

Health + Law

—
A research partnership to identify
and eliminate legal barriers to
testing and treatment



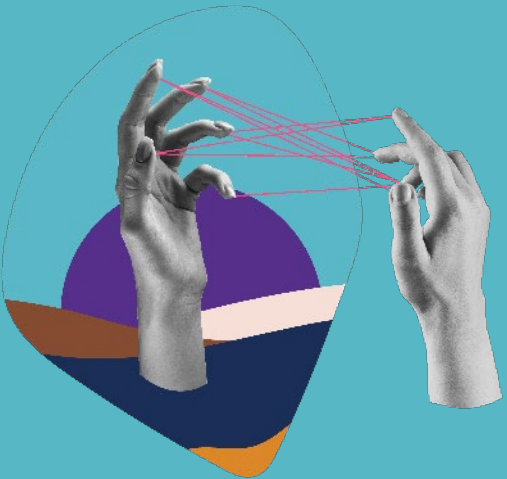
The Health+Law Research Partnership is supported by funding from the Australian Government Department of Health and Aged Care, under the Blood Borne Viruses (BBV) and Sexually Transmissible Infections (STI) Research and Data Program (Activity ID 4-IPV5612). The contents of all published materials are solely the responsibility of the individual authors and do not reflect the views of the funding body or partners.

The Health+Law Partnership



Disclaimer

- The presentation today is intended as a general guide to migration law. It should not be relied on as legal advice. The information is correct at the time of writing but may be subject to change.
- Migration law is complex and visa applicants need to make strategic decisions about a range of matters. We encourage you to seek advice from a registered migration agent or lawyer who are experienced in migration matters related to HIV.



Presentation Overview

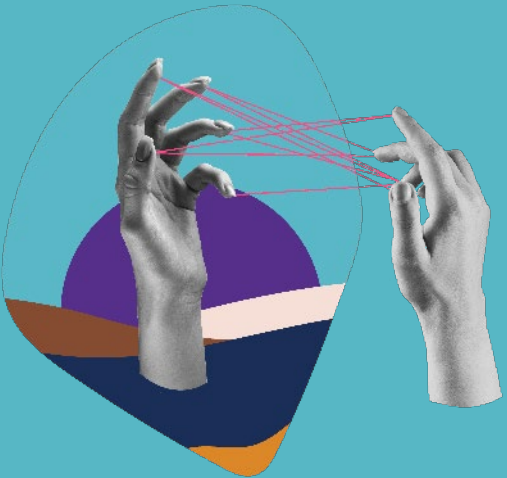
Step 1 - Seek Advice

Step 2 - Visa Application

Step 3 - Medical Assessment

Step 4 - Health Criteria

Step 5 - Health Waiver



Step 1 – Seek Advice

Step 2 – Visa Application

Step 3 – Medical Assessment

Step 4 – Health Criteria

Step 5 – Health Waiver



Step 1: Seek Advice

- Obtain advice from a registered migration agent or lawyer who are experienced in migration matters related to HIV before applying for a visa.
- Seek advice **early and often.**
- You might need to make strategic decisions about a range of matters.
- Disclose your HIV status to your migration representative. While you are not required to do so, it is in your best interest so that you can receive accurate advice.

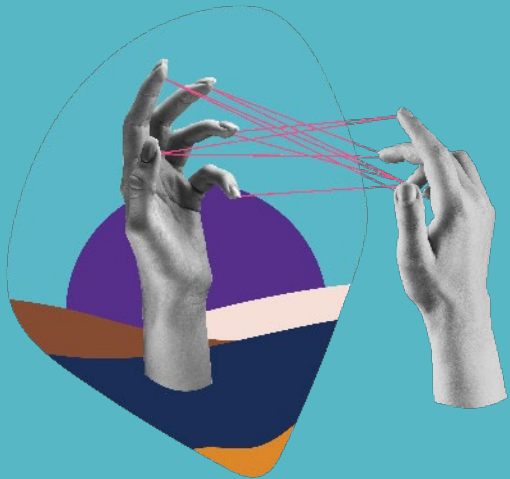
Step 1 - Seek
Advice

Step 2 - Visa Application

Step 3 - Medical
Assessment

Step 4 - Health
Criteria

Step 5 - Health
Waiver



Step 2: Visa Application

- Be honest and truthful.
- Providing false or misleading information on a visa application can have a negative impact on your visa application and may result in a visa refusal or cancellation.
- If you think that you have provided incorrect information, speak to a migration agent or lawyer about what to do.
- Keep track of due dates and other important dates (interviews, medical assessment, visa expiry etc.)
- Apply for a new visa before your current visa expires.

