

DISCLOSING YOUR HIV STATUS

A GUIDE TO SOME OF THE LEGAL ISSUES

—
WESTERN AUSTRALIA

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 or medical 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 Human Immunodeficiency Virus (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 the information back.

Disclosure of HIV status is one of the main areas where the law affects the lives of people living with HIV. If you are thinking of disclosing 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 living with HIV.

This guide looks at what the law says about disclosing your HIV status in Western Australia. It includes information about your right to privacy and freedom from discrimination, and how to protect these rights.

Someone may tell you that you have a 'duty of care' to disclose your HIV status. There are very few situations where this is true. If someone is telling you that you have a 'duty of care' to inform a person or group of your HIV status, contact the HIV/AIDS Legal Centre (HALC) for free legal advice.

This guide contains general information. It does not contain legal advice. HALC recommends that you use it as a guide only and seek further advice about your particular situation before taking any action.

Standard Precautions

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 a person coming into contact with another person's blood or bodily fluids. Standard Precautions are meant to be used in all employment and medical contexts. The idea behind Standard Precautions is that it is impossible to know if someone has a blood borne virus such as HIV, hepatitis B or hepatitis C. See [Useful Contacts](#) at the end of this guide for further information on Standard Precautions.

SEX AND RELATIONSHIPS

There are three sets of laws, listed below, that affect HIV and disclosure in sexual relationships:

- *Public health laws* are intended to reduce the risk of the transmission of sexually transmitted infections (STIs), including HIV, and encourage sexual practices that prevent the transmission of HIV and other STIs.
- *Criminal laws* are intended to punish people who transmit HIV to others either deliberately or through a lack of adequate care. They are also meant to deter people from transmitting HIV to others.
- *Civil laws* allow people to get compensation if HIV has been transmitted deliberately, or as a result of negligence. Successful prosecutions under these laws are relatively rare in Australia.

There are relatively few cases of transmission of HIV which come before the courts in Australia.

In recent years, there has been a scientific and medical consensus due to many years of research which currently demonstrates that a person living with HIV, whom is on antiretroviral medication and maintains a viral load below 200 copies/mL (known as an undetectable viral load) has effectively no risk of transmitting HIV.¹

This means that safer sex prevention options now include having an undetectable viral load as well as the use of condoms. It is important to remember that this evidence only relates to preventing HIV transmission during sex. It does not apply to other potential routes of HIV transmission such as the sharing of injecting equipment or breastfeeding as there is insufficient evidence to date to know the effect that an undetectable viral load has on these types of transmission.

You should discuss with your HIV specialist your individual risk of transmitting HIV to others. There might be factors that can affect an individual's viral load and the risk of transmission of HIV. Your HIV specialist is the best person to advise you about these factors.

> Public health laws

In 2016, Western Australia introduced new public health legislation through the *Public Health Act 2016* (WA)².

This new legislation takes into account laws relating to the transmission of HIV, and also covers public health risks more broadly.

With regards to HIV disclosure and transmission specifically, the legislation does not require you to disclose your HIV status to your sexual partner. However, if you intentionally or negligently transmit HIV to a sexual partner, you may face criminal charges for transmission of the virus (see [Criminal Law](#)).

> Do I have to disclose that I have HIV before I have sex?

No, you are not required to disclose your HIV status before having sex. However, the *Public Health Act 2016* (WA) does outline principles of mutual responsibility to be followed to limit the risk of transmitting HIV.

If you know you have HIV, you must take all reasonable precautions to ensure that you are not putting another person at risk of acquiring HIV unknowingly.³ The principles also state that a person who is not HIV positive, but is at risk of contracting HIV, must also take all reasonable precautions to avoid contracting HIV.⁴ This means that it is the responsibility of both the person living with HIV and their sexual partner/s to take all reasonable precautions to avoid the risk of transmitting HIV.

If you are HIV negative and are not sure about someone's HIV status, you should always take reasonable precautions to minimise the risk of acquiring HIV.

> What are considered reasonable precautions?

For a person with HIV at time of diagnosis, your treating doctor is required to give you information on how to prevent transmitting HIV to another person, unless this information has already been provided to you by another healthcare worker. Your treating doctor or HIV specialist are the most reliable source of information on how to prevent transmitting HIV to another person or how to take “reasonable precautions.”

Although the *Public Health Act 2016* (WA) does not define what is meant by ‘reasonable precautions’, the WA Department of Health have published a fact sheet outlining what is considered to be ‘reasonable precautions’ to prevent the transmission of HIV and other STIs and blood borne viruses.

For a person living with HIV, the following are considered reasonable precautions:

- use of barrier protection, such as condoms with lubricant; or
- having an undetectable HIV viral load (less than 200 copies/mL), usually resulting from being on effective treatment; or
- seeking and receiving information from a sexual partner that they are taking HIV pre-exposure prophylaxis (PrEP) - Note that proving your sexual partner confirmed with you that they are taking PrEP may be difficult where it is one person's word against another.

For a person who is at risk of contracting HIV from sexual partner/s, the following are considered reasonable precautions:

- use of barrier protection, such as condoms with lubricant; or
- taking HIV pre-exposure prophylaxis (PrEP) as prescribed by their medical practitioner.

For more information about reasonable precautions, please refer to the patient fact sheet found on the WA Department of Health website (see [Useful Contacts](#) at the end of this guide).

> People whose behaviour put others at risk and public health orders

Instances where a person living with HIV knowingly puts others at risk of contracting HIV are rare. When a situation like this does occur, there are public health laws and policies for these cases. Putting another person at risk of contracting HIV can happen when reasonable precautions are not used, such as during sex and when injecting drugs (see *People Who Inject Drugs*).

The Chief Health Officer has the power to issue Public Health Orders under the *Public Health Act 2016* (WA) to assist a person (whose behaviour is putting others at risk of HIV transmission) in understanding their responsibilities and to support them with additional counselling or other interventions to prevent them from putting others at risk.

The orders can include mandatory measures directing a person to attend counselling, start or resume HIV treatment, through to more intensive and restrictive measures if the person is not able or willing to engage with the process. These measures may include restricting a person's activities, movements and freedom, and in the most extreme cases, the detainment of a person if their behaviour is putting others at risk of contracting HIV.⁵ If a person is found to have failed to comply with a Public Health Order, a person may be imprisoned for up to 12 months or receive a fine of up to \$50,000.⁶

> Criminal law

Under the *Criminal Code 1913* (WA) ('the Code') in Western Australia, a person living with HIV who intentionally or negligently transmits HIV to another person can be charged with an offence. A person may also be charged with an offence if transmission does not occur, but the accused intended to transmit HIV or failed to take actions to avoid transmission. There are generally four situations where a person may be charged:

- **Where actual transmission of HIV occurs, and the accused intended for this to happen** – in this situation a person can be charged for doing an act with the intention of causing grievous bodily harm (GBH). This includes any act that is likely to result

in a person having a 'serious disease'⁷ or if the person intentionally endangered 'the life, health or safety'⁸ of a person. If proven, this can result in a maximum penalty of imprisonment for 20 years.⁹

- **Where no transmission of HIV occurs, but the accused had intended for transmission to occur** – in this situation it is an offence where HIV was not actually transmitted but there was an intention to transmit HIV, and it was *likely* to result in another person contracting HIV. Similar to the first scenario, if proven, this can result in a maximum penalty of imprisonment for 20 years.¹⁰
- **Where actual transmission of HIV occurs, and the accused was negligent as to whether HIV is transmitted** – the term 'negligent' means that a person failed to take steps to avoid a risk of causing grievous bodily harm when they had a duty to do so. In these circumstances, this is likely to mean that a person failed to take 'reasonable precautions' to avoid transmission. The penalty for unlawfully causing GBH to another person in these circumstances is imprisonment of up to 10 years, or 14 years if there are 'aggravating circumstances' (circumstances that make the offence worse – for example, offences committed as part of sexual assault or accompanied by threats of violence).¹¹
- **Where no transmission of HIV occurs, but the accused neglected to take actions to avoid transmission** – if a person fails to take reasonable precautions to avoid transmission of HIV they may still be charged even if transmission does not occur. This may be considered likely to endanger 'the life, health or safety' of a person. In these instances, if a person is found guilty, this can result in a maximum penalty of imprisonment for 7 years.¹²

The Code, in essence, imposes a duty to take reasonable precautions to avoid endangering the life, safety or health of any person. You should always practise safer sex and take precautions to prevent onwards HIV transmission to your sexual partners.

> **What if I am questioned by the police about a supposed transmission offence?**

If transmission of HIV is reported to have occurred and you are questioned by your sexual partner or the police, you should immediately contact HALC for legal advice before talking to the police or your sexual partner.

