

# HIV and the Law in Australia

---

A Mapping Review of  
Contemporary Case Law

## Acknowledgment of Country

Health+Law proudly acknowledges the Bedegal, Gadigal, Turrbal and Yugara people, who are the Traditional Custodians of the land at the campuses of UNSW, UTS and QUT respectively, where our research is based. The Health+Law Partnership includes people and organisations in every state and territory of Australia, and we recognise the unique and ongoing connection of First Nations people to the land and waterways in all of those places. We also value the unique contribution of Aboriginal and Torres Strait Islander people and community-led organisations working to support and improve the lives of people living with HIV and hepatitis B.

David J. Carter, Anthea Vogl, Rhys Evans, James Brown, Hamish Robertson & Dion Kagan 'HIV and the Law in Australia: A Mapping Review of Contemporary Case Law', Health+Law Partnership, Sydney, Australia, September 2024.

ISBN: 978-0-7334-4086-1

Designed and typeset by [Daniel Cordner Design](#)  
© Health+Law, 2024

**Suggested citation:** Carter et al (2024). 'HIV and the Law in Australia: A Mapping Review of Contemporary Case Law', Health+Law, Sydney, Australia.

Health+Law is a research partnership to identify and eliminate legal barriers to testing and treatment for people living with hepatitis B and people living with HIV in Australia.

Health+Law is supported by funding from the Australian Government Department of Health and Aged Care, under the Blood Borne Viruses (BBV) and Sexually Transmissible Infections (STI) Research and Data Program (Grant ID: H0NB4L8). The contents of this report are solely the responsibility of the individual authors and do not reflect the views of the funding body or partners.

The authors are grateful to Health+Law team members Georgia Neaverson, Katrina Mathieson and Cara Bruce for research and publication support in the production of this report.



[www.healthpluslaw.org](http://www.healthpluslaw.org)

## Acronyms Used in this Report

**ABA** American Bar Association

**ART** Antiretroviral therapy

**ARV/s** Antiretrovirals

**ASHM** Australasian Society for HIV, Viral Hepatitis and Sexual Health Medicine

**BBV** Blood-borne virus

**CALD** Culturally and linguistically diverse

**HALC** HIV/AIDS Legal Centre

**MSM** Men who have sex with men

**NAPWHA** National Association of People with HIV Australia

**PLHBV** Person/People Living with Hepatitis B

**PLHIV** Person/People Living with HIV

**PrEP** Pre-exposure Prophylaxis

**UNAIDS** Joint United Nations Programme on HIV/AIDS

**UNDP** United Nations Development Program

**U=U** Undetectable=Untransmittable

# Contents

<b>The Health+Law Research Partnership</b> .....	<b>2</b>
<b>Introduction</b> .....	<b>4</b>
Evidence Prior To This Study.....	5
This Legal Mapping Review.....	6
Key Findings.....	7
<b>Understanding the Impact of Legal Problems on the Health of PLHIV</b> .....	<b>10</b>
The Enabling Legal Environment.....	11
Assessing the Legal Environment .....	12
A Ground-Up Perspective on the Law and Legal Research.....	13
Justiciable Issues and Legal Needs.....	14
<b>HIV-Related Legal Disputes and Issues of Concern in Australia</b> .....	<b>16</b>
<b>Prior Research and Knowledge</b> .....	<b>17</b>
The Global HIV Justice Network.....	17
HIV-Related Legal Information Sources in Australia .....	17
<b>Methods</b> .....	<b>18</b>
Search Strategy.....	18
Inclusion Criteria .....	19
Extraction and Charting.....	20
<b>Results</b> .....	<b>23</b>
Jurisdiction .....	23
Areas of Law.....	25
Priority Populations .....	26
Legal Factors .....	27
<b>Discussion</b> .....	<b>30</b>
Diversity of Disputes and Areas of Law .....	30
The Relevance of HIV Status.....	30
Assumed HIV Status or Risk of HIV Transmission.....	31
Suppression Orders and Disclosure.....	32
The Rise of Migration-Related Matters .....	33
The Continued Prosecution of HIV Transmission.....	33
The Continued Prosecution of Spitting and Biting Cases .....	35
HIV as an Aggravating and Mitigating Factor in Sentencing.....	35
Further Observations.....	37
A True Picture of the Legal Experiences of PLHIV?.....	39
<b>Appendices</b> .....	<b>40</b>
<b>References</b> .....	<b>118</b>



THE  
HEALTH+LAW  
RESEARCH  
PARTNERSHIP

# Health+Law is a research partnership that works to identify and eliminate legal barriers to testing and treatment for people living with HIV and people living with hepatitis B.

The partnership is led by a consortium of research, community, health and legal organisations, including the University of New South Wales (UNSW) Faculty of Law & Justice, the University of Technology Sydney (UTS) Law Faculty, the School of Public Health and Social Work, Queensland University of Technology (QUT), the HIV/AIDS Legal Centre (HALC), ASHM Health (formerly the Australasian Society for HIV, Viral Hepatitis and Sexual Health Medicine), the National Association of People with HIV Australia (NAPWHA), and Hepatitis Australia. The partnership also draws from the expertise of people with lived experience of blood-borne viruses (BBVs) and the peers and community organisations across Australia that support them.

The demographics of people seeking HIV- and hepatitis-related legal services in Australia is changing. Increasingly, legal support is sought by people born overseas who identify as female and/or heterosexual, and younger people.<sup>1</sup> Preliminary research conducted by Health+Law has shown that people living with BBVs view the law as both a barrier to and enabler of access to health care, and many other things they value beyond physical health, including good working conditions, positive mental health, family stability and engagement with the community.

Australia currently lacks the evidence and means to provide appropriate legal support for people living with BBVs. By integrating expertise from the health and legal sectors, as well as from people who are part of the affected communities, Health+Law is working both to gather the evidence needed and to establish practical initiatives that work to enhance access to justice for PLHIV and PLHBV.

To achieve these aims, Health+Law is currently:

- 1 **Conducting research to identify the legal issues facing PLHIV and PLHBV across Australia.**
- 2 **Assessing the impact of different legal issues on access to testing, treatment and other forms of care.**
- 3 **Developing a tool for use by healthcare workers to determine the specific legal needs of a patient or client living with HIV or hepatitis B and refer them to an appropriate legal service provider.**
- 4 **Establishing a national network of legal service providers with expertise in BBVs.**

Go to the **Health+Law website** for more information, including updates on these activities, or to read publications, watch webinars and access other outputs from our work.

<sup>1</sup> David J Carter et al, 'HIV-Related Legal Needs, Demographic Change, and Trends in Australia since 1992: A Review of Legal Administrative Data' (2023) *AIDS and Behavior* 574.

# Introduction

**The development and maintenance of an ‘enabling’ legal environment has long been recognised as an important part of Australia’s response to HIV. Enabling legal environments have been referenced in successive Australian Commonwealth HIV strategies since the first was launched in 1989. The Global Commission on HIV and the Law, an independent expert body convened by the United Nations Development Program (UNDP) on behalf of the Joint United Nations Programme on HIV/AIDS (UNAIDS), has also concluded that an enabling legal environment is essential to improving public health responses and the quality of life of people living with HIV (PLHIV).<sup>2</sup>**

However, the last major formal review of the legal environment around HIV in Australia, which resulted in *The Final Report of the Legal Working Party of the Intergovernmental Committee on AIDS*<sup>3</sup>, was undertaken in 1992. In the more than 30 years since this report’s publication, changes in the social, biomedical, geopolitical and public health landscape have significantly altered the legal environment surrounding HIV. To update and advance our understanding of this legal environment in Australia today, this report presents the results of a legal mapping review of HIV-relevant Australian case law. We believe it to be the first legal mapping review of its kind, and a key step toward assessing the current state of the legal environment surrounding HIV in Australia.

This review focuses on case law as a way of mapping key areas of legal concern for HIV today. While this approach offers insights into the law as it is experienced by people, we recognise that further research is needed to build a more

complete picture of the legal environment surrounding HIV. This review is just one early step toward assessing the legal environment and will be complemented by other work, including primary socio-legal research with PLHIV.<sup>4</sup>

This legal mapping review is part of a set of two reviews. The second is a systematic review of current scholarly literature on the health-related impacts of law and justiciable issues in high-income countries for PLHIV. That review, titled *The Health Impacts of Law for People Living with HIV: A Systematic Review of Literature*<sup>5</sup>, is designed to complement and extend the review of primary legal materials presented here. Taken together, these reviews aim to identify and understand more about the legal needs of PLHIV; and form an important starting point for further research and other work undertaken by Health+Law to address these issues and better support people living with BBVs to navigate the law in Australia.

---

2 Global Commission on HIV and the Law (UNDP, HIV/AIDS Group), (July 2012) 19 (‘Global Commission Report’).

3 Intergovernmental Committee on AIDS (Australia) Legal Working Party, *The Final Report of the Legal Working Party of the Intergovernmental Committee on AIDS*, November 1992 (Dept. of Health, Housing and Community Services, 1992). (‘Final Report of the Legal Working Party’)

4 See <https://www.healthpluslaw.org> for details on and updates about this research.

5 David J Carter et al, ‘The Health Impacts of Law for People Living with HIV: A Systematic Review of Literature’, (Health+Law, Sydney, 2024).

# Evidence Prior To This Study

**While the call for an enabling legal environment is well established in Australian policy, very little research or practical interventions exist to better understand the law surrounding HIV and its impact on PLHIV. For one, no review of specific legal areas of concern has been undertaken in Australia since the Report of the Intergovernmental Committee in 1992.<sup>6</sup> This legal mapping review begins the task of updating that work; it is also the first to survey HIV-related legal disputes in all Australian jurisdictions and across all areas of law.**

Despite the absence of a review of this type, the topic of HIV and the law has received sustained attention since the emergence of HIV/AIDS in Australia. This has primarily occurred in legal research focused on specific cases, issues and opportunities for law reform, and has largely centred on the interaction between HIV and the criminal law. As such, there is a relatively well-developed literature in Australia regarding the criminalisation of HIV.<sup>7</sup> Other areas, including migration law, social security law, privacy law and more, have not been examined in detail.

---

6 'Final Report of the Legal Working Party' (n 3). See also Australian National Council on AIDS and Related Diseases and Intergovernmental Committee on AIDS (Australia) (eds), *Status Report on Implementation of the Final Report Recommendations of the Legal Working Party* (1999) ('Status Report')

7 E.g., Sally Cameron and John Stanley Rule (eds), *The Criminalisation of HIV Transmission in Australia: Legality, Morality and Reality* (National Association of People Living with HIV/AIDS, 2009); David J Carter, 'Transmission of HIV and the Criminal Law: Examining the Impact of Pre-Exposure Prophylaxis and Treatment-as-Prevention' (2020) 43(3) *Melbourne University Law Review* 937.

# This Legal Mapping Review

**This legal mapping review identifies and analyses HIV-related legal matters that have gone before Australian courts and tribunals. In so doing, it aims to build a ‘map’ of the key areas of legal concern around HIV today.**

There are a range of challenges and limitations to undertaking legal research of this kind. These include the limited number of reported judgments and decisions available to the public through legal databases. This is a limitation that applies to all forms of legal mapping research, but there may be particular limitations that are put in place by judges and decision makers in cases dealing with HIV, as we explain in more detail in the ‘Methods’ section below.

Due to these challenges around accessing judgments and decisions, this review has expanded its search strategy to include media reporting of HIV-related court and tribunal activity. To do so, we have searched both general media databases as well as HIV-specific legal information and media collections. While this does not make our coverage fully representative of all relevant cases, it expands the available records as well as creates the potential to identify some of the differences between published judgments or decisions, and the media’s reporting of these HIV-related legal matters.

This review classified judgments and decisions according to their ‘priority population’ as defined in Australia’s *Eighth National HIV Strategy 2018–2022*, as well as their principal ‘legal factor’. There are also some limitations associated with this method of categorising. For one, this approach to mapping can only

go so far in accurately representing the nature and meaning of HIV-related legal matters. Classifying judgments and decisions by a single priority population and single legal factor is useful for the purposes of generating a map of the underlying legal terrain; however, it cannot fully reflect the true texture and complexity of these cases, nor account for the intersectional identities of those at the centre of these disputes. Mapping reviews can never fully express the facts or law considered by a case because they necessarily reduce each case to a classification or narrative synthesis.

Given these limitations, the aim of this mapping review was to generate an overview of HIV-related legal matters of concern that is useful for the purposes of further legal analysis and primary socio-legal research. The results reported here should not be interpreted as a complete or wholly representative picture of the nature of the legal environment surrounding HIV in Australia, nor of the nature or incidence of legal disputes related to HIV. Instead, it aims to generate a ‘map’ of the legal terrain, which nonetheless identifies the main areas of law around which disputes arise, the priority populations engaged in these disputes, and a classification of the primary and secondary ‘legal factors’ involved in each dispute. Like any map, it is a partial but useful representation of the terrain.



## Key Findings

**A total of 281 records were identified from both legal and media searches, including case law from all Australian jurisdictions – Commonwealth, state and territory. The review found Australian HIV-related case law across a wide range of primary areas of law. The areas of law that featured most prominently were migration law, refugee law and criminal law. However, HIV-related legal matters were also found to arise across a spectrum of both public and private law, including anti-discrimination law, wills and estates and tort law. These results indicate that HIV-related legal matters extend well beyond those related to criminalisation, which has been the major focus of legal research and writing in this area to date.**

This review also identified a diversity of disputes and areas of law that go beyond migration and criminal law, and indeed beyond matters where a person's HIV status is strictly relevant as a matter of law. HIV-related legal disputes were identified across private and public law areas, including discrimination law, negligence, insurance law, family law, compensation (including workers' compensation schemes), administration law, social security law, industrial relations law, mental health, privacy, wills and estates, extradition, guardianship, public health, child and family health, personal injury, professional misconduct, and veterans' affairs. While the complete scope and scale of justiciable issues experienced by PLHIV is no doubt broader than what has been identified here, it is clear from these results that HIV remains an area of legal concern across a wide variety of areas of life, which drives this emergence of disputes across diverse areas of law.

That said, the criminal law still accounts for a substantial number of cases included in this review. These encompass HIV-related criminal offences, including transmission-related offences, as well as criminal matters

that relate indirectly to a person's HIV status. A substantial number of the criminal law matters we located were related to HIV transmission. Of the 76 criminal law judgments included in this review, 29 involve an HIV transmission-related offence. These transmission-related offences include exposure or endangerment offences – which involve *exposing* another person to a risk of acquiring HIV – alongside transmission-related offences where actual *transmission* of HIV is required for the offence to be made out. Three so-called 'biting or spitting' assault cases were included in this review. In each of these, a person's HIV status was disclosed as part of the legal process. These cases often garner significant media attention, and it is worth noting that all biting and spitting cases identified by the review were located through media sources rather than published by courts or tribunals.

The role of HIV in criminal proceedings varies across judgments and decisions included in this review. In determining the elements and seriousness of an offence, courts considered clinical information about HIV as well as factors related to a person's HIV status, such as their

The recent rise in the number of migration-related matters involving people living with HIV reflects changes to migration law and the operation of the health requirement over the past decade. In these cases, HIV status may either support protection claims or operate as a barrier to migration to Australia.

general health, treatment continuance and viral load at the time of the offence. These factors were also considered in sentencing proceedings.

Sentencing is an area where a person's HIV status receives significant attention from courts. In sentencing proceedings identified by this review, HIV status was considered by courts in some instances to be an aggravating factor and in others a mitigating factor. In one example, HIV status was found by a court to be an aggravating factor because the alleged risk of transmission in the context of sexual assault was seen to increase the seriousness of the offence. HIV status was considered a mitigating factor in cases where courts recognised that a custodial sentence could have a detrimental impact on the health of the accused, as well as noting safety concerns for the accused if their HIV status were to be disclosed within a prison or custodial setting.

Migration law was another area where a significant number of HIV-related cases were identified. The results of this review indicate that, in migration law, there is a clear relationship between HIV status and the determination of the question before a decision-maker or judge. The recent rise in the number of migration-related matters involving PLHIV reflects changes to migration law and the operation of the health requirement over the past decade,<sup>8</sup> as we discuss further below. In these cases, HIV status and its implications for PLHIV may either support protection claims or operate as a barrier to migration to Australia due to the health requirement imposed by the Australian government.

Most judgments or decisions identified by this mapping review were those where a PLHIV was a party to the proceedings (e.g. an applicant or a defendant). However, a number of cases involved people who were not known to be HIV

positive at the time of proceedings, but where HIV was evoked in proceedings on the basis of 'construal' of a person's potential HIV-positive status, or on the basis of particular actions that presented a 'risk' of transmission should they be HIV positive. This included a family law matter where a child's father sought an injunction preventing the child's mother from breastfeeding.<sup>9</sup> In awarding the injunction, the court gave weight to evidence that she had recently received a tattoo and had a history of illicit drug consumption. In a similar case, a woman had been dismissed from work after disclosing that her partner, who was living with HIV, had recently died.<sup>10</sup> At the time of these proceedings neither of the women concerned were HIV positive.

Several priority populations were identified as engaging in HIV-related legal disputes. 'People living with HIV' was the most frequently identified priority population, followed by 'people in custodial settings' and 'culturally and linguistically diverse (CALD) people from high HIV prevalence countries, people who travel to these countries, and their partners.'

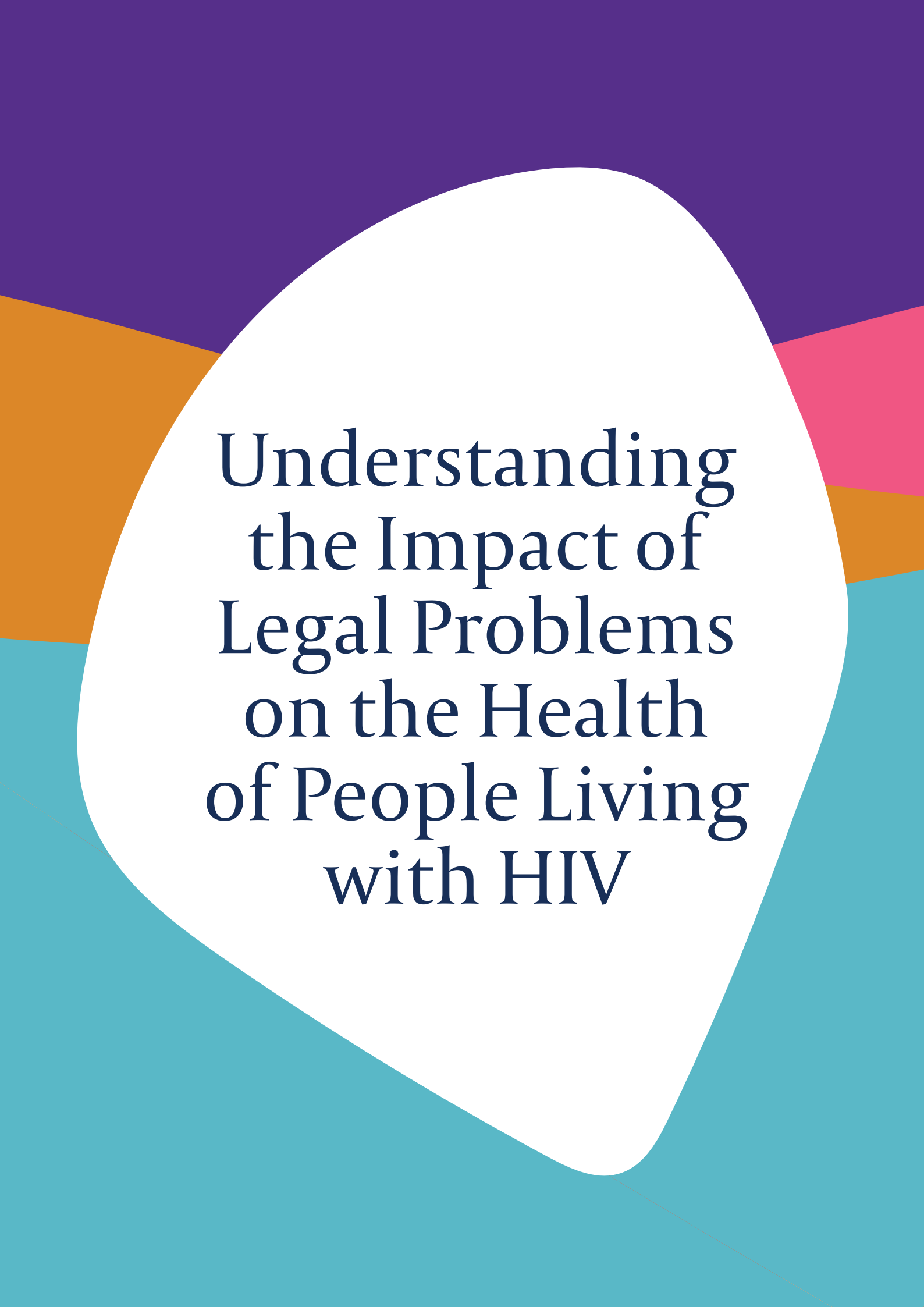
The leading legal factors in judgments and decisions included in this review were 'entry, stay and residence', followed by 'access to a forum, fair trial, and enforcement of remedies', and 'people under state custody.'

In the next section, 'Understanding HIV-Related Legal Disputes and Legal Issues of Concern', we offer a more detailed perspective of what is meant by an 'enabling legal environment', and briefly describe some approaches to assessing that environment. This includes distinguishing between 'top down' and 'bottom up' approaches to legal research. This provides further introduction to the key contexts and approaches that inform the work and findings of this review.

<sup>8</sup> Carter et al (n 1).

<sup>9</sup> *Jackson & Macek* [2015] FCCA 1656.

<sup>10</sup> *Ryan v Dennis and Dennis Deals Pty Ltd* [1998] HREOCA 36.



Understanding  
the Impact of  
Legal Problems  
on the Health  
of People Living  
with HIV

## The Enabling Legal Environment

Law affects individual and public health. Governments use legislation, formal regulations, policy and other legal tools to influence and change the flow of events around individual and public health. So too do non-government actors use private legal ordering in ways that influence individual and public health. Taken together, this public and private legal ordering creates a 'legal environment' around HIV that affects individual and public health. For this legal environment to be 'enabling', it should bring about greater quality of life for PLHIV by facilitating their access to justice.

The Global Commission on HIV and the Law was an independent expert body that assessed the impact of law, regulation, legal policies and other legal practices on PLHIV and responses to HIV. It was convened by the United Nations Development Program on behalf of UNAIDS and first reported in 2012, followed by a supplemental report in 2018.<sup>11</sup> The Commission concluded that establishing and maintaining an enabling legal environment is essential for both improving the lives of PLHIV and reducing the likelihood of new HIV infections. It highlighted evidence that 'nations have squandered the potential of the legal system' and that, '[w]orse, punitive laws, discriminatory and brutal policing and denial of access to justice for people with and at risk of acquiring HIV are fuelling the epidemic.'<sup>12</sup>

In addition to the work of the Global Commission, UNAIDS has identified seven key features of an effective HIV response, all of which point to the necessity for an enabling legal environment. These seven features are: (1) reducing stigma and discrimination; (2) increasing access to HIV-related legal services;

(3) monitoring and reforming laws, policies, and regulations; (4) enhancing legal literacy; (5) sensitising lawmakers and law enforcement agents; (6) training healthcare providers on human rights and medical ethics related to HIV; and (7) reducing discrimination against women in the context of HIV. These confirm the centrality of law and justice for effective HIV responses.

That central influence of the legal environment has long been recognised in Australian responses to HIV. The aim of establishing an enabling legal environment is, therefore, considered 'an essential foundation for success' in public health policy and practice, and has been embedded in each of the national strategies on HIV since the first in 1989. Alongside these national strategies, legal and health service provision and research have been committed to creating and sustaining an enabling legal environment in aid of better outcomes for public health and for PLHIV. The Health+Law partnership understands an enabling legal environment in Australia as one that:

- Emphasises a rational, humane, non-coercive and responsive approach to BBVs;
- Reflects current evidence-based knowledge and practices in the health sector;
- Is informed by and responds to the specific needs of communities affected by BBVs;
- Evolves in response to emerging issues and supports ongoing positive change; and
- Enables legal and health professionals to actively intervene in and remedy practices that generate stigma, discrimination and other forms of harm.<sup>13</sup>

<sup>11</sup> 'Global Commission Report' (n 2); 'Global Commission Report Supplement' (n 2).

<sup>12</sup> 'Global Commission Report' (n 2) 7.

<sup>13</sup> Adapted from 'Final Report of the Legal Working Party' (n 3).

## Assessing the Legal Environment

Despite the importance of an enabling legal environment having long been recognised by public health agencies, systems and researchers in Australia, it has rarely been the subject of methodical assessment. The last time a national review of the legal environment around HIV was undertaken in Australia was in 1992, resulting in the Final Report of the Legal Working Party of the Intergovernmental Committee on AIDS.<sup>14</sup> The Report presented a comprehensive review of the state of the law in Australia, focusing on key areas of law that operated as a barrier to an effective HIV response at the time. This work was based on a set of discussion papers and on consultation with state and territory law bodies. It spoke to issues arising in public health law, civil liability for HIV transmission, anti-discrimination, homosexuality and the law, the legal status of sex work, employment law, injecting drug use, therapeutic goods regulation, and media law.

This review of the legal environment was conducted by an expert working party including representatives of Departments of Health and Attorneys-General of the Australian jurisdictions, as well as lawyers and legal researchers, human rights agencies, PLHIV and members of the HIV and community sectors. Their final report concluded that there were 'widespread legal, ethical, social and political ramifications of the HIV epidemic' that make it necessary to think about law and HIV well beyond laws that relate to the virus and to HIV infection itself. The report asserted that the role of law was also to complement and support education and other health measures. The report set out principles that should guide the process of law reform over the coming years, including that:

- Law reform takes a rational, humane and responsive approach to the problems of the epidemic;
- Laws specially created to deal with HIV/AIDS alone require particular justification; and
- Reform measures should be as uniform as possible across different jurisdictions. This

is because the epidemic does not recognise political or geographic boundaries, and to ensure that consistent recognition is given to the rights of all Australians.<sup>15</sup>

Since that time, there have been continuing efforts to reform law and to enhance the legal environment.

Significant legal, biomedical, technological, political and social changes have occurred since 1992 and it is now time for a comprehensive new assessment of Australia's legal environment, to better understand how legal, regulatory and access-to-justice issues affect PLHIV today. This legal mapping review is a first step towards assessing the current state of the legal environment surrounding HIV in Australia. It presents a comprehensive survey of HIV-related primary legal materials since 1989, with a discussion focused on preliminary implications for the legal environment surrounding HIV in the 'U=U' era.

2018 marked the beginning of the 'U=U' paradigm in HIV public health. 'U=U' means that PLHIV who maintain an undetectable viral load through treatment with antiretrovirals (ARVs) cannot transmit HIV to others. Since the science of U=U was established, U=U has underpinned medical and public health efforts to end HIV globally, including recommendations that all people who acquire HIV be treated with ARVs. Case law and tribunal decisions that occurred prior to the U=U period remain relevant to this more recent era in HIV public health because of legacy effects of the law. The law and legal practices move at their own pace, not always immediately reflecting developments in biomedicine, society and public health.

Assessing the legal environment means reviewing 'HIV, health and any other related laws, regulations, policies and practices'<sup>16</sup> that have an impact on responses to HIV. This reviewing process must go beyond just those laws that are obviously about HIV – and beyond

<sup>14</sup> Ibid; see also 'Status Report' (n 6).

<sup>15</sup> 'Final Report of the Legal Working Party' (n 3); see also 'Status Report' (n 6).

<sup>16</sup> United Nations Development Programme, *Legal Environment Assessment for HIV: An Operational Guide to Conducting National Legal, Regulatory and Policy Assessments for HIV*, United Nations, January 2014) 14.

health law because, as the UNDP (2014) explain, 'HIV is not just a health or medical issue, but also a phenomenon that requires inquiry into structural factors of inequality, power, and personal and social dynamics.'<sup>17</sup>

A key preliminary step in the process of assessing the legal environment around HIV is to establish answers to the following questions:<sup>18</sup>

1. What are the major HIV, health, and other relevant legal issues of concern?
2. Which laws, regulations and policies regulate HIV or key populations identified in Australia's national HIV response?
3. How do these laws, regulations and policies address HIV, legal and human rights issues as priority concerns?

By understanding the nature and role that HIV played in legal matters that have made it to a court or tribunal and have resulted in a reported judgment or decision, or media reporting of the dispute, this legal mapping review is a first step towards assessing the state of the legal environment in Australia.

## A Ground-Up Perspective on the Law and Legal Research

Assessments of the legal environment around HIV use a mix of perspectives, sources of evidence and engagement with different stakeholders. The selection of and balance between these elements can generate a review that is predominantly 'top down' or 'ground up' in its perspective on what HIV-related health and legal issues are of concern.

