



Chief Public Health Officer Protocol

South Australian Code for the case management of behaviours that present a risk for HIV transmission

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Government
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SA Health

Version control and change history

Version	Date from	Date to	Amendment
1.0	1993	February 1997	Original version titled: <i>Guidelines for the Management in South Australia of People who Knowingly Place Others at Risk of HIV Infection</i>
2.0	February 1997	January 2008	Amended and re-titled: <i>Revised Guidelines for the Management in South Australia of People who Knowingly Place Others at Risk of HIV Infection</i>
3.0	January 2008	August 2010	Extensive review in line with the Walsh and Griev reports. Retitled: <i>Code for the Case Management of Behaviours that Present a Risk for HIV Transmission</i>
4.0	August 2010	May 2013	Routine review
5.0	May 2013	September 2019	Extensively reviewed to ensure compliance with new SA <i>Public Health Act 2011</i>
6.0	September 2019	current	Reviewed in line with new <i>National Guidelines for Managing HIV Transmission Risk Behaviours</i>

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1. Background

The 'South Australian Code for the case management of behaviours that present a risk for HIV transmission' (the Code) was originally developed pursuant to the provisions of the *Public and Environmental Health Act 1987* (now ceased) and was adopted by the South Australian Health Commission on 17 March 2008. Following the proclamation of the *Health Care Act 2008* it became a Directive of the Chief Executive of SA Health. During 2012, following the passing of the *South Australian Public Health Act 2011* (the SAPH Act), the Code was reviewed and amended accordingly. This current version was implemented after a scheduled review in 2019.

The Code is aligned with the 'National Guidelines for Managing HIV Transmission Risk Behaviours (2018)' and also reflects similar codes in most other Australian jurisdictions.

Specifically, the Code guides the management of persons known to be living with HIV and whose behaviour may present a risk to public health. It is designed to prevent or limit the spread of HIV in the community by ensuring that the behaviours of persons who may be placing others at risk are properly managed in a way that eliminates or reduces the risk to the greatest extent possible.

The Code is relevant to people (including case workers, social workers, psychologists, counsellors, medical practitioners, nurses and other clinicians) who work in a professional capacity with persons living with HIV in a clinical, counselling or community setting and for relevant staff working in communicable disease control within the Department for Health and Wellbeing (the Department).

The Code sets out the roles of the Chief Public Health Officer (CPHO) and their delegate(s). It operates as part of the CPHO's wider clinical, public health and [statutory responsibilities](#) for the protection of the public's health

In all respects, the Code complements the SAPH Act, the *Health Care Act 2008* and the *Mental Health Act 2009* and should be interpreted subject to the provisions and the powers established by them.

Note: The CPHO is appointed under section 20 of the SAPH Act, and is vested with the functions specified in section 21 and the powers specified in Part 10 (Controlled notifiable conditions).

The CPHO's powers and responsibilities within all sections of the SAPH Act that are relevant to the operation of the Code have been delegated to the Director of the Communicable Disease Control Branch (CDCB), except for section 77 powers related to detention. Any references throughout the Code document to the Director CDCB being a delegate of the CPHO are subject to current instruments of delegation.

2. Introduction

The Code applies where a person who has been diagnosed with HIV is known or reasonably believed to be engaged in behaviours that may be placing others at risk of the transmission of the virus. While within the scope of the SAPH Act, the Code also reflects a nationally agreed approach to the management of the public health risks that such behaviours might present.

It operates within an understanding that persons who have HIV ordinarily pose no risk to others and that there is no case to restrict their activities or to place any coercive controls on people living with HIV. By focusing only on the behaviours of particular individuals who might be placing others at risk, the Code seeks to avoid any general implication that persons with HIV are a threat to the community.

Management under the Code requires a consistent approach across all client groups regardless of gender, gender identity, disabilities, mental health diagnoses, sexual practices and orientation, work practices (including sex work), injecting drug use, cultural background and or religious beliefs, in order to maintain transparency, ensure fair treatment and to avoid any implication of stigma or discrimination.

