RECEIVED
05 OCT 2009
BY: MIG

napwa national association of people living with HIV/AIDS

Submission No 67

Submission to the Joint Standing Committee on Migration Inquiry into Immigration Treatment of Disability

October 2009

This submission was prepared by the National Association of People Living With HIV/AIDS (NAPWA)

PO Box 917
Newtown
NSW. 2042

EXECUTIVE SUMMARY

As the peak organisation representing HIV-positive people in Australia, NAPWA has held an interest in the issues of assessments for migration to Australia, and determination of costs of health and illness since our inception over twenty years ago - around the time of the first HIV diagnosis in this country.

Over this period, HIV prognosis has improved considerably, from progressive terminal illness to chronic, treatable and manageable disease over a long duration. However, we have not seen a corresponding change in the way that costs of illness and health care in the contemporary Australian setting align to procedures and administrative arrangements for purposes of migration assessment programs, and NAPWA remains concerned about this inconsistency.

NAPWA understands that our partner organisations have also responded to this Inquiry, each providing an analysis from their perspective. NAPWA offers, in our submission, the particular views of HIV-positive migrants, refugees and residents who must negotiate the difficulties of obtaining health waivers in order to reside in Australia.

In June 2008, NAPWA welcomed Australia's ratification of the United Nations Convention on the Rights of People with Disabilities (UN CRPD) and we are hopeful that this will now apply added pressure on government and authorities to make the necessary amendments to policy and legislation to ensure that people with disabilities are regarded equally in all processes of migration assessment, regardless of their illness or disability.

NAPWA's RESPONSE TO INQUIRY TERMS OF REFERENCE

Regarding options to properly assess the economic and social contributions of people with disability and their families, NAPWA argues that economic concerns are consistently privileged over social and humanitarian factors which, although often more difficult to assess, are nonetheless valid. We do not offer particular assessment models but insist that assessments be applied equitably and transparently. Importantly we argue that HIV-positive applicants should no longer be discriminated against regarding the migration Health Requirement.

NAPWA has long advocated on behalf of HIV-positive people who have failed the Health Requirement and then been affected by arduous appeal processes at considerable cost to the government and the applicants. We are of the view that Australia's well regarded response to HIV/AIDS has resulted in a comprehensive set of services that promote self-reliance and build the capabilities of their clients to live long and healthy lives. It is NAPWA's view that changes that would allow HIV positive individuals to become resident in Australia would not have an adverse impact upon Australia's HIV response in terms of care and delivery of services, and indeed could enhance and develop our current response priorities.

NAPWA argues that primacy must be given to the health needs of applicants - particularly during the application period. This is a difficult time for applicants and the process is inherently stressful, impacting on physical and emotional health. We are also arguing that there is a need for reliable national data on the health and wellbeing of migrants and refugees and that this data must be used to inform and implement effective

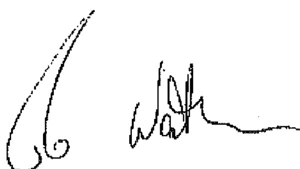
evidence-based policy and programs as an integral aspect of Australia's obligations to the UN CRPD.

We acknowledge that there need to be rational criteria that govern migration application decisions; however, NAPWA is of the view that current migration policies are confusing and complex. There are inconsistent criteria applied to different visa classes and further inconsistencies in assessment policy and processes. This is particularly evident in the operation of the Health Requirement Waiver and it is our view that these inconsistencies privilege some people more than others.

NAPWA is particularly concerned at the apparent blanket refusal of HIV-positive migrants under the Health Requirement, while many subsequent appeals have then been processed successfully. This underlines the lack of transparency and the inconsistency of medical assessment rulings. We believe that in light of improving HIV prognosis, generic estimates of heath care costs should no longer be used to make assessments. It would be more appropriate to rely on up to date medical reports provided by relevant specialists that relate to the individual applicant concerned.

We also wish take this opportunity, to appeal strongly through this Inquiry for the rights of individuals seeking visas on humanitarian grounds – that these people should no longer be denied entry on the grounds of failing the health test or on the grounds of disability. It is also unacceptable in a country as well resourced as Australia that any individual, while legally residing in Australia, cannot secure approval for Medicare access. This especially applies to those individuals living with a chronic illness who require medications or treatments only available through mechanisms like the PBS or Medicare. The threat to individual and public health that such situations pose cannot be justified.

