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## Senate Standing Committee on Legal and Constitutional Affairs

Joint submission in response to 'The efficacy, fairness, timeliness and costs of the processing and granting of visa classes which provide for or allow for family and partner reunions'

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## 1. About National Ethnic Disability Alliance (NEDA)

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- 1.1. National Ethnic Disability Alliance (NEDA) is a national Disabled People's Organisation (DPOs) governed by<sup>1</sup>, and constituted of, culturally and linguistically diverse (CALD) people with disability.
- 1.2. The key purpose of NEDA is to promote, protect and advance the human rights and freedoms of all people with disability from CALD, migrant, refugee, and asylum seeker backgrounds.
- 1.3. NEDA's membership is made up of CALD people with disability; our state/territory member organisations are either CALD DPOs, CALD disability advocacy organisations or community led disability advocacy organisations with a demonstrated history of working in partnership with CALD people with disability and their communities.<sup>2</sup>
- 1.4. NEDA is a founding member of Disabled People's Organisations Australia (DPO Australia), an alliance of four national DPOs. NEDA/DPO Australia receives systemic advocacy funding from the Department of Social Services as a Disability Representative Organisation.

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<sup>1</sup> Information pertaining to NEDA's Governance/Board can be found here: <http://www.neda.org.au/about-us/council-board>

<sup>2</sup> For more information about NEDA's membership visit: <http://www.neda.org.au/about-us/member-organisations>

## 2. About Multicultural Disability Advocacy Association (MDAA)

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- 2.1. 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).
- 2.2. 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.
- 2.3. MDAA works towards achieving these goals through Systemic and Individual Advocacy, Advocacy Development, Capacity Building and Networking, Industry Development and Training.<sup>3</sup>
- 2.4. MDAA works on various individual and systemic advocacy issues, and in the last financial year, supported 681 consumers (responded to 1481 enquiries), and strategizes a systemic program for evidence-based advocacy by producing submissions, organising consultations as well as stakeholder engagement, many of which involve immigration issues relating to carer and family reunion visa applications.<sup>4</sup>
- 2.5. MDAA has seven offices: MDAA Granville (Head Office), MDAA City and Inner West, MDAA South East Sydney, MDAA Bega, MDAA Griffith, MDAA Newcastle and MDAA Wollongong.

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<sup>3</sup> See <https://mdaa.org.au/about/>

### 3. Recommendations

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- 1) MDAA and NEDA recommend the Government to enhance consistency, transparency and administrative fairness for migrants and refugees with disability applying for an Australian visa.
- 2) We recommend that the Government abolishes the discriminatory health requirements for people with disabilities who want to live with their family in Australia. The Government has committed to protect everyone in Australia against discrimination based on their disability, which is why no legislation should ever be exempt from the Disability Discrimination Act.
- 3) Should the strict health requirement not be abolished, we recommend that obtaining a health waiver should be free of cost, accessible for people with limited English and possible for all visa subclasses.
- 4) We recommend the Government to remove the 10-year qualifying period for migrants to access Age and Disability Support Pensions and the 1-year waiting period to access Carers Allowance.
- 5) We recommend the Government to urgently decrease processing times for partner, parents and carer visas, reduce the cost of visas to applicants in vulnerable positions, and fund more services that can support applicants with limited English proficiency applying for visas.
- 6) We recommend the Government to conduct a review of the carer visa system by removing caps on visa grants, decreasing processing times and provide fast tracking options for sponsors in dire need of supports, and improving transparency and accessibility for applicants and sponsors.
- 7) We recommend that the Government urgently assess applications for permanent residency for asylum seekers and people with disability living in Australia on a non-permanent visa so they can sponsor family members without being given lowest processing priority; this will enable some people to access vital support services such as the National Disability Insurance Scheme.
- 8) We recommend the Government to broaden the definition of family for migration purposes to reflect the diverse cross-cultural conceptions and differences around what constitutes 'family'.
- 9) We recommend the Government to follow UN guidelines and remove its hard stance on people with HIV.
- 10) For additional consideration: NEDA recently submitted a response to the Department of Home Affairs (the Department) consultation paper on partner visa reforms, where we recommended the Government **not** to implement the proposed English language requirements and changes to the sponsorship framework, as this will further disadvantage CALD people with disability.

## 4. Introduction and General Comments

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- 4.1. Australia is a multicultural nation made up of Indigenous Australians, refugees, asylum seekers, newly arrived migrants and Australians who have immigrated generations ago and whose culture is still prevalent in Australia today. Australia prides itself on how diverse it is, and how CALD people make a positive contribution to Australia's social and economic life, as integral parts of communities, families, organisations and businesses.
- 4.2. Concurrently, research show that migration benefits all Australians.<sup>2</sup> Migration increases cultural diversity, which is a fundamental part of Australia's identity, it counteracts an aging population, provides the skills we need and makes us economically stronger and resilient, and creates jobs and improves the workforce participation rate.
- 4.3. Despite being beneficial to the economy and community, migrating to Australia is a long and tedious process, where factors such as health, financial situation, country of birth, skillset and English proficiency often impacts on outcomes.
- 4.4. The current family visa system<sup>5</sup> is expensive, lengthy, unjust and discriminatory towards our members: CALD people with disability. As will become evident in this submission, the health requirement that all applicants must meet unfairly impacts families who want to be together, by inaccurately assuming that disability will always result in a certain cost to Australian taxpayer.
- 4.5. For several decades, we have consistently voiced opposition to these policies within migration processes; for generations these systems have disempowered people with disabilities as they view them as being helpless 'unworthy' burdens.
- 4.6. We welcome the Government's inquiry into the current family visa system. We would welcome the opportunity to provide further comment and encourage you to contact our organisations directly, which would give you the opportunity to speak to our members with lived experience who would like to share their story.
- 4.7. NEDA and MDAA endorse the submission made to this Inquiry by Immigration Advice and Rights Centre (IARC).

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<sup>5</sup> NEDA and MDAA define the family visa system as parent visas, partner visa and carer visa.

## 5. Australia's Family Reunion Obligation

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- 5.1. Being separated from your family is extremely painful. Prolonged separation is caused by delays in processing applications, the restrictive definition of family under Australian migration law, limited availability of affordable migration advice and policies preventing sponsoring a family member if you arrived by boat to Australia. Family separation undermines successful settlement outcomes.<sup>3</sup>
- 5.2. The right to family life, and family unity free from interference is a fundamental human right which is recognised by international law, such as Article 16(3) of the 1948 Universal Declaration of Human Rights (UDHR), Article 17 and Article 23(1) of the 1966 International Covenant on Civil and Political Rights (ICCPR), Article 10(1) of the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR) and Article 23 of the Convention on the Rights of Persons with Disabilities. All conventions are ratified by Australia.<sup>45</sup>
- 5.3. Under international law, the family is recognised as a fundamental unit of society and is entitled to protection and assistance and which should not be subject to arbitrary or unlawful interference. Being separated from your loved ones due to extreme processing times for visa applications is a breach of numerous fundamental human rights instruments.

