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Inquiry into Immigration Treatment of Disability

By Vision Australia

Submission to: Joint Standing Committee on Migration
Response Submitted by: Brandon Ah Tong-Pereira

Preface

Vision Australia is the Nations premier provider of blindness and low vision services and was formed by combining the expertise of several organizations who shared in a common purpose. We are a living partnership that unites people who are blind, sighted and who have low vision. Our goal is that people who are blind or have low vision will be able to access and participate fully in every aspect of life they choose.

To help realize this goal, we provide early childhood, orientation and mobility, employment, information, recreation and independent living services, advocacy services and Seeing Eye Dog services. We also work collaboratively with

Government, business and community groups, to help raise awareness, promote public education and to work towards eliminating barriers for our clients in the community.

Through our combined histories of providing quality client focused services and our advocacy work more broadly, Vision Australia is well placed to provide a considered voice on a range of public issues affecting people, who are blind, Deafblind, have low vision and who have a print disability.

1. Introduction

Twenty-first century Australia, with its rich social and cultural diversity and economic prosperity, owes much to its post World War II migrant history. The opening of borders to non-northern European migrants following the years of 'White Australia Policy', and the progression of public policy away from 'Assimilation' to 'Multiculturalism', has helped create a society that is respectful of difference and awake to the opportunities change can provide. Understanding the need for peer support, diverse institutional infrastructure, and broad public engagement, has culminated in the Australia we all call home today.

Unfortunately, this social awakening in public policy, has not extended its egalitarian arm to those would be Aussies who have a range of physical, mental, intellectual and sensory impairments. Whilst liberal policy over the better part of four decades has been systematically pulling back the naive cloak of racial intolerance, ill informed and dogmatic beliefs about impairment have continued to anchor Australian immigration policy to old world thinking.

The 'Public Interest Criteria and Related Provisions' of Schedule 4 of the 'Migration Regulations 1994' (the Regulations) made under the Migration Act 1958 (the Act), are an exemplary example of state sanctioned discrimination against people with disability. Vision Australia therefore applauds the Commonwealth's move to review these archaic health provisions and would like to thank the Joint Standing Committee on Migration (the Committee) for this opportunity to provide comment. We do so loosely addressing question 6 of the consultation questions - what principles should apply to the assessment of visa applications against the health requirements.

Statement

Vision Australia in this submission, and in supporting those comments provided by other organisations such as Blind Citizens Australia (BCA) and the National Ethnic Disability Alliance (NEDA (see Appendix 1)), makes three key recommendations to the Committee:

- That the Committee recommend the systematic reform of the Act, the Regulations, and the administrative processes that enable their enforcement and promotion;
- That the Committee recommend that these reforms be applicable to, and consistent with, the Commonwealth Disability Discrimination Act 1992 (DDA), including the immediate repeal of S52;
- and that the Committee recommend that such reforms be extended internationally to be genuinely consistent with the spirit of the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD), mandating the immediate withdrawal of the Interpretive Declaration regarding migration appended to Australia's Treaty ratification.

Vision Australia believes that the human rights treaties of the United Nations, are universal ethical demands empowered through international consensus. Whilst it is clear that state sovereignty is a common good, ratification of international treaties by nation states conferred through domestic law, intrinsically implies obligations that extend across borders. This understanding does not undermine the importance of national sovereignty, but transcends the traditional presumption of its nature: combining sovereign rule with a choice to prescribe to shared values. Therefore, the ratification of international Human Rights treaties, dictate that the respect we afford our own citizens must also be reflected in the policies that extend to those outside our borders.

The understanding of human rights as articulated here is compatible with the actions of successive Australian governments over the last sixty years. In keeping in step with international human rights norms, the Commonwealth has legislated a suite of anti-discrimination laws that, combined with administrative, monitoring and resolution mechanisms, promote the principles ascribed in the Universal Bill of Rights. The

formation of the Australian Human Rights Commission and the establishment of the DDA and its subsequent standards, are measures that have identified disability as a particular site of discriminatory activity that requires legislative remedy. Australia further ratified the UN CRPD in July 2008, and has recently acceded to the Optional Protocol with a view to ratification in the near future.

However, the current health provisions of S4005 of the Regulations are directly out of step with the impetus of our own domestic anti-discrimination legislation and our obligations on the world stage. The exemption of the Migration Act and subordinate regulations and policies from Divisions 1, 2, 2a of the DDA under Section 52, critically undermine the integrity of the Migration Act. This regulation has four key problems:

- it fails to recognise that disability is not a homogenous notion, instead arbitrarily pigeon holing individuals into categories of impairment ;
- It treats impairment as the object for assessment, rather than assessing the individual applicant;
- It fails to consider individual merits and possible contributions to society, instead only factoring in potential societal cost;
- And fundamentally, it fails to recognise people with disability, as people, rather objects of disorder.

This regulation grossly medicalises disability, a phenomenon that has been outlawed in public policy for quite some time - the idea that disability lies with the afflicted and that society is powerless to mitigate its affects. The medical model has been replaced with a holistic perspective which understands that the social reception of impairment and the unwillingness to alter ingrained methods of process, more accurately defines disability. The differences in these perspectives can be illustrated in the following way:

Scenario 1

Sue is blind and can not read standard print material; therefore she is unable to work in an office environment because she is blind.

Scenario 2

Sue is blind and reads using a synthetic speech screen reader on her computer. So (As) long as the office environment can provide her work electronically, Sue can discharge her office duties independently and without further recourse.

Although crude and simplistic, the above scenarios accurately portray the logic critical to Regulation 4005, both in terms of the status quo, and in terms of what is absent. Through our work, Vision Australia gives testament to the fact that with the right attitudes and a commitment to alternative methods of achieving outcomes, people who are blind, Deafblind, people who have low vision, and people who have a print disability, can and do, participate in society and contribute to their local communities and the overall national identity. They are employed in almost every profession, are engaged in higher education and vocational training, they volunteer in community activities, play and support sporting clubs, they raise families and care for loved ones, and are community leaders. However, all these things are not considered in the calculation of public interest under regulation 4005. Reform of the Migration Act and the Regulations must therefore correctly assess applicants on the merits of the overall application, as is the case with other, non-disabled individuals.

However, our position must not be understood to mean that reform should simply create a ledger for tallying societal costs and benefits by adding social return to the equation. The current system still aggregates and stereotypes impairment, unjustly and indirectly discriminating against sub-groups and all disabled persons alike. Any reform must result in applicants being holistically assessed on their own real personal situation and specific potential costs, in order to be consistent with the DDA and the UN CRPD and other international norms against discrimination. That is, disability in and of itself, cannot be the deciding factor in achieving an unfavourable decision in migration. To do so is at odds with the spirit of the DDA and specifically S29, and a host of international human rights conventions, including Articles 5 and 18 of the UN CRPD. Therefore, Vision Australia believes that reform should be guided by the principles that Australia already aspires to - the DDA and the UN CRPD.

Conclusion

Vision Australia calls upon the Committee to recommend the systematic reform of the Migration Act 1958 and its subordinate regulations and administrative policies. We recommend that this reform be guided by the genuine spirit of the DDA and UN CRPD, and that this includes the repeal of the Act exemption from the DDA under S52, and the removal of Australia's UN CRPD interpretive declaration on migration. Vision Australia believes that people with disability, including people who are blind, Deafblind, people who have low vision and people who have a print disability, ought to be afforded the same human rights as others in the community, and we look to this review to assist with rectifying the current unjust situation.

Vision Australia thanks the Committee for this opportunity and welcomes the chance to elaborate in person should it be required.

Yours sincerely,

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