

Submission No 16

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## Submission to JSCM

# Migration treatment of disability

**October 2009**

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## 1. Introduction

Currently, **one in six** Australians has some form of hearing impairment, and this is projected to increase to one in four by 2050<sup>1</sup>. These figures are similar to figures overseas.

### 1.1. About the Deafness Forum

Deafness Forum is the peak body for deafness in Australia. Established in early 1993 at the instigation of the Federal government, the Deafness Forum now represents all interests and viewpoints of the Deaf and hearing impaired communities of Australia (including those people who have a chronic disorder of the ear and those who are Deafblind).

Deafness Forum members, whose views are incorporated into this submission, include:

- Numerous Better Hearing Australia branches, including Better Hearing Australia (National)
- Most State-based Deaf societies
- SHHH Australia (Self Help for Hard of Hearing People)
- CICADA groups (Cochlear implants)
- Deafness Councils
- Deafness Foundation
- Many service provider associations such as Deaf Children Australia, Audiology Australia, Australian Communication Exchange.

The Deafness Forum exists to improve the quality of life for Australians who are Deaf, Deafblind, have a hearing impairment or a chronic disorder of the ear by:

- advocating for government policy change and development
- making input into policy and legislation
- generating public awareness
- providing a forum for information sharing and
- creating better understanding between all areas of deafness.

### 1.2. Our consultation process

Deafness Forum has consulted with members in all states of Australia to gather feedback on this topic. Some specific comments have been included throughout the paper to illustrate particular points. Our responses represent a large number of

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<sup>1</sup> Access Economics: *Listen Hear! The economic impact and cost of hearing loss in Australia*, February 2006, pp.41

comments received from individuals and organisations in the deafness sector, combined with our own deductions (from our Telecommunications Issues Advisory Panel) and based on our continuing engagement with members.

## 2. Our comments and answers to questions

### 2.1. Background

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 such as deafness 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.

I have not told my daughter (that the rest of the family have been approved) thinking she would be emotionally devastated. She is doing everything right by agreeing to do the cochlear implant and working hard to improve her speech as well as wearing the implant all the time. She is trying her level best.

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.

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.

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.

### **3. Recommendations**

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

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



## **4. Contact**

If you have any questions about the information contained in this submission, please contact

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