A 'top-down' approach understands the law and its effects on PLHIV by prioritising the perspectives of the state, service organisations, legal and healthcare practitioners, experts and researchers. A 'ground up' approach understands the same material from the perspectives of those most affected by law and the legal system – that is, people living with and/or affected by HIV.

While both approaches are required, the advantages of emphasising the ground-up perspective are multiple. If executed rigorously, this approach elicits from those most directly affected a more accurate picture of law and its impacts around HIV. A ground-up approach supports greater and more meaningful participation of PLHIV in research about issues that affect them, while recognising that the expertise that comes with a lived experience of the law means we can often better perceive the reality of law's operation and effects, including injustice.

Not only can the identification of legal issues of concern be undertaken either through a top-down or ground-up approach, so too can the analysis of those issues. This is referred to as the difference between 'de facto' or 'de jure' legal analysis. De facto analysis looks at the law 'in reality' and as it is applied in the real world. De facto analysis is interested in how law actually works in practice, and what people affected by particular laws actually experience. A de jure analysis looks at the law 'on the books'; it is more interested in the law as it is written, what possibilities it creates or forecloses, and how it is intended to work in theory. Both approaches are important and are required to understand the law and its impacts. However, like with a top-down or ground-up approach to identifying laws of concern, ensuring an emphasis on a de facto analytical approach brings with it the advantage of centralising lived experience, as well as ensuring the meaningful engagement of PLHIV and others affected by the virus.

This systematic review of primary legal sources is a first step towards assessing the state of the legal environment around HIV in Australia and comparable jurisdictions. It emphasises a ground-up approach. It does so by undertaking a review of the laws, regulations, policies and legal practices that impact PLHIV from their perspective, and from the perspective of law as it operates in practice.

<sup>17</sup> Ibid.

<sup>18</sup> Adapted from *ibid* 47; see also American Bar Association, 'HIV/AIDS Legal Assessment Tool - Assessment Methodology Manual' - (HIV/AIDS Legal Assessment Tool).

## Justiciable Issues and Legal Needs

To achieve this, the review focuses on the concepts of ‘justiciable issues’ and ‘legal needs’ as its core objects of interest. A justiciable issue is defined here using the work of Genn as a

matter experienced by a [person] which raised legal issues, whether or not it was recognised by the [person] as being ‘legal’ and whether or not any action taken [...] to deal with the event involved the use of any part of the [...legal] system.<sup>19</sup>

This concept of a justiciable issue identifies circumstances in a person’s life where there is the potential for legal resolution – regardless of whether this occurs through formal processes involving the legal or judicial system. In other words, a justiciable issue is an ‘everyday life problem with a legal dimension’.<sup>20</sup>

‘Legal need’ is related to justiciable issues. The OECD, in its guidance on access to justice and legal needs research, explains that a legal need:

arises whenever a deficit of legal capacity necessitates legal support to enable a justiciable issue to be appropriately dealt with. Because of this, we can think of a legal need being either ‘met’ or ‘unmet’. An unmet legal need is one where a justiciable issue is not dealt with appropriately, due to effective legal and justice support not being available when necessary to make good a deficit of legal capability: if a legal need is unmet, there is no access to justice.<sup>21</sup>

---

<sup>19</sup> Hazel Genn, *Paths to Justice: What People Do and Think About Going to Law*. Hart Publishing, 1999, 12.

<sup>20</sup> *Ibid.*

<sup>21</sup> OECD and Open Society Foundations, *Legal Needs Surveys and Access to Justice* (31 May 2019) 23.







# HIV-Related Legal Disputes and Issues of Concern in Australia

**Legal mapping studies analyse the state of the law concerning a particular legal topic. They are an important method used in a variety of socio-legal research approaches, including sub-disciplines such as legal epidemiology.<sup>22</sup> There are different styles of legal mapping. In this review, we aim to identify and describe legal issues and areas of legal concern relevant to HIV in Australia by identifying legal disputes that have arisen in that area.**

Our aim is not to identify every single instance of a relevant legal dispute. Instead, it is to create a broad 'map' of the areas of law that give rise to legal disputes and to identify key areas of legal concern. This aim is influenced in part by the paucity of literature or analysis of HIV-related legal disputes or areas of concern in this jurisdiction. From a legal research or advocacy perspective there is little benefit to be gleaned from identifying and synthesising every single HIV-related dispute in a jurisdiction. That is, moreover, likely to be an impossible task given the challenges of access and coverage of disputes in specialist legal databases, as we discuss further below. This difference in both aim and method is an important difference between our approach here and the approach of some other forms of review or evidence synthesis, such as systematic reviews, which are commonly practiced in health and medical disciplines.

## Prior Research and Knowledge

While there has been little comprehensive or systematic mapping of HIV-related case law in Australia, there are sources that present useful overviews of HIV-related case law. Here is a brief summary of these sources, noting where they have been drawn on in this review.

### The Global HIV Justice Network

The HIV Justice Network (HJN) is a long-standing, community-based, international organisation building a response to the criminalisation of HIV.<sup>23</sup> In its ongoing effort to catalogue HIV-related legal matters from around the globe, it has amassed a significant archive of media and other reporting on HIV-related case law, including from Australia. The archive has a particular focus on criminal proceedings. We included this database as a source, and hope that our results here will add to global evidence on the practice not only of the criminal law in relation to HIV but also other legal engagements with HIV.

### HIV-Related Legal Information Sources in Australia

There are several Australian sources that present information on HIV-related case law that have been relevant to this legal mapping study. These include some scholarly and peer-reviewed publications documenting cases and relevant case law, including work published by NAPWHA and edited by Sally Cameron and John Rule in 2009,<sup>24</sup> on HIV-related criminal prosecutions. Cameron and Rule offer a review of criminal cases known to have been prosecuted since the first charge that proceeded to hearing in 1992.<sup>25</sup> More recently, Carter (2021) provides a register of known HIV-related criminal prosecutions in Australia from his research into the impacts of pre-exposure prophylaxis (PrEP) and U=U on the criminal prosecution of HIV transmission-related offences.<sup>26</sup>

<sup>22</sup> Scott Burris, 'How to Write a Legal Mapping Paper' (5 November 2020), Temple University Legal Studies Research Paper No. 2018-20.

<sup>23</sup> The HIV Justice Network (HJN), 'HIV Justice Network'.

<sup>24</sup> Cameron and Rule (n 7).

<sup>25</sup> *Queen v PD* (Prosecution Case File Y833; Committal Proceedings, Melbourne Magistrates Court, Barrow M).

<sup>26</sup> Carter (n 7).

## Methods

The aim of this legal mapping review was to search, screen and synthesise HIV-related judgments and tribunal decisions from all Australian jurisdictions, since 2018.

As we noted above, a challenge for legal research of this type is coverage. While courts and tribunals provide reasons for their decisions, written judgments and decisions are not always produced, published or made available to the public through legal databases. Historically, judgments or decisions with greater legal significance or public interest were more likely to be published; more recently, the digitisation of court and tribunal processes has led to an increasing number of judgments and tribunal decisions being produced and made available through specialised legal databases, meaning that coverage has increased over time. Despite these increases, legal matters heard in lower courts and tribunals remain an area with far less coverage in publicly accessible legal databases. This issue of coverage and access to records is well known in legal research and practice.

Additionally, when it comes to HIV-related legal matters, the production and availability of records is also influenced by rulings to prohibit the publication of judgments or decisions or restrict media access or reporting. Judges may restrict who may be present when the matter is heard and make orders prohibiting the publication or, more broadly, the disclosure of information<sup>27</sup> revealed in court proceedings where they deem it 'necessary' so as 'to prevent prejudice to the proper administration of justice'.<sup>28</sup> Judges or decision-makers may deem such orders necessary where, for example, the publication of information would jeopardise the fairness of the trial or safety of any person. In practice, the prohibition or limitation of publication or disclosure of information can include judges restricting members of the media from courtrooms during hearings, restricting the publication of a judgment, and/or ordering the use of pseudonyms and the removal of identifying information from any publication.

The overall effect of these coverage-related limitations is an archival bias towards decisions handed down more recently, decisions made by higher courts, appellate decisions (decisions made in higher court when a party who believes that a decision of a lower court was incorrect has been allowed to make an appeal), or decisions with significant public or media interest. Given these limitations to coverage, we have also drawn on alternative sources of information on HIV-related court and tribunal activity provided by media reporting and specialist HIV-related legal information sources.

## Search Strategy

### Specialist Legal Databases

Specialist legal databases Jade BarNet, AustLII and Westlaw AU were searched using the terms 'HIV', 'AIDS' and 'Human Immunodeficiency Virus'. Jade BarNet's Advanced Search function refined results to 'Judgments'. These were sorted by 'Best Match' algorithm. As the aim of this research was not to systematically review all results returned, but instead to develop a map of legal issues of concern, researchers reviewed the returned results in descending order, surveying the full text of results until results were consistently and repeatedly excluded. Results were excluded where, for example, a search term (e.g. 'HIV') was mentioned in passing but did not indicate that the judgment was HIV-related. So too were results excluded once an area of law and type of legal fact or dispute was well represented in results. The same approach was taken with both AustLII and Westlaw AU. AustLII's 'All Case Law Databases' was searched, while Westlaw's results were confined to 'Cases'.

This 'purposive sampling' method differs from the style of systematic review and synthesis used in many health, medical and other research contexts – primarily because the quantifying of cases adds little to a review aiming to map key matters of concern or to better understanding what the law is in a particular area. As we explain further in the notes about 'Inclusion Criteria' below, this review does not include every single

<sup>27</sup> *Court Suppression and Non-Publication Orders Act 2010 No 106 (NSW) s 3.*

<sup>28</sup> *Ibid s 8(1).*

eligible case available in the data sources because such a census of cases does not necessarily shed better light on the experience of law in practice.

Search results indicated frequent references to HIV in matters related to migration (refugee and health waiver), discrimination (employment and service provisions), criminal transmission of HIV, and sentencing considerations.

### Media and HIV-Specific Legal Information Sources

HIV-related court and tribunal matters are often reported by the print and online media. Factiva, a media database with strong coverage of Australian newspaper sources, was searched for HIV-related court and tribunal proceedings. Search terms 'HIV', 'court', 'tribunal' and 'judge' were used, with results confined to those published in Australia since 2018.

In addition to scholarly publications, practitioner resources have been an important source of information for this mapping study. Two specialist HIV-specific legal information sources were searched, and the results were screened and then integrated into this legal mapping review. These specialist sources were the HIV Justice Network, which maintains a global database of HIV-related legal proceedings, as described above; and the archive of the HIV/AIDS Legal Link newsletters.<sup>29</sup> Legal Link newsletters were published by the Australian Federation of AIDS Organisations (AFAO, now named 'Health Equity Matters') as part of its 'Legal Project', which quickly transformed into the HIV/AIDS Legal Centre (HALC). Legal Link was an Australian HIV legal information source that published 40 editions between 1993 and 2001. These newsletters were designed as a practitioner resource to support legal services and law reform efforts across the nation. They document

law reform and policy activity during the period, as well as reporting on cases that had come before courts or tribunals.

## Inclusion Criteria

The aim of the inclusion and exclusion criteria was to identify case law related to PLHIV or HIV-related legal issues from any jurisdiction.

Specialist legal databases lack the functionality of exporting results in a systematic manner, as is the case with health and biomedical databases of peer-reviewed literature. This method of exporting all results from a database, pooling these results with results from other databases into a single master list of results is commonly used to collect all potential records ready for screening in systematic reviews. As this was not possible with legal databases, results searches were manually searched and only relevant results were included. This process led to the inclusion of the 281 items, which were listed in a table using Excel.

As described above, the challenge of coverage of legal cases limits the usefulness of applying the sorts of systematic review screening approaches often used in other disciplines. Although one could screen every record in a database, this will only present information about *what is available in that database* rather than an accurate picture of legal engagements with HIV, because of the significant limits to coverage of legal information sources. As our aim was to generate a useful overview of available records by producing a 'framework' or 'map' that identifies key, impactful areas of law and major types of legal engagement with HIV, we focused on the most relevant results returned by searches. Once new areas of law or HIV-related legal domains ceased to be identified in our results, we reviewed only for 'outlier' results that would add to the 'map' of HIV-related case law.

<sup>29</sup> Australian Federation of AIDS Organisations, 'HIV/AIDS legal link: A quarterly newsletter on HIV/AIDS law and policy', 1993-2001.

## Extraction and Charting

Extracting information from primary legal sources involves reviewing full-text records and engaging in some legal classification. We extracted key pieces of information from the included records and applied a classification system to chart the results of this review. Table 1 below shows the information that was extracted.

**Table 1: Extraction Form**

Extraction Field	EXTRACTION FIELD DEFINITION
Case Citation	An official or medium neutral citation (where available). For cases reported only through media or other sources, we devised a form of medium neutral citation.
URL	A URL where the case had a permanent link to its source.
Area of Law	A description of the primary area of law, using the Priestley 11 categories of law.
Headnote/Facts	A copy of the headnote or other summary as generated by legal editors or the court/tribunal.
Comments	Quotation, comment or other material used to contextualise the judgment or decision to highlight the specific treatment or impact of HIV on the legal reasoning, findings or judgment/decision.
Priority Populations	<i>The Eighth National HIV Strategy</i> identifies a set of priority populations, including emerging populations at elevated risk and vulnerability as well as those that are impacted historically and remain at continued risk. Judgments/Cases were classified according to this Australian priority populations framework.
Primary Legal Factor	This classification identifies the primary legal factor that the decision or judgment is concerned with as its phenomenon of interest or analysis. These factors are taken from the ABA's HIV/AIDS Legal Assessment Tool, which is designed to assess a jurisdiction's compliance with international legal standards across its law, regulations, policies and legal practices that affect PLHIV.
Secondary Legal Factor(s)	Further applicable classifications from the ABA's Legal Assessment Tool.

Included in these classifications was a designation of 'legal factors' that we adopted from the American Bar Association (ABA)'s HIV/AIDS Legal Assessment Tool.<sup>30</sup> ABA's framework provides several HIV-related legal groupings and factors that are used to describe and classify HIV-related legal factors. The framework is shown in Table 2 below.

<sup>30</sup> American Bar Association, HIV/AIDS Legal Assessment Tool (n 18).

**Table 2: Legal Factors Framework from the ABA's HIV/AIDS Legal Assessment Tool**

NO.	FACTOR GROUP	FACTOR TITLE	FACTOR DESCRIPTION
1	Access to essential services	Public education, research and information exchange	Every person enjoys an equal right to seek, receive and impart reliable and accurate information about biomedical and socio-economic aspects of HIV. The state implements and supports raising HIV-related awareness, stigma reduction, training and information exchange programmes, and ensures that HIV research adheres to the highest ethical standards.
2	Access to essential services	HIV prevention	Every person has equitable and sustainable access to a wide range of effective, human-rights-based and evidence-informed measures aimed at preventing HIV transmission.
3	Access to essential services	Testing, counselling and referral	Every person has unrestricted access to voluntary, confidential or anonymous HIV testing accompanied by quality counselling and referral to essential services. Arbitrary, mandatory or compulsory HIV testing is prohibited.
4	Access to essential services	Treatment, care and other health services	PLHIV enjoy the right to the highest attainable standard of physical and mental health, including equitable and sustainable access to comprehensive health care. The state takes concrete steps to progressively realise universal access to HIV-related treatment and care.
5	Access to essential services	Social protection and material assistance	PLHIV enjoy the right to an adequate standard of living, including equitable access to social protection and other forms of material assistance, particularly in the event of unemployment, sickness or disability.
6	Access to essential services	Protection of privacy and confidentiality	PLHIV enjoy effective protection from arbitrary or unlawful interference with their privacy. Their medical and personal information is subject to strict rules of data protection and confidentiality.
7	Access to essential services	Political, social and cultural life	PLHIV enjoy full equality and inclusion in political, social and cultural life. The state ensures the right of PLHIV, HIV advocates and service workers to peaceful assembly and association.
8	Equality of PLHIV in public and private life	Family, sexual and reproductive life	PLHIV enjoy full equality in family life and the right to the highest attainable standard of sexual and reproductive health. The state facilitates the prevention of vertical transmission.
9	Equality of PLHIV in public and private life	Education and training	PLHIV enjoy the right to equal educational opportunity. Where appropriate, special measures are employed to provide reasonable accommodations for PLHIV and increase their representation in educational institutions.

NO.	FACTOR GROUP	FACTOR TITLE	FACTOR DESCRIPTION
10	Equality of PLHIV in public and private life	Employment, work and economic life	PLHIV enjoy equal rights to: work in the public and private sectors, including just, favourable, safe and healthy conditions of work; property and inheritance; and credit. Where appropriate, special measures are employed to provide PLHIV with income-generating opportunities and reasonable accommodations in the workplace.
11	Equality of PLHIV in public and private life	Private and public housing	PPLHIV enjoy equal access to adequate private and public housing, including residential facilities. Where appropriate, special measures are employed to provide reasonable accommodations for PLHIV and protect their rights in their place of residence. Segregation, exclusion and coercive or punitive measures based on HIV status are prohibited.
12	Equality of PLHIV in public and private life	Entry, stay and residence	The state does not impose restrictions on the entry, stay and residence of PLHIV based on their HIV status. PLHIV are not returned to countries where they face persecution, torture or other forms of cruel, inhuman or degrading treatment. Migrants and mobile populations have equitable and sustainable access to comprehensive HIV-related services.
13	Equality of PLHIV in public and private life	Non-criminalisation of HIV exposure and transmission	HIV exposure and non-intentional transmission are not criminalised. Deliberate and intentional transmission of HIV is prosecuted under general rather than HIV-specific criminal law.
14	Key populations	Women	The state takes all appropriate measures to reduce specific HIV vulnerabilities of women, eliminate HIV-related discrimination against them and provide them with equitable and sustainable access to comprehensive HIV-related services.
15	Key populations	Children and youth	The state takes all appropriate measures to reduce specific HIV vulnerabilities of children and youth, eliminate HIV-related discrimination against them and provide them with equitable and sustainable access to comprehensive HIV-related services.
16	Key populations	People who use drugs	The state takes all appropriate measures to reduce specific HIV vulnerabilities of people who use drugs, eliminate HIV-related discrimination against them and provide them with equitable and sustainable access to comprehensive HIV-related services.
17	Key populations	Adults engaged in commercial sex	The state takes all appropriate measures to reduce specific HIV vulnerabilities of adults engaged in commercial sex, eliminate HIV-related discrimination against them and provide them with equitable and sustainable access to comprehensive HIV-related services.



NO.	FACTOR GROUP	FACTOR TITLE	FACTOR DESCRIPTION
18	Key populations	MSM, and transgender people	The state takes all appropriate measures to reduce specific HIV vulnerabilities of men who have sex with men (MSM), and transgender people, eliminate HIV-related discrimination against them and provide them with equitable and sustainable access to comprehensive HIV-related services.
19	Key populations	People under state custody	The state takes all appropriate measures to reduce specific HIV vulnerabilities of people under state custody, eliminate HIV-related discrimination against them and provide them with equitable and sustainable access to comprehensive HIV-related services. Terminally ill PLHIV are considered for early release and given proper treatment outside prisons.
20	Access to justice	Legal protection	Every person enjoys the right to an adequate and effective protection against violations of human rights based on HIV status, vulnerability, advocacy or service work.
21	Access to justice	Legal awareness, assistance and representation	The state implements and supports educational programmes aimed at raising legal literacy among PLHIV. PLHIV have equal access to adequate and affordable legal assistance and representation.
22	Access to justice	Access to a forum, fair trial, and enforcement of remedies	PLHIV, HIV advocates and service workers are guaranteed equal access to a forum administering justice, the right to a fair trial, and effective enforcement of remedies.

## Results

The search and screening strategy resulted in the inclusion of 281 judgments or decisions, accessed either directly via legal databases or through media or other records.

### Jurisdiction

Case law was included in this review from all Australian jurisdictions – Commonwealth, state and territory. Each jurisdiction is listed below in descending order of the number of relevant records, along with reference to the earliest and most recent case in each jurisdiction included in this mapping review (Table 3). It is important to note that although state and territory matters will generally be handled under the law of that

jurisdiction, matters heard by federal courts or tribunals may consider the law of a state or territory due to operation of Australia's hierarchy of courts. This is common where cases or related proceedings move through appeal processes that may include the High Court of Australia.

**Table 3: Extraction Form Fields**

JURISDICTION	NUMBER OF CASES	EARLIEST CASE	MOST RECENT CASE
<b>Commonwealth</b>	141	<i>B and C</i> [1989] FamCA 98	<i>XY (litigation guardian) v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</i> [2022] FedCFamC2G 1076
<b>New South Wales</b>	58	' <i>H v Royal Alexandra Hospital for Children Case</i> ' (1990) New South Wales Court Unknown Media Reporting	<i>FBY v Secretary, NSW Ministry of Health</i> [2023] NSWCATAD 83
<b>Victoria</b>	32	' <i>Police Fear Case</i> ' (1991) Victorian Court Unknown Media Reporting	<i>Orr v Burkhan Pty Ltd</i> [2022] VMC 5
<b>Queensland</b>	19	<i>NC and others v Queensland Corrective Services Commission</i> [1997] QADT 22	<i>R v Cooney</i> [2019] QCA 166
<b>South Australia</b>	13	<i>The Queen v Thomas Charles Donald</i> [1989] SASC 1619	' <i>14-Year-Old Son Case</i> ' (2022) South Australian Court Unknown Media Reporting
<b>Western Australia</b>	7	' <i>Hoddy v Department of Correctional Services</i> ' (1992) WAEOT Media Reporting	' <i>Tracker Case</i> ' (2022) West Australian Court Unknown Media Reporting
<b>Tasmania</b>	2	' <i>R v Wright</i> ' (1991) Tasmanian Court Unknown Media Reporting	<i>Cain v The Australian Red Cross Society</i> [2009] TASADT 3
<b>The Australian Capital Territory</b>	2	<i>David Keith Phillips v Anne Elizabeth Paliaga No. SC1135 of 1988</i> [1993] ACTSC 163	' <i>Canberra Case</i> ' (2008) Australian Capital Territory Court Unknown Media Reporting
<b>The Northern Territory</b>	1	<i>Young v Northern Territory</i> [1992] NTSC 27	<i>Young v Northern Territory</i> [1992] NTSC 27
<b>Jurisdiction Unknown</b>	6	' <i>PD v Australian Red Cross Society</i> ' (1993) Court Unknown Media Reporting	' <i>Puppy Scam Case</i> ' (2022) Court Unknown Media Reporting

## Areas of Law

There are multiple ways to classify case law. The judgments and decisions included in this review have been classified according to two primary frameworks. The first of these classifies records according to their primary 'area of law'. A summary of this classification is provided in Table 4 below. As the table shows, Australian HIV-related case law involves a wide range of primary areas of law, including migration and

refugee law, wills and estates, criminal law, anti-discrimination law, and tort law. In this mapping study, criminal law generated the most frequently included judgments or decisions, closely followed by migration and refugee law. Later in this report we provide a narrative synthesis of these judgments and decisions, grouped by primary area of law.

**Table 4: Areas of Law Represented in the Corpus**

PRIMARY AREA OF LAW	NUMBER OF CASES	EXAMPLE CASES
Criminal	76	<i>Aubrey v The Queen</i> [2017] HCA 18; <i>Zaburoni v The Queen</i> (2016) 256 CLR 482
Migration	53	<i>Palmer and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration)</i> [2020] AATA 88
Refugee	44	0903707 [2009] RRTA 758; 1710853 (Refugee) [2021] AATA 3076
Discrimination	42	<i>X v Commonwealth</i> [1999] HCA 63; <i>Norman v Australian Red Cross Society</i> [1998] VCAT 10
Negligence	10	<i>E v Australian Red Cross Society</i> [1991] FCA 781
Insurance	9	D19-20\003 [2019] SCTA 128
Family	8	<i>Wendall &amp; James</i> [2000] FamCA 963
Compensation (including workers' compensation)	7	<i>Orr v Burkham Pty Ltd</i> [2022] VMC 5
Administrative	4	<i>B v Director of Public Prosecution</i> [2014] NSWCA 232
Social security	4	<i>Battiscombe and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs</i> [2011] AATA 458
Industrial	3	<i>C v Commonwealth</i> [2015] FCAFC 113
Mental Health	3	08-106 [2008] VMHRB 2
Privacy	3	'PD v Australian Red Cross Society Case' (1993) Court Unknown Media Reporting
Wills and estates	3	<i>Gebalski v Paraskevopoulos</i> [2001] NSWSC 1012
Deportation	2	'QLD Zimbabwean Man Case' (2016) Queensland Court Unknown Media Reporting

PRIMARY AREA OF LAW	NUMBER OF CASES	EXAMPLE CASES
Extradition	2	<i>De Bruyn v Minister for Justice &amp; Customs</i> [2004] FCAFC 334
Guardianship	2	<i>MKT</i> [2016] NSWCAT GD 37
Public health	2	<i>Chief Health Officer, NSW Health v FRC</i> [2023] NSWCATAD 75
Child and family health	1	<i>Re Baby A</i> [1999] NSWSC 787
Personal injury	1	<i>David Keith Phillips v Anne Elizabeth Paliaga No. SC1135 of 1988</i> [1993] ACTSC
Professional misconduct	1	<i>Health Care Complaints Commission v Cox</i> [2019] NSWCATOD
Veterans' affairs	1	<i>Petersen and Military Rehabilitation and Compensation Commission</i> [2008] AATA 1145

## Priority Populations

Judgments and decisions included in this review related to members of several of the priority populations identified in Australia's *Eighth National HIV Strategy*. Where possible, each record was classified as relating to a particular priority population. Where cases did not clearly involve a more specific priority population than

'People living with HIV', they were included in this broader category. 'People in custodial settings' was interpreted broadly to include cases that concerned or raised any justiciable issue relating to incarceration in the criminal justice system, as well as cases where a person was in custody and appealing a sentence or other matter.

**Table 5: Priority Populations and Number of Cases Associated with Each**

PRIORITY POPULATION	NUMBER OF CASES
People living with HIV	167
People in custodial Settings	46
CALD people from high HIV-prevalence countries and their partners	44
People who travel to high HIV-prevalence countries, and their partners	35
Gay men and other men who have sex with men	15
Nil	14
Sex Workers	4

We recognise that this approach to classification reduces the complexity of the legal disputes themselves and may not reflect the multiple and intersectional identities of the people involved in each case. Where possible, we

illuminate these aspects further in the narrative synthesis of cases below and the cases listed in the appendix. However, it is the nature of judgments, decisions and the underlying legal processes that generate them to provide a

focused and often limited account of parties' identities and other aspects of a dispute, often rendering a holistic and accurate description of people and their circumstances difficult, if not impossible.<sup>31</sup>

## Legal Factors

The ABA's HIV/AIDS Legal Assessment Tool<sup>32</sup> (see Table 2 above) was also used to classify the records included in this review according to an HIV-specific classification framework. Table 6, below, presents a descriptive summary of

the number of records included in this legal mapping review according to these primary legal factors. 'Entry, stay and residence' was the leading legal factor, closely followed by 'Access to a forum, fair trial, and enforcement of remedies' and 'People under state custody'. Table 7 displays these results grouped by Australian jurisdiction. These results must be read in light of the discussion above about the constraints and benefits of the legal mapping method; they should not be taken to describe the dominance of one factor over another.

**Table 6: Legal Factors Framework from the ABA's HIV/AIDS Legal Assessment Tool**

FACTOR TITLE	NUMBER OF CASES	CASES OR DECISIONS
Entry, stay and residence	95	<i>1511084 (Refugee)</i> [2018] AATA 5172; <i>1006765</i> [2010] RRTA 1135
Access to a forum, fair trial, and enforcement of remedies	53	<i>R v Ford</i> [2009] QCA 132; <i>SZLMN &amp; Anor v Minister for Immigration &amp; Anor</i> [2009] FMCA 582
People under state custody	46	<i>Kanengele-Yondjo v The Queen</i> [2006] NSWCCA 354; <i>R v Parenzee</i> [2008] SASC 245
Women	31	' <i>Alyschia Dibble Case</i> ' (1996) HREOCA Media Reporting; ' <i>Valentine's Day Case</i> ' (2019) NSW Court Unknown Media Reporting
Non-criminalisation of HIV exposure and transmission	28	' <i>Western Sydney Man Case</i> ' (2008) NSW Court Unknown Media Reporting; <i>Zaburoni v The Queen</i> [2014] QCA 77
MSM; transgender people	28	<i>Norman v Australian Red Cross Society</i> [1998] VCAT 10
Social protection and material assistance	20	<i>Petersen and Military Rehabilitation and Compensation Commission</i> [2008] AATA 1145; ' <i>Insurance Refused Case</i> ' (1996) HREOCA Media Reporting
Employment, work and economic life	19	' <i>David Jobling Dismissal Case</i> ' (1992) SAEOC Media Reporting

<sup>31</sup> There is a significant body of legal scholarship that identifies and assesses these issues, e.g., Richard Delgado, 'Storytelling for Oppositionists and Others: A Plea for Narrative Legal Storytelling' (1988) 87(8) *Michigan Law Review* 2411; Darren Jackson, 'The Role of Narrative in the Judicial Process' (2023) 15(1) *Judicial Review: Selected Conference Papers: Journal of the Judicial Commission of New South Wales* 99.

