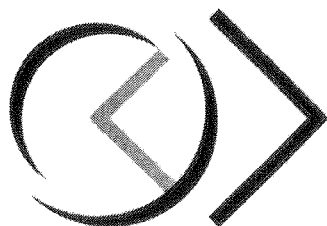


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N E D A

NATIONAL ETHNIC DISABILITY ALLIANCE

No Right to Discriminate

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

October 2009

No Right to Discriminate, National Ethnic Disability Alliance, October 2009

No Right to Discriminate: Submission to the Joint Standing Committee on
Migration Inquiry into Immigration Treatment of Disability

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Foreword

Addressing the discrimination faced by migrants and refugees with disability seeking to attain residency in Australia has been an ongoing issue for NEDA since the inception of the organisation. The Joint Standing Committee on Migration review of the migration treatment of people with disability creates a rare opportunity to ensure this crucial piece of law and process – one which affects many people, families and communities – is fair, consistent and reasonable.

NEDA has worked with a range of organisations over this issue. NEDA in particular acknowledges the Ethnic Disability Advocacy Association, the Multicultural Disability Advocacy Association of NSW and the Disability Studies and Research Centre, University of New South Wales. NEDA also acknowledges Dr Ben Saul for his previous work on identifying the inconsistency between migration laws and process and the United Nations Convention on the Rights of Persons with Disabilities.

NEDA also acknowledges the Disabilities Chair of the Federation of Ethnic Communities Councils of Australia, who sadly passed away on the 28 September 2009. Kelly was a strong supporter of a fairer system for migrants and refugees with disability, and had worked closely with NEDA on this issue: her passion and commitment will be missed.

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“Originally I come from a region that has long suffered marginalization and chronic underdevelopment. People with a disability face many disadvantages and neglect including family and personal humiliations resulting from discriminations based on their disabilities. Personally, I had to adopt various strategies to enable me to cope with these negative attitudes. I strongly believed that the only best option to liberate myself and advocate for social justice for others was to pursue education vigorously to better help cope in life and help others.”

Correspondence with NEDA - Name Withheld

“I think it’s very unfair to base the decision on somebody’s disability and try to look at their character themselves. I do believe there are people that do migrate – people that are able-bodied – that don’t even want to go to work and they live off the government. So you can get people that do that that are able-bodied. And how do you judge that? I think it’s very unfair to do that. Especially in a country like Australia which has very high standards of human rights so I don’t think it’s a fair way to judge somebody.”

Yusuf Akbas, Interview, “Ethnic Ability,” Ethnic Disability Advocacy Centre

1. Executive Summary

Australian migration policy fails migrants and refugees with disability. The laws are discriminatory; they do not provide fair opportunity to people with disability to attain residency on an equal basis with others. Migration law and processes treat people with disability solely as a cost, and devalue the important economic and social contributions that migrants and refugees with disability and their families might make to Australia.

Potential migrants and refugees to Australia are subject to a health assessment in order to determine their eligibility. In most cases (including for humanitarian entrants), the assumed future costs associated with a health condition or disability will affect their visa application.

This means 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. Families of people with disability are also affected by the policies. Many families supporting people with disability may make a difficult decision to leave behind a family member in order to build a life in Australia. In cases involving humanitarian entrants, family members with disability will remain in extremely vulnerable situations, having also been displaced by war, persecution, or civil unrest, but unable to join their families in Australia.

Policy affecting refugees and migrants has an important flow on effect for social inclusion and cohesion for all. Australia is a country with a rich migration history that has impacted upon its past, its present and its future. Many migrant families are able to relate their own stories of loss and grief in relation to a family member who has been unsuccessful in their attempt to migrate to Australia because illness

or disability has affected their application. Arguably the barriers faced by migrants and refugees with disability have an impact on the cohesion and wellbeing of the whole Australian community: these are issues that affect all Australians.

The United Nations Convention on Rights of Persons with Disabilities

Australia has acceded to the United Nations Convention on Rights of Persons with Disabilities (UN CRPD) and committed to non discrimination against people with disability in all areas of Australian law.

However, the current migration health assessment may give rise to unjustifiable indirect discrimination against refugees and migrants with disability, and thus does not comply with the equal protection obligation under Article 5 of the UN CRPD

Moving Beyond the “Healthy Migrant Effect”

Australia’s migration health requirement is based on the assumption that people with disability are a burden on Australia’s health system and are unable to make social and economic contributions to Australian society. These assumptions are flawed, are at odds with our international human rights obligations, and are out of step with community expectations that people with disability are entitled to participate on the same basis as anybody else.

Any Assessment of Costs Must be Non Discriminatory

Current criteria for the health requirement apply a threshold that is set too low to satisfy non discrimination obligations. Potential social and economic contributions must be taken into account. Existing processes must be fair to ensure a transparent, consistent and fair process for migrants and refugees with disability.

The Long Term Social and Economic Contribution of Migrants and Refugees Far Out Weigh Economic Costs

It has been acknowledged that the social and economic benefits delivered by migration programs far outweigh any short term costs. This benefit also accrues to people with disability, who provide a range of social and economic contributions, just as other migrants do. There is further significant cost associated with the current regime in the form of social exclusion, failed productivity and opportunity cost in relation to migrants with disability and their families who are excluded.

Migration is not a drain on the Australian Government. The fiscal impact of migration is positive for the Australian Government in the long term. Of the 72,400 people who settled in Australia in 2007-08, it can be estimated that the net contribution of these migrants and refugees to the Australian Government over the next 10 years will be \$2.31 billion dollars. The evidence suggests that there are only small number of migrants and refugees who fail the health requirement. In 2007-08 only 686 people who underwent the full health assessment failed to meet the requirement (see Appendix D). It is difficult to see how admitting the 686 people who did not meet the health requirement in the same year would lead to an excessive cost in the provision

of health and community services that would compromise access to services by other Australians.

If the health requirement remains, NEDA believes that it is only within the broad context of social and economic contribution that the any potential health costs associated with the health requirement must be weighed. Alternative frameworks are possible for assessing total economic and social contribution – for these to be effective and fair health costs would only be one consideration amongst many other potential factors.

No Right to Discriminate

NEDA believes that Australia has no right to discriminate unfairly against migrants and refugees with disability. To discriminate would not only fail community expectations and our international obligations, but would also deprive Australia of valuable social and economic contributions.

NEDA believes that there is a rare opportunity for Australia to fundamentally revise its stance on this issue, and take leadership in promoting fairness and non discrimination towards people with disability. Although NEDA has not included an analysis of migration policies in other jurisdictions, NEDA has worked closely with the Disability Studies Research Centre (DSRC), University of New South Wales on its submission to this review, and endorses the findings of that literature review. NEDA notes that taking leadership in relation to this issue is one of the opportunities noted in the DSRC report.

This submission makes 4 key recommendations:

Recommendation 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.

Recommendation 2.

Improved consistency, transparency and administrative fairness for migrants and refugees with disability applying for an Australian visa.

Recommendation 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.

Recommendation 4.

If the health requirement is maintained with respect to refugees and migrants, potential health and community costs associated with disability must be assessed within the context of a broad multi-factoral framework of long term social and economic benefits to the individual, family, economy, governments and society, and comply fully with the

non discriminatory principles laid out in the United Nations Convention on the Rights of Persons with Disabilities.

2. About NEDA

The National Ethnic Disability Alliance (NEDA) is the national peak organisation representing the rights and interests of people from non-English speaking background (NESB) with disability, their families and carers throughout Australia.

NEDA is funded by the Commonwealth Department of Families, Housing, Community Services, and Indigenous Affairs (FaHCSIA) to provide policy advice to the Australian Government and other agencies on national issues affecting people from NESB with disability, their families and carers.

NEDA actively promotes the equal participation of people from NESB with disability in all aspects of Australian society. It manages a range of projects relating to NESB and disability communities and works closely with its state and territory members to ensure that its policy advice reflects the lived experiences of people from NESB with disability. In states and territories where no NESB-disability advocacy agency exists NEDA undertakes development work to establish a structure that can support people from NESB with disability, their families and carers.

NEDA estimates that one in every four people with disability is a person of either first or second generation NESB, representing approximately 1 million people across Australia.

"I was aware that in order to determine my eligibility for an Australian visa, I would be subjected to unnecessary health assessment process. The impact of this process meant that I would be discriminated and refused any form of visa including a skilled visa despite my potential social and economic contributions."

Correspondence with NEDA - Name Withheld

3. Context of the Health Requirement

The *Migration Act 1958* is exempted from the majority powers of the *Disability Discrimination Act 1992* (as per section 52 of the DDA), and thus refugees and migrants with disability are not offered the same protections from discrimination that apply to other areas of Australian law.

The main source of potential concern for refugees and migrants with disability is the mandatory health requirement, where the estimated potential future health costs of applicants are weighed against the "public interest" of safeguarding access to scarce resources for the Australian community. The assessment must not only establish the future potential health costs associated with a person over their lifetime, but also assess the a capacity for the Australian community to afford this care, and for this not to affect access to services by Australian citizens and residents.

3.1 A Barrier to Fairness

While the health assessment does not specifically exclude people with disability, arguably some people with disability, particularly those who might require costly treatment or potentially may draw on social security and community support, are more likely to be excluded as a result of the assessment.

The exemption of the majority discriminatory provisions in the health requirement from the *Disability Discrimination Act 1992* highlights the potential discrimination that may occur. Indeed the 2004 review of the *Disability Discrimination Act 1992* noted in relation to the health test that "some of these criteria may indirectly discriminate against some people with disabilities."¹

It is arguably intolerable that any area of Australian law should discriminate directly or indirectly against people with disability, even with respect to non citizens, such as refugees and migrants.

It is also unfair and unreasonable that people with disability are rejected because of untested assumptions about future costs associated with their disability. It is conceivably difficult to rationally and fairly assess the costs associated with disability or illness over a person' life time, and arguably there is significant room for interpretation in this process. Further, the health assessment does not take into account whether or not services will actually be used, or the ability of individuals to

¹ Productivity Commission, *Review of the Disability Discrimination Act 1992*, April 2004, p348.

pay for the costs that may be attributable to a person's illness or disability. Arguably this unfairly disadvantages many skilled migrants, who in some cases have a demonstrated capacity to meet future costs associated with disability. The policies also deprive Australia of valuable skills from individuals who are excluded because they or a family member has disability. In this sense, the migration health requirements work at cross purposes to other government priorities, such as the need to attract valuable skills and experience to the Australian labour market.

It should be noted that there are significant costs associated with an application to migrate to Australia (see Box 1). The migration health assessment creates additional costs for many applicants with disability who may need specialist advice in order to realistically progress a successful application to migrate. People with disability whose initial application was rejected have to find the financial resources to get expert advice from migration agents, medical specialists and for the appeal procedures. People cannot usually afford to appeal, and the expensive, drawn out procedures result in large debts that have to be paid off, often forcing families to sell whatever assets they have.

It is true that some migrants and refugees with disability are able to migrate to Australia through the Immigration Minister's ability to waive the health requirement. However, this only emphasizes potential discrimination associated with the status quo, as entry is not available as a right but only at the discretion of the Minister.

Box 1: Additional Costs

Maria: "Well so far the total cost of the application has been, I suppose approaching \$5,000 now including seeking legal advice – which of course, none of it we would be able to recoup even if her application is refused. We've been to the Migration Review tribunal, that cost quite a bit too apply for that. Again it's not refundable in any way whatsoever.

