

Interim Framework for Managing People with Infectious Diseases Who Place Others at Risk of Infection in Tasmania

Introduction

Most people who are aware that they have a notifiable infectious disease conscientiously avoid exposing others to the risk of infection. However a few knowingly and recklessly continue to pose a risk of infection to others.

This public health risk falls within the functions and powers of the Director of Public Health to manage under the *Public Health Act 1997* (the Act).

This document sets out a framework to be applied by Population Health within the Tasmanian Department of Health and Human Services (DHHS) in the identification and management of persons with notifiable infectious diseases who put others at risk of infection.

In relation to Human Immunodeficiency Virus (HIV), this document reflects Tasmania's response to the national strategy for the management of people who place others at risk.¹ This balances community protection and the rights of the individual, recognising the complex and unique social, psychological and physical health care needs of an individual.

The principles underlying the approach taken by this framework are:

- the community as a whole has the right to appropriate protection against infection
- public health objectives will be most effectively realised with the co-operation of people with notifiable infectious diseases and those most at risk
- individuals have a responsibility to prevent themselves and others from infection and preventing the transmission of diseases
- most people with notifiable infectious diseases are motivated to avoid infecting others
- the risk of transmission by most people with notifiable infectious diseases is reduced by counselling, education, and access to resources and support services
- legislative directions are appropriate to manage the behaviour of persons putting others at risk of infection
- pharmacological treatment of disease is recognised as a legitimate part of reducing a person's risk of infection to others
- an individual has the right to procedural fairness, confidentiality and privacy noting also that the Act provides for disclosure of personal information where it is necessary to do so for the purposes of the Act.
- individuals have the right to dignity and appropriate care and treatment, without any discrimination other than genuinely necessary to protect public health
- in responding to cases where a person with a disease may be having difficulty maintaining safe behaviours, any restrictions that may be placed on that person's rights and personal liberties shall be imposed in proportion to the risk presented to others with the least restrictive options necessary to minimise public health risk be used.
- a person subject to management under this policy should be given information about this policy and be regularly communicated with, particularly about any decisions concerning their management

¹ National Guidelines for the Management of People with HIV who place Others at Risk developed by the Australian Government Department of Health and Ageing available at <http://www.health.gov.au/internet/main/publishing.nsf/Content/phd-hiv-guideline-at-risk>

- it is in the interest of the community and the person involved that decisions made in accordance with this policy are made promptly.

This documents sets out a consistent framework for identifying and managing people putting others at risk of notifiable infection and will only be applied as far as practicable in the specific circumstances.

At all times the Director of Public Health is responsible for performing and exercising their functions and powers under the Act and as such, it is within the Director's discretion to depart from the operational framework if necessary.

Legal Matters

Powers of the Director of Public Health

Under the *Public Health Act 1997*, the Director of Public Health can manage people with a notifiable infectious disease² who are putting others at risk of infection. Under section 42 the Director may:

- require the person to disclose contact details for those who may have been put at risk of infection
- require the person undergo medical examination, testing, treatment or counselling
- direct the person to refrain from performing any specified work, or to do, or not do, anything that presents a risk of infecting others
- isolate or place the person under supervision.

The Director may require a person to provide information considered relevant to public health or that is reasonably needed for the purposes of the Act (section 148).

Disclosure of Personal Information

Section 147 regulates the disclosure of information collected for the purposes of the Act. Personal information may be disclosed if the Director of Public Health authorises or if it meets one of the section 147 criteria.

Investigation into occurrence of disease and contamination

The Director can under section 52 of the Act to carry out any investigation or inquiry into the occurrence of notifiable infectious diseases and can make enforceable directions after carrying out that investigation if necessary.³

A person must comply with a direction or requirement made by the Director under the Act. Someone failing to comply with a section 42 direction may be arrested and brought before a magistrate who may order the person to comply with the directions issued by the Director.

A person with a notifiable infectious disease is required under section 51 of the Act to take all reasonable measures and precautions to prevent the transmission of the disease, and must not knowingly or recklessly place another person at risk of contracting the disease.

Failure to comply with these obligations may attract a fine of up to 100 penalty units and/or up to 12 months imprisonment.

