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Submission to the Joint Standing Committee on Migration inquiry into the migration treatment of disability

October 2009

Cabramatta Community Centre welcomes the opportunity to provide a submission to the Joint Standing Committee on Migration inquiry into the migration treatment of disability.

Cabramatta Community Centre (CCC) is a large non-profit community based organisation employing 250 staff which has provided a wide range of welfare services to the aged, young people, women, ethnic communities, newly arrived migrants and refugees and children since 1979. Cabramatta Community Centre includes Fairfield Migrant Resource Centre, Cabramatta Youth Team, Multicultural Community Care Services (which provide in home care to frail, elderly and people with disabilities and their carers from culturally and linguistically diverse backgrounds), Cabramatta Neighbourhood Centre and The Heights Community Services which runs neighbourhood centres in Mount Pritchard and Canley Heights.

Cabramatta Community Centre's expertise on the migration treatment of disability comes from 30 years of experience assisting newly arrived migrants to settle in Australia.

Legal issues

CCC notes the legal advice provided by Dr Ben Saul to the National Ethnic Disability Alliance regarding the compatibility of the Migration Act and Australia's international commitments regarding the United Nations Convention on the Rights of Persons with Disabilities.

Since this legal advice was provided, Australia has now ratified the United Nations Convention on the Rights of Persons with Disabilities and is therefore bound by obligations under international law not to discriminate against people with disabilities. To exempt the Migration Act from the Disability Discrimination Act does not indicate a commitment to uphold this international legal responsibility on the part of the Australian government. We note that Australia sought to exclude the migration health requirement from its obligations under the United Nations Convention on the Rights of Persons with Disabilities, where these requirements are based on legitimate, objective and reasonable criteria, through the declaration that was made upon ratification. Cabramatta Community Centre agrees with the concerns expressed by Dr Ben Saul that the migration health requirement may not be based on legitimate, objective and reasonable criteria. We note the comments that other countries have more measures in place to ensure that decisions are made on legitimate, objective and reasonable criteria.

Cabramatta Community Centre wants to see the government fulfil its responsibilities to people with disabilities by complying with all our international obligations to the United Nations Convention on

Fairfield Migrant Resource Centre, Cabramatta Youth Team,
Mount Pritchard Cabramatta West Community Centres and Multicultural Aged and Disability Services

the Rights of Persons with Disabilities, removing the exemption of the Migration Act from the Disability Discrimination Act, accepting migrants with disabilities and providing them with access to services without delay.

Accepting disabled migrants

Cabramatta Community Centre is aware that many refugees with a disability that most need help from Australia do not make it from the persecution that they face to reach refugee camps and are therefore not ever afforded the opportunity to be refugees in Australia. As António Guterres, the United Nations High Commissioner for Refugees wrote in the forward to The Women's Commission for Refugee Women and Children's report 'Disabilities among Refugees and Conflict-affected Populations' last year:

Too often invisible, too often forgotten and too often overlooked, refugees with disabilities are among the most isolated, socially excluded and marginalized of all displaced populations. ... refugees with disabilities possess valuable skills, knowledge and experience, and they wish and deserve to be given the opportunities to use them. They want equal access and opportunity. They need to be socially included and to participate fully. Like all of us, they want to contribute to their communities and have meaningful lives.

The Women's Commission report goes on to detail the discrimination that disabled refugees experience in getting to and then within refugee camps. This discrimination takes place before they are even given the opportunity to be proposed for possible resettlement in Australia. The rest of this submission deals with disabled migrants and refugees interactions with Australia once they have passed hurdles put in place by other authorities.

Cabramatta Community Centre has been assisting refugee families who have had difficulty in reuniting with their family members in Australia because one of the family members has a disability. Over 15 years ago, Cabramatta Community Centre was assisting Vietnamese refugee families with this and in the last three years in particular Cabramatta Community Centre has been assisting many Iraqi families who have been dealing with the rejection of refugee applications for family members who have disabilities.

One case Cabramatta Community Centre was dealing with over 15 years ago involved a young Cambodian refugee who was able to reunite with her siblings in Australia but not her mother because of her mother's heart and sight problems. This impacted on her ability to settle and contribute to the Australian community because she was not able to have the support of her mother's presence. The Cabramatta Community Centre worker assisting her at the time saw that her inability to be reunited with her mother led to her giving up her goal of university education, not completing year 10 but instead working in a factory and at the same time a sweat shop to support her siblings through school and further education.

