


Submission No 19

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**SUBMISSION TO THE JOINT STANDING COMMITTEE ON MIGRATION**

**Inquiry into the migration treatment of persons with disabilities**

**October 2009**

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## **Submission to the Joint Standing Committee on Migration Inquiry into the migration treatment of persons with disabilities**

### **Summary**

I believe that Australia's current attitude towards possible migration when the visa applicant is a person with a disability is a fundamental mess. The system is not remotely fair or even transparent. In addition the only consideration is "cost" – measured in the crudest possible fashion. No attempt is made to consider whether any benefit might accrue as a result of permitting persons with disabilities to migrate. Australia also has a potential legal problem with the Convention on the Rights of Persons with Disabilities.

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### **Introduction**

I write partly in my private capacity as the daughter of a disabled, elderly Mother who migrated to Australia in 2006 on a Contributory Parent subclass 143 visa. To this extent I have had direct and personal involvement in the migration process when the visa applicant is a person with a disability.

Partly I write as "Gollywobbler", one of the moderators on the Poms in Oz internet forum, which is devoted to the interests of Britons and others who wish to migrate to Australia. A link to the forum is here:

<http://www.pomsinoz.com/>

Registration with Poms in Oz is free. The moderators and members are all volunteers. We contribute to and help with the forum because we want to, not because any other sort of reward is involved.

Members bring their problems to the forum and we all try to help each other where we can.

During 2009 I have noticed a disturbingly high number of cases where British children aged under 10, all with learning difficulties of one sort or another, have "failed" the medical criteria for migration with the result that the visas applied for by their parents have been refused. I have been fairly closely involved with several of the cases, acting as a common sense sounding board for the children's parents and providing them with as much emotional support as I can, for I have personal experience of the emotional stress and strain involved when the applicant (or one of them) is a person with a disability.

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### **Terms of Reference**

I am not an expert in this field and I find the formal terms of reference too complicated to try to address.

I am able to deal with the informal questions which the Committee has kindly provided instead, as set out below:

- Is the current process for assessing a visa applicant against the health requirement fair and transparent?
- What types of contributions and costs should be considered?
- How do we measure these?

- Are there additional factors that should be considered?
- Do you have personal experience of this?
- What principles should apply to the assessment of visa applications against the health requirement? Should there be exceptions?

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### **Question 1**

#### ***Is the current process for assessing a visa applicant against the health requirement fair and transparent?***

##### **Section 1**

- In my opinion the current process is shrouded in dense opacity. It is anything but transparent.

If the MOC has any up to date Guidance Notes on how the MOC should approach applicants with a disability, those Notes are not in the public domain. They should be because otherwise applicants have no hope of making any sort of meaningful self-assessment in advance of committing money, time, effort and emotion to their dreams of migrating to Australia.

All that is in the public domain is the poorly drafted, garbled and utterly vague Form 1071i, coupled with a couple of equally vague descriptions on the DIAC website, none of which even mention disability. The conditions described by DIAC are confined to diseases of one sort of another:

<http://www.immi.gov.au/allforms/booklets/1071i.pdf>

The remainder of the "information" on the DIAC website may be found via the following links:

<http://www.immi.gov.au/media/fact-sheets/22health.htm>

<http://www.immi.gov.au/allforms/health-requirements/>

Nowhere does the material supplied by DIAC warn a visa applicant that if a member of his family is a person with a disability, harsh reality is that he will have an uphill battle to secure a visa and that his chances are of success are actually pretty poor.

Nowhere does it warn the visa applicant that the reason why his chances of success are so low is because an arbitrary threshold of \$21,000 was set some years ago as the benchmark via which to define "significant cost." In addition to not giving him the figure, DIAC's documentation also fails to warn the visa applicant that this figure of \$21,000 – set some years ago – is not linked to any indices of any sort so the \$21,000 never gets revisited, updated or even reconsidered.

The whole thing is so lacking in transparency that a visa applicant would somehow have to divine that he needs to read the legislation itself, the relevant Hansard for 27<sup>th</sup> May 2009, the ANAO Report of 2007 and a substantial number of the reports of the visa medical cases accessible via AustLii in order to have any remote chance of making a realistic self-assessment of his prospects or otherwise of success.

