

DISCLOSING YOUR HIV STATUS

A GUIDE TO SOME OF THE LEGAL ISSUES

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This guide contains the relevant law on disclosure of HIV status as it applies in New South Wales at June 2013. It has been prepared by the HIV/AIDS Legal Centre (HALC) in partnership with Positive Life NSW and funded by the NSW Ministry of Health. This publication is copyright. It may be reproduced in part or whole for educational purposes where proper credit is given to the HIV/AIDS Legal Centre (HALC).

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Every effort has been made to ensure that the information contained in this guide is as up to date and accurate as possible. It is not intended to be a substitute for legal advice. Please use this booklet as a guide only and seek legal advice if necessary.

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INTRODUCTION

There are very few situations where you are legally required to disclose your HIV status. These situations will be explained later in this guide, but it is best to think carefully and check your obligations before you disclose, because once you have disclosed it is impossible to take back.

Sometimes someone will try to tell you that you have a 'duty of care' to disclose your HIV status. There are very few situations where this is true. The guiding principle is that people should not intentionally or negligently harm others, and should warn others of real dangers or risks. Disclosure is only needed when there is no other way to avoid the danger or harm to another.

Disclosure of HIV status is one of the main areas where the law affects the lives of people with HIV. If you are thinking about whether or not to disclose your HIV status; or if someone else is asking you to, then this guide will help you to understand some of the legal issues involved. This guide may also help people such as counsellors and social workers who offer support services to people with HIV.

This is a guide to the laws about when you may need to disclose your HIV status in New South Wales. It includes information about your right to privacy and freedom from discrimination, and how to protect these rights.

This guide contains information but not legal advice. HALC recommends that you use it as a guide only and suggests that you seek further advice about your particular situation before taking any action. Contact HALC to obtain advice if you have

any doubts or concerns in regard to your rights and obligations about disclosure of your HIV status.

What positive people say about disclosure

After we had written the first draft of this guide, we sought feedback from HIV positive people and we thank them all for their valuable insights and ideas. Some people remarked that the draft focused on the potential negative outcomes of disclosing your HIV status. Several people told us about having a positive experience of disclosure, particularly the support they had received from friends, family and colleagues.

Unfortunately, as lawyers, we only get to hear the disclosure stories with unhappy endings. Too often, we hear about people being dismissed from work, ostracized by friends and family, or discriminated against by people like doctors or real estate agents. For that reason, and because this is a guide to the legal aspects of disclosure of your HIV status, it might seem negative. Please don't take it as meaning you should never disclose your HIV status to anyone, ever. What we are trying to say is that, legally, **you almost never have to disclose your HIV status if you don't want to.**

There are many resources that provide practical information to help you decide whether you would like to disclose your HIV status, for example to family members or friends, and the best way to go about it if you do. These resources are available from Positive Life NSW, NAPWHA and AFAO (see Useful Contacts section).

Standard Precautions

At various places throughout this guide, we will refer to 'Standard Precautions' (also known as 'Universal Precautions')

or 'Standard Precautionary Procedures'). These are procedures that should be followed **whenever** there is a possibility of contact with blood or bodily fluids. The idea behind Standard Precautions is that it is impossible to know for sure whether someone has a blood borne virus such as HIV, hepatitis B or hepatitis C. Precautions should always be taken against contact with any person's blood or bodily fluids. See Useful Contacts section for a site where you can obtain further information on Standard Precautions.

SEX AND RELATIONSHIPS

Do I have to disclose that I am HIV positive before I have sex?

No, if you are taking reasonable precautions against transmission of HIV. Yes, if you are having unprotected sex. The Public Health Act requires that a person must inform a sexual partner of their HIV status prior to sex (which includes vaginal, oral and anal sex) unless they are taking reasonable precautions against transmission of HIV.

Reasonable Precautions

Courts have not determined what 'reasonable precautions' are. However, it is likely that using condoms and lube will constitute 'reasonable precautions'. It is less certain whether the combination of undetectable viral load, due to adherence to a prescribed anti-retroviral drug regime plus the absence of other sexually transmitted infections (or sexually transmitted diseases) will be recognised as 'reasonable precautions' by courts.

