

A GUIDE TO THE LEGAL ISSUES
WITHIN VICTORIA

DISCLOSING YOUR HIV STATUS

This guide contains the relevant law on disclosure of HIV status as it applies in Victoria at 8 December 2020. It has been prepared by the HIV/AIDS Legal Centre (HALC) in partnership with Living Positive Victoria and funded by the Victorian Law Foundation. This publication is copyright. It may be reproduced in part or whole or educational purposes where proper credit is given to the HIV/AIDS Legal Centre (HALC) and Living Positive Victoria.

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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

A guide to some of the legal issues

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 to assist in feeling empowered about your choice to disclose in your personal life, 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 is a guide to what the law says about disclosing your HIV status in Victoria. 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, however 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 reason Standard Precautions are used is that it is impossible to know if someone has a blood borne virus such as HIV, hepatitis B or hepatitis C. See **Useful Contacts** at the end of this guide for further information on Standard Precautions.

SEX & RELATIONSHIPS

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

- *Public Health laws* are intended to reduce the risk of HIV transmission and encourage safe sex practices
- *Criminal laws* are intended to punish people who transmit HIV to others either deliberately or through lack of adequate care. They are also meant to deter people from transmitting HIV to others.
- *Civil laws* allow people to get compensation if HIV has been transmitted deliberately, or as a result of recklessness and/or a lack of adequate care. Successful prosecutions under these laws are extremely rare in Australia.

There are relatively few cases of transmission of HIV which are taken to Court in Australia. There is now a significant body of scientific and medical evidence that shows that a person on anti-retroviral medication with a viral load below 200 copies/mL (known as an undetectable viral load) has very low to negligible risk to transmitting HIV. This evidence now stands in addition to the long-held view that the main method to minimise risk to transmission of HIV is through the effective use of condoms. As such, what constitutes protected sex practices in relation to HIV remains an area of developing law. You should consult with your HIV specialist about the risk of HIV transmission to sexual partners, as there are, for example, a range of factors that can affect individual viral loads and the risk of transmission of HIV.

Public health

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

No, in Victoria there is no legal requirement for you to disclose your HIV status before you have sex. However, the *Public Health and Wellbeing Act (Vic)* does outline principles of mutual responsibility to be followed to limit the risk of transmitting HIV.

If you are living with HIV you must take all reasonable steps to eliminate or reduce the risk of another person contracting HIV.¹ The principles also state that a person who is not HIV positive, but is at risk of contracting HIV, must take all reasonable precautions to avoid contracting HIV.² This means that it is the responsibility of both the person living with HIV and their sexual partner to take reasonable precautions to avoid the risk of contracting HIV. If you are not living with HIV and are unaware of, or are not confident of someone's HIV status, you should always take reasonable precautions to minimise the risk of contracting HIV.

What is reasonable precautions?

For a person living with HIV, your treating doctor is required to give you information on how not to transmit HIV to another person at the time of your diagnosis, unless this information has been provided to you by another health care worker. As such, your treating doctor is always the first point of information on how to reduce the risk of transmission of HIV to another, or in other words how to take "reasonable precautions".

The Victorian *Public Health and Wellbeing Act* does not define what is meant by 'reasonable precautions', however, other in other states reasonable precautions include:

- Using Condoms
- Having an undetectable viral load of less than 200copies/mL resulting from being on effective treatment; or
- Seeking and receiving confirmation from a sexual partner that they are taking pre-exposure prophylaxis (PrEP)

Note that proving your sexual partner confirmed with you that they are taking PrEP may be difficult where it is one person's words against another, unless you have other evidence that confirms they are on PrEP. As stated previously, you should check with your doctor what reasonable precautions you should be taking in your particular circumstances.

People who put others at risk and public health orders

Instances where a person living with HIV knowingly puts another at risk of contracting HIV are rare, however, 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 to support them with additional counselling or other interventions to prevent them from putting others at risk of contracting HIV.

The interventions that can be utilised under the *Public Health and Wellbeing Act* range from counselling and education, and progress to more intensive or restrictive measures if the person is not able or willing to engage with the process.³ In the most extreme cases, court orders can be sought to detain a person if their behaviour is putting others at risk of contracting HIV.⁴

A person who is placed under such orders should seek legal advice about their rights and obligations. It is an offence to breach a Public Health Order, and a person can be subject to a large fine.

Criminal laws

Under the *Crimes Act 1958* there are several offences that are relevant to HIV transmission or where a person's behaviour places another person, deliberately or recklessly, at risk of contracting HIV. Charges in Victoria have been brought under section 22 and 23 of the *Crimes Act 1958* where there has been transmission or potential transmission of HIV.

