

7 November 2012,

Youth Justice (Boot Camp  
Orders) & Other Legislation  
Amendment Bill 2012  
Submission 026

To Whom It May Concern:

We write on behalf of New Zealand citizens residing in Qld to object to the proposed amendments that have been submitted in the Youth Justice (Boot Camp Orders) and Other Legislation Amendment Bill 2012 - ~~Amendment~~ Amendment of Anti-Discrimination Act 1991 (the Amendment).

These proposed amendments are a direct affront to the objective of the Anti-Discrimination Act 1991, which is to 'promote equality of opportunity for everyone by protecting them from unfair discrimination in certain areas of activity...'

The Anti-Discrimination Act 1991 further endorses their intent for equality by referring to the ratification by the Commonwealth of the following treaties, to name a few:

- the International Convention on the Elimination of All Forms of Racial Discrimination
- the Convention on the Rights of the Child
- the Declaration on the Rights of Mentally Retarded Persons
- the Declaration on the Rights of Disabled Persons.

Protecting the rights of the most vulnerable should not be so easily withdrawn based on the 'scarcity of public resources'. JP Bleijies' (Kawana LNP) reasoning is due to following:

- *public resources are finite.*
- *The exemption will ensure that government entities can adopt and implement assistance policies based on citizenship or residency without being exposed to litigation which would further deplete scarce public resources.*

The amendments are a response to the recent case of Campbell vs State of Queensland QCAT 2012 and their subsequent settlement. Ms Campbell (a child), who is permanently residing in the State of Queensland, was denied disability services

because she is a New Zealand citizen. The Tribunal stated that Ms Campbell had a strong case of direct discrimination based on nationality (which is classed as racial discrimination under the Anti Discrimination Act 1991). The Convention on the Rights of the Child guarantees rights such as government-funded disability services to all children.

Furthermore, this amendment breaches section 10 (rights to equality before the law), of the Racial Discrimination Act 1975 (Cth), which is 'concerned with the operation and effect of laws' (*Mabo v Queensland* (1988) 166 CLR 186, 230 (Deane J)).

The issue raised as a result of section 10 (1) is whether the operation and effect of a law prevents a person or people from enjoying the same right that others not of that race enjoy.

The Federal Court in *Bropho v Western Australia* [2008] FCAF 100 stated that section 10(1) of the Racial Discrimination Act (RDA) is engaged where there is unequal enjoyment of rights between racial or ethnic groups: see *Ward v Western Australia* (2002) 213 CLR 1.

Section 10 operates, not merely on the intention, purpose or form of legislation, but also on the practical operation and effect of legislation (*Gerhardy v Brown*, at 99; *Mabo v Queensland [no 1]* (1988) 166 CLR 186 at 230-231; *Western Australia v Ward* at 103).[23]

The proposed amendment will insert section 106B into the Anti-Discrimination Act 1991 (Qld) which will effectively make it lawful for the State of Queensland to restrict, at will, government services and assistance on the basis of race/nationality.

In 1973, the Trans-Tasman Travel Arrangement (TTTA) was formalised, allowing citizens of Australia and New Zealand to move freely between nations, working indefinitely with permanent residency and sharing reciprocal citizenry rights.

On the 26 February 2001, a new bilateral agreement on social security created two types of visas. Protected Special Category Visa Holders were given to residents who had been in Australia on or before the 26 February 2001 and anyone arriving after that date was classified as having unprotected Special Category Visas.

The 'rights' and 'access' of those defined by these categories were severely limited if not removed in comparison to what their fellow Australian citizens had access to.

New Zealanders pay the same taxes and contribute to Australian society in the same manner as Australian citizens, yet are restricted from accessing social security support systems based on an immigration status that is categorised by their nationality.

We are Polynesian and Maori professionals working in varying areas from the Juvenile Justice system, Child Safety, Tertiary institutes, Education Qld and Non-government organisations. The denial of access to services for our communities have been the triggering factor for many of the social issues that are ultimately creating a further burden on 'public resources' by way of the juvenile justice systems, Qld Police services and Child Safety. The approval of this amendment will only exacerbate that burden and remove the rights of the most vulnerable, which in Ms Campbells case, had this amendment been in effect, it would have been the removal of the rights of a disabled child to access support!!!

It is for these reasons that we strongly recommend that the Committee does not pass the proposed amendments, but that we continue to ensure that the objective of the Anti-Discrimination Act 1991 is upheld. To 'promote equality of opportunity for everyone by protecting them from unfair discrimination in certain areas of activity..."

Yours faithfully

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On behalf of and as:

- Program manager – Pasifika LIPI, Young offenders support program (Inala Youth Services)
- Committee member – Pasifika Pioneers, Qld
- Committee member – Voice of Samoa People Inc.