Finally, NAPWA regrets that many countries discriminate against people with HIV in migration law. NAPWA argues that this discrimination: harms HIV–positive people and their families; serves no public health purpose; propagates further stigma and discrimination; violates human rights and denies the impact of globalization. Australia is a nation of migrants – some with disabilities – but each having contributed to society in immeasurable ways, some economic – some social and cultural. Australia's current Migration Law undermines Australia's international obligations in respect to the ratification of the UN CRPD and in doing so fails to teat people with disability seeking to immigrate to Australia as full rights bearing citizens.



Jo Watson
Executive Director
NAPWA

ABOUT NAPWA

NAPWA is the peak body representing the interests of people living with HIV (PLHIV) in Australia. NAPWA membership includes PLHIV organisations in each state and territory and the following affiliate members: Positive Heterosexuals (Pozhets); Positive Women (Victoria); Straight Arrows; and the Positive Aboriginal and Torres Strait Islander Network (PATSIN). NAPWA is an early founding member of the Australian Federation of Disability Organisations (AFDO) and is funded by the Commonwealth to provide advocacy and policy advice to Government and other agencies on national issues affecting people with HIV/AIDS.

This submission provides an explanation of NAPWA's interest in this inquiry; and an overview of HIV in Australia; a brief discussion of the relationship between HIV and migration and a response to the Terms of Reference.

NAPWA's INTEREST IN THIS INQUIRY

NAPWA welcomes the decision by the Inquiry to consider a wide range of disabilities, including diseases and conditions such as HIV that result in visa refusal.

In acceding to the United Nations Convention on the Rights of Persons with Disability (UN CRPD) Australia has committed to equality for people with disability in all areas of Australian law. Article 1[1] of the (UN CRPD) defines persons with a disability as including '*those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal bias with others'.*

This is a social model of disability that clearly encompasses HIV and other chronic illness. NAPWA embraces the principles of the UN CRPD and holds the view that a social model of disability is necessary in order that people living with HIV and other chronic illness are adequately considered and protected.

NAPWA would also like to draw the Inquiry's attention to submissions from our partner organisations the Australian Federation of AIDS Organisations (AFAO), the National Ethnic Disability Alliance (NEDA) and AFDO.

NEDA's submission asserts that Australia's migration Health Requirement is based on the flawed assumption that people with disability are a burden on Australia's health system and are unable to make social and economic contributions to Australian Society. Like NEDA, we agree that such assumptions conflict with our international human rights obligations, and are at odds with community expectations that people with disability are entitled to participate on the same basis as anybody else.

---

[1] Article 1 of the UN Convention on the Rights of Persons with Disabilities (UN CRPD): www.un.org/disabilities/convention/conventionfull

The AFAO submission provides a comprehensive critique of current policies affecting people with disabilities in respect of all permanent visa applications. The AFAO submission also includes a comprehensive summation of Australia's ratification of the UN CRPD Optional Protocol and the Australian Government's submission of an Interpretative Declaration following its ratification of the UN CRPD in July 2008. Further, the AFAO submission includes an analysis of aspects of the Disability Discrimination Act (DDA) and highlights a number of human rights concerns regarding this pivotal legislation and the Department of Immigration and Citizenship's (DIAC) enactment of the migration Health Requirement.

Our submission will not be reporting on these legal and legislative issues in the same depth, however, NAPWA wishes to offer our unequivocal support to the AFAO, NEDA and AFDO submissions to this inquiry and to the recommendations and the legislative and policy reforms these organisations have each proposed.

HIV – THE AUSTRALIAN CONTEXT

The experience of HIV has changed considerably over the past twenty years in Australia. In this country, as in other developed countries, HIV is no longer a terminal illness but chronic, treatable and manageable. Over the same period there has also been a significant reduction in opportunistic infections and diseases. This change was bought about by the introduction of HIV antiretroviral treatments (ARV), a strong focus on clinical management, and access to a range of improved diagnostic tests which guide clinical decision-making. As a result, HIV mortality and morbidity has decreased to the extent that AIDS (Acquired Immunodeficiency Syndrome) is no longer a significant aspect of HIV in Australia.[2] The incidence of AIDS (as distinct from HIV infection) has dramatically declined since the introduction of effective treatments

While HIV diagnosis remains a traumatic experience, medical and allied health professionals can now offer greater hope and a clearer prognosis, than ever before. While it is nonetheless the case that some HIV positive people continue to experience chronic, episodic illness (including treatments side-effects, compromised immune systems and opportunistic infections), others are able to manage the illness by adhering to treatment regimens and making lifestyle changes.

