

The Health Impacts of Law for People Living with HIV

A Systematic Review
of Literature



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.

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

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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/s Blood-borne virus/es

CALD Culturally and Linguistically Diverse

HALC HIV/AIDS Legal Centre

LEA Legal Environment Assessment

MSM Men who have sex with men

NAPWHA National Association of People with HIV Australia

PLHIV Person/People Living with HIV

PLHBV Person/People Living with Hepatitis B

PrEP Pre-exposure Prophylaxis

TasP Treatment as Prevention

UNAIDS Joint United Nations Programme on HIV/AIDS

UNDP United Nations Development Program

U=U Undetectable=Untransmittable

WHO World Health Organization

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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, Queensland University of Technology (QUT) School of Public Health and Social Work, 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.¹ 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 to gather the evidence needed and 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.

¹ David J Carter et al, 'HIV-Related Legal Needs, Demographic Change, and Trends in Australia since 1992: A Review of Legal Administrative Data' (2023) 28(2) *AIDS and Behavior* 574.

Introduction

The development and maintenance of an ‘enabling’ legal environment has long been recognised as an important element in Australia’s response to HIV and has been referenced in each of the national 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), determined that an enabling legal environment is essential to both improving the lives of people living with HIV (PLHIV) and for broader public health interventions.

The last comprehensive review of the legal environment around HIV in Australia was undertaken in 1992. In the more than 30 years since then, there have been significant changes in the social, biomedical, geopolitical and public health landscapes of HIV, all of which have altered the legal environment surrounding the virus and people affected by it. In particular, this includes the substantial social and public health changes that have accompanied the public health era of Undetectable=Untransmittable (U=U), as we explain in more detail later in this report.

This systematic review of secondary legal sources is one of a set of two reviews that together comprise a first step towards assessing the state of the legal environment surrounding HIV in Australia. Its partner report, a legal

mapping review of relevant Australian case law, examines ‘primary’ material and aims to identify key legal issues and matters of concern in Australia that generate legal disputes related to HIV.² This report presents the results of a systematic review of ‘secondary’ materials, comprising the current scholarly literature on the health-related impacts of law and justiciable issues in high-income countries for PLHIV.

Together, these reviews aim to update and advance our understanding of the legal environment in Australia today. They form an important starting point for further primary socio-legal research currently being undertaken by Health+Law to identify and understand the legal issues and experiences of PLHIV and better support them to navigate the law in Australia.

2 David J. Carter et al, 'HIV and the Law in Australia: A Mapping Review of Contemporary Case Law' (2024), Health+Law.

Evidence Prior to This Study

As we note above, the last review of the legal environment around HIV undertaken in Australia was in 1992 and resulted in 'The Final Report of the Legal Working Party of the Intergovernmental Committee on AIDS'.³ In 1999, the Australian National Council on AIDS and Related Diseases released a status review⁴ noting that progress on meeting the objectives outlined in the working party's final report had been 'slow and generally unsatisfactory' and that further commitments to law reform were required.

Since the Council's report and subsequent review, there have been significant changes to the HIV social, biomedical and public health landscape that have impacted the legal environment PLHIV navigate today. This includes the advent of U=U, which refers to when a PLHIV who is on treatment and has an undetectable viral load cannot sexually transmit HIV. U=U also describes a foundational global public health strategy and advocacy movement that significantly informs the current era of HIV for both public health and for PLHIV, including in legal ways.

Internationally, the Global Commission on HIV's 2021 report, 'HIV and the Law: Risks, Rights & Health',⁵ urged countries to act on law reform in areas of discrimination, criminalisation, public health and human rights to ensure effective, equitable and just HIV responses.

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- 3 Intergovernmental Committee on AIDS (Australia), 'The Final Report of the Legal Working Party of the Intergovernmental Committee on AIDS', (Dept. of Health, Housing and Community Services, 1992) ('Final Report of the Legal Working Party').
 - 4 Australian National Council on AIDS and Related Diseases and the 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) ('Status Report').
 - 5 Global Commission on HIV and the Law, *Global Commission on HIV and the Law: Risks, Rights & Health* (UNDP HIV/AIDS Group, July 2021) ('Global Commission Report').

This Systematic Review

The aim of this systematic review is to identify studies that present information on justiciable issues experienced by PLHIV and the health-related impacts that flow from them. A ‘justiciable issue’, as we define further below, is an everyday life problem with a legal dimension.

To address these aims, a comprehensive systematic search of eight databases was conducted in September 2022, as well as a manual search of references and citations from relevant studies. Both peer reviewed and grey literature published between 2016 and September 2022 were included. This date range was specifically selected to align with literature from the U=U era to understand its legal issues. Among other things, the U=U era is marked by the launch of a campaign by the Prevention Access Campaign⁶ and the emergence of global consensus on the science and implications of U=U for HIV transmission reduction and public health strategies to eliminate HIV. For PLHIV, the era of U=U has specific legal implications.

In our search, a total of 89 records met the inclusion criteria and data was extracted from these records. Studies included in the review related to several national jurisdictions including the United States, Canada, Australia and the United Kingdom. The design of these studies varied, but the overall absence of studies that included legal needs surveys or other field-based research aimed at understanding the effect of legal issues on PLHIV was noteworthy. The justiciable issues faced by PLHIV were extracted in the systematic review according to a classification framework provided by the American Bar Association (ABA) in their HIV/AIDS Legal Assessment Tool.⁷ Each

study was classified according to the ABA's framework, using one of its primary (and where required, secondary), ‘legal factors’. ‘The non-criminalisation of HIV exposure and transmission’, followed closely by ‘legal awareness, assistance and representation’ were the factors most frequently identified in the literature.

Studies reported multiple health-related impacts, which we classified into ‘Health-Related Impact Groups’ for the purposes of presenting results. To present a synthesis of these health-related impacts it was decided to group the impacts according to the HIV Cascade of Care, a widely used tool for conceptualising key aspects of HIV-related care in public health, HIV policy, medicine and other fields (sometimes also known as the ‘Continuum of Care’). To the sequence of stages typically included in the Cascade we added two additional classifications: ‘quality of life’, which recognises calls to more meaningfully address quality of life as part of HIV care objectives; and ‘enabling legal environmental factors’, which includes enablers or barriers to meeting the legal needs of PLHIV and to creating an enabling legal environment more generally. With this expanded HIV Cascade of Care as an organising framework, the review provides a narrative synthesis of the health-related impacts of justiciable issues.

⁶ Prevention Access Campaign (PAC) is a global not-for-profit organisation that aims to mobilise the science around U=U and advocate for universal access to treatment for all PLHIV. U=U means that a person living with HIV who is on treatment and has an undetectable viral load cannot sexually transmit HIV.

⁷ American Bar Association, ‘HIV/AIDS Legal Assessment Tool - Assessment Methodology Manual’ (2011) (‘HIV/AIDS Legal Assessment Tool’).

Key Findings

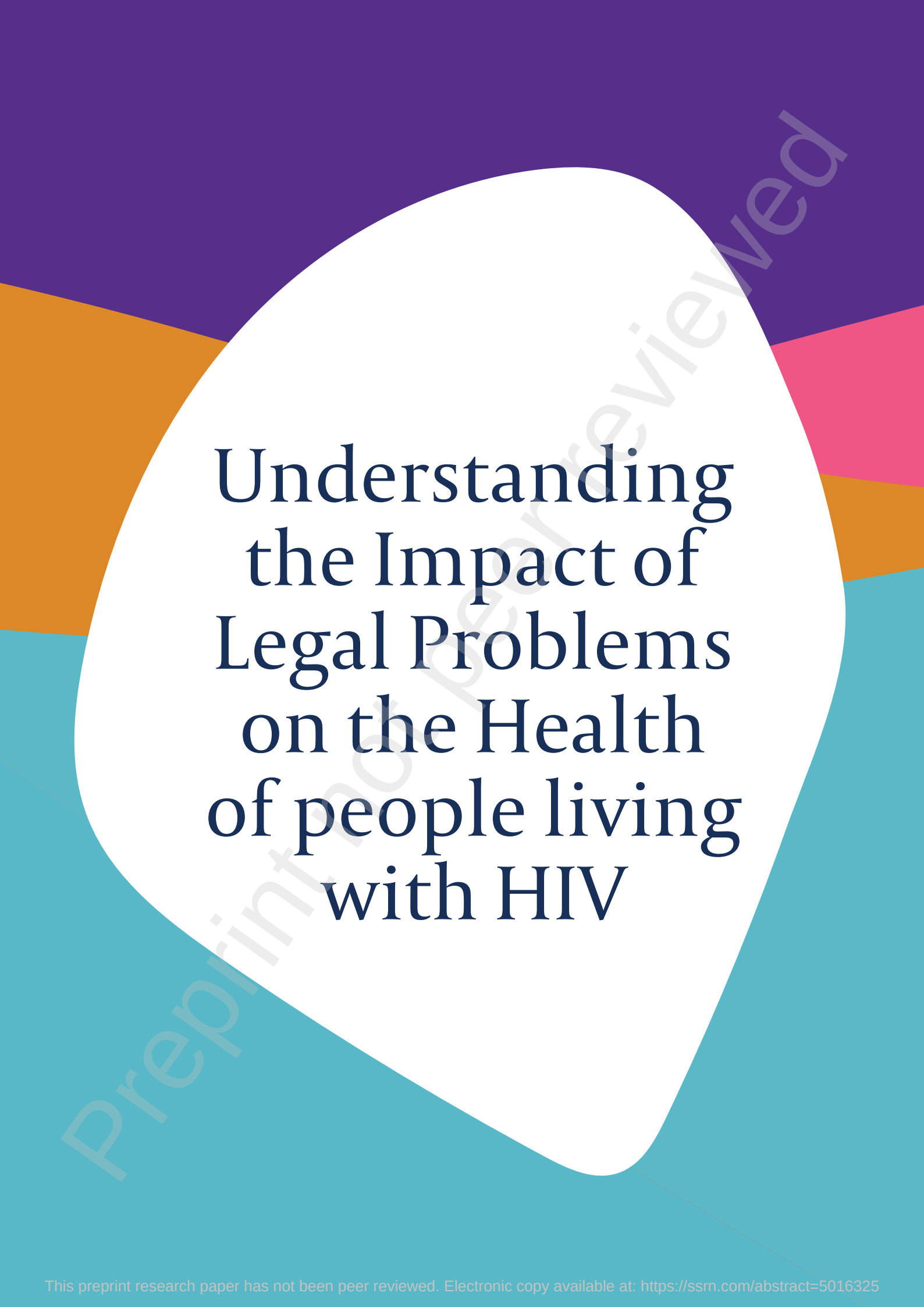
PLHIV experience a wide range of justiciable issues that generate health-related effects across all phases of the (expanded) HIV Cascade of Care. While the studies included here reflect a continued interest in the criminal law and its application to HIV status, disclosure and transmission, the literature also indicates a growing body of research on legal issues beyond the criminal law that affect the health and wellbeing of PLHIV.

This includes areas of law as diverse as administrative law, migration law, family law, privacy law, housing and employment/industrial relations law. The literature also shows that the justiciable issues that impact the health of PLHIV extend beyond HIV-specific legal provisions and even beyond provisions that directly concern health.

Most frequently, the studies included in this review identified the law as a barrier to the achievement of health and good quality of life. This dominant characterisation of the law as a 'barrier' may be due in part to an orientation of research that views the law primarily as a restrictive and limiting mechanism. This view is particularly associated with the operation of the criminal law, and with research that emphasises the deficits of law and legal practice, and that seeks to advance law reform.

This characterisation neglects to consider the flexibility and responsiveness of the law, and its capacity to operate as a tool to potentially advance the interests of PLHIV. The development of an enabling legal environment will require research and strategies that considers the law fulsomely, including its impacts in practice, and both its negative or limiting character alongside its more productive, protective and positive operations.

Although this systematic review focuses on the experience of PLHIV in high-income countries, it takes in a wide diversity of laws, legal systems and legal practices across many jurisdictions. Further doctrinal and socio-legal research is needed to understand more about laws and their operation in particular jurisdictions.



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, regulation, 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 health conditions like HIV, which influences HIV public health systems, the quality of life experienced by individual PLHIV and their access to justice.

The influence of an enabling legal environment has long been recognised in Australian responses to HIV. As a policy aim, it has been recognised as 'an essential foundation for success' and it has been embedded in each of the national HIV strategies since the first in 1989. Since then, successive national HIV strategies, legal and health services provision and research have been committed to creating and sustaining an enabling legal environment in aid of better outcomes for public health and people affected by HIV.

On the international stage, 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 HIV. Convened by the UNDP on behalf of UNAIDS⁸, the Commission concluded that establishing and maintaining an enabling legal environment is essential for improving the lives of PLHIV while reducing new HIV infections. Its report 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.'⁹

In addition to the Global Commission's work, UNAIDS has identified seven legal and justice enablers of an effective HIV response, which 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. The Commission's summary recommendations were to:

- Outlaw all forms of discrimination and violence directed against those who are vulnerable or living with HIV or are perceived to be HIV positive. Ensure that existing human rights commitments and constitutional guarantees are enforced.
- Repeal punitive laws and enact laws that facilitate and enable effective responses to HIV prevention, care and treatment services for all who need them. Enact no laws that explicitly criminalise HIV transmission, exposure or non-disclosure of HIV status, which are counterproductive.
- Work with guardians of customary and religious law to promote traditional and religious practice that promote rights and acceptance of diversity and that protect privacy.
- Decriminalise private and consensual adult sexual behaviours, including same-sex sexual acts and voluntary sex work.
- Prosecute the perpetrators of sexual violence, including marital rape and rape related to conflict, whether perpetrated against females, males or transgender people.
- Abolish all mandatory HIV-related registration, testing and forced treatment regimens.

8 Global Commission Report; see also 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) ('Global Commission Report Supplement').

9 Global Commission on HIV and the Law, Global Commission Report (n 8) 7.

- Facilitate access to sexual and reproductive health services and stop forced abortion and coerced sterilisation of HIV-positive women and girls.
- Reform approaches towards drug use. Rather than punishing people who use drugs but do no harm to others, governments must offer them access to effective HIV and health services, including harm reduction programmes and voluntary, evidence-based treatment for drug dependence.
- Enforce laws against all forms of child sexual abuse and sexual exploitation, clearly differentiating such crimes from consensual adult sex work.
- Ensure that the enforcement of laws against human trafficking is carefully targeted to punish those who use force, dishonesty or coercion to procure people into commercial sex, or who abuse migrant sex workers through debt bondage, violence or deprivation of liberty. Laws against human trafficking must be used to prohibit sexual exploitation, but they must not be used against adults involved in consensual sex work.
- In matters related to HIV and the law, offer the same standard of protection to migrants, visitors and residents who are not citizens as is extended to citizens. Restrictions that prohibit PLHIV from entering a country and/or regulations that mandate HIV tests for foreigners within a country should be repealed.
- Enforce a legal framework that ensures social protection for children living with and affected by HIV and AIDS. Laws must protect guardianship, property and inheritance rights, and access to age-appropriate, comprehensive sex education, health and reproductive services.

- Develop an effective intellectual property regime for pharmaceutical products. Such a regime must be consistent with international human rights law and public health needs, while safeguarding the justifiable rights of inventors.¹⁰

For the contemporary Australian context, the Health+Law Partnership views an enabling legal environment as one that, among other things:

- Emphasises a rational, humane, non-coercive and responsive approach to BBVs.
- Reflects evidence-based and current knowledge, practices and issues in the health sector.
- Acknowledges and responds to the specific needs of communities affected by BBVs.
- Encourages and supports changes that lead to positive outcomes.
- Enables legal and health professionals to address, remedy and reform practices that generate stigma, discrimination and other forms of harm.

Law and justice are essential to an effective HIV response, and we hope that our work will contribute to the advancement of these principles in Australia.

¹⁰ Global Commission on HIV and the Law, 'Global Commission Report' (n 8).

Assessing the Legal Environment by Understanding People's Legal Needs and Experiences of Law

While the importance of law and an enabling legal environment has been long recognised by public health agencies, systems and researchers in Australia, it has rarely been the subject of methodical assessment. There have been efforts both in Australia and globally to identify, understand and modify the various impacts of law on HIV. These include Australia's landmark 'Final Report of the Legal Working Party of the Intergovernmental Committee on AIDS', which was handed down in 1992,¹¹ and the 'Global Commission on HIV and the Law' which, some twenty years since publication, remains a leading global statement on the impact of law on HIV.¹² The contents of both reports are worth enumerating here in brief.

