

Submission No 33

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Submission to
The Joint Standing Committee on Migration
Inquiry into Immigration Treatment of Disability

From
The Australian Catholic Bishops Conference

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Thank you for the opportunity to make a submission to your inquiry into Immigration Treatment of Disability. I write as Head of the Australian Catholic Migrant and Refugee Office on behalf of the Catholic Bishops of Australia.

The work of the Catholic Church in care and support for people in need is well known. Two of those works include care for migrants and refugees (both in Australia and overseas) and care for people with illness and disability. This submission is informed by experience in our various works caring for such people.

A Context

Prior to discussing the issues identified by the terms of reference and questions of the Inquiry, it is appropriate to consider three important documents, which will be referred to in this submission:

1 Migration Regulations 1994 Schedule 4 Part 1 Public Interest Criteria (in part):

"The applicant:

- (a) is free from tuberculosis; and*
- (b) is free from a disease or condition that is, or may result in the applicant being, a threat to public health in Australia or a danger to the Australian community; and*
- (c) is not a person who has a disease or condition to which the following subparagraphs apply:*
 - (i) the disease or condition is such that a person who has it would be likely to:*
 - (A) require health care or community services; or*
 - (B) meet the medical criteria for the provision of a community service; during the period of the applicant's proposed stay in Australia;*
 - (ii) provision of the health care or community services relating to the disease or condition would be likely to:*
 - (A) result in a significant cost to the Australian community in the areas of health care and community services; or*
 - (B) prejudice the access of an Australian citizen or permanent resident to health care or community services;*
- regardless of whether the health care or community services will actually be used in connection with the applicant; and*
- (d) if the applicant is a person from whom a Medical Officer of the Commonwealth has requested a signed undertaking to present himself or herself*

to a health authority in the State or Territory of intended residence in Australia for a follow-up medical assessment, the applicant has provided such an undertaking.”

2 UN Convention on the Rights of Persons with Disabilities (ratified by Australia 17/7/2008) Article 18 – Liberty of movement and nationality (in part):

“State Parties shall recognize the rights of persons with disabilities to liberty of movement.....on an equal basis with others”.

3 Pope John Paul II said that regulating immigration according to equity and balance is one of the indispensable conditions for ensuring that immigrants are integrated into society with the guarantees required by recognition of their human dignity (Compendium of the Social Doctrine of the Church, Vatican, 2004, para 298, p 171) and that persons with disabilities are fully human subjects, with rights and duties (ibid para 148, p81).

B The Questions

For simplicity, it is proposed to briefly consider each of the 6 questions proposed by the Committee and to then discuss the issues for consideration.

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

One could argue that the relevant section of Schedule 4 re Public Interest Criteria of the Migration Regulations (quoted above) provides a very transparent criteria and process for assessing a visa applicant against the health requirement. However, it is noted that the section quoted above is only one of numerous similar sections in Schedule 4 regarding health. It is difficult to imagine how a normal applicant for migration could be expected to understand the criteria quoted above, even if they were aware of the Schedule. In addition, if one unpacks the criteria, one notes that it is complex and judgemental. For example, the section refers in part to:

“(ii) provision of health care or community services relating to the disease or condition would be likely to: (A) result in a significant cost to the Australian community in the areas of health care and community services; or (B) prejudice the access of an Australian citizen or permanent to health care or community services”

In the paragraph quoted, how does one determine what is “significant cost”? Eg, is periodic treatment for asthma a significant cost or does cost only become significant when it is for a major long term disability? Is a disease that can be treated intensively but briefly to achieve a cure (eg TB) to be considered in the same context as long term, permanent, disability? What about a highly qualified professional with a disability that, though permanent, is managed? Would Stephen Hawking have qualified for migration to Australia if the current Schedule 4 was applied?

The answer to the Question 1 is: no.

- 2 What types of contributions and costs should be considered? &**
- 3 How do we measure these?**

Calculating the contribution and net cost of an individual must include a holistic, whole of life approach, balancing the contribution that the person will make with the possible cost of care or treatment that a person may require. The underlying principle for identifying and calculating the assistance required should be that people with disability are entitled to support that enables them to be truly included in all aspects of society.