If the police ask you to do an interview, you have the right to refuse. You should contact a lawyer before you do any police interview.

> **What if my sexual partner knew that I was HIV positive?**

The courts have not yet specifically dealt with this scenario, as all the cases up to now have dealt with a situation where the partner did not know their partner was HIV positive. If a person knows that their sexual partner has HIV, and then consents to have sexual intercourse, criminal charges are unlikely to succeed.

> **What if the condom breaks and I do not have an undetectable viral load or I am unaware of my viral load?**

If you took the reasonable precaution to wear a condom, you should not be charged with intent to cause grievous bodily harm. However, in the event that the condom breaks and you do not have an undetectable viral load or are unaware of your viral load, you should tell your partner that the condom broke and suggest that they get post-exposure prophylaxis (PEP).

POST EXPOSURE PROPHYLAXIS (PEP)

PEP is a medically prescribed treatment to prevent infection with HIV following an incident of unsafe sex (e.g. without a condom) or condom breakage. PEP works best if taken as soon as possible after the exposure incident, ideally within 24 hours but up to a maximum of 72 hours after the incident. If a person with HIV tells someone of the risk of infection with HIV and suggests they seek PEP, it could be used as evidence that potential HIV transmission was not intentional and may contribute to the reduction of a possible sentence.

> **Where can I get PEP?**

For more information about PEP and whether you are eligible, call the 24-hour PEP Line on 1300 767 161.

You can also call the HIV Information Line on (08) 9482 0044 for some general information on HIV including transmission, treatments and risk mitigation.

If you are eligible, you can get PEP from:

- all hospital emergency departments (metropolitan and country WA)
- sexual health clinics at Fremantle Hospital (South Terrace Clinic) and Royal Perth Hospital (Ainslie House)
- some specialist clinics in metropolitan WA.
Please contact the PEP line to find out if stock is available.

For more information and contact details of PEP providers, please see the '[Useful Contacts](#)' at the end of this guide. Please also refer to the Australasian Society for HIV, Viral Hepatitis and Sexual Health Medicine's (ASHM) website for the Australian National Guidelines on PEP.

> Civil law

If you negligently allow another person to become HIV positive, you risk your sexual partner taking a civil claim against you under negligence or personal injury law. You owe a general duty of care not to inflict harm on others. If you do not take reasonable steps to prevent that harm, you may incur civil liability. A civil claim means that a person takes court action to get monetary compensation from you. Such a claim can be a taxing, costly, difficult and long process for all parties involved. Accordingly, it is a situation worth avoiding at all costs.

> Travelling interstate and overseas

Remember that the laws around HIV and sex differ from state to state in Australia. All Australian states and territories require you to take reasonable precautions, but the penalties and types of offences differ from state to state. For more specific information about these requirements, please contact HALC.

Similarly, the laws surrounding disclosure to sexual partners differ significantly from country to country. Accordingly, it is important that before travelling overseas, you familiarise yourself with the laws in the countries to which you are travelling as some countries impose severe penalties for non-disclosure to sexual partners or HIV transmission.

PEOPLE WHO INJECT DRUGS

As discussed in the previous '*Sex and Relationships*' section, *The Public Health Act 2016* (WA) outlines principles of mutual responsibility to be followed to limit the risk of transmitting HIV, which involves responsibilities for people who inject drugs.

If you are aware that you are living with HIV, you must take all reasonable precautions to ensure that you are not putting another person at risk of contracting HIV unknowingly. A person who is not living with HIV, but is at risk of contracting HIV, must also take all reasonable precautions to avoid contracting HIV. This means that people who inject drugs must take all reasonable precautions to avoid transmitting or contracting HIV when injecting drugs.

The WA Department of Health identifies taking 'reasonable precautions' for people injecting drugs as using sterile needles and syringes along with other injecting equipment which must not be reused or shared with another person even if you or your peers are on PrEP or have an undetectable viral load.

Please note that the above section titled '*People whose behaviour put others at risk and public health orders*' is also relevant to people who do not use reasonable precautions when injecting drugs.

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. Information arising from HIV tests, for example, is given extra protection under the law. Information provided to government departments is also protected by privacy legislation. In most 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 that you only tell people you can trust.

Issues surrounding confidentiality and privacy are addressed in this guide. If you believe your confidentiality or privacy has been breached, you should contact HALC for legal advice.

> What if I believe someone has mishandled my health information?

There are two situations in which your health information could be mishandled; either by an organisation or by an individual. An organisation that is regulated under the Privacy Act 1988 (*Privacy Act*) [Commonwealth (Cth)] can include:

- a government department;
- Non-Government Organisations (NGO);
- a healthcare provider; or
- a company that collects your information for the purpose of sharing your information to other companies.

Such organisations must follow the *Australian Privacy Principles*. However, they are permitted to share your personal information, including your HIV status, under specific circumstances or where you have authorised them to do so. An individual or an organisation that is not regulated under the *Privacy Act* (Cth), such as a small business, are not subject to the *Australian Privacy Principles*.

If you believe an organisation has mishandled your health information, then you should make a complaint to the organisation about how your information was mishandled. If they do not respond within 30 days, or you are unsatisfied with the response, then you can lodge a complaint to the Office of the Australian Information Commissioner (OAIC), see [Useful Contacts](#).

Making a complaint to the OAIC is free, but there is a time limit. You have **12 months** from the date of when the event occurred to make a complaint. After this time, the OAIC may decide not to investigate the complaint.¹³

If you believe an individual has mishandled your health information, then you should see the [Discrimination](#) section of this guide for more information. If the person is disclosing your HIV status to other people, there is no dependable way to legally resolve the situation. However, if the person is an employer or a landlord, and is treating you differently because of your HIV status, then you may be able to seek a legal resolution for unlawful discrimination.

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

This is one of the more common questions that we receive at HALC. Unfortunately, there are no reliable legal actions that can be taken to address this situation.

Depending on the circumstances (e.g. what precisely was said and by who), there may be a possibility for you to apply for a Family Violence Restraining Order, a Violence Restraining Order or a Misconduct Restraining Order to restrain the person from continuing to harass you.

A legal practitioner may also be able to send a cease and desist letter on your behalf to the person telling everyone your HIV status. Although such a letter may not carry much legal weight, it may be enough to dissuade people from disclosing your status. Additionally, if the person came to know of your HIV status as the result of an intimate relationship, there is also a small possibility that you may have a civil claim for breach of confidence.

Finally, if the person's comments are defamatory, then you may also be able to sue under defamation law. Defamation is a statement that injures a person's reputation, but strict criteria must be met. To successfully sue under defamation law depends largely on exactly what was said, the way this information is shared, and whether you have incurred damages as a result. If information was conveyed on public platforms like social media or in a public space, this is likely easier to evidence in court.

Unfortunately, both defamation and breach of confidence actions are costly and carry a significant risk for applicants because if you are unsuccessful at court, you will likely end up liable for the other person's legal costs.

Contact HALC or another Community Legal Centre if someone is disclosing your HIV status 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).

MEDICAL AND DENTAL CARE + TREATMENT

> Do I have to disclose my HIV status before undergoing a medical examination or procedure or receiving medical treatment from a doctor, dentist, nurse or other medical provider (e.g. naturopaths, chiropractors or masseurs)?

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

However, it may be useful to disclose your HIV status as HIV medications may interact with other medications; or the progression or treatment of other conditions may be affected by your HIV status. Under such circumstances, failure to disclose may have adverse consequences for your health. To ensure the best outcomes for your health, it is important that you discuss with your HIV specialist about when the disclosure of your HIV status may be relevant to any other treatment you are obtaining.

When receiving any complementary therapies, it is important that you discuss with your HIV specialist doctor whether it is suitable for you.

You should also discuss with them whether there are any medications that may interact with your HIV medication and when disclosure may be necessary in the event of a medical emergency. Even where disclosure might be relevant it is important to carefully consider each and every instance of disclosure because once your HIV status is disclosed, it cannot be undisclosed.

If you disclose your HIV status to a medical practitioner, then this information, like all other medical information, is protected by privacy laws. The *Public Health Act 2016* (WA) and *Privacy Act 1988* (Cth) provide enhanced protections regarding privacy of a person's health information, including your HIV status.

Health professionals can only share your personal health information if you authorise them to do so, or with others who are involved in your health care and treatment (including counselling services), or where otherwise authorised by law, such as by a court order. Health professionals are not allowed to treat you less favourably than any other patient because of your HIV status.

> **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?” You could also make a report to the Health and Disability Services Complaints Office (see [Useful Contacts](#)).

