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Dear ARLC

Review of equal recognition before the law and legal capacity for people with disability

I write to make a submission to this inquiry. My submission consists of the attached article: Ben Saul, 'Migrating to Australia with Disabilities: Non-Discrimination and the Convention on the Rights of Persons with Disabilities' (2010) 16 *Australian Journal of Human Rights* 63-104.

The article argues that the 'health test' in Commonwealth migration law, as applied to potential migrants and refugees with disabilities, involves unlawful discrimination and a breach of the equal protection obligation under the Convention on the Rights of Persons with Disabilities and the International Covenant on Civil and Political Rights.

Health requirements under migration law, as long as they are carefully crafted, are permissible in principle under international human rights law, to legitimately safeguard scarce medical resources. The current Australian health test, however, is not sufficiently restricted so as to comply with international law.

The article shows that the health test is problematic because: (1) its threshold of application is too low; (2) the quantification of disability costs is flawed; (3) the capacity of a person to pay for treatment is not taken into account; (4) the social and economic contributions of a migrant with disabilities (and their family) are not considered; (5) the evidentiary requirements are inadequate; (6) it adversely affects the right of family unity; and (7) it is not consistent with international refugee law.

The health test results in the routine, arbitrary exclusion of migrants with disabilities from Australia, in a manner not justified by any legitimate public policy concerns. The health test also embodies an outmoded 'medicalised' policy approach to disabilities, in which persons with disabilities are perceived as an economic burden and object of charity, rather than having their inherent worth and human dignity valued and their contributions to social diversity recognised.

Yours sincerely

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