

01

Under New Zealand law, you are not obligated to tell your sexual partners your HIV status so long as you are using condoms every time

In New Zealand, as long as you're having sex using condoms every time you have vaginal or anal sex you are not legally obligated to disclose your HIV positive status.

People living with HIV have a right to a full and active sex-life and as long as you are using condoms for anal or vaginal sex, the risk of transmitting HIV is minimal. Condoms also protect from other Sexually Transmitted Infections (STIs).

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02

Disclosure and legal rights

In New Zealand, everyone has a legal duty not to endanger the life, health or safety of others. In law this means that people living with HIV must take 'reasonable precautions' to avoid transmitting HIV to sexual partners.

What are 'reasonable precautions'?

Anal or vaginal sex without a condom carries a significant risk of HIV transmission. 'Reasonable precautions' would mean taking care to avoid sexual transmission of HIV and participating in sexual activities that involve a very low risk or no risk of transmission, for example, masturbation and kissing, and using condoms for anal and vaginal sex.

People living with HIV who disclose their status to their sexual partners before having consensual sex also avoid legal liability.

Some things to be mindful of:

- Some people believe there is a moral expectation for people living with HIV to disclose to their sexual partners
- While it's legal to have sex without condoms if you have disclosed your HIV status, the risk of HIV transmission still exists and is especially high for anal sex
- Even if there is consent from partners, it can be disputed if alcohol, drugs or fear are involved
- If you have not disclosed your HIV status, using condoms fulfils your legal duty to a sexual partner
- Having an undetectable viral load does not remove the legal obligation to disclose your HIV status
- While the risk of HIV infection via unprotected oral sex is very low, there is still a small risk of transmission. Currently, there is no NZ case law related to oral sex

03

Not taking 'reasonable precautions' is not worth the risk

In New Zealand, there have been legal cases involving disclosure and HIV. These fall under sections s145 or s188(2) of the Crimes Act 1961.

Legally, if a person living with HIV has not taken 'reasonable precautions' to avoid HIV transmission, he or she risks prosecution under the Crimes Act 1961 for criminal nuisance or wounding with intent.

So if HIV transmission has not occurred, you may still be imprisoned for up to one year. If HIV transmission has occurred, you may be imprisoned for up to seven years. If the court finds that HIV transmission was intentional, there may be more serious charges.

**Continued on page 04*

Disclaimer: The information contained in this brochure is based on case law established in New Zealand as at August 2014. The NZAF does not guarantee the non-prosecution of people living with HIV in criminal cases even when a condom has been used, as each individual case may be assessed by the police and the courts against other factors. People living with HIV involved in or who think they may be involved in such cases should seek expert legal advice.

04

What cases have there been in New Zealand to establish this law?

In 2005, the first case was laid against a man who did not disclose his HIV positive status but used a condom for vaginal sex. He was acquitted. This case established that legally, disclosing one's HIV status was not essential, provided that a condom is properly used for vaginal intercourse. This has not been applied to anal intercourse but will influence such a decision.

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05

HIV disclosure & the law

A 2005 case found that, by using condoms, a person living with HIV fulfils his or her duty to protect sexual partners from HIV infection. Not disclosing one's HIV positive status can potentially have an impact on issues of trust and emotional expectations in a sexual relationship. If you choose to disclose, you may want to seek support from your doctor, NZAF counsellor or a peer support group.

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Te Tūāpapa Mate Āraikore o Aotearoa

HIV & Disclosure

Safe-sex and your rights in New Zealand

