

Submission No 101

RECEIVED  
22 JAN 2010  
BY: MIA



**Council of Australian Postgraduate Associations (CAPA)**

**Submission to the Joint Standing Committee on Migration**

***Inquiry into the Migration Treatment of Disability***

**November 2009**

**capa**

Council of Australian Postgraduate Associations Incorporated

## Table of contents

1	Introduction .....	4
1.1	Health assessment requirements for visa applicants .....	4
1.1.1	Background .....	4
1.1.2	Case studies .....	4
2	Duty of care: international students' health .....	6
3	Health assessment for student visa renewals .....	7

## Summary of recommendations

Recommendation 1: That visa application provisions be reviewed to ensure health requirements are appropriately weighed against the potential economic, social and cultural benefits that applicants and their family members bring for Australia.....	5
Recommendation 2: That the Disability Discrimination Act apply to matters subject to the Migration Act, and associated Regulations. ....	6
Recommendation 3: That support for physical and mental health needs form part of national and local strategies adopted by Governments and higher education providers in support of international students. ....	7
Recommendation 4: That student visa medical examination requirements (including those for renewals) to be waived where applicants have not travelled outside Australia since undergoing previous medical examination.....	7
Recommendation 5: That the medical examination period of validity be extended from 1 year to a minimum of 2 years.....	7

# 1 Introduction

*(1) If the health or physical or mental condition of an applicant for a visa is relevant to the grant of a visa, the Minister may require the applicant to visit, and be examined by, a specified person, being a person qualified to determine the applicant's health, physical condition or mental condition, at a specified reasonable time and specified reasonable place.*

Migration Act 1958, Schedule 59, p.73<sup>1</sup>

Australia has yielded significant benefits from migration and temporary entry policies since their establishment of an Australian migration program in 1945. Since that time, temporary and permanent migration has supported significant economic and cultural benefits for Australia.

While the Australian Skilled Migration program is among the most successful worldwide, it is important to ensure fair treatment for all applicants, and support transparency in administrative practices wherever possible.

## 1.1 Health assessment requirements for visa applicants

### 1.1.1 Background

Applicants' qualifications, professional experience and skills are each assessed on a points-based system, while health and character requirements are assessed independently as part of the application process. Health assessment criteria require mandatory medical examinations, and these apply to both the main visa applicant and any family members relevant to the application.<sup>2</sup>

The rationale behind health assessment requirements is to help protect Australia from public health risks and contain public expenditure on health and community services. Applicants with a "disease or condition" are assessed on the potential cost and impact on Australian health and community services. The Migration Act is exempt from the Disability Discrimination Act, and while a stated disability in itself does may not necessarily justify refusal of a visa, it nevertheless often plays a determinate role in visa application outcomes.<sup>3</sup>

### 1.1.2 Case studies

The well-publicized cases of Bernhard Moeller and Dr Siyat Abdi serve as examples of how the current assessment regime can fail to support outcomes in line with the broad intent of Australia's Skilled Migration program, and can overlook the value that individuals with a disability may offer for the community and for Australia.

<sup>1</sup> Migration Act 1958, p. 73, Australian Government, Attorney-General's Department; <http://www.comlaw.gov.au/comlaw/management.nsf/lookupindexpagesbyid/IP200401592?OpenDocument>

<sup>2</sup> Migration Act 1958, p. 11, Australian Government, Attorney-General's Department; <http://www.comlaw.gov.au/comlaw/management.nsf/lookupindexpagesbyid/IP200401592?OpenDocument>

<sup>3</sup> Disability Discrimination Act 1992, Australian Government, Attorney-General's Department, p.40; <http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/0/02E50FC08E783ED7CA257609000288E1?OpenDocument>

Bernhard Moeller, after having worked for over two years as the principal specialist physician in the Victorian town of Horsham was declined in his application for permanent residency as a result of his son's stated disability (Down's Syndrome).

The official response at the time was that Dr Moeller's son's condition "potentially ha[d] a long-term financial impact on the community" and that "medical officers assess[ed] [the case] on the basis of the potential access to the services [Dr Moeller's son] would be entitled to".<sup>4</sup> Dr Moeller's ongoing service to the community and the potential benefit this would bring were outweighed by a family member's stated disability, and the possible repercussions as assessed in the course of the visa application process.

Dr Moeller and his family were eventually granted permanent residency after the Immigration Minister Chris Evans intervened.<sup>5</sup>

Dr Siyat Abdi is a Kenyan-born academic specialising in disability studies. Dr Abdi completed his Doctorate at the Flinders University of South Australia. Alongside his studies Dr Abdi was active in the community volunteering in a range of roles including as a mentor for young African refugees. In 2009 Dr Abdi was refused in his application for permanent residency due to his blindness.<sup>6</sup>

Dr Abdi has since been granted a temporary residency visa as a result of ministerial intervention, and has subsequently accepted a senior position with the South Australian agency Disability SA.

The above cases represent positive outcomes for visa applicants thanks largely to the support generated by a significant amount of media attention. There are unfortunately many more cases where applicants are unsuccessful in their visa application, and these include a significant number of student visa holders applying for permanent residency.<sup>7</sup>

These cases serve to demonstrate the shortcomings of current provisions which unfairly weigh against applicants in cases of a stated disability.

