HELPING PEOPLE NAVIGATE
AUSTRALIAN IMMIGRATION LAW

DISABILITY DISCRIMINATION ACT 1992 (CTH) REVIEW

Immigration Advice & Rights Centre

November 2025

ACKNOWLEDGEMENT OF COUNTRY

We acknowledge the Traditional Owners of Country throughout New South Wales and the Gadigal people of the Eora Nation who are the Traditional Custodians of the land in which we work. We acknowledge this land holds structures of law which were practiced for thousands of generations and recognise First Nations peoples' cultures, wisdom, and connection to lands throughout Australia. We pay our respects to Elders past and present, and acknowledge that sovereignty over this land was never ceded. It always was and always will be Aboriginal land.

INTRODUCTION

The Immigration Advice and Rights Centre (**IARC**) is a not-for-profit, specialist community legal centre providing free legal advice and assistance to people throughout New South Wales. We provide legal services and community education in relation to immigration and domestic violence, migrant worker exploitation, family visas, protection and humanitarian visas, visa cancellations, and Australian citizenship.

IARC has significant experience advising clients on the Migration Health Requirement, which involves health screening of visa applicants, generally as the final step in the visa application process. We have seen first-hand the detrimental impact of this Requirement on some of the most vulnerable members of our community, including victim-survivors of Domestic, Family and Sexual Violence (**DFSV**); people experiencing homelessness; and people with limited English skills who require an interpreter.

Table 1 outlines the intersecting vulnerabilities faced by the 40 clients with identified disabilities and/or health conditions advised by IARC in the last financial year. Note that some of the statistics, including the final total of 40 clients, are likely under-recorded given that certain information may not be disclosed during advice sessions.

Table 1

IARC clients with identified disabilities and/or health conditions (Financial Year 2024-25)

Category	Number of people
Residing in regional, remote, and very remote NSW	5
Aged 65 years or over	5
Victim-survivors of family violence	6
Experiencing homelessness	8
Requiring an interpreter	12
Total number of clients with disabilities and/or health conditions	**40**

The discrimination that visa applicants with disabilities and/or health conditions experience is permitted by Section 52 of the *Disability Discrimination Act 1992* (Cth) (**DDA**), which permanently exempts discriminatory provisions in the *Migration Act 1958* (Cth) and any legislative instruments made under that Act. This submission proposes narrowing Section 52, while still balancing other policy considerations, thereby responding to Question 33 in the Consultation Paper.

In particular, we endorse Welcoming Disability's recommendation that Section 52 be amended such that discrimination is rendered legally permissible only in the interests of protecting public health.[1] Protecting the Australian public from tuberculosis and emerging communicable diseases is a legitimate reason for having a Migration Health Requirement. However, in line with our previous advocacy on this issue[2], IARC strongly opposes the discriminatory thrust of the Health Requirement as it relates to the "significant cost to the Australian community in the areas of health care and community services".[3]

The rest of this submission is as follows. First, we endorse revising Section 52 of the DDA in line with Welcoming Disability's proposed wording. Then, we explain our specific reasons for this position by drawing on our clients' first-hand experiences of discrimination. In doing so, we provide three client case studies that highlight the damaging impact of the Migration Health Requirement in its current form.

HOW SECTION 52 SHOULD BE UPDATED

Welcoming Disability's submission to this Review, which IARC has endorsed, provides a comprehensive summary of the broader legal changes required in order to minimise discrimination towards visa applicants with disabilities and/or health conditions. It is worth reiterating here their first recommendation, which answers Question 33 in the Consultation Paper. Section 52 of the DDA should be amended as follows:

"Divisions 1, 2 and 2A do not:

(a) affect discriminatory provisions **pertaining to the need to protect public health and safety** in:

(i) the *Migration Act 1958*; or

(ii) a legislative instrument made under that Act; or

(b) render unlawful anything **pertaining to the need to protect public health and safety** that is permitted or required to be done by that Act or instrument."[4]

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[1] Welcoming Disability Submission to *Disability Discrimination Act 1992 (Cth) Review*. (2025, November). See: Recommendation 1.

[2] IARC Submission to *Review of the Migration Health Requirement and Australia's visa Significant Cost Threshold (SCT).* (2023, November). Retrieved from https://iarc.org.au/wp-content/uploads/2024/10/2023-11.17-IARC-Submission-to-DHA-Review-on-Significant-Cost-Threshold.pdf; IARC. *Response to Draft National Report for Australia's Fourth Universal Periodic Review*. (2025, August). Retrieved from https://iarc.org.au/wp-content/uploads/2025/09/IARC-Submission-Australias-fourth-Universal-Periodic-Review-UPR-–-draft-national-report-29.08.25-1.pdf.

