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Communication is the key

Submission No 26

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Vicdeaf submission to The Joint Standing Committee Inquiry into the Migration Treatment of Disability

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Established in 1884, the Victorian Deaf Society (Vicdeaf) is the primary support, advisory and referral service for Deaf and hard of hearing people in Victoria. Vicdeaf strives to improve the quality of life for deaf and hard of hearing people by breaking down communication barriers, improving access to services, increasing the status and participation of Deaf and hard of hearing people in society and providing specialist support, education, research and community services.

Vicdeaf welcomes the senate inquiry into the migration treatment of disability and thanks the committee for the opportunity to comtribute to this important policy debate. In our short submission to the inquiry we will focus on the following three questions:

- Is the current process fair and transparent?
- What criteria (if any) should be used to determine eligibility of people with a disability or chronic health condition and their families for migration to Australia?
- Costs and impact on service providers

Is the current process fair and transparent?

Currently, all migrants to Australia must pass a health test which is primarily designed to weed out those carrying or suffering from tuberculosis, but also targets those who have "medical conditions which are likely to result in significant health treatment and community service costs in Australia, or which may use treatment or services in short supply" (DIMA 2007:37). As supporting documentation from the Immigration Department explains, migrants may be excused from meeting the health requirements under some circumstances (for example if they are refugees or a spouse or child applying the family reunion program). However, granting of the waiver is entirely at the discretion of the Chief Medical Officer of the Commonwealth, who is obliged to take into account "undue cost or undue prejudice to the access of Australians to medical and support services if a visa is granted" (DIMA 2006:1).

Our submission supports the need for a health test for tuberculosis and other contagious diseases and fully acknowledges the frontline role migration staff play in protecting Australians from disease outbreaks. Any amendments to migration legislation in the light of this enquiry needs to preserve the important public health function of testing for, quarantining and potentially denying entry to migrants who prove a public health risk.

On the point of disabilities and non-contagious diseases, this submission finds that current guidelines appear vague to many potential migrants and advocacy groups, making it difficult for an individual to assess their likely chance of success before going through the time-consuming, emotionally-draining and often costly process of formally applying to migrate to Australia. Whatever recommendations the committee makes concerning the eligibility of people with disabilities and chronic health conditions migrating to Australia, this submissions asks that the publicly available criteria for assessment be made more explicit.

From 2006-08 Vicdeaf carried out a project examining the situation and needs of people from migrant backgrounds living in Victoria. A key finding from the project's report (Willoughby, 2008) is that there is real confusion within both Deaf and migrant communities as to whether deafness 'counts' as one of the disabilities/ health conditions that will see an individual denied entry to Australia. While the balance of Immigration Department rulings certainly suggest that deafness alone is not a barrier to migration, this is not the view taken by most members of the community. This creates a number of difficulties, that would presumably be minimized by more explicit criteria outlining which (if any) disabilities/ health conditions normally see people excluded from migrating to Australia:

- Lack of disclosure of deafness (as a 'hidden' disability it is not always detected in initial hearing screenings), which can result in migrants avoiding deafness services completely as they fear they will be deported if their hearing loss is detected.
- Mistaken beliefs that applications have been refused solely because of the applicant's hearing loss, when in fact other underlying health conditions or the combined effect of multiple disabilities seem to have lain at the heart of the decision.
- Strong perception within the Victorian Deaf community that the Australian government discriminates against deaf people in the migration process, and associated feelings of hostility and exclusion.

It is the belief of this submission that these issues are not specific to the Deaf community, but affect migrants with a range of disabilities and health conditions and that increasing the specificity of criteria would thus be beneficial to a range of groups. However, the submission also notes the need for a level of flexibility to be built into the system, given that it makes such high-stakes decisions affecting the lives of people who may have complex, interacting disabilities and conditions.

What criteria (if any) should be used to determine eligibility of people with a disability or chronic health condition and their families for migration to Australia?

It is difficult to separate questions about who should be eligible to migrate to Australia from thoughts about the different visa options available for someone entering Australia. Logic suggests that people with disabilities and long-term health conditions as most likely to be looking to migrate to Australia as dependents of someone accepted through the skilled migration scheme, as refugees or under the family reunion program. The different circumstances each entails may warrant different health criteria – as is already the de facto case, with the health requirement stipulating exceptions may be granted in some cases for refugees and others in perilous circumstances.