<sup>32</sup> American Bar Association, HIV/AIDS Legal Assessment Tool (n 18).

FACTOR TITLE	NUMBER OF CASES	CASES OR DECISIONS
Legal protection	17	<i>Charles v State of Victoria (Corrections Victoria) (Human Rights)</i> [2015] VCAT 375; <i>Chief Health Officer, NSW Department of Health v A</i> [2001] NSWADT 69
HIV prevention	13	<i>E v Australian Red Cross Society</i> [1991] FCA 781
Family, sexual and reproductive life	9	<i>Wendall &amp; James</i> [2000] FamCA 963
Protection of privacy and confidentiality	6	<i>BT v Oei</i> (1999) NSWSC Media Reporting
Treatment, care and other health services	6	<i>Heystraten v Naidu</i> [2000] NSWADT 33
Testing, counselling and referral	4	<i>PD v Harvey</i> [2003] NSWSC 487
People who use drugs	4	<i>KJB v Director-General, Department of Justice and Attorney-General</i> [2018] QCAT 187
Political, social and cultural life	4	<i>People Living with AIDS v Perth City Council</i> (1997) HCA Media Reporting
Education and training	3	<i>S v S</i> [2000] AQDT 4
Children and youth	3	' <i>Jadd Brooker Case</i> ' (2021) SA District Court Media Reporting
Adults engaged in commercial sex	3	<i>Chief Health Officer, NSW Department of Health v A</i> [2001] NSWADT 69
Legal awareness, assistance and representation	1	<i>S M Senarath B Chanaka Senanayake and Migration Agents Registration Authority</i> [2020] AATA 116
Public education, research and information exchange	0	N/A
Private and public housing	0	N/A

As we noted earlier, the classification 'People under state custody' was interpreted widely and so represents a diverse set of matters. These include matters that relate directly to issues arising from custody itself, as well as a larger group of cases concerning appeals on conviction or sentence by people in custody.

The classification 'Access to a forum, fair trial, and enforcement of remedies' describes matters centred on an exercise of legal rights, most often

the right to appeal a decision. For example, *Zaburoni v Minister for Immigration and Border Protection* is an appeal of a migration-related matter, where the appellant (a PLHIV) had been convicted of a HIV transmission-related criminal offence and had subsequently had his visa cancelled on character grounds. On the facts of the case alone it could be included under 'Non-criminalisation of HIV exposure and transmission', 'Entry, stay and residence' and 'Access to a forum, fair trial, and enforcement



## Discussion

Each HIV-related legal matter included in this legal mapping review engages with a diverse set of issues and raises complex questions of doctrine. For this reason, we do not attempt to represent completely the individual nature and meaning of all included cases, but instead present discussion of patterns among them that can elucidate some of the experience of navigating life and the law for PLHIV.

Crucially, the occurrence and conduct of legal disputes affect people beyond those who are parties to those disputes. People with and affected by HIV who may have never sought to access justice through formal legal proceedings are also affected by the law and the conduct of legal proceedings in that these come to constitute the legal environment surrounding HIV. This is not unique to the intersection between HIV and the law. Indeed, it is central to how the legal system is designed to operate more broadly: disputes and decisions interpret legal principles and express law's normative content, influencing the conduct of people who are not parties to a case, including PLHIV and the broader community.

Read alongside our systematic review of secondary sources on HIV and the law, this review offers previously undocumented information about the terrain upon which the law and HIV have intersected in Australia. In addition, it provides useful observations regarding this collection of judgments and decisions, and what they indicate about this intersection of law and HIV. These observations point to fruitful areas for further research, particularly research that tries to understand more fully the experiences, needs and desires of PLHIV regarding law and access to justice.

### Diversity of Disputes and Areas of Law

Judgments and decisions included in this study cover areas as diverse as criminal law, wills and estates, discrimination matters, privacy,

negligence, migration and even extradition proceedings. The scope of the legal needs of PLHIV in Australia is doubtlessly broader than that represented here. However, what is clear from this review is that even the very small numbers of justiciable issues that generate formal tribunal or court processes – and the even smaller number that result in a written decision that is accessible for research – encompass disputes that go well beyond health-related matters, or where a person's HIV status is centrally relevant as a matter of law. In short, HIV continues to be of relevance to a variety of justiciable issues, legal needs, and legal proceedings. Just as the experience of those affected by HIV extends well beyond the 'medical' aspects of the virus, so too do HIV-related legal issues and disputes extend into multiple areas of law and life.

### The Relevance of HIV Status

An important aspect of the relationship between HIV and the law as seen through these judgments and decisions is the question of the relevance of HIV to disputes from a formal legal perspective. In some examples, particularly those reported by the media, HIV seems to be peripheral to the case, but has nonetheless been raised and reported on. For example, in the 'Puppy Scam Case', the accused's HIV-positive status was raised; however, according to the sources available, no matter of law relied here on the presence or absence of HIV. So too in *R v Thomas Charles Donald*<sup>33</sup> did the appellant's HIV-positive status receive mention as a background fact despite HIV status bearing no discernible relationship to the questions before the court.

Some legal disputes and areas of law demonstrate a more direct relationship with HIV. These include migration law, where an applicant's HIV status may support claims for protection or cause a failure to meet migration-related health criteria imposed by the Australian government.<sup>34</sup> HIV is also legally relevant in matters regarding criminal prosecution of HIV transmission-related offences,<sup>35</sup> discrimination on the grounds of

<sup>33</sup> *Reg v Donald - Judgment No 1619* [1989] SASC 1619.

<sup>34</sup> Alex Stratigos and David J Carter, *Positive Migration Guide: Positive Migration Guide Immigration for People Living with HIV, Their Family Members and Others* (HIV/AIDS Legal Centre, 1 March 2022).

<sup>35</sup> For an overview of the law in this area see Carter (n 7).



HIV status, or in sentencing proceedings where a person's HIV status may be regarded as a mitigating or aggravating factor.

In other areas of law, such as family law proceedings, material regarding HIV and HIV status was often considered at length by decision-makers only to be given little weight in the decision itself. For example, in *W & G (Stage 3)*,<sup>36</sup> a father's HIV positive status arose in proceedings where the mother sought to dismiss the father's application for contact orders. Similarly, in *Wendall & James*,<sup>37</sup> HIV is referenced throughout the decision regarding an alleged risk of the child contracting HIV, and the father's alleged knowing exposure of the mother to HIV transmission risk during their relationship. The judge concluded that no evidence provided to the court demonstrated either of these matters. Such repeated signalling of HIV in these judgments and decisions is notable. It raises questions about how and why parties, legal representatives and decision-makers raise and engage with arguments related to HIV, and whether its presence – particularly in written judgments or decisions – operates in ways that exacerbate the stigma associated with HIV while having little bearing on legal process or outcomes. These questions are especially pertinent when HIV status is signalled as a mere background feature, bears little legal relevance, or is given little weight in the final decision.

## Assumed HIV Status or Risk of HIV Transmission

Most judgments and decisions identified by this review involve at least one party who was living with HIV. In a handful of judgments and decisions, however, HIV is raised because the HIV status of a person was assumed, or the court or tribunal has been asked to consider whether a person's actions may have placed them 'at risk' of HIV transmission.

In *Jackson & Macek*,<sup>38</sup> for example, a child's father sought orders to enjoin the child's mother from breastfeeding their child. The mother's history of drug use and her recent tattooing were central considerations with regards to HIV, with the father claiming that these activities put the mother at risk of contracting HIV or another BBV that could be transmitted to the child through breastfeeding. In response, the mother presented evidence of a recent negative HIV test. However, the court found that she 'could not be sure she had not contracted HIV as a result of having received a tattoo',<sup>39</sup> as the procedure had occurred within the 'window period' where a test may not detect seroconversion. The order was later set aside on appeal,<sup>40</sup> where Aldridge J noted in obiter:

There is a real sense that this issue [of HIV status and transmission risk] was being driven by the trial judge. On many occasions during the hearing [the trial judge] exhorted the mother to stop breastfeeding even saying on one occasion "don't breastfeed anymore. Seriously don't. It's not in the best interests of the child" and repeatedly asked her lawyer to obtain instructions to consent to the injunction, now sought by the father.<sup>41</sup>

In the anti-discrimination case of *Schlipalius v Petch*,<sup>42</sup> Ms Schlipalius, the complainant, claimed she was discriminated against when she was dismissed because she had informed her employer that she was to undertake an HIV test. It was not in dispute that the employer had informed the complainant that 'even if the HIV test were negative, she would not have the complainant working in her restaurant.'<sup>43</sup> HIV positive status was imputed to the complainant and was found by the tribunal to have been one of the substantial reasons for the dismissal, with the complainant awarded \$5,400 in damages.

<sup>36</sup> *W & G (Stage 3)* [2005] FamCA 617.

<sup>37</sup> *Wendall & James* [2000] FamCA 963.

<sup>38</sup> *Jackson & Macek* (n 9).

<sup>39</sup> *Ibid* [40].

<sup>40</sup> *Jackson & Macek* [2015] FamCAFC 114.

<sup>41</sup> Transcript of proceedings, 3 June 2015, page 11, lines 1-2

<sup>42</sup> *Schlipalius v Petch* [1996] VADT 37.

<sup>43</sup> *Ibid* [10].

In *Ryan v Dennis and Dennis Deals Pty Ltd*, a case with similar facts to *Schlippius v Petch* regarding imputation of HIV status, the complainant was not HIV positive, but claimed that she had experienced discrimination from her employer because they believed she was.<sup>44</sup> The complainant had disclosed to her employer that her husband had died as a result of HIV, which he acquired through a blood transfusion. Following this disclosure, the complainant was dismissed from work. The tribunal found that the employer had imputed that the complainant was HIV positive, and that, on that basis, she had been treated unlawfully.

## Suppression Orders and Disclosure

Many of the judgments and decisions included in this review use the name of a PLHIV. Almost all cases reported in the media do so as well. This reticence to universally apply suppression orders is a feature of our legal system, which has a commitment to open justice and in some matters a commitment to publicly naming parties as part of the deterrent, denunciatory or retributive roles of the law. However, for someone living with HIV who is party to a legal dispute, the use of their name may represent an involuntary disclosure of their status, with significant social and material effects, regardless of the outcome of the case. These effects may be intensified when disclosures are published in an electronically accessible format, open to those well beyond the jurisdiction through both specialist legal and publicly available databases and search engines.

The HIV/AIDS Legal Centre (HALC) in New South Wales has made representations in law reform contexts supporting the wider application of suppression orders in matters where the status of a PLHIV may be disclosed. In their submission to the NSW Law Reform Commission review of Open Justice,<sup>45</sup> for example, they submitted that:

Disclosure of the HIV status of a [PLHIV] in a court setting places them at risk of violence,

stigma, discrimination and harassment. This frustrates the public interest in maintaining the peace between citizens, undermines court's authority as the sole arbiter of justice and undermines public health goals of ending the HIV epidemic.<sup>46</sup>

Given incidents of repeated disclosure of a person's HIV status in cases where such status bears little or no legal or factual import, and, given the potential implications for individuals of unwanted disclosure of their HIV-positive status, this practice of peripherally signalling a person's HIV status in published decisions or judgments should be reviewed. Where a person's HIV status is directly relevant to the matter before the court or tribunal, disclosure may be warranted; in other instances, a wider or more consistent application of pseudonymisation and identity suppression of PLHIV may be suitable.

Indeed, carefully considered non-publication and suppression orders may also be useful in supporting access to justice for PLHIV as well as the broader response to HIV. *E v Australian Red Cross Society* [1991] FCA 781 was a matter considering the liability of the Australian Red Cross Society and hospitals for the transmission of HIV through a blood transfusion. In earlier proceedings,<sup>47</sup> counsel for the plaintiff had requested an order prohibiting the publication of the name of the applicant. The order was made on the basis of 'the stigma which, in our community, still attaches to persons who are known to be HIV positive and likely prejudice and embarrassment to the applicants and their families of any publicity about the proceedings.'<sup>48</sup> Following the order to prohibit the publication of applicants' names, a further 30 applications on behalf of 30 separate clients were filed, each seeking damages from the defendant. The judge made orders in each case prohibiting publication of the name of the applicant. A further 12 applicants filed following this decision. This indicates the potential usefulness of orders prohibiting the use of parties' names in support of access to justice

<sup>44</sup> *Ryan v Dennis and Dennis Deals Pty Ltd* (n 10).

<sup>45</sup> *New South Wales Law Reform Commission, Open Justice: Court and Tribunal Information: Access, Disclosure and Publication* (Report No 149, New South Wales Law Reform Commission, May 2022).

<sup>46</sup> NAPWHA and HALC, 'Submission – NSW Justice's Review of the Operation of Suppression Orders, Non-Disclosure Orders and Access to Information in NSW Courts and Tribunals' 2.

<sup>47</sup> *E v Australian Red Cross Society* [1991] FCA 781.

<sup>48</sup> *Ibid* 3.

in appropriate cases, as it seems the judicious application of orders protecting the publication of parties' names provided efficient support for others to then access justice through these proceedings.

## The Rise of Migration-Related Matters

As we have signalled above, a key theme in the material is the rise of migration-related matters. This reflects changes in migration law, and the operation of the health requirement, which requires PLHIV who wish to migrate to Australia to pass a cost-based test relating to their likely future health and social care needs. The health requirement can result in lengthy and costly proceedings that offer a slim (but improving) chance of permanent residency for PLHIV. As outlined in recent work by Stratigos and Carter, this process is laborious and discriminatory, violating the rights of those living with HIV who seek to migrate.<sup>49</sup> The process often requires PLHIV to demonstrate a capacity to contribute to the Australian community beyond that required of other migrants. PLHIV are required to provide evidence that these contributions could mitigate the costs attributed to health and social care they may receive while living in Australia.

Another set of migration matters deal with claims made by PLHIV on humanitarian grounds. Two examples include *1513428 (Refugee)* [2019] AATA 5172 and *1508989 (Refugee)* [2018] AATA 2116. In the former case, the tribunal remitted the decision under review, noting that PLHIV in Nepal were 'discriminated against, ostracised and often harmed or killed'.<sup>50</sup> By contrast, in the latter decision, the tribunal was not satisfied that 'given the country information about progress in overcoming stigma and discrimination in [Zambia], that harm caused by the stigma or discrimination would amount to serious harm',<sup>51</sup> and affirmed the decision to refuse a refugee protection visa. The presence of these cases alerts us to the very real and ongoing harm, fear and injustice faced by PLHIV. So too does it highlight the material differences in access to

contemporary forms of medical and health care for PLHIV in those contexts.

Among all cases identified by this review in which HIV was a central rather than peripheral legal issue, there were a substantial number of migration-related matters. The matters also demonstrate the importance of intersectionality and how it generates diverse risks of harm, discrimination and marginalisation for PLHIV. Claims for refugee protection as a PLHIV are also often accompanied by protection claims as a woman living with HIV, a trans or gender diverse person living with HIV, MSM living with HIV, or a person who uses drugs living with HIV, for example.

## The Continued Prosecution of HIV Transmission

A major theme of advocacy regarding HIV and the law has been one of the inappropriateness of criminal legal responses to HIV and its transmission. Referred to as the 'criminalisation of HIV', the engagement of criminal legal processes and related systems in the 'management' of HIV has been a feature of law-making and legal practice since the emergence of the virus.

Longstanding advocacy to combat the criminalisation of HIV has led to some progress in Australia. HIV-specific criminal offences – largely assault offences – have now been repealed in every Australian jurisdiction. However, the prosecution of PLHIV for transmission-related offences of general application continues to be a feature of the criminal law for those affected by HIV. Our mapping study identified 29 cases relating to HIV exposure or transmission-related criminal offences. These contribute to the 76 cases that the review identified as relating to the criminal legal system and criminal law more broadly. These HIV exposure and transmission-related cases add to the corpus of cases known to have been prosecuted in Australia, as collected by Cameron and Rule,<sup>52</sup> and more recently by Carter in work on the impact of PrEP and U=U on the prosecution of HIV-related criminal offences.<sup>53</sup>

<sup>49</sup> Stratigos and Carter (n 34).

<sup>50</sup> *1513428 (Refugee)* [2019] AATA 5172 [25].

<sup>51</sup> *Ibid.*

<sup>52</sup> Cameron and Rule (n 7).

<sup>53</sup> Carter (n 7).



Longstanding advocacy to combat the criminalisation of HIV has led to some progress in Australia. HIV-specific criminal offences – largely assault offences – have now been repealed in every Australian jurisdiction. However, the prosecution of people living with HIV for transmission-related offences continues to be a feature of the criminal law.

## The Continued Prosecution of Spitting and Biting Cases

International consensus holds that HIV cannot be transmitted via contact with the saliva of a PLHIV, including through a single event of biting or spitting.<sup>54</sup> However, various prosecutorial authorities continue to pursue charges on this basis. A surprising and disappointing result of this mapping review is the number and frequency of prosecution of so-called ‘spitting and biting cases.’

All biting and spitting cases in this review were identified through media sources, rather than published decisions of a court or tribunal. These included the ‘Mark Turjman Case’ (2020) and the ‘Queensland Spitting Case’ (2018).

Over the past 20 years, jurisdictions across Australia have introduced mandatory disease testing powers, including new provisions within public health or police powers legislation. These provisions give public sector workers, including police, the power to apply for an order that forces people to submit to a test for blood-borne viruses, including HIV. Such legislation was most recently introduced in New South Wales.<sup>55</sup> Although these powers are framed as a tool to protect the health and wellbeing of public sector workers, in practice the legislation relies on outdated understanding of HIV transmission risk.<sup>56</sup>

NAPWHA conducted an audit of mandatory disease testing laws throughout Australia in 2019.<sup>57</sup> The use of these powers differs greatly between jurisdictions. In Western Australia, for example, 377 applications for mandatory disease testing were approved (and 10 rejected) from 1 January 2015 to mid-December 2018.<sup>58</sup> During the same period, no applications for mandatory disease testing were approved in Victoria.<sup>59</sup> Other jurisdictions such as the

Northern Territory and Queensland were unable to or did not provide data to NAPWHA for the purposes of the report. This represents a markedly inconsistent application and use of mandatory disease testing powers across different jurisdictions.

A related issue in case law identified by the review is that of the psychological impacts of HIV ‘exposure’. Most of the case law related to HIV ‘exposure’ and psychological damage included in this review related to incidents of needle-stick injuries.<sup>60</sup> *Guff v The Commissioner of Police (No 2)* (2007), for example, considered whether a police sergeant’s psychiatric condition resulted from injury arising from his police service. The court was provided with evidence of nine events that occurred during the sergeant’s employment, one of which included exposure to blood from a deceased person he believed was HIV positive. Blood tests taken after the event ultimately showed the deceased person was not HIV positive. The court found that any contribution the event may have made to ‘a gradual erosion of the [sergeant]’s resilience to psychological trauma’ created in him a ‘pre-disposition or vulnerability.’ However, it declined to make a finding as to whether such gradual erosion was sufficient to establish causation.

## HIV as an Aggravating and Mitigating Factor in Sentencing

A person’s HIV status may be regarded as an aggravating factor where the court determines that there was a risk of HIV transmission to a victim in the context of criminal offences such as sexual assault. Moreover, HIV exposure or transmission-related offences necessitate consideration of a range of factors related to the accused’s HIV status and treatment in determining the elements of an offence as well as its seriousness. These factors include

54 Anthea Vogl, David J Carter and Elsher Lawson-Boyd, ‘Brief on Blood Borne Virus (BBV) Infection via Spitting or Biting’ (OSF Preprints, 1 February 2024).

55 *Mandatory Disease Testing Act 2021* (NSW).

56 See Anthea Vogl, ‘Brief on Blood Borne Virus (BBV) Infection, (n 54) Preprints.

57 Sally Cameron, *The System Is Broken - Audit of Australia’s Mandatory Disease Testing Laws to Test for HIV* (National Association of People Living with HIV and HIV Justice Network, 2019).

58 *Ibid* 26.

59 *Ibid* 23.

60 See for e.g. *Wright v KB Nut Holdings Pty Ltd as Trustee for the Kerrie-Ann Stevenson Family Trust Trading as Bonapartes Services Apartments* [2012] QDC 202; *Orr v Burkhan Pty Ltd* [2022] VMC 5.

whether the accused disclosed their HIV status to the victim, their adherence to HIV treatment and viral load at the time of the offence, representations made to the victim about their HIV status, and what, if any, measures were taken to reduce the likelihood of transmission.<sup>61</sup>

As treatment for HIV has improved over time, courts have begun to acknowledge the impact of these advances and associated health outcomes for PLHIV when evaluating the 'seriousness' of the offence. In *Palmer v The State of Western Australia* [2018], the court noted that in the earlier decision now on appeal, the judge at first instance had 'correctly observed' that PLHIV who adhere to treatment can expect to 'live a normal life and have a normal life expectancy' since the decision of *Houghton v The State of Western Australia* in 2006, and that the stigma associated with the condition would continue to reduce over time.<sup>62</sup> These observations regarding improvements in treatment and advances in societal views of HIV signal a willingness of the courts to apply updated and more accurate information regarding the nature of HIV and its effects. They also signal the potential for a future reconsideration of HIV transmission as grounds for prosecution on the basis that it may no longer represent a form of grievous bodily harm.<sup>63</sup>

HIV is also identified as a mitigating factor for sentencing purposes where a custodial sentence is being considered. There are two main arguments that are considered by courts when determining the detrimental impacts of a person's HIV status while in custody. First, there is consideration of the health impacts a custodial sentence may have on a PLHIV, such as reduced access to treatment and increased stress on the body's immune system. Second, courts consider the impact of disclosure in custodial settings, noting the difficulty of keeping health information private for PLHIV in custody. Disclosure can lead to PLHIV being subject to harassment and violence from others in custody who learn of their HIV status. In *R v Ronal Penalosa-Munoz* (2004) the court considered

both of these to be relevant, stating:

There was evidence revealed that a prisoner's status as an HIV sufferer is impossible to keep confidential within the prison system. Once such a person's status is known, he or she is likely to be subjected to harassment from other prisoners. Furthermore, imprisonment inevitably creates considerable stress for inmates. Stress in turn can significantly compromise the body's immune system and its capacity to resist the spread of the illness. It is these and related considerations which have led the courts to recognise that imprisonment for a person who has the HIV virus will often be more burdensome than would otherwise be the case.

A few courts noted the lack of evidence brought before them relating to the impact of the accused's HIV status on their imprisonment. One of the earliest cases in the review, from 1989, noted that there was no material before the court that would enable the court to conclude that 'imprisonment will bear more heavily upon this applicant than it would upon others, in consequence of his suffering that condition [HIV].'<sup>64</sup> Over 20 years later, in *R v Hassan Nagi*, the decision highlighted that the court is 'prepared to take note'<sup>64</sup> of the impact that a custodial sentence would have on a PLHIV but stated that it was difficult to quantify the impact due to the lack of evidence provided to the court in that case. On the other hand, the court also stated that Justice Health, the health services provider in NSW prisons, could provide the treatment required to minimise 'risk of the spread of infection.'<sup>65</sup>

<sup>61</sup> See Carter, 'Transmission of HIV and the Law' (n 7)

<sup>62</sup> *Palmer v The State of Western Australia* [2018] WASCA 225, [44].

<sup>63</sup> Carter, 'Transmission of HIV and the Law' (n 7).

<sup>64</sup> *R v Hassan Nagi* [2010] NSW NSWDC 129, [148].

<sup>65</sup> *Ibid* 149.

In the case of *DPP v El-Sayegh and Rajic*,<sup>66</sup> the court considered the impact of a custodial sentence on a PLHIV who had declined to engage in treatment. In this case, the representative for the accused (Mr Rajic) made submissions seeking a more lenient sentence so that Mr Rajic might receive community treatment upon release. The court, noting that the accused 'deliberately refused treatment',<sup>67</sup> rejected these submissions on the basis that they provided no evidence to suggest that a community corrections order would achieve the optimal treatment scenario described.<sup>68</sup> In the context of an existing rejection of treatment, coupled with the finding that continuance of community treatment would be unlikely if a community corrections order was made, the court found that the imposition of a custodial sentence would not thereby pose a greater burden on the accused by reason of their health, nor a serious risk that imprisonment would gravely affect their health.<sup>69</sup>

## Further Observations

Based only on the results of this review, we are cautious to draw broad conclusions about the legal needs of PLHIV. However, we offer some observations on this review's findings.

First, women living with HIV account for approximately 12% of PLHIV living in Australia.<sup>70</sup>

This figure is reflected in the review, with 31 cases of the 281 identified pertaining to women living with HIV. Given the limitations of the method in including a total or representational sample of all HIV-related legal disputes, this figure may be higher in reality. When broken down by matter types, there are areas of law that may impact women living with HIV to a higher degree in comparison to the rest of the population of PLHIV, including in areas of migration, family law and victims of crime. This is an important possibility that requires further research and consideration.

Second, there is a divergence between the demographic characteristics of people who are prosecuted for HIV-related criminal offences and the demographic characteristics of PLHIV in Australia today. The prosecutorial activity reviewed here indicates that these cases over-represent people who are migrants to Australia and people who engage in heterosexual sex. We class this finding as one that requires further research to both substantiate and properly understand.

A final observation is the significant number of migration and refugee matters. The centrality of HIV status in migration and refugee matters suggests that attention to refugee and migration law requires further attention if we are to establish and support an enabling legal environment for all PLHIV in Australia.

---

<sup>66</sup> *DPP v El-Sayegh and Rajic* [2016] VCC 2034.

<sup>67</sup> *Ibid* [42].

<sup>68</sup> *Ibid*.

<sup>69</sup> *Ibid* [43].

<sup>70</sup> J King et al, *HIV, Viral Hepatitis and Sexually Transmissible Infections in Australia: Annual Surveillance Report 2022* (The Kirby Institute, UNSW Sydney, Sydney, Australia, 2022) 36.

The centrality of HIV status in migration and refugee matters suggests that refugee and migration law requires further attention if we are to establish and support an enabling legal environment for all people living with HIV in Australia.



## A True Picture of the Legal Experiences of PLHIV?

Mapping published and accessible judgments and decisions, as we do here, reveals important things about the law and HIV. However, this approach can only ever present a partial view of law's relationship with HIV and the experience of PLHIV who engage in legal matters. It must be remembered, for example, that only a small number of HIV-related legal issues will result in a formally adjudicated dispute by a court or tribunal. Even fewer of these will generate a written judgment or decision that is accessible for the purposes of research. Even those disputes that produce accessible written reasons for a judgement or decision are required to conform to particular norms of narrative and genre, and in so doing construct only a partial representation of the facts of a case.<sup>71</sup> While most people in Australia, including those living with HIV, will experience a justiciable issue on a regular basis, the vast majority of those issues and associated legal needs are resolved without recourse to formal court or tribunal processes.<sup>72</sup>

The patterns, numbers and nature of the cases reviewed here should be interpreted

accordingly. They illuminate *something* of the legal environment around HIV and the diversity of justiciable legal issues faced by PLHIV. In particular, they illustrate that PLHIV are affected by a much wider set of legal areas than is customarily understood to be the case in some areas of research and advocacy that have historically focused on the issue of criminalisation alone.

The results of this review clearly indicate that a comprehensive assessment of the justiciable issues facing PLHIV as well as the nature of their legal needs is required. This assessment should aim to understand the ways PLHIV attempt to access justice, and their experience of trying to do so. Without this, we will only ever have a very partial and skewed picture of the nature, experience and influence of law on the lives of PLHIV and their access to justice. A more detailed and fulsome evidence base of this kind will help to assess whether the legal environment in Australia is (or is not) enabling when it comes to HIV, and what reforms to law and practice might be required to improve it.

---

71 This is a feature which scholars of law and narrative amongst other approaches have provided a sustained engagement with. See e.g. Anthea Vogl, 'Telling Stories from Start to Finish' (2013) 22(1) *Griffith Law Review* 63; Anthea Vogl, 'The Genres and Politics of Refugee Testimony' (2018) 30(1) *Law & Literature* 81; Lisa Sarmas, 'Story Telling and the Law: A Case Study of Louth v. Diprose' (1993) 19 *Melbourne University Law Review* 701.

72 Christine Coumarelos et al, *Legal Australia-Wide Survey: Legal Need in Australia*, vol 8 (Law and Justice Foundation, 2012) 98.

