

Submission No 43

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Cerebral Palsy League

Cerebral Palsy League of Queensland
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27 October 2009

Clerk Assistant (Committees)
House of Representatives
PO Box 6021
Parliament House
CANBERRA ACT 2600
Email: committee.reps@aph.gov.au

E-MAILED
26/10/09 AL

POSTED
26/10/09 AL

Dear Sir / Madam

Re: Submission to the Joint Standing Committee on Migration Inquiry into the Migration Treatment of Disability

On behalf of Cerebral Palsy League, I thank the Joint Standing Committee for the opportunity to provide feedback to assist in the public policy development in the area of Migration Treatment of Disability.

The Cerebral Palsy League also consents for the Submission to be uploaded onto the relevant web site for access and electronically sends this one Submission in four formats:

1. *Scanned original PDF;*
2. *Saved PDF;*
3. *RTF; and*
4. *Word document.*

A hard copy of the original is in the mail.

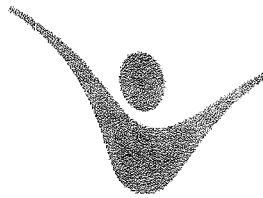
Should you have any enquiries please do not hesitate to contact me via the details outlined below.

Yours sincerely

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Cerebral Palsy League of Queensland

Submission

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



Cerebral Palsy League

**SUBMISSION
TO
JOINT STANDING COMMITTEE ON MIGRATION INQUIRY: THE MIGRATION TREATMENT OF
DISABILITY**

JURISDICTION

The **Cerebral Palsy League (CPL)** is the largest non-government service provider for Queenslanders who have physical disability and provides a range of services throughout the state. Services are accessed by children and adults with cerebral palsy and related disabilities and their families / carers. The League's vision is to have

a community which actively seeks and supports the contribution of people with a disability.

Our purpose is to provide services and advocate for people with physical disability to:

- Maximise independence and opportunities;
- Promote physical and emotional well being;
- Enhance social and economic participation; and
- Support the achievement of a fair and fulfilling life.

The organisation has grown, from its initial small inception 1948 by a group of parents of children and concerned citizens to one – some sixty years on – being an organisation that expends some \$68m on providing vital services to assist some 10,000 (active and inactive) clients. Currently we assist 1,500 children and 2000 adults and their families/carers to achieve their life goals. Many of these 3,500 clients and their families have English as their second language.

The CPL employs approximately 1500 staff to assist in the delivery of innovative services to meet the needs of our client population across the state with special consideration being given to the difficulties of service access to those people who have disability and who are living in rural and remote regions and also those people from culturally and linguistically diverse backgrounds.

The CPL whose central office is based in New Farm Brisbane, has several regional centres for child and adult services throughout Queensland and it also provides an outreach program within each region and throughout the state. The pivotal regional centres are located at: Gold Coast, South West; Brisbane South; Brisbane North; Sunshine Coast; Wide Bay, Townsville and Central Queensland. League services are also provided in rural and remote places such as Mt Isa, Torres Strait and Cairns. These include:

- **Access Employment Services** are based in Brisbane North, Brisbane South, Southport, Caboolture and Ipswich.
- **Day Service Centres** are based in Moorooka, Windsor, Ashgrove, Redcliffe, Springfield, Capalaba, Toowoomba, Rockhampton, Maryborough, Labrador, and Gladstone.
- **Supported Employment Services** are based at Tingalpa, Rocklea, Brisbane City, and Strathpine.
- **Adult Accommodation Services** are based at Fig Tree Pocket, Brown's Plains, Moorooka, Alderley, Maroochydore, Southport, Toowoomba, Kawangan, Urangan, Maryborough, and Rockhampton. Note

- that these locations are where offices are and not where services are located.
- **Child and Family Support Services** are based at Ipswich, Mt Gravatt East, , Strathpine, Southport and Maroochydore, Toowoomba, Maryborough, Hervey Bay, Rockhampton, Gladstone, Townsville.
- **Health Services** - South Brisbane including Gold Coast; North Brisbane including Sunshine Coast; Central Queensland including Hervey Bay, Maryborough, Gladstone, Rockhampton, Townsville, Toowoomba and South East Country.
- **Children's Outreach Services** are based at, Kingston and Townsville, Toowoomba, Maryborough, Hervey Bay, Rockhampton, Gladstone.

The CPL recently achieved certification under ISO 9001, covering the whole organisation. In addition, employment and business services are certified under the DES quality system. The CPL is currently certified as a Quality Assured organisation under Queensland Disability Sector Quality System, Commonwealth Disability Services Standards, and AS/NZS ISO 9001-2000.