> **Can I donate blood if I am HIV positive?**

You cannot donate blood if you are HIV positive. 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, including fines and imprisonment, apply if you do not answer the questionnaire truthfully.¹⁴

> **How does My Health Record affect my privacy?**

My Health Record (MyHR) is a summary of your health information that is available to you and clinicians nationally. Health care providers can also access your MyHR unless you choose to restrict access, have already opted out of having a MyHR, or have deleted your MyHR. You should check your privacy setting options within your MyHR and adjust the security measures if you wish for certain information to be protected. Note that MyHR is a new area of law and is being reviewed constantly.

Under current law, bodies/organisations such as the Commonwealth Ombudsman, the Auditor General, the Information Commissioner and health care provider insurers can access your MyHR without your consent under certain circumstances or for “secondary uses” without a court order.

Additionally, information in your MyHR can be disclosed by health care providers if they reasonably believe that the disclosure is necessary to lessen or prevent a serious threat to someone’s life, health or safety or to lessen or prevent a serious threat to public health or safety. It is highly unlikely that this would justify disclosure of your HIV status, depending on the circumstances. However, it is worth noting that if you have not opted out of having a MyHR, and if disclosure were deemed necessary, it would be beyond your control.

If you have concerns about the privacy of your health information held in your MyHR, you can either edit your privacy settings, opt out of the system, or request that your record be deleted. More information on the MyHR and the potential benefits and risks of the scheme for people living with HIV can be found on the National Association of People with HIV Australia (NAPWHA) website. Alternatively, you can contact HALC for further advice.

DISCRIMINATION

> What is unlawful discrimination?

Unlawful discrimination is treating someone differently in work or public life because of certain personal characteristics, such as a disability or impairment,¹⁵ 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.

> Impairment discrimination

The *Equal Opportunity Act 1984* (WA) makes it unlawful to discriminate against a person who has some kind of impairment. Under the act, impairment takes on a broad definition, and living with HIV is considered to be an impairment.¹⁶

Discrimination can be direct or indirect. Direct discrimination occurs when you are treated less favourably than other people in similar circumstances because you have HIV or some other impairment. Indirect discrimination occurs when there is a requirement, practice or policy that applies to everyone, but it has an unfair effect on you because of your impairment, and the requirement, practice or policy is unreasonable in the circumstances.¹⁷

It is unlawful to discriminate against you for the following reasons:

- because you have HIV or another impairment;
- because someone thinks you have HIV or another impairment;
- because you had an impairment in the past; or
- because you will or may have HIV or another impairment in the future.¹⁸

> Family responsibility and family status

Sometimes people need to help care for family members living with HIV. It is unlawful for someone to discriminate against you in employment or education because you have a responsibility to care for a family member.¹⁹ For example, where you are entitled to sick and carer's leave, it would be unlawful for your employer to dismiss you because you took time off work to care for a sick family member.²⁰

> 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*);²¹
 - when providing educational services;²²
 - when providing goods, services or facilities;²³
 - when providing membership of clubs and incorporated associations;²⁴
- and
- when providing accommodation, except where the person providing the accommodation (or their near relative) lives at the premises.²⁵

There are some exemptions or defences to discrimination,²⁶ and it is important to seek legal advice if you believe you have been discriminated against, see *Useful Contacts* at the end of this guide.

> What can I do about discrimination?

If you feel that you have been discriminated against it is a good idea to write down what happened while everything is still fresh in your memory. You may make a complaint to the WA Equal Opportunity Commission (EOC). 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) which is the federal anti-discrimination body. **A 6-month limit applies to these complaints.** Some complaints are better suited to the EOC 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). If the discriminating act occurred outside of the 6 or 12 month limit, both the EOC and AHRC have the discretion to either review or reject a complaint.²⁷

> Discrimination at work

In addition to the anti-discrimination complaints mechanisms described above, the general protections under the *Fair Work Act 2009* (Cth) provides against workplace discrimination. A complaint to Fair Work for workplace discrimination leading to termination **must be made within 21 days of the termination.**

Aside from wrongful termination, you may feel you are being treated unfairly at work because of your HIV status. Again, it is best to seek legal advice early. 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. If you act and seek assistance promptly, it will increase the probability of you finding a solution to your problem and maintaining necessary working relationships without disrupting your livelihood.

Most unions provide confidential legal advice to their members, whilst community legal centres may also be able to provide legal advice to employees. You can also contact HALC for advice (see *Useful Contacts* at the end of this guide).

> Reasonable Adjustments

As well as state-based discrimination legislation, the federal *Disability Discrimination Act 1992* (Cth) provides protection against discrimination based on a person's disability. HIV is also considered a disability under federal discrimination legislation and employers are required to make reasonable adjustments at work if a person living with a disability needs these adjustments to participate equally in the workplace and perform the inherent requirements of the job.

Both a potential employee and an existing employee with a disability may request reasonable adjustments be made. For a person living with HIV, this may include additional sick leave or additional leave for medical appointments. The employer does not have to make reasonable adjustments if it would cause them unjustifiable financial hardship to make those adjustments.

If your employer has refused to make reasonable adjustments, or you believe you have not been offered a job or promotion where reasonable adjustments are required of your employer, you should contact HALC for advice.

> Do I have to tell my employer or prospective employer that I am living with HIV?

No, you are not obliged to tell an employer or prospective employer that you are living with HIV unless one of the occupations outlined in the *Exceptions* section applies. 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.

An employer can only lawfully refuse to employ you on the basis of your HIV status if, because of your HIV, you are unable to perform the basic requirements of the job. There are very few jobs where this would apply.

If, in order to carry out the work, you require services or facilities that are not needed by employees who do not have HIV, and it would impose unjustifiable hardship on the employer to provide those services or facilities, the employer can then lawfully decide against employing you.²⁸ Unjustifiable hardship is based on an assessment of what is fair and reasonable in the circumstances and takes into consideration the costs or difficulties of providing the adjustments. The employer cannot discriminate against you unless they have taken all reasonable steps to obtain relevant and necessary information concerning HIV or any other impairment you may have.²⁹

It is the employer's responsibility to supply first aid and workplace personal protective equipment and to ensure Occupational Health and Safety (OHS) policies and procedure guidelines are in place. Although OHS processes require the use of Standard Precautions, employers can be unprepared for an employee's disclosure of their HIV positive status and frequently overreact because they think that the risk of transmission to others is much greater than it actually is.

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 under either the *Equal Employment Opportunity Act (WA)* or the *Fair Work Act (Cth)*. If you are being bullied or harassed at work by colleagues, or if people are spreading rumours about your HIV status, you may be eligible to make a complaint under the anti-bullying provisions in the *Fair Work Act (Cth)*.³⁰

Seek legal advice about your rights if an employer terminates your employment or treats you badly after finding out you have HIV. Act quickly, because there may be a limited amount of time, including in some instances **less than 21 days**, in which you can commence legal action. For more information about your rights, contact HALC (see *Useful Contacts* at the end of this guide. See also *Discrimination* section).

> I have been asked to undertake a medical examination for work. Do I have to tell my employer I am living with HIV?

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. If you are being asked about your HIV status or the medication you are taking during an employment related medical examination, you should seek advice from HALC. You may be able to ask your doctor to write you a letter stating that your medication will not interfere with your ability to do your job.

> I'm taking a lot of sick days. Do I have to tell my employer I am living with HIV?

Apart from the exceptions listed below, you do not need to disclose your HIV status to your employer. Your doctor is not required to disclose your HIV status on your medical certificate. You can ask your doctor not to specify your HIV status.

> I'm worried about transmitting HIV to other people at work, should I tell my workmates or my boss?

Under the *Occupational Safety and Health Act 1984* (WA) and the *Work Health and Safety Act 2011* (Cth), employers have a duty to protect the health and safety of their employees and maintain a working environment in which employees are not exposed to hazards.³¹ As an employee, you also have a duty to protect your own health and safety at work, and to avoid negatively affecting the health and safety of others.³² This does not mean that you have a duty to inform your employer or anyone else at work of your HIV status.

In practice, it means that your employer should ensure that Standard Precautions are used if blood or other bodily fluids are spilt in the workplace. This includes following the workplace policy and procedures for first aid e.g. using gloves when administering first aid. It is important to remember that you do not know the HIV status of all your colleagues, and your colleagues may not know their own HIV status. Therefore, everyone should always use Standard Precautions in relation to blood spills at work. Your employer is responsible for ensuring that the means to use Standard Precautions are available.³³ For example, First Aid kits should include disposable gloves.

> If I tell my boss that I'm living with HIV, will it be kept confidential?