### Defining family

- 5.4. The Department's narrow definition of what constitutes a family is causing great concern and distress. The current definition is being restricted to parents and children under the age of 18 or 23, unless you can demonstrate dependency due to "total or partial loss of bodily or mental functions."<sup>6</sup> Children who are over 23 but still financially dependent (such as students), dependent parents and older relatives are not automatically included in this definition.
- 5.5. This restrictive definition fails to recognise the cultural obligation to members of the extended family in different cultures.<sup>7</sup> Refugee Council of Australia's consultation with former refugees highlights how the family is perceived differently in other cultures. An example: the Assyrian language does not have a word for 'cousin' as cousins are seen and treated as brothers and sisters.<sup>7</sup>

- 5.6. We urge the Government to recognise that the family as a unit protected under international law comes in different configurations. UNHCR's Resettlement Handbook<sup>6</sup> provides guidelines for how the family should be defined to include broader concepts of dependency.

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### **Recommendation**

MCAA and NEDA recommend the Government to broaden the definition of family to include all level of dependencies, such as applying the UNHCR Resettlement Handbook's definition of family when determining refugee and humanitarian visa applications.

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- 5.7. The benefits of family reunification to the community and economy cannot be underestimated. Besides being a fundamental human right, being with your family is crucial for refugees rebuilding their lives in Australia and being with your family is crucial for migrants settling as they are more inclined to be isolated.
- 5.8. The visa system in its current form is keeping families apart unnecessarily. It is cruel and inhumane. We welcome this inquiry into the family visa streams and urge the Government to implement a transparent system that recognises the importance of family and the right to be with loved ones. The Australian Government should urgently prioritise to reunite families separated by the system.

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<sup>6</sup> Find United Nations High Commission for Refugees Resettlement Handbook here: <https://www.unhcr.org/46f7c0ee2.pdf>



## 6. Disability Discrimination

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- 6.1. People with disability are protected under the *Disability Discrimination Act 1992* (DDA). However, the DDA provides an exemption for certain provisions within the *Migration Act 1958 (Cth)*, which means that Australia's migration arrangements and treatment of disability are unable to satisfy the equal protection obligations under CRPD Article 5. This has serious implications for migrants with disability who want to settle in Australia.
- 6.2. People with disability, and families who have members with disability, consistently have their visa applications denied because they are unable to meet the strict health requirement under the *Migration Act 1958 (Cth)*. If they fail to meet the 'health requirement' as set out in the *Migration Act 1958*, they are denied permanent residency on the basis that they are a 'cost burden' to the Australian taxpayer. In 2010, a Parliamentary Inquiry<sup>7</sup> into the treatment of migrants with disabilities found that the health requirement unfairly discriminates against people with disability as it sets standards that the applicant do not or cannot meet.<sup>8</sup> There has been limited action by any government since 2010 to implement the Inquiry's concluding recommendations.
- 6.3. Article 18 of the CRPD argues that State Parties will recognise the rights of persons with disabilities liberty of movement, freedom to choose their residence and to a nationality, on an equal basis with others. This right includes the right to acquire and change nationality without discrimination on the basis of disability, and the right not to be subjected to immigration proceedings or other processes which might restrict liberty of movement. With the Interpretative Declaration on Article 18<sup>8</sup>, the Government has made it possible to implement strict health requirements.
- 6.4. The Government has not acted on the 2013 recommendation from the UN Committee on the Rights of Persons with Disabilities to withdraw its Interpretative Declaration to United Nations' Committee on the Rights of Persons with Disability, CRPD Article 18.<sup>9</sup>

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<sup>7</sup> Australian House of Representatives, Joint Standing Committee on Migration (2010), [Enabling Australia: Inquiry into the Migration Treatment of Disability](#).

<sup>8</sup> Australia's 'Interpretative Declaration' to CRPD Article 18: "Australia recognises the rights of persons with disability to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others. Australia further declares its understanding that the Convention does not create a right for a person to enter or remain in a country of which he or she is not a national, nor impact on Australia's health requirements for non-nationals seeking to enter or remain in Australia, where these requirements are based on legitimate, objective and reasonable criteria."

6.5. Australia's strict health requirement in law and policy is at odds with the United Nations CRPD, which the Australian Government has ratified.

## Health Requirements

6.6. The health requirement specifies that a visa applicant must be free of a 'disease or condition', which would cost the Australian community a 'significant' amount or prevent access to health and community care and/or scarce resources for Australian citizens. This argument is twofold; protecting Australians against diseases and ensuring that migrants with disabilities or health conditions will not be a financial burden to Australian taxpayers.

6.7. We accept the need to protect public health and keep our communities safe. However, we believe that the current health requirements focus solely of the cost of a disability or health condition to the community, which is unfair, inaccurate, and violates the rights of people with disability.

6.8. The current threshold for 'significant cost' is \$49,000<sup>9</sup>. The cost is assessed on what it would *potentially* cost an Australian citizen or permanent resident for services made available to them over a certain period. These services may include the provision of an Australian disability support benefit or allowance, supported accommodation, special education and home and community care.

6.9. When making a visa decision based on medical grounds, the Government considers the applicant's medical situation and the future potential cost of support needed without taking personal circumstances into account. A lot of factors, such as if the person has private health insurance, if the applicant has enough money to pay for their own treatment, if the applicant is in full time employment and/or economically comfortable, or if they will actually use the health care or community services of which the cost is assessed, are not taken into consideration. The focus is on eligibility for services that may never be utilised.

6.10. The health requirement assesses individuals based on whether they will be a potential cost burden to Australia instead of looking at the contributions the individual can make to the community. Australia prides itself on welcoming the contributions migrants make in all aspects of society, however CALD people with disability, as a cohort, are classified as a cost burden and therefore are not welcome.

6.11. Case study in **Appendix 2** demonstrates how a spouse with a disability has lived in Australia for 9 years on a bridging visa while waiting on a visa decision that is

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<sup>9</sup> March 2021

delayed due to the potential 'cost' of the disability, even though the applicant can demonstrate that in the past 9 years, there has not been any economic cost associated with their disability.

