

Submission No 48



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**Submission to the Joint Standing Committee on
Migration**

**INQUIRY INTO IMMIGRATION TREATMENT OF
DISABILITY**

October 2009

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Introduction

The Uniting Church has since its inception been committed to working for the eradication of discrimination and the protection of human rights.

At its Inaugural Assembly meeting in 1977, the Church committed to

oppose all forms of discrimination which infringe basic rights and freedoms
and
pledge ourselves to hope and work for a nation whose goals are not guided by self-interest alone, but by concern for the welfare of all persons everywhere¹

These commitments were remembered in 2006 when the Uniting Church adopted its statement on human rights, *Dignity in Humanity: Recognising Christ in Every Person*², which states

the Uniting Church believes that every person is precious and entitled to live with dignity because they are God's children, and that each person's life and rights need to be protected or the human community (and its reflection of God) and all people are diminished.

This statement also articulates the Church's support for the human rights standards recognised by the United Nations. The UN human rights instruments express the birthright of all human beings to all that is necessary for a decent life and to the hope of a peaceful future. As such, the Church continues to urge the Australian Government to fulfil its responsibilities under the UN human rights covenants, conventions and treaties which it has signed or ratified, and is dedicated to assessing current and future national public policy and practice against these human rights instruments.

In light of these commitments, UnitingJustice Australia, the justice and advocacy unit of the National Assembly of the Uniting Church in Australia, offers this submission to the Joint Standing Committee on Migration inquiry into the migration treatment of disability.

Recommendations

1. The Commonwealth *Migration Act 1958* should no longer be exempt from the anti-discrimination protections contained in the *Disability Discrimination Act 1992*
2. Australia should withdraw its reservation to the Convention on the Rights of People with Disabilities which states that the Convention does not 'impact on Australia's health requirements for non-nationals seeking to enter or remain in Australia, where these requirements are based on legitimate, objective and reasonable criteria.'³

¹ Uniting Church in Australia, *Statement to the Nation*, Inaugural Assembly, 1977, available: http://www.unitingjustice.org.au/images/pdfs/resources/churchstatementsandresolutions/1_statement1977.pdf

² Uniting Church in Australia, *Dignity in Humanity: Recognising Christ in Every Person*, Eleventh Assembly, July 2006, available: http://www.unitingjustice.org.au/images/pdfs/issues/human-rights/assembly-resolutions/11_dignityhumanity2006.pdf

³ Convention on the Rights of Persons with Disabilities, Declarations and reservations, available: <http://www.un.org/disabilities/default.asp?id=475>

3. The current understanding of what is in the 'public interest' should be re-examined to reflect Australia's non-discrimination obligations and the important social and economic contributions people with a disability can make in our community.
4. For humanitarian entrants, the Health Requirement should be waived in cases where a family is at risk of being separated or refused based on the disability of one family member.

The UN Convention on the Rights of Persons with Disabilities

We welcome Australia's ratification of the United Nations Convention on the Rights of Persons with Disabilities ('the Convention') as an indication of the Australian Government's commitment to the protection and promotion of the rights of people with a disability. We believe, however that the current treatment of disability in Australia's migration laws is in direct violation of Australia's human rights obligations under the Convention.

Article 18 of the Convention states that Parties 'shall recognize the rights of persons with disabilities to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others' and must ensure that persons with disabilities have the right to 'utilize relevant processes such as immigration proceedings that may be needed to facilitate exercise of the right to liberty of movement.'⁴

Currently, the Health Requirement is discriminatory to people with disability, in that it does not provide treatment to those with a disability and their families equal to people who do not have a disability. While those who are financially able to appeal the decision may receive a better outcome, many of those discriminated against do not have the financial means to push for a review of their situation. Ameliorating this practice will not be an act of charity on Australia's part, but will rather ensure the removal of discrimination against people with a disability and assist Australia in meeting its international human rights obligations in this area.

In assessing potential migrants, humanitarian entrants and refugees on the cost of their treatment to the Australian community, Australia is disregarding the important and valuable social and economic contributions that are made to Australian society by all people with disability. It is incompatible with a sophisticated understanding of what enriches a robust, diverse and inclusive community. It also detracts with the Australian Government's current social inclusion agenda.

We also reject the need for the Health Requirement in order to protect the health and safety of the Australian public. In instances where a person's disability may be a threat to the Australian community, Australia's existing quarantine mechanisms already provide adequate protection.