If his family member is a person with a disability, the visa applicant should also be aware that it would be prudent for him to ask DIAC whether the promised new Guidance Note for the MOC on Disability is in place as yet and if so to request a copy of it, using the Freedom of

Information Act if necessary in order to insist on production of a copy. If an FOIA request reveals that the new Guidance Note on Disability is not available then it would be prudent for the visa applicant to ask what is being used, in that case, and to insist on production of a copy of whatever yardstick the MOC is using – which may well be many years out of date.

If he is told that there is no written, transparent yardstick that he can read for himself, then and only then will the visa applicant discover that his family's future will actually depend on a subjective impression of the visa applicant, formed by one MOC doctor on a particular date.

How can a system which requires a visa applicant to know so much and to do so much be described as "transparent?"

- The process is not remotely fair either.

Whether or not an applicant meets the health requirement is a totally arbitrary decision, made by the MOC alone, based on nothing but documents supplied via a Panel Doctor. These documents may not be sufficient because a lot of the Panel Doctors in the UK cannot be bothered to do their own part of the job properly. They simply collect high fees for conducting the most brief and cursory of examinations. If a known medical condition is either apparent or is disclosed to the Panel Doctor, they do not seem to know what (if any) additional information the MOC will require. They prefer simply to get the bundle of papers on its way to Australia and then they leave it to the MOC to provide a "shopping list" of any other information that the MOC might want.

Frequently the MOC simply makes a decision on the basis of the half-information provided, without asking for anything more.

The Panel Doctor system is just as inefficient and as chaotic as the rest of the wholly inadequate system described by the Australian Auditor General when he audited DIAC's administration of the health requirement for migration. The ANAO Report, dated May 2007, is below:

[http://www.anao.gov.au/uploads/documents/2006-07\\_Audit\\_Report\\_37.pdf](http://www.anao.gov.au/uploads/documents/2006-07_Audit_Report_37.pdf)

The ANAO recorded a veritable catalogue of deficiencies in the administration of the health requirement. The visa applicants pay for this seriously deficient system, both with their money and with their future lives, which absolutely should not be. It is not fair.

The ANAO recorded that the MOC has never been provided with a full set of Guidance Notes. Two earlier attempts to produce them were abandoned. In anticipation of the ANAO Audit, DIAC hastily commissioned a firm of independent contractors to produce new Guidance Notes. There are two contracts between DIAC and the external contractors. They envisage that the complete set of new Guidance Notes will not be available until some time in 2011 at the earliest – assuming that the contracts are completed on time if at all. The two earlier (failed) attempts at producing Guidance Notes for the MOC suggest strongly that the new set will never be completed either.

Table 3.2 on Page 64 of the ANAO Report describes the status of the latest attempt to produce Guidance Notes. I have no idea whether any of the documents described have been completed as yet.

With regard to the proposed new Guidance Note on Disability, DIAC informed the ANAO that "an extensive re-write" is required. As of May 2007, this "extensive re-write" had yet to commence.

Does the Committee have any information about whether it has now commenced, some 2.5 years later? If it has been commenced, has the new Guidance Note on Disability been completed and if so it is being used by the MOC on each and every occasion, or even at all?

Are there any Quality Assurance and audit arrangements via which the extent to which the MOC actually uses any new Guidance Notes can be monitored and measured? If not then in what way can this system be called "fair" to a visa applicant and his family?

I submit that the truth of the situation is that the whole system is so unfair, so lacking in transparency and so chaotically poorly mis-managed that nobody including the MOC actually knows what parameters the MOC should consider when presented with a visa applicant who has a disability of some sort.

The only hard piece of information that is actually known by anyone is that the MOC is to measure nothing but what the applicant will "cost" Australia and if the MOC – in his sole, unaccountable, unchallengeable and unaudited Opinion - considers that this "cost" will be equal to or will be likely to exceed \$21,000 during the disabled visa applicant's first 3 to 5 years in Australia then the MOC should record "does not meet" on Form 884.