The last time a systematic review of the legal environment was undertaken in Australia was in 1992 with the Final Report of the Legal Working Party of the Intergovernmental Committee on AIDS.¹³ The report presented a comprehensive review of the state of the law and legal environment surrounding HIV in Australia at this time. This work was based on a set of discussion papers and 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 authored by an expert working party with contributors consisting of representatives of Departments of Health and Attorneys General as well as contributions from lawyers and legal researchers, human rights agencies with engagement from the HIV and community sector. Their final report concluded that there were 'widespread legal, ethical, social and

political ramifications of the HIV epidemic'¹⁴ that make it necessary to think about law and HIV well beyond laws that relate to the virus and to HIV infection itself. The role of law was to complement and assist education and other health measures, while they concluded that other principles 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 or AIDS alone require particular justification.
- 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.

The Intergovernmental Committee's report presented a coordinated national picture of key areas of law and their impacts on HIV/AIDS. To prepare their report, the Legal Working Party commissioned and produced a number of discussion areas of law identified as having a significant impact on HIV in Australia. These included papers on 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.

Seven years on, a status review was produced by the then Australian National Council on AIDS and Related Diseases in 1999,¹⁵ which concluded that since the initial report in 1992, 'progress on meeting the objectives of the Legal Working Party have been slow and generally unsatisfactory'.¹⁶ The review confirmed that if Australia was to be successful in its response

11 Intergovernmental Committee on AIDS Australia, 'Final Report of the Legal Working Party' (n 3).

12 Global Commission on HIV and the Law, 'Global Commission Report' (n 8).

13 Intergovernmental Committee on AIDS Australia, 'Final Report of the Legal Working Party' (n 3); see also Australian National Council on AIDS and Related Diseases, 'Status Report' (n 4).

14 Ibid

15 Australian National Council on AIDS and Related Diseases, 'Status Report' (n 4).

16 Ibid iv.

to HIV, continued commitment to law reform was 'an absolute necessity and integral part of our national public policy process'.¹⁷ Writing in 2014, Sally Cameron made similar conclusions, observing that while successive Australian HIV strategies 'have lauded the enabling environment and the importance of legal and human rights issues', these 'are no longer priorities' but goals that are 'linked only to broad not specific "priority actions" or "implementation strategies" that have, in practice, left law reform 'adrift for some time'.¹⁸ Cameron cited improvements in medical interventions and the success of particular policy and law reforms as factors that inhibited further law reform, while more contentious law reform agendas suffered from a lack of political will.

Beyond Australia, the Global Commission on HIV released its report, 'HIV and the Law: Risks, Rights & Health', in 2012.¹⁹ The Commission consisted of 14 public health and social justice advocates from around the world, and its report included testimonies from more than 700 people affected by HIV-related legal environments across 140 countries. In its findings, the Commission noted that:

- 123 countries outlawed discrimination based on HIV.
- 112 countries provided legal protection to at least some key populations.
- 78 countries criminalised same-sex activity.
- More than 60 countries criminalised transmitting or exposing HIV to another person.

In response to these findings, the Global Commission urged countries to outlaw discrimination, repeal punitive laws, and enact protective laws to promote public health and human rights for effective HIV responses.²⁰

Six years later, in July 2018, the Global Commission released a supplement to the earlier report, highlighting global developments made in HIV-related legal environments since 2012.²¹ The supplement found that:

- Of the estimated 36.7 million PLHIV globally, 20.9 million were receiving antiretroviral therapy (ART) by mid-2017 and three major studies had showed that PLHIV with sufficiently suppressed viral loads posed zero risk of transmission.
- As of July 2018, 68 countries criminalised HIV non-disclosure, exposure or transmission.
- Some countries adopted restrictive immigration policies, including visa denials, screenings, and deportation based on health status.

Both the Australian and international experience highlight the need for a systematic review of the legal environment around HIV.

Since the 1992 Intergovernmental Report, there have been continuing efforts to reform law and to enhance the legal environment. However, significant legal, biomedical and social change has occurred since 1992 and it is now time to make a new assessment of Australia's legal environment, to understand how legal, regulatory and access-to-justice issues affect PLHIV today.

¹⁷ Ibid v.

¹⁸ Sally Cameron, 'Are We Victims of Our Own Success? Addressing the Gaps in Australia's Enabling Environment' (2014) 12(2) Australian Federation of AIDS Organisations.

¹⁹ Global Commission on HIV and the Law, 'Global Commission Report' (n 8).

²⁰ Ibid 9–10.

²¹ Global Commission on HIV and the Law, 'Global Commission Report Supplement' (n 8).

Significant legal, biomedical and social change has occurred since 1992 and it is now time to make a new assessment of Australia's legal environment, to understand how legal, regulatory and access-to-justice issues affect people living with HIV today.

Assessing the Legal Environment

The aim of an assessment of the legal environment is to review 'HIV, health and any other related laws, regulations, policies and practices'²² that have an impact on responses to HIV. This assessment must go beyond just those laws that are obviously about HIV, and beyond health law, because 'HIV is not just a health or medical issue, but also a phenomenon that requires inquiry into structural factors of inequality, power, and person and social dynamics'.²³ This process can take a variety of forms; some key preliminary steps include identifying:²⁴

1. Which HIV, health and other related legal issues are of concern.
2. Which laws, regulations and policies regulate HIV or key populations and other populations considered key for the national HIV response in Australia.
3. How these laws, regulations and policies address the various key HIV, legal and human rights issues as priority concerns.

This systematic review is focused on the first of the three tasks listed above: identifying which HIV, health and other related legal issues are of concern. It addresses this by identifying which HIV, health and other related legal issues are known by the literature to be of concern, and describing their impact(s) on PLHIV, particularly with regards to health and quality of life.

Ground-Up Perspectives on the Law and Legal Research

While all assessments of the legal environment draw on a mix of perspectives, sources of evidence, and stakeholders, the selection and balance between these factors can generate a review that is predominantly 'top down' or 'ground up' in its understanding of what HIV, health and other related legal issues are of concern.²⁵ A 'top down' approach understands the law and its effects on PLHIV from the perspective of the state, service organisations, legal and healthcare practitioners, experts, and researchers. A 'ground up' approach approaches the same material from the perspective of those most affected by law and the legal system – in this instance, people living with 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 an arguably 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 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 sometimes referred to as the difference between 'de facto' or 'de jure' legal analysis.²⁶ De facto analysis looks at the law 'in reality' and as it is applied in the real world. It is interested in how law actually functions in practice, and what people affected by particular laws actually experience. A de jure analysis looks at the law 'on the books.'

²² 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) 14.

²³ Ibid.

²⁴ Adapted from Ibid 47; see also American Bar Association (ABA), 'HIV/AIDS Legal Assessment Tool - Assessment Methodology Manual' ('HIV/AIDS Legal Assessment Tool').

²⁵ For more on this approach to legal analysis in the domain of health and communicable conditions see the discussion of 'de jure' and 'de facto' analysis provided by the ABA in relation to HIV, especially in 'HIV/AIDS Legal Assessment Tool' (n 7) 9–10.

²⁶ Ibid.

It is more interested in the law as written, what possibilities it creates or forecloses and how it is meant to work in theory. Both approaches are important and are necessary to understanding the law and its impacts. This systematic review of secondary legal sources is a first step towards assessing the state of the legal environment around HIV in Australia and in comparable jurisdictions. It prepares the way for planned fieldwork that takes a 'ground-up' approach and technical legal analysis with an emphasis on the law 'in reality'.

In this review we look beyond laws that directly target or name HIV. Instead, we seek to identify evidence of the law's influence on health, without restricting our review to particular areas of law or those that specifically apply to HIV or PLHIV. There is a long tradition of this approach to HIV in Australian public policy, which:

has always recognised that advances in areas such as treatment and care, the provision of services and support, need to be complemented with other laws which recognise that HIV manifests itself in every aspect of the lives of people with the virus, their carers, families, lovers and friends, their workmates, the people with whom they play sports or go on holiday.²⁷

Justiciable Issues and Legal Needs

This review utilises the concept of a 'justiciable issue' as its core object of interest. A justiciable issue is defined here using the work of Genn (1999) 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.²⁸

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'.²⁹

While the focus of this review is primarily the existence and impact of justiciable issues for PLHIV, the concept of a 'legal need' is also important to this study. 'Legal needs' are related to justiciable issues. The OECD in its guidance on access to justice and legal needs research provide 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.³⁰

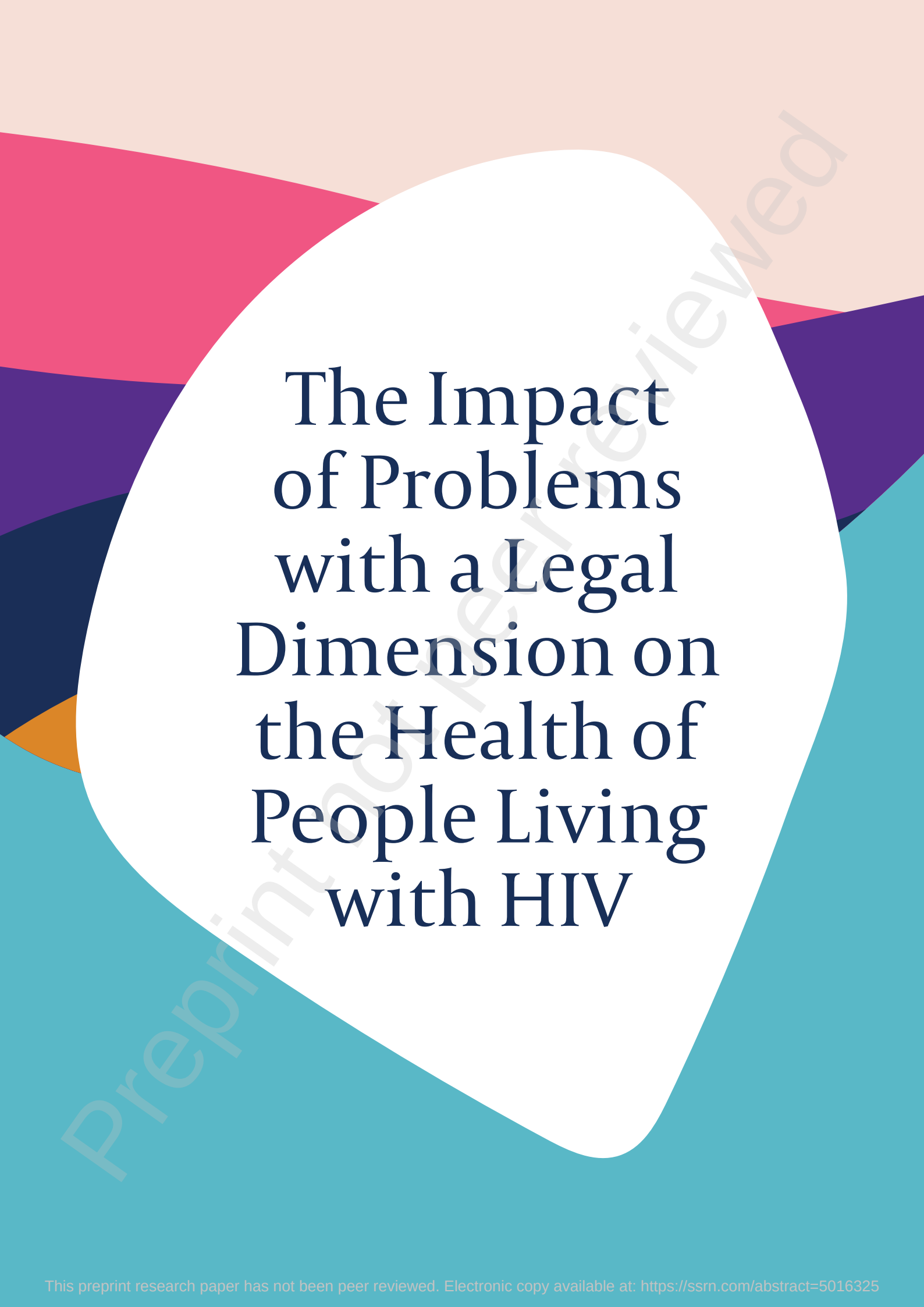
We have designed this systematic review to identify and include studies that present information on justiciable issues experienced by PLHIV. We extract information on justiciable issues and their various health-related impacts reported in published studies and use this as a way of grounding the review in PLHIV's lived experience of law.

²⁷ Australian National Council on AIDS and Related Diseases, 'Status Report' (n 4) v.

²⁸ Hazel Genn. *Paths to Justice: What People Do and Think About Going to Law*. Hart Publishing, 1999, 12.

²⁹ Ibid

³⁰ OECD and Open Society Foundations, *Legal Needs Surveys and Access to Justice* (OECD, 31 May 2019) 23



The Impact of Problems with a Legal Dimension on the Health of People Living with HIV

Legal Environment Assessments (LEAs) have emerged as a way of systematically assessing the state of the enabling legal environment around HIV in national and sub-national jurisdictions. These take a range of approaches, however, their basic shape has been influenced by both the ABA's HIV/AIDS Legal Assessment Tool and the UNDP's Practical Manual on the design and conduct of LEAs.³¹ A growing number of LEAs have been undertaken using this approach.³² These assessments draw a range of conclusions regarding the state of the legal environment in the jurisdiction under investigation, while identifying the existence and characteristics of a variety of justiciable issues that impact the lives and health of PLHIV.

The first step in undertaking an assessment of the legal environment is to identify which HIV, health and related legal issues are of concern. This literature review contributes to this step by identifying health-related and other legal issues identified by existing studies and their impacts on PLHIV.

Methods

Search Strategy

A systematic search of eight databases was undertaken during September 2022. Reference lists from relevant studies and reviews were then searched manually for additional relevant reports or conference papers, both published and unpublished, and any that were found were also included, though other formal searches for grey literature were not conducted.

The systematic review searched for both peer-reviewed and grey literature published from January 2016 to September 2022. In legal research, both types of literature are regarded as 'secondary' sources – that is, forms of information or research that explain, interpret and analyse primary legal sources (or 'law'), including in terms of their operation and impacts.

The date range was selected to focus the systematic review on current legal factors, as well as to align specifically with the start of the 'U=U' era. This moment was marked by the launch of the global 'Undetectable=Untransmittable' campaign by Prevention Access Campaign, and the associated emergence of a scientific consensus on U=U as a cornerstone public health approach to HIV transmission reduction.³³ 'U=U' means that PLHIV who maintain an undetectable viral load through treatment with antiretrovirals (ARVs) cannot transmit HIV to others. Since the scientific consensus on this 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. We explicitly restricted the scope of the searches conducted for this review to literature published during this period.

³¹ American Bar Association (n 7), 'HIV/AIDS Legal Assessment Tool'.

³² 'eLibrary Legal Environment Assessments', Global Commission on HIV and the Law (6 July 2017).

³³ Prevention Access Campaign, 'Risk of Sexual Transmission of HIV from a Person Living with HIV Who Has an Undetectable Viral Load (U=U Consensus Statement)' (U=U Consensus Statement); see also recent Australian guidance on U=U, ASHM, 'U=U ASHM Guidance for Healthcare Professionals' (3rd Edition, 2020), ed Brent Allan.

The search strategy was also designed to capture existing evidence of the types and character of justiciable issues that impact the lives and health of PLHIV. Health-related impacts were broadly defined to include a range of impacts across the Cascade of Care, including testing, treatment, engagement with and access to care, as well as more general impacts on health-related quality of life and health system functioning.

The Cascade of Care is a concept well known to those working in public health, HIV policy and medicine. It is a tool for conceptualising key aspects of HIV-related care, and various versions of the Cascade are used widely in healthcare services delivery. In addition to clinical and care contexts, the Cascade is drawn upon widely

in healthcare policy and research, including epidemiology. In aid of advancing a dialogue between legal scholarship on the impacts of justiciable issues and these other relevant clinical, policy and research contexts, we have clustered the health-related impacts that studies identified according to different stages of the Cascade (Table 9).

