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

Down Syndrome Victoria

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Down Syndrome Victoria works to empower individuals to achieve a lifetime of meaningful inclusion in the community

Down Syndrome Victoria makes this submission in response to the Joint Standing Committee on Migration Review into the Migration Treatment of Disability.

DISCRIMINATION AGAINST PEOPLE WITH DISABILITY

The Migration Act 1958 is exempt from the majority discrimination provisions under Section 52 of the Disability Discrimination Act 1992 (despite recent amendments that enable complaints to be made under the DDA as to the administrative process concerning visa applications). Down Syndrome Victoria believes the exemption has contributed to ongoing discrimination against people with a disability and their families attempting to migrate to Australia.

Transparency and Equity

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 a health condition or a disability are taken into account as part of the assessment procedure. In practice this means that families with a family member with Down syndrome are routinely refused entry to Australia.

Down Syndrome Victoria believes these assessments appear to be based on archaic notions of intellectual disability rather than a comprehensive individualised assessment process. There is no indication that these assessments are evidence-based or have been tested empirically. The arbitrary nature of these assessments and the lack of standardised guidelines means individual attitudes and prejudices are able to come into play. Discriminatory attitudes aside, the lack of clear and detailed guidelines and benchmarked scales means there is considerable variation in costs attributed to individuals. As a result there is considerable inconsistency and inequity.

For people with Down syndrome, a system based on cost assessment is inherently problematic. All people with Down syndrome are individuals. The only thing all people with Down syndrome have in common is some degree of intellectual disability. But the range of ability and capability amongst people with Down syndrome is enormous. Each person with Down syndrome has their own strengths and weaknesses, their own talents and interests. It is the experience of Down

Syndrome Victoria that standardised assessment tools such as IQ measures do not accurately capture or predict the capabilities of people with Down syndrome. The ability to function independently and actively contribute to the community is rarely captured by measures such as these. People with Down syndrome are consistently capable of greater independence than their scores on these measures suggest. Any assessment process which relies on these tools will therefore result in an underestimation of their ability to function and contribute and an overestimation of their need for government support and assistance. The difficulties presented by attempting to assess the predicted future costs associated with any individual suggests the process is inherently flawed and its value questionable.

The existing subjective, arbitrary and inconsistent system means that some refugees and migrants are granted exemptions under the current arrangements, while others are not. The recent media attention to the Moeller case in Victoria resulted in swift action and a resolution within weeks. In contrast, a family in Western Australia with a child with Down syndrome in almost identical circumstances had been waiting almost six years for a resolution to their application and appeal. Ironically media attention in the Moeller case also resulted in final resolution of their situation. Ministerial intervention as a result of media attention is neither a fair nor sustainable means of operating a functioning system.

Cost/Benefit Analysis

The lack of evidence-based guidelines for the calculation of potential costs means applications for entry to Australia are not consistently assessed. More importantly, no account is taken of the economic and social contribution which migrants and refugees with a disability may make to the Australian community. The absence of assessment of potential benefits suggests an assumption that there are none. This assumption is not only erroneous but offensive to the many Australians with a disability who are currently productive, participating members of the community.

Down Syndrome Victoria believes people with Down syndrome and their families currently make an enormous contribution to Australian life. What often prevents them from making a further contribution are the negative attitudes and outdated stereotypes found in the community. The biggest challenge facing people with Down syndrome is overcoming the limitations placed upon them by others. People with Down syndrome face daily discrimination in all areas of their lives. It is therefore somewhat ironic justifying their exclusion from Australia on the basis of potential cost to the community, when it is community attitudes which limit their ability to participate and contribute.

If the Department of Immigration continues to assess applications for entry to Australia on basis of cost it must not only introduce a transparent, consistent, evidence-based process, it must also introduce a process to take account of the potential contribution a person with a disability and their family may make to the Australian community.

CONFLICT WITH INTERNATIONAL OBLIGATIONS.

Down Syndrome Victoria believes that the migration health test is in conflict with Australia's international obligations.

The Australian Government has ratified the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). The UNCRPD is a powerful document. Signing the Convention creates an unprecedented opportunity to promote participation, empowerment and independence for Australians with a 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 some cases, families with a child with Down syndrome have been advised to leave the child behind when looking to build a new life in Australia. This causes intolerable stress and hardship. In cases involving humanitarian entrants, family members with a disability are forced to remain in extremely vulnerable situations, such as refugee camps or in situations of war or political unrest. 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.

COMMUNITY SUPPORT

Down Syndrome Victoria has evidence of strong community support for change.

As part of its campaign to support Dr Moeller and his family's application for permanent residency in Australia, Down Syndrome Victoria launched a petition to the Department of Immigration on October 30. It states

> *I sign this petition to call for an immediate review of Dr Moeller's application for permanent residency in Australia.*
>
> *I also call on the Government to urgently review Australia's laws and policies regarding immigration applications by people with a disability.*

More than 4000 people signed the petition. The considerable media attention the case attracted also generated extensive debate on media sites, individual blogs and organisational sites. Down Syndrome Victoria received many emails of support from both organisations and individuals who expressed their desire to see both law and practice changed. There is therefore strong evidence that many ordinary Australians no longer regard the practice as acceptable.

RECOMMENDATIONS

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, policies and processes.

Down Syndrome Victoria calls on the Joint Standing Committee on Migration to recommend:

1. 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 a disability;

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

3. 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. That the positive contribution made by people with disabilities and their families be given full consideration within the migration application and review process.

5. That, if all other eligibility criteria are met, disability should not be grounds for exclusion to Australia.

ATTACHMENT A

Down Syndrome Victoria

Down Syndrome Victoria is the state-wide peak membership organisation representing individuals with Down syndrome and their families. Down Syndrome Victoria is a not-for-profit organisation established in 1978 to provide support, encouragement, information and resources to people with Down syndrome, their families and the broader community.

Down Syndrome Victoria is a whole-of-life service offering:

- Personal support and information for families, especially when a new baby is born;
- Advocacy, information and support for adults with Down syndrome;
- An education support service to assist students with Down syndrome and their teachers in mainstream schools;
- Peer support groups around Victoria;
- Annual family fun day and other events;
- Conference and education sessions;
- A quarterly journal;
- Information and professional development for health and education professionals;
- A library of Down syndrome specific resources.

Down Syndrome Victoria is an active member of the Down Syndrome Australia network of state associations. Down Syndrome Victoria relies on public and private sector support to fulfil its mission of empowering individuals with Down syndrome to achieve a lifetime of meaningful inclusion in the community.

About Down syndrome

Down syndrome is the world's most common chromosome disorder and cause of intellectual disability – it is not an illness or disease. It occurs at conception in one of every 700 to 900 births worldwide and affects people of all ethnic and social backgrounds.

The human body is made up of millions of cells, and in each cell there are 23 pairs of chromosomes – or 46 chromosomes in every cell. Down syndrome is caused by the occurrence of an extra chromosome, chromosome 21, hence the name Trisomy 21. Therefore, people with Down syndrome have 47 chromosomes in their cells instead of 46. This results in a range of physical characteristics, health and development indications and some level of intellectual disability. Down syndrome is usually recognisable at birth and confirmed by a blood test.

Down syndrome affects, but does not determine development. People with Down syndrome are each as unique as any other person, with their own talents, abilities, thoughts and interests. Everyone with Down syndrome experiences some delay in areas of their development, and some degree of learning disability. However, this will vary significantly from one individual to another, and what happens after birth will be far more important in shaping the outlook for any individual with Down syndrome than the occurrence of an extra chromosome at conception.