I happen to have discovered all this via a huge amount of solid, painstaking legal research. It is both unrealistic and completely unreasonable to expect a lay applicant to be able to do this research. The information that he needs should be easily accessible via the DIAC website – but alas the website does more to conceal the truth from him than it does to reveal it to him.

Indeed, I had always been sceptical about whether Australia is serious about this arbitrary \$21,000 proposition until I read Hansard earlier this year. The relevant copy of Hansard is here:

<http://www.aph.gov.au/hansard/senate/commttee/S12041.pdf>

I draw the Committee's attention to the section which Senator Fifield opened, beginning on page 125 of Hansard (using the page numbering in Hansard itself, not the Adobe page numbering.) I quote the Minister for Immigration and senior members of DIAC's staff:

**Mr Vardos**—..... there is a financial threshold, which at the moment might surprise you—it is only \$21,000.

.....  
**Senator FIFIELD**—Sure. Thank you for that. In the case of Dr Moeller's son, I think Mr Vardos mentioned that \$21,000 was the threshold for medical costs.

**Mr Vardos**—We are negotiating a new threshold of \$100,000.

**Senator FIFIELD**—Yes, but at the moment it is \$21,000.

**Mr Vardos**—Yes, \$21,000.

**Senator FIFIELD**—At the moment, it is \$21,000.

.....  
**Mr Kennedy**—Senator, the three elements of the health requirement have been described in earlier responses. The \$21,000 threshold is what is classified as the 'does not meet' threshold. If the health costs or community services costs related to a health condition exceed \$21,000, a medical officer will find that the applicant 'does not meet'.....

**Senator Chris Evans**—Could you explain why the threshold is \$21,000 and how that is assessed by the medical officer? That is the key issue. It is actually not a departmental decision.

**Mr Kennedy**—The \$21,000 is the threshold that the medical officer of the Commonwealth uses to assess eligibility in terms of whether the applicant meets or does not meet the requirement. The medical officer of the Commonwealth considers a range of factors, including health costs and community support costs and, if the medical officer of the Commonwealth assesses those costs as totalling more than \$21,000, he will declare that the applicant 'does not meet'. In that circumstance our visa decision maker must accept the

medical officer of the Commonwealth's decision and must refuse the visa.

**Senator FIFIELD**—Is that \$21,000 a figure that has been negotiated or agreed with the states?

**Mr Kennedy**—Sorry?

**Senator FIFIELD**—That \$21,000 is agreed—

**Mr Kennedy**—No. The \$21,000 is the 'does not meet' threshold.

**Senator FIFIELD**—It is just stipulated.

**Mr Kennedy**—Yes.

**Senator Chris Evans**—I think it would be worthwhile your explaining that this is not an assessment of the individual's case, because I think that is the other issue here.

**Mr Kennedy**—Yes. The courts have held that the medical officer has to assess the situation on the basis of what is called a hypothetical person, not the individual circumstances. They have to assess the circumstances as if they apply to a hypothetical person. A medical officer is not able to take into account the individual circumstances of the individual applicants. In the Moeller case, as I think the minister has already mentioned, the other factors that might have been weighed in, such as whether the family was of value to Australia, were not able to be taken into account.

.....

**Mr Kennedy**—The health requirement has been in place in its current form since the 1990s.

*According to the Minister:*

**Senator Chris Evans**—But also things are taken into account like whether they have private health insurance.

(Really? Public Interest Criterion 4005 specifically says that items such as private medical insurance must be disregarded. What does the Minister mean?)

Why is the figure of \$21,000 not stated in Form 1071i or in anything else which is accessible via the DIAC website? How is it "fair and transparent" to conceal this very low figure from a prospective visa applicant?

It is also possible to access the Panel Doctors Gateway via the DIAC website, though I am not persuaded that DIAC really intend that prospective visa applicants should scour this portal as well. It is intended for doctors and I think it is too complex for lay-people.