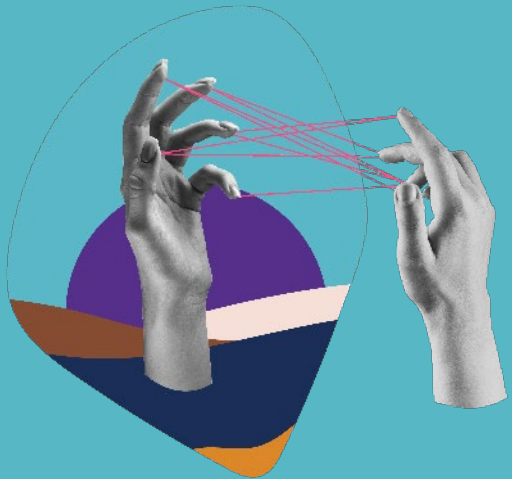
Step 1 - Seek Advice

Step 2 - Visa Application

Step 3 - Medical Assessment

Step 4 - Health Criteria

Step 5 - Health Waiver



Step 3: Medical Assessment

Migration Guide
References:

Medical Assessment -
p4

- If you are asked to attend a medical assessment it is important you do so.
- You may be required to complete a health declaration form - answer honestly.
- Even if you have disclosed your HIV status, you may still be asked to undergo a HIV test as well as other medical tests.
- The results are sent to the Medical Officer of the Commonwealth for assessment.

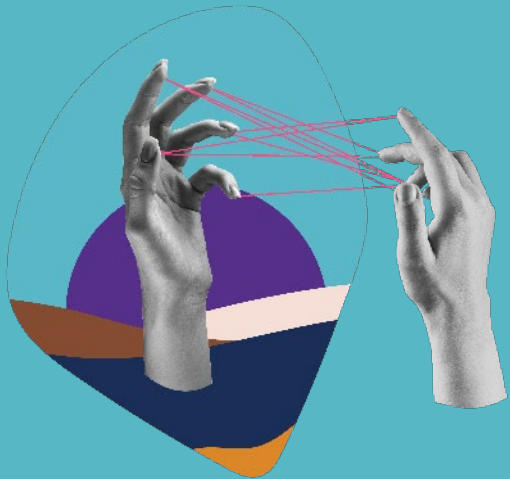
Step 1 - Seek Advice

Step 2 - Visa Application

Step 3 - Medical Assessment

Step 4 - Health Criteria

Step 5 - Health Waiver



Step 4: Health Criteria

Migration Guide

References:

Health Criteria - p2
- 7

All applicants for Australian visas are required to satisfy the relevant health requirement.

The health requirement generally takes into consideration:

1. Public health risks.
2. The costs associated with treating and supporting a person living with a health condition.
3. The impact on access to services for current Australian citizens and permanent residents.

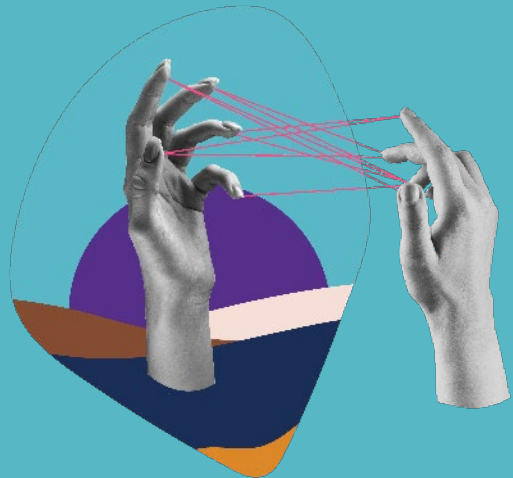
Step 1 - Seek Advice

Step 2 - Visa Application

Step 3 - Medical Assessment

Step 4 - Health Criteria

Step 5 - Health Waiver



Step 4: Health Criteria

Migration Guide
References:

Health Criteria - p2
- 7

The Significant Cost Threshold is set by policy and is subject to change from time to time. Currently it is **\$86,000**.

Costs are assessed over a period of time depending predominantly on the visa type:

- Temporary visas - over the proposed period of stay.
- Permanent or Provisional visas - For HIV, this is generally calculated over 10 years.

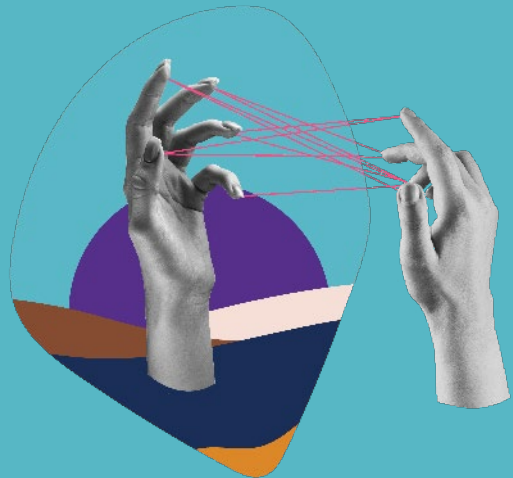
Step 1 - Seek Advice

Step 2 - Visa Application

Step 3 - Medical Assessment

Step 4 - Health Criteria

Step 5 - Health Waiver



Step 4: Health Criteria

Migration Guide
References:

Health Criteria - p2
- 7

The costs include:

- Pharmaceutical costs (ARV's).
- Healthcare and community services.

