
HIV and the law: reinforcing the model of shared responsibility

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HIV affects us all and, positive or negative, gay or straight, we all have a responsibility to do what we can do prevent HIV transmission.

People living with HIV have long accepted the critical role they play in preventing HIV infections, as part of a model of shared responsibility. But the recent increases in criminal prosecutions of HIV exposure and transmission in Australia have caused considerable concern and led some to ask: is that model of shared responsibility breaking down?

In response, last year NAPWA commissioned a collection of papers to examine these issues. We wanted to show how these cases have been prosecuted quite inconsistently across the country, and how they have been represented in the public domain by media coverage. We are launching the resulting monograph, [The Criminalisation of HIV Transmission in Australia: Legality, Morality and Reality](#) [1], this week.

A number of authors with different viewpoints have contributed to the monograph, including academics, legal experts and voices from within the HIV-positive and HIV-affected communities. The end result is a collection of papers that provide rigorous analysis of the current environment in Australia, and other parts of the world, with regards to prosecution of HIV transmission.

This set of materials and commentaries will be the basis for further work on these issues by NAPWA and its member organisations. Our intention is to start a dialogue across the HIV sector and with the broader public health and legal sectors, to examine the issues raised and the impact of criminal prosecutions on the HIV-positive community in Australia today.

While few would argue that an HIV-positive person who deliberately and maliciously sets out to infect another person with HIV has committed an act of violence that should be subject to criminal sanction, very few of the prosecutions in Australia have been in this category. Almost all have been for the 'knowing and reckless' category of HIV transmission, where the accused had no intention of transmitting HIV.

The use of criminal law against a person on the basis of HIV status in these circumstances is considered by many to be discriminatory, as it treats the HIV-positive partner as perpetrator and the HIV-negative partner as victim. This shifts the burden of prevention onto people with HIV, and undermines established principles of shared responsibility and safe, consenting, sexual practice.

The blame and persecution directed towards HIV positive people is unacceptable and NAPWA is calling for a review of criminal laws to redress this imbalance. Laws requiring mandatory disclosure by positive people, and laws that treat HIV as inherently more serious than other infections with similar medical impacts, are areas we think need fixing. We need a nationally consistent legal framework that supports public health policy and population health outcomes, and protects the human rights of people with HIV.

NAPWA hopes this work will spark interest and support from across the community to work towards resolving these differences and contradictions. We are working towards a nationally consistent, fair and just legal framework that reinforces rather than degrades the model of shared responsibility and treats HIV as a health issue first and a legal issue only as a last resort.

This article appeared in SX magazine on Thursday 22 October.

- [Criminalisation of HIV transmission](#)

Links:

[1]



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From the NAPWA website at

<http://www.napwa.org.au/2009/10/21/hiv-and-the-law-reinforcing-the-model-of-shared-resp>

<http://www.napwa.org.au/papers/2009/the-criminalisation-of-hiv-transmission-in-australia-legality-morality-and-reality>

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