enjoy the highest attainable standard of health and rehabilitation (Art 24).

Queensland Human Rights Act 2019

The main objects of the Human Rights Act 2019 are to protect and promote human rights; help build a culture in the Queensland public sector that respects and promotes human rights; and help promote a dialogue about the nature, meaning and scope of human rights. The Act protect 23 human rights including the right to health. The Queensland Human Rights Commission suggests that under the HRAQ the right to health could relate to access to health facilities, goods including essential medications and services, especially for vulnerable or marginalised groups; and to health services for particular groups including people with disability.

Based on the HRAQ, an individual may make a complaint to the Queensland Human Rights Commissioner s 64 if they have been discriminated against for access to health and disability support. A complaint under the HRAQ can be taken to a court or tribunal. While complaints about breaches of the HRAQ cannot be taken directly to the courts or tribunals, it is possible to raise breaches of the HRAQ on the back of a complaint under the Anti-Discrimination Act 1991. In this way the Queensland Civil and Administrative Tribunal (QCAT) would consider both the discrimination complaint and whether or not the public entity gave appropriate consideration to human rights when making decisions and taking action.

In Queensland the Human Rights Act 2019 includes the protection of the right to health for all, a right which similar acts in other jurisdictions do not include.

The NDIS

It was clearly determined by the Australian Government that the NDIS would not provide disability supports for temporary protection visa holders and that the NDIS was to provide for Australian citizens and persons with permanent visas, or a protected special category visa, aged under 65 years. All disability support funding provided in Australia, by full implementation of the NDIS, will flow through the NDIS. State, Territory and Commonwealth Government disability program funds were transferred to the NDIS, with only some exceptions.

As part of the arrangements between NDIS and the States and Territories, there is agreement for "continuity of supports" to persons who were already receiving specialised disability support through State and Territory disability service providers, where a person may not now be considered eligible for NDIS. Some states have continued to provide supports to a cohort of non-permanent residents who were accessing disability supports prior to the NDIS transition and who have been deemed ineligible for the NDIS based on residency. Anecdotally, these cases receiving continued support have been reported to be mainly New Zealanders.

As part of the continuity of support agreements between Commonwealth and States and Territories, it was permissible to provide specialised disability supports to persons not considered eligible for NDIS prior to transition to the NDIS, but unlikely following transition to the NDIS.

Inconsistent policy settings

While the NDIS policy excludes from eligibility those persons without citizenship or permanent residency in Australia, other policies impacting on the lives of refugees and asylum seekers generally do not.

- Holders of TPVs and SHEVs who have had their protection visa approved are eligible to receive Centrelink payments, are Medicare eligible, have work rights and limited study rights.
- Holders of Bridging Visas are waiting for a visa application to be processed and do not have access to Centrelink but generally have access to Medicare and work rights. Access to Medicare and work rights may be interrupted if the visa expires and while waiting for renewal.
- Persons who reside in Australia with no current visa due to a negative outcome from their visa application process do not have access to Centrelink, Medicare or work rights.

Except for those persons without a visa, all temporary visa types listed above enable access to short term emergency housing but not to social housing. None of these visa holders have eligibility for NDIS. This is incongruent when considering that holders of TPVs, SHEVs and SCVs are Centrelink and Medicare eligible and have work rights.

New Zealanders with disability

New Zealanders are able to access a Special Category Visa (SCV) (Subclass 444). It is a temporary visa which permits New Zealanders to visit, study, stay and work as long as they remain a New Zealand citizen. It is granted to New Zealand citizens if the person was in Australia on 26 February 2001, and was a special category visa holder on that day. If a New Zealander was in Australia as an SCV holder for a period of, or periods totalling, 12 months during the two years immediately before 26 February 2001; or commenced or recommenced residing in Australia within three months from 26 February 2001 they may be eligible for a Protected SCV. The Commonwealth JobAccess Program advises that anyone who arrived from New Zealand after 26 February 2001 on a temporary visa is not eligible for funding under the Employment Assistance Fund and that there are no other programs like JobAccess for temporary residents with disability. Holders of SCVs are eligible for Centrelink, Medicare and have work rights. However, only New Zealanders on Protected SCVs may be eligible for NDIS.