# Appendices

YEAR	JURISDICTION	COURT/ TRIBUNAL	CASE NAME	AREA OF LAW	FULL HEADNOTE
1989	Federal	FamCA (Family Court of Australia)	B and C. [1989] FamCA 98	Family	N/A
1989	State - SA	SASC	The Queen v Thomas Charles Donald [1989] SASC 1619	Criminal	Criminal Law - sentence - accessory after the fact of armed robbery - bad criminal record - 22 months in custody prior to sentence - sentence of 2 years and 3 months imposed on wrong factual basis and on incorrect view of section 12 Sentencing Act - Court of Criminal Appeal assessing sentence afresh imposing sentence of 15 months in addition to the time spent in custody - sentence to commence at expiration of unexpired balance of previous sentence - total period of imprisonment 5 years 4 months - non-parole period 3 years 6 months.
1991	Federal	FCA	E v Australian Red Cross Society [1991] FCA 781	Negligence	Negligence - Duty of care of blood bank taking blood from donor who is HIV positive - duty of care of hospital giving transfusion of that blood to a patient - evidence of practice adopted by other blood banks - whether conclusive on question of duty of care - whether proper consideration given to donor screening form - whether a surrogate test for hepatitis B core antibodies should have been used for testing HIV infected blood.
1991	Federal	FCA	E v Australian Red Cross Society [1991] FCA 20	Negligence	
1991	Federal	FCA	Re Timothy Alan Raven v Minister of Immigration, Local Government and Ethnic Affairs [1991] FCA 571	Migration	Trade Practices - Implied term - whether contract between patient and hospital insofar as it related to the supply of blood is a contract for the supply of goods.
1992	State - NT	NTSC	Young v Northern Territory [1992] NTSC 27	Negligence	
1996	State - SA	SACCA (Court of Criminal Appeal)	R v Spinotti (1996) 67 SASR 244	Criminal	Evidence - Opinion evidence - expert opinion - status of expert - whether communal insight into a particular subject disbars person who has made special study of that subject from being an expert.
1996	Federal	HREOCA (Human Rights Equal Opportunity Commission)	X & Y v Western Australia [1996] HREOCA 32	Discrimination	Trade Practices - Supply by hospital to applicant of HIV- infected blood - Blood supplied to hospital by New South Wales Division of Australian Red Cross Society - Whether respondents were each a "trading corporation" - Whether supply "in trade or commerce" - Whether the hospital was an emanation of the New South Wales Crown - Claim of implied misrepresentation amounting to misleading conduct - Reliance on implied terms as to merchantability and fitness for disclosed purpose - Whether claims made within the prescribed time.

SUMMARISED HEADNOTE	LEGAL FACTOR - PRIMARY	LEGAL FACTOR - KEY POPULATION	PRIORITY POPULATION
Husband seeking order for access to three-year-old child; husband HIV positive.	8 - Family, Sexual and reproductive life	18 - Men who have sex with men, and transgender people	Gay men and other men who have sex with men
Sentencing; poor criminal record; appellant HIV positive; HIV mentioned fleetingly.	22 - Access to a forum, fair trial, and enforcement of remedies	19 - People under state custody	People in Custodial Settings
Duty of care in transfusion of blood from an HIV-positive donor; whether supply of blood is a contract; expert opinion.	2 - HIV Prevention	Nil	People Living With HIV
First instance decision of <i>E v Australian Red Cross Society</i> [1991] FCA 781 (above).	2 - HIV Prevention	Nil	Nil
Judicial review; application for resident status; applicant HIV positive; Court considered level of medical care required by applicant.	12 - Entry, Stay and Residence	18 - Men who have sex with men, and transgender people	Gay men and other men who have sex with men
Remoteness of damage; economic loss; sole reference to HIV was in referencing <i>E v Australian Red Cross Society</i> .	2 - HIV Prevention	Nil	People Living With HIV
Appeal against sentence; fresh evidence; appellant and appellant's wife HIV positive; Court considered HIV status in fixing non-parole period.	22 - Access to a forum, fair trial, and enforcement of remedies	19 - People under state custody	People in Custodial Settings
Applicant HIV positive; Court considered whether retaining applicant in the Infectious Diseases Unit and in solitary confinement on account of HIV status amounts to discrimination.	20 - Legal Protection	19 - People under state custody	People in Custodial Settings

YEAR	JURISDICTION	COURT/ TRIBUNAL	CASE NAME	AREA OF LAW	FULL HEADNOTE
1997	State - QLD	QADT (Anti-Discrimination Tribunal)	NC and others v Queensland Corrective Services Commission [1997] QADT 22	Discrimination	
1998	Federal	FCAFC	Commonwealth v Human Rights and Equal Opportunity Commission [1998] FCA 3	Discrimination	Negligence - Adequacy of screening notices used by NSW Division in collecting blood donations - Whether respondents should have adopted surrogate testing at earlier date - Time taken to implement decision to adopt surrogate testing.
1998	State - VIC	VCAT	Norman v Australian Red Cross Society [1998] VCAT 10	Discrimination	
1999	Federal	HCA	X v The Commonwealth [1999] HCA 63	Discrimination	Administrative Law - judicial review - relevant considerations - non- existence of a fact - unreasonableness.
1999	State - VIC	VCAT	Hall Matthew v Victorian Amateur Football Association [1999] VCAT 627	Discrimination	Migration - application for resident status - health and medical requirements.
2000	State - NSW	NSWADT (Administrative Decisions Tribunal)	Heystraten v Naidu [2000] NSWADT 33	Discrimination	Damages - Measure and remoteness of damages in actions for tort - Pain and suffering and loss of amenities to judgment - Future pain and suffering and loss of amenities of life - Lost earnings to date - Future lost earning capacity - Special damages - Cost of future operations and pharmaceuticals - Pain clinic treatment - Interest on economic and non-economic losses - ...
2000	Federal	FamCA (Family Court of Australia)	Wendall & James [2000] FamCA 963	Family	Criminal Law — Jurisdiction, practice and procedure — Sentence — Appeal against sentence — Appeal against non-parole period on grounds that medical information was not complete at time of sentencing — Fresh evidence adduced as to the life expectancy of the appellant and his wife — Appeal allowed — Non-parole period reduced.
2001	State - NSW	NSWSC	Gebalski v Paraskevopoulos [2001] NSWSC 1012	Wills & Estates	N/A

SUMMARISED HEADNOTE	LEGAL FACTOR - PRIMARY	LEGAL FACTOR - KEY POPULATION	PRIORITY POPULATION
Direct discrimination of an HIV-positive prisoner; meaning of 'work' and 'accommodation'.	20 - Legal Protection	19 - People under state custody	People in Custodial Settings
Disability discrimination; army recruit discharged from service on account of positive HIV status.	10 - Employment, Work and Economic Life	Nil	Nil
Refusal to allow complainant to donate blood after complainant answered 'yes' to male-to-male sexual activity.	20 - Legal Protection	18 - Men who have sex with men, and transgender people	Gay men and other men who have sex with men
Disability discrimination; army recruit discharged from service on account of positive HIV status; meaning of 'inherent requirements of the particular employment'.	10 - Employment, Work and Economic Life	Nil	Nil
Refusal to allow complainant to play Australian Rules Football on account of HIV-positive status; whether discrimination 'reasonably necessary'.	7 - Political, Social and Cultural Life	Nil	People Living With HIV
Disability discrimination; whether medical centre's refusal to treat complainant was on account of complainant's positive HIV status.	4 - Treatment, Care and Other Health Services	Nil	People Living With HIV
Father HIV positive, risk of HIV transmission in a normal parent/child relationship.	8 - Family, Sexual and reproductive life	Nil	People Living With HIV
Estate left to neighbour; son HIV positive.	10 - Employment, Work and Economic Life	Nil	People Living With HIV

YEAR	JURISDICTION	COURT/ TRIBUNAL	CASE NAME	AREA OF LAW	FULL HEADNOTE
2002	State - NSW	NSWCCA	R v Higgins [2002] NSWCCA 407	Criminal	Anti discrimination law - direct discrimination - impairment - prisoners - HIV positive - discrimination in accommodation and administration of State Laws and Programs - whether work and accommodation in prison constitutes "work" and "accommodation" as defined by the Anti-Discrimination Act - whether complaint lapses upon death of complainant - whether proceedings in Anti-Discrimination Tribunal are "actions" as understood by s.95 of the Public Trustee Act 1978 - Exemptions - Public Health - Workplace Health & Safety - Compliance with legislation.
2003	State - NSW	NSWSC	PD v Harvey [2003] NSWSC 487	Negligence	'Inherent requirements' of particular employment — Discharge of soldier from Australian Defence Force — Soldier diagnosed HIV positive — Unable to carry out 'inherent requirements' of employment — Distinction between definition of inherent requirements in Workplace Relations Act 1996 (Cth) — Disability Discrimination Act 1992 (Cth).
2004	State - NSW	NSWCCA	R v Ronal Penalosa-Munoz [2004] NSWCCA 33	Criminal	Equal Opportunity - application to strike out complaint- Complainant answered yes to question in Blood Bank questionnaire as to whether donor had male to male sexual activity – refusal to allow Complainant to donate blood – whether Respondent provided services to Complainant – whether Respondent conduct authorised under other legislation - Equal Opportunity Act 1995 ss4 6 – 9 42 69 and 109 – Victorian Civil and Administrative Tribunal Act 1998 s75 – Health Act 1958 s132 – Therapeutic Goods Act 1989 (Cth) s36.
2004	State - NSW	NSWCA	A Mazzaferro & Riverstone Pty Ltd (t/a Family Medical Centre) v Vozzo [2004] NSWCA 271	Workers' compensation	Discrimination law – Disability discrimination – Appellant discharged from army on account of HIV-positive status – Discrimination admitted – Discrimination alleged to be lawful – Appellant alleged to be unable to carry out the inherent requirements of the particular employment – Meaning of "inherent requirements of the particular employment" in s 15(4)(a) of the Disability Discrimination Act 1992 (Cth) – Whether appellant "unable" to perform inherent requirements with reasonable safety.
2004	State - WA	WASCA	Houghton v The Queen [2004] WASCA 20	Criminal	Discrimination law – Disability discrimination – Infectious disease – Whether s 48 of the Disability Discrimination Act 1992 (Cth) provides an exclusive code for determining whether discrimination on account of an infectious disease is lawful.

SUMMARISED HEADNOTE	LEGAL FACTOR - PRIMARY	LEGAL FACTOR - KEY POPULATION	PRIORITY POPULATION
Social security fraud; applicant HIV positive; effect of ill health on sentence.	22 - Access to a forum, fair trial, and enforcement of remedies	19 - People under state custody	People in Custodial Settings
Scope of a medical practitioner's duty of care to inform complainant of complainant's partner's positive HIV status following joint consultation.	3 - Testing, Counselling and Referral	14 - Women	People Living with HIV
Robbery; special circumstances; respondent HIV-positive; HIV not otherwise central to case.	22 - Access to a forum, fair trial, and enforcement of remedies	19 - People under state custody	People in Custodial Settings
Respondent contracted HIV in course of employment with appellant; appeal dismissed.	22 - Access to a forum, fair trial, and enforcement of remedies	Nil	People Living With HIV
Applicant did not disclose positive HIV status; unlawful grievous bodily harm; meaning of 'unlawful'	13 - Non-Criminalisation of HIV Exposure and Transmission	19 - People under state custody	People in Custodial Settings

YEAR	JURISDICTION	COURT/ TRIBUNAL	CASE NAME	AREA OF LAW	FULL HEADNOTE
2004	Federal	FCAFC	De Bruyn v Minister for Justice & Customs [2004] FCAFC 334	Extradition	Discrimination law – Disability discrimination – "Combat duties" and "combat-related duties" – Whether s 53 of the Disability Discrimination Act 1992 (Cth) provides an exclusive code for determining whether discrimination in relation to "combat duties" and "combat-related duties" is lawful.
2004	State - NSW	NSWCA	Harvey v PD [2004] NSWCA 97	Negligence	Administrative law – Application for order of review – Error of law – Whether applicant must show a different result was inevitable or merely open if no error was made.
2005	State - NSW	NSWSC	R v Dolan [2005] NSWSC 380	Criminal	N/A
2005	State - QLD	Mental Health Court	Re Ijs [2005] QMHC 002	Criminal	Disability Discrimination — Goods and Services.
2005	State - QLD	QCAT	Hay v Dubbeld [2005] VCAT 642	Discrimination	N/A
2006	State - NSW	NSWCCA	Kanengele-Yondjo v The Queen [2006] NSWCCA 354	Criminal	Son suffering from HIV and nearly blind — whole estate left to neighbour who had been good to deceased and husband — discussion of duty of parent to provide for child — balancing factors — overall claims considered — wrong to give whole estate to neighbour — order of legacy in favour of son
2006	State - QLD	QCA	R v Reid [2006] QCA 202	Criminal	Three charges of imposing on Commonwealth — Social security fraud — Appeal against sentence of 18 months' imprisonment — Release after six months upon entering into recognisance to be of good behaviour for 12 months — Reparation order in sum of \$52,599 — Pled guilty — Fraud occurred over long period of time — Applicant HIV positive — Prognosis not good — 86% chance of illness progressing over next three years — Used money for heroin and gambling — Adequate remissions taken into account — Objective criminality of offences warranted sentence greater than awarded — Sentencing judge took applicant's ill health into account in handing down sentence — Technical error by sentencing judge — Failed to make individual sentences smaller then accumulate part of them — Sentencing judge failed to follow 'fundamental principle' — Appeal allowed on counts one and three — Applicant resentenced to six months' imprisonment on count one — 12 months imprisonment on count three, to be released on recognisance after six months — Reparation order confirmed.



SUMMARISED HEADNOTE	LEGAL FACTOR - PRIMARY	LEGAL FACTOR - KEY POPULATION	PRIORITY POPULATION
Court considered risk of HIV transmission to applicant if applicant served sentence in a South African prison; whether surrender would be unjust; oppressive or incompatible with humanitarian considerations.	20 - Legal Protection	19 - People under state custody	People in Custodial Settings
Cross-appeal for additional costs of second child conceived from a partner, known to be HIV positive, after complainant aware of having herself become HIV positive.	2 - HIV Prevention	Nil	People Living With HIV
Murder; guilty plea; accused HIV positive; Court considered accused's limited life expectancy.	22 - Access to a forum, fair trial, and enforcement of remedies	19 - People under state custody	People in Custodial Settings
Defendant charged with dishonesty and property offences; defendant HIV-positive; expert psychiatric opinion; Court considered whether defendant fit for trial.	22 - Access to a forum, fair trial, and enforcement of remedies	19 - People under state custody	People in Custodial Settings
Refusal to provide a tattoo service to complainant on account of complainant's HIV positive status.	7 - Political, Social and Cultural Life	Nil	People Living With HIV
Discrimination, homosexuality and HIV/AIDS vilification.	22 - Access to a forum, fair trial, and enforcement of remedies	19 - People under state custody	People in Custodial Settings
Applicant did not disclose positive HIV status; unlawfully transmitting a serious disease with intent; meaning of 'intention'; appeal against sentence; whether sentence manifestly excessive.	22 - Access to a forum, fair trial, and enforcement of remedies	19 - People under state custody	People in Custodial Settings

YEAR	JURISDICTION	COURT/ TRIBUNAL	CASE NAME	AREA OF LAW	FULL HEADNOTE
2007	State - SA	SASC	R v Parenzee [2007] SASC 143	Criminal	Professions and trades[198] — Medical practitioners — Liability in tort — HIV test — joint consultation prior to commencing unprotected sex — duty of care to non-infected partner — scope of duty — disclosure of test results — confidentiality — public interest.
2007	State - SA	SASC	R v Parenzee [2007] SASC 316	Criminal	Professions and trades[198] — Medical practitioners — Liability in tort — HIV test — joint consultation prior to commencing unprotected sex — duty of care to non-infected partner — scope of duty — disclosure of test results — confidentiality — public interest
2008	State - SA	SASC	R v Parenzee [2008] SASC 245	Criminal	Negligence — medical practitioner — scope and content of duty of care after joint consultation for sexually transmissible diseases
2008	Federal	AATA	Petersen and Military Rehabilitation and Compensation Commission [2008] AATA 1145	Veterans' Affairs	Robbery — no lasting physical harm done to victim — whether sentencing judge erred in fixing non-parole period — special circumstances — turbulent childhood — HIV positive — unlikely to reoffend — no prior convictions — good prospects of rehabilitation — early plea of guilty — less serious offence — deterioration in medical condition — original sentence of 18 months' imprisonment not manifestly inadequate — non-parole period of one month — appeal dismissed
2009	State - QLD	QCA	R v Ford [2009] QCA 132	Criminal	Evidence of arithmetic probability — respondent doctor contracted HIV and AIDS in course of employment with appellant — trial judge found it more probable that respondent was infected with HIV when employed by appellants than when working for other hospitals — determining whether evidence supported finding — trial judge used evidence of arithmetic probability in finding on balance of probabilities — respondent led all evidence reasonably available to him — respondent worked for appellants for longer period — only known HIV patients treated by respondent were patients treated while employed by appellants — expert evidence supported trial judge's conclusion — open to trial judge to making finding — appeal dismissed

SUMMARISED HEADNOTE	LEGAL FACTOR - PRIMARY	LEGAL FACTOR - KEY POPULATION	PRIORITY POPULATION
Fresh evidence; expert opinion; applicant advised not to have unprotected sex on account of applicant's HIV-positive status; applicant convicted of three counts of endangering life.	22 - Access to a forum, fair trial, and enforcement of remedies	19 - People under state custody	People in Custodial Settings
Second proceeding following above case; permission to appeal refused.	22 - Access to a forum, fair trial, and enforcement of remedies	19 - People under state custody	People in Custodial Settings
Appeal and new trial after conviction.	22 - Access to a forum, fair trial, and enforcement of remedies	19 - People under state custody	People in Custodial Settings
Applicant lodged compensation claim; claim rejected on ground that applicant's HIV infection did not arise out of defence service.	5 - Social Protection and Material Assistance	Nil	People Living With HIV
Appeal; applicant convicted of attempted sodomy; applicant asserted he did not attempt to have sex with complainant due to complainant's HIV-positive status.	22 - Access to a forum, fair trial, and enforcement of remedies	19 - People under state custody	People in Custodial Settings

YEAR	JURISDICTION	COURT/ TRIBUNAL	CASE NAME	AREA OF LAW	FULL HEADNOTE
2009	Federal	FMCA (Federal Magistrates Court of Australia)	SZLMN & Anor v Minister for Immigration & Anor [2009] FMCA 582	Migration	Meaning of 'unlawful' — unlawful grievous bodily harm — applicant diagnosed with HIV — informed of risk of infecting people through sexual intercourse — engaged in sexual relationship with complainant — did not reveal health condition to complainant — sexual intercourse unprotected — complainant contracted HIV as result — whether trial judge erred in construction of term 'unlawfully' under s 297 — trial judge held 'unlawful' required prosecution to prove relevant grievous bodily harm not authorised, justified or excused by law — ordinary understanding of 'unlawful' afforded preference — requirement that 'unlawful' act to be forbidden by some definite law recognised — correct construction of 'unlawful' not placed before jury — miscarriage of justice demonstrated — leave to appeal granted — appeal upheld — retrial ordered — Criminal Code (WA), s 297
2009	State - TAS	TASADT (Anti-Discrimination Tribunal of Tasmania)	Cain v The Australian Red Cross Society [2009] TASADT 3	Discrimination	Extradition — appeal — determination by Minister to surrender appellant to Republic of South Africa under s 22 of the Extradition Act 1988 (Cth) — whether surrender would be unjust, oppressive or incompatible with humanitarian considerations for the purpose of reg 5(4) of the Extradition (Republic of South Africa) Regulations — whether Minister misunderstood what may amount to humanitarian considerations — whether prison conditions in the requesting country are excluded from consideration — whether Minister erred in concluding that surrender would not be unjust, oppressive or incompatible with humanitarian considerations because no certainty that appellant would contract HIV/AIDS if made to serve a sentence in a South African prison

SUMMARISED HEADNOTE	LEGAL FACTOR - PRIMARY	LEGAL FACTOR - KEY POPULATION	PRIORITY POPULATION
Applicant HIV-positive; Court considered Tribunal's failure to provide an interpreter.	22 - Access to a forum, fair trial, and enforcement of remedies	Nil	People Living With HIV
Direct and indirect discrimination; provision of services; risk of HIV transmission in blood supply.	20 - Legal Protection	18 - Men who have sex with men, and transgender people	Gay men and other men who have sex with men

YEAR	JURISDICTION	COURT/ TRIBUNAL	CASE NAME	AREA OF LAW	FULL HEADNOTE
2009	Federal	RRTA	0903707 [2009] RRTA 758	Refugee	<p>Negligence — liability of doctors in a medical centre for inadequate counselling to female member of couple at a joint consultation where the couple sought advice as to sexually transmitted disease including HIV preparatory, as known to the doctor, to engaging in unprotected sex and getting married in circumstances where female member was later to be deceived by her prospective husband into believing that he was not HIV positive when he was — relevance of prospective husband coming from a known high risk area for HIV — relevance of test results being provided to female member separately through Receptionist — failure to advise on the statutory requirement for consent to disclosure of test results under s 17(2) (b) of the Public Health Act 1991 (NSW) as well as failure to advise as to the manner of disclosure and possibility of discordant results — relevance of inadequate post-test counselling not necessary to decide — effect of s 17(2)(b) of the Public Health Act 1991 (NSW) — relevance of informed consent — causation — common sense and two stage approach — cross-appeal for additional costs of second child conceived from a partner, known to be HIV positive, after female member of couple aware of having herself become HIV positive — scope of liability for consequences of negligence and causation aspects — anticipated loss of capacity to care for child after it turns 12 as result of HIV and implications for damages — public policy issues — requirement to mitigate — distinction between legal policy, public policy and legal principle — recovery disallowed for loss of capacity to care for second child after second child no longer able to be cared for by mother.</p>

SUMMARISED HEADNOTE	LEGAL FACTOR - PRIMARY	LEGAL FACTOR - KEY POPULATION	PRIORITY POPULATION
Refugee; applicant a member of a particular social group of 'people living with HIV/AIDS and Hepatitis B in Vietnam'.	12 - Entry, Stay and Residence	Nil	People Living With HIV

YEAR	JURISDICTION	COURT/ TRIBUNAL	CASE NAME	AREA OF LAW	FULL HEADNOTE
2010	State - VIC	VSCA	Kuoth v The Queen [2010] VSCA 103	Criminal	Accused pleaded guilty to murder — accused bludgeoned his stepmother to death with axe — accused's father had recently died — accused had good relationship with stepmother — no premeditation — accused had drug and alcohol problem — criminal record of drug and alcohol related convictions not aggravating circumstance — plea of guilty was mitigating factor — accused was contrite and genuinely horrified by his own actions — accused was intoxicated on night of murder — victim made remarks which hurt accused — accused had HIV, Hepatitis B and C and chronic liver disease — multiple illnesses suffered by accused would make his imprisonment greater burden — being imprisoned in protection zone would also add to his burden — imprisonment could adversely affect accused's health — accused may not survive minimum term — limited life expectancy relevant to both term of imprisonment and non-parole period — prospects of rehabilitation were good — appropriate to make finding of special circumstances — circumstances in which victim died were brutal in extreme — sentenced to 15 years and four months' imprisonment with non-parole period of 10 years and three months
2010	State - NSW	NSWADT (Administrative Decisions Tribunal)	JM and JN v QL and QM [2010] NSWADT 66	Discrimination	Mental health - declaration or finding of mental illness of incapacity – where defendant has been charged with a large number of dishonesty and property offences, as well as several drug offences – where defendant has a long history of cannabis abuse and dependence – where defendant has the HIV virus – where defendant has permanent brain damage – where expert psychiatric opinion is that defendant's ongoing abuse of cannabis is exacerbating his deficits – where defendant has no desire or intention to alter pattern of habitual offending and cannabis use – where defendant is unable to retain things he is told for more than 30 minutes or to process what he is told – whether defendant is fit for trial – whether to make a forensic order.
2010	State - NSW	NSWADT (Administrative Decisions Tribunal)	TU v AMI Australia Holdings Pty Ltd [2010] NSWADT 290	Discrimination	Refusal to provide a service on the basis that a person carries an infectious disease - tattoo refused for man infected with HIV and Hepatitis C - whether it was reasonably necessary to protect the health or safety of any person - Equal Opportunity Act 1995, section 80(1)(a) - Factors to be considered



SUMMARISED HEADNOTE	LEGAL FACTOR - PRIMARY	LEGAL FACTOR - KEY POPULATION	PRIORITY POPULATION
Applicant did not disclose positive HIV status; reckless conduct endangering persons; re-sentencing.	22 - Access to a forum, fair trial, and enforcement of remedies	19 - People under state custody	People in Custodial Settings
Discrimination, homosexuality and HIV/AIDS vilification.	20 - Legal Protection	Nil	People Living With HIV
Disability Discrimination — HIV — public health; alleged respondent informed applicant that applicant was no longer suitable for the respondent's treatment due to positive HIV status.	4 - Treatment, Care and Other Health Services	Nil	People Living With HIV

YEAR	JURISDICTION	COURT/ TRIBUNAL	CASE NAME	AREA OF LAW	FULL HEADNOTE
2010	Federal	RRTA	1008364 [2010] RRTA 1135	Refugee	Appeal against sentence — appellant aware had HIV virus and engaged in unprotected sexual intercourse — two victims — whether matter fell into worst class of cases — applicant's recklessness demonstrated contemptible and callous disregard for life of victims — trial judge accurately characterised offences — whether insufficient discount in sentencing given for plea of guilty — plea does not give rise to presumption of, or entitlement to, discount — nature and circumstances of offence made discount inappropriate — whether insufficient weight given to appellant's subjective circumstances — remorse and contrition exhibited — incarceration would involve hardship — life expectancy reduced through HIV infection — weight assigned to subjective circumstances matter for trial judge's discretion — totality and whether sentence manifestly excessive — cumulative sentence was appropriate given nature and criminality of offences — offences were deserving of condign punishment — no errors of trial judge established on these grounds — failure to give reason for fixing non-parol period — non-compliance with s 45(2) purely technical — did not merit interference by appeal court — leave to appeal granted — appeal dismissed — Crimes (Sentencing Procedure) Act 1999 (NSW), s 45(2)
2010	Federal	RRTA	1006765 [2010] RRTA 1008	Refugee	Criminal Law — particular offences — offences against the person — acts intended to cause or causing danger to life or bodily harm — other offences against the person — where appellant charged under s 317(b) of the Criminal Code 1899 (Qld) with one count of unlawfully transmitting a serious disease with intent and in the alternative with one count of grievous bodily harm under s 320 — where the appellant transmitted the HIV virus to the complainant through acts of sexual intercourse — whether the jury were adequately instructed about whether the appellant intentionally transmitted the HIV infection to the complainant — where jury were instructed 'intent' and 'intention' carry their ordinary meaning — meaning of intention — whether the transmission of a disease is an event which occurs 'by accident' under s 23(1)(b) of the Code — whether verdict reasonable — whether trial judge erred in not directing the jury on the absence of evidence of motive in the Crown case

SUMMARISED HEADNOTE	LEGAL FACTOR - PRIMARY	LEGAL FACTOR - KEY POPULATION	PRIORITY POPULATION
<p>Applicant HIV positive; Tribunal found applicant is a person to whom Australia has protection obligations under the Refugees Convention.</p>	<p>12 - Entry, Stay and Residence</p>	<p>Nil</p>	<p>People Living With HIV</p>
<p>Applicant HIV positive; Tribunal found applicant is a person to whom Australia has protection obligations under the Refugees Convention.</p>	<p>12 - Entry, Stay and Residence</p>	<p>Nil</p>	<p>People Living With HIV</p>

YEAR	JURISDICTION	COURT/ TRIBUNAL	CASE NAME	AREA OF LAW	FULL HEADNOTE
2011	State - VIC	VSCA	Neal v The Queen [2011] VSCA 172	Criminal	Criminal Law — appeal and new trial and inquiry after conviction — appeal and new trial — appeal against sentence — appeal by convicted person — applications to reduce sentence — when refused generally — whether sentence of 10 years and 6 months manifestly excessive — where sentence imposed considered to be at the lower end of the sentencing discretion
2011	State - QLD	QCAT	M v Dental Board of Queensland [2011] QCAT 373	Discrimination	Criminal Law — appeal and new trial and inquiry after conviction — appeal and new trial
2011	Federal	RRTA	1100816 [2011] RRTA 356	Refugee	Appeal and new trial — new trial — in general and particular grounds — particular grounds — fresh evidence — general principles as to grant or refusal of new trial
2011	Federal	RRTA	1106832 [2011] RRTA 826	Refugee	Evidence — admissibility and relevancy — opinion evidence — expert opinion — qualifications of witness
2013	State - VIC	VCAT	Re Victorian AIDS Council [2013] VCAT 932	Discrimination	Application for permission to appeal — endangering life
2014	State - QLD	QCA	Zaburoni v The Queen [2014] QCA 77	Criminal	Applicant had been convicted of three counts of endangering life — basis of convictions was that applicant had unprotected sexual intercourse with three women at a time when he knew he was infected with the virus HIV and had been advised not to have unprotected sexual intercourse with his sexual partners — applicant sought permission to appeal on the ground that there should be a retrial to enable fresh expert evidence to be led — evidence sought to be led was heard during application for permission — whether evidence sought to be led was expert evidence — whether witnesses sought to be called were experts — whether fresh evidence could be led — held, witnesses were not experts — held, evidence was not such that it might have led a jury to acquit — held, there was therefore no basis for a retrial — application for permission to appeal refused
2014	State - NSW	NSWSC	R v Armstrong [2014] NSWSC 700	Criminal	Criminal Law — appeal and new trial and inquiry after conviction — appeal and new trial — particular grounds — fresh evidence — availability at trial; materiality and cogency — particular cases — materiality and cogency

