Youth Justice (Boot Camp Orders) & Other Legislation Amendment Bill 2012
Submission 050

Submission

Youth Justice (Boot Camp Orders) and other Legislation Amendment Bill 2012
Part 3 - Amendment of Anti-Discrimination Act 1991 (the Amendment)

We write to formally ask the Committee to dismiss the above proposed amendment on the grounds that the proposed amendment itself is by definition, racial discrimination and particularly to New Zealand migrants, the obvious and intended target cohort.

We say that New Zealanders are the intended target cohort because this proposal is clearly in response to the recent case of Campbell vs State of Queensland QCAT 2012 and their subsequent settlement. Ms Campbell, 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, quite correctly, classed as racial discrimination under the Anti Discrimination Act 1991).

The 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. This is clearly in direct violation of the (Commonwealth) Racial Discrimination Act 1975 which prohibits, amongst other things, discrimination against migrants. We fail to see how State legislation can totally undermine and contradict Commonwealth legislation and therefore hold up in an Australian court of law.

We refer to a submission provided to the Committee by David Faulkner who says;

The legalisation of race discrimination by the State is also a clear breach of Queensland's binding obligations under the *International Covenant on Civil and Political Rights*, as nationality discrimination concerning economic rights is prohibited under the right to equality before the law (art. 26).

Nationality discrimination is similarly prohibited under article 2(2) of the *International Covenant on Economic, Social, and Cultural Rights* (ICESCR). I note that the Queensland Government is citing limited public funds as a rationale for the Amendment; however, ICESCR Article 2(3) only allows *developing* countries to determine to what extent they guarantee economic rights to non-nationals. As one of the richest countries in the world per capita, Australia cannot claim developing country status, and is required to treat all residents equally – particularly those lawfully residing on an open-ended basis.

The Convention on the Rights of the Child guarantees rights such as government-funded disability services to *all* children. The Amendment will allow the State to continue to deny such support to the disabled children of New Zealanders – including those actually born in Australia. The deliberate commission of human rights violations against disabled children is an unjustifiable disgrace.

In addition, in General Recommendation 30 (Discrimination against non-citizens), The UN Committee on the Elimination of Racial Discrimination stated inter alia:

> 3. Article 5 of the Convention incorporates the obligation of States parties to prohibit and eliminate racial discrimination in the enjoyment of civil, political, economic, social and cultural rights. Although some of these rights, such as the right to participate in elections, to vote and to stand for election, may be confined to citizens, human rights are, in

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principle, to be enjoyed by all persons. States parties are under an obligation to guarantee equality between citizens and non-citizens in the enjoyment of these rights to the extent recognized under international law;

4. Under the Convention, differential treatment based on citizenship or immigration status will constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim.

These things cannot be ignored.

By virtue of a long standing bilateral agreement between New Zealand and Australia, New Zealand citizens are entitled to reside indefinitely in Australia and vice versa. The Special Category Visa awarded at entry into Australia is not a temporary visa, or a permanent visa, it is in effect an *indefinite* visa, which makes their situation quite unique when compared to other migrants.

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 and alike based on an immigration status that pertains uniquely to their nationality. Some 60% of New Zealand migrants will *never* meet the criteria for Permanent Residency but are still long term, valuable and contributing members to Australian society. To use the argument that New Zealanders are treated no worse than other temporary migrants is incorrect. The Special Category Visa, afforded only to New Zealanders, is not a temporary visa with a finite period attached. New Zealanders can in fact live in Australia (lawfully) for an indefinite period of time and thousands of New Zealanders have done just that, positively contributing many years to Australian society and to the bucket of funds collected in taxes. To then deny a long term resident of Queensland necessary State support, after years of paying taxes, based solely on their (indefinite) visa status, one perhaps that they will never be able to change, is most assuredly racial discrimination and entirely unjust. Allowing discretion on this point would be most harmful and highly detrimental to arguably the largest migrant group to Australia.

We strongly urge the Committee to dismiss the proposed insulting amendment and give integrity to the unique relationship New Zealand and Australia have shared and both benefited from for many years.

Sincerely,

Vicky Va'a
On behalf of and as;

- Chairperson - Pacific Indigenous Nations Network, Gold Coast
- Committee Member - Pasifika Pioneers, Brisbane
- Chairperson - Wahine Toa, Gold Coast

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