[3] *Migration Regulations 1994* (Cth), Schedule 4, PICs 4005 and 4007, 1c) ii) .

[4] Welcoming Disability Submission to *Disability Discrimination Act 1992 (Cth) Review*. (2025, November). The bolded words represent the proposed additional words to Section 52.

Revising Section 52 in this way would mean that any provisions in the *Migration Act 1958* (Cth), or any legislative instrument made under that Act, pertaining to either containing public expenditure on health care and community services or safeguarding the access of Australian citizens and permanent residents to healthcare and community services that are in short supply, should remain subject to all the provisions of the DDA.

In order for the *Migration Act 1958* (Cth) and the associated *Migration Regulations 1994* (Cth) (**Regulations**) to comply with the revised DDA, Public Interest Criteria (**PIC**) 4005 and 4007 – contained in Schedule 4 in the Regulations – would need to be updated. In particular, clauses 1(c)(i) and 1(c)(ii) should be removed.

The difference between PIC 4005 and PIC 4007 needs explaining here given their centrality to the discussion below. PIC 4005 sets out the general health test an applicant and members of their family unit must ordinarily satisfy to be granted a visa. The requirements of PIC 4005 cannot be waived. The requirements of PIC 4007 are identical to PIC 4005, except PIC 4007 provides a discretion for the health requirements to be waived in some circumstances. The health waiver provisions do not apply to cases where the person has a condition considered to be a public health risk or danger to the community, such as active tuberculosis.[5]

WHY SECTION 52 SHOULD BE UPDATED

Our central argument is that excluding visa applicants with disabilities and/or health conditions based solely on projected costs to the Australian community is disproportionate to other policy considerations. First, the discrimination visa applicants face is neither reasonable nor actually driven by controlling healthcare and community services costs borne by the Australian taxpayer. Second, the Migration Health Requirement is not adequately balanced against other key policy considerations, such as the economic benefits that migrants bring to Australia. Indeed, for applicants in visa streams where PIC 4005 applies, there is no health waiver, meaning their economic contributions are not considered at all. The case study of Priya illustrates both these arguments.

CASE STUDY:

PRIYA*

Priya came to IARC for our assistance after she had submitted a Skilled Nominated (subclass 190) visa application. Priya submitted this visa application shortly after being diagnosed with rheumatoid arthritis, an autoimmune disease that causes inflammation, pain, and swelling in the joints. Treatment requires regular, high-cost medication.

Fortunately for Priya, a pharmaceutical company in Australia currently provides her with medication by compassionate access (i.e., free of charge). The company has undertaken to continue this arrangement indefinitely. The combination of an early diagnosis and regular medication enables Priya to keep the arthritis under control, and continue as an effective member of the Australian workforce.

Unfortunately, when assessing visa applicants on whether they meet the Migration Health Requirement, the actual provision of healthcare and community services is not

[5] *Migration Regulations 1994* (Cth), Schedule 4, PICs 4005 and 4007.

considered. Rather, the health assessment is conducted with reference to a hypothetical person with a similar condition at the same level of severity. Due to the operation of this so-called 'hypothetical person' test, Priya's healthcare costs were projected to exceed the Significant Cost Threshold of $86,000 over a ten-year period. Consequently, Priya's visa application was refused. PIC 4005 applies to the subclass 190 visa, meaning there was no health waiver available and therefore, no opportunity for Priya to explain that she receives medication by compassionate access and generates negligible costs for the Australian taxpayer.

This outcome has highly negative consequences. Priya is unlikely to have access to the care and medication she has received in Australia back in her home country, which will severely impact her health. Meanwhile, Australia will lose a skilled and committed member of the workforce who otherwise meets all visa criteria.

*Name altered to protect client confidentiality

Priya's story shows that the Migration Health Requirement often does not save the Australian taxpayer money and can unfairly exclude people who would otherwise contribute significantly to the country. The next two case studies illustrate further the discriminatory impact of the Requirement on some of the most vulnerable members of our community, starting with James, a migrant worker in remote NSW who suffered a workplace injury on a rural farm.

CASE STUDY:

JAMES*

James moved to Australia to do agricultural work on a farm in remote NSW. His employer sponsored him for an Employer Nomination Scheme (subclass 186) visa under the Direct Entry stream, which allows skilled workers to live and work in Australia permanently.

The Department of Home Affairs initially refused James's visa application after incorrectly determining that he had insufficient relevant work experience. In fact, James met this requirement, and his employer supported him in seeking review of this decision at the Tribunal. While awaiting the Tribunal's outcome, James suffered a serious workplace injury that resulted in spinal trauma and nerve damage.

