

Criminalisation of HIV

PLS Position Statement



Positive Life SA strives to improve the quality of life for all HIV positive people through its core principles of Opportunity, Equity and Acceptance.

Criminal prosecutions fail to reflect the reality of Australia's HIV epidemic. HIV transmission is not unusual. There have been more than 30,000 diagnoses of HIV infection in Australia, the vast majority resulting from sexual contact. The harms of HIV infection have changed significantly over the last decade as a result of advances in anti-retroviral treatments.

HIV is a virus and only one of many communicable diseases. The more than 21,000 people living with HIV in Australia are diverse and are entitled to opportunity, equity and acceptance. HIV does not define us.

Positive Life SA believes that HIV-based stigma and discrimination is exacerbated by criminal prosecutions and provides a platform for the criminalisation of people living with HIV.

People living with HIV continue to experience HIV-related stigma and discrimination which erode people's rights and dignity. Stigma and discrimination have real impacts on people's quality of life.

Stigma and discrimination also undermine HIV prevention strategies. They work against individuals disclosing their HIV status, practicing safe sex and accessing health care.

Stigma and discrimination are exacerbated by media reporting of criminal trials. That reporting shapes community understanding of HIV, with inadequate knowledge of HIV directly impacting attitudes and, consequently, the expression and experience of HIV-related stigma and discrimination. In turn, the sensationalising of HIV triggers prosecutions for HIV exposure and transmission.

Positive Life SA does not support the causing of deliberate harm between people.

No Australian HIV prosecution to date has found a person guilty of deliberately harming another. Instead, prosecutions concern HIV positive individuals who have had unprotected sex. Individuals have been found 'not guilty' of crimes when HIV has been transmitted. Others have been found guilty despite HIV not being transmitted, including in South Australia, where individuals have been imprisoned. Criminal law is an inappropriate and ineffective tool for considering HIV transmission, including questions of ethical and moral conduct.

HIV infection is a serious matter but the criminal courts are not the appropriate locale to interrogate non-deliberate transmission of HIV. Instead, individuals' experience of HIV infection should be addressed through the range of existing HIV community and health sector mechanisms which are better able to support individuals and address problematic behavior.

Positive Life SA supports the UNAIDS Policy Brief on the Criminalisation of HIV Transmission and Exposure, the NAPWA Declaration of Rights for People Living with HIV, and Australia's National HIV Strategy 2010-2013.

UNAIDS urges governments to limit criminalisation to cases of intentional transmission, i.e. where a person knows his or her HIV positive status, acts with the intention to transmit HIV, and does in fact transmit it. Australian prosecutions do not adhere to that recommendation. The State's response to HIV transmission and transmission risk must be located in a human rights informed health response, as informed by the NAPWA *Declaration of Rights* and Australia's *National HIV Strategy*.

Positive Life SA is committed to an inclusive and respectful public health response through evidence-informed HIV prevention and treatment, and care and support of HIV positive people including:

- HIV positive peer support
- Targeted HIV education
- HIV prevention messages of mutual responsibility

Australia's public health response is internationally esteemed as a result of its success in limiting HIV transmission. Fundamental to that response is the idea that responsibility for sexual health is shared. Media from criminal prosecutions directly undermines that message by laying blame on one party only. Further, much of the media generated has portrayed those accused as 'villains', which overshadows the core prevention message that any sexual partner could have HIV or be infected with any of the many sexually transmissible infections.

The public health response also includes formal mechanisms to address instances of individuals putting others at risk of HIV infection, including public health laws and formal management guidelines.

Criminal prosecutions are of no discernible benefit to Australia's HIV response. Financial and human resources spent on policing and criminal trials should be invested in reinvigorating HIV prevention, awareness, treatment, care and support.

Guiding Documents

- *Declaration of Rights of People Living with HIV/AIDS*, National Association of People Living With HIV/AIDS (2005)
- *Jakarta Declaration on Leading Health Promotion into the 21st Century* (1997)
- *Meaningful Involvement of People Living with HIV and affected communities*, (MIPA) Global Network of People Living with HIV/AIDS (GNP+) and the Asia Pacific Network of People Living with HIV/AIDS (APN+) (No Date)
- *Ottawa Charter*, WHO/HPR/HEP/95.1, *First International Conference on Health Promotion Ottawa, 21 November (1986)*
- *Positive Life SA Constitution* (2010)
- *The Greater Involvement of People Living with HIV (GIPA)*, *UNAIDS POLICY BRIEF* (2007)