SIGNATURE



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CEO

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METHODOLOGY

The evidence for this submission has been gathered by:

- Consultation, focus groups and discussions with managers, supervisors, staff and clients of Cerebral Palsy League;
- Consultation with Client Consultative Committee and the Parents and Guardian's Committee
- Document analysis from various Government and Community Reference Groups involved with providing employment services;
- In-Depth interviews with relevant clients/staff and their families;
- Work-shopping the proposed Position Statement and making adjustments where necessary; and
- Research identifying international benchmarks.

**Submission to the Joint Standing Committee on Migration Inquiry into the Migration
Treatment of Disability**

FROM
CEREBRAL PALSY LEAGUE

October 2009

POSITION STATEMENT (Three Case Studies follow the Position Statement)

This position statement is in response to the Joint Standing Committee on Migration's Consultation around "The Review and Treatment of Disability." The order of the content is as follows:

1. Cover Letter
2. Jurisdiction Information
3. Methodology
4. Position Statement
5. Case Studies

Potential migrants and refugees to Australia are subject to a **health assessment** in order to determine:

- Their eligibility for an Australian Visa;
- The assumed future costs associated with health condition; and/or
- The *type/s of disabilities that are taken into account as part of the assessment procedure.*

The current arrangements for the **migration health test** mean that:

- migrants and refugees with disability are routinely refused entry to Australia as a result of an assessment of the potential health costs associated with their illness or disability;
- the potential economic and social contributions of migrants and refugees with disability are not adequately taken into account;
- there is stress and hardship for many families supporting people with disability who make a difficult decision to leave behind a family member in order to build a life in Australia. In cases involving humanitarian entrants, these family members with disability will remain in extremely vulnerable situations, such as refugee camps or in situations of war or political unrest.
- while some refugees and migrants are granted exemptions under the current arrangements, these waivers are determined through a decision making process which is inconsistent, can be arbitrary in nature and therefore potentially unfair.
- The Migration Act 1958 is exempt from the majority discrimination provisions under s. 52 of the Disability Discrimination Act 1992. However, recent amendments enable complaints to be made under the DDA as to the administrative process concerning visa applications.
- The Case Studies outlined below highlight stories that outline a system out of date and not in touch with the context of the experiences of these people and their families.

While the majority of our clients have physical disability, in most cases they do not have an intellectual disability and contribute at a very high level in the employment market so long as they have support for their physical needs.

CPL has a number of clients whose primary language is not English. Some clients have come through the

immigration program, others have arrived here by boat and yet others are legal refugees. Some clients who still possess Temporary Protection Visa's, have since had children who may have a disability.

We believe that the current laws are discriminatory to people with disability, and disregard the valuable contributions that are made to Australia by all people with disability.

The migration health test is at odds with Australia's international obligations.

United Nations Convention on the Rights of Persons with Disabilities (UN CRPD)

(Please see Case Study Two)

The Australian Government has ratified the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD). The UN CRPD is a powerful document. The Convention enables a strong anti-discrimination mandate and creates an opportunity to promote participation, empowerment and independence for people with disability.

Giving the reason of "cost" for refusing visa, contravenes Australia's obligations under the Convention on the Rights of Persons with Disabilities. The Convention commits States Parties to:

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 (Article 18)

The Convention also states that Parties must ensure that people 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.

Australia made a declaration upon ratification that the Convention did 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."

There has been strong opposition to this most recent interpretive declaration from both the Australian disability community and international advocates. The Joint Standing Committee on Treaties recommended in November 2008 that:

a review be carried out of the relevant provisions of the Migration Act and the administrative implementation of migration policy, and that any necessary action be taken to ensure that there is no direct or indirect discrimination against persons with disabilities in contravention of the Convention.

United Nations Convention on the Rights of the Child

(Please see Case Study One¹)

While Case Study One comes from one of our clients and family there are other more public cases that recently received media attention involving the Robinson, Ford and Moellar families and the tragic case of Mr Sharaz Kayani where Rights were not upheld. The recent media attention to the case of Dr Bernard Moeller, Dr Siyat Hillow Abdi and others has highlighted that current migration processes do not provide fair outcomes for people with disability and their families, and devalue the full social and economic contribution that people with disability make to their communities and Australian society as a whole. In so far as the current migration health requirements can contribute to the separation of migrant and refugee families, Australia's migration treatment of people with disability is also at odds with Article 3 and Article 5 of the United Nations Convention on the Rights of the Child. Leaving children with disability

¹ This case study spans the period of the early 1990s although the same stringent policies still apply in the current setting.

behind to an uncertain future is not in a child's best interest.

