



Immigration Advice
and Rights Centre

17 November 2023

Department of Home Affairs

Via email: health.requirement.review@homeaffairs.gov.au

Dear Department of Home Affairs,

Re: Response to Review of Australia's visa Significant Cost Threshold

Thank you for the opportunity to provide submissions in relation to the response to the review of Australia's visa Significant Cost Threshold (SCT).

The Immigration Advice and Rights Centre (IARC) is a community legal centre operating in NSW that specialises in immigration, refugee and citizenship law. IARC advocates for some of the most vulnerable members of our community including women on temporary visas experiencing domestic and family violence (DFV), migrant workers subject to exploitation, asylum seekers and migrants seeking reunification with their families.

It is our strong view that the *Migration Act 1958* (Cth) should not be exempt from the *Disability Discrimination Act 1992* (Cth), we believe that Australia's migration system should be fair, just and accessible meaning that it should not discriminate against people on the basis of their disability or health status.

After navigating the many hurdles in Australia's migration system, health is generally the final step in the visa application process. The consequences of the existing health framework can be devastating for our clients, who have often overcome extreme and traumatic circumstances, and otherwise meet the visa criteria, only to fail to meet the health requirement.

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

In our view, the SCT is out of date and does not reflect the current 'average annual health and community services costs for an Australian.' It also does not reflect community standards and attitudes regarding disability.

SCT process is dehumanising

IARC's clients have found the current health assessment process to be dehumanising for people with disabilities or illness and their families. The process of placing a dollar figure on how much an illness is expected to cost the Australian healthcare system and implies that people living with disability or illness are an undue burden on the community. This approach is out of touch with the social model of disability,¹ and community standards in Australia.

"When I saw the estimated costs of \$600,000 for my son, I was heartbroken. There is an amount labelling your son, that this is how much he costs the system. They don't see the whole person - how he is non-verbal but still excelling. We needed to prove that we are an asset and not a liability."

-Maria, TSS holder, Nurse (name changed to protect identity)

¹ See for example: Victorian Government, "The social model of disability", accessed at: <https://www.vic.gov.au/state-disability-plan/our-language/social-model-disability>



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SCT does not reflect the cost of healthcare per annum in Australia

As noted by Welcoming Disability, the SCT of \$51,000 is well below the current average amount per capita spent on health. According to the Australian Institute of Health and Welfare, between 2021 and 2022, the cost of healthcare in Australia was \$9,365 per person, per annum.² This would equate to \$93,650 over ten years, this figure is almost double the current SCT. This shows that the SCT should be, at the very least, significantly increased to accurately reflect the average annual health and community services costs for an Australian, if not scrapped entirely.

Recommendation: The SCT should be significantly increased or scrapped entirely.

2. How 'significant' is defined in the Australian visa Significant Cost Threshold

The term 'significant cost' indicates that the cost is likely higher than average annual health and community services costs for an Australian, however the current SCT figure of \$51,000 is well below the current average healthcare cost per person over a 10-year period. By comparison, Canada defines their significant cost threshold (phrased as 'excessive demand') as three times the average community expenditure on a Canadian for health and community services.³ If the term 'significant cost' is retained, the threshold should reflect the plain meaning of 'significant cost' which far exceeds the average per capita cost of health care in Australia.

Recommendation: The SCT should be revised to an amount that is 'significant' within the plain meaning of the word.

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

We agree with the submission from Welcoming Disability outlining that education is a right and add that this right is upheld by every state and territory by making school attendance compulsory. It is our view that special education costs should not be included in the Department's costing algorithm, as it is plainly discriminatory against children with disabilities. This is out of line with community expectations regarding the of the treatment of children and may be inconsistent with Australia's international obligations under the *United Nations Convention on the Rights of the Child* (CRC) and the *Convention on the Rights of Persons with Disabilities* (CRPD).