Interview with Maria Gillman, "Ethnic Ability," Ethnic Disability Advocacy Centre

"In addition to this fact the process of accreditation for a skilled visa placed an extra barrier for me to overcome. For example, just to do International English Language Test IELTS costed unnecessary expenses in relation to the application that I had to wait for three months because Braille exam materials had to be imported while those without disability had to wait for only five weeks. This was a double disadvantage for me. At that moment, I was financially disadvantaged, unemployed and unable to seek private migration lawyers for advice and assistance."

Correspondence with NEDA - Name Withheld

3.2 A Barrier to Social Inclusion

There are significant social costs associated with the Australian Government's policy stance in relation to migrants and refugees with disability.

Migration processes have a history of splitting families apart. NEDA is aware of a number of cases where applications from people with disability are rejected, and families are told that everyone except the person with disability would be accepted. Note that NEDA understands that current practices mean that immigration officials apply "one fails, all fails" approach to families. This approach is not necessarily more satisfactory, as it creates a situation where family members with disability are held personally responsible for a family's visa rejection.

NEDA is aware of families that have fragmented as a result of the policies. Some families make the difficult decision to leave behind a son or daughter, a parent or a grandparent with disability or illness in order to migrate to Australia. Families in these circumstances are often 'put on hold,' as they desperately attempt to navigate migration applications in order to reunite family members who have been excluded as a result of the health test.

Where families do split up by having to leave the person with disability in the care of relatives, this frequently disadvantages the most vulnerable members of the community, particularly children with disability, because they are left with little financial, emotional or psychological support (particularly if it is the parents who have migrated to Australia). This leads to distress for both the ones left behind and those who move to Australia. Family members in Australia carry excessive financial and emotional burdens, having to send regular amounts of money overseas to support their family members with disability and dealing with feelings of guilt and the emotional distress both parties experience. In some instances, this frustrating process of trying to reunite family members leads to mourning, despair and acts of desperation:

In the year 2000, Shazad Kayani, an Australian Citizen from Pakistani background, doused himself in petrol and set himself alight in front of Parliament House, Canberra and died as a result. He had been waiting six years to bring his family, including his daughter who has a disability, to Australia. Since 1995, after arriving on a Visitor Visa and applying and being granted refugee status, Mr Kayani had tried to reunite with his family. All his efforts had come to nothing, largely because his daughter with the disability is considered to be "too much of a drain on the health system" with costs estimated to be around \$750,000 over the girl's lifetime.²

Because existing migration processes fail to account for the broad social contribution that might be made by applicants –for example, to families and communities – the existing system fails to account for the community discord and poor cohesion which results from the exclusion of key family members through the migration process. For example, NEDA is aware that migration applications from

² Multicultural Disability Advocacy Association, "Disability Discrimination and Immigration," Fact Sheet. At <http://www.mdaa.org.au/faqs/immigration-mdaa.doc>.

spiritual and cultural leaders have in the past been rejected on the basis of a failure on behalf of the individual, or of a family member, to meet the health requirements, despite the obvious contribution to community social and cultural cohesion that may have eventuated. Once again, this highlights the fact that Australia's migration health requirements can often work at cross purposes to other government objectives.

3.3 A Barrier to Refuge

Refugees escaping persecution, war and trauma often face significant difficulties. However, people with disability who seek refuge in Australia face additional barriers as a result of the health requirement. NEDA is aware that out of desperation, families may often have to make the difficult choice to either stay in a country and face continuing war and terror, or choose a life in Australia on condition that they leave behind a family member within a precarious civil or social context.

Some refugees with disability and their families who reside in Australia may also face difficulties in accessing vital services, including early intervention and support, while waiting years while numerous permanent residency applications are rejected as a result of Australia's health requirements.

3.4 The Myth of the "Healthy Migrant"

Australia's migration program has historically been premised on the assumed 'healthy migrant effect,' where the potential economic costs of migration are mitigated by filtering out people who – it is assumed – will generate adverse health costs. This leads to a set of guiding principles that are at odds with our commitments to fairness and non discrimination. For example in a report commissioned by the Australian Government, it states: "A prosperous Australian society requires a stock of people who are capable of economic and social participation. In the first instance, this means people of sound physical and mental health who can contribute their skills to supply market and non-market labour. If migrants suffer from ill health, their contribution to society can be lessened."

The contention that "If migrants suffer from ill health, their contribution to society can be lessened" is untested and presents an unsophisticated understanding of the relationship between health, disability and social and economic contribution. NEDA contends that if this is the basis for the current health requirement, it contains a number of disturbing assumptions that may lead to discrimination.

Disability represents a set of social barriers placed upon individuals with an impairment or health condition. Disability does not necessarily imply ill health (see Box 2). Nor does disability or health condition necessarily imply an inability to contribute to the labour force or make social contributions.

Box 2: Disability and Health

Zel: "Now Maria, your sister, Una, is currently in South Africa. Together with Una, you're working to bring her to Australia – she's been here before. I had the pleasure of meeting her, working with her and even visiting her in South Africa. And there are a lot of problems with her coming to Australia as a permanent resident".

Maria: "That's right. Yes she basically made an application as a skilled migrant and she ticks every box except that she happens to be a blind person. The irony is, it was only when her health assessment came back saying that she has a medical condition – which means that she will not be able to be accepted because there will be a cost to the Australian community – it was only then that we realized actually that she will be discriminated against – I didn't know that before. So at the moment, her application is with the Minister, we've asked him to personally intervene in her case."

Zel: "Now when they're referring to Una having a 'medical condition', they're referring to her being blind?"

Maria: "That's right, yes. As I say, it was something – we never think of her blindness as a 'medical condition', it's just more a physical condition. She's not ill any way. She happens to be blind and – in many ways we always think of her blindness as affording her skills that other people don't have. She has a much more highly developed sense of hearing, for instance. Her computer skills are way better than my computer skills because she has to learn every key stroke. She cannot rely on just clicking on icons. She knows Braille. Many things make her more skilled than I am because of her blindness."

Interview with Maria Gillman, "Ethnic Ability," Ethnic Disability Advocacy Centre

1. States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.
2. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.
3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.

Article 5, United Nations Convention on the Rights of Persons with Disabilities “Equality and non-discrimination.”

4. Implications of the United Nations Convention on the Rights of Persons with Disabilities

On the 18 July 2008, Australia ratified the United Convention on the Rights of Persons with Disabilities (UN CRPD). The UN CRPD is a historic document, which provides guidance on the basic rights and freedoms that should be accorded to people with disability. Importantly, the document offers principles that inform international policy and lawmaking in accord with the rights of people with disability.

Australia’s migration health requirement was the subject of some discussion prior to ratification. The Australian Government National Interest Analysis noted that despite the exemption of the health test requirements from the *Disability Discrimination Act 1992*, that “the processes apply to all applicants, are based on legitimate, objective and reasonable criteria and would not constitute discrimination under international law.”³

However, the Australian Government eventually took the step of issuing an interpretive declaration in relation to the migration health requirement, when the UN CRPD was ratified. The wording of the declaration is as follows:

Australia recognizes the rights of persons with disability to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others. Australia further declares its understanding that the Convention does not create a right for a person to enter or remain in a country of which he or she is not a national, nor 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 Australian Government Attorney General, National Interest Analysis [2008] ATNIA 18, 4 June 2004, p15. See also p17.

It remains unclear why a strongly worded declaration was needed if it were indeed the case that Australia's health requirements "would not constitute discrimination under international law."

In early 2008 NEDA sought legal advice on the consistency between the UN CRPD and the Migration Act 1958 with regard to the health requirement. The legal advice was provided by Barrister Dr Ben Saul, Director, Sydney Centre for International Law. The full advice has been submitted to the Joint Standing Committee on Migration Review as a separate submission.

The findings of the advice are summarised below.

1. Health requirements under migration law are in principle permissible under human rights law in order to safeguard scarce medical resources.
2. However, the current health assessment may give rise to unjustifiable indirect discrimination against refugees and migrants with disability, and thus does not comply with the equal protection obligation under Article 5 of the UN CRPD.
3. Indirect discrimination against refugees and migrants with disability may occur because the threshold of the health test is set too low to adequately balance the interests of non discrimination against people with disability with the preservation of scarce health resources. Thus, in some cases the health assessment may lead to discrimination that is not proportionate to the policy objective of preserving health resources for all Australians.
4. Indirect discrimination against refugees and migrants with disability may also occur because the evidentiary requirements are not sufficiently strong, for example in relation to accurately quantifying the future costs to the community of illness or disability.
5. Finally, indirect discrimination against refugees and migrants with disability may occur by inadequate procedures to take into account an applicant's ability to pay for the costs attributable to their own disability or illness.

The advice provides significant options for reform and provides a basis for framing the consideration of costs and benefits associated with migrants and refugees with disability. These will be discussed below in sections 5 and 6 of this submission.

NEDA believes there is a strong mandate for full application of the UN CRPD to all aspects of Australian law and processes, including the migration health requirement. It is certainly of relevance that the Joint Standing Committee on Treaties recommended in 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." This recommendation sends a signal that strong positive change is warranted to remove discrimination.

“For almost five years, during the period of my studies, I sacrificed most of my time in volunteer work in various organizations helping migrant communities integrate into the Australian society. I have been helping these communities in establishing themselves and as a mentor, help them gain skills. I used my professional skills by providing counselling, initiating various community projects and frequently giving advice. I was passionate by sharing my personal and acquired skills in a human service area. I voluntarily provided the migrant communities with resources that were extremely difficult to find in relation to a population with low levels of literacy and who need to learn how to adjust to the Australian life.

Thus, I strongly believed that I had immense social and economic contribution and would be an asset to the public. Having acquired a number of degrees, I was certain that my qualifications would be extremely competitive on the Australian employment market. I strongly believed in gainful employment that would make me a beneficiary not a benefactor to taxation payments or rely on meagre Disability Support Pension.”

Correspondence with NEDA - Name Withheld

My passion was to work with people from minority groups like people from refugee and migrant backgrounds, people with disabilities etc. It was very important for me to put something back into the community that supported me through the years. When I first came to Australia, through my education, when I went to university - I had lots and lots of friends through university who supported me with my learning, reading books for me. So I thought it was time to put something back into the community and that's why I was important for me to get somewhere to put something back into the community in my own way”

Interview with Nihal Iscel, “Ethnic Ability,” Ethnic Disability Advocacy Centre

5. Assessment of Economic and Social Costs and Benefits

Current migration arrangements do not provide fair opportunities for the potential economic and social contributions of migrants and refugees with disability to be taken into account. All new arrivals to Australia make economic and social contributions through economic consumption, employment, social interaction, community building, language and values:

Migrants contribute in positive ways to the productive diversity of Australia through investment in housing, in the transformation of urban areas, the creation of new businesses, the supply of products, the provision of new and different skills, and through other types of entrepreneurial activities. From the perspective of the host country, migration contributes substantially to Australia's capacity for innovation, productive diversity and economic

prosperity, opening up valuable cultural and business opportunities with the rest of the world.⁴ xii

These contributions are difficult to measure because of the breadth of their scope, and the complexity involved in determining their financial value. However new frameworks for adequately measuring costs are possible – for example the framework used by Department of Immigration and Citizenship / University of New England to assess human, social, produced and financial, and natural capital provides a comprehensive means by which to assess the potential contribution of all migrants and refugees, including people with disability. An example framework, that takes into account a range of costs and benefits associated with migration, is included in Appendix C.

