

## **‘Nowhere to be found’: disabled refugees and asylum seekers within the Australian resettlement landscape**

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Australia has long placed restrictions on the immigration of people with disabilities. While recent civil society mobilisation has forced some shift in policy, it is far from clear whether this will result in people with disabilities being accepted as immigrants. The issue is complicated further for people defined as ‘refugees’ and ‘asylum seekers’ who have encountered the migration restrictions on disability. As a result of this policy landscape, there is limited rigorous research that seeks to understand the social inclusion and participation of disabled refugees and asylum seekers within the resettlement process. An extensive review reveals that refugees and asylum seekers with disabilities remain largely absent from both resettlement literature and disability research. This paper summarises the limited available research in the area around the following themes: processes of offshore migration and the way that disability is assessed under Australia’s refugee legislation; the uncertainty of the prevalence of disability within refugee and asylum seeker communities; the provision of resettlement services, both mainstream and disability-specific, through the transitional period and beyond; and the invisibility of asylum seekers with disabilities in Australia’s immigration detention centres, community-based arrangements and offshore processing centres. To conclude, the paper outlines implications for further research, policy and practice in the Australian context.

**Keywords:** disability; refugee; asylum seeker; resettlement; Australia; migration restrictions

### **Introduction**

Research in the area of resettlement<sup>1</sup> for refugees and asylum seekers<sup>2</sup> with disabilities remains largely under-developed in the separate fields of disability scholarship and refugee research. There is little information available on how refugees and asylum seekers with disabilities experience the resettlement process, and even less that seeks to identify the type of services required to support their resettlement. There is therefore little that is known or understood about the inclusion and participation, or barriers to such, in society for a person whose identity cuts across these two significantly marginalised categories. This is a

significant oversight within both fields of research given that there is substantial empirical evidence to suggest that it is the very conditions that force people across borders which create high rates of disability and impairment (Meekosha and Soldatic, 2011).

Fifteen per cent of the world's population is estimated to have disabilities (WHO and World Bank, 2011). The occurrence of disability is higher among displaced people who have fled violent situations and been exposed to high-risk situations resulting in serious injuries, including physical, mental or sensory impairments (Women's Refugee Commission, 2008). By the end of 2013, there were 51.2 million forcibly displaced people worldwide, including at least 11.7 million refugees under the mandate of the United Nations High Commissioner for Refugees (UNHCR, 2014:2). The UNHCR (2011a:18, 2012:19) has projected that approximately 800,000 resettlement places globally are needed each year. In contrast, a total of 22 resettlement countries admitted just 88,600 refugees in 2012 (UNHCR, 2013a:3). It is not known how many of the refugees resettled in a second or third country had a disability of some kind.

The invisibility of refugees and asylum seekers with disabilities in both the disability literature and refugee resettlement research is, however, not surprising given that historically many nation-states have actively excluded disability from their immigration systems. Recent studies from Australia, Canada, the United States and the United Kingdom have highlighted the ways in which nation-states have advanced disability exclusionary regimes in their migration systems (El-Lahib and Wehbi, 2012; Mirza, 2011; Soldatic and Fiske, 2009; Soldatic et al., 2012). The findings from this small, yet rich, body of literature clearly identify the diverse range of state mechanisms, such as refugee and immigrant selection processes, that work to actively 'screen out' disabled migrants for resettlement.

Australia has been particularly active on this front. While its first act of parliament (Immigration Restriction Act 1901) is well known for the screening out of non-white migrants, what is less well known is that this legislation also explicitly named disability as one of the primary sites of migration exclusion under Section 3 of the Act (Soldatic and Fiske, 2009). The formation of a White Australia, as a national 'body' politic, was the 'confluence of border controls and public health measures, underpinned by medical science' (Jakubowicz and Meekosha, 2003:180). The screening out of disabled people from Australia's migratory zones via medical science was further normalised with the Migration Act 1958. This Act embedded a health screening process as a central mechanism to determine migratory status (Soldatic and Fiske, 2009). While disability rights have since advanced within the internal borders of the Australian nation-state, the Migration Act remains exempt from the Australian Disability Discrimination Act of 1992. Australia ratified the United Nations Convention on the Rights of Persons with Disabilities (CRPD) in July 2008 with the proviso of an interpretative clause surrounding Article 18: Liberty of Movement and Nationality, allowing its exclusionary migration practices surrounding disability to largely

remain in place. The normalisation of the policy to exclude disabled migrants is reinforced by two recent studies on settlement experiences, both commissioned by the then Department for Immigration and Citizenship: *Settlement Outcomes of New Arrivals* (2011) and the Hugo Report, *Economic, Social and Civic Contributions of First and Second Generation Humanitarian Entrants* (2011), of which neither makes any significant mention of disability.