We have also extended the 'stages' taken in by the Cascade by including 'prevention' and 'awareness'. The HIV Cascade of Care is associated with the '90-90-90' treatment goals (90% diagnosed, 90% on treatment, 90% achieving viral suppression). In Australia, there have been calls to add a 'fourth 90' target to ensure that PLHIV 'have a quality of life that goes beyond the continuum of treatment paradigm'.³⁴

Table 1: Search Strategy (PubMed)

No.	SEARCH TERM COMBINATIONS
#1	HIV OR HIV/AIDS OR "Human Immunodeficiency Virus" OR "acquired immunodeficiency syndrome" OR "Human immunodeficiency virus infection" OR PLHIV OR "people living with AIDS" OR "PLHIV or AIDS" OR "PLHIV" OR "HIV Infections"[Mesh]
#2	Legal OR law OR "legal assistance" OR "Legal Services"[Mesh] OR "Jurisprudence"[Mesh]
#3	#1 AND #2
#4	Stigma* OR discrimination OR knowledge OR attitudes OR perception OR "health care access" OR "access to care" OR "public benefits" OR migration OR Immigrant OR migrant OR testing OR screening OR treatment OR therapy OR "HIV transmission" OR "continuum of care" OR "quality of life" OR "health impact" OR "health outcome" OR "Delivery of Health Care"[Mesh] OR "Health Services Accessibility"[Mesh] OR "Health Literacy"[Mesh] OR "Emigrants and Immigrants"[Mesh]
#5	#3 AND #4
#6	Review
#7	#5 NOT #6
#8	#7 filter 2016

34 Viiv Healthcare, 'Optimising Quality of Life for All People Living with HIV: Recognising the 4th 90' (No NP-GBL-HVX-BRF-200008, June 2020) 4 (*The Positive Perspectives 2 Manifesto*); see also Timothy Krulic et al, 'Revealing an Enabling Environment: How Clinical Community and Clinical Stakeholders Understand Peer Navigation to Improve Quality of Life for People Living with HIV in Australia' (2023) 11 *Frontiers in Public Health* 1101722 ('Revealing an Enabling Environment'); Daniel Yan et al, 'Quality of Life in People Living with HIV (the Fourth 90) – Are We There yet in Australia?' (2023) 35(2) *AIDS Care* 306, 90; David Crawford et al, 'Client-Led Care in HIV: Perspectives from Community and Practice' (2021) 22(S1) *HIV Medicine* 3 ('Client-Led Care in HIV').

In recognition of this, we include a 'quality of life' stage in our rendering of the HIV Care Cascade. The search strategy was designed by the second author, a specialist in systematic review, in collaboration with the first author. They developed a combination of search terms related to three areas of interest: (1) HIV; (2) the law and its impacts; and (3) justiciable issues that were identified as commonly arising for PLHIV or that have been understood to operate as a factor in the cause, distribution or prevention of HIV. This search strategy is detailed in Table 1 according to eligibility criteria that is detailed in Table 2.

Studies were deemed eligible for inclusion if they reported on a justiciable issue experienced by PLHIV. This included studies that presented material on the impacts of law, regulation or justiciable issues on the health or quality of life of individuals, or their impact on the community, public health, or health-system functioning. We included any research study design, excluding theses, books and book chapters (see Table 2).

All records identified through database searches (n=5156) were exported first into the reference manager EndNote X9 (version 3.3). Data sources that do not support bulk exporting of results (WestLaw and WordLII) were searched manually, and records of these were added to EndNote prior to de-duplication. De-duplication was conducted in EndNote and results were exported to Excel. This resulted in 89 included records. The process, including database searches, screening and selection is presented in Figure 1.

Screening and Selection

Two authors independently screened approximately 25% of the record's titles and abstracts to determine if they fulfilled the criteria for a full-text review. This process was used to refine and clarify the inclusion and exclusion criteria, while producing a training set for research assistants who would screen the remaining records. The remaining 75% of records were imported into Rayyan, an online systematic review bibliographic management system. The entire record set was then independently screened by two research assistants, using the training set to orient and monitor agreement. Any disagreement was resolved through discussion or by the lead author.

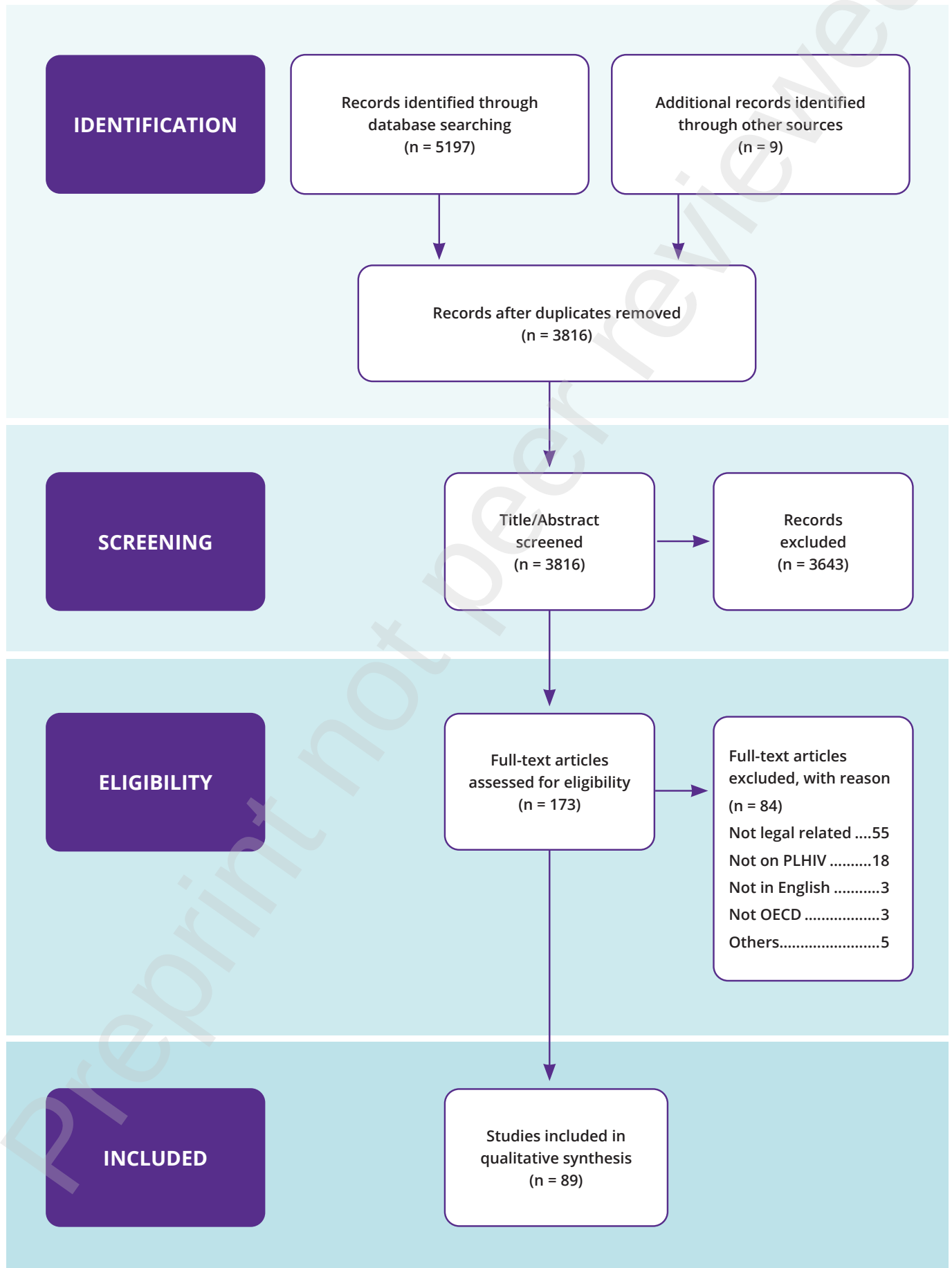
One challenge encountered during screening was the frequency of passing references to law, human rights, policy issues or other terms that could suggest that a study offered a contribution to understanding the impact of law on HIV. Considering this, we applied a final screening criterion to ensure that law or legal material was a phenomenon of substantial interest in the studies being screened and that its authors had indeed identified a legal aspect or justiciable issue in their study. This meant that studies relating to the lived experience, health and health care of PLHIV were excluded if they made only passing reference to law. Such passing references often occurred in introductory or concluding commentary in a record, without presentation of material on the law or its relationship to HIV as a phenomenon of interest. This final review was conducted by the first and fourth authors, both of whom have legal training.

Table 2: Study Inclusion and Exclusion Criteria

STUDY FRAMEWORK	INCLUSION CRITERIA	EXCLUSION CRITERIA
Study Population	Individuals living with HIV residing in high-income countries [†]	- Animal studies - Adults living with HIV/AIDS residing in low and middle-income countries
Exposure	Justiciable issues (i.e. legal issues or problems with a legal dimension) or legal needs faced by PLHIV	Unrelated to justiciable issues or legal issues/needs
Outcomes	- Any justiciable issue with an impact on health - Any unmet legal or law-related need that impacts health or access to health care	Not relevant to legal needs or related to health outcomes
Study Design	Any scholarly or grey literature that describes justiciable issues relevant to PLHIV including expert opinions and evidence-based reviews	- Books or book chapters - Theses - Narrative reviews
Others	- Published in English only - Published from 2016-2022	
Filters to apply	Human filter/Article filter depending on database searched	
Databases to search (8 in total)	PubMed, Embase, SCOPUS, PsychINFO/CINAHL Current Index to Legal Periodicals:(WorldLII), (WestLaw)	

[†] Countries listed as high-income members of the Organisation for Economic Co-operation and Development (OECD) based on World Bank country classification.

Figure 1: PRISMA Flowchart of Study Progress



Data Extraction and Synthesis

Extracting information from secondary legal sources involves reviewing the full text of records. We extracted key pieces of information from the included studies and applied a classification system to assist in charting the results. The extraction form included the following fields:

Table 3: Extraction Form Fields

EXTRACTION FIELD	EXTRACTION FIELD DEFINITION
Study Reference	A shortened citation of the study identifying its first author, publication year and jurisdiction(s).
Study Title	Title of the published report, article or other publication.
Study Design	Description of the study design, including legal research method.
Aim of the Study	Brief description of the aim of the study as described by its authors.
Study Participants/ Settings	Brief description of the participant group/population, setting or other relevant context.
Primary Legal Factor	Identification of the primary legal factor that the study 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. Legal factors indicate areas where law, regulations, policies and legal practices are likely to impact on HIV and PLHIV.
Secondary Legal Factor(s)	Further classifications of the study and its phenomenon of interest as defined by the ABA's Legal Assessment Tool legal factor framework.
Key Population(s)	Classification of the 'key population(s)' (if any) that the study relates to, as defined in the ABA's HIV/AIDS Legal Assessment Tool legal factor framework.
Priority Population(s)	Classification of the 'priority population(s)' the study relates to, as defined in Australia's <i>Eighth National HIV Strategy</i> . These populations are identified by the Strategy as being at elevated risk and vulnerability. They include emerging populations as well as those that have been impacted historically and remain at continued risk.
HIV-Related Health Impact(s) of Legal Factors	Identification of the 'health-related' impacts that have a causal link with primary and secondary legal factors identified in each study. Health-related impacts are a major focus of the Health+Law Research Partnership and of this review. Our definition of what is included as a 'health-related' impact is broad. It encompasses not only specific and measurable impacts on mortality or morbidity, function or health status but also experiences like health-related stigma or variable access to health services – both of which might be thought of in other frameworks as a 'determinant' of a health impact. For this classification we relied primarily on the authors of studies identifying health-related impacts.
Legal, Regulatory or Justiciable Issue(s)	The specific legal, regulatory or justiciable issue/s identified in each study as having a health-related impact on the lives of PLHIV. These issues can be either 'barriers' or 'enablers', in the sense that a particular law may, for example, be supportive of greater access to healthcare, while others may act as a barrier to the same. A 'justiciable issue', as discussed earlier, is a concept used in legal research and practice that refers to 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 civil justice system.' (Genn 1999)
Impact of Legal Issue and/or Evidence of Justiciable Issue	Evidence or description of the impact(s) of the legal, regulatory or justiciable issue extracted at a level of further granularity.

Initially, all records were reviewed – and extracted by – a single author. Where an article required specialist legal expertise, a second author with legal training reviewed it and extracted data. Finally, the first and fourth authors assessed each record for inclusion during the synthesis and analysis phase.

Information extracted from included records was collated in a spreadsheet. Results were classified according to a set of 'legal factors' taken from the ABA's HIV/AIDS Legal Assessment Tool, which is designed to assess a jurisdiction's compliance with international legal standards.³⁵ An author with legal training undertook this classification process. The framework of legal factors applied in this classification process is described in Table 4 below.

Table 4: Legal Factors Framework from the ABA's HIV/AIDS Legal Assessment Tool

	FACTOR GROUP	LEGAL FACTOR	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 bio-medical 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.

³⁵ American Bar Association, (n 7).

	FACTOR GROUP	LEGAL FACTOR	FACTOR DESCRIPTION
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.
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	PLHIV 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 criminalized. 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.

	FACTOR GROUP	LEGAL FACTOR	FACTOR DESCRIPTION
18	Key populations	Men who have sex with men; transgender people	The State takes all appropriate measures to reduce specific HIV vulnerabilities of 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.

Due to the heterogeneity of the populations of interest, the types and descriptions of outcomes, and the varied methodologies of the included studies, we did not attempt to generate overall summary estimates (e.g. meta-analysis) or other forms of synthesis that might be applied in systematic reviews of a more homogenous nature. Instead, we adopted a descriptive narrative synthesis approach.

Results

Application of the search strategy to databases that allow for bulk exporting of results yielded a total of 5,197 potentially relevant studies. After removing 1,343 duplicates, 3,816 records were included for title and abstract screening (see Figure 1). From these, 173 records were selected for full-text retrieval and screening. After applying the inclusion and exclusion criteria, the final result was 89 relevant records.

Study Characteristics

In this section, we describe the characteristics of studies included in the review, including their: focus jurisdictions; study designs/methods; and the populations that were their central focus.

Geography and Jurisdiction

Studies related to several different national and sub-national jurisdictions. The national jurisdiction with the highest number of relevant studies was the United States, followed by Canada. Eleven studies related to multiple jurisdictions or were comparative in nature.

Study Design and Methods

The design of studies varied widely. Notably, many involved legal and regulatory scholarship, which is a form of research not often included in systematic reviews. The various forms of legal and regulatory scholarship in this review include legal history, doctrinal legal analysis and socio-legal analysis of the law and its operation. Absent from the included studies were legal needs surveys or other field-based research into the nature and effect of legal issues on the lives of PLHIV in any jurisdiction.

Study Populations: Key and Priority Populations

As noted earlier, to classify studies by the populations they related to, we first used the 'priority populations' listed in the Australian Government's *Eighth National HIV Strategy*.³⁶ We applied this classification hierarchically, only applying the classification of 'People with Living with HIV' to studies where no other classification applied. Results appear in Table 6.

Table 5: National Jurisdictions

JURISDICTION	NUMBER OF INCLUDED STUDIES
United States of America	45
Canada	16
Multiple Jurisdictions	11
Australia	6
Spain	4
France	2
United Kingdom	2
Israel	1
Italy	1
New Zealand	1

³⁶ Department of Health, Commonwealth of Australia, *Eighth National HIV Strategy 2018-2022*, 2018 ('Eighth National HIV Strategy').

Table 6: Priority Populations

PRIORITY POPULATIONS	NUMBER OF INCLUDED STUDIES
Culturally and linguistically diverse people from high HIV prevalence countries; people who travel to these countries, and their partners	18
Gay Men and other MSM	1
Nil	1
People in Custodial Settings	1
People who Inject Drugs	4
PLHIV	62
Sex Workers	1
Trans and Gender Diverse People	1

Studies were also classified according to the 'key populations' identified in the ABA's HIV/AIDS Legal Assessment Tool to enable consistency with other studies that use this framework.³⁷ These population descriptors differ from those used by the Australian Government and its current classification of 'priority' populations.³⁸ For example, 'culturally and linguistically diverse (CALD) people' is included in the Australian framework, while 'women' is included as a key population in the ABA's framework.

Classification of Legal Factors

This systematic review extracted descriptions of the justiciable issues that each study found to be experienced by PLHIV. Each study was reviewed and the justiciable issues it addressed were classified according to the framework of legal factors in the ABA's HIV/AIDS Legal Assessment Tool. This tool was applied as it provides an HIV-specific framework of legal factors – areas where justiciable issues arise – within which we could represent and synthesise the justiciable issues reported in each study.

