

11 May 2015

Committee Secretary
Senate Standing Committees on Community Affairs
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Submission to the Senate Standing Committee on Community Affairs on violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability

Introduction

The Federation of Ethnic Communities' Councils of Australia (FECCA) is the national peak body representing Australians from culturally and linguistically diverse backgrounds. We provide advocacy, develop policy and promote issues on behalf of our constituency to government and the broader community.

FECCA continues to build partnerships and continue to work with organisations that advocate for people with disabilities from culturally and linguistically diverse (CALD) backgrounds, including the National Ethnic Disability Alliance (NEDA). FECCA is thankful to the government for taking the initiative to address the issues faced by people with disability in institutional or residential settings.

Background

Article 12 of the United Nations Convention on the Rights of People with Disabilities (CRPD) reiterates the stance of international law, that there must be effective safeguards to protect people with disabilities from any form of abuse. Moreover, Article 19 stipulates that all people with disability have a right to live independently and be included in the community and that the services are responsive to the needs of people with disability. Incidents which occurred in Yooralla, Victoria and Western Australia provide clear evidence that these international obligations have been breached.

The issues faced by CALD individuals with disabilities are poorly researched and documented. Current data does not reflect the cultural diversity of those

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with disabilities. The reporting of birthplace is misleading and use of this measure underestimates the number of persons from a CALD background with disabilities recorded as using institutional or residential facilities. The lack of relevant data renders it arduous to identify and address specific issues faced by people with disabilities from CALD backgrounds in institutional or residential settings. This is even more distressing given that there are over 27,000 people with disabilities from non-English speaking countries in supported accommodation facilities, domestic-scale supported settings, private residency and other settings¹. The current system of reporting does not include those who are from a CALD background born in Australia or from an English speaking country. It is imperative that any measure taken by the authorities to make all practical endeavours to identify the issues faced by CALD people with disability in such institutional or residential settings.

The National Disability Agreement between the Commonwealth and the States and Territories, provides the national framework and key areas of reform for the provision of government support to services for people with disabilities.² As per this agreement, subject to the development of the data and an agreed method of disaggregation, performance indicators will be broken down to show performance for people from CALD backgrounds with disabilities³. Although this agreement has merit in relation to creating a cohesive system of service delivery across Australia, the language used is overly flexible, creates ambiguity and does not impose a concrete obligation on the parties to take proactive measures to ensure that data gathered on performance indicators are reflective of the people from CALD backgrounds. Given that one in four Australians come from a migrant or refugee background⁴, it is manifest that the Governments must dedicate more resources to analyse data in relation to CALD communities.

Foster care

Children in foster care should be considered as being accommodated in institutional care and therefore should have the same safeguards as adults in residential care. According to the 2011 census there were over 13,000 children

¹ Australian Institute of Health and Welfare (AIHW) Users of NDA services, 2012–13

² The National Disability Agreement between the Commonwealth and the States and Territories, Intergovernmental agreement on Federal Financial Relations, accessed at: <http://www.federalfinancialrelations.gov.au/content/npa/disability/national-agreement.pdf>

³ *Ibid* p.5

⁴ Australian Bureau of Statistics, Australia's Population by Country of Birth, accessed at <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/3412.0Chapter12011-12%20and%202012-13>

under 15 in foster care. Those who spoke a language other than English represented 3.39% of the total. All those recorded as having a need for assistance (disability) 13.31% or 1 in 7 persons of the total number in foster care. Those who did not have English as their stated language was 16.23% or 1 in 6 young people in foster care with a disability were from a non-English speaking background⁵.

There are numerous generalisations and assumptions around parenting and upbringing of children in the Australian legal system. Many parents from migrant and refugee backgrounds, particularly those from new and emerging communities, are not aware of the government policies and regulations in relation to children. Some parental conduct considered as norms among CALD communities may amount to an offence or against acceptable Australian parenting norms. These communities would benefit from early intervention and prevention strategies focusing on educating them about parenting practices, instead of placing their children in foster care where they may be more vulnerable to harm.

Complaints mechanisms

The Complaints Reference and Resolution Service (CRRS) and National Disability Abuse and Neglect Hotline⁶ (DANH) provide an independent, fair, impartial and nationally accessible complaints resolution and referral service for people with disabilities who are service users of Disability Employment or Advocacy Services funded under the *Disability Services Act (1986)*. According to the policies of CRRS, psychological and emotional abuse includes denying cultural or religious needs and preferences. Failure to recognise, provide or attempt to provide adequate or appropriate services, including services that are appropriate to the consumer's age, gender, culture, needs or preferences can also constitute abuse.⁷ However, in order to lodge a complaint under this system, the person subjected to abuse or neglect must be aware of such services and have the capacity to understand and access the complaint procedure.