Cabramatta Community Centre continues to work with an Iraqi refugee family who having arrived in Australia three years ago are still on bridging visas having been told that their applications have been rejected because a son in the family has a disability. The emotional and financial consequences for this family of having to rely on handouts from charity and pay for health services that they need to access are substantial. A rejection of their applications based on the disability of one child in the family is preventing them from being able to contribute to Australia.

Cabramatta Community Centre is aware of the need for more services to meet the needs of disabled migrants. Over 30 years, Cabramatta Community Centre has had extensive experience of working with disabled migrants who have not been able to access the services that they require. This has often been because the mainstream disability services do not have the linguistic or cultural capacity to deliver appropriate services. Especially those organisations that rely on volunteers to provide services have often not invested in appropriate training for volunteers to enable them to provide services to culturally and linguistically diverse disabled clients.

A mechanism the government could use for accepting migrants would be to establish a quota of visas that would be made available to people with a disability wanting to travel to Australia. The provision of separate quotas for different levels of disability would help to manage cost on the health and community sector and provide transparency in relation to claims of discrimination for particular types of disability.

Cabramatta Community Centre believes that there needs to be more transparency in relation to the information that is made available to applicants and the public regarding decision making for disabled migrants and refugees. Government provision of information about the number and type of visas granted and refused to disabled migrants and refugees, including the type and severity of disability.

Cabramatta Community Centre does not believe that the weighing of the contributions and costs of a disabled migrant to Australia should be a factor in a visa decision, especially not a disabled refugee or migrant who is found to require protection from Australia. Australia has international responsibilities to provide protection to such an individual and not subject them to further discrimination.

If the government is to assess the contribution that disabled migrants (excluding refugees) can make to Australia, there is a stark difference between the contributions that they can make if they are able to access assistance with their disability as opposed to the contribution they can make if they are not able to access support. The experience that Cabramatta Community Centre has had in assisting migrants with a disability clearly illustrates this. Cabramatta Community Centre provides Complex Case Support funded by the Department of Immigration and Citizenship to humanitarian entrants with exceptional needs through the Fairfield Migrant Resource Centre which is a division of Cabramatta Community Centre. The following are case studies of disabled migrants whose contribution to Australia would differ depending on whether the assessment was made on the basis of the contribution they could make without receiving assistance for their needs or if they received assistance with their needs.

Case Study 1:

'Emil' arrived in Australia in June 2008 with his wife and children. Two months after arriving in Australia, 'Emil's wife evicted him from the family home. At first he slept on the street before he was taken in by a friend. 'Emil' was told by someone on the street he should apply for public housing, but there was a mistake in spelling his name and it was never processed. He also didn't understand that he should apply for priority housing. After 9 months of this, his friend told him he had to leave, and he went back to sleeping under the bridge. He was assisted to go to housing and contact the Homeless Persons Information Centre. At one point, he was told he was found a place in

Parramatta. He said that he didn't have any money and didn't know how to get there, and this was taken to be a "rejection of housing offer" and he slept rough again. He is now been given accommodation in a hostel for a week and needs to demonstrate that he is looking every day. He also has to contact the Homeless Persons Information Centre every day and is expected to accept any offer as an alternative to the hostel.

'Emil' is depressed and reports that he has seen doctors but nothing consistently that could make a concrete difference for him. He was kidnapped in Iraq when he was working as a driver for Coalition forces. He also has body shrapnel (from the Iran-Iraq conflict) that causes him pain and reduces his mobility.

He would benefit from advocacy and support for understanding his physical and mental health needs, attending appointments and regularly taking his prescriptions. He would benefit from torture and trauma counselling. He would also benefit from relationship counselling to restore contact with his children and court support for divorce proceedings. He has not attended English classes due the chaos of his situation.

The Cabramatta Community Centre workers assisting 'Emil' believe that if he was provided with the assistance he needs, he would be able to work and contribute to the Australian community

Case Study 2:

'Lalya' and her family arrived as refugees in 2007. Her husband is an amputee. His body is scattered with shrapnel and he experiences debilitating pain. He has a prosthetic limb but has limited mobility. He also experiences depression and panic attacks. He is on a Disability Support Pension.

'Layla' has her own health issues. She has sciatica and is not managing her pain and therapy due to her anxiety. She is her husband's carer.

