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Submission No

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## Introduction

The overarching advocacy role which ECCQ fulfils requires regular contact with a wide range of multicultural and migrant advocacy workers, community based service delivery organisations, and people and communities with migrant backgrounds. This submission draws on those regular contacts and consultations.

ECCQ supports the submission provided to this Inquiry by the National Ethnic Disability Alliance<sup>1</sup> and the legal opinion expressed therein that the current health requirement under the Migration Act 1958 is not consistent with the United Nations Convention on the Rights of Persons with Disabilities, which Australia is now a party to.

ECCQ also asserts that an overly restrictive and inflexible health test can compromise the fundamental right to family unity. This in turn undermines a key foundation of multiculturalism.

The most recent multicultural policy statement at federal government level - *Multicultural Australia: United in Diversity* issued in May 2003 - asserted that "all Australians have the opportunity to be active and equal participants in Australian society, free to live their lives and maintain their cultural traditions."<sup>2</sup> Culture is about more than ethnicity or nationality. It is about family and shared personal experiences, traditions and challenges.

One of the underlying principles of multiculturalism is equity of access, but if our migration program – one of the most fundamental building blocks of Australian society now and into the future – pays little heed to this principle, we are putting short-term fiscal calculations ahead of the principles of family unity and long-term productive diversity.

As Gary Hardgrave, the then Minister for Citizenship and Multicultural Affairs, wrote in the introduction to the "Multicultural Australia: United in Diversity" document, "Multiculturalism is about respect for and of each person in our society."<sup>3</sup>

In its opening lines, this policy statement asserts that "the key to the success of Australian multiculturalism is inclusiveness." Whilst ECCQ acknowledges that potential costs to public revenue have to be given some consideration in determining the granting of residency visas in Australia, we believe the right balance is not being struck, and in some cases principles such as inclusiveness, family unity and fairness are being excluded or given insufficient weight.

## Effective settlement and family unity

Many of ECCQ's individual and organisational members are involved in one way or another with the settlement of refugees and migrants. A commonly heard concern is that many refugees and migrants have difficulty fully settling until they have all their family here with them. This happens most commonly with refugees. Regardless of whether they are refugees who arrived

<sup>1</sup> Listed as Submission 1 to this inquiry

<sup>2</sup> "Multicultural Australia: United in Diversity – Updating the 1999 New Agenda for Multicultural Australia: Strategic directions for 2003-2006". Commonwealth of Australia, 2003.

<sup>3</sup> *ibid*

initially under their own steam, or refugees taken into Australia through the offshore humanitarian program, many of them do not arrive as a fully intact family.

It should be noted that while there is no precise internationally accepted definition of “family”, even on the narrowest of definitions, migrants and particularly refugees are often separated from their immediate family.

The right to family reunification is well recognised in a range of fundamental international human rights instruments, such as Article 16 of the Universal Declaration of Human Rights 1948, Articles 17 and 23 of the International Covenant on Civil and Political Rights 1966, Article 10 of the International Covenant on Economic, Social and Cultural Rights 1966, Article 74 of Additional Protocol 1 of 1977 to the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Times of War 1949, and Article 9 of the *UN Convention on the Rights of the Child 1989*.

In a preliminary report issued by the International Labour Organisation in 1973, it was stated that

"Uniting migrant workers with their families living in the countries of origin is recognized to be essential for the migrants' well-being and their social adaptation to the receiving country. Prolonged separation and isolation lead to hardships and stress situations affecting both the migrants and the families left behind and prevent them from leading a normal life."<sup>4</sup>

Whilst this specifically relates to migrant workers, the same principle applies for refugees, many of whom also play a key role in filling skilled and unskilled positions in our labour market.

Australia has a proud record of resettling a large number of refugees from many different countries over the past fifty years. Over that time, we have developed some good skills and learnings in what factors contribute to effective settlement. Rebuilding or maintaining family connections is recognised as a crucial component in the settlement process.

#### Narrow assessment criteria in the health requirement

It is expected that other with more formal expertise in international human rights law will make submissions to this inquiry. ECCQ wishes to focus on the practical consequences of current processes and how they can harm not only individuals affected, but families, communities and wider society.

The current absence of any capacity for a health waiver in Public Interest Criterion 4005 under the Migration Regulations means an individual, and thus potentially a whole family, can be excluded solely on a formulaic assessment of *potential* future costs to the public health system. Not only does this exclude all other factors that might be able to be balanced against these costs, reports to ECCQ suggest that the health assessment itself can sometimes be based solely on the

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<sup>4</sup> Internal Labour Conference, 59<sup>th</sup> Session, 1974, Report VII(I), *Migrant Workers* (Geneva, International Labour Office, 1973, quoted at page 117 in Ryszard Cholewinski, *Migrant Workers in International Human Rights Law: Their Protection in Countries of Employment*". Oxford: Clarendon Press, 1997.

presence of a particular condition, with very little consideration to the severity of the condition and the record and capacity of the family or community to provide adequate support for the person concerned without excessive drain on the public purse.

