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Guideline for the Management of People Living with HIV who Place Others at Risk of HIV

1. Purpose

This Guideline provides direction on the management of the small sub-set of people living with Human Immunodeficiency Virus (HIV) who place others at risk of HIV. A person living with HIV must not recklessly spread HIV and must take precautions to protect others.

The *Public Health Act 2005* allows for the management of HIV-related risks, such as when a person living with HIV places others at risk, for example through unprotected sex or unsafe injecting. This Guideline may assist clinicians to fulfil their obligation to provide correct advice to their patients regarding risk prevention and to manage any identified risks. It outlines a staged approach for the management and supervision of counselling, education and support of those persons living with HIV who place others at risk who have not responded to initial interventions at the local level, or are unwilling or unable to change their risk behaviours.

Each Australian state and territory has implemented management processes which align with the *National Guidelines for the Management of People with HIV Who Place Others at Risk*.

The enforcement of the criminal law by the Queensland Police is a separate and distinct function to this Department of Health process.

2. Scope

The Guideline provides information for all employees, contractors and consultants within the Department of Health, for all clinicians or services providing care to people living with HIV, including GPs and Visiting Medical Officers, and other stakeholders.

3. Related documents

- *Public Health Act 2005*
- *National Guidelines for the Management of People with HIV Who Place Others at Risk*
- *Criminal Code Act 1899*
- *Code of Conduct for the Queensland Public Service*
- *Medical Board of Australia Code of Conduct*
- *Queensland Department of Health PEP Guidelines*
- *Australasian Society of HIV Medicine (ASHM) Guideline to Australian Laws and Policy*

4. Guideline for the Management of People Living with HIV Who Place Others at Risk

4.1 Introduction

The management of people living with HIV who place others at risk requires a variety of strategies including access to the range of services generally available to people living with HIV; information and education about HIV transmission and prevention; access to HIV treatment and clinical care and access to protective equipment, such as condoms and needles and syringes. It may also require more intensive individualised case management, a variety of responses to other health and social service needs and an escalating series of behavioural management techniques including counselling, behavioural supervision, formal warnings and public health orders, including, if necessary, detention or referral to police.

The Guideline is based on the following principles and assumptions:

- except in special circumstances, testing for HIV should be conducted on a voluntary basis
- people living with HIV should not be quarantined, or excluded from social or sexual activities
- every individual has a responsibility to prevent themselves from becoming infected
- every individual with HIV has a responsibility to prevent transmission of the virus to others
- the vast majority of people living with HIV are motivated to avoid infecting others and the risk of transmission by most people living with HIV is best managed through access to information, education, resources for the prevention of transmission and HIV clinical services
- counselling and support services, including post-diagnosis counselling, should be provided to encourage behaviours that minimise the risk of infecting others
- for people with HIV who place others at risk, a variety of increasingly interventionist strategies may be needed, with preference being given to strategies that are least restrictive, as these will generally be the most sustainable and effective in the long term
- the right to equitable, non-discriminatory and transparent treatment, including the right of review and appeal, should be preserved.

4.2 HIV transmission

HIV is a blood borne virus which can be spread via exposure to HIV-infected body fluids.

HIV attacks the immune system. If a person's immune system is severely damaged by the virus, they may develop Acquired Immune Deficiency Syndrome (AIDS). This means they are vulnerable to infections and illnesses that their body could normally fight off.

HIV must be present in body fluids in sufficient quantities to be infectious. HIV is only present in such quantities in the blood, semen, pre-ejaculatory fluid, vaginal secretions and breastmilk of an HIV positive person. A person can only become infected with HIV if the virus from one of these body fluids

from an infected person passes into their blood stream. Unprotected sexual contact and sharing of injecting equipment are the two main ways in which this happens:

Unprotected sexual contact
A person can become infected if they are in contact with infected semen, vaginal fluids, blood and other body fluids during unprotected anal or vaginal intercourse. Unprotected vaginal intercourse carries a risk of HIV transmission of between approximately 1 in 2500 per occasion of intercourse and unprotected anal intercourse carries a risk of HIV transmission of approximately 1 in 70 per occasion of intercourse. The risk is higher with anal intercourse than with vaginal intercourse. The risk from oral sex is so low as to be considered non-measurable (Department of Health, 2014).

Shared injecting equipment
People can acquire HIV through sharing needles and syringes and other injecting equipment following use by a person infected with HIV - the risk is 1 in 125 per occasion of sharing (Department of Health, 2014).

There are no documented reports of HIV transmission following injuries in the community from publically discarded syringes.

