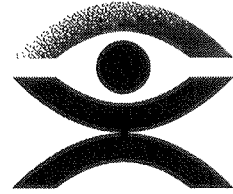


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Blind Citizens Australia



# Inquiry into immigration treatment of disability

28 October 2009

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Joint Standing Committee on Migration  
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## **About Blind Citizens Australia**

Blind Citizens Australia is the peak national representative organisation of people who are blind or vision impaired. Our mission is to achieve equity and equality by our empowerment, by promoting positive community attitudes, and by striving for high quality and accessible services which meet our needs. As the national peak body we have over 3100 individual members, 15 branches nationwide; in metropolitan, regional and rural locations and 13 affiliate organisations that represent the interests of Australians who are blind or vision impaired.

As such, it is important for Blind Citizens Australia to advocate for equality in areas of community participation and social inclusion for all Australians who are blind or vision impaired.

Blind Citizens Australia is funded by the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) to provide policy advice to the Australian Government and other agencies relating to people who are blind or vision impaired.

## **Background**

Blind Citizens Australia is pleased to have the opportunity to participate in this important review of the Australian *Migration Act* (Act) and highlight what we believe to be the negative impact that the Health Requirement of the Migration Act (Health Requirement) has on potential migrants and refugees with disability.

Blind Citizens Australia understands that in order to responsibly protect our national interest and national borders, Australia must have strong, robust and humanitarian migration policies. We also understand that in order to have this national security, it is essential that the migration policies allow Australia to select migrants that will enhance the fabric of Australian society, not only in economic or developmental areas, but also in areas of culture, family, society and diversity. We do however argue that in order to facilitate a strong and robust migration policy it is essential that the process be transparent and above all humanitarian. Any Australian migration policy that discriminates against certain groups of individuals, who would otherwise qualify for Australian visas and because of disability falls outside of the rule of international humanitarian law and the human rights conventions that Australia has adopted.

We are hopeful that this review will address the direct and indirect discrimination that we see the current interpretation of the Act having on people with disability, particularly potential migrants and refugees who are blind or vision impaired. We are especially concerned by the fact that the Australian Migration Act falls outside of the Commonwealth *Disability Discrimination Act 1992 (Cth)* (section 52b) and, by way of the interpretive declaration, outside positive protections mandated by the recent adoption of the *United Nations Convention on the Rights of Persons with Disability (Cth)* and its optional Protocol.

## **Discussion**

As noted above Blind Citizens Australia understands the need of all nations to have migration policies that protect their national interests and borders and which allow the government to decide who can enter their country.

Australia is a nation that has been built on the back of migration, with nearly seven million migrants making Australia their new home since the mid last century. Arguably, in international terms Australia's current migration policy is one of the best. Our policy for migration, both voluntary and humanitarian, serves us well and on the whole works in the way it is intended. We have a relatively open policy regarding the migration of skilled migrants, their families, and reunification of families, international students, and importantly a relatively generous quota for humanitarian refugees.

Immigrants have participated in the building of the Australia we live in today; one of the world's leading democracies. We have a wealth of cultural, social, educational, economic and diverse value as a result of having a multi-cultural society.

By way of the recent signing of the United Nations Convention on the Rights of Persons with Disability (Cth) (UNCRPD) and ratification of it's optional Protocol, Australia has taken another step forward from it's earlier incorporation of the Disability Discrimination Act (Cth) DDA (1992) in understanding disability as a social rather than a medical construct. As such Blind Citizens Australia is strongly opposed to the declarative interpretation that Australia has included in it's adoption of the UNCRPD and the optional Protocol, as the declaration relates to migration policy and

the continued exclusion of the migration act from the DDA (1992). If the Australian government is to understand disability in the Social model, which is inferred by our adoption of the UNCRPD and other international human rights documents, it is necessary to bring all Australian laws and regulations in line with the understanding of positive rights with all people as being treated equally without discrimination, this must include policies on migration.

In his recent speech at the 2009 Blind Citizens Australia National Convention, the Honourable Bill Shorten MP, Parliamentary Secretary for Disability, referred to blindness as being an information disability rather than a physical disability. This definition is in line with the commonly accepted understanding of blindness or vision impairment as being a social rather than a medical/welfare issue. When people who are blind or vision impaired have access to the information that they need to live their lives productively and independently, they will not be anymore likely to need government support or assistance than any other group of Australian society.

