

SUBMISSION TO JOINT STANDING COMMITTEE ON MIGRATION

MIGRATION TREATMENT OF DISABILITY

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Submission No. 94

I am a solicitor currently practising law part-time in Brisbane. The balance of my time is spent assisting in the administration of a systemic disability advocacy group of which I am president, namely, Queensland Advocacy Incorporated and undertaking post-graduate studies on the subject of this inquiry.

I appreciate the opportunity to make a submission on this very important issue. Fortunately, I have had the benefit of reading a number of the submissions which have already been submitted. Many of the submissions have focused on ethical, legal and socio-economic considerations which underly the Committee's terms of reference. In my humble opinion, these submissions provide the Committee with the information necessary to make recommendations to the Government to change what is a most unfair law. Unfair on applicants with a disability and their families and unfair on Australian people with a disability, who are demeaned by its very basis—that Australia attaches no importance to or takes no account of the contributions of persons with a disability and views such persons only in terms of their cost to the community. Australia's human rights record is undermined by this appalling law ("the health requirement").

Rather than duplicate the valuable comments in the submissions made to date, I will endeavour to express my concerns about the existing assessment process in the context of my personal experiences gained in trying to assist parents with children with a disability and the knowledge I have accumulated by examining the origins of the health requirement.

A number of submission authors have pointed out that with the repeal of the racially discriminatory provisions of our immigration restrictions, the White Australia Policy was dead and buried, notwithstanding that it was survived by what must have been considered as an almost separate restrictive policy aimed at the disabled, the diseased and people such as paupers, all of whom posed the threat of being a financial charge on the community. This is only partially accurate. The use of the expression "White Australian Policy" has had the effect of disguising, in a sense, what was a eugenic policy which sought to exclude people who themselves and whose progeny would dilute the superior stock which made up the majority of the population. One does not need to go any further than to mention that the disability restrictions were not designed (in truth there was not a lot of design about it) to apply to non-European applicants. They were 'aimed' at Europeans whose physical or mental impairments caused them to be judged as inferior 'other' ---just like non-Europeans. So, in the true sense, the White Australia Policy lives on in the form of the medical inadmissibility laws contained in the health requirement.

The demise of the racially discriminatory admissibility laws suited the political demands of the time. Australia needed immigrants to carry out the many tasks required to be undertaken in the growth of a new nation. However, it did not need to complicate matters and take in people with disabilities. Their continued exclusion could be easily justified by highlighting the possible cost of supporting them at the expense of the existing population. This law remains in place today.

I first became aware of the health requirement when I was asked to assist the parents of an Australian couple who, when working overseas, adopted an orphaned baby girl with a disability. The couple had been made aware that there was a need to satisfy a health requirement so they brought the baby to Australia to be examined by a senior paediatrician. The paediatrician produced a report that the baby was a very healthy child who would grow up and make a meaningful contribution to Australia. Shortly before their return to Australia the family were shocked to discover that their application for a visa for their baby had been declined due to the baby's disability.

I contacted the Immigration Department by phone to try and discuss the matter and was told that as I was not a registered migration agent I could not act on the couple's behalf. As I believed this to not be the case, I commenced proceedings in the Tribunal for the decision to be reviewed. At the same time I wrote to the responsible Minister asking that he intervene and then wrote to another very senior Federal parliamentarian, who I knew had a daughter with the same disability, requesting he speak to the Minister in support of the family. This he did and after a number of exchanges of correspondence and telephone conferences the decision was reversed.

Efforts to assist a number of other families in a similar predicament have not been successful. However, all applicants I have sought to assist share a number of characteristics which are worth noting:

- a) the applications were made by the parents of persons with a disability. The parents were skilled and satisfied all requirements. These skills were not taken account of in the decision making process regarding the admissibility of their child with a disability;
- b) the parents were prepared to provide security in the form of irrevocable financial bonds or guarantees to be called on by the Government in the event that their children with disabilities having to utilize Australian health services for reasons related to these disabilities. Again, this was not taken into account in the decision making process;
- c) each assessment of the admissibility of the person with a disability was made by a medical practitioner appointed by the Australian Government, but not necessarily an Australian familiar with the social welfare arrangements etc. of this country; and

- d) as far as each of the families could gather. the MOC's they each encountered were appointed solely on the basis of their medical qualifications

The assessments were based on strictly medical grounds. The social model of disability simply did play any part in the process.

Not only should the Committee examine the health requirement itself having regard to its terms of reference but I submit that its purposes would be well served by gaining an appreciation of the understanding of disability by some Department personnel. Is it the case that the following statement contained in the Department's Fact Sheet 22 – Health Requirement, is a reflection of the understanding of disability discrimination by Department personnel or, dare it be said, a cynical attempt to mask the continuation of a truly inequitable practice ?

“In line with Australia's global non-discriminatory immigration policy, the health requirement applies equally to all applicants from all countries, although the extent of testing will vary according to the circumstances of each applicant.”

It is appreciated many other countries have similar restrictive immigration laws but that does not hide the fact that Australia, which enjoys the reputation of being a nation which is always ready to embrace human rights conventions etc. when the truth is that, in certain instances, this is the case only so long as their full implementation does not come at a cost.

By way of conclusion, I support the call by the Australian Coalition for the Ratification of the UN Convention on the Rights of Persons with Disabilities on the Joint Standing Committee on Migration to recommend to the Australian Commonwealth Government that:

- a) there be full application of the Disability Discrimination Act 1992 to the Migration Act 1958 health assessment to remove the potential for any direct or indirect discrimination against refugees and migrants with a disability;
- b) there be improved consistency, transparency and administrative fairness for migrants and refugees with a disability applying for an Australian visa; and
- c) the Australian interpretive declaration made upon ratification of the Convention pertaining to the health requirements for non-nationals be withdrawn.

Thank you.