

Executive Summary*

JUNE 2011 :: FOR GENERAL DISTRIBUTION



Migration law and HIV

AFAO is the national federation for the HIV community response, providing leadership, coordination and support to the Australia's policy, advocacy and health promotion response to HIV/AIDS. Internationally we contribute to the development of effective policy and programmatic responses to HIV/AIDS at the global level, particularly in the Asia Pacific region. For more information on AFAO, visit our website at www.afao.org.au.

This document is the Executive Summary* from AFAO's discussion paper, *Migration Law and HIV: The case for reform of Australian migration law and policy to ensure that the human rights of people living with HIV are respected and protected*. The paper is available at www.afao.org.au.

- Current Australian migration law and policy discriminates against people living with HIV.
- Reform of Australian migration law and policy to remove mandatory HIV testing is required to bring Australia into line with international human rights standards and public health best practice.
- Australia's ratification of the United Nations *Convention on the Rights of Persons with Disabilities* (CRPD) should drive reform of Australia's migration law and policy in respect of the Health Requirement generally, and particularly in respect of its application to people living with HIV.
- The exemption of the *Migration Act 1958* from the *Disability Discrimination Act 1992* is not supportable.
- Given the highly selective nature of the migration program, there should be no Health Requirement except the Public Health Criteria restricting the entry of people with active TB and other highly infectious diseases (or conditions that otherwise pose a threat to public health).
- In respect of humanitarian and refugee applicants, no regard should be had to disability or chronic illness in the determination of claims for protection. HIV testing should be voluntary and offered to people from high HIV prevalence communities after their arrival in Australia, and any person granted permanent protection who is HIV positive should be referred to culturally appropriate treatment, care, support and counselling services.
- People living with HIV on temporary visas who apply for permanent status should be eligible for Medicare, the Pharmaceutical Benefits Scheme and Social Security income support while they await the determination of their substantive claim.