Under section 22 It is an offence for a person to recklessly engage in conduct that places or may place another person in danger of death without lawful excuse and a person found guilty is liable to imprisonment for 10 years.⁵ Under section 23 It is also an offence for a person to recklessly engage in conduct that places or may place another person in danger of serious injury without lawful excuse and a person found guilty is liable to imprisonment for 5 years.⁶ It is also an offence under section 17 to recklessly cause a serious injury without lawful excuse and a person found guilty is liable to imprisonment of 15 years.⁷

What if they knew that I was HIV-positive?

There have been very few cases where the courts have dealt with this specific scenario. If a person knows that their sexual partner is living with HIV, and then consents to have sexual intercourse, criminal charges are unlikely to be pressed.

Having an undetectable viral load, using condoms, having confirmation that the sexual partner is on PreP, or telling someone to get post exposure prophylaxis (PEP) if the condom breaks, would assist to demonstrate that you were not recklessly or intentionally placing someone at risk of contracting HIV or that you did not recklessly or intentionally transmit HIV in the event transmission did occur.

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

If you took the reasonable precaution of wearing a condom, you shouldn't be charged under the *Crimes Act 1985*. However, in the event that the condom breaks and you do not have an undetectable viral load or are unaware of your viral load, you should tell your partner that the condom broke and suggest that they get post-exposure prophylaxis (PEP) from their nearest emergency department, Sexual Health clinic or HIV specialist doctor.

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.

Post Exposure Prophylaxis (PEP)

PEP is medically prescribed treatment to prevent infection with HIV following an incident of unsafe sex or condom breakage. 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 HIV transmission and suggest they seek PEP, it could be used as evidence to demonstrate that if HIV was transmitted, it was not intentional. In the case of a legal conviction this may contribute to the reduction of a possible sentence

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. Under section 45 of the *Crimes Act* it is an offence to make a false or misleading representation to induce someone into participating in a sexual act, and because of that false or misleading representation the person participates in the sexual act.⁸ This means that if you lie to a person about your HIV status with the intention of convincing that person to participate in a sexual act, and the person consents to the sexual act due to your representation, you may be charged with an offence.

A false representation 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 or you explicitly do not answer. Also, having a dating profile that states you are HIV negative may be considered a false representation.

Proving that someone has made a false representation may be difficult when it is one person's word against another. At this stage we are unaware of anyone who has been successfully prosecuted under this section for lying about their HIV status.

Civil laws

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

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. 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

The laws around HIV and sex differ from state to state in Australia and it is important to check before you travel. All Australian states and territories require you to take reasonable precautions to prevent transmitting HIV to sexual partners. Some states define what constitutes reasonable precautions while others do not, and the penalties and types of offences differ from state to state. For more specific information about these requirements please go to halc.org.au

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, as some countries impose severe penalties for non-disclosure to sexual partners of HIV transmission.

EMPLOYMENT

Please note that this section refers to employment conducted in Victoria. If your employment contract is governed by laws from another state or country (for example, freelance work or international travel services), then refer to the relevant employment laws. International employment contracts do not need to take into consideration the employment laws of where you reside.

Do I have to tell my current or prospective employer?

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 **Exceptions** section 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.

An employer can only lawfully refuse to employ you on the basis of your HIV status, if because of your HIV, you are unable to perform the basic requirements of the job.

There are very few jobs where this would apply. If an employer asks about your HIV status and they do not fall into the various exceptions, then you have no legal obligation to disclose. This is protected under the *Equal Opportunity Act 2010*.

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.⁹ The employer cannot discriminate against you unless they have taken all reasonable steps to obtain relevant and necessary information concerning HIV or any other impairment you may have.¹⁰ Employers are often unprepared for the disclosure of an employee's 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 about situations that pose no risk ('What if someone else drinks from your mug?') or where there may be a very slight risk that can be minimised by the use of Standard Precautions ('What if you cut yourself and bleed?'). The use of Standard Precautions is important since not everyone knows if they have a blood borne virus, including HIV, and not everyone who does know will disclose.

If an employer dismisses you because you have HIV or prevents you from undertaking certain tasks that would normally be part of the job, then this may amount to unlawful discrimination under the Victorian *Equal Opportunity Act 2010 (Vic)*¹¹, the *Disability Discrimination Act 1992 (Cth)*¹² or the *Fair Work Act 2009 (Cth)*¹³. If you are being bullied or harassed at work by colleagues, or if people are spreading rumours about your HIV status, you may be eligible to make a complaint under the antibullying provisions in the *Fair Work Act 2009*¹⁴.

Get legal advice about your rights if an employer terminates your employment or treats you badly after finding out you have HIV. Act quickly, because there may be a very limited amount of time in which you can commence legal action. For more information about your rights, see the **Useful Contacts** at the end of this guide, and also the **Discrimination** section.