While recent changes to the health screening policy suggest some steps towards the inclusion of people with disabilities in Australia's immigration intake, significant questions remain as to the impact of this policy. From July 2012 the Australian government allowed people seeking entrance to Australia under a range of immigration programs to be eligible for permanent visas even if they failed the health requirement, as long as the Department of Immigration and Border Control<sup>3</sup> is 'satisfied that the granting of the visa would be unlikely to result in undue costs or prejudice to access (health care and community services that are in short supply in Australia)' (DIBP 2015b). However, how such costs are calculated and what is considered to be 'undue costs or prejudice to access' is not clear. It is also unclear if anyone who has failed the health requirement has been accepted into Australia.

The disability literature that does exist within refugee research is positioned predominantly in the field of mental health. A substantial amount of the Australian literature on refugee experiences has focused on the negative impact of immigration detention on the mental health of detainees (Coffey et al., 2010; Rees et al., 2010; Fleay and Briskman, 2013). There is minimal Australian research on refugees with disabilities outside the mental health arena (Goggin and Newell, 2005). Of the work that does mention disability among this group, for the most part it is presented in terms of health, that is, as a medical issue. As Straimer (2010) suggests, this focus obscures the differential impact of policies and services that may lead to inclusion or exclusion of recently arrived refugees and asylum seekers with disabilities within their local communities. Soldatic et al. (2012) further argue that the positioning of disability within a health paradigm negates the social, cultural and economic factors that lead to disability exclusion, marginalisation and discrimination.

As advocate researchers within the disability and refugee movements, we argue that there is an urgent need to critically review and contextualise the limited available research to develop a thorough understanding of the systems, processes and services that do exist for disabled refugees and asylum seekers and to provide a framework for policy advocacy. This includes distilling some of the nuances between treatment of disabled refugees and treatment of disabled asylum seekers within the Australian legislative, policy and service systems.

We attempt to undertake this task in this paper and, in turn, suggest areas for further research required to facilitate the inclusion and participation of refugees and asylum seekers in Australian society. Much of the literature traversed is drawn from civil society organisations and advocates who have had direct contact with refugees and asylum seekers as part of their

disability advocacy role. The methodological process entailed identifying key themes within the grey literature (civil society and non-government organisation reports); government documents of relevance; and published academic research. This review affirmed our initial concerns that few qualitative studies actively engaging with disabled refugees were publicly available. The notable absence of rich qualitative accounts from disabled refugees and asylum seekers reinforces their invisibility both within the academy and within the broader policy field. There is no doubt that this dearth of qualitative accounts would make the policy change process more difficult for advocates as they would have few personal narratives to draw upon for their work.

Despite these limitations, the thematic review revealed a number of key issues drawn directly from the fieldwork of experienced practitioners who are actively involved in the resettlement process for this group. The central themes are: processes of offshore migration and the way that disability is assessed under Australia's refugee legislation; the uncertainty of the prevalence of disability within the refugee and asylum seeker communities; the provision of resettlement services, both mainstream and disability-specific, through the transitional period and beyond; and the invisibility of asylum seekers with disabilities in Australia's immigration detention centres, community-based arrangements and in offshore processing centres. Finally, we review the implications of these themes for the social inclusion of disabled refugees and asylum seekers resettling in Australia, and the relevance of intersectionality for research among these communities.

### **Offshore migration treatment of refugees with disabilities**

Australia has accepted relatively few refugees with disabilities. In large part, this has been due to the restrictions placed on the acceptance of refugees with disabilities under Australia's Humanitarian Program. Up until 2011-12, the majority of refugees resettled in Australia were first identified by UNHCR, then referred to the Australian government for acceptance under its Humanitarian Program (referred to as 'offshore' refugees). That year the number of offshore refugees accepted by Australia was fewer than the number of refugees who had arrived by boat to Australia and were accepted for resettlement. This is due to an Australian government decision in 1996 which linked the total number of offshore and onshore refugees accepted for resettlement, meaning that the number of offshore refugees accepted under the Humanitarian Program was determined by the number of refugees who arrived 'onshore' to Australia and claimed asylum (Crock et al., 2006:18). In 2011-12, with an increase in asylum seekers arriving onshore compared with previous years, Australia accepted fewer offshore UNHCR-recognised refugees for resettlement (6,004) than refugees who made their claim for asylum onshore (7,038) (DIAC, 2012:15). In order to increase the number of UNHCR-recognised refugees accepted, and as part of a number of measures aimed at deterring asylum seekers from getting on boats bound for Australia that are often unfit for purpose, in August

2012 the Australian government announced that the number of offshore entrants accepted under the Humanitarian Program for 2012-13 would be increased to 12,000 (Gillard and Bowen, 2012). This quota was realised (12,515 were accepted; see DIAC, 2013).