These changes now see many HIV-positive people in Australia returning to employment and training, rebuilding social connections and realizing their potential for full and active participation in community life.

---

[2] National Centre in HIV Epidemiology and Clinical Research, *2009 Annual Surveillance Report. Table 1.3. National AIDS Register – Characterisation of AIDS cases by year.*

HIV AND MIGRATION - THE AUSTRALIAN CONTEXT

In setting the context for our comments, it is important to note that people with HIV represent a small percentage of the total applications for permanent residency to Australia. DIAC[3] sources confirm that 205,940 permanent resident visas were issued in 2007 – 2008 with a total of 1532 temporary and permanent visa applications being refused on health grounds. Of these refusals, 244 were applications failing the Health Requirement on cost/prejudice rulings, with 71 refused on the grounds of disability. Of the applications refused on the grounds of failing the Health Requirment, NAPWA understands that the highest proportion for this refusal was on the grounds of the applicants' HIV-positive status.

NAPWA is very concerned that, in Australia, people with HIV represent the largest proportion of migration applicants rejected on the grounds of not satisfying the migration Health Test[4] for a health condition. It is clear that, despite Australia's ratification of the UN CRPD, Australia's migration legislation and policies and guidelines regarding the Health Requirement result in discriminatory rulings against people with disabilities – including those living with HIV and other chronic illnesses.

NAPWA believes that now is the time for Australia to display leadership by promoting fairness and equality towards people with disability and revise its stance on this issue.

REPORT ON INQUIRY TERMS OF REFERENCE
SECTION1:
Report on the options to properly assess the economic and social contribution of people with a disability and their families seeking to immigrate to Australia.

Both the UN CRPD and the DDA[5] commit Australia to respond to the needs of people with disabilities as full rights-bearing citizens

> "*with recourse to systems that redress any infringements of their rights: where people with disabilities can participate in the life of the community...where difference is accepted, and where public instrumentalities, communities and individuals act to ensure that society accommodates such difference. Only then will we be able to say that justice has been achieved*"[6]

---

[3] Department of Immigration and Citizenship, 'Immigration Update: 2007-2008', p 8

[4] DIAC, Integrated Client Server Environment, UN Convention on the Rights of People with Disabilities – slide 8: Note that HIV accounted for 72 of 380 rejections from a total of 800 rejections for the period July 2005 – Feb 2006.

[5] Disability Discrimination Act (DDA): www.hreoc.gov.au/disability_rights

[6] ABCD Conference 'Building Australia's Future' 13 September 2005: Graeme Innes AM Deputy Disability Discrimination Commissioner Human Rights and Equal Opportunity Commission: The Disability Discrimination Act and the rights of people with disabilities.

Acknowledging the full extent of human interactions brings into practice *real* participation and *real* social inclusion and – it seems – provides *real* economic benefit to Australia. In a Study *The Social Costs and Benefits of Migration into Australia* 2007[7], it was found that:

> *"The main conclusion to be drawn from this study is that the social benefits of migration far outweigh the costs, especially in the longer term. The evidence overwhelmingly supports the view that migrants to Australia have made and continue to make substantial contributions to Australia's stock of human, social and produced capital".*

Under Australian immigration policy, an HIV-positive sero-status does not necessarily result in a permanent visa being denied. The main factor taken into account is the cost of health care: including the likely need for medical, pharmaceutical and community services such as home and community care and income support.[8] Currently HIV-Positive applicants are routinely rejected in the first instance on the grounds of failing the Health Requirement.[9] This has led to concern regarding the consistency with which the Health Waiver is applied to HIV-positive applicants.[10]

Health Waiver decisions made by the Migration Review Tribunal (MRT) on the basis of the lack of medical care in the applicant's home country or where the applicant's sponsor cannot relocate to the applicant's home country, also suggest unsatisfactory anomalies. Under these circumstances, NAPWA would agree with such rulings however, such cases highlight the inadequacy of relying on economic criteria to make determinations. For instance, Szaraz states that:

