

Reporting against Core Indicators for the Joint United Nations Programme on HIV/AIDS 2008

I. Human Rights

1. Does the country have laws and regulations that protect people living with HIV against discrimination?

Yes. The *Disability Discrimination Act 1992* (Cth) applies to people living with HIV/AIDS in that the virus may cause or is capable of causing a disability. The Act applies to the elimination of discrimination in areas of work, accommodation, education, access to premises, clubs and sport; the provision of goods, facilities, services and land; existing laws; the administration of Commonwealth laws and programs.

There are also a number of state anti-discrimination laws and regulations that prohibit discrimination against someone on the basis of their HIV status. In NSW, under the *Anti-Discrimination Act 1977* (NSW), it is illegal to discriminate against someone on the basis of a disability, which includes having HIV. The act also specifically prohibits vilification against someone who is, or is perceived to be, HIV positive.

2. Does the country have non-discrimination laws or regulations which specify protections for vulnerable sub-populations?

The *Sex Discrimination Act 1984* (Cth) prohibits discrimination on the basis of sex, marital status, pregnancy and family responsibilities. Its aim to ensure that women do not face discrimination in the public sphere.

The *Age Discrimination Act 2004* (Cth) aims to eliminate discrimination on the basis of age in a variety of areas of public life. While introduced in order to respond to Australia's ageing population, the provisions can be applied to protect young people from discrimination.

The *Racial Discrimination Act 1975* (Cth) prohibits discrimination on the basis of race in Australia. It has been used for a number of decades as a means of ensuring that both Indigenous Australians and migrants are protected from discrimination.

The four acts listed above are administered by the Human Rights and Equality Opportunity Commission (HREOC), which is a semi-autonomous, government-funded body. The mechanism by which discrimination cases are addressed is as follows:

1. Complaint is made to HREOC
2. Complaint is either conciliated or withdrawn at first instance
3. Complaint is investigated and possibly conciliated by the HREOC President
4. Complaint is either terminated by the President or remitted to the Federal Court or Federal Magistrates Court for determination.

At a federal level, there is limited protection for men who have sex with men through the *Human Rights and Equal Opportunity Commission Act 1986* (Cth). This allows the Commission to investigate claims that a person has been discriminated against on the basis of their sexuality. However, unlike in the acts mentioned above, any determinations made by the Commission are not enforceable. In contrast to the

federal level, legislation exists at the state level that prohibits discrimination on the basis of either homosexuality or sexuality.

In NSW, the *Anti-Discrimination Act 1977* (NSW) prohibits discrimination on the grounds of sex, age, race, homosexuality and transgender status and provides a similar mechanism for redress as under the separate Commonwealth acts.

There is no legislation at either the federal or state level that explicitly prohibits discrimination against someone on the basis that they engage in sex work or that they are an injecting drug user.

3. Does the country have laws, regulations or policies that present obstacles to effective HIV prevention, treatment, care and support for vulnerable sub-populations?

At a federal level the lack of legal recognition of same-sex relationships reinforces discrimination and the stigma associated with being GLBT in Australia. Consequently many gay men and other men who have sex with men do not access health care services such as HIV prevention, treatment, care and support because they fear being discriminated against.

While shared responsibility is a fundamental part of HIV prevention for this population, the current criminalisation of HIV transmission in NSW law places full liability on the positive sexual partner where transmission occurs. This acts as a disincentive for gay men and other men who have sex with men to undergo regular testing to determine their HIV-status and engage with HIV service providers.

Recent changes to legislation in NSW that makes it easier for local councils to shutdown illegal brothels may potentially lead to parts of the NSW sex work industry being forced further underground than they already are. This will make it harder for services such as ACON's Sex Worker Outreach Project (SWOP) to access sex workers and provide them with HIV prevention, treatment and support.

4. Is the promotion and protection of human rights explicitly mentioned in any HIV policy or strategy?

No, but the core principles of the National Strategy on HIV/AIDS are focused on the centrality of self-determination for people living with HIV/AIDS in response to building healthy communities.

5. Is there a mechanism to record, document and address cases of discrimination experienced by people living with HIV and /or most-at-risk populations?

Yes. As outlined above, HREOC is responsible for administering the various Commonwealth anti-discrimination acts, including the *Disability Discrimination Act 1992*. Part of that administrative role is receiving, documenting and attempting to resolve complaints of discrimination made under any of the acts.

In NSW, the Anti-Discrimination Board is responsible for administering the *Anti-Discrimination Act 1977* (NSW), and undertakes many of the same functions as HREOC, but at the state level. Where the ADB is not able to resolve a complaint, it is dealt with by the Administrative Decision Tribunal.

6. Has the Government, through political and financial support, involved most-at-risk populations in governmental HIV-policy design and programme implementation?