Excluding a person because of a disability, disease or condition is inconsistent with the new era in Australia of Social Inclusion and disability rights. Australians must practise what we preach.

These two questions identify the fundamental difficulties of developing a system for assessing migration applicants (with and without disabilities). Every attempt to develop a simple but rigid system is contradicted by the complexity of human nature and human circumstances. In summary, an assessment system can only be a guide to a final decision maker.

The decision maker must take a holistic and a person-centred approach of the situation in assessing each migration situation and applicant. In summary, the decision maker should ask: "what is the net benefit or cost for Australia if I approve the application from this individual or family group?"

In taking a holistic view of an application, how much weight should a decision maker give to an applicant's disease or condition? One matter for consideration by the decision maker is the UN Convention on the Rights of Persons with Disabilities (quoted in part above) which says "States Parties shall recognize the rights of persons with disabilities to liberty of movement....on an equal basis with others". That is, one's disability, disease or condition should not present an automatic disqualification from migration. All other factors must be considered. However, a reasonable person reading the current wording of Schedule 4 of the Migration Regulations would conclude that the current wording is not consistent with Australia's obligations regarding the UN Convention of the Rights of Persons with Disabilities.

4 Are there additional factors that should be considered?

An additional factor that should be considered is: should the same criteria be applied to refugees as to normal migration applications? Obviously an applicant for refugee status is not making the same claims for entry as, eg, a skilled migrant. But a similar holistic and person centred approach should be taken, except that the criteria regarding ones' claims to refugee status are different to those of migration applicants.

Another factor for consideration is whether a person with a disease that could be a major public health threat in Australia should be admitted, if they have other factors in favour of their approval. Again the holistic and people-centred approach should be applied in that the cost and benefits of the application should be considered.

Another factor for consideration is inherent in one of the Terms of Reference: "Report on the impact of funding for, and the availability of, community services for people with a disability moving to Australia, either temporarily or permanently". One significant factor regarding this term of reference is the often imposed requirement that people with a disability moving to Australia can be prohibited from accessing community services, including Disability Support Pension, for up to 10 years. Such requirements are clearly cost driven. But they are unconscionable and are inconsistent with Australia's commitments under the UN Convention of the Rights of Persons with Disabilities. They are also inconsistent with Australia's preference that migrants to Australia should become part of our society and share our democratic beliefs, respect our rights and liberties and uphold and obey the law. Consistent with our obligations and a holistic approach, such draconian requirements need to be revised.

Australia's ratification of the UN Convention on the Rights of Persons with Disabilities is consistent with the Government's Social Inclusion Agenda. The Disability Convention is the beginning of a new era for people with disability and includes a paradigm shift away from pity, charity and dependency towards autonomy, self-determination and independence. Australia's Social Inclusion Agenda sits comfortably with this shift in how we should now think about disability, disease and other conditions.

5 Do you have personal experience of this?

Within the numerous services provided by the Catholic Church in Australia, especially those that assist migrants and refugees and those with health issues or disability, numerous examples that illustrate the above issues are regularly encountered. However, for a variety of reasons, there is a widespread reluctance by many individuals to talk publicly about their personal circumstances.

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

As noted above, the main principle that should be applied to the assessment of visa applications against the health requirement is that the health requirement should not be considered in isolation from or prior to other issues for consideration. The decision maker must take a holistic view of the situation in assessing each migration situation and applicant. Obviously, refugees should be considered against different criteria to migrant applicants but the holistic approach should also be applied.

Thank you again for the opportunity to make a submission to your Inquiry into this important matter.

If I or any of my colleagues can assist the Committee further, we would be happy to do so.

For convenience, our first points of contact are:

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On behalf of the Catholic Bishops of Australia, I wish the Committee well in its deliberations.

+Bishop Joe Grech DD
Bishop of Sandhurst and
Delegate of the Australian Catholic Bishops Conference for Migrants and Refugees.