Diana – Child visa

Diana (name changed to protect identity) was granted a Partner visa under the Family Violence provisions. She is a survivor of significant physical and emotional abuse from her Australian former partner and is the sole carer of her three children, one of whom is an Australian citizen. One of Diana's children, Daniel, has autism spectrum disorder. Diana applied for a Child visa for Daniel to remain in Australia with Diana and his siblings. Unfortunately, the costs associated with Daniel's condition were assessed to be almost \$2 million over the course of 10 years. More than a quarter of these costs were attributed to special education. Diana faces a substantial hurdle in applying for a health waiver, to enable her family to remain in Australia.

Recommendation: Special education costs should be excluded from costing calculations.

4. The impact of the migration health requirement on non-citizen children with a disability born in Australia to people on temporary visas

² Australian Institute of Health and Welfare, 'Health Expenditure Australia 2021-22', accessed at [Health expenditure Australia 2021-22, About - Australian Institute of Health and Welfare \(aihw.gov.au\)](https://www.aihw.gov.au/about-australian-institute-of-health-and-welfare)

³ Government of Canada, 'Excessive demand on health services and on social services', accessed at <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/standard-requirements/medical-requirements/refusals-inadmissibility/excessive-demand-on-health-social-services.html>



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Families with children born in Australia with a disability have their pathways to permanent residency curtailed and face possible refusal of subsequent temporary visa applications. In a lot of cases, PIC 4005 applies meaning that no health waiver is available to the visa applicant.

People who have been living, working and otherwise contributing to Australia may be forced to leave because their child cannot obtain a substantive visa to remain in Australia with them.⁴ IARC has seen clients working in health care and other critical services being refused subsequent substantive visas, as their child does not meet certain health requirements for the grant of a visa.

Recommendation: Abolish PIC 4005 and replace it with PIC 4007.

5. Any other matters in relation to the Migration Health Framework.

Health waivers to be available for all visa subclasses

We submit that the current system, wherein a health waiver (PIC 4007) is only available for a limited number of visas thereby severely limiting access to permanent residency, is inequitable and out of step with community expectations.

When assessing health for the purposes of a visa application, the Medical Officer of the Commonwealth (**MOC**) will first determine the existence of any medical conditions. Depending on the circumstances, the MOC may then request that the applicant provide a specialist report or undertake further medical exams to complete their assessment. Once all relevant health information has been provided, the MOC will determine the anticipated costs an objective person with the applicant's condition would incur over the period of the visa or, if the visa is a permanent residency visa, over the course of 10 years. In the case that the costs associated with the condition are projected to exceed the SCT, the applicant would fail to meet the health criteria. For applicants in visa streams where PIC 4005 applies, this is where the assessment ends. The Department cannot consider the subjective circumstances of the applicant and their family. In cases where PIC 4007 applies, the Department can consider the full scope of the applicant's circumstances, including their ties to the Australian community and the benefit that they would bring to Australia.

Under PIC 4005, the Department cannot consider any additional factors when making an assessment. There is no mechanism for the applicant to demonstrate why their contributions to Australia or the compelling and compassionate circumstances of their case warrant the approval of the visa, despite the costs determined by the MOC. Applicants applying for permanent residency who are affected by PIC 4005 face visa refusal, despite the social and economic benefit the applicant and their family may bring to Australia.

For applicants who have had a visa application refused on the basis of not meeting PIC 4005, their only option is personal intervention by the Minister which generally cannot be accessed until a decision is made by the Administrative Appeals Tribunal (**AAT**). The practical implication of the lack of availability of health waivers in all visa streams is that these applicants are forced to apply for review at the AAT. The AAT is also bound by PIC 4005 and cannot consider the subjective circumstances of the case and these applications must be refused. The backlog at the AAT has been well-documented.⁵ This is a costly exercise for both the applicant and the Australian Government, who are charged with resourcing the AAT and also responding to requests for Ministerial Intervention.

