

DISCLOSING YOUR HIV STATUS

**A GUIDE TO SOME
OF THE LEGAL ISSUES**

—
NEW SOUTH WALES

halc

HIV/AIDS LEGAL CENTRE INCORPORATED (NSW)
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This guide contains the relevant laws on the disclosure of HIV status as it applies in New South Wales at 1 February 2023. The third version of the guide has been prepared by the HIV/AIDS Legal Centre (HALC) and funded by ViiV Healthcare. This publication is copyrighted. It may be reproduced in part or whole for educational purposes, where proper credit is given to the HIV/AIDS Legal Centre (HALC).

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

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INTRODUCTION

There are very few situations where you are legally required to disclose your Human Immunodeficiency Virus (HIV) status. These situations will be explained later on in this guide, but it is best to think about disclosure carefully and check your obligations beforehand because once you have disclosed, it is impossible to take that information back.

Disclosing one's HIV status is one of the main areas in which 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 better understand some of the legal issues involved. This guide can also help people, such as counsellors and social workers, who offer support services to people living with HIV.

This is a guide to the laws about when you may need to disclose your HIV status in New South Wales. The guide includes information about your right to privacy and freedom from discrimination, along with more information on 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 in which 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 advice.

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

Standard Precautions

Throughout this guide, we refer to 'standard precautions' (also known as 'universal precautions' or 'standard precautionary procedures'). These are procedures that should be followed whenever there is a possibility of contact with 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 for sure whether someone has a blood-borne virus, such as HIV, hepatitis B, or hepatitis C. See the [Useful Contacts](#) section for where you can obtain more information on standard precautions.

SEX AND RELATIONSHIPS

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

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

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

Recently, thanks to many years of research, there has been a scientific and medical consensus demonstrating that a person living with HIV who is on antiretroviral medication and maintains a viral load below 200 copies/mL (known as an undetectable viral load) cannot sexually transmit HIV.¹

This means that safer sex prevention options now include having an undetectable viral load, as well as the use of condoms. This evidence relates only 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, because there is insufficient evidence to date showing 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 HIV transmission. Your HIV specialist is the best person to advise you about these factors.

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

You are not legally required to disclose your HIV status before you have sex. However, under the new NSW sexual consent laws lying about your HIV status or lying about being on PrEP to induce someone to participate in sexual activity may mean that the sexual partner has not consented to the sexual activity.²

As the new law is untested, we are unaware what impact, if any, having an undetectable viral load will have if someone lies about their HIV status to their sexual partner.

If you lie about your HIV status to induce your sexual partner to participate in sexual activity you may be charged with sexual assault. A person found guilty of sexual assault may be liable to imprisonment for up to 14 years.³

It is also important to still remember that under the *Public Health Act 2010* (NSW), if you know you are living with HIV, you must take reasonable precautions against transmitting HIV.⁴ Penalties apply for not taking reasonable precautions against transmission of HIV (maximum of 100 penalty units (\$11,000), 6 months in jail, or both).⁵

> What are reasonable precautions?

Under the *Public Health Regulation 2022* (NSW), reasonable precautions may include the following:

- Using condoms;
- Having an undetectable viral load of less than 200 copies/mL; or
- Seeking and receiving confirmation from a sexual partner that they are taking pre-exposure prophylaxis (PrEP).⁶

You should also consult with your HIV specialist about the risk of HIV transmission to sexual partners and what are the most appropriate reasonable precautions for you to take based on your circumstances.

> Do I need to disclose my HIV status on my dating profile?

You do not have a duty to disclose your HIV status on your dating profile. However, you should not lie on any dating profile about your HIV status or being on PrEP. If you engage in sexual activity and your sexual partner had seen the information on your dating profile where you had lied about your HIV status or being on PrEP, the sexual activity may not be consensual under the law. If you are not comfortable with people knowing your HIV status, it is best not to include this information on your dating profile.

If you are asked online about your HIV status it is your decision whether you wish to disclose or disengage from the conversation. It is still important to remember that if you lie about your HIV status on a dating application or website this may mean that your sexual partner has not consented to sexual activity engaged in.

> Do I need to disclose my HIV status if I am asked after engaging in sexual activity?

No, if your sexual partner asks your HIV status after engaging in sexual activity you do not have to disclose. If you lie about your HIV status, this may impact that person's future consent to engage in sex with you.

> What should I do if I am contacted by a sexual partner or the police about this?

If you are contacted by the police, or your sexual partner has informed you they will be contacting the police you should not say anything and seek legal advice immediately. You can contact **HALC** on **(02) 9492 6540**.

Even if you disclose your status to your sexual partner, you could still be charged under this section if you fail to take reasonable precautions.

> People whose behaviour puts others at risk and in Public Health Orders

Instances where a person living with HIV puts others at risk of contracting HIV are rare. When a situation like this does occur, there are public health laws and policies to manage those who do. This management process is designed to help the person understand their responsibilities and support them with additional counselling or other interventions to prevent them from putting others at risk of contracting HIV.

The Chief Health Officer and authorised medical practitioners have the power to issue Public Health Orders under the *Public Health Act 2010* (NSW) to assist a person (whose behaviour is putting others at risk of HIV transmission) in understanding their responsibilities and support them with additional counselling or other interventions to prevent them from putting others at risk.⁷

The orders can include mandatory measures directing a person to attend counselling or start or resume HIV treatment and can include 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 can be issued if their behaviour is putting others at risk of contracting HIV. If a person is found to have failed to comply with a Public Health Order, a person may be imprisoned for up to 6 months and/or receive a fine of up to \$11,000.

