

**Special Interest Articles:**

- *Department of Immigration grants Visa to HIV+ applicant without a health undertaking.*
- *Latest News on Health Criteria*
- *Principal Solicitor of HIV/Legal Centre joins Advocate Team on full-time basis*
- *Reciprocal Health Agreements affecting Temporary Visa Holders*

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## HIV + Visa Applicant meets Department of Immigration Health Criteria

The 17 May 2006 marked an important milestone for HIV positive migrants when an HIV positive applicant for a work visa passed the health requirement. The Department of Immigration and Multicultural affairs (DIMA) granted the visa with no conditions attached and no health undertaking was required.

Previously applicants who are HIV positive have been found to fail the health requirement, and can only be granted a temporary work sponsored visa if they disclose their condition to their employer, and their employer guarantees to pay their health costs.

The applicant was diagnosed in 2005 and currently is not taking any medication for his condition. He was found to pass the health requirement, and therefore granted a visa so that he can now work and live in Australia.

Because he met the health requirement he was not required to disclose to his employer his HIV status, although he did so voluntarily, the employer

was not required to give an undertaking.

The grant by DIMA of a subclass 457 Temporary Visa on the primary application without conditions as to undertakings by the sponsor to cover any medical costs incurred by the applicant is a rarity in Australian immigration law.

The decision comes only months after the Federal Court decision in Robinson which determined that the cost of health conditions should be assessed on a case by case basis related to their specific medical prognosis. This decision has allowed the applicant, who is currently not on any medication, to meet the health criteria unconditionally.

Mr David Puls, solicitor and migration agent for the applicant is quoted as saying:

“This is great news for any prospective migrant who is HIV positive. It is recognition that individual cases of HIV are to be assessed according to their particular circumstances.

The decision may have a knock on effect to HIV positive people applying for permanent visas. They may now expect to have their medical circumstances and histories properly considered in deciding their application”.

### Latest Health News

From 1 October 2006, health waivers are available to applicants and their family members who apply for visas under the following categories:

Subclass 846 State/Territory Sponsored Regional Established Business in Australia  
Subclass 855 Labour Agreement  
Subclass 856 Employer Nomination Scheme  
Subclass 857 Regional Sponsored Migration Scheme

This waiver is only available to applicants proposing to reside in a specified state or territory. Contact us today to find out how this affects your application!



## Editorial: Health Issues & Migration

Welcome to Advocate Immigration Lawyers and Agents second newsletter, this time focusing on health. The first edition of the newsletter (which focused on IT), is available on our website at

[www.advocateimmigration.com.au](http://www.advocateimmigration.com.au).

This issue looks at health from the perspective of people looking to come to Australia who have a medical condition, or seek clarification on medical services they may access in Australia free of charge.

This issue is timely as there have been a number of developments in relation to health that have

occurred recently, discussed in this edition.

All visa types have a health requirement, whether they be permanent or temporary. The health test is administered by Health Services Australia. The type of health test associated with the visa type will vary depending on the type of visa applied for, the nationality of the applicant, and the occupation that the applicant is intending to work in (if it is a work related visa).

If a person applying to come to Australia does not pass the health test associated with a

particular type of visa, in some cases that applicant can apply to the Minister for the visa to be granted even though the applicant did not pass the health test (called a health waiver).

Different visas may have different waivers, or may not have a waiver at all.

This issue looks at some of the different current issues in getting nursing and medical workers to Australia, and current issues relating to processing of cases where a person has a health condition that may make immigration to Australia a more difficult prospect.

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*“The basic principal has now been established that the applicant must be examined on the basis of their individual qualities.”*

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### The Health Criteria and the HIV+ Visa Applicant

The basic principal has now been established (*Robinson v Minister for Immigration and Multicultural and Indigenous Affairs* [2005] FCA 1626) that whether a HIV positive visa applicant satisfies the health criteria must be examined on the basis of their individual qualities and not on the

basis of the presumed cost of the hypothetical person.

Whereas all HIV positive people failed the health criteria previously, now The Medical Officer of the Commonwealth will be required to give different estimates depending on

the severity of the condition.