Employers have a general duty to maintain employee confidentiality. However, there are no effective privacy protections to ensure your HIV status remains confidential. In some cases, your employer will be subject to the *Privacy Act 1988* (Cth), which requires that the information you give be kept confidential. In practice, though, if your employer breaches the duty there may be no way to provide a satisfactory legal resolution. Consider very carefully before disclosing because once you have disclosed, you cannot take the information back.

Although your boss or supervisor may be understanding, if your HIV positive status is on file, your next boss will also have access to this information and may have a very different attitude. If you have concerns about your confidentiality at work, contact HALC for advice.

> If I'm a sex worker, do I have to tell my clients about my HIV status?³⁴

At the time of publication, there is no legal obligation for you to disclose your HIV status to your clients, but you must use either a condom or a dental dam to prevent the transmission of bodily fluid between you and your clients. Engaging in an act of sex work under current legislation without ensuring that these reasonable precautions are in place can constitute an offence with a penalty of up to \$5,000 irrespective of your or the client's HIV positive status.³⁵ Moreover, sex workers are subject to the same disclosure laws as everyone else before sex. The *Public Health Act 2016* (WA) does not require a person to inform a sexual partner of their HIV status prior to sex on the basis that they take all reasonable precautions against any transmission of HIV.

In 2008, the *Prostitution Amendment Bill 2007* passed through both houses of the Parliament of Western Australia which is likely to prohibit sex workers living with HIV from undertaking sex work. The Act provides for a penalty of \$20,000 for the first offence or imprisonment for three years for second or subsequent offences. However, at time of publication of this guide the Act has not been proclaimed, meaning that it is not in force.

It is important to stay up to date with this legislation through the Department of Justice website or by contacting HALC.

> If I work in the mining industry do I have to disclose my HIV status?

No, if you work in the mining industry, you do not need to disclose your HIV status.

However, many workplaces will ask employees to undergo a medical examination. By law, you cannot be tested for HIV without your specific consent for employment purposes, and it may be unlawful for your employer to require you to undergo an HIV test.

If you do disclose your status, or consent to undergo a medical examination that includes an HIV test, then your employer has a duty of confidentiality and must also not treat you any less favourably. See *Discrimination* and *Employment* sections.

People in the mining industry and other industries involving heavy machinery may be subject to random drug testing. Random drug tests aim at assessing whether you have used any prohibited substances which may make it unsafe for you and your colleagues in the workplace.

If you receive a positive illicit drug test result, and you have not taken any illicit drugs, then it is advisable to notify your supervisors that you are currently on a course of medication which may have caused this result to occur. It is advisable to have with you, or to obtain if this occurs, a letter from your HIV doctor or GP that indicates that you are on prescription medication which might cause a false positive drug test. It is not necessary for your doctor to specifically note your HIV condition as the reason for the medication or to list the antiretroviral treatment.

A positive result (including a false positive result) may cause the medical examiner to notify your supervisors of this fact so they can withdraw you from duties or place you on different duties pending a conclusive result. If you do elect to disclose your HIV status to the medical examiner or your employer, they have a duty of confidentiality and that information is protected by privacy laws.

EXCEPTIONS

> Health care workers

If you are a healthcare worker living with HIV, you can usually continue to work without any restrictions. However, if you are a nurse, dentist or doctor who performs or wishes to perform 'Exposure Prone Procedures' (EPPs), there are certain guidelines that you must follow.

EPPs are 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. The *'Australian National Guidelines for the Management of Healthcare Workers living with Blood Borne Viruses and Healthcare Workers who Perform Exposure Prone Procedures at Risk of Exposure to Blood borne Viruses'* (National Guidelines) are the relevant guidelines surrounding EPPs for health care workers living with blood borne viruses.

If you test positive for HIV, you must cease performing EPPs immediately until the following criteria are satisfied:

- be under the regular care of a specialist in the treatment of HIV; and
- undergo HIV viral load monitoring every three months; and
- be on effective antiretroviral treatment with a HIV viral load below 200 copies/mL (two test results from a NATA/RCPA accredited laboratory, taken no less than three months apart) or meet the definition of 'elite controller'.

EXCEPTIONS

> Elite Controller

The National Guidelines define 'elite controllers' as people living with HIV, who are not yet receiving antiretroviral treatment but have maintained an undetectable viral load for at least 12 months, based on at least three separate viral load measurements.

Only a very small proportion (0.2 – 0.55%) of people living with HIV are classified as an elite controller.³⁶

If you are a health care worker living with HIV and wish to perform EPPs, you should seek medical advice about whether you meet the criteria outlined in the National Guidelines. If you do not meet the requirements, you can request that your employer consider making reasonable adjustments to enable you to continue to work in your profession, for example, a change of duties.

If you have been excluded from performing EPPs or are being denied a job where you need to perform EPPs, you may have an action under discrimination law and it is important you seek legal advice.

Contact HALC if your employer dismisses you or you are not offered a position because of your HIV status.

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.

> Australian Defence Force

Everyone who applies to join the Australian Defence Force (ADF) is tested for HIV. If you are HIV positive, you will not be accepted into the ADF. The ADF also regularly test serving personnel. If you are already a member of the ADF, and you are diagnosed with HIV, you may be at risk of termination (however in practice this may not occur); your clinician may assist you by providing a report to the ADF confirming that your health does not impact upon your duties and that your HIV condition is well managed. Combat and related roles are specifically exempted from the protection of discrimination legislation, and members of the ADF are excluded from the definition of 'employee' in the *Fair Work Act 2009* (Cth).

Please contact HALC for further advice if you are not allowed to join or are discharged from the ADF due to an HIV diagnosis.³⁷

EXCEPTIONS

> Aviation ³⁸

According to the *Civil Aviation Safety Authority Guidelines*, medical certification for pilots or air traffic controllers living with HIV is undertaken on a case-by-case basis following medical assessment. The medical assessment includes a HIV specialist review, neurological review, neuropsychological review and, if indicated, a psychiatric and cardiological review. If a certificate is granted, medical reviews are required at regular intervals including a three-monthly CD4 and viral load measurement, a six-monthly neurological assessment and an annual cognitive function assessment. Any change in condition can result in a person being designated temporarily unfit to work.

If you are an airline pilot or air traffic controller and are diagnosed with HIV, the *Civil Aviation Safety Authority Guidelines* require you to immediately stop working and notify the Designated Aviation Medical Examiner (DAME) and the Civil Aviation Safety Authority Aviation medicine branch (AVMED).

The guidelines also require a pilot or air traffic controller with HIV who has been medically certified as fit to work, but who changes their HIV medication or experiences side effects, to stop working and notify the DAME so that a further medical assessment can be arranged.

SUPERANNUATION ³⁸

> 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 superannuation on retirement in this way requires no health information disclosure.

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

Seek advice before attempting to access your superannuation early. Superannuation funds must follow very strict criteria before allowing early release of superannuation, 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* (Cth).

> What about the insurance cover that my superannuation fund provides?

Many superannuation funds include insurance cover for death or permanent disability by default. These policies do not usually require that you disclose health information and may be a good option for people living with HIV, as there is no disclosure of HIV status required. If, however, you are asked a specific question about your health or HIV status, you should answer truthfully as a false declaration may be considered fraud and may void any cover. (See [Insurance](#) section).

You can 'opt out' of this insurance cover, but think carefully before you do. Once you have opted out of this insurance your fund may not allow you to take it out again or they may require that you undergo a medical examination to do so. Your superannuation 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 do not disclose all the health information requested, you may face problems later on if you try to claim on the policy.

In accordance with the *Equal Opportunity Act 1984* (WA), superannuation funds may lawfully discriminate against you, such as by charging higher premiums, on the ground that you are living with HIV. The decision to discriminate must be based upon reasonable actuarial or statistical data, or where no such data is available, having regard to other reasonable factors (see [Insurance](#) section for further information on when insurance providers may lawfully discriminate).

INSURANCE

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

When taking out insurance, you have a legal obligation to disclose all relevant information. Taking out a contract of insurance requires each party to act with 'utmost good faith' towards each other. 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 do not disclose your HIV status when taking out these kinds of insurance policies, then the insurance company usually will not 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 living with HIV, whilst others may charge higher premiums. Do not be tempted to not disclose or cover up your HIV status to obtain insurance. The law is very clear that if a person does not disclose something relevant or lies on an application for insurance, the contract will be invalid, and any insurance claim that you might make will not be valid.

