

Australia's current approach to disability

Introduction

- 2.1 This chapter considers Australia's current approach to disability and the environment that this approach creates with respect to Australia's migration policy. Australia is a country with a rich migration history. Approximately 45 per cent of all Australians were born overseas or have at least one parent who was born overseas.¹
- 2.2 Australia's migration program has historically focussed on shortfalls in the labour market, including addressing skill shortages. However, it can also be said that Australia has one of the best resettlement programs for humanitarian settlement.² Australia has been viewed internationally as having a vibrant, multicultural society, reflective of the origins of many of its residents.
- 2.3 Australia is a nation built on migration, and the contribution of migration to Australia cannot be underestimated. Migration history shows that Australia has placed a premium on the health of incoming persons, migrants, who are generally healthier than the resident population. They contribute in positive ways to the productive diversity of Australia through investment in housing, cultural diversification of urban areas, the establishment of new businesses, the supply of products, the provision of

1 Australian Bureau of Statistics (ABS), Census 2006 data cited in *ABS. 1301.0 Year Book 2008-County of Birth*, accessed April 2010 at <<http://www.abs.gov.au/ausstats/abs@.nsf/0/F1C38FAE9E5F2B82CA2573D200110333?opendocument>>

2 *United Nations High Commissioner for Refugees*, Mr António Guterres, March 2009, quoted Department of Immigration and Citizenship, *Annual Report 2008-09*, Secretary's Overview, accessed April 2010 at <<http://www.immi.gov.au/about/reports/annual/2008-09/html/overview/the-secretarys-review.htm>>

new and different skills, and through other types of entrepreneurial activities.³

- 2.4 This Chapter will examine the migration Health Requirement and provide a brief statistical overview of migration in Australia. It then provides some background on Australia's disability policy and Australia's capacity to provide health and community services for disabled persons.

Migration legislation and the health requirement

- 2.5 This section provides a brief overview of migration legislation and the Health Requirement. A more detailed examination of the operation of the Health Requirement is provided in the following Chapter. The Committee is aware that the operation of the Migration Act 1958 (Cth) results in disability being assessed under the Health Requirement. The Committee sees this approach as problematic. This is discussed in greater detail further in the report.
- 2.6 Migrants to Australia have to meet Health Requirements in order to be eligible for certain visa classes of entry. These requirements aim to minimise the burden of planned migration on the health care system, to prevent the spread of contagious diseases, and to protect Australia's record of good health.
- 2.7 Although other factors may be implicated, studies have suggested that pre-migration screening appears to ensure migrants have better physical health on arrival and in ensuing years, compared with the Australian-born population.⁴ This is reflected in longer life expectancy, lower death and hospitalisation rates, and a lower prevalence of some lifestyle-related risk factors. In 2004–05, for example, total hospital separation rates for Australia born persons in 2004–05 was 24 per cent higher (at 352.7 per 1 000 population) than for the overseas-born population (at 285.2).⁵
- 2.8 Pre-migration screening contributes to a lower incidence of core-activity limitations and disabilities among migrants (5.6 per cent and 16.7 per cent
-

3 Vision Australia, *Submission 37*, p. 2.

4 Other factors, such as reduced accessing of services among migrants may contribute to this. Dr Paul Douglas, Department of Immigration and Citizenship, *Committee Hansard*, Canberra, 17 March 2010, p. 14.

5 Australia Health and Welfare Institute 2004, quoted in K Carrington, A McIntosh and J Walmsley (eds), *The Social Costs and Benefits of Migration into Australia*, Centre for Applied Research in Social Sciences, University of New England, Commonwealth of Australia, 2007, pp. 36; 248.

respectively) than for the Australia-born population (6.5 per cent and 21 per cent respectively). This reflects the younger cohort of newer migration waves, those born in North East Asia, compared with migrants from the United Kingdom whose rate of disability has risen after decades in Australia.⁶

- 2.9 Using data from the Australian Bureau of Statistics (ABS) and the Department of Family and Community Services (now the Department of Families, Housing Community Services and Indigenous Affairs (FaHCSIA)), Disability Services Census, the Federation of Ethnic Community Councils of Australia (FECCA) has estimated that there are about one million people from a culturally and linguistically diverse background with a disability living in Australia.⁷
- 2.10 FECCA advised that the rate of occurrence of disability among migrants is comparable to the general community. Although there are fewer people with a disability coming into the country because of the Health Requirement, which controversially includes disability, some migrants come here as able-bodied people but acquire a disability whilst in Australia. FECCA also advises that there is a higher incidence of work related disability among adult migrants because many engage in manual labour or lower paid jobs.⁸