> Can I be charged with a criminal offence if I transmit HIV to another person?

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

Under the *Crimes Act 1900* (NSW), it is a criminal offence to transmit a 'grievous bodily disease'⁸ (which includes HIV) with the intent to transmit such a disease, or do so recklessly. The maximum penalty for intentionally transmitting HIV is imprisonment for 25 years⁹ and for recklessly transmitting HIV is imprisonment for 10 years.¹⁰ It is also a criminal offence for a person to transmit HIV to another person through an unlawful or negligent act; this carries a maximum penalty of imprisonment for 2 years.¹¹

The best defence against a criminal charge is taking reasonable precautions to prevent the transmission of HIV to a sexual partner.

> What if they knew that I was HIV positive?

The courts have not yet specifically dealt with this scenario because all the cases up to now have dealt with a situation in which the partner did not know. If a person knows that their sexual partner is living with HIV and then consents to have sexual intercourse, criminal charges are unlikely to succeed. However, as stated above, disclosure does not prevent a charge under the *Public Health Act 2010* (NSW).

> What if the condom breaks?

If you took the reasonable precaution of wearing a condom, you should not be charged with grievous bodily harm with intent. However, in the event that the condom breaks, you should tell your partner that the condom broke and suggest that they receive post-exposure prophylaxis (PEP).

If transmission of HIV occurs and you are questioned by your sexual partner or the police, you should immediately contact HALC or other legal services before talking to the police or making admissions.

> What if I did not know that I had HIV or other STIs at the time sex happened?

If you did not know that you had HIV or other STIs at the time sex happened, there was no 'fraudulent inducement' on your part and your HIV status or other STI status would not impact your sexual partner's consent at that time. However, we recommend that you take regular tests to know your status so that you can look after yourself and obtain optimal support and treatment.

If you find out later that you had HIV or other STIs at the time of sex, you have no obligation to notify your past sexual partners at risk of contracting HIV or other STIs. Under r 61 of the *Public Health Regulation 2022* (NSW), the Secretary of the NSW Ministry of Health and your attending medical practitioner may conduct contact tracing by notifying your past sexual partners (without disclosing your details) at risk of contracting HIV or other STIs of measures to be taken, and activities to be avoided.

POST EXPOSURE PROPHYLAXIS (PEP)

Following an incident of unsafe sex or condom breakage, PEP is a medically prescribed treatment to reduce the risk of HIV infection. PEP works best if taken as soon as possible after the exposure incident, up to a maximum of 72 hours after the incident. If a person living with HIV tells someone of the risk of infection with HIV and suggests they seek PEP, it could be used as evidence to show that if HIV was transmitted, it was not intentional, which may contribute to the reduction of a possible sentence.

> Where can I get PEP?

Contact your local sexual health clinic, hospital accident and emergency department or the PEP NSW hotline **1800 PEP NOW (1800 737 669)**.

For questions regarding HIV, call the HIV Hotline at **9332 9700** or **1800 451 600**.

For more information about PEP and to find locations to access PEP in your area, visit the www.getpep.info website.

> Can I be penalised under civil law for transmitting HIV to another person?

If because of negligence or recklessness you contribute to another person contracting HIV, you may be at risk of your sexual partner bringing a civil claim against you for negligence or personal injury. A civil claim means that they can take court action to obtain monetary compensation from you. Such a claim is difficult and costly to pursue and is rarely successful. If your partner knew you were living with HIV and consented to the risk of transmission of HIV, they would be unlikely to have any civil claim against you.

> Travelling interstate and overseas

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

Similarly, the laws surrounding disclosure to sexual partners differ significantly from country to country. Before travelling, it is important to familiarise yourself with the laws in the countries to which you are travelling because some countries impose severe penalties for nondisclosure to sexual partners or HIV transmission.

DISCRIMINATION

> What is unlawful discrimination?

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

> What is HIV discrimination?

The *Anti-Discrimination Act 1977* (NSW) and *Disability Discrimination Act 1992* (Cth) make it unlawful to discriminate against a person with a disability.¹² Under both the *Anti-Discrimination Act 1977* (NSW) and *Disability Discrimination Act 1992* (Cth), HIV is categorised as a disability because it is a presence in a person's body that can cause illness.¹³

Discrimination can be direct or indirect. Direct discrimination occurs when you are treated less favourably than other people in similar circumstances because you are living with HIV or another disability or illness. Indirect discrimination occurs when there is a requirement, practice, or policy that applies to everyone but that has an unfair effect on people with a particular disability, such as HIV, and the requirement, practice, or policy is unreasonable in the circumstances.

It is unlawful for someone to discriminate against you because you are living with HIV or another disability, as defined under the *Anti-Discrimination Act 1977* (NSW) or *Disability Discrimination Act 1992* (Cth); because someone thinks you are living with HIV or another disability; because you had a disability in the past; or because you will or may have HIV or another disability in the future. It is also unlawful for someone to discriminate against someone you associate with or are related to if they are discriminating based on your HIV status or other disability.

> What is HIV vilification?

HIV vilification is unlawful under the *Anti-Discrimination Act* (NSW).¹⁴ HIV vilification is a public act that is used to incite hatred or contempt towards a person or ridicule a person based on that person's HIV status. A public act includes any form of communication or actions to the public (e.g., a post on a social media platform or shouting to a room of people). A public act does not include private communication between people (e.g., a private message on any social media platform or private text messages).

