

# DISCLOSING YOUR HIV STATUS

A Guide to Some of the Legal Issues  
& Navigating Disclosure



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This guide contains the relevant law on disclosure of HIV status as it applies in Queensland as at December 2023. It has been prepared by the HIV/AIDS Legal Centre (HALC) in partnership with, and funded by Queensland Positive People (QPP).

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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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# 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 Queensland. 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 idea behind Standard Precautions is that it is impossible to know if someone has a blood borne virus such as HIV, hepatitis B or hepatitis C.

*See [Useful Contacts](#) at the end of this guide for further information on Standard Precautions.*

## 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. An employer can only lawfully refuse to employ you on the basis of your HIV status if, because of your HIV status, you are unable to perform the inherent requirements of the job. There are very few jobs where this would apply. There are some jobs, described below, where you must disclose your HIV status, even if you believe that it does not affect your ability to do the job (see *Exceptions* below).

Similarly, there are very few jobs where an employer or prospective employer can legally ask about your HIV status or require you to have an HIV test (see *Exceptions* below). If an employer asks about your HIV status and they do not fall into the various exceptions, then you have no obligation to disclose.

Employers are often unprepared for an employee's disclosure of their HIV positive status and frequently over-react because they think that the risk of transmission to others is much greater than it actually is. They may be concerned 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 either the *Anti-Discrimination Act 1991* (Qld) or the *Fair Work Act 2009* (Cth). If you are being bullied or harassed at work by colleagues, or if people are spreading rumours about your HIV status, you may be eligible to make a complaint under the anti-bullying provisions in the *Fair Work Act 2009* (Cth).

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.

## **I'm a sex worker with HIV, how does this affect my work?**

Currently there are restrictions on the type of sex work people can do in Queensland, however laws relating to sex work are currently under review and reform is likely in the near term. If you are a sex worker and want more information on the legality of sex work in Queensland please contact Respect Inc (see *Useful Contacts at the end of this guide*) for the most up to date information on your rights and responsibilities.

### **Currently:**

- As a sole operator sex worker in Queensland you do not need to disclose your HIV status. However, you must use condoms and/or dams.
- You cannot work in a licenced brothel as a person living with HIV as the licensee of a brothel must not allow a person with an STI to work in the brothel. In order to work in a licensed brothel, a worker is required to provide a current sexual health certificate which must be renewed every 3 months. A sexual health certificate will not be issued to you if you are HIV positive.

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

No, you do not need to disclose to your employer. However, the *Coal Mining Safety and Health Regulation 2017* (Qld) requires employees to undertake a health assessment prior to commencing employment and at intervals throughout the term of employment (at least every 5 years) to ensure that the employee has no medical conditions that pose a risk to the employee undertaking the duties of the role, or a risk to others. This assessment is undertaken by, or under the supervision of, an appointed medical advisor (who is a registered medical practitioner).

The medical practitioner has a duty of confidentiality and will not provide confidential medical information to your employer. The purpose of the health assessment is to ensure that the employee is able to carry out their duties at the mine without creating an unacceptable level of risk. This is unlikely to apply to a person with HIV. For example, you may be restricted in the work you can do if you have a serious back injury or suffer from vertigo.

If you are taking HIV medication, and suffer any side effects that might impair your ability to undertake your duties at the mine, you must notify the site senior executive. However, you do not need to tell them what the medication is for, and you should seek advice from your HIV doctor and/or the appointed medical advisor in such circumstances.

People in the mining industry are subject to random drug (and alcohol) testing. Random drug tests aim to assess whether you have used any prohibited substances which may make it unsafe for you and your colleagues in the work place. HIV medications sometimes cause false positive results for prohibited substances, such as cannabis. A positive result (including a false positive result) may cause the medical examiner to notify your supervisors of this fact so they can withdraw you from duties or place you on different duties pending a conclusive result. It is advisable to have with you, or to obtain if this occurs, a letter from your HIV doctor that indicates that you are on prescription medication that might cause a false positive drug test. It is not necessary for your doctor to specifically cite your HIV condition as the reason for the medication or to list the medications. If you do elect to disclose your HIV status to the medical examiner or your employer, they have a duty of confidentiality and your information is protected by the *Coal Mining Safety and Health Regulation 2017* (Qld).



