



2021

MDAA's response to Australia's 2021-22 Migration Program Discussion Paper – February 2021

**Multicultural Disability Advocacy
Association of NSW Inc.**

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2/9/2021

About this submission

This submission is produced by the Multicultural Disability Advocacy Association of NSW Inc. (MDAA) in response to the Department of Home Affairs' *2021-22 Migration Program Discussion Paper*. By way of participation in this submission, several case studies have been used of the lived experiences of MDAA consumers with disability from CALD/NESB backgrounds, who have faced several issues with the migration system. Feedback was also used from a recent workshop by MDAA in collaboration with the Immigration Advice and Rights Centre. The submission talks to various aspects of the social aspects of the Migration program, mainly elements relating to social cohesion, diversity, and demographics.

About MDAA NSW

MDAA is a state-wide advocacy service for all people with disability, their families, and carers, with a specific focus on people from Culturally and Linguistically Diverse (CALD) and non-English speaking backgrounds (NESB). MDAA aims to promote, protect, and secure the rights and interests of people with disability, their families, and carers in NSW with the view to empowering communities through systemic and individual advocacy, advocacy development, capacity building and networking, as well as industry development and training.

MDAA Case Studies relating to migration experiences

Key themes:

- **Improving the migration system to be more economically viable for international students with disability post Covid-19**
- **Enhancing social cohesion by improving the lives of people with disability (PWD) relying on the migration system for care**
- **Flexibility in visa arrangements for partner and family visas as well as temporary visa holders living in the regions**
- **Access to appropriate health services for PWD on temporary visa's**
- **Improving the overall attractiveness of the Australian Migration program**

This submission outlines case studies around the key themes mentioned above, as lived experiences by MDAA consumers with disability from an NESB/ CALD background. It is MDAA's position that to have a thriving Migration Program post Covid-19 with the prospects of future economic and competitive viability, issues relating to flexibility, social cohesion, and access to much-needed services should be addressed, as well as considering Australia's human rights obligations under the United Nations (UN) conventions and the compassionate needs of individuals.

Temporary Student Visa

It has been a relief for many students on temporary student visas that considering the Covid-19 pandemic, many who are faced with travel restrictions and cannot attend face-to-face classes, can apply for a Covid-19 Pandemic Event Visa, allowing them to work in critical sectors whilst in Australia. While the visa allows up to 40 hours per fortnight during the semester, the Australian government has temporarily relaxed this rule if they work in the agriculture sector. This is to encourage temporary visa holders, which include international students, to support Australian farmers struggling to find workers during COVID-19.¹

This is a fantastic step toward assisting various students on a visa, who fear the worst when it comes to the real prospects of becoming unemployed and who cannot return

¹ See: <https://www.studyinternational.com/news/covid-19-pandemic-event-visa/>

home. However, a similar approach to flexibility needs to be taken when it comes to students who may need to attend online classes that are run in the day and have no choice but to work at night to fulfil their visa requirements.

The following case study outlines the issues faced by international students who are facing this predicament:

Case Study A: Student Visa

*Octo is currently studying English at a leading provider of English Language Intensive Courses for Overseas Students (ELICOS). During the COVID-19 -19 pandemic throughout 2020, classes have gone online and only held during the day. Prior to the pandemic Octo attended night classes and worked during the day.

Octo is not able attend the day classes as he needs to work during the day to continue to pay for his tuition fees. He has been threatened by the college if he does not pay his fees, they will cancel his visa. However, to pay his fees, he must work, meaning he is not able to attend classes. He has not been able to find other suitable employment.

Essentially, he is paying full fees for classes he is not able to attend. Octo has complained to his educational Institute about the inequity of only holding classes during the day, not providing adequate adjustments to meet the needs of all students and refusing to discount or reimburse course fees as they have not provided classes as per their agreement. All students who attend night classes have been affected similarly.

Octo would like night classes to be offered to students as per the original agreement as a matter of urgency

Recommendations

- ❖ Institutions should be able to provide flexibility for students who may not be able to attend day classes only, due to working commitments that have visa requirements contingent upon them
- ❖ To ease fee requirements in instances where a student cannot attend class due to effects of a pandemic

- ❖ Allowing international students to continue their classes as agreed, to maintain Australia's attractiveness and competitiveness in the international education market

Carer Visa's

It has been a common point of concern by MDAA consumers that the current wait-times for Carer Visa's is 'too long.' According to the Department of Home Affairs website², based on the current planning levels and ongoing allocation of the majority of 'Other Family' category places to Carer visa applications, it is estimated that the Carer Visa applicants who meet the Visa criteria could wait for approximately 4.5 years but with cases we have supported it has been longer than what is their benchmark for the final processing of their applications. Additionally, many MDAA consumers were raised their concerns about the lower cap the Department has placed on Carer Visa's compared to other visa categories.

