

PUBLIC HEALTH LAWS

ACT There are no specific laws obliging HIV positive people to disclose their status before having sex, however, public health regulations state that a person who knows or suspects they have HIV, or knows or suspects they are a contact of a person with HIV, must take reasonable and appropriate precautions against transmitting the virus. 'Reasonable precautions' include precautions taken on the advice of a doctor or an authorised officer.

NSW A person who knows they have HIV is guilty of an offence if he or she has sexual intercourse with another person unless, before intercourse takes place, the other person has been informed of and voluntarily accepts the risk of contracting HIV.

NT There are no general public health laws dealing with HIV transmission or disclosure of HIV status in the Northern Territory, however, there are departmental guidelines that may be applied to people identified as putting others at risk of infection. If people fail to follow public health orders, they may be prosecuted.

QLD Queensland law makes it an offence to recklessly transmit HIV or put someone at risk of contracting HIV, however, it is a defence if the person knew the accused was infected with HIV and voluntarily accepted the risk of infection.

SA Although the law does not specifically require a person with HIV to disclose their HIV status to a prospective sexual partner, it states that an HIV positive person must take all reasonable measures to prevent transmission of the disease to others.

TAS A person who is aware of being HIV positive must inform in advance any sexual contact or person with whom needles are shared of that fact. HIV positive persons are also required to take "all reasonable measures and precautions" to prevent the transmission of HIV to others, and must not knowingly or recklessly place another person at risk of contracting the disease, however, it is a defence if the other person knew of, and voluntarily accepted, the risk of contracting HIV.

VIC Until 31 December 2009, the law requires HIV positive persons to take necessary measures to ensure others are not unknowingly placed at risk of infection. The law does not specifically require an HIV positive person to disclose their HIV status before having sex, however, it is a defence to a charge of infecting a person, if the other person knew of and voluntarily accepted the risk of infection

From 1 January 2010, the law will change. Although public health laws will no longer include the specific requirements listed above, departmental guidelines may be applied to people identified as putting others at risk of infection. If people fail to follow public health orders, they may be prosecuted.

WA Western Australia's public health laws have little bearing on HIV as they deal with diseases transmitted through casual contact or inadequate public sanitation, however, departmental guidelines may be applied to people identified as putting others at risk of infection. If people fail to follow public health orders, they may be prosecuted.

CRIMINAL LAW

In certain instances, an HIV positive person who exposes another person to HIV or transmits HIV may be found guilty of a criminal offence. There have been relatively few criminal prosecutions for HIV exposure or transmission (some 22 to date), although there is some evidence that people may be being prosecuted more frequently than a decade ago.

Relevant criminal laws vary greatly between states, and in each state, possible charges differ according to the circumstances involved. Consequently, it is not feasible to list the range of possible offences in this factsheet. In summary, generally criminal law offences carry far weightier punishment than public health offences even though they may be applied to similar behaviours. In most instances, charges are not HIV specific but relate to a person having acted dangerously (e.g. 'reckless conduct that places or may place another person at risk of serious injury' [Vic]) or having caused injury or harm (e.g. inflicting grievous bodily harm with intent [NSW]). Charges and penalties vary depending on the circumstances involved and particularly, whether the act occurred intentionally, recklessly or negligently. Maximum penalties vary between states and territories but are generally from some two years imprisonment (for acts that are negligent) to 15 years to life (for acts considered intentional).

PUTTING IT ALL TOGETHER

RELATIONSHIPS, INTIMACY, THE LAW AND DISCLOSURE

Disclosure can, in some circumstances, be beneficial, serving as a way of accessing support, of minimising depression and isolation, of improving physical health, and regaining a sense of control of your life. Deciding how and when to tell someone you are HIV positive is a personal and sometimes difficult decision. Talking to a counsellor or a friend on how to approach disclosure can be helpful.



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GAY MEN & HIV
DISCLOSURE

INTRODUCTION

Anonymous or casual sex is a significant part of the lives of many gay men. And for many with HIV it offers a convenient outlet without the usual social obligations of cooking him breakfast or meeting his mother. While having sex without disclosing your HIV status is against the law in some Australian states, in practice, disclosure under these circumstances does not always happen.

THE DISCLOSURE DILEMMA

Many positive men have been rejected upon disclosing to potential partners and some threatened with physical violence. That is why some men use a non-verbal form of disclosure by insisting on safe sex. Often, simply reaching for the condom at the appropriate time is enough. This method does have its pitfalls because an HIV-positive gay man may assume his partner is also positive because he doesn't insist on condoms, while a negative gay man may assume his partner is negative for the very same reason.

Some men will make assumptions about their partner's status based on how they look. Lipodystrophy, for example, can often be recognised, but not all hollow cheeks are related to HIV. **Basing sexual decisions on how a person looks is never a foolproof strategy.**

There is no easy way to disclose your HIV status to your sexual partners, or any guarantee they will respond positively. When it comes to relationships, however, most positive men who choose to disclose early in the relationship find that their partner is supportive. Often it makes no difference to the relationship and in some cases it even brings the couple closer together.

