

RECEIVED  
24 SEP 2009  
BY: mig [signature]  
Submission No 3

*James & Cynthia Muir*  
443 The Panorama – Tallai 4213  
QLD - Australia  
0438 93 27 53  
[cynthia@cynthiamuir.com](mailto:cynthia@cynthiamuir.com)

**Subject: Senate Inquiry seeking input about Australia's immigration policies towards people with disabilities - Miss Maria del Carmen Sierra Diaz**

Tallai, 21<sup>st</sup> September 2009

**To: The Clerk Assistant (Committees)**  
House of Representatives  
PO Box 6021  
Parliament House  
CANBERRA

Dear Sir, Madam,

Following your current Senate Inquiry seeking input about Australia's immigration policies towards people with disabilities, I confirm by this letter my submission to help the mentioned inquiry.

We too, like Dr Moeller (German doctor from Victoria who appeared on the news last year with a disabled son who was refused residency), received the crushing news on 28 October 2008 by registered post, 3 years after we originally applied in August 2005, that the Australian residency application has been refused for my only sister, Maria del Carmen Sierra Diaz, mentally handicapped since birth, under the sole remaining relative residence visa type 3344.

**A key difference to the Dr Moeller's case is that my husband, I and my two children are Australian citizens.**

My sister was born in Spain and educated in France where my parents lived. My mother took care of her until she passed away in May 2005; my father had already passed away in 1991. Australian citizen, I then became her sole and legal guardian. I and my husband James went to fetch Carmen from France in June 2005, as we were now her only and primary carers in order to provide Carmen a home she no longer had. Immediately upon return we commenced the process to apply for citizenship for Carmen. After seeking professional legal direction we were advised to submit a sole remaining relative residence visa type 3344, which we did. Since then, we have gone through additional administrative and medical procedures to try and provide supportive evidence. We were notified by phone that she had not been approved in November 2005, and that we would have the option to appeal once we had received confirmation in writing. For 3 years we never received this letter until the 28 October 2008, 3 years later. We now had the choice of appealing to the tribunal review with another application fee of \$1400 and no guarantee of success, or we had 28 days to place Carmen on a plane back to Spain, where she will have no family, no support, and whatever

care the Spanish administration allows in these circumstances, of course our choice was obvious and we had proceeded to appeal.

I noted the Immigration Department stated; *"Ms Muir has been given several opportunities to respond to the health assessment, including the opportunity to provide more medical information for the Medical Officer of the Commonwealth to take into account when making their decision about the likely cost to the community of her sister's condition."*

Carmen's medical condition was perfect; she was in good health with absolutely no indication of any major health or disease issues such as cancer, hepatitis, heart conditions, etc. We did seek out further disability supporting evidence including explanation of the WHO disability classification and to have an IQ Test to prove that Carmen was mentally disabled. Carmen should not be discriminated against based on her disability, her medical and health conditions are perfect.

My sister does not need medication or physical care of any sort, she is mentally handicapped (as a result of anoxia at birth), under the WHO (World Health Organisation) Handicapped classification she is a level 1 (you and I are a level 0 which is considered normal). Level 1 means she is fully capable of taking care of herself, following simple instructions and performing menial tasks, and given the opportunity can perform simple work and contribute to society. What Carmen cannot do is more complex tasks such as opening Bank accounts, filing tax returns, etc, in these she needs assistance and guidance, and hence I am her legal guardian. Carmen is blessed with a happy and placid character and is a loving Auntie to her 2 nieces and more importantly a part of our family. In the 4 years of waiting Carmen has established many friends in the community and extended family on my husband's side.

My husband and I are good Australian citizens and taxpayers, and that all we ask is the right for us to provide a loving home to my sister.

Australia seems to be moving in the right direction signing the convention on the Rights of Persons with Disabilities, Australia ratified on 17th July 2008, and Spain on 3rd December 2007, our understanding is that countries like Spain, where Carmen was born, and Australia, where Carmen hopes to live with her only remaining family, can resolve any potential care issues so that disable people can enjoy the same rights as any other person looking to immigrate.

At this stage, we are waiting anxiously for a positive response from MRT, I intend to do everything I possibly can to insure my sister has every right that any other human being warrants and insure that Carmen can stay with us and to stop her being considered as an international community ghost.