> "*The obvious result is that a person who will not contribute to Australia in any economic way, but comes from a country unable to provide medical care, will be a justifiable cost, while a highly educated and productive applicant with skills needed in Australia, and high earning capacity, will be undue cost. This is surely not the intention of the legislation. It disadvantages people with ongoing, but manageable, medical condition,* [such as HIV] *where they may have many years of valuable contribution to make to Australia*".[11]

---

[7] The Social Costs and Benefits of Migration into Australia DIMIA 2007

[8] DIMIA 2003a, *The People of Australia: Statistics from the 2001 Census*, DIMIA. Canberra. Retrieved July 2 2006 from www.immi.gov.au/media/publications/research/index.htm

[9] Szaraz L (2005). Australia's Immigration Response to HIV/AIDS. In *Australasian Society for HIV Medicine, HIV and Hepatitis C: Policy Discrimination, Legal and Ethical Issues* (pp 97 – 112) Sydney: Australasian Society of HIV Medicine

[10] Korner H: Ethnicity and Health Vol 12, No 3. June 2007, pp 205 – 225: *If I had MY Residency OI Wouldn't Worry: Negotiating Migration and HIV in Sydney Australia*

[11] Szaraz L (2005). Australia's Immigration Response to HIV/AIDS. In *Australasian Society for HIV Medicine, HIV and Hepatitis C: Policy Discrimination, Legal and Ethical Issues* pp 105. Sydney: Australasian Society of HIV Medicine

As a signatory to the NEDA Position Statement[12] issued on behalf of disability organisations, NAPWA wishes to reiterate its demand that this Inquiry recommend to remove discrimination against people with a disability from current laws and processes. Likewise, NAPWA believes that the assessment of migrant contributions to Australian society must be considered equitably and that administrative arrangements and processes must be transparent and with a view to achieving meaningful social inclusion.

SUMMARY

NAPWA believes that an emphasis on economic factors when assessing the contribution of people with a disability and their families seeking to migrate to Australia represents a serious deficiency in the assessment process. Regarding HIV, NAPWA argues that these rulings are further complicated by an improving prognosis for HIV-positive applicants and the resulting capacity to contribute to society productively across an increased life expectancy. However, the blanket rejection of applications, in the first instance, on the grounds of failing the Health Requirement and the economic emphasis in Health Waiver deliberations suggests that these applications are being processed in a discriminatory manner. This would contravene Australia's ratification of the UN CRPD, and our human rights obligations which underscore the social (and economic) capital that people with disabilities contribute to Australian society.

RECOMMENDATIONS:

- That the Health Requirement should not apply in respect of a disease or condition that constitutes a disability.

- That in assessing the economic and social contributions of migrants with HIV seeking permanent residency in Australia, HIV should be assessed in the Australian context - as a chronic, treatable and manageable illness where, for a significant majority, their prognosis is for an extended and productive life.

- That assessments applied to HIV-positive migrants seeking residency in Australia should reflect a 'return on investment' that takes into consideration improved treatment options and the *manageability* of HIV disease (including improved life expectancy) and that these enable the applicants' productivity and contribution to Australia's social and economic capital.

- That, failing the removal of the Health Requirement from migration legislation, visa applications for which HIV constitutes a disability should be assessed transparently and with equal merit.

---

[12] Position Statement: cited www.neda.org.au September 2009

SECTION 2
Report on the impact on funding for, and availability of, community services for people with disability moving to Australia either temporarily or permanently.

NAPWA draws the inquiry's attention to the work of Dr Henrike Korner, National Centre in HIV Social Research (NCHSR) at the University of New South Wales who has researched clients of the Multicultural HIV/AIDS and Hepatitis Service and a sexual health clinic in metropolitan Sydney in 2003-04. Korner's[13] research describes the relationships between migration and re-settlement, the Australian immigration system and living with HIV. With one quarter of people with a disability in Australia coming from Culturally and Linguistically Diverse (CALD) backgrounds[14], Korner's research offers important insight as to the impact of migration upon CALD populations, from the perspective of an HIV–positive cohort.

The process of migration assessment directly impacts upon health and well-being, in turn affecting applicants' capacities to access services and offer support to their families. According to Korner:

"For those whose immigration status was uncertain, survival was precarious and access to support was limited. Some had to work in physically demanding jobs to support themselves at a time when they were physically and emotionally vulnerable".

