

# THE USE OF AUSTRALIAN PUBLIC HEALTH AND HUMAN BIOSECURITY DETENTION, INVOLUNTARY TESTING AND TREATMENT POWERS IN RESPONSE TO HIV: AN EMPIRICAL ANALYSIS

## Authors:

Carter DJ<sup>1</sup>

<sup>1</sup> Faculty of Law, University of Technology Sydney

## Background:

As has been demonstrated in response to COVID-19, the powers available to the state in the name of advancing or protecting the public's health are extensive and highly elastic. Drawing on the findings of an empirical project on the use of public health law in Australia, this paper provides an account of their use by Australian state and territory governments in relation to HIV and other communicable diseases.

## Methods:

A multimethod design using methods of public information audit, administrative engagement and freedom of information ('FOI') processes.

## Results:

The research reported here reveals some serious concerns about the use of these powers. This includes evidence of the indefinite detention of multiple individuals by public health authorities, including those living with HIV detained until their death, and public health orders made without time limits and never rescinded.

## Conclusion:

The use of coercive public health and biosecurity legal powers against those living with HIV, Tuberculosis and similar communicable diseases in Australia is active but not currently accompanied by sufficient transparency. This lack of publicly available information must be rebalanced in light of the strong public interest arguments for transparency and accountability. Reform to these powers and enhanced accountability is necessary to ensure both effective public health outcomes and respect for the rule of law.

## Disclosure of Interest Statement:

*This research is funded in part by a National Health and Medical Research Council (NHMRC) Early Career Fellowship Grant (Grant ID: 1156520). The contents are solely the responsibility of the individual author and does not reflect the views of NHMRC.*