Thank you and Kind Regards

Cynthia Sierra Muir

## Convention on the Rights of Persons with Disabilities

This document consists of articles from the Convention on the Rights of Persons with Disabilities relevant to the case of Miss Maria del Carmen Sierra Diaz, disabled Spanish citizen, refused Australian permanent residence under visa 3344 Sole Remaining Relative of Mrs Cynthia Sierra Muir her legal guardian, based on the statement from the Medical Officer of the Commonwealth, MOC, that her "condition" or "her disease" would be likely to result in a significant cost to the Australian community. Therefore the MOC advised that the applicant (Carmen) did not meet the health requirement and the public interest.

\*\*\*\*\*

### **Article 18 - Liberty of movement and nationality**

1. States Parties shall recognize the rights of persons with disabilities to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others, including by ensuring that persons with disabilities:

- a. Have the right to acquire and change a nationality and are not deprived of their nationality arbitrarily or on the basis of disability;
- b. Are not deprived, on the basis of disability, of their ability to obtain, possess and utilize documentation of their nationality or other documentation of identification, or to utilize relevant processes such as immigration proceedings, that may be needed to facilitate exercise of the right to liberty of movement;
- c. Are free to leave any country, including their own;
- d. Are not deprived, arbitrarily or on the basis of disability, of the right to enter their own country.

2. Children with disabilities shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents.

### **What the article 18 means for Carmen's case:**

**As a disabled person, Carmen has the right:**

**To decide where she lives and to move about the same as everyone else.**

**To belong to a country (be a citizen) and not have that taken away because she is disabled.**

**To have papers, like passports, that other people have.**

**To leave any country including her own.**

### **Article 25 - Health**

States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation. In particular, States Parties shall:

- a. Provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes;
- b. Provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older persons;
- c. Provide these health services as close as possible to people's own communities, including in rural areas;
- d. Require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by, inter alia, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health care;
- e. Prohibit discrimination against persons with disabilities in the provision of health insurance, and life insurance where such insurance is permitted by national law, which shall be provided in a fair and reasonable manner;
- f. Prevent discriminatory denial of health care or health services or food and fluids on the basis of disability.

**What the article 25 means for Carmen's case:**

**As a disabled person, Carmen has the right to good health and access to health services including family planning.**

**Countries will:**

**Make sure disabled people like Carmen have access to the same health services as others.**

**Make sure disabled people like Carmen get the health services they need because of their disability.**

**Make sure health professionals give the same service to disabled people like Carmen as to others**

**Make sure disabled people like Carmen are not discriminated against in health and life insurance.**

**Make sure people like Carmen are not refused care or treatment because they are disabled.**

**Article 32 - International cooperation**

1. States Parties recognize the importance of international cooperation and its promotion, in support of national efforts for the realization of the purpose and objectives of the present Convention, and will undertake appropriate and effective measures in this regard, between and among States and, as appropriate, in partnership with relevant international and regional organizations and civil society, in particular organizations of persons with disabilities. Such measures could include, inter alia:

- a. Ensuring that international cooperation, including international development programmes, is inclusive of and accessible to persons with disabilities;
- b. Facilitating and supporting capacity-building, including through the exchange and sharing of information, experiences, training programmes and best practices;
- c. Facilitating cooperation in research and access to scientific and technical knowledge;
- d. Providing, as appropriate, technical and economic assistance, including by facilitating access to and sharing of accessible and assistive technologies, and through the transfer of technologies.

2. The provisions of this article are without prejudice to the obligations of each State Party to fulfil its obligations under the present Convention.

**What the article 32 means for Carmen's case:**

**Countries like Spain and Australia will work together as partners to make this agreement happen.**

**They should:**

**Make sure that working together includes disabled people like Carmen.**

**Make sure that countries like Spain and Australia share information, experiences and training so that all people work in the best way.**

**Make sure that countries like Spain and Australia work together on research and share what they find out.**

### **Article 33 - National implementation and monitoring**

1. States Parties, in accordance with their system of organization, shall designate one or more focal points within government for matters relating to the implementation of the present Convention, and shall give due consideration to the establishment or designation of a coordination mechanism within government to facilitate related action in different sectors and at different levels.

2. States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights.

3. Civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process.

### **What the article 33 means for Carmen's case:**

**Making this agreement happen**

**Governments should:**

**Have one area of Government dealing with making this agreement happen.**

**Have a way that measures how well the agreement is happening.**

### **Article 34 - Committee on the Rights of Persons with Disabilities**

1. There shall be established a Committee on the Rights of Persons with Disabilities (hereafter referred to as "the Committee"), which shall carry out the functions hereinafter provided.