Migration Act 1958 (Cth)

- 2.11 The object of Australia's migration legislation is 'to regulate in the national interest, the coming into, and presence in, Australia of non-citizens'.⁹ *The Migration Act 1958* (the Migration Act) introduced a planned migration system involving migrant intake targets, caps and quotas for various visa streams.¹⁰
- 2.12 **Sub-section 5(1)** of the Migration Act sets out prescribed criteria for the visa that the health requirement:

6 K Carrington, A McIntosh and J Walmsley (eds), *The Social Costs and Benefits of Migration into Australia*, Centre for Applied Research in Social Sciences, University of New England, Commonwealth of Australia, 2007, pp. 36; and see Table 3A.2.2, p. 248

7 Federation of Ethnic Community Councils of Australia, *Submission 24*, p. 6.

8 Federation of Ethnic Community Councils of Australia, *Submission 24*, p. 6.

9 *Migration Act 1958 (Cth)* s 4(1).

10 K Carrington, A McIntosh and J Walmsley (eds), *The Social Costs and Benefits of Migration into Australia*, Centre for Applied Research in Social Sciences, University of New England, Commonwealth of Australia, 2007, p. 36.

(a) relates to the applicant for the visa, or the members of the family unit of that applicant (within the meaning of the regulations); and

b) deals with:

(i) a prescribed disease; or

(ii) a prescribed kind of disease; or

(iii) a prescribed physical or mental condition; or

(iv) a prescribed kind of physical or mental condition; or

(v) a prescribed kind of examination; or

(vi) a prescribed kind of treatment;

2.13 Key sections for administration of the Health Requirement are:

- **Section 60** – provides that the Minister may require that an applicant undergo an examination of that person’s ‘health, physical condition or mental condition’ by a ‘person qualified to determine the applicant’s health’ as a precondition to the grant of certain classes of visa, and
- **Section 65** – requires the Departmental decision-maker to use this medical opinion to make a decision on the visa application. If the visa decision-maker is satisfied that the applicant has met the ‘health criteria’ and the other criteria prescribed by the Act or Regulations for that visa, he or she is to grant the visa. If the Department decision-maker is not satisfied, the visa must be refused.
- **Section 52** of the *Disability Discrimination Act 1992* (Cth) (DDA) – exempts the application of the DDA to the Migration Act and Migration Regulations 1994.

2.14 Key sections in terms of enabling legislation are:

- **Section 496**, which enables the Minister to delegate power to consider and decide whether a visa applicant meets the health requirement, and to delegate to another person the power to consider all aspects of the application.
- **Section 474** (privative clause decisions), which provides that all decisions made under the Migration Act are final:
 - (1) A privative clause decision:
 - (a) is final and conclusive; and
 - (b) must not be challenged, appealed against, reviewed, quashed or called in question in any court; and

(c) is not subject to prohibition, mandamus, injunction, declaration or certiorari in any court on any account.¹¹

Migration Regulations 1994

- 2.15 Schedule 4 of the Migration Regulations 1994 contains the criteria of assessment for the health requirement, known as Public Interest Criteria (PICs). There are three PICs which attach to various visa subclasses: PIC 4005, 4006A, and 4007. These are outlined in Appendix C.
- 2.16 **PIC 4005** provides the general (or standard) test for all permanent or provisional visa classes. It requires that an applicant:
- be free from tuberculosis or any disease or condition which may provide a threat to public health in Australia or a danger to the Australian community;
 - be free from any a disease or condition which would require health care or community services or meet medical criteria for the provision of such services during the period of the applicant's proposed stay in Australia; and
 - not require health care or community services that would impose significant cost on the Australian community, or prejudice access of an Australian citizen or permanent resident to health care or community services.
- 2.17 These requirements are to be met by the applicant *regardless* of whether the level of health care or community services determined by the examining medical officer will actually be used in connection with the applicant.¹² Additionally, the applicant must provide an undertaking to have further health assessments on entering Australia if this is requested by the Medical Officer of the Commonwealth (MOC).¹³
- 2.18 These standard requirements are also contained in the other two PICs. The significant difference is the potential that a waiver of the Health Requirements may be granted for certain visa subclasses:

11 *Migration Act 1958* (Cth) s474 (2) states that for the purposes of the section, 'privative clause decision means a decision of an administrative character made, proposed to be made, or required to be made, as the case may be, under this Act or under a regulation or other instrument made under this Act (whether in the exercise of a discretion or not), other than a decision referred to in subsection (4) or (5) [these do not include health decisions].

