Australian Government

Department of Home Affairs

Review into the Migration Health Requirement and Australia's visa Significant Cost Threshold

April 2024

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The Department of Home Affairs acknowledge the Traditional Custodians throughout Australia and their continuing connection to land, sea and the community. We pay respect to all Aboriginal and Torres Strait Islander peoples, their cultures and to their Elders past and present.

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FOREWORD

Health is dynamic and continuously evolving with technologies and medical interventions that provide new options for care and treatment including for chronic illnesses. There has also been a welcome evolution in community attitudes embracing inclusion, accessibility and equitable opportunities. It is timely Australia's Migration Health Requirement (including the Significant Cost Threshold) is once again reviewed, as it has been historically, to remain contemporary with health advances and societal expectations.

The Department of Home Affairs has undertaken this review building on previous work, through targeted and public consultation, taking into account community views on how to improve fairness and inclusivity in the migration system whilst containing public expenditure on health and community services. The review acknowledged the delicate balance required in this regard.

The review has identified practical changes to enhance fairness and inclusion for the Migration Health Requirement, which are consistent with community feedback and feasible within the existing legislative framework. These are presented for consideration by Government, acknowledging that should such reforms be progressed, it will be necessary to ensure that the aforementioned balance is maintained within the framework of the overarching Migration Strategy.

Some potential changes requiring further work have also been outlined for future consideration.

The Department of Home Affairs would like to express appreciation for all the stakeholders that participated in the consultation process, in particular to those who shared personal experiences.

Dr Grant Pegg
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REVIEW TIMELINE AND KEY MILESTONES

The Minister for Immigration, Citizenship and Multicultural Affairs requested that the Department of Home Affairs undertake a review into the Migration Health Requirement and Australia's visa Significant Cost Threshold in mid-October 2023.

This timeline outlines key dates relevant to the review, including work previously undertaken by the Department.

OCTOBER 2022

Data analysis commenced to prepare for biennial increase to Significant Cost Threshold (SCT).

MARCH 2023

Health economist advice regarding the impact of COVID-19 on health and welfare expenditure data used to calculate the SCT.

APRIL 2023

Targeted consultation with stakeholders to inform policy options to reform the Migration Health Requirement, including the SCT. This process concluded in October 2023.

AUGUST 2023

Interdepartmental meetings with Commonwealth and Jurisdictional agencies to seek views on potential reforms to the Migration Health Requirement.

SEPTEMBER 2023

The Disability Royal Commission into Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability delivered its Final Report including Recommendation 4.31.

NOVEMBER 2023

Public consultation on the SCT and potential reform options.

APRIL 2024

Final Report completed.

OVERVIEW OF KEY EVENTS RELEVANT TO THIS REVIEW

- In **October 2022**, the Department of Home Affairs (The Department) commenced data analysis to prepare for the biennial incremental update to the Significant Cost Threshold (SCT). This included seeking Health Economist advice assessing the impacts of inflated health and welfare costs due to the COVID-19 pandemic in the data set used to derive the SCT. The Department also sought advice whether the SCT calculation used all the available Australian Institute of Health and Welfare data sets to fully reflect a comprehensive, plain meaning of 'health and community services' costs.
- In **early 2023**, the Department began meeting with stakeholders to understand the impacts of the current Migration Health Requirement policy settings on visa applicants living with disability or a health condition. The Department invited relevant stakeholder organisations, groups and individuals to participate in targeted online consultations from April 2023 through to October 2023. The feedback from targeted consultation was used to explore policy opportunities that could introduce greater fairness and inclusivity to the Migration Health Requirement.
- From **August 2023**, the Department met with Commonwealth, State and Territory Government Departments that could be fiscally impacted by any changes to the current Migration Health Requirement[1], to seek their views and understand any programmatic and funding implications.
- The final report of the Disability Royal Commission released in **September 2023** recommended (Recommendation 4.31) a review of section 52 in the Disability *Discrimination Act 1992* (DDA), which provides an exemption for the *Migration Act 1958* (Migration Act), with reference to the *Convention on the Rights of Persons with Disabilities*[2].
- In **mid-October 2023**, the Minister for Immigration, Citizenship and Multicultural Affairs requested the Department undertake public consultation in line with the terms of reference. This occurred between 2 and 17 November 2023, with 51 public submissions received. The submissions received built upon the Department's targeted consultation and were used to inform the development of policy options.
- In **April 2024** this report was completed.