[http://www.immi.gov.au/gateways/panel\\_doctors/conducting\\_medicals/visa\\_health\\_requirements/](http://www.immi.gov.au/gateways/panel_doctors/conducting_medicals/visa_health_requirements/)

However I submit that absolutely nothing above is remotely "transparent", nor it is remotely "fair" to invite somebody to submit himself and his family to the visa application process without providing him with ALL the information which may be relevant to himself, up front and in an easily understood format.

It should be possible for a prospective visa applicant to contact DIAC, identifying a particular medical condition or other disability, and DIAC should be able to send that person a copy of the Guidance Note that will be relied on by the MOC in making his assessment. This will not be possible until at least 2012 according to the contracts with the external contractors tasked with production of the new Guidance Notes.

## **Section 2**

Another aspect of this which I consider to be grossly unfair is that there is no machinery for testing whether or not somebody meets the health requirement in advance of making a decision about whether or not to risk both the money and the emotional tension of making a visa application if the main applicant for the visa is applying under the Skilled Stream – which, after all, is deliberately set at 70% of the total migrant intake in any given year.

Because of the way the visa system works, new visa holders of most permanent residency visas and also some of the provisional visas are required to make an initial entry to Australia by no later than a particular date. This initial entry date is usually a date which is 12 months after the earlier of the dates on the police checks or the medical examination by the Panel Doctor.

DIAC advise – both on the main DIAC website and on the website of the Australian High Commission in London – that visa applicants should not undertake their visa medicals until instructed to do so by a Case Officer. When the applicant is in Australia, the meds must be done by Health Services Australia and I have been told (though I do not know for sure) that H.S.A are obliged to charge a fixed price and that this price is pleasantly low compared to the prices charged by Panel Doctors and x-ray clinics outside Australia.

In the UK a family of two adults and two children would typically pay somewhere between £750 GBP and £1,000 GBP for full visa medicals for all four of them depending on the ages of the children. (\$1,400 to \$2,000 AUD.) Once the visa has been granted, typically it will take some time for the family of a skilled visa holder to be ready to make their move to Australia. Houses take time to sell in the UK because of the "chain" system. It may be that teenaged children are about to sit for important exams and so forth.

The Case Officers do not ask for the medicals and police checks until they are satisfied that the remainder of the paperwork is satisfactory. It would be irresponsible to encourage a large item of expenditure such as the medicals if the other information available to DIAC results in a visa refusal because the applicant fails to meet the points pass mark, for example.

DIAC rely on the assumption that visa applicants will pass their medicals – which most applicants do according to the discussion recorded in Hansard above.

However when one of the family is someone with a disability, this caution about discouraging undertaking the meds prematurely has the opposite effect to that which DIAC intend. Let us assume, for illustrative purposes, that the main visa applicant is a British, UK resident bricklayer who has applied for a skilled independent Permanent Residency visa. Long before the CO requests the medicals, the Bricklayer has already incurred the following costs:

1. Pre migration skills assessment. In the case of a UK resident bricklayer, the relevant skills assessment authority is Vetassess, not TRA. Vetassess charge \$2,200 whereas a Welder whose skills assessment is done by TRA only has to pay TRA \$300. The Vetassess process is in two stages – a paper based assessment of competencies followed by a day long practical assessment. The practicals are done in the UK. The assessors come to the UK from Australia. They visit the UK one a quarter – ie four times in a calendar year. The result of this tortuous Vetassess process is that it usually takes about 6 months to complete the skills assessment part, and the visa cannot be applied for until a positive skills assessment can be produced.

2. Current visa processing priority arrangements are such that it would be prudent for the Bricklayer to obtain State sponsorship. Currently South Australia, the Northern Territory, the Australian Capital Territory and West Australia all offer the right State sponsorship for Bricklayers. (Tasmania might, too, but four is enough for this illustration.) As yet, SA and the NT do not charge for State sponsorship applications and both of them process the applications within a couple of months. WA and the ACT charge \$220 and \$275 respectively and processing takes around 4 to 6 months.

3. Eventually – after a process which has already cost a significant amount and has probably taken a minimum of 9 months – it is possible for the Bricklayer to submit his visa application. DIAC's current fee for that is \$2,525.