NEDA believes that any assessment of health costs can only fairly be taken within a broad context of recognition of human rights, acknowledgement of social and economic contribution, and cognisance of Australia's place as a wealthy, productive and diverse society.

Non discrimination principles suggest that migrants and refugees with disability should have the same opportunity to demonstrate their potential social and economic contributions as any other visa applicant. Key cost and benefit implications for this non discriminatory approach are discussed below.

5.1 Cost determinations must be proportionate.

At present the cost threshold for the health requirement is set too low – NEDA understands that individuals with a health assessment over \$21,000 do not meet the health requirement.⁵ It is difficult to see how the \$21,000 threshold was determined, and what its relationship is to the broad aim of 'securing scarce health resources'.

An unjustifiable hardship principle suggests that it would be unreasonable to not meet potential health and community costs of a person with disability unless an applicant would attract health costs and necessitate adjustments that are unfeasible to accommodate.

Based on the high levels of wealth and relative standard of living enjoyed by Australians, the capacity for the Australian community to absorb potential health and community costs in order to satisfy non discrimination principles would be – it must be assumed – reasonably high.

As discussed below, Australia's net migration program will deliver approximately \$31.9 million in Government revenue per 1000 migrants over the next 10 years. On this basis there is no justification for the current threshold level.

5.2 The evidence for determinations must be strong, transparent and open to appeal

⁴ Department of Immigration And Citizenship, *The Social Costs and Benefits of Migration into Australia*, University of New England, 2007, pxii.

⁵ Standing Committee on Legal and Constitutional Affairs, "Estimates," 24th February 2009, L&CA 35.

At present cost determinations appear arbitrary, inconsistent and unfair to many migrants with disability. Lifetime potential health and community support costs are of necessity difficult to estimate accurately. NEDA questions how a medical officer might assess accurately the health complications an individual may experience over their lifetime based upon their impairment or health condition. NEDA also questions how accurately current costing guidelines are in providing up to date estimates of health costs, and their ability to take into account future price movements in health treatments, medication and equipment. It is unreasonable and discriminatory to make a cost determination unless there is solid evidence upon which to make findings.

Poor transparency in relation to the rationale for a determination of costs appears to be an issue. NEDA understands that potential costs are assessed by health officers using "Notes for Guidance" provided by the Department of Immigration and Citizenship. NEDA understands that these guidance notes are not publicly available, are not subject to external or public scrutiny to ensure costs are accurate or up to date.

NEDA is informed that appeals against a determination of a medical officer are expensive and unlikely to succeed. Given the fact that a failure to meet the health requirement will result in a visa rejection for many applicants (at least under the status quo migration system), it is reasonable for an affordable and easy to navigate appeal system to be created to ensure fairness for all applicants.

5.3 Taking into account Economic and Social Contributions.

The health requirement explicitly excludes individuals on the basis of a health cost assessment *regardless* of any social or economic contribution that individual may make. This means that individuals who could make strong social and economic contributions – sometimes well in excess of any potential costs they may incur – are still excluded from a visa. For this reason the health requirement in its application is discriminatory.

The health requirement only treats individuals with disability as a cost. NEDA notes that migrants and refugees *without* disability may attract significant health costs in their lifetime as a result of a health condition – for example heart disease, diabetes or cancer – however residency is usually granted on the positive assumption that these migrants will contribute. It appears unfair that migrants and refugees with disability appear not to be given this same 'benefit of the doubt.'

5.3.1 Economic Contribution

At present, the economic contribution of a potential visa applicant with disability is not weighed against assessed health costs as part of the migration health requirement. Further the ability of individuals and families to directly meet their own health costs is not taken into account: for example by demonstrating ability to provide for future costs, as in the United Kingdom. This means that individuals who have the potential to make a strong economic contribution to Australia – including those who might contribute valued skills and experience – are excluded from a visa as a result of the health test. In the case of family applications, it

means that family members who might make a strong economic contribution are denied opportunities.

5.32 Social Contribution and Social Inclusion

There is no framework in current processes to measure the social contribution of individuals and weigh these against potential costs. This means that individuals who might make a strong social contribution – working with other migrants, in caring roles, volunteering, as part of a family unit, providing skills or knowledge, etc – are still excluded if they don't meet the health requirement.

As discussed above, there is significant social cost associated with the current migration arrangements in creating hardship, distress and alienation for many migrant communities. NEDA believes that the capacity of the health requirement to tear apart families and communities works at cross purposes with Australian Government social inclusion goals by actively deteriorating the social capital and resources of migrant families and communities.

... the social benefits of migration far outweigh the costs, especially in the longer term. The evidence that is available overwhelmingly supports the view that migrants to Australia have made and continue to make substantial contributions to Australia's stock of human, social and produced capital.

Department of Immigration And Citizenship, *The Social Costs and Benefits of Migration into Australia*, University of New England, 2007. ⁶

Sanja: "that's excellent, that's really good and you have really achieved a lot. As a mediator and a counsellor do you think your disability and cultural background has any influence on your interaction with your clients?"

Nihal: "well, I think it does, in a positive way because I was brought up here in Australia so I know the western culture and I was also brought up with the Turkish culture. being Turkish myself, it does have a positive influence; it gives me an understanding of people who come from culturally and linguistically diverse backgrounds and what sort of difficulties they may face. Then I try to tailor my service to meet their special needs".

Interview with Nihal Iscel, "Ethnic Ability," Ethnic Disability Advocacy Centre

6. Balancing Non Discrimination, Costs and Benefits

Because the existing application process for migrants and refugees does not provide a way to balance social and economic contributions against potential costs, people with disability will face discrimination based upon assumed future health costs associated with impairment or health condition. The following should be a consideration for any revised framework.

6.1 Application of Non Discrimination Principles

It is intolerable that there should be unfair discrimination against people with disability in any area of Australian law or process.

Non discrimination principles have an affect on assessing potential costs for migrants and refugees with disability. Discrimination is clearly unreasonable where the costs threshold for excluding individuals is set too low, where the social and economic contribution of individuals is not taken into account; and where processes lack transparency and expose migrant and refugees to additional costs.

An unjustifiable hardship principle suggests that it would be unreasonable to exclude a person with disability on the basis of the potential health and community costs associated with impairment or health condition unless an applicant would attract health costs and adjustments that would be unfeasible to accommodate.

6.2 Social Inclusion Aims of Migration program

⁶ Department of Immigration And Citizenship, *The Social Costs and Benefits of Migration into Australia*, University of New England, 2007, pxi.

The Australian Government has adopted a social inclusion agenda with benchmarks for enabling stronger cohesion and social capital.

Given the strong social benefit of migration programs for Australia, there is the potential for social inclusion targets to intersect with goals of the migration program. NEDA notes that exclusion of migrants and refugees with disability has worked against social inclusion goals, in particular in generating fractured migrant communities, and removing sources of inter-generational knowledge, support and productivity.

6.3 Long Term Benefit and Intergenerational Contribution

Any assessment of social and economic contribution must examine the long term benefits of individual contribution. This should include recognition of:

- *Future productivity as individuals attain training and education.* Investment in training and education creates long term benefit in future productivity for all migrants, including people with disability. Some training (eg English language) is the gateway for individuals to make use of existing skills and knowledge.
- *Future productivity if individuals attain required supports (for example employment support).* Given the required support, people with disability can contribute economically, regardless of the social limitations imposed upon them by impairment or health condition. Community supports must be treated as an investment rather than cost: in this context, to every cost there is a benefit.
- *Long term social contribution as individuals build social capital and cohesion within the Australian community.* People with disability are siblings, aunts and uncles, parents and grandparents. People with disability engage with social networks, community organisations, sporting and leisure, faith institutions, communities in general. People with disability also have played an important role in building rights movements that have improved the responsiveness of governments and communities to addressing the social barriers faced by people with disability. Migrants and refugees with disability will make the same contribution, including to migrant communities.
- *Intergenerational contribution.* The social and economic contribution of migration is intergenerational in nature: “many of the benefits of migration accrue to the second generation, while most of the personal costs of migrating are born by the first generation.”⁷ This means that assessment of the benefits of migration must explicitly be framed to understand the contribution the individual might make to intergenerational networks – migrants and refugees with disability, like other migrants and refugees will

⁷ Department of Immigration And Citizenship, *The Social Costs and Benefits of Migration into Australia*, University of New England, 2007, xii.

pass on knowledge, skills and experience to future generations of productive Australians. Note also that younger migrants and refugees with disability can build inclusion for older migrants, for example by offering higher levels of English proficiency, allowing migrant parents to navigate social and economic networks more effectively (see Box 3 below).

6.4 Community Support Costs and Investments

It is acknowledged that some migrants and refugees may require community support in the form of income support and support services.

NEDA believes that the following should be taken into consideration when considering these costs:

- *Income support costs may be short term or transitional in nature.* People with disability face numerous barriers to entering the labour force, but training and support can enable participation. Changes in the nature of the workplace – increased accessibility, technological change, fluid workplace arrangements including capacity to work from home – have enabled many people with disability to enter the workforce. Further, there has been a strong push by the Australian Government to improve workforce participation. The evolving nature of Australia's future workforce should be taken into account.
- *Some Community Support expenses are an Investment in Future Productivity.* Some support costs are short term or episodic in nature, and deliver long term economic returns. As a result these should be treated as an investment. Some forms of community support – such as employment services, adaptive equipment and in home support – may enable an individual to make social and economic contributions, such as engaging in employment. Income support can – in some circumstances – enable individuals to make this contribution, for example in part time work.
- *Community support services by and large are provided on an eligibility rather than entitlement basis.* Although many people with disability are eligible for services, they do not necessarily receive the services they need. The existence of unmet need has not historically led to an escalation in government expenditure to meet this need. There are access issues for many migrant groups, particularly people from non English speaking backgrounds.⁸ It is unfair to apply potential community service costs to individuals who are unlikely to use these services.

⁸ National Ethnic Disability Alliance, "Access to Disability Services for People from Non English Speaking Backgrounds," NEDA Fact Sheet 2.

Box 3: Intergenerational Social Contribution

Zel: "Right. If your family had arrived in Australia without you, do you think that they would have been able to contribute to Australia as well and as much as they do now?"

Yusuf: "Initially no, because when my parents came here they didn't have much English, and if you don't have much English in Australia, it's pretty hard to contribute anything to this society. You can only contribute to your own culture but even now the English level that they have would never match my English so it would be very hard for them to contribute. Because I can speak English very well – I grew up in Australia – I help them out with almost everything. So I can get them involved in the community a lot more than they do. Because of my disability they can actually make their contribution to the Australian society to help out. You know, I have to go to hospital, speak to people, speak to professors about this disability – my Mum has a lot of input as well."

Zel: "Yusuf, can you tell me more about what your family benefits from having you with them in Australia?"

Yusuf: "Ok. Firstly we focus a lot around family and staying together. Now honestly, for the last five/six years, I've been the main person trying to get the family together, trying to do things in our community. I've sort of taken the leader role in my family. Trying to sort out their lives as well. So without me, it would be very hard for them to live in Australia."