12 Migration Regulations 1994, *Schedule 4*, PIC 4005, (c) (ii).

13 Migration Regulations 1994, *Schedule 4*, PIC 4005 (d).

- **PIC 4006A** – applies to 457 (Temporary Business - Long Stay) visas and, until recently, the subclass 418 (Educational) visa.¹⁴
 - ⇒ A waiver may be provided where the applicant's employer has given the Minister a written undertaking that the relevant employer will meet 'all costs' related to the disease or condition that causes the application to fail to meet the requirements of the health test;¹⁵
- **PIC 4007** – applies to some family, humanitarian, second stage business skills and permanent sponsored skilled visas where (a) the applicant satisfies all other criteria for the grant of the visa applied for; and (b) the Minister is satisfied that the granting of the visa would be unlikely to result in:
 - (i) undue cost to the Australian community; or
 - (ii) undue prejudice to the access to health care or community services of an Australian citizen or permanent resident.¹⁶

2.19 A further distinction applies to onshore and offshore applicants. The requirements set out in PICs 4005-4007 do not apply to protection visas made onshore (ie subclass 866 visas), whereas those regarding offshore refugee and humanitarian visas are subject to the health requirement (visa subclasses 200 to 204).¹⁷

2.20 Under **Migration Regulation 2.25 (A)** Department decision-makers are required to seek the opinion of an MOC, and without this opinion they cannot make a decision on a visa. Once the MOC has delivered the opinion, the Department decision-makers (and, if required) the Migration or Refugee Review Tribunal must accept the opinion of the MOC as to whether an applicant meets the health requirement.¹⁸

Statistics

2.21 Australia's annual migration intake is substantial. Migrants to Australia arrive under a range of permanent and temporary visa arrangements and for a variety of reasons including those related to employment or family

14 Law Institute of Victoria, *Submission 88*, p. 6; NB. The Educational Visa 418 was repealed in September 2009. See Discussion in Chapter 6.

15 Migration Regulations 1994, *Schedule 4*, PIC 4006A (2), and see Law Institute of Victoria, *Submission 88*, p. 6.

16 Migration Regulations 1994, *Schedule 4*, PIC 4007 (2).

17 Castan Centre for Law and Human Rights and Rethinking Mental Health Laws Federation Fellowship, *Submission 36*, p. 8.

18 Mr Nicholas Torkington, Department of Immigration and Citizenship, *Committee Hansard*, 17 March 2010, p. 1; Law Institute of Victoria, *Supplementary Submission 88.1*, p. 5.

reunion. Australia's substantial humanitarian migration program also assists many people migrate to Australia from situations of displacement for a variety of reasons.

- 2.22 The Annual Report of the Department of Immigration and Citizenship (DIAC) provides a range of statistics in relation Australia's overall migration program.¹⁹ In 2008–09, Australia admitted a total of 171 318 migrants who it is estimated will make an \$851 million contribution to the Australian economy within the first year of arrival.²⁰
- 2.23 In March 2009, in response to a difficult economic climate, the permanent migration program planning levels for 2008–09 were revised down to just under 172 000 places from the original planning level of some 190 000 places. Of this, the skilled migration component was reduced by 14 per cent, or 18 500 places. At the same time there was an increase in the proportion of employer and state sponsored components, which support Australian industry by ensuring that critical in-demand skill shortages are addressed.
- 2.24 These demand driven elements of the skilled migration program contributed to nearly 45 per cent of the total skilled migration program.²¹ The reduction and restructuring of the skilled migration program, in the wake of the global economic crisis, was a demonstration of the responsiveness of the migration program to achieve the maximum economic and social benefit for Australia.
- 2.25 In 2008–09, 101 280 subclass 457 visas were granted to temporary skilled workers and their dependants. This was a decrease of 8.4 per cent compared with the previous year. By June 2009, the number of applications lodged was 40 per cent lower than those lodged in September 2008, in response to changes in the labour market flowing from the global economic crisis.
- 2.26 Under the Humanitarian program 13 507 visas were granted, including 788 visas in the 'woman at risk' category. The intake was drawn from the three priority regions of Africa, Asia, and Middle East/South West Asia.