The inconsistency of policy positions is further exemplified by the case of New Zealand citizens who are unable to access disability support through NDIS, despite living and working in Australia for many years and paying taxes. Arrangements between Australia and New Zealand have encouraged New Zealanders to come and work in Australia based on a view that this brings benefits to Australia, yet the lack of reciprocal benefits to New Zealanders with a disability is denied by the Australian Government. AMPARO provides advocacy support to New Zealanders from CALD backgrounds who have entered New Zealand on the NZ humanitarian refugee program, gained NZ citizenship and then immigrated to Australia. An additional point worth noting is that persons who have worked in Australia have paid the Medicare levy and half of this Medicare levy goes to NDIS. Despite this, the New Zealander on an SCV having worked in Australia for, say, approximately 18 years and paid the Medicare levy, cannot access the NDIS.

The first step-accessing free assessment and diagnosis

For refugees and asylum-seekers, just getting an assessment and diagnosis of disability can prove very difficult.

For adults:

- The Disability Assessment and Referral Service within the Queensland Government (formerly of the Department of Communities, Disability Services and Seniors) does not provide assessments for persons who are not eligible for the NDIS.
- Psychology clinics staffed by provisional psychologists within Universities such as the one at Griffith University provide cognitive assessments but do not undertake

functional assessments and thus cannot provide disability diagnoses. Additionally there are fees involved.

- The Mater Intellectual Disability and Autism Service (MIDAS) only undertakes assessments of young people and adults from age 16 years for developmental disability and autism.
- A GP may refer a person for a Medicare Health plan for 5 free visits to an allied health clinician who may undertake assessment of disability but this will not generally allow for the preparation of a report required for the NDIS.

For children:

- Queensland Health provides the Child Development Program which is a statewide specialist public health service offering multidisciplinary, diagnostic assessment and intervention for children exhibiting developmental difficulties (Queensland Government, 2020a). Specialist outpatient and inpatient services are provided for children with specific developmental disorders, rare conditions and developmental disorders, comorbid medical conditions and disabilities with complex neuro-developmental difficulties. Referrals to this service are required from a GP, paediatrician or another medical specialist.

For eligibility for the Child Development Program, an asylum seeker who has a temporary entry visa and is an applicant for a protection visa and has either work rights or a spouse, parent or child who is a permanent Australian resident, is eligible to apply for a Medicare card and is therefore an eligible person. Those who are not eligible for Medicare will be considered on a case-by-case basis.

- Queensland Department of Education-early childhood
The Education Department has established the Refugee and Asylum-seeker Early Childhood (RASEC) Pilot for sessional kindergartens (for 4 year olds) (Queensland Government, 2020b). The pilot operates in targeted location with high populations of refugee and asylum seeker families, including Brisbane, Logan and Toowoomba. Fees for participation are covered as part of this program. Families and children with Refugee and Special Humanitarian Program Visas, including temporary protection visas and bridging visas are eligible for this program. The program may provide access to early childhood interventions and has links with community health services to assess development.
- Queensland Department of Education-school aged children
As part of the Education Department's programs from Pre-school to year 12, all children with suspected learning difficulties and disabilities are assessed by guidance officers with input from behaviour support and learning support teams. Through a regional prioritisation process the child may receive additional supports through the Department's allied health specialists and reasonable. Residency status does not affect access to support services in schools. It is important to note that educational supports target the impacts of the disability within the educational context. These supports do not extend to providing disability support for the child in family and community contexts.

The services provided by health and education departments in Queensland described here do not extend to providing ongoing disability supports for children with disability in family and community settings and are they do not provide an alternative to the NDIS.

The next step-accessing ongoing disability supports

For refugees and asylum seekers on temporary protection visas or no visas who are unable to access the NDIS (including the Early Childhood Early Intervention supports), there are a few programs that offer general support, but not specialised disability funding and supports. In other words, there is no alternative option provided by the Commonwealth or by the Queensland Government specifically for specialised funding and ongoing disability support.

In cases where a person cannot access the NDIS, there is no alternative option through the Commonwealth or Queensland Government for funding and ongoing specialised disability support.

The following programs which target temporary protection visa holders attempt to provide some support to alleviate the hardships faced by asylum seekers and refugees. However, they do not provide specialised disability support and are not an alternative to the NDIS.

Status Resolution Support Services SRSS (Department of Home Affairs)

The Status Resolution Support Services Program through the Department of Home Affairs provides support to approved persons who are transitioning into the community from immigration detention, living in the community under Residence Determination, or living in the community on a bridging visa. The SRSS program provides needs-based financial and casework support for people seeking asylum while they are awaiting the outcome of their claim for refugee protection in Australia. It was provided in place of Centrelink and enabled individuals and families to meet their basic healthcare and living needs if they are unable to work, or do not have work rights. Persons accessing the SRSS may apply for a living allowance and rental allowance through the SRSS. However, the amount for this allowance is not made public, although it would unlikely be greater than Centrelink benefits available to other classes of asylum seekers. This allowance is approved through the Department of Home Affairs as an alternative to Services Australia benefits.