- 6.12. Meeting the health requirements is one the biggest concerns for many migrants in their settlement experience. We know that non-disabled people who are normally of good health will not seek help from a Health Professional if they are feeling unwell out of the fear that a condition or diagnosis could jeopardise their visa. This is especially exacerbated for migrants experiencing mental illness or living with psychosocial disability. Concerns over meeting the health requirements make migrants feel they have to compromise their own health and wellbeing while waiting for a decision.

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### **Recommendation**

MDAA and NEDA recommend that the Government abolish the discriminatory health requirements for people with disabilities. The Government has committed to protect everyone in Australia against discrimination based on their disability, which is why no legislation should ever be exempt from the Disability Discrimination Act.

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### *Medical Model vs. Social Model of Disability*

- 6.13. The social model of disability sees 'disability' as a result of people living with impairments in an environment full of physical, attitudinal, communicative and social barriers. The social model does not seek to change impairment but rather change society to accommodate and include impairment as an acknowledgement that people with disability are just an expected incident of human diversity.
- 6.14. The current health requirement is based on the medical model of disability. The medical model is considered archaic, outdated and discriminatory, and places the impairment on the individual often through the assessment of what they can and cannot do. The arbitrary cost-calculation of a person's potential to access future government services based solely on their 'disability' type is not only inaccurate and unreliable, but also discriminatory and disabling.
- 6.15. The Department would not know the accurate cost of those who had their visa refused over failure to meet the health requirement, or those who have had a health waiver granted. The accuracy of these assessments, over time, have not been subject to review. Studies from other countries show that the cost of admitting migrants with disabilities and/or health conditions does not significantly impact the budget compared to migrants who meet the health requirements.<sup>10</sup>

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**Recommendation**

MDAA and NEDA recommend an audit into the cost of permitting migrants with health conditions to settle in Australia. This will provide a better and more realistic understanding that will inform the reformation of a complex visa system.

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*Removing HIV from medical tests*

6.16. All visa applicant over 15 years of age must be tested for HIV, tuberculosis and other diseases. Other countries do not test for HIV anymore as the success and cost of therapies does not pose an economic cost to its taxpayers.<sup>11</sup> The UN Programme on HIV/AIDS has recommended to soften its hard stance on people with HIV. Many people live with HIV today due to therapies being affordable and successful.

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**Recommendation**

MDAA and NEDA recommend the Government to follow UN guidelines and remove its hard stance on people with HIV.

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*Health waivers*

6.17. In some cases, applicants can apply for a 'health waiver' which means that the health requirements may be set aside, at the Department's discretion. Unfortunately, only applicants of some visa subclasses have this option: partner visa, child visa, and some short term and permanent employer-sponsored skilled visa.

6.18. Unlike the health requirements, each waiver is considered on a case-by-case basis. Only when applying for a waiver is the applicant's personal circumstances taken into consideration.<sup>12</sup> To be considered for a waiver of the health requirement, applicants need to demonstrate evidence that can support their case. This is complex and would often require support from Migration agents, which come at an additional cost that our members and their families may not be able to afford.

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## **Recommendation**

Although we fundamentally disagree with the Government discriminatory use of health requirements to prevent people with disability from settling in Australia and recommends abolishment, we ask that the Government that they as a bare minimum make is more accessible to obtain waivers for the health requirement, should they not follow our recommendations as outlined previously.

MDAA and NEDA recommend that obtaining a health waiver should be:

- Available to everyone, no matter what visa you are applying for
  - Accessible for people with limited English proficiency
  - Free of cost
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6.19. Although we have seen some steps towards reducing disability discrimination in the immigration system<sup>10</sup>, significant reform is still needed. Considering Australia is a party to multiple human rights treaties which consider disability as a social relationship and not a characteristic of individuals with ‘impairments’, it is our opinion that classifying and conceptualising individuals as ‘burden’ because of a person’s disability, and the subsequent refusal of their migration to Australia, is fundamentally dehumanising and discriminatory.

6.20. We urge the Federal Government to facilitate policy and legislative change in line with Australia’s commitment as a party to the UNCRPD. We also believe public health risks and disability cannot be assessed and judged through the same lenses for determining eligibility.

## **Disability Support Pension**

6.21. People with disability continue to face barriers after their permanent residency has been granted. There is a waiting period for most social security payments for newly arrived migrants, however for people with disability from migrant backgrounds this waiting period is excessively lengthy. The Disability Support Pension, which supports a person with disability who experiences significant barriers to the workforce because of their disability, has a waiting period of 10 years. Refugees and former refugees with permanent residency are exempt and can access the entitlement immediately.

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<sup>10</sup> As of 1 July 2019, the Government has changed the health requirement threshold from \$40,000 to \$49,000. Instead of assessing the hypothetical cost over a person’s lifetime, it is now over a 10 year period.

6.22. We know that people with disability would like to work and contribute to the society on an equal basis as others. However, many people with disability face numerous barriers to employment and are often worse off economically when engaging in employment.<sup>13</sup> CALD people with disability face additional compounding barriers due to the intersection of their impairment, racism, language barriers, sexism.<sup>13</sup> Accessing social security services may be the only way for a person who is unable to work due to compounding barriers to employment in our society to support themselves. By delaying access to certain supports, it puts financial pressure on the family and increases the likelihood of financial hardship and poverty.

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**Recommendation**

MDAA and NEDA recommend the Government to remove the 10-year waiting period for migrants to receive age or disability pensions.

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## 7. Family Reunion for Refugees and Asylum Seekers

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- 7.1. While Australia's resettlement program is often well regarded, asylum seekers who seek protection onshore are treated very differently.<sup>11</sup> Since 2013, asylum seekers arriving by boat or without a valid visa to Australia, will never be able to receive permanent residency. Being a temporary resident means that you cannot sponsor a family member and access services.
- 7.2. In 2014, the Government implemented the Ministerial Direction 62<sup>12</sup> meaning that all asylum seekers who arrived by boat prior to 2013 and are now permanent residents will be given the lowest processing priority for family reunification visa. There are examples of permanent residents who have been waiting for more than 10 years on a decision on their spouse visa.<sup>14</sup>
- 7.3. The re-introduction of temporary protection visas, the Ministerial Direction 80 and the exclusion of boat arrivals from the humanitarian programs are all ways of deterring asylum seekers from coming to Australia, despite the 1951 Refugee Convention prohibit states from imposing penalties on those entering a country 'illegally'.<sup>15</sup>
- 7.4. Asylum seekers and/or people with disability living in Australia on non-permanent visas are ineligible to access the National Disability Insurance Scheme (NDIS) and the Age and Disability Support Pensions as they do not meet residency requirements, leaving asylum seekers and migrants with disability at an increased risk of a range of human rights violations.
- 7.5. Family separation is one of the main reasons for mental illnesses in refugee communities. Concerns about if they ever see their loved ones again, distress about their family's safety in areas of violence and poverty overseas and financial pressure to support relatives overseas are all contributing to the deteriorating health of refugees that can contribute to life-long disability and impairments.
- 7.6. More than one third of people held in detention have been diagnosed with psychosocial disability.<sup>16</sup> Female asylum seekers/refugees experience rape and sexual abuse yet there is no independent investigation mechanism in place, and even when incidents are reported, investigation or appropriate sanctions rarely ensue.<sup>17</sup>

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<sup>11</sup> Australia's [Refugee and Humanitarian Program](#) is twofold: the onshore protection program and the offshore resettlement program where refugees wait in a second country until their claim has been processed. Since September 2013, onshore applicants arriving without a valid visa or by boat can never become a permanent resident.

