

## Punishing one person for STI transmission weakens public health efforts

Written by Denton Callander, Research fellow, UNSW

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In most Australian states, if you have certain STIs, you have a legal responsibility to notify your potential sexual partners.[from shutterstock.com](#)

Is one person to blame if another gets a sexually transmissible infection (STI)? In most Australian states, if you have certain STIs, you have a legal responsibility to notify your potential sexual partners.

The NSW government [last week](#) passed an amendment to the state's [Public Health Act](#) that increased the associated penalties by doubling the maximum fines and adding potential jail time.

Section 79 (1) of the Act [now reads](#) :

A person who knows that he or she has a notifiable disease, or a scheduled medical condition, that is sexually transmissible is required to take reasonable precautions against spreading the disease or condition.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

In addition to increasing potential penalties, the amendment removed an earlier provision mandating disclosure of STI status, replacing it instead with the need for “reasonable precautions”.

This is a positive change for the law that reflects the best available research on STIs and transmission. Yet its coupling with increased penalties has sent a mixed message about sexual health in the state.

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Further, the idea that punishing STI exposure or transmission will decrease rates of infection is [not supported by global research](#) on HIV, and there is no reason to believe this would be any different for other STIs.

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**Read more:** [Moral responsibilities to disclose your HIV status to partners aren't so clear-cut](#)

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## Laws across Australia

Health law is pretty complex and mainly left up to each state and territory. Generally speaking, across Australia you risk some kind of punishment for knowingly infecting another person with what are often referred to as “[notifiable diseases](#)”. This list covers a range of infections but STIs include chlamydia, gonorrhoea, syphilis, HIV, shigella, donovanosis, and hepatitis a, b and c.

In some states, notably [New South Wales](#), [Tasmania](#) and [Queensland](#), it's an offence just to knowingly expose someone to an infection, even if they don't actually become infected. While in other states, like [Victoria](#) and [South Australia](#), health acts do not specify penalties for exposure or transmission, referring instead to the respective crime acts. For the most part, curable STIs do not rank as serious enough for criminal prosecution.

What is unique about NSW is that it uses the Public Health Act to single out STIs and describe specific punishments above and beyond other infections.



### **Punishment doesn't help**

Every year, there are over 100,000 STI [diagnoses across Australia](#), the vast majority of which can be cured using antibiotics. Ultimately, public health initiatives aim to reduce new cases and lower the overall amount of infection.

It's been suggested by public health experts that criminalising transmission can [undermine public health efforts](#) by reinforcing stigma and causing people to delay accessing testing, treatment and care.

And in [a review](#) of legal conditions around the world, researchers found that there was no link between laws criminalising HIV transmission and lower infection rates. The review also found such laws disproportionately impacted those who may experience marginalisation, such as young people and women.

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**Read more: [Stigma and lack of awareness stop young people testing for sexually transmitted infections](#)**

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In reality, situations where an individual recklessly or wilfully places another at risk of an STI are [incredibly rare](#) and health officials have many options besides punishment.

As part of their core work, doctors and clinics counsel on and work with people to prevent

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onward transmission, and in some cases public health orders can be used to compel people to, among other actions, attend counselling and refrain from activities that might spread an infection. In the most extreme situations, criminal charges can be brought on the basis of grievous bodily harm.

Overall, a special and punitive focus to STIs risks further entrenching stigma and undermining the Act's intent, which is to manage and reduce infection. If there is any hope of reducing STIs in Australia, laws must aim to foster an environment where people feel comfortable, able and willing to get tested and engaged with their sexual health.

While it seems unlikely a rush to prosecute those who expose others to STIs will spring up from this amendment, the law as it is currently written leaves open that rather serious possibility. In NSW and across Australia, health law consistently places the burden of prevention on one partner. In an ideal world, all parties to a sexual encounter take "reasonable precautions" to protect themselves and each other from infection.

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**Read more** <http://theconversation.com/punishing-one-person-for-sti-transmission-weakens-public-health-efforts-84210>