The Code also recognises that a person with HIV may be placing others at risk for a range of reasons including an incomplete knowledge or understanding of their condition and the risks that it presents, or complex personal issues or circumstances which might influence their behaviours or limit their options. As such, the Code aims to operate in a non-judgmental way to achieve safe behaviours through education and voluntary co-operation with flexible strategies and supports available through treatment services and the Department.

Management through co-operation, agreement and the creation of trust between the person and their case workers is the most effective way of intervening to change behaviours and is the primary approach established in the Code. However, in cases where this approach fails, or is inappropriate, the coercive powers available through Part 10 of the SAPH Act may be used by the CPHO or their delegate as set out below.

3. The effect of undetectable HIV viral load

Research has shown that people with HIV who take anti-retroviral therapies (ART) daily as prescribed, and achieve and maintain sustained viral suppression, defined as an undetectable HIV viral load or a HIV viral load of less than 200 copies/mL, measured at least 3 monthly or as recommended by their treating doctor, have effectively no risk of sexually transmitting the virus to a HIV-negative partner¹⁻¹⁸ and should therefore not be managed under the Code. While there is currently insufficient evidence to state the same for non-sexual routes of exposure (e.g. injecting drug use), it is likely that sustained viral suppression will also minimise the risk of HIV transmission in these situations.

Therefore, early commencement of therapy, high adherence to ART, sustained viral suppression, and retention in appropriate ongoing clinical care and treatment are the primary focus of management under the Code.

Where a person is already being managed under the Code and is later able to demonstrate appropriate adherence to treatment and has a consistently undetectable HIV viral load, a graded withdrawal of staged public health measures should be undertaken and the need for continued support assessed.

Thus, throughout the Code document, where references are made to transmission risk behaviours, these should be read as to imply that there is the presence of a detectable HIV viral load, together with evidence of risk behaviours.

Conversely, the presence of a detectable HIV viral load does not itself warrant management under this Protocol, unless there are also behaviours that place others at risk of HIV transmission.

The 'National Guidelines for Managing HIV Transmission Risk Behaviours (2018)' explores these concepts in detail and form the basis of concepts on which the Code is based.

4. Responsibility for the Code

The CPHO is responsible for the overall administration and operation of the Code, for assessing its effectiveness and for giving advice and reasonable assistance to agencies involved in its administration.

The day-to-day administration of the Code is principally conducted by staff of the CDCB of the Department. At the time of writing, the Director CDCB is a delegate of the CPHO for the purposes of exercising the specific powers and functions that are outlined within the Code, except for section 77 powers related to detention. The HIV Case Coordinator works under the direction of the Director CDCB to gather the information required to ensure informed decisions are made regarding management of people according to the Code and to implement these decisions with reference back to the Director CDCB and the CPHO as appropriate.

5. Guiding principles

The implementation of the Code is based on the principles in the SAPH Act, specifically the objects and principles set out in sections 4 to 13 and the specific principles set out in section 14 (see Appendix B).

Staff of the CDCB will be mindful of these objects and principles during the day to day administration of the SAPH Act and the Code. This is especially the case in regard to the rights of the community to protection from HIV transmission, weighed with the rights of individuals to fair and equitable treatment under the Code; directly in proportion to the level of risk their behaviours may present. Moreover, all people have responsibilities during individual encounters, firstly to not engage in behaviours that might place themselves at risk of contracting HIV and secondly to not engage in behaviours that might place others at risk of contracting HIV. This principle of mutual responsibility outlined in the SAPH Act reflects messages in decades long Australian HIV prevention awareness campaigns promoting the concept of shared responsibility for the prevention of HIV; that is, every individual has an equal responsibility to prevent themselves and others from becoming infected with HIV and for preventing further transmission of the virus. Thus, an over-arching aim of management under the Code is to de-escalate or discharge people from management unless it continues to be necessary to protect public health.

Staff will give further regard to the specific principles pursuant to section 14 of the SAPH Act by ensuring they act in a manner that affords individuals who are subject to management under the Code with:

- > privacy and the protection of patient/client confidentiality, subject to the specific provision of the Code and the SAPH Act
- > dignity and appropriate care and treatment, without any discrimination other than that reasonably necessary to protect public health
- > information about their options under the Code and to be given a reasonable opportunity participate in the decision making process
- > the application of proportionate restrictions (if any) in line with the principle of the 'least restrictive means necessary'
- > written communications regarding any recommendations or decisions made under the Code.