SUMMARISED HEADNOTE	LEGAL FACTOR - PRIMARY	LEGAL FACTOR - KEY POPULATION	PRIORITY POPULATION
HIV transmission with intent; reckless conduct endangering person; consent; sentencing.	13 - Non-Criminalisation of HIV Exposure and Transmission	18 - Men who have sex with men, and transgender people	Gay men and other men who have sex with men
Indirect discrimination; applicant restricted from performing work on account of HIV-positive status; whether workplace policy was reasonable.	10 - Employment, Work and Economic Life	Nil	People Living With HIV
Applicant HIV positive; Tribunal found applicant is a person to whom Australia has protection obligations under the Refugees Convention.	12 - Entry, Stay and Residence	Nil	People Living With HIV
Applicant HIV-positive; Tribunal found that decision is an RRT-reviewable decision.	12 - Entry, Stay and Residence	Nil	People Living With HIV
Application to advertise to employ only gay men; exemption under Equal Opportunity Act.	2 - HIV Prevention	18 - Men who have sex with men, and transgender people	Gay men and other men who have sex with men
Unlawful HIV transmission with intent.	13 - Non-Criminalisation of HIV Exposure and Transmission	19 - People under state custody	People in Custodial Settings
Manslaughter; offender inflicted grievous bodily harm upon discovering deceased was HIV positive; guilty plea.	22 - Access to a forum, fair trial, and enforcement of remedies	19 - People under state custody	People in Custodial Settings

YEAR	JURISDICTION	COURT/ TRIBUNAL	CASE NAME	AREA OF LAW	FULL HEADNOTE
2015	Federal	FCAFC	C v Commonwealth [2015] FCAFC 113	Industrial relations	Application for permission to appeal to the Court of Criminal Appeal and extension of time — fresh evidence — whether evidence not put before jury at trial admissible and sufficiently cogent to create possibility of miscarriage of justice
2015	State - NSW	NSWDC	RM v The Queen [2015] NSWDC 377	Criminal	Held: evidence relied on by applicant does not meet fresh evidence test, lacks cogency and probative force — application for extension of time refused — permission to appeal refused
2015	State - NSW	NSWCCA	Aubrey v The Queen [2015] NSWCCA 323	Criminal	Criminal Law — appeal and new trial and inquiry after conviction — appeal and new trial — practice: after criminal appeal legislation — miscellaneous matters — south australia — procedure
2016	Federal	HCA	Zaburoni v The Queen (2016) 256 CLR 482	Criminal	Appeal and new trial — appeal — practice and procedure — south australia — when appeal lies — by leave of court — generally
2017	Federal	FCA	Zaburoni v Minister for Immigration and Border Protection [2017] FCA 654	Migration	Application for extension of time within which to appeal against conviction and extension of time within which to seek permission to appeal — whether applications are competent — previous application for permission to appeal on different grounds refused — merits of appeal considered in previous application — whether second application competent — (per majority) appeal incompetent — (per Doyle CJ) appeal is competent and permission to appeal should be granted but appeal should be dismissed
2017	Federal	FCAFC	Zaburoni v Minister for Immigration and Border Protection [2017] FCAFC 205	Migration	Criminal Law — particular offences — offences against the person — other offences against the person — acts intended to cause or causing danger to life or bodily harm — other offences
2017	Federal	HCA	Aubrey v The Queen [2017] HCA 18	Criminal	Applicant had unprotected sexual intercourse with three women knowing that he had the HIV/AIDS virus — applicant convicted of doing an act knowing that the act was likely to endanger the life of another — consideration of when an act is likely to endanger life — where danger to life depends on the likelihood of a chain of events occurring — whether prosecution required to prove that an act of unprotected sexual intercourse had the consequence that it was more likely than not that the life of the complainant was endangered — likelihood of life being endangered is a matter for the assessment of the fact-finder — whether there was evidence upon which the jury could find the appellant guilty — if competent, application for permission to appeal and for extension of time should be dismissed

SUMMARISED HEADNOTE	LEGAL FACTOR - PRIMARY	LEGAL FACTOR - KEY POPULATION	PRIORITY POPULATION
Applicant enlisted in the Royal Australian Air Force; applicant subsequently diagnosed with HIV, Court considered whether members of the ADF were 'employees'; ordinary meaning of 'employee'.	10 - Employment, Work and Economic Life	Nil	People Living With HIV
Fraud; dishonestly gaining financial advantage; offending precipitated by severe personal upset including partner's HIV positive diagnosis.	22 - Access to a forum, fair trial, and enforcement of remedies	19 - People under state custody	People in Custodial Settings
Unreasonable verdict; whether proved beyond reasonable doubt that accused caused HIV infection.	22 - Access to a forum, fair trial, and enforcement of remedies	19 - People under state custody	People in Custodial Settings
Unlawful HIV transmission with intent.	22 - Access to a forum, fair trial, and enforcement of remedies	Nil	People Living With HIV
Reasonableness of Minister's decision to cancel visa on character grounds after appellant knowingly transmitted HIV.	22 - Access to a forum, fair trial, and enforcement of remedies	Nil	People Living With HIV
Visa cancellation; new evidence; appeal dismissed.	12 - Entry, Stay and Residence	Nil	People Living With HIV
Grievous bodily harm; reckless HIV transmission.	22 - Access to a forum, fair trial, and enforcement of remedies	19 - People under state custody	People in Custodial Settings

YEAR	JURISDICTION	COURT/ TRIBUNAL	CASE NAME	AREA OF LAW	FULL HEADNOTE
2018	Federal	AATA	1508989 (Refugee) [2018] AATA 2116	Refugee	Veterans Affairs – HIV infection – service disease – acceptance of liability – non-warlike service – East Timor – defence service – original determination – reviewable determination – standard of proof – requirement to refer only to current SoP – rendering defence service – means of transmission of HIV infection – provision of medical assistance – treatment of accident victims – use of protective gloves – infection by sexual activity
2018	State - NSW	NSWSC	New South Wales v O'Donnell [2018] NSWSC 563	Criminal	
2018	Federal	AATA	1511485 (Refugee) [2018] AATA 5232	Refugee	Criminal Law — appeal and new trial — miscarriage of justice — what constitutes — where applicant alleged miscarriage of justice insofar as counsel at trial was refused an adjournment — where applicant alleged refusal arose from listing judge's preconceived view of his guilt — where transcripts reveal counsel at trial had previously advised Court that matter was ready to proceed — where Crown objected to adjournment due to complainant's ill health — whether refusal to adjourn trial constitutes miscarriage of justice
2018	Federal	FCCA (Federal Circuit Court)	ACL17 v Minister for Immigration and Border Protection [2018] FCCA 3191	Migration	Criminal Law — appeal and new trial — miscarriage of justice — what constitutes — where applicant alleged miscarriage of justice insofar as refusal to adjourn trial prevented trial counsel from receiving adequate instructions from applicant — where commencement of trial was delayed to permit trial counsel to be instructed — where trial counsel conducted case in a manner consistent with having received instructions from applicant — whether miscarriage of justice
2018	Federal	AATA	1511084 (Refugee) [2018] AATA 882	Refugee	Criminal Law — appeal and new trial — miscarriage of justice — what constitutes — where applicant convicted of attempted sodomy of and permitting himself to be sodomised by a child under 16 years — where applicant asserted Crown failed to establish a 'satisfactory date' as to applicant's knowledge that complainant was HIV positive — where undisputed evidence was that parties used a condom and that applicant was unconcerned with complainant's HIV status — whether miscarriage of justice



SUMMARISED HEADNOTE	LEGAL FACTOR - PRIMARY	LEGAL FACTOR - KEY POPULATION	PRIORITY POPULATION
Refugee; applicant HIV positive; Tribunal not satisfied that harm caused by stigma/discrimination would amount to serious harm.	12 - Entry, Stay and Residence	Nil	People Living With HIV
Extended supervision order final hearing; whether defendant poses unacceptable risk of committing another serious offence; where defendant diagnosed with HIV-associated neurocognitive disorder.	22 - Access to a forum, fair trial, and enforcement of remedies	19 - People under state custody	People in Custodial Settings
Refugee; applicant HIV-positive; particular social group.	12 - Entry, Stay and Residence	Nil	People Living With HIV
Review of AATA decision; applicant HIV-positive and claiming a fear of harm in Malaysia; refusal of protection visa.	12 - Entry, Stay and Residence	Nil	People Living With HIV
Refugee; applicant HIV-positive; particular social group.	12 - Entry, Stay and Residence	Nil	People Living With HIV

YEAR	JURISDICTION	COURT/ TRIBUNAL	CASE NAME	AREA OF LAW	FULL HEADNOTE
2019	Federal	AATA	1513428 (Refugee) [2019] AATA 5172	Refugee	Criminal Law — appeal and new trial — appeal against sentence — grounds for interference — sentence manifestly excessive or inadequate — where applicant previously sentenced to eight years imprisonment with respect to other sexual offences against other complainants — where applicant sentenced to three years imprisonment cumulatively with respect to instant complaint — where the effect of instant sentence to postpone parole eligibility by 18 months — whether sentence manifestly excessive
2019	State - QLD	QCA	R v Cooney [2019] QCA 166	Criminal	Migration – Application to review decision of the Refugee Review Tribunal – whether Tribunal failed to comply with s.425 of the Migration Act by not providing an interpreter for the primary applicant at the Tribunal hearing – whether Tribunal failed to consider an integer of the applicant's claim – whether breach of s.424A.
2019	State - NSW	NSWDC	R v Navarro [2019] NSWDC 540	Criminal	Equal opportunity - Discrimination on basis of lawful sexual activity, sexual orientation or a characteristic imputed to attribute - Direct and indirect discrimination - Provision of services - Whether respondent must provide the service for the purpose of s22 - Imposition of condition, requirement or practice - Whether unreasonable in the circumstances - Statutory exceptions - Anti-Discrimination Act 1998 (Tas), ss14, 15, 22, 24, 25
2019	Federal	FCA	ACL17 v Minister for Home Affairs [2019] FCA 753	Migration	N/A
2020	Federal	AATA	1711438 (Refugee) [2020] AATA 789	Refugee	Criminal Law — Appeal — Sentence — Reckless conduct endangering persons — Appellant HIV-positive — Unprotected sexual intercourse — Victim not informed of HIV status — Guilty plea — Judge declined to reduce sentence on account of guilty plea — Crown concession of error — Resentencing — Significance of lengthy detention in isolation by health authorities — Enhanced community protection — Subsequent deterioration in appellant's health — Community-based order for two years with special conditions — Health Act 1958 (Vic) s 121
2020	Federal	AATA	1708100 (Refugee) [2020] AATA 1893	Refugee	Discrimination, homosexuality and HIV/ AIDS vilification
2020	Federal	AATA	Palmer and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2020] AATA 88	Migration	Disability Discrimination — HIV — public health

SUMMARISED HEADNOTE	LEGAL FACTOR - PRIMARY	LEGAL FACTOR - KEY POPULATION	PRIORITY POPULATION
Refugee; applicant HIV-positive; particular social group.	12 - Entry, Stay and Residence	Nil	People Living With HIV
Appeal against sentence; guilty plea; psychological stress of fear of HIV contamination.	22 - Access to a forum, fair trial, and enforcement of remedies	19 - People under state custody	People in Custodial Settings
Applicant did not disclose HIV-positive status at relevant time; criminal sentencing; mitigating/aggravating factors.	22 - Access to a forum, fair trial, and enforcement of remedies	19 - People under state custody	People in Custodial Settings
Appellant based application for protection visa on a claimed fear of harm by reason of HIV-positive status.	12 - Entry, Stay and Residence	Nil	People Living With HIV
Refugee; applicant HIV-positive; particular social group.	12 - Entry, Stay and Residence	Nil	People Living With HIV
Refugee; applicant HIV-positive; particular social group.	12 - Entry, Stay and Residence	Nil	People Living With HIV
Mandatory visa cancellation on account of substantial criminal record; applicant HIV-positive; Tribunal considered risk to Australian community.	12 - Entry, Stay and Residence	19 - People under state custody	People in Custodial Settings

YEAR	JURISDICTION	COURT/ TRIBUNAL	CASE NAME	AREA OF LAW	FULL HEADNOTE
2020	Federal	AATA	1621844 (Refugee) [2020] AATA 2425	Refugee	N/A
2021	Federal	AATA	1715202 (Refugee) [2021] AATA 837	Refugee	N/A
2021	Federal	AATA	1710853 (Refugee) [2021] AATA 3076	Refugee	Crime — Intentionally causing another person to be infected with very serious disease — Attempt — Actus reus — Conduct constituting attempt — Whether unprotected anal intercourse 'Immediately and not remotely connected with the commission of the offence' — Whether act must be likely to produce intended consequence — Whether supposedly low risk of infection inconsistent with act being immediately and not remotely connected with commission of offence — Mens rea — Necessity for accused to believe himself to be infectious and not just that he may be infectious — Leonard v Morris (1975) 10 SASR 528, referred to — Crimes Act 1958, ss 19A, 321N(1)(b) — s 321N(2)(b)
2021	Federal	AATA	1+D72702194 (Refugee) [2021] AATA 2922	Refugee	Reckless conduct endangering person — Unprotected anal intercourse between HIV infected accused and uninfected complainant — Defences — Consent — Whether informed consent to risk of infection with HIV constitutes defence to reckless or intentional conduct endangering a person with infection with HIV — R v Dica [2004] QB 1250, R v Barnes [2005] 1 WLR 910, R v Konzani [2005] 2 Cr App R 14, followed; R v Mwai [1995] 3 NZLR 149, R v Lee [2006] 3 NZLR 42, R v Currier [1998] 2 SCR 371, considered
2021	State - VIC	VCC (Victorian County Court)	Director of Public Prosecutions v Adam Alki [2021] VCC 1965	Criminal	Rape — Mens rea — Accused's belief as to complainant's state of intoxication and lack of comprehension of sexual nature of act — Whether necessarily following that accused aware complainant not consenting or may not be consenting — Interrelationship between s 36 and s 37AA of Crimes Act 1958 — Belief in consent — Whether accused's belief that complainant consenting precluding finding that accused aware of possibility that complainant not consenting — R v Worsnop [2010] VSCA 188, followed — Crimes Act 1958, ss 36, 37AA and 37AAA
2022	State - VIC	VIC Magistrates Court	Orr v Burkhan Pty Ltd [2022] VMC 5	Workers' compensation	Appeal against conviction allowed in part and convictions on counts of rape and reckless conduct endangering person set aside
2022	Federal	AATA	1821127 (Refugee) [2022] AATA 3735*	Refugee	Sentence — On remaining counts, applicant re-sentenced to total effective sentence of 12 years' imprisonment with non-parole period of nine years

SUMMARISED HEADNOTE	LEGAL FACTOR - PRIMARY	LEGAL FACTOR - KEY POPULATION	PRIORITY POPULATION
Refugee; applicant HIV-positive; particular social group.	12 - Entry, Stay and Residence	Nil	People Living With HIV
Refugee; applicant HIV-positive; particular social group.	12 - Entry, Stay and Residence	Nil	People Living With HIV
Refugee; applicant HIV-positive; particular social group.	12 - Entry, Stay and Residence	Nil	People Living With HIV
Refugee; applicant HIV-positive; particular social group.	12 - Entry, Stay and Residence	Nil	People Living With HIV
Applicant HIV-positive; applicant regularly engaged in unprotected sex; common law assault; guilty plea.	22 - Access to a forum, fair trial, and enforcement of remedies	19 - People under state custody	People in Custodial Settings
Whether HIV contracted in the course of employment.	5 - Social Protection and Material Assistance	Nil	People Living With HIV
Refugee; applicant HIV-positive; particular social group.	12 - Entry, Stay and Residence	Nil	Culturally and linguistically diverse

YEAR	JURISDICTION	COURT/ TRIBUNAL	CASE NAME	AREA OF LAW	FULL HEADNOTE
2022	Federal	AATA	1711983 (Reguee) [2022] AATA 3780*	Refugee	Anti-discrimination – where dentist is HIV positive – where dentist restricted from performing dentistry involving invasive intraoral procedures based on a policy of respondent – where effect of policy alleged to be unreasonable – where allegations of indirect discrimination – referral for decision as to whether conduct of respondent in relying on the policy was reasonable
2003	Federal	RRTA	NO3/45504 [2003] RRTA 627*	Refugee	N/A
1998	Federal	RRTA	N97/20754 [1998] RRTA 3705*	Refugee	N/A
2015	Federal	FCCA (Federal Circuit Court)	SZUFQ & Anor v Minister for Immigration & Anor [2015] FCCA 3406*	Migration	The applicant has applied for an exemption under section 89 of the Equal Opportunity Act 2010 (EO Act) to enable it to advertise for and employ only gay men in the roles of peer counsellor, registered nurse and receptionist (the conduct).
2020	Federal	FCCA (Federal Circuit Court)	CFU17 v Minister for Immigration & Anor [2020] FCCA 3364*	Migration	Criminal law — appeal and new trial — verdict unreasonable or insupportable having regard to the evidence — appeal dismissed — where the appellant was diagnosed as HIV positive — where the appellant and complainant commenced a relationship — where the complainant was diagnosed with HIV after engaging in unprotected sex with the appellant numerous times — where the appellant was deceptive about his HIV diagnosis — where the appellant was found guilty of transmitting a serious disease with intent — where the evidence of the appellant's conduct led to the inference that there was intent — whether the verdict was unreasonable or contrary to the evidence — whether the appellant had intent to transfer HIV

SUMMARISED HEADNOTE	LEGAL FACTOR - PRIMARY	LEGAL FACTOR - KEY POPULATION	PRIORITY POPULATION
Refugee; applicant HIV-positive; particular social group, gay men with HIV	12 - Entry, Stay and Residence	18 - Men who have sex with men, and transgender people	people from high HIV prevalence countries, people who travel to those countries.
Refugee; applicant HIV-positive; particular social group, gay men with HIV	12 - Entry, Stay and Residence	18 - Men who have sex with men, and transgender people	People from high HIV prevalence countries, people who travel to those countries.
Refugee; applicant HIV-positive; particular social group	12 - Entry, Stay and Residence	Nil	People from high HIV prevalence countries, people who travel to those countries.
Refugee; applicant HIV-positive; particular social group. Review of AAT decision	12 - Entry, Stay and Residence	Nil	Culturally and linguistically diverse
Refugee; applicant HIV-positive; particular social group. Review of AAT decision	12 - Entry, Stay and Residence	16 - People who use drugs	People from high HIV prevalence countries, people who travel to those countries.

YEAR	JURISDICTION	COURT/ TRIBUNAL	CASE NAME	AREA OF LAW	FULL HEADNOTE
2012	Federal	FMCA (Federal Magistrates Court of Australia)	SZQUP v Minister for Immigration & Anor [2012] FMCA 276*	Migration	Criminal law — sentence — manslaughter — guilty plea directly contradicted offender's evidence in his previous trial — key witness inaccurate about sequence of events but otherwise reliable — offender inflicted grievous bodily harm upon deceased upon discovering deceased was HIV positive — minor provocation in circumstances where offender made no inquiry as to the HIV status of the deceased and offender was prepared to engage in sexual acts not knowing whether person had HIV — objectively serious offence having regard to brutality of assault and relatively minor provocation — statistical analysis of sentences imposed for manslaughter unhelpful given their varied factual nature — no adverse movement of sentencing practices since commission of crime in 1991 established — no concurrence appropriate with sentence for unrelated offences of sexual intercourse without consent — lack of remorse — offender not entitled to leniency given offender's criminal history before and after his killing of deceased — low prospects of rehabilitation given offender's subjective circumstances — small utilitarian value of guilty plea due to its timing — offender's institutionalisation by reason of lengthy incarceration not a special circumstance
2022	Federal	AATA	1933486 (Refugee) [2022] AATA 4579*	Refugee	Industrial Law — adverse action — whether members of the Australian Defence Force 'employees' within the meaning of the Fair Work Act 2009 (Cth) — consideration of the meaning of 'ordinary meaning' of 'employee'
2018	State - WA	WASCA	Palmer v The State of Western Australia [2018] WASCA 225*	Criminal	Practice and procedure — application for summary judgment — whether applicant has no reasonable prospects of success — whether applicant has standing to commence or prosecute proceeding



SUMMARISED HEADNOTE	LEGAL FACTOR - PRIMARY	LEGAL FACTOR - KEY POPULATION	PRIORITY POPULATION
Refugee; applicant HIV-positive; particular social group. Review of Refugee Tribunal decision	12 - Entry, Stay and Residence	14 - Women	People from high HIV prevalence countries, people who travel to those countries.
Refugee; applicant HIV-positive; particular social group.	12 - Entry, Stay and Residence	14 - Women	People from high HIV prevalence countries, people who travel to those countries.
Appeal against sentence; negligent HIV transmission; Amicus Curiae application	22 - Access to a forum, fair trial, and enforcement of remedies	19 - People under state custody	Culturally and linguistically diverse

YEAR	JURISDICTION	COURT/ TRIBUNAL	CASE NAME	AREA OF LAW	FULL HEADNOTE
2023	State - NSW	NSWCATAD	Chief Health Officer, NSW Health v FRC (application for confirmation of public health order) [2023] NSWCATAD 75*	Public health	Criminal Law — Severity appeal — 10 counts of dishonestly gain financial advantage by deception — Total amount gained in respect of all 10 offences was \$20,150 — Offending precipitated by severe personal upset including partner's HIV positive diagnosis, the death of a cousin caused by pancreatic cancer and the suicide of a close friend within the same month — Diagnosed as suffering chronic Adjustment Disorder with Mixed Anxiety and Depressed Mood at time of offending, resolved at time of sentence and appeal — Section 32, Mental Health (Forensic Procedures) Act 1990 not exercised — Appellant turned his life around with new employment and by performing charity work — Voluntary increase in compensation payments — Community Corrections advised Court of lack of appropriate community service work — Strong remorse and low risk of recidivism
2017	Federal	FCA	SZUFQ v Minister for Immigration and Border Protection [2017] FCA 15*	Migration	Precedent — review of previous decision by same court — whether previous decision was wrong
2009	State - NSW	NSWADT	MT v AA [2009] NSWADT 268*	Discrimination	Appeal — unreasonable verdict — causation — whether proved beyond reasonable doubt that applicant caused HIV infection — consideration of circumstantial evidence
1999	Federal	RRTA	N98/23842 [1999] RRTA 1718*	Refugee	Appeal — whether trial judge erred by directing jury that recklessness constituted foresight of possibility of some harm — grievous bodily harm — malice — possibility or probability
2020	Federal	AATA	1618045 (Refugee) [2020] AATA 2226*	Refugee	Criminal Law — Intent — Unlawful transmission of serious disease to another with intent to do so — Transmission of HIV in course of unprotected sexual intercourse — Accused's knowledge of own infection — Lies to victim about his condition — Frequency of conduct — Whether intent proved by evidence of awareness of risk — Criminal Code (Qld), s 317(b), (e)

SUMMARISED HEADNOTE	LEGAL FACTOR - PRIMARY	LEGAL FACTOR - KEY POPULATION	PRIORITY POPULATION
Public Health Order, Confirmation of order, PHO directly related to HIV and behaviour of Respondent	20 - Legal protection	Nil	People from high HIV prevalence countries, people who travel to those countries.
Refugee; applicant HIV-positive; particular social group.	12 - Entry, Stay and Residence	Nil	People from high HIV prevalence countries, people who travel to those countries.
Discrimination on grounds of HIV status and victimisation, summarily dismissed from employment	10 - Employment, work and economic life	18 - Men who have sex with men, and transgender people	People from high HIV prevalence countries, people who travel to those countries.
Refugee; applicant HIV-positive; particular social group.	12 - Entry, Stay and Residence	Nil	Culturally and linguistically diverse
Refugee; applicant HIV-positive; particular social group.	12 - Entry, Stay and Residence	14 - Women	People from high HIV prevalence countries, people who travel to those countries.

YEAR	JURISDICTION	COURT/ TRIBUNAL	CASE NAME	AREA OF LAW	FULL HEADNOTE
2022	Federal	FedCFamC	XY (litigation guardian) v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2022] FedCFamC2G 1076	Migration	Risk of reoffending — recidivism — where appellant knowingly infected a woman with HIV — where appellant convicted of grievous bodily harm — where psychological problems influencing offending resolved — where medical evidence showed future risk of transmitting HIV negligible if medical regiment continued — where Minister decided possibility of reoffending could not be ruled out — visa cancelled on character grounds — reasonableness of Minister's decision — held open to Minister to weigh low risk of reoffending against protection of Australian community — no error demonstrated — Migration Act 1958 (Cth), s 501(2); Apprehended bias — Minister for Immigration — cancellation of visa on character grounds — standard of impartiality required for Minister — compared with standard for judges — where Minister made a public comment expressing disapproving attitude towards appellant
2002	State - NSW	NSWSC	R v Peters [2002] NSWSC 1234	Criminal	Practice and procedure — application to adduce new evidence — where new evidence contained statements of reasons from visa cancellation decisions which contained substantially similar words to those used by the Minister in his statement of reasons in this case — whether new evidence was intended to support a case not run below — leave refused
1997	State - WA	WAIRComm (Western Australia Industrial Relations Commission)	Western Australia Prison Officers' Union of Workers v The Hon. Attorney General (First Respondent) and Ministry of Justice (Second Respondent) [1997] WAIRComm 21	Industrial relations	Migration — appeal from a decision of a single judge of the Federal Court of Australia — whether primary judge erred in not accepting that the Minister had inflexibly applied a policy and thereby failed to exercise the required statutory discretion under s 501(2) of the Migration Act 1958 (Cth) — whether primary judge applied the wrong test for apprehended bias — whether primary judge erred in not finding that the Minister's decision was attended by apprehended bias — need to establish appealable error — appeal dismissed with costs
1991	Federal	FCA	Re "E" v Australian Red Cross Society; Australian Red Cross Society New South Wales Division and Central Sydney Area Health Service [1991] FCA 603	Negligence	Criminal law — Infliction of grievous bodily harm — Meaning of 'inflicts' — Where appellant caused complainant to contract human immunodeficiency virus — Whether infliction requires force and immediate physical injury — Whether communication of infection or disease amounts to infliction — Consideration of R v Clarence (1888) 22 QBD 23 and R v Dica [2004] QB 1257

SUMMARISED HEADNOTE	LEGAL FACTOR - PRIMARY	LEGAL FACTOR - KEY POPULATION	PRIORITY POPULATION
Refugee; applicant HIV-positive; particular social group. Mental health and other complex health needs	12 - Entry, Stay and Residence	Nil	People from high HIV prevalence countries, people who travel to those countries.
Criminal - murder(s) and obtaining money by deception. Both victim and defendant HIV positive	22 - Access to a forum, fair trial, and enforcement of remedies	19 - People under state custody	People from high HIV prevalence countries, people who travel to those countries.
Industrial Relations - Ministry of Justice policy denies prison officers the right to know or be officially informed of the medical status of HIV positive prisoners	6 - Protection of privacy and confidentiality	19 - People under state custody	Culturally and linguistically diverse
Duty of care in transfusion of blood from an HIV-positive donor; whether supply of blood is a contract; expert opinion.	2 - HIV prevention	Nil	People from high HIV prevalence countries, people who travel to those countries.

