



AUSTRALASIAN HIV/AIDS CONFERENCE 2018

Current issues related to HIV, human rights and the law: the way forward

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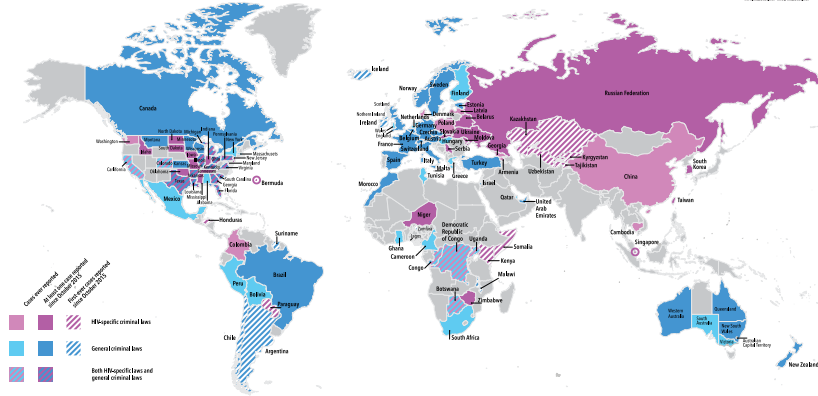
HIV criminalisation in 2018

In this talk

1. Where we are
2. How we got here
3. How we're doing
4. The way forward

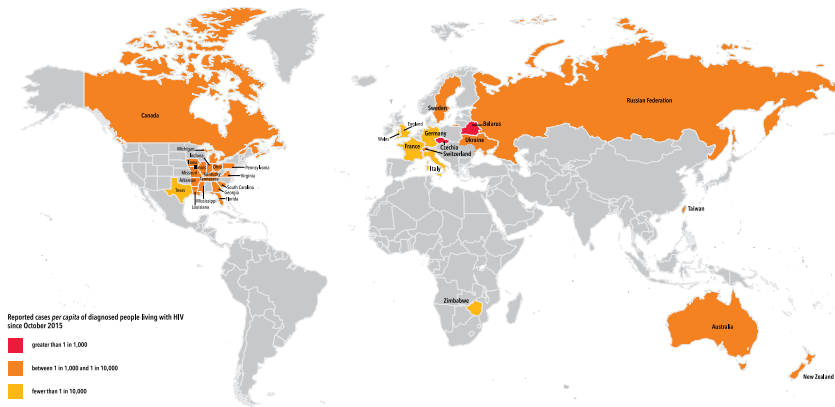
The global perspective

WHERE HIV-RELATED CRIMINAL CASES HAVE BEEN REPORTED



HIV criminalisation hotspots

HIV CRIMINALISATION HOTSPOTS

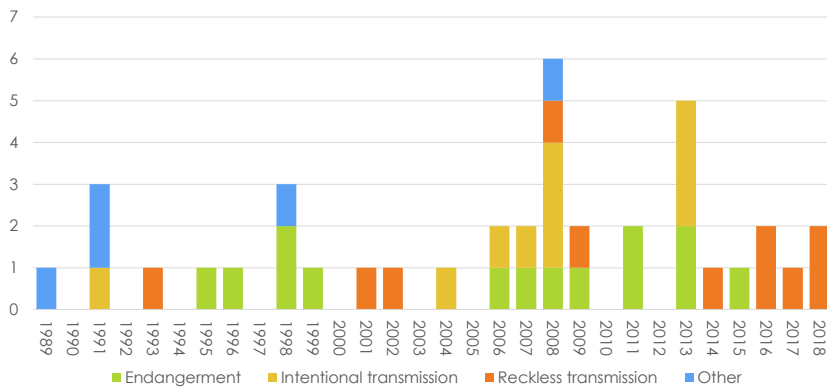


HIV and the law today

	NSW	Vic	Qld	SA	WA	Tas	ACT	NT
Transmission – intentional	4	0	1	0	0	0	0	0
Transmission – reckless	1	0	2	1	3	0	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								
Fail to take precautions – PH offence								

Key: ■ indictable/≥5y ■ summary/≥1y ■ regulatory/fine ■ none
 Numbers indicate known guilty verdicts, blank = no data.

HIV prosecutions by year



How we got here

- ▶ HIV is an **exceptional subject** for the criminal law
- ▶ Disease traditionally the exclusive province of **public health**, not criminal law
- ▶ That changed with HIV...
- ▶ A series of **moral panics** from 1985 onwards
 - ▶ Blood donors
 - ▶ Sex workers
 - ▶ Syringe bandits
 - ▶ Gay men
 - ▶ African men

So, how are we doing?

- ▶ HIV criminalisation **hasn't gone away**
 - ▶ Some **successes**
 - ▶ Repeal of s 19A
 - ▶ U = U
 - ▶ Consensus statement(s)
 - ▶ *Zaburoni v The Queen* [2016] HCA 12
 - ▶ Some **failures**
 - ▶ Section 79
 - ▶ CJ Palmer
 - ▶ *Aubrey v The Queen* [2017] HCA 18
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What about U=U and PrEP?

- ▶ **U=U presumptively protects some people from criminal prosecution**
 - ▶ To be liable for transmission, you must be infectious, and know that fact
 - ▶ Not everyone can take advantage of U=U
 - ▶ Those least likely to be undetectable are already more likely to be criminalised
 - ▶ There are no cases we can rely on
 - ▶ Risk of intensification by narrowing the scope of possible offenders
- ▶ **What do we know about the law around PrEP? Not much.**
 - ▶ We don't know if a HIV-positive person can rely on the other person's disclosure that they are on PrEP as a 'reasonable precaution'

The Consensus Statements

Boyd, Mark A et al, '**Sexual Transmission of HIV and the Law: An Australian Medical Consensus Statement**' (2016) 205(9)
Medical Journal of Australia 409

Barré-Sinoussi, Françoise et al, '**Expert Consensus Statement on the Science of HIV in the Context of Criminal Law**' (2018) 21(7)
Journal of the International AIDS Society

The way forward

- ▶ HIV criminalisation (still) **hasn't gone away**
- ▶ **We need...**
 - ▶ POAR guidelines that reflect modern HIV science
 - ▶ Governments, state & federal, to *conspicuously* adopt U=U as policy
 - ▶ without leaving anyone behind
 - ▶ Prosecutorial guidelines and engagement
 - ▶ Enduring vigilance over the full range of legal intrusions into the lives of PLHIV
 - ▶ Spitting laws/mandatory testing laws
 - ▶ Named notifications
 - ▶ Mandatory safe-sex laws like s79
 - ▶ Immigration reform
 - ▶ Winding back anti discrimination laws ('religious freedom')

The way forward

- ▶ We must, as a community, stand behind those people with HIV who are **marginalised, vulnerable, targeted**
- ▶ We can't let PrEP and U=U distract us from the core issue, which is that **HIV criminalisation is bad policy**, bad for public health, bad for human rights
- ▶ This is a **very exciting time** for everyone engaged in the HIV response – treatment and prevention, U=U, TasP, PrEP, talk of a cure
- ▶ **BUT there can be no end to the HIV epidemic while people with HIV continue to face stigma, discrimination and criminalisation**