Zel: "And you were telling me earlier that you were helping your Mum fill out forms still and understand/or get the concept of things as they change, for example things with her job or her income, etc. So that's really important as well."

Yusuf: "Yes. Plus they need to fill out tax forms and I need to help them with that. Also living in our neighbourhood, there are rules and regulations and they don't cater to their language, so you need to translate for them and actually teach them about the Australian culture. Because of the language barrier, they don't mix with Australians very much. But with my help they feel confident that I can translate for them for things they don't understand. I understand the Australian culture a bit better because I was brought up in Australia and mixed with Australian people quite a lot. I know how they think and I know what their culture is so it helps me to explain to my parents, explain to my family their way of thinking, their way of life. And it makes it better for us to get along as a community."

'zel: "Absolutely. So you're almost like a mediator between your parents and the community, facilitating their lives in Australia."

Yusuf Akbas, Interview, "Ethnic Ability," Ethnic Disability Advocacy Centre

6.5 Factoring other social and economic costs

The current migration arrangements impose a range of social and economic costs on migrant and refugee families, communities and the Australian economy as a whole. These costs include:

- *Opportunity Cost of lost potential.* Because migrants and refugees with disability are excluded solely on the basis of potential future health costs, rather than economic and social costs, there is an opportunity cost associated with current arrangements, particularly where an individual would clearly make significant contributions to the Australian community. There is further opportunity costs associated with family members who are excluded as a result of a failure to meet the health requirement by one or some members of a family- there is a cost to Australia in foregone social and economic contribution when these individuals are excluded (see Box 4).

Box 4: Opportunity Cost – who is being excluded?

Maria: "While we're talking Zel, I was also thinking – when I was very little, we learnt in school about a famous lady you might know, Helen Keller. And it struck me how, you know, she is still one of those people is kind of one of the heroes of the world for her ability to have overcome the drawbacks that she had. She was in fact blind, deaf and mute. And she's held out as a hero to people and it just seems to be a double standard for people to be encouraged to admire someone like Helen Keller, whereas in fact, Helen Keller would have been refused entry into Australia under the current law. Someone like Betty Churchill, who is losing her sight, would be refused entry into Australia. Someone like Colleen Mc'Culloch, who's losing her sight. Someone like Gordon Brown who has vision impairment – to some extent, might be refused entry. It just seems to be that – you know people with disability work so hard to better themselves, to overcome – and to be just knocked down by something that you know is so – it just seems to me that there's a real unfairness in that. And it's hard to explain that to someone like Una – to say you know THAT is the reason why you cannot come to a country like Australia."

Interview with Maria Gillman, "Ethnic Ability," Ethnic Disability Advocacy Centre

- *Economic costs of failed effectiveness of migration programs.* Migration programs are compromised in their effectiveness by existing arrangements. Families that would otherwise thrive do not make effective contributions because of the personal strain involved in supporting a family member with disability through a visa application process, or financially supporting a family member with disability who has stayed overseas. This has a very strong effect for some migrants – for example in business migration

streams – where barriers to migration for people with disability compromise the economic goals of migration program (see Box 5 below).

- *Social costs of family, community separation.* As described above, the current arrangements lead to the separation of families, and lost social connections with communities. There is a social cost for family and community separation, with compromised cohesion and capital, antagonism and alienation.
- *Economic costs of separation.* There is an economic cost of separation for the Australian economy, particularly where families send income overseas to support a family member with disability who has not been able to migrate to Australia. This represents forgone expenditure within the Australian economy.

Box 5: Case study, Economic Migration

Aisah* attained a four year visa under the Business Skills Migration program to set up an enterprise. Aisah had a family who she intended to bring with her. Unfortunately, Asiah was forced to leave behind her child with disability in with a family carer in Malaysia. Now Asiah struggles with her business. She spends a significant amount of time and resources organising care and support for her child in Malaysia, and is unable to focus on making her enterprise in Australia a success. Although she would like to stay in Australia, it is difficult to see how it is possible: her business has not achieved what it could have, and the health requirement will make it difficult for her to be reunited with her child in Australia.

**Name and details changed to preserve anonymity.*

6.6 Assessing Net Fiscal Revenue and Expenditure

As discussed above, the Australian Migration program has erroneously been based on the assumption of the 'healthy migrant,' creating a situation where migration policies do not sit comfortably with our international obligations, or with changing attitudes towards disability and health. Importantly, this assumption has failed to acknowledge the total social and economic contribution migration has made and continues to make to Australia.

Migration delivers net economic benefits to the economy, community and government. It is within this broad context that any costs associated with migration must be assessed.

One method of balancing costs and benefits would be to weigh the net fiscal impact of the Australian Migration program to the Australian government. This is a

narrow measure (it only measures impact to Government), but addresses key concerns, particularly around cost to Government in the form of transfer payments.

In 2001 the Australian Government commissioned Access Economics to assess the impact of migrants on the Commonwealth Budget. The report found that over a 10 year period migrants and refugees delivered a net surplus in revenue to the Australian Government: the equivalent of approximately \$31.9m for every 1000 migrants (see Table 1). Using this data, and based on current data for net permanent settlers (approximately 72,400 in 2008-09), it can be estimated that the net contribution of these migrants and refugees to the Australian Government over the next 10 years will be \$2.31 billion dollars. Note that as this report was commissioned before an accurate picture was available of the transfer benefits of the Goods and Services Tax (GST), it can be assumed that this figure is conservative.

It is difficult to see how admitting the 686 people who did not meet the health requirement in 2007-08 would lead to an extreme cost in the provision of health and community services that would compromise access to services by other Australians. Even if it were assumed that each of these migrants would incur a potential lifetime health cost of \$1 million, these costs would not compromise the net fiscal surplus extracted by the Australian government from annual new settlers over a 10 year period. Note that using this approach, any lifetime health costs must be weighed against the fiscal contribution of these individuals; the broad economic contribution of individuals to the economy beyond the government transfer system (ie businesses, infrastructure, services); and finally, where relevant, the opportunity costs associated with foregone fiscal contributions of families connected to excluded individuals must be taken into account.

Table 1: Fiscal Impact to the Australian Government of Migration Programs

	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m
Family, per 1,000										
Revenue	3.1	3.9	4.2	4.7	4.8	5.0	5.2	5.4	5.7	5.9
Expense	4.4	3.8	5.1	5.0	5.0	4.9	4.9	4.8	4.7	4.6
Net Operating Surplus (deficit)	(1.3)	0.1	(0.9)	(0.3)	(0.1)	0.1	0.4	0.7	1.0	1.3
Concessional (SAL), per 1,000										
Revenue	3.7	4.1	4.5	4.9	5.1	5.3	5.5	5.7	5.9	6.1
Expense	3.7	3.5	4.3	3.9	3.7	3.7	3.7	3.6	3.6	3.5
Net Operating Surplus (deficit)	(0.0)	0.6	0.2	0.9	1.4	1.6	1.8	2.1	2.3	2.6
Business Skills, per 1,000										
Revenue	11.4	11.6	11.9	12.6	13.1	13.6	14.1	14.7	15.3	15.9
Expense	3.3	2.6	2.2	2.0	1.2	0.7	0.3	(0.2)	(0.7)	(1.2)
Net Operating Surplus (deficit)	8.1	9.0	9.7	10.6	11.9	12.9	13.9	14.9	16.0	17.1
Independent, per 1,000										
Revenue	7.7	9.8	11.3	13.2	13.7	14.2	14.8	15.4	16.0	16.6
Expense	4.2	4.1	4.0	3.1	2.6	2.1	1.6	1.0	0.4	(0.2)
Net Operating Surplus (deficit)	3.4	5.7	7.2	10.0	11.1	12.1	13.2	14.4	15.6	16.9
Skilled Total, per 1,000										
Revenue	7.3	8.6	9.5	10.7	11.1	11.6	12.0	12.5	13.0	13.5
Expense	3.9	3.6	3.7	2.9	2.6	2.2	1.9	1.5	1.0	0.6
Net Operating Surplus (deficit)	3.4	5.0	5.8	7.8	8.6	9.4	10.2	11.1	12.0	12.9
Humanitarian, per 1,000										
Revenue	1.8	2.1	2.1	2.6	2.7	2.8	2.9	3.0	3.1	3.3
Expense	11.5	7.8	6.8	6.7	6.7	6.9	7.0	7.1	7.2	7.3
Net Operating Surplus (deficit)	(9.7)	(5.6)	(4.7)	(4.1)	(4.0)	(4.1)	(4.1)	(4.1)	(4.1)	(4.0)
Total, per 1,000										
Revenue	5.1	6.2	6.8	7.7	8.0	8.3	8.6	9.0	9.3	9.7
Expense	5.9	4.7	5.4	4.6	4.8	4.6	4.5	4.3	4.2	4.0
Net Operating Surplus (deficit)	(0.8)	1.6	1.4	3.1	3.2	3.7	4.1	4.6	5.2	5.8

Source: Access Economics, *Impact of Migrants on the Commonwealth Budget: Summary Report, 2000-01 Update*, Department of Immigration and Multicultural Affairs. January 2001.

Zel: "Lastly Yusuf, what would you advise the Government on their current inquiry into migration and disability?"

Yusuf: "One of the most important things is that the people that make these decisions, they really need to put themselves in that situation and maybe think about that. For example, if they were married and their wife or husband had a disability, would you leave them because it's going to be a higher cost?"

Yusuf Akbas, Interview, "Ethnic Ability," Ethnic Disability Advocacy Centre

7. Conclusion

There is a significant opportunity for Australia to take positive steps towards reform of migration policy that will create a fairer system for migrants and refugees, and recognise the valuable contributions of people with disability to social and economic life.

NEDA believes the current arrangements are discriminatory and do not meet our international obligations; create social discord and hardship for many individuals, families and communities; do not accurately reflect the social and economic contributions that migrants and refugees with disability and their families might make to Australia; and represent a lost opportunity in enabling a range of individuals to contribute to a diverse and productive society.

NEDA makes the following recommendations to the Joint Standing Committee on Migration Review.

End Discrimination Towards Migrants and Refugees with Disability

Australia has no right to discriminate against migrants and refugees with disability in migration matters. Exclusion of migrants and refugees with disability is not on a reasonable or fair basis and is at odds with our international obligations.

Recommendation 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.

Create Fairness in Administrative Processes

All migrants and refugees deserve transparency and accountability in the potentially life-changing decisions that are being made about them. This means transparency in relation to what is required and how decisions are made. It also means ensuring affordability, including affordable means of appeal. Applicants with disability should not have to pay higher costs than other applicants.

Recommendation 2: Improved consistency, transparency and administrative fairness for migrants and refugees with disability applying for an Australian visa.

Take Leadership on Disability Rights

Australia's interpretive declaration on migration made upon ratification on UN CRPD sends a message to the international community that discrimination against people with disability in migration matters is acceptable. There is an opportunity for the Australian Government to take on a leadership role on the world stage in championing disability rights.

Recommendation 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.

Recognise the Contribution of People with Disability

The health requirement devalues the contribution of all people with disability to Australian society. Policy has an important symbolic and material affect on the way that people are seen and see themselves. NEDA believes that if the health requirement is maintained, then it must be fundamentally changed to recognize the many forms of social and economic contribution that are made by migrants and refugees, including people with disability.

