

HIV and immigration

This template has been developed to support clinicians who have patients living with HIV applying for a permanent visa.

Summary

This information has been developed to support clinicians treating patients with Human Immunodeficiency Virus (HIV) who are applying for an Australian permanent residence (PR) visa. The provision of a 'positive' medical report in support of a patient's PR visa application can help to support a favourable outcome for the applicant.

It is recommended that the applicant seeks advice from an appropriate migration agent/lawyer. Clinicians are recommended to make use of this provided information in conjunction with the advice of the applicant's migration agents/lawyers, who will be able to advise in regards to the application or health waiver.

It is often important that a medical report is provided prior to the appointment for the health examination

In this report it is important that the following is included:

- The long-term effects of HIV on the health status of the applicant
- Description of HIV symptoms experienced by the patient and the influence this might have on the patient's ability to work
- Whether or not the patient is already receiving treatment, and if so, what kind
- The impact of treatment including the influence on the patient's ability to work and contribute to the Australian community
- How this treatment will influence the likelihood of developing HIV-related complications
- The patient's contribution to the Australian community (e.g. paid or volunteer work).

Introduction HIV

In Australia HIV is most commonly transmitted through unsafe sex and sharing injecting needles. Mother to child transmission and unsafe medical procedures are uncommon in Australia but can be significant in HIV endemic countries.

HIV is not transmitted through saliva, sweat, tears, mucous, vomit, urine or faeces. HIV cannot be transmitted by kissing, hugging, sharing eating utensils, shaking hands or any other everyday social contact.

HIV infection if left untreated can lead to other infections and cancers by affecting the body's immune function. This usually takes several years. When a HIV positive person develops one or more opportunistic illnesses they are referred to as having Acquired Immunodeficiency Syndrome (AIDS). Or someone has progressed to AIDS when the number of CD4 cells falls below 200 cells per cubic millimetre of blood (200 cells/mm³). Incidence of AIDS has dropped significantly with early diagnosis and improved treatment of HIV infection.

HIV is a chronic infection and requires lifelong antiretroviral treatment (ART). Treatment is advised as early as feasible with the newer well tolerated drugs. Close adherence to ART enables people living with HIV to lead long and healthy lives. Treatment can result in an undetectable viral load, which can reduce the chance of developing HIV-related complications. In addition, when someone has a sustained undetectable viral load they cannot sexually transmit HIV.

The healthcare costs for uncomplicated HIV infection are usually limited to a few medical appointments a year for monitoring and the prescription of HIV medications. Cost of HIV medications in Australia is currently around AUD\$2000/month for a single combined pill regimen. The cost of HIV medications is subsidised through the Pharmaceutical Benefits Scheme (PBS) for anybody with a Medicare card. Healthcare costs will increase in non-compliant patients who develop complications.

Why is HIV an issue for immigration? Health assessment for visa applicants

The standard procedure for permanent visa applications for an applicant (with HIV) is:

1. Application lodgement.
2. Health examination showing HIV+ status – if already

known, the applicant must disclose this health condition to the Department of Home Affairs on all relevant forms and when otherwise requested.

3. Provision of health (including HIV) results to the Department.
4. Appointment with a panel physician, the results of the health examination are then assessed by the Medical Officer of the Commonwealth (MOC). The MOC will consider whether the applicant meets the health criteria according to the Department's Notes for Guidance for MOCs – the clinician should provide the required report before the health examination.
5. MOC provides an opinion to the department's case officer – for HIV positive applicants this will most often be 'Does Not Meet' (i.e. fails) the health criteria due to a calculated significant cost over the applicant's lifetime or visa period.
6. Case officer begins considering application, including PIC 4005/4007. The case officer must, under the Regulations, accept the MOC's opinion as correct. The case officer may determine, based on the MOC's opinion, that the applicant fails to meet the health PIC. Depending on the visa type applied for (see Table 1), the applicant may be given a 'natural justice' opportunity to respond and apply for a health waiver.
7. The applicant is refused or granted the visa, based on all criteria, including the health criteria. This means that the applicant may be refused for failing to satisfy the PIC, if the PIC is not waived.

