Australian Government

Department of Immigration and Multicultural and Indigenous Affairs

Submission on *Review of the* Disability Discrimination Act *1992 - Draft Report*

There are two draft recommendations in the *Review of the* Disability Discrimination Act 1992 - *Draft Report* (Draft Report) to which DIMIA responds. These are Draft Recommendation 5.7 and Draft Recommendation 10.4.

Draft Recommendation 5.7

Draft Recommendation 5.7 of the report found that:

> *People with disabilities from Indigenous or non-English speaking backgrounds, and those living in regional areas face multiple potential sources of disadvantage. However, reasons for this often relate to factors other than disability discrimination, such as race discrimination, language barriers, socioeconomic background and remoteness.*

In June 1998, the Australian Government launched the *Charter of Public Service in a Culturally Diverse Society* (the Charter). This provides a nationally consistent approach to ensuring government services are delivered in a way that is sensitive to the language and cultural needs of all Australians. All Commonwealth Departments and agencies report against the Charter's performance indicators.

The Charter places the emphasis on building cultural diversity considerations into the strategic planning, policy development, budgeting and reporting processes of government service delivery, irrespective of whether these services are provided by government agencies, community organisations or commercial enterprises.

The Charter requires that Australian Government agencies provide equitable access for their services for culturally and linguistically diverse clientele. The Charter is underpinned by seven principles: access, equity, communication, responsiveness, effectiveness, efficiency and accountability. These principles are designed to ensure that all government service providers have the capacity to deliver client services which are culturally appropriate, accessible, consumer-oriented and effective and address issues of double disadvantage.

Agencies need to be aware of the possible double disadvantage that could be faced by disabled persons from culturally and linguistically diverse backgrounds in obtaining government services.

Establishing the extent to which the Charter requirements had been met in the provision of disability services would need to be an integral part of addressing all of the terms of reference of the Review of the *Disability Discrimination Act 1992.*

Draft Recommendation 10.4
Draft Recommendation 10.4 is that

> *The exemption of the* Migration Act *1958 in the* Disability Discrimination Act *1992 (s.52) should be amended to ensure it:*
>
> - *exempts the areas of the* Migration Act *and regulations that are directly relevant to the criteria and decision-making for Australian entry and migration visa categories but*
>
> - *does not exempt more general actions done in the administration of Commonwealth migration laws and programs.*

Close consultation with DIMIA should occur in amendment of s52 of the *Disability Discrimination Act 1992* (DDA).

The Draft Report confirms that those areas of the *Migration Act 1958* (Migration Act) and regulations that are directly relevant to the criteria and decision-making for Australian entry and migration visa categories should remain exempt from the *Disability Discrimination Act 1992* (DDA). This is supported by DIMIA and considered important, while acknowledging that some respondents opposed this view. It may be helpful to explain that Australia's immigration laws do not automatically exclude persons with disabilities from visiting or migrating to Australia.

Australia's migration laws do, nevertheless, allow a visa to be refused where a person's condition is likely to result in a significant cost to the Australian community or prejudice the access of Australian citizens or permanent residents to health care or community services. This is important in setting a balanced migration program that provides for both skilled migration and family reunion in the national interest.

Every applicant for a visa that permits the holder to travel to and enter Australia must meet a health criterion. Essential elements of these health criteria are that:

- the applicant must not have tuberculosis;

- the applicant must not have a disease or condition that is a threat to public health in Australia or a danger to the Australian community; and

- if the applicant has a disease or condition that requires treatment, the cost of that treatment should not result in a significant cost to the Australian community or prejudice access to health care or community services of Australian citizens or permanent residents.

Each case is considered on its merits and, in some circumstances, depending on the particular health criterion, it is possible for the Minister to waive the last requirement (to do with the cost of potential treatment).

Thus, people with disabilities can and do migrate to Australia and Australia enjoys their contribution. Where a disability nevertheless gives rise to substantial costs potentially borne by the Australian community, then the weight of the imposition on the Australian community must be considered. Decisions to refuse applications on the grounds of health are not made lightly, with applications involving the spouse, children, interdependent partners of Australians, or humanitarian visa applicants, provided with the opportunity for waiver consideration.

Australia would find it difficult to maintain and justify a generous migration program for family reunion and humanitarian entry if there were a part of the intake that attracted an extremely disproportionate concentration of resources. Such resources are intended for the health and welfare of all Australians.

The Draft Report discusses the sorts of administrative actions that are carried out under the Migration Act and the regulations. They include "... the provision of information, the operation of detention centres and the provisions of language and other migrant services." DIMIA notes that the provision of English language courses is the subject of the *Immigration (Education) Act 1971* and the *Immigration (Education) Charge Act 1992,* neither of which are presently exempted from the provisions of the DDA (as only the Migration Act and regulations made under that Act are exempted under s52 of the DDA).

Further, issues associated with provision of appropriate disabled facilities at detention centres are addressed through adherence with legal advice in respect of the effect of s52 of the DDA on the provision of detention services. Legal advice received has indicated that s52 does not exempt DIMIA from complying with the DDA in respect of premises it occupies. That is, DIMIA is required to provide appropriate disabled facilities at detention facilities.

While it is accepted that general administrative actions taken under the Migration Act and regulations should be separated in principle from those areas of the Act that are directly relevant to the criteria and decision-making for Australian entry and migration visa categories, and not exempted from the DDA, particular care would be needed in the separation. DIMIA would like full consultation on rephrasing of s52 because ’operations’ often flow, out of ’administration’ and are closely entwined. The Migration Act operations must not be fettered.