Delegates

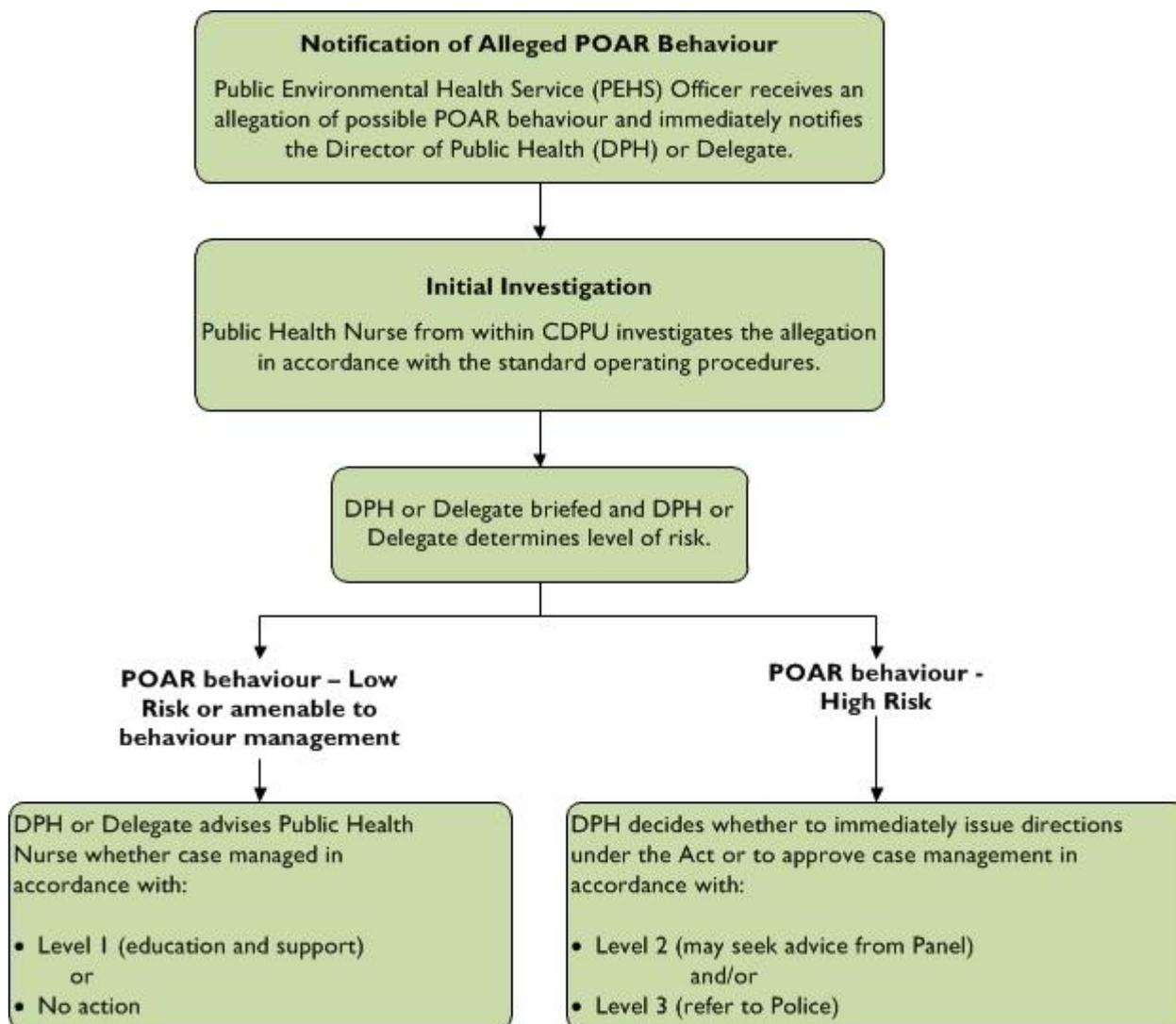
The Director of Public Health may delegate any of their functions or powers under the Act to another person. A person who holds a delegation from the Director may exercise the delegated functions and powers as if he or she is the Director. The operational aspects of the Department's management of people who place others at risk of infectious diseases will involve the relevant, delegated medical officer or public health nurse from the Communicable Diseases Prevention Unit, Population Health.