Finally, the involvement of people living with HIV in the review and administration process of the Code (including by representation on Advisory panels) reflects the internationally recognised principles of the Greater (or Meaningful) Involvement of People Living with HIV – known as the GIPA and MIPA principles¹⁹.

6. Confidentiality

Wherever possible the Code seeks to promote cooperation and trust between the person and those working to curtail the risks that their behaviours present.

A central aspect of that trust is the knowledge that personal information, especially information likely to identify an individual, will not be released or be available to others unless there is a compelling reason to do so. Personal information is defined in the SAPH Act as medical information or information relating to a person's personal affairs.

Therefore, as a general rule all information obtained by persons pursuant to the Code is confidential and should only be obtained or released as allowed by law.

It is an offence under section 99(1) of the SAPH Act for a person to disclose personal information except to the extent that the person is authorised under section 99(2) which includes disclosure with consent of the person, disclosure as required by law (that is, to a court under a subpoena), disclosure where it is reasonably necessary for the treatment, care or recovery of the person, disclosure where it is reasonably necessary to prevent the transmission of a controlled notifiable condition (such as HIV) and disclosure where it is reasonably required to lessen or prevent a serious threat to the health or safety of a person, or a serious threat to public health. Appendix C sets out section 99 in full.

Sections 82(6) and (7) of the SAPH Act set out additional restrictions on the use of information gained as a result of, or in connection with, an Advisory Panel established under section 82. Advisory Panels are discussed below.

Further, under section 84 of the SAPH Act, documents for the purposes of Part 10 concerning controlled notifiable conditions, such as HIV, are not subject to access under the *Freedom of Information Act 1991*.

The CPHO or delegate or an authorised officer may exercise the power under section 49 of the SAPH Act to require a person to provide information relating to public health as may reasonably be required for the purposes of the SAPH Act. Once a request is made under section 49 it must be complied with and the person providing the information is protected from any assertion that they have breached confidentiality.

It is not an excuse for a person to refuse or fail to furnish information on the grounds that to do so might tend to incriminate the person or make the person liable to a penalty (section 49(4)). However, if compliance with a requirement to furnish information might tend to incriminate a person or make a person liable to a penalty, then the provision of that information is not admissible in evidence against the person for an offence or for the imposition of a penalty (section 49(5)).

Courts and tribunals also have the power to require the disclosure of information.

Section 99(2) allows CDCB staff and members of the Advisory Panel to receive information relating to the people they see, as is necessary for the purpose of assisting them in their treatment; for preventing the transmission of HIV; and for lessening or preventing serious threats to specific persons or to public health. However, that information remains confidential to staff and Advisory Panel members and cannot be disclosed by them other than as necessary for their day-to-day work, the work of the Advisory Panel, or as required by law.

7. Prior to application of the Code

The Code is not intended to be used as a prevention education tool and therefore does not replace primary interventions by health and allied workers.

Ideally, at diagnosis a person with HIV receives information about the medical and social consequences of living with the virus including guidance on ways to prevent transmission to others. This guidance should also include information regarding the effect of treatments and subsequent HIV viral load suppression on reducing or eliminating transmission risk. This information may need to be repeated at intervals. If concerns persist about a person's behaviour they should receive further counselling, focussing on the ways in which transmission may be avoided. Counselling could also emphasise the legal responsibilities of the individual to avoid behaviours that might place others at risk.

People living with HIV should continue to receive the range of treatments, supports and counselling suitable for their individual needs. These interventions are best provided in the community, primary and allied health care settings and are the responsibility of the diagnosing clinician and the primary care agencies involved in the ongoing treatment, care and support of the individual. Skilled practitioners should continue to incorporate this information and these interventions into their daily interactions with clients well before consideration is given to referral under the Code.

Successful management at these early stages may avert the need for ongoing management of the person under part 10 of the SAPH Act and subsequent levels of the Code.

It is important that service providers and local clinicians are able to seek advice without needing to provide identifying information or without the discussion automatically leading to referral and the person being formally managed under the Code. This type of discussion and seeking of advice is encouraged and may often lead to the provision of management advice or linkage with other professionals able to provide care and support. This may be especially relevant to clients who have complex and/or cultural needs.