Recommendation 4: If the health requirement is maintained with respect to refugees and migrants, potential health and community costs associated with disability must be assessed within the context of a broad multi-factoral framework of long term social and economic benefits to the individual, family, economy, governments and society, and comply fully with the non discriminatory principles laid out in the United Nations Convention on the Rights of Persons with Disabilities.

Appendix A : Interviews

In preparation for the Joint Standing Committee on Migration Review of the Migration Treatment of People with Disability, NEDA and the Ethnic Disability Advocacy Centre collaborated to record a set of interviews with migrants with disability. The aim of the interviews was to capture the experience of migration and discuss the economic and social contributions that migrants with disability make to Australian society.

The interviews are being aired on the Ethnic Disability Advocacy radio program "Ethnic Ability" on 95.3 6EBA FM, Western Australia.

The interviews have been transcribed in full below.

Interview 1: Nihal Iscel

Sanja: "Nihal migrated to Australia with her family at the end of 1981. She has since become a valued member of the community, recently having completed her Bachelor of Arts in Psychology and now working as a Counsellor at the Multicultural Services Centre."

Sanja: "Nihal, are you there?"

Nihal: " I sure am, yes, Hello"

Sanja: "Hi, welcome to ethnic ability, nice to talk to you Nihal"

Nihal: "Thank you Sanja and thank you for your kind words too"

Sanja: "that's fine. Now Nihal can we start with how you migrated to Australia? You migrated from Turkey in 1982 or .81?"

Nihal: "End of .81 we were here, on the very last day"

Sanja: "alright, and you migrated with your family and I believe that entry into Australia wasn't an easy experience for you due to your blindness"

Nihal: "that's correct yes"

Sanja: "what steps did you and your family take to arrive in Australia?"

Nihal: "My Dad was in Australia before us. He came in 1979 and gained his permanent residency in 1980. And when he went to sponsor us, he was informed that because he had two children with sight disability - he was told that his family's application would not be accepted to migrate to Australia, because of the disability issues."

Sanja: "yeah"

Nihal: "So dad wrote to us and asked Mum to leave my sister and I in Turkey and bring the other of my siblings with her. Mum said 'no, if it's not for all my children, I am not going to Australia'."

Sanja: "right"

Nihal: "so then Dads work-place, he was working in the mines in the Goldfields at the time - his work-place sponsored us and Dad applied for the visa again under the family reunion application. So it was accepted because we were being sponsored by Dads workplace and that's how we came to Australia"

Sanja: "and it didn't matter then that you had disability?"

Nihal: "well, it wasn't the Australian governments responsibility to take care of us, it was Dads workplace responsibility"

Sanja: "I see"

Nihal: "so it didn't become an issue then"

Sanja: "ok, right"

Nihal: "but unfortunately, six months after we arrived here, the workplace where Dad was working had a bankruptcy"

Sanja: "oh no"

Nihal: "but we were already here with a permanent residency"

Sanja: "yeah, that's great! Yeah, so you were fifteen when you arrived?"

Nihal: "yeah"

Sanja: "and you couldn't speak English? I believe you wanted to continue your education from where you left in Turkey; This was also a challenge for you wasn't it, can you tell us about that"

Nihal: Yes, we settled in Kalgoorlie for the first six or seven months and because of lack of resources and expertise in Kalgoorlie, They were not able to accept me in any of the schools there. They said that if I could see but couldn't speak English or visa versa, was blind but could speak English, They would be able to provide some kind of education for me there. But because I was blind and couldn't speak English, there was nothing available there for me so we were encouraged to move to Perth. Dad had to give up his job and we settled in Perth by the end - well 2nd half of 1982 - and I started school in 1983 when I was sixteen so I lost a year"

Sanja: "right, it must have been hard for you when you just came and couldn't speak English; how did you get along with other children?"

Nihal: "well, all my sisters and brothers went to school. I was at home with Mum and being in Kalgoorlie, there were not many other people - well, there were no

one but us could speak Turkish. I felt a bit socially isolated and having come from Turkey where I had a school full of friends and street full of friends and lots of cousins and all that, I felt very lonely actually. It was not a very nice experience. I used to tell my Dad please, 'please send me back to Turkey; What sort of first-world country is this, I can't even get education here'."

Sanja "Right, well, I bet you missed all your friends in Turkey coz I know how it is over there, same like in Montenegro all of us kids just goes on the street and play, our parents doesn't see us all day you know"

Nihal: "that's right, that's right"

Sanja: "and really that bond - with friends there - Do you experience that here?"

Nihal: "at the moment, at my age, yes, because I've been here about 28 years now and we are really well-established here and have a really strong community; our family has grown very large now and I do feel that sense of belonging, good network of people, good friends here as well but when I first arrive, no no I didn't feel that way at all"

Sanja: "yeah, because here its different, I have grand children and they're in the house all day, on the computer, going to their rooms, they do have sports and stuff but it is nothing like when we were brought up"

Nihal: "on the streets"

Sanja: "yeah"

Nihal: "it was lovely"

Sanja: "ok so Nihal, when you finished high school, you didn't sit around, you had several switchboard jobs and also worked as an interpreter"

Nihal: "that's right yes"

Sanja: "right, Nihal, let's fast forward to where you are now, You have completed your Bachelor in Psychology and are working as a counselor and mediator with the Multi-cultural Services Centre in Perth"

Nihal: "yes"

Sanja: "why is it important for you to have a career?"

Nihal: "OK. When I was working as a switchboard operator, I applied for upper-level jobs like level 2 and level 3 positions and I don't have the experience, I don't have the training and I wasn't able to go above the level of the switchboard, I mean there is nothing wrong with working at the switchboard - I really enjoyed it - but I knew I could do better. And my aim was to go one step further and I was at the time training people on switchboard and using the relevant data programmes. They were getting jobs at higher levels and I wasn't allowed to so I decided to go

to university and I studied psychology, four years equivalent full-time. My passion was to work with people from minority groups like people from refugee and migrant backgrounds, people with disabilities etc. It was very important for me to put something back into the community that supported me through the years. When I first came to Australia, through my education, when I went to university - I had lots and lots of friends through university who supported me with my learning, reading books for me. So I thought it was time to put something back into the community and that's why I was important for me to get somewhere to put something back into the community in my own way"

Sanja: "that's excellent, that's really good and you have really achieved a lot. As a mediator and a counsellor do you think your disability and cultural background has any influence on your interaction with your clients?"

Nihal: "well, I think it does, in a positive way because I was brought up here in Australia so I know the western culture and I was also brought up with the Turkish culture. being Turkish myself, it does have a positive influence; it gives me an understanding of people who come from culturally and linguistically diverse backgrounds and what sort of difficulties they may face. Then I try to tailor my service to meet their special needs".

Sanja: "it makes it much easier when you have an ethnic background."

Nihal: "that's right, it does, yes"

Sanja: "Nihal, have you ever wondered what you would be doing now if you hadn't been allowed to immigrate to Australia?"

Nihal: "um, its' hard to say, I really don't know what would have happened to me if I'd stayed back in Turkey but who knows, who knows. If my Dad was still there, he would be working on, you know, one salary, one teachers salary with six children. I don't think it would have been possible for me to go to university and have a career. In those days, it was much more difficult living in Turkey. These days, because I've been here for so long I really can't tell you and I don't think I would have had a university degree. I don't think I would have had a proper job"

Sanja: "don't you think Australia is the best country in the world?"

Nihal: "absolutely"

Sanja: "especially when it comes to education"

Nihal: "education, absolutely yeah; employment, yes I had extremely difficult times trying to get employment but it is improving as far as I'm concerned"

Sanja: "yes, and also I believe that there's much help here in Australia for people with disabilities rather than back in say Turkey or Montenegro or any other country"

Nihal: "absolutely yeah, yes; there's always room for improvement even here, however, I do agree that our services are much better here , coz I was in Turkey

about two months ago - I went there for a four week holiday - and I found that the curbs, the footpaths were not really adjusted for people with disabilities, wheelchairs etc. Curbs being too high, not enough lifts, lots of stairs, yeah, I found it very very difficult”

Sanja: “but on that issue I believe that,, when you were back in Turkey, did you find that stigma and shame still exists with people with disabilities?”

Nihal: “well I went to visit the Association for the Blind in Istanbul and I was very impressed with their progress in terms of trying to find jobs for people and trying to help with education; I find that they were coming a long way from when I left about 28 years ago”

Sanja: “right, and they are more open to talk about it?”

Nihal: “absolutely, absolutely, yeah”

Sanja: “that’s good”

Nihal: “you still find people who are blind on street corners busking and all that only because they haven’t got jobs, you know. They do need help in terms of directing them into the right employment etc. it’s not the best, but it is getting better there as well”

Sanja: “yeah , with education, I believe it gets better everywhere”

Nihal: “I hope so, I believe so.”

Sanja: “so Nihal, getting back to Australia now, I assume you are aware of the enquiry by the joint standing committee on migration on the treatment of people with disability in the Australian migration system, with particular reference to the health test, what do you think about the application of the health test to people with disability?”

Nihal: “well, disability is accepted in the health criteria as a health condition which is very discriminating because disability is not a health condition. People who are blind, or are in wheelchairs or whatever- or intellectual disabilities - do not need medical care for the rest of their lives. Most people with disability are productive, can work and provide for the community so I find that clause to be very discriminating and it stops all people with disabilities from coming to Australia and provide diversity.”

Sanja: “So Nihal, you are a very good example for people with a disability - when they’re listening to you talking like that, they can do the same; they just need a goal don’t they, and achieve whatever they’re hoping for in life”

Nihal: “lots of people with disability, whether they come from an ethnic background or mainstream, try to do the best for themselves, and for their families and their communities and if they are given the right opportunities. Sometimes people with ethnic backgrounds who come to Australia because of non-existing

services in their countries - they are not aware of the services that are available for them here and don't access them when they need it. I think most of our service providers need to learn how to provide culturally appropriate services, you know - help the specific service providers to get to those people so that those people can access our services - our health service, education service, employment service, our housing service. I mean, when you don't speak English and you have a disability, it's very very difficult to find your way, very difficult. I mean you need that extra help and once that help is given, people can go a long way; there is no stopping them"

Sanja: "of course"

Sanja: "nihal it's been a real pleasure talking to you."

Nihal: "thank you"

Interview 2: Paran Kuppusamy

Zel: "Welcome Paran"

Paran: "thank you"

Zel: "now Paran, you migrated from Malaysia last year"

Paran: "that's right"

Zel: "and, I believe it was right at the end of the year so it hasn't been a year yet but you also applied as a person who has a disability, Can you tell me what procedure you underwent to make your application - because I understand that for many of us who have a disability, it can be a very difficult process. We have to go through stringent health tests - I can't remember because I was only very young - so if you can tell us about this, to start with?"

Paran: "right, thank you for giving me this opportunity to share my experience with all. Well as you know, I was put through the same procedural process as any other applicant. That is, at the preliminary stage my application was put forward to the vet assess ... in other words to see if my qualification was on a par with the Australian qualification"

Zel: "that's right and as you say, that applies to everybody that is applying to enter into Australia as a permanent resident or a migrant."

Paran: "that's right and once it's been assessed, the other things to be determined is the character - whether you have any criminal records and as well as English ability which I had to sit for the international English test in Malaysia"

Zel: "and I guess you didn't have any problems there did you?"