The maximum fine for failing to inform a sexual partner that you are HIV positive (or have a sexually transmissible medical condition) is 50 penalty units, currently \$5,500.00. Charges can be laid where there is a failure to inform, but it is a full defence to such a charge that you practised reasonable precautions against transmission of HIV.

There are criminal offences that apply for infecting another person with HIV. Penalties for these offences include jail terms. Criminal laws are directed to punish and so prevent people infecting others with HIV, whether deliberately or through lack of adequate care. Public Health Laws are directed to reduce the risk of transmission of HIV.

Taking reasonable precautions against transmitting HIV to your partner will ensure your compliance with both the criminal and public health laws.

Public Health management of people who put others at risk

Instances where HIV positive people put others at risk of infection with HIV are rare, however there are public health policies to manage those who do. These policies are implemented by doctors from NSW Health in conjunction with a panel of experts, including a community representative. When a complaint is made about a person, or when they otherwise come to the notice of NSW Health for putting others at risk of infection with HIV, a range of interventions is available to manage and monitor the person's behaviour, preventing harm to others. The interventions start with counselling and education and can progress to more restrictive measures if it is deemed necessary to prevent continued risk to others. In the most extreme cases public health orders may be made to restrict the person's activities, movements and freedom. These

are administrative orders and are quite wide in scope. They are reviewed by the Administrative Decisions Tribunal. A person who is subject of such orders or attention from the Public Health panel should seek legal advice about their rights and obligations.

Administration of these policies to prevent risk of HIV infection to others is one of the few reasons doctors and health professionals may disclose a person's HIV status without their prior consent.

Criminal laws against transmission of HIV

[Can I be charged with an offence if I transmit HIV to another person?](#)

Yes, but only if you knew you were HIV-positive at the time, and either intentionally transmitted it, or did not take any precautions to prevent the transmission.

A person who either intentionally or recklessly transmits HIV to another person can be charged with a criminal offence. Intentionally causing grievous bodily harm (which includes grievous bodily disease) is the most serious offence for infection of another with HIV. The offence carries a penalty of up to 25 years in jail. Recklessly causing HIV transmission carries a penalty of up to 10 years in jail. There are also offences for attempting to inflict actual bodily harm, and for causing grievous bodily harm through unlawful or negligent acts.

Practising safe sex using condoms and lube is the most effective means of preventing transmission of HIV through sex. It will also be the best defence to a criminal charge for HIV transmission.

Note: Post Exposure Prophylaxis (PEP) is a medically prescribed treatment to prevent infection with HIV following an exposure event, such as a condom break or unsafe sex. PEP can work if taken within 72 hours of the exposure event. Having told someone of the risk of infection with HIV and recommending they seek PEP could be used as evidence to show that the transmission was not intentional or reckless, or to reduce a jail term.

Merely having told a person that you are HIV positive before having sex, or telling them to get PEP after unsafe sex, will not be enough to avoid being found guilty of transmitting HIV.

Travelling interstate

You should remember that the laws around HIV and sex differ from state to state in Australia.

Check before you travel to see whether these requirements have changed. There is a summary of State laws in relation to disclosure prior to sex available on the HALC website at www.halc.org.au.

Do I have to tell my employer or prospective employer?

No, you are not obliged to tell an employer or prospective employer that you are HIV positive unless you work in one of the jobs outlined in the Exceptions section below. A prospective employer can only lawfully discriminate against employing you based on your HIV status (or the side effects of its treatment) if you are unable to perform the basic requirements of the job. There are very few jobs where this is likely to apply, but there are some jobs where you must disclose your HIV status, even if you believe that it does not affect your ability to do the job (see Exceptions below).

Similarly, there are very few jobs where an employer or prospective employer can legally ask about your HIV status or require you to have an HIV test (see Exceptions below).

Employers are often unprepared for an employee's disclosure of their HIV positive status and frequently over react because they think that the risk of transmission to others is much greater than it actually is. They may be concerned over situations that pose no risk ('What if someone else drinks from your mug?') or where there may be a slight risk that can be minimised by the use of Standard Precautions ('What if you cut yourself and bleed?').