**Recommendation 1:**

That visa application provisions be reviewed to ensure health requirements are appropriately weighed against the potential economic, social and cultural benefits that applicants and their family members bring for Australia.

<sup>4</sup> Stephen Lunn, "Democracy is disabled when Down and out is the law", The Australian, 4 November 2008, <http://www.theaustralian.com.au/news/opinion/democracy-is-disabled/story-e6frg71o-1111117934410>

<sup>5</sup> Britt Smith, Dewi Cooke, "German doctor wins visa", The Age, 26 November 2008; <http://www.theage.com.au/national/german-doctor-wins-visa-20081126-6hzz.html>

<sup>6</sup> Karen Barlow, "Blind doctor granted temporary visa"; Lateline, ABC News, 28 May 2009; <http://www.abc.net.au/news/stories/2009/05/28/2583815.htm>

<sup>7</sup> Michaela Rost, Submission to the Senate Education, Employment and Workplace Relations Committee, Inquiry into the Welfare of International Students, p.30; <https://senate.aph.gov.au/submissions/comitees/viewdocument.aspx?id=067888a8-a0aa-42f4-a16d-f9ac41c5b826>.

**Recommendation 2:**

That the Disability Discrimination Act apply to matters subject to the Migration Act, and associated Regulations.

## 2 Duty of care: international students' health

*Student disability support should be:*

**Inclusive** – Core activities of the University are designed and implemented in order to accommodate the needs of all students including those with a disability.

**Comprehensive** – Provision for students with a disability should cover all core university activities.

**Systemic** – Consideration of the needs of the diverse student population should be embedded within University-wide planning, administrative support and quality assurance processes.

Universities Australia (formerly the Australian Vice Chancellors' Committee) Guidelines relating to Students with a Disability.<sup>8</sup>

Two thirds of all international students intend to stay in Australia; of these students around 95 per cent plan to gain permanent residency before or immediately after graduation.<sup>9</sup> The majority of onshore international students (85 per cent) find work within six months of obtaining permanent residency.<sup>10</sup>

International students must undergo medical examination as a part of the student visa application process. During this examination, an assessment is made as to whether a student is fit to study, and that they do not pose a risk to the Australian community.

International students may be reluctant to admit having a disability for fear of jeopardising their student visa, and possible future prospects for permanent residency, and this reluctance may include both physical and mental health concerns. The stigma attached to the mental illnesses and disabilities in certain quarters can also play a role in the students' reluctance to reveal or admit having mental health concerns.

This reluctance may extend to students' contact with health professionals while studying onshore. Some may believe that indicating that they may be suffering from depression or another kind of mental or physical condition may somehow be reflected in their student or immigration record, and could therefore compromise their prospects for visa

<sup>8</sup> AVCC Guidelines relating to Students with a Disability, Universities Australia; <http://www.universitiesaustralia.edu.au/documents/publications/policy/statements/DisabilityGuidelinesMay06.pdf>

<sup>9</sup> David Carroll, Graduate Careers Australia, The Student Experience: Perspectives from GCA Research; Australian International Education Conference 2009; [www.aiec.idp.com/PDF/2009\\_Carroll\\_Wed\\_1100\\_B104.pdf](http://www.aiec.idp.com/PDF/2009_Carroll_Wed_1100_B104.pdf)

<sup>10</sup> John Ross, "Aussie qualifications provide an 'employment bonus' – and Indians don't even need it", Campus Review, October 19, 2009 <http://www.campusreview.com.au/pages/section/article.php?s=News&idArticle=13242>

renewals or permanent residency in the future.<sup>11</sup> Students may therefore choose to hide or ignore any physical or mental health concerns that may arise during their studies.

Many students suffer when such concerns go un-checked, and the negative impact and potential cost of physical or mental health problems is compounded where they are overlooked for an extended period of time. It is likely that these factors would remain for students irrespective of the exact nature of student visa or permanent residency application health assessment requirements.

It is important to recognise therefore that international student concerns about their current and future visa status has direct implications for the pastoral care obligations on the part of higher education providers and both State and Federal Governments.

**Recommendation 3:**

That support for physical and mental health needs form part of national and local strategies adopted by Governments and higher education providers in support of international students.

### **3 Health assessment for student visa renewals**

---

International student visa applicants must undergo a medical examination each time they make an application for a new or renewal student visa. This costly and time-consuming process requires a general medical examination, X-ray checks and a blood test for HIV. Each dependent of an international student must also undergo examination. This requirement is applied even if a student has not travelled outside of Australia since the last health examination was made. The current student visa medical examination requirements place an undue financial and administrative burden on students, and detract from broader efforts to ensure that Australia remains a preferred destination for study.

**Recommendation 4:**

That student visa medical examination requirements (including those for renewals) to be waived where applicants have not travelled outside of Australia since undergoing previous medical examination.

**Recommendation 5:**

That the period of validity for evidence of medical examinations be extended from 1 year to a minimum of 2 years.

---

<sup>11</sup> Pechenkina E., International Student Experience in Australia, 2008; in press