



NATIONAL ASSOCIATION OF PEOPLE LIVING WITH HIV/AIDS
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Criminalisation and the sexual transmission of HIV



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NAPWA is the National Association of People Living with HIV/AIDS.

NAPWA is the national peak organisation representing people living with HIV/AIDS in Australia. Through leadership in advocacy, policy, education and prevention, NAPWA strives to minimise the adverse personal and social effects of HIV/AIDS. By championing the participation of HIV-positive people at all levels of the national HIV/AIDS response we aim to build a positive future for people living with HIV/AIDS

We acknowledge that the evidence clearly indicates that the vast majority of people with HIV practice safe sex with partners who are HIV negative or of unknown serostatus. We also acknowledge that accidents and unintended miscommunications do occur and that, in a very small number of cases, deliberate or reckless exposure may occur.

NAPWA supports the practice of the overwhelming majority of HIV positive Australians in actively seeking to reduce the risk of HIV transmission, however, we believe that the criminal justice system is an inappropriate mechanism for achieving that aim and should only be used in exceptional circumstances as a mechanism of last resort.

NAPWA acknowledges that the overwhelming majority of HIV positive Australians are actively seeking to prevent the transmission of HIV through a variety of practices. We believe that people with HIV require support, education and access to services which maintain and enhance these practices.

Australia's response to HIV has been and continues to rely heavily on the involvement of affected communities in helping to prevent the transmission of HIV. Through the successful engagement of communities at high risk of HIV (men who have sex with men, sex workers and injecting drug users) and people with HIV; Australia has managed to successfully contain the spread of HIV. Our success is acknowledged and emulated worldwide.

The focus of criminal law in HIV transmission will be harmful to the community response to HIV and as such should only be used as a mechanism for cases of clearly manifest reprehensible and exceptional behaviour.

Finally, we believe that each partner in a sexual relationship has a responsibility to protect themselves and each other from HIV and STI transmission. Some people with HIV may not know that they actually have HIV and it is extremely unwise to proceed on the assumption that each partner is HIV negative, particularly in the case of unsafe casual sexual encounters.

NAPWA supports:

Sexual lives free from stigma and discrimination

- The right for all adult Australians to have a safe, active and fulfilling sexual life free from discrimination and stigma.

Continued emphasis upon community education and support for primary HIV prevention

- HIV is preventable, and all people play a part in preventing the transmission of HIV. All people should be encouraged, educated and supported about the importance of safer sex and sexual health.

Disclosure of one's HIV status

- The right of people to choose whether to disclose their health status to sexual partners in a context of encouraging condoms and water-based lubricant for vaginal and/or anal intercourse in cases where disclosure is not available.

Discussion of unintended outcomes and circumstances

- People to advise their partner of her/his serostatus, should a condom break or slip, in order that post-exposure prophylaxis might be accessed as soon as possible. In such circumstances we do not believe that the potential threat of criminal penalty is neither useful nor equitable.

Accessible and useful information

- The right for all sexually active people to have access to culturally appropriate information and resources aimed to assist in understanding and effectively managing the risk of HIV transmission.

Programs that assist vulnerable people to protect themselves

- Appropriate public health interventions aimed at identifying HIV positive people in psychosocially vulnerable life situations - in which the potential for transmission is heightened - with a view to minimising risk. NAPWA believes that a well-supported and confidential public health system is best placed to assist people living with HIV who are not able to mediate the risk of HIV transmission on their own.

A national standard with regard to disclosure

- Currently, there are a range in the legal requirements of people with HIV and their obligation to disclose their status to sexual partners across state jurisdictions. This lack of uniformity is a source of concern for many people with HIV and requires the creation of a National standard. It is neither useful nor productive to have laws that govern disclosure that are so variable and thus confusing to the public.

NAPWA does not support:

Deliberate or reckless endangerment of sexual partners

- People who deliberately misrepresent their serostatus to sexual partners and/or who deliberately expose their unknowing sexual partners to the risk of transmission.

The application of criminal law as a tool to prevent HIV transmission

- Community education and health promotion, alongside culturally appropriate and sensitive public health interventions are effective tools for preventing the spread of HIV. Criminal law can play no role in preventing HIV, as punitive or blame oriented interventions are ineffective at changing sexual practice or behaviour.

NAPWA believes that irrecoverable damage is done to the rights of all people living with HIV by the sensationalist reporting of criminal prosecution of people with HIV accused of criminal, deliberate and /or reckless endangerment.

NAPWA believes that ill considered laws and policies with regard to HIV transmission invariably have the opposite effect to that intended – they make people with HIV and those at risk of infection much less likely to seek information, testing, treatment and care. This in turn undermines prevention and clinical care strategies.

NAPWA considers that criminalisation as a first level public health intervention is a step back towards a culture of 'blame' that surrounded the early years of the epidemic.

NAPWA considers that HIV is an infectious disease, one in which is acquired and transmitted sometimes knowingly but most often not. The real criminal is perhaps not the person but HIV itself.