If an employer dismisses you because you have HIV, or prevents you from undertaking certain tasks that would normally be part of the job, then this may amount to unlawful discrimination. Get legal advice as to your rights. Act quickly, because some

legislation requires you to lodge complaints within 21 days. For more information about your rights, talk with Positive Life NSW or HALC (see Useful Contacts). See also Discrimination section.

Exceptions

Health care workers

Only those nurses, dentists and doctors who perform Exposure Prone Procedures (EPPs) have to know and disclose their HIV status. EPPs include procedures performed in a confined body cavity where there is poor visibility and a risk of cutting yourself with a sharp tool, or on a tooth or sharp piece of bone. This restriction particularly affects surgeons, operating theatre nurses and dentists.

Doctors, dentists or nurses whose work involves performing Exposure Prone Procedures are required to know their HIV and other blood borne virus status, and not perform EPPs if they are HIV positive. If you are an HIV positive surgeon, dentist or operating theatre nurse, you must notify your professional registration body and seek advice from them as to the types of procedures you may and may not perform or assist with. Health professionals should seek clarification if they are unsure whether their work involves Exposure Prone Procedures.

Ancillary staff such as clerical workers, porters, cleaners and laundry staff in hospitals, nursing homes and other health care settings do not have to disclose their HIV status to employers or prospective employers.

Defence force

Everyone who applies to join the Australian Defence Force is tested for HIV. If you are HIV positive, you will not be accepted into the force. The ADF also regularly test serving personnel.

The ADF is exempted from the provisions of the Disability Discrimination Act.

Aviation

In the past, HIV positive people faced restrictions on the classes of commercial aviation licences they could hold. These restrictions are under review at the time of publication of this guide. Contact the Civil Aviation Safety Authority or HALC for further information.

It is an offence to give false or misleading information, or to omit information when completing an application for an aviation medical examination. This includes lying about one's HIV status. The maximum penalty is twelve months imprisonment.

If I'm a sex worker, do I have to tell my clients about my HIV status?

No, if you are taking reasonable precautions against transmission of HIV, such as proper use of condoms and lube. Yes, if you are having unprotected sex. Sex workers are subject to the same laws as everyone else in the context of disclosing before sex. The Public Health Act requires that a person must inform a sexual partner of their HIV status prior to sex unless they are taking reasonable precautions against transmission of HIV.

See Sex and Relationships section.

See Useful Contacts: SWOP can provide further information on HIV and sex work.

I'm taking a lot of sick days. Do I have to tell my employer that I'm HIV positive?

Apart from the exceptions listed above, you do not need to disclose your HIV status to your employer. Additionally, there is no requirement that your doctor disclose your HIV status on your medical certificate for sick leave. You can ask your doctor not to specify your HIV status on your medical certificate. Note as well that you have no privacy rights in relation to information provided to your employer (see further below).

I'm worried about infecting other people at work, should I tell my workmates or my boss?

Apart from the exceptions listed above, you do not need to disclose your HIV status to your employer. Employers have a duty to protect the health and safety of their employees, and employees also have a duty to protect their own health and safety, and to avoid adversely affecting the health and safety of others in the workplace. Your employer should ensure that Standard Precautions are used if blood or other bodily fluids are spilt in the workplace. Your employer is responsible for ensuring that the means to use Standard Precautions are available. For example, First Aid kits should include disposable gloves.

If you are concerned that an incident at work has put others at risk of HIV, contact your HIV specialist or HALC to seek advice. Effective steps can be taken within 72 hours to avoid any risk to others. Often, risk can be avoided without disclosing your HIV status.

Talk to your specialist doctor or contact HALC if you have concerns about your risk to others at work. Disclosing in the workplace can be very problematic because there are no privacy protections.

If I tell my boss that I'm positive, will it be kept confidential?

There are no effective privacy protections for information provided to an employer. Employers have a general duty to maintain employee confidentiality. In practice, though, if your employer breaches the duty there may be no way to get a satisfactory remedy. Consider very carefully before disclosing your HIV status, because once you have disclosed, you cannot take the information back. While your current boss or supervisor may be understanding, if your HIV positive status is on file then your next boss will also have access to this information and he or she may have a very different attitude.