Mere disclosure of a person's HIV status is not vilification. For vilification to occur, the person disclosing your HIV status to the public must also be inciting hatred, contempt, or ridiculing you because of your HIV status. If you believe this has occurred, contact HALC and seek legal advice. Furthermore, you can contact Anti-Discrimination NSW, who may be able to assist you in contacting the police (see below and the [Useful Contacts](#) section).

> When is it unlawful to discriminate based on HIV status?

It is unlawful to discriminate against you in the following situations:

- In almost all types of employment but not including employment to undertake domestic duties in a private home (also see [Employment](#) section for exceptions);
- When providing educational services;
- When providing goods, services, or facilities;
- When providing membership of clubs and incorporated associations; and
- When providing accommodations, except for where the person providing the accommodation (or their near relative) lives at the premises.

There are some exemptions and defences to discrimination, and it is important to seek legal advice if you believe you have been discriminated against. Contact HALC for legal advice if you believe you have been discriminated against.

> What can I do about discrimination?

If you feel you have been discriminated against, it is a good idea to write down what happened while everything is still fresh in your memory.

You can make a complaint to Anti-Discrimination NSW. Making a complaint is free, but there is a time limit. You have **12 months** from the date the discrimination happened in which you can make a complaint.

Alternatively, you can lodge a complaint with the Australian Human Rights Commission (AHRC), which is the federal antidiscrimination body. Like Anti-Discrimination NSW, making a complaint is free, but you have **24 months** from the date the discrimination happened in which you can make a complaint to the AHRC. Some complaints are better suited for Anti-Discrimination NSW and some for the AHRC. Obtain legal advice about which body is best suited to your complaint (see the [Useful Contacts](#) section at the end of this guide).

If you need support in the light of your HIV discrimination experiences, you can contact Positive Life NSW and speak with a peer support officer.

> Discrimination at work

In addition to the antidiscrimination complaints process described above, Fair Work Commission provides some protections against workplace discrimination, for example, if you have been terminated from your job because of your HIV status or denied a promotion because of your HIV status. Note that a complaint to Fair Work Commission for workplace discrimination leading to the termination of employment must be made within **21 days** of the date of the termination.

Most unions provide confidential legal advice to their members, while community legal centres may also be able to provide legal advice to employees (see the [Useful Contacts](#) section at the end of this guide).

If you feel you are being treated badly at work because of your HIV status, seek legal advice as soon as possible because 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.

> Do I have to tell my current employer or prospective employer?

No, you are not obliged to tell an employer or prospective employer that you are living with HIV, unless you are employed in one of the occupations outlined in the *Exceptions* section. Similarly, there are very few jobs where an employer or prospective employer can legally ask about your HIV status or require you to take an HIV test.

An employer can only lawfully refuse to employ you based on your HIV status if, because of your HIV, you are unable to perform the inherent requirements of the job.¹⁵ There are very few jobs in which this would apply.

If 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.¹⁶ 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 these adjustments.

It is the employer's responsibility to supply first aid and workplace personal protective equipment and ensure Occupational Health and Safety (OHS) policies and procedure guidelines are in place. Although OHS processes require the use of standard precautions, employers may 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 are living with 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 *Anti-Discrimination Act 1997* (NSW) or *Fair Work Act 2009* (Cth).¹⁸

Seek legal advice about your rights if an employer terminates your employment or treats you badly after finding you about your HIV status. 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.¹⁹ For more information about your rights, contact HALC (see the *Useful Contacts* section at the end of this guide and the *Discrimination* section).

> I have been asked to undertake a medical examination for work. Do I have to tell my employer that 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 take 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 that I'm living with HIV?**

Apart from the exceptions found in the *Exceptions* section, 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 on a medical certificate.

> **I'm worried about transmitting HIV to other people at work. Should I tell my workmates or my boss?**

Under the *Work Health and Safety Act 2011* (NSW) 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.²⁰ 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.²¹ This does not mean that you have a duty to inform your employer or anyone else at work of your HIV status.

In practice, this means that your employer should ensure that standard precautions are used if blood or other bodily fluids are spilled in the workplace. This includes following the workplace policy and procedures for first aid, for example, by using gloves when administering first aid. It is important to remember that you do not know the HIV status of all your colleagues and that 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. For example, first aid kits should include disposable gloves.

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

There are no effective privacy protections for information provided to an employer. Employers have a general duty to maintain employee confidentiality. In practice, though, if your employer breaches their 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 current boss or supervisor may be understanding, if your HIV-positive status is on file, then your next boss will also have access to this information, and they may have a very different attitude about it. If you believe that your employer has breached your rights to privacy, see the *Privacy Protection* and *Discrimination* sections for further information.

> **I'm a sex worker living with HIV. How does this affect my work?**

In NSW, sex workers are subject to the same laws as everyone else in the context of taking reasonable precautions against HIV transmission. This means that you do not need to disclose your HIV status to your sexual partner, but you are required to take reasonable precautions against the transmission of HIV, and that lying about your HIV status if asked may mean that the sex is not consensual. To learn more about this, see the *Sex and Relationships* section.

Note that these laws specifically relate to laws in NSW. If you are working in a different state or territory, it is important that you check the laws in the state or territory that you are working in because they may differ.

For more information contact SWOP (see the *Useful Contacts* section).

