

HIV immigration restrictions don't hold water

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Does Australia have a problem with HIV-positive immigrants? Judging by the comments made by our Prime Minister on Friday, you would think so. Speaking on Southern Cross Radio, Mr Howard said that he did not think HIV-positive people should be allowed to migrate to Australia, and flagged possible legislative change to restrict them.

But Australia already has immigration laws that make it almost impossible for most HIV-positive people to gain permanent resident status. Applicants for permanent resident visas are required to undergo a comprehensive medical assessment, including an HIV test, as part of the application process. Applications from people with HIV are routinely refused, on the basis that there would be an undue cost to the Australian community if the application were approved.

Only by demonstrating genuine humanitarian or compassionate grounds can applicants for permanent residency overcome this barrier. The immigration minister can waive the health requirement, but in most cases people with HIV have to take their claim to the Migration Review Tribunal (MRT) for adjudication. The MRT applies the criteria in the Immigration Regulations to determine whether there is just cause to waive the health requirement; there must be compelling compassionate or humanitarian reasons or the application will be refused.

We do not know exactly how many HIV-positive people manage to pass these hurdles (the Immigration Department will not tell us) but we understand there are only a handful of successful cases each year. So the suggestion that there are large numbers of HIV-positive people migrating to Australia is wrong.

The immigration process is not without its shortcomings. The National Association of People Living with HIV/AIDS, Australia (NAPWA) has argued that the Commonwealth Medical Officer uses outdated information to determine the cost of medical treatment for people with HIV, and that the process fails to take account of the contribution the individual will make to Australian society. We think the legal process is too slow and too expensive for the majority of applicants. But we accept the Government's position that, unless there are humanitarian or compassionate grounds, people with HIV will be refused permanent residency.

That is the law as it stands, so is the Prime Minister proposing something new? He acknowledged "there can be some circumstances where there may be a humanitarian reason", and indicated that people with genuine claims of this sort would continue to be treated as exceptions to the rule. It is hard to see how the rules could be made more restrictive than they already are. It is also hard to see how doing so will help Australia's response to AIDS.

Presumably the Prime Minister believes that preventing HIV-positive people coming to live in Australia will help reduce the number of people who contract the [virus](#) [1] A small infective organism which is incapable of reproducing outside a host cell., but there is no evidence for this. People with HIV have been banned from travelling to the United States (even as tourists) since 1987, but that has done little to protect that country from HIV/AIDS. The US has a significantly higher HIV prevalence than Australia: more than 1 million Americans are HIV-positive, compared with about 17,000 Australians. On a per-capita basis, the US, with its tight border controls which prohibit positive people setting foot in the country, much less settling there, has four times the HIV burden of Australia.

Australia is fortunate not to have a much worse HIV epidemic than it does. And yes, there is much work to be done to combat rising HIV infections. NAPWA believes that education, testing and treatment are the keys to combating HIV. Calling for tighter border security sounds good on the radio, but it won't help defeat this virus.

- Robert Mitchell is the president of the National Association of People Living with HIV/AIDS (NAPWA).
- This article was originally published on [ABC Online](#) [2] on Tuesday 17 April 2007.

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Links:

[1] <http://www.napwa.org.au/glossary/term/125>

[2] <http://www.abc.net.au/news/opinion/items/200704/s1898721.htm>