² The Director's powers extend to all diseases declared by the Director to be 'notifiable diseases'. For the purposes of this document a reference to 'notifiable infectious diseases' means infectious diseases that have been declared by the Director under section 40 of the Act as notifiable diseases.

³In 2014 The HIV/AIDS Preventive Measures Act (1993) is anticipated to be repealed by the Tasmanian State Government. As a result, the Tasmanian Public Health Act is being amended to update the legislative framework for this Policy.

Response to a Notification

As the Director of Public Health retains legislative responsibility for managing persons putting others at risk, the Director may at any stage depart from, or authorise a departure from, this framework or the manner in which case management levels are implemented.



The day-to-day case management of a person putting others at risk (POAR) will generally be the responsibility of a public health nurse within Population Health DHHS.

The following diagram applies with any new POAR cases, or any new information about existing cases may suggest a higher public health risk.

This diagram represents the operational framework applied in identifying and managing POAR behaviour.

Initial Investigation

Initial investigation will usually include obtaining further information from the person reporting the allegation as well as from the subject of the allegation.

In addition the public health nurse may use their delegations under the *Public Health Act 1997* to acquire, from treating clinicians or others, relevant information about the person allegedly displaying POAR behaviour.

In consultation with the Director or Delegate and/or relevant public health physician the nurse may seek external specialist advice from people outside DHHS to provide the best information about the case for consideration by the panel if appropriate.

This will include advice about the person's competency and capacity to understand directions and legal responsibilities to reduce disease transmission. For example, the nurse might investigate factors such as cultural and linguistic background or specific psychiatric diagnoses.

Based on the results of the investigation, the Director of Public Health will decide whether individual case management is required and the appropriate level of that management..

Level I – Education and support

Level I case management involves the continued management (for example, counselling, treatment and support) of the person by the person's usual health care provider(s) and helping them connect with healthcare professionals and/or support services.

Following the initial investigations the public health nurse might suggest to the usual healthcare provider services relevant for their case. However, it is the clinician's role to arrange such referrals in the context of usual service provision.

The range of services offered by various service providers may include:

- specialist medical and psychological services
- alcohol and other drug services
- counselling and education services to understand aspects of the particular infectious disease, sexuality, interpersonal relationships and help manage specific behaviours (for example, negotiating safe sex)
- help with housing or supported accommodation
- help with retraining and job placement
- life skills, for example assistance with budgeting and social skills
- home care support, for example, shopping, cooking, cleaning
- advice and access to risk reduction strategies relevant to the infectious disease of concern, such as the use of condoms, clean injecting equipment, or P2/N95 face masks.
- peer group support organisations.

The public health nurse may provide the clinician with educational material for their client if indicated.

Level 2 – Convening the POAR Advisory Panel

Level 2 case management involves convening the POAR Advisory Panel to consider the case and advise the Director of Public Health of those strategies or directions it considers appropriate to manage the POAR behaviour. Panel meetings will be convened at the direction of the Director of Public Health.

Panel Members

Members of the POAR Advisory Panel (the Panel) are:

- Chairperson – a senior public health physician from Population Health Services
- a medical infectious diseases specialist, preferably with experience in the notifiable infectious disease of concern – this person is preferably not the person's treating physician
- the investigating Public Health Nurse or medical officer
- a legal policy officer
- a person with a qualification in a relevant mental health discipline (including psychology or psychiatry), preferably with experience in behavioural management.

At the discretion of the Director of Public Health or the Chair of the Panel, other persons who are DHHS employees and who possess knowledge and experience of the particular social or clinical circumstances of the case may be included in Panel meetings on a case-by-case basis.

DHHS recognises the importance of including input from appropriate advocates for people living with diseases associated with social stigma and discrimination.

The Panel may also seek written material for consideration.

Functions of Panel Members

The Panel is not a legal entity and has no statutory functions or powers. It has no legislated decision-making capacity and members of the Panel perform an advisory function only.