While the Coalition government elected in September 2013 subsequently reduced the size of the overall Humanitarian Program from 20,000 to 13,750 places, the majority of entrants (11,016) accepted under the program in 2013-14 continued to be offshore entrants (DIBP, 2014:95). This reflected more the Coalition government's intention to increase the number of people accepted under the Special Humanitarian Program (SHP) category (including family reunion) than an increased number of UNHCR-recognised refugees (4,515 entrants were accepted under the SHP, the largest number under this program since 2007-08, while 6,501 were UNHCR-recognised refugees; see DIBP, 2014:95). It also reflected that the refugee claims of asylum seekers who had arrived to Australia by boat since 13 August 2012 had not been processed. In the wake of the government's announcement in December 2014 that the intake of the overall program would be increased by 7,500 places during 2016-18 (RCOA 2015), the number of offshore entrants accepted under the program looks likely to increase, although the composition is not yet known. It also remains unclear whether the July 2012 health waiver policy will result in the acceptance of offshore refugees with disabilities by Australia.

According to Mirza (2010:1), the UNHCR has historically considered resettlement for disabled refugees 'as an option of last resort'. Indeed, disability is a relatively new issue for the UNHCR, with greater attention given to it since the introduction of the CRPD in 2006 (Straimer 2010). Despite a greater focus on the particular needs of this group over the past few years, there remains no UNHCR category of consideration specifically for resettlement of refugees with disabilities, who are currently subsumed within the Medical Needs category. In addition, the UNHCR's 2011 *Resettlement Handbook* maintains that, 'Refugees who are well-adjusted to their disability and are functioning at a satisfactory level are generally not to be considered for resettlement under [the category of Medical Needs]', a policy that has remained unchanged since at least 1996 (UNHCR, 2011b; also see Mirza, 2010:2). Although the guidelines state otherwise, field evidence indicates that refugees with disabilities 'do not have equitable access to resettlement opportunities on a par with non-disabled refugees' (Mirza, 2010:4).

Moreover, while some countries such as the USA provide for the inclusion of refugees with disabilities in their resettlement programs, others, including Australia, have placed restrictions on the immigration of people with disabilities (Mirza, 2010:2-4; Soldatic et al., 2012). Denmark, Norway, New Zealand, Republic of Ireland, Finland and Chile either have quotas for or otherwise consider refugees with disabilities / medical needs for resettlement (Mirza, 2010:2-4). The exemption of Australia's Migration Act from its Disability Discrimination Act has meant that any migrant to Australia, including offshore refugees and

other humanitarian entrants, has had to meet the health requirement under which disability is defined for migration purposes (Australian Government, 2012; Soldatic and Fiske, 2009). As a result, people with disabilities have routinely been refused entry to Australia based on an assumed maximum cost burden of their potential access to health and care services, irrespective of whether these services are actually used (NEDA, 2008:6).

As outlined earlier, since July 2012, Australia has implemented subtle changes to the health requirement to allow entry for migrants who do not meet this requirement as long as they are not considered to be a cost burden. This followed a government-commissioned inquiry into the migration treatment of disability which found that the health requirement unfairly discriminated against people who have a disability (JSCM, 2010). The new waiver policy effectively reinforces the cost-calculation system underpinning the previous policy, however. As John Walsh (2011) has demonstrated in his study on Australian and Canadian migration regimes, new quantitative frameworks firmly embedded within neoliberal economic structures have emerged which reinforce migration processes that favour 'entrepreneurial' able-bodied immigrants. These neoliberal immigration calculation systems assume that bodies are 'healthy', 'free from disease and forms of contagion' and will therefore place no 'fiscal burden' on national social security regimes (El-Lahib and Wehbi, 2012; Mirza, 2011). These new processes of disability exclusion versus inclusion thus categorise disabled refugees into classes of disability, resulting in uneven treatment where refugee status is granted to some disabled refugees, while denied to others.

This system quantifying the 'cost of disabilities' is particularly discriminatory towards refugee children with disabilities and their families (Natalier and Harris-Rimmer, 2009). Refugee children with disabilities are calculated as being much more expensive to the Australian state because their additional expected life years are assumed to result in a much higher cost calculation and, therefore, a greater fiscal burden on the state's resources. There is empirical evidence which clearly demonstrates that as a result of this 'disability cost measurement procedure', the Australian state has actively denied resettlement to refugee children with disabilities (Natalier and Harris-Rimmer, 2009). In some instances, resettlement status has been granted to other members of the family, including the disabled child's parents, while the disabled child has been denied entry (Soldatic and Fiske, 2009).