Insurance companies may lawfully discriminate against you on the grounds that you are living with HIV, provided that their decision is based upon reasonable actuarial or statistical data, or where no such data is available, having regard to other reasonable factors.⁴⁰

Now that advances in HIV treatment have improved the general health and life expectancy of people living with HIV, the range of insurance policies available if you are living with HIV is increasing. It is worth shopping around to find a company that offers the type of cover you want.

If you apply for insurance and are refused on the basis that you are living with HIV, please contact HALC immediately and seek legal advice. Due to the advances in treatment for HIV, the data on which insurers are relying on may no longer be reasonable and you may therefore have a claim in discrimination. See the [Discrimination](#) section for more information about how you can lodge a complaint.

> Do I have to disclose my HIV status if I already have Income Protection or Life Insurance?

Disclosure of your HIV status may not be necessary if you are diagnosed after entering into an insurance contract. If you have an annuity with your insurance company, then the only relevant matter is your state of health at the time that you initially signed up with the insurer. An annuity is an insurance contract you purchase where you receive a guaranteed income for a number of years, or for the rest of your life.

If you have a contract of insurance for a fixed period – and many insurance contracts are for fixed periods, such as year to year – then you have a duty to disclose all relevant particulars (which could include your HIV diagnosis) at the start of every insured period.

Australian law requires that insurers provide you with a Product Disclosure Statement (PDS) which includes a description of all the terms and restrictions within your insurance policy. It is important you read and compare policies and seek advice to make an informed decision about which policy is best suited for your needs.

Insurers can (and often do) void insurance contracts on the basis that the insured failed to disclose all relevant particulars at the time of entering into the contract. As most fixed term insurance contracts automatically roll over at the expiry of the period, the duty to disclose arises at the time of rollover. Unfortunately, there is often no way to tell from the insurance contract whether it is for a fixed period or for a lifetime. If in doubt, you should always get legal assistance, otherwise you may end up paying premiums for an insurance policy that could later be voided by the insurance company when you make a claim.

If your insurance cover is cancelled or not rolled over on the basis that you are living with HIV, please contact HALC immediately and seek legal advice. Due to the advances in treatment for HIV, the data on which insurers are relying on may no longer be reasonable and you may therefore have a claim in discrimination. See the [Discrimination](#) section for more information about how you can lodge a complaint.

> 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 other reasons such as loss of luggage or theft of personal possessions.

Policies that cover medical and related expenses usually exclude claims arising from pre-existing conditions, and claims arising from STIs. HIV falls into both these categories, so if your policy has either or both of these exclusions, then you are not covered for any HIV-related claims while you are travelling. It is therefore important to do your research prior to taking out travel insurance if you wish to cover any HIV related illness while you are travelling. If your insurance cover excludes coverage for HIV-related claims, 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 claims. 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 infection. This may happen if your policy excludes HIV-related claims. 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?

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. The law requires health insurance providers to offer coverage to everyone, regardless of the state of their health. However, health insurance providers are allowed to impose a 12-month waiting period during which they will not pay any claims relating to pre-existing conditions, such as HIV, which were diagnosed 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.

> What about private health insurance for temporary visa holders?

Overseas Visitors Health Cover or Overseas Student Health Cover is required for some classes of temporary visas. These generally have the same waiting periods as private health insurance for Australian citizens and permanent residents. However, health insurance for temporary residents is not covered by the same law, and insurers can refuse cover on the basis of HIV status. It is worth shopping around for a suitable policy.

If your health insurance is being paid by or through a third party (such as an employer), the third party is not entitled to access any of your personal information or claim history.

Claiming on your private health insurance as needed will not impact upon any future visa applications. For further information about immigration for people living with HIV, please visit the HALC website www.halc.org.au and contact HALC if you have any further questions.

TRAVEL OVERSEAS

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

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 people living with HIV to enter their country. Other countries may allow you to enter for short stays, such as on tourist visas, but will have different requirements for longer or permanent visas. See www.hivtravel.org for more information about overseas travel for people living with HIV.

If a visa application form asks about your HIV status, you are legally required to disclose. If you do not disclose, and the authorities in your destination country find out, you place yourself at risk of being refused entry, deported or even imprisoned or detained.

For the most accurate information on visa requirements for a particular country, you should contact their Embassy or High Commission in Australia.

TRAVEL TO AUSTRALIA

> If I am coming to Australia as a tourist or for a short term, do I need to disclose my HIV status?

Depending upon your length of stay, and other factors such as whether or not you are on treatment, you may not need to disclose your HIV status. However, under certain circumstances, people visiting Australia on temporary visas may be required to undergo a medical examination, which will include questions about HIV. You must answer all questions on a visa application truthfully. Giving any incorrect or misleading answers can have serious consequences, including being issued a fine, having your visa refused or cancelled, and could possibly impact upon future visa applications.

Living with HIV should not prevent you from being granted a short-term visa (of two years or sometimes longer) such as tourist visas, student visas or temporary work visas.

> Can I come to live in Australia on a longer-term visa or permanently if I am living with HIV?

Yes, however permanent visa options are very limited for people living with HIV. For advice on this complex and frequently changing area of law, please refer to the HALC website at www.halc.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 assisting HIV positive people. It is illegal for a person who is not a registered migration agent to offer immigration advice.

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

CENTRELINK

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

No, you do not have to disclose your HIV status to Centrelink. However, there are a number of situations where it could be to your benefit to tell them. These are:

- If you wish to claim Disability Support Pension or Sickness Allowance because you are living with HIV and unable to work because of an HIV-related illness that is affecting your capacity to work.
- If you are receiving Youth Allowance or Job Seeker and want to be exempt 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 do not have to answer and can refer the officer to the information already on your file.

Centrelink is able to confirm your details and match your information with the Australian Taxation Office (ATO) and the Department of Veteran's Affairs (DVA), to ensure the information you have provided is accurate and that you are receiving correct benefits.

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?

No, 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.⁴¹

For assistance with government housing applications you may wish to contact WAAC (see [Useful Contacts](#) at the end of this guide).

> In a 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 choose to disclose to either a private landlord, a real estate agent, or public housing provider, 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 their close relatives.⁴² (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 childcare 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, for example a child with a nut allergy. School and childcare staff are required to use Standard Precautions in the event of any incident that involves blood or bodily fluids. Children living with HIV normally would not require any special health management by school or childcare staff, therefore there is no need to disclose your child's HIV status.

However, there may be a situation where disclosure may be practically necessary, such as an overnight school trip to ensure that your child is taking their HIV medication. If your child is unable to take the medication by themselves or de-identifying the medication is not practical, then you should contact your child's HIV specialist for the best method to ensure your child takes their medication in this situation.

The *Equal Opportunity Act (WA)* and the *Disability Discrimination Act (Cth)* provides that it is unlawful to discriminate in providing education on the grounds of impairment. If the school or childcare centre learns of you or your child's HIV status, they cannot deny admission. They must also keep that information confidential except in circumstances where the parents' consent to the disclosure for a relevant purpose (for example, to a school nurse).^{43,44}

FINANCES

> Do I have to disclose my HIV status when I apply for a bank loan?

No.

Generally, loan application forms will not request health information, and your HIV status will not form part of your credit history.

> What if I'm having trouble making repayments because I'm sick?

If you are having difficulty meeting repayments on a loan or credit card due to ill health, seek advice as soon as possible. Approaching your credit provider as soon as the problem arises gives you the best chance of negotiating an arrangement with them and protecting your credit rating. Again, you do not have to disclose your HIV status, although you will probably need to provide medical evidence that you have been ill. This may simply be a generic letter from your doctor that does not disclose your HIV status.

If a financial institution becomes aware of your HIV status, they are subject to the *Privacy Act (Cth)*, and are legally required to keep that information confidential. The information can only be used for the purpose for which it was provided, such as in considering a reduction in loan repayments on compassionate grounds. See the *Privacy Protection* section if you believe they have mishandled your health information.

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. If you are being questioned by the police about your HIV status, you should seek legal advice from HALC.

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 do not miss any doses. You can request that the police take you to a hospital to obtain it or help you arrange for a friend or other trusted person to bring you your medication. 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 you are placed in corrective services (jail) then you may need to disclose your HIV status to the WA Department of Justice to ensure that they will arrange for you to obtain treatment and see an HIV specialist periodically during your stay.

> Mandatory Testing

In Australia, circumstances leading to the mandatory testing for HIV, meaning without a person's consent, are very rare. Despite this, the *Mandatory Testing (Infectious Diseases) Act 2014 (WA)* allows for mandatory testing of a person whose bodily fluids, including semen, blood and saliva, come into contact with a police officer or a police service employee's anus, vagina, mucous membrane (mouth, eyes, ears etc.) or broken skin.⁴⁵

The assault of a police officer that involves bodily fluids, i.e. spitting on a police officer, may lead to a mandatory test being requested, irrespective of your HIV status. A police officer may apply to a senior police officer for the order, or if the person is a protected person (a child or an incapable person), an application to the Children's Court or Magistrates Court.

