Submission No 40



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28 October 2009

Committee Secretary
Joint Standing Committee on Migration
Department of House of Representatives
PO Box 6021
Parliament House
CANBERRA ACT 2600
AUSTRALIA

Dear Committee Secretary

**RE: SUBMISSION TO THE JOINT STANDING COMMITTEE INQUIRY INTO IMMIGRATION TREATMENT OF DISABILITY.**

**Introduction**

AMPARO Advocacy is a small non-profit community organisation that provides individual and systems advocacy on behalf of vulnerable people from a non-English speaking background (NESB) with disability. In the course of providing individual advocacy we become aware of significant systemic barriers that impact negatively on the lives of people from a NESB with disability. Through our systems advocacy we aim to address priority issues and bring about positive, sustainable change to policies, practices and attitudes.

AMPARO Advocacy is aware of the unfair impact of the Migration Act 1958 on refugees and migrants with disability through our contact with a number of individuals and families who have been severely disadvantaged because of the stringent health requirements under the Act. Subsequently we welcome the Inquiry into Immigration Treatment on People with Disability.

AMPARO Advocacy, as a member of the National Ethnic Disability Alliance, fully endorses the submission provided to the Joint Standing Committee by this peak organisation.

The current Migration Act 1958 is exempt from the Disability Discrimination Act 1992 so that migrants and refugees with disability are routinely refused entry to Australia based on health assessments that make untested assumptions about the future costs associated with the person's disability.

In 2004 the Productivity Commission Review of the Disability Discrimination Act 1992 acknowledged that visa entry criteria *"may indirectly discriminate against some people with disabilities, in that they will be less likely to meet the criteria than people with no disability*[1]*."*

Whilst there has been little recourse available for individuals to complain that the provision of these Acts discriminateS against them on the basis of disability, Australia has ratified the Convention on the Rights of Persons with Disabilities and more recently acceded to its Optional Protocol. Given this commitment, and in order to fulfil our international obligations, AMPARO Advocacy would argue that these rights must be protected in Australia's domestic law.

## Migration Health Assessment

The provisions under the Migration Act fail to take into account the contributions the person with a disability or their family will make to the Australian community and that these contributions whether they are, to their family, culturally or socially, could far outweigh any estimated costs as a result of their disability. We would suggest that this stance is at odds with the Federal governments' policy and promotion of social inclusion for all.

AMPARO Advocacy has had contact with several people from a non-English speaking background with disability and their families who we believe have been unfairly treated as a result of Australian Migration law. These individuals and families have often endured extreme hardship, frustration and further loss of family relationships and connections because of their treatment.

The following true stories are provided to highlight the serious impact of the treatment of the Migration Act on people with disability.

## Migrants

***Story 1.*** ***Child's wellbeing outweighs cost to Australian community.***

> *AMPARO Advocacy has advocated on behalf of a fourteen year old child whose family was refused permanent residency in Australia because of the child's disability. The Stepfather of this young girl was himself born in Australia and was an Australian citizen who while living overseas had married a non-citizen who had a child with a disability from a previous marriage. He desperately wanted his new family to live in his country of birth, and brought his new wife and step-daughter back home to Australia. He was unaware that because his step-daughter had a disability applications for permanent residency for her and his wife would present insurmountable difficulties for his family.*
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> *As a consequence of the family's immigration status, the child was denied the fundamental right to free primary school education and was not eligible for support from Disability Services Queensland. The Queensland Education Department would only allow this child to attend school if the parents paid full fees for the child's education and additional fees to access*

[1] National Ethnic Disability Alliance, *Refugees and Migrants with Disability and the United Nations Convention on the Rights of Person with Disabilities*, July 2008, p7.

*special education. The Education Department required the annual fees to be paid upfront, approximately $20,000, which the family could not afford. Consequently during the two and a half years, while they waited for their application to be processed their child had not been able to attend school, so has missed out on the important learning and social interaction with other children that attending school provides.*

*The child's parents appealed the decision by the Department of Immigration and Citizenship (DIAC) to deny them permanent residency in Australia. However, the processing of their application and the appeal process took over two and a half years and placed significant pressure on the family unit. The stress became too great for the family, who had also given birth to a boy during this time, so they returned to the home country of the mother and her child.*

*Should the family wish to continue with their application for permanent residency in Australia they would be forced by the Australian Government's current Migration policy to consider the option of making alternative arrangements for their daughter to remain in her home country.*

The *Convention on the Rights of Persons with Disabilities (CRPD)* recognises that children with disability should be granted the same rights as any other children to family life, and that children should be protected against being concealed, abandoned, neglected and segregated. However the Migration Act and the provisions under the Act do not appear to support the principles of the CRPD. In this situation and for this child, Australia also failed to honour our international obligation under the Covenant of Economic, Social and Cultural Rights, *Article 13,* which requires States Parties to recognise the right to education.

*Primary Education shall be compulsory and available free to all*

The unfair treatment of this family, under the current system, unashamedly placed the burden of the failed application for residency on this child's disability. AMPARO Advocacy is aware of the outcomes for this family and for this child, and whilst they cannot be disclosed here, they are a sad indictment on Australian law and contravene our obligations under the Convention on the Rights of the Child, Article 3 (i), which requires States parties to giver primary consideration to the *"best interests of the child"*

*In all actions concerning children whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*[2]

The significant costs to this family and the long term harm to the life of this child cannot be measured, but I would strongly argue they far outweigh any costs to the Australian community had she and her family been allowed to stay in Australia.