If you have concerns about your confidentiality at work, contact HALC for advice.

SUPERANNUATION

Do I have to disclose when I apply for super, or change super funds?

There is no requirement to disclose any health information when you apply to become a member of a superannuation fund.

Do I need to disclose my HIV status to access my superannuation early?

Superannuation contributions made by you or your employer are normally 'preserved'. This means that you cannot access them until you retire from full time employment on or after reaching 'preservation age' - this is 55 years of age for people born before 1 July 1960, increasing incrementally up to 60 years of age for people born after 1 July 1964.

Accessing your super this way requires no health information disclosure.

However, if you become very ill or suffer serious financial hardship before you reach preservation age, then you may be able to access some or all of your superannuation early. In most cases, this will require disclosure of your HIV status and other health information.

Seek advice before attempting to access your super early. Superannuation funds must follow very strict criteria before allowing early release of super, and if your application is not exactly correct, then they are obliged to reject your claim.

Any disclosure you make to your superannuation fund or insurer will be confidential and protected under the Privacy Act 1988.

What about the insurance cover that my super fund provides?

Many superannuation funds include insurance cover by default (this means that if you do nothing, you pay insurance premiums out of your super balance and gain coverage through a 'group' insurance policy for death and sometimes permanent disability). These policies do not require that you disclose health information, and may be a good option for HIV positive people, as there is no disclosure of HIV status required.

You can 'opt out' of this type of insurance cover, but think carefully before you do. Once you have opted out of group insurance through your super fund, you cannot usually take it out again with that fund.

Your super fund insurance may offer the option of additional 'top up' cover. If you want this further cover, you will have to disclose health information, including your HIV status. If you don't disclose all the health information requested, you may

face problems later on if you try to claim on the policy (see Insurance section).

INSURANCE

Do I have to disclose my HIV status if I take out insurance?

Generally, when taking out insurance, you have a legal obligation to disclose all relevant information. Whether your HIV positive status is considered 'relevant' depends on the type of insurance. It is not relevant for insurance such as home and contents insurance or car insurance. On the other hand, it will almost certainly be relevant if you are taking out insurance cover on yourself, such as death and disability cover, life insurance or income protection insurance. If you don't disclose when taking out these kinds of insurance policies, then the insurance company usually won't have to pay out for any claim you make.

Some companies will refuse life insurance, disability insurance and income protection insurance to people who disclose that they are HIV positive, whilst others may charge higher premiums. Do not be tempted to lie about your HIV status to obtain insurance, as any claim that you might later make will likely be refused, and you will be left with a difficult battle on your hands at a time when you are unwell and least able to deal with it.

Now that advances in HIV treatment have improved the general health and life expectancy of HIV positive people, the range of insurance policies available if you are HIV positive is

increasing. It's worth shopping around to find a company that offers the type of cover you want.

What about travel insurance? Is my HIV status relevant?

Travel insurance covers a variety of events that may occur while you are travelling. The two main areas covered are medical and other expenses arising from illness or injury; and expenses arising from loss of luggage, theft of personal possessions and so on.

Policies that cover medical and related expenses usually exclude claims arising from pre-existing conditions, and claims arising from sexually transmitted diseases. HIV/AIDS usually falls into both these categories, so if your policy has either or both of these exclusions, then you aren't covered for any HIV related illness while you are travelling. If your insurance cover excludes coverage for HIV related illnesses, then you may not need to disclose your status.

If your policy does not cover medical expenses at all, then your HIV status is not relevant, and you should not be asked to disclose any health information.

Some insurance companies offer travel insurance that covers HIV related illnesses. Apart from the obvious benefit of being covered in case you fall ill with an HIV related illness while travelling, an additional benefit is that there will be no argument as to whether an illness is or is not related to your HIV. This may happen if your policy excludes HIV related illnesses. Policies covering HIV will usually cost more and you will need to disclose your HIV status before taking out the policy. Shop around for a policy that meets your needs, and seek advice if necessary.

What about private health insurance? Surely my HIV status is relevant here?