Support services provided have a focus on status resolution either through the grant of a substantive visa or departure from Australia. The type of the support provided is focussed on addressing significant barriers present to resolving the person's immigration status and may include: financial, accommodation, access to health care, access to education for school aged children, case worker support and case management. SRSS is provided by contracted service providers in conjunction with the Department. In Queensland these services are provided through Access Community Services and Multicultural Australia.

For those persons with no visa in community detention, assistance through International Health and Medical Services (IHMS) may provide for essential medical and dental needs, some carer support and may also provide access to disability aides and equipment.

For persons on bridging visas who may not be deemed eligible for Medicare, some health care may be purchased for them through this program following an approval process. It is not clear if or what level of disability support may be provided through this program.

Persons on TPVs or SHEVs, while eligible for special benefits through Centrelink, and are eligible for Medicare, but while some one off support for disability may be provided, ongoing disability support is not provided through this program. The SRSS program is unlikely to approve payment for disability assessment and identification or for specialist disability supports when the diagnosis is known.

Asylum Seeker and Refugee Assistance Program ASRA (Provided by the Queensland Department of Local Government, Racing and Multicultural Affairs)

This program targets vulnerable persons who have no visa or a bridging visa or a TPV or SHEV. The program aims to alleviate financial hardship through the provision of emergency relief, provide access to employment support, provide assistance to those on TPV and SHEV to meet permanent pathway requirements, and to link vulnerable refugees and those seeking asylum to legal support and counselling. For those persons who do not have eligibility for Medicare, the ASRA program provides referral to a medical service which receives some funding through ASRA. ASRA does not have financial capacity to provide access to disability support even though noting that their group of clients is not eligible for the NDIS.

Queensland Community Support Scheme (Provided by the Queensland Department of Communities, Child Safety and Disability Services)

Persons under 65, including persons on temporary protection and special category visas who are Medicare eligible may apply for up to five hours per week support for in-home support, including support with personal care and domestic activities and assistance to participate in the community. Persons with high support needs, who are not eligible for the NDIS have been excluded from this program, leaving them highly vulnerable and at risk of having to enter a nursing home to have their fundamental needs met.

Queensland Medical Aid Subsidy Scheme

The Queensland Medical Aid Subsidy Scheme (MASS) is provided by Queensland Health for aids and equipment. MASS generally requires permanent residency as eligibility and also consider applicants on Low Income Health Cards provided through Centrelink. Persons under 65 will generally need to meet NDIS criteria but cases which fall outside NDIS may be considered on a case by case basis. Not all persons with insecure visas may qualify for access to this scheme.

An example of a critical area of need - psychosocial disability

Psychosocial disability is a term used to describe a disability which may develop from mental health issues. Psychosocial disability pertains to the functional impact and barriers which may be faced by someone living with a mental health condition.

Studies show that there is generally a low rate of access to mental health services by refugees despite the numerous stressors which they may have faced through exposure to combat, extreme living conditions, serious injury, imprisonment, separation from family, murder/separation from family, torture and gender-based violence, coupled then with stressors associated with displacement and resettlement (Bryant et al., 2020). In Queensland, there are specific services that respond to the mental health needs of refugees and asylum seekers.

Specialist mental health services are provided by the Queensland Government through Queensland Health. As part of Queensland Health, The *Queensland Transcultural Mental Health Centre* is a specialist state-wide service that works to ensure people from culturally and linguistically diverse (CALD) backgrounds receive culturally responsive mental health care and support. The Centre offers mental health support for migrants, refugees and asylum seekers irrespective of residential status by providing expert education and consultation to community mental health services in relation to these often complex cases.

The *Queensland Program of Assistance to Survivors of Torture and Trauma (QPASTT)* receives funding and assistance through the Commonwealth Departments of Health, Social Services and Home Affairs, Queensland Health, International Health and Medical Services (IHMS), Alcohol and Drug Foundation as well as Brisbane South and Brisbane North Primary Healthcare Networks.