## EXCEPTIONS

### Health care workers

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

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

In Queensland, the relevant guidelines for healthcare workers living with a blood-borne virus who perform EPPs are The National Guidelines on the *'Management of healthcare workers living with blood-borne viruses and healthcare workers who perform exposure prone procedures at risk of exposure to blood-borne viruses'*.

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

- Be under the regular care of a specialist in the treatment of HIV who also understands the regulatory framework for healthcare workers living with HIV, including the National Guidelines;
- Undergo HIV viral load monitoring every three months; and
- Be on effective antiretroviral treatment with an HIV viral load below 200 copies/mL (two test results from a NATA/RCPA accredited laboratory, taken no less than three months apart) or meet the definition of 'elite controller'.

The National Guidelines define 'elite controllers' as people living with HIV who are not receiving antiretroviral treatment but have maintained an undetectable viral load for at least 12 months, based on at least three separate viral load measurements. Only a very small proportion (0.2–0.55%) of people living with HIV are classified as elite controllers.

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

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

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

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

## Australian Defence Force

Everyone who applies to join the Australian Defence Force (ADF) is tested for HIV. If you are HIV positive, you will likely not be accepted into the ADF.

The ADF also regularly tests serving personnel. If you are already a member of the ADF and you are diagnosed with HIV, you may be at risk of termination (however, in practice, this may not occur); your clinician may be able to assist you by providing a report to the ADF confirming that your health does not impact your duties and that your HIV condition is well managed.

Combat and related roles are specifically exempted from the protection of discrimination legislation, and members of the ADF are excluded from the definition of 'employee' under the *Fair Work Act 2009* (Cth).

Please contact HALC for further advice if you are not allowed to join or are discharged from the ADF because of 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. 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 infecting 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 (Qld)* and the *Work, Health and Safety Act 2011 (Cth)*, 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. This does not mean that you have a duty to inform your employer or anyone else at work of your HIV status.

In practice, it means that if anyone in the workplace has an accident where blood is involved, standard precautions should be used. This includes following the workplace policy and procedures for first aid, for example, by using gloves when administering first aid. It is important to remember that you do not know the HIV status of all your colleagues, and 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.

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

There are no effective privacy protections for information provided to an employer. Employers have a general duty to maintain employee confidentiality. In practice, though, if your employer breaches their duty, there may be no way to provide a satisfactory legal resolution. Consider very carefully before disclosing because once you have disclosed, you cannot take the information back. Although your current boss or supervisor may be understanding, if your HIV-positive status is on file, then your next boss will also have access to this information, and they may have a very different attitude about it. If you believe that your employer has breached your rights to privacy, see the *Privacy Protection* and *Discrimination* sections for further information.

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

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

A person living with HIV who is on antiretroviral medication and maintains a viral load below 200 copies/mL (known as an undetectable viral load) has effectively no risk of transmitting HIV to a sexual partner.

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

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

## PUBLIC HEALTH LAWS

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

The *Public Health Act 2005* (Qld) outlines principles of mutual responsibility to be followed to limit the risk of transmitting HIV.

Importantly, this means that everyone has a duty to protect themselves and others from contracting HIV, so even if you are HIV negative, you should be protecting yourself from contracting HIV by taking all reasonable precautions.

You are not legally required to disclose your HIV status before you have sex.

However, it is an offence to recklessly put someone else at risk of contracting HIV (maximum penalty: 200 penalty units (\$30,960 from 1 July 2023) or or 18 months imprisonment) or recklessly transmit HIV to someone else (maximum penalty: 400 penalty units (\$61,920 from 1 July 2023) or or 2 years imprisonment). It is a defence that the other person knew you had HIV and that they voluntarily accepted the risk of contracting HIV. Note that proving that you disclosed your HIV to a person might be difficult where it is one person's words against another.

### What is recklessly putting someone at risk?

There is no legal definition, and the Courts have not determined what 'recklessly putting someone at risk' is. However, scientific and medical consensus suggests that using condoms, having an undetectable viral load of less than 200 copies/mL, or seeking and receiving confirmation from a sexual partner that they are taking pre-exposure prophylaxis (PrEP) are all effective measures against transmitting HIV. These measures have also been prescribed by legislation in some other Australian jurisdictions. You should always consult with your HIV specialist about the risk of HIV transmission.

## Public health management of people who put others at risk

Instances where a person living with HIV puts others 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 Act 2005* (Qld) 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. Court orders can be made that may compel a person to engage with behavioural interventions, and/or restrict a person's activities, movements and freedoms. In the most extreme cases, orders can be sought to detain a person if their behaviour is putting others at risk of contracting HIV. A person who is subject to such orders should seek legal advice about their rights and obligations.

