It's time to make our voices heard!

Make a submission to the Department of Home Affairs Review of Australia's Visa Significant Cost Threshold and Migration Health Requirements.

Send your submission to: health.requirement.review@homeaffairs.gov.au

> If you, or someone you know, has been impacted by the Migration Health Requirements and would like support to tell the Review your story, please email us at welcomingdisability@alhr.org.au

This fact sheet contains key information that can help you to make a submission. You can find more comprehensive information in our Campaign Position Statement

Include an introduction

Explain the problems and why they must be addressed. Make sure you include your unique perspective as an individual or an organisation and try to use your own words. Here's some background that can help:

Australia's current legal framework can exclude otherwise fully eligible visa applicants (and their family members) based on their disability or health status. This approach reinforces the stigma and discrimination that people with disabilities and health conditions already face. It is archaic, degrading and takes no account of the applicant's or their family's ability to contribute socially and economically to the Australian community.

Australia claims to be a nation that is committed to valuing inclusion, diversity and equality. To live up to this commitment the Australian Government must reform Australia's migration health laws to remove their discriminatory impact on people with disabilities and health conditions.

Australia's Migration Health Requirements are inconsistent with both the *United Nations Convention on the Rights of Persons with Disabilities (CRPD)* and the *United Nations Convention on the Rights of the Child (CRC).* Australia is a party to both of these treaties and bound to uphold all of the rights and obligations contained within them.

The right to live free from discrimination on the basis of disability or health status is a fundamental human right belonging to every person. The *Migration Act 1958* should not be exempt from the *Disability Discrimination Act 1992*.

Address the Terms of Reference:

1. **How the Australian Visa Significant Cost Threshold (SCT) is Calculated**

   The SCT is arbitrary, outdated and out of step with community expectations and

comparable democracies.

Every visa applicant should have the right to argue their case but Australia's migration regulations explicitly assume disability and health conditions are a cost burden to the wider community.

Each potential immigrant with a disability or health condition is currently assessed against a theoretical, arbitrary and non-transparent "significant cost threshold", applied irrespective of whether services are actually used.

Australia's cost threshold is unreasonably low at just $51,000 over ten years.

In contrast, the Australian Institute of Health and Welfare's 2021-2022 report notes that the average amount per capita spent on healthcare in Australia was $9,365 per person, or $93,650 over ten years. In other words, the "significant" cost against which visa applicants are assessed is just 54 percent of the average cost expended on Australians over a ten year period.

Australia's approach is also out of step with comparable developed democracies.

Canada

- Canada's significant cost threshold is currently set at $CAD 24,000 per annum or $CAD 120,000 over five years.
- It is set at three times the average community expenditure on a Canadian for health and community services.
- It is adjusted annually in line with that level of expenditure.
- The Canadian government introduced this framework after a three year trial that examined the costs of admitting visa applicants with a health or disability issue, and weighed those costs against the benefits of inclusion for the Canadian community, human rights obligations and community expectations

New Zealand

- The significant cost threshold for New Zealand is now $NZD 81,000 over five years.

If Australia's SCT continues to be assessed over a maximum 10 year period:

- to bring Australia into line with New Zealand, the SCT would need to be raised to approximately $AUD 160,000 over ten years; or $AUD 80,000 over five years
- to bring Australia into line with Canada, the SCT would need to be raised to approximately $AUD 27,000 per annum, or $AUD 135,000 over five years, or $AUD 270,000 over ten years.

It is clear that Australia's SCT is outmoded and does not meet community expectations.

2. How significant is defined

The term "significant cost" is not defined in Australia's migration legislation, but it appears to

be an arbitrary figure that is not subject to public scrutiny or accountability.

It is measured by the Medical Officer of the Commonwealth for each visa applicant in terms of community costs for health, including pharmaceuticals and medical treatment, aged care, and disability services, including so-called "special education" for children with disabilities.

It is also based on the cost of services which an Australian citizen or permanent resident would be entitled to claim, regardless of whether or not a visa applicant intends to use such services, for example the public education system.

3. The implications of including special education as a costing policy definition of community service

Special education costs should not be treated differently to any other education cost. Education is a human right and a community investment. It is not a cost.

Australia's inclusion of education support for children with a disability or health condition within the "significant costs" threshold is inconsistent with Australia's obligations under the United Nations Convention on the Rights of the Child (CRC). It is also inconsistent with Australia's obligations under the Convention on the Rights of persons with Disabilities (CRPD)

When applying the Migration Health Requirements, the Australian Government, including the Minister for Immigration and the Department of Home Affairs, must:

- ensure that the best interests of children are a primary consideration
- protect children's human rights to education, development and non-discrimination.

4. The impact of the Migration Health Requirement on non-citizen children with a disability (or health condition) born in Australia to people on temporary visas

The human rights of children born in Australia are disproportionately impacted by the current application of the Migration Health Requirements and the SCT.

