
The Parliament of the Commonwealth of Australia

Enabling Australia

Inquiry into the Migration Treatment of Disability

Joint Standing Committee on Migration

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Canberra

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Foreword

- 1.1 Australia is a nation which is proud of its cultural diversity and rich pluralist heritage. Each year, Australia welcomes tens of thousands of new immigrants under its well organised family, humanitarian and skilled migration programs. The positive contribution of these immigrants, both social and economic, made to Australia's prosperity and vitality is clear.
- 1.2 One aspect of Australia's migration policy is the need for all prospective permanent and temporary migrants to undergo health assessments. Such assessments are in place to protect Australians from threats to public health brought from overseas and to contain public health expenditure. The current arrangements, known as the migration Health Requirement, fall under the auspices of the Migration Regulations 1994, under the *Migration Act 1958* (Cth).
- 1.3 Through its Inquiry into the Migration Treatment of Disability, the Joint Standing Committee on Migration heard that the majority of people seeking permanent or temporary migration to Australia have little difficulty in fulfilling the requirements under this Health Requirement. However, the Inquiry has found that the current Health Requirement reflects old-fashioned approaches to disability in particular and so unfairly discriminates against those who have disability.
- 1.4 Our present migration regulations explicitly assume disability, or conditions associated with a disability, to be a cost burden to the wider community. Consequently the system assesses each potential immigrant with a disability against a threshold of 'significant cost' to Australia's public health and community service system. This theoretical cost is mandated in the assessment of immigrants with a disability irrespective of whether these services are actually used. The current system also assesses whether the applicant's condition may prejudice access to health and community services by Australian citizens and permanent residents.
- 1.5 In the vast majority of cases, no account is taken of the applicant's or their family's ability to contribute socially and economically to the Australian

community and, if this is indeed an economic cost to their immigration, whether or not this is outweighed by other factors such as the potential contribution of other skilled family members whose immigration is linked to or even dependent on the individual with a disability.

- 1.6 This is an outmoded approach and the Committee has determined that it should be replaced with a more modern form of a health requirement which has scope to positively recognise individual or overall family contributions to Australia.
- 1.7 Through the course of the inquiry, the Committee took evidence from many and varied interests including the Department of Immigration and Citizenship and other federal departments, community organisations assisting persons with a disability, and individuals who have suffered as a result of the current arrangements. Many of the stories related to the Committee told of the difficulties faced by people who have a disability or have a family member with a disability in their attempts to migrate permanently or temporarily to Australia.
- 1.8 Most extreme were the accounts of family applications which were denied solely because a child in that family had a disability. Other evidence included persons who could make valuable social and economic contributions to Australia, but were prevented from doing so as a result of the theoretical assessed costs of their disability to the Australian community. In these assessments, the current system provides limited opportunity to consider the individual circumstances of a family, the actual health and community services likely to be accessed, and other factors such as the skills of the applicant or family. Moreover, the Committee also received a great deal of evidence relating to Australia's international obligations under a number of international treaties.
- 1.9 In this report, the Committee has made 18 recommendations to the Government, which it considers will make the current arrangements fairer to persons with a disability. Among the Committee's recommendations are that:
- Where a person does meet the Health Requirement, there is also the capacity to consider the social and economic contributions made by a visa applicant or their family,
 - separate assessments be made for diseases or conditions perceived to be a threat to public health and those conditions linked to disability,
 - the decision making processes of Medical Officers of the Commonwealth (who assess the Health Requirement) be made more transparent and that information on costs assessments be provided to prospective visa applicants,

- families not be unfairly disadvantaged under the Health Requirement as a result of a member of that family being a person with a disability; and
- that offshore refugee applicants who have a disability or other health condition have access to the consideration of a waiver of the Health Requirement.

1.10 I am confident that the recommendations made in this report will provide a fairer and more migration transparent system and assessment process for persons with a disability seeking to migrate to Australia. These recommendations will ensure that Australia continues to have a strong, prosperous and vibrant community partially based on migration, including migrants with a disability whose applications to come to this country are considered in a more modern, enlightened and indeed utilitarian manner for their benefit and the benefit of all Australians.

1.11 In concluding, I would like to thank Members of the Committee for their hard work and dedication in reaching the outcomes that we have determined. I would also like to thank Committee Secretary, Dr Anna Dacre and her staff, Inquiry Secretary, Mr Muzammil Ali and Senior Research Officer, Ms Loes Slattery for their synthesis of the many hundreds of pages of evidence into the Committee's final report and for the smooth organisation of the Committee's meetings and hearings around Australia. Finally, I would like to thank all of the submitters and witnesses to the inquiry, who have bravely told their stories and contributed to a new migration policy for the future.