Private health insurance is insurance that covers part of the cost of hospital treatment, and in some cases other expenses such as visits to the dentist or physiotherapist.

Health insurance is an exception to most other types of insurance because you are not required to disclose your HIV status when you apply for it. This is because the law requires that health insurance providers must offer coverage to everyone, regardless of the state of their health.

However, health insurance providers are allowed to impose a twelve month waiting period during which they will not pay any claims relating to pre-existing conditions, such as HIV, that you already suffered from before you took out the insurance. You can change from one health insurance company to another without having to serve another waiting period; provided you don't have a break and you don't reduce your level of cover.

TRAVEL OVERSEAS

Am I required to disclose my HIV status when applying for an Australian passport?

No. There is no medical check required for an Australian passport, and the application form does not ask any questions about your health.

I need a visa for the country I want to visit overseas.
Do I have to disclose my HIV status?

Some countries have very strict requirements for granting

visas, and some do not allow HIV positive people to enter their country at all. Other countries may allow you to enter for short stays, such as on a tourist visa, but will have different requirements for longer or permanent visas. See Useful Contacts at the end of this guide for the HIV Restrictions website that contains information about overseas travel for HIV positive people.

If a visa application form asks you about your HIV status, then you are legally required to disclose it. If you don't disclose, and the authorities in your destination country find out, then you can be refused entry, or deported if you have already entered the country. You may also be fined or possibly even imprisoned for making a false declaration.

For the most accurate information on visa requirements for a particular country, you should contact their diplomatic mission in Australia.

TRAVEL TO AUSTRALIA

Do tourists and other short term visitors to Australia need to disclose their HIV status?

Not usually. However, under certain circumstances, people visiting Australia on temporary visas may be required to undergo a medical examination which can include an HIV test.

Can an HIV positive person migrate to Australia?

Yes, in certain circumstances. For advice on this complex and frequently changing area of law, please refer to the Positive Migration Guide available on the HALC website at www.halc.org.au.

org.au and contact HALC if you have further questions.

For all migration questions, it is important to obtain advice from a registered migration agent with experience in HIV issues. It is illegal for a person who is not a registered migration agent to offer migration advice.

Do not wait until the last minute before seeking advice - once you have overstayed a visa, it can become much more difficult to obtain permission for further stays in Australia.

MEDICAL CARE AND TREATMENT

Do I have to disclose my HIV status before undergoing a medical examination or procedure or receiving medical treatment?

There is no legal requirement that you disclose your HIV status before undergoing any type of medical examination or treatment.

However, it may be wise to disclose since HIV medications may interact with other medications; or the progression or treatment of other conditions may be affected by HIV infection. Under such circumstances, failure to disclose may lead to serious or even fatal consequences. Your treatment for other conditions may have to be modified to allow for the effects of HIV infection and HIV medications, and your doctor or dentist can only do this if he or she is fully informed. Discuss with your regular HIV specialist doctor whether disclosure to other practitioners is medically necessary.

If you disclose your HIV status to a medical practitioner, then

this information, like other medical information, is protected by the medical profession's duty of confidentiality. The Public Health Act provides enhanced protections regarding privacy of HIV health information. Health professionals are not allowed to treat you less favourably than any other patient because of your HIV status.

Should I disclose to my dentist?

You are not legally required to disclose your HIV status to your dentist. However, if your HIV status is relevant to the treatment you are obtaining, then disclosing your status may lead to the best outcomes.

Ideally, try and find a dentist who is used to dealing with HIV positive patients so that you will feel comfortable disclosing your status to them. Your HIV specialist doctor may be able to recommend a dentist.

Should I disclose to other health care providers?

You do not need to disclose your HIV status to other health care services, like naturopaths, chiropractors or masseurs. However, if your HIV status is relevant to the treatment you are obtaining, then disclosing your status may assist you in obtaining the best outcomes. You should discuss any complementary therapies with your HIV specialist doctor to ensure that they will be suitable for you and not interact badly with your HIV medication.

What if I think a practitioner is not following Standard Precautions?

If you think that a practitioner is not following Standard Precautions, then you can draw attention to this without

disclosing your own status. For example, you could say "Shouldn't you be wearing gloves? I thought everyone had to wear gloves when there was blood?"

