



POCKET GUIDE

**DISCLOSING
YOUR HIV
STATUS**

EMPLOYMENT

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

No, you do not have to tell an employer or prospective employer that you are HIV positive unless you work in one of the jobs outlined in the question below.

Which jobs require me to disclose my HIV status to my employer?

Medical practitioners who perform certain procedures need to know and disclose their HIV status. The Australian Defence Force tests for HIV and you are likely to not be accepted if you are HIV positive. Pilots or air traffic controllers living with HIV must have medical certification which is undertaken on a case-by-case basis following medical assessment and is reviewed at regular intervals.

Am I allowed to do sex work if I am living with HIV?

No, in Victoria, it is against the law for a person to work as a sex worker while knowingly having a sexually transmitted infection; this includes HIV.

If I tell my boss that I am positive, are they legally obligated to keep it confidential?

Employers have a legal obligation to maintain employee confidentiality, however, they may not. See the **Privacy and Confidentiality** section if someone has breached your confidentiality.

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.*

SEX & RELATIONSHIPS

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

In Victoria, you are not legally required to disclose provided you are not recklessly putting another person at risk of contracting HIV. Using condoms and lube would satisfy this requirement, and being on effective HIV medication and having an undetectable viral load may also satisfy this requirement.*

What if they knew that I was HIV-positive?

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

What if I lie to a sexual partner about my HIV status?

Although you are not required to disclose your HIV status to a person prior to having sex, it is important that you do not lie about your HIV status if asked prior to sex. Lying about your HIV does not only include what you say but can also include other actions or omissions. For example, if you were directly asked about your HIV status and you shake your head; explicitly do not answer; or if you have a dating profile that states you are HIV negative, may be considered as lying.

Can someone sue me if we had sex?

If, due to 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. It is always recommended that you use your preferred method of preventing HIV transmissions and to disclose when it is safe and appropriate to do so.

Note: Remember that the laws around HIV and sex differ from state to state in Australia. Check before you travel.

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. This may affect your ability to claim against the insurance policy.*

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.*

What about travel insurance? Is my HIV status relevant?

Some insurance companies offer travel insurance that covers HIV related illnesses which means there will be no argument as to whether your claim is related to your HIV infection or not. 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.*

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

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.*

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. Health insurance for temporary residents is not covered by the same law, and insurers can refuse cover due to your HIV status. It is worth shopping around for a suitable policy.*

TRAVEL

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; do I have to disclose my HIV status?

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 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.*

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 you are on treatment or not, 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.*

Can I come to live in Australia 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 HIV/AIDS Legal Centre (HALC) website at www.halc.org.au and contact HALC if you have further questions.

MEDICAL & DENTAL CARE 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; including dental work. However, it may be wise to disclose your HIV status to ensure you receive the most appropriate medical treatment.

Do I have to disclose to other health care providers?

You do not need to disclose your HIV status to other health care providers, such as naturopaths, osteopaths, chiropractors, or masseurs. This is also true for in-home carers, palliative care, and aged care facilities.

What if I think a healthcare worker is not following Standard Precautions?

If you think that a healthcare worker is not following Standard Precautions, such as gloves or clean equipment, then you can draw attention to this without disclosing your HIV status.

Can a healthcare worker disclose my HIV status?

If you disclose your HIV status to a healthcare worker, then this information, like all other medical information, is protected by the medical profession's duty of confidentiality. See the **Privacy and Confidentiality** section if someone has breached your confidentiality.

Can I donate blood if I have HIV?

No, you are legally obligated to disclose your HIV status.

Can I donate my organs?

Yes, people living with HIV are allowed to register for organ donation. Although it is not yet common practice, people living with HIV are able to receive HIV positive solid organ donations.

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

No, you do not need to disclose to personal appearance services like hairdressers, nail salons, beauty therapists, tattoo and piercing services. All such services are required to minimise the risk of infection to clients, by using Standard Precautions as detailed in the law and guidelines.

CENTRELINK

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. 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 consideration from Centrelink because of your HIV status. For example, if you want Centrelink to waive reporting requirements because of the special circumstances of your illness.

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.

In a private rental, do I need to disclose my HIV status to my landlord, real estate agent, or housemate(s)?

No, you do not have to disclose your HIV status to your landlord, real estate agent, or housemate(s), and we would advise against it.

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.

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 am having trouble making repayments because I am sick?

If you are having difficulty meeting repayments on a loan or credit card due to ill health, seek advice as soon as possible. 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.

SPORT

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

No. All sports will have a “Blood Rule” to minimise the possibility of transmitting any blood borne virus, including HIV. Some professional combat sports such as boxing and martial arts are regulated by law and participants are required to undergo medical examinations, including a blood test, and be certified medically fit to compete.

POLICE & 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 do not miss any doses.*

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. If you are charged with putting someone at risk of contracting HIV or transmitting HIV under the Public Health and Wellbeing Act 2008, the court can order that the matter be dealt with in private and restrict publication of proceedings. Seek legal advice and discuss this with your legal representative before going to court.*

PRIVACY PROTECTION

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

Unfortunately, there are no set rules for this situation. Seek advice from your local Community Legal Centre or Living Positive Victoria if someone is disclosing your HIV status without your consent.

Can my HIV status be disclosed without my consent?

Only in extremely limited circumstances can your HIV status be disclosed without your consent. Even then, it can be done only in strict accordance with relevant laws. Circumstances in which your status can be disclosed include:

- If you have consented to disclosure;
- If authorised, permitted or required by law in criminal court proceedings or for a public health matter;
- If it is required for the provision of health care treatment that will benefit you;
- In accordance with recognised medical practices to disclose to next of kin;
- To the Australian Red Cross Society for the purpose of tracing blood products.

DISCRIMINATION

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, 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 accommodation.

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 can make a complaint to the Victorian Equal Opportunity and Human Rights Commission. You have 12 months from the date the discrimination happened in which to make a complaint.

What if I am discriminated against at work?

Fair Work Australia and unions provides some protections against workplace discrimination, for example if you have been sacked from your job because of your HIV status. Note that a complaint to Fair Work for workplace discrimination leading to termination of employment must be made within 21 days of the date of the termination.

FOR MORE INFORMATION

**Please refer to the full Disclosure Guide*

Content is adapted with permission from Queensland Positive People's Peer Navigation Program.