The dilemma is: *when does a casual partner become a potential relationship?* In an ideal world we would all disclose and all our partners would be supportive. But in the real world:

1. Disclosing can lead to rejection which can sometimes be traumatic.
2. There's no guarantee the person you disclose to will respect your confidentiality.
3. He may become upset or angry.
4. He may want to talk about it and you might not want to play the role of a counsellor or educator at that time.

REASONS FOR DISCLOSING

Some HIV-negative gay men believe that it is the sole responsibility of gay men with HIV to disclose their status before having sex. There have been successful prosecutions brought against men in Australia for knowingly transmitting HIV. But there are more personal reasons for disclosing early:

1. It's a quick way to find out if you want to get to know the person better.
2. If you think that you are eventually going to tell someone you've met, the longer you delay it, the harder it can become—and the more resentment you might have to deal with.
3. You might be seeking other positive partners.
4. It makes it more likely that you'll stick to practising sex that's safe for you and your partner.
5. If a condom breaks, you've at least told him first of the potential risks.

TIMING

With sexual partners, timing can be important. It can be difficult to talk about HIV when you have only just met someone, but putting it off may cause problems later: If your partner does find out later on but can't accept it, it may be more upsetting for both of you.

If you've just met someone, you might not feel that you know enough about them to anticipate their reaction, or to judge whether they'll respect your privacy. You might be in a bar, a party or another place where it feels out of place to talk about HIV. Some people go to a more neutral environment, arrange to meet up later or decide to talk about HIV once they've got to know the person better. Other people drop HIV into the conversation very early on, in a very casual and matter-of-fact way, so that if the other person can't accept it, no time is lost.

Some people drop hints about HIV or try to guess the status of their partner. But these judgements are not always accurate.

TELLING YOUR CURRENT PARTNER

If you've just been diagnosed with HIV and you are already in a relationship, there will be the question of telling (or not telling) your partner. The news could introduce new concerns and pressures into your relationship. Your partner may be worried about their own health, and may want to have an HIV test or think again about the sex you have.

Some people face particularly difficult situations. You may live with your partner and be worried about losing your home. Or you may be afraid of domestic problems or violence.

HIV is a fact of life these days, particularly gay men's lives, and responsibilities in any sexual encounter are always shared responsibilities. So, be bold and remember it's his problem if he can't deal with it.

DISCLOSURE STORIES

"I hate the verbal HIV disclosure routine. A couple of times I've deliberately and openly taken my HIV medication in front of trade I've had to my place. It's an easy way to show my HIV status and to demonstrate I'm relaxed about it..."

"I was at the pub and we'd been chatting for a couple of hours and getting on really well. I thought 'Here goes...' and told him that I was HIV positive. He went to the toilet and didn't come back! It doesn't encourage me to do it again."

"Well, it's got a lot better than it used to be. The last two times I disclosed being positive was 'So what difference does that make if we do safe sex?' and 'Thanks for telling me'. It's like gay men have dealt with it more often now. It's also a lot more common to be asked."

"He'd been chatting me up persistently for a while and I hadn't really encouraged him. I wasn't going to go home with him. Then he told me he was HIV positive and it made rejecting him more difficult—it wasn't because he was HIV positive."

"I'd been openly taking my pills in front of this guy I'd been seeing for weeks. I assumed he knew my HIV status. When I said I was off to my HIV doctor that afternoon it suddenly became apparent that this was not the case. He thought it was not polite to ask what the pills were for... and hadn't even thought they might be for HIV..."

"He wanted to brush his teeth before we went to bed. I told him there was some unused (new) toothbrushes in my bathroom cabinet. He looked a bit tentative when he emerged from his teeth cleaning. I then went to clean mine—and saw in the open bathroom cabinet my supplies of HIV pills..."

"I keep my HIV pills in vitamin bottles. It avoids unplanned disclosure."

THE LAW AND HIV TRANSMISSION

There are numerous laws and regulations in place to address instances of people who put others at risk of HIV transmission. These laws vary between states and territories, however, in every state and territory two systems apply: public health and criminal law.

PUBLIC HEALTH

Every state and territory has a public health system designed to help people understand what they need to do to avoid putting others at risk of HIV infection. These systems, which usually start with advice from a doctor and sometimes also a counsellor, are designed to be supportive. Doctors and public health counsellors understand there are many challenges involved in always behaving in ways that prevent HIV transmission and can provide excellent advice and support. Such support has proven very effective in the vast majority of cases, however, in unusual cases of a person not managing their behaviour and putting others at risk of HIV infection, states and territories are able to make public health orders. Although infrequently used, these orders may include restrictions on a person's behaviour and, in rare instances, may include detention.

Additional to public health orders, there are specific public health laws that may be applied to any person who transmits HIV or exposes another person to HIV transmission. The wording (and consequently the requirements) of these public health laws and the penalties imposed vary considerably from state to state. Depending on the circumstances of the case and the state in which the offence occurred, a person convicted of such an offence would be liable for a fine of between \$1,000 and \$40,000 or imprisonment.