The simplest, and arguably most equitable, option would be to remove the health requirement for people in all migration stream (possibly while retaining separate requirements vis-à-vis contagious diseases). Such an approach has the additional advantage of placing Australia in full compliance with the United Nations Convention on the Rights of Persons with Disabilities, and would allow the removal of our current rider on the CEPD 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.". However, such a blanket removal may place an unsustainable burden on the Australian health care and disability service sector. While this submission endorses the idea of removing the health requirement from an ethical perspective, we do not have enough information to hand to assess whether it is viable in practice.

Another option being seriously considered by the committee is to try to link the health requirement to the potential economic and social contribution people with a disability and their families might make to Australia. The idea for such a measurement is a noble attempt ideologically to move beyond a beyond a view of disability as inherently negative and preventing people from living a full and productive life, however, we have a number of concerns about any attempts to operationalise the potential benefits (as well as costs) of allowing a given person to migrate to Australia. These can be summarized as follows:

- ACCURACY: Trying to estimate potential earnings and medical expenses, let alone quantify non-monetary factors such as contribution to family and community life is a very difficult task, and estimates are likely to be subject to large degrees of inaccuracy over time. Given the high-stakes of visa decision we fear any modeling will not have the long-term accuracy to make fair and equitable decisions.
- FEASABILITY: Even if a reliable model could be developed to assess contributions, doubts remain about the costs and feasibility of implementation. Any thorough assessment would create extra workload for frontline processing staff, who in many cases will not have the requisite medical knowledge to appropriately assess the likely costs of a disability/ condition and contributions a person's is capable of making.
- TRANSPERANCY: unless criteria are extremely rigid, any model is likely to be accused of being applied inconsistently. From this, there is also the potential for an unsustainably high rate of appeals by people who feel that their initial

assessment did not appropriately cover or weight the costs of their health condition/ diability and/or their potential contribution to society

For these reasons, we would argue that any system that retains the health requirement would do best to use criteria that are either medical or visa-related in determining who is and is not eligible to migrate to Australia. For example a two tiered system of the health requirement could be established – a more rigorous requirement for the majority of migrants and a less rigorous (or potentially even no requirement at all) for refugees and potentially the dependents of skilled migrants who filling critical skills shortages. Such a system has the advantage that once the initial criteria were established, it would require no more work to process applications than under the current health requirements, while formally recognizing that the circumstances some people are in provide a compelling case for allowing them to migrate to Australia.

Costs and impact on service providers

As many submissions will mention, in many cases the cost of disabilities or health conditions may not actually be that great to the community. By global standards, Australia has high rates of employment for people with disabilities/ chronic health conditions so it is premature to presume that they will be unable to work and be a life-long drain on the tax system. For this reason the submission recommends that only direct costs of medical treatment and disability support services should be factored into cost calculations when determining a person's eligibility under the health requirement.

For disabilities such as deafness, blindness and other mobility impairments, ongoing support costs are minimal and medical treatment rarely, if ever, required. For these sorts of conditions there need be no barrier to migration to Australia on the grounds of costs. Numbers are likely to be small in any case, and disability service providers such as Vicdeaf could easily incorporate these clients into our service delivery without impacting negatively on existing clients. However, the situation is likely to be different in service areas (such as Autism or other complex needs), where long waiting lists already exist.

In closing our submission, we would like to note that while migrants with disabilities and health conditions should not be viewed as a burden on the system, they occasionally require specific services that are currently not always being provided. A clear example of this is deaf people from migrant backgrounds, who may need hearing aids and/or special instruction to benefit from AMEP classes. Currently, adult refugees are not normally eligible for free hearing aids, and receive little to no support to access AMEP classes. Vicdeaf has recently arranged a partnership with AMEP to provide a tailored class for a cohort of deaf migrants for next year, but similar services are not available in other states. The costs of such accommodations is extremely small (often less than $10,000 per year), but as they can make such a enormous difference to people's lives it is important that the Department of Immigration talks with disability sector organizations about the needs of migrants with disabilities and health conditions in order to plug current gaps in service provision and ensure positive settlement outcomes.

References

DIMA (Department of Immigration and Multicultural Affairs). (2006). *Form 1071i Health Requirement for permanent entry to Australia*. Retrieved 23/10/09, from http://www.immi.gov.au/allforms/pdf/1071i.pdf.

DIMA (Department of Immigration and Multicultural Affairs). (2007a). *Booklet 6: General skilled migration*. Retrieved 23/10/09, from http://www.immi.gov.au/allforms/booklets/1119.pdf.

Willoughby, L. (2008). *Catering to a diverse community: The situation and needs of deaf people from migrant backgrounds living in Victoria*. Melbourne: Vicdeaf and the Victorian Multicultural Commission.