## CRIMINAL CHARGES

In some cases, a person with HIV who transmits HIV to another person may be charged with more serious offences under the *Criminal Code Act 1899* (Qld). It is a criminal offence to transmit a serious disease (which includes HIV) with intent to transmit such a serious disease, or to unlawfully do grievous bodily harm (which includes transmitting HIV to another person). The maximum penalty for intentionally transmitting HIV is life imprisonment, and for causing grievous bodily harm is 14 years' imprisonment.

### Law Changes

This guide contains the relevant law on disclosure of HIV status as it applies in Queensland as at December 2023. At the time of publication there are potential law changes that may impact a person with HIV in addition to or differently to what is included in this guide. No time frame is set, however an updated version of the guide will be produced to reflect any changes.

See *Useful Contacts* at the end of this guide for details of QPP and HALC to stay up to date.



## 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. Having an undetectable viral load or telling someone to get post exposure prophylaxis (PEP) after risky sex may also assist the defence against a charge of intentionally transmitting HIV, as the prosecution must prove beyond reasonable doubt that the accused intended to transmit HIV. Both these things reduce the risk of transmission. However, they are not relevant to a charge of unlawfully causing grievous bodily harm because that charge does not relate to the accused's state of mind.

### Post Exposure Prophylaxis (PEP)

PEP is a 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 with HIV tells someone of the risk of infection with HIV and suggests they seek PEP, it could be used as evidence to show that if HIV was transmitted, it was not intentional, and may contribute to the reduction of a possible sentence.

## What about Civil Law?

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. However, if your partner knew you were HIV-positive and consented to the risk of transmission of HIV, they would be unlikely to have any civil claim against you.

## Travelling Interstate and Overseas

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

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

## **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, or are transitioning to retirement, on or after reaching 'preservation age'—this is 55 years of age for people born before 1 July 1960, increasing incrementally up to 60 years of age for people born after 1 July 1964. Alternatively, you can access your super when you turn 65 even if you haven't retired. You may wish to seek financial advice to help you decide how you will access your super. Accessing your superannuation on retirement in this way requires no health information disclosure.

However, if you become very ill or suffer serious financial hardship before you reach the preservation age, then you may be able to access some or all of your superannuation early. In most cases, 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 any part of your application is incorrect, then they are obliged to reject your claim. Any disclosure you make to your superannuation fund or insurer will be confidential and protected under the *Privacy Act 1988* (Cth).

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

Many superannuation funds include insurance cover for death or permanent disability by default. These policies do not usually require that you disclose health information and may be a good option for people living with HIV because there is no disclosure of HIV status required.

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

You can 'opt out' of this insurance coverage but think carefully before you do. Once you have opted out, your fund may not allow you to take it out again or may require that you undergo a medical examination to do so. Your superannuation fund insurance may offer the option of additional 'top up' cover. If you want this further 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.

Under the *Anti-Discrimination Act 1991* (Qld) and the *Disability Discrimination Act 1992* (Cth), superannuation funds may lawfully discriminate against you, such as by charging higher premiums, on the ground that you are living with HIV. The decision to discriminate must be based upon reasonable actuarial or statistical data, or where no such data is available, having regard to other reasonable factors (see *Insurance* section for further information on when insurance providers may lawfully discriminate).

## 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 lies 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 have HIV provided that their decision is based upon reasonable actuarial or statistical data, or where no such data is available, having regard to other reasonable factors.

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

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

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

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

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

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

Insurers can (and often do) void insurance contracts 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 coverage is cancelled or not rolled over based on the fact that you are living with HIV, please contact HALC immediately and seek legal advice. Because of advances in treatment for HIV, the data on which insurers are relying on may no longer be reasonable, so you may have a claim in discrimination. See the *Discrimination* section for more information about how you can lodge a complaint.

## **What about travel insurance? Is my HIV status relevant?**

Travel insurance covers a variety of events that may occur while you are travelling. The two main areas covered are medical and other expenses arising from illness or injury; and those expenses arising from other reasons such as loss of luggage, 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 STIs.