⁵ Data Source: 2011 Census of Population and Housing

⁶ Complaints Reference and Resolution Service (CRRS) and National Disability Abuse and Neglect Hotline', Policies and Procedure 2014- 2016, accessed at:

<http://www.disabilityhotline.net.au/resources/>

⁷ *Ibid* p. 24

It has been brought to the notice of authorities by various organisations at different forums and media that there is a serious need to revisit the rules and regulations relating to issues of CALD people with disabilities⁸. CALD people with disabilities living in group homes and similar accommodation settings are more vulnerable to abuse from other residents and/or carers due to language barriers, fear of authority and fear of not being believed. Individuals from these backgrounds are often not in a position to make complaints, do not understand the complaint procedure or are afraid to make complaints as it may make their situation worse. These barriers contribute to the underreporting of these horrific incidents of abuse and neglect of people in institutional settings.

Cultural hindrances also play an important role. There is a considerable amount of cultural stigmatisation around disability itself and abuse further stigmatises the individual. Due to the stigma of disability and especially sexual abuse many individuals from CALD backgrounds may be reluctant to complain about the incidents of abuse. Furthermore, the victims of such abuse in most instances are intimidated by the perpetrators.

CALD people with disability in these settings may confide in their parents or family members about their experiences. Often, these parents or family members are unaware of the avenues available to obtain assistance, complaint procedures and could also be socially isolated. The lack of knowledge about mechanisms for complaints and redress can cause further distress.

Individuals from CALD backgrounds who are subjected to abuse in institutional settings are more likely to be comfortable talking about incidents of violence with people who understand their language and culture. The measures taken by the government to protect people with disability from harm must ensure that CALD people with disabilities are aware of and have access to culturally appropriate services, especially translation and interpreter services.

In some instances, the issues are caused by the lack of awareness of the rights and entitlements of people in these institutional settings. People who are unaware of the Australian legal system, policies and procedures, especially

⁸ Submission To The Senate Inquiry Into Domestic Violence, Joint Submission from the National Cross-Disability Disabled People's Organisations Alliance, September 2014, accessed at: <http://wwda.org.au/submission-senate-inquiry-domestic-violence/> , Violence Through Our Eyes: Improving Access to Services for women from non-English Speaking Backgrounds with Disability and Carers Experiencing Violence Project Report, accessed at: <http://www.adfvc.unsw.edu.au/PDF%20files/Violence%20Through%20Our%20Eyes.pdf>

those coming from a migrant or refugee background, may live under the misconception that neglect and restraints used by the employers, employees and/or carers of these institutions are the accepted norm or that such wrongful acts are authorised by the law. Thus, it is imperative that the people with disabilities and their family members are aware of their rights and the legislative frameworks relating these institutions.

The lack of cultural diversity within institutions and care settings may create numerous challenges. A carer's or staff member's inability to understand or effectively communicate with people from CALD backgrounds due to language barriers may cause tension and frustration between the parties. This may lead to unhealthy relationships of neglect and resent in care settings. There is a clear need for multi-lingual workers in these institutions and the staff and/or carers should be provided with appropriate training on cultural sensitivity and competency.

Since the engagement of CALD communities in the NDIS trial sites has been minimal thus far, it is difficult to gauge the challenges that may arise in relation to CALD people who are eligible to access the National Insurance Disability Scheme (NDIS). Following the national roll out of NDIS in July 2016, there will be a considerable increase in the demand for labour in the disability sector. Individuals who do not understand or appreciate cultural sensitivities, peculiar health conditions and needs of people with disability will create more room for abuse and neglect. Thus, the relevant authorities including the National Disability Insurance Agency (NDIA) should consider imposition of a mandatory cultural sensitivity training for the new wave of NDIS workforce. The NDIA must ensure that there is more productive and positive engagement of CALD communities if the government approves the proposed trial sites in Queensland and Northern Territory⁹.

Recommendations

- Display and disseminate information about services, contact details and rights of people with disabilities especially within the institutions and group homes. This information should be in simple language, and where possible translated into a number of appropriate languages, and provide

⁹ The federal government has agreed to discuss the possibility of the pilots following a Council of Australia Governments meeting in Canberra on Friday (17/04/2015). Accessed at: <http://www.news.com.au/national/breaking-news/qld-nt-may-get-ndis-trial-sites/story-e6frfku9-1227308118639>

clear instructions as to the methods of accessing interpreter and translation services.

- Gather and analyse data in relation to people with disabilities from CALD backgrounds, including those who were born in Australia and/or speak English. Where required, ensure that the Governments of States and Territories are legally bound to gather information and analyse them accordingly to improve service delivery.
- Take appropriate measures such as information sessions and workshops to educate CALD people with disabilities and their family members about protective behaviour, rights of people disabilities, complaint procedures relating to abuse and neglect.
- Provide cultural sensitivity and competency training to all employees working with people with disabilities in institutional settings.
- Increase the number of bilingual/multilingual workers in the disability sector to assist CALD people with disabilities within institutions and in the government sector.
- Increase the engagement of CALD people with disabilities in the proposed NDIS trial sites in the Northern Territory and Queensland to ensure early detection of issues that could potentially arise following the national roll out of NDIS in July 2016.

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