Like Priya, James was affected by the rigid application of PIC 4005, which applies to the Direct Entry stream of the subclass 186 visa. Last month, the Tribunal affirmed the Department's original refusal. It accepted that the Department had been wrong about his work experience but found that James no longer met the Health Requirement because of his injury. Since no health waiver is available under this stream, there was no discretion to consider his individual circumstances.

Additionally, new Ministerial Instructions issued in September this year mean that James's case will most likely be finalised without referral to the Minister. If the Tribunal's decision had been made prior to September, James would have had reasonable prospects

of his matter being referred to the Minister for consideration under the previous guidelines, which included consideration of compassionate circumstances relating to the applicant's health. However, the new instructions stipulate that to refer a similar request to the Minister, the individual must have first entered Australia as a minor and lived in Australia for at least 50% of their life, which excludes James.[6]

*Name altered to protect client confidentiality

The new Ministerial Instructions on requests for Ministerial Intervention are likely to negatively impact many vulnerable people, including visa applicants with disabilities and/or health conditions, like James. Previously, applicants whose compassionate or compelling circumstances could not be considered because of PIC 4005 could still seek Ministerial Intervention as a last resort after an unsuccessful Tribunal review. Although this process was often lengthy and uncertain, it offered a final avenue for consideration. Following the recent changes, even this last option is now effectively closed to many of these individuals.

The final case study below concerns another vulnerable client strongly impacted by the Migration Health Requirement: Annisa, a victim-survivor of DFSV wishing to leave her abusive partner.

CASE STUDY:

ANNISA*

Annisa is an IARC client who was referred to our service as a victim-survivor of DFSV, seeking advice on her immigration options. As a result of years spent in a highly abusive relationship, Annisa suffers from a severe eating disorder and other serious mental health conditions, meaning she requires significant medical support. She is also a victim of financial abuse: her partner has control over household finances and prevents her from working, severely limiting her personal income.

Annisa's partner had applied for an Employer Nomination Scheme (subclass 186) visa under the Temporary Residence Transition stream and included Annisa as a secondary applicant in his visa application. Last year, the Federal Government expanded the family violence provisions in the *Migration Regulations 1994* (Cth) to 18 visa subclasses, including the subclass 186 visa. This means that Annisa could still be eligible for the permanent visa without remaining in the relationship with her partner.

However, Annisa's situation is complicated by the Migration Health Requirement. Her visa application is likely to be refused solely because the projected healthcare costs for her mental health conditions exceed the Significant Cost Threshold.

[6] Department of Home Affairs. (2025, September). *Ministerial Instructions – requests for use of the Minister's intervention powers under sections 351 and 501J of the Migration Act 1958*. Retrieved from https://immi.homeaffairs.gov.au/refugee-and-humanitarian/Pages/Ref-and-hum-program/documents/ministerial-Instructions-351-501J.pdf.

A health waiver is available under the Temporary Residence Transition stream of the subclass 186 visa. When considering a health waiver, the Department requires detailed information and evidence from the applicant regarding their ability to mitigate the estimated potential costs, and any compelling and/or compassionate circumstances. This leaves Annisa in a difficult situation. If she stays in the abusive relationship, both her partner's skills and his income are potentially strong reasons to exercise the health waiver.[7] If Annisa leaves her partner, her situation as a victim-survivor of family violence may be considered as compelling or compassionate circumstances, however, she would no longer be able to put forward her partner's income and employment to support her waiver request.[8]

*Name altered to protect client confidentiality

The fact that Annisa faces this decision at all is deeply troubling. The application of the Migration Health Requirement, even where the health waiver is available, adds a further complication for victim-survivors trying to make decisions about safety. The health criteria therefore undermine other Government objectives such as the elimination of gender-based violence.

This final case study demonstrates that even where a health waiver is available, the Migration Health Requirement creates significant problems for people. It reinforces our broader argument that the Requirement permits overly expansive discrimination against people with disabilities and/or health conditions. Priya, James, and Annisa's experiences all show that the system can compound vulnerabilities – whether through illness, injury, or exposure to violence – resulting in outcomes that are not only disproportionate to other policy considerations, but also at odds with the Government's broader commitment to reducing discrimination across Australia.

IARC therefore strongly advocates for narrowing section 52 of the DDA to only permit discrimination in the interests of protecting public health.

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[7] Department of Home Affairs, *Sch4/4005-4007 – The Health Requirement > 19.10. Assessing PIC 4007 waivers for non-humanitarian visas*, reissued on 01 August 2025. (Accessible by subscription to LEGEND.com, operated by the Department of Home Affairs).

[8] Department of Home Affairs, *Sch4/4005-4007 – The Health Requirement > 19.12.1. Compassionate and Compelling circumstances*, reissued on 01 August 2025. (Accessible by subscription to LEGEND.com, operated by the Department of Home Affairs).