8. When the Code should and should not be applied

Application of the Code may provide an opportunity to work more intensively with the person so that they are provided with the greater support that might be required to achieve safe and appropriate behaviours.

The Code should be applied:

- > when a person is known to have HIV infection, has a detectable or unknown HIV viral load and it is reasonable to believe that the person's ongoing behaviour is, or may be, presenting a risk of the transmission of HIV to others.

The Code should not be applied:

- > 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 and/or additional risk reduction strategies (especially where the response to treatment has not resulted in a sustained undetectable viral load or where the level of adherence to ART may not be ideal). These strategies may include the use of condoms and lubricant, sexual contact with partners who are taking HIV pre-exposure prophylaxis (PrEP), other safer sex practices and safer injecting drug use practices, including the use of sterile needles and syringes. Additionally, ART also has a role in prevention as

post-exposure prophylaxis (PEP). Employing such strategies demonstrates the person's engagement in, and commitment to, reducing the risk of transmission to others.

- > Where a view can reasonably be formed, either prior to the application of the Code or at any stage in the process of implementing it, that the person's behaviour cannot be influenced and therefore the risk that they present to others will not be removed through any intervention available in the Code. In these cases the person should be managed by the CPHO in accordance with part 10 of the SAPH Act and/or consideration of referral to SA Police (see below).

In determining whether or not the Code should be applied, the CPHO or delegate may, under the provisions of the SAPH Act, require additional information that will assist them in coming to a decision, including (but not limited to) the following:

- > genotyping information
- > information from relevant service providers
- > medical records
- > forensic psychiatric evaluation.

9. The framework

The Code establishes four levels for managing the behaviours of a person who may be placing others at risk of HIV transmission.

These levels seek to ensure that persons whose behaviours are of concern receive information, opportunities and encouragement to reduce the risk of transmitting HIV to other persons. Each level involves a higher degree of intervention, moving from counselling and information through to a formal detention order.

The levels are:

- > Level 1 – The CPHO or staff of the CDCB receive information that a person with HIV is not taking reasonable steps or precautions to avoid placing others at risk. After a preliminary consideration and assessment by staff of the CDCB, there may be a decision to manage the person at the appropriate level of the process outlined in the Code.
- > Level 2 – Ongoing oversight by the Director CDCB (as delegate of the CPHO) for the development and implementation of behaviour modification and case management strategies.
- > Level 3 – Involves the CPHO or delegate making an order under sections 74 or 75 of the SAPH Act imposing counselling requirements and/or directions with respect to the person's activities on the advice of an Advisory Panel established under section 82.
- > Level 4 – Decision of the CPHO to isolate or detain the person under section 77 of the SAPH Act on the advice of an Advisory Panel established under section 82 of the SAPH Act.

As a general principle these levels would be applied in ascending order, commencing with Level 1. However, if the CPHO, having considered the advice of the Director CDCB and/or the Advisory Panel and having regard to the objects of the SAPH Act and specific principles (section 14), believes that more restrictive responses should be imposed earlier in the management process, then the CPHO will use the powers in the SAPH Act and make such orders as considered appropriate. Alternatively, a person who has been managed at a higher level of management may continue to receive intervention at a lower level should the CPHO or delegate consider it appropriate.

Level 1: Referral and initial assessment of the person's behaviours

Level 1 involves referral by a person or agency to the CPHO, usually via staff of the CDCB. It is the first step in the operation of the Code involving an initial assessment of the person's behaviours and the risks that these might present for the transmission of HIV. Management continues in the community by the client's primary health care provider, without the ongoing involvement of the staff of the CDCB.

Referral to the Chief Public Health Officer or delegate

Referral to the CPHO usually occurs via staff of the CDCB, specifically the HIV Case Coordinator or (in their absence) the Director CDCB.

Should a medical practitioner or any person involved in treating, caring for or counselling a person with HIV, form a reasonable belief that, despite being given the information and counselling outlined in the '[Prior to application of the Code](#)' section above, the person's behaviours are presenting a risk to public health the person may refer the matter to the CPHO. The decision to refer a person is a matter of professional judgment for the medical practitioner, allied health worker or other clinician.

