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Migration Act and Disability - Sector Wide Position Statement

September 2009

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

Potential migrants and refugees to Australia are subject to a health assessment in order to determine their eligibility for an Australian visa. The assumed future costs associated with health condition or disabilities are taken into account as part of the assessment procedure.

The current arrangements for the migration health test mean that:

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

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

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

The Australian Government has ratified the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD). The UN CRPD is a powerful document. The Convention enables a strong anti-discrimination mandate and creates an opportunity to promote participation, empowerment and independence for people with disability. Australia made a declaration upon ratification that the Convention did not "impact on Australia's health requirements for non-nationals seeking to enter or remain in Australia, where these requirements are based on

legitimate, objective and reasonable criteria.” There has been strong opposition to this interpretive declaration from both the Australian disability community and international advocates. The Joint Standing Committee on Treaties recommended in November 2008 that:

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

In so far as the current migration health requirements can contribute to the separation of migrant and refugee families, Australia’s migration treatment of people with disability is also at odds with Article 3 and Article 5 of the United Nations Convention on the Rights of the Child. Leaving children with disability behind to an uncertain future is not in a child’s best interest.

The recent media attention to the case of Dr Bernard Moeller, Dr Siyat Hillow Abdi and others has highlighted that current migration processes do not provide fair outcomes for people with disability and their families, and devalue the full social and economic contribution that people with disability make to their communities and Australian society as a whole.

There is strong community support for change.

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

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

1. Full application of the Disability Discrimination Act 1992 to the Migration Act 1958 health assessment to remove the potential for any direct or indirect discrimination against refugees and migrants with disability;
2. Improved consistency, transparency and administrative fairness for migrants and refugees with disability applying for an Australian visa;
3. Withdrawal of the Australian interpretive declaration made upon ratification of the United Nations Convention on the Rights of Persons with Disabilities pertaining to the health requirements for non nationals.

Endorsed by:

Association for Children with a Disability
Australian Association for Families of Children with a Disability (AAFCD)
Australian Council of Social Service
Australian Federation of Aids Organisations
Australian Federation of Disability Organisations
Blind Citizens Australia

Council of Australian Postgraduate Associations (CAPA)
Deafness Forum
Federation of Ethnic Communities Councils of Australia
Multicultural Mental Health Australia
National Association of People Living with HIV / AIDS
National Council on Intellectual Disability
National Ethnic Disability Alliance
NSW Disability Discrimination Legal Centre Inc
People with Disability Australia Incorporated
Physical Disability Australia
Refugee Council of Australia
Vision Australia