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

In Victoria, it is against the law for a person to work as a sex worker while knowingly infected with a sexually transmitted infection; this includes HIV. This is stated in the *Sex Work Act 1994*, specifically Section 20.¹⁵ Sex workers who work in a brothel are required to provide a certificate of attendance as evidence that they do not have any sexually transmitted infections. The certificate is valid for three months from the date of issue.¹⁶ The *Sex Work Act 1994* states that both blood tests and swabs are mandated for all sex workers, including but not limited to brothel based and escort agency workers. These tests must be carried out every three months.

Furthermore, a person who provides or receives sex work services must take all reasonable steps to minimise the risk of acquiring or transmitting sexually transmissible infections while providing or receiving those services.¹⁷ Failing to do so as a recipient or a provider may be penalised with a fine.

Exceptions

Health care workers If you are a nurse, dentist or doctor who performs Exposure Prone Procedures (EPPs) then you must know your HIV status. EPPs include procedures performed in a confined body cavity where there is poor visibility and risk of cutting yourself with a sharp instrument, tooth or piece of bone. If you wish to perform EPPs then you must disclose your HIV status to your employer. If you are a health care worker who does not perform EPPs, you do not need to disclose your HIV status.

The Australian Government Department of Health policy on the *'Management of the healthcare workers living with blood borne viruses and healthcare workers who perform exposure prone procedures at risk of exposure to blood borne viruses'* outlines guidelines allowing Health Care Workers (HCW) living with HIV to perform EPPs where:

- they have a viral load below 200 copies/mL (and are on effective combination anti-retroviral therapy (cART) or meet the definition of 'Elite Controller'); and
- are under the care and supervision of an HIV specialist who is aware of the guidelines; and
- undergo HIV viral load monitoring every 3 months as part of the supervision

It is important to note that this exception does not apply to someone co-infected with another blood borne virus.

If you are a HCW living with HIV and wish to perform EPPs you should seek medical advice about whether you meet the above conditions. If you do not meet the requirements, you can request that your employer consider making reasonable adjustments to enable you to continue to work in your profession, for example, a change of duties etc., until such time as your viral load can be reduced. Contact HALC if your employer dismisses you or you are not offered a position because of your HIV status.

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

Australian Defence Force

Everyone who applies to join the Australian Defence Force (ADF) is tested for HIV. If you are HIV positive, you will 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, it is likely that you will be discharged from the service (however, in practice this may not occur). Your clinician may assist you to provide a report to the ADF confirming that your health does not impact upon your duties and that your HIV condition is well managed. Combat and related roles are specifically exempted from the protection of discrimination legislation, and members of the ADF are excluded from the definition of 'employee' in the *Fair Work Act*.¹⁸ Please contact HALC for further advice if you are not allowed to join, or are discharged from the ADF due to an HIV diagnosis.

Aviation

According to the *Civil Aviation Safety Authority Guidelines*, medical certification for pilots or air traffic controllers living with HIV is undertaken on a case-by-case basis following medical assessment.¹⁹ If a certificate is granted, medical reviews are required at regular intervals, and any change in condition can result in a person being designated temporarily unfit to work.

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

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

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 on a medical certificate.

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

Apart from the exceptions above, you do not need to disclose your HIV status at work. Under the *Work, Health and Safety Act 2011*, employers have a duty to protect the health and safety of their employees and employees have a duty to protect their own health and safety, and to avoid affecting the health and safety of others at work.²⁰

This means that you do not have a duty to inform your employer or anyone else at work of your HIV status. In practice, it means that if anyone in the workplace has an accident where blood is involved, standard precautions should be used. This means using gloves when administering first aid, for example. Remember that you do not know the HIV status of all your colleagues, and your colleagues may not know their own HIV status. Therefore, everyone should always use standard precautions in relation to blood spills at work. Your employer is responsible for ensuring that the means to use Standard Precautions are available. For example, First Aid kits should be provided and include disposable gloves.

You should also talk to your doctor about the risks of transmitting HIV to others. The actual risk of transmitting HIV in a workplace environment are negligible.

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 some cases, your employer will be subject to the *Privacy Act 1988 (Cth)*, which requires that the information you give be kept confidential. In practice though, if your employer breaches the duty, there may be no way to provide a satisfactory 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 they may have a very different attitude.

SUPERANNUATION

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

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

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

Superannuation contributions made by you or your employer are normally 'preserved'. This means that you cannot access them until you retire from full time employment on or after reaching 'preservation age'—this is 55 years of age for people born before 1 July 1960, increasing incrementally up to 60 years of age for people born after 1 July 1964. Accessing your 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. If your fund provides “automatic” cover, insurance premiums are deducted as a matter of course out of your superannuation balance and you have coverage through a ‘group’ insurance policy for death and sometimes temporary and/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, as there is no disclosure of HIV status required.