> What if I'm a sex worker working in a sex services premise? How does this affect my work?

In NSW, you do not need to disclose your HIV status to your client or the owner of the premise, but lying about your HIV status if asked may mean that the sex is not consensual. However, you must take reasonable precautions against the transmission of HIV. If you do disclose your HIV status to the owner of the premise, then the owner has a duty to ensure that you and your client are taking reasonable precautions against the transmission of HIV. Note also that if the owner of the premise is aware that your client is HIV positive, they must ensure that the client is taking reasonable precautions against the transmission of HIV. Penalties apply to the owner if they do not act on their duties to ensure that both sex workers and clients are taking reasonable precautions to prevent the transmission of HIV.

To learn more about reasonable precautions, see the [Sex and Relationships](#) section. Also, see the [Useful Contacts](#) section. In addition, SWOP can provide further information regarding HIV and sex work.

EXCEPTIONS

> Health care workers

If you are a healthcare worker living with HIV, you can usually continue to work without any restrictions, and it is not necessary to disclose your status to your employer. However, if you are a nurse, dentist, or doctor who performs exposure prone procedures (EPPs), there are certain guidelines that you must follow.

EPPs are procedures performed in confined body cavities where there is poor visibility and the risk of cutting yourself with a sharp tool or on a tooth or sharp piece of bone.

In NSW, the relevant guidelines for healthcare workers living with a blood-borne virus who perform EPPs are as follows:

- The NSW Health Policy Directive on the '*Management of healthcare workers with a blood-borne virus and those doing exposure prone procedures*'²²; and
- The National Guidelines on 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*'.²³

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 who also understands the regulatory framework for healthcare workers living with HIV, including both the National Guidelines and NSW Policy Directive;
- Undergo HIV viral load monitoring every three months; and
- Be on effective antiretroviral treatment with an 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 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 elite controllers.²⁴

If you are a healthcare 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 these 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 in this case, 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 healthcare 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 likely not be accepted into the ADF.

The ADF also regularly tests 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 be able to assist you by providing a report to the ADF confirming that your health does not impact 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’ under the *Fair Work Act 2009* (Cth).²⁵

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

EXCEPTIONS

> Aviation ²⁴

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 a medical assessment. The medical assessment includes an 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 3-monthly CD4 and viral load measurement, a 6-monthly neurological assessment, and an annual cognitive function assessment. Any change in condition can result in a person being designated as temporarily unfit to work.

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

The guidelines also require a pilot or air traffic controller living 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

> Do I have to disclose when I apply for superannuation or change superannuation 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, or are transitioning to retirement, 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. Alternatively, you can access your superannuation when you turn 65 even if you haven't retired. You may wish to seek financial advice to help you decide how you will access your super.

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 the early release of superannuation, and if any part of your application is incorrect, then they must 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?

By default, many superannuation funds include insurance coverage for death or permanent disability. These policies do not usually require that you disclose health information and may be a good option for people living with HIV because 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 because a false declaration may be considered fraud and may void any cover (see the *Insurance* section).

You can 'opt out' of this insurance coverage but think carefully before you do. Once you have opted out, your fund may not allow you to take it out again or 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 coverage, 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 file a claim on the policy.

Under the *Anti-Discrimination Act 1977* (NSW)²⁷ and the *Disability Discrimination Act 1992* (Cth)²⁸, superannuation funds may lawfully discriminate against you, such as by charging higher premiums, on the grounds that you are living with HIV. The decision to discriminate must be based on reasonable actuarial or statistical data or, where no such data is available, having regard to other reasonable factors (see the *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 coverage on yourself, such as death and disability coverage, 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, while 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 on reasonable actuarial or statistical data or, where no such data are available, having regard to other reasonable factors.²⁹

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 coverage 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. Because of the advances in treatment for HIV, the data on which insurers are relying on may no longer be reasonable, so you may have a claim. 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) that 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 based on the fact that the insured failed to disclose all relevant particulars at the time of entering into the contract. Because 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 coverage is cancelled or not rolled over based on the fact that you are living with HIV, please contact HALC immediately and seek legal advice. Because of advances in treatment for HIV, the data on which insurers are relying on may no longer be reasonable, so you may 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 those 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 of these categories, so if your policy has either or both of these exclusions, then you are not covered for any HIV-related illness while you are travelling. Therefore, it is 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 coverage excludes coverage for HIV-related illnesses, then you may not need to disclose your status.

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

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

> What about private health insurance?

Private health insurance covers part of the costs 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 do not have a break and do not 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 coverage based on 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.

Making claims on your private health insurance 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 at all. Other countries may allow you to enter for short stays, such as on a tourist visa, but will have different requirements for longer or permanent visas. See www.hivtravel.org for more information about overseas travel for people living with HIV.

If a visa application form asks you about your HIV status, then you are legally required to disclose it. If you do not disclose and the authorities in your destination country find out, then 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 that country's diplomatic mission 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 on your length of stay and other factors such as whether you are on anti-retroviral 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. Generally, there may be questions that involve health-related costs, and you must declare your HIV status when answering these questions. You must answer all questions on a visa application truthfully because incorrect and misleading answers can have serious consequences, including having your visa refused or cancelled, which may impact future visa applications. Living with HIV will not usually prevent you being granted a temporary visa. If you are facing problems obtaining a visa you should seek migration advice ASAP.

