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Factsheet

An overview of Australia's migration health requirements and how they impact on people with disability and/or health conditions

People with disability or health conditions, and family who have members with disability or health issues, run the risk of having their visa applications refused because they are unable to meet the strict health requirement set out under the Migration Act 1958 (Cth) and Migration Regulations 1994.[1]

- This factsheet will explain the discrimination people with disability experience when navigating the complex Australian migration system.
- It breaks down the different processes a person with disability must go through when applying for a visa in Australia.
- It also provides information to people with disability on where to find professional migration assistance and support.

The Australian government's rationale for the migration health requirement is:

1. to protect the Australian community from public health and safety risks, especially active tuberculosis;
2. to help the Department to control how much the Australian government spends on services such as certain social security benefits, allowances, and pensions; and
3. to ensure Australian citizens and permanent residents can access health and community services that are in short supply.

1 *The health criterion applies to all visas to gain entry into Australia.*

Why this is unfair

The migration health requirement specifies that a visa applicant must be free of a ‘disease or condition’, which would cost the Australian community a ‘significant’ amount, or prevent access to health and community care and/or scarce resources for Australian citizens.

Sometimes it can be difficult for visa applicants with disability or an ongoing health condition to meet the health requirement, which is focused exclusively on the economic cost of the applicant’s condition and the perceived ‘burden’ it could place on public health and community resources.

The health requirement assesses disability through an outdated disease/health lens and does not account for individual circumstances. Nor does it assess whether applicants actually intend to access government services; or take into account the social, economic and cultural contributions applicants make to our community.

While all visa applicants must be assessed against the health requirement, the provisions indirectly discriminate against people with disability.

The 2010 Joint Standing Committee on Migration's Inquiry into the Migration Treatment of Disability (***Enabling Australia***) has stated that the health requirement is discriminatory as it sets 'standards of health requirement which the disabled do not or cannot meet'.[2]

This discriminatory impact was also noted in 2017 by the Special Rapporteur on the human rights of migrants.[3] While the Australian government has made some amendments to its visa health policy for people with disability and health conditions, especially following the 2010 *Enabling Australia* inquiry and more recently in 2019, key legislative and policy reform has not been implemented so far.

Critically, the Migration Act and associated Regulations remain exempt from the *Disability Discrimination Act (1992)*. Nor has the Australian government acted on the recommendation from the Committee on the Rights of Persons with Disabilities to withdraw its Interpretative *Declaration to United Nations' Committee on the Rights of Persons with Disability, CRPD Article 18*.[4]

This means that Australia maintains its strict health requirement in law and policy even though this is at odds with the Convention on the Rights of Persons with Disability (**CRPD**), which the Australian government has ratified.

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2 *Australian House of Representatives, Joint Standing Committee on Migration (2010), Enabling Australia: Inquiry into the Migration Treatment of Disability, chapter 7, p. 177 noting the opinion of Professor Ben Saul.*

3 *Francois Crepeau, 'Report of the Special Rapporteur on the human rights of migrants on his mission to Australia and the regional processing centres in Nauru', 35th sess, Human Rights Council, Agenda item 3, UN Doc A/HRC/35/25/Add.3 (24 April 2017) [92].*

4 *Committee on the Rights of Persons with Disabilities, 'Concluding observations on the initial report of Australia, adopted by the Committee at its 10th session (2-13 September 2013), UN Doc CRPD/C/AUS/CO/1, 21 October 2013, paras 8-9.*

Meeting the health requirement

The Australian government requires almost all visa applicants to meet certain health requirements before the Department of Home Affairs (**the Department**) can grant them a visa.[5] These requirements are set out in the form of two so-called Public Interest Criteria (PIC), PIC 4005 and PIC 4007.

In some cases, the Department might also assess the health of non-migrating family members as part of the visa application process, and if a non-migrating family member fails to meet the health requirement set out in the relevant PIC, the whole family can be refused visas.

Significant costs

When assessing a visa applicant who has a health condition or disability, the Medical Officer of the Commonwealth (**MOC**) must assess the likely cost to public health and community services which would arise if a visa were granted, and provide a written opinion to the Department as to whether those hypothetical costs are 'significant'.[6]

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5 *https://immi.homeaffairs.gov.au/help-support/meeting-our-requirements/health/protecting-health-care-and-community-services*

6 *Department of Home Affairs, MOC Advice Pack, February 2024*

Community services may include the provision of an Australian disability support benefit or allowance, supported accommodation, special education, and home and community care. If an applicant's costs are deemed 'significant' over a specified period, they will fail the health requirement.

When assessing 'significant costs', an applicant's costs are assessed for:

1. the period for which the visa is to be granted if the visa applicant has applied for a temporary visa; or
2. a maximum of ten years if the visa applicant has applied for a permanent or provisional visa.