Despite this stringent migration processing regime, a small number of refugees and asylum seekers with disabilities have made it to Australia (NEDA 2008:6). One of the main reasons is that the different status of 'refugee' and of 'asylum seeker' results in differential treatment in regard to the health requirement, which is waived for onshore asylum seekers under Australia's human rights commitments. Up until July 2012, this waiver was not granted to any other immigrant group. Second, there have been a small number of instances where the Minister for Immigration and Citizenship has waived the health requirement determination for individual offshore cases (JSCM, 2010:106). These exceptions highlight not only the

restrictive nature of immigration policy in this regard, but also its arbitrariness and the ways in which issues such as access to the English language and socio-cultural literacy all shape one's chances of being granted resettlement.<sup>4</sup>

### **Prevalence of disability in the refugee and asylum seeker community resettling in Australia**

Given this policy context, it should not be surprising that information on the numbers of asylum seekers and refugees with disabilities in Australia is not collected, making it difficult to determine the scope of this group. While we do not wish to advance arguments that seek to further quantify disability within immigrant categories and feed into the 'cost burden' arguments that dominate the area, understanding the prevalence of disability within these communities is particularly important in mobilising local community groups to drive policy change towards inclusion. There are material issues around keeping the actual numbers of disabled refugees and asylum seekers hidden within the either/or category.

The vast majority of refugees that arrive in Australia come from non-English speaking countries (DIAC, 2013:127-29). There are only two regular pieces of data relating to people with disabilities from non-English speaking backgrounds (NESB) in Australia that are publicly reported: *National Disability Agreement Minimum Data Set* figures of service utilisation by people born in a non-English speaking country, and the *Survey of Disability, Ageing and Carers*, which indicates country of birth. Neither of these data sets captures migration status, however. It is evident that understanding the complex resettlement processes for refugees with disabilities is a highly neglected area within both research and policy domains, despite some initial evidence suggesting that the incidence of disability is potentially extremely high for this population group, given the geo-political locations from which they flee (Mirza, 2010).

The lack of available data raises significant issues for advocates. In particular, it suggests to governments that appropriate support mechanisms, processes and services are not required, as the numbers of refugees and asylum seekers with disabilities are negligible and, therefore, that there is no need to develop and fund appropriate policy responses. The lack of data thus reinforces the invisibility of refugees and asylum seekers with disabilities within the broader Australian community and, in turn, further marginalises their ongoing experiences of exclusion and discrimination in policy debates within both the disability field and the refugee / asylum seeker field. This is most evident when reflecting upon the Australian government's A\$13 billion national redevelopment of the disability service system. There is absolutely no mention of refugees or asylum seekers within the new legislative framework (DisabilityCare Australia Fund Act, 2013) and despite Australia being a nation of migrants, only minimal attention is paid to people from non-English speaking backgrounds. This reinforces the

relations of inequality enshrined by the White Australia policy referred to earlier, despite its official demise. It is another illustration of policy construction that effectively defines who belongs and who does not.

***Refugees and asylum seekers with disability from non-English speaking backgrounds***

As noted earlier, there is no way of establishing how many refugees from NESB have an impairment and/or disability. However, understanding the service utilisation by people with disabilities from NESB who have acquired their disability post-migration to Australia, while failing to capture the particular experiences and needs of refugees and asylum seekers, does shed some light. According to Australian Bureau of Statistics data, approximately 45 per cent of all Australians were born overseas or have at least one parent who was born overseas (JSCM, 2010:31). It is estimated that from this broad immigrant group, more than 1 million people with disabilities are from non-English speaking backgrounds and, conversely, over 40 per cent of people with disabilities have some form of recent migration heritage (NEDA 2010:9).

While all people with disabilities face barriers to social participation, those from non-English speaking countries face deeper forms of marginalisation and cumulative disadvantage (NEDA, 2010:21; Straimer, 2010:6). People from NESB are four times less likely to access a government-funded disability support service than people born in an English-speaking country (Productivity Commission, 2009 cited in MCWH, 2009:19). Possible reasons for this include articulation barriers for NESB people in an English-speaking country, and a degree of stigma attached to disability among various cultures (Ward et al., 2008:15). In addition, women with disabilities may be considered to be especially vulnerable in some cultures and, as such, heavily protected by family members. This may mean they are socially isolated from their ethnic community and the wider society (MCWH, 2009:19-20). These barriers are compounded by the negative attitudes towards disability held by the wider community (Ward et al., 2008:15), reflected in the cost-burden arguments of disability as a drain on healthcare and social service systems (Mirza, 2010:5). The intersection of disability and non-English speaking background creates a range of additional barriers in both the provision of and access to appropriate disability supports and services (Soldatic et al., 2012).

Within the literature it is well established that NESB communities encounter institutional racism when attempting to access disability support services (Soldatic et al., 2012; Ward et al., 2008:15). In Western Australia, the Ethnic Disability Advocacy Centre notes a lack of sensitivity to the cultural, social and linguistic needs of NESB communities, which have varying levels of language and health literacy (EDAC 2011). People with disabilities may experience further systemic barriers when accessing the primary health system, which is especially problematic as disability tends to be medicalised in Australia, and the medical

system is the site where disabled people primarily interact with the state (EDAC, 2011; Stevens, 2010:6). Another reason for low rates of access is that some services are not affordable. Minority ethnic migrant parents with disabled children are likely to have lower average incomes than the general population, which has implications for access to service provision (Stevens, 2010:12; Ward et al., 2008:15). Given that refugees with disabilities also face severe economic constraints, these issues will only be heightened for this group. Unfortunately, given the dearth of research in the area, it is extremely difficult to ascertain the severe levels of disadvantage and discrimination they may face when attempting to negotiate these service systems.