2. The Committee shall consist, at the time of entry into force of the present Convention, of twelve experts. After an additional sixty ratifications or accessions to the Convention, the membership of the Committee shall increase by six members, attaining a maximum number of eighteen members.

3. The members of the Committee shall serve in their personal capacity and shall be of high moral standing and recognized competence and experience in the field covered by the present Convention. When nominating their candidates, States Parties are invited to give due consideration to the provision set out in article 4.3 of the present Convention.

4. The members of the Committee shall be elected by States Parties, consideration being given to equitable geographical distribution, representation of the different forms of civilization and of the principal legal systems, balanced gender representation and participation of experts with disabilities.

5. The members of the Committee shall be elected by secret ballot from a list of persons nominated by the States Parties from among their nationals at meetings of the Conference of States Parties. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present

and voting.

6. The initial election shall be held no later than six months after the date of entry into force of the present Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit the nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating the State Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

7. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election once. However, the term of six of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these six members shall be chosen by lot by the chairperson of the meeting referred to in paragraph 5 of this article.

8. The election of the six additional members of the Committee shall be held on the occasion of regular elections, in accordance with the relevant provisions of this article.

9. If a member of the Committee dies or resigns or declares that for any other cause she or he can no longer perform her or his duties, the State Party which nominated the member shall appoint another expert possessing the qualifications and meeting the requirements set out in the relevant provisions of this article, to serve for the remainder of the term.

10. The Committee shall establish its own rules of procedure.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention, and shall convene its initial meeting.

12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

13. The members of the Committee shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

**What the article 34 means for Carmen's case:**

**A special committee will be elected by all the countries to make sure this agreement is being followed properly. It will be based at the United Nations. We understand Professor Ronald McCallum as been elected in such committee and in an article published in "The Australian" on 5 November 2008, Professor McCallum urged Immigration Minister Chris Evans to reverse the Moeller decision and take steps to ensure it does not happen to other families.**

**Article 35 - Reports by States Parties**

1. Each State Party shall submit to the Committee, through the Secretary-General of the United Nations, a comprehensive report on measures taken to give effect to its obligations under the present Convention and on the progress made in that regard, within two years after the entry into force of the present Convention for the State Party concerned.

2. Thereafter, States Parties shall submit subsequent reports at least every four years and further whenever the Committee so requests.

3. The Committee shall decide any guidelines applicable to the content of the reports.
4. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports, repeat information previously provided. When preparing reports to the Committee, States Parties are invited to consider doing so in an open and transparent process and to give due consideration to the provision set out in article 4.3 of the present Convention.
5. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

**What the article 35 means for Carmen's case:**

**Reports from Countries like Spain and Australia involved.**

**Each country will write a report about their work for this agreement and send it to the Committee within 2 years after they agree to join.**

**After that, each country will send a report every 4 years, as well as extra reports if the Committee asks for them.**

**The Committee will decide what information countries like Spain and Australia need to put in their reports.**

**The reports can also be about things that are holding up disabled people's rights like Carmen.**

**Article 43 - Consent to be bound**

The present Convention shall be subject to ratification by signatory States and to formal confirmation by signatory regional integration organizations. It shall be open for accession by any State or regional integration organization which has not signed the Convention.

**What the article 43 means for Carmen's case:**

**Countries that have signed this agreement then decide when to join it properly. That is when it starts properly in their country.**

**Spain ratified the Convention on 3 December 2007.**

**Australia ratified the Convention on 17 July 2008.**

**Article 45 - Entry into force**

1. The present Convention shall enter into force on the thirtieth day after the deposit of the twentieth instrument of ratification or accession.

2. For each State or regional integration organization ratifying, formally confirming or acceding to the Convention after the deposit of the twentieth such instrument, the Convention shall enter into force on the thirtieth day after the deposit of its own such instrument.

**What the article 45 means for Carmen's case:**

**The agreement will start 30 days after 20 countries have joined it.**

**Spain ratified the Convention on 3 December 2007.**

**Australia ratified the Convention on 17 July 2008.**

**Article 46 - Reservations**

1. Reservations incompatible with the object and purpose of the present Convention shall not be permitted.
2. Reservations may be withdrawn at any time.

**What the article 46 means for Carmen's case:**

**Keeping to the agreement;**

**Countries like Spain and Australia cannot refuse to sign up to any really important parts of this agreement.**

**Cynthia Sierra Muir**