1 This included Commonwealth, State and Territory Departments of Health, Education, Treasury, Finance, Department of Social Services and National Disability Insurance Agency.

2 For clarity, the Department's review did not include a review of the DDA, but it did consider the relationship of s52 of the DDA with the implementation of the Migration Health Requirement provided for in the *Migration Act 1958*. The Government response to the Royal Commission recommendations was pending at the time of completion of this report.

CONTEXT

The Migration Health Requirement

Most Australian visas require applicants to meet Public Interest Criteria (PIC) 4005 or 4007 of Schedule 4 to the *Migration Regulations 1994*. These are known collectively as the 'Migration Health Requirement'. There is a small group of temporary Australian visas in which the PICs do not apply.

The aims of the Migration Health Requirement are to:

a) protect the Australian community from public health and safety risks,

b) **contain public expenditure on health care and community services**; and

c) safeguard the access of Australian citizens and permanent residents to health care and community services that are in short supply (at the time of this report, this is dialysis and organ transplantation).

For the majority of visa applicants, completion of a Health Declaration is all that is needed to satisfy the Migration Health Requirement. Other visa applicants, including all provisional and permanent visa applicants, are required to undertake an Immigration Medical Examination to determine whether they meet the Migration Health Requirement.

Significant Cost Threshold (SCT)

The SCT is the underpinning policy to 'contain public expenditure on health care and community services' (referenced in bold on the previous page).

The SCT policy was established in 1995 after a review by the then Department of Immigration and Ethnic Affairs (DIEA) and the Department of Human Services and Health (HSH). At that time it was determined that 'significant cost' should be interpreted as a cost that is 'higher than average annual health and community services costs for an Australian'.

As depicted in Table 1 below, there have been a number of increases to the SCT since its introduction in 1995.

TABLE 1. SIGNIFICANT COST THRESHOLD INCREASES

Year of increase	Amount ($)
1995 (first)	16,000
1998	17,500
2001	20,000
2006	21,000
1 July 2012	35,000
1 July 2013	40,000
1 July 2019	49,000
1 September 2021 (current)	51,000

Since 2019, the SCT has been reviewed biennially to align with the release of Australian Institute of Health and Welfare (AIHW) data (see next page). The 2023 update has been incorporated into this broader review on the calculation and definition of the SCT. This delayed biennial update is expected to occur in July 2024.

The ‘average’ cost of an Australian calculation

The current SCT methodology utilises two annually published AIHW reports as data sources to calculate the ‘average’ Australian value:

- AIHW health expenditure publication[3], and
- AIHW welfare expenditure publication[4].

There is up to an 18 month delay after each financial year for the AIHW’s release of these publications. Therefore, a projection method is used to forecast costs to the current financial year applying a growth rate based on a weighted average of the most recent three years of health and welfare expenditure real growth. Real growth is used to account for inflation. This is weighted to 50 per cent of the real growth rate of the most recent year, and 25 per cent for each of the earlier two years.

A five-year per capita approach is then used to calculate the SCT. The approach sets the SCT value at a level that represents the average five-yearly per person expenditure on health and welfare services in Australia.

Using this methodology in 2021, the average cost of health and community services per year for an Australian was assessed as $10,200 which was then subject to the five-year per capita approach ($10,200 x 5) to derive a SCT of $51,000.

How the SCT is used to determine if a visa applicant meets the Migration Health Requirement

A Medical Officer of the Commonwealth (MOC) is authorised[5] to assess the hypothetical estimated costs to the community of a visa applicant’s health condition and provide an opinion as to whether the Migration Health Requirement has been met or not. This is known as the ‘MOC assessment’. If the estimated costs are above the SCT ($51,000), the visa applicant is assessed by the MOC as not meeting the Migration Health Requirement.

When assessing costs for a **temporary** visa applicant, the estimated costs for their proposed stay in Australia are assessed over the period of stay that the visa processing officer intends to grant the visa. For example, a student visa applicant with health care costs of $16,000 a year who will be granted a one year visa should be assessed to meet the Migration Health Requirement. On the other hand, a student applicant with costs of $16,000 a year who will be granted a four year visa ($16,000 x 4 = $64,000) would be assessed as not meeting the Migration Health Requirement because the estimated costs of $64,000 are above the SCT of $51,000.