⁴ United Nations Convention on the Rights of Persons with Disabilities, Article 18, available: <http://www.un.org/disabilities/convention/conventionfull.shtml>

Ministerial intervention

As a signatory to the Convention on the Rights of Persons with Disabilities, Australia has committed to take 'all appropriate legislation, administrative and other measures of implementation' to ensure the protection of the rights of the disabled.⁵ We do not believe that the ministerial intervention powers are an adequate implementation of this obligation.

While the Health Requirement is waived for some refugees and migrants by ministerial discretion, this exemption process is arbitrary and inconsistent. The exercise of the minister's powers is non-reviewable and non-transferable, making it an inadequate substitute for transparent legal and regulatory protection of the human rights of those with disabilities.

It is not an appropriate mechanism to remedy a process which currently systematically leads to discrimination and a violation of human rights.

The experience of refugees and humanitarian entrants

The Health Requirement has particular impact on refugees or humanitarian entrants, who are some of the most vulnerable in the international community and are more likely to suffer from particular physical and psychological health problems relating to their status as a refugee.

On several occasions, the Uniting Church has voiced its concerns about the effect of the Health Requirement on refugees and humanitarian entrants. We have previously stated that

The idea that refugees with complex health needs place a burden on the Australian community that is outside what is reasonable for a resettlement nation to spend or provide in support of refugees goes against both the spirit of developed nations resettlement programs and the Australian Government's specific commitment to help those 'most in need'.⁶

We have also called for

repeal of the Health Requirement for refugees (including Women at Risk and in-country Special Humanitarian visas) to ensure that refugees will be accepted for resettlement according to need, rather than anticipated costs to the public health system⁷

⁵ Article 5 of the Convention on the Rights of Persons with Disabilities

⁶ UnitingJustice Australia and the Australian National Committee On Refugee Women, Submission to the consultations on the 2005-2006 Humanitarian Program, February 2005, available: http://www.unitingjustice.org.au/images/pdfs/issues/refugees/submissions/0506humanitarianprogramancorw_uja.pdf

⁷ UnitingJustice Australia, Submission to the consultations on the 2006-2007 Humanitarian Program, February 2006, available: http://www.unitingjustice.org.au/images/pdfs/issues/refugees/submissions/humanitarianprgsub_0206.pdf

The possibility of the Health Requirement in obstructing family reunions is particularly troubling. Although it does appear that the number of waivers of the health requirement has increased in recent years, there are still reports of very vulnerable people excluded on health grounds.⁸ In order to ensure that the focus of the humanitarian program is on assisting those most in need, the Health Requirement should be waived in cases where a family is at risk of being separated or refused based on the disability of one family member.

The rights of children

The Health Requirement also fails on human rights grounds when the applicant is a child or when a family has a child with a disability. The current process allows for a whole family to fail the Health Requirement if that family has a child with a disability and does not satisfy the Requirement. There is no consideration of the contributions of the family as a whole or of the potential of the child to make important contributions to Australian society in the future. The only determinant in the process is the cost of the child's disability over his or her lifetime.

This is a violation of Australia's obligations under the Convention on the Rights of the Child, which states that the 'best interest of the child shall be the primary consideration' in all actions concerning children⁹ and that all States Parties

shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.¹⁰

Conclusion

The Uniting Church welcomes this review of Australia's treatment of disability in its immigration policies. We believe that the current system is discriminatory towards people with a disability, and causes considerable stress for people with a disability and their families, and refugees and humanitarian entrants in particular. We stress the need for non-discriminatory practices in Australia's immigration policies, which recognise the important social and economic contributions people with a disability make to our society, and which allow Australia to fulfil its obligations under the Convention on the Rights of Persons with Disabilities.

⁸ Refugee Council of Australia, *Australia's Refugee and Humanitarian Program: community views on current challenges and future directions*, Submission to the Department of Immigration and Citizenship Australia's Refugee and Humanitarian Program, February 2008, p.45, available:

http://refugeecouncil.org.au/docs/resources/submissions/2008-09_intakesub.pdf

⁹ United Nations Convention on the Rights of the Child, Article 3, available:

<http://www2.ohchr.org/english/law/crc.htm>

¹⁰ United Nations Convention on the Rights of the Child, Article 2