HIV falls into both of these categories, so if your policy has either or both of these exclusions, then you aren't covered for any HIV related illness while you are travelling. Therefore, it is important to do your research prior to taking out travel insurance if you wish to cover any HIV-related illness while you are travelling. If your insurance 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 issue may arise if your policy excludes HIV-related illnesses. Policies covering HIV will usually cost more and you will need to disclose your HIV status before taking out the policy. Shop around for a policy that meets your needs and seek advice, if necessary.

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

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

The law requires 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 12-month waiting period during which they will not pay any claims relating to pre-existing conditions, such as HIV, which were diagnosed before you took out the insurance. You can change from one health insurance company to another without having to serve another waiting period, provided you do not have a break and do not reduce your level of cover.

## **What about private health insurance for temporary visa holders?**

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

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

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



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

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

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

Some countries have very strict requirements for granting visas, and some do not allow people living with HIV to enter their country at all. Other countries may allow you to enter for short stays, such as on tourist visas, but will have different requirements for longer or permanent visas.

See [www.hivtravel.org](http://www.hivtravel.org) for more information about overseas travel for people 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 place yourself at risk of being refused entry, deported, or even imprisoned or detained.

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

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

Depending upon your length of stay, and other factors such as whether or not you are on treatment, you may not need to disclose your HIV status. However, under certain circumstances, people visiting Australia on temporary visas may be required to undergo a medical examination, which will include questions about HIV. Generally, there may be questions that involve health-related costs, and you must declare your HIV status when answering these questions. You must answer all questions on a visa application truthfully, and 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 (of 2 years or sometimes longer) such as tourist visas, student visas, or temporary work visas.

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

Yes, but permanent visa options are very limited for people with HIV. For advice on this complex and frequently changing area of law, please refer to the HALC website at [www.halc.org.au](http://www.halc.org.au) for further information and contact HALC if you have further questions.

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



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

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

However, it may be useful to disclose your HIV status because HIV medications may interact with other medications; or because the progression or treatment of other conditions may be affected by your HIV status. Under such circumstances, failure to disclose may have adverse consequences for your health.

To ensure the best outcomes for your health, it is important that you discuss with your HIV specialist about when the disclosure of your HIV status may be relevant to any other treatment you are obtaining.

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

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

If you disclose your HIV status to a medical practitioner, then this information, like all other medical information, is protected by privacy laws. The *Public Health Act 2005* (Qld), the *Information Privacy Act 2009* (Qld) and the *Privacy Act 1988* (Cth) provide enhanced protections regarding the privacy of a person's health information, including your HIV status. Health professionals can only share your personal health information if you authorise them to do so or with others who are involved in your health care and treatment (including counselling services), or where otherwise authorised by law, such as by a court order. Health professionals are not allowed to treat you less favourably than any other patient because of your HIV status.

## **What if I think a practitioner is not following Standard Precautions?**

If you think that a practitioner is not following Standard Precautions, then you can draw attention to this without disclosing your 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 Office of the Health Ombudsman (see *Useful Contacts*).

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

You cannot donate blood if you are HIV positive. Before giving blood you must fill out a questionnaire that is designed to assess whether you are, have been, or could be at risk of a blood borne disease, including HIV. This questionnaire operates as a statutory declaration and you must sign it to verify the accuracy of the information you have given. Penalties, including fines and imprisonment, apply if you do not answer the questionnaire truthfully.

## **Can I donate organs if I am HIV positive?**

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

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

If you tell Centrelink your HIV status for the purpose of receiving a payment or special treatment, you may be required to undergo a medical examination or provide medical evidence from your 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 can confirm your details and match your information with the Australian Taxation Office (ATO) and the Department of Veteran's Affairs (DVA) to ensure the information you have provided is accurate and that you are receiving the correct benefits. For more information, contact Basic Rights Queensland (See *Useful Contacts* at the end of this guide).

## **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 status, 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 is the result of your HIV condition, then you will need to provide supporting evidence and disclose your HIV status.

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

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 his or her close relatives .

For more information, see the *Discrimination* section.

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

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

Upon enrolling your child, you may be asked about any health conditions the child has. This is to enable trained staff to provide support for certain common conditions that may require attention during the day. Children with HIV do not require any special health management by school or child care staff, so there is no need to disclose your child's status. However, there may be a situation where disclosure may be practically necessary, such as an overnight school trip, to ensure that your child is taking their HIV medication. If your child is unable to take the medication by themselves or deidentifying the medication is not practical, then you should contact your child's HIV specialist for the best method to ensure your child takes their medication in this situation.