Mr Michael Danby MP
Chair



Membership of the Committee

Chair Mr Michael Danby MP

Deputy Chair Hon Danna Vale MP

Members Senator Catryna Bilyk

Senator Sue Boyce

Mrs Yvette D' Ath MP

Mr Paul Fletcher MP (*from 10 February 2010*)

Mrs Joanna Gash MP (*from 10 February 2010*)

Mr Petro Georgiou MP (*to 10 February 2010*)

Senator Sarah Hanson-Young

Senator Anne McEwen


Mr Scott Morrison MP (*3 February - 10 February 2010*)

Dr Sharman Stone MP (*to 3 February 2010*)

Mr Tony Zappia MP

Committee Secretariat

Secretary	Dr Anna Dacre
Inquiry Secretary	Mr Muzammil Ali (<i>from</i> <i>January 2010</i>)
	Ms Anna Engwerda- Smith (<i>to December 2009</i>)
Research Officers	Ms Loes Slattery
Administrative Officers	Ms Tamara Palmer
	Ms Carly Scholes
	Ms Claire Young



Terms of reference

The Committee has been asked to inquire into the assessment of the health and community costs associated with a disability as part of the health test undertaken for the Australia visa processing.

The Committee shall:

- Report on the options to properly assess the economic and social contribution of people with a disability and their families seeking to migrate to Australia.
- Report on the impact on funding for, and availability of, community services for people with a disability moving to Australia either temporarily or permanently.
- Report on whether the balance between the economic and social benefits of the entry and stay of an individual with a disability, and the costs and use of services by that individual, should be a factor in a visa decision.
- Report on how the balance between costs and benefits might be determined and the appropriate criteria for making a decision based on that assessment.
- Report on a comparative analysis of similar migrant receiving countries.



List of abbreviations

ABS	Australian Bureau of Statistics
ACT	Australian Capital Territory
AFDO	Australian Federation of Disability Organisations
ANAO	Australian National Audit Office
ANU	Australian National University
AoS	Assurance of Support
CALD	Culturally and Linguistically Diverse
CAPA	Council of Australian Graduate Associations
CRC	Convention on the Rights of Persons with the Child
CRPD	Convention on the Rights of Persons with a Disability
CSL	Critical Skills List
DDA	Disability Discrimination ACT 1992 (CTH)
DEEWR	Department of Education, Employment and Workplace Relation
DIAC	Department of Immigration and Citizenship
DoHA	Department of Health and Ageing
DSP	Disability Support Pension
ENS	Employer Nomination Scheme
EU	Europe Union
FaHCSIA	Department of Families, Housing, Community Services and Indigenous Affairs

FECCA	The Federation of Ethnic Communities' Councils of Australia
GMS	General Migration Stream
HALC	HIV/Aids Legal Centre Inc.
HIV	Human immunodeficiency virus
IARC	Immigration Advice and Rights Centre
ICF	International Classification of Functioning, Disability and Health
INZ	Immigration New Zealand
JSCOT	Joint Standing Committee on Treaties
LIV	Law Institute of Victoria
MDA	Multicultural Development Association
MOC	Medical Officer of the Commonwealth
MODL	Migration Occupations Demand List
MOU	Memorandum of Understanding
MRT	Migration Review Tribunal
NDA	National Disability Agreement
NDS	National Disability Strategy
NEDA	National Ethnic Disability Alliance
NIA	National Interest Analysis
NSW	New South Wales
PAM 3	Procedures Advice Manual 3
PIC	Public Interest Criteria
QAI	Queensland Advocacy Incorporated
QNU	Queensland Nurses Union
QPDD	Queensland Parents for People with a disability
RACP	The Royal Australasian College of Physicians
RCOA	Refugee Council of Australia
RMOC	Review Medical Officer of The Commonwealth
RRT	Refugee Review Tribunal

RSMS	Regional Sponsored Migration Scheme
SDAC	Survey of Disability, Ageing and Carers (2004)
SHP	Special Humanitarian Program
SOL	Skilled Occupation List
STARTTS	NSW Service for the Treatment and Rehabilitation of Torture and Trauma Survivors
TB	Tuberculosis
UK	United Kingdom
US	United States
UN	United Nations
UNCRPD	United Nations Convention on the Rights of Persons with a Disability
UNHCR	The United Nations High Commissioner for Refugees
UWA	University of Western Australia



List of recommendations

3 The Migration Health Requirement.....25

Recommendation 1 38

The Committee recommends that the Australian Government raise the ‘significant cost threshold’ (which forms part of the Health Requirement developed under the Migration Regulations 1994) to a more appropriate level. The Committee also recommends that the Department of Immigration and Citizenship quickly complete the review of the ‘significant cost threshold’.

Recommendation 2 43

The Committee recommends that the Australian Government adopt a contemporary Health Requirement for prospective permanent and temporary migration entrants under the Migration Act 1958 (Cth).

