

HIV transmission, the law, and public health

October 2013



**National Association of People with HIV Australia (NAPWHA),
on behalf of the PLHIV membership, and in collaboration with Living Positive Victoria,
Positive Life New South Wales, Positive Life South Australia and Queensland Positive People**

On who we are . . .

People living with HIV gather together in many forms such as alliances, collaborations and networks. We acknowledge that our uniqueness is our lived experiences, the voice and action of people living with HIV and that this must remain vital and central to an effective response to HIV locally and globally. Our organisations include all the ways we respond to HIV.

On what we do . . .

People living with HIV organisations are committed to the notion of the greater involvement and meaningful engagement of people living with HIV (GIPA) in the health, social and structural responses to HIV, including government, clinical, research and civil society responses.

People living with HIV organisations aim to represent and advocate on behalf of the diversity of people living with HIV. They are founded in a commitment to the involvement and empowerment of the group most affected by HIV – people living with the virus. The organisations draw on the experience of the consumer health movement, community based health promotion, and community development and they embody and promote the peer legitimacy of peer led approaches to health.

People living with HIV organisations are informed by the lives of people living with HIV and actively seek the engagement of the diversity of people living with HIV to ensure that their organisational voice is credible, relevant and timely.

On how we work . . .

People living with HIV organisations aim to ensure that the voices of people living with HIV are heard as a partner in all research, policy and program responses to HIV and further promote the leadership of people living with HIV as full, equal and essential partners to guide this work. These organisations strive to build the capacity of people living with HIV to participate in all aspects of society as informed, enabled and empowered participants in their own right and for their community's development and social change.

People living with HIV organisations represent and acknowledge the diverse and evolving experiences of living with HIV. This 'lived experience' identity and its authority are essential to the ongoing production of quality and effective prevention, treatment and care responses to HIV. It is the quality of these responses that continues to allow people with HIV to live in dignity, maintain and improve their health, and make choices that have beneficial impacts for themselves, their partners, families and communities.

People living with HIV organisations seek to be responsive to the evolving challenges and strengths of people living with HIV and advocate on behalf of people living with HIV at an individual, a community and a systemic level.

Background

The 2012 *United Nations Global Commission on HIV and the Law* concluded that any laws criminalising HIV transmission, exposure or non-disclosure of HIV status are counterproductive and should be repealed; laws should facilitate and enable effective responses to HIV prevention, care and treatment services.

NAPWHA supports HIV prevention strategies being driven by an evidence-based, best practice model of public health interventions. These are based on the principal goals of:

- Encouraging a shared responsibility for the complex factors that surround behaviours associated with transmitting or contracting HIV.
- Supporting PLHIV to prevent HIV transmission, including how to discuss the facts about protecting sexual partners from contracting HIV.
- Reducing misconceptions of HIV that contribute to stigma, including the need to increase community awareness of the advances that have led to HIV now being considered a chronic, manageable condition – not a death sentence.
- Respecting human rights and improving access to social support, treatment, prevention and health services.

What are the risks of criminalising HIV transmission?

Criminalising transmission contradicts the most essential prevention message: every person has a responsibility to take all reasonable precautions to avoid contracting an STI or HIV. The prosecution of HIV transmission attracts negative media and community attention that unfortunately:

- misrepresents HIV as a death sentence;
- increases the fear of being known as HIV positive;
- discourages voluntary HIV testing for fear of prosecution and/or stigma;
- discourages PLHIV from engaging with health and social services;
- impedes the environment necessary to enable HIV disclosure; and
- jeopardises education, counselling & treatment initiatives that facilitate new scientific advances being introduced and integrated into communities.

The prosecution of individuals for the transmission of HIV will contribute to an environment of fear and confusion among people living with HIV, and those at risk of HIV. It can discourage people from disclosing their status to sexual partners, and also discourage those at risk of HIV from accessing testing and care. These outcomes will undermine prevention efforts and actually increase the risk of further HIV transmission.

Why is HIV transmission criminalised?

Stigma, fear and discriminatory perceptions of HIV influence the decision to proceed with criminal charges – a statement clearly evidenced by a lack of criminal prosecution or media attention regarding the transmission of other controlled notifiable conditions such as syphilis or hepatitis.

When an individual is diagnosed HIV-positive, a common reaction during that period is to reflect on how they acquired HIV. Some people might believe that another person is responsible, but rarely are true intentional transmissions linked to consenting sexual behaviour. Some people may also still consider HIV as a death sentence, when in fact HIV is now considered a chronic manageable condition and the majority of people living with HIV will reach a normal life expectancy if they (a) are diagnosed early, and (b) have affordable access and support to take HIV treatment as prescribed by their doctor.

Rather than focussing on the very rare allegations of intentional transmission, media attention should encourage testing and report on Australian epidemiology indicating that the average time a person may be living with HIV prior to diagnosis is 4.6 years.

Many people that have been diagnosed HIV positive are leaders in HIV prevention, but unfortunately perpetuating fear and negative stereotypes of HIV will decrease the likelihood of testing and prevention.

Why is a public health approach preferable?

Public health frameworks are intended to prioritise education, management, and the engagement of affected communities over punitive legal sanctions; public health interventions seek to effect change in risk-taking behaviour among those who have difficulty taking appropriate precautions to prevent the transmission of HIV.

These interventions acknowledge the complex factors unique to each case, such as power imbalances, impairment, discrimination or other social determinants of health that may confuse or limit an individual's ability to prevent transmission.

Unlike incarceration, public health interventions can provide supportive education and referrals to HIV support groups, social workers, counsellors, mental health practitioners, drug/alcohol services or other social support services as required to enable a person's capacity to prevent the transmission of HIV. These interventions are done in a confidential and supportive environment that is separate from the criminal justice system, and likely to be much less damaging to both the 'accused' and the person making the allegation.

All of us together – regardless of HIV status – can each play a vital role in reducing stigma and taking personal responsibility, as public health strategies seek to shift Australia's response to HIV and eliminate transmission of HIV across the population.