<sup>12</sup> Now Direction 80

- 7.7. In a case study in **Appendix 3**, two Afghani women share their story coming to Australia from a refugee camp in Iran. Long processing times, inadequate support for refugees with disability in applying for and obtaining protection visas and prolonged family separation due to not meeting the health requirements are some of the issues addressed. Additionally, a case study in **Appendix 4** shows how a refugee family hopes their family member overseas can receive humanitarian entry as an eligible refugee to support a family member with physical disability and ageing carers.

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### **Recommendation**

MDAA and NEDA recommend the Government to remove Ministerial Direction 80 and temporary protection and provide permanent protection, with the right to family reunification, for all persons found to be refugees.

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## 8. Carer Visa

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- 8.1. A carer visa allows for individuals to come to Australia to provide care for their relatives who require support due to long term or permanent disability and/or health conditions. Many CALD people with disability prefer the family to provide primary carer responsibilities and supports.<sup>18</sup>
- 8.2. We believe that the current carer visa process prevents our members, CALD people with disability, from receiving the care and support they prefer: assistance from loved ones and family members. Many CALD people with disability do not want to access formal disability support services, or are unable to access relevant, reliable and adequate supports through currently available services and schemes.
- 8.3. Caps on visa grants per year, long processing times, systemic issues regarding health requirements and logistical barriers to lodging a carer visa application prevent our members who rely on support from overseas family to live their life to the fullest. This goes against fundamental principles of the Government's National Disability Strategy and is breaching Article 13<sup>13</sup> and 25<sup>14</sup> of the United Nations Declaration of Human Rights and the UN CRPD.

### *Cap on visa grants per year*

- 8.4. Our members have raised concerns about the need to lower the current cap that the Department has placed on the number of carer visas granted per year, compared to other visa categories. It has been a common point of concern by CALD people with disability that the current waiting times for carer visas are too long.
- 8.5. Currently, there is not a known cap on carer visa, but an overall cap on the other family visa<sup>15</sup> that the carer visa directly falls under. As per table 1 in **Appendix 1**, the number of granted family visas in 2019-20 was 444. According to the Department, most visas granted under other family visas are carer visas, however the global processing times indicate that the number of granted carer visas are considerably than many other subclasses.

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<sup>13</sup> Article 13 states that "Everyone has the right to freedom of movement and residence". The government's Department of Health and Aged Care only considers institutionalisation of people with disability in nursing homes as a last resort after all other options have been explored.

<sup>14</sup> Article 25 states that "Everyone has the right to a standard of living adequate for the person's health and well-being". Having the carers supports would provide the applicant a better quality of life because they can have personalised care and will be in a secure and safe environment.

<sup>15</sup> Other family visa includes carer visa, Aged Dependent Relative visa applications and Remaining Relative visa. See: <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-processing-times/family-visa-processing-priorities/other-family-visas-queue-release-dates>

- 8.6. According to the Department's website<sup>19</sup>, based on the current planning levels and ongoing allocation of most visas in the 'Other Family' category to carer visa applications, it is estimated that eligible carer visa applicants wait for approximately **4.5 years**. In many instances, CALD people with disability have reported that they are eligible but still have to wait almost 5 years.
- 8.7. As of February 2021, the Department has released what applications are up for final processing, showing that carer visa applications with a queue date up to 11 October 2017 will be processed.<sup>20</sup> Waiting five years for a visa decision is unfair and significantly impacts on CALD people with disabilities quality of life. The case study in **Appendix 5** highlights the impact of this lengthy waiting period.
- 8.8. Long processing times are insensitive to our members physical, cultural and linguistic needs and can end up with sponsors passing away. As an example, people with terminal illnesses with young children and no formal or informal support structures available are not afforded top priority with their applications. Processing time should be expedited in these circumstances, as children would otherwise be left without adequate physical and emotional support.

#### *Other systemic barriers*

- 8.9. Our members have outlined a multitude of logistical difficulties in lodging their carer visa applications such as distance preventing them from attending interviews, language barriers and difficulties obtaining various documentation. This has particularly been difficult during COVID-19, where applicants could not travel to attend an interview. This is especially a problem in countries where there are internal conflicts like civil wars and sometimes no interim governing system exists.
- 8.10. Case study in **Appendix 6** highlights how health requirements impact on the carer visa processes, resulting in CALD people with disability being unable to access informal supports from family members.
- 8.11. Carers coming to Australia can receive an allowance from the Government after having served a one year waiting period as an Australian permanent resident. Carers who are in Australia on temporary visas waiting on a decision cannot access government supports.<sup>21</sup> Case study in **Appendix 7** shows how inadequate supports for carers impact their mental and physical well-being and which in turn can lead to serious health concerns.

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### **Recommendation**

MDAA and NEDA recommend the following improvements to the carer visa system as we believe CALD people with disability should be able to choose and/or rely upon family members to provide carer assistance:

- Provide fast tracking of visa application for sponsors in dire need of support
  - Increase the cap on number of visa grants for carer visa
  - Improve the application process to make it more transparent and accessible
  - Remove the waiting period for carer allowance
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## 9. The Complexity of Applying for Visas

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- 9.1. Based on consultations with applicants of family visas (spouses, parents and carers), there are some common themes and challenges that are frequently mentioned. Please see section 8 regarding the complexity of applying for carer visas. The reality of applying for family visas for our members is as follows:

### *Partner Visa*

- 9.2. An Australian partner visa costs close to \$8,000 where the US equivalent cost \$2,100, New Zealand partner visa cost \$2,000 and the UK partner visa cost \$2,700. Concurrently, processing times for partner visas are similar or shorter in the above-mentioned countries.<sup>22</sup> There is still a high number of applicants successfully obtaining partner visas every year but unfortunately there is a massive backlog of applications leaving couples stuck in limbo for years. Currently the backlog of partner visas applicants is estimated to be close to 91,000 applications.<sup>23</sup>

### *Parents Visa*

- 9.3. For parent visas, processing times are not as transparent as partner visas with some visas taking 30 years to process.<sup>24</sup> In order to avoid the long wait, applicants could apply for another visa which costs \$50,000. The rationale here is “The more you pay, the less you wait.” This is unjust as the right to be together should never be determined by your income or socio-economic status.

