

12 June 2024

Statement on Australian Defence Force HIV Policy Reform

The Australian Defence Force (ADF) has recently changed their health entry assessment policy regarding HIV. Previous policy required all ADF recruits be tested for HIV. Those who returned a positive test were automatically disqualified from service. Under the new policy, people living with HIV (PLHIV) are no longer automatically considered unsuitable for ADF entry.

According to the ADF:

“Each individual is assessed on a case-by-case basis, with consideration of their response to treatment, infectiousness and overall health status. For example, an individual who is living with HIV but stable on treatment, with an undetectable viral load, normal immune function and is otherwise well (i.e. has no complications) would generally be considered suitable for most job roles in the ADF.”

HALC and NAPWHA strongly support these ADF policy reforms as a significant step forward for PLHIV, who to date have been, discriminated against when seeking employment with the ADF. With the removal of this exclusion, there is now no job in Australia that PLHIV are excluded from.

This change comes after many years of advocacy and legal challenges. The ADF’s announcement removes the shadow cast by the case of *X v Commonwealth* [1999] HCA 63. That case had raised questions surrounding the *Disability Discrimination Act 1992* (Cth) (‘the Act’). That Act provides a general prohibition on discrimination, section 15(4) contains an exemption wherein if an employee is unable to carry out the ‘inherent requirements’ of employment, discrimination is permissible.

However, *X v Commonwealth* held that the inherent requirements of a particular employment are not confined to the performance of the tasks or use of the skills for which the employee is specifically prepared. It can extend to being able to perform the job with reasonable safety to the individual concerned and to others the individual will encounter during employment. The risk of HIV transmission to others from a PLHIV in the ADF was therefore held to be a permissible exception to the general prohibition on discrimination.

HALC had unsuccessfully endeavoured to challenge this interpretation of the previous ADF HIV Policy to the full bench of the Federal Court after a client was dismissed from the ADF due to being diagnosed with HIV. With the present reforms, cases like this, where a person’s sole relevant medical condition is HIV (and that HIV is undetectable and untransmissible), will no longer occur, wherein a person’s income and lifestyle are threatened.

This important step towards equality reflects sound science. Since the HIV epidemic began in the 1980s, there have been myriad advances in the treatment and prevention of HIV and AIDS. When on proper treatment, a person’s viral load can now be suppressed to the point that HIV is undetectable, and untransmissible. This scientific progress meant that the supposed risk that justified the previous ADF HIV policy was negligible.

HALC and NAPWHA are incredibly proud of the Australian Government's clear commitment to ensuring equality for all PLHIV and look forward to the breakdown of further human rights barriers for PLHIV in the near term.

If there are further questions in relation to this statement, please do not hesitate to get in touch with Alexandra Stratigos, Principal Solicitor of HALC on (02) 9492 6540 or at alexs@halc.org.au, or Aaron Cogle, Executive Director of NAPWHA, on (02) 8568 0300 or at aaron@napwha.org.au.

HALC and NAPWHA

The HIV/AIDS Legal Centre (HALC) is a not-for-profit, specialist community legal centre. The only one of its kind in Australia, HALC provides free and comprehensive legal services and representation to people living with HIV (PLHIV) and undertakes community legal education and law reform activity in areas relating to HIV.

The National Association of People Living with HIV (NAPWHA) is Australia's peak non-government organisation representing community-based groups of PLHIV. NAPWHA provides advocacy, policy, health promotion, effective representation, and outreach Australia-wide.