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# Improving Access to the Law for Women with H.I.V.

## Addressing the special legal needs of women living with H.I.V. / AIDS

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Women living with H.I.V. face multiple challenges.

The H.I.V. / AIDS Legal Centre (H.A.L.C.) is attempting to address the special legal needs of women living with H.I.V. / AIDS with the release of a new resource *Unravelling the Law*, reports Sian Aldis.

***A socially and geographical diverse minority group, women living with H.I.V. are more likely to experience isolation.***

Women living with H.I.V. face multiple challenges. A socially and geographical diverse minority group, women living with H.I.V. are more likely to experience isolation. For most, finding answers to questions and concerns about legal issues and family can be difficult and confusing.

The H.I.V. / AIDS Legal Centre is committed to positive women. With the financial assistance of the N.S.W. Department for Women we are now finally able to realise a resource we have been working on for nearly two years, *Unravelling the Law: A resource for women living with H.I.V. / AIDS*. This resource is unique in providing positive women, and their service providers with easy access to plain legal information on questions that they themselves have identified as being of common concern. A guide to the law in the areas of sex and relationships, family violence, pregnancy and childbirth, and raising children, this resource clearly states the legal responsibilities and rights of women living with

[H.I.V. / AIDS in N.S.W.](#)

## The Organisation

The H.I.V. / AIDS Legal Centre is a community legal centre located in the A.C.O.N. building in Sydney. We are a publicly funded non-profit organisation that provides advice and assistance to people living with or affected by H.I.V. / AIDS in H.I.V. related legal matters. Most of our case work concerns superannuation, insurance, discrimination, medical complaints, employment, immigration, wills, powers of attorney and enduring guardianships. We promote recognition of the rights of people living with H.I.V. / AIDS by taking part in community education programs, lobbying for legislative reform and contributing to policy drafting.

## The Process

The idea to develop a legal resource for women living with H.I.V. / AIDS originated from workers at A.C.O.N. who became aware that women with H.I.V., and their health and welfare service providers, lacked easy access to clear and plain legal information.

A.C.O.N. and H.A.L.C. utilised the experience of staff working in the area to draft a list of ten commonly asked legal questions posed by women with H.I.V. Feedback was sought from a diverse range of these women and there was an overwhelming response to the need for a resource that answered these questions. Focus groups were set up and direct input from positive women made apparent that an extended list of fourteen questions and answers was needed.

The answers were researched and drafted by staff at H.A.L.C.. Legal information was distributed to relevant community groups, organisations and departments including the Women's Legal Resource Centre, the New South Wales Department of Community Services, the Attorney-Generals Department and the Anti-Discrimination Board. Their feedback assisted with the collation of the final draft.

Restructuring of the Department originally intended to finance the resource, and staff shortages at H.A.L.C. created a delay in making the resource available. Volunteer recruitment and participation in A.C.O.N. 'Activate' forums that focus on women and families renewed vigour and made evident again the pressing need for positive women to gain better access to legal information. H.A.L.C. increased its outreach, gaining valuable insight into how best to provide women with H.I.V., and their service providers, with access to the resource once published, especially those living in rural N.S.W.. The resource was updated to include recent developments and funding was gained from the N.S.W. Department for Women for publication.

## The Resource

*Unravelling the Law: A resource for women living with H.I.V. / AIDS* provides answers to questions such as; "If I practise safe-sex do I

have to tell the person I am having sex with that I am positive?", "I am having unprotected sex and my sexual partner does not know I am positive. If I tell my doctor/nurse/counsellor/social worker are they required to take it further?", "If I need to go to court is there a way I can protect my privacy?", "Do I need to disclose my own or my child's status to their kindergarten or school?", "If I am unable to care for my children what legal care arrangements can I make?".

Some of the legal issues addressed in the resource are included below. The information contained here is not legal advice. If you have a legal issue you should talk with a legal practitioner before making a decision about how to proceed. If you would like further information about any of the matters discussed here please contact [H.A.L.C.](#) on (02) 9206 2060. We are open Monday to Friday between 10:00am and 6:00pm.

## Discrimination

It is against the law in [N.S.W.](#) to treat someone less favourably or harass someone because they have [H.I.V.](#) or because they are thought to have [H.I.V.](#). The law can provide some course of redress if it happens in the course of employment, state education, in registered clubs, when acquiring goods and services or accommodation. [H.I.V.](#) vilification is also against the law and includes any public act that could incite hatred, serious contempt or severe ridicule against people who have [H.I.V.](#).

If you have experienced vilification or discrimination and you have suffered as a result, you can complain to the Anti-Discrimination Board or the Human Rights and Equal Opportunity Commission. There is a time limit on the making of such a complaint; the last act of discrimination or vilification must have occurred no longer than six months ago (Anti-Discrimination Board), or twelve months ago (Human Rights and Equal Opportunity Commission). For people who do not access legal information these limitations create real barriers as being unaware of them does not provide an exemption from their effect.

## Disclosure

There are no laws in Australia that place any obligation on an ordinary member of the public to keep another persons [H.I.V.](#) status confidential. If you are unsure of whether or not you are required to disclose in a certain situation, seek advice first.

## Sexual Relationships

Legally you are required to disclose your status to any person you intend to have sexual intercourse with. Failure to disclose may put you at risk of being charged or sued by the person to whom you haven't disclosed. Practising safe-sex is not an exception. You are still required to disclose your status to a sexual partner, even if you plan on having safe sex and reducing the risk.