Paran: "I don't believe so; and of course, the health requirement itself wherein they will look in to the applicant's condition -whether it is in such a condition - could be construed that the person is reliant on the social security benefits of Australia or is going to be dependent on the medical service in Australia. So this will be determined by the Commonwealth Medical Officers"

Zel: "so I understand that there is a big form you have to fill in initially with all the information about your personal details and that's where they ask about your health condition initially"

Paran: "that's right"

Zel: "so from that point where you fill in the form to the time where you receive your permanent residency how long would you say it took?"

Paran: "about one year approximately for me to be granted the permanent residents visa because I go stage by stage, one after another and once its all been construed in regards to the eligibility, Then the case officers will decide whether the person is eligible to be granted the visa"

Zel: "so can you tell us about the stages?"

Paran: "that's right as I told you there is the preliminary stage to assess the qualification, and thereafter the character, English and as well as health"

Zel: "so they are all tested one by one, not at the same time?"

Paran: "that's right, yes. And we have to furnish information in regards to all this to the case officer for him to determine as to eligibility"

Zel: "so, can you tell us about the medical test; I understand you went through a very stringent medical test because of your disability, is that the case?"

Paran: "right. As you know, as any applicant, you're put through the health test. Then they refer you to a GP, a general practitioner who has to be the panel doctors of the immigration and then once the general practitioner assesses our condition, the report will be submitted to the Department of Immigration and I do not know what is the outcome. And then thereafter I received the letter for the medical assessment wherein I have to get back to the same GP, then to a neurologist based on my condition"

Zel: "so what sort of tests were they"?

Paran: "basically the tests were to accumulate more information for the officers to determine my condition"

Zel: "I guess what I am asking is what did the medical tests entail?"

Paran: "right, its more towards my sensory, motor, muscles and other things that would be described in medical terms which was not within my knowledge, which

was for the doctor to specify and then liaise with the Commonwealth medical officers. And this information would later be disclosed to the applicant”

Zel: “sure and so, did they find that you were in good health and accept your application?”

Paran: “well, they must have. Of course it’s collaborative – other things will be taken into consideration such as my qualification, my experience ...”

Zel: “were you first disqualified because your disability may cost over \$21 thousand to the Australian government and community?”

Paran: “no, not at any stage my disability was made an issue because it is a collaborative issue where all other factors are taken into consideration. That’s the reason why the benefit of the doubt was given to me and I was referred to further assessment. At that preliminary stage, the issue of disqualification was not voiced at all - the only thing was that the department wants me to go through further medical tests - assessment - through the general practitioner as well as through further reference to a neurologist:

Zel: “that’s great! So your disability was never an issue and you never had to argue a case for you being independent when you arrived”

Paran: “Well I believe I construed the entire thing – I speak for what I have experienced. The health test was not due to my disability but to understand my condition further as to its impact on the Australian system and that is for the Commonwealth medical officers to determine based on the reports furnished by the panel doctors to whom I was referred to’

Zel: “that’s very promising because time and time again, I’ve actually been involved in cases and I’ve heard of other people being rejected because of their disability and the cost of their disability - the assumed cost that their disability may be to the Australian community and government. So the fact that that wasn’t an issue for you is a really positive move towards accepting that disability is something that is not medical necessarily but a fact of life. I really hope that all future applicants can be treated the same way that you’ve been treated. But do you feel that you’ve been treated fairly?”

Paran: “No doubt I was put through some further assessment but I believe it was in the light for the officers to understand my condition further with more relevant facts. But as I say, my entire case was not just upon the condition but it has been collaborated with other issues such as my qualification, my experience and so on - with all the relevant documents which I furnished. I believe that no doubt I was put further for specific assessment but the department was transparent all the way and was responding promptly as to any questions which I put forward. Then I got very positive feedback and they guided me all the way out as to what are the personal requirements that I need to fulfil, and what are the things I need to do. I believe I furnished enough information and documents for my case per se.”

Zel: "that's great. Do you feel that someone who couldn't speak English as well and possibly migrating as a spouse or another family member would be treated as fairly?"

Paran: "well, I'm afraid that I do not have sufficient knowledge to comment on that generally but of course I can say that these are the requirements - such as the ability to speak English - wherein every other person has to go through this exam. And of course, the health requirement is there and it is still weak in the sense that how it's been construed. Maybe it is on a case to case basis or there is some general guidelines on which I don't have sufficient knowledge to comment on that - but of course it's still a requirement when it comes to skilled migrants"

Zel: "I feel that you're saying that you can accept the health tests. I'm just wondering that being in a healthy situation, do you feel that it was necessary for the Australian government to put you through the medical tests just because you have a disability?"

Paran: "well every applicant has to go through the medical tests per sey because it is a requirement"

Zel: "but you don't feel that you went through additional tests?"

Paran: "well for me to go through additional tests as I say it was not because of my disability butt it is for them to understand further as to the condition I am in - whether it infringes the requirement"

Zel: "We talked about the process you went through to get your visa to arrive in Australia as a permanent resident, so how are you going in Australia? How is life treating you here?"

Paran: "well, now I'm almost eight months here as you introduced me earlier. I'm Advocacy officer at EDAC (the Ethnic Disability Advocacy Centre). And generally I find it's an incredible system in the sense that the environment is more conducive for people with disability compared with the country of my origin. And apart from that, I do feel a sense of freedom wherein my movement is not restricted and I could participate in things which able-bodied persons can do which I was not able to previously."

Zel: "but you were a lawyer back in Malaysia from where you migrated. You still felt you couldn't contribute to community life there?"

Paran: "well basically the first thing is the structural environment. For a person with a disability who walks with crutches or in a wheelchair to get access from one place to another - there is a lot of barricades such as staircases and so on. But of course not much events has been organized for people with disabilities or much focus made towards them in the country of my origin. No doubt I was more fully involved in my profession than in these events and organizations. Here I can see that reasonable effort is being put forward by organizations like EDAC and NEDA andso on to educate people with disability and to assimilate them into the

mainstream and make them understand what is their rights and what is available for them in the system”

Zel: “sure. Just to stop you there, NEDA is the national ethnic disability alliance - for the sake of our listeners. So Paran, thank you very much for all that. Before I let you go I can’t help myself but to ask you how you manage to well, work as a lawyer back in Malaysia?”

Paran: “well, basically, it was a challenging profession. Hence, as you know it needs considerable time to work on cases and of course, it needs a lot of physical movements from one place to another. But hence of course with assistance from others - colleagues and so on - and at the same time, I was quite independent as well. I was coping well in the sense that I made myself an environment which was conducive for me to practice and move on”

Zel: “I’m gathering that that environment for you was fairly limiting.”

Paran: “that’s right yeah”

Zel: “so what’s your future here? What future do you see for yourself in Australia?”

Paran: “well, it’s a long way to go”

Zel: “absolutely”

Paran: “and I’m looking for what other means that could be employed for me to contribute further”

Zel: “are you thinking of taking up law here? “

Paran: “well yes, of course for me to practice in this country I have to go through a bridging and articleship but I find that I am still at a preliminary stage”

Zel: “sure. Paran Kupasamy, thank you very much for joining us today on ethnic ability”

Paran: “thank you very much for giving me this opportunity”.

Interview 3: Yusuf Akbas

Zel: “Yusuf Akbas, thank you very much for joining us on ‘EthnicAbility’.”

Yusuf: “It’s my pleasure to be here.”

Zel: “And you’ve been on our program before a couple of times, so it’s always a pleasure to have you on the program as well.”

Yusuf: “Yeh, thank you very much.”

Zel: "Yusuf, can you briefly tell our listeners about yourself?"

Yusuf: "Briefly, I'm 30 years old, turning 31 in December. I've lived in Australia for about 28 years. I live in Perth and I've lived here all my life. I went to high school in Australia. Also I live at home with my family which I really love to be with. Also I spend a lot of time in the community at home on my computer."

Zel: "So you were diagnosed with muscular dystrophy, tell us about how your diagnosis came about – and I understand too that, when you arrived in Australia as a child – you were only two and you didn't have a disability then or your muscular dystrophy wasn't diagnosed."

Yusuf: "Yeh. Basically the disease, muscular dystrophy, now is detected even before birth. Back then they didn't have the technology to actually do that, they just suspected having muscular dystrophy. Basically I was about five years old – and one of the first signs of this disability is when you walk, your heels don't touch the floor so you're almost like tippy-toeing a little bit. And when my family noticed that, they took me to the local GP and had a look at me and he said 'I don't think there's anything wrong'. But about nine months later, the disability gets worse so they notice me walking a bit more. My heels were getting higher and higher off the floor so they took me to another doctor and he sent me to a specialist. They did a lot of tests on me and I was diagnosed at the age of six years old. I came to Australia when I was about three years old. At that age I was running around and I had a normal life. At the age of seven or eight, my feet got worse. By the time I was nine years old I was still in a normal primary school but I was falling over a lot. So yeh, I was diagnosed at the age of six it must have been."

Zel: "So muscular dystrophy is a disability where – or a condition – where your muscles deteriorate. So where are you at this stage?"

Yusuf: "At this stage of my life I'm confined to a wheelchair with very little movement – I can move my thumb just to drive a wheelchair. I use a respirator to help with my lungs - because the muscles around my lungs are very weak to even breathe – so I use a respirator to help with my breathing, I use that twenty-four hours a day, every day. And with the muscular dystrophy I'm very skinny, I don't have much weight on me. Also, it effects the way that I speak – I speak a bit slower. I have to eat special food. So you might put me in a very high, very high needs category. Anything physical, you know – even to scratch my nose – I have someone to do that."

Zel: "Now a person who has advanced muscular dystrophy – as in your case – who applies to migrate to Australia on a temporary or permanent basis, is likely to be rejected entry into Australia. What do you think about that?"

Yusuf: "I think it's very unfair to base the decision on somebody's disability and try to look at their character themselves. I do believe there are people that do migrate – people that are able-bodied – that don't even want to go to work and they live off the government. So you can get people that do that that are able-bodied. And how do you judge that? I think it's very unfair to do that. Especially in a country like

Australia which has very high standards of human rights so I don't think it's a fair way to judge somebody."

Zel: "Now we did say before that you didn't have MD, or muscular dystrophy as a child ..."

Yusuf: "Yeh I had no signs of a disability".

Zel: "But if you were making an application to migrate to Australia now, how would you argue your case?"

Yusuf: "Well I would argue that I've got a lot to contribute to society. People with disabilities, they are the best way to motivate other people. So the argument I would use is I can make a contribution to this society and I have the right just like any other human being to apply for these sort of things".

Zel: "Do you believe that people with muscular dystrophy are just a cost to the Australian community and government?"

Yusuf: "I wouldn't say there is no cost there – of course there's a cost – but how do you put a price by somebody's life, you know, to make it better? There's a lot of people that I know with muscular dystrophy and other disabilities, that have contributed enormously to the Australian society and I think we can still contribute."

Zel: "What are some of the contributions people living with muscular dystrophy make to the Australian community?"

Yusuf: "Firstly, muscular dystrophy is just a physical disability. With today's technology we could run our own businesses using the internet. The computer has advanced so much; you can use the computer basically just by moving your thumb. So with today's technology there's a lot of things we could be doing ..."

Zel: "Sorry I know you mentioned it before but can you tell me how you operate the computer again?"