3 Health expenditure Australia 2020-21, Report editions – Australian Institute of Health and Welfare (aihw.gov.au).
4 Welfare expenditure Australia 2020-21, Report editions – Australian Institute of Health Welfare (aihw.gov.au).
5 PART 1 – Public interest criteria [clause 4001 to clause 4022] (border.gov.au).

When assessing costs for a **provisional or permanent** visa applicant, the costs for any permanent health conditions are assessed for 10 years. For example, a permanent skilled visa applicant with a permanent chronic health condition and the course of the disease is inevitable with estimated health care costs of $11,700 per year, would be assessed as not meeting the Migration Health Requirement ($11,700 x 10 years = $117,000) because the estimated costs of $117,000 are above the SCT of $51,000.

Not meeting the Migration Health Requirement

Over 99 per cent of visa applicants meet the health requirement.

In 2022-23, a total of 1,327,370 Immigration Medical Examinations were undertaken and 2,267 visa applicants did not meet the Migration Health Requirement. The total estimated cost of the health and welfare services that these visa applicants hypothetically required was estimated to be $1.06 billion.

Access to Health Waivers

If the applicant fails to meet the Migration Health Requirement, and the visa they applied for is subject to Public Interest Criterion 4007, a waiver of the need to meet this requirement (a 'health waiver') is available for the visa delegate to consider. In these cases, the visa delegate is able to consider the applicant's personal circumstances, including capacity to mitigate costs and/or compelling or compassionate circumstances, to waive the health outcome and grant the visa.

If an applicant fails to meet the Migration Health Requirement, and the visa they applied for is subject to Public Interest Criterion 4005, a health waiver is not available. Therefore, the visa delegate cannot consider the applicant's personal circumstances and the visa cannot be granted.

Since 2012, it has been Departmental policy that significant costs for Refugee and Humanitarian visa applicants have been waived.

In 2022-23, 60 per cent of all visa applicants who failed to meet the health requirement (n = 1,341) had access to a health waiver and a majority of these had health waivers exercised.

Waiving the need to meet the Migration Health Requirement has potential cost implications for public expenditure. In the 2022-23 program year, the estimated potential cost to Australian health care and community services from health waivers was $358 million ($236 million for humanitarian visa applicants and $122 million for non humanitarian visa applicants). This represents the hypothetical health and welfare costs (based on MOC assessment) for either the period of the temporary visa or for the first 10 years of a permanent visa for all 'does not meet' health cases that were waived in 2022-23.

FINDINGS

FINDINGS FROM THE REVIEW INTO THE MIGRATION HEALTH REQUIREMENT AND AUSTRALIA'S VISA SIGNIFICANT COST THRESHOLD

1	The Significant Cost Threshold, as currently defined, prevents some permanent visa applicants living with a stable and managed chronic condition from meeting the Migration Health Requirement
2	The 'average' Australian's health and community service calculation could be more comprehensively captured and better align with the Medical Officer of the Commonwealth assessment
3	The COVID-19 impact on health and welfare expenditure requires revised indexation and projection to better calculate the SCT value
4	The exclusion of special education costings from the MOC assessment would create a more inclusive Migration Health Requirement
5	The community seeks greater transparency on how the SCT is calculated and applied
6	The disparity between the SCT calculation and the MOC assessment period may be unfair for visa applicants with stable and managed chronic conditions
7	Child visa applicants born and living in Australia with a health condition or disability could be given special consideration due to their inherent connection to Australia since birth
8	Access to the migration health waiver could be more equitable across permanent skilled visa subclasses
9	Migration language within the visa health declaration questions could be revised to be more inclusive

FINDING 1: THE SCT, AS CURRENTLY DEFINED, PREVENTS SOME PERMANENT VISA APPLICANTS LIVING WITH A STABLE AND MANAGED CHRONIC CONDITION FROM MEETING THE MIGRATION HEALTH REQUIREMENT

When the SCT was established in 1995, it was determined that 'significant costs' should be interpreted as any cost that is higher than the 'average' annual health and community service costs.

Merely exceeding the national average per capita cost for health and community services is not considered 'significant' for most stakeholders. The review noted stakeholders expect the ordinary meaning of the term 'significant' to be adopted, with some suggesting further defining the term in the Act or the regulations.