19 Department of Immigration and Citizenship, *Annual Report 2008-09, Secretary's Overview*, accessed April 2010 at <<http://www.immi.gov.au/about/reports/annual/2008-09/html/overview/the-secretarys-review.htm>>

20 Department of Immigration and Citizenship, *Annual Report 2008-09, Secretary's Overview*, accessed April 2010 at <<http://www.immi.gov.au/about/reports/annual/2008-09/html/overview/the-secretarys-review.htm>>

21 Department of Immigration and Citizenship, *Annual Report 2008-09, Secretary's Overview*, accessed April 2010 at <<http://www.immi.gov.au/about/reports/annual/2008-09/html/overview/the-secretarys-review.htm>>

- 2.27 On 9 August 2008, the Temporary Protection visa arrangements were abolished. From 1 July 2009 the '45 day rule' which denied work rights and Medicare access to some protection visa applicants was also abolished.

Statistics in relation to the Health Requirement

- 2.28 The focus of this report is essentially in relation to the migration Health Requirement which stems from the legislative obligations placed on the migration intake by the *Migration Act 1958* (Cth). As described later in this report, all applicants for a visa for permanent or temporary migration to Australia are subject to this Health Requirement. The stringency of the requirement is dependent on the type of visa applied for, the purpose and length of the proposed stay in Australia.
- 2.29 DIAC administers the Health Requirement for migrants and visitors to Australia. Overall, in 2008–09, a total of 1 586 clients were refused on 'health grounds'.²² DIAC informed the Committee that:
- Of these clients:
- 36 failed to meet the health requirement on public health grounds;
 - 360 actually failed to meet the health requirement on cost or prejudice of access grounds
 - 282 had a family member who failed to meet the health requirement on health costs/prejudice of access grounds (i.e. they were not granted a visa due to the "one fails all fails" rule for permanent visas - i.e. all applicants for the visa as well as any non-migrating dependants must meet the health requirement).
 - 864 failed to undergo required health assessments and hence were refused a visa
 - 44 clients were refused an ETA and asked to apply for another visa product so that their health could be properly assessed due to a previous adverse health result.²³
- 2.30 From the statistics presented, it can be seen that rejections of visa on the basis of health grounds account for only a small percentage of those who have applied to come to Australia (although a number of applicants refuse to undergo the health assessment). The Committee's focus is on the reasons why this group of people were excluded from migrating to

22 Department of Immigration and Citizenship, *Submission 66*, p. 42.

23 Department of Immigration and Citizenship, *Submission 66*, p. 42.

Australia and the implications of amending the Health Requirement assessment criteria.

Australian disability policy

2.31 This section considers disability policy in Australia and the legislation which prevents discrimination on the basis of disability.

Definition of disability

2.32 The definition of disability has changed significantly in recent decades, with the emphasis moving from a simple medical focus on an individual's impairment to an appreciation of the person's capacity to engage in the community.

2.33 This is reflected in the definition of disability under the World Health Organisation's international framework for describing and measuring health and disability, the *International Classification of Functioning, Disability and Health* (ICF). The ICF advises that:

... disability is an umbrella term for impairments, activity limitations and participation restrictions. It denotes the negative aspects of the interaction between an individual with a health condition based on clinical diagnosis and that individual's contextual factors, limitation of environment and personal factors.²⁴

2.34 ABS provides an interpretation of this in its *Survey of Disability, Ageing and Carers* (2004), Australia's principal data source on disability participation in Australia.²⁵

2.35 For the purposes of the survey, a person is defined as having a disability if they report at least one of 17 impairments, health conditions, limitations or restrictions which has lasted, or is likely to last, for at least six months and restricts everyday activities.