YEAR	JURISDICTION	COURT/ TRIBUNAL	CASE NAME	AREA OF LAW	FULL HEADNOTE
2019	Federal	FCA	DKT16 v Minister for Immigration and Border Protection [2019] FCAFC 208	Migration	Criminal law — Fault element — Recklessness — Foresight of risk — Where appellant diagnosed with human immunodeficiency virus — Where appellant knew of possibility of transmitting virus through unprotected sexual intercourse — Whether foresight of possibility of risk sufficient to establish recklessness
1995	Federal	RRTA	N95/07740 [1995] RRTA 2163	Refugee	Refugee – Protection visa – Zambia – Particular social group – People with HIV – Political opinion – United Party for National Development – Murders of family members – Sexual abuse – Availability of medication – Political violence – Decision under review affirmed
2018	Federal	AATA	1515485 (Refugee) [2018] AATA 724	Refugee	
2021	Federal	AATA	1619224 (Refugee) [2021] AATA 3876	Refugee	High risk offender — serious sex offender — extended supervision order final hearing — whether high degree of probability that defendant poses unacceptable risk of committing another serious offence if not under supervision of ESO — where defendant convicted of violent sexual assault and conspiracy to murder — where defendant evinced denial of responsibility for offences — where defendant convicted of aggravated indecent assault on person under 16 — where defendant subject of allegations not resulting in charge or conviction — where defendant subject of allegation of sexual assault resulting in APVO — where defendant's parole revoked due to breach of alcohol abstinence direction — where psychiatrists and psychologists almost unanimously categorised defendant's risk of reoffending as moderate to high — where defendant diagnosed with HIV-associated neurocognitive disorder — extended supervision order granted
1996	Federal	FCA	Commonwealth of Australia v the Honourable W J Carter Qc In His Capacity As A Member of the Human Rights and Equal Opportunity Commission and "X" [1996] FCA 1850	Discrimination	REFUGEE – protection visa – India – social group – person with HIV – risk of discrimination as perceived homosexual – lack of family support – access medical services – limited capacity to work due to medical condition – level of stigma and discrimination in broader Indian society – relocation unreasonable – real chance of serious harm – decision under review remitted

SUMMARISED HEADNOTE	LEGAL FACTOR - PRIMARY	LEGAL FACTOR - KEY POPULATION	PRIORITY POPULATION
Refugee; applicant HIV-positive; particular social group.	12 - Entry, Stay and Residence	14 - Women	People from high HIV prevalence countries, people who travel to those countries.
Refugee; applicant HIV-positive; particular social group.	12 - Entry, Stay and Residence	Nil	People from high HIV prevalence countries, people who travel to those countries.
Refugee; applicant HIV-positive; particular social group.	12 - Entry, Stay and Residence	18 - Men who have sex with men, and transgender people	Culturally and linguistically diverse
Refugee; applicant HIV-positive; particular social group.	12 - Entry, Stay and Residence	14 - Women	People from high HIV prevalence countries, people who travel to those countries.
Discrimination on grounds of HIV status, discharged from ADF after positive HIV test	10 - Employment, work and economic life	Nil	People from high HIV prevalence countries, people who travel to those countries.

YEAR	JURISDICTION	COURT/ TRIBUNAL	CASE NAME	AREA OF LAW	FULL HEADNOTE
2020	Federal	FCA	FDQ18 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2020] FCA 1735	Migration	Migration — Review of Administrative Appeals Tribunal decision — refusal of a protection visa — applicant claiming a fear of harm in Malaysia — applicant disbelieved in critical respects — whether the Tribunal erred in its reasoning process, failed to accord procedural fairness, failed to consider relevant information or took into account irrelevant considerations — no jurisdictional error
1995	Federal	IRTA (Immigration Review Tribunal Australia)	Visa Applicant: S IRT Reference: N94/01389 #number 6005 [1995] IRTA 6005	Migration	Refugee – Protection Visa – Malawi – Particular social group – People living with HIV – Availability of HIV treatment in Malawi – Country information suggests treatment is available – Whether stigma exists against people living with HIV – Stigma exists but not at a level amounting to serious harm and is reducing – Returnees from the west – Harm feared suffered by society generally – Imputed political opinion – Members of the Yao tribe – Support of opposition party – Limited evidence of persecution on basis of imputed political opinion – Ministerial intervention – Matter referred to Minister
1995	Federal	HREOCA	X v Department of Defence [1995] HREOCA 16	Discrimination	REFUGEE – protection visa – Nepal – particular social group – HIV positive status – limited treatment available in Nepal – social attitudes to HIV positive status – social attitudes to divorced women – decision under review remitted
2000	Federal	FCA	Kuthyar v Minister for Immigration & Multicultural Affairs [2000] FCA 110	Migration	Criminal Law — appeal and new trial — appeal against sentence — grounds for interference — sentence manifestly excessive or inadequate — where the applicant pleaded guilty to attempted unlawful entry of a vehicle with intent to commit an indictable offence, with violence, and two counts of serious assault of police while acting in execution of duty — where the applicant received a head sentence of two years imprisonment for one count of serious assault, and 18 months for each of the other counts — where the applicant was delusional as a result of voluntary intoxication and believed the police were in fact Hells Angels — where the offending against police consisted of swinging blows that did not make contact — whether the sentence was manifestly excessive



SUMMARISED HEADNOTE	LEGAL FACTOR - PRIMARY	LEGAL FACTOR - KEY POPULATION	PRIORITY POPULATION
Refugee; applicant HIV-positive; particular social group.	12 - Entry, Stay and Residence	16 - People who use drugs	People from high HIV prevalence countries, people who travel to those countries and their partners.
Health Waiver - costs of granting visa 'undue' - compassionate grounds for granting visa	12 - Entry, Stay and Residence	Nil	Culturally and linguistically diverse
Discrimination on grounds of HIV status, discharged from ADF after positive HIV test	10 - Employment, work and economic life	Nil	People from high HIV prevalence countries, people who travel to those countries and their partners.
Refugee; applicant HIV-positive; particular social group.	12 - Entry, Stay and Residence	Nil	People from high HIV prevalence countries, people who travel to those countries and their partners.

YEAR	JURISDICTION	COURT/ TRIBUNAL	CASE NAME	AREA OF LAW	FULL HEADNOTE
1995	Federal	RRTA	V95/03396 [1995] RRTA 2674	Refugee	Criminal Law — appeal and new trial — appeal against sentence — grounds for interference — other matters — where the applicant had sustained lacerations and was bleeding when police attempted to restrain him — where the applicant's blood was inadvertently deposited on the cut hand of a police officer — where there was no circumstance of aggravation — where a victim impact statement from the complainant referred to the psychological stress of fear of HIV contamination — where the learned sentencing judge had regard to the emotional harm caused to the complainant — whether the learned sentencing judge erred in considering an uncharged circumstance of aggravation in determining sentence — whether the emotional harm was relevant as harm suffered by a victim because a crime was committed against that person
2004	Federal	MRTA (Migration Review Tribunal Australia)	Dougall (Member) [2004] MRTA 7500	Migration	Sentencing — Aggravating factors — Substantial harm, injury, loss or damage — Without regard for public safety
2000	State - QLD	QADT	S v S [2000] QADT 4	Discrimination	Sentencing — Mitigating factors — Good character — Rehabilitation — Remorse — Unlikely to re-offend
2020	Federal	AATA	1708100 (Refugee) [2020] AATA 1893	Refugee	Sentencing — Relevant factors on sentence — Form 1 offences — Victim impact statements
1996	Federal	RRTA	V96/04392 [1996] RRTA 2329	Refugee	Sentencing — Subjective considerations on sentence — Hardship — Health issues — Special circumstances
1994	Federal	RRTA	N94/04178 [1994] RRTA 1149	Refugee	Migration — appeal from judgment of Federal Circuit Court — no error demonstrated — appeal dismissed
2010	Federal	RRTA	1005910 [2010] RRTA 904	Refugee	REFUGEE - Protection visa - Fiji - fear harm from the general public - membership of a particular social group - homosexuality - homosexual men in Fiji - HIV-positive gay person - societal discrimination - decision under review remitted
2019	Federal	FCCA	DKT16 v Minister for Immigration & Anor [2019] FCCA 170	Migration	REFUGEE - Protection Visa - Indonesia - particular social group - persons living with HIV - societal discrimination - genuine fear of returning to Indonesia - access specialised medical care - barriers to access medication - relocation not available - decision under review remitted

SUMMARISED HEADNOTE	LEGAL FACTOR - PRIMARY	LEGAL FACTOR - KEY POPULATION	PRIORITY POPULATION
Refugee; applicant HIV-positive; particular social group.	12 - Entry, Stay and Residence	Nil	People from high HIV prevalence countries, people who travel to those countries and their partners.
Health Waiver - costs of granting visa 'undue' - compassionate grounds for granting visa	12 - Entry, Stay and Residence	Nil	Culturally and linguistically diverse
Discrimination - refusal to enrol in massage course after HIV disclosure	9 - Education and Training	Nil	People from high HIV prevalence countries, people who travel to those countries and their partners.
Refugee; applicant HIV-positive; particular social group.	12 - Entry, Stay and Residence	14 - Women	People from high HIV prevalence countries, people who travel to those countries and their partners.
Refugee; applicant HIV-positive; particular social group.	12 - Entry, Stay and Residence	18 - Men who have sex with men, and transgender people	People from high HIV prevalence countries, people who travel to those countries and their partners.
Refugee; applicant HIV-positive; particular social group.	12 - Entry, Stay and Residence	Nil	People in custodial settings
Refugee; applicant HIV-positive; particular social group.	12 - Entry, Stay and Residence	18 - Men who have sex with men, and transgender people	People Living with HIV
Refugee; applicant HIV-positive; particular social group, judicial review	12 - Entry, Stay and Residence	14 - Women	Culturally and linguistically diverse

YEAR	JURISDICTION	COURT/ TRIBUNAL	CASE NAME	AREA OF LAW	FULL HEADNOTE
2011	State - NSW	NSWSC	R v De Silva [2011] NSWSC 243	Criminal	MIGRATION – Migration Act 1958 (Cth) – mandatory visa cancellation – s 501CA(4) – substantial criminal record – another reason why the cancellation decision should be revoked – Direction 79 – protection of the Australian community – nature and seriousness of the conduct – the risk to the Australian community – extremely low risk of reoffending – not unacceptable risk – grievous bodily harm by non-violent acts – other consideration – strength, nature and duration of ties – extent of impediments if removed – decision set aside and substituted
2010	Federal	RRTA	1008440 [2010] RRTA 1136	Refugee	REFUGEE – protection visa – Thailand – particular social group – homosexual men – non-acceptance by family – fear of discrimination – complex medical needs – unavailability of new antiviral medication in Thailand – decision under review remitted
2004	State - NSW	NSWADT	Z v University of A & Ors (No 7) [2004] NSWADT 81	Discrimination	REFUGEE – protection visa – Pakistan – imputed political opinion – opposition to the Taliban – religion – Shia – race – Turi tribe – particular social group – HIV/AIDS sufferer – killing of the family members – bombings – sectarian violence – perceived as homosexual – internal relocation – access to HIV/AIDS treatment – decision under review remitted
2001	Federal	FMCA	Xiros v Fortis Life Assurance Ltd [2001] FMCA 15	Discrimination	REFUGEE – Protection Visa – Ethiopia – political opinion – member of the Coalition for Unity and Democracy (CUD) – being diagnosed with HIV – race – Amhara ethnicity – membership of a particular social group – People living with HIV (PLHIV) in Ethiopia – possible separation of the applicant and his Australian citizen wife and children – state protection not available – decision under review remitted
2004	Federal	MRTA (Migration Review Tribunal Australia)	Abcdeav [2004] MRTA 203	Migration	REFUGEE – protection visa – India – particular social group – male homosexual – homosexual living with HIV – pressure to marry a woman – abuse by relatives – state protection – access to appropriate retroviral medication – employment – return visits to India – right to enter and reside in Nepal – decision under review remitted
2022	Federal	AATA	PFKJ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2022] AATA 172	Migration	Plea of guilty – conduct endangering persons – common law assault – stalking – distributing an intimate image – committing and indictable offence on bail – contravening conduct on bail – HIV positive – successful completion of CISP Bail

SUMMARISED HEADNOTE	LEGAL FACTOR - PRIMARY	LEGAL FACTOR - KEY POPULATION	PRIORITY POPULATION
Criminal - insider trading - offender HIV positive, temporary visa no access to medicare	22 - Access to a forum, fair trial, and enforcement of remedies	Nil	People from high HIV prevalence countries, people who travel to those countries and their partners.
Refugee; applicant HIV-positive; particular social group.	12 - Entry, Stay and Residence	14 - Women	People from high HIV prevalence countries, people who travel to those countries.
Disability Discrimination, Discrimination on the ground of presumed HIV/AIDS disability, Imputed HIV/AIDS vilification	9 - Education and Training	Nil	People from high HIV prevalence countries, people who travel to those countries.
Disability Discrimination, HIV exclusion	5 - Social Protection and Material Assistance	Nil	People Living with HIV
Health Waiver - costs of granting visa 'undue' - compassionate grounds for granting visa	12 - Entry, Stay and Residence	Nil	Culturally and linguistically diverse
Refugee; visa refusal due to danger to community	12 - Entry, Stay and Residence	Nil	People from high HIV prevalence countries, people who travel to those countries and their partners.

YEAR	JURISDICTION	COURT/ TRIBUNAL	CASE NAME	AREA OF LAW	FULL HEADNOTE
1997	Federal	RRTA	N95/08165 [1997] RRTA 2205	Refugee	WORKERS COMPENSATION – Rejection of claim – Cleaner undertaking cleaning duties of public toilets – Two claimed incidents of needlestick injury - Human immunodeficiency virus (HIV) diagnosis - Whether injury in the course of or arising out of employment – Whether disease contracted in the course of employment - ‘Injury’ - ‘Disease’ - Whether employment a significant contributing factor – Capacity - Credit of the plaintiff – Workplace Injury Rehabilitation and Compensation Act 2013, ss 3, 39(1), 40(3)(b).
1995	Federal	RRTA	V95/03256 [1995] RRTA 2263	Refugee	
1997	Federal	RRTA	N96/10237 [1997] RRTA 2442	Refugee	REFUGEE – Protection Visa – Vietnam – HIV positive – applicants’ son had now been granted Australian citizenship – particular social groups – people living with HIV in Vietnam – women living with HIV in Vietnam – severe stigma and discrimination – lack of adequate access to medical treatment – effective protection measures not available – decision under review remitted
2002	Federal	MRTA (Migration Review Tribunal Australia)	Christian, Vincent Thangarajah [2002] MRTA 5266	Migration	REFUGEE – Protection visa – Thailand – membership of a particular social group – gay man with HIV who may not be able, or able to afford, to access appropriate anti-retroviral treatment – the lack of free access to Biktarvy or Odefsey treatment under Thailand’s UCS – sibling of an Australian citizen or resident who has supported him socially and emotionally for several years – refer this matter to the Minister – decision under review affirmed
1997	State - VIC	VMHRB (Victorian Mental Health Review Board)	MJ [1997] VMHRB 15	Mental Health - Involuntary patient status	N/A
2002	State - NSW	NSWADT	Wensley v Technical and Further Education Commission (No. 2) [2002] NSWADT 68	Discrimination	Social group; HIV-AIDS
2012	Federal	RRTA	1102877 [2012] RRTA 101	Refugee	MIGRATION – Application for review of the decision of the Administrative Appeals Tribunal – whether Tribunal did not consider an integer of the applicants’ claims – whether Tribunal decision was illogical or unreasonable – no jurisdictional error – application dismissed.
2003	Federal	MRTA (Migration Review Tribunal Australia)	Glec [2003] MRTA 1430	Migration	MIGRATION – Persecution – review of Administrative Appeals Tribunal (“Tribunal”) decision – visa – protection visa – refusal.

SUMMARISED HEADNOTE	LEGAL FACTOR - PRIMARY	LEGAL FACTOR - KEY POPULATION	PRIORITY POPULATION
Refugee; applicant HIV-positive; particular social group.	12 - Entry, Stay and Residence	Nil	People from high HIV prevalence countries, people who travel to those countries and their partners.
Refugee; applicant HIV-positive; particular social group.	12 - Entry, Stay and Residence	14 - Women	People from high HIV prevalence countries, people who travel to those countries and their partners.
Refugee; applicant HIV-positive; applicant sex worker particular social group.	12 - Entry, Stay and Residence	17 - Adults engaged in commercial sex	Culturally and linguistically diverse
Health Waiver - costs of granting visa 'undue' - compassionate grounds for granting visa	12 - Entry, Stay and Residence	Nil	People from high HIV prevalence countries, people who travel to those countries and their partners.
Involuntary patient under Mental Health Act, risk of behaviour (HIV status) to members of the public; risk to self; schizophrenia	4 - Treatment, care and other health services	14 - Women	People from high HIV prevalence countries, people who travel to those countries and their partners.
Disability discrimination on grounds of HIV status and pedophilia, Education setting	9 - Education and Training	Nil	People from high HIV prevalence countries, people who travel to those countries and their partners.
Refugee; applicant HIV-positive; particular social group.	12 - Entry, Stay and Residence	18 - Men who have sex with men, and transgender people	People from high HIV prevalence countries, people who travel to those countries and their partners.
Health Waiver - costs of granting visa 'undue' - compassionate grounds for granting visa	12 - Entry, Stay and Residence	Nil	people from high HIV prevalence

YEAR	JURISDICTION	COURT/ TRIBUNAL	CASE NAME	AREA OF LAW	FULL HEADNOTE
2011	Federal	RRTA	1100927 [2011] RRTA 306	Refugee	ADMINISTRATIVE LAW – Allegation that the Tribunal's decision affected by jurisdictional error by reason that it failed to have regard to all the evidence and an integer of one of the applicant's claims.
2000	Federal	RRTA	N98/22948 [2000] RRTA 1055	Refugee	MIGRATION – Review of decision of Refugee Review Tribunal – persecution – where applicant HIV positive female from the Ukraine – whether Tribunal failed to consider persecution as member of social groups of women living in Ukraine/ Eastern Europe, people living with HIV /Aids, people living with HIV /AIDs in Ukraine/Eastern Europe and perceived membership of social groups of sex workers and injecting drug users in the Ukraine – whether Tribunal failed to consider applicant's claim of inability to have family – where Tribunal found no persecution of particular social groups – whether Tribunal required to consider psychological persecution to members of groups – whether Tribunal considered whether HIV discrimination laws “effective state protection”.
2007	Federal	FMCA	Applicant Y v Minister for Immigration & Anor [2007] FMCA 468	Migration	
2007	Federal	FMCA	Ally v Minister for Immigration & Anor [2007] FMCA 430	Migration	MIGRATION – Persecution – whether Tribunal erred in finding applicant could avoid discrimination through not disclosing HIV status – jurisdictional error.
2001	Federal	MRTA (Migration Review Tribunal Australia)	Ra [2001] MRTA 3886	Migration	
2012	Federal	RRTA	1113465 [2012] RRTA 575	Refugee	MIGRATION – Independent country information – where issue previously raised by delegate – where s.424A exclusions apply equally to s.424AA of Migration Act 1958 (Cth) – whether Tribunal required to grant additional or reasonable time to respond to information – whether procedural unfairness.
2014	State - NSW	NSWCA	B v Director of Public Prosecutions [2014] NSWCA 232	Administrative	MIGRATION – Interpreters – where, by agreement, interview conducted in English – whether standard of interpretation so inadequate as to prevent applicant from giving evidence – whether hearing not in accordance with s.425 of Act – whether lack of use of interpreter affected finding on consistency.
2005	Federal	MRTA (Migration Review Tribunal Australia)	N04/00123 [2005] MRTA 614	Migration	



SUMMARISED HEADNOTE	LEGAL FACTOR - PRIMARY	LEGAL FACTOR - KEY POPULATION	PRIORITY POPULATION
Refugee; applicant HIV-positive; particular social group.	12 - Entry, Stay and Residence	18 - Men who have sex with men, and transgender people	People from high HIV prevalence countries, people who travel to those countries.
Refugee; applicant HIV-positive; particular social group.	12 - Entry, Stay and Residence	18 - Men who have sex with men, and transgender people	countries, and their partners
Health Waiver - costs of granting visa 'undue' - compassionate grounds for granting visa	12 - Entry, Stay and Residence	14 - Women	People in Custodial Settings
Health Waiver - costs of granting visa 'undue' - compassionate grounds for granting visa	12 - Entry, Stay and Residence	Nil	People in custodial settings
Health Waiver - costs of granting visa 'undue' - compassionate grounds for granting visa	12 - Entry, Stay and Residence	Nil	People Living with HIV
Refugee; applicant HIV-positive; particular social group.	12 - Entry, Stay and Residence	14 - Women	Culturally and linguistically diverse
Appeal - public health offence - failure to disclose HIV status to sexual partner as required by public health act	22 - Access to a forum, fair trial, and enforcement of remedies	Nil	people from high HIV prevalence
Health Waiver - costs of granting visa 'undue' - compassionate grounds for granting visa	12 - Entry, Stay and Residence	Nil	People from high HIV prevalence countries, people who travel to those countries.

YEAR	JURISDICTION	COURT/ TRIBUNAL	CASE NAME	AREA OF LAW	FULL HEADNOTE
2005	Federal	FCA	B34 of 2003 v Minister for Immigration & Multicultural & Indigenous Affairs [2005] FCA 871	Migration	MIGRATION – Subjective fear of persecution – where finding partly based on applicant's return to the Ukraine following HIV diagnosis – where applicant not previously persecuted – where disease for which applicant claims fear of persecution currently asymptomatic – where other factual grounds for finding – conclusions as to fact – whether Wednesbury unreasonableness – whether Tribunal required to consider subjective fear in respect of each claim made by applicant – whether Tribunal made finding on basis of applicant's articulated claims.
2005	State - SA	SASC	R v P, AC [2005] SASC 451	Criminal	REFUGEE – protection visa – Nigeria – membership of particular social group – woman with HIV perceived as sex worker or drug user – access to and standard of healthcare – social stigma and discrimination, and no family support – mental health – ability to subsist – credible presentation and evidence – country information – no effective state protection and treaty right to enter and reside in other countries limited on same grounds – decision under review remitted
2010	Federal	RRTA	0908905 [2010] RRTA 138	Refugee	Criminal law - Appeal against sentence - Appellant convicted after trial of one count of grievous bodily harm - Negligent HIV transmission - Sentence of 6 years' imprisonment - Manifest excess - Turns on own facts
2003	Federal	MRTA (Migration Review Tribunal Australia)	Def3, Abc3 [2003] MRTA 7059	Migration	
1996	Federal	RRTA	V94/02084 [1996] RRTA 351	Refugee	Criminal law - Practice and procedure - Application for peak body to appear amicus curiae - Turns on own facts
2010	Federal	RRTA	0908933 [2010] RRTA 169	Refugee	HEALTH — Public health — Infectious disease — Public health order — Category 5 condition — whether public health order should be confirmed, varied or removed
2001	Federal	SCTA (Superannuation Complaints Tribunal of Australia)	D00-01\269 [2001] SCTA 148	Workers' compensation	MIGRATION – assessment of country information – whether the Refugee Review Tribunal was bound to accept country information produced by the applicant – whether the reasoning process of the Tribunal was illogical or irrational – whether the decision of the Tribunal was unreasonable.

SUMMARISED HEADNOTE	LEGAL FACTOR - PRIMARY	LEGAL FACTOR - KEY POPULATION	PRIORITY POPULATION
Refugee; applicant HIV-positive; particular social group. judicial review; never raised claims as a member of the particular social group of HIV positive persons	12 - Entry, Stay and Residence	Nil	People from high HIV prevalence countries, people who travel to those countries.
Criminal - Bail Application, HIV offence(s), Bail refused	22 - Access to a forum, fair trial, and enforcement of remedies	19 - People under state custody	People living with HIV
Refugee; applicant HIV-positive; particular social group.	12 - Entry, Stay and Residence	Nil	People living with HIV
Health Waiver - costs of granting visa 'undue' - compassionate grounds for granting visa	12 - Entry, Stay and Residence	Nil	People living with HIV
Refugee; applicant HIV-positive; particular social group.	12 - Entry, Stay and Residence	Nil	People living with HIV
Refugee; applicant HIV-positive; particular social group.	12 - Entry, Stay and Residence	Nil	People living with HIV
Total and Permanent Disablement (TPD) benefit - Death of complainant - complainant diagnosed with HIV	5 - Social Protection and Material Assistance	Nil	Culturally and linguistically diverse

YEAR	JURISDICTION	COURT/ TRIBUNAL	CASE NAME	AREA OF LAW	FULL HEADNOTE
2020	Federal	AATA	1730115 (Migration) [2020] AATA 1789	Migration	Anti-Discrimination Act 1977 – discrimination on grounds of disability – discrimination against employee – victimisation – aiding and abetting – vicarious liability
1997	Federal	HCA	IW v City of Perth [1997] HCA 30	Discrimination	
2020	Federal	AATA	S M Senarath B Chanaka Senanayake and Migration Agents Registration Authority [2020] AATA 116	Migration	N/A
1996	State - VIC	VADT	Schlipalius v Petch [1996] VADT 37	Discrimination	REFUGEE – protection visa – India – member of a particular social group – inter-religious marriage – husband's heavy drinking and domestic violence – separation and divorce – ex-husband's protection application refused and refusal affirmed – applicant intimidated into relinquishing custody of children, who are now in home country with ex-husband and his family – no contact with children – fear of harm from ex-husband and his family, and from own family – would seek to make contact with children despite fear of harm – fear of discrimination, abuse and economic hardship – new partner and child – new partner's medical condition – availability, quality and cost of treatment in home country – stigma and discrimination – applicant and child would be imputed to have medical condition also – mental health – decision under review remitted for first applicant, affirmed for second and third applicants
2004	Federal	MRTA (Migration Review Tribunal Australia)	Creek (Member) [2004] MRTA 6769	Migration	
2002	Federal	MRTA (Migration Review Tribunal Australia)	Gd [2002] MRTA 6745	Migration	MIGRATION – Administrative Appeals Tribunal – application for a Protection Subclass 866 Visa – where the first applicant is a member of a particular social group – where the first applicant raised complex health needs and need for a support person—whether there was a substantial and clearly articulated claim that was not addressed by the Tribunal – prerogative relief granted – costs
2011	State - NSW	NSWSC	C S v Anna BIEDRZYCKA [2011] NSWSC 1213	Negligence	

SUMMARISED HEADNOTE	LEGAL FACTOR - PRIMARY	LEGAL FACTOR - KEY POPULATION	PRIORITY POPULATION
Cancellation of student visa, HIV diagnosis reason for non-commencemnt of studies	12 - Entry, Stay and Residence	Nil	People from high HIV prevalence countries, people who travel to those countries and their partners.
Anti-discrimination - refusal of planning approval for drop-in centre for people living with HIV	7 - Political, Social and Cultural Life	Nil	People from high HIV prevalence countries, people who travel to those countries and their partners.
Migration agent registration - represented person living with HIV	21 - Legal awareness, assistance and representation	Nil	People from high HIV prevalence countries, people who travel to those countries and their partners.
Discrimination -Impairment - Employment - informed employer attending HIV test	2 - HIV prevention	14 - Women	People living with HIV
Health Waiver - costs of granting visa 'undue' - compassionate grounds for granting visa	12 - Entry, Stay and Residence	Nil	Culturally and linguistically diverse
Health Waiver - costs of granting visa 'undue' - compassionate grounds for granting visa	12 - Entry, Stay and Residence	Nil	People from high HIV prevalence countries, people who travel to those countries and their partners.
Tort - negligence - transmission of HIV - failure to keep current and accurate patient records - Contracts - breach of service agreement	3 - Testing, Counselling and Referral	Nil	People from high HIV prevalence countries, people who travel to those countries and their partners.