The Committee recommends changes to the Health Requirement include changes to the assessment criteria, processes and waiver options. These are outlined in subsequent recommendations.

Recommendation 3 55

The Committee recommends that the Australian Government amend Schedule 4 of the Migration Regulations 1994 to allow for the consideration of the social and economic contributions to Australia of a prospective migrant or a prospective migrant’s family in the overall assessment of a visa.

Recommendation 4 58

The Committee recommends that the Australian Government amend the Migration Regulations 1994 (in particular Public Interest Criteria 4005, 4006A and 4007) so that the assessment of diseases and medical conditions are addressed separately from the assessment of conditions as part of a disability.

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	Recommendation 5.....	77
	<p>The Committee recommends that the Department of Immigration and Citizenship make the current 'Notes for Guidance' publicly available. It further recommends that, when such papers are revised, their updated version be placed on the Department's website as soon as possible. 'Notes for Guidance' and associated background information should also be referred to in the Department's Fact Sheets for prospective visa applicants.</p>	
	Recommendation 6.....	77
	<p>The Committee recommends that the Department of Immigration and Citizenship publish on the Department's website the cost calculation methodology used by Medical Officers of the Commonwealth in assessing the costs associated with diseases or conditions under the Health Requirement.</p>	
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	<p>The Committee recommends that the Department of Immigration and Citizenship provide each applicant with a detailed breakdown of their assessed costs associated with diseases or conditions under the Health Requirement.</p>	
	Recommendation 8.....	79
	<p>The Committee recommends that the Australian Government remove from the Migration Regulations 1994 the criterion under Public Interest Criteria 4005, 4006A and 4007 which states that costs will be assessed 'regardless of whether the health care or community services will actually be used in connection with the applicant'.</p> <p>The Committee also recommends that the Australian Government revise the approach which assesses visa applicants' possible health care and service needs against 'the hypothetical person test'. This test should be revised so that it reflects a tailored assessment of individual circumstances in relation to likely healthcare and service use.</p>	
	Recommendation 9.....	79
	<p>The Committee recommends that the Australian Government amend Regulation 2.25A of the Migration Regulations 1994 in a manner which does not bind the Minister of Immigration and Citizenship to take as final the decision of a Medical Officer of the Commonwealth in relation to 'significant cost' and 'prejudice to access' issues, and provides scope for Ministerial intervention.</p>	

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The Committee recommends that visa decision-makers in the Department of Immigration and Citizenship be provided with the discretion to consider mitigating factors for any visa stream once a ‘does not meet’ the Health Requirement decision is received from a Medical Officer of the Commonwealth. These factors may be used to mitigate the ‘significant cost threshold’.	
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The Committee recommends that the Australian Government review the operation of the ‘one fails, all fails’ criterion under the Migration Regulations 1994 to remove prejudicial impacts on people with a disability.	
Recommendation 12.....	129
The Committee recommends that the Australian Government amend the criterion for assessing waivers to the Health Requirement to include recognition of the contribution made by carers within the family as an offset to health care or community services costs identified in the process.	
Recommendation 13.....	129
The Committee recommends that the Australian Government review the requirements for health inspections for short term visas under the Family Visits program.	
Recommendation 14.....	134
The Committee recommends that the Australian Government amend the Migration Regulations 1994 to provide access to consideration of a waiver to offshore refugee visa applicants involving disability or health conditions on compelling and compassionate grounds.	
Consideration should also be given to extended family members for the same treatment in the same circumstances.	
Recommendation 15.....	138
The Committee recommends that the Department of Immigration and Citizenship create a priority visa category for refugees who have sustained a disability or condition as a result of being a victim of torture and trauma. The Committee recommends that similar visa consideration is provided to immediate family members within the offshore refugee program.	

6	Skilled migration and disability	139
	Recommendation 16.....	160
	<p>The Committee recommends that the Australian Government work with State and Territory Governments to expand the waiver option to the Health Requirement for skilled migration visa classes to a broader range of skilled visa categories, targeting areas of skill shortages and rural and regional development schemes.</p>	
	Recommendation 17.....	163
	<p>The Committee recommends that the Australian Government investigate the introduction of a voluntary bond or other scheme for visa applicants to indemnify against, or manage health care or community services costs assessed under the Health Requirement of the <i>Migration Act 1958</i> (Cth).</p> <p>The Committee recommends that any introduction of such a bond or other scheme should not prejudice those applicants that are unable to provide a surety.</p>	
7	Australia's international obligations and domestic exemptions.....	165
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	<p>The Committee recommends that as part of its proposal to amalgamate Australian discrimination law, the Australian Government review the <i>Disability Discrimination Act 1992</i> (Cth) with particular reference to the section 52 migration exemption, to determine its legal implications for migration administration and conduct expert consultations on its impact on people with a disability.</p>	