### **Utilisation of settlement and disability services**

Australia's resettlement program is said to be among the most sophisticated and comprehensive in the world for those granted refugee resettlement status (RCOA, 2011). This program is made available to offshore refugees accepted under the Humanitarian Program and was also available to onshore refugees whose protection claims were finalised and were granted a permanent visa. Following the passage of the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014 in December 2014, however, asylum seekers who arrive by boat are no longer eligible for permanent protection visas and will not be able to access the resettlement program (RCOA, 2015).

Resettlement services include English-language learning, general orientation, on-arrival housing assistance, overseas-qualifications assessment, job-seeking, and dedicated mental health services. Refugees and humanitarian entrants are entitled to access these services for up to five years, after which they are expected to access mainstream services (Pittaway et al., 2011:134). Unfortunately, while the empirical evidence may suggest that this is the case for able-bodied refugees, service providers and communities have noted that there is a paucity of services, such as accessible housing, available on arrival for refugees with disabilities (NEDA 2008). In addition, support to continue learning English beyond the allocated 510 hours in the Adult Migrant English Program is difficult for disabled refugees to access, particularly for those with an intellectual disability, or those who are not appropriately identified, or are misidentified (as is commonly the case), as requiring mental health services (RCOA, 2011).

While specialist torture and trauma services are provided in each state and territory, there are no specialist disability services available for refugees resettling in Australia. Refugees with disabilities are entitled to a mental health assessment followed by eight sessions of counselling in the first six months of settlement, with limited services and support available after this time. These specialist services are overloaded and reported to be inadequate, as six months is insufficient time to allow for recovery from trauma (OMI, 2007:17). Furthermore, these services are not necessarily equipped to work with refugees who have disabilities

outside the bounds of mental health and, therefore, it cannot be assumed that these funded specialist services have the capacity to support the resettlement process for disabled refugees (EDAC, 2011:3). Many refugees have a range of impairments with no single impairment type dominating an individual's experience (Women's Refugee Commission, 2008). Negating this reality of multiple impairments may potentially diminish the mental well-being of this group as it renders their impairment/s and associated processes of disability discrimination as invisible, denying a critical aspect of their identity (Straimer, 2010).

### **Before resettlement: immigration detention and disabled asylum seekers**

While Australia has one of the most sophisticated resettlement programs, it is well recognised within international asylum literature that it also has an immigration detention system that allows for long-term detention of asylum seekers. Australia enshrined a policy of mandatory detention in federal legislation in 1992. This policy stipulates that any non-citizen arriving to Australia without a valid visa (predominantly asylum seekers who arrive by boat) can be detained indefinitely. Since this time, thousands of asylum seekers have been subjected to lengthy periods of indefinite detention while they wait for their protection claims to be finalised, with the majority eventually being recognised as refugees by the Australian state. Figures from the Australian government highlight that between 70 and 97 per cent of asylum seekers who arrived to Australia by boat at different times during the period from 2001 to 2010 were finally found to be refugees and allowed to resettle in Australia (Phillips, 2011). United Nations human rights agencies and international human rights organisations have highlighted the human rights violations inherent in the mandatory detention policy (for examples see Amnesty International, 2012; UNHCR, 2013b). The year this policy was passed (1992) is also considered a year of achievement for disability rights in Australia with the passing of the Disability Discrimination Act. However, the granting of disability rights to the internal disabled population was actively coupled with denying migratory status to external disabled populations under the very same Act. Curiously, as noted earlier, up until July 2012, onshore asylum seekers were the only exceptions to this legislative ruling, and they continue to be exempt from the cost-calculation health requirement. Despite this exception, disabled onshore asylum seekers are particularly disadvantaged due to Australia's detention regime.

As with other onshore asylum seekers, those with disabilities who arrive in Australia without a valid visa are subject to the mandatory detention policy unless the Minister for Immigration exercises his discretion to release those considered 'vulnerable' into the community. Until 2011, the minister rarely exercised this discretion (Hartley and Fleay, 2014). People held in immigration detention centres, particularly in remote parts of the country where some of the largest immigration detention centres are located (such as on Christmas Island, in the northwest of Western Australia and in the northeast of Queensland),

have little opportunity to access disability support services. This lack of provision is exacerbated by the experience of being detained on an indefinite basis, as supported by a growing amount of research that highlights the harmful effects of prolonged detention (for example Coffey et al., 2010; Fleay and Briskman, 2013; Rees et al., 2010). Immigration detention, particularly in remote locations, serves to further entrench the invisibility of the experiences of asylum seekers with disabilities. Travel to these destinations can be prohibitively expensive for disability advocates, who largely act in a voluntary capacity or as staff members of largely under-funded non-government disability organisations (EDAC, 2011). The remoteness of many detention centres has also contributed to the lack of scholarly attention to their experiences, which in other areas, such as those involving children and women more generally, has been critical to informing resettlement policy and practices.