Families on temporary visas who are looking to make their contribution to our communities permanent and who otherwise meet all visa eligibility requirements can be refused a subsequent visa because they have a child born in Australia with a disability or health condition.

This is discriminatory and out of step with the Australian community's expectations.

5. Any other matters relating to the Migration Health Framework

It's Time for Action

Less than two months ago, the Disability Royal Commission (DRC) recommended that the Australian Government review the operation of section 52 of the *Disability Discrimination Act 1992 (Cth)* insofar as it authorises the *Migration Act 1958 (Cth)* to discriminate against people with disability seeking to enter Australia temporarily or permanently. The DRC specified that such a review should:

- consider changes to the legislation and migration practices to eliminate or minimise discrimination.
- be conducted with particular reference to the rights recognised by the *Convention on the Rights of Persons with Disabilities* and the *Concluding observations on the combined second and third periodic reports of Australia* made by the United Nations Committee on the Rights of Persons with Disabilities

It has been three years since the 2019 Concluding Observations of the United Nations Committee on the Rights of Persons with Disabilities recommended that Australia amend its migration laws and policies to ensure that persons with disabilities do not face discrimination in any of the formalities and procedures relating to migration and asylum. The Committee specifically recommended that Australia remove the exemption in the *Disability Discrimination Act 1992 (Cth)* to certain provisions of the *Migration Act 1958 (Cth).*

It has been thirteen years since the Joint Standing Committee on Migration published its "Enabling Australia" Report recommending the Federal Government replace its outmoded and discriminatory migration health requirements with a more modern approach which is consistent with Australia's international human rights law obligations and positively recognises individual and overall family contributions to Australia.

It is very concerning that successive federal governments have failed to act on many of the Report's fundamental recommendations.

This review should consider Australia's international human rights law obligations to adults and children with disabilities and health conditions.

Health Waivers must be made available to all visa applicants

Some visas allow an applicant who has failed to meet the health requirement to argue for a **waiver** of the Migration Health Requirement. This means that they can argue that the requirements that apply to community costs should be put aside, on the grounds of the applicant's particular situation. Such arguments usually relate to the benefits and skills the applicant brings to Australia.

96 per cent of people who are eligible to apply for a health waiver are ultimately granted a visa however, only around **half** of all visa applicants are given the opportunity to argue that the financial and social benefits they bring to the Australian community outweigh any potential costs associated with their disability or health condition. If there is no waiver option available, their visa will simply be refused.

The current framework for waivers is therefore unfair, inequitably applied and continues to treat many people with disabilities and health conditions as a net burden to our community. Such an approach is archaic and out of step with community expectations.

One Fails, All Fail rule for family units

If an applicant for a permanent visa has a member of their family unit, such as a child, spouse or parent, who is not themselves applying to migrate, that "non-migrating family member" is nonetheless still required to meet Australia's Migration Health Requirements

(MHR).

The “one fails, all fail” rule, therefore, means that the visa applicant will be refused their visa simply because they have a family member who happens to have a disability or health condition that causes them to fail the MHR, even though that family member is **not applying for a visa** to come to Australia. Examples of where this can happen include an applicant with an elderly parent in care in their home country but who is not applying to migrate, or a child with a disability or health condition who will remain with a divorced custodial parent in the home country and is not applying to migrate.

The government’s 2012 Response to the 2010 Enabling Australia Report agreed to provide a cost benefit analysis for all visa applicants: in effect, to introduce the possibility of waivers for all visa applicants. The Response also agreed to end the “one fails, all fail” rule. Neither of these reforms has been implemented to date.

6. Please include the following calls for reform at the end of your submission or in your recommendations to the Review:

We call on this Review to recommend that the Australian Government urgently replace Australia’s outmoded migration health requirements with a framework that is consistent with international human rights law standards and positively recognises individual and overall family contributions to Australian communities.

In particular we call for:

1. An immediate, meaningful increase in the SCT to bring it into line with comparable nations such as Canada and New Zealand;
2. A costing review of the migration health requirements, similar to the Canadian government’s review of their Medical Inadmissibility requirement;
3. The right to apply for a health waiver to be made available to all visa applicants;
4. The granting of an automatic health waiver for all children with a disability or health condition born in Australia to temporary visa applicants if the family wants to apply for further visas;
5. An end to the inclusion of "special education" as a community cost in the MHR;
6. An end to the requirement that non-migrating family members undertake a health assessment and to the “one fails all fail” rule.
7. Removal of the exemption in the *Disability Discrimination Act 1992* to the *Migration Act 1958*;
8. Removal of Australia’s interpretative declaration to the *Convention on the Rights of Persons with Disabilities* (**CRPD**), which has enabled the Australian government to continue to discriminate against people with disability in migration matters.