The impact of the current policy is that people living with stable and managed health conditions such as HIV, Crohn's Disease and skin disorders such as Psoriasis, are prevented from meeting the Migration Health Requirement for a permanent visa.

The review recognised that the current definition of 'significant', which has been in place for almost 30 years, does not reflect contemporary views. It does not consider the medical advancements that have occurred which may effectively prevent disease progression and costs associated with that progression, enabling people with stable and managed health conditions to live full and healthy lives on treatment with a working capacity not dissimilar to the general population.

The review noted that in 2018, in response to similar concerns, the Commonwealth Government of Canada introduced a three-times multiplier to be applied to the average health and community service cost of a Canadian over 5 years, to determine their equivalent of the SCT[6].

The review acknowledged that, notwithstanding planned biennial increases, the actual level of the SCT would continue to be significant barrier in particular to visa applicants living with a stable and managed chronic health condition.

The review highlighted the need to balance fairness and community expectations with the intent of the Migration Health Requirement to contain public health expenditure for both Commonwealth and jurisdictional agencies.

Potential action that could address this finding:

1. Consider re-defining 'significant' within the SCT by applying a multiplier to the national average per capita cost for health and community services. Implementation of such a change would require Government authority and careful consideration to balance any resultant fiscal impact to the Commonwealth and States and Territories.

6 www.canada.ca/en/immigration-refugees-citizenship/corporate/mandate/policies-operational-instructions-agreements/excessive-demand-june-2018.html.

FINDING 2: THE 'AVERAGE' AUSTRALIAN'S HEALTH AND COMMUNITY SERVICE CALCULATION COULD BE MORE COMPREHENSIVELY CAPTURED AND BETTER ALIGN WITH THE MOC ASSESSMENT

Health Economist advice sought by the Department agreed that the AIHW data remained the most comprehensive and accurate source on the average Australian's health and welfare expenditure. However, it was identified that not all relevant data elements from these publications were currently being incorporated into the SCT calculation.

Specifically, it was identified that the AIHW publications included data on special education costs and welfare payments. Whilst these potential costs were included in MOC assessments, they did not form part of the SCT calculation. The review found that if they were included, it would not only correct this disparity but more comprehensively capture the 'average' cost of an Australian's health and welfare services and serve as a fairer comparator.

Public submissions also advocated for the inclusion of these additional services in the 'average' cost calculation noting it would have the effect of both increasing the SCT and better aligning the SCT calculation to the MOC assessment.

The review further considered that as part of future biennial SCT increases, the available AIHW data elements should be reviewed to ensure the 'average' calculation is as comprehensive as possible.

Proposed actions that could address this finding:

2. Improve the SCT calculation to include identified AIHW expenditure data on special education and welfare payments, based on Health Economist advice, to better reflect 'average' costs of health and welfare services.
3. Continue to update the SCT biennially, and as part of this process review available AIHW published data to ensure the 'average' Australian's health and community service costs remain current.

FINDING 3: THE COVID-19 IMPACT ON HEALTH AND WELFARE EXPENDITURE REQUIRES REVISED INDEXATION AND PROJECTION TO BETTER CALCULATE THE SCT VALUE

Health Economists considered the indexation and projection applied to calculate the SCT value for the biennial increase. The review confirmed this is appropriate due to the up to 18-month delay after each financial year for the AIHW's publication of health and welfare expenditure data.

However, health expenditure during the COVID 19 pandemic showed an unprecedented increase in real growth (6.6 per cent) and average health expenditure ($691 per person) relative to previous years. There was also a sharp rise in welfare expenditure in the early stages of the pandemic with a 10 per cent increase documented in 2019-20 due to Jobseeker and Economic Support Payments[7].

In order to smooth the unprecedented health expenditure caused by the COVID-19 pandemic, the current year indexation projection method could be improved by moving from a three-year weighted average to a seven-year rolling average. The review confirmed this could be implemented at the next SCT update.

Proposed action that could address this finding:

4. Improve the SCT calculation by acknowledging the impact caused by the COVID-19 pandemic and using a seven-year rolling average indexation and projection method.

7 Australia Institute of Health and Welfare (2022) Health Expenditure 2020-2021 accessed on 11th April 2024.

FINDING 4: THE EXCLUSION OF SPECIAL EDUCATION COSTINGS FROM THE MOC ASSESSMENT WOULD CREATE A MORE INCLUSIVE MIGRATION HEALTH REQUIREMENT

The review noted strong support by disability organisations, members of the public and migration agents to exclude the costs of special education from the MOC assessment.