> **Can I come to live in Australia permanently if I am living with HIV?**

Yes, however health conditions can impact permanent visa options and processes. For advice on this complex and frequently changing area of law, please refer to the HALC website at www.halc.org.au for further information and contact HALC if you have further questions.

For all migration questions, it is important to obtain advice from a registered migration agent or a lawyer with experience in assisting people living with HIV. It is unlawful for a person who is not a registered migration agent or a lawyer to offer migration 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 for further stays in Australia.

MEDICAL CARE AND TREATMENT

> **Do I have to disclose my HIV status before undergoing a medical examination or procedure or receiving medical treatment 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 because HIV medications may interact with other medications or because the progression or treatment of other conditions may be affected by your HIV status. Under these 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 regular HIV specialist doctor whether the therapy is suitable for you.

You should also discuss 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 2010* (NSW), *Health Records and Information Privacy Act 2002* (NSW), and *Privacy Act 1988* (Cth) provide enhanced protections regarding the 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 healthcare 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 health 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 Care Complaints Commission (see the *Useful Contacts* section).

> Can I donate blood if I am HIV positive?

You cannot donate blood if you are living with HIV. 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.³⁰

> Can I donate organs if I am HIV positive?

Yes, people living with HIV are allowed to register for organ donation.

> 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. Healthcare 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 constantly reviewed.

Under current law, bodies/organisations such as the Commonwealth Ombudsman, the Auditor General, the Information Commissioner and healthcare 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 healthcare 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. If you need assistance adjusting your security measures in your MyHR, you can contact Positive Life NSW. More information on the MyHR and potential benefits and risks of the scheme for people living with HIV can be found on the Positive Life NSW website³¹ and the National Association of People with HIV Australia (NAPWA) website. Alternatively, you can contact HALC for further advice.

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

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

- 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;
- If you are receiving youth or JobSeeker allowances and want to be exempted from activity testing because you are sick with an HIV-related illness;
- If you have a carer who wishes to claim carer payment or allowance based on the fact 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; or
- 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 HIV status.

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 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 can 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 the correct benefits. If you have a matter with Centrelink, contact the Welfare Rights Centre for help (see the [Useful Contacts](#) section).

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

You do not have to disclose your HIV status when you apply for public housing. However, if you wish to obtain priority housing for medical reasons related to your HIV status, then you will need to provide supporting evidence, which 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 is the result of your HIV status, then you will need to provide supporting evidence and disclose your HIV status.

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

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

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 based on your HIV status, unless you are in shared accommodation with the owner or one of their close relatives.

For more information, see the [Discrimination](#) section.

EDUCATION

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

No.

Your own health conditions are completely irrelevant to your child's school or child care centre.

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

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

The *Anti-Discrimination Act 1977* (NSW) and the *Disability Discrimination Act 1992* (Cth) state that it is unlawful to discriminate in providing education on the grounds of disability.³² Accordingly, if the school or childcare centre does learn of you or your child's HIV status, they cannot deny admission or treat the child differently and must keep that information confidential, except in circumstances where the parents consent to the disclosure for a relevant purpose (e.g., to a school nurse).

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 should 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 because of poor 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, even though 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 1988* (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.

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

No, you do not need to disclose your HIV status. Playing most sports will not present a risk of transmitting HIV to other people because the likelihood of incurring a bleeding injury in circumstances where others will come into contact with your blood is generally quite low. For example, you do not need to disclose your HIV status to play Australian Rules Football because the 'blood bin' rules ensure that any bleeding player is immediately removed from the field.

> What about professional combat sports?

Professional combat sports, such as boxing and martial arts, are regulated by law in most states and territories, and participants are required to undergo medical examinations and be certified medically fit to compete. In NSW, the conditions of registering for combat sports contests are found under the *Combat Sports Act 2013* (NSW) and the *Combat Sports Regulation 2014* (NSW).

When applying to be registered as a combatant under this law, all participants are required to obtain a serological clearance certificate.³³ This involves a medical practitioner providing an 'opinion' that the participant is not capable of transmitting any medical condition or disease, including HIV, to any other person. The opinion must be based on the results of blood tests or other tests carried out on a date specified in the certificate.³⁴ If you are intending to compete in professional combat sports, you should talk to your HIV specialist about obtaining a serological clearance certificate.

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

You do not need to disclose your HIV status.

Body decorating and grooming industries that deliberately pierce the skin, such as acupuncture, tattooists, and piercing services, are regulated in NSW by the *Public Health Act 2010* (NSW) and *Public Health Regulation 2012* (NSW). Under these pieces of legislation premises that undertake skin penetration procedures are required to take specifically regulated precautions against the transmission of blood-borne viruses, including HIV.³⁵

Personal appearance services that do not deliberately pierce the skin, such as hairdressers and nail salons, are not specifically regulated, but as with all workplaces, they are required to use standard precautions.

All these services are required to minimise the risk of infection to clients by using standard precautions, as described earlier in this guide, including using sterile equipment. If you think that a service is not following standard precautions, then you can draw attention to this without disclosing your HIV 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 talk to your local public health unit if you believe a service is not taking precautions.

> Do I have to tell the police or corrective services my HIV status if they ask me?

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

However, if you are being held in police custody without access to your HIV medication, it may be in your best interests to inform the police that you require this medication so that you 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 your medication to the police station. You will probably need to disclose your status because the police will need to be convinced of the importance of the medication before they will assist you.

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

If you are placed in corrective services (jail), then you may need to disclose your HIV status to Justice Health so that you can ensure that they will arrange for you to obtain treatment and see an HIV specialist periodically during your stay.

