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HUMAN RIGHTS
COMMISSION

Committee Secretary
Joint Standing Committee on Migration
House of Representatives
PO Box 6021
Parliament House
Canberra ACT 2600

Submission No 76

Email: jscm@aph.gov.au

Dear Sir/Madam

Thank you for the opportunity to provide a submission to the Committee's Inquiry into the Migration Treatment of Disability. The ACT Human Rights Commission would like to submit a short overall response to the following questions proposed by the Committee:

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

Costs and Factors Currently Considered

The Commission understands that migrants and refugees with disabilities are routinely refused entry to Australia because of an assessment of the potential health costs associated with their illness or disability.

The Commission submits that the current assessment for migration into Australia with respect to disability is solely deficit based and only looks at the potential cost to the community that the person with the disability *may* add. The current policy does not acknowledge that the person with a disability may provide a positive contribution to society such as skills, investment and taxation, and so mitigate any cost that may occur.

As part of our work, we deal with many people with disabilities, and those from culturally and linguistically diverse (CALD) backgrounds. We see at close hand the benefits a community with such a diverse mix of experiences can bring. In the Commission's experience, many people with disability contribute significantly to the ACT community. This contribution cannot be measured merely in monetary terms, and provides broad benefits to the community as a whole. This contribution may be equal to or greater than the contribution of many other people, including those who do not have a disability.

For these reasons, we submit that the current process for assessing a visa applicant against the health requirement be reconsidered and broader factors taken into consideration.

Children

The Commission also notes Articles 3 and 5 of the United Nations Convention on the Rights of the Child have a direct application to the question of migration. In particular, Article 3 (2) of the Convention states:

'States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.'

The Commission argues the current 'deficit model' fails to take into account the protection and care of children, in circumstances where a child or a member of their family has a disability. Such consideration should also consider the welfare of the child in their current situation from a humanitarian viewpoint.

Discrimination

The Commission also notes that the *Commonwealth Disability Discrimination Act 1992* ('DDA') exempts any acts done in relation to the administration of the Migration Act. We suggest that consistent with Australia's obligations under a number of international conventions, including the UN Convention on Rights of Persons with Disabilities, United Nations Convention on the Rights of the Child and the International Covenant on Civil and Political Rights, that this blanket exemption be removed. While we welcome recent amendments that enable complaints to be made under the DDA as to the administrative process concerning visa applications, this should be extended to substantive discrimination protection.

Further, given the challenging background of many people who have recently arrived to our country, including those seeking asylum, we suggest it sends the wrong message about Australian society that people with a disability are not valued. To the contrary, health, discrimination and human rights legislative and service regimes that exist around Australia, particularly in the ACT, demonstrate the commitment of our society to inclusiveness. National strategies and action plans on health and disability highlight the importance of liaising with those from a CALD background.¹ To suggest in their very first contact with Australia that people with a disability are not valued contradicts these aims and goals.

Our submission does not propose that health checks cease on those seeking entry, either temporarily or permanently into Australia. There are clear public health grounds for conducting such checks. However, we believe refusing entry entirely because of such checks will often be a disproportionate response.

For example, the Commission notes that applications from people living with HIV are routinely refused, on the basis that there would be an 'undue cost' to the Australian community if the application were approved. Only by demonstrating genuine humanitarian or compassionate grounds can applicants for permanent residency overcome this barrier. This system does not take into account the benefits such an individual may bring to the Australia community. The Joint United Nations Programme on HIV/AIDS reported in 2008 on International HIV-related Travel Restrictions highlights Australia as one of 59 countries found to still employ restrictions, whereas 108 countries have no restrictions.²

¹ See for example the National HIV/AIDS Strategy 2005-2008 which identifies people from a CALD background as a key target group for action.

² UNAIDS, *Mapping of restrictions on the entry, stay and residence of people living with HIV*, 2009.

The Task Team urged member countries to adopt the approach used in the 2004 *Statement on HIV/AIDS-related Travel Restrictions*, UNAIDS and IOM, which recommended that countries not single out HIV or treat it differently from similar conditions.³ Countries should instead perform individual assessments taking into account the following factors:

- that the person requires health and social assistance and is likely in fact to use it in the relatively near future;
- has no other means of meeting such costs (through private or employment-based insurance, private resources, support from community groups); and
- that these costs will not be offset through benefits that exceed them, such as specific skills, talents, contribution to the labour force, payment of taxes, contribution to cultural diversity, and the capacity for revenue or job creation.

The Commission submits this sort of analysis is more appropriate than the current deficit model. The assessment would be made on an individual basis according to the particular cost that person might bring to bear on the public health system, balanced against the benefits that individual would bring to the Australian community. Such a consideration should consider both economic and non-economic benefits and not be fixated solely on the person's ability to meet the costs of their own health care.

About the ACT Human Rights Commission

The Human Rights Commission was established to promote the human rights and welfare of people living in the Australian Capital Territory. The Commission is an independent statutory agency established by the *ACT Human Rights Commission Act 2005*. Currently, there are three Commissioners comprising:

- Dr Helen Watchirs, Human Rights & Discrimination Commissioner
- Ms Mary Durkin, Health Services Commissioner, and Disability & Community Services Commissioner
- Mr Alasdair Roy, Children & Young People Commissioner.

The Commission handles complaints in the ACT in relation to health services, services for older people, services for people with a disability, services for children and young people, and complaints in relation to *discrimination and sexual harassment in areas of public life*.

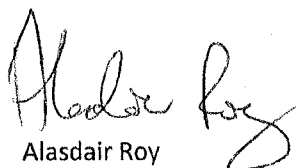
Commissioners also provide advice to the ACT Government on these matters and under the *ACT Human Rights Act 2004*.

We would be happy to provide further information to the Committee.

Yours sincerely



Dr Helen Watchirs
Human Rights & Discrimination
Commissioner



Alasdair Roy
Children & Young People
Commissioner



Mary Durkin
Health Services Commissioner
Disability & Community Services
Commissioner

30 October 2009

³ UNAIDS and International Organization for Migration, *UNAIDS/IOM Statement on HIV/AIDS-related Travel Restrictions*, 2004.