Most submissions expressed the view that special education should be considered no more than another form of education cost, which should accommodate children with special needs. Many submissions compared this to children in need of English as a second language education.

The review found that temporary visa applicants with a dependent child with a disability, were more likely to not meet the Migration Health Requirement due to special education costings being included in the MOC assessment. The review recognised that only children with a disability have special education costings applied to their migration health assessment.

The review noted that the National Disability Insurance Scheme (NDIS) is only available to Australian citizens and permanent residents. For children with disabilities, the NDIS package may include wrap around support services such as transport assistance, self-care at school, mobile equipment or assistive technology. By removing the costs of special education from their health assessments, most child temporary visa applicants would then go on to meet the health requirement and be granted visas. Some jurisdictions expressed concerns about more children on temporary visas who are not eligible for NDIS services, accessing special education without supplementary NDIS support services. This could amplify the current pressures on schools to provide these supplementary services for children who cannot access NDIS services.

There were 263 child visa applicants who did not meet the Migration Health Requirement in 2022-23 due to a MOC assessment including special education costings.

The review acknowledged that while the exclusion of special education costings from the MOC assessment has strong community support, any resultant fiscal impacts would need to be carefully considered by Government.

Proposed action that could address this finding:

5. Consider excluding special education costings from the MOC assessment and therefore the SCT calculation[8]. Implementation of such a change would require Government authority and careful consideration to balance any resultant fiscal impact to States and Territories.

8 For clarity, while they may appear to be mutually exclusive, proposed action 5 is made independent of proposed action 2.

FINDING 5: THE COMMUNITY SEEKS GREATER TRANSPARENCY ON HOW THE SCT IS CALCULATED AND APPLIED

The review heard that stakeholders requested greater transparency in the calculation of the SCT. In particular, a plain language breakdown of what is included in the calculation of the 'average' cost of health and welfare expenditure was considered to be required.

Stakeholders also requested a list of services considered in MOC assessments to be 'health care or community services', and greater transparency on the methodology used by MOCs in assessing the estimated costs associated with disabilities or health conditions.

The review noted that when a MOC assesses that the visa applicant 'Does Not Meet' the Migration Health Requirement, the Department requires that they provide a MOC opinion which evidences their assessment. This is made available to the visa applicant and provides guidance on how the MOC costed the visa applicant's condition. The MOC may reference a series of 'Notes for Guidance' documents to support their cost assessment for a hypothetical person. These guidance documents are periodically updated by medical experts.

Proposed action that could address this finding:

6. A plain language explanation of the SCT and how it is applied could be developed and published on the Home Affairs website.

FINDING 6: THE DISPARITY BETWEEN THE SCT CALCULATION AND THE MOC ASSESSMENT PERIOD MAY BE UNFAIR FOR VISA APPLICANTS WITH STABLE AND MANAGED CHRONIC CONDITIONS

The review considered that the SCT is underpinned by the average annual health care and community service costs for an Australian, however the way the SCT is calculated represents the *five-yearly* health and welfare expenditure cost for the average Australian.

Public submissions highlighted perceived unfairness that a visa applicant applying for a permanent visa with a stable chronic health condition would likely have costs assessed for 10 years, yet the SCT represented the five-yearly health and welfare expenditure, thereby resulting in an apples versus oranges comparison. Advocates expressed views that the misaligned timeframes unfairly impact a person's ability to meet the Migration Health Requirement for the grant of a visa.

The review noted that in 2019 the Government of Canada announced it would cease to assess visa applicants with a chronic condition for 10 years, and reduced the assessment period to a maximum of five years to align with the Canadian average five-yearly health and welfare expenditure threshold.

In Australia, the current assessment periods are outlined in Table 2, below.

TABLE 2. MOC ASSESSMENT PERIODS BY VISA TYPE

Visa Type	Medical Officer of the Commonwealth cost assessment period		SCT ($)
Temporary	Maximum period of stay allowed on the visa and/or the period of stay the visa delegate intends to grant the visa for		51,000
Permanent and Provisional	Applicants aged 75 years or older	Three years	
	Applicants with a reasonably predictable (beyond a five year period) permanent condition	A maximum of 10 years	
	Applicants with a reasonably predictable (65% likelihood) reduced life expectancy	A maximum of 10 years	
	All other permanent and provisional visa applicants	Five years	

Proposed actions that could address this finding:

7. Review the five yearly approach and the 10 year MOC assessment period for visa applicants with a stable chronic condition.

