

The Expert Reference Committee made the following amendments to the 2011 National HIV Testing Policy v1.2 on 05 April 2013. These changes have now been accepted into the online version of the policy on the Testing Portal website.

2011 National HIV Testing Policy v1.3

Changes made in v1.3:

- **4.0 Informed consent for testing**

Addition of section on patients without capacity to make medical decisions or where informed consent cannot be obtained from the person being tested

4.0 INFORMED CONSENT FOR TESTING

[Informed consent](#) for testing means that the person being tested agrees to be tested on the basis of understanding the testing procedures, the reasons for testing and is able to assess the personal implications. Informed consent is required for HIV testing, except for rare occasions when a legal order is made for compulsory testing or in [emergency settings](#) (see [Section 3.0 Indications for HIV Testing](#)). ~~On these rare occasions when informed consent cannot be obtained, pre-test discussions and the provision of appropriate information to the patient should still take place.~~ The person performing the test **should** use their clinical judgement in securing informed consent. This **should** be based on their understanding of the context in which the test is being performed:

- the features which precipitate testing such as clinical presentation, risk exposure, epidemiology and prevalence and patient initiation; and
- an assessment of the person being tested's [with respect to their](#) understanding of the HIV testing process and ~~the~~ consequences of the result.

~~Relationships between health care providers and patients can be complex. General principles of professional conduct apply in the case of HIV testing, and informed consent should~~

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~~not be sought by a health care provider from the patient's sexual partner/s or family members.~~

People involved in HIV testing should use whatever additional supports are necessary to assist the person who is considering testing to become adequately informed. The discussion should be appropriate to the gender, culture, behaviour, ~~language~~ and literacy level of the person being tested and to their intellectual capacity. Professional interpreters (accredited in the person's language, or in Auslan for people with a hearing impairment or deafness) should be used where requested or where, in the health professional's judgement, an interpreter is required.

In situations where protocols dictate that HIV testing is undertaken unless a person opts-out, ~~practice should~~ Protocol driven opt-out testing approaches, if used, necessitate special attention to ensure those that people who choose not to 'opt-out' are free of any form of real or perceived coercion.

~~In the case of testing a child or person who is incapable of giving consent (perhaps due to mental illness or cognitive disability) then the responsibility for consent rests with the guardian or other person/agency legally authorised to make such decisions on their behalf.~~

The person being tested needs to be made aware of [privacy considerations](#) and [protections](#).

A person should not be denied testing because of a lack of capacity to pay for the test or fear of having their name associated with an HIV test (see Section 15.0 Funding of HIV Testing).

4.1 Patients without capacity to make medical decisions or where informed consent cannot be obtained from the person being tested

Clinical judgement should be exercised in determining whether a person has capacity to make a medical decision or not. In cases where the patient has an appointed guardian, consent must be obtained from that person. Where no formal appointment has been made, consent should be sought from another person/agency legally authorised to make such decisions on behalf of the patient, usually their partner (provided there continues to be a relationship), carer or close relative or friend. See [HIV/AIDS Legal Centre matrix](#) for the hierarchy of responsibility in each jurisdiction.

If you have concerns about seeking consent from an informal guardian, you can make an application to the [appropriate authority in your state or territory](#) for a formal guardian to be appointed.

Rarely, circumstances will arise that are not adequately covered by existing laws and policies. In these circumstances, practitioners should seek any clinical or legal support necessary to exercise their clinical judgement.

On these ~~rare occasions when informed consent cannot be obtained, pre-test discussions and the provision of appropriate information to the patient~~ **should** still take place, where appropriate.

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Links

Informed consent: Existing resource previously produced by ERC - *Features of Informed Consent for HIV Testing*

Emergency settings: existing link to AHSM Guide to Australian HIV Laws and Policies for Healthcare Professionals, Privacy and Confidentiality

Privacy considerations: **new link** to the Office of Australian Information Commissioner
<http://www.privacy.gov.au/law>

Protections: existing link, same as emergency settings above

HIV/AIDS Legal Centre matrix: **new link** to HALC matrix – document attached is to be produced as a resource to support the testing policy

www.ashm.org.au/images/Testing Portal/TESTING_PORTAL_Factsheet_HALC_V2.pdf

Appropriate authority in your state or territory: **new link** to HALC matrix as above