2.36 Four levels of core-activity limitation are determined based on whether a person needs help, has difficulty or uses aids or equipment with any of the

24 World Health Organisation, accessed May 2010 at <<http://www.who.int/classifications/icf/en/>>

25 Australian Bureau of Statistics, *4430.0 – Disability, Ageing and Carers: Summary of Findings, 2003*, September 2004, accessed May 2010 at <[http://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/978A7C78CC11B702CA256F0F007B1311/\\$File/44300_2003.pdf](http://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/978A7C78CC11B702CA256F0F007B1311/$File/44300_2003.pdf)>

core activities (communication, mobility or self care). A person's overall level of core-activity limitation is determined by their highest level of limitation in these activities.

2.37 The four levels of limitation are:

- profound: the person is unable to do, or always needs help with, a core-activity task
- severe: the person
 - ⇒ sometimes needs help with a core-activity task
 - ⇒ has difficulty understanding or being understood by family or friends
 - ⇒ can communicate more easily using sign language or other non-spoken forms of communication.
- moderate: the person needs no help but has difficulty with a core-activity task
- mild: the person needs no help and has no difficulty with any of the core-activity tasks, but
 - ⇒ uses aids and equipment
 - ⇒ cannot easily walk 200 metres
 - ⇒ cannot walk up and down stairs without a handrail
 - ⇒ cannot easily bend to pick up an object from the floor
 - ⇒ cannot use public transport
 - ⇒ can use public transport but needs help or supervision
 - ⇒ needs no help or supervision but has difficulty using public transport.²⁶

2.38 The Australian Institute of Health and Welfare (AIHW) estimates that this very broad construct of disability would indicate that 3.9 million Australians (20 per cent of the population) had a disability in 2003.²⁷

Disability Discrimination Act 1992

2.39 The Federal *Disability Discrimination Act 1992* (DDA) makes disability discrimination unlawful and aims to promote equal opportunity and access for all people with disabilities within Australia.²⁸

26 Australian Bureau of Statistics, *4430.0 – Disability, Ageing and Carers: Summary of Findings, 2003*, September 2004, pp. 72–73, accessed May 2010 at [http://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/978A7C78CC11B702CA256F0F007B1311/\\$File/44300_2003.pdf](http://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/978A7C78CC11B702CA256F0F007B1311/$File/44300_2003.pdf)

27 The Australian Institute of Health and Welfare, 'Disability in Australia: Trends in Prevalence, Education, Employment And Community Living', *Bulletin 61*, June 2008, p. 1.

28 Australian Human Rights Commission, Disability Rights Homepage, accessed May 2010 at http://www.hreoc.gov.au/disability_rights/

- 2.40 **Disability** is defined in s 4 of the DDA to cover loss of physical or mental functions, malformation or disfigurement of the body, learning disorders, disorders or diseases which affect mental perceptions or behaviour as well as the presence of organisms in the body either causing or capable of a disease or illness.²⁹
- 2.41 Disability is thus defined broadly to cover both physical illnesses and other conditions. The section further specifies that the definition applies to disability that presently exists; or previously existed but no longer exists; or may exist in the future (including because of a genetic predisposition to that disability); or is imputed to a person.
- 2.42 Sections 5 and 6 of the DDA respectively prohibit both direct and indirect discrimination on the basis of disability, indicating that:
- **Direct discrimination** is where someone receives less favourable treatment than a person without a disability in similar circumstances.
 - **Indirect discrimination** occurs when a rule or condition that applies to everyone particularly disadvantages people with disabilities.
- 2.43 Part 2 of the DDA deals with the prohibition of disability discrimination in the workplace and public life. Section 29 prohibits both direct and indirect discrimination in the administration of Commonwealth programs.
- 2.44 However, s 21(b) of the DDA qualifies that discrimination is not unlawful if it would impose unjustifiable hardship on the discriminator. In determining whether hardship is unjustifiable, all relevant circumstances should be taken into account, including (among others):
- the nature of the benefit or detriment likely to accrue to, or to be suffered by, any person concerned;
 - the effect of the disability of any person concerned;
 - the financial circumstances, and the estimated amount of expenditure required to be made, by the first person; and
 - the availability of financial and other assistance to the first person.³⁰
- 2.45 The burden of proving that something would impose unjustifiable hardship lies on the person claiming unjustifiable hardship.³¹

29 *Disability Discrimination Act 1992* (Cth).