Health assessment

When applying for a permanent visa the applicant must undergo a health examination conducted by a Bupa panel physician. After the examination the MOC will assess and form an opinion whether the applicant meets the relevant health requirement. MOCs are required to determine whether the health status of the applicant could affect their visa application. Australian migration law provides two distinct types of health-related Public Interest Criteria (PIC), see table 1.

PICs 4005 and 4007 require that applicants are:

- 1) Free of tuberculosis;
- 2) Free of any disease or condition that it is or may result in the applicant being a threat to the public health in Australia or a danger to the Australian community;

- 3) Free of any disease or condition that would be likely to require the applicant to:
- Receive healthcare or community services; or
 - Meet the medical criteria for the provision of community services; and
 - The provision of this healthcare of these services is likely to result in:
 - 'Significant costs' to the Australian community (the current threshold set by the Department is AUD\$49,000 up to a maximum of 10 years for an applicant with a reasonably predictable permanent condition); or
 - Prejudice the access of an Australian citizen or permanent resident to healthcare or community services (currently this healthcare includes organ transplants (including bone marrow) and kidney dialysis).

It is recommended that the applicant seeks advice from a migration agent/lawyer

If an applicant is found by the MOC to not meet the health criteria, there will be a different outcome for each applicable category of PIC (table 1). Visas where PIC 4005 applies do not have the possibility to apply for a health waiver. In the case of permanent visa applicants where PIC 4007 applies, an opportunity is given for them to apply for a 'waiver' of the health requirement. Due to the complex process it is recommended that the applicant seeks advice from a migration agent/lawyer.

Why is HIV an issue for immigration?

Patients with HIV are most likely to fail the health requirements due to the significant cost of treatment

(including medication and health services). The department has presently set a threshold of AUD\$49,000 as a significant cost. Given that HIV is currently a chronic condition, this cost is calculated over a patient's life-time, and the estimated treatment cost is often well above the threshold.

The purpose of the requirement for an applicant to be free of any conditions that are likely to result in a significant cost for treatment, is to prevent a burden on the Australian public health system. As part of the application, the MOC considers the health care or community services for which a 'hypothetical person' with the same form and level of the applicant's condition would be eligible, regardless of whether the applicant will actually use this care or these services if granted the visa. It does not matter for the purposes of the criteria whether:

The costs are calculated regardless of whether or not the applicant will use this treatment. The MOC only considers:

- The nature of the condition
- The severity of the condition
- The age of the applicant
- The type of visa applied for
- The visa period

and will not consider that:

- The person intends not to use Australian services.
- The person's costs will be met through alternative means – savings, health insurance, reciprocal health care, etc.
- The person has their own supply of medication or a carer.
- Family members provide support or care.
- The services are not available in some parts of Australia.

Health PIC	Visa type	Health waiver available, when failing the health assessment
PIC 4005	majority of visas	No
PIC 4007	most family stream, all humanitarian and a limited number of skilled visas, including temporary employer nominated work visas.	Yes * within the family stream, a health waiver is available for: partner/fiancée/defacto/spouse and child visas. Not available for parent, carer or adoptive child visas.
	most family stream, all humanitarian and a limited number of skilled visas	Yes * within the family stream, a health waiver is available for: partner/fiancée/defacto/spouse and child visas. Not available for parent, carer or adoptive child visas.

Table 1 : Health PICs categorised by visa type and health waiver

HIV is not considered a public health threat to the Australian society. There are few occupational restrictions (e.g.: surgeons carrying out exposure prone procedures) for HIV positive individuals.

The role of Clinicians - Support with a Report

It is important that the patient's clinician(s) provide a medical report to the Department prior to the appointment with the physician. The MOC is required to consider the report from the applicant's clinician. The report should address the nature and severity of the HIV infection, and the prognosis.

It should specifically address the following:

- The long-term effects of HIV on the health status of the applicant.
- Description of HIV symptoms experienced by the patient and the influence this might have on the patient's ability to work.
- Whether or not the patient is already receiving treatment, and if so, what kind.
- The impact of treatment including the influence on the patient's ability to work and contribute to the Australian community.
- How this treatment will influence the likelihood of developing HIV-related complications.
- The patient's contribution to the Australian community (e.g. paid or volunteer work).

