

DISCLOSING YOUR HIV STATUS

A GUIDE TO SOME OF THE LEGAL ISSUES
IN WESTERN AUSTRALIA

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guide

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HIV/AIDS Legal Centre Incorporated (NSW)



WA AIDS COUNCIL

This guide contains the relevant law on disclosure of HIV status as it applies in Western Australia as at 3 April 2013. It has been prepared by the HIV/AIDS Legal Centre (HALC) and funded by the Western Australian AIDS Council (WAAC)

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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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WA guide

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

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. Contact the HIV/AIDS Legal Centre (HALC) for legal advice if someone is telling you that you have a 'duty of care' to inform a person or group of your HIV status.

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.

SEX AND RELATIONSHIPS

Public health laws

Western Australia is planning to introduce new and modernised public health legislation in future.

The current health laws do not specifically deal with sexual transmission of HIV. These laws do not require you to disclose your HIV status to your sexual partner. However, if you transmit HIV to a sexual partner you may face criminal charges for transmission of the virus (see below).

The proposed public health laws contain penalties for people who engage in an activity which will cause, or is likely to cause, a serious public health risk. Accordingly, although the proposed law does not require disclosure of HIV status prior to sexual intercourse, it does require both HIV positive and negative people to take all reasonable steps to prevent transmission, such as through the use of condoms or dams.

Note: please ensure you regularly check the HALC and/or WAAC websites for updated information about this legislative change

Case Management Program

The Case Management Program is part of WA Health and is aimed at HIV positive people who knowingly expose others to the risk of infection. The Program operates under existing laws and is intended to operate until the new public health laws are in place. The Program provides counselling, support and education with the aim of encouraging people to change their behaviour, in those rare instances where there is reason to believe that a person with HIV is putting others at risk.

If you are contacted by the Case Management Program Team, we recommend that you seek guidance and legal advice. See *Useful Contacts* at the end of this guide.

Criminal and Civil charges

An HIV positive person who transmits HIV to another person can be charged with an offence under the *Criminal Code* for unlawfully doing 'grievous bodily harm' to another person. The Code provides for a penalty of up to 10 years imprisonment, or 14 years imprisonment 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).

It can also be a criminal offence where HIV was not actually transmitted but there was an *intention* to transmit it, and it was likely to result in another person contracting HIV. Such an offence, if proven, can result in a maximum penalty of imprisonment for 20 years.

Other criminal offences may include acts or omissions causing bodily harm or endangering another person's health.

The *Code* imposes a duty to take reasonable care and use precautions to avoid endangering the life, safety or health of any person. You should always practise safe sex and take precautions to prevent transmission to your sexual partners.

If you negligently allow another person to become HIV positive, you may be at risk of your sexual partner taking a civil claim against you under Negligence or Personal Injury. A civil claim means that they take court action to get monetary compensation from you. Such a claim is difficult and costly to pursue and has been successful in Australia on only one occasion to date.

Travelling Interstate and Overseas

The laws around HIV and sex differ from state to state in Australia. For example, in NSW and Tasmania you must disclose your HIV positive status to your partner before you have sex. This applies even if you have protected sex.

Check before you travel. A summary of state laws in relation to disclosure prior to sex is available on the HALC website at www.halc.org.au.

Similarly, the laws surrounding disclosure to sexual partners differ significantly from country to country. It is important that before travelling 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.

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 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 have been addressed throughout this guide. If you believe your confidentiality or privacy has been breached you should contact HALC for legal advice.

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 dependable remedies for this situation.

Depending on the circumstances (ie, what precisely was said, and the manner in which the disclosures were made), you may be able to apply for an apprehended violence order to restrain the person from continuing to harass you. 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 be able to sue for a *breach of confidence*. Finally, if the person's comments are defamatory, then you may also be able to sue under defamation law.

Unfortunately, both defamation and breach of confidence actions are costly and carry a significant risk for applicants because if you lose you will end up liable for the other person's legal costs. These actions are also only worthwhile where the other party has considerable assets, as the principal remedy is economic damages.

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

MEDICAL /DENTAL CARE AND TREATMENT

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

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

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

If you disclose your HIV status to a medical practitioner, then this information, like all other medical information, is protected by the medical profession's duty of confidentiality. 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). Health professionals are not allowed to treat you less favourably than any other patient because of your

HIV status. The exception to this is if a medical practitioner, nurse or responsible pathologist suspects that you are engaging in risky behaviours, then they may report your behaviour to the Department of Health.

Do I have to disclose to my dentist?

