

Immigration forum in Sydney

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MPs, migration lawyers, immigration officials and HIV community representatives came together at an ACON-hosted forum in Sydney in November to discuss travel and migration for people living with HIV/AIDS. CHRIS

While globalisation has made national boundaries increasingly irrelevant to the world economy, and the volume of international travel continues to grow, restrictions on personal movement, often based on old-fashioned notions of disease containment and quarantine, continue to pose difficulties for people living with HIV/AIDS who wish to travel or migrate across national boundaries.

Australia is one of many countries which prohibit or restrict immigration by PLWHAs but do not exclude HIV positive short-term visitors such as tourists.

Migration lawyers Lachlan Riches from the Sydney firm of Taylor Scott and David Puls from the HIV/AIDS Legal Centre (NSW) both spoke about representing clients with HIV who apply to migrate to Australia from other countries.

All applicants for permanent residence are required to have an HIV test, and people who are HIV positive will fail the health test set down by the Migration Act, which stipulates that a person will not be permitted to migrate if their health condition will cause "undue cost" to the Australian community, or will "unduly prejudice" Australian citizens' access to health care services.

These tests are applied to all health conditions, not just HIV/AIDS. The criterion on access to health care does not present a problem for HIV positive migrants, as Australia has ample health care services for PLWHAs. However the lifetime health care costs of a person with HIV/AIDS is routinely assessed — by a Medical Officer of the Commonwealth (MOC) — to be "undue", requiring would-be migrants to mount an argument that they should be permitted to migrate to Australia on compassionate grounds.

The health test may be waived on compassionate grounds only for people in certain visa categories: those who have a spouse, de facto spouse, fiancé, or same sex partner who is an Australian citizen or permanent resident. Dependent children of Australian citizens and permanent residents, and people applying for recognition as refugees, can also apply to have the health test waived.

As David Puls told the meeting, "it seems to be the case that no matter what the health of the applicant, or how well they are doing on medication, or whether they are likely to be hospitalised, or where their drugs are being provided from, the MOC will estimate the lifetime cost of treating their HIV as being somewhere between \$240,000 and \$250,000."

Solicitors are frustrated that the Migration Act provides no means of establishing or verifying the matters the MOC has taken into account. They are also concerned that such generic assessments fail to take into account individual circumstances and treatment developments such as structured treatment breaks, which for many PLWHAs mean less use of [antiretrovirals](#) [1]A medication or other substance which is active against retroviruses such as HIV. and therefore lower health care costs.

Although the Immigration Department says it does not retain information on HIV positive residency applications because of privacy concerns, a 2001 survey of known cases by the Australian Federation of AIDS Organisations (

David Puls told the roundtable that he had never seen an HIV health waiver approved by the Department, no matter how good the merits of the application. "Anyone who is to have a chance of success must appeal to the MRT, which apart from the added expense, can also mean waiting an additional 18 months or more to get a result", he said.

Some weeks later, David advised he had just received news that a health waiver had been granted for a client by the Department — a first for his legal practice — and that the client would be spared what he had come to consider the usual ordeal of appeal processes.

The difficulties facing Australians with HIV/AIDS undertaking international travel can range from being refused entry to a country — the USA, for example, prohibits entry to all people with HIV in most circumstances, regardless of the length of the proposed stay — to ensuring sufficient supplies of medication during the period of travel.

PLWHA (NSW) President John Robinson outlined the information available in the booklet *International Travel and — Advice for the Positive Traveller*, produced by the PLWHA (NSW) Legal Working Group. The booklet, now in its second edition, provides information on over 40 countries, with detailed information on entry to the United States, reportedly one of the most popular travel destinations for Australian PLWHAs.

Robinson told the meeting that, since 1990, PLWHAs who wish to enter the US have been entitled in some circumstances to apply for a waiver of the ban. Where the travel to the US is for 30 days or less, and for purposes which “confer a public benefit which outweighs any risk to the public health,” an application to waive the ban can be made to the local US consulate. In the case of Australian applications, the request is forwarded to the US regional Immigration and Naturalisation Service in Bangkok for processing.

Travel which may be considered as “conferring a public benefit which outweighs any risk to the public health” may include attending conferences, conducting business activities, and visiting close family members. Entry for the purpose of tourism alone will not be considered to confer the requisite “public benefit”, and Robinson warned the meeting that “once you have applied for a waiver, your name and status is on the record for all future references — you will have to declare [your HIV status] each time you want to visit the US.”

It's not uncommon to hear of HIV positive people entering the US for various periods of time and for various purposes — tourism, conferences, visiting friends, employment — and this illustrates that the law excluding PLWHAs is not rigorously enforced. At the same time it can't be assumed that it won't be enforced, and many people will recall reports of an incident in July 1999 in which HIV positive delegates to a conference organised by the Metropolitan Community Church were refused entry by immigration officials at Los Angeles airport. The United Kingdom's Terrence Higgins Trust is campaigning for an end to the ban on HIV positive people entering the US. Further information

- *International Travel and HIV — Advice for the Positive Traveller* is available from PLWHA (NSW), 1st floor, 94 Oxford Street Darlinghurst, or by phoning (02) 9361 6011.
- Applying for Permanent Residence in Australia — Information for people with HIV/AIDS and their advisers is available on this website.
- The Terrence Higgins Trust campaign to end the ban on entry to the US is at www.advocacyonline.net/tht [3].

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Links:

[1] <http://www.napwa.org.au/glossary/term/122>

[2] <http://www.napwa.org.au/glossary/term/385>

[3] <http://www.advocacyonline.net/tht>