

Who is entitled to a “Health Waiver”?

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If you apply for permanent resident visa to Australia, you and all members of your family unit (including those who are not included in your visa application), will be required by the Department of Immigration and Citizenship (DIAC) to undertake the medical examinations and to pass the health criteria before your visa can be granted.

However, where there is a health waiver provision for the visa, even if the Medical Officer of the Commonwealth (MOC) has determined that you or any member of your family unit has failed the health criteria, your visa may still be granted.

The Case Officer’s discretion to exercise the health waiver will arise only after has been established that the cost to Australia, if the visa is granted, is likely to be "significant". The Minister will therefore need to be satisfied that the likely "significant" cost will “not be undue” or that “prejudice” to access health care and community services, by Australian citizens and permanent residents will “not be undue”.

“Undue” is not defined in the Migration Act or Regulations. However, it is DIAC policy that case officers consider the dictionary definition of “undue” which is "unwarranted"; “excessive”; “too great” and to further consider “compelling and compassionate” circumstances.

Other factors that may be considered by DIAC in determining a health waiver include:

- That the nominated occupation is in demand or severe shortage, Australia-wide and in the jurisdiction/geographical area where they propose to reside;
- That the family is already settled or proposes to settle in a remote, rural or regional area;
- That the family's care obligations constrain their earning capacity or ability to fully deploy their skills or practice their trade/profession/occupation in the economy;
- the skills and qualifications of the main visa applicant and their migrating family members;
- the extent to which the visa applicant and/or their family may be able to mitigate potential costs/prejudice to access issues identified by a MOC
- the reasons why the family would find it difficult to return to their home country;
- that it is very unlikely or impossible that the non-migrating member of the family unit who does not pass the health criteria will ever migrate to Australia;
- the education and occupational needs of, and prospects for the applicant in Australia;
- the potential for the applicant’s state of health to deteriorate, taking into account not only the known medical factors but also influences such as the strains of adjusting to a new environment, life-style, occupation etc (as applicable to the visa class and the individual);

Among the visas with health waiver are partner visa, child visa, certain onshore skilled migration visa and “2nd stage” skilled visa, family migration, visas under the regional sponsored migration scheme and employer nomination.

In case of tuberculosis, or other public health risk grounds, the applicants will usually be required to undergo treatment first before visa grant.

If you are applying for permanent residence, and one of the members of your family unit has a medical condition that is likely to result in significant cost, consider to have the medical examination carried out first, before lodgement of your visa application, for practical reasons.

This information is of a general nature and should not be taken as authoritative legal advice for specific cases. Australia has a scheme that requires persons who give immigration assistance to be registered as migration agent.

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