If, however, you are asked a specific question about your health or HIV status, you should answer truthfully as the duty of disclosure applies. A false declaration may be considered fraud and may void any cover. (see **Insurance** section below).

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 are living with HIV provided that their decision is based upon reasonable actuarial or statistical data, or where no such data is available, having regard to other reasonable factors²¹ (see **Insurance** section for further information on when insurance providers may lawfully discriminate).

INSURANCE

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

When taking out insurance, you have a legal obligation to disclose all relevant information. Taking out a contract of insurance requires each party to act with the ‘utmost good faith’ towards each other. Whether your HIV positive status is considered ‘relevant’ depends on the type of insurance. It should not be 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 not disclose or cover up your HIV status in order to obtain insurance. The law is very clear that if a person does not disclose something relevant or makes a false declaration on an application for insurance, the contract will be invalid, and any claim that you might make will not be valid. Insurance companies may lawfully discriminate against you on the grounds that you are living with HIV provided that their decision is based upon reasonable actuarial or statistical data, or where no such data is available, having regard to other reasonable factors.²²

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 to people living with HIV is increasing. It’s worth shopping around to find a company that offers the type of cover you want.

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

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

Disclosure of your HIV status may not be necessary if you are diagnosed after entering into an insurance contract. If you have an annuity with your insurance company, then the only relevant matter is your state of health at the time that you initially signed up with the insurer. However, many contracts of insurance are for a fixed period, such as year to year, then you have a duty to disclose all relevant information (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.

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

What about travel insurance? Is my HIV status relevant?

Travel insurance covers a variety of events that may occur while you are travelling. The two main areas covered are medical and other expenses arising from illness or injury; and expenses arising from 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 falls into both these categories, so policies that cover medical and related expenses usually exclude claims arising from pre-existing conditions, and claims arising from sexually transmitted infections. If your insurance cover excludes coverage for HIV related illnesses, then you may not need to disclose that you have HIV.

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.

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 you may have prior to taking out the insurance (such as HIV).

What about private health insurance for temporary visa holders?

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

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

Claiming on your private health insurance as needed will not impact upon any future visa applications. See the HALC website halc.org.au for further information about immigration for people living with HIV and their families. Contact HALC if you have further questions.

TRAVEL OVERSEAS

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

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

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

Some countries have very strict requirements for granting visas, and some do not allow people living with HIV to enter their country. Other countries may allow you to enter for short stays, such as on tourist visas, but will have different requirements for longer or permanent visas. See the Useful Contacts section at the end of this guide for *The Global Database on HIV-specific Travel & Residence Restrictions* website that contains 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 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 embassy/mission in Australia.

TRAVEL AND IMMIGRATION 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 you are on treatment, you may not need to disclose your HIV status. However, under certain circumstances, people visiting Australia on temporary visas may be required to undergo a medical examination, which will include questions about HIV. Generally, there may be questions that involve health related costs, and you must declare your HIV status when answer these questions. You must answer all questions on a visa application truthfully. Giving incorrect or misleading answers can have serious consequences, including having your visa refused or cancelled. Having HIV will not usually prevent you being granted a short-term visa such as a tourist visa. Some visa applications may calculate your potential cost on the Victoria healthcare system and does not consider where you will source your medication. This is independent of where you may be accessing your medications.

Can I come to live in Australia permanently if I am HIV positive?

Yes, however permanent visa options are very limited for people living with HIV. For advice on this complex and frequently changing area of law, please refer to the HALC website 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 HIV issues. It is unlawful 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 for further stays in Australia.

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.

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 status. 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 they are fully informed. Discuss with your regular HIV specialist whether disclosure to another practitioner is medically necessary.

Can a medical practitioner disclose my HIV status?

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. The *Public Health and Wellbeing Act 2008* (Vic) provides enhanced protections regarding protecting the privacy of HIV diagnosis. 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 suspect that you are engaging in activity that represents a likely risk of HIV transmission. Then they may report your behaviour to the Victorian Department of Health and Human services, as described in the public health management section above.

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 outlined above. Ideally, try and find a dentist who is used to working with patients with HIV so that you will feel comfortable disclosing your status to your dentist. Your HIV doctor may be able to recommend a dentist; or you could try asking your friends or staff at Living Positive Victoria.

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. 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.

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 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 make a report to the Health Complaints Commissioner (see **Useful Contacts**).

Can I donate blood if I have HIV?

No. Before giving blood you must fill out a questionnaire that is designed to assess whether you are, have been, or could be at risk of a blood borne disease, including HIV. This questionnaire operates as a statutory declaration and you must sign it to verify the accuracy of the information you have given. Penalties, including fines and imprisonment, apply if you do not answer the questionnaire truthfully.²³

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.

