

What does the law say about disclosure?

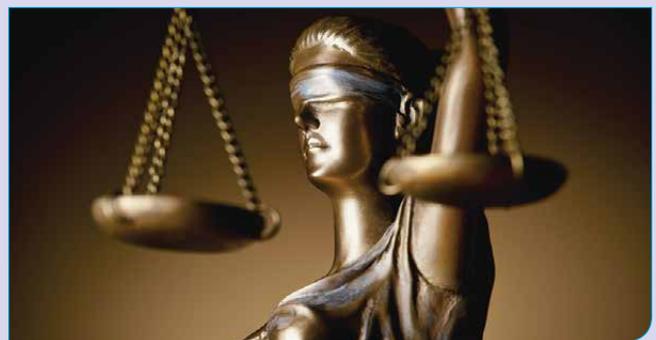
The law and disclosure - key points

- By law you don't usually have to tell anyone about having a bleeding disorder or carrying the gene
- There are a few situations where you will be required to give this information *if asked*.

These include:

- ▶ Applying to join the Australian Defence Force or police force
- ▶ Applying for insurance such as Life and Income Protection Insurance
- ▶ Applying for superannuation
- ▶ Applying for private health insurance
- ▶ Applying for travel insurance
- ▶ Travelling – you may be asked questions relating to your bleeding disorder by customs and security officers or other government officials.
- ▶ Applying for or continuing a job where your condition is likely to have a fundamental impact on your ability to do your work or may pose a risk to occupational health and safety

- If you are unsure whether you need to disclose your bleeding disorder it may be helpful to speak with your Haemophilia Treatment Centre (HTC)
- If you do choose to tell an employer or service provider, by law they are not able to discriminate on the basis of your condition apart from the exceptions above
- If you need information on discrimination you can contact your state or territory Equal Opportunity or Human Rights Commission, or contact The Australian Human Rights Commission (www.humanrights.gov.au). You can also contact your Haemophilia Treatment Centre, local Haemophilia Foundation or Haemophilia Foundation Australia.



By law you don't usually have to tell anyone about having a bleeding disorder or carrying the gene. Your diagnosis is seen as your private information and it's up to you whether to tell someone. There are, however, a few situations where you *are* required by law to give this information if you are asked.

Do you have a 'health condition'?

If you disclose, it is important to be clear about whether you have been diagnosed with a bleeding disorder, e.g. VWD or haemophilia, or whether

you carry the gene but do not have symptoms. Usually organisations that ask questions about health conditions, such as insurers or employers, are assessing risk and will treat having a bleeding disorder differently to being a carrier. You may not be required to tell your employer that you are a carrier if you do not have bleeding symptoms as it is not considered a 'health condition'. If you have any questions about your status, speak to your Haemophilia Treatment Centre (HTC).

You are required to disclose if you are:

- 1 Applying to join the Australian Defence Force (ADF) or state/territory/federal police forces.** The ADF and the police force have very strict medical entry requirements. Members may be sent to remote locations where access to appropriate treatment may not be available, and members may be in active service where the risk of injury is increased. You must provide the ADF or police force medical officer with information about any known health condition so they can make a decision about how relevant it is. If it's not disclosed and causes a problem you can be discharged from the ADF or police force.
- 2 Applying for insurance such as Life and Income Protection insurance.** The law requires anyone applying for life and disability insurance to disclose all matters that are reasonably known to be relevant to the insurer's decision about whether to accept the risk. Some insurance companies will ask about pre-existing health conditions or genetic testing. You will need to answer questions honestly. If you do not answer honestly and the cover is granted the company may be entitled to refuse to pay any subsequent claim and void your cover entirely, even if the cause of a claim is unrelated to the matter which was not disclosed. Insurance companies can ask about results of any genetic testing already undertaken but cannot request that you get this done. If you are refused insurance, or the premiums you are asked to pay appear unreasonably high because of your condition, you can appeal the decision. If you have an insurance claim rejected for any reason you may be able to challenge the decision. If you want to challenge or appeal the decisions, legal advice is recommended.
- 3 Applying for superannuation.** Most default superannuation funds provide contributing members with automatic life and disability insurance under a 'group' insurance policy. These benefits can be tens of thousands of dollars and cover is generally granted without having to answer any questions about pre-existing