While policy changes under the Labor government in 2010-2011 signalled a softening of the mandatory detention policy for some asylum seekers, accessibility of appropriate services for those with disabilities remained a concern. The Minister for Immigration at the time began to exercise his discretionary powers more frequently to allow asylum seekers to be released from detention before their protection claims were finalised. Most of those released were not able to access Australia's resettlement program until their claim had been finalised, however. Since the Coalition government came to power, fewer asylum seekers have been released from detention through the exercise of the minister's discretionary powers. As at the end of January 2015, 26,168 asylum seekers were living in the community on bridging visas following their release from immigration detention (DIBP, 2015a:3). A further 1,635 asylum seekers who had arrived by boat were being held in Australian immigration detention centres (DIBP, 2015a:6). While it is not known how many of these asylum seekers in detention or in the community have disabilities, the most recent figures at hand are dated the end of September 2014, when there were 268 asylum seekers with disabilities in immigration detention in Australia (NEDA, 2015).

While the release from detention for many asylum seekers is a welcome move away from the experience of indefinite detention and the mental health issues associated with it, for some, the support and services provided under community-based arrangements have failed to adequately address their needs to live a dignified life in the community. The support and access to services varies according to an assessment of each asylum seeker's needs conducted by the Department of Immigration and Border Protection, but generally there is much less access to appropriate services than under the resettlement program (Hartley and Fleay, 2014). Research into the experiences of asylum seekers living in community-based arrangements is still scarce and no attention thus far has been given to any asylum seekers with disabilities living in these arrangements. What is known is that onshore asylum seekers with disabilities living in the community prior to the acceptance of their protection claims have access to fewer services than those whose claims have been accepted as humanitarian

entrants, as they do not qualify for either disability services or resettlement services. Any appropriate services that are received are dependent upon the advocacy efforts of support agencies working with asylum seekers.

The denial and the differing articulation of human rights to onshore asylum seekers reveals several tensions between the layers of rights that exist, which remains largely under-theorised within the disability arena (Soldatic and Grech, 2014). As Soldatic (2013) has pointed out, many disability scholars assume that human rights equate to citizenship rights, even though these two sets of rights operate at differing scales of the transnational and national, and are not directly transferable from one scale to another. Pisani (2012:189) points out how this is especially the case for people seeking asylum within liberal democracies as here ‘state power ultimately depends on its relationship with its citizens’.

This trumping of citizenship rights over human rights is particularly acute for asylum seekers who have arrived to Australia by boat since 13 August 2012. In an effort to deter the arrival of further boats of asylum seekers, the Labor government adopted a ‘no advantage’ policy from this date that aimed to ensure ‘that those who choose irregular and dangerous maritime voyages to Australia in order to seek asylum are not advantaged over those who seek asylum through regular migration pathways and established international arrangements’ (Australian Government, 2012:20). The intended effect of the policy was that the protection claims of asylum seekers who came to Australia by boat after this date would not be processed any faster than if they had remained in transit countries such as Indonesia or Malaysia, or in their neighbouring countries. The policy included sending asylum seekers to the re-established regional processing centres on Nauru or Papua New Guinea’s Manus Island. Some of the asylum seekers detained on these islands in 2012 have since been brought to Australia, while others who have arrived more recently by boat have been transported to these sites of detention. Following its election, the Coalition government expanded the capacities of the sites of detention on Nauru and Manus Island. As at the end of January 2015 there were 1,825 asylum seekers detained on the islands, including children in the Nauru offshore processing centre (DIBP, 2015a:3).

The lack of adequate facilities and healthcare services for asylum seekers on these islands continues to be of great concern (Amnesty International, 2012; Cavill, 2013; UNHCR, 2013b), including reports that inadequate medical attention led to the death of an asylum seeker on Manus Island (Whyte, 2014). Reports continue to highlight the ongoing deterioration of the mental health of many of those detained (AAP, 2013; Amnesty International, 2014; Barlow, 2013; UNHCR, 2013b). In addition, there are great concerns for the safety of asylum seekers in the wake of violent incidents at both sites of detention, including the violence on Manus Island that left one asylum seeker dead and others injured in February 2014 (Amnesty International 2014). As at 30 September 2014, there were 109 adults and five children with disabilities detained in the regional processing centres on Nauru

and Manus Island (NEDA, 2015). These asylum seekers are also very likely enduring extremely limited provision of services to meet their needs.

