**ISSUE: Discrimination against migrants and refugees with disability**

(See Article 18 on page 13 of DPO Australia Submission to the CRPD)

**Background**

People with disability, and families who have members with disability, consistently have their visa applications denied because they are unable to meet the strict health requirement under the *Migration Act 1958* (Cth).[[1]](#endnote-1) An individual or family could have been living in Australia for many years, contributing to the economic and social life of the community, but they will be deported because of a failure to meet the health requirement.[[2]](#endnote-2)

The health requirement means that the visa applicant must be free of a ‘disease or condition’, which would cost a significant amount, or prevent access to health care for Australian citizens. It is extremely difficult for children and adults with disability to meet the health requirement given the focus is exclusively on the perceived economic cost of the applicant’s ‘condition’ and the perceived ‘burden’ this will place on public health and community resources. There is no recognition of the economic, social and cultural contributions of people with disability and their families. The only recourse for people with disability, and families who have members with disability is to seek Ministerial intervention. This relies on significant lobbying, public pressure and petitioning to achieve, and often does not result in a fair outcome.[[3]](#endnote-3)

While the health requirement does not, on its face, discriminate against persons with a disability, the provisions indirectly discriminate against people with disability. The Joint Standing Committee on Migration’s Inquiry into the Migration Treatment of Disability (*Enabling Australia*) stated that the health requirement is discriminatory in that it sets ‘standards of health requirement which the disabled do not or cannot meet’.[[4]](#endnote-4) The discriminatory effect of the health requirement on migrants and refugees with disability has also been noted by the Special Rapporteur on the human rights of migrants.[[5]](#endnote-5)

The Australia Government has made some amendments to its visa policy processes and requirements for people with disability, but key legislative and policy reform has not been undertaken. This includes reforms recommended by the Committee on Economic, Social and Cultural Rights to amend the Migration Act 1958 (Cth) and the Disability Discrimination Act 1992 (Cth) “to ensure that the rights to equality and non-discrimination apply to all aspects of migration law, policy and practice.”[[6]](#endnote-6)

The Australia Government has also not acted on the recommendation from the Committee on the Rights of Persons with Disabilities to withdraw its Interpretative Declaration to CRPD Article 18, which in effect means that Australia maintains the strict health requirement in law and policy.[[7]](#endnote-7)

**Proposed Questions**

**Please update the Committee on measures taken to improve consistency, transparency and administrative fairness for migrants and asylum seekers with disability applying for an Australian visa, and in particular, compliance with obligations under the Convention, including measures taken to amend the health requirement in the *Migration Regulations 1994 (Cth)*.**

Please provide disaggregated information on the number of people with disability who have been denied immigration visas for reasons related to the health requirement since 2013.

Please indicate whether Australia intends to remove its Interpretative Declaration to CRPD article 18. If not, please provide reasons for this.

**Endnotes**

1. The health criterion applies to all visas for permanent entry into Australia. [↑](#endnote-ref-1)
2. See e.g. See e.g. Rajan, S. (2016), ‘Yet another example of disability discrimination in Australian Immigration’, *The Stringer*, Available at:<http://thestringer.com.au/yet-another-example-of-disability-discrimination-australian-immigration-12070> ; David Ellery, ‘Canberra family split as right to live Australia revoked’, *The Canberra Times,* 19 April 2016, <http://www.canberratimes.com.au/act-news/watson-family-split-as-right-to-live-in-australia-is-revoked-20160415-go7nyb.html> ; *SBS Australia*, ‘Blind Kenyan Father ordered to Leave Australia’, 18th August 2015, <http://www.sbs.com.au/news/article/2015/08/18/blind-kenyan-father-ordered-leave-australia> [↑](#endnote-ref-2)
3. See e.g. Nasrin Haque, ‘Please do not deport daughter of 2 full-time doctors because of her developmental delay, Petition to the Hon. Peter Dutton, MP, <https://www.change.org/p/department-of-immigration-and-border-protection-please-do-not-deport-daughter-of-2-full-time-doctors-because-of-her-developmental-delay> [↑](#endnote-ref-3)
4. Australian House of Representatives, Joint Standing Committee on Migration (2010), *Enabling Australia: Inquiry into the Migration Treatment of Disability,* 177 noting the opinion of Professor Ben Saul. [↑](#endnote-ref-4)
5. Francois Crepeau, ‘Report of the Special Rapporteur on the human rights of migrants of Australia and the regional processing centres in Nauru’, 35th sess, Human Rights Council, Agenda item 3, UN Doc A/HRC/35/25/Add.3 (24 April 2017) [92]. [↑](#endnote-ref-5)
6. Committee on Economic, Social and Cultural Rights, ‘Consideration of Reports Submitted by States Parties under Articles 16 and 17 of the Covenant, Australia, UN Doc E/C.12/AUS/CO/4, 42nd sess, 12 June 2009, para 16. [↑](#endnote-ref-6)
7. Committee on the Rights of Persons with Disabilities, ‘Concluding observations on the initial report of Australia, adopted by the Committee at its tenth session (2-13 September 2013), UN Doc CRPD/C/AUS/CO/1, 21 October 2013, paras 8-9. [↑](#endnote-ref-7)