> *"I did not get the service right away because at the time I did not have any amount from Centrelink [Social security benefits] at all. So I had to support myself financially. (...) My weight is about 35 kilos. That's all. When I first came I was 42, and I go down to 35." (Cambodian woman)*[15]

While Korner's work highlights a need for services among HIV-positive migrants, NAPWA does not believe that this would impact in any significant way upon the services in place for Australian citizens or permanent residents. Australia's HIV response is internationally acknowledged as among the best because it relies upon a partnership between community based organisations, government and research. In recent years the response has built upon earlier successes by understanding that the needs of HIV-positive people have changed in the light of new drug therapies. This has led to broader access to mainstream health and community services, while maintaining dedicated HIV specific services where justified and necessary.

---

13 Korner H: Ethnicity and Health Vol 12, No 3, June 2007, pp205 – 225; *If I had My Residency I Wouldn't Worry: Negotiating Migration and HIV in Sydney, Australia*

[14] Dinesh Wadiwel, Executive Officer, National Ethnic Disability Alliance. Background to Migration Health Inuiry: HIV and that Immigration Health requirement Workshop, 24 September 2009

[15] Korner H: Ethnicity and Health Vol 12, No 13, June 2007, pp 205 – 225: *'If I had My Residency I Wouldn't Worry'*: Negotiating Migration and HIV in Sydney, Australia

Many community based HIV services now foster participation as a key goal. They span strong individual case management, self management and peer support projects, counseling, and health promotion interventions that equip people with the skills to maintain and improve their health and wellbeing, thus avoiding welfare dependency and disempowerment.

SUMMARY

Evidence suggests that HIV-positive migrants do have care and support needs, as do other HIV-positive people.

Australia has a comprehensive set of services that provide support to HIV-positive people and NAPWA does not believe that a change in migration rules would significantly impact upon these.

HIV services promote self-reliance and build the capacities of their clients to live long healthy lives.

SECTION 3

Report on whether the balance between the economic and social benefits of the entry and stay of an individual with a disability, and the costs and use of services by that individual, should be a factor in a visa decision.

SECTION 4

Report on how the balance between costs and benefits might be determined and the appropriate criteria for making a decision based on that assessment.

NAPWA acknowledges that application decisions need to be based on criteria of some kind. To the extent that economic and social factors are the most obvious criteria to use – then it seems reasonable that these are the considerations that will indeed continue to be applied. However, NAPWA believes that the decisions and processes currently governing Australia's visa class rulings are inconsistent and the question of the cost and use of services by people with disabilities is complex.

In recent years there have been a number of high profile cases involving HIV, other disabilities and migration law. These cases have received a high degree of media coverage focusing national and international attention on DIMIA (now DIAC) policy and operations. In 2007 the Australian National Audit Office (ANAO) reported on several aspects of the efficacy of DIAC's implementation of the Health Requirement and found that although DIAC had complied with the intent of the Migration Act:

> "*DIAC could not determine the effectiveness of its implementation of the health requirement in protecting Australia from public health threats, containing health costs and safeguarding access to Australians to health*

services in short supply – important DIAC objectives under the health requirement."[16]

The ANAO challenges to DIAC policy and processes highlight the complexity involved in arriving at visa rulings (intent versus *actual* outcomes). The ANAO report has also shown that DIAC rulings are compromised and have failed to meet DIAC's own objectives regarding implementation of the Health Requirement.

NAPWA is concerned that the Health Requirement singles out people with disabilities as targets of rejection on the basis of potential health costs while ignoring their potential social contribution.

> *"There are human socials costs, social scars, strains on families, relationship breakups, people overseas left in fear for personal safety, abandonment of children, and many other results from being granted an unfair hearing under Australia's Migration Act. These rules and processes refuse to meaningfully account for participation, contributions to society, a realistic assessment of public health risk and, foster indirect discrimination against people with disabilities and illness, by being skewed towards keeping out people with disability."*[17]

NAPWA understands that rulings regarding HIV-positive visa applications for temporary or permanent residency are routinely rejected on the grounds of 'significant cost'. NAPWA is of the opinion that the DIAC calculation of $250,000 (health care cost) and the generic use of this costing to applications from HIV-positive migrants and refugees is both over-inflated and too generalised.