Detaining asylum seekers on such remote islands outside Australia adds a further layer of invisibility to those with disabilities. Additionally, it highlights some of the key constraints surrounding human rights conventions such as the CRPD. As noted earlier, Australia has signed and ratified the CRPD into Australian law, policy and programming. New disability services for Australian citizens with disabilities are emerging in direct response to its international commitments. Yet, its interpretative clause surrounding Article 18 means there is no international nor national legal impost for the Australian government to acknowledge the supports required by disabled asylum seekers or provide them with these vital services (Meekosha and Soldatic, 2011). The contradictory consensus around the power of international conventions such as the CRPD is most starkly obvious when considering the treatment of maritime asylum seekers.

Other asylum seekers who have arrived by boat since 13 August 2012 have been detained in Australian immigration detention centres and some subsequently released into community-based arrangements. They face the ongoing uncertainty of waiting for their refugee claims to be processed, an expedited claims process with reduced access to review mechanisms, and the granting of temporary protection visas if found to be refugees (RCOA, 2015). This group of asylum seekers has also been denied the right to work and given minimal financial support, in contrast to many of those who arrived prior to 13 August 2012 and who were released from detention on a bridging visa that included work rights. While the Coalition government announced in December 2014 that asylum seekers living in the community could now be granted the right to work by the Minister for Immigration while they wait for their claims to be processed (Yaxley et al., 2015), the process is administratively difficult and, as at March 2015, thousands continue to be without such a right. For any in this group with disabilities, the denial of the right to work would have further inhibited their already limited access to appropriate services, and their greater reliance on the advocacy efforts of support agencies.

### **‘People out of place’: intersecting complex categories**

In the Australian context, there is an urgent need for researchers to engage in inter-disciplinary dialogue to ensure that disabled refugees and asylum seekers do not remain ‘people out of place’ (Brysk and Shafir, 2004:3) with the advent of neoliberal immigration regimes that seek to disqualify complex identities from citizenship rights and human rights. This will involve both the academic community and the practitioners and advocates for policy change. The two research areas have historically been distinct with little overlapping engagement (Mirza, 2010; Soldatic et al., 2012). Disabled refugees and disabled asylum seekers remain ‘out of place’ as an area of scholarly inquiry, policy engagement and advocacy practice. It appears

that within these domains, the point of analysis tends to privilege a single marked category, that is, disability, refugee or asylum seeker, revealing little about the material experiences of disabled refugees and asylum seekers from their own subjective standpoint. Thus, the historical prioritisation within the research of either social category works to suppress the potential to critically understand how being a 'disabled refugee' or a 'disabled asylum seeker' results in a differentiated and nuanced experience of marginalisation, exclusion and discrimination. The impact of this process of singularisation within both fields of scholarship has helped to make this group absent from broader debates within both fields of policy. This level of invisibility, in terms of the Australian resettlement and disability landscape, has resulted in the development of a range of practices that negate the existence of disabled refugees and asylum seekers and their complex experiences of resettlement and, in turn, undermines the development of policy and services that can effectively support their inclusion and participation, enhancing their overall well-being within the resettlement process.

Further, once the category of disability becomes central to the status of migration, state regulation of the migrating body becomes complex and contradictory. This is particularly so when examining policy responses to refugee children with disabilities because they are more disadvantaged within the Australian migration system than adult disabled refugees. This is despite the fact that refugee and asylum seeker children are usually positioned as the most vulnerable, innocent and at greater susceptibility to danger (Chatty and Lewando Hundt, 2001). The cost-calculation assessment for the health requirement maps onto the child's body a counter discourse; that is, that disabled refugee children are an unknown future burden. Other nuances of policy show that the distinction between asylum seeker and refugee has mattered in that disabled asylum seekers are more likely to be accepted for resettlement, due to the onshore exemptions that apply, than those disabled refugees waiting offshore.

Bedolla's (2007:233) mapping of recent progress in theories of intersectionality illuminates the effects of singular identity categorisation as it conceals the 'crosscutting political effects of both marginalisation and privilege within and among groups'. Bedolla, alongside other intersectionality theorists, argues that processes of marginalisation, discrimination and oppression are inter-locking, and cannot be marked into discrete areas of analysis, particularly when developing research which seeks to deepen theoretical and practice understandings of the relationship between differing identity categories. International disability scholars such as Dossa (2009) have identified that disabled people with overlapping identities are far more likely to experience discrimination and exclusion, especially when their identity is layered with a range of characteristics outside the 'norm' in terms of disability, gender, minority religious status and migration. As Southern feminist scholar Mohanty (2003) suggests, it is of critical importance to contextually ground the complex and rich interstices of varying identities as a means of identifying those state processes that

actively discriminate against certain ‘types of people’ and give privilege and access to state supports to ‘other groups’. Bedolla’s arguments are therefore compelling when consideration is given to the advancing of research that is critically engaged with those acutely marginalised under nation-state citizenship regimes, despite international human rights commitments, such as disabled refugees and asylum seekers seeking resettlement in modern liberal democracies such as Australia.