> Mandatory testing laws

In Australia, the circumstances leading to the mandatory testing for HIV, meaning without a person's consent, are very rare. Despite this, the *Mandatory Disease Testing Act 2021* (NSW) allows for mandatory testing of a person whose bodily fluid, including blood, faeces, saliva, and semen, come into contact with a 'worker' while in the execution of the 'worker's' duties.³⁶

Under the act, a 'worker' includes the following:

- Members of the NSW Police Force
- Correctional officers
- Juvenile justice officers
- Members of a fire brigade
- Persons employed in the NSW Health Service

The assault of a police officer that involved bodily fluids, such as spitting on a police officer, may lead to a mandatory test being requested, irrespective of a person's HIV status. Applications for a mandatory testing order are made by a 'worker' and will be determined by a 'senior officer', as prescribed in the legislation.

A person who fails to comply may be fined \$11,000, imprisoned for 12 months, or both.

Contact HALC for legal advice if you are subject to a mandatory disease testing order.

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

No. In most situations, 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 in 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 doing the following:

- Providing the information in writing;
- Asking the judge to keep your 'health information' private; and
- Referring to it in court as 'a chronic illness'.

If a person is charged with putting someone at risk of contracting HIV or transmitting HIV under the *Public Health Act 2010* (NSW), the court will order that the matter be dealt with in private and restrict publication of the proceedings.³⁷ Seek legal advice and discuss this with your legal representative before going to court.

PRIVACY PROTECTION

The protection of your privacy regarding your HIV status is very important, especially given the stigma, prejudice and discrimination often attached to HIV. If you believe an organisation has mishandled your health information, there are different bodies that you can complain to depending on which organisation has mishandled your information.

> **NSW Public Sector Agency**

If you believe a NSW Public Sector Agency has mishandled your health information, then you should first ask that the agency conduct an 'internal review'. A complaint must be made to the agency within six months from the time you first became aware of the incident.³⁸ The agency must complete the review as soon as is 'reasonably practicable' in the circumstances.³⁹ However, if the review is not completed within 60 days from when the complaint was received, you can make an application to the NSW Civil and Administrative Tribunal (NCAT).⁴⁰

If you are unhappy with the result of the review, you have 28 days to apply to NCAT for a review of the complaint. Any decision by NCAT is enforceable and can include ordering the agency to change its practices, make apologies or remedy damages. NCAT can award compensation for damages related to the incident.

> Private Organisations

If an organisation is subject to the *Privacy Act 1988* (Cth), then a complaint can be made to the Office of the Australian Information Commissioner (OAIC). Organisations that are subject to the *Privacy Act 1988* (Cth) include:

- Organisations with an annual turnover of \$3 million
- Federal government departments
- Private sector health service providers
- Credit reporting bodies
- A contracted service provider for an Australian Government contract ⁴¹

Before making a complaint to the OAIC you must first contact the organisation you believe has mishandled your health information to make a complaint. If the organisation does not respond to your complaint within 30 days, or you are not satisfied with their response, you can make a complaint to the OAIC (see the [Useful Contacts](#) section). Making a complaint to the OAIC is free, but there is a time limit. You have **12 months** from when you became aware of the event to lodge a complaint.⁴² The OAIC generally aims to resolve complaints through conciliation where appropriate.

Where matters cannot be resolved through conciliation, the Commissioner may make a determination that is enforceable. Outcomes from conciliation or a determination can include:

- Changes in practice, procedure or policy
- Staff training
- Review of privacy policies and procedures
- Apologies
- Financial compensation

If you are unhappy with a determination by the OAIC, you have 28 days to apply to the Administrative Appeals Tribunal (AAT) for a review of the decision. It is best to seek legal advice if you are seeking for a determination to be reviewed by the AAT.

You can also make a complaint to the Information and Privacy Commission NSW (IPC) (see the [Useful Contacts](#) section). If you have already made a complaint with the OAIC then the IPC may not investigate your complaint. A complaint must be lodged with the IPC within **6 months** from the time you first became aware of the event. Unlike the OAIC, the IPC cannot make a determination that is enforceable or award financial compensation. The IPC may try to resolve the complaint through conciliation.

If the IPC provides a report on its findings, you then have 28 days to apply to NCAT for an enquiry into the complaint. NCAT decisions are enforceable and they can award financial compensation.

If neither the OAIC or IPC are able to accept your complaint, they may refer you to another body that may be able to assist including the Health Care Complaints Commission or the NSW Ombudsman (see the [Useful Contacts](#) section).

> **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. One possible action may be to seek an apprehended violence order (AVO) against them. However, the court will only order an AVO under specific circumstances. You must prove that you fear the person you are seeking the AVO against and that there is reasonable grounds for that fear. Merely fearing that the person will disclose your HIV status to other people would not satisfy this requirement. If the court orders an AVO against that person, the court can order them not to disclose your HIV status to other people as one of the conditions.

Although you can apply directly to the court for an AVO, it is first advisable to make a complaint to the police. In some circumstances, the police may apply to the court on your behalf. If you apply to the court yourself for an AVO (without police assistance) and are unsuccessful, then you risk having to pay the other party's legal costs of the proceedings.

Seek advice from HALC or Positive Life NSW if someone is disclosing your HIV status without your consent (also see [What is HIV Vilification?](#) under the [Discrimination](#) section for more information).

Remember 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 the [Discrimination](#) section).