The HIV/AIDS Legal Assessment Tool remains the leading HIV-related framework for classifying the legal factors that impact HIV. It draws on a human rights-oriented conception of HIV and the law. This orientation reflects an important emphasis in HIV-related discussions around law. Although the framework was formulated over a decade ago and takes more of a 'top down' perspective rather than a 'ground up' view built out of the lived experience of those most affected by HIV and the law – and these are potential disadvantages of the framework – it is, nonetheless, well established in the field. For example, the UNDP's 'Legal Environment Assessment Manual' recommends the ABA framework as a way of structuring legal environment assessment (LEA) processes across different jurisdictions.³⁹ This has led to several LEAs that utilise the framework, and hence our application here assists in aligning the results of this systematic review with the broader, existing body of research on the legal environment in multiple jurisdictions.

We classified each study according to the framework, identifying one primary and (where required) multiple secondary 'legal factors'. The primary legal factors impacting PLHIV that were addressed in the included studies are listed in descending order of frequency in Table 7.

³⁷ American Bar Association (n 7).

³⁸ Department of Health, Commonwealth of Australia, 'Eighth National HIV Strategy' (n 36).

³⁹ United Nations Development Programme (n 22) 41–45.

Table 7: Primary Legal Factor Classification

PRIMARY LEGAL FACTOR CLASSIFICATION	NUMBER OF INCLUDED STUDIES
Non-Criminalisation of HIV Exposure and Transmission	22
Legal Awareness, Assistance and Representation	18
Legal Protection	17
Entry, Stay and Residence	14
Private and Public Housing	4
Treatment, Care and Other Health Services	5
Social Protection and Material Assistance	3
Employment, Work and Economic Life	2
Access to a Forum, Fair Trial, and Enforcement of Remedies	2
Protection of Privacy and Confidentiality	1
Testing, Counselling and Referral	1

The justiciable issues identified by studies were limited in number, although the way each study described such issues was widely varied. Studies engaged with the legal factor of 'Non-Criminalisation of HIV Exposure and Transmission' most frequently. This was followed closely by 'Legal Awareness, Assistance, and Representation', and then 'Legal Protection' and migration-related matters.

Both the legal factor classification and population-based classifications demonstrate the intersectional nature of the experience of justiciable problems. For example, in Arnold et al (2020),⁴⁰ the primary legal factor we applied was 'Entry, Stay and Residence'. However, the study was also classified as relating to 'Treatment, Care and other Health Services' and 'Legal Protection'. As in other instances, this highlights something of the artificiality of such classification and the necessary flattening of the underlying terrain that occurs when studies are classified according to legal factors or main areas of law. This is an issue that is well known in legal scholarship. The findings reported on in this review suggest that a PLHIV will experience a justiciable issue that stretch into or across multiple areas of law and will likely generate further problems with a legal aspect. This is particularly so in relation to legal matters that arise around migration given the legal status of citizenship (and other forms

of status) is often used as a form of threshold for other forms of legal status. So, for example, a migration-related legal issue (e.g. status as a citizen/non-citizen) can give rise to matters relating to access to government healthcare services (a matter of administrative law), and/or to matters related to industrial relations and privacy, all of which have emerged from the *primary* legal matter of a migration-related legal need.

Health-Related Impacts of Justiciable Issues

The health-related impacts identified by authors of the included studies are diverse. They include a mix of impacts on mortality and morbidity, healthcare expenditure, health status and function. Most studies reported multiple health-related impacts arising from a single justiciable issue, as well as identifying both legal and other determinants of health for PLHIV.

We synthesised these impacts into Health-Related Impact Groups. These groups cluster the health-related impacts reported by studies into higher-order classifications for the purposes of presenting results. Table 8 shows the full range of health-related impact groups identified. We present these in alphabetical order and have extracted only those health impacts that the study authors themselves determine to be HIV-related.

40 Emily A Arnold et al, 'Documenting Best Practices for Maintaining Access to HIV Prevention, Care and Treatment in an Era of Shifting Immigration Policy and Discourse' (2020) 15(2) *Plos One* e0229291.

Table 8: Health-Related Impacts of Justiciable Issues for PLHIV in High-Income Countries

HEALTH-RELATED IMPACTS GROUP	STUDY REFERENCES
Access or Application of Evidence-Based Regimes	Scanlon, McNaughton & Sprague (2017); Godley, Schoenback & Adimora (2020); Abdo et al (2021)
Access to Appropriate Legal Services and Advice	Orser and O'Byrne (2021); Tran et al (2022); Fuster-RuizdeApodaca et al (2019)
Access to HIV-Related Treatment, Care and Other Health Services	Aidala et al (2016); Arnold et al (2017); Huebenthal (2021); Kipiriri et al (2016); Krüsi et al (2018); Patterson et al (2020); Patterson et al (2022); Ashford, Morris & Powell (2020); Krueger et al (2019); Ojukwu et al (2022); Power et al (2018); Sun et al (2019); Storrier, Ouliaris & George (2022); Nelson, Skinner & Underhill (2022); Abdo et al (2021); Drew et al (2020); Geter et al (2018); Hasenbush et al (2016); Hume et al (2017); Martinez et al (2022); McHale and Aviles (2019); Miyashita & Hasenbush (2016); Melas (2022); Tran et al (2022); Khan et al (2022); Rajabiun et al (2022); McMenamin et al (2017); Jacomet et al (2020)
Access to Public Benefits or Other Supports	Arnold et al (2017); Krüsi et al (2018); Patterson et al (2022); Phillips et al (2016); Krueger et al (2019); Storrier, Ouliaris & George (2022); Martinez et al (2022); Khan et al (2022)
Awareness of Status	Kavanagh et al (2021); Tan and Wong (2019)
Clinical Outcomes and Measures	Aidala et al (2016)
Continuance of Treatment/Retention in Care	Aidala et al (2016); Riley et al (2019); Fernandez et al (2022); Kaposy et al (2017); Patterson et al (2022); Henkhaus et al (2021); Ojukwu et al (2022); Stangl et al (2022); Carter (2021); Park et al (2020); Geter et al (2018); Holloway et al (2021); Sangaramoorthy et al (2021); Rachlis et al (2021); Rajabiun et al (2022); Hanna et al (2022); McMenamin et al (2017)
Discrimination	Lalwani (2021); Blecher-Cohen (2021); Khan et al (2022); McMenamin et al (2017)
End-of-Life Care and Advanced Care Planning	Hutson et al (2019); Martinez et al (2022); Melas (2022)
Exposure to the Criminal Legal System and State Violence	Phillips et al (2016); Carter (2020); Barney (2020); Sweeney et al (2017); Barre-Sinoussi (2018); Ashford, Morris & Powell (2020); Carter (2021); Storrier, Ouliaris & George (2022); Godley, Schoenback & Adimora (2020); Orser and O'Byrne (2021); Sáenz & Hoppe (2020)
Exposure to Physical Harm from Violence or Injury (including intimate partner or family violence)	Goossens et al (2021); Greene et al (2019); Krüsi et al (2018); Patterson et al (2020); Patterson et al (2022); Hasenbush et al (2016)
Health Status Generally	Melas (2022)

HEALTH-RELATED IMPACTS GROUP	STUDY REFERENCES
Utilisation or Engagement in HIV-Related Treatment, Care and Other Health Services	Aidala et al (2016); Arnold et al (2017); Fernandez et al (2022); Kaporiri et al (2016); Henkhaus et al (2021); Ojukwu et al (2022); Stangl et al (2022); Sun et al (2019); Carter (2021); Park et al (2020); Scanlon, McNaughton & Sprague (2017); Bagal (2017); Geter et al (2018); Martinez et al (2022); Rachlis et al (2021)
Viral Suppression/ Viral Load	Riley et al (2019); Fernandez et al (2022); Kavanagh et al (2021); Henkhaus et al (2021); Krueger et al (2019); Stangl et al (2022); Matheu et al (2020); Bagal (2017); Geter et al (2018); Tran et al (2022); Hanna et al (2022)
Quality of Life and Wellbeing	Bourne et al (2022); Breslow et al (2020); Drew et al (2020); Sangaramoorthy et al (2021)
Mental Health	Bourne et al (2022); Breslow et al (2020); Matheu et al (2020); Hasenbush et al (2016)
Mortality	Kavanagh et al (2021); Krueger et al (2019)
Prevention and Transmission	Huebenthal (2021); Kavanagh et al (2021); Phillips et al (2016); Carter (2020); Barney (2020); Sweeney et al (2017); Ashford, Morris & Powell (2020); Sabharwal, Mitchell and Fan (2018); Carter (2021); Godley, Schoenback & Adimora (2020)
Racism and Racialisation	Huebenthal (2021)
Social Supports	Bourne et al (2022); Krueger et al (2019); Matheu et al (2020); Khan et al (2022)
Stigma	Bourne et al (2022); Breslow et al (2020); Krüsi et al (2018); Patterson et al (2020); Storrier, Ouliaris & George (2022); Matheu et al (2020); Melas (2022); Sangaramoorthy et al (2021); Fuster-Ruiz de Apodaca et al (2019)
Testing and Diagnosis	Sweeney et al (2017); Sweeney et al (2017)

Another way to synthesise these health-related impacts would have been to classify and arrange them according to a 'social determinants of health' model. This approach would dovetail with existing efforts in health-focused socio-legal research that use the social determinants conceptual framework, as well as with specifically legal moves to understand and embed law as a particular determinant of health.⁴¹ However, there was insufficient information in the included studies to ensure accurate reinterpretation of

their findings according to a social-determinants framework. Thus, instead of taking this approach, we chose to (a) identify '*health-related*' impacts, rather than only very specific impacts on health such as mortality and morbidity, health function or status; and (b) to group rather than re-classify these '*health-related*' impacts according to the HIV Cascade of Care.

We cluster health-related impacts in the fourth (added) stage of the Cascade ('Good Health-

41 See, for example, Michael Thomson, 'Legal Determinants of Health' (2022) 30(4) *Medical Law Review* 610.

Related Quality of Life') according to domains in the PozQoL Scale,⁴² an HIV-specific quality-of-life indicator developed in Australia. We also added a health-related impacts grouping that we call 'Legal Environment Factors'. Clusters of health-related impacts in this category constitute barriers or enablers of an enabling legal environment around HIV. When studies identified health-related impacts that did not clearly relate to another stage on the Cascade

or to a PozQoL domain, we placed them in this group. In other contexts, these clusters might be considered social determinants of health (e.g. 'Access to Public Benefits or other Supports'). However, given our focus on justiciable issues, along with the recent recognition of the need to further understand specifically 'legal determinants of health',⁴³ we chose to use this classification to align with the current framing and language in Australian policy.

Table 9: HIV Cascade of Prevention and Care

STAGE OF THE HIV CASCADE OF CARE	HEALTH-RELATED IMPACT AREA	STUDY REFERENCES
Legal Environment Factors	Access to Public Benefits or other Supports	Arnold et al (2017); Krüsi et al (2018); Patterson et al (2022); Phillips et al (2016); Krueger et al (2019); Storrier, Ouliaris & George (2022); Martinez et al (2022); Khan et al (2022)
	Exposure to Physical Harm from Violence, Injury including intimate partner or family violence	Goossens et al (2021); Greene et al (2019); Krüsi et al (2018); Patterson et al (2020); Patterson et al (2022); Hasenbush et al (2016)
	Discrimination	Lalwani (2021); Blecher-Cohen (2021); Khan et al (2022); McMenamin et al (2017)
	Racism and Racialisation	Huebenthal (2021)
	Access to Appropriate Legal Services and Advice	Orser and O'Byrne (2021); Tran et al (2022); Fuster-RuizdeApodaca et al (2019)
	Exposure to the Criminal Legal System and State Violence	Phillips et al (2016); Carter (2020); Barney (2020); Sweeney et al (2017); Barre-Sinoussi (2018); Ashford, Morris & Powell (2020); Carter (2021); Storrier, Ouliaris & George (2022); Godley, Schoenback & Adimora (2020); Orser and O'Byrne (2021); Sáenz & Hoppe (2020)
	End-of-Life Care and Advanced Care Planning	Hutson et al (2019); Martinez et al (2022); Melas (2022)

⁴² Graham Brown et al, 'Development and Validation of PozQoL: A Scale to Assess Quality of Life of PLHIV' (2018) 18(1) *BMC Public Health* 527.

⁴³ For a recent critical overview of these developments, which proposes centring the 'role of law in addressing inequalities in social determinants', see Thomson (n 41). See also, generally, Samantha Bent Weber and Dawn Pepin, 'Why Law Is a Determinant of Health' (2020) 50 *Stetson Law Review* 401; John Coggon and Lawrence O Gostin, 'Global Health with Justice: Controlling the Floodgates of the Upstream Determinants of Health through Evidence-Based Law' (2020) 13(1) *Public Health Ethics* 4 ('Global Health with Justice'); Lawrence O Gostin et al, 'The Legal Determinants of Health: Harnessing the Power of Law for Global Health and Sustainable Development' (2019) 393(10183) *The Lancet* 1857 ('The Legal Determinants of Health'); John Coggon, 'Legal, Moral and Political Determinants within the Social Determinants of Health: Approaching Transdisciplinary Challenges through Intradisciplinary Reflection' (2020) 13(1) *Public Health Ethics* 41 ('Legal, Moral and Political Determinants within the Social Determinants of Health'); John Coggon and Beth Kamunge-Kpodo, 'The Legal Determinants of Health (in) Justice' (2022) 30(4) *Medical Law Review* 705.

STAGE OF THE HIV CASCADE OF CARE	HEALTH-RELATED IMPACT AREA	STUDY REFERENCES
Prevention and Prevention-Related Activities	Awareness of Status	Kavanagh et al (2021); Tan and Wong (2019)
	Prevention and Transmission	Huebenthal (2021); Kavanagh et al (2021); Phillips et al (2016); Carter (2020); Barney (2020); Sweeney et al (2017); Ashford, Morris & Powell (2020); Sabharwal, Mitchell and Fan (2018); Carter (2021); Godley, Schoenback & Adimora (2020)
Diagnosed with HIV	Testing and Diagnosis	Sweeney et al (2017);
Initiated and Retained in Care	Access to HIV-Related Treatment, Care and Other Health Services	Aidala et al (2016); Arnold et al (2017); Huebenthal (2021); Kipiriri et al (2016); Krüsi et al (2018); Patterson et al (2020); Patterson et al (2022); Ashford, Morris & Powell (2020); Hume et al (2017); Krueger et al (2019); Ojukwu et al (2022); Power et al (2018); Sun et al (2019); Storrier, Ouliaris & George (2022); Nelson, Skinner & Underhill (2022); Abdo et al (2021); Drew et al (2020); Geter et al (2018); Hasenbush et al (2016); Martinez et al (2022); Miyashita & Hasenbush (2016); Melas (2022); Tran et al (2022); Khan et al (2022); Rajabiun et al (2022); McMenamin et al (2017); Jacomet et al (2020)
	Access to or Application of Evidence-Based Regimes or other Health Inequalities	Scanlon, McNaughton & Sprague (2017); Godley, Schoenback & Adimora (2020); Abdo et al (2021)
	Utilisation of or Engagement in HIV-Related Treatment, Care and Other Health Services	Aidala et al (2016); Arnold et al (2017); Fernandez et al (2022); Kipiriri et al (2016); Henkhaus et al (2021); Mchale and Aviles (2019); Ojukwu et al (2022); Stangl et al (2022); Sun et al (2019); Carter (2021); Park et al (2020); Scanlon, McNaughton & Sprague (2017); Bagal (2017); Geter et al (2018); Martinez et al (2022); Rachlis et al (2021)
Sustained on ART and Treatment	Continuity of Treatment/ Retention in Care	Aidala et al (2016); Riley et al (2019); Fernandez et al (2022); Kaposy et al (2017); Patterson et al (2022); Henkhaus et al (2021); Ojukwu et al (2022); Stangl et al (2022); Carter (2021); Park et al (2020); Geter et al (2018); Holloway et al (2021); Sangaramoorthy et al (2021); Rachlis et al (2021); Rajabiun et al (2022); Hanna et al (2022); McMenamin et al (2017)
Suppressed Virus	Viral Suppression/ Viral Load	Riley et al (2019); Fernandez et al (2022); Kavanagh et al (2021); Henkhaus et al (2021); Krueger et al (2019); Stangl et al (2022); Matheu et al (2020); Bagal (2017); Geter et al (2018); Tran et al (2022); Hanna et al (2022)

STAGE OF THE HIV CASCADE OF CARE	HEALTH-RELATED IMPACT AREA	STUDY REFERENCES
Good Health-Related Quality of Life	Quality of Life and Wellbeing	Bourne et al (2022); Breslow et al (2020); Drew et al (2020); Sangaramoorthy et al (2021); Martinez et al (2022)
	Psychological Domain: Mental Health	Bourne et al (2022); Breslow et al (2020); Matheu et al (2020); Hasenbush et al (2016)
	Social Domain: Stigma	Bourne et al (2022); Breslow et al (2020); Krüsi et al (2018); Patterson et al (2020); Storrier, Ouliaris & George (2022); Matheu et al (2020); Melas (2022); Sangaramoorthy et al (2021); Fuster-Ruiz de Apodaca et al (2019)
	Social Domain: Social Supports	Bourne et al (2022); Krueger et al (2019); Matheu et al (2020); Khan et al (2022)

The Impacts of Justiciable Issues

In this section we provide a narrative synthesis of the health-related impacts of justiciable issues, using our version of the Cascade of Care as an organising framework.