A person who fails to comply may be fined \$12,000 and imprisoned for up to 12 months.⁴⁶ Seek legal advice immediately if you are asked to undertake a mandatory test.

Similarly, a detainee in prison may also be required to undertake mandatory testing for HIV if there has been a transfer of bodily fluid from the detainee to a prison officer.⁴⁷

The police can also apply to a magistrate for an order to take blood and/or urine samples from a person held in custody for certain other serious criminal charges. Seek legal advice if you are in such a situation.

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

Not usually. Generally, it is unlikely that your HIV status will be directly relevant to the matter before the court, so you will not need to mention it.

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.

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

No.

Playing most 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 rule' ensures that any player with an open and bleeding wound is immediately removed from the field.

If someone excludes you from a sporting activity or if a sporting club or association refuses your membership application merely because you are HIV positive, this will usually be unlawful discrimination.⁴⁸ There are, however, exceptions.

> Combat Sports

Combat sports (such as boxing and martial arts), where greater exposure to blood is prevalent, are treated differently to most other sports and are regulated by specific legislation. The Combat Sports Commission (The Commission) was created and given powers under the legislation to ensure the health and safety of all contestants. Accordingly, contestants may be required to undergo medical examinations, including HIV tests, and to disclose the use of any prescribed medications.

If your HIV status is discovered during a medical examination for participation, they must keep your HIV status confidential. However, it may be brought to the attention of the Commission by the medical practitioner that your participation as a contestant might adversely impact on the degree to which the Commission can ensure the health and safety of all contestants. This information can be construed any number of ways, but does not necessarily mandate the disclosure of your HIV status. It would also depend largely on the nature and class of the specific mode of combat sport, and the discretion of the Commission to do what it believes is necessary to ensure the health and safety of all contestants in that particular situation. The legislation does not distinguish between professional and amateur combat sports, as the definition of 'contestant' is quite broad. Accordingly, much of this regulation falls to the discretionary powers of the Commission, and decisions may be therefore determined on a case-by-case basis.

In any event, if you are not sure about your particular sport, talk to your doctor, or contact the WA Department of Local Government, Sport and Cultural Industries or HALC (see [Useful Contacts](#) at the end of this guide).

BEAUTY AND BODY ART PROCEDURES

> Do I have to disclose my HIV status to my beautician, my barber, my tattoo artist, or my body modification specialist?

In some cases, you may need to disclose your HIV status to them. If you are having skin penetration procedures done you must disclose your HIV status.⁵⁰

Under Section 9 of the *Health (Skin Penetration Procedure) Regulations 1998*:

“A person who knows or could reasonably have been expected to know that he or she is or may be suffering from an infectious disease must not permit an operator to carry out a skin penetration procedure on the person unless the person has told the operator that the person has or may have the disease.”

A skin penetration procedure includes body piercing, tattooing, pedicures involving skin shaving, or other procedures where the skin or mucus membrane (e.g. ears and tongue) are cut, punctured, torn or shaved. This is not applicable to procedures by medical, dental or podiatrist practitioners. Failure to disclose your medical condition may result in a penalty of up to \$1,000.

This does not mean the service provider can refuse service once you have disclosed your status. If you are refused service after disclosing your HIV status, you should contact HALC or a Community Legal Centre in your area (see [Useful Contacts](#)).

NAVIGATING DISCLOSURE

The previous section of this guide has outlined when a person is legally required to disclose their status. However, there are occasions where you are not required by law to disclose but may wish to consider disclosing your status. What we mean by ‘disclosing’ your status is telling a person you have HIV.

This section outlines some of the considerations for disclosing your status, including the potential risks and benefits of doing so. This section also outlines some practical things you might like to consider before you disclose. Whether you are newly diagnosed or have had HIV for some time, the issues of disclosure can be challenging.

THERE CAN BE SOME BENEFITS TO DISCLOSURE.

It can:

- provide an opportunity to connect with others who have HIV;
- provide an opportunity to receive support from family, friends, significant others or communities;
- provide an opportunity to receive appropriate care and support from healthcare and other service providers;
- provide a sense of closeness or intimacy within relationships;
- relieve stress or anxiety about HIV;
- reduce social isolation related to HIV;
- reduce self-stigma; and
- allow you to feel a sense of control over disclosing on your own terms.

However, there are potential risks of disclosure, such as:

- negative reactions including rejection, harassment;
- physical violence;
- stigma and discrimination;
- causing distress to yourself or others;
- needing to educate others about HIV or provide them with emotional support;
- being unable to take back disclosing your HIV status if things go badly; and
- loss of control over your disclosure or being “outed” as HIV positive.

When deciding to disclose your status (outside of the legal requirements) it is important to weigh up the potential benefits and risks. By weighing up the risks and benefits, you may feel more comfortable about your decision.

> Feeling safe to disclose

People may react differently to your disclosure. Everybody is unique. Some people may immediately accept your diagnosis. Others may need more time and information to respond or adjust to your disclosure. It is also important to recognise that some people may never adjust.

Whatever the response you receive in a specific situation, and even if your disclosure experience does not go the way you had hoped, there is support out there. You are not alone.

People living with HIV are often put in the position of an educator when they disclose. Generally, people who do not know a lot about HIV may want you to inform them. It is OK not to know all the answers. You can direct them to this guide, contact a support agency to answer their questions or concerns, or you can direct them to HIV support agencies with their queries (see [Useful Contacts](#)).

When disclosing, it is important to consider your personal safety. If you fear that the person you are disclosing to may become violent, then you should consider your support options. One possible option could be that you choose to change your disclosure setting to somewhere more public, or in the presence of a friend or healthcare provider.

It can be hard to tell the children in your life. Try to explain things in simple ways so that it is easier for them to understand. For more information on disclosing to a child, see Positive Life NSW's 'HIV & Disclosing to your child' available at: <https://www.positivelife.org.au/wp-content/uploads/2021/07/plnsw-fs-disclosingtochild.pdf>.

When considering disclosing your status, remember that you should weigh up the potential risks, benefits and your safety to arrive at a position that is comfortable for you. You can never take back information, or control how people will react. If you think a person will have a bad reaction, it may be worth waiting until you feel more confident, or even reconsider if you should tell them.

Remember, you may have HIV, but that does not define who you are as an individual.

> Planning for disclosure

There are many ways to prepare for disclosing your HIV status, whether it is to a friend, family member or partner.

In most situations, you can take your time to consider who to tell and how to tell them. Consider whether there is a real purpose for you to tell this person or if you are simply feeling anxious and want to “unload” your feelings. Telling people without thinking about the possible consequences first may affect your life in ways you have not considered.

Having feelings of uncertainty about disclosing is a very common reaction in this situation.

You do not have anything to apologise for simply because you are living with HIV.

Keep it simple.

You do not have to tell the story of your life or go into details that you're not comfortable with, including how you contracted HIV. Remember, you are in control!

Avoid isolating yourself.

If you are uncomfortable talking to friends, family members or other loved ones about your HIV status, allow yourself to draw upon the support and experience available to you. This can be done through counselling or psychology services provided by WAAC or other organisations (see [Useful Contacts](#) at the end of this guide).

If you are considering going public with your status, whether that be online, at a public event or through the media, it is important to consider the impacts that may have on you.

Going public can be very empowering. It can result in greater advocacy for the community, challenge stigma and be a way to connect with other people living with HIV. Talking to another person who has gone public is a great way to understand and prepare for how it may make you feel and what to expect from the experience.

THE 5 W's

Be sure to consider the five “W’s” when thinking about disclosure: who, what, when, where, and why.



Who do you need to tell?



What do you tell them about your HIV status, and what are you expecting from the person you're disclosing to?



When should you tell them?



Where is the best place to have the conversation?



Why are you telling them?

PREPARING FOR DISCLOSURE

Disclosing your status is different for everyone as there is no perfect roadmap for disclosure. Every person is unique.