BEAUTY & OTHER PERSONAL APPEARANCE SERVICES

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. Personal appearance services like hairdressers, nail salons, beauty therapists, tattoo and piercing services are regulated in Victoria by the *Public Health and Wellbeing Act 2008*. Some services may ask you about existing health conditions and may, unlawfully, refuse you service based on your answers. It may be in your best interest to not disclose your HIV status in this situation.

All such services are required to minimise the risk of infection to clients, by using Standard Precautions as detailed in the law and guidelines, including using sterile equipment. If you think that a person (e.g. a tattooist or piercing 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 make a report to your local Council; the Health Complaints Commissioner (Victoria); or Australian Health Practitioner Registration Agency (national). See **Useful Contacts** for more details.

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 situations where it would be to your benefit to tell them. These include:

- if you wish to claim Disability Support Pension or Sickness Allowance because you are living with HIV and have a HIV related illness that is affecting your capacity to work
- if you are receiving Youth or Jobseeker Payments 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 a reporting requirement because of the special circumstances of your illness.

If you tell Centrelink your HIV status for the purpose of receiving a payment or special consideration, 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 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 match your information with the Australian Taxation Office (ATO) and the Department of Veteran's affair (DVA), to ensure the information you have provided is accurate and that you are receiving the correct benefits. For more information, contact Social Security Rights Victoria.

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

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

If you choose to disclose to either a private landlord, a real estate agent, or public housing provider, it is unlawful for the landlord to treat you less favourably than another tenant on the basis of your HIV status unless you are in shared accommodation with the owner or one of their close relatives (see **Discrimination** section).

EDUCATION

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

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

Upon enrolling your child, you may be asked about any health conditions the child has. This is to enable trained staff to provide support for certain common conditions that may require attention during the day, for example a child with diabetes. Children living with HIV normally would not require any special health management by school or childcare staff, and in those circumstances, there is no need to disclose your child's status. However, there may be some situations in which your child may need to take medication while under school supervision; such as school camps or excursions. In these cases, you may need to give your child's medication to school staff.

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

The Victorian *Equal Opportunity Act 2010*²⁴ and the *Federal Disability Discrimination Act 1992*²⁵ provide that it is unlawful to discriminate in providing education on the grounds of impairment. Accordingly, if the school or childcare centre does learn of you or your child's HIV status, they cannot deny admission and must keep that information confidential except in circumstances where the parents' consent to the disclosure for a relevant purpose (for example, 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 does 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 or a financial advisor as soon as the problem arises will give 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 without stating that you are living with HIV.

If a financial institution becomes aware of your HIV status, they are subject to the *Privacy Act* (Cth), and are legally required to keep that information confidential, and the information should 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.

SPORT

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

No. Playing most sports will not present a risk of transmitting HIV to 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' ensure that any bleeding player is immediately removed from the field.

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.²⁶ Seek advice from your HIV doctor or HALC if you are considering competing in these sports.

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 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.

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.

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 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'.

If a person is 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

The protection of your privacy regarding your HIV status is very important, given the stigma, prejudice and discrimination that is often associated with 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.

What if I believe someone has mishandled my health information?

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

- a government department;
- a healthcare provider; or
- a company that collects your information for the purpose of sharing your information to other companies.

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

If you believe an organisation has mishandled your health information, then you should make a complaint to the organisation about how your information was mishandled. If they do not respond within 30 days, or you are unsatisfied with the response, then you can lodge a complaint to the Office of the Australian Information Commissioner (OAIC). Making a complaint to OAIC is free, but there is a time limit. You have 12 months from the date of when the event occurred to make a complaint.

If you believe an individual has mishandled your health information, then you should see the Discrimination section for more information. If the person is merely disclosing your HIV status to other people, there are no dependable legal remedies for this situation. However, if the person is an employer or landlord, and is treating you differently because of your HIV status, then you may be able to seek a legal remedy for unlawful discrimination.

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

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

One possible action may be to seek a Personal safety intervention order (PSIO) if the person is not a family member, or a family violence protection order (FVPO) if the person is a family member. However, the Court will only order an intervention or protection order under specific circumstances. Although you can apply directly to the court for an intervention or protection order, 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 order (without police assistance) and you are unsuccessful then you risk having to pay the other party's legal costs of the proceedings.

Seek advice from your local Community Legal Centre, HALC, or Living Positive Victoria if someone is disclosing your HIV status without your consent.

Remember, also, that if someone such as your employer or landlord starts treating you differently because they have found out about your HIV status, then this may be unlawful discrimination and you may be able to do something about this (see **Discrimination** section).

How does My Health Records affect my privacy?

My Health Record (MyHR) is a summary of your health information that is available to you and clinicians nationally.

Generally, Health care providers can also access your MyHR unless you choose to restrict access; have already opted out of having a MyHR; or have deleted your MyHR. Some information about your HIV status may be in 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. If you wish to properly operate the privacy settings of your MyHR account, you will need to assess each piece of information on MyHR and determine who you are comfortable sharing that information with.