Legal Environment Factors

Miyashita and Hasenbush (2016) present some of the only legal needs research included in this systematic review.⁴⁴ Their study analyses administrative data from legal service providers in the United States (2010-2012), presenting a rich account of the justiciable issues and legal needs experienced by PLHIV. The broad area of legal issues they found to most affect PLHIV was that of public or private health insurance, income support and other insurance, making up 33% of the providers' caseload. This was followed by housing (20%), future planning documents (12%), consumer and tax issues (11%), immigration (4%), privacy and confidentiality (4%), employment (3%), discrimination (3%) and family law (2%).

Other studies identify seven areas of health-related impacts flowing from justiciable issues: access to public benefits; legal services, advice and other supports; exposure to physical harm; discrimination; racism; end-of-life care and advanced care planning; and exposure to the violence of the criminal legal system.

Access to Public Benefits or other Supports

Legal environment factors associated with access to public benefits or other supports were identified in the United States, Canada, the United Kingdom and Australia. Krueger et al (2019) found that mortality rates among PLHIV living in the United States were significantly lower in jurisdictions with higher levels of public benefits like healthcare coverage.⁴⁵ Arnold et al (2017) found that limited access to public benefits reduces the chance of maintaining care and treatment.⁴⁶ As the 2016 study by Miyashita and Hasenbush mentioned above found, United States legal administrative data shows that the broad legal areas that most commonly affect PLHIV are:

- 44 Ayako Miyashita and Amira Hasenbush, 'Meeting the Legal Needs of People Living with HIV-Effort, Impact, and Emerging Trends' (Williams Institute, School of Law, UCLA, April 2016).
- 45 Amy L Krueger et al, 'Factors Associated with State Variation in Mortality among Persons Living with Diagnosed HIV Infection' (2019) 44 *Journal of Community Health* 963.
- 46 Emily A Arnold et al, 'Identifying Social and Economic Barriers to Regular Care and Treatment for Black Men Who Have Sex with Men and Women (BMSMW) and Who Are Living with HIV: A Qualitative Study from the Bruthas Cohort' (2017) 17 *BMC Health Services Research* 1.

public or private health insurance income support, and other insurance, together comprising 33% of the caseload managed by those legal services that provided data to the study.

Access to Appropriate Legal Services and Advice

Legal services and supports through medical-legal partnerships are the topic of a number of studies in the United States. Martinez et al (2022) traced HIV care and outcomes for PLHIV across three integrated continua of care – clinical, legal and social.⁴⁷ They found that health-harming legal needs were present for all PLHIV in their study. However, they also found that the availability and accessibility of legal services enhanced health and quality of life by minimising barriers to HIV management.

Housing and access to transport were repeatedly identified as legal environmental factors leading to poor health outcomes for PLHIV in the United States. Arnold et al (2017) describes the effect of unstable housing in their qualitative study, finding that this unmet legal need contributes to missed treatment appointments and hinders continuity of care.⁴⁸

Exposure to Discrimination and Exposure to Racism and Racialisation

Discrimination was seen to impact street-involved youth and their access to care in a qualitative study on Canadian and Kenyan youth provided by Khan et al (2022).⁴⁹ Krueger et al (2019) showed that mortality rates among PLHIV living in the US were significantly lower in jurisdictions with anti-discrimination laws.⁵⁰

Exposure to Physical Harm from Violence or Injury

Exposure to physical harm through violence or injury – including in situations of intimate partner or family violence – was a health-related impact area identified by several studies as arising from legal needs experienced by PLHIV. Documentation of these forms of harm was particularly focused on the experiences of women living with HIV, and this area of research was dominated by Canadian studies. Greene et al (2019) found that, for women living with HIV in Canada, disclosure of their HIV status places them at a higher risk of physical harm through violence.⁵¹ Krüsi et al (2018) came to the same conclusion and described this as an example of the 'structural violence of legislation'.⁵² Criminalisation of HIV non-disclosure was identified by Patterson et al in their 2022 study as a driver of increased intimate partner violence for women living with HIV, with 21% of survey respondents having experienced such violence following disclosure of their status.⁵³

Hasenbush et al (2016) presented survey data on the legal needs of cisgender women living with HIV in the US.⁵⁴ When surveyed about their most recent legal need, 5% of respondents in this study reported that they involved responding to violence. This violence was part of a complex of health-related impacts for women living with HIV arising from their most recent legal need, which also included difficulty carrying on normal life (73% of participants), stress-related illness (52%), loss of income (23%), physical ill health (21%), difficulty keeping medical appointments (15%) and difficulty taking medication (12%).

⁴⁷ Omar Martinez, Miguel Munoz-Laboy and Robin Davison, 'Medical-Legal Partnerships: An Integrated Approach to Advance Health Equity and Improve Health Outcomes for People Living with HIV' (2022) 4 *Frontiers in Reproductive Health* ('Medico-Legal Partnerships').

⁴⁸ Arnold et al (n 46).

⁴⁹ M Khan et al, 'Barriers to and facilitators of accessing HIV services for street-involved youth in Canada and Kenya' (2022). *BMC Public Health* 22, 1901.

⁵⁰ Amy L Krueger et al, 'Factors Associated with State Variation in Mortality among Persons Living with Diagnosed HIV Infection' (2019) 44 *Journal of Community Health* 963.

⁵¹ Saara Greene et al, 'How Women Living with HIV React and Respond to Learning about Canadian Law That Criminalises HIV Non-Disclosure: "How Do You Prove That You Told?"' (2019) 21(10) *Culture, Health & Sexuality* 1087.

⁵² Andrea Krüsi et al, 'Positive Sexuality: HIV Disclosure, Gender, Violence and the Law—A Qualitative Study' (2018) 13(8) *PLoS One* e0202776.

⁵³ Sophie Patterson et al, 'Impact of Canadian Human Immunodeficiency Virus Non-Disclosure Case Law on Experiences of Violence from Sexual Partners among Women Living with Human Immunodeficiency Virus in Canada: Implications for Sexual Rights' (2022) 18 *Women's Health* 17455065221075914; Krüsi et al (n 52).

⁵⁴ Amira Hasenbush, Ayako Miyashita and Brad Sears, 'The Legal Needs of Cisgender Women Living with HIV' (Williams Institute, School of Law, UCLA, July 2016).

Exposure to the Criminal Legal System and State Violence

Among these studies, the health effects of exposure to the criminal legal system emerged repeatedly. For example, Krüsi et al (2018) argue that the legal framework for HIV disclosure – which includes criminal punishment for non-disclosure – perpetuates HIV-related stigma, increases the risk of interpersonal and state violence, and may produce reduced access to essential health and social supports and services.⁵⁵ Modifications to the legal, medical and social practices that require or encourage disclosure were proposed in the work of Patterson and colleagues (2016; 2017; 2020, 2022)⁵⁶ and Phillips and Schembri (2016).⁵⁷ These include duties to disclose HIV positive status found in public health or criminal law, as well as the embedding of disclosure-related education or advice in interactions with health practitioners. These aimed to mitigate the risks of interpersonal violence, prosecution potential exposure to the criminal legal system for PLHIV who are, in certain jurisdictions and contexts, required to disclose their HIV status.

Access to End-of-Life Care and Advanced Care Planning

Relevant legal environments identified in these studies include contexts beyond HIV-specific legal or healthcare needs. Legal needs around access to end-of-life care and appropriate advanced care planning for PLHIV were identified in three works. Hutson and Hankins (2019) examined the opinions of both PLHIV and providers of advanced care planning

regarding different digital methods used in this area in Canada.⁵⁸ They found that the cost of legal services was a barrier to appropriate end-of-life planning and access to care. Martinez et al (2017) identified medical-legal partnerships as important tools for addressing the health and legal needs of PLHIV in the United States.⁵⁹ Also in the United States, Melas (2022) supported the use of medical-legal partnerships in the context of end-of-life care and arrangements, noting how collaboration by healthcare providers with lawyers provided better support for PLHIV around end-of-life needs.⁶⁰ Abdo et al (2021) use a retrospective chart review to identify the comparatively low rates of use of advanced directives and medical power of attorney provisions prior to death for PLHIV.⁶¹

Prevention of Transmission and Prevention-Related Activities

Two health-related impact areas identified in this study are on a person's awareness of their HIV status and on their ability to enact HIV transmission prevention activities.

Awareness of Status

Tan and Wong (2019) analysed global data on democracy and the association between measures of democracy and its association with the number of people aware of their HIV status. Their work found that countries with higher democracy indexes were positively associated with a higher proportion of PLHIV who are aware of their HIV status. They hypothesise that this correlation is due to the increased capacity

⁵⁵ Krüsi et al (n 52).

⁵⁶ Sophie Patterson et al, 'Prevalence and Predictors of Facing a Legal Obligation to Disclose HIV Serostatus to Sexual Partners among People Living with HIV Who Inject Drugs in a Canadian Setting: A Cross-Sectional Analysis' (2016) 4(2) *Canadian Medical Association Open Access Journal* E169; Sophie Patterson et al, 'Awareness and Understanding of HIV Non-Disclosure Case Law among People Living with HIV Who Use Illicit Drugs in a Canadian Setting' (2017) 43 *International Journal of Drug Policy* 113; Sophie Patterson et al, 'Awareness and Understanding of HIV Non-Disclosure Case Law and the Role of Healthcare Providers in Discussions about the Criminalization of HIV Non-Disclosure among Women Living with HIV in Canada' (2020) 24 *AIDS and Behavior* 95; Patterson et al, 'Impact of Canadian Human Immunodeficiency Virus Non-Disclosure Case Law on Experiences of Violence from Sexual Partners among Women Living with Human Immunodeficiency Virus in Canada: Implications for Sexual Rights' (n 53).

⁵⁷ Matthew D Phillips and Gabriel Schembri, 'Narratives of HIV: Measuring Understanding of HIV and the Law in HIV-Positive Patients' (2016) 42(1) *Journal of Family Planning and Reproductive Health Care* 30.

⁵⁸ Sadie P Hutson and Lauren R Hankins, 'A Focus Group Study of Provider and Patient Perceptions of Communicating Advanced Care Planning Wishes Using Digital Storytelling' (2019) 21(2) *Journal of Hospice & Palliative Nursing* 131.

⁵⁹ Omar Martinez et al, 'Bridging Health Disparity Gaps through the Use of Medical Legal Partnerships in Patient Care: A Systematic Review' (2017) 45(2) *Journal of Law, Medicine & Ethics* 260.

⁶⁰ Amelia Melas, 'Increasing LGBTQ+ Access to Legal Services via Medical-Legal Partnerships' (2022) 48(1) *American Journal of Law & Medicine* 134.

⁶¹ Mona Abdo et al, 'End of Life Planning Prior to Death among Individuals with HIV' (2021) 32(1) *The Journal of the Association of Nurses in AIDS Care* 127.

and opportunities for civil society organisations in these places to 'organise, articulate communities' healthcare needs and engage in healthcare delivery for their own communities.⁶² In a multi-jurisdictional ecological analysis, Kavanagh et al (2021) explored a range of the impacts that criminalisation (of same-sex sexual acts, sex work, and drug use) has on HIV.⁶³ One significant discovery was that the presence of HIV-related criminal offences in a jurisdiction was associated with significantly lower awareness of HIV status. They found that jurisdictions with anti-discrimination legal protections were associated with far better knowledge of HIV status. This pattern extended to viral suppression, with those jurisdictions that have laws around non-discrimination, independent human rights institutions and gender-based violence were associated with higher viral suppression among PLHIV, and those without those structures achieving worse outcomes.

Prevention and Transmission

The legal history provided by Huebenthal (2021) supports and deepens the empirical analysis of the interaction between law and health outcomes by tracing the connection between criminalisation and transmission reduction, and charting the historical redirection of resources ('public health dollars') towards law enforcement that has occurred in jurisdictions engaged in criminalisation.⁶⁴ This redirection privatises responsibility for transmission reduction, deprives structural HIV prevention efforts

of resources and reduces access to lifelong medical care, while compounding stark racial and regional disparities in HIV infection and treatment rates.

Despite these serious effects of criminalisation, Phillips and Schembri (2016) demonstrate that many PLHIV in the UK do not possess a strong understanding of the law surrounding HIV transmission, and are at increased risk of exposure to the criminal justice system through prosecution.⁶⁵ Such exposure has long been understood to be pathogenic,⁶⁶ particularly for those living with HIV.⁶⁷ Barney (2020), however, writing from the United States, argues that an awareness of criminal laws relating to intentional transmission of HIV does not have a meaningful impact on PLHIV's likelihood to disclose their status to all partners.⁶⁸

The role of healthcare practitioners in disclosure/non-disclosure cases and legal processes was a feature particularly of Canadian scholarship. Goossens et al (2021), Greene et al (2019) and Patterson et al (2022) each reflect on the interface between disclosure law requirements, health practitioners and PLHIV.⁶⁹ Carter (2021) extends this analysis in the Australian context by arguing that the law in Australia requiring PLHIV to take 'reasonable precautions' against transmission – where neglecting to do so amounts to a criminal offence – fails PLHIV, and fails to achieve the full potential of law to reduce transmission.⁷⁰ Carter argues that the definition of 'reasonable

62 Rayner KJ Tan and Chen Seong Wong, 'Mobilizing Civil Society for the HIV Treatment Cascade: A Global Analysis on Democracy and Its Association with People Living with HIV Who Know Their Status' (2019) 22(8) *Journal of the International AIDS Society* e25374 ('Mobilizing Civil Society for the HIV Treatment Cascade').

63 Matthew M Kavanagh et al, 'Law, Criminalisation and HIV in the World: Have Countries That Criminalise Achieved More or Less Successful Pandemic Response?' (2021) 6(8) *BMJ Global Health* e006315.

64 Jan Huebenthal, 'The Case of Linwood Boyette and Transatlantic Imaginaries of AIDS, Race, and Carcerality' (2021) 2021(140) *Radical History Review* 165.

65 Phillips and Schembri (n 57).

66 Stuart A Kinner, Jesse T Young, 'Understanding and Improving the Health of People Who Experience Incarceration: An Overview and Synthesis' (2018) 40(1) *Epidemiologic Reviews* 4; Meghan A Novisky et al, 'Incarceration as a Fundamental Social Cause of Health Inequalities: Jails, Prisons and Vulnerability to COVID-19' (2021) 61(6) *The British Journal of Criminology* 1630.

67 M J Milloy, JSG Montaner and E Wood, 'Incarceration of People Living with HIV/AIDS: Implications for Treatment-as-Prevention' (2014) 11 *Current HIV/AIDS Reports* 308.

68 Jamie L Barney, 'Louisiana's Intentional Exposure to HIV Policy: The Social Construction of Target Populations' (2020) 35(3) *Social Work in Public Health* 100.

69 Ilvy Goossens et al, 'Criminalization of HIV: Ethical and Legal Issues for the Practice of Psychology in Canada.' (2021) 62(3) *Canadian Psychology/Psychologie canadienne* 304 ('Criminalization of HIV'); Greene et al (n 51); Patterson et al, 'Impact of Canadian Human Immunodeficiency Virus Non-Disclosure Case Law on Experiences of Violence from Sexual Partners among Women Living with Human Immunodeficiency Virus in Canada: Implications for Sexual Rights' (n 53).