### **Cost of Visas**

- 9.4. As demonstrated above, Australia’s family visas are among some of the most expensive visas in the world. The more complicated your case is, the more expensive it gets as you may need professional help by a Migration Agent or lawyer, who are the only people who can legally provide migration advice, which is reflected in their fees. For example, applicants who require advice on their partner visa application will pay an additional \$4,000-\$5,000 on top of the application fee for migration advice.
- 9.5. Many of NEDA’s members turn to free legal services such as Legal Aid, however they only offer initial advice and do not have the capacity to support some of the more complicated cases, such as helping applicants who have a disability meeting the health requirements.

- 9.6. We know that CALD people with disabilities are more likely to need professional support navigating the visa system, due to the complicated process of meeting the health requirements or obtaining a health waiver. Simultaneously, considering CALD people with disabilities have lower incomes and are living in more disadvantaged areas than non-CALD people with disability (see **Appendix 1: Figure 1: Disability Income Distribution**) accessing professional migration support would most often be economically inaccessible.
- 9.7. MDAA recently held a consultation with their members who have their own lived experience of applying for family visas in Australia. Distress and frustration associated with the high visa fees, and the cost and varying quality of professional help were common themes. Our members expressed that it feels like migration agents are benefitting financially as the industry is not regulated. The cost of getting professional help is out of reach for our members, who spend all their savings of different fees without any guarantees they will receive their visa.
- 9.8. Inbuilt discrimination towards people with disability in our migration system means that our members may not be able to apply for family reunion and therefore be living in Australia without their loved ones.

### **Long Processing Times**

- 9.9. Long processing times can cause a lot of distress for those waiting, both onshore and offshore. Offshore applicants are separated from their partner and children, and it is extremely painful not knowing when they will see each other again. The travel ban caused by COVID-19 has really highlighted how devastating the long processing times are. Case studies in **Appendix 8** demonstrate how being separated from your loved ones has impacted our members physical and mental well-being and almost caused relationships to break down.
- 9.10. We welcome the changes implemented as of 27 February 2021 which allows offshore partner visa applicants to receive their visa grant while being in Australia.
- 9.11. While onshore applicants are living with their family in Australia, the long processing times are impacting this cohort as well. Some temporary visas come without the right to work or study, and some may struggle to find permanent and meaningful employment due to employers being reluctant to hire migrants on temporary visas. Being a temporary resident means limited access to support and services, and research shows how barriers to accessing service while being temporary adds to the level of trauma for CALD women experiencing family violence.<sup>25,26</sup>

9.12. Overall, families are putting their lives and dreams on hold while waiting for their visa as people will not settle if there is no certainty.<sup>27</sup>

### **Complexity**

9.13. Our members have expressed concerns about the complexity of applying for family visas. The application form is lengthy and confusing, the level of evidence required can be challenging to provide and there is not transparency and consistency in the process. In addition to this, our members have expressed that most Australian embassies overseas are very hard to contact especially due to time difference or they do not answer calls at all.

9.14. Many of our members have limited English proficiency at the time of lodgement or when they arrive in Australia, and even limited literacy in their own language. Australia has a long migration history with migrants from different parts of the world coming to Australia with little or no English. Generations of Australians have become citizens while still developing their English language skills and are a huge part of Australia's identity.

9.15. To adequately complete the application form and meet information requirements, a certain level of English proficiency is required. For many visa applicants, the only alternative is to seek professional help, which is expensive. Different government departments have become better at providing information in plain English however when it comes to immigration, the application forms are long and complex. The fear of making a mistake that could jeopardise the visa due to limited English often forces the applicant to turn to professional services, as it is a very overwhelming experience applying and navigating processes with limited support.

9.16. It can be difficult for our members to meet the requirements, as they may not have access to the required documents. Political situations in the applicant's home country can impact whether police checks, birth certificates and other official documents can be obtained. Especially refugees or applicants from refugee backgrounds find it difficult obtaining identification documents and other formal documents as they may never had it in the first place or not have access to required documentation due to the instability in their home country or due to forced migration related factors.

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### **Recommendation**

MDAA and NEDA recommend the Government to make the family visa more transparent and accessible for migrants with disability by:

- Make a targeted effort to reduce waiting times
  - Reduce the cost of visa applications to migrants in vulnerable positions
  - Fund more services that can support applicants with limited English proficiency applying for visas
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## 10. Partner Visa Reforms

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10.1. Substantial changes to the current partner visa stream were introduced in October 2020. We welcome some of the changes that were introduced in October 2020, such as changes to subclass 309 (Offshore Partner Visa) where the visa can be granted onshore if the applicant is in Australia due to the current travel restrictions. NEDA and MDAA, however, are concerned about the proposed English language requirements for applicants and sponsors who are permanent residents, and the sponsorship framework as set out in the *Migration Amendment (Family Violence and Other Measures) Act 2018*.

10.2. NEDA recently submitted a response<sup>28</sup> to the Department of Home Affairs consultation paper on the above-mentioned changes to the partner visa stream, recommending the Government to not implement language requirements and reconsider if the changes to the sponsorship framework will achieve anything which it is not already providing.<sup>28</sup>

### English Language Requirements

10.3. MDAA and NEDA are deeply concerned about the proposed implementation of English language requirements as this is yet another barrier our members would experience whilst navigating the complexity of their settlement experience. We are of the strong belief that level of English proficiency should not be a determinant in assessing a person's ability to contribute to the social, economic, and political life of Australian Society. Australia's social fabric has been strengthened by generations of migrants who have struggled to speak English.

10.4. The Government's argument for introducing a language requirement is that women with a sufficient level of English would not face language barriers and would be more aware of Australia's laws and how to seek help. From our understanding of the evidence, which is in line with multiple studies, factors other than English proficiency play a larger role in determining if a woman on a temporary visa accesses appropriate support services, such as distrust in law enforcement, the importance of the family for CALD members, fear of losing custody of children if they report violence.

10.5. Research also show how being a temporary resident adds to the level of trauma for CALD women experiencing family violence as they have limited access to crisis support services and pathway to independence, and that withdrawal of sponsorship can be used as a threat and a way of exerting power over visa holders.<sup>29,30,31</sup> The most powerful way to protect women on temporary visas who experience abusive relationships is by offering them permanency.