'Layla's' family is living in private rental but are unable to afford the rent. The house is not close to amenities and services. 'Layla' applied for priority list with the Department of Housing but was unable to negotiate for the documentation she needs in a timely manner. (Occupational therapy documentation had 18-months waiting list, or \$770, and application expired before she was able to resolve the matter).

'Layla' struggles to manage her finances, and has personal debts.

'Layla' struggles to pay medical and care costs, and to support her husband emotionally. He requires non-PBS medicines. He would benefit from counselling and English classes. She would benefit from support to help her understand the available benefits and subsidies. She and her husband would also benefit from engagement with respite services.

They require strong advocacy to resolve their housing situation.

The client would benefit from engagement with counselling services. She also requires support to manage her own health. She would also benefit from financial counselling services to regain control of the family budget.

The children would benefit from engagement with social, education and health services.

The Cabramatta Community Centre workers assisting 'Layla' and her husband believe that if they were provided with the assistance they need then 'Layla's' husband would be able to assist 'Layla' with raising their children. He would then be making a contribution towards Australian society by ensuring that the children experienced a positive upbringing and 'Layla' would be able to manage her illness thereby reducing future costs on the health budget.

The following is an example of a migrant with an illness who has been able to access the assistance that she needs and is therefore making a contribution to the Australian community by raising her 7 children alone (one of whom also has a serious illness).

Case Study 3:

'Ana' is a single mother with 7 children from Southern Sudan. Her husband was detained and disappeared during the war. 'Ana' and her children fled to Egypt and they spent several years in Cairo waiting for resettlement. She has Hepatitis B and her 5-year-old son has sickle-cell anaemia. She is not literate in English or her own language. She has struggled to negotiate the necessary health services and to understand the necessary management of these conditions. However she has made time to attend English classes and is making good progress and wants to work. In spite of their interrupted education and the years of schooling that they have missed, the children have picked up English quickly and are generally doing well in school. Their teachers report that they are well presented, polite and attentive in class. One of her older sons is doing "legal studies" for the HSC and is excited about attending university. They have joined their local Catholic Church, and fellow members of the congregation have helped the family and are enjoying getting to know them.

'Ana' is contributing to the Australian community, raising her children, providing them with an education and being actively involved in her local community.

Cabramatta Community Centre believes that if the government is to assess the contribution that disabled migrants can make to Australia, they should assess the contributions that they can and do make if they are able to access assistance with their disability. In this way the contributions of people with a disability can be assessed on a more equal basis to the contribution that can be made by people without a disability.

Detention and Immigration system related disability

The government needs to address not only the needs of migrants who arrive in Australia with a disability but there is now a group of refugees in Australia who have disabilities and illnesses as a result of their interaction with the immigration and detention policies of the Australian government. Many of these refugees struggle with the mental health consequences of their experiences of time spent in detention centres. The government clearly has a responsibility to provide these individuals with the support they need to manage their disabilities. Cabramatta Community Centre is currently working with a man who fits this criterion.

Case Study 4:

'Ahmed' first came to the Fairfield Migrant Resource Centre in late 2008 and he was homeless. He had fled Iraq in 2002. He first travelled to Australia by a boat that was intercepted and turned back by the Australian Navy to Indonesia. In the process of turning the boat back to Indonesia, 'Ahmed'

was injured and left permanently disabled. He is now blind and has poor memory function. Between 2003 and 2007, he was in Indonesia. In 2007, he was granted an offshore temporary humanitarian visa and came to Australia. He then heard that his sister and nephew were recently killed in a bombing. His mother was badly injured, and had sought medical treatment in Syria. When he came to us he was attempting to send money home to pay his mother's medical bills.

During this time, 'Ahmed' had become depressed and wasn't sleeping. He hadn't been able to resolve his visa status, and so was only receiving Special Benefit. He also didn't have access to Medicare. He had been referred to many different services but the chaotic nature of his situation meant that he was only following up ones that offered the possibility of raising funds for his mother.

After his full situation became more fully known to his Settlement Grants Program caseworker at Fairfield Migrant Resource Centre, she made a referral to Complex Case Support. Working with 'Ahmed' was a challenge. His physical disability affected his mobility. However, he was also slowed down by the ongoing chaos in his life. 'Ahmed' has now received his permanent residency and is now living in affordable share accommodation with friends that support him. He has received assistance from services to improve his mobility. He is receiving Disability Support Pension but is also looking for work. He has been assisted in finding safer ways to send money home, as well as manage his own budget. He is attending counselling, and also reports that he feels 'lighter' and is sleeping better now that he has his permanent visa.