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 would like to consider disclosing your status. What we mean by 'disclosing' your status is telling a person that you are living with 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 been living with HIV for some time, the issues surrounding disclosure can be challenging.

THERE CAN BE SOME BENEFITS TO DISCLOSURE.

It can help with the following:

- Provide an opportunity to connect with others who also live with 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 the following:

- Negative reactions including rejection or harassment;
- Physical violence;
- Stigma and discrimination;
- Causing distress to yourself or others;
- Needing to educate others about HIV or provide them with emotional support; and
- Loss of control over your disclosure or being 'outed' as living with HIV.

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

> Feeling safe to disclose

When considering disclosing your HIV status, remember that you should weigh 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 you can even reconsider if you should tell them.

People may react differently to your disclosure. Everybody is unique. Some people may immediately accept your HIV status. Others may need more time and information to respond or adjust to your disclosure. The person may also be shocked or surprised and you may see them react out of character. 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.

Prior to your disclosure, take the opportunity to discuss your disclosure with a peer support officer at Positive life NSW. Together you can explore how to prepare, what are the possible reactions you can expect, how to deal with these and where to get further support if you need it.

People living with HIV are often put in an educator position 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 such as Positive Life NSW to answer their question/concerns, or direct them to HIV support agencies.

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 choosing to change your disclosure setting to somewhere more public or in the presence of a friend, a peer support officer from Positive Life NSW, 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' which is available at: <https://www.positivelife.org.au/blog/hiv-disclosing-to-your-child/>

Remember that you may be living with 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 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 indiscriminately 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 are not comfortable with, including how you acquired HIV. Remember that 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 on the support and experience available to you. This can be done through Positive Life NSW peer support services, counselling, or psychology services.

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 this may have on you. Positive Life NSW can support you in deciding about going public and in going over the considerations involved. For instance, how much of your story would you like to share and in which environments?

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 find out what to expect, if you decide to do so. Positive Life NSW can help you get in touch with the right person.

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 because there is no perfect roadmap for disclosure. Every person is unique.

The following 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. (Will there be privacy? Is there support around you if the disclosure does not go the way you thought it would?)
- ✓ 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 your decision to disclose. (In some communities, attitudes about sex, sexuality, and drugs may make it harder to talk about HIV and living with 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—invite them to call Positive Life NSW or 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 or calling Positive Life NSW and practicing with one of their peers (someone also living with HIV)? 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 living with HIV. I'm telling you because I trust you, you are important to me and I wanted you to know'.
- ✓ 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 so will 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, rejection from their own families and friends, or even social isolation from their 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 you are not alone.

HIV stigma can happen, and it hurts. It can occur at many different levels, and often, it is not obvious at first glance. 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 acquired HIV.

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

Ways to work with and through stigma are to draw on and develop your personal resilience. If you are feeling down because of someone being ignorant about HIV, this can be an early sign of 'internalising stigma' – the process of adopting negative beliefs and/or being emotionally controlled by someone else's ignorance. Reach out to support organisations made up of peers (others living with HIV) such as Positive Life NSW. Join groups for people living with HIV, and focus on those friends and family who are supportive.

> Disclosure, the environment and stigma

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

It serves as 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 the following:

- 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;
- 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 about fostering community resilience. When we draw on our diverse and collective strengths, together, we can challenge societal stigma.

> What if my status is disclosed without my consent?

The previous section of this guide outlines the legal actions that are available if your status is disclosed without your consent.

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

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

This 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 (see the [Useful Contacts](#) section).

If you do have a negative experience, it is important to talk to Positive Life NSW or someone you trust so that you do not start to believe those negative thoughts about yourself.

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

- Is there a legal solution 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 such as Positive Life NSW.

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

USEFUL CONTACTS AND RESOURCES

HIV/AIDS Legal Centre (HALC)	<p>For advice and information on all HIV and hepatitis related legal issues</p> <p>www.halc.org.au Phone: (02) 9492 6540 Email: halc@halc.org.au</p>
Aboriginal Legal Service NSW/ACT	<p>Free legal advice and assistance for Indigenous people</p> <p>www.alsnswact.org.au Phone: (02) 9213 4100 Freecall: 1800 765 767 <i>for police charges and court matters</i> 1800 733 233 <i>care and protection and family matters</i></p>
ACON Sydney	<p>HIV prevention, education, and sexual health information for communities at risk of HIV and counselling and other support services</p> <p>www.acon.org.au Phone: (02) 9206 2000 Freecall: 1800 063 060</p>
Anti-Discrimination NSW	<p>Information and assistance with discrimination complaints</p> <p>www.antidiscrimination.nsw.gov.au Phone: (02) 9268 5544 Freecall: 1800 670 812</p>
Australian Federation of Aids Organisations (AFAO)	<p>Leadership, coordination, and policy and advocacy support</p> <p>www.afao.org.au Phone: (02) 9557 9399</p>