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

Ideally, try and find a dentist who is used to dealing with HIV positive patients so that you will feel comfortable disclosing your status to him or her. Your HIV doctor may be able to recommend a dentist; or you could try asking your friends or staff at WAAC.

Do I have to disclose to other health care providers?

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

Sometimes medical practitioners are not as careful with handling your confidential information as they should be, particularly when they are dealing with other medical staff. If you have any concerns, you should clearly remind the practitioner you are dealing with know that they should not pass on your information without your written consent. This will prevent your surgeon, for instance, from passing on the information to your GP (who may not know of your 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.

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, 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* makes it unlawful to discriminate against a person who has an impairment. Having HIV is considered to be an impairment for the purposes of discrimination law even if you do not have an HIV related illness or AIDS.

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 another impairment. Indirect discrimination occurs when there is a requirement, practice or policy that applies to everyone but has an unfair effect on you because of your impairment; and the requirement, practice or policy is unreasonable in the circumstances.

It is unlawful to discriminate against you 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.

Family responsibility and family status

It is unlawful for someone to discriminate against you in employment or education because you have a responsibility to care for a family member. For example, where you are entitled to sick leave, it would be unlawful for your employer to dismiss you because you took time off work to care for a sick family member.

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

It is unlawful to discriminate against you:

- in almost all types of employment (see *Employment* section for the exceptions);
- when providing educational services;
- when providing goods, services or facilities;
- when providing membership of clubs and incorporated associations; and
- when providing accommodation, except where the person providing the accommodation (or their near relative) lives at the premises.

There are some exemptions or defences to discrimination, 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 similar 12 month limit applies to these complaints as well. 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).

Discrimination at work

If you feel you are being treated badly at work because of your HIV status, seek legal advice early on, as the problem may be able to be resolved in a way that enables you to keep on working with your employer without any further problems.

Most unions provide confidential legal advice to their members, 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).

EMPLOYMENT

Do I have to tell my employer or prospective employer?

Generally, you are not obliged to tell an employer or prospective employer that you are HIV positive. It is generally unlawful for an employer to discriminate against job applicants or employees merely because they have or are believed to have HIV, but there are exceptions.

An employer can lawfully discriminate against employing you if you are unable to carry out the work reasonably required to be performed in the course of the employment. There are very few jobs where this is likely to apply, but there are some jobs where you must disclose your HIV status, even if you believe that it does not affect your ability to do the job (*see Exceptions below*). Similarly, there are very few jobs where an employer or prospective employer can legally ask about your HIV status or require you to have an HIV test (*see Exceptions below*). If an employer asks about your HIV status and they do not fall into the various exceptions then you have no obligation to disclose.

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, then the employer can lawfully discriminate against employing you. An employer cannot lawfully discriminate against you unless they have taken all reasonable steps to obtain relevant and necessary information concerning HIV or any other impairments you may have.

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

If an employer dismisses you because you have HIV, or prevents you from undertaking certain tasks that would normally be part of the job, then this may amount to unlawful discrimination.

Get legal advice about your rights. 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, talk with HALC (*see Useful Contacts* at the end of this guide *see also Discrimination section*).

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

There is currently no legal obligation to disclose your HIV status to your clients, but you must use either a condom or a dam to prevent the transmission of bodily fluid between you and your clients. Engaging in an act of prostitution without using a condom or a dam is an offence with a penalty of up to \$5,000 regardless of your or the client's HIV positive status.

New laws have been proposed. The Prostitution Bill 2011 seeks to introduce a licensing system and proposes prohibiting HIV positive persons from taking part in sex work. At the date of publishing this Guide, the Bill has not become law.

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, and it may be unlawful for your employer to require you to undergo an HIV test. You have a duty to take reasonable care to ensure your own safety and health and to avoid adversely affecting the health and safety of others in the work place. Employers and managers must ensure that first aid is available at all times.

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* above.

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 work place. ARVs sometimes cause false positive results for prohibited substances, such as cannabis. If you receive a false positive on a drug test due to your ARV medication then this may cause some problems. 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. It is advisable to have with you, or to obtain if this occurs, a letter from your HIV doctor 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 cite your HIV condition as the reason for the medication or to list the ARVs. 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 an HIV positive health care worker, you can usually continue to work without any restrictions. However, you must not perform 'Exposure Prone Procedures' (EPPs). These 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. This restriction particularly affects surgeons, dentists and a limited number of nurses. If you are an HIV positive surgeon, dentist or nurse performing EPPs, you must seek advice from your professional body as to the types of procedures you may and may not perform or assist with. Other health professionals should also seek clarification if they are unsure whether their work involves EPPs.