Can I donate blood if I am HIV positive?

No. Before giving blood you must fill out a questionnaire that is designed to assess whether you are, have been, or could be at risk of a blood borne disease, including HIV. This questionnaire operates as a statutory declaration and you must sign it to verify the accuracy of the information you have given. Penalties apply if you do not answer the questionnaire truthfully.

CENTRELINK

Do I have to tell Centrelink that I am HIV positive?

You do not have to disclose your HIV status to Centrelink but there are a number of situations where it would be to your benefit to tell them. These are:

- If you wish to claim Disability Support Pension or Sickness Allowance because you are unable to work due to an HIV related illness.
- If you are receiving Youth or Newstart Allowances and want to be exempted from activity testing because you are sick with an HIV related illness.
- If you have a carer who wishes to claim Carer Payment or Allowance on the basis that they provide care for you because of your HIV related illness.
- If you are currently receiving a Centrelink payment and you experience a 'change of circumstance' relating to your HIV

status that affects your eligibility to receive the payment.

- If you are asking for special treatment from Centrelink because of your HIV status. For example, if you want Centrelink to waive recovery of an overpayment because of the special circumstances of your illness.

If you tell Centrelink your HIV status for the purpose of receiving a payment or special treatment, you may be required to undergo a medical examination or provide medical evidence from your own doctor.

If you are reviewed by Centrelink or have other contact with them, they may ask you questions relating to your HIV status. The questions are not always relevant or necessary and you may or may not wish to answer them. If you feel uncomfortable about any of the questions you don't have to answer and can refer the officer to the information already on your file.

Centrelink cannot disclose your information to third parties without your consent except in certain limited situations.

For more information, contact the Welfare Rights Centre. See Useful Contacts at the end of this guide.

HOUSING

Do I have to disclose my HIV status if I apply for government housing?

You do not have to disclose your HIV status when you apply for public housing. However, if you wish to get priority housing for medical reasons related to your HIV, then you will need to provide supporting evidence that will involve disclosure.

Similarly, if you need to live near a particular medical facility, or need a property with adaptations to suit a disability that has resulted from your HIV, then you will need to provide supporting evidence and disclose your HIV status.

In private rental, do I need to disclose my HIV status to my landlord or real estate agent?

No, you do not have to disclose your HIV status to your landlord, and we would advise against it.

If you do disclose, it is unlawful for the landlord to treat you less favourably than another tenant on the basis of your HIV status unless you are in shared accommodation with the owner or one of his or her close relatives. See Discrimination section.

EDUCATION

Do I have to disclose my own or my child's HIV status at their school or child care centre?

No. Your own health conditions are completely irrelevant to your child's school or child care centre.

Upon enrolling your child, you may be asked about any health conditions the child has. This is to enable trained staff to provide support for certain common conditions that may require attention during the day. HIV positive children do not require any special health management by school or child care staff, so there is no need to disclose your child's status.

School and child care staff are required to use Standard Precautions in the event of any incident that involves blood or bodily fluids.

Do I have to disclose my HIV status when I play sport?

No. Some sports (such as boxing and martial arts) are regulated by legislation which requires the sport's regulatory body to assess and certify a person's fitness to participate in the sport. Participants are required to undergo a medical examination, including an HIV test, in order to register to compete in these sports. You will not be allowed to compete if you are HIV positive. However, you do not need to disclose your HIV status to the sport's administrators, although you should tell the medical examiner. The medical report should just state that you are not fit to compete in the sport.

Playing most other sports will not present a risk of infecting others as the likelihood of incurring a bleeding injury in circumstances where others will come into contact with your blood is generally quite low, so the risk of transmitting HIV is also low. For example, you do not need to disclose your HIV status in order to play Australian Rules football, because the 'blood bin' rules ensure that any bleeding player is immediately removed from the field.

If you are not sure about your particular sport, talk to your HIV specialist doctor or contact HALC (see Useful Contacts at the end of this guide).

POLICE AND THE COURTS

Do I have to tell the police my HIV status if they ask me?