Australian Human Rights Commission (AHRC)	<p>Information and assistance with discrimination complaints</p> <p>www.humanrights.gov.au Complaints InfoLine: 1300 656 419 General enquiries: 1300 369 711 TTY (for hearing impaired): 1800 620 241</p>
Australian Information Commissioner	<p>Information and assistance with privacy complaints</p> <p>www.oaic.gov.au Phone: 1300 363 992</p>
Bobby Goldsmith Foundation (BGF)	<p>Range of services for people living with HIV, including case management, case work, financial counselling, and well-being programmes</p> <p>www.bgf.org.au Phone: (02) 9283 8666</p>
Community Legal Centres New South Wales	<p>For information about your nearest Community Legal Centre</p> <p>www.clcnsw.org.au</p>
Financial Rights Legal Centre	<p>Advice on consumer finance issues</p> <p>financialrights.org.au Freecall: 1800 007 007</p>
Healthcare Complaints Commission	<p>Receives and assesses complaints against healthcare providers in NSW</p> <p>www.hccc.nsw.gov.au Phone: (02) 9219 7444 Freecall: 1800 043 159 TTY (for hearing impaired): (02) 9219 7555</p>

Immigration Advice and Rights Centre (IARC)	<p>Immigration specialist community legal centre providing free legal advice and assistance to people throughout New South Wales</p> <p>www.iarc.org.au Phone: (02) 8234 0700</p>
LawAccess NSW	<p>Free government telephone service that provides legal information, referrals, and advice</p> <p>www.lawaccess.nsw.gov.au Phone: 1300 888 529</p>
Multicultural HIV and Hepatitis Service	<p>Support and advice for people living with HIV and/or hepatitis from non-English-speaking backgrounds</p> <p>www.mhahs.org.au Phone: (02) 9515 1234 Freecall: 1800 108 098</p>
National Association of People with HIV Australia (NAPWAH)	<p>NAPWAH is the national peak organisation representing people living with HIV in Australia</p> <p>www.napwha.org.au Phone: (02) 8568 0300 Freecall: 1800 259 666</p>
Positive Life NSW	<p>The voice of all people living with HIV since 1988 offering information, referral, and advice on all relevant issues</p> <p>www.positivelife.org.au Phone: (02) 8357 8386 Freecall: 1800 245 677</p>

Pozhet (Heterosexual HIV Service)	<p>The lead agency in NSW for issues related to HIV and heterosexuality</p> <p>www.pozhet.org.au Phone: 1300 363 992 Freecall: 1800 812 404</p>
Sex Workers Outreach Project (SWOP)	<p>Help, support, and information for sex workers in NSW</p> <p>www.swop.org.au Phone: (02) 9184 9466</p>
Travel Information	<p>Worldwide travel information for HIV positive people</p> <p>www.hivtravel.org</p>
Welfare Rights Centre NSW	<p>Information, assistance, and advocacy for people reliant on the Social Security system.</p> <p>www.welfare.rightscentre.org.au Phone: (02) 9211 5300 Freecall: 1800 226 028 TTY (for hearing impaired): (02) 9211 0238</p>
Information and Privacy Commission (IPC) NSW	<p>Promotes and protects information access rights in NSW and provides information, advice, assistance and training for agencies and individuals on information access matters.</p> <p>www.ipc.nsw.gov.au Freecall: 1800 472 679</p>

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3. *Ibid*, s61I.
4. *Public Health Act 2010* (NW) s79.
5. *Ibid*.
6. *Public Health Regulation 2022* (NSW)
7. *Public Health Act 2010* (NSW) s62.
8. *Crimes Act 1900* (NSW) s 4, definition of 'grievous bodily harm' includes 'any grievous bodily disease (in which case a reference to the infliction of grievous bodily harm includes a reference to causing a person to contract a grievous bodily disease).
9. *Ibid*, s 33(1).
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13. *Anti-Discrimination Act 1977* (NSW) s4 *Disability Discrimination Act 1992* (Cth) s4.
14. *Anti-Discrimination Act 1977* (NSW) Part 4F
15. *Anti-Discrimination Act 1977* (NSW) s49D(4)(a).
16. *Ibid*, 4(b).
17. *Ibid*, s49C for definition of 'unjustifiable hardship.'
18. *Fair Work Act 2009* (Cth) s789FC.
19. For example see s366 of *Fair Work Act* (Cth) where an application for the Fair Work Commission to deal with a dismissal dispute must be made within 21 days after the dismissal took effect.
20. *Work Health and Safety Act 2011* (Cth) s19, *Work Health and Safety Act 2011* (NSW) s19.
21. *Ibid*.
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23. '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' Communicable Diseases Network Australia - [https://www1.health.gov.au/internet/main/publishing.nsf/Content/36D4D796D31081EBCA257BF0001DE6B7/\\$File/nat-guidelines-work-bbv-Oct2019.pdf](https://www1.health.gov.au/internet/main/publishing.nsf/Content/36D4D796D31081EBCA257BF0001DE6B7/$File/nat-guidelines-work-bbv-Oct2019.pdf)
24. *Ibid*, p 32.
25. *X v Commonwealth of Australia* [1999] HCA 63.
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27. *Anti-Discrimination Act 1977* (NSW) s49Q.
28. *Disability Discrimination Act 1992* (Cth) s46.
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30. *Human Tissue Act 1983* (NSW) s20D, 20E.
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33. *Combat Sports Act 2013* (NSW) s11.
34. *Ibid*, s7(1).
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36. *Mandatory Disease Testing Act 2021* (NSW).
37. *Public Health Act 2010* (NSW) s80.
38. *Health records and Information Privacy Act 2022* (NSW) s21 and *Privacy and Personal Information Protection Act 1998* (NSW) s53(3).
39. *Privacy and Personal Information protection Act 1998* (NSW) s53(6).
40. *Ibid*.
41. *Privacy Act 1988* (Cth) s6C and 6D.
42. *Ibid*, s41(c).

