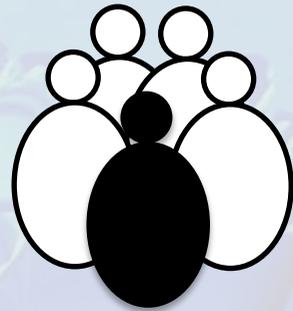


BARRIERS TO ACCESSING JUSTICE FOR PEOPLE LIVING WITH HIV AND HIV-ASSOCIATED NEUROCOGNITIVE DISORDER (HAND)



HALC is a not-for-profit, specialist community legal centre, and the only one of its kind in Australia. As lawyers we tackle the severe stigma and discrimination that remains associated with HIV, and provide specialist support to deal with the particular issues that HIV and the law create.

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HAND affects approximately 1 in 5 PLHIV¹

The HIV/AIDS Legal Centre has recognised an increase in the need for legal representation in criminal law matters for people living with HIV and HIV-associated neurocognitive disorder (HAND).

Many clients do not even have a recollection of having committed any offence and/or are in denial of their actions.

The Mental Health (Forensic Provisions) Act in the Australian state of New South Wales allows for the dismissal of some criminal offences where the person has a cognitive impairment. Case law requires that the defendant also enter into a treatment plan as proposed by an appropriately qualified physician.

The application of case law and legislation poses challenges for those facing criminal charges as a result of HAND.

Approximately

42%

of PLHIV in NSW experience some degree of symptomatic HAND²

WHY IS IT IMPORTANT?

People with HIV and HAND require competent representation

To ensure that clients remain empowered and engaged

To ensure that the judiciary and prosecution are educated on HIV and HAND

To ensure that people with HIV are not stigmatised and that the public do not form a view that all people with HIV will develop HAND. To ensure people with HAND are not inappropriate penalties



CHALLENGES

Case studies have shown that it is difficult to have charges dismissed under the mental health legislation for people with HAND

The Magistrate has wide direction in whether to use these provisions

Appeals to higher courts only available on points of law

Establishing whether the client has sufficient legal capacity to provide instructions

It is difficult to obtain a treatment plan for HAND or AIDS dementia as the condition may be unlikely to improve with a treatment plan given

WHAT ARE THE RAMIFICATIONS?



These challenges mean that appeals processes are often utilised and/or people with HAND face criminal penalties in circumstances where the mental health legislation should have applied

REFERENCES

¹ Alzheimer's Australia Vic, 'Living with HIV Associated Neurocognitive Disorders (HAND): Information for people living with HIV and HAND, their partners and families' (Alzheimer's Australia Vic, 2014) 4.

² David Crawford, 'Developing Resources to Assist People Living with HIV Associated Neurocognitive Disorder (HAND)' (PositiveLifeNSW, 2016) 18.