
The Criminalisation of HIV Transmission in Australia: Legality, Morality and Reality

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This monograph addresses the issue of criminal prosecution of people who transmit HIV in Australia, examining the legal, moral and ethical justification for laws criminalising HIV transmission and the impacts of criminalisation on people with HIV.

The monograph was edited by Sally Cameron and [John Rule](#) [1], and includes contributions from Yusef Azad, Edwin J. Bernard, Samantha Croy, John B. F. de Wit, Jeanne Ellard, Michael Hurley, Elena Jeffreys, Susan Kippax, David Menadue, Dean Murphy, Lisa Power, Daniel Reeders, Peter Rush, David Scamell, Stephen Tomsen, Chris Ward, Melissa Woodroffe and Iryna Zablotska, with an introduction by Robert Mitchell and foreword by the Hon. Michael Kirby AC CMG.

From the introduction, by [Robert Mitchell](#) [2]:

NAPWA and its membership have a strong commitment to articulating the impacts of HIV at a personal level, as well as across a population experience. The engagement of HIV-positive people with prevention strategies and education messages has been a critical part of the Australian HIV response from the beginning of the epidemic.

In this monograph the authors have described aspects of the recent trend in Australia of HIV exposure or transmission being pursued within a criminalisation framework. They have also documented how these cases have been prosecuted inconsistently across the country, and also how the cases have been represented in the broader public domain by various, and often inappropriate media coverage.

NAPWA has supported the development of this work, initiated by people living with HIV, bringing together a collection of multidisciplinary papers, under the expert coordination of Sally Cameron and John Rule. The monograph includes several HIV-positive and community voices observing these events, alongside other authors from academic and legal sectors. I would like to thank all of the contributing authors for their involvement and support.

The end result is a collection of papers which provide rigorous analysis, and are relevant to the current environment in Australia, and other parts of the world, where increasingly there is a public intersection between personal behaviours, intimate encounters, moral judgements, public health positions and various legal instruments. This intersection has effectively created a complex and confounding set of realities not only for individuals, but also agencies across a national HIV response that has been based in health promotion and is now being pulled towards a health protection paradigm.

The intention of this work is to start a dialogue across the HIV sector and with broader public health and legal sectors, to talk about the issues raised and the impacts of these events on the HIV-positive community in Australia. The notion of criminal law being directed against a person on the basis of HIV status is considered by many to be discriminatory, and to undermine the very principles behind two decades of promoting messages of shared responsibility and safe consenting sexual practice. The notion of blame and persecution directed towards HIV-positive people is unacceptable and NAPWA is calling for laws that require mandatory disclosure of HIV status, and laws that are targeting a specific disease status, to be reviewed. It is imperative that a nationally consistent legal framework be adopted that supports public health policy and population health outcomes, as well as protecting notions of fairness and equal rights under the law.

This is the beginning of what could become a body of work analysing the issues raised, including other areas not covered adequately in the monograph. For example, women and gender discussions have a set of unique parameters within the way HIV transmission is described in the Australian context, and notions of consent and cultural influence need to be explored in contexts other than the gay male experience.

NAPWA is also keen to progress a thorough review and reflection of legal and ethical implications surrounding the development of new technologies and laboratory analysis. These developments have been applied increasingly to HIV population surveillance and [clinical](#) [3] Pertaining to or founded on observation and treatment of participants, as distinguished from theoretical or basic science. patient focus, but attempts to position this data within a legal discussion has been widely resisted both internationally and nationally, quite rightly for compelling scientific reasons. NAPWA believes this is an increasingly important place for consistent governance and protocols to be developed and applied on a national level. It is critical that those operating within the legal system have an appreciation of the limitations of current scientific reliability for such purposes.

Finally, NAPWA hopes that this monograph is able to spark interest and support from other sectors to collaborate on future work towards resolving differences and contradictions inherent in the way HIV transmission is currently being described and dealt with across various state legal systems. NAPWA is committed to improving the current situation in Australia, where people living with HIV are being affected either directly or indirectly by adverse legislation, inappropriate legal procedures, and associated public media responses.

Attachment	Size	Type
Complete document [4]	516.67 KB	 PDF

- [Criminalisation of HIV transmission](#)
- [discussion paper](#)

Links:

- [1] <http://www.napwa.org.au/people/john-rule>
 [2] <http://www.napwa.org.au/people/robert-mitchell>
 [3] <http://www.napwa.org.au/glossary/term/475>
 [4] http://www.napwa.org.au/files/napwa_monograph_09.pdf