30 Cited in Human Rights Law Resource Centre, *Submission 54*, p. 8.

31 *Disability Discrimination Act 1992* (Cth) s. 11 (2).

Australia's capacity in assisting persons with disability

Background

- 2.46 While it may be that there are exclusionary elements of Australian migration law, there is also the issue of, if such barriers are relaxed, whether Australia has the necessary policy and infrastructure to assist new migrants with a disability. This is examined in the context of the current levels of service provision, policy and funding.
- 2.47 As highlighted earlier, the AIHW found that approximately 20 per cent of Australians suffered some form of disability in 2003. The Royal Australasian College of Physicians suggest that in terms of trends:
- Between 1981 and 2003 there was a trend towards people with severe or profound core activity limitations living in the community. The trend was strongest in those aged 5 - 29 years. The trend shows clearly the importance of service programs to support carers, and to support the stability of community living arrangements.³²
- 2.48 The Committee contends that as of 2010, it is very likely that this trend has continued. These statistics stress the need for a more organised and structured approach to disability policy and service provision.
- 2.49 To this end, the Committee understands that FaHCSIA is currently working with the States and Territories to reform and improve disability services.³³ The policy framework for this reform stems from the National Disability Agreement (NDA) which aims to establish the National Disability Strategy (NDS). Briefly, these core frameworks are:
- **National Disability Strategy** – is a holistic framework being developed for release in 2010 to deliver disability and other mainstream services. The NDS will advance commitments made under the United Nations Convention on the Rights of Persons with Disabilities (ratified July 2008) and the Optional Protocol to the Convention (accession in September 2009), and
 - **National Disability Agreement** – replaced the Commonwealth State and Territory Disability Agreement on 1 January 2009 and will provide the States and Territories with \$5 billion over five years to assist people

32 Royal Australasian College of Physicians, *Submission 80*, p. 5.

33 Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), *Submission 71*, pp. 1-2.

with a disability into more sustainable living arrangements and also support families and carers.³⁴

- 2.50 The NDS is currently being evolved in consultation with community stakeholders with the advice of the National People with Disabilities and Carer Council, established for the purpose.³⁵
- 2.51 In addition, the Senate Community Affairs Committee is conducting an Inquiry into Planning Options and Services for People Ageing with a Disability.
- 2.52 The Committee also notes the upcoming inquiry into Disability Care and Support which is being conducted by the Productivity Commission. The Committee notes that:
- The Commission has been asked to examine the feasibility, costs and benefits of replacing the current system of disability services with a new national disability care and support scheme that:
- provides long-term essential care and support
 - manages the costs of long-term care
 - replaces the existing funding for those people covered by the scheme
 - takes account of the desired and potential outcomes for each person over a lifetime, with a focus on early intervention
 - provides for a range of coordinated support options – accommodation, aids and appliances, respite, transport, day programs and community participation
 - assists the person with the disability to make decisions about their support
 - provides for people to participate in education, training and employment where possible.³⁶
- 2.53 The Committee looks forward to the outcomes of this inquiry which is due to report by July 2011.

Services and resources available

- 2.54 Some submissions to the present inquiry make note of the current service and resource arrangements available to disabled persons in Australia. All

34 Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), *Submission 71*, pp. 1–2.

35 Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), *Submission 71*, p. 1.

36 Australian Productivity Commission, *Disability Care and Support Issues Paper*, May 2010, accessed May 2010 at <<http://www.pc.gov.au/projects/inquiry/disability-support/issues>>

such services come at a cost to Government, whether Commonwealth, State or Territory and need to cater for disabled persons currently in Australia. Resources are finite and priority must be given to current Australian citizens and eligible residents.