4. Unless there is a "live" visa application, the MOC has no legal basis on which to consider the medical files for the Bricklayer and his family. The DEEWR oversee skills assessments. The WA State Government is a separate legal entity. The MOC's task is to advise the Minister for Immigration. Without the visa application there is no legal transaction between the visa applicant and the Minister for Immi.

The Bricklayer has a child who has a Statement of Special Educational Needs. The child might have Down Syndrome, Fragile X, Aspergers, some other Autistic Spectrum Disorder or the child may be partially sighted, technically blind or disabled in some other way. (Very few people who are registered blind are completely without sight.) Any of these conditions should be enough to secure a Statement of SEN in the UK because unless the level of disability is so mild that it is almost imperceptible, the chances are that the child will have Special Educational Needs of some sort.

The chances are high – and recent experience with Poms in Oz members and others has proven it – that this child will be deemed not to meet the health requirement for migration. The moment the MOC is shown a Statement of SEN, an instant assumption is made that this child's schooling needs will be expensive to provide. Couple that with the very low threshold of \$21,000 and it does not take genius to work out that this child only has a slim chance of avoiding a "does not meet" Opinion from the MOC.

The upshot is that the family have already incurred significant costs of their own, just to get to a point right at the end of this long, expensive and emotionally draining process when the Bricklayer is likely to find that the visa application will be refused.

Does he have any remedies? Can he appeal to the MRT in order to test whether the RMOC concurs with the MOC's Opinion? The short answer is "No" because the Bricklayer is sponsored by one of the States. That is the best route under the current Ministerial Directions about visa processing priorities.

Technically a State Government can launch an appeal to the MRT in this situation – legally it is possible. However in practical terms they all decline to do it, for reasons which I consider are sound. The State Government has no information about the disabled person – be it the Bricklayer's wife or one of his children. The State Government has no locus standi to enquire about the type and severity of the disability. The State Government is not a doctor in any case.

The States all have a dilemma – the person with the disability might be so disabled that there is no realistic prospect of the person's being able to meet the health requirement for migration. If so then it would be irresponsible for the State Government to do anything which might encourage false hope and could lead to the visa applicant spending a pile of additional money on a course of action which might be futile and predictably so.

I believe that the State Governments are absolutely right to decline to get involved in a situation where any further action by one of them might simply prolong the emotional agony as well as adding to the wad of money which has, in essence, been completely wasted on different sections of the Australian Federal and State Governments. If a migration agent has been used then the money spent on his fees (typically around \$4,000, doubling the costs of the exercise) has been wasted as well.

I submit that there should be a way to "road test" the health requirement in advance of a visa applicant spending any time or incurring any costs in relation to any other part of the process.

It has been suggested by a senior member of DIAC's Health Section that a crude form of "road test" is technically feasible. In theory, the Bricklayer could seek two subclass 676 Tourist visas for himself and his disabled family member, requesting a stay of the maximum



12 months in Australia. He could make this application by paper & post so as to ensure that it will be processed by a human in London.

Although a British visa applicant would not normally be asked to produce medicals in connection with a subclass 676 application, the Health Section say that it is possible to get a Panel Doctor & x-ray clinic to do full visa medicals as if for an application for Permanent Residency. The Health Section say that if the facts are explained to DIAC – the “road test” idea – DIAC can ask the MOC to consider the medical information that has been volunteered as if an application for a visa involving Permanent Residency has been made.

DIAC in London are very doubtful. They consider that the legal position is that the MOC can only consider health information in so far as it relates to the visa which has actually been sought. Legally, I suspect that this is the better view – I suspect it is the accurate one.

I also think that in practical terms the idea would be 99% likely to fall flat on its face in any event. An Administrator in London would have to convince a confused and doubtful colleague at the Health Operations Centre in Sydney to ignore all the usual rules. The person in Sydney would have to try to convince an equally confused and doubtful MOC doctor. If somebody asks DIAC’s legal department for guidance, they will wonder what on earth everyone else is up to and why. And the person in the Health Section (who started this hare running) has probably moved to a new career in the private sector and forgotten all about the idea! Too much is likely to go wrong, in my opinion. There are too many opportunities for the idea to go wrong.