We would also like to draw the Inquiry's attention to a number of inconsistencies and concerns regarding the Health Requirement and a range of visa sub-class application processes:

- Permanent – humanitarian: NAPWA notes no waiver is available for an un-sponsored offshore humanitarian visa. This in effect excludes these applicants from any possibility of permanent residency. The Health Requirement test often exposes offshore applicants to increased stigma and discrimination. The question arises; is it necessary to require offshore applicants to undergo a health test if there is no possibility of a waiver?

- Permanent - Skilled migration: as at 14th September 2009 applicants for one of the four visa sub classes in the Migration scheme (Employer

---

[16] Administration of the Health Requirment of the Migration Act 1958, Australain National Audit Office, Commonwealth of Australia 2007, p 18

17 Dinesh Wadiwel, Executive Officer, National Ethnic Disability Alliance: Background to Migration Health Inquiry: HIV and the Immigration Health Requirement Workshop, 24 September 2009

Nomination Scheme, the Labour Agreement Nomination Scheme, the State/Territory regional Established Business Visa and the Regional Sponsored Migration Scheme) will not be eligible to seek a health waiver to obtain a visa for themselves and members of their families, if they apply to live within either NSW or SA, as these two states have not agreed to participate for these purposes. This creates inequities and triggers application rejection under the no waiver and 'one out all out' provisions.

- Temporary – work/business visa sub-class 457: Temporary residents living in Australia, who become unemployed, currently have no other option but to return to their country of origin.

- Medical Officers of the Commonwealth (MOCs) estimates of 'significant cost' are largely understood as medical, and exclude social and non-medical costs and / or benefits.

- In visa categories where waiver options are available decision making process are reported to NAPWA as discretionary, lengthy, capricious and expensive.

- The application for any one particular visa will determine particular criteria and internal DIAC procedures for assessing a waiver. For instance, under Public Interest Criteria (PIC 4006A) a waiver is possible if the employer signs an undertaking - applicable to 418 and 457 visas; whereas for PIC 4007 a waiver is possible so long as costs or prejudice are not undue[18]. This demonstrates that it is the visa ***itself*** that determines the health criteria that must be satisfied.

- The *Notes for Guidance*[19] are currently available to applicants only under Freedom of Information (FOI) often denying applicants access to information on the factors being considered by the MOC. Preventing applicants from being able to raise pertinent issues.

- There is little guidance for the MOC weighting of cost and benefit, and how to accommodate these elements. While this affords a discretionary role for decision makers based on individual circumstance, it also permits inconsistent rulings.

---

18 Peter Papadopoulos, Solicitor and Registered Migration Agent: The Migration law health requirement: HIV and the Immigration Health Requirement Workshop, 24 September 2009

[19] Notes for Guidance for Medical Officers of the Commonwealth of Australia: Financial implications and consideration for prejudice to access for services associated with infection and human immunodeficiency virus and acquired immune deficiency syndrome (HIV/AIDS), 9 July 2008

- The Health Requirement is weighted toward assisting those applicants who have Australian connections and those with a high degree of literacy, able to navigate the complexities of the process or engage suitably qualified migration agents to do so.

- Potential immigrants applying offshore without Australian family, friendship or networks, and who do not have specific knowledge of the opportunities and choices available to them post settlement, face a huge challenge responding to how they will contribute to Australian life and participate fully in society. This limits these applicants' ability to adequately demonstrate their contribution and participation to Australian life.

In addition to these anomalies, NAPWA draws the Inquiry's attention to the plight of migrants and refugees deemed 'Medicare ineligible'. The available evidence suggests that people with HIV represent only a small percentage of the total population of migrants and refugees, including those granted temporary entry permits. However, NAPWA has extensive knowledge of individuals designated 'Medicare ineligible' and the serious health consequences they face as result of lack of treatment access. NAPWA believes this is a serious gap in Australia's public health efforts to contain HIV. Furthermore, it undermines our commitment to the UN CRPD and global efforts to promote the equality of people with disability.

The effective management of public health challenges posed by HIV requires unique solutions which may seem counter-intuitive to management approaches used for other chronic conditions.

> *"The public health threat posed by HIV is unique and creates a different set of treatment access imperatives to those which might apply in respect to other chronic conditions and illnesses that may present in temporary residents ineligible for publicly subsidised pharmaceuticals. It is therefore considered that there are compelling and exceptional ethical and public health grounds for policy to support the access to treatment and monitoring services to Medicare ineligible pwhiv." (E.6.1 Ethical and public health issues)*[20]

The dire circumstance facing HIV-positive people in this position demands an immediate and compassionate response.