Yes, the Australian response has long been shaped by effective partnership between all levels of government and most-at-risk populations, and it is for this reason that Australia has had one of the best responses to HIV in the world. The current *National HIV/AIDS Strategy 2006-2008 Implementation Plan* expressly provides a policy framework to address the needs of people living with HIV and most-at-risk populations, like people from culturally and linguistically diverse backgrounds, Aboriginal people, people who inject drugs and sex workers. This strategy is used to inform the *NSW HIV/AIDS Strategy 2006-2009*.

Both the Commonwealth and State Governments have provided funding for HIV prevention, treatment and support that has been targeted towards most-at-risk populations through the funding of community organisations that work with and are representative of all these populations. For example, the NSW Government provides funding to ACON, which works primarily with gay men and MSM, sex workers, IDU and Indigenous GLBT people.

7. Does the country have a policy of free services for the following:

HIV prevention services: Yes

Anti-retroviral treatment: ART is available at a heavily discounted rate for people who have a Medicare card. This excludes people who are going through the immigration process or who are in Australia illegally.

HIV-related care and support interventions: Yes

Under the Council of Australian Governments (COAG), joint Commonwealth and State funds are administered to guide supported measures outlined in National and State strategies addressing above services.

8. Does the country have a policy to ensure equal access to women and men, to prevention, treatment, care and support? In particular, to ensure access for women outside the context of pregnancy and childbirth?

Yes, any discrimination on the basis of sex in relation to the provision of services is expressly prohibited under the *Sex Discrimination Act 1984* (Cth) and the equivalent legislation in each state and territory.

However, it should be noted that given that gay men and men who have sex with men account for the overwhelming majority of people living with HIV in Australia and new annual infections, most HIV prevention and treatment services are rightly targeted towards this population.

9. Does the country have a policy to ensure equal access for most-at-risk populations to prevention, treatment, care and support?

Yes, the Australian response to HIV has long recognised the need to ensure that the most-at-risk populations have access to prevention, treatment, care and support.

9.1 Are there differences in approaches for different most-at-risk populations?

Generally models around harm minimisation and peer-education are used as supported through the National strategy. However programs that work with at-risk populations are tailored to meet culturally specific needs.

10. Does the country have a policy prohibiting HIV screening for general employment purposes (recruitment, assignment/relocation, appointment, promotion, termination)?

According to the *National HIV Testing Policy 2006*, all testing that takes place in Australia must be done voluntarily with informed consent and be of benefit to the person being tested. This would suggest that testing cannot be enforced on anyone as a requirement in relation to their employment.

11. Does the country have a policy to ensure that AIDS research protocols involving human subjects are reviewed and approved by a national/local ethical review committee?

Yes. The ethical review committees which are responsible for ensuring that AIDS research protocols involving human subjects meet ethical standards include representatives of civil society and people living with HIV where possible. In Australia, review committee's are guided by the highest standard of integrity governed by the principles outlined in the National Statement on the Ethical Conduct in Research Involving Humans made in accordance with the *National Health and Medical Research Council Act 1992 (Cth)*.

12. Does the country have the following human rights monitoring and enforcement mechanisms?

Existence of independent national institutions for the promotion and protection of human rights, including human rights commissions, law reform commissions, watchdogs, and ombudspersons which consider HIV-related issues within their work

Yes. As outlined above, HREOC is the peak body for monitoring human rights in Australia. Law reform commissions and ombudsman at both the national and state level also from time to time consider HIV-related issues within their work.

Focal points within governmental health and other departments to monitor HIV-related human rights abuses and HIV-related discrimination in areas such as housing and employment

No

Performance indicators or benchmarks for

- a) compliance with human rights standards in the context of HIV efforts
- b) reduction of HIV-related stigma discrimination

No

13. Have members of the judiciary (including labour courts/employment tribunals) been trained/sensitised to HIV and AIDS and human rights issues that may come up in the context of their work?

Yes. The "Equality before the Bench" handbook, a resource produced by the NSW Judicial Commission, provides background and up-to-date information on people with disabilities, which includes PLWHA.

14. Are the following legal support services available in the country?

Legal aid systems for HIV and AIDS casework

Yes.

Private sector law firms or university-based centres to provide free or reduced-cost legal services to people living with HIV

Yes.

Programmes to educate, raise awareness among people living with HIV concerning their rights

Yes

15. Are there programmes designed to change societal attitudes of stigmatization associated with HIV and AIDS to understanding and acceptance?

Yes. The *National HI/AIDS Strategy 2005-2008* lists as a priority, the development of approaches to reduce stigma and discrimination experienced by PLWHA in Australia. Australia has a number of peak bodies like the National Association of People living with HIV/AIDS (NAPWA), the Australian Federation of AIDS Organisations (AFAO) and PLWHA (People Living with HIV/AIDS) that work with state-based organisations to implement and deliver educational services around HIV.

At a state and community-based level, peak non-government organisations like the AIDS Council of NSW (ACON) work explicitly, through partnerships, to promote the health and wellbeing of PLWHA by educating the community to minimise stigma associated with HIV.

PLWHA (NSW) has a Speakers Bureau Program that coordinates a person living with HIV to speak at schools where required.