10.6. We argue that the introduced language requirement is an example of favouritism as it directly favours applicants from an English-speaking country, which means it further disadvantages applicants from refugee backgrounds who as a cohort are more likely to not speak English upon arrival. We know that migrants and refugees want to learn English, and they view that as a key factor to successful settlement<sup>32,33</sup>. However, trauma and psychological distress, never having attended school, not being able to read and write in your own languages are all factors which impact a person's likelihood of learning English. Additionally, the language disproportionately discriminates against migrant women as we know women from developing countries have had fewer employment and education opportunities due to caring responsibilities, cultural norms around accessing and participating in education, and possibility due to instability in their home country.

10.7. Australia has a long migration history with migrants from different parts of the world coming to Australia with little or no English. Generations of Australians have become citizens while still developing their English language skills and are a huge part of Australia's identity. Many people in Australia, including Australian citizens, have low levels of English while still contributing to this country's economy and culture. We see Australians, permanent residents and temporary visa holders with low levels of English proficiency working in our factories, farms, small businesses, creating enterprises and caring for family members while paying their taxes, supporting themselves and being a valuable member of their community.

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### **Recommendation**

MDAA and NEDA recommend the Government does not implement the English language requirement as this will not protect women in abusive relationships. Instead, it gives perpetrators a tool for further control.

We recommend that the Government acknowledges the lifelong process of learning English, and how the diversity in languages spoken has shaped Australian multiculturalism, by not introducing English language requirements.

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### **Sponsorship Framework**

10.8. We understand that both the English language requirement and changes to the sponsorship framework aim to protect applicants. We are not opposed to a visa system that protects and supports migrants, however we argue that the current partner visa application process, where the applicant and sponsor are assessed simultaneously, is already providing that layer of protection.

10.9. Instead, the sponsorship framework will very likely increase waiting times and cost. We are yet to find out how long it will take for a sponsor to be approved. Meanwhile, for those applying onshore, the applicant may be forced to leave the country or apply for a different visa allowing them to stay lawfully in the country. This will increase both costs and waiting time. As mentioned in section 5, longer processing times are stressful and emotional for those waiting. Additionally, it is already financially challenging for CALD people with disability to sponsor their spouse and with the new changes implemented, it will be close to impossible. This is unfair, inhumane and unjust. Income and socio-economic status should never determine who gets to be with their loved ones.

10.10. We have serious concerns about the increased waiting times that could arise from the new sponsorship framework, as being separated from your loved ones due to extreme processing times for visa applications is a breach of international human rights legislation. Being denied sponsoring or the opportunity to become a permanent resident because of your English proficiency is discriminatory towards Australians whose partner may not have what the Government deems 'functional English'.

10.11. The benefits of family reunification to the community and economy cannot be underestimated. Besides being a fundamental human right, being with your family is crucial for refugees rebuilding their lives in Australia; being with your family is crucial for migrants settling as they are less inclined to be isolated.

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### **Recommendation**

MDAA and NEDA urge the Government to not implement the sponsorship framework as set out in the *Migration Amendment (Family Violence and Other Measures) Act 2018* as it is against human rights instruments, and it will increase cost and waiting times which are already outrageously expensive and long.

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## 11. Summary and Moving Forward

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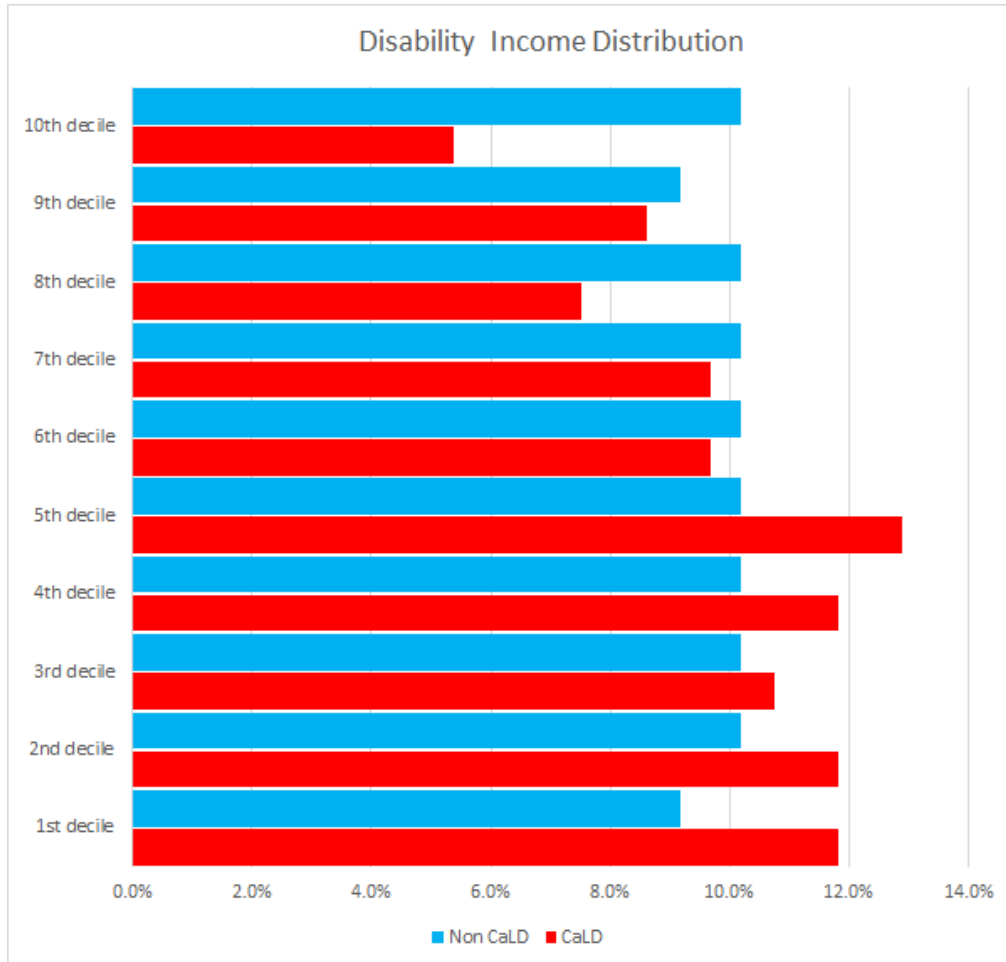
- 11.1. This submission has explored some of the challenges people with disability from migrant and or refugee background experience when engaging Australia's current migration system. It is a system that is extremely complex, tedious, and keeps family apart rather than unite. Further to this, it is a system with inbuilt mechanisms preventing applicants with disabilities or health conditions to ever settle in Australia.
- 11.2. Australia is a nation built on multiculturalism where we cherish and pride ourselves on how diverse we are; yet practically our migration policies and practices do not reflect these values of inclusion. As this submission has highlighted, Australia's migration system has discriminatory policies against some cohorts of our community, such as CALD people with disability. The rights and interests of CALD people with disability are structurally less favoured than others.
- 11.3. MDAA and NEDA encourage the Government to implement all recommendations outlined in this submission as part of an overall review and improvement of the family visa stream under the Migration Program. We believe there is significantly room for improvement.

