

AUSTRALIAN VISA APPLICANTS AND HEPATITIS

Introduction

Living with a chronic health condition shouldn't make you less eligible for a visa, but it can make things more difficult. This information aims to help as a starting point for people living with chronic viral hepatitis to understand some important procedures during the visa application process.

Information in this document has been sourced from the Australian Government Department of Home Affairs website.

"I would highly recommend talking to a migration lawyer or agent, rather than just asking friends and family for help."

This factsheet does not replace migration legal advice.

Health Requirements and Testing

In Australia, most visa applicants are assessed against minimum health standards. The Department of Home Affairs call this the health requirement, which is in place to protect public health and contain healthcare expenditure. Certain health conditions (including chronic hepatitis) can affect this.

If you are applying for a permanent visa, the Department will ask you to arrange a health examination, which may include a blood test for hepatitis. If you are applying for a temporary visa, whether or not you will need a health examination will depend on how long you want to stay in

Australia, what your intended activities are, and the type of visa you are applying for.



In most cases you will have to pay the costs of the medical examination, unless you are a Refugee or Special Humanitarian program applicant.

A blood test for viral hepatitis is always required for:

- People, 15 years and over who want to work or study to be a doctor, dentist, nurse or paramedic.
- Those applying for an onshore protection visa who are 15 years or older.
- Children who are being adopted, or a child in the care of an Australian state or territory government welfare authority (hepatitis B only).
- Pregnant women who intend to have the baby in Australia (hepatitis B only).

All visa applicants must also disclose if they currently have or have previously had hepatitis. Migration and health issues generally only occur if someone has an ongoing chronic infection, and not an acute infection.

Health Requirements For Temporary Visa Applicants

If you are applying for a temporary visa and the Department is aware of your chronic viral hepatitis status, you may be considered a concern for public health if you:

- Intend to work as a doctor, dentist, nurse or paramedic whilst in Australia.
- Intend to carry out procedures where there is a risk of contact between your blood and a patient's blood.
- Have a high viral load present in your body.

The time frames used for a temporary visa are generally the period of your stay. Costs that are measured include medication, medical care, and other community service costs.

Health Requirements For Permanent Visa Applicants

If you are applying for a permanent visa and you have chronic hepatitis you will need to attend a migration health examination. In Australia, this is conducted by a Panel Physician employed or managed by BUPA Migration on behalf of the Department of Home Affairs. That physician will refer their findings, including your blood test results, to a Medical Officer of the Commonwealth (MOC) who will assess those and provide an opinion as to whether you meet the health requirement. Their decision takes into account whether your healthcare needs will result in significant costs and/or require health and community services in short supply.

"I found a doctor who was very helpful in preparing a positive medical report in support of my application."

"My lawyer explained that the decision on meeting the health requirement is made on the same grounds as any other pre-existing health condition. The main factor they take into account will be the cost to the Australian community."

From 1 July 2019, incurred costs for a temporary (≤ 5 years) or chronic condition that are expected to exceed \$49,000 over ten years of your life are regarded as significant costs, and procedures such as liver transplants are considered services in short supply.

Current health and community service costs are used to work out what your condition is likely to cost over a period of time. For permanent visa applicants – this is generally 5 years, or 3 years if you are over the age of 75 years. However, if you have an ongoing or permanent condition with a reasonably predictable course, the MOC will estimate what your condition will cost the community over your remaining life expectancy – up to a maximum of 10 years.

For more information on significant costs and services in short supply, see:

<https://immi.homeaffairs.gov.au/help-support/meeting-our-requirements/health/protecting-health-care-and-community-services>

If the MOC determines that you do not meet the health requirement, the Department case officer will send you a 'natural justice' letter. If the visa you are applying for has the Public Interest Criterion (PIC) 4007, you will be invited to provide further information and claims in support for a health waiver. Seek migration law advice if this happens.

Health Waivers

Not all visas allow you to apply for a health waiver, but many do. A list of visas that have a health waiver provision can be found at:

<https://immi.homeaffairs.gov.au/help-support/meeting-our-requirements/health/health-waiver>

The Department is obliged to consider any factors of a compelling or compassionate nature when deciding whether to grant a health waiver. When writing a formal submission for a health waiver you need to explain that the risks and expenses associated with your health condition will be offset by other things. For example:

- your skills will be valuable in Australia (as paid or unpaid work);
- your current financial situation;
- the cost of medication will be likely to decrease in the future;
- or your doctor can note medical factors – for example, your present viral load does not indicate the need for ongoing treatment.

It is highly recommended that you seek advice from a Registered Migration Agent or lawyer specialising in migration law for this process.

If your health waiver is successful, your visa application will continue. If a health waiver is not granted, your visa will not be approved.



“I took my partner to a local GP and got some blood tests, specialist tests, and a liver scan. We found out she was positive for hepatitis B, however it was in an inactive phase and not affecting the liver. This means she did not yet require any treatment and it was not an issue.”

Review of Decision

If you are not granted a health waiver, you may be able to appeal this decision with the Administrative Appeals Tribunal (AAT). This is called merits review. You should get legal advice urgently. There are strict time limits that apply to getting a merits review. An application for a review costs approximately \$1,800, and increases regularly.

The AAT will reconsider all the original information and any new information since the Department’s decision, and may determine that you meet the health requirement and refer the case back to the Department for final processing of your visa application. To give yourself the best chance of success at the Tribunal, you will need to have a Registered Migration Agent or lawyer specialising in migration and/or Tribunal work to help prepare your case and make submissions on your behalf. This Tribunal process can be costly and take a lot of time, but it may be the only way to get your permanent residency approved.

For more information, speak to your Registered Migration Agent (RMA) or Lawyer, or visit the AAT website: www.aat.gov.au

If a non-citizen does not have a visa, the law says they can be detained and removed from Australia.

List of Terms

Administrative Appeals Tribunal (AAT)

– A body that reviews decisions made by the Australian Government.

Department of Home Affairs – An Australian Government department responsible for areas such as immigration, refugees, and citizenship.

Health examination – A health test by a medical professional.

Health requirement – A set of rules that outline minimum health standards for visa applicants.

Health waiver – A decision that allows someone who does not meet the health requirement to get a visa.

Medical Officer of the Commonwealth (MOC) – Someone who decides if a visa applicant meets the health requirement.

Merit review – A process where the Administrative Appeals Tribunal reconsiders the information and decision made by the Australian government.

Panel physician – A doctor who is approved by the Australian government to perform health examinations.

Registered Migration Agent (RMA) – Someone who is a professional in visa applications.

Information and Support

You can get information and support from a RMA – only RMAs are allowed to give advice about visa applications.

For more information, call the Office of the Migration Agents Registration Authority on 1300 226 272 or contact the following:

Refugee and Immigration Legal Service (RAILS)

170 Boundary Street, West End, QLD 4104

www.rails.org.au

07 3846 9333

FOR CLINICIANS

Australasian Society for HIV, Viral Hepatitis and Sexual Health Medicine (ASHM)

ASHM has developed a template to support clinicians who have patients with chronic hepatitis B and are applying for a permanent visa, which can be found here:

www.ashm.org.au/products/product/hepbandimmigration

MORE INFORMATION

If you have a question, call Hepatitis QLD InfoLine on 1800 HEP ABC (1800 437 222) or email info@hepqld.asn.au if you would like more information about hepatitis B or hepatitis C.

Ethnic Communities Council of Queensland

253 Boundary St, West End, QLD 4104

www.eccq.asn.au

07 3255 1540

We acknowledge Hepatitis Victoria as the original developer of this resource and extend our thanks for allowing it to be reproduced.