Here is a checklist to prepare you to disclose:

- ✓ Think about the range of possible responses that you may receive from the person you are disclosing to.
- ✓ Consider where and when to disclose. (Consider if there is privacy. Is there support around you if the disclosure does not go the way you thought it would?).
- ✓ Consider whether your disclosure could place you in a position where your physical safety is under threat. You should not disclose if this could be the case.
- ✓ Consider whether your living arrangements depend on the person you are disclosing to. If your disclosure could mean that you can no longer live where you currently do, or if you share with the person you are disclosing to money, food or accommodation, then you may wish to disclose when you have more independence.
- ✓ Consider things you are not comfortable to talk about. (Just because you have disclosed your status, does not mean you should feel pressured to disclose any personal information that you are not comfortable with).
- ✓ Consider cultural and religious differences that may impact upon your decision to disclose. (In some communities, attitudes about sex, sexuality, and drugs may make it harder to talk about HIV and having HIV); .
- ✓ Consider your confidentiality. Remember to remind the person to keep it confidential, but also accept that they may need to talk to someone else about it. Remember that HIV affects those around us as well. They might not be comfortable asking you some questions - you could let them know of a mutual contact that you have disclosed to if they want to talk with someone else about it. They might need support as well.
- ✓ Have you considered practicing with someone you have already disclosed to? Rehearsing what you want to tell people beforehand can be helpful.
- ✓ Have you thought about how you would have the conversation? Some suggestions are "I am going through a hard time right now, and I could use your support. I was recently diagnosed with HIV" or "I want to tell you that I am HIV positive. I'm telling you because I trust you and you are important to me".
- ✓ Are you prepared to answer questions they may have? Remember you do not need to know all the answers and can direct the individual to information or to a support agency.

WHAT IF DISCLOSURE DOESN'T GO ACCORDING TO PLAN?

Everybody approaches disclosure from their own unique perspective.

Some people may not worry about how their status may be received and therefore may openly talk about their HIV status or disclose their status to their friends and loved ones expecting social and emotional support.

For others, a concern may be any potential negative or stigmatising reaction that they may receive when they disclose. Some may face challenges such as discrimination based on their HIV status, unauthorised disclosure, or rejection from their own families and friends or even social isolation from their own community.

ARE YOU FEARFUL OF DISCLOSING YOUR STATUS? OR HAVE YOU ENCOUNTERED A NEGATIVE REACTION TO DISCLOSING?

This section is for those who may have fears and concerns about the negative reactions they may receive or have received. If disclosure does not go according to plan, remember that **you are not alone**.

HIV stigma can happen, and it hurts. It can occur at many different levels and often it is not obvious to us in the first instance. It can be visible and blatant, such as a healthcare worker treating you with extra precautions when there is no risk of transmission.

Stigma can also be less visible, such as feeling like it is a 'no-go topic' with friends and family or being made to feel like you need to explain or justify how you contracted HIV.

Stigma can exist within ourselves, from our own views of HIV that have been formed by seeing HIV being represented by friends, family and the media. Stigma causes fear and lack of discussion, which is one of the driving reasons why people may not seek testing or treatment.

Another way to work with and through stigma is to draw upon and develop your personal resilience. If you are feeling down because of someone being ignorant about HIV, that can be an early sign of 'internalising stigma' – the process of adopting negative beliefs and/or being emotionally controlled by someone else's ignorance.

> Disclosure, the environment and stigma

You are the expert of your environment and you have a human right to feel safe. This diagram provides a visualisation of ‘the big picture’ around stigma, disclosure, and your environment.

It can be a visual example to show how everyone’s experiences and environment are different.



The outside layer represents community narratives, cultural norms, values and beliefs. The second layer represents family, partners, and close friends also known as significant others. The inside layer is you - your safe space. Regardless of the negativity or positivity from the outside world (the two outside layers), you have the power to nurture and care for yourself.

Despite the negative narratives you may encounter, you still deserve respect and to be valued as a member of your community. Living with and facing a potential negative reaction about your status is going to call upon and develop your individual resilience. We cannot always control what happens to us, but we can control how we respond. ‘Resilience’ can be defined as ‘the ability of a substance or object to spring back into shape; elasticity’ or ‘recover from difficulties’. For some, this can be through:

- developing support networks and becoming involved with the HIV community and campaigns;
- cultivating abilities to bounce back from disclosure;
- examining the extent to which HIV is regarded as a key aspect of identity;
- building support networks of friends and family;
- seeking support through a peer, community or organisation; and
- choosing to speak about your experience or going public.

Building and fostering resilience against HIV stigma is not only about building the capacity of individuals but also fostering community resilience. When we draw on our diverse and collective strengths, we can challenge societal stigma together.

> What if my status is disclosed without my consent?

The previous section of this guide outlined the legal remedies that are available if your status is disclosed without your consent (see [Privacy Protection](#)).

Unfortunately, there are not many legal solutions available in the situation where someone like your ex-partner/friend/relative is telling others about your status.

This is often called involuntary disclosure because your status has been disclosed without your consent. Many people that have HIV have had their HIV status shared by others without their consent.

Such disclosure can cause negative feelings, such as anger, betrayal, anxiety, embarrassment and isolation. You may feel a loss of control or it may bring up feelings related to your initial diagnosis. You may wish to seek help about navigating the feelings. Remember, we cannot control the thoughts, feelings and actions of others, but we can choose how we respond.

If you do have a negative experience, it is important to talk to someone you trust so that you do not start to believe those negative thoughts about yourself. You may also want to seek support from psychology or counselling services (see [Useful Contacts](#)).

Whether you wish to stand up to or challenge involuntary disclosure may depend on a number of factors such as:

- Is there a legal remedy available?
- Do you have support to help process the disclosure?
- Do you feel safe and comfortable to talk with the person who has disclosed your status?
- Do you want to address the disclosure?

It may take some time to process the disclosure and your feelings about it. Take your time. Talk over the issue with someone you trust or reach out to a support agency.

Trust your instinct, not your fears. Most importantly, you are not alone during this process. Support is here to talk you through and support your disclosure process.

USEFUL CONTACTS AND RESOURCES

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| HIV/AIDS Legal Centre (HALC) | <p>Nationwide advice on all HIV related legal issues</p> <p>www.halc.org.au Phone: (02) 9206 2060 Freecall: 1800 063 060</p> |
| Aboriginal Legal Service Of Western Australia | <p>Free legal advice and assistance for Indigenous people</p> <p>www.als.org.au Phone: (08) 9265 6666 Freecall: 1800 019 900</p> |
| Australian Federation Of Aids Organisations (AFAO) | <p>Leadership, coordination and policy and advocacy support</p> <p>www.afa.org.au Phone: (02) 9557 9399</p> |
| Australian Human Rights Commission | <p>Information and assistance with discrimination complaints</p> <p>www.hreoc.gov.au Complaints InfoLine: 1300 656 419 General enquiries: 1300 369 711 TTY (for the hearing impaired): 1800 620 241</p> |
| CARAD – Centre for Asylum Seekers, Refugees and Detainees | <p>A specialist refugee and immigration community centre based in Western Australia</p> <p>www.carad.org.au Phone: (08) 9227 7322</p> |
| Consumer Credit Legal Service (WA) | <p>Advice on consumer finance issues</p> <p>www.cclswa.org.au Phone: (08) 9221 7066</p> |

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| Department of Local Government, Sport and Cultural Industries | <p>Information about sports and restrictions on participation</p> <p>www.dlgsc.wa.gov.au/sport-and-recreation Phone: (08) 9492 9700</p> |
| Employment Law Centre of WA | <p>Legal advice, assistance and referrals for employment matters in WA</p> <p>www.elcwa.org.au Phone: 1300 130 956 or (08) 9227 0111 Regional, Rural and Remote Advice: 1300 520 054 or 9227 0185</p> |
| Equal Opportunity Commission of Western Australia | <p>Information and assistance with discrimination complaints</p> <p>www.eoc.wa.gov.au Phone: (08) 9216 3900 Freecall: 1800 198149 TTY (for the hearing impaired): (08) 9216 3936</p> |
| The Health and Disability Complaints Office (HADSCO) | <p>Information and assistance with complaints against health care providers</p> <p>www.hadscow.wa.gov.au Complaints and enquiries line: (08) 6551 7600 Country Free Call: 1800 813 583 TTY (for the hearing impaired): (08) 6551 7640</p> |
| Magenta and SWOPWA | <p>Services, support and information for sex workers in Western Australia</p> <p>www.magenta.org.au Phone: (08) 9328 1387</p> |

