

## The last word - the law and HIV transmission

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A person with HIV who transmits the [virus](#) [1]A small infective organism which is incapable of reproducing outside a host cell. to another, or exposes another person to the risk of HIV transmission, may have broken the law. There are significant variations between state and territory laws concerning disclosure of your positive HIV status to sexual partners, and the possible penalties for HIV transmission. Somewhat confusingly, there are potentially two types of laws involved: public health laws and criminal laws.



Each state and territory has its own public health laws. These laws empower public health authorities (amongst other things) to take action to stop the spread of infectious diseases. This usually includes the power to detain or imprison someone who is believed to be placing the health of other people at risk. Detention is usually regarded as a last resort, and will only be used where other interventions such as education, counselling, and warnings, have failed to change the behaviour of a person which is believed to be placing others at risk of infection. Public health laws are administered by the health department in the relevant state or territory.

In some states and territories, criminal laws have been used to prosecute people with HIV who are accused of having intentionally or recklessly transmitted HIV to another person. There are some states (such as Victoria and NSW) which have created specific criminal offences to cover the intentional transmission of HIV to another person. Existing criminal offences (such as causing grievous bodily harm) have also been used in these circumstances.

In many cases, criminal prosecutions are only commenced when attempts to modify a person's risk behaviour through the use of public health-based interventions have failed. However sometimes criminal prosecutions are used prior to or in the absence of any interventions through the public health system.

The following is a brief outline of the relevant laws in each state and territory.

### Tasmania

**Public health law:** An HIV-positive person must take "all reasonable measures and precautions" to prevent the transmission of HIV to others, and must not knowingly or recklessly place another person at risk of contracting the disease. Maximum penalty: a fine of up to \$10,000 or imprisonment for one year. If an HIV-positive person is charged with an offence under this law, it is a defence for the HIV-positive person to prove that the other person knew of, and voluntarily accepted, the risk of contracting HIV.

**Criminal law:** A person who causes grievous bodily harm to a person by any means is guilty of a crime. Maximum

penalty: imprisonment for 21 years. It is possible this law could be used to charge an HIV-positive person for transmitting HIV to another person, although no such prosecutions are known to have taken place.

## **South Australia**

**Public health law:** A person with a “controlled notifiable disease” (which includes HIV) must take all reasonable measures to prevent transmission of the disease to others. Maximum penalty: a fine of \$30,000 or imprisonment for seven years. The law does not specifically require a person with HIV to disclose their HIV status to a prospective sexual partner.

**Criminal law:** A person who recklessly endangers another person’s life is guilty of a criminal offence. Maximum penalty: 15 years imprisonment. It is possible this law could be used to charge an HIV-positive person for transmitting HIV to another person, although no such prosecutions are known to have taken place to date.

## **New South Wales**

**Public health law:** A person who knows they have a sexually transmissible medical condition (which includes HIV) is guilty of an offence if he or she has sexual intercourse with another person unless, before intercourse takes place, the other person has been informed of and voluntarily accepts the risk of contracting the sexually transmissible medical condition. Maximum penalty: a \$5,000 fine.

**Criminal law:** A person who maliciously causes another person to contract a “grievous bodily disease” (which includes HIV), is guilty of a crime. Maximum penalty: 25 years imprisonment.

## **Victoria**

**Public health law in Victoria** does not specifically require an HIV-positive person to disclose their HIV status before having sex. The law states that a person must not knowingly or recklessly infect another person with an infectious disease. Maximum penalty: a fine of \$20,000. In addition, it is a defence to a charge under this law, to show that the person who becomes infected with the infectious disease knew of and voluntarily accepted the risk of infection.

**Criminal law:** A person who intentionally causes another person to be infected with a “very serious disease” (which includes HIV) is guilty of a crime, and liable to a maximum penalty of imprisonment for up to 25 years. In Victoria, the offence of “conduct endangering life” has been used to charge HIV-positive people who place others at risk of

## **Queensland**

Queensland public health law does not specifically require an HIV-positive person to disclose their HIV status before having sex. The law makes it an offence to deliberately or recklessly infect another person, or to place them at risk of infection. Maximum penalty: a fine of \$20,000 or imprisonment for two years. It is a defence to such a charge if the other person is the opposite sex spouse or de facto spouse of the person charged, and that other person knew of and voluntarily accepted the risk of infection.

The criminal law provides that a person who transmits a serious disease (including HIV) to another person is guilty of a crime. Maximum penalty: life imprisonment.

## **Western Australia**

Western Australian public health laws have not been updated since the early 20th century, and are largely irrelevant to the HIV epidemic. In that state, it is an offence for a person with an infectious disease to “wilfully expose” themselves in any public place, without taking proper precautions against the spreading of transmissible through casual social contact, this law has no real meaning in relation to the sexual transmission of HIV.

**Criminal law:** a person who does any act that is likely to result in another person contracting a serious disease

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(which includes HIV), is guilty of a crime. Maximum penalty: imprisonment for 20 years.

## Australian Capital Territory

Public health law: there is no specific legal obligation on HIV-positive people to disclose their status before having sex.

Criminal law: It is an offence to intentionally or recklessly inflict grievous bodily harm on another person. Maximum penalty: imprisonment for 15 years. It is possible that this law could be used to prosecute an HIV-positive person for transmission of HIV, but there have never been any such prosecutions in the ACT.

## Northern Territory

There are no public health laws dealing with HIV transmission or disclosure of HIV status in the Northern Territory.

Criminal law: it is an offence to do grievous bodily harm to another person. Maximum penalty: imprisonment for life. It is also an offence to endanger another person's life. Maximum penalty: imprisonment for 10 years.

It is possible that these laws could be used to prosecute an HIV-positive person for transmission of HIV. One prosecution was commenced, but there have been no such prosecutions successfully completed in the Northern Territory.

[Getting support](#) [2][up](#) [Contacts for support, information or referral](#) [4]

- [HIV and the law](#)
- [Sex and relationships](#)

### Links:

[1] <http://www.napwa.org.au/glossary/term/125>

[2] <http://www.napwa.org.au/resource/hiv-gay-sex/getting-support>

[3] <http://www.napwa.org.au/resource/hiv-gay-sex>

[4] <http://www.napwa.org.au/resource/hiv-gay-sex/contacts-for-support-information-or-referral>