If you need assistance adjusting your security measures in your MyHR, you can contact Living Positive Victoria. It is important to note that MyHR is a new area of law and is constantly under review.

Under current law, bodies/organisations such as the Commonwealth Ombudsman, the Auditor General, the Information Commissioner and Indemnity Insurance providers can access your MyHR without your consent under certain circumstances without a court order.²⁷

Additionally, information in your MyHR can be disclosed by health care providers if they reasonably believe that the disclosure is necessary to lessen or prevent a serious threat to someone's life, health or safety or to lessen or prevent a serious threat to public health or safety.²⁸

If you have concerns about the privacy of your health information held in your MyHR or are uncomfortable managing the privacy settings on your account you may wish to opt out of the system, or request that your record be deleted. Alternatively, you can contact HALC for further advice.

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

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 2010* makes it unlawful to discriminate against a person with an impairment. HIV is considered to be an impairment under the *Equal Opportunity Act* even if your HIV does not appear to affect your health in any noticeable way.²⁹

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 impairment. Indirect discrimination occurs when there is a requirement, practice or policy that applies to everyone, but it has an unfair effect on people with a particular impairment, 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 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. It is also unlawful for someone to discriminate against someone you associate with, or are related to, if they do so based on your HIV status or other impairment.

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 based on 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, except 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, 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 can make a complaint to the Victorian Equal Opportunity and Human Rights Commission. 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 Victorian Equal Opportunity and Human Rights Commission and some to the AHRC. Obtain legal advice about which body is best suited to your complaint (see **Useful Contacts** at the end of this guide).

Discrimination at work

In addition to the anti-discrimination complaints process described above, Fair Work Australia 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.

Most unions provide confidential legal advice to their members, whilst community legal centres may also be able to provide legal advice to employees. (see **Useful Contacts** 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, 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.

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 another person 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, and 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 of disclosure can be challenging.

The Potential Benefits and Risks of Disclosure

Some of the possible benefits of disclosure are that it can:

- 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 also potential risks of disclosure, such as:

- negative reactions including rejection, harassment; or
- 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 the legal requirements) it is important to weigh up the potential benefits and risks. By weighing up the risks and benefits, you may feel more comfortable about your decision.

Feeling safe to disclose

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

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 navigator at Living Positive Victoria; or those you draw support from for HIV related issues. 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 the position of educator when they disclose. Generally, people who don't know a lot about HIV may want you to inform them. It's okay not to know all the answers. You can direct them to this guide or contact a support agency, such as Living Positive Victoria, to answer their question/concerns.

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

It can be hard to tell the children in our lives – try to explain things in simple ways so that it's easier for them to understand.

Remember, 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 it is to a friend, family member, or partner.

In most situations, you can take your time to consider who to tell and how to tell them. Consider whether there is a real purpose for you to tell this person or if you're simply feeling anxious and want to “unload” your feelings. Telling people indiscriminately may affect your life in ways you haven't considered.

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

You don't have anything to apologise for simply because you are living with HIV.

Keep it simple. You don't have to tell the story of your life or go into details that you're not comfortable with, including how you acquired HIV. Remember, you are in control of your story!

Avoid isolating yourself. If you are uncomfortable talking to friends, family members or other loved ones about your HIV status, allow yourself to draw upon the support and experience available to you. This can be done through Living Positive Victoria's 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 that may have on you. Living Positive Victoria can support you in deciding about going public, and the considerations involved. For instance, how much of your story would you like to share and in which environments? Do not be afraid to reach out to other people in your networks who have gone public as well. They may be able to let you know what to expect from their own personal experience.

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 get a feeling of what to expect. Living Positive Victoria 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?

When should you tell them?

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

What are you telling *them*?

Where is the best *place* to have the conversation?

Preparing for disclosure

Disclosing your status is different for everyone as there is no perfect roadmap for disclosure. Every person is unique. Here is a checklist to prepare you to disclose:

- Think about the range of possible responses that you may receive from the person you are disclosing to;
- Consider where and when to disclose (Consider if there is privacy. Is there support around you if the disclosure does not go the way you thought it would?);
- Consider things you are not comfortable to talk about (Just because you have disclosed your status, it does not mean you should feel pressured to disclose any personal information that you are not comfortable with);
- Consider cultural and religious differences that may impact upon your decision to disclose (In some communities attitudes about sex, sexuality and drugs may make it harder to talk about HIV and 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 Living Positive Victoria, or you could let them know of a mutual contact that you've 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've already disclosed to, or calling Living Positive Victoria and practicing with one of their peer navigators (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"; and
- 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 the information or to a support agency.

What if disclosure doesn't go according to plan?

Everybody approaches disclosure from their own unique perspective.