70 David J Carter, 'Criminal Legal Challenges to the Uptake of Effective HIV Transmission Prevention Technologies and the Role of Medical Advice' (2021) SocArXiv Papers..

precaution' should be made clearer. Noting that medical practitioners are required by law to provide general transmission reduction information and education to PLHIV, Carter posits that the content of this information and education as well as individualised medical advice tailored to the needs of the person concerned should be included in the legal definition of what constitutes a 'reasonable precaution' against HIV transmission. This would ensure the legal duty supports best practice in public health strategies of transmission reduction.⁷¹ Sabharwal, Mitchell and Fan (2018), again writing from Canada, also address the role of medical practitioners in transmission reduction, arguing for legal mandates for medical practitioners to inform adolescents of their serostatus and therefore enable them to practice better transmission reduction behaviours.⁷²

Diagnosed with HIV

Sweeney et al (2017) show that there is no association between HIV diagnosis rates and HIV-related criminal laws, concluding that these laws had no detectable HIV prevention effect.⁷³ Instead, legal need areas around unemployment, poverty and education as well as urbanicity and race/ethnicity had a measurable effect on HIV diagnoses.

Initiated and Retained in Care

Three areas of health-related impacts from justiciable issues were classified as relating to the HIV Care Cascade phase 'Initiated and Retained in Care'. These are: access to HIV-related treatment, care and other health services; access to or application of evidence-based approaches to care; and utilisation or engagement in HIV-related treatment, care and other health services. As we describe next, several studies addressing the justiciable issues faced by PLHIV relate to health-impacts that fall under this stage of the Cascade.

Access to HIV-Related Treatment, Care and

Other Health Services

PLHIV have a right to access comprehensive HIV-related services, including treatment. The ABA defines this as a legal and human right that encompasses physical accessibility, economic accessibility (i.e. affordability), non-discrimination and information accessibility.⁷⁴

Access to HIV-related treatment, care and other health services was the most frequently identified health-related impact area, appearing in 25 different studies and arising from various justiciable issues and associated unmet legal needs. These justiciable issues include: a heightened risk of abuse and violence following disclosure of status; lack of stable housing; inaccessible transportation contributing to missed treatment appointments; and institutional barriers, such as a lack of inclusive education and training.

Drew et al (2020) describe how quality of life is greatly impacted by 'legal impediments' alongside other social determinants of health.⁷⁵ Their engagement with legal determinants is framed by the emergence of biomedical advances in treatment and prevention over the past two to three decades.⁷⁶ As they write, these biomedical developments should also be helping to create a more enabling legal environment around HIV. Instead, they argue, PLHIV continue to face significant and complex legal impediments beyond those experienced by people living with other chronic conditions. Drew et al summarise these impediments as primarily relating to intimate partner abuse and violence, criminalisation, stigma, confidentiality, housing and transportation.⁷⁷ They synthesise evidence from other studies showing that at least half of all women living with HIV have been in abusive intimate relationships, while men in same-sex relationships report higher rates of abuse when they are living with HIV.

⁷¹ Ibid.

⁷² Sabhyta Sabharwal, Jason W Mitchell and Victoria Y Fan, 'Should There Be a Disclosure Mandate for Physicians Caring for Perinatally Infected Adolescents Who Don't Know Their HIV Serostatus?' (2018) 20(8) *AMA Journal of Ethics* 743.

⁷³ Patricia Sweeney et al, 'Association of HIV Diagnosis Rates and Laws Criminalizing HIV Exposure in the United States' (2017) 31(10) *Aids* 1483.

⁷⁴ American Bar Association (n 7) 56.

⁷⁵ Margaret B Drew, Jason Potter and Caitlin Stover, 'Complicated Lives: A Look into the Experiences of Individuals Living with HIV, Legal Impediments, and Other Social Determinants of Health' (2020) 23 *Quinnipiac Health Law Journal* 81 ('Complicated Lives').

⁷⁶ Ibid.

⁷⁷ Ibid.

They highlight how disclosure of positive status brings with it heightened risk of abuse and violence, while an abusive intimate partner may use disclosure or non-disclosure to further victimise the PLHIV through legal means (e.g. by falsely claiming never to have been informed of a partner's HIV status).

Drew et al also note various confidentiality-related legal issues that have an impact on initiation and retention in care. One such issue is mandatory disclosure of HIV status by a newly diagnosed person to all those who may have been exposed, a legal requirement that discourages testing, especially in young people. Another issue reported by PLHIV was constant fear of involuntary status disclosure in healthcare contexts, which discourages engagement with health care.

Arnold et al (2017) found that legal needs around housing contribute to missed medical appointments and limited access to care and treatment.⁷⁸ Similarly, a systematic review by Aidala et al in 2016 identifies impacts of housing instability on medical and health outcomes for PLHIV.⁷⁹ They conclude that housing instability is a significant barrier to accessing HIV-related medical care, noting specifically that this instability results from interactions between individual vulnerabilities and legal-structures.

In a second work evaluating the potential and practice of medical-legal partnerships for those living with HIV, Martinez et al (2022) finds that 'availability and accessibility of legal and social services support suggest improvements in health outcomes' for PLHIV.⁸⁰ They highlight a set of central legal barriers to HIV care, including: inadequate insurance coverage leading to reduced health system engagement and medication continuance; lack of stable housing leading to reduction in continuance of medication; inaccessible transportation

leading to reduction in attendance at medical appointments; inability to access food stamps and other social supports leading to compromised nutrition; and lack of disability discrimination protections, education and job training, and appropriate work adjustments leading to high unemployment. Their work reveals too that there is a set of 'intersecting continua of care' that goes beyond the HIV care cascade, concluding that 'the integration of legal support, social services, and clinical care [will be] the key to improving outcomes in the HIV care continuum and achieving optimal health and wellness'. A legal continuum of care to support PLHIV would consist of five stages: identification of health harming legal need(s); linkage to legal support; engagement in legal services; resolution of legal issue(s); and access to continued legal support. The legal continuum's purpose is to support and improve equitable access to health care.

Geter et al (2018) note that 'social and structural determinants' are often referred to as either barriers to, or facilitators of, care.⁸¹ They identify a range of barriers to care among Black women living with HIV that all have a strong legal dimension. These include poor compliance with confidentiality, inequitable and inadequate access to various social supports, and unmet needs beyond HIV treatment and care (e.g. housing and transportation). Unmet needs beyond clinical care are also a focus of the report by Khan et al (2022), which presents the results of a study of Canadian and Kenyan street-involved youth.⁸² The report describes barriers to HIV prevention, testing and treatment for this population, including a range of justiciable issues such as discrimination, access to basic needs, legal documentation and health insurance, as well as institutional barriers such as a lack of inclusive training, funding and educational outreach.

⁷⁸ Arnold et al (n 46).

⁷⁹ Angela A Aidala et al, 'Housing Status, Medical Care, and Health Outcomes among People Living with HIV/AIDS: A Systematic Review' (2016) 106(1) *American Journal of Public Health* e1.

⁸⁰ Martinez, Munoz-Laboy and Davison (n 47).

⁸¹ Angelica Geter, Madeline Y Sutton and Donna Hubbard McCree, 'Social and Structural Determinants of HIV Treatment and Care among Black Women Living with HIV Infection: A Systematic Review: 2005–2016' (2018) 30(4) *AIDS Care* 409.

⁸² Momina Khan et al, 'Barriers to and Facilitators of Accessing HIV Services for Street-Involved Youth in Canada and Kenya' (2022) 22(1) *BMC Public Health* 1901.

Tran et al (2022) investigate non-clinical support services for PLHIV and how these can influence viral load suppression.⁸³ They find that 36% of those who accessed legal and housing support services for issues like housing and evictions, immigration-related legal processes and benefits/entitlements had not achieved viral load suppression. Given this large proportion of PLHIV who have not yet achieved viral load suppression are accessing these services, they suggest that legal and similar support services are 'promising venues in which to find and engage this population in HIV care and treatment adherence' and in reconnecting to HIV care. Rajabiun et al (2022) adds to this evidence of the demand for and access to non-clinical services for PLHIV. Their study, conducted in the US, centred on cis- and transgender women of colour who were either newly diagnosed with HIV, had been out of care for at least six months, or were not virally suppressed.⁸⁴ More than half of their respondents presented with needs for non-medical services, including in the areas of transportation and housing benefits. Women living with HIV who were born outside of the United States reported more unmet legal needs, indicating an intersection between migration and demand for 'multiple, complex' non-clinical support services.

Ojukwi et al (2022) investigate the effects of the law itself – particularly HIV-related criminal law – on the health of PLHIV.⁸⁵ These authors show how, for older Black women living with HIV in the United States, laws determine treatment engagement. Women in this study noted the inaccessibility of health insurance, with insurance 'policies and bureaucratic processes' posing an 'extreme challenge' to engaging in treatment. HIV-related criminal laws were shown to have a negative influence on access to and engagement with health services, with respondents indicating that contact with the state and health practitioners incited fear

of criminal prosecution. The criminal law was shown also to influence clinical processes and relationships, with a report that included a treating doctor threatening to call police should women participants miss further medical appointments. In related work, Kipiriri et al (2016) and Krüsi et al (2018), both writing from Canada, show how women living with HIV in jurisdictions where law requires disclosure or engages in criminalisation are more likely to avoid the legal system and available assistance; they also tended to avoid public health services more broadly due to concerns around the loss of confidentiality, as well as fearing detrimental impacts on their relationships, including abuse and abandonment, and loss of the ability to have sexual relationships that are fulfilling due to HIV stigma.⁸⁶

Nelson, Skinner and Underhill (2022) discuss consent provisions designed to support the provision of HIV testing for minors. These laws allow minors to obtain testing without the consent or involvement of their parents or guardians; they reduce the risk of legal sanction of clinicians who provide testing and other HIV services to this cohort of young people who are unable to consent due to their age. The study finds that 'low levels of knowledge about these laws [among clinicians] and a dearth of institutional policies and procedures to support their use' and a lack of clinician confidence in using these laws to facilitate testing resulted in minors often not receiving the services they need.⁸⁷ Hume et al (2017) also considered consent provisions for adolescents in the context of HIV clinical trials. Their work argued that laws establishing the right for minors to access confidential STI treatment also be extended to allow adolescents to consent to clinical trials. They conclude that laws providing access to confidential HIV testing and treatment should be extended to clinical research trials, as a failure to do so 'does not serve the interests of

83 Trang T Tran et al, 'Characterizing Ryan White Part A-Funded Support Service Utilization Patterns and Their Association with Viral Suppression among People with HIV in New York City' (2022) 26(10) *AIDS and Behavior* 3254.

84 Serena Rajabiun et al, 'Unmet Needs Among Out of Care and Recently Diagnosed Women of Color With HIV: Opportunities for Focused Interventions' (2022) 28(2) *Journal of Public Health Management and Practice* 135.

85 Emmanuela Ojukwu et al, 'A Qualitative Study on the Social Determinants of HIV Treatment Engagement Among Black Older Women Living With HIV in the Southeastern United States' (2022) 33(2) *Journal of the Association of Nurses in AIDS Care* 211.

86 Lydia Kipiriri et al, '... They Should Understand Why... The Knowledge, Attitudes and Impact of the HIV Criminalisation Law on a Sample of HIV+ Women Living in Ontario' (2016) 11(10) *Global Public Health* 1231; Krüsi et al (n 52).

87 Kimberly M Nelson, Alexandra Skinner and Kristen Underhill, 'Minor Consent Laws for Sexually Transmitted Infection and HIV Services' (2022) 328(7) *JAMA* 674.

adolescents who may wish to seek treatment for STIs in a clinical trial.⁸⁸

Patterson (2020) continues this theme of the role of clinicians and their interaction with HIV law in the context of a Canadian ruling that established that PLHIV who engage in sex with what the court regards as 'a realistic possibility of HIV transmission' without disclosing their HIV status can face criminal charges.⁸⁹ The study supports the cautions of legal scholars who predicted the ruling would disproportionately impact women living with HIV, due to gendered barriers to condom use negotiation and inequalities in health outcomes. It found that the use of criminal law against women with HIV compromises health and rights, with more than three quarters of their sample of women living with HIV having been afraid to disclose their HIV serostatus, and almost a quarter fearing that disclosing their status might compromise their access to healthcare services. And, although health providers and peers were the preferred source for information about HIV disclosure and the law among participants, very few discussions of this type were had and, among women in this cohort, an understanding of the current legal obligations to disclose HIV serostatus to sexual partners was suboptimal. These studies are joined by the work of Sun et al (2019), which finds that legal system changes are required to support engagement and retention in HIV-related care for Black MSM who are living with HIV.⁹⁰

Storrier, Ouliaris and George (2022) consider pathways for enforcing treatment among PLHIV who lack the capacity to consent. They note that PLHIV choose not to accept treatment for a range of reasons that include distrust of medicine and medical practitioners, concerns

about side effects, stigmatisation and socio-economic factors. In the case of PLHIV who are unable to exercise choice due to a lack of capacity, there is reluctance among healthcare providers to utilise legal mechanisms (e.g. guardianship and other routes) to enforce treatment.⁹¹

Jacomet et al (2020) explored the perspectives of PLHIV and medical practitioners on telemedicine and associated digital health data collection and found that a major concern among participants was data security.⁹² While more than half of PLHIV participants were amenable to telemedicine, inadequate legal protections for confidentiality meant service providers were uncomfortable teleconsulting.

McMenamin et al (2017) present a Californian case study of discriminatory insurance benefit design for PLHIV. They address complaints filed in seven states accusing health insurers of violating anti-discrimination clauses in the Affordable Care Act by designing benefit structures that discourage PLHIV from enrolment. The complaints allege that insurance providers participating in state marketplaces either choose not to include essential HIV medications in their formulary of covered prescription drugs, or require cost-sharing for prohibitively expensive medication, especially single-tablet regimens.⁹³ The article notes the response to this from legislators across the country, focusing particularly on legislation passed in California that attempts to remedy this by requiring insurers to cover single-tablet regimens and by placing a cap on patient cost-sharing. The authors note the potential for the Californian legislation to influence other states across the country.

88 Michelle Hume, Linda L Lewis and Robert M Nelson, 'Meeting the Goal of Concurrent Adolescent and Adult Licensure of HIV Prevention and Treatment Strategies' (2017) 43(12) *Journal of Medical Ethics* 857.

89 Patterson et al, 'Awareness and Understanding of HIV Non-Disclosure Case Law and the Role of Healthcare Providers in Discussions about the Criminalization of HIV Non-Disclosure among Women Living with HIV in Canada' (n 56).

90 Christina J Sun, Jennifer L Nall and Scott D Rhodes, 'Perceptions of Needs, Assets, and Priorities among Black Men Who Have Sex with Men with HIV: Community-Driven Actions and Impacts of a Participatory Photovoice Process' (2019) 13(1) *American Journal of Men's Health*

91 Kirbie Storrier, Calina Ouliaris and Duncan George, 'New Injectable Antiretroviral Therapy for HIV Facilitates Novel Treatment Pathways for Persons without Capacity to Consent to Medical Treatment' (2022) 30(3) *Australasian Psychiatry* 375.

92 C Jacomet et al, 'E-Health. Patterns of Use and Perceived Benefits and Barriers among People Living with HIV (PLHIV) and Their Physicians-Part 3: Telemedicine and Collection of Computerized Personal Information' (2020) 50(7) *Médecine et Maladies Infectieuses* 590.

93 Sara B McMenamin et al, 'Addressing Discriminatory Benefit Design for People Living with HIV: A California Case Study' (2017) 29(12) *AIDS Care* 1594.