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 you may or may not be discharged depending upon the stage of your infection. Combat and related roles are specifically exempted from the protection of discrimination legislation.

Aviation

HIV positive people are not able to gain or hold certain classes of commercial aviation licences. It is an offence to give false or misleading information, or to omit information when completing an application for an aviation medical examination. This includes lying about your HIV status. The maximum penalty is twelve months imprisonment.

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

Apart from the exceptions listed above, you do not need to disclose your HIV status to your employer. 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 infecting other people at work, should I tell my workmates or my boss?

Under the *Occupational Safety and Health Act 1984*, 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. As an employee, you also have a duty to protect your own health and safety at work, and to avoid adversely affecting the health and safety of others. **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. 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?

Employers have a general duty to maintain employee confidentiality and in many cases, your employer will be subject to the *Privacy Act 1988*, which requires that the information you give be kept confidential. In practice, though, if your employer breaches the duty then there may be no way to provide a satisfactory remedy. Consider very carefully before disclosing because once you have disclosed, you cannot take the information back. While your current boss or supervisor may be understanding, if your HIV positive status is on file then your next boss will also have access to this information and he or she may have a very different attitude.

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, this 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.

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 HIV positive people, as there is no disclosure of HIV status required.

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.

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 don't disclose all the health information requested, you may face problems later on if you try to claim on the policy.

Superannuation funds may lawfully discriminate against you in the provision of insurance on the ground that you have 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. (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?

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

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

Now that advances in HIV treatment have improved the general health and life expectancy of HIV positive people, the range of insurance policies available if you are HIV positive is increasing. It's worth shopping around to find a company that offers the type of cover you want. Discrimination law covers insurers, although they may lawfully discriminate against you on the grounds that you have 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. The insurance products currently available for people with HIV are arguably significantly behind the times, and a refusal to provide insurance could well be discriminatory. If you feel that you have been discriminated against, you should get legal advice or contact HALC.

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. However, 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.

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 (which is what an annuity is for). 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.

What about travel insurance? Is my HIV status relevant?

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

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

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

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

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

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

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

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

What about private health insurance for temporary visa holders?

The same rules apply to private health insurance irrespective of whether you are an Australian Citizen or Permanent Resident, or if you are a temporary visa holder.

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 positive people please see the *Positive Migration Guide* located on the HALC website www.halc.org.au

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 HIV positive people 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.hivrestrictions.org this website contains information about overseas travel for HIV positive people.

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

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

TRAVEL TO AUSTRALIA

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 an HIV test. Being HIV positive will not usually prevent you being granted a short term visa such as a tourist visa, even if you are on treatment.

Can I come to live in Australia on a longer term visa or permanently if I am HIV positive?

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

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

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

- If you wish to claim Disability Support Pension or Sickness Allowance because you are HIV positive and unable to work because of HIV related illness.
- If you are receiving Youth or Newstart Allowances and want to be exempted from activity testing because you are sick with an HIV related illness.
- If you have a carer who wishes to claim Carer Payment or Allowance on the basis that they provide care for you because of your HIV related illness.
- If you are currently receiving a Centrelink payment and you experience a 'change of circumstance' relating to your HIV status that affects your eligibility to receive the payment.
- If you are asking for special treatment from Centrelink because of your HIV status. For example, if you want Centrelink to waive recovery of an overpayment because of the special circumstances of your illness.

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

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

Centrelink is able to confirm your details and share your information with other agencies to ensure the accuracy of the

information you have provided and that you are receiving the correct benefits. The sharing and disclosure of information can extend to disclosing your personal information to organisations such as to job network providers. It is possible to request higher protections on personal health information such as your HIV condition; and such requests for greater privacy protections should be renewed periodically. For more information, contact the Welfare Rights & Advocacy Service. See *Useful Contacts* at the end of this guide.

HOUSING

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

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

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

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

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 land lord, 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 his or her close relatives (*see Discrimination* section).

EDUCATION

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

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

Upon enrolling your child, you may be asked about any health conditions the child has. This is to enable trained staff to provide support for certain common conditions that may require attention during the day, for example a child with a nut allergy. School and child care staff are required to use Standard Precautions in the event of any incident that involves blood or bodily fluids. HIV positive children normally would not require any special health management by school or child care staff, and in those circumstances there is no need to disclose your child's status.