QPASTT provides flexible and culturally sensitive services to promote the health and well-being of people who have been tortured or who have suffered refugee related trauma prior to migrating to Australia. QPASTT aims to provide services which address the range of physical, psychological and social needs that survivors of torture and trauma have. The following people are eligible to access QPASTT services: those with a refugee (or refugee-like) background AND those with a history of torture and/or other traumatic events prior to arrival in Australia (in the case of children and youth, QPASTT recognises the effects of intergenerational trauma and provides service to those whose key family member or carer have pre arrival experiences of torture and/or trauma); AND those who are experiencing psychological or psychosocial difficulties believed to be associated with their experience of torture and traumatic events. QPASTT is also funded to provide counselling to asylum seekers.

However, while these key services in Queensland offer mental health support with no limits imposed on the basis of a person's visa status, it is still the case that individual funding for psychosocial disability support through the NDIS cannot be accessed by persons on a temporary visa. Through NDIS psychosocial disability support provides an individual with funds to access services that provide: support for increased community participation; coping mechanisms to tackle everyday tasks like getting to places on public transport, housekeeping, and budgeting; assistance to access health or housing services; coordination amongst different service providers for the individual; and support to access employment services. Ineligibility for NDIS leaves a significant and critical gap for refugees experiencing psychosocial disability.

Issue 2 Denial of meaningful “choice and control” for CALD community members

Migrants and humanitarian refugees granted permanent residency are eligible for the NDIS.

However, as shown by the less than estimated numbers of persons from CALD background receiving support through the NDIS, they face ongoing barriers to participation.

On 28 August 2020, the National Ethnic Disability Alliance (NEDA), the peak disability body for CALD communities, cautiously welcomed further changes to the NDIS announced by the NDIS Minister to improve the operations of the NDIS and NDIA. NEDA CEO stated “We welcome changes that make life easier for people. Making sure that CALD people have equity and access to the NDIS is really important, but there is still a big lag time and CALD people are still finding it hard to engage.” According to a quarterly report released in August this year, 6.4 per cent of NDIS participants identify as Aboriginal and Torres Strait Islander and 9.2 per cent as CALD, despite estimates suggesting those numbers should be higher. The NDIS Minister said “We know [there are difficulties] when it comes to engaging culturally and linguistically diverse and Aboriginal and Torres Strait Island communities and introducing the NDIS to them” (247newsaroundtheworld.com). Despite this acknowledgement of “the difficulties”, commitment to meaningful engagement with CALD persons with disability has been slow, not always based on best practice, and for some, further debilitating.

Underpinning principles of the NDIS include choice and control by individuals with disability and respect for and upholding of the individual's legal and human rights (Australian Government, 2018). The NDIA which delivers the NDIS has an expressed commitment to increase and support the participation by CALD communities in the NDIS (National Disability Insurance Agency, 2018) requiring that all NDIA and Community Partner staff understand the cultural and language needs of diverse communities across Australia.

Provision of information about NDIS in culturally appropriate formats

There have been continuous calls for better information strategies to be designed and delivered for CALD communities since the inception of the NDIS. Still, recent reports continue to make recommendations such as the following. *Refugee and humanitarian entrants with a disability should receive information on the NDIS in their preferred language or communication method, including through the use of professional accredited interpreters, translated material or any other*

communication method that suits their needs. This information should contain information about their rights, entitlements and expectations of the services they can receive, including information about independent advocacy services and how to access those supports if required (FECCA et al., 2019).

Understanding the right to advocacy

There have been instances where planning meetings have been held without the advocate from AMPARO being informed or invited to these meetings despite being listed on the participants' file with their consent, as a 'contact person' and someone to be invited to the planning meeting. Some planners are welcoming of the involvement of advocates when consent has been provided, however some appear to have little understanding of people's right to advocacy support and less appreciation of the value of the advocate's involvement for the person. In instances where this happened, participants did not receive a plan that met their needs, receiving less core support and either limited or no support coordination.

One might well ask why after so many years of calling for meaningful engagement with CALD communities by NDIS, progress has been very slow. AMPARO's experience is that individuals and families require culturally appropriate support through each step of the process:

- from accessing affordable allied health or specialists assessments
- making access requests
- undertaking preplanning
- effectively participating in the planning process and
- connecting with appropriate service providers.

There are many obstacles and barriers that people experience in accessing and participating in the NDIS, including the prohibitive cost of new assessments that are required by many for access. Without targeted culturally appropriate engagement and specialised assistance, many individuals from a CALD background with disability and their families have either:

- not submitted an access request to the NDIS
- had their NDIS access requests rejected, often due to lack of evidence
- received poor plans that cannot meet their needs, or
- not been able to implement their plans, due to receiving inadequate or no funding for support coordination.

