

HIV AND THE CRIMINAL LAW IN AUSTRALIA 2019



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TL;DR

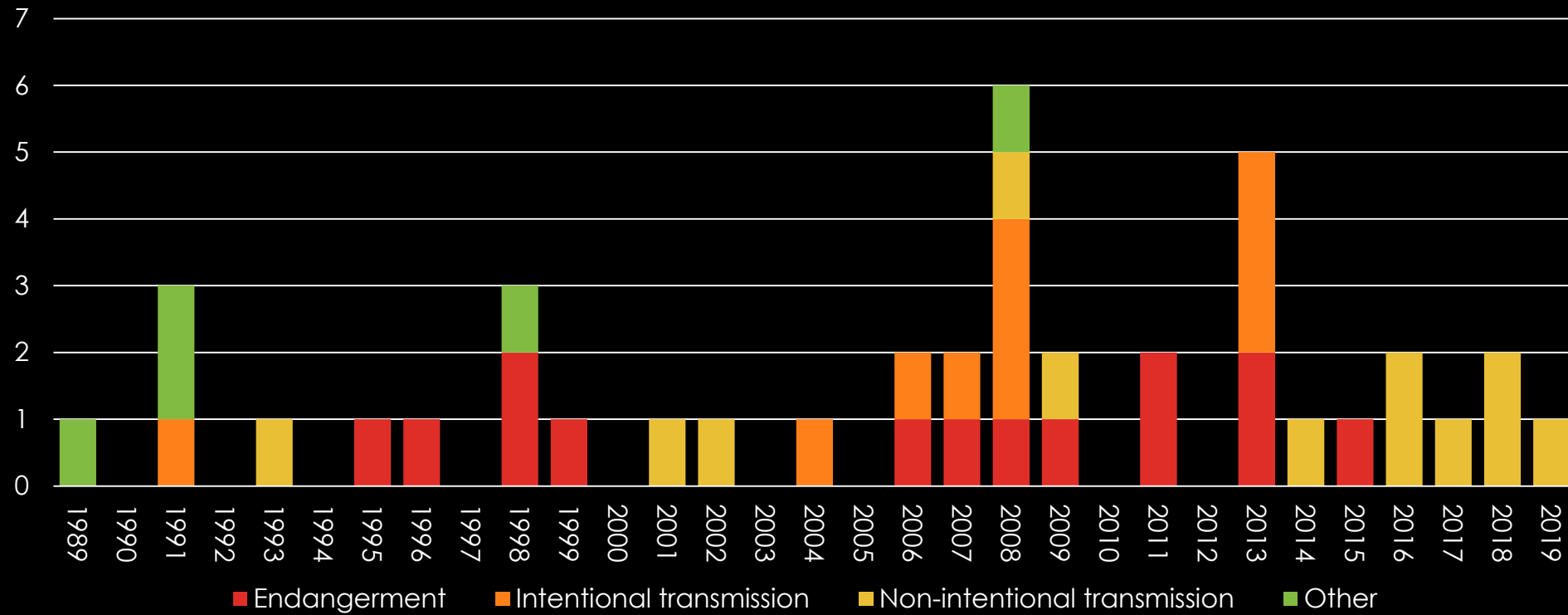
- People with HIV have been subject to criminal prosecution via an increasing variety of species of HIV criminalisation for the last 34 years.
- Criminalisation of disease transmission is a novel, but now well entrenched, area of interest for the criminal justice system.
- In 2019, HIV-related criminal prosecutions continue to occur at a fairly steady rate of 1-2 major prosecutions per year.
- People living with HIV on the margins of mainstream society are most at risk – African diaspora, sex workers, drug users, homeless people.
- At least six people are currently incarcerated in Australia due to these laws.
- The scope of criminal surveillance is expanding via spitting laws.

HIV OFFENCES IN AUSTRALIA

	NSW	Vic	Qld	SA	WA	Tas	ACT	NT
Transmission – intentional	4	0	1	0	0	0	0	0
Transmission – reckless	1	0	2	1	2	0	0	0
Transmission – negligent	0	1	0		1		0	0
Exposure – reckless		8		3				0
Procure sex by fraud		3			*			
Sex work while HIV+		>1					1	
False blood donor declaration		1						
Transmission – public health offence						1		
Exposure – public health offence								
Nondisclosure (<i>per se</i>)								
Fail to take precautions – PH offence								
Mandatory testing by police (spitting etc)	Next?			Yes	Yes			Yes

Key: ■ indictable/≥5y ■ summary/ ≥1y ■ regulatory/fine. Numbers indicate known guilty verdicts, blank = no data.

HIV CRIMINAL PROSECUTIONS IN AUSTRALIA



WHAT ABOUT PrEP & U=U?

- Objectively, very unlikely we will see transmission-related prosecutions where these are in issue (because transmission is virtually impossible)
- For endangerment prosecutions, we don't know!
- Last time someone tried to argue U=U in court was 2007 (and they failed)
- A test case/precedent would be good to have, but no-one should be dragged through that process
- U=U is not a panacea for HIV criminalisation – it could increase the risk to people who can't get to undetectable
- Public health guidelines increasingly being enforced according to VL