Article 6 (ii), which requires States Parties to ensure to the "maximum extent possible" the physical wellbeing of the child.

States Parties shall ensure to the maximum extent possible the survival and development of the child.

In summary, it is not in a child's best interests to be treated as a "cost". It is demeaning and objectifying and could do long term harm. Moreover it places unnecessary added stress to the family members who are also usually their carers and under enough stress. Article 6 of the Convention means that the child's disability cannot be a reason for refusing a Visa.

The irony that Case Study One occurred in the early 1990s is evidence enough that Migration Public Policy has not kept abreast of the current day situation and the evolvement of the disability movement and the social model of disability.

The Disability Discrimination Act 1992 including most recent amendments

Australia's Disability Discrimination Act (section 52b) clearly exempts the Migration Act from its operations – including '*anything done by a person in relation to the administration of that Act or those regulations*' – is unjust and may contravene the UN Convention on the Rights of the Person with Disability.

In **Case Study Two (outlined in detail further below)**, a man who had his limbs cut off in a war cannot be brought to Australia because he has a disability while the rest of his family can be reunified and have been provided Visa's. There is now a legal battle occurring to overturn the Australian Government decision to refuse entry for the amputee and in the meantime the families Visa has a "use-by" timeframe. The result is that the family cannot leave the man with disability there because they are his sole carers and therefore all the family may not be able to reunite with their family in Australia after all.

In **Case Study Three, (outlined in detail further below)** a young political refugee is trying to see his parents who are ageing. The young man arrived in Australia as an illegal refugee – he had nothing when he arrived. He is attempting to bring his parents over to Australia in order for them to see that he has settled. He somehow has to find \$30000 dollars as an assurance that his parents will return. He has to pay all the medical bills for the health check; pay for their health cover while they are over here, pay for their flights; and support them financially while they are here. This would be an impossible feat for the majority of Australians let alone a person who has experienced a catastrophic event in his life. Health tests so far show that his parents have mild ailments associated with ageing that are treatable and yet there has been a four year delay in the process.

Centrelink has a number of policies around eligibility for payment and qualifying periods for new Australians. While these policies apply to all new Australians, they are of concern when applied to people who have high physical support needs.

The Migration Act is not consistent with the recent Government move towards social inclusion that embraces diversity and recognizes the multiple contributions of young and old.

Migration policy plays a vital role in determining the shape of our society, who we welcome and who we don't. In the same way that the infamous dictation test narrowed the range of acceptability on racial grounds, so does the Health Requirement in relation to disability.

Please turn over for recommendations

There is strong community support for change.

The Joint Standing Committee on Migration Review into the Migration Treatment of Disability creates an opportunity to remove discrimination against people with disability from current migration laws and processes.

We call on the Joint Standing Committee on Migration to recommend:

1. 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 disability;
2. Improved consistency, transparency and administrative fairness for migrants and refugees with disability applying for an Australian visa;
3. Withdrawal of the Australian interpretive declaration made upon ratification of the United Nations Convention on the Rights of Persons with Disabilities pertaining to the health requirements for non nationals.

Case Study One— The experience of a Family trying to emigrate to Australia

We decided to apply to emigrate to Australia after we had visited relatives in Brisbane in the mid 1980s.

We were aware of Australia's stand on health requirements and knew that had the 10 pounds scheme still been in place Brian², who has Down syndrome, would not have been accepted into Australia. However we were under the impression that things were different as Australia now had a policy that it did not discriminate.

We thus applied on the family migration point's scheme. We had the required number of points to go ahead and went through all the necessary interviews, chest x-rays for TB, full medical etc. At the medical, although the doctor said Brian was very healthy etc and gave Brian an excellent report, he advised us not to get our hopes up as it would be very unlikely that Brian would be accepted. This was also the advice given us at the interview.

Eventually we got notification that Brian did not meet the health requirements for entry into Australia and we were advised that there was an appeal process which had to be undertaken by my brother in Australia. We were appealing on the grounds that Brian had excellent health but had a disability and that it was discrimination not to allow him into Australia. From memory my Aunt and Uncle in Australia were the sponsors as they could afford to provide for us for a certain amount of time should it come to it. In the appeal they were not close enough relatives to undertake the appeal so it fell to my brother to do the appeal through Canberra. This meant we had to make expensive phone calls (no email) to make sure it was all happening etc.

We then began a letter writing campaign for the next year or so to various members of the Federal Government and amongst the letters we received that didn't really say anything positive at all, we did get a couple of very positive letters back from the then Health Minister. We will never know if they influenced the ultimate decision.