[2] Listed as Submission 2 to this inquiry

***Story 2.*** ***Skilled Migration Program***

*A husband and wife, who had come to Australia under the skilled migration program, were employed in well paid professions and in the process of applying for permanent residency. All indications were that their application would be successful. However prior to a decision being made by the Department of Immigration and Citizenship the woman gave birth to a beautiful baby girl who is also profoundly deaf. The parents desire to welcome and celebrate the birth of their baby, and to understand what deafness would mean for their child was seriously marred by a formal government letter stating that because their child is profoundly deaf they do not meet the health requirement for the relevant visa. The cost of a cochlear implant was cited as the reason for the determination of 'significant cost' and failure to meet the health assessment, despite the parent's willingness to pay for this.*

Current provisions under the Migration Act failed to take into account the applicants ability to pay for the costs attributable to their own disability or whether community services will actually be used by the applicant. The immediate consequences of this policy was that Australia lost the benefits of their professional skills and their financial contribution and they in turn were severely disadvantaged because the opinion of a single medial officer determined that the costs to Australia as a result of their child's deafness would outweigh any contribution this child and her family could make to the Australian community. This decision also failed to take into account Australia's obligations under the Convention on the Rights of the Child, **Article 6 (ii)** which requires:

> *States Parties shall ensure to the maximum extent possible the survival and development of the child.*[3]

The reality is that this child will not have access to the equivalent medical services or the educational opportunities, if her parents are forced to return home. AMPARO Advocacy would also argue that the deaf community of Australia would be find this medial approach to determining the costs of deafness extremely offensive and fails to understand or respect the history, culture and language of deaf people and their contribution to our society.

## Processes lack transparency.

Unlike Canada where "two or more concurring medial opinions" are required, Australia only requires one opinion.[4] AMPARO Advocacy would argue that at the very least an additional safeguard would be that two medical opinions be necessary. How medical officers determine what is a 'significant cost' or that these costs are likely to 'prejudice the access of an Australian citizen or permanent resident to health care or community services' is not transparent and therefore lacks accountability.

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[3] Listed as Submission 2 to this inquiry.
[4] National Ethnic Disability Alliance, *Refugees and Migrants with Disability and the United Nations Co0nvention on the Rights of Person with Disabilities*, July 2008, p28.

***Story 3.*** ***Arbitrary Decision***

*An example of Migration law being applied arbitrarily is that of a family whose child is also deaf and who had come to Australia from New Zealand. This family have had their application for Citizenship denied because of the child's disability and the reason cited was the cost of a cochlear implant, despite the fact that under Medicare their child is entitled to receive this medical treatment and was at the time being prepared to have a cochlear implant fitted.*

The decision would seem to indicate that at the very least the processes used to examine and determine the potential costs of health care are in urgent need of review and clarification. It could also suggest that the determination of 'significant cost' is arbitrary or that having any type of disability automatically precludes an applicant from passing the mandatory health assessment.

## Refugees

***Story 4.*** ***A Positive Contribution***

*Originally from Ethiopia, Abebe was granted Australian citizenship in 2007 having secured a 'talent visa'. In 1997, following a pro-democracy meeting, the car that Abebe was driving which was being pursued by the police, overturned trapping Abebe underneath. Abebe was eventually supported to travel to Italy where his brother was living, to receive treatment for his serious spinal injuries which left him a paraplegic.*

*In desperation in 1998 Abebe came to Australia with his brother where they claimed asylum. Abebe and his brother were placed in detention, however because the centre was not accessible for people in wheelchairs, Abebe was soon released to live in the community. With a bridging visa, Abebe was unable to work, study or receive state funded medical assistance, however was fortunate to receive help from people in Brisbane with his day to day living expenses. This support network was also vital to his emotional and psychological wellbeing, which was greatly enhanced through his involvement in a local sporting wheelies gym.*

*Abebe was encouraged to become involved in weight lifting to develop the upper body strength he needed to push his manual wheelchair. Although Abebe had never been involved in sporting events, he began power lifting and entered his first professional competition in 2002. Abebe went on to take the title of Australian champion in 2004, 2005, 2006 and 2007. In 2008 he was granted a 'talent visa' in acknowledgment of his sporting achievements and skills and as a result was able to participate and win gold at the Arafura Games in Darwin in May 2007. This was a proud moment for Abebe as he was able to compete for the first time as an Australian Citizen. Abebe followed this success to compete in the Beijing Olympics in 2008 where he was placed 9$^{th}$ in his division.*

*Abebe had spent nine years exhausting bureaucratic processes in his attempt to be granted permanent residence. He experienced much frustration and hardship during this period, yet despite his struggles, Abebe has shown that he is a proud Australian with much to contribute to his community and his country.*

The Australian Government states that it "is strongly committed to helping refugees and people who face serious abuses of their human rights" and yet it is prepared to leave refugees with disability who are most vulnerable, without protection and often then dislocated from family members who may have been accepted under the Australia's Humanitarian Program.

A program which refuses entry to those seeking protection from persecution, war and trauma because they have a disability, despite the fact that they are often at even greater risk of human rights abuses, makes absolutely no sense and is by no means 'humanitarian'.

**Conclusion**

Australia is a prosperous country and Party to several international human rights instruments including the Convention on the Rights of Persons with Disabilities, and as such has an obligation to honour it commitments to fulfil and protect these rights.

AMPARO Advocacy would concur with the National Ethnic Disability Alliance's position that the *"current Australian migration health test is at adds with the equal protection obligation under Article 5 of UN CRPD, leading to unjustifiable indirect discrimination for some refugees and migrants with disability."*[5]

We thank the Standing Committee for the opportunity to provide comment and feedback on the impact of the Migration Act on people with disability.

Yours sincerely

Maureen Fordyce

Coordinator

[5] National Ethnic Disability Alliance, *Refugees and Migrants with Disability and the United Nations Co0nvention on the Rights of Person with Disabilities*, July 2008, p7.