Inadequate access to interpreters

The current NDIS information on accessing interpreters refers to the participant's right to request a specific interpreter when issues of confidentiality and continuity of care are a concern for them or their families. Due to issues of confidentiality and stigma attached to disability in some communities, many people with disability and/or their families prefer to use a specific interpreter they have had previous contact with and trust. However in practice this is difficult to do. The memorandum of understanding developed between the NDIA and TIS National (Translating and Interpreting Service) does not address the difficulties experienced when requesting a specific interpreter. This process is administratively time consuming and cumbersome, with TIS National often refusing applications for a specific interpreter or those making the booking giving up because the process is so difficult.

The need for on-site rather than telephone interpreters is critical to facilitating accurate communication and effective access and participation in the NDIS for people with disability from CALD backgrounds. The use of telephone interpreters at lengthy meetings such as planning meetings, makes open and detailed discussion of functional impairment and support needs impossible. Phone interpreters should not be used where discussions are complex and where body language and facial expression are crucial to understanding what is being said.

AMPARO believes having access to preferred on-site interpreters is critical to facilitating accurate communication and effective access and participation in the NDIS for people from CALD backgrounds with disability. The memorandum of understanding developed between the NDIA and TIS National does not address the difficulties experienced when requesting a specific interpreter with most providers reluctant to persist with the current process as it is so onerous. As the NDIS and NDIS service providers can only use TIS National for interpreting this is a highly significant and concerning issue for many for the following important reason.

A core tenet of the NDIS is 'choice and control'. The NDIA's website clearly states that *'participants control the support they receive, when they receive it, and who provides it'*. TIS National's policy of refusing to allow the majority of participant's choice when booking an interpreter conflicts directly with this guiding principle of the NDIS.

Should TIS National continue to be unable to provide preferred interpreters except in all but the most exceptional of circumstances, it is essential that the NDIA, LACs and service providers are able to access interpreters through alternative interpreting services which acknowledge a participant's right to choice and control and are willing to book preferred interpreters as requested.

Unmet targets for CALD communities

The NDIS has recently recognised the additional challenges experienced by specific populations in navigating and equitably participating in the NDIS and in response to this the National Community Connector Program (NCCP) has been established (Australian Government, 2020). Under this program 68 FTE connectors have been funded Australia-wide, including 15 FTE connectors in Queensland to work with CALD communities. These connectors will connect individuals with the NDIS through the local NDIA or non-government organisation working with the NDIA; and advise the NDIA, non-government service providers on effective communication and engagement with CALD community members. They will not act as advocates for the person with disability and not have input to plan and funding decisions.

AMPARO recognises that this program has the potential to address many of the barriers being experienced by people from CALD backgrounds with disability. However, the NCCP will only be on the ground from September 2020 to June 2021. The poor levels of NDIS participation of CALD communities over the past several years, would require the program to continue for at least three years to be effective, or we risk the continuation of persons from a CALD background with disability and their families falling through the gaps.

Culturally inadequate planning processes

The NDIS is a complex system that is largely designed and delivered to reflect mainstream practices and the NDIA has still not developed a pathway that can meet the needs of CALD participants and their families. Estimated target numbers for NDIS participation by persons from CALD backgrounds has not been achieved by NDIS.

Critical to a participant receiving a good NDIS plan is the pre-planning process, and for people and their families from CALD background this is often not available (AMPARO Advocacy, 2019). Most people from a CALD background have not previously been accessing or connected to specialist disability services and have no access to preplanning support. They usually will have no assistance to think through what their needs for support are and what supports and strategies will help them to achieve their goals. This means they often attend NDIS Planning sessions with little idea as to what supports, capacity building, therapy or equipment they would benefit from receiving.

Once a person receives access to the NDIS, they are sent NDIA documents that are intended to help them to plan for their planning meeting. The NDIA has translated this information into some

languages, but there are few resources translated into languages of new and emerging and refugee communities. Furthermore many individuals have had limited or no access to education in their countries of origins and are not literate in their own language. Without direct support to explain information in these documents they are of little value.