No. There is no requirement for you to disclose your HIV status to the police. The police cannot make you disclose, even if you are in police custody.

However, if you are being held in police custody without access to your HIV medication, it may be in your best interests to inform the police that you require this medication, so that you don't miss any doses. You can request that the police help you arrange for a friend or other trusted person to bring you your medication, or take you to a hospital to obtain it. You will probably need to disclose your status, as the police will need to be convinced of the importance of the medication before they will assist you.

If I have to go to court do I have to disclose my HIV status?

No. Generally, it is unlikely that your HIV status will be directly relevant to the matter before the court, so it will not be mentioned.

However, your HIV status may be relevant to determining your sentence if you are convicted of a criminal offence. You may be able to provide information to the court, but still keep your HIV status private by:

- providing the information in writing;
- asking the judge to keep your HIV status private; and
- referring to it in court as 'a chronic illness'.

In limited circumstances a suppression order may be available to restrict the publication of your HIV status. Most courts are open to the public but very rarely a court may hold a hearing in a closed court where the public is not allowed to watch the proceedings. Closed court hearings will only be granted by the court when the protection of especially vulnerable witnesses or other persons is necessary.

You should discuss these options with your legal representative before going to court.

PRIVACY PROTECTION

The protection of your privacy regarding your HIV status is very important, given the stigma, prejudice and discrimination that is often attached to HIV/AIDS. Information arising from you having had an HIV test, for example, is given extra protection under the law. Information provided to Government departments is also protected by privacy legislation. In other settings, however, there is only limited legal protection of your privacy and the laws do not bind the general public. So it is important to be able to trust the person you tell.

My ex-partner/friend/relative is telling everyone that I have HIV. Is there anything I can do to stop them?

Unfortunately, there are no good remedies for this situation. There may be scope to obtain an 'AVO' (apprehended domestic/personal violence order) against the person. This is a court order that prevents the person doing a particular action, such as approaching your workplace or posting your private information online.

Alternatively, a civil claim against the person for breach of confidence may provide a remedy. Civil claims are generally costly and slow and may not be practical. If the statements the person is making about you are intended to denigrate you based on your HIV status, they may constitute vilification. Vilification complaints are dealt with by the Anti-Discrimination Board NSW. In practice, vilification can be difficult to prove.

Contact HALC for further advice if someone is telling people that you are HIV positive without your consent. Remember, also, that if someone such as your employer or landlord starts treating you differently because they have found out about your HIV status, then this may be unlawful discrimination and you may be able to do something about this (see Discrimination section in this guide).

DISCRIMINATION

What is unlawful discrimination?

Unlawful discrimination is treating someone differently in work or public life because of certain personal characteristics, such as their disability or gender, or because they belong to a certain group, such as a particular race. Discrimination laws do not cover all aspects of life, and in particular do not apply in personal or family relationships.

HIV discrimination

Being HIV positive, or having an HIV related illness or AIDS, is considered to be a disability for the purposes of discrimination law. This applies even if your HIV positive status is not affecting your health in any noticeable way.

Disability discrimination

It is unlawful for you to be treated less favourably because you have HIV or another disability; because someone thinks you have HIV or another disability; because you had a disability in the past or because you will or may have HIV or another disability in the future.

Carer discrimination

It is also unlawful to discriminate against you because of your status as a carer, relative or other associate of someone who is HIV positive or who is thought to be HIV positive.

When is it unlawful to discriminate on the basis of HIV status?

It is unlawful to discriminate against you:

- in almost all types of employment (see Employment section for the exceptions);
- when providing educational services;
- when providing goods and services (for example at shops, getting a loan, seeing a doctor);
- when providing membership of associations; and
- when providing accommodation, except in certain limited shared housing arrangements (where the accommodation is for 6 or fewer persons and where the landlord or a close relative of the landlord also lives on the premises).

What can I do about discrimination?

If you feel you have been discriminated against, you can make a complaint to the NSW Anti-Discrimination Board (ADB).

Making a complaint is free, but there is a time limit. You have 12 months from the date the discrimination happened in which to make a complaint.