## 12. Appendixes

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### Appendix 1:

Figure 1: Disability Income Distribution



Source: ABS SDAC 2018 Survey Tablebuilder

\*Decile 1 represents those with the lowest income.

Table 1: Granted application under the ‘Other Family’ visa stream.

Year	Carer subclasses	Other subclasses	Total Other Family
2010–11	468	282	750
2011–12	941	311	1,252
2012–13	887	398	1,285
2013–14	365	220	585
2014–15	358	92	450
2015–16	387	513	900
2016–17	385	447	832
2017–18	372	190	562
2018–19	282	242	524
2019–20	288	156	444

Source: Department of Home Affairs, Response to FOI request FA21/02/2010, 12 March 2021

**Appendix 2:** *Spouse with disability has lived in Australia for 9 years on bridging visa while waiting on a visa outcome due to the potential ‘cost’ of disability.*

A CALD person with disability who is an amputee and wheelchair user is living in Australia with her husband, who also has a disability and who sponsored her to live with him in Australia. She has been on a bridging visa for approximately 9 years, and the Department of Home Affairs continuously assesses her as being an individual who will be a ‘financial burden’ to Australia, as someone with ‘high-end medical needs that could cost Australia thousands of dollars’. This assessment has been made even though her General Practitioner has confirmed in reports that for the time she has been in Australia, she has had no medical needs of a serious nature whatsoever. The person has stated:

*“Many services do not help me because of my visa status. This makes me feel very hopeless. I am very scared of being sent home. Another fear I have is the possibility of my application being rejected because I have a disability. My life is not secure, and the only service I have is given by MDAA where I join a peer group, and access advocacy and activities with its women’s network. My dream is for the immigration to expedite my application because I have been here for 9 years.”*

**Appendix 3:** *Afghani refugee women now resettled in Australia explains how long waiting times, prolonged family separation and limited support for family members with disability to obtain a visa have impacted them.*

MDAA interviewed two Afghani women living in refugee camps in Iran and Pakistan before they arrived in Australia.

Eight out of twelve of their extended family members were allowed to come to Australia, although it took them up to 2.5 years until some of the family members were granted visas to come to Australia.

The women also reported that people in Iranian refugee camps who had severe physical disabilities received no help or potential prospects to obtain a visa.

The father of their own family who had major problems with his kidneys was initially interviewed by health officials but – due to his condition - had to stay in a refugee camp in Pakistan. This family is still separated from each other what they feel makes it very hard to settle in Australia and to start a new life.

**Appendix 4:** *Former African refugee with a disability dependent on his ageing mother as an informal carer wishing for his eligible brother to be offered humanitarian entry to Australia to take over with caring responsibility.*

In 2006 an African man with a physical disability, Mr K, and his mother (who is an informal carer) arrived in Australia as a humanitarian entrant via Australia's offshore resettlement program. Mr K's mother is ageing, is struggling to provide the level of support Mr K requires to undertake many activities associated with daily living. Mr K is hopeful that his brother, who still resides in Africa, will be granted a humanitarian entry visa to live in Australia, and to provide carer supports to Mr K. Both Mr K and his mother do not understand why Mr K's brother has not been offered humanitarian entry to Australia, considering they all have a shared experience/background of refugees and therefore believe he would meet eligibility requirements.

**Appendix 5:** *Young CALD person with disability resides in an aged-care facility, which could have been prevented, if her sister's carer visa was processed faster and thus supported to maintain independent living in her own home.*

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

As a result, Nelly now resides in an aged care facility as a crisis housing response from the state government. Her current residence in the aged care facility is highly inappropriate as she is the only person in her aged group, and she is surrounded by residents who are experiencing the end of their life. Nelly does not have access to appropriate supports in the aged care facility, and advocacy staff have significant concerns for her short and long-term emotional and physical well-being. Due to the lengthy visa waiting times, Nelly could be living in the aged care facility for another 3 to 4 years prior to being notified if her sister has been granted a carer visa.

*\*Nelly is not the person's real name.*

**Appendix 6:** *Carers must demonstrate that they are able to care for the sponsor. Misunderstandings around culture and disability can lead to applicants being deemed unable to care for the sponsor.*

At a consultation with MDAA's members, a carer for a person with disability shared their challenges with the visa application process. The carer has a disability but is still able and willing to care for their family member in Australia. Firstly, the carer must meet the health requirement which can cause further delay in the visa process, uncertainty and distress. Secondly, the carer shared how their speech impediment combined with limited English made it difficult to communicate with Department staff at their interview. The carer said that the Department, due to the language barrier and stereotypes about what people with speech impediments can and cannot do, deemed them as a cost-burden, less productive and unable to care for the family member with a disability.

**Appendix 7:** *The lack of appropriate support for carers to people with disability*

Mrs N is a carer, and provides informal caring supports to her husband who has a physical disability. Mrs N also cares for her son. Mrs N does not have access to appropriate supports as a carer, and is therefore often feeling isolated and tired. Mrs N requires practical assistance and needs access to daily assistance for herself and her husband to ensure she is supported in her caring role. Formal government carer supports only partially meet her needs, leaving Mrs N to undertake all night-time support needs of her husband and son. As a result, Mrs N is permanently living off little sleep, and is feeling fatigued and exhausted.