Panel members consider cases of POAR behaviour referred to them by the Director of Public Health and provide recommendations to the Director, via the Chair, about the following matters:

- whether the behaviours of the person being reviewed by the Panel are likely to constitute behaviour that places other persons at risk of acquiring a notifiable infectious disease (that is, a public health risk)
- where the behaviours of the person being reviewed by the Panel do constitute a public health risk, the appropriate public health management responses to reduce the public health risk
- if management under the *Public Health Act 1997* is recommended, any specific Directions the Panel considers are appropriate to manage the public health risk presented by the person's behaviour
- when review of the Public Health Directions placed on a person should occur
- when, if appropriate, a Public Health Direction should be rescinded
- any other matter relevant to the case Panel members consider necessary and appropriate.

Directions

Public Health Directions are divided into two groups.

1. Medical and Behavioural Directions under section 42 of the *Public Health Act*

Examples include directing a person to:

- undergo medical examination, testing, treatment or counselling
- disclose details of others to whom the person may have transmitted notifiable infectious diseases
- refrain from performing specified work which presents a risk of infecting others
- be placed under the supervision of a specified person.

2. Detention under section 42 of the *Public Health Act*

Examples include:

- be detained, isolated in any place or placed in quarantine.

Persons subject to Public Health Directions will be notified in writing via a Public Health Order document.

Directions remain in place until revoked in writing by the Director of Public Health who will review them at least once a year.

Performance of functions

When performing their functions, Panel members are to have regard to the principles set out in the introduction to this document.

Where Panel members are considering Directions, members should:

- consider the least restrictive isolation needed to protect the community from the risk of infection
- in cases where the person is unwell or in need of medical treatment, consider isolation in a hospital setting for as long as medical treatment is needed
- in cases where the person has a psychiatric condition or may also have committed criminal offences, consider requesting the Director seek and provide the views of other relevant agencies as to the most appropriate placement for the person
- consider options for a place of isolation that can be staffed by those who, in the Panel's view, can best meet the needs of the person involved
- take account of the practicalities including, risks to society of implementing isolation, as well as the rights of the individual to a reasonable living environment.

Before providing advice to the Director, Panel members may ask the Director to provide them with any information they consider necessary for them to provide advice about the best management of the POAR behaviour.

In forming a view on the Directions appropriate to manage POAR behaviour, members of the Panel will:

- consider the principles underlying this policy
- only take relevant considerations into account
- be free from actual and perceived bias
- act ethically and in good faith
- form a view that is reasonable in the circumstances
- at all times remain mindful of the need to protect confidentiality in accordance with the *State Services Act 2000*.

Information to Panel Members

The public health nurse managing the POAR case will present information to the Panel. All written documentation to Panel members will use de-identified coded details to help protect confidentiality.

The public health nurse may consult with the Chair of the Panel before a panel meeting to discuss the nature of the information to be provided. The Chair has discretion over the information provided. The Chair may seek clarification from the Director of Public Health on this decision.

Panel Documentation

Advice from Panel members to the Director of Public Health will be in writing from the Panel's Chair and a draft circulated to the Panel for comment within two working days of the Panel meeting. Panel members may provide comment on the advice within one working day of receiving the draft advice.

Immediate verbal advice may be given in more urgent circumstances if required, but will be followed by written advice within the above timeframe.

Director's decision

The Director of Public Health retains responsibility for issuing Directions under the Act and may do so at any time, notwithstanding that a case has been referred to the Panel.

The Director will not exercise his powers under the Act solely on the recommendation of Panel Members. In determining whether to issue a Direction under the Act, the Director will independently consider relevant factual material, including that obtained during the investigation of the alleged or possible POAR behaviour, and form his or her own opinion, giving such weight to any advice from Panel members as considered appropriate.

Level 3 – Referral to Tasmania Police

Referral to Tasmania Police of matters that relate to an offence or suspected offence under Public Health or other laws may be made at any stage of management under this policy. The Director has a letter of exchange with the Commissioner of Police about the exchange of information.

The decision to formally refer a case to Tasmania Police, as a result of suspected offences under the *Public Health Act*, will be made by the Director of Public Health.

An example of this could be where the Director reasonably suspects a client has intentionally tried to infect others with an infectious disease.

Serious criminal behaviour that does not fall under the scope of the *Public Health Act* might also be identified by the Director of Public Health and referred to Tasmania Police for investigation.

Examples of this could include cases where the Director reasonably suspects serious criminal offence such as rape, child sexual abuse or involvement with child pornography has occurred.

A referral to Tasmania Police does not preclude the Director issuing directions under the *Public Health Act*.