Yusuf: "Yeh basically because I have a carer that does this, I can't actually use the computer by myself, but there is technology out there where you just speak to the computer and tell it what to do. There's a lot of other technology that I've seen where you just use your thumb. So basically you move the mouse around with your thumb and they have an online keyboard. So the keyboard is actually on the screen and you just scroll with the mouse over it and it presses the buttons for you. I know a guy in Queensland who's helping his family run a business so he's running his business through his computer."

Zel: "That's great!"

Yusuf: "Yeh but the other thing that I've done in the past is I've contacted the local community close to my house and I coached basketball for under fourteens. I did that for two years and I really enjoyed that. Also I played wheelchair sports for

Western Australia and I represented Western Australia five times in my career with the wheelchair sports. Also I've studied graphic design. And recently – it's been about a couple of years – I went to a primary school where I gave a motivational talk to the primary school students, and I did that twice.”

Zel: “Do you think that you still would have been able to migrate to Australia?”

Yusuf: “I think it would have been very difficult. I know that the immigration policies have changed and it's getting harder to get in here, so I don't like my chances.”

Zel: “Do you think that your family would have left you behind in Turkey?”

Yusuf: “I think my Mum, my main family – mother, sister, - would not agree, would not leave me behind, I don't think they would do that. Especially my other relatives, I don't think they would agree with it either, but they probably would have left me behind just to come to Australia”.

Zel: “Right. If your family had arrived in Australia without you, do you think that they would have been able to contribute to Australia as well and as much as they do now?”

Yusuf: “Initially no, because when my parents came here they didn't have much English, and if you don't have much English in Australia, it's pretty hard to contribute anything to this society. You can only contribute to your own culture but even now the English level that they have would never match my English so it would be very hard for them to contribute. Because I can speak English very well – I grew up in Australia – I help them out with almost everything. So I can get them involved in the community a lot more than they do. Because of my disability they can actually make their contribution to the Australian society to help out. You know, I have to go to hospital, speak to people, speak to professors about this disability – my Mum has a lot of input as well.”

Zel: “Yusuf, can you tell me more about what your family benefits from having you with them in Australia?”

Yusuf: “Ok. Firstly we focus a lot around family and staying together. Now honestly, for the last five/six years, I've been the main person trying to get the family together, trying to do things in our community. I've sort of taken the leader role in my family. Trying to sort out their lives as well. So without me, it would be very hard for them to live in Australia.”

Zel: “And you were telling me earlier that you were helping your Mum fill out forms still and understand/or get the concept of things as they change, for example things with her job or her income, etc. So that's really important as well.”

Yusuf: “Yes. Plus they need to fill out tax forms and I need to help them with that. Also living in our neighbourhood, there are rules and regulations and they don't cater to their language, so you need to translate for them and actually teach them about the Australian culture. Because of the language barrier, they don't mix with Australians very much. But with my help they feel confident that I can translate for

them for things they don't understand. I understand the Australian culture a bit better because I was brought up in Australia and mixed with Australian people quite a lot. I know how they think and I know what their culture is so it helps me to explain to my parents, explain to my family their way of thinking, their way of life. And it makes it better for us to get along as a community."

'zel: "Absolutely. So you're almost like a mediator between your parents and the community, facilitating their lives in Australia."

Yusuf: "Yeh you see, another thing I'd like to mention is, because I have a disability, I know the value of people helping you out. I know people can't always ask for the help so you need to go out there and find the people who need that and actually try to help them out. And that's exactly what I do because I understand. When I was a lot younger I found it very difficult to ask people to help out, and sometimes you would need the help but you would just put up with the discomfort rather than ask. But now that I've learnt that, I like to help people in the same situation that I was. If they can't ask for help, I go out there and find out if they need anything in their community – whether it be the Australian neighbours or people that I went To Rocky Bay with. Rocky Bay is a day centre for people with disabilities. I spent a lot of my days over there so that really helped out, now I understand that there are people out there that need help or need some motivation, but they're just too worried to ask."

Zel: "That's right, and through your experiences of receiving help, you are able to help your parents, your community and everybody else now. And on this topic of being in the community, I know you're a public speaker and you would be happy to speak to anybody – any organizations or at any events."

Yusuf: "Yeh you see I've always had this idea – I watched a few motivational videos, I've listened to the psychology audio tapes - and this is going back about ten years ago that I listened to these sorts of things because I needed that sort of help. By listening to that I thought, 'Wow this really helps' and I would love to do coaching of life and I thought I'm very qualified. I don't have any official qualifications to do this sort of thing but one thing I do have is that I have lived my life with a very bad disability and I've learned how to cope with it and I still enjoy life no matter how hard it is. These days I don't get depressed as often, I don't feel bored. And the experience that I have as a basketball coach - where I tried to get kids motivated and positive about sports – and I've also been a captain of my own sports team – I captained it for about eight years – so I know how valuable to have motivated people and being a leader is. And hopefully I want to get more involved with public speaking and motivating others. Yeh so I've just began to try to pursue this career but I really enjoy it. I think that's probably my goal for the future."

Zel: "Yusuf, if your family had decided not to leave you behind – in fact if they all decided that 'no, we're not going to go to Australia, we'll stay. If my son isn't accepted then I'm not coming', how would you feel?"

Yusuf: "I'd feel that I'd let down my family. Yeh, this could have a negative impact on a person's mental state but also physical disability., it might get worse, he might

feel worthless in life. Also, because his family can't go, he'd feel like he's more of a burden now. So I wouldn't feel happy about that at all."

Zel: "Lastly Yusuf, what would you advise the Government on their current inquiry into migration and disability?"

Yusuf: "One of the most important things is that the people that make these decisions, they really need to put themselves in that situation and maybe think about that. For example, if they were married and their wife or husband had a disability, would you leave them because it's going to be a higher cost? So this is really an ethical question to themselves. And I think they really need to sit down, maybe talk with psychologists, and actually find out exactly how it feels to apply for a visa/apply for residency and be rejected, plus tell them it's because 'you've got a disability'. I think they really need to think about that side of it as well. And another thing they can do is actually maybe programs where we can get people that migrate over here more involved and help out in the community. These are the sort of things we need to actually do. We probably need a bit more thought about it. Plus there's plenty of things we can do as a community and not just the government, you know."

Zel: "Absolutely! Yusuf Akbas, thank you very much for joining us again on 'EthnicAbility' – for the very inspirational conversation."

Yusuf: "My pleasure."

Interview 4: Maria Gillman

Zel: "Maria Gillman, thank you very much for joining us on 'EthnicAbility.'"

Maria: "Thank you very much Zel, I appreciate the opportunity to speak to you today."

Zel: "Now Maria, your sister, Una, is currently in South Africa. Together with Una, you're working to bring her to Australia – she's been here before. I had the pleasure of meeting her, working with her and even visiting her in South Africa. And there are a lot of problems with her coming to Australia as a permanent resident".

Maria: "That's right. Yes she basically made an application as a skilled migrant and she ticks every box except that she happens to be a blind person. The irony is, it was only when her health assessment came back saying that she has a medical condition – which means that she will not be able to be accepted because there will be a cost to the Australian community – it was only then that we realized actually that she will be discriminated against – I didn't know that before. So at the moment, her application is with the Minister, we've asked him to personally intervene in her case."

Zel: "Now when they're referring to Una having a 'medical condition', they're referring to her being blind?"

Maria: "That's right, yes. As I say, it was something – we never think of her blindness as a 'medical condition', it's just more a physical condition. She's not ill any way. She happens to be blind and – in many ways we always think of her blindness as affording her skills that other people don't have. She has a much more highly developed sense of hearing, for instance. Her computer skills are way better than my computer skills because she has to learn every key stroke. She cannot rely on just clicking on icons. She knows Braille. Many things make her more skilled than I am because of her blindness."

Zel: "And I'm blind myself and I'm actually in very good health. I don't have any medical condition that I'm aware of."

Maria: "No that's right. I mean that's the – I suppose the unfairness of the assessment by the migration law, that people get treated exactly the same whether they've got a real medical condition or whether it's just a simple disability."

Zel: "So how much has the application cost you so far? I imagine there would be a lot of psychological costs as well?"

Maria: "Well so far the total cost of the application has been, I suppose approaching \$5,000 now including seeking legal advice – which of course, none of it we would be able to recoup even if her application is refused. We've been to the Migration Review tribunal, that cost quite a bit too apply for that. Again it's not refundable in any way whatsoever. I mean the cost issue is something – now just a couple of days ago in the paper, they had a figure of \$31 billion its costing the community due to the health issues of smokers. Now if the government was really concerned about the cost to the community, why are they not refusing smokers? The Disability Support Pension cost to the government in 2008 - I believe that the budget was \$12 billion, as opposed to \$31 billion for smokers so there's a real double standard in that sense. I mean there'd be an absolute outcry if people were refused visas on the grounds that they are smokers. It just doesn't make sense in many ways to me at all. And again, currently there's no provision for people to look at the benefits of allowing people like Una to come here. I mean, as I say, she's a highly skilled person, she's fully qualified – she's got a Bachelor of Arts Degree, she majored in Psychology, she's working as a counselor, she's working as an administration person for the organization that she's working with. And it's, at the moment, because she's there – (sighs) it's hard to talk about it cos I do get anxious about her situation. I worry about her being in South Africa, it's certainly not safe for a single woman at the best of times. The blindness of course makes her more vulnerable there than what it would make her here. In my street, for instance, there lives a blind girl and I often see her at night, you know, going out. Not coming home but just walking down the street, she's going out for the evening – and she's completely safe to do that here. Whereas in South Africa my sister is virtually, by choice naturally, almost institutionalized because she can only 'live safely' while she's living in this organisation's facilities. She cannot live independently in that country and that's a constant worry to us of course so, yeh, it's something we deal with every day and just hope that her visa will be allowed. It is a constant anxiety for me and I believe if you want to, you could almost put a figure on it. I need to see my doctor far more than in the time that Una was with

me, for instance. That year – many people will tell you – this was such a relaxed, happy year for both of us, whereas since she's had to go back – it is affecting many aspect of my life in that I constantly worry about it. I have to – there's nothing much more I can do now in terms of an application so all that work is done but – yes there definitely is a cost that's affecting me as an Australian citizen. It's not just a financial cost to me, it's definitely a cost in terms of my life that this has brought on."

Zel" "As you're aware probably, the Government is saying that there is already a scarce resource issue in Australia for people with disabilities, and bringing in more people with disabilities will only exacerbate that situation. How would you argue against that to the Government?"

Maria: "Well as I say, I've been looking at figures, for instance I have some numbers here about the number of visa applicants in the 2007-2008 year, 600,000 people made application for visas. Of those, 1532 were refused on health grounds. Of the 1532 only 71 were refused on grounds of some form of disability, so I don't think it's a large number of people. And the other thing that people may not be aware of is, even if someone like my sister has been given a visa, she has to wait ten years before she's able to apply for Disability Pension. It's not an automatic thing that's given to her. Whereas of that 600,000 people, it would be interesting to know how many are smokers and that will knowingly be a cost to the community. To me, again as I say, there's a double standard in assessing what is a cost to the community and there's no allowance made for the benefit that people like Una can be to the community. There will be a net benefit as far as I can see. In her particular case, she's working as a counselor – she may well arguable be the type of person who could assist someone to quit smoking, for instance, which again, if you want to talk figures – that will be a help to the community."