Pregnancy and breastfeeding
While transmission of HIV through pregnancy and breastfeeding is not within the scope of this Guideline, it is acknowledged that both of these activities constitute a risk. Clinicians should recommend that women who are HIV positive do not breastfeed and that a HIV positive woman who is planning a pregnancy or becomes pregnant seeks advice regarding the risks of transmission and advantages of antiretroviral therapy. Due to the complex legal and ethical issues involved, clinicians should seek the advice of a HIV experienced paediatrician.

Currently, HIV is a lifetime infection. There is, as yet, no cure. HIV treatments reduce infectivity but that is not by itself an absolute safeguard against infection. HIV transmission does not occur via casual social contact. Specific behaviours are linked to transmitting HIV. Therefore managing individuals with HIV who place others at risk requires support and education which leads to lifelong behaviour change.

4.3 Notifiable conditions

HIV is a controlled notifiable condition in all Australian States and Territories. A controlled notifiable condition, such as HIV, is one which could have a substantial impact on public health, can be transmitted if preventative measures are not in place, and transmission of the condition will, or is likely to, result in long term or serious consequences for the health of the person who acquires the condition. Controlled notifiable conditions must be reported to government authorities. Coded HIV notification information is kept on a confidential register which is protected by the *Public Health Act 2005*. In exceptional circumstances the Chief Executive, Department of Health, can request further details to prevent or minimise the spread of a notifiable condition (*Public Health Act 2005*, section 75).

A person living with HIV must not recklessly spread HIV. They must take precautions to protect others. The *Public Health Act 2005* allows for the management of public health risks, such as when a person living with HIV places others at risk e.g. through unprotected sex or unsafe injecting. A public health risk is any activity that is likely to be, hazardous to human health, or that contributes to, or is likely to contribute to, disease in humans or the transmission of an infectious condition to humans.

The criminal code also has penalties for those who recklessly transmit HIV, but the Department of Health recommends assessment for management under this Guideline, as an alternative in the first instance, which provides for management under the *Public Health Act 2005.*

This Guideline consists of a five level framework designed to facilitate behavioural change in those who have not responded to initial interventions at the local level or are unwilling or unable to change their risk behaviours. A panel of experts provides advice to assist in the management of these individuals. Clinicians or persons with HIV-related public health concerns may contact the Department of Health for further advice (see section 5).

4.4 Investigation, initial clinic management and referral of HIV-related public health concerns

Where a clinician forms a reasonable opinion that a person is placing others at risk of HIV the clinician should initiate a plan of action to manage the risk.

Identify and assess risks or concerns:

- Reports of unsafe behaviours by a person living with HIV. These may include, but are not limited to; anal and/or vaginal intercourse without a condom; the sharing of unsterile injecting, tattooing or body piercing equipment. These reports should be considered in context with the person's behaviour, known social situation and psychological state.
- Determine if the Guideline is applicable to the concern:
    - A person who knows they are HIV positive, engages in unsafe behaviour and does not inform the other person(s) of their HIV status

      or

    - A person who knows they are HIV positive, engages in unsafe behaviour where the other person(s) does not consent to engage in unsafe behaviour.
- Identify the risk of transmission.
- Identify any direct evidence of transmission e.g. diagnosis of HIV infection where the newly diagnosed person names another person living with HIV as the source of that infection.
- Identify evidence of recently acquired sexually transmitted infection (STI) in a person living with HIV. (Note: This requires careful examination of the issues associated with the particular STI, the site of infection, and the sero-status of the partner).
- Ascertain if there is an urgent need to protect others, for example, pregnant partner who is unaware of status or partner who could benefit from post-exposure prophylaxis (PEP).
- Review relevant information related to the person, including: previous concerns; repeated STI's; non-compliance with HIV care; recent HIV related results; statements made by the person or others, or concurrent mental health issues.
- Statement of intent to infect other people made by someone living with HIV.

Confidentially discuss your concerns with the person who may be placing others at risk as soon as possible.

Review actions already taken to address the concerns with the person (at the clinic or elsewhere).

Clearly document HIV-related concerns, the person's response to discussions and any actions taken, including time and dates.

Local health care providers are more likely to understand the dynamics of each situation of concern and are often best placed to successfully manage concerns without formal reporting or enactment of the levels of the Guideline.

If the matter cannot be resolved at the local level or there are concerns about a person's willingness or ability to address the issues, the clinician may request assistance or advice on managing the concern from the Department of Health (see section 5).

Health care providers are invited to contact the HIV Public Health Team, Department of Health (see section 5) for confidential support and guidance on assessing and managing a concern that a person living with HIV may be placing others at risk. No identifying information is required at this initial phase.

A member of the public can also raise concerns of a HIV related public health risk to be further investigated by the Department of Health (see section 5).

4.5 The HIV Advisory Panel

The panel consists of experts who have specialties in HIV, psychiatry, public health, alcohol and drugs, and a peer representative, and is convened and chaired by the Communicable Diseases Unit within the Department of Health. The panel meets regularly and provides expert individual advice to determine at which level the person of concern will be offered management, and will provide advice to the person's HIV clinician such as recommend a review by an addiction specialist or psychiatrist, or request they refer the person to a non-government agency for advocacy and support.