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

The *Anti-Discrimination Act 1991* (Qld) and the *Disability Discrimination Act 1992* (Cth) 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 or treat the child differently and must keep that information confidential except in circumstances where the parents consent to the disclosure for a relevant purpose (for example, to a school nurse).

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

No. Generally, loan application forms will not request health information, and your HIV status should not form part of your credit history.

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

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

If a financial institution becomes aware of your HIV status, they are subject to the *Privacy Act 1988* (Cth) and are legally required to keep that information confidential, 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.



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

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

Professional combat sports such as boxing and martial arts are regulated by law in most states and territories and participants are required to undergo medical examinations and be certified medically fit to compete. However, Queensland does not at present have laws which regulate these sports, despite calls for such laws to be implemented. Seek advice from your HIV doctor or HALC if you are considering competing in these sports.

## **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 hair-dressers, nail salons, beauty therapists, tattoo and piercing services are regulated in Queensland by the *Public Health (Infection Control for Personal Appearance Services) Act 2003 (Qld)*, the *Public Health (Infection Control for Personal Appearance Services) Regulation 2016 (Qld)* and the *Infection Control Guidelines for Personal Appearance Services 2012 (Qld)*.

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 or the Office of the Health Ombudsman (see *Useful Contacts*).

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

No. There is no requirement for you to disclose your HIV status to the police or corrective services. The police cannot make you disclose, 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 Offender Health Services 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 'health information' private; and
- referring to it in court as 'a chronic illness'.

If a person is charged with putting someone at risk of contracting HIV or transmitting HIV under the *Public Health Act 2005* (Qld), 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.

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

## Queensland Agency

If you believe a Queensland public authority has mishandled your health information, then you should first contact them to make a complaint. You should allow the offending agency a minimum of 45 business days to deal with the complaint. If after this time, you have not received a response, or received a response that you consider is not adequate, you need to bring your complaint to the Office of the Information Commissioner (Queensland) (OIC) (see *Useful Contacts* section) within 12 months that you became aware of the mishandling of your information.

If the OIC decides to accept the complaint, the Office must consider whether the privacy complaint can be resolved between you and the agency and then take all reasonable steps to effect that resolution. If a resolution is not achievable for a complaint, the OIC is obligated under the *Information Privacy Act 2009* (Qld) to advise the parties of the complainant's right to progress the complaint to an external body.

## Commonwealth Agency and Private Organisations

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

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

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

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

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

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

For disputes with private health providers, you can also make a complaint to the Office of the Health Ombudsman (Queensland) (OHO) (see *Useful Contacts* section). A complaint must be lodged with the Office of the Health Ombudsman within 2 years from the time you first became aware of the event.

If neither the OAIC or OHO is able to accept your complaint, they may refer you to another body that may be able to assist.

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

This is one of the more common questions that we receive at HALC. Unfortunately, there are no dependable remedies for this situation. One possible remedy may be to seek a domestic violence order (DVO) against them. However, the court will only make a DVO under specific circumstances. You must prove that a relevant relationship exists between you and the person you are seeking the DVO against (the respondent); that the respondent has committed domestic violence (including emotional or psychological abuse); and that the DVO is necessary or desirable to protect you from domestic violence. If the court orders a DVO against that person, the court can order them not to disclose your HIV status to other people as one of the conditions.

You can apply directly to the court for a DVO. If you apply to the court yourself for a DVO and are unsuccessful, normally you don't need to worry about paying for the legal costs of the other party as long as the application is not malicious, deliberately false, frivolous or vexatious. You can also make a complaint to the police. In some circumstances, the police may apply to the court on your behalf.

Seek advice from your local community legal centres, HALC or QPP 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).

## 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.

## What is HIV discrimination?

The *Anti-Discrimination Act 1991* (Qld) makes it unlawful to discriminate against a person with an impairment. The *Disability Discrimination Act 1992* (Cth) makes it unlawful to discriminate against a person with a disability. HIV is categorised as an impairment under the *Disability Discrimination Act 1991* (Qld) and a disability under the *Disability Discrimination Act 1992* (Cth).

Discrimination can be direct or indirect. Direct discrimination occurs when you are treated less favourably than other people in similar circumstances because you are living with HIV or another disability/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 disability/impairment, such as HIV, and the requirement, practice or policy is unreasonable in the circumstances.

