

# Joint Statement - Response to Enabling Australia

24 June 2010

## **Enabling Australia NOW, no ifs or buts – Migration Report offers opportunity for the Gillard Government to effectively change outmoded legislation**

Today, the undersigned organisations representing large sections of the Australian public and electorate have welcomed the understanding and knowledge reflected in the report *Enabling Australia, Inquiry into the Migration Treatment of Disability* released by the Joint Standing Committee on Migration this week.

However, the recommendations are not going far enough and we call on the new Gillard Government to use the opportunity now to end the archaic and absurd situation of excluding people with disability from Australia.

We are calling on the Government and the opposition parties to utilise the Enabling Australia Report as a step towards key changes to Australia's migration processes in the true spirit of the UN Convention on the Rights of Persons with Disabilities

1. Full application of the Disability Discrimination Act 1992 to the Migration Act 1958 health assessment.
2. 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.

We appreciate the words of the Inquiry Chair Michael Danby in stating that, *'the Inquiry has found that the current Health Requirement reflects old-fashioned approaches to disability in particular and so unfairly discriminates against those who have disability.'* (Enabling Australia, p.x)

While we support the intentions of the report's recommendations we believe that they are not reflective of the findings of the Inquiry and it is questionable and disappointing that the recommendations have been limited to administrative changes.

Improved consistency, transparency and administrative fairness for migrants and refugees with disability applying for an Australian visa is very important and it is the strength of the report's recommendations. Yet, the recommendations fall short in involving Disabled Peoples Organisation in any reviews as mandated by the UN Convention on the Rights of Persons with Disabilities (UNCRPD).

### UNCRPD Article 4, point 3

In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.

The discriminatory nature of the current legislation and practices demand a full application of the Disability Discrimination Act 1992 to the Migration Act 1958.

We therefore commend and endorse Senators Sue Boyce and Sarah Hanson-Young on their additional recommendation to such effect.

We believe that the application of the DDA is in accordance with the UNCRPD.

UNCRPD Article 4, 1b)

To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities;

The recommendation that the current review to amalgamate Australian discrimination law specifically focus on the question of the Migration Act exemption to determine its legal implications for migration administration and conduct expert consultations on its impact on people with a disability is disappointing. This recommendation appears to be a way of avoiding the critical question of discriminating against people with disability.

We commend Senators Sue Boyce and Sarah Hanson-Young on their additional comments on the social model of disability and the need for this model to consistently replace the outmoded medical model.

As the Report avoids the solution of ending any forms of discrimination with the utilization of the DDA the recommendations end up restricted in their administrative nature.

Therefore, instead of removing the cost assessments of visa applicants with disability it is recommended that the threshold be expanded.

While this is a positive step towards addressing discriminatory aspects of migration policy the recommendations are not sufficient.

Equally, positive steps are recommendations around allowing for consideration of social and economic contribution, separating disability from disease, tailoring of decisions to individual (rather than hypothetical) circumstances, taking into account whether individuals will actually use health services, recognition of the contribution of carers, and updating the health criteria to match 'contemporary' community expectations.

The effectiveness of the recommendations if implemented will need to be monitored carefully in regards to the actual outcomes of visa applications.

The Report is silent on how this will be achieved and how people with disability and their organizations can be part of this.

Similarly, welcomed are the recommendations around improved transparency and administrative fairness of migration decisions, including providing clearly available guidelines on how health costs will be assessed; providing more information to applicants on how they were assessed; clarity on roles of medical officer and Immigration Minister in relation to waivers; review of the "one fails all fails" rules and conditions for short stay family visas.

Recommendations for increased fairness for refugees, including granting health criteria waivers to offshore refugee applications (including extended family members) and a priority visa for people who have sustained disability as a result of torture or trauma are viewed positively.

We view cautiously the recommendation for a voluntary bond system for migrants to offset potential health costs.

This will effectively benefit affluent individuals and families, and although the committee state “that any introduction of such a bond or other scheme should not prejudice those applicants that are unable to provide a surety,” the reality will probably be that this will favour higher income migrants. The inability of the existing legislation to recognise the capacity of individuals to meet their own costs is a problem area, at the same time safeguards need to be developed to prevent the prejudice as outlined above.

While the report contains a limited discussion on the ten year disability support pension waiting period the recognition of inconsistent eligibility to social security benefits is echoed.

There is now an opportunity for the Government and the opposition parties to embrace the social model of disability and act in the spirit of the UN Convention on the Rights of Persons with Disabilities.

Not to do so will go down as a failure of the new Gillard Government and expose as rhetoric its statements on fairness and social inclusion.

This statement is signed and endorsed by the following organisations.



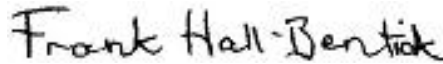
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This statement is further endorsed by:  
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