4.6 Levels of management

There are five levels of management:

- Level One: Management by the clinician at the clinic level
- Level Two: Department of Health managed and supervised counselling, education and support
- Level Three: Formal agreement on behaviour change
- Level Four: Detention
- Level Five: Referral to police

Cases are managed at various levels or cease management based on the person's engagement and risk behaviour.

Following a report from the treating clinician regarding the person's satisfactory engagement and behaviour change, the HIV Advisory Panel will recommend de-escalation to a lower level or release from management under the Guideline. In the majority of cases interventions implemented at Level One or Level Two should successfully assist the person to modify their behaviour and demonstrate they are able and willing to prevent placing others at risk in future.\

4.6.1 Level One - Management by the clinician at the clinic level

A person may be placed on Level One of the Guideline if they are assessed as being unwilling or unable to change their risk behaviour. Level One management is provided at the local level by the person's clinician.

The clinician should encourage the person to change their behaviour by:

- Informing the person they may be committing an offence under the *Public Health Act 2005*.
- Coordinating counselling, education and support.
- Making appropriate referrals e.g. sexual health clinician or drug/alcohol/mental health counsellor.

The clinician should also:

- Monitor changes in behaviour.
- Notify the Department of Health they have enacted Level One (see section 5).

If required, clinicians can contact the HIV Public Health Team (see section 5) for advice and assistance regarding Level One management.

Cases are normally reviewed by the panel every three months at which time the clinician will be notified to provide a report to the Department of Health of the following information:

- Interventions initiated/completed and whether they were successful or not.
- Assessment and comment on the person's public health risk.

4.6.2 Level Two - Department of Health managed and supervised counselling, education and support

A person may be placed on Level Two if they are assessed by the clinician or panel as unwilling or unable to change their behaviour while on Level One. The interventions to support the person will be managed by the Department of Health and the person will participate in an intensive process to change their behaviour. The Department of Health will liaise with the person's care team and report to the panel on the person's engagement.

The treating clinician should continue to provide routine HIV care and counselling, and report to the panel after three months providing:

- Interventions initiated/completed and whether they were successful or not.
- Assessment and comment on the person's public health risk.

4.6.3 Level Three - Formal agreement on behaviour change

A person who is assessed by the panel as unwilling or unable to change their behaviour on Level Two may be escalated to Level Three. This level provides for the management plan to be formalised under the orders of a magistrate. A referral for a court order would be made by the Department of Health.

4.6.4 Level Four - Detention

The purpose of Level Four is to provide for the management of the person who in most cases has been managed under Level Three, but continues to place others at risk of infection, or who has refused to be managed under Level Three. Options for detention may include home detention or detention within a supervised environment. Escalation to Level Four would only occur where management at lower levels had not been successful. All actions available under lower levels would be exhausted before Level Four is initiated.

4.6.5 Level Five – Referral to police

Escalation to Level Five would only occur where management at lower levels had not been successful. All actions available under lower levels would be exhausted before Level Five is initiated, however, the matter can be elevated to Level Five immediately if the panel considers there is clear evidence that:

- a person is unwilling to modify their behaviour that recklessly endangers another person(s) by exposing them to HIV

  or

- would support a charge with the elements of "intentionally causing serious harm".

Prosecution under the *Public Health Act 2005* or the *Criminal Code Act 1899* would be considered in most circumstances.

5. Department of Health contact details

The HIV Public Health Team, of the Department of Health and can be contacted by:

Phone: 07 3328 9797

Fax: 07 3328 9799

Email: HIV_PH_Team@health.qld.gov.au

Post: Locked Bag 28
Fortitude Valley BC QLD 4006

6. References

Department of Health (2014) *HIV post-exposure prophylaxis (PEP): guideline for assessment and management of non-occupational exposures.* Queensland Government.

7. Review

This Guideline is due for review on: 31/10/2015

Date of Last Review: 31/10/2014

Supersedes: *Protocol for the Management of People Living with HIV who Place Others at Risk*

8. Business Area Contact

Communicable Diseases Unit, Department of Health

9. Approval and Implementation

Policy Custodian:

Senior Medical Officer, Communicable Diseases Unit.

Responsible Executive Team Member:

Senior Director, Communicable Diseases Unit.

Approving Officer:

Dr Alun Richards, Senior Medical Officer, Communicable Diseases Unit.

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Version Control

Version	Date	Prepared by	Comments
1	31/10/2014	HIV Public Health Team	Final version based on consultation with the HIV Public Health Team, CDU, QPP representatives and members of the HIV Advisory Panel.