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

For others, a concern may be any potential negative or stigmatising reaction that they may receive when they disclose. Some may face challenges such as discrimination based on their HIV status, unauthorised disclosure or rejection from their own families and friends or even social isolation from their own community. If you are planning to disclose and you are not sure how it will go, try and have a friend on standby to provide support just in case.

Let's talk about HIV Stigma

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 to us in the first instance. It can be visible and blatant, such as 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.

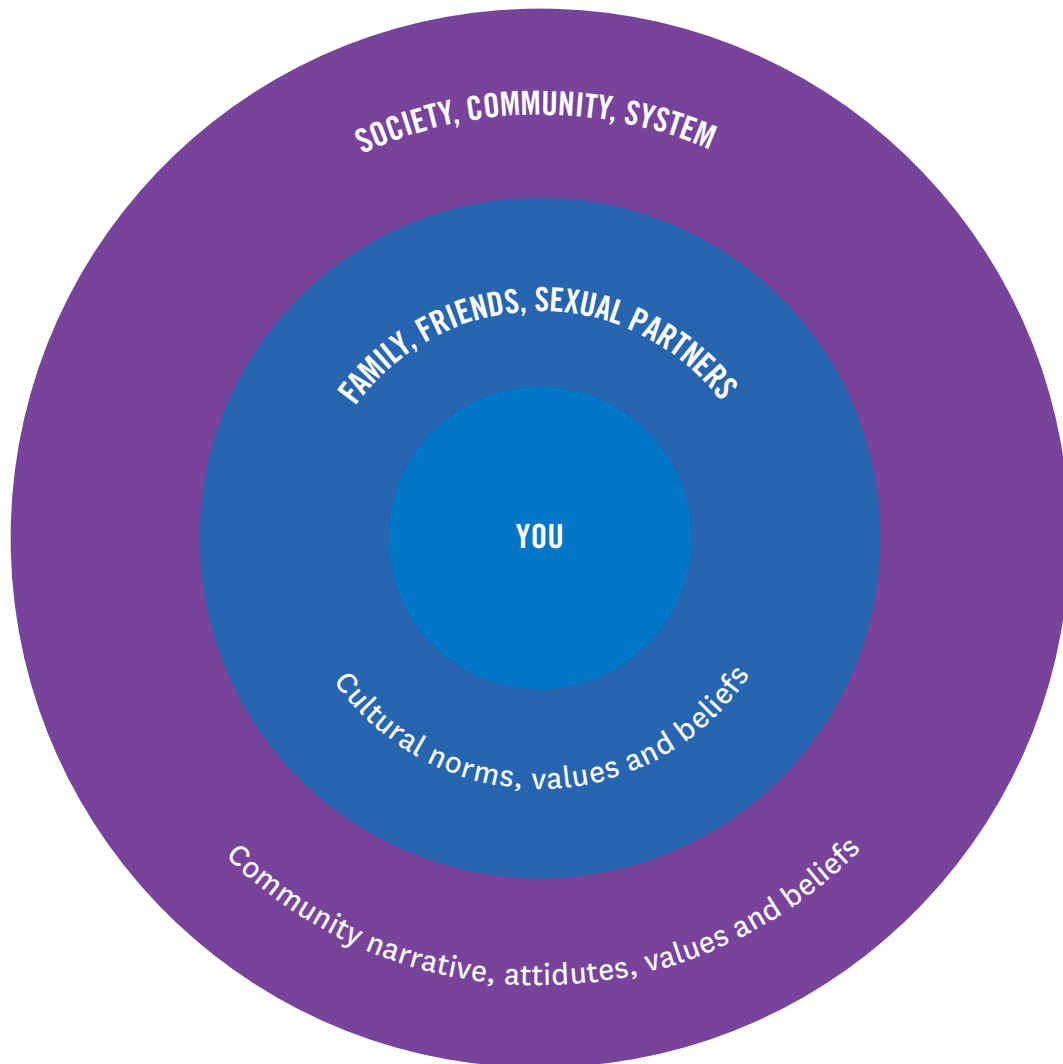
Stigma can exist within ourselves, from our own views of HIV that have been formed by seeing HIV being represented by friends, family, movies, in social and mainstream media. Stigma causes fear and lack of discussion, which is one of the driving reasons why people may not seek testing or treatment.

Ways to work with and through stigma is to draw upon and develop your personal resilience. If you are feeling down because of someone being ignorant about HIV, that can be an early sign of 'internalising stigma' – the process of adopting negative beliefs and/or being emotionally controlled by someone else's ignorance. Reach out to support organisations made up of peers (others living with HIV) such as Living Positive Victoria. 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. This diagram provides a visualisation of ‘the big picture’ around stigma, disclosure and your environment.

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



The outside layer represents community narratives, attitudes, 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 can't always control what happens to us, but we can control how we respond.