FINDING 7: CHILD VISA APPLICANTS BORN AND LIVING IN AUSTRALIA WITH A HEALTH CONDITION OR DISABILITY COULD BE GIVEN SPECIAL CONSIDERATION DUE TO THEIR INHERENT CONNECTION TO AUSTRALIA SINCE BIRTH

The review noted strong support by disability organisations, members of the public and migration agents for special consideration to be extended to child temporary visa applicants born and living in Australia with a health condition or disability.

Children born and ordinarily living in Australia have an inherent connection to the Australian community since birth and the eventual likelihood of obtaining citizenship on their tenth birthday, as prescribed in the *Australian Citizenship Act 2007*.

The review noted that children born and ordinarily residing in Australia with a disability or health condition, who would inherit the temporary visa status of their parent, would not typically meet the Migration Health Requirement for the grant of a permanent visa. This is due to the estimated costs for health and community services that the child may require over a 10 year period (assessment period for the permanent visa), such as special education, Medicare, Pharmaceutical Benefits Scheme, Disability Support pension or Carer payment and NDIS. An example of this is outlined in Table 3, below.

TABLE 3. EXAMPLE MOC ASSESSMENT FOR A CHILD WITH A DISABILITY BORN AND LIVING IN AUSTRALIA

Permanent visa application of a 4 year old dependent child living with a disability				
Included costs - MOC Assessment	**Years costed**	**Cost per year ($)**	**Total cost ($)**	**Relevant information**
Special education services (ages 7 - 13)	7	58,294	408,058	Eligible for 7 years, between the age of 7 and 13 years
Carer Pension/ Allowance/ Subsidies	8	27,405	219,240	Costed for 10 years excluding the two year waiting period.
NDIS Payments Early Intervention	3	56,000	168,000	Early Intervention - weighted cost (weighted based on severity) - eligible to age 6
	7	46,000	322,000	Weighted cost (weighted based on severity) - eligible from 7-13 years (inc.)
		TOTAL	**1,117,298**	

The review acknowledged that when a child does not meet the Migration Health Requirement, it impacts the whole family's application for a permanent visa. The parents have often been residing in Australia for a considerable amount of time and are contributing to the economy and the community with the intention of eventually settling in Australia.

The review noted that such circumstances often result in considerable time and expense pursuing applications for merits review to the Administrative Appeals Tribunal and submissions for Ministerial Intervention. History demonstrates that Ministers have intervened and facilitated visa grant when such cases have been brought to their attention. However, despite the eventual positive outcome, the status quo results in an expensive and stressful experience for the visa applicant family and considerable use of review resources.

There were 61 permanent visa applications in 2022-23 from children born in Australia with a disability or health condition to parents with temporary visas; who have been ordinarily resident in Australia and who did not meet the health requirement for the grant of a permanent visa.

The review found that the implementation of special measures for these child visa applicants would introduce clarity, streamline the process and reduce time and costs by avoiding appeals and submissions.

The review acknowledged that resultant fiscal impacts of implementing such a change would need to be carefully considered by Government.

Proposed actions that could address this finding:

8. Consider an amendment to the *Migration Regulations 1994* to enable special consideration for child visa applicants born and living in Australia with a health condition or disability. The review notes that Government authority would be required for this change.

FINDING 8: ACCESS TO THE MIGRATION HEALTH WAIVER COULD BE MORE EQUITABLE ACROSS PERMANENT SKILLED VISA SUBCLASSES

A health waiver provision is available to all visas subject to PIC 4007. This includes mostly permanent family, humanitarian and some skilled visas. The review noted that providing access to a health waiver means that factors such as an applicant's ties to Australia, the skills or talents they possess, the social and economic benefit they bring to Australia, or their ability to mitigate the significant health and community service cost identified, can be considered by a visa delegate. The visa delegate can then decide if it is in the best interests of the Australian community to waive the health costs and grant the visa.