Since July 1, 2024, the threshold for 'significant' costs has been $86,000[7]. This threshold is due to be updated again in around July 2026.

Exemption for visa applicants born and ordinarily residing in Australia

The Migration Regulations were updated in 2024, in line with a key recommendation of the Disability Royal Commission Report. Visa applicants under the age of 18 born and ordinarily resident in Australia who have a health condition or disability are no longer required to meet the health requirements outlined above.

7 *Department of Home Affairs, Protecting health care and community services*

How to meet the health requirement

Depending on which visa they are applying for, and on some other factors, applicants for visas are required either to complete a health declaration or to undergo a full medical examination conducted by a doctor appointed or accredited by the Department. These factors include, among other things: proposed period of stay; country of passport; where they have lived recently; age; and what they intend to do in Australia. The results of such declarations or examinations will be assessed by the MOC.

If an applicant shows evidence of a disability or medical condition, the MOC will advise the Department whether the condition is likely to:



threaten public health;



result in significant healthcare and community service costs; or



place a demand on healthcare or community services that are in short supply.

The MOC will then assess what kind of health and community services an Australian citizen or permanent resident would be eligible for, if they had the same condition at the same degree of severity as the applicant.

How are the health costs calculated?

The MOC opinion considers only the applicant's medical situation, including disability, not other personal circumstances. For example, the MOC cannot take into account whether applicants will use available public services because, for example, they have private health insurance or have enough money to pay for treatment; or whether parents of a child with a learning disability might prefer to educate their child privately.

Consequently, the health care or community services **which will actually be used** by the applicant are irrelevant to the MOC's assessment of health and community costs. The focus is on **eligibility** for services.

Costs are generally assessed as set out below.

Applicants for a permanent or provisional visa

Applicants aged 75 years and over	3 years for a non-permanent health condition
Applicants with reasonably predictable (beyond a 5-year period) permanent condition	A maximum of 10 years
Applicants with reasonably predictable (>65% likelihood) reduced life expectancy	A maximum of 10 years if expectancy greater than 5 years
All other permanent and provisional applicants	5 years

Applicants for a temporary visa

	Period for which the visa is to be granted

Health Waiver

In some circumstances, a 'health waiver' may be available.
This means that the health requirement may be 'waived' or set aside at the Department's discretion. This is only possible for applicants for those particular visas which are subject to PIC 4007, notably: partner visas, child visas, and some short term and permanent employer-sponsored skilled visas.

If the visa being applied for is one for which a waiver of the health requirement is available under PIC 4007, an applicant who fails to meet the health requirement will be invited to apply for the exercise of the waiver, by providing more information and documents to the Department for consideration.

To be considered for a possible waiver of the health requirement, applicants must first meet all other eligibility criteria for the visa.

The Department will then ask applicants to:

1. give more information about their particular circumstances; and
2. complete a formal submission template stating why a health waiver should be granted.

Each waiver is considered on a case-by-case basis. A number of factors need to be addressed, including:



whether applicants or any of their family members can lessen the potential cost of their condition and their potential reliance on Australia's health care and community services; and



any particular compassionate and compelling circumstances that support the granting of the visa.

The applicant's personal circumstances are only taken into consideration when applying for a waiver.

What if a health waiver is refused?

If a health waiver is refused, there may be some avenues open for applicants, though it is important to note that not all visa refusals are 'reviewable'. However, if a review of the refusal is an option, the first step is generally to apply for review of the decision at the Administrative Review Tribunal (ART). Judicial review in a court, or Ministerial Intervention (MI) may also be options.

Advocates and supporters may be able to provide some character references or letters of support to the applicants, at the waiver, ART review or MI stage.

Summary

Although the health requirements have been relaxed since 1 July 2019, the underlying discriminatory nature and practice of the migration process continues to impact negatively on people with disability and health conditions applying for Australian visas.

Australia's complex migration system treats people with disability and health conditions, and their families unfairly. To address this, a legislative reform, which ensures a non-discriminatory migration system and alignment with international expectations as set out in the United Nations CRPD is imperative.

Where to find professional migration assistance

Migration is a complex area of law and obtaining advice from an experienced Registered Migration Agent (**RMA**) or migration lawyer is strongly recommended, particularly when requesting a health waiver or ART review of a refusal.

Registered Migration Agents can be found via the Office of Migration Agents Registration Authority: www.mara.gov.au

Free legal advice or information can sometimes be provided by different general or specialist community legal centres or pro bono migration agents. You can contact one of the following agencies or referral centres to ascertain the one close to you:

Community Legal Centres Australia:
https://clcs.org.au

Australian Pro Bono Centre:
https://www.probonocentre.org.au/legal-help/individual/

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