- 2.55 The Health Requirement, as discussed in this report, specifically provides consideration for prejudice to access of services available to Australian residents. It is prudent that these aspects are examined in the context of the debate relating to the immigration of disabled persons.
- 2.56 FaHCSIA has advised that migrants are subject to limitations on what and when they may receive in terms of services and welfare payments.³⁷ In lieu of receiving such payments, under certain visa classes Australian citizens sponsoring relatives must provide an Assurance of Support (AOS) to DIAC to cover any possible welfare costs. These Assurances usually cover two years or ten years, the period of exclusion of migrants from many support services.³⁸

Disability Support Pension (DSP)

- 2.57 The key social security payment derived by those with a disability is the Disability Support Pension (DSP). It is:

... a payment made to people with disability who are unable to work for at least 15 hours per week at or above the relevant minimum wage, or be re-skilled for any work, for more than two years because of their disability. DSP claimants must be aged 16 or over but under the qualifying age for Age Pension (currently 65 years for men and 64 years for women) at date of claim lodgement.³⁹

- 2.58 The majority of social security payments provide that there is a waiting period for newly arrived migrants, before access is available. For the DSP, this period is ten years, unless the disability occurred whilst the person was resident in Australia. FaHCSIA has informed the Committee that:

Refugees and former refugees are exempt from all waiting periods for social security pensions and benefits (other than Special Benefit) and therefore have immediate access. They are exempt

37 Department of Families, Housing, Community Services and Indigenous Affairs, *Submission 71*, p. 3.

38 Department of Immigration and Citizenship, *Fact Sheet 34 – Assurance of Support*, accessed May 2010 at <<http://www.immi.gov.au/media/fact-sheets/34aos.htm>>

39 Department of Families, Housing, Community Services and Indigenous Affairs, *Submission 71*, p. 3.

from the ten year residence requirement for DSP and Age Pension. Family members of refugees and former refugees (at the time the refugee or former refugee arrived in Australia) are also exempt from the two year residence requirement for Carer Payment.⁴⁰

2.59 Cabramatta Community Centre has told the Committee that the ten year moratorium on the DSP should be removed to improve settlement outcomes. It cites numerous cases studies to indicate the:

... stark difference between the contributions that they can make if they are able to access assistance with their disability as opposed to the contribution they can make if they are not able to access support.⁴¹

2.60 The Centre further adds:

Cabramatta Community Centre assists a large number of migrants who have arrived in Australia on a spouse or other visa but in their own right would be eligible for refugee status. These migrants are required to wait 10 years before having access to the Disability Support Pension even though as refugees they would not face this wait. This 10 year wait brings enormous financial and emotional pressure on them and their families and supporters and it can prevent the individuals, their families and supporters from successfully settling and making a more significant contribution to Australia.⁴²

2.61 This is but one of a range of comments received by the Committee in this regard. There is an argument to suggest that in circumstances where a visa applicant has been granted a permanent visa, they should be eligible for any payments with the same consistency as access to other forms of social security benefit.

Financial assistance to carers

2.62 The benefits available to carers are one example of where a two year waiting period applies. Financial assistance is provided either as the Carer Payment or the Carer Allowance. These payments are made to those who support people with a disability, a severe medical condition or the frail aged. There is a two year waiting period for the Carer payment, which provides income support to those out of employment due to carer

40 Department of Families, Housing, Community Services and Indigenous Affairs, *Submission 71*, p. 3.

41 Cabramatta Community Centre, *Submission 28*, p. 3.

42 Cabramatta Community Centre, *Submission 28*, pp. 7-8.

responsibilities. There is no waiting period for the Carer Allowance, an income supplement for those providing daily care to a person.⁴³

2.63 Other services and support for carers include:

- **Support for seniors** – the Age Pension at a Commonwealth cost of \$28.1 million for 2008–09, or for those not eligible, the Commonwealth Seniors concession allowance at half a million dollars for 2008–09. The Age Pension has qualifying period of ten years from the date of permanent residency.⁴⁴
- **Utilities allowances and rail concessions** – the Utilities Allowance is paid to all recipients of the Age pension, the DSP and the Carer payments. Expenditure for the program in 2008–09 was \$1.15 million. Railway concessions are also provided with \$6.9 million allocated over 2008–09.⁴⁵
- **National partnership agreement concessions** – from 1 January 2009 Reciprocal Transport Concessions were provided for Seniors Card holders to the value of \$1.9 million and compensation of \$1.18 million (through the Treasury portfolio) paid to State and Territories to provide concessions on core services, such as municipal and water rates, utilities, motor vehicle registration and public transport.⁴⁶

Other key programs and services

2.64 There are a range of other programs and services which are provided by the Government. The access to these by newly arrived migrants varies and some are accessible immediately.