The MOC assess the cost based on a 'hypothetical person' with the same condition as the applicant.

The MOC will assess whether an applicant **meets** or **does not meet the health criteria**.

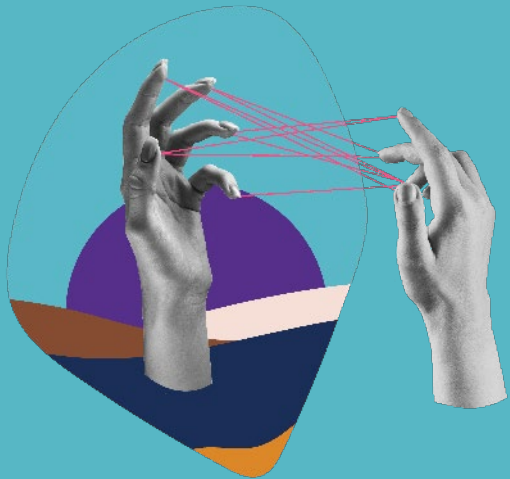
Step 1 - Seek Advice

Step 2 - Visa Application

Step 3 - Medical Assessment

Step 4 - Health Criteria

Step 5 - Health Waiver



Step 5: Health Waiver

Migration Guide
References:

Visa Options - p8 -15

HW Checklist - p21-28

Only a handful of visas provide applicants an opportunity to argue that the health requirement should be waived. - See page 13 of Migration Guide

A health waiver considers whether granting the visa would be unlikely to result in undue cost or undue prejudice to access to health care to Australian citizens or permanent residents.

Applicants will generally need to show:

- The benefits that the applicant/sponsor/dependents bring to the Australian community and economy.
- Their ability to mitigate (make less serious or severe) estimated costs.
- Compassionate factors.

Resources and Legal Services

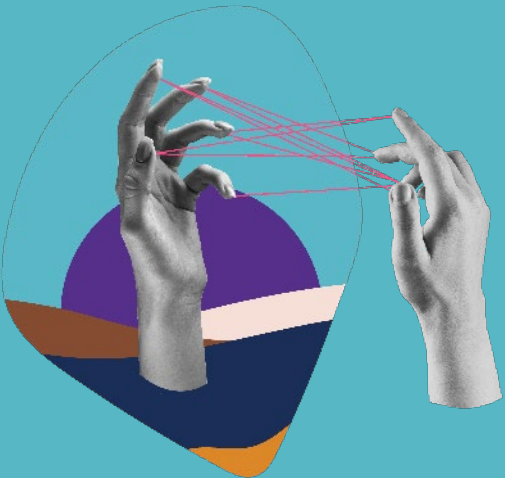
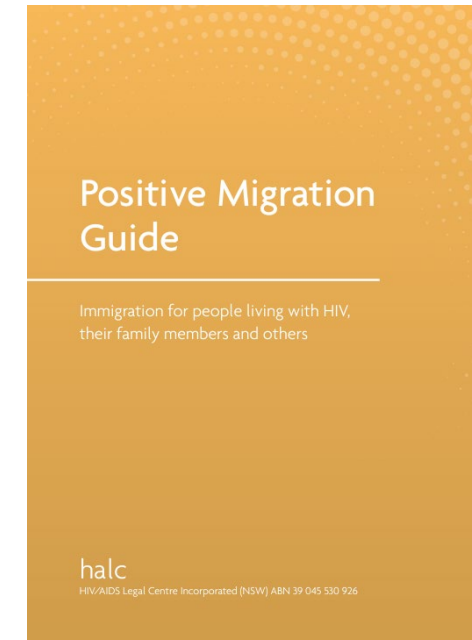
HIV/AIDS Legal Centre (HALC)

Phone: (02) 9492 6540

Email:
halc@halc.org.au

Website:
www.halc.org.au

Positive Migration Guide



Questions?

TOP TIPS AND REMINDERS

- Seek Advice early and often
 - Be honest and truthful
- Keep track of important dates and due dates
 - Read all paperwork carefully
- Keep your migration agent/lawyer up to date
 - Keep the department up to date

Contact us:

www.healthpluslaw.org.au

healthpluslaw@unsw.edu.au

