

## Young, Claire (REPS)

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**From:** Murphy, Adrian [Adrian.Murphy@yarracity.vic.gov.au]  
**Sent:** Monday, 21 December 2009 12:09 PM  
**To:** Committee, Migration (REPS)  
**Cc:** Barton, Anne; Roberts, Ro  
**Subject:** Submission to the Joint Standing Committee on Migration  
**Attachments:** Delegates ReportMigrationAct.docx

Submission No 95

Dear Sir / Madam,

I refer to the current review of the health requirements contained in the Migration Act, being conducted by the Joint Standing Committee and wish to advise that Yarra City Council, at its meeting held on 15 December 2009, resolved to support the position statement and recommendations contained in the submission forwarded by the following organisations:-

- Association for Children with a Disability
- Blind Citizens Australia
- Australian Federation of Disability Organisations
- National Ethnic Disability Alliance
- Federation of Ethnic Communities Councils of Australia
- National Association of People Living with HIV / AIDS
- People with Disability Australia Incorporated
- Refugee Council of Australia
- NSW Disability Discrimination Legal Centre Inc.

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I attach a copy of the Delegates Report endorsed by Council in support of this position.

Should you require further information, please contact myself.

Regards

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## **Delegates Report – Chair – Disability Advisory Committee**

As Chair of Council's Disability Advisory Committee, I wish to speak to and seek Council's support for an issue that was recently been considered at the Disability Advisory Committee.

### **Inquiry into the migration treatment of disability**

#### Background

The Federal Government has requested the Joint Standing Committee on Migration to undertake an inquiry relating to the health requirements in the *Migration Act*.

Every year, millions of people apply to visit or migrate to Australia, and grant of a visa is conditional on a person satisfying the health requirement specified in the Migration Regulations. The health requirement is designed to protect Australia from public health risks, contain public expenditure on health and community services, and maintain access of Australian residents to those services.

Disability does not in itself mean that a person or a family will be refused a visa. However, as part of the health test, applicants with a 'disease or condition' are assessed on the potential cost and impact on Australian health and community services.

The Committee is investigating the assessment of the health and community costs associated with a disability as part of visa processing in Australia.

The key questions being considered through the Inquiry include:-

- Is the current process for assessing a visa applicant against the health requirement fair and transparent?
- What types of contributions and costs should be considered?
- How do we measure these?
- Are there additional factors that should be considered?
- What principles should apply to the assessment of visa applications against the health requirement? Should there be exceptions?

The Committee has sought submissions and many disability organisations and other interested parties have prepared a response.

(above summary: Parliamentary website –

<http://www.aph.gov.au/house/committee/mig/disability/subs.htm> )

#### Consideration by Council's Disability Advisory Committee

The Disability Advisory Committee has endorsed a response prepared by a number of organisations including:-

- Australian Federation of Disability Organisations;
- Federation of Ethnic Communities Councils of Australia;

- National Association of People Living with HIV / AIDS; and
- Refugee Council of Australia

and has requested that Council consider and endorse the Position Statement (see attached).

### The Need for Change

The Position Statement highlights the injustice experienced by people living with a disability under the current migration health test that means for example, 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;
- 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; and
- 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.

### Key Recommendations of Position Statement

The Position Statement therefore calls upon the Joint Standing Committee to recommend that:-

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; and
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.

### **Motion**

1. That Council notes the delegates report and endorses the attached Position Statement, calling on the Joint Standing Committee on Migration, to recommend:-
  - (a) 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;
  - (b) improved consistency, transparency and administrative fairness for migrants and refugees with disability applying for an Australian visa; and

(c) 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.

2. That Officers write to the Joint Standing Committee on Migration stating Council's support for the Position Statement.

Attachment 1:- Position Statement on Migration Act Review

## Attachment 1

### Position Statement

This position statement is in response to the Joint Standing Committee on Migration Review Treatment of Disability, and is intended to assist organisations and individuals making submissions to the Review.

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 or disabilities 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.

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.

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. 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 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.*

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

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.

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.

Endorsed by:

Association for Children with a Disability

Blind Citizens Australia

Australian Federation of Disability Organisations

National Ethnic Disability Alliance

Federation of Ethnic Communities Councils of Australia

National Association of People Living with HIV / AIDS

People with Disability Australia Incorporated

Refugee Council of Australia

NSW Disability Discrimination Legal Centre Inc