- **National Mental Health and Disability Employment Strategy** – part of the Government’s Social Inclusion Agenda, carried primarily by the Department of Education, Employment and Workplace Relations (DEEWR). The strategy attracts \$1.23 billion for employment services for those with a disability. Additional budget allocations (2008–09) provided \$6.8 million for skills accreditation to receivers of the DSP,

43 Department of Families, Housing, Community Services and Indigenous Affairs, *Submission 71*, pp. 3–4.

44 In this section all estimates are rounded down to nearest. See Department of Families, Housing, Community Services and Indigenous Affairs, *Submission 71*, pp. 7–8.

45 Includes value of Economic Security Strategy payments made to Commonwealth Seniors Health Card holders, Department of Families, Housing, Community Services and Indigenous Affairs, *Submission 71*, p. 7.

46 Department of Families, Housing, Community Services and Indigenous Affairs, *Submission 71*, pp. 7–8.

and further funds for the Employment Assistance Fund and the Innovation Fund.⁴⁷

- **Australian Disability Enterprises** – the Government invests \$200 million annually to employ people in 610 disability enterprises. FaHCSIA also provides funding for training and assistance to jobseekers and workers with a disability. There is no residency requirement.⁴⁸
- **Helping Children with Autism** – \$190 million has been allocated over four years to June 2012 to provide support services for Autism Spectrum Disorders. Permanent residency is a requirement but there is no waiting period.⁴⁹
- **National Disability Advocacy Program** – \$14.5 million was offered to 63 organisations under this program which assists people with disabilities overcome barriers (such as physical access, discriminatory attitudes, neglect). No residency requirements under the program.⁵⁰
- **Outside School Hours Care for Teenagers with Disability** – \$5.1 million in additional funding for four years in the 2009 Budget, to extend care for 12 to 28 year olds, bring total funding to \$27.6 million. There is no residency requirement for the program.⁵¹
- **Disability Employment Network** – provides specialist assistance to job seekers with disability who require ongoing support to find and maintain employment. Eligible persons are those with (or likely to have) a disability, who have reduced capacity for communication, learning or mobility, or require support for an extended period.⁵²
- **Vocational Rehabilitation Services** – provides comprehensive intervention, combining vocational rehabilitation with employment assistance. The program aims to enable job seekers with an injury,

47 Department of Families, Housing, Community Services and Indigenous Affairs, *Submission 71*, p. 4.

48 Department of Families, Housing, Community Services and Indigenous Affairs, *Submission 71*, p. 5.

49 Department of Families, Housing, Community Services and Indigenous Affairs, *Submission 71*, p. 4.

50 Department of Families, Housing, Community Services and Indigenous Affairs, *Submission 71*, p. 4.

51 Department of Families, Housing, Community Services and Indigenous Affairs, *Submission 71*, p. 7.

52 Department of Education, Employment and Workplace Relations, *Submission 97*, p. 13.

disability or health condition achieve sustainable employment to their maximum capacity.⁵³

2.65 Other mainstream services include:

- **Job Services Australia** – Job seekers entering Australia under the skilled migration or family reunion programs are eligible for limited support in searching for employment. Humanitarian entrants are eligible immediately from the date of their arrival in Australia. Some providers provide specialised assistance for those from Culturally and Linguistically Diverse (CALD) backgrounds.⁵⁴
- **English as a Second Language – New Arrivals Program** – provides funding to non-government education authorities to assist with the cost of delivering intensive English language tuition to eligible, newly arrived primary and secondary school students.⁵⁵

2.66 **Additional programs, with estimated expenditure for 2009-10** – the National Auslan Interpreters Service (\$5 million); National Information and Captioning Services (\$352 000); Postal Concession for the Blind (\$7.5 million); Print Disability Services (\$1.4 million); Harmonisation of Disability Parking Permit Schemes (\$1.6 million for 900 000 new permits) and the National Companion Card Scheme with funding of \$41.7million over three years to 2013. There are no residency requirements for these programs.⁵⁶

53 Department of Education, Employment and Workplace Relations, *Submission 97*, p. 14.

54 Department of Education, Employment and Workplace Relations, *Submission 97*, p. 13.

55 Department of Education, Employment and Workplace Relations, *Submission 97*, p. 17.

56 Department of Families, Housing, Community Services and Indigenous Affairs, *Submission 71*, p. 7.