Alternatively, you can lodge a complaint with the Australian Human Rights Commission (AHRC). Some complaints are better suited to the ADB and some to the AHRC. Obtain legal advice about which body is best suited to your complaint. See Useful Contacts at the end of this guide.

Discrimination at work

In addition to the anti-discrimination complaints mechanisms described above, Fair Work Australia provides some protection against workplace discrimination. A complaint to Fair Work for workplace discrimination leading to termination must be made within 21 days of the termination. If you feel you are being treated badly at work because of your HIV status, seek legal advice early on, as the problem may be able to be resolved in a way that enables you to keep on working with your employer without any further problems.

Most unions provide confidential legal advice to their members. You may also contact HALC for advice (see Useful Contacts at the end of this guide).

USEFUL CONTACTS/WEBSITES

HIV Services

HALC – HIV/AIDS Legal Centre

For advice on all HIV related legal issues

Freecall: 1800 063 060 Phone: (02) 9206 2060 www.halc.org.au

Positive Life NSW

The voice of people with HIV since 1988

Freecall: 1800 245 677 Phone: (02) 9206 2177 www.positivelife.org.au

Pozhet – Heterosexual HIV/AIDS Service

Support and services for HIV positive heterosexual people in NSW

Freecall: 1800 812 404 www.pozhet.org.au

Multicultural HIV and Hepatitis Service

Support and advice for people living with HIV from non-English-speaking
Backgrounds

Freecall: 1800 108 098 Phone: (02) 9515 1234 www.mhahs.org.au

NAPWA – National Association of People with HIV Australia

HIV information and resources

Freecall: 1800 259 666 Phone: (02) 8568 0300 www.napwa.org.au

ACON

HIV prevention, education and sexual health information for communities at
risk of HIV

Freecall: 1800 063 060 TTY: (02) 9283 2088 www.acon.org.au

Phone: (02) 9206 2000 (Hearing impaired)

BGF – the Bobby Goldsmith Foundation

Practical, emotional and financial support for people with HIV.

Freecall: 1800 651011 Phone: (02) 9283 8666 www.bgf.org.au

Travel information

Worldwide travel information for HIV positive people

www.hivrestrictions.org

Other Services

Safe Work Australia

"First Aid in the Workplace Code of Practice" See, in particular, Appendix D for a helpful overview of standard precautions in the workplace

<http://www.safeworkaustralia.gov.au/sites/swa/about/publications/pages/first-aid-in-the-workplace>

Community Legal Centres New South Wales

For information about your nearest Community Legal Centre

www.clcnsw.org.au

Australian Human Rights Commission

Information and assistance with discrimination complaints

Phone: 1300 656 419 TTY: 1800 620 241 www.humanrights.gov.au

(Complaints infoline) (Hearing impaired)

Phone: 1300 369 711

(General enquiries)

Australian Information Commissioner

Information and assistance with privacy complaints

Phone: 1300 363 992 www.oaic.gov.au

Consumer Credit Legal Centre (NSW)

Advice on consumer finance issues

Freecall: 1800 007 007 www.cclcnsw.org.au

NSW Anti-Discrimination Board

Information and assistance with discrimination complaints

Freecall: 1800 670 812 Phone: (02) 9268 5544 www.lawlink.nsw.gov.au/ADB
(for rural and regional TTY: (02) 9268 5522
NSW only) (Hearing impaired)

Welfare Rights Centre, NSW

Information, assistance and advocacy for people reliant on the Social Security system

Freecall: 1800 226 028 TTY: (02) 9211 0238 www.welfarerights.org.au
Phone: (02) 9211 5300 (Hearing impaired)

Healthcare Complaints Commission

Receives and assesses complaints against health care providers in NSW

Freecall: 1800 043 159 TTY: (02) 9219 7555 www.hccc.nsw.gov.au
(Hearing impaired)

SWOP – Sex Workers Outreach Project

Sexual health information and support for sex workers in NSW

Freecall: 1800 622 902 Phone: (02) 9206 2166 www.swop.org.au



halc

halc

414 Elizabeth St Surry Hills

Phone: (02) 9206 2060

Fax: (02) 9206 2053

Freecall: 1800 063 060

Email: halc@halc.org.au

www.halc.org.au