

Introduction

- 1.1 Since Federation, Australia's migration policy has undergone many changes. Australia has experienced times of large migration intakes to meet the demands of new infrastructure projects and skill shortages. Australia continues to seek skilled migrants to meet skill shortages in key labour areas. Australia also has an extensive family reunion, humanitarian and refugee migration program. Over the generations, migrants regardless of their background or reasons for choosing Australia have added to the cultural diversity of our nation.
- 1.2 However, Australia has also always maintained its sovereign right to determine annual migration numbers and to select migrants who meet predetermined criteria. Currently Australia requires temporary and permanent migrants entering Australia to meet a Health Requirement under the *Migration Act 1958* (Cth).
- 1.3 This ensures that we safeguard our community against the spread of infectious diseases. However the Health Requirement also assesses any condition (which may be conditions resulting from a disability) of a potential migrant or their family member which may require health care or access to health services in Australia.
- 1.4 It is the application of this Health Requirement, and in particular the assessment methodology and assumptions that underpin its current operation, which are the focus of this inquiry.
- 1.5 Social attitudes to disability have progressed, as have opportunities for those with a disability or medical condition to engage with and contribute to the community. Similarly the capacity to safely manage many diseases has improved. Accordingly it is timely to consider whether it is now appropriate to reform our migration policy, and the migration legislation and regulations that underpin it, in order to reflect these changes, particularly in regard to our treatment of people with a disability.

Terms of Reference

1.6 In 2008 the Joint Standing Committee on Treaties inquired into the United Nations *Convention on the Rights of People with a Disability* and recommended an inquiry into Australia's migration treatment of people with a disability.¹ The Australian Government response to the Treaties Committee report agreed to the recommendation and in August 2009 the Minister for Immigration and Citizenship referred the inquiry to the Joint Standing Committee on Migration.

1.7 The Terms of Reference for the inquiry determined that the Migration Committee shall:

- report on the options to properly assess the economic and social contribution of people with a disability and their families seeking to migrate to Australia
- report on the impact on funding for, and availability of, community services for people with a disability moving to Australia either temporarily or permanently
- report on whether the balance between the economic and social benefits of the entry and stay of an individual with a disability, and the costs and use of services by that individual, should be a factor in a visa decision
- report on how the balance between costs and benefits might be determined and the appropriate criteria for making a decision based on that assessment, and
- report on a comparative analysis of similar migrant receiving countries.

1.8 On 13 August 2009 the Committee Chair, Mr Michael Danby MP, launched the inquiry stating:

Potential migrants with disabilities and their families are currently treated under the migration system as costs to our society, and there is little scope to take into account the contributions they might make to their community and workplace.

Under the terms of reference we will be examining whether the balance between the economic and social benefits of the entry and

1 See Response to Recommendation 2, *Government Response to Report 95 of the JSCOT*, Response for the Australian Government, Chapter 2: 'Convention on the Rights of People with Disabilities', 4 February 2010, accessed April 2010 at <<http://www.aph.gov.au/house/committee/jsct/reports.htm>>

stay of an individual with a disability, and the costs and use of services by that individual, should be a factor in a visa decision.²

Approach of the Inquiry

- 1.9 The Committee sought the views of people with a disability, employers, business organisations, disability and community services providers, advocacy groups, and other interested individuals or community stakeholders.
- 1.10 The Committee also asked for personal accounts from those who have had difficulties getting a visa due to a disability, disease or condition, or have a friend or family member who have experienced those difficulties. To assist submitters to frame their responses, the Committee posed the following general questions:
- Is the current process for assessing a visa applicant against the health requirement fair and transparent?
 - What types of contributions and costs should be considered?
 - How do we measure these?
 - Are there additional factors that should be considered?
 - Do you have personal experience of this?
 - What principles should apply to the assessment of visa applications against the health requirement? Should there be exceptions?
- 1.11 The Committee received 113 submissions to the Inquiry. While most submissions came from Australian citizens or people residing in Australia awaiting a visa decision, the Committee was also contacted by a number of people outside Australia whose visa had been refused or who were waiting the outcome of a visa decision. The full list of submissions is at Appendix A.
- 1.12 The Committee held a number of public hearings and roundtables for the inquiry. These were held in Canberra, Sydney, Brisbane and Melbourne. The full list of witnesses and public hearings is provided at Appendix B.
- 1.13 The Committee endeavoured to ensure that all venues for public hearings were accessible and that proceedings of the inquiry were available in a range of formats to ensure access by those with a vision or hearing