It is unlawful to discriminate against you because you are living with HIV or another disability/impairment; because someone thinks you are living with HIV or another disability/impairment; because you had a disability/impairment in the past or because you will or may have HIV or another disability/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 on the basis of your HIV status or other disability/impairment.



## Unlawful requests for information

A closely related protection for persons living with HIV under the Acts is the prohibition against asking unnecessary questions.

A person cannot ask for information that could lead to discrimination. The most common situations where unnecessary questions are asked are in job interviews and looking for rental accommodation. A person can ask what seems to be an unnecessary question if they can prove that it is relevant to the particular situation. Often, people believe they need to know your HIV status when in fact they do not.

## 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, 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 Queensland Human Rights Commission (QHRC). 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. You have 24 months from the date the discrimination happened in which to make a complaint to the AHRC. Some complaints are better suited to the QHRC 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 Commission provides some protections against workplace discrimination, for example if you have been sacked from your job because of your HIV status or denied a promotion because of your HIV status. Note that a complaint to Fair Work Commission for workplace discrimination leading to 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' status is telling a 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. It also outlines some practical things you might like to consider before you disclose. Whether you are newly diagnosed or have been living with HIV for some time, the issues of disclosure can be challenging. There is no perfect roadmap on how to disclose. This booklet will help you navigate disclosure.

**Disclosure can provide many benefits. It can:**

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

**However, there are some potential risks of disclosure:**

- negative reactions such as 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;
- loss of control over your disclosure or being “outed” as HIV positive.

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

People may react differently to your disclosure. Everybody is unique. Some people may immediately accept your diagnosis. Others may need more time and information to respond or adjust to your disclosure. Whatever the response you receive in a specific situation, and even if your disclosure experience doesn't go the way you'd hoped, there is support out there. You are not alone.

People living with HIV are often put in the position of an educator when they disclose. People who don't know a lot about HIV will want you to inform them. It's OK not to know all the answers. You can contact a support agency such as QPP to answer their questions/concerns, or you can direct them to HIV support agencies with their queries.

It is also important to consider your personal safety when disclosing. If you fear that the person you are disclosing to may become violent, consider your support options. One possible option could be choosing to change your disclosure setting to somewhere more public, or in the presence of a friend or 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. For information on disclosing to a child, you can refer to Positive Life NSW's 'HIV & Disclosing to your child' available at: [www.positivelife.org.au/blog/hiv-disclosing-to-your-child/](http://www.positivelife.org.au/blog/hiv-disclosing-to-your-child/).

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

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

There are many ways to prepare for disclosing your HIV status, whether it be 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 contracted HIV. Remember, you're in control!

**Avoid isolating yourself.** If you are uncomfortable talking to friends, family members or other loved ones about your HIV status, allow yourself to draw upon the support and experience available to you. This can be done through QPP 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. QPP 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?

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 feel of what to expect, if you decide to do so. QPP can help you get in touch with the right person.

# 5Ws

Be sure to consider the five “Ws” when thinking about disclosure; who, what, when, where, and why.



**Who** do you need to tell?



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



**When** should you tell them?



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



**Why** are you telling them?



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 yourself to disclose

- ✔ Think about the range of possible responses that you may receive from the person you are disclosing to;
- ✔ Consider where and when to disclose (Will there be privacy? Is there support around you if the disclosure does not go the way you thought it would?);
- ✔ Consider things you are not comfortable to talk about (Just because you have disclosed your status, does not mean you should feel pressured to disclose any personal information that you are not comfortable with);
- ✔ Consider cultural and religious differences that may impact 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 QPP or let them know of a mutual contact that you have disclosed to if they want to talk with someone else about it. They might need support as well;
- ✔ Have you considered practicing with someone you've already disclosed to, or calling QPP? It can be helpful to rehearse what you want to tell people beforehand;
- ✔ Have you thought about how you would have the conversation? Some suggestions are “I am going through a hard time right now, and I could use your support. I was recently diagnosed with HIV” or “I want to tell you that I am HIV positive. I'm telling you because I trust you and you are important to me.”
- ✔ Are you prepared to answer the 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.

## Are you fearful of disclosing your status? Or have you encountered a negative reaction to disclosing?

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

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

Stigma can also be less visible, such as feeling like it is a 'no go topic' with friends and family or being made to feel like you need to explain or justify how you contracted HIV. Stigma can exist within ourselves, from our own views of HIV that have been formed by seeing HIV being represented by friends, family and even the media. Stigma causes fear and a lack of discussion, which is one of the driving reasons why people may not seek testing or treatment.