Overall, how would you rate the policies, laws and regulations in place to promote and protect human rights in relation to HIV and AIDS in 2007 and in 2005?

2007	8 Good
2005	8 Good

Comments on progress made since 2005: N/A

Overall, how would you rate the effort to enforce the existing policies, laws and regulations in 2007 and 2005?

2007	8 Good
2005	8 Good

Comments on progress made since 2005: N/A

II. Civil society participation

1. To what extent has civil society contributed to strengthening the political commitment of top leaders and national policy formulation?

4.5 High

2. To what extent have civil society representatives been involved in the planning and budgeting process for the National Strategic Plan on AIDS or for the current activity plan?

4.5 High

3. To what extent are the services provided by civil society in areas of HIV prevention, treatment, care and support included

a. in both the National Strategic plans and the national reports?

4.5 High

b. in the national budget?

4.5 High

4. Has the country included civil society in a National Review of the National Strategic Plan?

Yes, the Review which is to be conducted in 2008 will work in partnership with NGO's in the HIV/AIDS sector to evaluate the impacts of the National Strategy.

5. To what extent is the civil society sector representation in HIV-related efforts inclusive of its diversity?

4.5 High

List types of organisations representing civil society in HIV and AIDS efforts:

Australia has a number of peak bodies like the National Association of People living with HIV/AIDS (NAPWA), the Australian Federation of AIDS Organisations (AFAO) and PLWHA (People Living with HIV/AIDS) that work with state-based organisations to implement and deliver educational services around HIV/AIDS.

At a state level, ACON is the peak community-based organisation that provides HIV prevention, treatment, care and support services. ACON works closely with the NSW and Federal Governments in responding to the epidemic in NSW.

6. To what extent is civil society able to access:

a. adequate financial support to implement its HIV activities?

4.5 High

b. adequate technical support to implement its HIV activities?

4.5 High

Overall, how would you rate the efforts to increase civil society participation in 2007 and in 2005?

2007 8 High

2005 8 High

Comments on progress made since 2005: N/A

III. Prevention

1. Has the country identified the districts (or equivalent geographical/decentralised level) in need of HIV prevention programmes?

Yes.

Blood safety	All districts in need
Universal precautions in health care settings	All districts in need
Prevention of mother-to-child transmission of HIV	All districts in need
IEC on risk reduction	All districts in need
IEC on stigma and discrimination reduction	All districts in need
Condom promotion	All districts in need
HIV testing & counselling	All districts in need
Harm reduction for injecting drug users	All districts in need
Risk reduction for MSM	All districts in need
Risk reduction for Sex workers	All districts in need
Programmes for other most-at-risk populations	Most districts in need
Reproductive health services including STI prevention & treatment	Most districts in need
School-based AIDS education for young people	Some districts in need
Programmes for out-of-school young people	Some districts in need
HIV prevention in the workplace	Some districts in need
Other programmes	N/A

Overall, how would you rate the efforts in the implementation of HIV prevention programmes in 2007 and in 2005?

2007 8 Good

2005 8 Good

Comments on progress made since 2005: N/A

IV. Treatment, Care and support

1. Has the country identified the districts (or equivalent geographical/decentralised level) in need of HIV and AIDS treatment, care and support services?

Yes.

Antiretroviral therapy	All districts in need
Nutritional care	All districts in need
Pediatric AIDS treatment	All districts in need
STI management	All districts in need
Psychosocial support for people living with HIV and their families	All districts in need
Home-based care	All districts in need
Palliative care and treatment of common HIV related infections	All districts in need
HIV testing and counselling for TB patients	All districts in need
TB screening for HIV infected people	All districts in need
TB preventive therapy for HIV infected people	All districts in need
TB infection control in HIV treatment and care facilities	All districts in need
Cotrimoxazole prophylaxis in HIV infected people	N/A
Post-exposure prophylaxis	All districts in need
HIV treatment services in the workplace or treatment referral systems through the workplace	Some districts in need
HIV care and support in the workplace	Some districts in need
Other programs:	Some districts in need

Overall, how would you rate the efforts in the implementation of HIV prevention programmes in 2007 and in 2005?

2007 8 Good
2005 8 Good

Comments on progress made since 2005: N/A

2. What percentage of the following HIV programmes or services is estimated to be provided by civil society?

Prevention for youth – 25-50%
Prevention for IDU – 50-75%
Prevention for MSM – 50-75%
Prevention for Sex workers - 50-75%
Counselling and testing – 50 -75%
Clinical services (OI/ART) – 50 -75%
Home-based care – 50-75%
Programmes for OVC – N/A

3.Does the country have a policy or strategy to address the additional HIV and AIDS related needs of orphans and other vulnerable children?

There is no policy for orphans or other vulnerable children in relation to HIV and AIDS in Australia as the response in this country has been successful in containing the virus to gay men and men who have sex with men. This means that there have been very few cases of children themselves contracting HIV through mother-to-child transmission or being orphaned as a result of the disease.