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| National Association of People with HIV Australia (NAPWA) | <p>Advocacy, policy, health promotion and outreach on a national level</p> <p>www.napwha.org.au Email: info@napwha.org.au Phone: (02) 8568 0300 Freecall: 1800 259 666</p> |
| National Health and Medical Research Council | <p><i>Australian Guidelines for the Prevention and Control of Infection in Healthcare (2019) including Standard Precautions Information</i></p> <p>www.nhmrc.gov.au/about-us/publications/australian-guidelines-prevention-and-control-infection-healthcare-2019</p> |
| Office of the Australian Information Commissioner | <p>Information and assistance with privacy complaints</p> <p>www.oaic.gov.au Phone: 1300 363 992</p> |
| Positive Organisation WA (POWA) | <p>HIV peer education and support services</p> <p>www.positivewa.org Phone: 0431 905 338 Email: powacontact@gmail.com</p> |
| Sexual Health Quarters | <p>Clinical and counselling services</p> <p>www.shq.org.au Phone: (08) 9227 6177 – Clinic Phone: (08) 9228 3693 – Counselling</p> |
| Travel Information | <p>Worldwide travel information for HIV positive people</p> <p>www.hivtravel.org</p> |

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| WAAC (Formerly WA AIDS Council) | <p>HIV prevention education, counselling, care and support services in Western Australia.</p> <p>www.waac.com.au Phone: (08) 9482 0000 Freecall: 1800 671 130</p> |
| Welfare Rights & Advocacy Service | <p>Help with Centrelink issues for people in Western Australia</p> <p>www.wraswa.org.au Phone: (08) 9328 1751</p> |
| WA Department of Health | <p>Sexual Health and Blood-Borne Virus Program (SHBBVP)</p> <p>www.healthywa.wa.gov.au Phone: (08) 9222 2355 Email: SHBBVP@health.wa.gov.au</p> |
| PEP Providers | <p>Royal Perth Hospital, Sexual Health Clinic Phone: (08) 9224 2178</p> <p>Fremantle Hospital, South Terrace Clinic Phone: (08) 9431 2149</p> <p>Sexual Assault Resource Centre Phone: (08) 6458 1828</p> <p>PEP Line Phone: 1300 767 161</p> |

REFERENCES

1. See <https://www.ashm.org.au/HIV/UequalsU/>.
2. *Public Health Act 2016* (WA).
3. *Public Health Act 2016* (WA) s 88(4).
4. *Public Health Act 2016* (WA) s 88(2).
5. *Public Health Act 2016* (WA) s 117.
6. *Public Health Act 2016* (WA) s 122.
7. *Criminal Code 1913* (WA) s 294 (1)(h).
8. *Criminal Code 1913* (WA) s 304 (1).
9. *Criminal Code 1913* (WA) s 297 and 304(2).
10. *Criminal Code 1913* (WA) s 294 and 304(2).
11. *Criminal Code 1913* (WA) s 294.
12. *Criminal Code 1913* (WA) s 304.
13. *Privacy Act 1988* (Cth) s 41.
14. *Blood Donation (Limitation of Liability) Act 1985* (WA) ss 9-11 (donor must make donor declaration); *Blood and Tissue (Transmissible Diseases) Regulations 1985* (WA) (form of declaration); *Blood and Tissue (Transmissible Diseases) Regulations 1985* (WA) *Schedule 1*.
15. *Equal Opportunity Act 1984* (WA) s 66A - Discrimination on ground of impairment; s 4(1); **impairment** in relation to a person, means one or more of the following conditions —
(a) any defect or disturbance in the normal structure or functioning of a person's body
Hoddy v Executive Director Department of Corrective Services (1992) EOC 92-397 (HIV positive status indicated a disturbance in the normal functioning of the body).
Disability Discrimination Act 1992 (Cth) s 4(1). **disability**, in relation to a person, means:
(c) the presence in the body of organisms causing disease or illness; or
(d) the presence in the body of organisms capable of causing disease or illness;
16. LexisNexis, Halsbury's Laws of Australia, (at 7 October 2011) 80 Civil and Political Right, '11(1)(C)(111)(D) Ground of Impairment of Disability' [80-360]; *Equal Opportunity Act 1984* (WA) ss 4(1), 66A; *Hoddy v Executive Director Department of Corrective Services* (1992) EOC 92-397.
17. *Equal Opportunity Act 1984* (WA) s 66A; See also *Disability Discrimination Act 1992* (Cth) ss 5-6.
18. *Equal Opportunity Act 1984* (WA) s 66A.
19. *Equal Opportunity Act 1984* (WA) Pt IIA, example based on s 35B(2).
20. See also Equal Opportunity Commission of Western Australia, 2010, *Frequently asked questions*, available online <http://www.eoc.wa.gov.au/YourRights/FAQs.aspx>; See also *Minimum Conditions of Employment Act 1993* (WA) Div 2 for minimum leave for illness or injury or family care in WA.
21. *Equal Opportunity Act 1984* (WA) s 66B.
22. *Equal Opportunity Act 1984* (WA) s 66I.
23. *Equal Opportunity Act 1984* (WA) s 66K.
24. *Equal Opportunity Act 1984* (WA) s 66M.
25. *Equal Opportunity Act 1984* (WA) s 66L.
26. *Equal Opportunity Act 1984* (WA) ss 66R, 70, 72, 73.
27. *Australian Human Rights Commission Act 1986* (Cth) s 11(1)(a)-(aa); *Australian Human Rights Commission Act 1986* (Cth) s 46P; *Australian Human Rights Commission Act 1986* (Cth) s 46PH(1).
28. *Equal Opportunity Act 1984* (WA) s 66Q.
29. *Equal Opportunity Act 1984* (WA) s 66Q.
30. *Equal Opportunity Act 1984* (WA) Division 2, s 66B.
31. *Occupational Safety and Health Act 1984* (WA) s 19.
32. *Occupational Safety and Health Act 1984* (WA) s 20.
33. *Occupational Safety and Health Regulations 1996* (WA) reg 3.12(2).
34. See *Criminal Code*; *Health Act*; *Prostitution Act*.
35. *Prostitution Act 2000* (WA) s 8.
36. Communicable Diseases Network Australia, 'Australian National Guidelines for the Management of Healthcare Workers Living with Blood Borne Viruses and Healthcare Workers who Perform Exposure Prone procedures at risk of Exposure to blood Borne Viruses' [https://www1.health.gov.au/internet/main/publishing.nsf/content/36D4D796D31081EBCA257BF0001DE687/\\$File/nat-guidelines-work-bbv-Oct2019.pdf](https://www1.health.gov.au/internet/main/publishing.nsf/content/36D4D796D31081EBCA257BF0001DE687/$File/nat-guidelines-work-bbv-Oct2019.pdf)
37. *X v Commonwealth of Australia* [1999] HCA 63.
38. Nationally regulated <https://www.casa.gov.au/licences-and-certificates/medical-professionals/dames-clinical-practice-guidelines/human-immunodeficiency-virus-hiv>
39. *Equal Opportunity Act 1984* (WA) s 66P; See also *Disability Discrimination Act 1992* (Cth) s 45.
40. *Equal Opportunity Act 1984* (WA) s 66P(aa)-(bb).
41. Priority Housing Assistance, Government of Western Australia Department of Communities Housing <http://www.housing.wa.gov.au/housingoptions/rentaloptions/publichousing/priority/Pages/default.aspx>.
42. *Equal Opportunity Act 1984* (WA) s 66L.
43. *Equal Opportunity Act 1984* (WA) s 66I.
44. *Disability Discrimination Act 1992* (Cth) s 22.
45. *Mandatory Testing (Infectious Diseases) Act 2014* (WA).
46. *Mandatory Testing (Infectious Diseases) Act 2014* (WA) s 13.
47. *Prisons Act 1981* (WA) s 46A.

48. *Equal Opportunity Act 1984* (WA) ss 4(1), 66N, 66M.

49. *Combat Sports Act 1987* (WA); *Combat Sports Regulations 2004* (WA).

NOTE: the Professional Combat Sport Amendment Bill 2009 was passed by Parliament in 2011 and amended the *Professional Combat Sports Act 1987* (WA) providing for the creation of the Combat Sports Commission under s 4 of the Act, and conferring powers on the Commission under s 21 to ensure the health and safety of contestants under the Act, as well as reforming the name to *Combat Sports Act 1987* (WA).

Amateur combat sports are not specifically regulated by legislation as being distinct from professional, as the definition of 'contestant' under the Act is quite broad. However, it would be determined by the Commission itself as to the regulations of a specific combat sport insofar as the requirements that specific sport must maintain in order to ensure the health and safety of its contestants. Accordingly, this would vary and depend largely on the nature and type of contest. Irrespective of the statutory provisions, the common law duty to take reasonable care may be applicable in all circumstances. For a discussion of tortious liability and sports participants see LexisNexis, Halsbury's Laws of Australia, (at 1 May 2008) 175 Entertainment, Sport and Tourism, '11(1)(A) Tortious Liability of Participants in Sport' [175-6845]-[175-6850].

50. *Health (Skin Penetration Procedure) Regulations 1998* (WA) reg 9.