YEAR	JURISDICTION	COURT/ TRIBUNAL	CASE NAME	AREA OF LAW	FULL HEADNOTE
2021	Federal	AATA	BYMD and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 3476	Migration	CRIMINAL LAW - remarks on sentence - 2 counts of murder - pleas of guilty - Form 1 offences - obtain money by deception.
1997	Federal	FamCA	S & P [1997] FamCA 67	Family	
2005	Federal	MRTA (Migration Review Tribunal Australia)	Amanda MacDonald (Member) [2005] MRTA 103	Migration	N/A
2012	State - NSW	NSWCAT	Idameneo (No 123) Pty Ltd v Dr Colin Gross [2012] NSWCA 423	Negligence	Negligence - Duty of care of blood bank taking blood from donor who is HIV positive - duty of care of hospital giving transfusion of that blood to a patient - evidence of practice adopted by other blood banks - whether conclusive on question of duty of care - whether proper consideration given to donor screening form - whether a surrogate test for hepatitis B core antibodies should have been used for testing HIV infected blood.
2011	State - SA	SASCFC	R v McDonald [2011] SASCFC 57	Criminal	Trade Practices - Implied term - whether contract between patient and hospital insofar as it related to the supply of blood is a contract for the supply of goods.
2010	Federal	SCTA (Superannuation Complaints Tribunal of Australia)	D09-10\046 [2010] SCTA 19	Insurance	
2016	Federal	SCTA (Superannuation Complaints Tribunal of Australia)	D16-17\040 [2016] SCTA 141	Insurance	Evidence - Opinion evidence - expert opinion - status of expert - whether communal insight into a particular subject disbars person who has made special study of that subject from being an expert.
2004	Federal	MRTA (Migration Review Tribunal Australia)	O'Neill (Member) [2004] MRTA 7419	Migration	MIGRATION – protection visa – appeal from a decision of the Federal Circuit Court of Australia – application for judicial review of a decision of the Administrative Appeals Tribunal (the “Tribunal”) – decision of the first respondent refusing an application for a protection visa – whether the Tribunal committed jurisdictional error – whether the Tribunal failed to consider risks of harm cumulatively – whether the Tribunal misunderstood the definition of “degrading treatment or punishment” – appeal dismissed
2003	Federal	MRTA (Migration Review Tribunal Australia)	Cs [2003] MRTA 2150	Migration	

SUMMARISED HEADNOTE	LEGAL FACTOR - PRIMARY	LEGAL FACTOR - KEY POPULATION	PRIORITY POPULATION
Revocation of Refugee visa - mandatory cancellation - character test	12 - Entry, Stay and Residence	16 - People who use drugs	People from high HIV prevalence countries, people who travel to those countries and their partners.
Family Law - Division of property pool - Evidence of HIV in s75(2) factors	8 - Family, Sexual and reproductive life	Nil	Culturally and linguistically diverse
Health Waiver - costs of granting visa 'undue' - compassionate grounds for granting visa	12 - Entry, Stay and Residence	Nil	People from high HIV prevalence countries, people who travel to those countries and their partners.
Tort - negligence - transmission of HIV - failure to keep current and accurate patient records - Contracts - breach of service agreement	3 - Testing, Counselling and Referral	Nil	People from high HIV prevalence countries, people who travel to those countries and their partners.
Criminal law - appeal - sequencing data - further testing of the defendant	22 - Access to a forum, fair trial, and enforcement of remedies	Nil	People from high HIV prevalence countries, people who travel to those countries and their partners.
Insurance - TPD - pre-existing condition	5 - Social Protection and Material Assistance	Nil	People living with HIV
Insurance - TPD - additional - refusal of increased coverage	5 - Social Protection and Material Assistance	Nil	People living with HIV
Health Waiver - costs of granting visa 'undue' - compassionate grounds for granting visa	12 - Entry, Stay and Residence	Nil	Culturally and linguistically diverse
Health Waiver - costs of granting visa 'undue' - compassionate grounds for granting visa	12 - Entry, Stay and Residence	Nil	People from high HIV prevalence countries, people who travel to those countries and their partners.

YEAR	JURISDICTION	COURT/ TRIBUNAL	CASE NAME	AREA OF LAW	FULL HEADNOTE
2001	Federal	MRTA (Migration Review Tribunal Australia)	Pf [2001] MRTA 5304	Migration	PRACTICE AND PROCEDURE – whether leave ought to be granted to permit reliance upon additional ground not argued before the primary judge – whether additional ground has merit – leave refused
2004	Federal	MRTA (Migration Review Tribunal Australia)	Cranston (Member) [2004] MRTA 6885	Migration	N/A
2005	Federal	MRTA (Migration Review Tribunal Australia)	N03/07254 [2005] MRTA 369	Migration	Refugee – Protection visa – India – Social group - Homosexual – General discrimination from community – Societal and family pressure – Health – State protection available – Access to medical treatment
2016	State - VIC	VSC	The Queen v Kepenci [2016] VSC 817	Criminal	
2023	State - NSW	NSWPICPD	K & W Haulage Pty Ltd v BCL [2023] NSWPICPD 7	Workers' compensation	REFUGEE – Protection Visa – Uganda – imputed to be a part of LGBTIQ community – imputed political opinion in support of the LGBTIQ community – health worker in Uganda – relocation not reasonable – state protection not available – decision under review remitted
2015	Federal	FCCA	Jackson & Macek [2015] FCCA 1656	Family	
2004	Federal	MRTA (Migration Review Tribunal Australia)	McCluskey [member] [2004] MRTA 2567	Migration	Discrimination - Enlistee discharged from Australian Defence Forces ("ADF") after testing positive to HIV - whether unlawful discrimination within Part 2 of the Disability Discrimination Act 1992 (Cth) - whether enlistee "unable to carry out the inherent requirements of the particular employment" because of his HIV positive status - relationship between soldier and Crown - discussion of inherent requirements of employment as a soldier - whether include external requirements imposed by employer on occupational health and safety grounds.
1995	Federal	IRTA (Immigration Review Tribunal of Australia)	Applicant: Gamo Gameda Principal: Addis Alem Taye IRT Reference: V93/01812 #number 5772 [1995] IRTA 5772	Migration	



SUMMARISED HEADNOTE	LEGAL FACTOR - PRIMARY	LEGAL FACTOR - KEY POPULATION	PRIORITY POPULATION
Health Waiver - costs of granting visa 'undue' - compassionate grounds for granting visa	12 - Entry, Stay and Residence	Nil	People from high HIV prevalence countries, people who travel to those countries and their partners.
Health Waiver - costs of granting visa 'undue' - compassionate grounds for granting visa	12 - Entry, Stay and Residence	Nil	People from high HIV prevalence countries, people who travel to those countries and their partners.
Health Waiver - costs of granting visa 'undue' - compassionate grounds for granting visa	12 - Entry, Stay and Residence	14 - Women	Culturally and linguistically diverse
Criminal - sentencing - reduced life expectancy due to HIV treatment refusal	22 - Access to a forum, fair trial, and enforcement of remedies	19 - People under state custody	People from high HIV prevalence countries, people who travel to those countries and their partners.
Workers Compensation - extension of time to appeal - workers compensation for suffering psychological injury as a result of being bullied and harassed on the basis of HIV status and sexual orientation	22 - Access to a forum, fair trial, and enforcement of remedies	Nil	People from high HIV prevalence countries, people who travel to those countries and their partners.
Famil Law - injunction to prevent mother from breastfeeding - risk of BBV due to tattoo	8 - Family, Sexual and reproductive life	14 - Women	People from high HIV prevalence countries, people who travel to those countries and their partners.
Health Waiver - costs of granting visa 'undue' - compassionate grounds for granting visa	12 - Entry, Stay and Residence	Nil	Culturally and linguistically diverse
Health Waiver - costs of granting visa 'undue' - compassionate grounds for granting visa	12 - Entry, Stay and Residence	Nil	people from high HIV prevalence

YEAR	JURISDICTION	COURT/ TRIBUNAL	CASE NAME	AREA OF LAW	FULL HEADNOTE
2010	Federal	RRTA	0910025 [2010] RRTA 451	Refugee	MIGRATION – appeal from a decision of the Federal Circuit Court – appellant refused the grant of a Safe Haven Enterprise Visa – whether Immigration Assessment Authority (IAA) decision affected by jurisdictional error because it did not consider separately the appellant’s claims of apostasy and conversion to Christianity – whether IAA had failed to consider evidence concerning the appellant’s Facebook profile – whether IAA had erred in the assessment of the medical treatment available to the appellant if returned to his home country – whether the IAA failed to consider the cumulative effect of the appellant’s personal circumstances in his claim for complementary protection – appeal dismissed.
2004	Federal	AATA	Clark and Secretary, Department of Family and Community Services [2004] AATA 1018	Social security	TRANSITIONAL (PERMANENT) VISA - equivalent to DECEMBER 1989 (PERMANENT) ENTRY PERMIT - whether there was a 'compassionate ground' for the granting of the entry permit sought - Tribunal was satisfied that, were the applicant to return to Fiji, the nominator, the applicant's brother-in-law, would have suffered 'extreme hardship' or 'irreparable prejudice' - application remitted.
2003	Federal	MRTA (Migration Review Tribunal Australia)	Abcdef [2003] MRTA 5301	Migration	
2004	Federal	MRTA (Migration Review Tribunal Australia)	Abcdecr [2004] MRTA 737	Migration	HEALTH CRITERIA - whether the health criteria should be waived - the applicant would incur medical costs in relation to the treatment of HIV - Tribunal found that the cost likely to result if the visa were granted would not have been undue.
2016	State - VIC	VCC	DPP v El-Sayegh and Rajic [2016] VCC 2034	Criminal	N/A
2003	Federal	MRTA (Migration Review Tribunal Australia)	Def3, Abc3 [2003] MRTA 7546	Migration	MIGRATION - Hindu from Kashmir - application for a protection visa - fear of persecution because of applicant's past association with Muslim militants, because he is a Hindu from Kashmir, because his parents were killed by Muslim separatists, because he was forcibly converted to Islam and circumcised, and because of his HIV infection - whether the Refugee Review Tribunal failed to set out findings on material questions of fact and to refer to the evidence or any other material upon which its findings of fact were based

SUMMARISED HEADNOTE	LEGAL FACTOR - PRIMARY	LEGAL FACTOR - KEY POPULATION	PRIORITY POPULATION
Refugee; applicant NOT HIV-positive; particular social group - homosexual; country information on HIV	12 - Entry, Stay and Residence	Nil	People from high HIV prevalence countries, people who travel to those countries and their partners.
Disability Support Pension - HIV 15 impairment points - anxiety and depression not diagnosed - does not reach 20 impairment points required	5 - Social Protection and Material Assistance	Nil	People from high HIV prevalence countries, people who travel to those countries and their partners.
Health Waiver - costs of granting visa 'undue' - compassionate grounds for granting visa	12 - Entry, Stay and Residence	Nil	Culturally and linguistically diverse
Health Waiver - costs of granting visa 'undue' - compassionate grounds for granting visa	12 - Entry, Stay and Residence	Nil	People from high HIV prevalence countries, people who travel to those countries and their partners.
Sentencing - the accused refusing HIV treatment - mitigating factor	20 - Legal Protection	19 - People under state custody	People from high HIV prevalence countries, people who travel to those countries and their partners.
Health Waiver - costs of granting visa 'undue' - compassionate grounds for granting visa	12 - Entry, Stay and Residence	Nil	People from high HIV prevalence countries, people who travel to those countries and their partners.

YEAR	JURISDICTION	COURT/ TRIBUNAL	CASE NAME	AREA OF LAW	FULL HEADNOTE
2023	State - NSW	NSWCAT	FBY v Secretary, NSW Ministry of Health [2023] NSWCATAD 83	Discrimination	
2003	Federal	FCA	Applicant M78/2002 v Minister for Immigration & Multicultural Affairs [2003] FCA 726	Migration	
2004	Federal	MRTA (Migration Review Tribunal Australia)	Cipolla (Member) [2004] MRTA 2455	Migration	N/A
2015	Federal	FamCAFC	Jackson & Macek [2015] FamCAFC 114	Family	Review of visa refusal - Subclass 826 - genuine relationship - health waiver
2004	Federal	MRTA (Migration Review Tribunal Australia)	McCluskey (Member) [2004] MRTA 6740	Migration	N/A
2004	Federal	MRTA (Migration Review Tribunal Australia)	Zisin, Gal [2004] MRTA 6983	Migration	REFUGEE - Protection Visa - Indonesia - particular social group - persons living with HIV - societal discrimination - genuine fear of returning to Indonesia - access specialised medical care - barriers to access medication -relocation not available - decision under review remitted
2001	Federal	MRTA (Migration Review Tribunal Australia)	Mc [2001] MRTA 330	Migration	
2005	Federal	MRTA (Migration Review Tribunal Australia)	V05/01275 [2005] MRTA 1122	Migration	N/A
2006	Federal	SCTA (Super-annuation Complaints Tribunal of Australia)	D05-06\114 [2006] SCTA 4	Insurance	N/A
2006	State - SA	SASC	R v Parenzee [2006] SASC 127	Criminal	N/A
2021	Federal	AATA	1707094 (Refugee) [2021] AATA 5311	Refugee	MIGRATION - Application for review of a decision of the Administrative Appeals Tribunal - protection visa - complementary protection criteria - no jurisdictional error - application dismissed.

SUMMARISED HEADNOTE	LEGAL FACTOR - PRIMARY	LEGAL FACTOR - KEY POPULATION	PRIORITY POPULATION
Discrimination - failure to implement a policy in private health facilities - issue of qualifying body	10 - Employment, work and economic life	Nil	Culturally and linguistically diverse
Refugee; applicant HIV-positive; particular social group;	12 - Entry, Stay and Residence	Nil	People from high HIV prevalence countries, people who travel to those countries and their partners.
Health Waiver - costs of granting visa 'undue' - compassionate grounds for granting visa	12 - Entry, Stay and Residence	Nil	People from high HIV prevalence countries, people who travel to those countries and their partners.
Famil Law - Appeal - injunction to prevent mother from breastfeeding - risk of BBV due to tattoo	8 - Family, Sexual and reproductive life	14 - Women	People from high HIV prevalence countries, people who travel to those countries and their partners.
Health Waiver - costs of granting visa 'undue' - compassionate grounds for granting visa	12 - Entry, Stay and Residence	Nil	Culturally and linguistically diverse
Review of visa refusal - Subclass 802 (Child) - dependent child - dependent - dependent living with HIV	12 - Entry, Stay and Residence	Nil	People from high HIV prevalence countries, people who travel to those countries and their partners.
Health Waiver - costs of granting visa 'undue' - compassionate grounds for granting visa	12 - Entry, Stay and Residence	Nil	People from high HIV prevalence countries, people who travel to those countries and their partners.
Health Waiver - costs of granting visa 'undue' - compassionate grounds for granting visa	12 - Entry, Stay and Residence	Nil	People from high HIV prevalence countries, people who travel to those countries and their partners.
Insurance - TPD - does applicant meet definition of TPD - applicant living with HIV	5 - Social Protection and Material Assistance	Nil	Culturally and linguistically diverse
Criminal - HIV endangerment charges - decision of whether all three counts of charges should be heard together	22 - Access to a forum, fair trial, and enforcement of remedies	Nil	People from high HIV prevalence countries, people who travel to those countries and their partners.
Refugee; applicant HIV-positive; particular social group;	12 - Entry, Stay and Residence	18 - Men who have sex with men, and transgender people	People from high HIV prevalence countries, people who travel to those countries and their partners.

YEAR	JURISDICTION	COURT/ TRIBUNAL	CASE NAME	AREA OF LAW	FULL HEADNOTE
2015	State - VIC	VCAT	Charles v State of Victoria (Corrections Victoria) (Human Rights) [2015] VCAT 375	Discrimination	
2007	Federal	RRTA	071070452 [2007] RRTA 50	Refugee	CRIMINAL LAW - sentencing - insider trading - "true insider" - plea of guilty - other favourable subjective features
1992	State - VIC	VICCAT	Justin Maine v Crimes Compensation Tribunal (1992/34503) [1993] VICCAT 63	Compensation	
2019	Federal	SCTA (Super-annuation Complaints Tribunal of Australia)	D19-20\003 [2019] SCTA 128	Insurance	N/A
2021	Federal	AATA	1732677 (Migration) [2021] AATA 796	Migration	N/A
2002	Federal	MRTA (Migration Review Tribunal Australia)	Vrp [2002] MRTA 7310	Migration	HUMAN RIGHTS - disability discrimination - insurance policy - whether HIV/AIDS exclusion justified
2003	Federal	MRTA (Migration Review Tribunal Australia)	Frw [2003] MRTA 4496	Migration	
2016	State - NSW	NSWCAT	MKT [2016] NSWCATGD 37	Guardianship	COSTS - whether costs should follow the event - special circumstances justifying a departure from the general principle
2021	State - NSW	NSWCAT	FBY v Secretary, NSW Ministry of Health [2021] NSWCATAD 319	Discrimination	N/A
2004	Federal	FCA	de Bruyn v Ellison [2004] FCA 880	Extradition	MIGRATION - protection visa refused - whether applicant is a danger to the Australian community - guardianship order - scheduled under mental health legislation - serious health issues - social isolation - decision set aside and remitted
2006	State - NSW	NSWSC	Re Elm [2006] NSWSC 1137	Family	

SUMMARISED HEADNOTE	LEGAL FACTOR - PRIMARY	LEGAL FACTOR - KEY POPULATION	PRIORITY POPULATION
Discrimination - determination of what may be considered a 'service' under Equal Opportunity Act - applicant HIV positive	20 - Legal Protection	19 - People under state custody	People from high HIV prevalence countries, people who travel to those countries and their partners.
Refugee; applicant NOT HIV-positive; particular social group - homosexual; country information on HIV	12 - Entry, Stay and Residence	Nil	Nil
Crimes Compensation - Applicant raped in custody - claims contracted HIV during sexual assault	20 - Legal Protection	19 - People under state custody	People living with HIV
Insurance - income Protection - complainant HIV positive - complainant diagnosed with HIV Associated Neuro-cognitive disease	5 - Social Protection and Material Assistance	Nil	People living with HIV
Health Waiver - costs of granting visa 'undue' - compassionate grounds for granting visa	12 - Entry, Stay and Residence	18 - Men who have sex with men, and transgender people	People living with HIV
Health Waiver - costs of granting visa 'undue' - compassionate grounds for granting visa	12 - Entry, Stay and Residence	Nil	People living with HIV
Health Waiver - costs of granting visa 'undue' - compassionate grounds for granting visa	12 - Entry, Stay and Residence	Nil	People living with HIV
Guardianship - consideration of need for an order where person has HIV - consideration that orders can be made under the Public Health Act where a person is a risk to public health -	5 - Social Protection and Material Assistance	Nil	Sex workers
Discrimination - summary dismissal - Surgeon HIV positive performing exposure prone procedures - qualifying body	10 - Employment, work and economic life	Nil	Culturally and linguistically diverse
Extradition - risk of contracting HIV in South African prison	12 - Entry, Stay and Residence	Nil	People from high HIV prevalence countries, people who travel to those countries and their partners.
Family law - Child welfare - mother refusing to take HIV medication - mother refusing to allow baby to receive 'anti-HIV' medication - mother HIV positive	8 - Family, Sexual and reproductive life	14 - Women	People from high HIV prevalence countries, people who travel to those countries and their partners.

YEAR	JURISDICTION	COURT/ TRIBUNAL	CASE NAME	AREA OF LAW	FULL HEADNOTE
2022	State - NSW	NSWCAT	ERJ v South Eastern Sydney Local Health District [2022] NSWCATAD 260	Privacy	N/A
2007	Federal	AATA	Power and Secretary, Department of Employment and Workplace Relations [2007] AATA 1425	Social security	N/A
2014	State - VIC	VSCA	Pham v The Queen [2014] VSCA 204	Criminal	Prostitute - HIV /AIDS sufferer
2010	State - NSW	NSWDC	R v Hassan NAGI [2010] NSWDC 129	Criminal	Review of visa refusal - subclass 820 - health criteria - opinion of medical officer - waiver provision
1993	State - ACT	ACTSC	DAVID KEITH PHILLIPS v. ANNE ELIZABETH PALIAGA No. SC1135 of 1988 Number of pages - 9 Damages [1993] ACTSC 163	Personal injury	Involuntary patient - involuntary status - mental illness - significant disturbance of thought - significant disturbance of mood - significant disturbance of perception - significant disturbance of memory - risk to self - risk to others - treatment - insight - Mental Health Act 1986 (Vic), s8 - HIV status - schizophrenia
2010	State - NSW	NSWADT	Monroe v Moore [2010] NSWADT 179	Discrimination	
2019	Federal	FamCA	Heaton & Heaton [2019] FamCA 688	Family	N/A
2020	Federal	AIC (Australian Information Commissioner and Privacy Commissioner)	SD' and 'SE' and Northside Clinic (Vic) Pty Ltd [2020] AICmr 21	Privacy	N/A
2015	State - NSW	NSWCATAP	TAL Life Limited v CAS [2015] NSWCATAP 155	Insurance	Review of visa refusal - Subclass (Interdependency)(826) - Health criteria waiver (4007)
1998	Federal	HREOCA	Ryan v Dennis and Dennis Deals Pty Ltd [1998] HREOCA 36	Discrimination	N/A
2014	State - VIC	VCAT	Kendellstien v Transport Accident Commission (Review and Regulation) [2014] VCAT 302	Insurance	N/A



SUMMARISED HEADNOTE	LEGAL FACTOR - PRIMARY	LEGAL FACTOR - KEY POPULATION	PRIORITY POPULATION
Privacy - Health Privacy Principles - disclosure of health information for primary purpose or secondary purpose - health information related to HIV care, treatment and support services	6 - Protection of privacy and confidentiality	Nil	People from high HIV prevalence countries, people who travel to those countries and their partners.
Social security- disability support pension - applicant HIV positive	5 - Social Protection and Material Assistance	Nil	People living with HIV
Criminal - sentencing - accused HIV positive - sentencing considerations - manifestly excessive sentence	22 - Access to a forum, fair trial, and enforcement of remedies	19 - People under state custody	People living with HIV
Criminal - sentencing - whether HIV status is an aggravating/mitigating factor	22 - Access to a forum, fair trial, and enforcement of remedies	19 - People under state custody	Culturally and linguistically diverse
Personal Injury - damages assessment - impact of HIV status on damages	22 - Access to a forum, fair trial, and enforcement of remedies	Nil	People from high HIV prevalence countries, people who travel to those countries and their partners.
Discrimination - ground of disability - HIV status - Victimisation	10 - Employment, work and economic life	Nil	People from high HIV prevalence countries, people who travel to those countries and their partners.
Family Law - parental responsibility - mother HIV positive	8 - Family, Sexual and reproductive life	14 - Women	People from high HIV prevalence countries, people who travel to those countries and their partners.
Privacy - disclosure of HIV status to third party	6 - Protection of privacy and confidentiality	Nil	People living with HIV
Appeal of interlocutory decision - Discrimination - refusal of insurance due to HIV status	22 - Access to a forum, fair trial, and enforcement of remedies	Nil	Culturally and linguistically diverse
Discrimination - imputed impairment - partner was HIV positive and had passed away - complainant was not HIV positive - employment discrimination	Nil	Nil	People from high HIV prevalence countries, people who travel to those countries and their partners.
Death Benefit - was applicant a 'surviving partner' - deceased partner was HIV positive - relationship breakdown after disclosure of HIV status	5 - Social Protection and Material Assistance	Nil	People from high HIV prevalence countries, people who travel to those countries and their partners.

YEAR	JURISDICTION	COURT/ TRIBUNAL	CASE NAME	AREA OF LAW	FULL HEADNOTE
2012	State - VIC	VCC	DPP v Bayliss [2012] VCC 1369	Criminal	MIGRATION – Application to review decision of Migration Review Tribunal – failure to meet health criteria – whether Tribunal fell into error in relation to opinion of MOC – whether Tribunal erred in manner in which it dealt with medical reports – whether Tribunal applied the wrong test in relation to undue cost to the Australian community.
1994	State - NSW	NSWCA	NICKLESS v GOVERNMENT INSURANCE OFFICE OF NEW SOUTH WALES [1994] NSWCA 233	Administrative	
2011	State - NSW	NSWCA	Sydney Local Health Network v QY and QZ [2011] NSWCA 412	Discrimination	MIGRATION – MRT decision – spouse visa – refused for absence of genuine and continuing relationship and mutual commitment at time of visa application – husband withheld knowledge that HIV positive – equivocal evidence of cohabitation – long periods of separation – relevance of consideration of events subsequent to application – no jurisdictional error found.
2011	State - QLD	QDC	Wright v K B Nut Holdings P/L (as Trustee for the Kerrie-Ann Stevenson Family Trust) t/as Bonapartes Serviced Apartments [2012] QDC 202	Negligence	
2016	State - NSW	NSWCA	AB v Director of Public Prosecutions [2016] NSWCA 73	Administrative	Health waiver - unlikely to result in undue cost
1996	State - VIC	VMHRB	KC [1996] VMHRB 9	Mental Health - Involuntary patient status	N/A
2010	State - NSW	NSWADTAP	QY & QZ v Sydney South West Area Health Service (EOD) [2010] NSWADTAP 48	Discrimination	ADMINISTRATIVE LAW - judicial review - appeal from the Local Court to the District Court in respect of a conviction for an offence under the Public Health Act 1991, s 13 dismissed - whether jurisdictional error established
2019	State - NSW	NSWADT	Health Care Complaints Commission v Cox [2019] NSWCATOD	Professional misconduct	
2007	State - NSW	NSWDC	Guff v The Commissioner of Police (No 2) [2007] NSWDC 290	Compensation	ADMINISTRATIVE LAW - procedural fairness - bias - apprehended bias - whether a bias or apprehended bias - observation not supported by evidence - whether observation matter of judge's personal opinion - whether observation available as a matter of common experience - whether relief should be granted - matter remitted to the District Court

SUMMARISED HEADNOTE	LEGAL FACTOR - PRIMARY	LEGAL FACTOR - KEY POPULATION	PRIORITY POPULATION
Criminal - sentencing - solicit, make available and access child pornography - accused HIV positive	22 - Access to a forum, fair trial, and enforcement of remedies	Nil	People from high HIV prevalence countries, people who travel to those countries and their partners.
Miscarriage of justice - inference of homosexuality due to HIV testing every 6 months	Nil	Nil	Culturally and linguistically diverse
Discrimination - ground of disability - reconstruction of HIV positive body	20 - Legal Protection	Nil	People from high HIV prevalence countries, people who travel to those countries and their partners.
Tort - liability - needle stick injury - psychiatric injury related to potential HIV transmission	2 - HIV prevention	Nil	People from high HIV prevalence countries, people who travel to those countries and their partners.
Appeal - Criminal - failure to disclose HIV status as required under Public Health Act - Bias	22 - Access to a forum, fair trial, and enforcement of remedies	Nil	People from high HIV prevalence countries, people who travel to those countries and their partners.
Involuntary patient - hospital transfer - HIV positive patient - risk to community due to HIV status and psychosis	4 - Treatment, care and other health services	14 - Women	People living with HIV
Discrimination - 'associate' of person with protected characteristic (disability) - disclosure of cause of death (HIV)	Nil	Nil	People living with HIV
Professional misconduct - professional misconduct - breach of confidentiality - disclosure of patients HIV status	6 - Protection of privacy and confidentiality	Nil	People living with HIV
Compensation - psychiatric condition - one incident where deceased was exposed to blood - concern about risk of HIV/hepatitis had psychological impact	2 - HIV prevention	Nil	Culturally and linguistically diverse

YEAR	JURISDICTION	COURT/ TRIBUNAL	CASE NAME	AREA OF LAW	FULL HEADNOTE
2015	State - NSW	NSWCAT	SCO [2015] NSWCATGD 32	Guardianship	Review of visa refusal - Subclass 826 (Interdependency) - health criteria 4007 waiver
2006	Federal	AATA	QX05/10 and Secretary, Department of Employment and Workplace Relations [2006] AATA 178	Social Security	MIGRATION – judicial review – protection visa – Refugee Review Tribunal – whether failure to consider claim – obligation of RRT to consider claims arising on material before it – applicant's claims before RRT based on political opinion and ethnicity – applicant HIV positive – no claim raised in relation to membership of particular social group of HIV positive persons – claim neither articulated nor apparent from materials – no jurisdictional error by failure of RRT to consider claim – application dismissed
2005	Federal	FamCA	W & G (Stage 3) [2005] FamCA 617	Family	CRIMINAL LAW - JURISDICTION, PRACTICE AND PROCEDURE - BAIL - GROUNDS FOR GRANTING OR REFUSING - BEFORE TRIAL - GENERALLY
2011	Federal	AATA	Battiscombe and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs [2011] AATA 458	Social security	
2019	State - SA	SAET (South Australia Employment Tribunal)	McDonald v The State of SA [2019] SAET 33	Discrimination	HIV -positive accused charged with two separate counts of endangering life arising out of consensual unprotected sexual intercourse with two women in the course of relationships with each – Second offence alleged to have occurred whilst on bail for first offence – Previous grant of bail in District Court revoked by Judge of Supreme Court on application for review by Crown – A different District Court Judge subsequently granted bail on more onerous conditions, including home detention – Second Crown application for review under s 14 Bail Act – Court unable to deal with complex review involving large volume of evidentiary material within 72 hours required by s 16 – Bail revoked and immediate oral application for bail entertained.
1999	Federal	FCA	Galvin v Renito Pty Ltd [1999] FCA 1005	Industrial relations	
1999	State - NSW	NSWSC	Re Baby A [1999] NSWSC 787	Infant health/ injunction	Consideration of previous revocation of bail in Supreme Court – Whether any error in application of s 10(1)(b)(ii) as to likelihood of "re-offending" where accused has no previous convictions – Proper construction of s 10(1)(b)(ii) – Likelihood and consequences of possible offending pending trial.

SUMMARISED HEADNOTE	LEGAL FACTOR - PRIMARY	LEGAL FACTOR - KEY POPULATION	PRIORITY POPULATION
Guardianship - scizophrenia - requires guardian as due to mental illness is unable to make decisions about legal matter and is at risk of being depored - if deported risk to health due to HIV and mental health	5 - Social Protection and Material Assitance	19 - People under state custody	People from high HIV prevalence countries, people who travel to those countries and their partners.
Related to BT v Oei [1999] NSWSC 1082. Social Securiry - preculsion of compensation	5 - Social Protection and Material Assitance	14 - Women	People from high HIV prevalence countries, people who travel to those countries and their partners.
Family Law - parental contact - father living with HIV - mother lack of trust with faterh due to lack of disclosure about HIV positive status	8 - Family, Sexual and reproductive life	Nil	People from high HIV prevalence countries, people who travel to those countries and their partners.
Social Security - special reasons to not treat member of a couple - if treated as member of couple disability support pension reduced	5 - Social Protection and Material Assitance	Nil	People living with HIV
Discrimination - applicant required to disclose HIV status to potential or actual employers as parole condition - definition of 'service'	22 - Access to a forum, fair trial, and enforcement of remedies	Nil	People living with HIV
Industrial law - unlawful termination - applicant HIV postive - termination after disclosure of HIV status	10 - Employment, work and economic life	Nil	Culturally and linguistically diverse
Equity - application for injunction to stop second defendant breast feeding infant	8 - Family, Sexual and reproductive life	Nil	People from high HIV prevalence countries, people who travel to those countries and their partners.