There is no reason why long term slow progressors not requiring medication should now fail the health criteria as there would be no significant cost to the Australian Community.

### Medicare Eligibility for Non Permanent Residents

Generally only permanent visa-holders are entitled to Medicare, and in some limited circumstances provisional visa-holders may also be entitled (eg: applicants on provisional partner visas, NZ citizens...).

However, some other visa

holders may also be eligible, such as: protection visa applicants who have lodged their application within 45 days of arriving in Australia; or in very limited circumstances, Bridging Visa holders with a request before the Minister for Immigration.

The rules around Medicare are extremely complex. We suggest any visa holders looking to determine the eligibility should contact us, the Department of Immigration via their web site, or the nearest Medicare office.



## David Puls former Principal of HIV/AIDS Legal Centre joins Advocate team full-time



David Puls, the Principal Solicitor at the HIV/AIDS Legal Centre in Sydney, left his position at HALC on 3 October to take up a full-time role at Advocate Immigration Lawyers & Agents.

David, who has been part-time at Advocate since its inception in July 2006, will leave HALC after seven years of working there. David will bring to Advocate a wealth of experience in dealing with HIV related immigration issues, and particularly with dealing with health waivers at the Migration

Review Tribunal. He specialises in dealing with HIV-related immigration issues, but the breadth of his experience and knowledge lends itself to addressing the health criteria across all classes of visa, and in relation to any health condition.

David also intends to oversee a new division of Advocate, which will focus on federal and state health law and related issues. As a legal practitioner, David has presented specialist seminars on general health law to a range of

service providers, including hospitals, doctor's groups, social workers, and other health professionals. He intends to pursue this at Advocate, through education programs, seminars, conference presentations and publications.

Welcome aboard David! We are thrilled to have you! If you have a migration related health issue contact David at [david@advocateimmigration.com.au](mailto:david@advocateimmigration.com.au) or by phone on (02) 9267 3097.

## Long-Stay Temporary Visa Holders and Reciprocal Health Agreements

Subclass 457 visa holders often ask whether they are entitled to Medicare when in Australia. Technically, they are not. The only way they can access the public health system is under the terms of a Reciprocal Health Agreement between their home country and Australia, if one exists.

Reciprocal Health Agreements only cover treatment that is **immediately necessary** and that arises during the visa-holder's stay here. They do not cover pre-arranged or elective treatment, or treatment for which there is no immediate medical necessity.

All agreements except for those with New Zealand and the Republic of Ireland cover residents of those countries for:

- Free treatment as a public hospital inpatient or outpatient
- Medicare benefits for out of hospital treatment
- Subsidised pharmaceuticals under the Pharmaceutical Benefits Scheme.

### What is not covered:

- Ambulance services
- Dental care
- Optometry services
- Medical repatriation
- Funerals
- Treatment in private hospitals, or as private patients in public hospitals

- Treatment that is not immediately necessary
- Elective treatment
- Treatment that has been prearranged before arrival in Australia

We strongly advise that you contact our offices to clarify whether there is a Reciprocal Health Agreement between your home country and Australia.

We also recommend that all Subclass 457 visa holders take out private health insurance to cover them for the duration of their stay here.



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**We're on the Web!**

See us at:  
[www.advocateimmigration.com.au](http://www.advocateimmigration.com.au)

MARN: 0534898, 0532285,  
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**Upcoming Advocate Events**

Advocate Immigration Lawyers & Agents are not only committed to providing clients with superior immigration legal assistance, but are also strongly committed to building networks with other like-minded organisations and individuals. In future this section of the newsletter will be devoted to

providing information on all Advocate events, including seminars, presentations, conferences and our now legendary Advocate Pub Crawl!

We at Advocate are as passionate about life and having fun as we are about our clients! Come join us if you dare!

**Who we are...**

Advocate Immigration Lawyers and Agents is an Australian owned and operated law firm specializing in immigration law.



Advocate Immigration is committed to establishing a new approach in migration services for those seeking to live, work or stay in Australia.

Our lawyers and support staff have extensive experience in the business and community sectors, giving us a unique and dynamic approach to migration law.