**Appendix 8:** *MDAA's members expressed concern about how the long processing times impact their relationships, mental health and well-being.*

At a recent consultation MDAA did with their members, a CALD person with a disability expressed how the long processing times impacted the relationship between her and her partner, outlining that the relationship was close to ending due to the stress and uncertainty of processing time. The person stated that *“I waited two years for partner visa – long distance can put a strain on the relationship – government said you have to go to Lebanon to prove that you are in a legitimate relationship but I don’t have the money for it.”*

Another CALD person with disability who is waiting for her carer visa application emotionally stated:

*“It seems like they wait for person needing care to die and then application is not needed. I am isolated and am afraid I can die – I have had many operations, in and out of the hospital, living on pain killers, the long wait causes mental anguish. The wait times are often completely unreasonable and sometimes outright cruel.”*



- <sup>2</sup> [https://www.australianchamber.com.au/wp-content/uploads/2018/12/FINAL-Australian-Chamber\\_Policy\\_Migration\\_WEB.pdf](https://www.australianchamber.com.au/wp-content/uploads/2018/12/FINAL-Australian-Chamber_Policy_Migration_WEB.pdf)
- <sup>3</sup> <https://www.refugeecouncil.org.au/family-separation/>
- <sup>4</sup> <https://www.unhcr.org/5a8c40ba1.pdf>
- <sup>5</sup> [https://humanrights.gov.au/sites/default/files/HRC\\_Report13.pdf](https://humanrights.gov.au/sites/default/files/HRC_Report13.pdf)
- <sup>6</sup> <https://www.australiavisa.com/immigration-news/changes-to-member-of-family-unit/>
- <sup>7</sup> <https://www.refugeecouncil.org.au/wp-content/uploads/2016/11/Family-reunion-discussion-paper.pdf>
- <sup>8</sup> Joint Standing Committee on Migration, Enabling Australia: Inquiry into the Migration Treatment of Disability, 2010, Available at:  
[https://www.aph.gov.au/parliamentary\\_business/committees/house\\_of\\_representatives\\_committees?url=mi/g/disability/report.htm](https://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=mi/g/disability/report.htm)
- <sup>9</sup> *Committee on the Rights of Persons with Disabilities, 'Concluding observations on the initial report of Australia, adopted by the Committee at its tenth session (2-13 September 2013), UN Doc CRPD/C/AUS/CO/1, 21 October 2013, paras 8-9.*
- <sup>10</sup> <https://www.ctvnews.ca/canada/after-40-years-federal-government-ending-barriers-to-disabled-immigrants-1.3887123>
- <sup>11</sup> <http://halc.org.au/wp-content/uploads/2017/12/140729-Final-Report.pdf>
- <sup>12</sup> <http://neda.org.au/sites/default/files/fact-sheets/English/migration-disability-factsheet-english.pdf>
- <sup>13</sup> [http://www.neda.org.au/sites/default/files/2017-12/FECCA\\_NEDA%20Submission%20-%20Willing%20to%20Work.pdf](http://www.neda.org.au/sites/default/files/2017-12/FECCA_NEDA%20Submission%20-%20Willing%20to%20Work.pdf)
- <sup>14</sup> <https://www.sbs.com.au/news/australia-s-lowest-priority-the-men-waiting-a-decade-to-reunite-with-their-families/be4ea612-488f-4725-b704-06e214d2b9ad>
- <sup>15</sup> [https://www.aph.gov.au/about\\_parliament/parliamentary\\_departments/parliamentary\\_library/pubs/rp/rp1415/asylumfacts](https://www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library/pubs/rp/rp1415/asylumfacts)
- <sup>16</sup> Disabled People's Organisations Australia (DPOA)(2017) Submission to the Committee on the Rights of Persons with Disabilities; [List of issues \[Australia\] to be adopted during the 18th Session of the Committee on the Rights of Persons with Disabilities.](#)
- <sup>17</sup> <https://dpoa.org.au/factsheet-migration/>
- <sup>18</sup> Federation of Ethnic Communities' Councils of Australia, National Ethnic Disability Alliance, Refugee Council of Australia and Settlement Council of Australia (2019). Barriers and Exclusions: The support needs of newly arrived refugees with a disability
- <sup>19</sup> <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/carer-836#About>
- <sup>20</sup> <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-processing-times/family-visa-processing-priorities/other-family-visas-queue-release-dates>
- <sup>21</sup> <https://www.servicesaustralia.gov.au/individuals/services/centrelink/carer-allowance/who-can-get-it/residence-rules>
- <sup>22</sup> <https://www.9news.com.au/national/australia-immigration-couples-left-in-limbo-for-years-as-partner-visa-delays-blow-out/de2421fb-5a5f-4bb4-9a39-61953a8dbd3d>
- <sup>23</sup> <https://www.sbs.com.au/news/greens-push-for-inquiry-to-overhaul-the-broken-system-of-family-visa-approvals>
- <sup>24</sup> <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-processing-times/global-visa-processing-times#>
- <sup>25</sup> <https://awava.org.au/wp-content/uploads/2018/12/National-Report-on-Women-on-Tempo...3-compressed.pdf>
- <sup>26</sup> [https://intouch.org.au/wp-content/uploads/2020/03/inTouchPositionPaper\\_WomenOnTemporaryVisasExperiencingViolenceInAustralia\\_March2020\\_website.pdf](https://intouch.org.au/wp-content/uploads/2020/03/inTouchPositionPaper_WomenOnTemporaryVisasExperiencingViolenceInAustralia_March2020_website.pdf)
- <sup>27</sup> <https://fecca.org.au/wp-content/uploads/2020/02/FECCA-Consultation-Report-2019.pdf>
- <sup>28</sup> National Ethnic Disability Alliance (NEDA). Submission in response to public consultation on the English language requirement and on the sponsorship framework for the partner visa program. NEDA. March 2021.
- <sup>29</sup> <https://awava.org.au/wp-content/uploads/2018/12/National-Report-on-Women-on-Tempo...3-compressed.pdf>
- <sup>30</sup> [https://intouch.org.au/wp-content/uploads/2020/03/inTouchPositionPaper\\_WomenOnTemporaryVisasExperiencingViolenceInAustralia\\_March2020\\_website.pdf](https://intouch.org.au/wp-content/uploads/2020/03/inTouchPositionPaper_WomenOnTemporaryVisasExperiencingViolenceInAustralia_March2020_website.pdf)
- <sup>31</sup> [https://bridges.monash.edu/articles/online\\_resource/Family\\_violence\\_and\\_temporary\\_visa\\_holders\\_during\\_COVI](https://bridges.monash.edu/articles/online_resource/Family_violence_and_temporary_visa_holders_during_COVI)
- <sup>32</sup> [https://fecca.org.au/wp-content/uploads/2019/10/FECCA-Community-Driven-English\\_WEB.pdf](https://fecca.org.au/wp-content/uploads/2019/10/FECCA-Community-Driven-English_WEB.pdf)

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<sup>33</sup> [https://scanloninstitute.org.au/sites/default/files/2020-01/June2019\\_Scanlon-Institute\\_Narrative-3.pdf](https://scanloninstitute.org.au/sites/default/files/2020-01/June2019_Scanlon-Institute_Narrative-3.pdf)