YEAR	JURISDICTION	COURT/ TRIBUNAL	CASE NAME	AREA OF LAW	FULL HEADNOTE
2018	State - QLD	QCAT	KJB v Director-General, Department of Justice and Attorney-General [2018] QCAT 187	Administrative	
2008	State - VIC	VMHRB	08-106 [2008] VMHRB 2	Mental Health - Involuntary patient status	Factors considered – Presumption in favour of bail – Gravity of alleged offences – Protection of general public – Risk of re-offending in context of circumstances of alleged offending and current stable relationship with fiancée – Implications of accused being in custody for management of illness and for his physical and mental health – Likelihood of discrimination and harassment of accused in gaol – Ability of accused to assist in preparation of his case for trial – Whether guarantors would report any breaches of bail – Role and responsibilities of guarantors – Home detention bail with electronic monitoring granted subject to extensive and strict conditions, guarantees and written assurances given pursuant to s 11(2)(b).
2001	State - NSW	NSWADT	Chief Health Officer, NSW Department of Health v A [2001] NSWADT 69	Public Health	N/A
1990	State - NSW	Court Unknown	H v Royal Alexandra Hospital for Children Case	Discrimination	
1991	State - VIC	VIC - Court Unknown	Police Fear Case	Workers' compensation	
1991	State - TAS	TAS - Court Unknown	R v Wright	Criminal	
1991	State - NSW	NSWCCA	R v Cooper	Criminal	
1992	State - SA	SAEOC (South Australia Equal Opportunity Commission)	David Jobling Dismissal Case	Discrimination	

SUMMARISED HEADNOTE	LEGAL FACTOR - PRIMARY	LEGAL FACTOR - KEY POPULATION	PRIORITY POPULATION
Working with children - blue card - whether exceptional case to refuse blue card - applicant HIV positive and history of drug use	10 - Employment, work and economic life	16 - People who use drugs	People from high HIV prevalence countries, people who travel to those countries and their partners.
Involuntary patient - HIV positive patient - risk to community due to HIV status and psychosis	4 - Treatment, care and other health services	Nil	People from high HIV prevalence countries, people who travel to those countries and their partners.
Public health order confirmation - respondent living with HIV - respondent sex worker	20 - Legal Protection	17 - Adults engaged in commercial sex	People in custodial settings
Complainant asserted that describing the boy seeking compensation for transfusion related to HIV as an 'innocent victim' discriminated against those who contracted HIV through sexual practices.	20 - Legal Protection	15 - Children and youth	Culturally and linguistically diverse
Victorian police officers received compensation for fear of contracting HIV; no officers tested positive to HIV.	10 - Employment, work and economic life	Nil	People from high HIV prevalence countries, people who travel to those countries and their partners.
Tasmanian Court considered whether the physical condition of an HIV-positive prisoner was an appropriate consideration in sentencing.	22 - Access to a forum, fair trial, and enforcement of remedies	19 - People under state custody	People from high HIV prevalence countries, people who travel to those countries and their partners.
Court considered whether fresh evidence to an appellant prisoner's previously undetected HIV infection is an exception to the rule that subsequent events are not relevant in an appeal against severity of sentence.	22 - Access to a forum, fair trial, and enforcement of remedies	19 - People under state custody	People from high HIV prevalence countries, people who travel to those countries and their partners.
Artist dismissed from employment on account of HIV-positive status and sexuality.	10 - Employment, work and economic life	18 - Men who have sex with men, and transgender people	People living with HIV

YEAR	JURISDICTION	COURT/ TRIBUNAL	CASE NAME	AREA OF LAW	FULL HEADNOTE
1992	State - WA	WAEOT (Western Australian Equal Opportunity Tribunal)	Hoddy v Department of Correctional Services	Discrimination	
1993	State - VIC	VIC Magistrates Court	Red Cross Blood Bank Case	Criminal	
1993	State - Unknown	Court Unknown	PD v Australian Red Cross Society	Privacy	
1993	State - Unknown	Court Unknown	Dementia and Testamentary Case	Wills & Estates	
1996	Federal	HREOCA (Human Rights Equal Opportunity Commission)	WA Prison Case	Discrimination	
1996	Federal	HREOCA (Human Rights Equal Opportunity Commission)	Alyschia Dibble Case	Discrimination	
1996	Federal	HREOCA (Human Rights Equal Opportunity Commission)	Insurance Refused Case	Discrimination	
1996	State - Unknown	EOT (Equal Opportunity Tribunal)	\$50,000 Case	Discrimination	
1996	State - NSW	NSWCA	Zukerman v Zukerman	Wills & Estates	
1997	State - VIC	VIC Magistrates Court	Charges Dismissed Case	Criminal	
1997	State - VIC	VIC - Court Unknown	Victorian Doctor Case	Criminal	
1997	Federal	HCA	People Living with AIDS v Perth City Council	Discrimination	



SUMMARISED HEADNOTE	LEGAL FACTOR - PRIMARY	LEGAL FACTOR - KEY POPULATION	PRIORITY POPULATION
WAEOT held that positive HIV status constitutes an impairment under the Equal Opportunity Act.	10 - Employment, work and economic life	19 - People under state custody	Culturally and linguistically diverse
HIV-positive man imprisoned for non-disclosure during blood donation.	2 - HIV Prevention	Nil	People from high HIV prevalence countries, people who travel to those countries and their partners.
Plaintiff alleged she had received a contaminated blood transfusion; plaintiff wished to contact anonymous blood donor to ascertain his medical history.	6 - Protection of privacy and confidentiality	Nil	People from high HIV prevalence countries, people who travel to those countries and their partners.
Court considered whether an HIV-positive testator, in the terminal stages of HIV, was of sound mental capacity to draft his will.	20 - Legal Protection	Nil	People from high HIV prevalence countries, people who travel to those countries and their partners.
WA Government breached federal Disability Discrimination Act 1992 in respect to prison policies which segregate HIV positive prisoners and imprison them in maximum security prisons.	20 - Legal Protection	19 - People under state custody	Culturally and linguistically diverse
Dibble lodged a complaint on the basis that the denial of her right to participate in an HIV drug trial was a breach of the Sex Discrimination Act.	4 - Treatment, care and other health services	14 - Women	People from high HIV prevalence countries, people who travel to those countries and their partners.
Insurance company refused to pay a death and disability mortgage policy to an HIV-positive person.	5 - Social Protection and Material Assistance	Nil	People from high HIV prevalence countries, people who travel to those countries and their partners.
HIV vilification case; EOT ordered \$50,000 in damages for complainant's pain and suffering.	20 - Legal Protection	Nil	People from high HIV prevalence countries, people who travel to those countries and their partners.
NSWCA found that an HIV-positive son was entitled to a lump sum interim distribution from his father's estate to travel to seek medical treatment.	10 - Employment, work and economic life	Nil	People living with HIV
Accused HIV positive; accused found not guilty of intentionally transmitting HIV.	13 - Non-Criminalisation of HIV Exposure and Transmission	Nil	People living with HIV
Accused HIV positive; accused struck off medical register after having unprotected sex with male patients.	13 - Non-Criminalisation of HIV Exposure and Transmission	18 - Men who have sex with men, and transgender people	People living with HIV
PLWA brought discrimination proceedings against City of Perth after it refused planning permission for a drop-in centre; PLWA's appeal dismissed.	7 - Political, social and cultural life	Nil	People living with HIV

YEAR	JURISDICTION	COURT/ TRIBUNAL	CASE NAME	AREA OF LAW	FULL HEADNOTE
1997	Federal	FCAFC	ADF Discharge Case	Discrimination	
1997	Federal	N/A	Re Complaint to ACCC	Insurance	
1997	State - QLD	QADT (Queensland Anti-Discrim- ination Tribu- nal)	Queensland Anti- Discrimination Tribunal Case	Discrimination	
1998	Federal	HREOCA (Human Rights Equal Opportunity Commission)	Diane Ryan v Dennis Deals Pty Ltd	Discrimination	
1998	State - VIC	VSC	Samuel Mutemeri v AB	Criminal	
1998	State - VIC	VIC - Court Unknown	DPP v F	Criminal	
1999	State - VIC	VIC - Court Unknown	Christopher Dirckze Case	Criminal	
1999	State - NSW	NSWSC	BT v Oei	Negligence	
2000	State - VIC	VCAT	Life Insurance Questionnaire Case	Discrimination	
2000	Federal	FCA	Cuna Mutual Group Limited v Bryant & Anor [2000] FCA 970	Insurance	
2001	State - Unknown	Court Unknown	Rowan Fitzpatricke and Wade Turland v FAI Life Insurance Society Ltd	Insurance	
2008	State - ACT	ACT - Court Unknown	Canberra Case	Criminal	
2008	State - VIC	VCC (Victorian County Court)	Lam Kuoth Case	Criminal	
2008	State - VIC	VCC (Victorian County Court)	Michael Neal Case	Criminal	

SUMMARISED HEADNOTE	LEGAL FACTOR - PRIMARY	LEGAL FACTOR - KEY POPULATION	PRIORITY POPULATION
Commonwealth Government appealed to the Full Court of the Federal Court against a ruling that the ADF breached the Disability Discrimination Act when it discharged an HIV-positive soldier.	10 - Employment, work and economic life	Nil	Nil
MLC Life Limited reversed its decision to refuse a total and permanent disability payout to a person with HIV after the ACCC received a complaint that the insurer had engaged in misleading and deceptive conduct.	5 - Social Protection and Material Assistance	Nil	People living with HIV
QADT awarded compensation to prisoners who were subject to discrimination by the Queensland Corrective Services Commission on account of their positive-HIV status.	20 - Legal Protection	19 - People under state custody	People living with HIV
Complainant dismissed from employment on account of her late husband's positive HIV status.	10 - Employment, work and economic life	14 - Women	People living with HIV
Accused HIV-positive; Court overturned convictions for reckless conduct endangering life.	13 - Non-Criminalisation of HIV Exposure and Transmission	Nil	People living with HIV
HIV transmission case; Court convicted an HIV-positive person under s. 22 of the Victorian Crimes Act.	13 - Non-Criminalisation of HIV Exposure and Transmission	Nil	People living with HIV
Accused HIV positive; accused did not disclose HIV status to wife.	13 - Non-Criminalisation of HIV Exposure and Transmission	Nil	People living with HIV
Whether a doctor's duty of care extended to an HIV-positive patient's sexual partners.	6 - Protection of privacy and confidentiality	Nil	People living with HIV
Complainant alleged that life insurance policy questionnaire which asked him to declare he was not HIV-positive was resulted from discriminatory presumptions based on his sexuality.	3 - Testing, counselling and referral	Nil	People living with HIV
Cuna Mutual Group refused to pay complainant's life insurance due to complainant's positive HIV status.	5 - Social Protection and Material Assistance	Nil	People living with HIV
Deceased HIV positive; Life insurance company refused to pay \$240,000 policy to deceased because he failed to disclose his sexuality, lifestyle and medical history.	5 - Social Protection and Material Assistance	Nil	People living with HIV
HIV-positive sex worker imprisoned for being an HIV-positive sex worker.	5 - Social Protection and Material Assistance	17 - Adults engaged in commercial sex	People living with HIV
Accused imprisoned; accused HIV-positive; two counts of recklessly endangering another person.	13 - Non-Criminalisation of HIV Exposure and Transmission	19 - People under state custody	Culturally and linguistically diverse
Deliberate/attempted HIV transmission.	13 - Non-Criminalisation of HIV Exposure and Transmission	18 - Men who have sex with men, and transgender people	People from high HIV prevalence countries, people who travel to those countries and their partners.

YEAR	JURISDICTION	COURT/ TRIBUNAL	CASE NAME	AREA OF LAW	FULL HEADNOTE
2008	State - NSW	NSW (Court Unknown)	Western Sydney Man Case	Criminal	
2008	State - VIC	VIC - Court Unknown	Zambia Man Case	Criminal	
2008	State - VIC	VIC Magistrates Court	Jilted Wife Case	Criminal	
2008	State - QLD	QLD - Court Unknown	Brisbane Biting Case	Criminal	
2009	State - NSW	NSW - Court Unknown	Sydney Husband and Wife Case	Criminal	
2009	State - SA	SA - Court Unknown	African Migrant Case	Criminal	
2009	State - VIC	VIC - Court Unknown	Victorian Husband and Wife Case	Criminal	
2010	State - NSW	NSW - Court Unknown	\$750K Case	Criminal	
2012	State - QLD	QLD Magistrates Court	Roma Street Magistrate's Court Case	Criminal	
2013	State - NSW	NSWDC	NSW Zimbabwean Man Case	Criminal	
2013	State - NSW	NSW - Court Unknown	New South Wales Man Case	Criminal	
2016	State - QLD	QLD - Court Unknown	QLD Zimbabwean Man Case	Deportation	
2016	State - QLD	QLD - Court Unknown	Brisbane Policeman Case	Criminal	
2017	State - NSW	NSW - Court Unknown	GB Case	Criminal	
2017	State - QLD	QLD District Court	Maroochydore Man Case	Criminal	
2018	State - NSW	NSWDC	X Case	Criminal	

SUMMARISED HEADNOTE	LEGAL FACTOR - PRIMARY	LEGAL FACTOR - KEY POPULATION	PRIORITY POPULATION
Accused did not disclose positive HIV status to wife; HIV transmission.	13 - Non-Criminalisation of HIV Exposure and Transmission	Nil	People from high HIV prevalence countries, people who travel to those countries and their partners.
Accused HIV positive; accused not guilty of knowingly transmitting HIV to complainant as it was not known when accused contracted HIV; Crown failed to prove elements of reckless conduct endangering serious injury.	13 - Non-Criminalisation of HIV Exposure and Transmission	Nil	People from high HIV prevalence countries, people who travel to those countries and their partners.
Accused HIV positive; accused did not disclose HIV status to wife; wife subsequently contracted HIV.	13 - Non-Criminalisation of HIV Exposure and Transmission	14 - Women	People living with HIV
Accused HIV positive; accused bit policeman.	22 - Access to a forum, fair trial, and enforcement of remedies	Nil	People living with HIV
Accused HIV positive; malicious infliction of grievous bodily harm.	13 - Non-Criminalisation of HIV Exposure and Transmission	14 - Women	People living with HIV
Accused HIV positive; charged with two counts of endangering life after exposing partner to HIV.	13 - Non-Criminalisation of HIV Exposure and Transmission	Nil	People in custodial settings
Accused HIV positive; accused did not disclose HIV status to wife; wife subsequently contracted HIV.	13 - Non-Criminalisation of HIV Exposure and Transmission	14 - Women	People living with HIV
Accused HIV positive; did not disclose status to partner.	13 - Non-Criminalisation of HIV Exposure and Transmission	18 - Men who have sex with men, and transgender people	People living with HIV
Accused HIV positive; accused did not disclose HIV status to two partners.	13 - Non-Criminalisation of HIV Exposure and Transmission	18 - Men who have sex with men, and transgender people	People living with HIV
Accused HIV positive; charged with maliciously inflicting grievous bodily harm.	13 - Non-Criminalisation of HIV Exposure and Transmission	Nil	People living with HIV
Accused HIV positive; charged with maliciously inflicting grievous bodily harm.	13 - Non-Criminalisation of HIV Exposure and Transmission	18 - Men who have sex with men, and transgender people	Nil
Accused HIV-positive; accused deported after knowingly transmitting HIV.	22 - Access to a forum, fair trial, and enforcement of remedies	19 - People under state custody	People living with HIV
Accused HIV-positive; charged with assault after biting a policeman.	22 - Access to a forum, fair trial, and enforcement of remedies	Nil	People living with HIV
Accused HIV-positive; failed to take reasonable precautions, HIV transmission.	13 - Non-Criminalisation of HIV Exposure and Transmission	18 - Men who have sex with men, and transgender people	People living with HIV
Accused HIV-positive; charged with causing grievous bodily harm after HIV transmission to a woman.	13 - Non-Criminalisation of HIV Exposure and Transmission	14 - Women	People in Custodial Settings
Accused HIV-positive; pleaded guilty to recklessly causing grievous bodily harm.	13 - Non-Criminalisation of HIV Exposure and Transmission	18 - Men who have sex with men, and transgender people	People living with HIV

YEAR	JURISDICTION	COURT/ TRIBUNAL	CASE NAME	AREA OF LAW	FULL HEADNOTE
2018	State - QLD	QLD - Court Unknown	Queensland Spitting Case	Criminal	
2018	State - NSW	NSWLC	Rozelle Man Case	Criminal	
2018	State - WA	WA - Court Unknown	WA Man Case	Criminal	
2019	State - QLD	QLD - Court Unknown	Open Wound Case	Criminal	
2019	State - NSW	NSW - Court Unknown	Valentine's Day Case	Criminal	
2019	State - VIC	VIC - Court Unknown	Surgeon Sexual Assault Case	Criminal	
2020	State - WA	WA - Court Unknown	Perth Man Case	Criminal	
2020	State - NSW	NSW - Court Unknown	Mark Turjman Case	Criminal	
2020	Federal	AATA	Sex Worker Case	Deportation	
2021	State - SA	SA District Court	Jadd Brooker Case	Criminal	
2022	State - NSW	NSWLC	Not-Guilty Case	Criminal	
2022	State - SA	SA - Court Unknown	14-Year-Old Son Case	Criminal	
2022	State - WA	WA - Court Unknown	Tracker Case	Criminal	
2022	State - Unknown	Court Unknown	Killer Freed Case	Criminal	
2022	State - Unknown	Court Unknown	Puppy Scam Case	Criminal	

SUMMARISED HEADNOTE	LEGAL FACTOR - PRIMARY	LEGAL FACTOR - KEY POPULATION	PRIORITY POPULATION
Accused HIV positive; accused spat at security guard.	22 - Access to a forum, fair trial, and enforcement of remedies	Nil	People living with HIV
Accused HIV positive; accused charged with knowingly transmitting HIV to a woman.	13 - Non-Criminalisation of HIV Exposure and Transmission	14 - Women	People living with HIV
Accused HIV positive; accused charged with knowingly transmitting HIV.	13 - Non-Criminalisation of HIV Exposure and Transmission	Nil	People living with HIV
Accused HIV positive; convicted of dripping blood on police officer; sentence reduced on appeal.	22 - Access to a forum, fair trial, and enforcement of remedies	19 - People under state custody	People living with HIV
Accused HIV positive; HIV transmission with intent.	13 - Non-Criminalisation of HIV Exposure and Transmission	14 - Women	People living with HIV
Accused charged with sexual assault; victim raised concerns about accused's HIV status; accused not HIV positive.	2 - HIV Prevention	18 - Men who have sex with men, and transgender people	People living with HIV
Accused did not disclose positive HIV status; HIV transmission.	13 - Non-Criminalisation of HIV Exposure and Transmission	Nil	People living with HIV
Accused HIV positive; accused punched and bit a security guard and spat blood on a nurse.	22 - Access to a forum, fair trial, and enforcement of remedies	Nil	People living with HIV
Accused a transgender sex worker; Appeals Tribunal overturned deportation order after accused charged with HIV transmission.	22 - Access to a forum, fair trial, and enforcement of remedies	18 - Men who have sex with men, and transgender people	People living with HIV
Accused HIV positive; accused pled guilty to committing 181 crimes against children, including 100 counts of communicating to make a child amenable to sex.	2 - HIV Prevention	15 - Children and youth	People living with HIV
Accused did not disclose positive HIV status, accused found not guilty of HIV exposure to female partner.	13 - Non-Criminalisation of HIV Exposure and Transmission	14 - Women	People living with HIV
Accused HIV positive; accused supplied drugs to and sexually assaulted two teenage boys.	2 - HIV Prevention	15 - Children and youth	People in Custodial Settings
Accused perpetrator of domestic violence; accused previously faced allegations that he told his partner she was at risk of contracting HIV from him; HIV not central consideration in article.	22 - Access to a forum, fair trial, and enforcement of remedies	14 - Women	Nil
Accused HIV positive; accused murdered partner; HIV not central to article.	22 - Access to a forum, fair trial, and enforcement of remedies	18 - Men who have sex with men, and transgender people	People in Custodial Settings
Accused HIV positive; accused charged with knowingly dealing with the proceeds of crime; HIV not central to article.	22 - Access to a forum, fair trial, and enforcement of remedies	Nil	People living with HIV

# References

## Books, journal articles, reports and submissions

American Bar Association, 'HIV/AIDS Legal Assessment Tool - Assessment Methodology Manual' (Washington, 2011) [https://www.usaid.gov/sites/default/files/2022-05/ABAROLI\\_HIVAIDSLegalAssessmentTool\\_Oct.2011.pdf](https://www.usaid.gov/sites/default/files/2022-05/ABAROLI_HIVAIDSLegalAssessmentTool_Oct.2011.pdf)

Australian National Council on AIDS and Related and Intergovernmental Committee on AIDS (Australia) (eds), *Status Report on Implementation of the Final Report Recommendations of the Legal Working Party* (Australian National Council on AIDS and Related Diseases, 1999).

Burris, Scott C., 'How to Write a Legal Mapping Paper' (November 5, 2020). Temple University Legal Studies Research Paper No. 2018-10. SSRN: <https://ssrn.com/abstract=3133065> or <http://dx.doi.org/10.2139/ssrn.3133065>.

Cameron, Sally, *The System Is Broken - Audit of Australia's Mandatory Disease Testing Laws* (National Association of People with HIV Australia & HIV Justice Network, 2019). [https://napwha.org.au/wp-content/uploads/2019/09/2019\\_NAPWHA\\_TheSystemIsBroken.pdf](https://napwha.org.au/wp-content/uploads/2019/09/2019_NAPWHA_TheSystemIsBroken.pdf)

Cameron, Sally & John Stanley Rule (eds), *The Criminalisation of HIV Transmission in Australia: Legality, Morality and Reality* (National Association of People Living with HIV/AIDS, 2009).

Carter, David J, Negar Jamshidi, Anthea Vogl, James Brown, Hamish Robertson & Dion Kagan, 'The Health Impacts of Law for People Living with HIV: A Systematic Review', *Health+Law*, Sydney, 2024.

Carter, David J., Adel Rahmani, Rhys Evans, Alexandra Stratigos, James Brown, 'HIV-Related Legal Needs, Demographic Change, and Trends in Australia since 1992: A Review of Legal Administrative Data' (2023) *AIDS and Behavior* 28(2).

Carter, David J, 'Transmission of HIV and the Criminal Law: Examining the Impact of Pre-Exposure Prophylaxis and Treatment-as-Prevention' (2020) 43(3) *Melbourne University Law Review* 937.

Coumarelos, Christine, Deborah Macourt, Julie People, Hugh M. McDonald, Zhigang Wei, Reiny Iriana & Stephanie Ramsey, *Legal Australia-Wide Survey: Legal Need in Australia*, vol 8 (Law and Justice Foundation, 2012).

Delgado, Richard, 'Storytelling for Oppositionists and Others: A Plea for Narrative Legal Storytelling' (1988) 87(8) *Michigan Law Review* 2411.

Genn, Hazel. (1999). *Paths to Justice: What People Do and Think About Going to Law*. Hart Publishing, Oxford.

Global Commission on HIV and the Law, *Global Commission on HIV and the Law: Risks, Rights & Health* (Global Commission on HIV and the Law, UNDP, HIV/AIDS Group, July 2012), <https://hivlawcommission.org/report/>

Global Commission on HIV and the Law, *Global Commission on HIV and the Law: Risks, Rights & Health -Supplement* (Global Commission on HIV and the Law, UNDP, HIV/AIDS Group, July 2018) <https://hivlawcommission.org/supplement/>

HIV Justice Network (HJN), 'HIV Justice Network'. <https://www.hivjustice.net/>



Intergovernmental Committee on AIDS (Australia) and Australia (eds), *The Final Report of the Legal Working Party of the Intergovernmental Committee on AIDS, November 1992* (Dept. of Health, Housing and Community Services, 1992).

Jackson, Darren, 'The Role of Narrative in the Judicial Process' (2023) 15(1) *Judicial Review: Selected Conference Papers: Journal of the Judicial Commission of New South Wales* 99.

King, Jonathan, Hamish McManus, Amy Kwon, Richard Gray & Skye McGregor, *HIV, Viral Hepatitis and Sexually Transmissible Infections in Australia: Annual Surveillance Report 2022* (The Kirby Institute, UNSW Sydney, Sydney, Australia, 2022). <http://doi.org/10.26190/sx44-5366>

National Association of People with HIV Australia (NAPWHA) and HIV/AIDS Legal Centre (HALC), 'Submission – NSW Justice's Review of the Operation of Suppression Orders, Non-Disclosure Orders and Access to Information in NSW Courts and Tribunals.' <https://www.lawreform.justice.nsw.gov.au/Documents/Current-projects/Court-information/Preliminary-submissions/PCI28.pdf>

New South Wales Law Reform Commission, *Open Justice: Court and Tribunal Information: Access, Disclosure and Publication* (Report No 149, New South Wales Law Reform Commission, May 2022). <https://www.lawreform.justice.nsw.gov.au/Documents/Publications/Reports/Report%20149.pdf>

OECD and Open Society Foundations, *Legal Needs Surveys and Access to Justice* (OECD, 31 May 2019) 23. [https://www.oecd-ilibrary.org/governance/legal-needs-surveys-and-access-to-justice\\_cab05cff-en;jsessionid=IR1iGdPecCAPx6tsUhlvFV3dhDjyHCpldaic2In7.ip-10-240-5-79](https://www.oecd-ilibrary.org/governance/legal-needs-surveys-and-access-to-justice_cab05cff-en;jsessionid=IR1iGdPecCAPx6tsUhlvFV3dhDjyHCpldaic2In7.ip-10-240-5-79)

Sarmas, Lisa, 'Story Telling and the Law: A Case Study of Louth v. Diprose' (1993) 19 *Melbourne University Law Review* 701.

Snedaker, Kathryn Holmes, 'Storytelling in Opening Statements: Framing the Argumentation of the Trial' (1986) 10(1) *American Journal of Trial Advocacy* 15.

Stratigos, Alexandra and David J. Carter, *Positive Migration Guide: Positive Migration Guide Immigration for People Living with HIV, Their Family Members and Others* (HIV/AIDS Legal Centre, 1 March 2022). <https://opus.lib.uts.edu.au/handle/10453/156652>

United Nations Development Programme, *Legal Environment Assessment for HIV: An Operational Guide to Conducting National Legal, Regulatory and Policy Assessments for HIV* (Practical Manual, United Nations, January 2014). [www.undp.org](http://www.undp.org).

Vogl, Anthea, David J Carter & Elsher Lawson-Boyd, 'Brief on Blood Borne Virus (BBV) Infection via Spitting or Biting' (1 February 2024). <https://osf.io/xpkft>.

Vogl, Anthea, 'Telling Stories from Start to Finish' (2013) 22(1) *Griffith Law Review* 63.

Vogl, Anthea, 'The Genres and Politics of Refugee Testimony' (2018) 30(1) *Law & Literature* 81.

**Cases Noted in Text**

*DPP v El-Sayegh and Rajic* [2016] VCC 2034

*Jackson & Macek* [2015] FCCA 1656

*Jackson & Macek* [2015] FamCAFC 114

*Orr v Burkhan Pty Ltd* [2022] VMC 5

*Palmer v The State of Western Australia* [2018] WASCA 225

*Queen v PD* (Prosecution Case File Y833; Committal Proceedings, Melbourne Magistrates Court, Barrow M)

*R v Hassan Nagj* [2010] NSW NSWDC 129

*Reg v Donald - Judgment No 1619* [1989] SASC 1619

*Ryan v Dennis and Dennis Deals Pty Ltd* [1998] HREOCA 36

*Schlipalius v Petch* [1996] VADT 37

*W & G (Stage 3)* [2005] FamCA 617

*Wendall & James* [2000] FamCA 963

*Wright v KB Nut Holdings Pty Ltd as Trustee for the Kerrie-Ann Stevenson Family Trust Trading as Bonapartes Services Apartments* [2012] QDC 202

'1513428 (Refugee) [2019] AATA 5172'

'*E v Australian Red Cross Society* [1991] FCA 781'

**Legislation**

*Mandatory Disease Testing Act 2021 No 13* (NSW)

*Court Suppression and Non-Publication Orders Act 2010 No 106* (NSW)