No service however, is funded to address the underlying cause of his initial financial situation – his mother's health.

'Ahmed' wants to work. He has looked for work in the past. On one occasion he got a job washing dishes. But his blindness meant he was not able to do the job to the satisfaction of his employer and so he lost the job.

If Ahmed can receive the assistance he requires, he would be able contribute to the Australian community.

The health requirement means that disabled refugees who have been assessed as requiring Australia's protection face an additional barrier to accessing the protection to which they are entitled. As a result of this, some families make the difficult decision to leave behind a family member with a disability in order to migrate to Australia. Cabramatta Community Centre believes that Australia should ensure that families are not broken up because of the existing health requirement.

When Australia does accept disabled migrants, they face another additional barrier in the form of the 10 year wait before they can have access to the Disability Support Pension. Cabramatta Community Centre believes that it is cruel to accept disabled migrants into Australia and then require them to wait for 10 years before they can have access to the Disability Support Pension. This requirement should be removed.

Cabramatta Community Centre assists a large number of migrants who have arrived in Australia on a spouse or other visa but in their own right would be eligible for refugee status. These migrants are required to wait 10 years before having access to the Disability Support Pension even though as refugees they would not face this wait. This 10 year wait brings enormous financial and emotional

pressure on them and their families and supporters and it can prevent the individuals, their families and supporters from successfully settling and making a more significant contribution to Australia.

Responses to questions posed on inquiry website

- Is the current process for assessing a visa applicant against the health requirement fair and transparent?

No and the provision of more information about how decisions are made as well as government provision of the number and the type or severity of visas granted and refused to disabled migrants and refugees would improve government transparency on this matter and allow for a more informed critique of government decision making processes. The grants of a quota of visas for migrants with different levels of disability would also improve the current situation.

- What types of contributions and costs should be considered?

All contributions should be considered including contributions such as house work, child minding, child rearing, carer support, activities that enable able bodied family members to work and volunteer work. Consideration needs to be made of the consequences of not providing a visa or services to a person with a disability in relation to both the life of the disabled person and their family members. As the previous case studies and research has shown, not allowing a family to be reunited with family members with a disability can have significant consequences for the remaining members of the family and these consequences can cost the Australian community significantly in terms of services and in some instances security. Family reunion removes the guilt that prevents family members from being able to settle and contribute to Australia.

- How do we measure these?

We are not aware of accurate tools for measuring these contributions.

- Are there additional factors that should be considered?

The aforementioned contributions and costs should be considered. The improvement of the life of the person with a disability that can be provided in Australia should be considered.

- Do you have personal experience of this?

Cabramatta Community Centre has 30 years of experience in assisting clients with these matters.

- What principles should apply to the assessment of visa applications against the health requirement? Should there be exceptions?

Cabramatta Community Centre supports the removal of the health requirement and if the health requirement is not removed, the nature, structure and implementation of it needs to be based on legitimate, objective, transparent and reasonable criteria. Consideration should be made of the importance of family reunion and the contribution of family reunion to improving settlement outcomes for individuals. Consideration should also be made of the social support that is provided through family reunion and the lack of social support that may be available without family reunion.

Recommendations

That the government complies with its international obligations regarding the United Nations Convention on the Rights of Persons with Disabilities

Remove the requirement that disabled migrants must wait 10 years before accessing the Disability Support Pension

Remove the exemption in the Disability Discrimination Act for the Migration Act

The health requirement should be removed and if it is not, the nature, structure and implementation of it needs to be based on legitimate, objective, transparent and reasonable criteria.

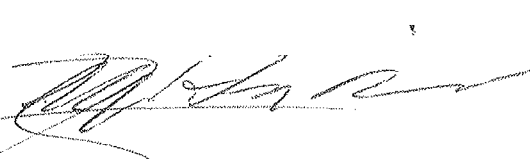
If the government assesses the contributions that can be made by disabled migrants, the government should assess the contributions disabled migrants could make if they were provided with appropriate support for their disability

The government should establish a quota of visas for different levels of disabled migrants coming to Australia

The government should address the needs of migrants/refugees with disabilities that have resulted from their detention or other interactions with the Australian immigration system.

The government should provide information about the number and type of visas granted and refused to disabled migrants and refugees, including the type and severity of disability

The government should provide more information about how visa decisions for disabled migrants and refugees are made to applicants and the public



Julio Gruttulini

President of Cabramatta Community Centre