Equitable access to and application of evidence-based approaches to HIV care

Scanlon, McNaughton and Sprague (2017) identify more of the granular health-related impacts of a failure to apply evidence-based approaches and achieve equitable access to HIV care for PLHIV.⁹⁴ Theirs is one of two studies included in this review that address the health of young people, and the only one that explicitly addresses the experience of children living with HIV. Assessing the global state of research, development and clinical practice relating to paediatric HIV treatment, they find that approximately 40% of all children living with HIV are not on optimal treatment regimes. Only 50% of children are on treatment, and poorer viral suppression among children is 'at least partly attributable to a lack of child-specific and child-friendly treatment options, which leads to suboptimal efficacy, side effects, non-adherence to treatment, and dropping out of care'. Scanlon et al conclude that this demonstrates a serious failure of state obligations to respect, protect and fulfill a child's right to access the benefits of science under international human rights law.⁹⁵

Godley, Schoenbach and Adimora (2020) present a synthesis of the abundant evidence demonstrating the pathogenic 'effects of racism in producing and maintaining the [United States'] persistent, dramatic racial inequities in rates of HIV infection'.⁹⁶ They point to the 14% of all PLHIV who are exposed to criminal legal incarceration and detention facilities in the United States each year, which generates significant HIV-related health impacts, beginning with the obstruction of education, and followed by the obstruction of 'career opportunity, thereby increasing unemployment and poverty; disrupting stable monogamous relationships, thereby fostering sexual network patterns that promote HIV transmission; and disenfranchising a significant proportion of

the Black population, thereby reducing their influence on public policies'. The authors propose four legal interventions that aim to interrupt these pathways to poor outcomes, reduce HIV risk and improve personal and public health. These interventions are: policing reform; decarceration; eliminating downstream consequences of incarceration, including loss of voting rights or welfare access; and the provision of access to high-quality universal healthcare.

Engagement in HIV-related Treatment, Care and Other Health Services

A significant number of studies across multiple jurisdictions reported on how the justiciable issues facing PLHIV impact on their engagement with healthcare services. A cluster of legal issues impact access to treatment, including confidentiality concerns, housing needs, and discriminatory and inequitable design of health insurance benefit schemes.

In a 2022 multi-jurisdictional scoping review, Stangl et al specifically and clearly identify legal impediments to the HIV response.⁹⁷ The present evidence that enabling legal environments have significant impacts on HIV outcomes and, especially, on healthcare uptake.⁹⁸ According to their review, the legal issues that moderate uptake include the presence and status of enabling legal environments in general, access to justice for PLHIV, gender-related discrimination and equality, interpersonal violence and redress, as well as law-related forms of HIV- stigma and discrimination. These legal needs and law-related matters are shown to 'inhibit quality HIV prevention, care, treatment and support services'⁹⁹ and include legal action on sexual and reproductive health and rights and economic justice, inequality, education, security and livelihoods.¹⁰⁰

⁹⁴ Michael L Scanlon, Gillian Macnaughton and Courtenay Sprague, 'Neglected Population, Neglected Right: Children Living with HIV and the Right to Science' (2017) 19(2) *Health and Human Rights* 169.

⁹⁵ Ibid.

⁹⁶ Bria A Godley, Victor J Schoenbach and Adaora A Adimora, 'Racial Justice and HIV in the United States: Now Is the Time' (2020) 23(10) *Journal of the International AIDS Society*.

⁹⁷ Anne L Stangl et al, 'Removing the Societal and Legal Impediments to the HIV Response: An Evidence-Based Framework for 2025 and Beyond' (2022) 17(2) *Plos* 1 e0264249.

⁹⁸ Ibid.

⁹⁹ Ibid

¹⁰⁰ Ibid

A number of recent studies from the United States identify structural barriers to the utilisation of care, with legal needs and law-related challenges repeatedly identified as moderators of the uptake of HIV care and other health services.

A number of recent studies from the United States identify structural barriers to the utilisation of care, with legal needs and law-related challenges repeatedly identified as moderators of the uptake of HIV care and other health services. Henkhaus et al (2021) identifies confidentiality concerns and the state of privacy legal protections as a barrier to PLHIV's engagement with innovative mobile health services designed to engage those who are out of care.¹⁰¹ Park et al (2021) show how women living with HIV in Southern California were forced to strategically disengage employment, with both industrial relations protections and rights to take sick leave, engage in flexible work and a lack of employment-related health benefits erecting a barrier to HIV-related care and appointments. For some women, the cost-benefit of employment under such conditions with its knock-on effect of also ending government-assistance generated a scenario where 'medical treatment is counterintuitively hindered by employment opportunities and poverty itself is reinforced'.¹⁰² As Geter et al (2018) (see above), Rajabiun et al (2022) (see above) and Holloway et al (2021) identify, there are multiple determinants of utilisation of treatment and care, each of which have significant legal aspects.¹⁰³ Similarly, Sangaramoorthy et al (2021) find that unmet needs regarding housing, emergency financial assistance, employment assistance and food security – all of which are justiciable issues – are the most common unmet needs that negatively impacted care uptake.¹⁰⁴

In their systemic review, Aidala et al (2016) identifies how unresolved justiciable issues regarding secure access to appropriate housing leads to a decreased utilisation of

HIV-related medical care, while the resolution of housing issues through various forms of assistance was associated with improved health outcomes for PLHIV.¹⁰⁵ Twenty-nine of thirty-five relevant studies in their review reported a statistically significant association between this unmet housing need and not receiving appropriate HIV care, with PLHIV experiencing homelessness or other housing needs 'less likely to be engaged in care than are their counterparts without housing challenges'. Similarly, unmet needs regarding housing is a significant barrier to consistent and appropriate access and continuance of antiretroviral medications among PLHIV (and, therefore, sustained viral suppression among affected people, with its tantamount reduction of onward HIV transmission). Arnold et al (2017) reinforce this link between unmet legal needs around housing and utilisation of healthcare services, with unstable housing contributing to missed treatment appointments.¹⁰⁶ For women living with HIV, the same structure of housing-related legal need led to both lower treatment adherence and engagement in care, with Fernandez et al (2022)'s qualitative study of women facing homelessness and unstable housing finding that such housing-related legal need has 'an impact on women's health and well-being' by generating specific difficulties around storing medication, privacy- and stigma-related issues that produce inconsistent access to medication and healthcare disruptions, and constructs a form of competition between unmet physical and mental health needs.¹⁰⁷ Melas (2022) finds various health-related impacts on PLHIV caused by unmet legal needs, including income and housing insecurity – challenges that compound as individuals 'battle with their declining wellbeing'.¹⁰⁸ Melas proposes

¹⁰¹ Michelle E Henkhaus et al, 'Barriers and Facilitators to Use of a Mobile HIV Care Model to Re-Engage and Retain out-of-Care People Living with HIV in Atlanta, Georgia' (2021) 16(3) *Plos One* e0247328.

¹⁰² Ibid.

¹⁰³ Geter, Sutton and Hubbard McCree (n 81); Rajabiun et al (n 84); Ian W Holloway et al, 'Structural Syndemics and Antiretroviral Medication Adherence among Black Sexual Minority Men Living with HIV' (2021) 88(1) *Journal of Acquired Immune Deficiency Syndromes* (1999) S12.

¹⁰⁴ Thurka Sangaramoorthy et al, 'Measuring Unmet Needs among Persons Living with HIV at Different Stages of the Care Continuum' (2021) 25 *AIDS and Behavior* 1954.

¹⁰⁵ Aidala et al (n 79).

¹⁰⁶ Arnold et al (n 46).

¹⁰⁷ Sofia B Fernandez et al, 'Examining Barriers to Medication Adherence and Retention in Care among Women Living with HIV in the Face of Homelessness and Unstable Housing' (2022) 19(18) *International Journal of Environmental Research and Public Health* 11484.

¹⁰⁸ Melas (n 60).

greater investment in medical-legal partnerships to address these issues.¹⁰⁹

Beyond a sole focus on housing, both Hanna et al (2022) and McMenamin et al (2017) identify and address connections between various legal needs that arise from broader social and welfare rights for PLHIV in the United States.¹¹⁰ Hanna et al find PLHIV have twice as many social needs, including housing-related ones, than patients who are not living with HIV. For example, PLHIV reporting transport-related needs were 27% less likely to have achieved viral suppression.¹¹¹ McMenamin et al identify the discriminatory and unequal design of health insurance benefits as another factor that interrupts uptake of treatment.¹¹² This problematic intersection between insurance and HIV treatment is echoed by Rachelis et al (2021), who identify a cluster of intersecting drivers of poor treatment uptake, including insurance coverage and immigration-related needs.¹¹³

Kapiriri et al (2016) contributes another study on the effects of HIV criminalisation on HIV positive women and the effectiveness of healthcare interventions.¹¹⁴ In that study, women living with HIV in Ontario described their knowledge and experience of criminal and other laws, with discussion of their influence on infant feeding choices, including breastfeeding, as well as experiences of child removal by the state in the context of vertical transmission risk. Participants argue that while criminal laws relating to transmission and disclosure could potentially be fair and protective, without support for women who experience multiple forms of disadvantage the laws 'could potentially lead HIV-positive women into hiding and not accessing services that could help them'. Ojukwu et al (2022) engage with the healthcare uptake impacts of

legal needs regarding criminal law. For their participants, who were Black older women living with HIV, they found that HIV-related laws were a facilitator of treatment engagement and uptake, while lack of appropriate health insurance was a barrier.¹¹⁵ The effects of status disclosure were both a barrier to and enabler of treatment for this group, with benefits primarily owing to greater engagement in care generated by the closer bond and subsequent support from the person to whom disclosure was made. Barriers relating to disclosure emerged largely from privacy or confidentiality breaches, which hindered uptake of healthcare services. Interestingly, disclosure and/or transmission-related criminal offences were cited as a potential enabler of treatment uptake in this study, with a small number of women participants reporting that 'encounters with public service agents incited fear of persecution, which motivated them to be more vigilant about their health.'¹¹⁶

In an Australian study of gaps in the HIV Cascade of Care for migrants in Australia, Marukutira et al (2020) describe migration status as presenting a number of significant barriers to the uptake and engagement with HIV care. Each of these barriers led to lower retention in HIV care across the cascade in comparison to non-migrants.¹¹⁷ Lack of access to subsidised, state-provided healthcare is identified as a partial driver of these health inequalities. In a doctrinal analysis of criminal legal challenges to the uptake of pre-exposure prophylaxis (PrEP) and Treatment as Prevention (TaSP), Carter (2021) identifies the potential for new biomedical prevention technologies to radically reduce or even eliminate the criminal prosecution of HIV transmission-related criminal offences in Australia.¹¹⁸ However, the uneven

¹⁰⁹ Ibid.

¹¹⁰ David B Hanna et al, 'Association of Social Needs with Uncontrolled Viremia in People with HIV' (2022) 26(11) *AIDS and Behavior* 3740; McMenamin et al (n 93).

¹¹¹ Hanna et al (n 110).

¹¹² McMenamin et al (n 93).

¹¹³ Beth Rachelis et al, 'Using Concept Mapping to Explore the Challenges Associated with Affording and Accessing Medications among People Living with HIV in Ontario, Canada' (2021) 33(6) *AIDS Care* 827.

¹¹⁴ Kapiriri et al (n 86).

¹¹⁵ Ojukwu et al (n 85).

¹¹⁶ Ibid.

¹¹⁷ Tafireyi Marukutira et al, 'Gaps in the HIV Diagnosis and Care Cascade for Migrants in Australia, 2013–2017: A Cross-Sectional Study' (2020) 17(3) *PLoS Medicine* e1003044.

¹¹⁸ Carter (n 70).

application of these offences in recent times, with a concentration of prosecutorial activity relating to migrant male defendants from Africa in the context of heterosexual sex, suggests that the potential of these technologies may be lessened by the more limited uptake of these new biomedical prevention technologies (e.g. PrEP) by women who engage in heterosexual sex, who are the major demographic of complainants in these recent cases. This scenario will likely see an extension of the well-known health and other impacts of criminal law described by studies included in this review for this migrant population. Before the finalisation of the United Kingdom's withdrawal from the European Union in 2019, McHale and Avilés (2019) considered the decision's impact on British citizens living with HIV in Spain if a withdrawal agreement was not confirmed.¹¹⁹ Their work noted the previous issues faced by non-citizens living with HIV accessing ART when legal requirements to access healthcare for migrants changed in 2012 and later were rectified in 2018. If a withdrawal agreement had not been agreed to, there would be issues accessing treatment due to increased costs of HIV treatment and public health concerns that would replicate those of 2012.

Sustained on Treatment

Sustained treatment using ART is a safe and effective method of managing HIV. For people diagnosed with HIV, early use of ART is advised, and is shown to reduce viral load, mortality and risk of HIV transmission. ART is also considered a powerful instrument in reducing discrimination by altering the narrative that HIV is a fatal condition. However, many PLHIV, especially those who experience intersecting vulnerabilities and marginalisation, do not experience the timely

and uninterrupted access to ART required to fully achieve the benefits of treatment.

Many of the studies parsed above provide some detail on the law-related impacts of sustaining PLHIV on ART, including those by: Aidala et al (2016); Fernandez et al (2022); Kaposy et al (2017); Patterson et al (2022); Henkhaus et al (2021); Ojukwu et al (2022); Stangl et al (2022); Carter (2021); Park et al (2020); Geter et al (2018); Holloway et al (2021); Sangaramoorthy et al (2021); Rachlis et al (2021); Rajabiun et al (2022); Hanna et al (2022); and McMenamin et al (2017). Each one of these describe treatment-related impacts of justiciable issues.¹²⁰ Studies by Riley et al (2019) and Holloway et al (2021) provide some specific and focused evidence on this relationship between justiciable issues and ART.¹²¹ For example, Riley et al describe how 'homelessness predicts a failure to use ART, housing eviction predicts unsuppressed viral load [...] and becoming housed predicts viral suppression'.¹²² Holloway et al found that Black sexual minority men living with HIV in Los Angeles County who experienced a one-point increase in structural syndemic indicators (including exposure to the criminal justice system, poverty and housing instability) were 1.63 times more likely to have missed a dose of ART.¹²³

Viral Suppression

Viral load describes the amount of HIV present in an individual's blood at a particular time. Low viral load and viral suppression, achieved through treatment, is associated with a reduced risk of onward transmission. Indeed, achieving durable viral suppression through treatment to the point that a person's viral load is described as being 'undetectable' eliminates the risk of the sexual transmission of HIV.¹²⁴ While multiple

¹¹⁹ Jean V McHale and Miguel A Ramiro Avilés, 'Brexit and United Kingdom Citizens with HIV Residing in Spain: A Matter of Public Health' (2019) 33(14) *AIDS* 2257.

¹²⁰ Aidala et al (n 79); Fernandez et al (n 107); Chris Kaposy et al, 'Clinical Ethics Issues in HIV Care in Canada: An Institutional Ethnographic Study' (2017) 18 *BMC Medical Ethics* 1; Patterson et al, 'Impact of Canadian Human Immunodeficiency Virus Non-Disclosure Case Law on Experiences of Violence from Sexual Partners among Women Living with Human Immunodeficiency Virus in Canada: Implications for Sexual Rights' (n 53); Henkhaus et al (n 101); Ojukwu et al (n 85); Stangl et al (n 97); Carter (n 70); Eunhee Park et al, 'Structural Barriers to Women's Sustained Engagement in HIV Care in Southern California' (2020) 24 *AIDS and Behavior* 2966; Geter, Sutton and Hubbard McCree (n 81); Holloway et al (n 103); Sangaramoorthy et al (n 104); Rachlis et al (n 113); Rajabiun et al (n 84); Hanna et al (n 110); McMenamin et al (n 93).

¹²¹ Elise D Riley et al, 'Housing First: Unsuppressed Viral Load among Women Living with HIV in San Francisco' (2019) 23 *AIDS and Behavior* 2326; Holloway et al (n 103).

¹²² Riley et al (n 121).

¹²³ Holloway et al (n 103).

¹²⁴ ASHM, 'U=U' (n 33).

studies describe changes in viral suppression as a key impact of justiciable issues and associated unmet legal needs, Matheu et al (2020), Bagal (2017) and Tran et al (2022) each present studies that determine the influence of these legal issues on viral suppression as their main phenomenon of interest.¹²⁵ Matheu et al present a cross-sectional study from the United States that finds evidence of an association between disclosure-related stigma and viral suppression.¹²⁶ HIV-related stigma is influenced by a range of phenomena, including legal regimes that criminalise failures to disclose (which were in operation in the jurisdiction they studied). Matheu et al found, however, that a one point increase in disclosure-related stigma was statistically significant: it led to a 4% *reduction* in levels of viral suppression among study participants, which continued to hold even after controlling for other variables including age, gender and sexual orientation, drug use and ethnicity. This finding was contextualised by qualitative and related studies that indicate a more complex relationship between disclosure-related stigma and viral suppression, including the potential that HIV-related disclosure stigma encouraged engagement in care by reducing the potential for unintentional disclosure through illness or physical changes due to ill-health. Bagal (2017)'s longitudinal retrospective study of PLHIV living in the United States report that PLHIV receiving legal services had a higher engagement in care and higher rates of viral load suppression (83%), compared to PLHIV receiving only medical services.¹²⁷ Read together, these studies suggest that both the prevention of disclosure-related stigma and access to legal services for PLHIV may be enablers of viral suppression.