The public health challenges posed by HIV and the paucity of evidence on the health status of migrants and refugees, dictates that the collection of robust national data on these populations must be of high priority and that the resulting data must be used to inform, develop and implement effective evidence-based policy responses. The public health benefit derived from the collection of accurate health status information supports the health care system, supports the

---

[20] NSW Health (on behalf of AHMAC), 2008 *'National Study of Medicare ineligible HIV Positive Temporary Resident Population in Australia'*

individual to participate and contribute to society – including through meaningful and productive employment, community activities and volunteer participation and must be an integral aspect of Australia's obligations to the UN CRPD.

SUMMARY

NAPWA is of the view that the migration policies and processes are complex and confusing and that the Health Requirement waiver process is discretionary, lengthy, capricious and expensive. Inconsistencies in the visa class system privilege some people over others, while the Health Requirement, as it is currently applied does not adequately value contributions and participation when balancing costs and benefits to Australia. Furthermore, current Migration Law undermines Australia's international obligations in respect to the ratification of the UN CRPD and in doing so fails to treat people with disability seeking to immigrate to Australia as full rights bearing citizens.

RECOMMENDATIONS

- Generic estimates of cost should no longer be used as evidence to make assessments – particularly as this applies to HIV-positive applicants seeking temporary or permanent residency.

- MOC cost estimates should be relevant to the applicant. They should rely on specialist and medical reports on the applicants' health condition and be reasonably current at the time of migration decision. Cost estimations by MOCs should be accessible to visa applicants.

- In respect of refugees and applicants seeking visas on humanitarian grounds, these applications should no longer be denied entry on the grounds of failing the Health Test or on the grounds of disability – including on the grounds of an HIV-positive diagnosis.

- The collection of reliable national data on the health and wellbeing of refugee and migrant populations should be a high priority and that the data be used to develop and implement evidence-based interventions and responses.

- The Health Requirement should be removed for diseases or conditions that do not present as a serious public health threat.

- Section 52 of the Disability Discrimination Act 1992 should be removed (the provision exempting the migration law health requirement from the DDA).

- Notes for Guidance should be updated regularly to accommodate changes in treatment, management and prognosis for disability, including HIV and other illness and conditions. The Notes for Guidance should be open for public comment, input and critique.

- Estimated lifetime costs (medical and community services) should be balanced against all other factors including compassionate grounds and social and cultural contributions.

SECTION 5
Report on a comparative analysis of similar migrant receiving countries.

While NAPWA understands that many countries in the world discriminate against people with HIV in migration law, we argue that such discrimination: harms HIV-positive people and their families; serves no public health purpose; propagates stigma and discrimination; violates human rights commitments; and ignores the realities of globalization.

NAPWA directs the Inquiry to a recent policy paper by the International AIDS Society (IAS) titled *HIV-specific Travel and Residence Restrictions*[21]. In this paper the Governing Council of the IAS affirms the following position:

> *HIV-specific restrictions on entry, stay and residence is stigmatizing, discriminatory and contrary to effective public health programming. Since HIV-specific travel and residence restrictions serve no public health purpose, the International AIDS Society (IAS) regards the 63 countries that impose such restrictions as engaging in state sponsored discrimination against HIV-positive people and their families. HIV-specific travel and residence restrictions contradict and therefore undermine all other HIV/AIDS programmes these same countries implement. There is no country in the world without an HIV epidemic.'*

CONCLUSION
NAPWA believes that criteria used to assess whether people with disabilities, including people with HIV, are allowed to enter and stay should be broader than simply based on cost and labour-market demands. We also believe that migration Medical Officer Determinations should consider the impact of a much improved HIV prognosis, from one of terminal illness to one that is chronic treatable and manageable and hence the capacity for HIV-positive people to live longer, productive lives, enabling them to contribute to Australian society both socially and economically.

Australia has a long history of compassion towards migrants with various needs and has demonstrated a capacity to absorb such migrants into society. In return, successive generations of migrants have made invaluable contributions to Australian society: some measurable in economic terms and much of it immeasurable in social and cultural terms. NAPWA asks the Inquiry to consider this, as well as other specific issues raised in this submission, when making recommendations on this important issue.

---

[21] IAS Policy Regarding the Right to Travel of People Living with HIV/AIDS; 19 January, 2009