2 Parliamentary Joint Standing Committee on Migration, Mr Michael Danby MP and the Hon. Mrs Danna Vale MP, 'New Inquiry Launched into Migration Treatment of Disability', *Media Release*, 13 August 2009.

impairment. In addition, the Committee made use of Auslan and other interpreters to assist witnesses present their views to the Committee.

Structure of the Report

- 1.14 The Committee considers that current migration legislation and regulation does not reflect changed social attitudes to disability or changed opportunities for those with a disability to make a valued contribution to the community. Consequently systemic change is required in order to enable a more modern and individual assessment of people with a disability who apply to enter Australia on a permanent or temporary visa.
- 1.15 Migration and in particular the various visa categories and conditions attached to each visa is a complex field. This report has not attempted to make recommendations relating to specific visa classes or criteria. Some recommendations will apply to particular visa streams. Rather, the Committee's emphasis has been to set out the principles that should inform migration policy as it relates to the treatment of people with a disability and to the health assessment of applicants.
- 1.16 Chapter 2 considers Australia's current approaches to disability and the development of the National Disability Strategy which aims to deliver better services to people in Australia. Current Commonwealth supported payments and services provided to people with a disability are explored. The Chapter also considers Australia's migration legislation and regulations that prescribe the processes for assessing migration applicants and their families.
- 1.17 Chapter 3 considers in more detail the Health Requirement that forms part of the *Migration Act 1958* (Cth). The Health Requirement specifies the minimum state of health that potential visa applicants are required to possess to be granted a permanent or temporary visa to migrate to or remain in Australia. The Chapter details the Health Requirement's key criteria and examines issues such as the cost methodology used to assess health care and access to services. The Chapter also looks at how the operation of the Migration Act reflects broader societal attitudes that confuse disability and disease.
- 1.18 Chapter 4 examines decision-making processes in conduct of the health assessment and visa decisions. It first considers the role of Medical Officers of the Commonwealth (MOCs) who are the primary assessors of health under the migration Health Requirement. The decision of an MOC

is final in determining whether a visa applicant ‘meets’ or ‘does not meet’ the Health Requirement. They are provided with ‘Notes for Guidance’ which allow for a calculation under the ‘significant cost threshold’ and ‘prejudice to access’ requirements. Their processes have been criticised for lack of transparency and consistency, difficulty in obtaining second opinions and the difficulty in interpreting decisions.

- 1.19 Secondly Chapter 4 considers the decision-making processes followed by the Department of Immigration and Citizenship (DIAC). The Department’s decision-makers usually receive applications. They make the decision to refer an applicant to an MOC if the applicant is deemed to have a ‘significant medical condition’ which may impact on their eligibility for a visa. Chapter 7 explores a number of avenues of appeal available to the applicant following a decision that the applicant ‘does not meet’ the Health Requirement,
- 1.20 Australia’s Family and Refugee and Humanitarian migration programs reflect our international commitments to promote family reunification and to provide a safe haven for people escaping from the threat of persecution or violence. The current system raises a number of issues for family visa applications and humanitarian visa applications. Chapter 5 evaluates this evidence and considers a more harmonised and holistic approach to applicant assessments.
- 1.21 Chapter 6 considers the situation of skilled people with a disability, or with family members with a disability, who wish to enter Australia under the Skilled Migration Program. Recent initiatives to offset or indemnify possible costs are considered, alongside a range of other proposals.
- 1.22 Finally Chapter 7 examines the interaction of Australia’s migration treatment of people with a disability, and Australia’s ratification of the United Nations *Convention on the Rights of Persons with a Disability* (2008). Consideration is also given to the impact of the exemption of the *Migration Act 1958* (Cth) and the *Migration Regulations 1994* from the *Disability Discrimination Act 1992* (Cth).