Zel: "So the scarcity, you're saying, could be outweighed by the contribution that she can make."

Maria: "Absolutely yes, yes I firmly believe that. As I say, the refusal is on the grounds of whether or not the person applies for the pension. It's not necessarily that she will be getting a pension – she's eligible for it but whether or not she gets it or applies for it, is another matter. But it's just assumed that she will apply for it and – given her age as well, I don't believe it's a very huge cost to the community. As I say, her contribution to the country will definitely offset any cost to the community."

Zel: "That's right. And I don't believe there's been any study on how much people with disability contribute to the community, be it financially or socially."

Maria: "Exactly, there's a real enrichment of the community that comes from living with people who just live a little bit differently, who do things differently. Una, for instance, when she was here in that year – she spent a lot of time working with a young architecture student who was doing her PHD in designing architecture to accommodate people with vision impairment. And she was very valuable to this girl in that she has firsthand experience, and of course, Una has got excellent communication skills – and they worked together really well. People like Una could

make a contribution in that field as well by acting as a consultant to professional people that need to be aware of people with vision impairment. I work in an architect's office at the moment, and listening to conversations of the other architects there when they have to deal with designing for people with vision impairment – and they often just do not have the background information, the knowledge, that is required to successfully integrate design like that. So in that sense she could make a contribution. She has been, like I say, very proficient with computer. She's taught herself many programs like Excel – well she had a basic induction to it – she taught herself the rest of that. Una had never touched a computer until she came to Australia and within three months, she was more proficient in programs Word, than I am, simply because of her ability to use the keystrokes. She would be able to teach this program – Jaws that she uses – to other vision impaired people who have a need for that.”

Zel: “And I do believe that Una would be very, very good asset – very valuable to Australia so ...”

Maria: “While we're talking Zel, I was also thinking – when I was very little, we learnt in school about a famous lady you might know, Helen Keller. And it struck me how, you know, she is still one of those people is kind of one of the heroes of the world for her ability to have overcome the drawbacks that she had. She was in fact blind, deaf and mute. And she's held out as a hero to people and it just seems to be a double standard for people to be encouraged to admire someone like Helen Keller, whereas in fact, Helen Keller would have been refused entry into Australia under the current law. Someone like Betty Churchill, who is losing her sight, would be refused entry into Australia. Someone like Colleen Mc'Cullough, who's losing her sight. Someone like Gordon Brown who has vision impairment – to some extent, might be refused entry. It just seems to be that – you know people with disability work so hard to better themselves, to overcome – and to be just knocked down by something that you know is so – it just seems to me that there's a real unfairness in that. And it's hard to explain that to someone like Una – to say you know THAT is the reason why you cannot come to a country like Australia.”

Zel: “That's a very good point. Maria Gillman thanks very much for speaking so candidly with us today. Good luck with your application.”

Maria: “Thanks you very much Zel, and thank you for visiting Una when you were in Durban.”

Zel: “It was great, I enjoyed it. And I we have Una among us soon.”

Maria: “Ah that would be wonderful. Thank you so much Zel for speaking with me today.”

APPENDIX B: Anonymous Correspondence

NEDA received a number of calls and email during the months preceding the Joint Standing Committee on Migration Review. The below correspondence is reproduced by permission of the author, who wished to remain anonymous. It highlights some of the frustrations faced by skilled migrants with disability seeking a fair right to attain Australian residency.

Correspondence with NEDA - Name Withheld

“Originally I come from a region that has long suffered marginalization and chronic underdevelopment. People with a disability face many disadvantages and neglect including family and personal humiliations resulting from discriminations based on their disabilities. Personally, I had to adopt various strategies to enable me to cope with these negative attitudes. I strongly believed that the only best option to liberate myself and advocate for social justice for others was to pursue education vigorously to better help cope in life and help others.

“Luckily, I had an opportunity to study in Australia. However I had bad experience when applying for a student visa at the embassy due to my disability status. I remember paying three times more than the cost of the so called “ablelloids” undergoing various health assessments notwithstanding the cost, the stress and hardship associated with it. This process had lacked consistency, transparency and administrative fairness and faulted social justice for a person with a disability.

“For almost five years, during the period of my studies, I sacrificed most of my time in volunteer work in various organizations helping migrant communities integrate into the Australian society. I have been helping these communities in establishing themselves and as a mentor, help them gain skills. I used my professional skills by providing counselling, initiating various community projects and frequently giving advice. I was passionate by sharing my personal and acquired skills in a human service area. I voluntarily provided the migrant communities with resources that were extremely difficult to find in relation to a population with low levels of literacy and who need to learn how to adjust to the Australian life.

“Thus, I strongly believed that I had immense social and economic contribution and would be an asset to the public. Having acquired a number of degrees, I was certain that my qualifications would extremely make competitive on the Australian employment market. I strongly believed in gainful employment that would make me a beneficiary not a benefactor to taxation payments or rely on meagre disability Support Pension.

“However, I was aware that in order to determine my eligibility for an Australian visa, I would be subjected to unnecessary health assessment process. The impact of this process meant that I would be discriminated and refused any form of visa including a skilled visa despite my potential social and economic contributions. In addition to this fact the process of accreditation for a skilled visa placed an extra barrier for me to overcome. For example, just to do International English Language Test IELTS costed unnecessary expenses in relation to the application that I had to wait for three months because Braille exam materials had

to be imported while those without disability had to wait for only five weeks. This was a double disadvantage for me. At that moment, I was financially disadvantaged, unemployed and unable to seek private migration lawyers for advice and assistance.”

APPENDIX C: An Example Cost and Benefit Framework

The table below is based on that outlined in *The Social Costs and Benefits of Migration into Australia* and in the Australian Bureau of Statistics *Measuring Australia's Progress* report. The table aims to demonstrate the variety of long term costs and benefits that must be taken into account when considering the global impact of an individual migrant or refugee. The Table outlines some category areas that might be used, including notes for how the contribution of migrants and refugees with disability might be more fairly taken into account. The table adapts the frameworks from the reports mentioned, but includes recognition of human rights / international obligations as a key theme.

All the factors included below are certainly not exhaustive. However the table demonstrated both the potential complexity associated with assessing costs and benefits, *and* the numerous benefits that must be weighed against health costs in a cost benefit only framework.

Dimension	Contribution / Cost	Short Term / Long Term	Notes
Individual	Employment	Recognise both short and long term employment contributions.	Employment supports for people with disability an investment in future contribution.
	Welfare payments	Welfare support may be short term for some individuals.	Acknowledge increasing participation of people with disability in labour force and potential of training and support in moving individuals into labour force.
	Workplace Skills and Education	Short term investment for some skills (eg language training).	Acknowledge increasing participation of people with disability in labour force and potential of training and support in moving individuals into labour force. Acknowledge need for skills and experience in relation to health, ageing and disability.

	Health	Acknowledge changing costs into the future – eg reduced cost of medication / treatment.	Acknowledge difference between “health” and “disability.” Assessment of health costs must be based on fair, transparent and balanced criteria.
	Leisure and Recreation	Assess both short and long term contributions.	Migrants and refugees with disability make contributions to arts, sports and cultural life in Australia.
Social Inclusion and Community	Community life and civil society	Assess both short and long term contribution, including the broad contribution migrants have made to an evolving cosmopolitan Australian society.	Acknowledge contribution of people with disability to families, communities and social life. Acknowledge contribution to social and rights movements that have enhanced rights and wellbeing for Australians, including other people with disability.
	Social networks and neighbourhood	Migrants and refugees provide active support networks to new arrived migrants in the short term, and contribute to community building in the long term.	Existing migration policies actively remove the contribution of migrants and refugees with disability to neighborhoods and social networks. Acknowledge intergenerational contribution of people with disability.
	Culture and diversity	Long term economic and social benefits to Australia in building a rich, diverse, cosmopolitan society.	People with disability from migrant and refugee backgrounds bring considerable cultural diversity, including knowledge about disability from diverse contexts.

	Crime and justice	Assess both short and long term contributions.	Acknowledge that poor community cohesion and inclusion can contribute to social discord and crime.
Produced and financial capital	Housing	Improve accessible housing stock in the long term through demand stimulation.	Migrants and refugees, including those with disability, stimulate demand for housing in the long term. Creates necessary demand for accessible housing.
	Infrastructure	Improve accessibility of built environment in the long term through demand stimulation.	Migrants and refugees, including those with disability, stimulate demand for new infrastructure in the long term. Migrants and refugees with disability can bring knowledge and experience in improving the accessibility of Australia's infrastructure.
	New businesses	Assess both short and long term contributions.	Migrants and refugees, including those with disability, contribute to diversity and new enterprises.
	Goods and services	Assess both short and long term contributions.	Migrants and refugees with disability stimulate demand for goods and services. In some cases people with disability enable the development of specialized service and goods provision (eg adaptive equipment, information services).
Environmental	Environmental impact	Long term only.	Note long term global responsibility for Australia of

			environmental refugee, including those with disability.
	Population impact	Long term only.	
	Sustainability	Long term only.	
International	Human Rights Obligations	<p>Meet Obligations under relevant conventions including</p> <ul style="list-style-type: none"> • the International Covenant on Civil and Political Rights • the International Covenant on Economic, Social and Cultural Rights • the Convention on the Elimination of All Forms of Racial Discrimination • the Convention on the Elimination of All Forms of Discrimination against Women • the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment • the Convention on the Rights of the Child • the Convention on the Rights of Persons with 	Acknowledge current inconsistency with UN CRPD.

		Disabilities.	
	Australia's Human Rights Leadership Role	Long term goal of building Australia as human rights champion.	Leadership in overcoming barriers faced by migrant and refugees with disability

APPENDIX D

QUESTION TAKEN ON NOTICE, BUDGET ESTIMATES HEARING: 27 MAY 2009, IMMIGRATION AND CITIZENSHIP PORTFOLIO

(15) Program 1.1: Visa and Migration

Senator Fifield (L&CA 87-88) asked:

Can you advise how many are refused permanent residency on the basis of failing to satisfy the health requirement? Provide a breakdown into those who are refused on the basis of having a disability as opposed to an illness.

Answer:

A total of 1532 permanent and temporary visa applicants were refused a visa on "health grounds" in 2007-2008. This included:

- 1133 permanent visa applicants;
- 116 provisional visa applicants (provisional visas are temporary visas which lead to grant of a permanent visa); and
- 283 temporary visa applicants.

During this period, almost 600 000 temporary and permanent visa applicants including their family members were assessed against the health requirement by a Medical Officer of the Commonwealth.

Of the 1532 applicants referred to above:

- 2 failed to meet the health requirement on public health grounds (i.e. because they had active TB).
- 244 visa applicants had a health condition that led to their failure to meet the health requirement on health costs/prejudice to access grounds and were refused a visa.
- An additional 442 applicants were refused a visa on "health grounds" because they had a family member who was unable to meet the health requirement. This is because, under Australian migration law, all members of the family unit included on a permanent visa application must meet the health requirement in order for any applicant to be granted a visa.
- 844 were refused a visa because they failed to undergo required health assessments.

Of the 244 temporary and permanent visa applicants who failed to meet the health requirement, 71 failed to meet the health requirement on the grounds of some form of disability.

The above figures do not include people who did not meet the health requirement, but obtained a visa as a result of the visa decision-maker exercising a health waiver.