However, there is no health waiver available for visas subject to PIC 4005. Therefore, if an applicant does not meet the Migration Health Requirement for the grant of a visa due to the 'significant cost' of their health care and/or community services, there is no provision for the visa delegate to consider personal circumstances. The absence of a health waiver for permanent skilled visas ends a pathway to permanent migration for these applicants.

The review noted evidence that applicants for a permanent skilled visa subject to PIC 4005, who are facing a visa refusal on health grounds, will often seek alternative visa pathways that offer a health waiver. This results in visa applicants either going offshore to lodge a new offshore visa application subject to PIC 4007, or a repetitive cycle of multiple visa applications and appeals, causing prolonged stays on temporary visas.

The review noted strong support by health organisations, members of the public and migration agents for health waivers to be extended to more visa subclasses. This would enable visa delegates to be able to consider the economic or social benefits that the visa applicant (and their families) could contribute to the Australian community.

Currently 31 per cent of all visa subclasses (temporary and permanent) have access to a health waiver, providing access to all permanent skilled visa subclasses would increase this to 38 per cent of all visa subclasses

The review also acknowledged that providing expanded health waiver access to skilled visa applicants may attract a more diverse range of skilled migrants. It is possible that existing settings may currently act as a deterrent for skilled migrants with a child with a disability or a skilled migrant with a chronic condition such as HIV.

The review also noted feedback that obtaining a health waiver can be costly and prolong visa processing for the visa applicant. The review acknowledged that resultant fiscal impacts of expanding health waivers would need to be carefully considered by Government.

Proposed actions that could address this finding:

9. Consider greater access to a health waiver (PIC 4007) for permanent skilled visa subclasses. The review notes that Government authority would be required for this change.
10. Identify options to streamline the health waiver processes for visa applicants and visa delegates.

FINDING 9: MIGRATION LANGUAGE WITHIN THE VISA HEALTH DECLARATION QUESTIONS COULD BE REVISED TO BE MORE INCLUSIVE

The review considered consultation feedback on the framing of language in the health declaration which is completed by visa applicants. Health declaration questions guide the assessment of whether the visa applicant meets the Migration Health Requirement.

The review found that language could be revised to be more inclusive and consistent with the *Australian Government's Style Manual: People with Disability*.

Proposed actions that could deliver this reform:

11. Review and update health declaration language in paper and online visa application forms to be more inclusive.

Note regarding Disability Royal Commission Recommendation 4.31

The Disability Royal Commission (DRC) into Violence, Abuse, Neglect and Exploitation of People with Disability delivered its Final Report in September 2023. Relevant to this review, Recommendation 4.31 relating to disability discrimination and migration law states:

a) *The Australian Government should initiate a review of the operation of section 52 of the Disability Discrimination Act 1992 (Cth), insofar as it authorises discrimination against people with disability seeking to enter Australia temporarily or permanently. The review should consider changes to the legislation and migration practices to eliminate or minimise the discrimination.*

a) *The review should 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.*

At the time of this report, the Government's response to the DRC is awaited. Without pre-empting the Government response and any subsequent review that may arise, due to overlapping elements and for clarity, this review has considered the impact that the removal of Section 52 of the *Disability Discrimination Act* (Cth) [DDA] would have on the functioning of the Migration Health Requirement.

The review noted that Public Hearing 29 of the DRC acknowledged that if the Act were not exempt from the DDA, some of the health screening processes required for assessing visa applications might conceivably be found to discriminate against some people with disabilities indirectly, by setting rules that they do not or cannot meet, or discriminating directly, by requiring additional tests or medical evidence that are not required of people without disabilities.

The review noted that the Migration Health Requirement is not condition-specific with the exception of tuberculosis. A MOC assesses each applicant based on their health care or community services need for their condition and level of severity. The MOC then applies the statutory criteria by reference to a hypothetical person test. This test is grounded on precedents from court rulings, beginning with *Robinson v MIMA* [2005] FCA 1626.

To the extent that it may relate to any Government response to Recommendation 4.31, the review considered that the proposed actions outlined in this report, implemented together or in part, would assist in minimising discrimination within the current functioning of the Migration Health Requirement.