Good Health-Related Quality of Life

Good health-related quality of life is an area of growing importance in the HIV response. Stigma and discrimination, as well as ongoing criminalisation, have been shown to present risks to the safety, financial security, housing, educational and migration opportunities of PLHIV. Not only do they potentially inhibit access to and uptake of treatment and care, but such risks negatively impact health-related quality of life.

Multiple studies included in this review identified quality of life-related impacts of justiciable issues and their associated unmet legal needs. These included studies in which quality of life was measured using general frameworks, as well as those using HIV-specific quality of life instruments. Impacts on quality of life include mental health, stigma and social supports.

Bourne et al (2022), Breslow et al (2020), Drew et al (2020), Sangaramoorthy et al (2021) and Martinez et al (2022) each identify impacts of justiciable issues on quality of life generally.¹²⁸ In the Australian context, Bourne et al describe how criminalisation generally, and the inclusion of HIV-related issues as a matter of criminal law specifically, have a negative impact on the quality of life and wellbeing of PLHIV.¹²⁹ In their study, higher levels of anxiety related to criminalisation was correlated with lower mental health-related quality of life, lower levels of social support and higher levels of HIV stigma. Breslow et al (2020) mirror these conclusions in the United States, finding that both HIV-related discrimination and internalised HIV stigma were significantly associated with adverse health impacts, including mental health-related impacts (psychological distress). Similarly, Drew et al (2020) detail how the quality of life experienced by PLHIV in the United States is impacted by 'legal impediments', including exposure to and

¹²⁵ Michelle Matheu et al, 'Lack of Virologic Suppression Is Associated with Lower HIV-Related Disclosure Stigma in People Living with HIV' (2020) 32(8) *AIDS Care* 1001; Guillaume Bagal, 'Protective Health Effect of Legal Intervention on People Living with HIV (PLWH)' in *APHA 2017 Annual Meeting & Expo* (Nov. 4-Nov. 8) (APHA, 2017); Tran et al (n 83).

¹²⁶ Matheu et al (n 125).

¹²⁷ Bagal (n 125).

¹²⁸ Adam Bourne et al, 'Anxiety about HIV Criminalisation among People Living with HIV in Australia' (2022) 34(7) *AIDS Care* 942; Aaron Samuel Breslow and Melanie Elyse Brewster, 'HIV Is Not a Crime: Exploring Dual Roles of Criminalization and Discrimination in HIV/AIDS Minority Stress.' (2020) 5(1) *Stigma and Health* 83; Drew, Potter and Stover (n 75); Sangaramoorthy et al (n 104); Martinez, Munoz-Laboy and Davison (n 47).

¹²⁹ Bourne et al (n 128).

responses to domestic and family violence, the criminal law and legal system, and privacy and confidentiality concerns. The authors conclude that these legal issues affect quality of life for PLHIV 'as much as the condition [HIV] itself'.¹³⁰ Mental health-related quality of life impacts are identified by studies published by Bourne et al (2022), Breslow et al (2020), Matheu et al (2020) and Hasenbush et al (2016).¹³¹ Stigma-related quality of life impacts are identified in the studies discussed above by: Bourne et al (2022); Breslow et al (2020); Krüsi et al (2018); Patterson et al (2020); Storrier, Ouliaris & George (2022); Matheu et al (2020); Melas (2022) and Sangaramoorthy et al (2021).¹³² Fuster-RuizdeApodaca et al (2019) conducted a content analysis of Spanish judgments handed down between 1981 and December 2016.¹³³ Their analysis of these judgments across thirty-five years identified stigmatising discursive and legal constructions of HIV, including the construction of HIV as 'a severe and easily transmitted infection', alongside 'attributions of responsibility and blame' towards PLHIV.¹³⁴ These were found in judgments, and were frequently associated with the application of outdated scientific, medical and prevention evidence.

¹³⁰ Breslow and Brewster (n 128); Drew, Potter and Stover (n 75).

¹³¹ Bourne et al (n 128); Breslow and Brewster (n 128); Matheu et al (n 125); Hasenbush, Miyashita and Sears (n 54).

¹³² Bourne et al (n 128); Breslow and Brewster (n 128); Krüsi et al (n 52); Patterson et al, 'Awareness and Understanding of HIV Non-Disclosure Case Law and the Role of Healthcare Providers in Discussions about the Criminalization of HIV Non-Disclosure among Women Living with HIV in Canada' (n 56); Storrier, Ouliaris and George (n 91); Matheu et al (n 125); Melas (n 60); Sangaramoorthy et al (n 104).

¹³³ María José Fuster-RuizdeApodaca et al, 'Content Analysis of Spanish Judgements Addressing the Sexual Transmission of HIV: 1996-2016' (2019) 31(2) *AIDS Care* 265.

¹³⁴ Ibid.

Discussion

PLHIV Experience a Diversity of Justiciable Issues Beyond HIV-Specific Legal Provisions

PLHIV experience a wide range of justiciable issues that impact their health. This includes issues that interact with all aspects of the HIV Cascade of Care and beyond, generating a diverse set of health-related impacts. From a legal perspective, PLHIV face justiciable issues relating to almost all the traditional divisions of law. Historically the criminal law and related criminal legal system interactions has been a major concern for the literature on HIV. The studies included in this review reflect a continuing attentiveness to the criminal law and its effects in the post U=U era. For example, Ashford, Morris and Powell (2020) argue that the criminalisation of HIV transmission diminishes the humanity of HIV-positive people by re-constituting them as a 'threat' to HIV-negative people.¹³⁵

The literature reviewed here does not, however, confine itself to this traditional concern with HIV criminalisation. Instead, there is a growing body of research on HIV-related legal issues that arise across other areas of both private and public law. This affirms claims that the law and the influence of the legal system on HIV and PLHIV reaches into areas well beyond the criminal law, with evidence of justiciable issues arising in areas as diverse as administrative law around access to government services and social supports, migration law around challenges regarding the movement of PLHIV across borders, and into areas of family law, education and training law, privacy law, as well as housing and industrial relations. These may intersect with one another, as in, for example, Yamanis et al's (2019) findings that justiciable issues (for example, a lack of stable housing and family support) are challenges associated with meeting legal deadlines for PLHIV. In this example, as in numerous others, the justiciable issues faced by PLHIV are entangled, and some may augment the health impacts of others.

The health-related impacts of these justiciable issues are also diverse. They include impacts right across the Cascade of Care, with evidence of the law and legal practices driving sub-optimal outcomes relating to HIV prevention, testing, treatment initiation, retention in care, viral suppression and good health-related quality of life. To cite but one example of this: Geter et al (2018) identify a raft of (sometimes intersecting) social and structural barriers to HIV care among Black women living with HIV, including poor compliance by providers with confidentiality obligations, inadequate access to housing and transportation, HIV-related stigma, domestic and relationship turbulence, and prioritising care for others over care of the self.

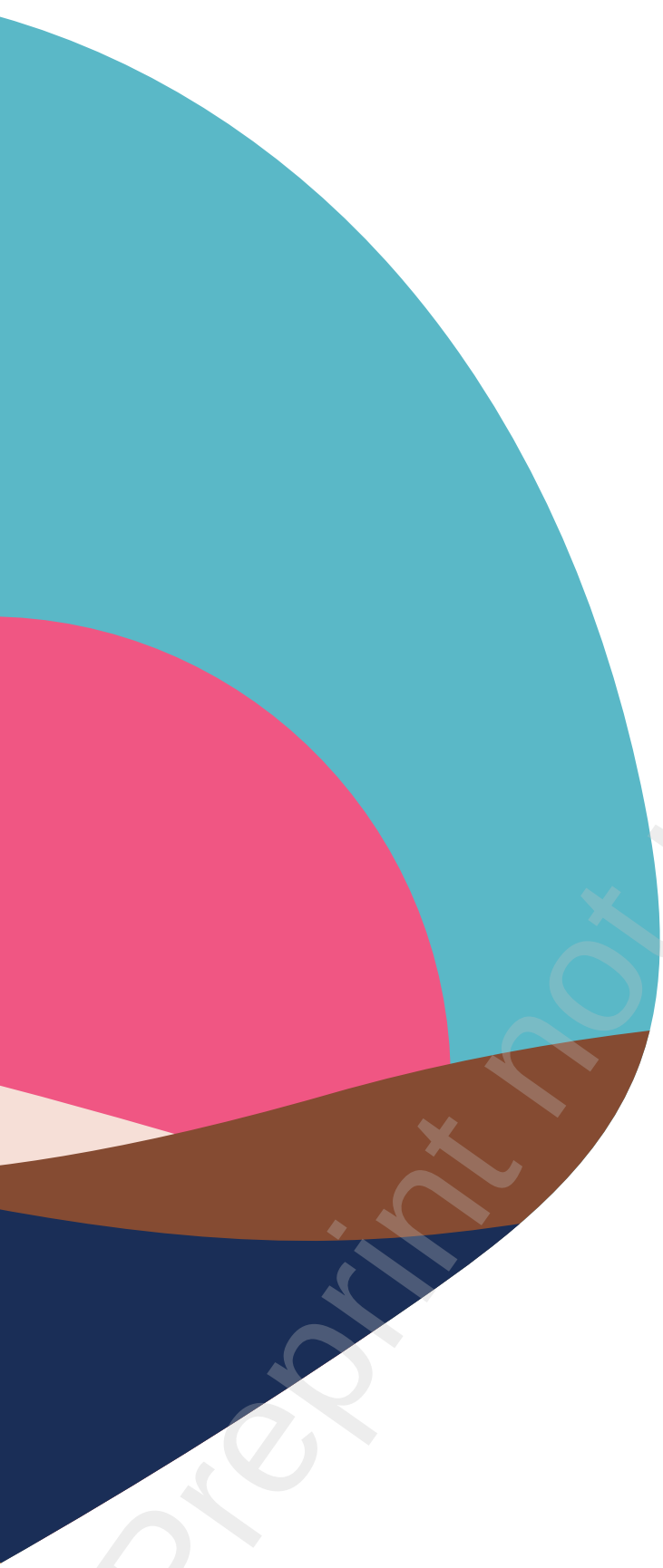
This review of literature has resulted in a constellation of justiciable issues experienced by PLHIV, with various impacts on health. One of the key insights here is that the nexus between HIV and the law extends well beyond *HIV-specific* legal provisions and even beyond provisions that directly concern health. Instead, there are a range of facially neutral laws that generate differential and inequitable effects for those living with HIV.

Law as a Barrier, Law as an Enabler

In the studies included here, law is most frequently engaged with as a barrier to the achievement of health and good quality of life. Indeed, there is ample evidence presented by these studies for law's negative influence over the achievement of health and good quality of life, supported by details regarding how law, regulation and the legal system interact with the lives of those living with HIV to produce these suboptimal outcomes. For example, Power et al (2018) investigate the role of regulatory barriers in accessing HIV testing and care across Europe. While the authors find that some barriers require reform of the health system, the authors also find that many legal needs may be overcome through updates to practice and the use of modern techniques. They conclude with this sentiment: 'We have the tools. Why can't we finish the job?' The literature's emphasis on

¹³⁵ Chris Ashford, Max Morris and Alex Powell, 'Bareback Sex in the Age of Preventative Medication: Rethinking the "Harms" of HIV Transmission' (2020) 84(6) *The Journal of Criminal Law* 596.

The nexus between HIV and the law extends well beyond HIV-specific legal provisions and even beyond provisions that directly concern health. Instead, there are a range of facially neutral laws that generate differential and inequitable effects for those living with HIV.



law as exclusively negative in its effects risks a one-sided view of the operation of law and its effects on health and quality of life, as well as a one-sided view of law itself and its mechanism of operation. Certainly, law – particularly in its criminal guise – often operates in a negative, limiting and restrictive way. It operates by defining what cannot be done, threatening punishment for violation of its rule. However, law also operates in a generative fashion, creating new structures and possibilities, defining rights and the positive obligations of various actors, including the state, operating in flexible and often unexpected ways. By maintaining a focus only on the negative and limiting operation of law, we risk missing an opportunity to see law's more flexible and responsive mode as well as foregoing legal strategies and tactics that might employ this mode of law's operation in aid of advancing the interests of PLHIV. We suggest that there is a need for greater attention to the law as a tool that might enable and advance the various interests of PLHIV, including how it may generate an enabling legal environment not only through its removal, reform or absence from the domain of HIV.

While this dominant characterisation of the relationship between law and HIV may be an effect of the nature of research undertaken in this domain rather than a more representative picture of the law and its effects, at present there is a lack of interrogation of the potential for law and regulation as well as legal system structures to promote health and health-related quality of life for PLHIV. More information is needed to identify what, if any, laws or legal practices are *enablers* of the achievement of health and good quality of life, or which are generative of an enabling legal environment more broadly. In other words, more research and analysis must be conducted to understand what works for PLHIV and what supports high quality responses to HIV from a legal perspective, in addition to what doesn't work.

Both Doctrinal and Socio-Legal Scholarship is Lacking

Most of the scholarship included in this systematic review arises from disciplinary contexts outside of doctrinal or socio-legal scholarship and their associated methods of analysis. Existing scholarship is incredibly valuable: it identifies everyday problems faced by PLHIV with a legal aspect, it advances our collective understanding of law's influence, and identifies the health-related impacts of its operation, among other contributions. However, these approaches can go only so far toward advancing our understanding of the interplay between law and HIV. What is missing in this body of work is an analysis of law's technical operations. This leads to a lack of doctrinally informed strategies for law reform, an inattention to specific legal provisions in different jurisdictions and the various other fruits of analysis that doctrinal and socio-legal scholarship offers.

One fundamental gap in the field of scholarly engagement with law and HIV is that there is too little detailed identification, knowledge or analysis of the specific legal provisions or legal system practices that are said to lie at the heart of problems facing PLHIV. The result is a growing body of knowledge about law's influence, but little knowledge that can be utilised to reform specific provisions or practices that generate suboptimal outcomes in the lives of PLHIV or that erode the legal environment around HIV. This situation not only produces an important gap in our knowledge but robs policy and law reform efforts of the essential tools to effectively target and propose successful law reform when opportunities for this arise.

The weighting of the literature reviewed here away from legal scholarship and towards the approaches of other disciplines brings with it at least one further implication. It produces a body of knowledge that sees law as implicated in differential outcomes regarding health, rather than health-status and services as implicated in differential outcomes regarding access to justice, the full achievement of legal rights and fair treatment by the law. The latter approach is a more common framing within legal scholarly accounts that engage with law and health, and more legal research of this kind may generate further insights into the impact of people's health and health-status on their experience of the law and the achievement of justice.

The Challenge of Comparability and the Need for Context Specificity

This systematic review has focused on the experience of those living in high-income countries. Even with this limitation in scope, there exists a very wide diversity of law, legal systems and associated practices both across and within high-income national jurisdictions. This diversity is a well-known feature of the law, and legal analysis methods take account of this diversity when applied to multi- or cross-jurisdictional research. More work is required to understand and to synthesise the particular and local conditions and experiences of law and justiciable issues for PLHIV. This includes an understanding of the *specific* laws, regulations and associated legal practice that generate health-related impacts for PLHIV in each jurisdiction. Importantly, this includes a need to understand the lived experience of law in a particular jurisdiction, as a formal analysis of law – even when undertaken with appropriate sensitivity to multi-jurisdictional analysis – may overlook the substantive, lived experience of law and its application that differs due to equally diverse socio-legal contexts and cultures.

One method of tackling this problem is offered by the ABA's HIV/AIDS Legal Assessment Tool. This tool presents a useful and well-established framework by which to organise an assessment of the enabling legal environment based on human rights principles. This is a method of attempting to rise 'above' – the variation between national and sub-national jurisdictions and their diversity of law and legal practices through the application of international legal principles. While there are advantages to this approach, the framework risks being too removed and unrepresentative of the lived experience of PLHIV and affected by HIV, particularly in different jurisdictional contexts. For the reasons outlined above, it remains essential that a 'ground up' approach be pursued in aid of establishing both an accurate picture of the influence and experience of the law on health, as well as one that is responsive to the experience, desires and priorities of those most affected by HIV.

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