Finally, one of the key issues to emerge from this review of the literature is that too often disability is positioned within a medical paradigm, where the disabled body is constructed as a space of deficit and deficiency. This appears in both policy that seeks to leave disability at the state’s borders and among many refugee and asylum seeker advocates and researchers who are unable to situate the disabled body as a site of social, rather than biological, difference. In turn, despite the Australian disability movement’s attempts to engage the nation-state in a dialogue to re-position broader social understandings of disability (see Soldatic and Chapman, 2010), the referential framing of disabled refugees and asylum seekers within the medical sphere actively undermines these ongoing struggles for disability justice.

### **Concluding discussion**

There is much need for attention to the social processes of inclusion for disabled refugees and asylum seekers who are settling into Australian society. A critical yet overlooked aspect is the delineation of policy and institutional practices, and whether these enhance or impede disabled refugees’ participation socially, culturally, politically and economically. This is most clearly the case when considering the plight of disabled refugees and asylum seekers seeking resettlement in Australia. While many within the disability community have advanced ideas of citizenship rights to promote disability social inclusion, too often these discussions have discounted the competing effects of human rights versus citizenship rights. Moreover, despite the promises of international conventions to realise rights for social inclusion and participation within the polity, these rights are bound by the confines of the nation-state. Disabled asylum seekers and refugees, standing at the threshold of social understandings of rights, reveal the limits of these global governance mechanisms for social justice.

While disability researchers and advocates have pushed for states to adopt more social understandings of disability in their policy frameworks, the scholarship in the refugee and asylum seeker area unfortunately has had a strong tendency to conflate ‘mental illness’ caused by the migratory process (particularly the impact of detention) with that of ‘social’ disability, caused by structural disadvantage and marginalisation that nearly all disabled people navigate as part of their daily lived experience (see Grech, 2014). Lacking is a strong qualitative empirical picture that clearly identifies everyday practices of inclusion and

exclusion and distils the broader systemic policy discourses, processes and practices that enable greater participation for disabled refugees and asylum seekers. Rich, rigorous research is critical to advancing their claims for rights upon the nation-state and to ensure state support for resettlement processes that actively create social inclusion, cohesion and civic participation.

In the last three years, refugee and asylum seeker policy and disability policy have become urgent priorities in Australia. As outlined earlier, since July 2012 there has been a health requirement waiver policy for immigrants who are not considered to be a potential cost burden, including offshore refugees, and an increased quota for UNHCR-recognised refugees for 2012-13. Changes to the size and composition of the Humanitarian Program under the Coalition government suggest that increased numbers of offshore humanitarian entrants will continue to be accepted under this program, although how many will be UNHCR-recognised refugees in 2014-15 and beyond is not yet known. But the cost-calculation system is likely to effectively exclude offshore refugees with disabilities from being resettled in Australia, and punitive measures continue for asylum seekers who have arrived by boat since 13 August 2012. These punitive measures further limit the capacity of asylum seekers with disabilities to access any existing services and, when they do, these services are extremely limited in their effectiveness to respond to people's needs. Disability is likely to remain invisible in this policy landscape.

In terms of national disability policy, numerous directives have been launched, including the National Disability Insurance Scheme. However, to date, there are no initiatives under the new scheme that give consideration to refugee migration and resettlement, and the resulting implications for disabled people's participation and inclusion. Despite ongoing public inquiries in the disability arena (Productivity Commission, 2011), refugees and asylum seekers with disabilities are not granted the attention they deserve and have a right to. This is a grave oversight given that it is non-English speaking migrants who have the highest onset rates of adult disability in Australia (NEDA, 2010). Countries such as Australia, the UK, Canada and the USA are adopting more restrictive disability classification regimes which appear to directly contravene the realisation of disabled people's rights (Grover and Soldatic, 2013). The role of social policy is to provide the 'social bases for self-respect and non-humiliation' (Nussbaum, 2004:283) through providing mechanisms, processes and systems that enable participation and inclusion within the polity. This becomes more acute in the intersecting realms of refugees and asylum seekers, and disability. There is an urgent need for research that further illuminates these intersections.

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## **Notes**

- 1 Resettlement is understood here to refer to the situation where a person is granted permanent residency in a country other than their own after being recognised as a refugee. This includes where a person's refugee status has been recognised by the UN High Commissioner for Refugees and a state then agrees to resettle them as a permanent resident (often referred to as offshore refugees). It also includes where a person arrives in a country as an asylum seeker and their refugee claim is subsequently accepted by the state, allowing them to resettle in that country as a permanent resident (often referred to as onshore refugees).
- 2 The term 'refugee' here refers to individuals whose refugee status has been recognised either by the UNHCR or Australia and 'asylum seeker' to those whose refugee status is still being determined.
- 3 In September 2013 the Australian agency responsible for immigration changed its name from the Department of Immigration and Citizenship (DIAC) to the Department of Immigration and Border Protection (DIBP).
- 4 See Grech (2014) for a full discussion of the role of language as a system of power which maintains oppressive socio-cultural understandings of disability.

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