Function of the report

Depending on the applicable PIC (see Table 1), the report from the clinician has different functions.

PIC 4007 – Health Waiver

As described, for visas to which PIC 4007 applies, and where the applicant has failed 4007 due to their HIV+ status, the applicant should be given a chance to respond as according to the rules of natural justice. The applicant may then apply for a waiver of PIC 4007 – a 'health waiver', so that the PIC is no longer held to apply.

The applicant with HIV who has failed PIC 4007 due to

calculated significant costs may receive a health waiver if it can be demonstrated to the decision maker's satisfaction that they satisfy all other criteria for the grant of the visa, and that granting the visa would be unlikely to result in 'undue' cost to the Australian community or 'undue' prejudice to the access to health care or community services of an Australian citizen or permanent resident.

The applicant's migration agents/lawyers will be able to advise as to the factors they will be addressing in the waiver application, including the following discretionary issues:

- The applicant's ability to mitigate the calculated costs of treatment financially.
- Compelling and compassionate circumstances
- Any regional location of applicant.
- The applicant's compliance with migration requirements to date.

The clinician's provision of a 'positive' report in support of a migration application is very important with respect to health criteria and contributes to a favourable outcome for the applicant-patient.

This resource was developed by Medicare Ineligible PLHIV Working Group in consultation with Emma Drynan from Freedom Migration. The members of the Working Group are: Satrio Nindyo Istiko (Peer Navigation Team Leader, QPP), Katelin Haynes (ASHM Queensland Program Manager), Dr Julian Langton-Lockton (Clinical Director, Sexual Health & HIV Service, Metro North HHS), Dr Andrew Redmond (Infectious Diseases Unit, RBWH, Metro North HHS), Dr Diane Rowling (Senior Staff Specialist, Sexual Health & HIV Service, Metro North HHS), Dr David Siebert (Princess Alexandra Sexual Health (PASH), Metro South HHS), Dr Mekala Srirajalingam (Ipswich Sexual Health Service, West Moreton HHS), Dr Caroline Thng (Gold Coast Sexual Health, Gold Coast HHS), Dr Ken Koh (General Practitioner/S100 Prescriber, Holdsworth House)

SAMPLE TEMPLATE FOR MEDICAL PRACTITIONERS REQUESTED TO PROVIDE AN EXPLANATORY LETTER TO BE USED FOR THE PURPOSE OF ATTENDING A VISA MEDICAL FOR THE PURPOSES OF APPLYING FOR AN AUSTRALIAN VISA WHERE THE PATIENT IS HIV POSITIVE.

This letter should be on letterhead.

To Whom It May Concern,

RE: First name/s, Surname **DOB: HAP ID NUMBER:** This is the number generated when the patient books to complete a visa medical examination.

Paragraph 1. State the capacity in which you engage with the patient ie I am the general practitioner to XX OR XX is a patient of the XX Clinic where I have treated him/her. State the relevant health condition that the patient has, viral load/CD4 count.

Paragraph 2. State your qualifications and relevant experience, including your current role.

Paragraph 3. Provide an explanatory paragraph of what the health condition is.

Paragraph 4. Detail the treatment prescribed to the patient including medication and community health services ie routine blood test every 3 months.

Paragraph 5. Provide a statement regarding the patient's overall health and adherence with the above prescribed treatment.

Paragraph 6. State the prognosis of the patient with the said condition. Comment on whether or not they are fit to work and what long term care arrangements are required. If there are no long-term care arrangements required outside of the prescribed medication and check-ups – state that.

Conclude with your full name, contact details, qualifications and signature.

This is a sample template only prepared by Emma Drynan (Registered Migration Agent 0960361). Where a health waiver may be required for an Australian visa, it is the applicant's obligation to seek advice from an Australian Registered Migration Agent prior to lodging or as soon as they become aware they may not meet the relevant health criteria. Circumstances vary, thus the contents and comments required within a letter or report of this nature by the treating general practitioner may change.