In my view a special piece of legislation (which could be very short) is needed, which specifically enables the “road test” suggested by the Health Section person who came up with the original notion. I don’t know what the legal basis of my idea would be – that would be something for DIAC’s lawyers to devise, I would suggest.

### Section 3

I invite the Committee to consider Question 26 in Form 26. The question asks whether the visa applicant has **ever** been in receipt of, “Government financial assistance for medical reasons?”

<http://www.immi.gov.au/allforms/pdf/26.pdf>

This question is new in Form 26. It was added in about March 2009. The emphasis on “ever” is evidently designed to prevent circumvention – a visa applicant might stop claiming the foreign Government’s financial assistance in advance of making the visa application.

I consider that this question is grossly unfair – and indeed I consider it to be both impertinent and outrageous – for the following reasons:

1. In a “developed” country such as the UK, if the visa applicant is a person with a disability then the answer is likely to be “yes.” In an “emerging” country such as Sri Lanka the answer is likely to be “no” for the simple reason that so far as I am aware Sri Lanka does not have a “Welfare State.” Therefore I believe that Australia is in breach of its own legislation prohibiting racial discrimination in even asking this question.

The question is there for a reason. It is not there for the purpose of idle and thoroughly impertinent curiosity. Given the lack of transparency and lack of fairness in Australia’s entire approach to the health requirement for migration - coupled with the lack of any discernible attempt at the proper management thereof, as identified and criticised heavily by the Auditor General – the chances are that if the answer to this question is “yes” then the MOC’s attitude

towards the visa applicant is likely to be heavily influenced by the applicant's answer. The subliminal influence on the MOC doctor is unlikely to be a positive one, I suggest.

2. Apart from the fact that I consider that this question is racist and that it negates all of DIAC's claims to act in a non-discriminatory fashion between applicants, what the British Government chooses to do for its Citizens in the UK is irrelevant. Australia has its own criteria for determining whether somebody is disabled and if so whether to provide financial help and if so what help. The Australian criteria are the only ones which are relevant in this context.

3. The UK and Australia do not share an identical approach to the assessment of disability in the context of the payment of State Benefits. Can an Australian doctor in Sydney – the MOC – reasonably be expected to know how every other Government's State Benefits system works in relation to a person with a disability? Of course not, so what is the point of confusing the MOC doctor with this impertinent question in the first place?

4. The MOC's role is confined to considering how *Australia* would treat a "hypothetical Australian" who is - in effect - the Aussie clone of the foreign visa applicant. How Canada, the UK, France or any other jurisdiction might treat this same disabled visa applicant financially is and should remain completely irrelevant as far as the MOC is concerned.

My personal view of this obnoxious question is that the Commonwealth Ombudsman should be asked to look into it. I suspect that the question has been slipped in for the sole purpose of trying to facilitate keeping persons with disabilities or other medical conditions out of Australia. I can see no other reason for its recent inclusion and I think it should be expunged from Form 26 without further ado.

### **Questions 2 & 3**

***What types of contributions and costs should be considered?***

***How do we measure these?***

Currently no attempt is made to consider what contributions a person with a disability could make if permitted to migrate. The only consideration that the legislation allows is consideration of cost and \$21,000 is deemed to be the threshold at which cost is considered to be excessive, leading to visa refusal. Because there is no consideration of whether there might be any positive aspects to this, no attempt is made to measure what they might be.

Beyond this, I think the answers are obvious.

A disabled person's contribution is likely to be an intangible benefit. Who can say what sort of benefit my two Australian nephews obtain as a result of having their disabled maternal grandmother with them? Can the Australian Government take it upon themselves to say that the boys would be better off without their British grandmother because she is disabled and therefore might be costly for the Australian Government to maintain? How would the Government justify that proposition to its two voters of the future?

My nephews are lucky, as it happened. Their grandmother was allowed to migrate in spite of being a person with a disability. Via Poms in Oz I know several other families who have not been as lucky as we were. In the unlucky families, the voters of the future who are minors at present have been deprived of the company of two of their four grandparents because the Australian Government decided – on behalf of the grandchildren concerned – that one of their grandparents represents an unacceptable cost to the Government.