However through our work AMPARO Advocacy has been able to meet participants from a CALD background with disability and/or their family and with the certified interpreters have face to face discussions to provide important information, answer their questions and assist with preplanning. All of the individuals and families AMPARO has worked with have required significant support in the preplanning process to

- Understand their rights
- Explore what a good life for a person with disability can look like
- Understand the opportunities available under the NDIS
- Identify their specific needs for support/ therapy/ equipment/ capacity building
- Understand complex terms and language of the NDIS.
- Document this information to take to their planning meeting
- Processes to arrange planning meetings do not meet the needs of participants and their families from CALD backgrounds.

Processes that the NDIS and NDIA/Local Area Coordinators (LACs) are engaging in to arrange planning meetings are not meeting the needs of CALD participants. NDIA and LAC planners will not leave a message for a participant or family member if they don't answer the phone, unless the family has included their surname on their voicemail message. The individuals and families from CALD backgrounds we work with usually have a generic voicemail as they may not know how to create their own message or may not have adequate English proficiency. Therefore they rarely have a message left by the NDIA to advise them of their planning meeting. Additionally planners will attempt to contact the person three times, so when they haven't been able to reach the person, the result is that people from CALD backgrounds with disability are falling through the cracks and without additional support, not accessing the NDIS.

Younger people with disabilities in nursing homes

The Australian Government is committed to ending the need for younger people to live in aged care facilities and to take concrete actions to reduce the number of younger people aged under 65 who need to live in aged care and to help them access more age-appropriate housing and supported living options. The Government undertook that by July 2019, the Complex Support Needs Pathway will give all NDIS participants in aged care, or currently in hospital settings and at risk of entering aged care given their need for significant supports and a lack of other accommodation options, access to appropriate access and planning decisions; support coordinators who can tap into specialised knowledge on housing options, including specialist disability accommodation; planning discussions tailored to explore and confirm housing and support goals; and assessments and approvals for assistive technology and home modifications. Plans will be tailored to each person's cultural and disability needs. The planning process will allow multiple opportunities for conversations and encourage advocacy (Australian Government, 2019). These commitment reflect the expectations Australian have of a dignified life for person with complex support needs.

For persons with disability who require high intensity daily personal care including complex health care, without access to the NDIS, they often have no option but to seek a nursing home placement. Refugees who must survive on less than \$300 per week and charity cannot afford to purchase specialist accommodation and health care.

We are witnessing cases of New Zealand citizens who have lived here for many years and who sustain a disability requiring intensive daily care who have no choice but to seek nursing home care, contrary to the Australian and Queensland Governments' policy position on younger persons with

disability being found supports in other than aged and nursing home settings. It would appear that the Commonwealth Government is willing to bear the cost of paying for high nursing home care rather than support through the NDIS.

Conclusion

This submission has sought to demonstrate the gaps in supports to persons on temporary visas which impact significantly and deleteriously on refugees and asylum seekers with disability: specifically highlighting lack of access to assessments and disability supports for adults; for children younger than school age, lack of access to early childhood early intervention; and for children of school age, lack of access to disability supports provided in family and community settings.

The submission has also demonstrated lack of adequate and appropriate engagement with of persons with disability from CALD backgrounds, who are eligible for the NDIS, to access the NDIS and to participate in the NDIS in ways that enable them to exercise meaningful choice and control.

These gaps in supports signify a breach of international agreements ratified by Australia and are inconsistent with the values reflected in Australia's social policies. The Australian Government's responses should be more strongly driven by its obligations under the:

- Convention on the Rights of Persons with Disabilities (CRP),
- Convention on the Rights of the Child (CRC), and
- International Covenant on Economic, Social and Cultural Rights (ICESCR), which recognises "the inherent dignity" and "equal and unalienable rights of all members of the human family".

The exclusion of a class of resident in Australia from access to the NDIS are assumingly rationalised under border control policies to deter asylum seekers. However, is it necessary to deny refugees and asylum seekers on temporary or no visas access to much needed disability supports while they await determination of their cases, or while they await deportation?

The experience in Queensland indicates that the education and the health sectors ensure that their policies and programs are inclusive and provide supports to refugees and asylum seekers with disability. It remains for the Government to modify legislation and policy in the disability sector to fall in with the inclusive approach used in the education and health sectors.

The changing global circumstances, the reported increases in people with disability amongst refugee and asylum seeker populations, and the recent reforms in Australia in the provision of disability supports have created a pocket of critical, unmet need relating to refugees and asylum seekers with disability. These developments require a greater degree of reflexive and ethical thinking and the exercise of discretion in Australia's legislation and policies at Commonwealth and State/Territory levels.



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