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

## Disclosure, the environment and stigma

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

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



The outside layer represents community narratives, cultural norms, values and beliefs. The second layer represents family, partners, close friends also known as significant others. The inside layer is you living with HIV (your safe space). Regardless of the negativity or positivity from the outside world (the two outside layers), you have the power to nurture yourself 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 potential negative reactions 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 'ability to 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;
- 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 outlines the legal protections 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 status.

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

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 QPP or someone you can 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 available?
- Do you have support to help process the disclosure?
- Do you feel safe and comfortable to talk with the person who has disclosed your status?
- Do you want to address the disclosure?

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

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



**HIV AIDS Legal Centre**

Phone: (02) 9492 6540

Website: [www.halc.org.au](http://www.halc.org.au)

**Queensland Positive People**

*Support services for people living with HIV in Queensland.*

Freecall: 1800 636 241

Phone: (07) 3013 5555

Website: [www.qpp.org.au](http://www.qpp.org.au)

**National Association of People with HIV Australia**

*Australia's peak non-government organisation representing community-based groups of people living with HIV.*

Freecall: 1800 259 666

Phone: (02) 8568 0300

Website: [www.napwha.org.au](http://www.napwha.org.au)

**INFORMATION & ADVOCACY SERVICES****Queensland Human Rights Commission**

*Information and assistance with discrimination complaints.*

Freecall: 1300 130 670

Website: [www.adcq.qld.gov.au](http://www.adcq.qld.gov.au)

**Australian Human Rights Commission**

*Information and assistance with discrimination complaints.*

Complaints Infoline: 1300 656 419

General Enquiries: 1300 369 711

TTY (for hearing impaired): 1800 620 241

Website: [www.humanrights.gov.au](http://www.humanrights.gov.au)

**Australian Information Commissioner**

*Information and assistance with privacy complaints.*

Phone: 1300 363 992

Website: [www.oaic.gov.au](http://www.oaic.gov.au)



## **Financial Rights Legal Centre**

*Nationwide advice on consumer finance issues.*

**Phone:** 1800 007 007

**Website:** [www.financialrights.org.au](http://www.financialrights.org.au)

## **Legal Aid Queensland**

*Free legal advice and assistance.*

**Phone:** 1300 651 188

**Website:** [www.legalaid.qld.gov.au](http://www.legalaid.qld.gov.au)

## **Office of the Health Ombudsman**

*Statutory body which receives and investigates complaints about Queensland health care providers.*

**Phone:** 133 646

**Website:** [www.oho.qld.gov.au](http://www.oho.qld.gov.au)

## **Office of the Information Commissioner**

*Statutory body for the Right to Information Act 2009 (Qld) and Information Privacy Act 2009 (Qld).*

**Phone:** 07 3234 7373 or 1800 642 753

**Website:** [www.oic.qld.gov.au](http://www.oic.qld.gov.au)

## **Queensland Association of Independent Legal Services Inc**

*For information about your nearest Community Legal Centre and specialist services.*

**Website:** [www.qails.org.au](http://www.qails.org.au)

## **Respect Inc**

*Support for Queensland sex workers.*

**Phone:** 07 3835 1111

**Website:** [www.respectqld.org.au](http://www.respectqld.org.au)

## **Basic Rights Queensland (formerly Welfare Rights Centre)**

*A state-wide specialist community legal centre, providing free advice, advocacy and legal services to people having problems with social security or disability discrimination.*

**Phone:** 07 3847 5532

**Freecall:** 1800 358 511

**Website:** [www.brq.org.au](http://www.brq.org.au)





### **Queensland Positive People**

21 Manilla Street, East Brisbane  
PO BOX 7403 East Brisbane QLD 4169

Freecall (Queensland Landline): 1800 636 241

Phone: (07) 3013 5555

Fax: (07) 3891 1830

Email: [info@qpp.org.au](mailto:info@qpp.org.au)  
[www.qpp.org.au](http://www.qpp.org.au)

### **HIV/AIDS Legal Centre**

414 Elizabeth Street, Surry Hills  
NSW 1300

Phone: (02) 9492 6540

email: [halc@halc.org.au](mailto:halc@halc.org.au)  
[www.halc.org.au](http://www.halc.org.au)

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