Blind Citizens Australia believes that the current application of the Health Requirement not only discriminates against people with disability but additionally deprives the Australian community of the economic, social and cultural participation and contributions from talented migrants and refugees who are denied visas on the reason of disability.

A recent example of how the current interpretation of the Act does not serve Australia's best interest is the case of Dr Siyat Hillow Abdi, a Blind Citizens Australia member. Dr Abdi who has been blind since birth was denied a skilled migrant visa after completing his Doctorate in Disability studies at Flinders University. Dr Abdi was the first teacher who is blind

to be registered as a teacher by the South Australia Teachers Registration board yet under the application of the Health Requirement of the Act Dr Abdi does not qualify for Australian residency. Clearly people like Dr Abdi have the potential to add to the social, cultural, educational and economic value of the vibrant and diverse fabric that is Australia.

As is clearly stated in the joint position statement that was issued by a wide representative group of Australia's Disability peak organisations, Blind Citizens Australia sees the interpretation of the Health Requirement as being indisputably discriminatory towards potential migrants with disability. This discrimination is in complete contradiction to the Australian values espoused in the Department of Immigration and Citizenship booklet *Life in Australia*. This booklet is required reading for all potential migrants and in its opening paragraph states "Australian values include respect for the equal worth, dignity and freedom of the individual..." Given that this is one of our foremost values as a nation, it is unacceptable that the migration act is exempt from this inherently Australian value.

Blind Citizens Australia also argues that the application of the Health Requirement as a way of denying migrants with disability, who would otherwise be eligible for Australian visas, is in direct contravention of the UNCRPD, Article 18, *and Liberty of movement and Nationality*. Whilst the Act does not specifically state disability as an exclusionary criterion, the interpretation of the Act, as informed by the *Migration Regulations 1994(Cth)*, leads to the Health Requirement being the final determinant of an applicants allocation of an Australian visa. We believe that the current application of the Health Requirement as applied to individual migrants, or members of a migrants family, with

disability, not only contravenes the stated values of Australian society, but is shortsighted, based in an outdated understanding of disability, and above all ignores the potential of persons with disability to contribute in all aspects of Australian community, society and economic life.

## **Case study**

Anita and her husband immigrated to Australia in 2005 with their three daughters, one of their daughters, Lucy, is blind. The family was initially denied residency because of Lucy's blindness. After much stress and having spent several years in Australia awaiting the outcome of their residency application, Anita and her husband were advised to apply individually for residency, which they have since done and been granted. Their two older daughters have also made applications for residency on their own behalf. Anita's youngest daughter, Lucy was granted a six-month student visa at a cost of \$5500 and worked in a call-centre for the maximum hours per week allowed on a student visa. The family is unable to continue to pay \$11,000 per year for Lucy to stay in Australia as a student, and consequently the family has been split up as a result of the Health Requirement. Lucy has had to return to her country of birth and has been living alone for the past three years.

This is a stark example of how the current interpretation of the Act discriminates against potential migrants with disability, clearly Lucy was not a burden on the state as she was able to work while on a student visa, the contributions of the other members of Lucy's family were considered to be significant to Australia by way of their being granted residency, but the familial ties, social and cultural contributions of the entire family were not considered as



important to our national interest as was the improbable potential economic cost of an otherwise qualified blind person. This application of the Act, whilst unarguably within the current migration guidelines, devalues not only the contributions of families and individual migrants and refugees with disability, but it also undermines the value of all Australians who are blind or vision impaired.

As a nation that prides itself on diversity and community life, with a current government that espouses social inclusion and is working in many areas to strengthen the rights and inclusion of Australians with disability, it is unacceptable that we are willing to discriminate so freely and unquestionably against potential migrants and refugees who have disability.

Blind Citizens Australia sees this inquiry into the application of the Health Requirement under the Migration Act 1958(Cth), as indication of growing public concern that there is need for change in order to fulfil our international human rights commitments and grow the social inclusion values that the Australian community embraces. In response to the recent media attention highlighting the cases of potential migrants such as Dr Abdi, there has been an increased public discussion around the validity of our current migration policies as they relate to qualified migrants living with disability. In response to an overwhelming call for support of Dr Abdi's case from the Blind Citizens Australia membership, we wrote to Senator Chris Evans, Minister for Immigration and Citizenship, outlining our concerns and urging the Minister to intercede on Dr Abdi's behalf by invoking his public interest power under section 417 of the Migration Act 1958.