The fact that the Minister for Immigration has recently changed Regulations allow a health waiver for people with in demand skills being nominated under the Employer Nominated Scheme is welcome. ECCQ believes this still places far too much emphasis on addressing immediate shortages in particular areas of the skilled labour market, rather than considering the wider social, cultural and economic benefits that the migrants could bring, including people with a disability.

However, while ECCQ believe the terms of this waiver still give excessive weight to government revenue impacts above all other factors, this change has been a step forward. As a minimum, ECCQ would like to see this capacity for a health waiver to be made available to all visa applicants, not just some relating to immediate skill shortages.

However, ECCQ believe the overall national interest consists of more than government revenue flows. Migrants, including those with a disability can have wider positive economic impacts both through their own activities as a consumer and through the paid and unpaid work which many of them undertake.

While a sound multicultural policy serves to maximise the economic and productivity gains from migration and cultural diversity, it also recognises that people are more than just economic units.

It should be emphasised that the government's own projection predict a shrinking in the overall labour force participation rates in the very near future. This is demographically unavoidable, and the only solution is a migration intake sufficiently high to counter this, which by necessity will need to include younger people and families. This factor will be relevant to employment at all skill levels, including unskilled and semi-skilled work.

Competition for migrant workers is likely to continue to increase amongst developed economies in the near future. A more flexible, family friendly approach under Australia's laws, which accepts the reality that many families include partners or children with a disability, is likely to gain significant competitive advantage in the context for securing this labour.

By contrast, overly inflexible and restrictive approaches to people with a disability or health condition can easily put off workers, including some with much needed skills. Whilst the current Minister must be congratulated for acting as promptly as possible in the case of Dr Moeller – the case which in many ways sparked this current inquiry – the message is likely to have gone out to many others with much needed medical and other skills that Australia is not welcoming for migrants who happen to have a child with a disability.

ECCQ is concerned that many people already face barriers to permanent migration due to issues such as lack of recognition of qualifications or insufficient personal or family wealth. It sends a poor message to migrant communities that Australia is prepared to accept individuals and families on long-term temporary visas such as subclass 457 or international student visas, with

enormous net revenue benefits to the country over a number of years<sup>5</sup>, but refuses to allow those same people to stay permanently if they or a family member has a disability or health condition deemed to be unacceptable.

#### Impact on public attitudes towards people with a disability

For a country which rightly prides itself on promoting human rights, equality and the inherent worth of each individual, it sends a very poor message to effectively preclude whole groups of people on the basis of a particular disability. Such a stance also undercuts efforts within our own community to reduce negative attitudes and ignorance about the capacities and benefits of people with a disability.

As the Parliamentary Secretary for Disabilities & Children's Services, the Hon Bill Shorten said on the release of the National People with Disabilities and Carer Council's report examining the barriers faced by people with disability:

"A strong theme from the report is the desire for people with disability to have the same opportunities as everyone else and to lead a productive life."<sup>6</sup>

It is difficult to promote a message of encourage people with disability to have the same opportunities as everyone else when such a fundamental building block of our nation as our migration laws actively and overtly work against this.

ECCQ accepts that potential economic costs have to be considered, alongside the economic and other benefits, in making a balanced assessment as to who should be eligible to become a permanent resident in Australia. But we believe that balance is currently out of kilter and gives insufficient weight to wider factors, as well as newly adopted responsibilities under the Convention on the Rights of Persons with Disabilities.

#### Recommendation 1

As a minimum, the government should expand the existing health waiver available to a limited number of visas to all visa classes which enable permanent residency.

#### Recommendation 2

In addition to recommendation 1, ECCQ believes greater discretion should be available at decision maker level to take into account non-economic factors.

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<sup>5</sup> See chapter 9, "*Migrants Fiscal Impact Model: 2008 Update*", a report prepared by Access Economics Pty Ltd for the Commonwealth Department of Immigration and Citizenship. April 2008. Table 21 shows a net revenue gain to the Commonwealth of \$25.6 million over 2 years for every 1000 temporary business migrants.

<sup>6</sup> "*Shut Out: The experience of people with disabilities and their families in Australia.*" Joint Media release by Jenny Macklin MP & Bill Shorten MP, 5 August 2009. (accessed at [http://www.billshorten.fahcsia.gov.au/internet/billshorten.nsf/content/shut\\_out\\_05aug09.htm](http://www.billshorten.fahcsia.gov.au/internet/billshorten.nsf/content/shut_out_05aug09.htm) on 25 Oct 2009)