

HIV and Immigration Law on Norfolk Island

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Introduction

In January 2002, a motion was introduced into the Norfolk Island Legislative Assembly which proposed to ban people with HIV, Hepatitis B, and Hepatitis C from taking up permanent residence on the island. The rationale given for the proposed ban was that the island could not afford the cost of health care

for people with these conditions. There was intense media interest in the issue, which was due to be debated in the Norfolk Island Legislative Assembly in February 2002. AFAO is opposed to such a ban, on the grounds that it makes a special case of people living with these blood-borne viruses, and discriminates against them. In January and February AFAO undertook a campaign in the media and with the Norfolk Island Legislative Assembly to have the motion defeated. The motion has now been withdrawn in favour of a more comprehensive examination of the island's migration laws, in which AFAO will participate later in 2002. This briefing paper looks at the issues which have been raised by the Norfolk Island proposal.

Government on Norfolk Island

Norfolk Island is a semi-autonomous Territory. Australian law does not apply on Norfolk Island except where it is specified to do so. The *Norfolk Island Act 1979* gave the Norfolk Island Government primary responsibility for provision of health services on the island. Commonwealth legislation covering health, aged care and health insurance does not extend to Norfolk Island, with the result that people on the island, whether residents or visitors, do not have access to health programs and initiatives provided on the mainland.

The island government consists of a nine-member Legislative Assembly, which has more extensive law-making powers than mainland States or Territories, including revenue-raising powers. The Legislative Assembly's powers derive from the *Norfolk Island Act 1979*. The Federal Government retains some control over the island's laws, and island laws dealing with certain subjects must be approved by the Federal Minister for Territories before they can commence operation. Norfolk Island laws dealing with immigration require Federal Government approval, and other laws requiring approval include those dealing with customs, quarantine, education, industrial relations and social security. The current Minister for Territories is the Hon Wilson Tuckey MP, Member for the Western Australian electorate of O'Connor.

Norfolk Island's Taxation and Health Care System

In a report published in 1997, the Commonwealth Grants Commission found that the Norfolk Island Government had the capacity to raise sufficient revenue to fund both health infrastructure and service provision, but that it did not in fact raise sufficient revenue to do so. The Grants



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Commission reported that successive Norfolk Island Governments had kept taxes low, and that the low level of government revenue is the result of the very narrow range of taxes imposed on the island, and the fact that a number of tax bases are not used at all. With very limited taxation of income and wealth, the tax regime is regressive.

While the total amount Norfolk Islanders pay towards government services is low, the amount they pay for health services is high. Households spend 50 percent more on health than do households in New South Wales, and the burden is particularly great on low-income earners. The cost of many pharmaceuticals is higher than on the mainland, to the point where people avoid taking essential medicines. The government imposes a health levy of \$500 per person on residents over the age of 18. The levy is neither means-tested nor indexed.

The Government runs a medical insurance scheme called Healthcare, but this does not cover the first \$2500 of medical expenses, and the gap can be higher than this amount because of exclusions from the “allowable expenses” which can be claimed. A Federal Parliamentary Joint Standing Committee inquiry reported in 2001 that the Healthcare system is “manifestly inadequate”.

The only pharmacy on the island is at the hospital. As an income-generating measure, the hospital pharmacy marks up the price of medicines which are already expensive as a result of freight and customs charges. The Joint Standing Committee found that this practice acts as a deterrent to good health. There is no pharmaceutical benefits scheme, although pensioners are covered by the Hospital and Medical Assistance Scheme which pays all, or most of, their medical expenses. Cardholding veterans and war widows pay \$3.50 for all prescriptions.

Access to mainland health services

If treatment is not possible locally, evacuation to the mainland is arranged. Evacuation may be by commercial flight, chartered aircraft or the RAAF. RAAF flights are free of charge. The preferred evacuation destination for Australian citizens is Sydney, because the Norfolk Island Government has entered an arrangement with the NSW Health Department for special rates for various services. Costs are met by the island’s health insurance scheme if an island doctor provides a referral for mainland treatment.

Medicare entitlement

There is very limited Medicare entitlement for some residents who are Australian citizens. Those who move from the mainland to Norfolk Island remain eligible for treatment on the mainland under Medicare for five years. Norfolk Islanders who are fulltime students on the mainland are entitled to a Medicare card. Otherwise, residents who require protracted and expensive treatment can exercise their right to move to and reside on the mainland.

AFAO’s response to the proposed law

There are many flaws with the proposed law:

- If implemented, the law would not be effective in excluding people with HIV/AIDS. Some people who have been infected with the virus will return a negative HIV test result due to the “window period” between infection and the development of a measurable immune response.

- The threat to the island's healthcare services from people with HIV/AIDS, Hepatitis B or Hepatitis C is overstated. People with HIV can live without acute care services for many years. Many people who become infected with Hepatitis B or C require no treatment at all as their immune response clears their body of the virus on first exposure. Incorrect assumptions about the health care needs of people with HIV/AIDS, Hepatitis B, or Hepatitis C should not be used to justify discrimination against people with these viruses.
- The island's health care system appears unable to ensure adequate treatment and care for a range of chronic and life-threatening conditions such as heart conditions, renal conditions, cancer, or in fact any condition requiring major surgery or treatment with medications currently on Australia's Highly Specialised Drugs Program (funded under section 100 of the National Health Act 1953).
- If the Legislative Assembly passes the proposed law, the Minister for Territories should instruct the Norfolk Island Administrator to disallow the law.

AFAO would advise people with HIV/AIDS not to take up long-term residence on Norfolk Island due to the low level and high cost of services provided under the island's health care system. However Norfolk Island needs to improve its health care system, rather than discriminate against people with HIV/AIDS and Hepatitis B and C.

Further action

The Norfolk Island Legislative Assembly announced in late February that instead of proceeding with a ban on migration by people with HIV, Hepatitis B and Hepatitis C, it would release a discussion paper within "three to six months" examining all aspects of the island's immigration laws. AFAO expects to make a written submission to the Legislative Assembly in response to this discussion paper.

Further information

This briefing paper was written by AFAO policy analyst Chris Ward, who can be contacted by email at cward@afao.org.au, or by telephone on 02 8260 9336. The Federal Parliament's Joint Standing Committee on the National Capital and External Territories report on Norfolk Island "In the pink or in the red? Inquiry into the provision of health services on Norfolk Island" is available at www.aph.gov.au/house/committee/ncet/report/norfolkhealth/