'Resilience' can be defined as 'the ability of a substance or object to spring back into shape; elasticity' or 'recover from difficulties'.

For some, this can be through:

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

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

What if my status is disclosed without my consent?

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

Unfortunately, there are not many legal remedies available in the situation where someone like your ex-partner/friend/relative is telling others about your HIV status, often referred to as a vexatious (annoying, frustrating or worrying) disclosure.

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.

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

If you do have a negative experience, it is important to talk to Living Positive Victoria 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:

- Is there a legal remedy/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 bring extra attention to the situation?
- Is this a situation you want to further involve yourself in, especially if it will cause extra stress?

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 Living Positive Victoria.

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

USEFUL CONTACTS & RESOURCES

Information & advocacy services

HALC – HIV/AIDS Legal Centre

For advice and information on all HIV related legal issues.

halc.org.au

Phone: (02) 9206 2060

Freecall: 1800 063 060

Living Positive Victoria

Living Positive Victoria is a community-based organisation that works to advance the human rights and wellbeing of people living with HIV.

livingpositivevictoria.org.au

Phone: (03) 9863 8733

Positive Women Victoria

Positive Women Victoria works to empower HIV positive women to live healthy, happy and vibrant lives.

positivewomen.org.au

Phone: (03) 9863 8747

NAPWHA – National Association of People living with HIV Australia

NAPWHA is the national peak organisation representing people living with HIV in Australia.

napwha.org.au

Phone: (02) 8568 0300

Freecall: 1800 259 666

Travel information

The Global Database on HIV-specific Travel & Residence Restrictions

hivtravel.org

Other Services

Australian Human Rights Commission

Information and assistance with discrimination complaints

humanrights.gov.au

Complaints infoline: 1300 656 419

General Inquiries: 1300 369 711

TTY (for the hearing impaired): 1800 620 241

Australian Information Commissioner

Information and assistance with privacy complaints

oaic.gov.au

Phone: 1300 363 992

TTY (for the hearing impaired): 1800 620 241

Federation of Community Legal Centres

For information about your nearest Community Legal Centre

fclc.org.au

Health Complaints Commissioner

Receives and assesses complaints against health care providers in Victoria.

hcc.vic.gov.au

Phone: 1300 582 113

Victorian Equal Opportunity & Human Rights Commission

Information and assistance with discrimination complaints

humanrights.vic.gov.au

Phone: 1300 292 153

Social Security Rights Victoria

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

ssrv.org.au

Phone: (03) 9481 0355

ENDNOTES

- 1 *Public Health and Wellbeing Act 2008* (Vic) s 111(c).
- 2 *Public Health and Wellbeing Act 2008* (Vic) s 111(b)
- 3 *Public Health and Wellbeing Act 2008* (Vic) s 117
- 4 *Public Health and Wellbeing Act 2008* (Vic) s 117(5)(k)
- 5 *Crimes Act 1958* (Vic) s 22
- 6 *Crimes Act 1958* (Vic) s 23
- 7 *Crimes Act 1958* (Vic) s 17
- 8 *Crimes Act 1958* (Vic) s 45
- 9 *Disability Discrimination Act 1992* (Cth) s21 B, similar provision found in *Equal Opportunity Act 2010* (VIC) s 23
- 10 *Disability Discrimination Act 1992* (Cth) s 11, similar provision found in *Equal Opportunity Act 2010* (Vic) s20
- 11 *Equal Opportunity Act 2010* (Vic) s 18(b)
- 12 *Disability Discrimination Act 1992* (Cth) 15
- 13 *Fair Work Act 2009* (Cth) s 351
- 14 *Fair Work Act 2009* (Cth) s 789FC
- 15 *Sex Work Act 1994* (Vic) s 20
- 16 Victoria, *Victorian Government Gazette*, No S 333, 6 October 2012
- 17 *Sex Work Act 1994* (Vic) s 18A
- 18 *X v Commonwealth of Australia* [1999] HCA 63
- 19 <https://www.casa.gov.au/licences-and-certification/aviation-medicine/human-immunodeficiency-virus-hiv>
- 20 *Work, Health and Safety Act 2011* (Cth) Div 2, 4
- 21 *Equal Opportunity Act 2010* (Vic) s 47
- 22 *Equal Opportunity Act 2010* (Vic) s 47
- 23 *Public Health and Wellbeing Act 2008* (Vic) s 155
- 24 *Equal Opportunity Act 2010* (Vic) s 38
- 25 *Federal Disability Discrimination Act 1992* (Cth) Div 2, s 22
- 26 *Professional Boxing and Combat Sports Regulations 2018* (Vic) reg 14
- 27 *My Health Records Act 2012* (Cth) s 65
- 28 *My Health Records Act 2012* (Cth) s 64
- 29 *Equal Opportunity Act 2010* (Vic) s 4