## Employment

All employees owe a duty to their employer to exercise care not to cause injury or loss in the course of performing work. Generally as an employee you are not obligated to tell your employer or potential employer if you are [H.I.V.](#) positive. However, if you are unable to perform the requirements of the job in a way that is safe your employer may be able to legally discriminate. Jobs where [H.I.V.](#) status is considered relevant include those that involve the performance of 'exposure-prone' procedures and some defence force jobs.

Sex workers with [H.I.V.](#) are legally obliged to tell clients about the risk of contracting [H.I.V.](#) before engaging in oral sex or vaginal or anal intercourse. If the owner or manager of a parlour or brothel knows that you have [H.I.V.](#), and allows you to have sex without telling clients, they have breached the law.

## Superannuation

When taking out standard cover insurance, disclosure of your [H.I.V.](#) status is generally not required and all applicants are accepted for death and/or disability cover. If you stop work because of poor health and you want to claim your superannuation on the grounds of total and permanent disability, disclosure is required.

## Schools

There is no legal requirement to disclose to school staff, school management or other students that you or your child has [H.I.V.](#) It is against the law for a school, college, university or other institution at which education or training is provided, to discriminate against a person with [H.I.V.](#).

## Privacy: Health Care

You have rights of privacy enforceable in law against all doctors in private practice, private hospitals and all other service providers in the private sector. Organisations must keep health information secure and protect it from misuse and unauthorised access. You also have the right to access your full medical records and request that they be corrected.

All health service providers must take all 'reasonable steps' to prevent disclosure of [H.I.V.](#) related information to another person. A recent case in [N.S.W.](#) confirmed that a doctor must not override a patient's confidentiality by informing their partner of their [H.I.V.](#) status without the patient's consent. Rather, the obligation is to ensure adequate pre- and post-test counselling. In exceptional circumstances in which it is thought that someone's behaviour is endangering public health a doctor may inform the Health Department who has special powers to order counselling and, in extreme cases, detention.

## Privacy: Court Proceedings

If you are going to court and you wish to maintain your privacy you can ask the magistrate or judge to close the court to the public.

Closed courts can be granted when it is considered that parties' details should not be released because of the stress and other social disadvantages it might cause. Alternatively, you can request that your H.I.V. status be masked. That is, instead of the court saying "H.I.V." the court could instead refer to it as a "disability" or "medical condition".

## Parenting: Pregnancy and Childbirth

The decision to have a child (naturally or by insemination), the decision to undergo or not to undergo any treatment considered to reduce the risk of transmission of H.I.V. during pregnancy, decisions on how to care for and raise your children are legally yours to make. Where the law can compel you to do something or prohibit you from acting in a certain way is to prevent harm to your child. The Department of Community Services (DoCS) will not be notified when you have a baby just because you have H.I.V., they will only intervene if they receive a report that a baby or child is being neglected or abused, or an unborn child is at risk of harm after his or her birth.

If you do not take precautions recognised as reducing the risk of transmission and a report is made, it is likely DoCS will investigate. An investigation may involve speaking to you, your family and other health care workers. DoCS then decide how to proceed to promote the safety of your child. DoCS may provide you with support, draw up care plans, supervise you or obtain a court order instructing or prohibiting you to act in a certain way.

## Parenting: Care Arrangements

If you need someone to look after your children, you can make informal arrangements with family (including your child's father) or friends. Legally you are only allowed to leave your child with a person who is not related to your child for a limit of twenty-eight days in any twelve month period. If you would like a non-related person to look after your child for a longer period, you are required to make a formal and legally recognised arrangement.

Any one person who has an interest in the welfare of your child can make an application to the Family Court to obtain a parenting order. Parenting orders can determine issues such as who your child lives with, who can have contact with your child and who can make decisions regarding your child's future. In determining the order, the paramount consideration for the court will be what is in the best interest of your child. Factors affecting this include your child's wishes, your child's relationships with the relevant people, your child's cultural background and the capacity of relevant people to care for your child.

While the main purpose of a will is to direct who is to inherit your property, you can, however, state your wishes as to other matters such as who you would like to look after your children; such a provision does not guarantee that they will be cared for by that person but it does ensure that your wishes are considered by a court making orders.

The legal issues for people living with H.I.V./AIDS can be specialised and complex. For women living with H.I.V. this is especially true. *Unravelling the Law: A resource for women living with H.I.V./AIDS* is designed not as a substitute for legal advice but as a source of legal information that is easy to access and understand. It is hoped that the resource will better equip women living with H.I.V. to fulfil their responsibilities and assert their legal rights.

## Further Information

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Download *Unravelling the Law: A Guide for Women Living with H.I.V./ AIDS* (168kb) in Adobe P.D.F. You will require Adobe Reader to view. Adobe Reader is available for Download from the [Adobe](#)  website.

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The Gender Centre is committed to developing and providing services and activities, which enhance the ability of people with gender issues to make informed choices. We offer a wide range of services to people with gender issues, their partners, family members and friends in New South Wales. We are an accommodation service and also act as an education, support, training and referral resource centre to other organisations and service providers. The Gender Centre is committed to educating the public and service providers about the needs of people with gender issues. We specifically aim to provide a high quality service, which acknowledges human rights and ensures respect and confidentiality.