GLOSSARY

Term	Definition
Community Services	Under regulation 1.03 definition, community services includes the provision of an Australian social security benefit, allowance or pension. Under policy, it is also taken to include services such as residential aged care, groups home, supported accommodation, special education, National Disability Insurance Scheme (NDIS) as well as home and community care packages (HACC) through the Commonwealth Department of Health and Aged care.
Convention on the Rights of Persons with Disabilities (CRPD)	A convention from the United Nations of which Australia is signatory, which outlines international responsibilities of member states with respect to persons with disabilities. Australia declared an interpretative declaration on the *Convention on the Rights of Persons with Disabilities* when it was ratified by the Australian Commonwealth Government.
Disability Royal Commission	The Disability Royal Commission refers to the Final Report handed down in September 2023 which contained 222 recommendations following the conclusion into the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.
Does Not Meet (DNM) Health	A health outcome for a visa applicant who has **not** satisfied the legislative criteria contained in Public Interest Criterion 4005 or 4007 for the grant of their visa.
Health Care	Under policy, health care include services such as medical services provided under the Medical Benefits Scheme (MBS) including hospital admissions, outpatient consultations, pathology and diagnostic tests, community-based services, Pharmaceutical Benefits Scheme (PBS) subsidised medications as well as chemotherapy drugs to treat malignant conditions, usually administered intravenously in an inpatient or day-stay facility, inpatient surgical services covered by an eligible surgical MBS item number, MBS-funded mental health and psychological services and end of life care.
Health Waiver	A Health waiver is available under Public Interest Criterion 4007 which enables the Minister to consider compassionate and compelling circumstances of the visa applicant. This Minister may be satisfied that the granting of the visa would unlikely result in undue cost to the Australian community or prejudice the access of health or community care of an Australian citizen or permanent resident.

Term	Definition
Immigration Medical Examination (IME)	The medical examinations required to be undertaken by the visa applicant to determine whether a visa applicant satisfies the Migration Health Requirement.
Indexation	Indexation is a standard process used to adjust the value of government programs for changes in the level of prices, living costs or wages. In general, indexation aims to maintain the relative value or level of policy settings over time.
Medical Officer of the Commonwealth (MoC)	Registered medical practitioner appointed by the Department of Home Affairs. They may work directly for the Department, or be employed by the Migration Medical Services Provider.
Meets Health	A health outcome for a visa applicant who has satisfied the legislative criteria contained in Public Interest Criterion 4005 or 4007 for the grant of their visa.
Migration Health Requirement	The Migration Health Requirement is the legislative rule contained in Schedule 4 of the *Migration Regulations 1994* that aims to: 1) Mitigate public health risks to the Australian community. 2) Contain public expenditure to health and community services. 3) Safeguard access to medical services in short supply.
Offshore Panel Physician	An approved and qualified medical professional who conducts the Immigration Medical Examination on behalf of the Department of Home Affairs. Panel physicians report medical diagnosis within approved medical systems to facilitate a decision relevant to Public Interest Criterion 4005 or 4007 for the grant of a visa.
Public Interest Criterion 4005 (PIC 4005)	One of the legislative health criteria applicable for the grant of a visa. This Public Interest Criterion does not have access to a health waiver for the Minister to consider any compassionate or compelling circumstances for any significant cost.
Public Interest Criterion 4007 (PIC 4007)	One of the legislative health criteria applicable for the grant of a visa. This Public Interest Criterion does have access to a health waiver for the Minister to consider any compassionate or compelling circumstances for any significant cost.
Recommendation 4.31	Contained in Chapter 4 of the Final Report is Recommendation 4.31 which is to consider a review to ensure elimination or minimising of discrimination with reference to Section 52 of the *Disability Discrimination Act 1992* and the *Convention on the Rights of Persons with Disabilities*.

Term	Definition
Section 52 to the *Disability Discrimination Act 1992*	Section 52 in the *Disability Discrimination Act 1992* exempts the operation of the *Migration Act 1958* with respect to discrimination.
Significant Cost Threshold (SCT)	The Significant Cost Threshold is the policy threshold for the level of costs regarded as 'significant'. Medical Officers of the Commonwealth provide an opinion as to whether an applicant's condition or disease would be likely to result in 'significant' health care and community service costs if a visa were to be granted.
Special Education	Teaching practices that meet the individual needs of students with disability. The teaching practices are adjusted in line with the individual need to uplift future economic and social participation.

Tables

Table	Title
Table 1	Significant Cost Threshold updates
Table 2	MOC assessment periods by visa type
Table 3	Example Medical of the Commonwealth Officer assessment for a child with a disability born and living in Australia