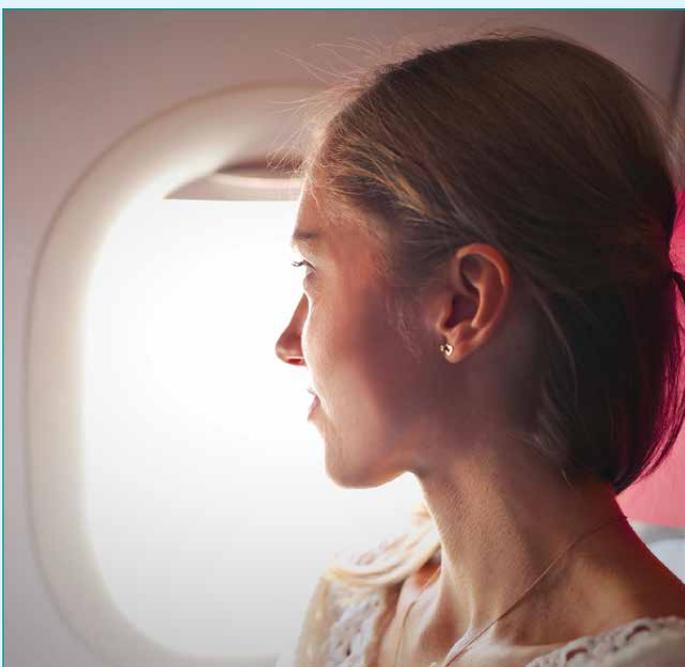


health conditions. Claims caused by pre-existing conditions will usually be covered as long as you have worked normal hours without restriction while you were a member of the super fund. It's important to check your superannuation statements to make sure your contributions are being made and your insurance is maintained so that you remain covered in the event that you cease work due to injury or illness. Self-managed or private superannuation is different from group superannuation and is often used by people who are self-employed or not in regular employment. You can still get life and disability insurance through these funds but the insurer is likely to ask health questions to which you are required to answer honestly. Some schemes will cover you if you haven't needed any treatment for a certain length of time.

- 4 Applying for private health insurance.** Even though private health insurers may ask about pre-existing medical conditions they cannot charge a higher premium based on your medical history, including results of genetic tests.

5 Applying for travel insurance. If you are applying for medical and disability cover under travel insurance you may need to fill out a health questionnaire. You will need to complete this honestly or you might not be covered if you try to make a claim. It's often worth shopping around to see what information is required and what options there are. Some insurers who ask about pre-existing health conditions will allow you to pay a higher premium for travel insurance. If you have an insurance application or a claim rejected because of your pre-existing medical condition you may be able to challenge the insurer under the discriminations laws but that will depend upon whether the insurer can justify its decision.

6 Travelling: At the time of travel you will also need to answer any questions from government officials, such as customs and security officials, about any medication or equipment, but only if asked or you are required to declare it. Airlines and officials may choose not to raise it with you. Read the airline's fine print about their requirements relating to your medical condition and any medical treatment products and equipment you will be taking with you – this information is usually on their website. Speak to your HTC ahead of time to prepare the necessary documentation and have it in your hand luggage just in case.



7 Applying for, or continuing in a job where your condition is likely to impact on your fundamental ability to carry out the work, or if your condition is an occupational health and safety risk. You do not have to disclose your medical condition to your employer or a prospective employer unless it is a risk to the safety of the workplace or you cannot perform the inherent requirements of a job. Sometimes it's easier for everyone involved if you don't volunteer information unless asked. There may be situations at work when you decide it is in your best interest to speak up – see the section above, **Telling work** for more information on this. If you're not sure whether your condition should be disclosed you should speak to your Haemophilia Treatment Centre. However, employers are able to refuse employment if it is considered reasonable to do so based on these concerns. If you don't mention your bleeding disorder when asked on an application form and an accident occurs, you may not be entitled to legal protection. However there are numerous state/territory and federal laws that protect against discrimination in the workplace if you disclose your status and are treated unfairly because of it. Under the Disability Discrimination Act, Anti-discrimination, and Industrial Relations laws employers are required to make 'reasonable adjustments' to accommodate an employee's condition, for example, providing you with a work station that reduces the chance of a bleeding injury through repetitive movements or knocks.

If you are a woman or girl with bleeding symptoms you may want to get further specialist advice about disclosure and applying for any of the above insurance products, and about legal aspects of disclosure in the workplace. If you would like to talk over these issues or get information, it may be useful to speak to the social workers or counsellors, or other health professionals at your Haemophilia Treatment Centre. You can also contact your local Haemophilia Foundation, or Haemophilia Foundation Australia.

For insurance issues, including superannuation and travel insurance, you might also consider going through an insurance broker who can apply on your behalf. If you apply yourself and are turned

down on a product, this can count against you with other applications. For concerns about legal aspects of disclosure at work, including workplace discrimination, you may want to speak with a lawyer or your union representative. If issues arise you may be eligible for free legal assistance through Legal Aid.

“ I had to tell work as I had haemorrhaged and had to leave. I had to explain to my boss. However, she didn't believe me and I lost my job over it. ”

Apart from the above exceptions, you are not required by law to tell future or current employers, teachers, landlords, or other service providers. If you do choose to tell an employer or service provider, by law they are not able to discriminate on the basis of your condition. For example, if a sporting club is worried about you injuring yourself they cannot use your condition as a reason for not allowing you to participate.

If you would like more information about discrimination you can contact your state or territory Equal Opportunity or Human Rights Commission, or contact The Australian Human Rights Commission (www.humanrights.gov.au). You can also contact your Haemophilia Treatment Centre, local Haemophilia Foundation or Haemophilia Foundation Australia.



A final word

Deciding *who, when and how* to tell others about your diagnosis are important decisions. Usually you are not *required* to tell anyone, but you might *decide* it is in your best interest, or someone else's. Before you tell someone think about the pros and cons, and the best way to tell them. Make sure you're well informed so you can give others accurate information. Contact your Haemophilia Treatment Centre if you need information or support along the way.