The *Equal Opportunity Act* and the *Disability Discrimination Act* provides that it is unlawful to discriminate in providing education on the grounds of impairment. Accordingly, if the school or childcare centre does learn of your or your child's HIV status they cannot deny admission and must keep that information confidential.

For more information on supporting children with HIV see the Guide for Women with HIV found on the HALC website www.halc.org.au

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.

If a financial institution becomes aware of your HIV status they are required to keep that information confidential, and 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.

SPORT

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 bleeding player 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. There are, however, exceptions.

Professional combat sports (such as boxing and martial arts) are regulated by legislation. Contestants are required to undergo medical examinations, including HIV tests, and to disclose the use of any prescribed medications. You will not be allowed to compete if you are HIV positive. If your HIV status is discovered in the course of a medical examination for participation in the sport the medical examiner may disclose that you're not medically able to participate, however they must keep your HIV status confidential.

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

BODY MODIFICATION

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 these people. If you are having *skin penetration procedures* done you must disclose your HIV status. 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. If you do not disclose this may result in a penalty of up to \$1,000.

POLICE AND THE COURTS

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

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

However, if you are being held in police custody without access to your HIV medication, it may be in your best interests to inform the police that you require this medication, so that you don't miss any doses. You can request that the police 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 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 won't 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.

HIV/AIDS Legal Centre (HALC)

Nationwide advice on all HIV related legal issues.

www.halc.org.au

Phone: (02) 9206 2060

Freecall: 1800 063 060

WA AIDS Council (WAAC)

HIV prevention education, counselling, care and support services in Western Australia.

www.waids.com

Phone: (08) 9482 0000

Legal Aid WA

Free legal advice and assistance.

www.legalaid.wa.gov.au

Telephone InfoLine: 1300 650 579

Aboriginal Legal Service of Western Australia

Free legal advice and assistance for Indigenous people.

www.als.org.au

Phone: (08) 9265 6666

Freecall: 1800 019 900

Equal Opportunity Commission of Western Australia

Information and assistance with discrimination complaints.

www.eoc.wa.gov.au

Phone: (08) 9216 3900

Freecall: 1800 198149

TTY (for the hearing impaired): (08) 9216 3936

Australian Human Rights Commission

Information and assistance with discrimination complaints.

www.hreoc.gov.au

Complaints InfoLine: 1300 656 419

General enquiries: 1300 369 711

TTY (for the hearing impaired): 1800 620 241

Australian Information Commissioner

Information and assistance with privacy complaints

www.oaic.gov.au

Phone: 1300 363 992

TTY (for the hearing impaired): 1800 620 241

National Health and Medical Research Council

Australian Guidelines for the Prevention and Control of Infection in Healthcare (2010) including Standard Precautions Information

www.nhmrc.gov.au/book/australian-guidelines-prevention-and-control-infection-healthcare-2010/b1-standard-precautions

Consumer Credit Legal Service (WA)

Advice on consumer finance issues

cclswa.org.au

Phone: (08) 9221 7066

Employment Law Centre of WA

Legal advice, assistance and referrals for employment matters in WA

www.elcwa.org.au

Phone: 1300 130 956 or (08) 9227 0111

Regional, Rural and Remote Advice: 1300 520 054 or 9227 0185

Magenta and SWOPWA

Services, support and information for sex workers in Western Australia

www.magenta.org.au

Phone: (08) 9328 1387

Welfare Rights & Advocacy Service

Help with Centrelink issues for people in Western Australia

www.wraswa.org.au

Phone: (08) 9328 1751

Travel Information

Worldwide travel information for HIV positive people

www.hivrestrictions.org

The Health and Disability Services Complaints Office (HaDSCO)

Information and assistance with complaints against health care providers

[*www.hadsco.wa.gov.au*](http://www.hadsco.wa.gov.au)

Complaints and enquiries line: (08) 6551 7600

Country Free Call: 1800 813 583

TTY (for the hearing impaired): (08) 6551 7640

Department of Sport and Recreation

Information about sports and restrictions on participation

[*www.dsr.wa.gov.au*](http://www.dsr.wa.gov.au)

Phone: (08) 9492 9700

NOTES

WA guide

Western Australian AIDS Council

664 Murray St West Perth 6005
PO Box 1510 West Perth WA 6872
Tel: (08) 9482 0000
Fax: (08) 9482 0001
email: waac@wa aids.com
www.wa aids.com

halc

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414 Elizabeth Street Surry Hills 2010
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Tel: (02) 9206 2060
Fax: (02) 9206 2053
Freecall: 1800 063 060
email: halc@halc.org.au
www.halc.org.au