How on earth Senator Evans imagines that he can ever explain that to the Australian youngsters concerned is anyone's guess, I suggest. Nonetheless the decision to deprive these young Aussies of two of their grandparents was made in his name, so I suggest that the Minister should make it his personal business to explain it – one to one – to the children concerned.

I would cringe at having to try to explain it to tomorrow's Australian voters, so I leave the Minister to ponder his own responsibilities in its regard. Suffice to say that I would not like to wear his or Mr Rudd's shoes myself.

#### **Question 4**

##### ***Are there additional factors that should be considered?***

In my opinion, emphatically "yes." I suggest the following factors:

1. The first additional factor that should be considered is Australia's obligations under the international Convention on the Rights of Persons with Disabilities. I understand that Australia has not ratified the Convention but Australia nevertheless agrees with enough of the proposals to have become a signatory to the Convention.

Therefore I submit that the Australian Government has a duty to act as if Australia has already ratified the Convention. On any other basis there was little point in involving Australian officials in any part of the process leading to Australia's signature, surely?

I understand that legal Opinion is that the Migration Act 1958 cannot be excluded from the ambit and intention of the Convention. If so then it seems to me that the migration legislation will surely have to be altered in the light of the Convention?

2. I am troubled by this assertion by the Minister:

**Senator Chris Evans**—But also things are taken into account like whether they have private health insurance.

If he means that, I disagree with him. I think it is socially divisive to accept only the people with disabilities who can pay their own way or can pay for private medical insurance. That idea diminishes all other persons with disabilities who are less well off financially.

Additionally, I get this question all the time via my involvement with the Poms in Oz forum. The families are so desperate to make the move that they try to do "deals with the devil." They beg me to say that if they promise to pay all the costs for their child or their loved one, I can somehow make things come right for them. People who are desperate will promise anything in the heat of the moment. They do not consider how hollow that promise would be if circumstance should prevent them from being able to keep their promise.

It is my firm belief that ability to pay should have absolutely nothing to do with any of the health considerations for permanent migration to Australia. I am convinced that any other approach would cause more inequity than it would solve.

3. I do think that Australia should use some logic where the parents of a child with a disability are concerned, though. At present the child is regarded only as a "cost." What about the child's parent's contribution to solving Australia's skills shortage? What about the taxes that the child's parents will pay to the Australian Government in years to come? What about the taxes that the child himself will be able to pay once some early years intervention at this stage has paid off and the child has become a fully functional, independent adult? Australia is very short sighted, it seems to me.

## **Question 5**

### ***Do you have personal experience of this?***

Yes. My beloved mother is a person with a disability who migrated to Australia in 2006. And yes again because of the help that I personally go out of my way to provide to distressed, anxious visa applicants who join Poms in Oz and meet Gollywobbler (me) in the flesh or by chatting with me over the phone.

I do not believe that it is possible to begin to understand – or even to imagine – the sheer emotional torment that prospective visa applicants and their families go through with the health requirement for migration unless one has been there, done that and got the tee-shirt oneself. It is one of the main reasons why I devote hours and hours of my spare time to helping other people in a similar position via the Poms in Oz forum. I know exactly how the other families feel because I have been through exactly the same torment myself. The torment lasts for FAR longer than is conscionable because of the way that the visa application process works and the many, many long months that it takes.

I have not personally had to endure the very real disappointment and bitterness towards Australia that ensues after a visa refusal. However I know several Poms in Oz members who are feeling it right now, as I write this submission.

They suffer a form of bereavement and their sense of bereavement is real. Dreams can be killed just as easily as a car crash can kill humans and animals. They don't simply shake themselves down and forget Australia as easily as the Australian Government forgets them. They brood, they grieve – the gamut of emotions is just as bad as that which follows the death of a loved one.

The Australian Government does not even have the decency to offer them a counselling service of any description. To the Minister and to DIAC, these people are no more than numbers – ciphers – unless the person concerned makes a fuss on the same scale as the fuss made by Dr Moeller.