² Pseudonym

I forget how we eventually got on to the Down Syndrome Association in Australia, bearing in mind that we didn't have the luxury of looking things up on the Internet. Everything had to be by letter or by phone. Eventually the Australian Down Syndrome Association agreed to take up the case for us.

It wasn't too long after this that we received formal notification from the government that Brian would be accepted into Australia. I think we heard informally from the Down Syndrome Association first but didn't get our hopes up as by that time it had been a long two year gruelling process. By this time I'd had enough of Australia, its government and everything else but we decided to go ahead anyway.

We had a house to sell in the British winter over the Christmas period, which meant we sold our house cheaper than we would have done in order to meet the deadline of the appeal process. Obviously we did make it.

It is hard to portray exactly what it was like and what we felt going through this process. Your life is kind of on hold, you feel like second class citizens and you hate the way they treat your son etc. It was also difficult too for our other son Gideon who was 7 when we first applied. He and Brian were 9 and 11 when we arrived here.

Case Study Two - The experience of a family applying through the Family Reunification Program

My family comes from Sierra Leone. My wife and I were refugees from Sierra Leone and were studying in the neighboring country of Guinea when their newly appointed president announced a violent crackdown on people who had come from Sierra Leone to live and study. Although the previous government had offered us study scholarships the situation changed overnight and we found ourselves displaced refugees with no home. Sierra Leone at the time was in the throes of civil war. We applied for refugee status and were granted permanent protection visas in Australia. We have been working with the Australian Department of Foreign Affairs & Trading towards reuniting our family through their family reunification program.

We are having trouble in moving our dream of family reunification forward because my brother had his two legs amputated by the enemy during the war and is now in a wheelchair. He could use artificial limbs but they are not available in Sierra Leone. The Australian Government (DFAT) states that because he has a disability it will put added strain on Australia's ability to provide services to him. We argue that if given access our brother is self sufficient and will contribute constructively to Australia's economy. I had nearly completed my medical degree when we had to leave Guinea and my wife has just finished her degree in nursing in Australia. We would be in a situation to support my brother and whole family if they were reunified in Australia.

We now have to pay a substantial amount of money to engage a solicitor to assist us in our endeavor to have my brothers application reconsidered. There has been approval for the rest of the family to come to Australia under the reunification scheme but they can't come unless Tamba³ comes as well as they support him. Tamba has a Masters in Business Management and would contribute to his community and work in a constructive fashion. To date the reunification is not looking very good. We constantly worry about not seeing our family again and we miss them very much. We could settle much better knowing that our family is safely with us.

³ Pseudonym

Case Study Three – Family Visitor Sponsorship

I am an oldest son and a political refugee from Iran. I had to leave Iran in extreme haste as the government had found the underground newsletter I was distributing and these could be linked to me. My father drove me to the Pakistan border where I was put in the hands of the people smugglers. I didn't know which country I was travelling to and only realized when I arrived on Ashmore Reef. I spent six months in detention and was finally released six months later.

It has been a very difficult time for me as I feel profound guilt the way I had to leave my country and my parents. My father and I headed up our construction company and he is getting older now. As well the government has now sidelined him in terms of favorable status with tenders and so the company is not doing so well. I'm also told that I have post-traumatic-stress-disorder from the period serving in the Iraq/Iran war and then the process of leaving Iran under the cover of darkness.

My family is extremely close and I have worked hard in the last nine years to save the money and invite my mother and father over to Australia under the Family Visitor Sponsorship Program. If we could meet I think everyone would be more settled. I cannot return to Iran. To bring my mother and father over I have had to find \$15,000 deposit for each of them making the deposit to DFAT \$30,000 to ensure they return to their country.

My mother and father have had to undergo expensive medical tests for DFAT and I am also paying for these. Once they obtain clearance to travel I will then have to pay for their air fares. Currently my father has recorded a slightly high cholesterol level and so his application has been delayed. When someone is settling in a new country and starting again under these circumstances it is very difficult to provide this sort of financial assistance in order to experience the family unit again.

My mother had breast cancer four years ago and has been fully cleared since. DFAT have asked that a full medical "work-up" is again required before they can consider her application (although she only had a full examination six months ago). This is costing so much money. It's not as if both mum and dad are in their prime – they are healthy for their age and are able to travel to other countries in the region without health checks. Both my parents will have a high level medical insurance when they come and I can't see what the problem is.

This has taken four years so far and I am concerned that they will not get the opportunity to come to visit as they are getting old.