Many members of Blind Citizens Australia and the wider Australian community of people who are blind or vision

impaired, participate in all aspects of Australian community and public life; we have members who are University Dean's, Government Agency Commissioners, Lawyers, Psychologists; people who are blind or vision impaired hold jobs in any number of fields. In general, people who are blind or vision Impaired are found in all areas of our communities making positive contributions big and small on a daily basis.

### **Case study**

Robert, who is blind came to Australia in 2006, he is a New Zealand citizen and consequently is allowed to work in Australia. In order to gain further career credentials, Robert enrolled in Sydney University as a fee paying postgraduate student and completed a Masters degree, with Merit. Whilst Robert is eligible to work and has a rewarding role in the Community Service sector, he would be unable to apply for Australian citizenship given the application of the Health Requirement. Robert contributes to Australian society in a myriad of ways from financial, social, community work and diversity; however he is unable to fully participate as an Australian resident. Robert's blindness is a result of a hereditary condition called Retinitis Pigmentosa, a condition that is not curable nor does it require ongoing medical attention, as such Roberts's economic burden on the Australian health system is no more than any other Australian resident. Robert uses a dog-guide for independent mobility, a service which has been provided by the charitable organisation Guide Dogs NSW/ACT. The economic costs to Australian society as a result of Robert residing in Australia pale in comparison to the value Robert adds to the community and social fabric of his world.

As shown in the examples of Dr Siyat Hillow Abdi and Robert, migrants who are denied Australian visas solely on

the fact of disability deprive all Australians a wealth of knowledge, diversity and economic value.

The current Act and its interpretation of the “national interest” is stated as “provision of the health care or community services relating to the disease or condition would be likely to

- a) Result in a significant cost to the Australian community in the areas of health care and community services; or
- b) Prejudice the access of an Australian citizen or permanent resident to health care or community services;

regardless of whether the health care or community services will actually be used in connection with the applicant.”

While Blind Citizens Australia sees the need for border security and migration policies, we argue that the interpretation of the term “national interest” is discriminatory, outdated and based in early 20<sup>th</sup> Century understandings of disability and fear. This interpretation in the Act has not changed since it’s incorporation in 1901 and whilst the word disability does not occur in the Act in relation to the Health Requirement, the understanding that the Act is in and of itself discriminatory is not in question. Were the Act not a relic of the past White Australia policy and interpreted in a way that continues to discriminate, it would not be exempt from the DDA (1992) and covered by the UNCRPD interpretative declaration.

Using the Health Requirement as a defining criterion for issuance of Australian visas means that

- migrants and refugees with disability are routinely refused entry to Australia as a result of an assessment

of the potential health costs associated with their 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.

## **Recommendations**

Blind Citizens Australia makes the following recommendations to the Joint Standing Committee on Migration as positive steps to ameliorate the systemic discrimination that results from the current interpretation of the Migration Act and its Health Requirement as applied to potential migrants and refugees with disability.

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 disability
2. Consideration of all social, cultural and diversity contributions that migrants and refugees with disability can make to Australian community when evaluating residency applications
3. Improved consistency, transparency and administrative fairness for migrants and refugees with disability applying for an Australian visa

4. Withdrawal of the interpretive declaration on the United Nations Convention on the Rights of Persons with Disabilities regarding the health requirements for potential migrants and refugees with disability.

## **Conclusion**

Blind Citizens Australia as already stated, understands the need for strong migration policy, however we conclude that the current Australian Migration Act discriminates both directly and indirectly against potential migrants and refugees with disability, through the implementation of the Health Requirement.

The current application of the Health Requirement as a safeguard of the national interest does not consider the inherent value of all people, and in particular discounts the inherent value of people living with disability. As we have stated above, Blind Citizens Australia sees this as being contrary to the values enshrined in both the UNCPRD and the DDA (1992).

This present application of the Health Requirement places an individual's entire value on the potential cost burden that may or not be placed on the Australian community, without consideration of the individual's ability to contribute to all areas of Australian society. This interpretation of a person's value undermines all Australians living with disability.

Blind Citizens Australia appreciates the Committee's undertaking of this review and we welcome the opportunity to appear at the public hearings to provide further information about this important issue.