To be informed that Australia considers a member of one's own flesh and blood to be nothing more than an unacceptable "cost" is an exercise in creating unnecessary enemies, frankly. It is also an exercise in causing almost unbearable grief for the people concerned. The Australian Government ignores the consequences of its own brutality. Why so?

No matter how much one tries to tell oneself that one knows there is a real risk of rejection and so forth, my experience is that once the visa application is submitted an "inner change" happens. It is very difficult to describe. The day before Mum's application was submitted, I still felt fairly detached. At that stage, we could still decide that the gamble was not worth it.

However the day after I despatched Mum's visa application, my whole feeling changed in a way that I did not expect or anticipate. I had rolled the dice down the casino table (when I loathe gambling anyway.) Suddenly I could not walk away from the gamble. It was weird.

It was the single most stressful thing I have ever done in my life. I felt personally and solely responsible for the sense of utter loss and bereavement that I knew we would all feel if I lost my gamble against the Australian Government.

Only one word can describe the emotional experience. That word is "Horrible."

## **Question 6**

***What principles should apply to the assessment of visa applications against the health requirement? Should there be exceptions?***

I submit that the first requirement is to decide what the health requirements actually are. Without proper – or indeed any – Guidance Notes for the MOC it is impossible to do this.

Somewhere – possibly in a statement by the Minister – I have seen another reference to the figure of \$21,000. I understand that this \$21,000 is considered to be the cost of caring for the “hypothetical Australian” for a period of 3 to 5 years, with an uplift of 20%. If so then the cost of caring for the “hypothetical Aussie” is \$16,800 over 3 to 5 years?

How old is the “hypothetical Aussie?” I strongly suspect that the whole idea is too crude and too rudimentary to withstand rational scrutiny. Whether the period is three years or five years can make a significant difference in the life of an elderly person. It can be equally significant in the life of a child.

The exact age of the child will bring its own nuances, to add to the complications. Please consider this example:

Child A is four (4) years old at the time of the visa application. He has recently been identified as being a person with a disability because he has Special Educational Needs. Providing the special help which will help him to grow into a “normal” adult is likely to take some years and is therefore likely to be costly.

Child B is twelve (12) at the time of the visa application. He has already had eight (8) years of help in another country and is almost independent of Special Needs help. He will cost Australia demonstrably less than Child A. It will also be much easier to try to frame an accurate “picture” of whether Child B is likely to become a fully independent, functional adult than it is to try to make an accurate assessment of this for Child A.

Because the whole thing is pinned to the arbitrary figure of \$21,000, Child B is more likely to be granted a visa than Child A.

Yet in May 2009, neither DIAC or the Minister were able to tell Senator Fifield where this figure of \$21,000 comes from, when it was last revised or anything else about it. Apparently it is not linked to any known Index about anything.

It is supposed to be nothing more than a very general, fluid “rule of thumb”, designed to do nothing more than to alert offshore Panel Doctors to the possibility that the medical findings should be reported to the MOC. It was never the intention that the MOC should be confined to making arbitrary decisions that treat \$21,000 as a hard & fast figure.

I think the Minister, Mr Vardos and Mr Kennedy – all three of them – totally fail to understand how PIC 4005 is actually supposed to work. However reading Hansard - in which all three gentlemen stated it as an absolute fact that \$21,000 is “make or break” – the MOC has been left with no room for manoeuvre based upon clinical judgement. Surely this cannot be right?

Instructions which are properly drafted in the first place should not need exceptions in my view. By “instructions”, I include legislation because the role of legislation is to provide instructions for a given society to abide by.

**Conclusion**

I am very grateful to this Committee for taking the time to read and to consider my contribution to this debate.

I believe that it is necessary to repair the fundamental mess which is the Australian Government's current operation of the health requirement for migration *before* it will be possible to do anything coherent about treating visa applicants who happen to have disabilities humanely, fairly and in accordance with Australia's obligations in International Law.

**Gillian Palmer (Ms) MA (Cantab)**

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