

Fact Sheet

SA Code for HIV risk behaviours

The Chief Public Health Officer's Code for the case management of behaviours that present a risk for HIV transmission (the Code) is a nationally guided approach for the management of people who have HIV and whose behaviours may pose a risk of transmission of the virus to other people.

The Code has a legal basis in the *South Australian Public Health Act 2011* and the basic principle that the South Australian public have the right to protection against infection.

The Code contributes to the response by government and the community sector to contain the spread of HIV. This is done by ensuring that risk behaviours are managed in a way that removes or reduces danger to the public as much as possible.

Who does the Code apply to?

The Code applies to a small minority of people living with HIV (PLHIV) who may be participating in behaviours that place others at risk of contracting the virus. The Code recognises that PLHIV do not usually put others at risk, or intend to harm others.

The Code does not apply where it can be shown that a person has taken all reasonable precautions and is exercising all due care to prevent the risk of transmission, including through the use of HIV treatments to achieve and sustain an undetectable HIV viral load.

Before involvement in the Code

Usually, before an individual enters management under the Code, they will have already received the full range of treatments, supports and counselling, including HIV education and transmission prevention strategies. In most cases this is successful and means there is no need for involvement with the Code process.

How does the Code work?

If a person is managed through the Code process then decisions on how this will occur are made by the Chief Public Health Officer (CPHO) who is advised by the Director of the Communicable Disease Control Branch and the HIV Case Coordinator and later in the process by an advisory panel known as the HIV Risk Behaviour Panel (the Panel).

The Code has four main levels. Depending on the risk involved the person may enter or exit at any level and move between levels during management.

Level 1 - Referral and initial assessment

When a person is referred to the Department for Health and Wellbeing (the Department), information is gathered by the HIV Case Coordinator to confirm the reason for referral. If there is a sound basis for referral, the case will be discussed with the Director of the Communicable Disease Control Branch. These two staff members assess the situation and advise the CPHO on the most appropriate way to manage that person within the Code process.

Level 2 - Behaviour modification management

If the CPHO decides that a person requires closer management under the Code strategies such as education, counselling and support will be developed and recommended to the person. A letter may be sent to the person stating that they must stop unsafe behaviour. The letter also outlines the person's legal responsibility to not place others at risk. The HIV Case Coordinator then monitors the individual's progress and reports back to the CPHO.

Level 3 - Restrictions via Formal Order

If all Level 2 management strategies are unsuccessful or deemed not appropriate, a legal order, called a Public Health Direction, may be issued to the person. This may place restrictions on their behaviours and impose directions about their activities, medical care, or where they live or work. The person will continue to have access to all necessary treatment, support and counselling.

If a person does not follow the directions of this order then legal actions including fines and arrest may result.



At Level 3 the person is usually directed to attend face to face meetings with the Panel. The person is encouraged to choose a support person to come with them to meetings, or a support person can be arranged if the individual is unable to organise their own.

Level 4 - Isolation/Detention

This level of management is a last resort and is used only when risk from a person's behaviour is considered to be extreme, immediate or ongoing.

If the Panel advises the CPHO that the risk of transmission is extreme and the individual has not complied with the requirements of a Public Health Direction, or that the person's behaviour is unlikely to change, then the law allows the person to be placed under detention. When placing a person under detention, the least restrictive conditions will be used, while still protecting members of the general public.

An individual's rights regarding detention include:

- > Being given a notice explaining the reason for detention.
- > Having periods of detention reviewed by a magistrate.
- > Having access to necessary medical/psychiatric care.

Exiting the Code process

A person will continue to be managed under the Code until their behaviour reaches a point where the Code outlines that it no longer applies, and/or the Panel advises the CPHO that the person is no longer a risk to public health.

Confidentiality

Any information obtained through processes in the Code is confidential and will not be released to anyone unless required/allowed by law.

Appeals

If an individual is dissatisfied with legal orders made at Levels 3 and 4 they can apply to a magistrate for a review of the decisions, and if unhappy with the magistrate's decision the person may appeal to the Supreme Court who can change, cancel or overrule any decision with a new order.

Role of the SA Police

Any member of the public can refer someone directly to the police without first involving the Department.

Where the Department has been involved, the CPHO may refer a case on to SA Police when it is believed that an individual is intentionally trying to infect others, or when the person seems unwilling to change unsafe behaviours.

Further information

For a full copy of the Code:

www.sahealth.sa.gov.au

For a copy of the *South Australian Public Health Act 2011*: www.legislation.sa.gov.au

For a copy of the National Guidelines:

www.health.gov.au

Counselling, support and information services for people with HIV can be accessed from:

SAMESH (South Australia Mobilisation + Empowerment for Sexual Health)

Ph: 7099 5300

Web: www.samesh.org.au

Relationships Australia (SA):

> [MOSAIC](#) Blood Borne Viruses Support Services

> [PEACE](#) Multicultural Services

Ph: 8245 8100

Web: www.rasa.org.au

For more information

Communicable Disease Control Branch

PO Box 6

Rundle Mall SA 5000

Telephone: 1300 232 727

www.sahealth.sa.gov.au