

16 January 2014

Ms Sabina Wynn  
Executive Director  
Australian Law Reform Commission  
GPO Box 3708  
SYDNEY NSW 2001

via email: [info@alrc.gov.au](mailto:info@alrc.gov.au)

Dear Ms Wynn

**Review of Equal Recognition Before the Law and  
Legal Capacity for People with Disability**

I write to provide an initial submission to the Australian Law Reform Commission's *Review of Equal Recognition Before the Law and Legal Capacity for People with Disability*.

FECCA is the national peak body representing Australians from culturally and linguistically diverse (CALD) backgrounds. FECCA provides advocacy, develops policy and promotes issues on behalf of its constituency to the Australian Government and the broader community. FECCA supports multiculturalism, community harmony, social justice and the rejection of all forms of discrimination and racism so as to build a productive and culturally rich Australian society. FECCA's policies are designed around the concepts of empowerment and inclusion, and are formulated with the common good of all Australians in mind.

FECCA has a dedicated Disability Advisory Committee comprising committed disability advocates, many of whom are CALD people with disability themselves, and chaired by a FECCA Executive member. The Disability Advisory Committee collaborates with key stakeholders, including the National Ethnic Disability Alliance (NEDA), to advance its work.

I write specifically to urge the Commission to include within its scope areas of Australian law that discriminate against migrants with disability.

The Migration Health Test

Australia applies a health test under the *Migration Act 1958*. The *Migration Act 1958* is exempt from the majority discrimination

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provisions under s.52 of the *Disability Discrimination Act 1992*. While the Australian Government has committed to a reform process in order to ensure fairer outcomes for people with disability, the failure to apply the *Disability Discrimination Act 1992* fully to migration assessment means that migrants may be rejected on the basis of their disability or health condition.

Australia is at odds with its international obligations in relation to the application of the migration health assessment. In June 2009, the United Nations Committee on Economic, Social and Cultural Rights recommended that “*the Migration Act 1958* and the *Disability Discrimination Act 1992* be amended to ensure that the rights to equality and non-discrimination apply to all aspects of migration law, policy and practice”.

Australia made a declaration upon ratification of the *United Nations Convention on the Rights of Persons with Disabilities* (UN CRPD) that the Convention did not “impact on Australia's health requirements for non-nationals seeking to enter or remain in Australia, where these requirements are based on legitimate, objective and reasonable criteria.” In October 2013, the United Nations Committee on the Rights of Persons with Disabilities recommended that Australia “review its interpretative declarations ... with a view to withdrawing them”.

FECCA strongly urges the Australian Law Reform Commission to address the Migration Health Test as part of its *Review of Equal Recognition Before the Law and Legal Capacity for People with disability*. FECCA also supports the submission made by Professor Ben Saul, University of Sydney, which also addresses the migration health assessment.

### The Ten Year Qualifying Residence Period for the Disability Support Pension

While most social security payments become available to migrants after two years, a ten year qualifying residence period applies for the Disability Support Pension. This qualifying period imposes severe financial hardship on migrants who are unable to find suitable employment, or are unable to work. In so far as the Disability Support Pension is often a prerequisite for eligibility for disability support programs, the ten year qualifying residence period potentially excludes migrants with disability from access to disability support that they would otherwise be entitled to.

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The ten year qualifying residence period for the disability support pension is not compatible with Australia's international obligations. The 2008 NEDA report *Refugees and Migrants with Disability and the United Nations Convention on the Rights of Persons with Disabilities* released legal advice which found that "the 10 year waiting period for the Disability Support Pension interferes with human rights to an adequate standard of living and to social protection under Article 28 of UN CRPD, the right to health under Article 25 of UN CRPD and may in certain circumstances be contrary to inhuman and degrading treatment provisions in Article 15 of UN CRPD".

FECCA strongly urges the Australian Law Reform Commission to address the ten year qualifying residence period for the disability support pension as part of its *Review of Equal Recognition Before the Law and Legal Capacity for People with Disability*.

I hope you will favourably consider the issues raised in this submission. For further information, the FECCA Office can be contacted on (02) 6282 5755. FECCA is planning a more in-depth response to this inquiry after the release of the Australian Law Reform Commission's discussion paper in April 2014.

Yours sincerely

*Zeliha Iscel*

Zeliha Iscel  
FECCA Disability Chair

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