The current health criteria favours employers

The current application of health criteria favours employer sponsored pathways to permanent residency. PIC 4005 applies to Skilled Independent visas, State/Territory Nominated visas and the Employer Nomination Scheme visa under the Direct Entry stream, amongst others. These visa pathways do not provide access to health waivers and an application would be unsuccessful in the case that the applicant or any family members had a medical condition where the associated costs exceed the SCT. The practical implication is that migrant workers in in-demand occupations, who

⁴ Ashleigh Davis 'Perth family's desperate struggle to avoid deportation, all because their son has Down syndrome' *ABC News* (Online, 4 March 2023) <<https://www.abc.net.au/news/2023-03-04/aneesh-family-deportation-son-down-syndrome/102050564>>

⁵ Administrative Appeals Tribunal, 'A new federal administrative review body' <<https://www.aat.gov.au/about-the-aat/a-new-federal-administrative-review-body>>



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would otherwise meet the criteria for Skilled Independent or State/Territory Nominated visas, are unable to access these visa pathways.

Health waivers are available under PIC 4007 to most family visa pathways (excluding parent visas) and a limited number of skilled visa pathways, including Employer Nominated Scheme (ENS) visas (crucially, only under the Temporary Residence Transition stream (**TRT stream**)), Global Talent Independent (**GTI**) visas and Business Innovation and Investment visas. It should be noted that the eligibility criteria for GTI and Business Innovation and Investment visas are extremely difficult to meet, with only 1,588 GTI visa applications successful in the period of October 2022 – January 2023,⁶ and even fewer Business Innovation and Investment visas.⁷ Most migrant workers in Australia would not have access to these pathways, and are reliant on an employer nominating them for an ENS visa under the TRT stream to have access to a health waiver.

The application of PIC 4005 to most skilled visa pathways can result in migrant workers being dependent on employers to sponsor them for an ENS visa under the TRT stream. We see clients from in-demand occupations, such as nurses who worked throughout the COVID-19 pandemic, who would otherwise be eligible for skilled independent visa pathways, forced to remain with employers to have access to a health waiver.

The balance of power is then in the hands of the employer, who can withhold or withdraw nomination/sponsorship to maintain control over the migrant worker. For applicants with a disability or illness, or with a family member who has a disability or illness, they could be forced to remain with exploitative employers for fear of losing access to a possible pathway to permanent residency with a health waiver available.

Recommendation: PIC 4005 should be replaced by PIC 4007 for all visa subclasses.

“One Fails, All Fail” rule for family units

It is our view that the ‘one fails, all fail’ requirement should be discarded, as this policy is prejudicial against families where one member has a disability. The requirement means that if one member of a family unit does not meet the health criteria (either PIC 4005 or 4007, depending on the visa subclass), the application will be refused. This includes members of the family unit that are not intending to relocate to Australia. Under policy, the Department has discretion to set aside the requirement for non-migrating members of the family unit to complete the health exams. The term “unreasonable” is not defined in legislation and creates uncertainty for visa applicants in families where a non-travelling member may have an illness or disability. This approach should be abandoned, especially where people are not a visa applicant.

Recommendation: The ‘one fail, all fail’ requirement should be abolished.

A summary of our recommendations for the review of the health framework are as follows:

1. The *Migration Act 1958* (Cth) should not be exempt from the *Disability Discrimination Act 1992* (Cth).
2. The SCT should be scrapped or significantly increased.
3. Special education costs should be excluded from costing calculations.
4. PIC 4005 should be replaced by PIC 4007 for all visa subclasses.
5. The ‘one fail, all fail’ requirement should be abolished.

⁶ Australian Government Department of Home Affairs, Freedom of Information Request – FA 22/01/01117
<<https://www.homeaffairs.gov.au/foi/files/2023/fa-230101117-document-released.PDF>>

⁷ Australian Government Department of Home Affairs, Freedom of Information Request FA 23/02/00382
<<https://www.homeaffairs.gov.au/foi/files/2023/fa-230200382-document-released.PDF>>



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We would appreciate the opportunity to provide further information, in person or in writing, if there are future consultations.

Yours sincerely,

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