The case study below outlines the major problems faced by PWD who rely on carers to live their lives to the fullest, particularly if they have no other relatives to take care of them.

Case Study: Young person with disability placed in nursing home Carer Visa wait times too long

*Nelly is in her mid-40s, is from a CALD/ NESB background and has a disability. She currently has no family remaining in Australia. She has applied approximately 13 months ago for her sister who is overseas, to travel to Australia to become her full-time carer. Whilst waiting 13 months, her condition has deteriorated, to the point of not being able to live in her home alone.

Given there was no room for her at a hospital, she has now been moved to an aged-care facility, where she is the only one of her age, and does not have the appropriate access and supports needed to treat her condition. Due to the Department's lengthy wait times, she could be waiting for another 3.5 years before she hears positive news from the Department that her relative can travel to Australia to take care of her.

² See: <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/carers-836#About>

Recommendations

- ❖ To provide flexible options relating to carer visa's when there are dire situations of individuals with disability being admitted to nursing homes for care despite their young age. This goes against the government's National Disability Strategy to provide people with disability choice and control in their lives and promote their inclusion in society.
- ❖ To increase the cap for carer visa particularly for urgent situations

Partner and other Family Visas

According to the Department, the approximate global processing time for a partner visa is 2 years, and the approximate global processing time for a family visa is anywhere between 30-50 years. The below case study outlines issues of the existing visa system especially when it comes to caring for PWD.

Case Study: Partner/ Family Visa's

*Sally is a consumer living in Australia who has a child with disability. She is married to an individual who live overseas, and he is currently waiting for his partner visa. Sally currently has no other family members in Australia to assist her and is living on a pension.

Sally has waited over 12 months and has still not heard anything in relation to her husbands' visa application and is in a situation where she feels alone and unable to take care of her son. She believes that with her husband's help, her son's needs can be met, and he can live a quality life that he deserves. Sally has stated that even though she has outlined the severity of her son's condition and that she is alone, it made no difference to the processing times of her application.

*Samantha is a single mother in Australia who would like to invite her parents out to Australia so they can assist her in taking care of her two children who both have disability. She has been told through her migration agent that she would have to wait approximately 30-50 years unless she could make a payment of thousands of dollars which she does not have.

Recommendations

- ❖ To waive visa global processing times in urgent situations requiring the care of person with disability
- ❖ To prioritise family visas that involve the direct care of people with disability particularly children
- ❖ Rather than being assessed in order of lodgement and placed in a queue accordingly, family visas should be assessed on a case-by-case basis for urgency.

It is important to note that under almost all migration categories, applicants are subject to stringent health assessments during the visa application process. Many consumers have reported through their experiences that these assessments are based on the assumption that if a person has a disability and/or health condition, this person will be a financial burden to the community. This assumption is contrary to other government policies and statements that people with disability are valued members of the community and make valuable contributions.

Further more according to the Conventions on the Rights Persons with disabilities of which Australia is a signatory, it stresses that parties follow the 8 guiding principles that underlie the Convention, as outlined in Article 3 among others but not limited to: Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons.

Under Section 417 of the Migration Act, the Minister can allow migrants and refugees with disability to enter Australia. While this may demonstrate that the Minister can show humanity and compassion, it also demonstrates that the current system simply does not work for people with disability.

The following case study outlines the difficulties faced by visa holders with disability who do not have access to the health system due to their residency status:

Case Study: Visa applicant with disability- no access to health services

*Mr. and Mrs. Choudhry and their 4-year-old son Kamal came to Australia 3 years ago to seek early intervention support for Kamal who sustained a brain injury at birth. When a racially based civil conflict broke out in their country, they applied for Permanent Residence in Australia but were rejected. Fearing for their lives (because of their ethnic minority status) they applied for Refugee status. As their country of origin froze all their assets, they applied for and were granted an Interim Working Visa. While waiting for a decision they are working and managing quite well. But because of the family's residence status, Kamal cannot access any of the services available to other people with disability.

Recommendations

- ❖ To provide better access to health services for those with disability on a temporary visa in Australia

General Comments:

The findings from the various case studies acknowledge that there is a real need to reform Australia's migration program by way of introducing flexibility for measures of urgency when it comes to matters relating to PWD from CALD/ NESB communities and their access to appropriate care. This would include re-evaluating global processing times and assessing applications on a case-by-case basis rather than the first in the queue approach.

Similarly, students on a temporary visa with disability who choose to study in Australia should be supported as this would enhance the overall economic viability and competitiveness of Australia's education and migration program on the international stage.

We welcome further discussion on any aspects of our submission.

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