Referral can also be made to the CPHO by SA Police or any member of the public.

Preliminary consideration by the Chief Public Health Officer or delegate

Having received a referral, the CPHO or delegate can consider the circumstances in which it has been made together with any other relevant issues to decide whether:

- > there is substance to the information that prompted the referral
- > the person should be referred to the CDCB to oversee the management of their behaviours via the appropriate level of the Code and part 10 of the SAPH Act
- > some other course of action is appropriate.

In making these determinations, the CPHO or delegate will direct the HIV Case Coordinator (see below) to gather the required information to inform these decisions.

Referral for the purposes of an examination

Where a person whose HIV status is unknown, but there are reasonable grounds for believing that they may be living with undiagnosed HIV infection, and engaging in behaviours that present a risk of the transmission of the virus to others, a person involved in treating, caring for or counselling that person in a professional capacity may provide the CPHO or delegate with the name and contact details of the person and a brief description of the reason why the referral is being made. The CPHO or delegate may then investigate whether or not it is appropriate to require the person to undergo an examination under section 73 of the SAPH Act in order to determine their HIV status.

Referral to the staff of Communicable Disease Control Branch

On receiving a referral from a person or agency and after the preliminary consideration outlined above, the CPHO may assign the matter to the staff of the CDCB.

The Director CDCB and the HIV Case Coordinator will meet as soon as reasonably practicable to assess the risks the person presents. In undertaking this assessment they may:

- > consider any case notes relating to the person or any other information that is relevant and is available through the provisions of the SAPH Act
- > ask the person to attend an interview
- > interview any other person who can assist in reaching a decision

- > decide that more information is warranted and if necessary request the person voluntarily undergo a medical and psycho-social assessment.

The CPHO will endeavour to provide the CDCB staff with reasonable assistance to be able to complete its assessments.

Recommendations by the Director CDCB to the Chief Public Health Officer

Having undertaken an assessment, the Director CDCB may advise the CPHO that:

- > there is no basis for further investigation and request that the case be closed until such time as additional relevant information becomes available to warrant a reassessment
- > based on the information available there is no likelihood of the person presenting a future risk of the transmission of HIV and request that the case be closed
- > the CPHO request additional specific information if there is insufficient information to reach a conclusion
- > the person's behaviour be monitored whilst undertaking further assessment of whether it warrants management under a specific level of the Code
- > the CPHO initiate management under levels 3 or 4 of the Code because the person requires significant input to change their behaviour or may even be unwilling or unable to change their behaviour or unwilling to undergo voluntary examination and testing
- > the CPHO refer the matter to the SA Police (in line with considerations further outlined in 'Referral to Police' section below) because there is a reasonable suspicion that the behaviour is intentional or that the person may have caused a material or serious risk to public health (part 7 SAPH Act).

HIV Case Coordinator

Throughout the process outlined in the Code, the HIV Case Coordinator undertakes the following roles:

- > the initial information gathering that informs the subsequent decisions of the CPHO and the Director CDCB
- > maintaining an active and ongoing involvement with the person's primary care providers and where indicated, with the person while they are subject to the Code
- > the point of contact with the person for the purposes of the Code
- > preparation and presentation of reports on the person's behaviour, management and other relevant information as requested
- > maintaining contact with the relevant medical and treatment agencies
- > liaising with any guardian appointed for the person in relation to matters relevant to the Code
- > any other function as directed by the CPHO or Director CDCB.

Powers of the Chief Public Health Officer

Although the CPHO has delegated powers and functions, other than section 77 powers related to detention, under the SAPH Act to the Director CDCB, the CPHO retains the power to act and is not bound by the recommendations of the Director CDCB. This is particularly with respect to the powers to require a person to undergo an examination or test (section 73), attend counselling (section 74), impose directions (section 75) and/or require detention (section 77).

The CPHO will inform the Director CDCB of any such decisions or actions taken by them such that these are taken into account during ongoing management of the person.

Level 2: Behaviour modification and management using education, counselling and support measures

Active management of the person's behaviours commences at Level 2 of the Code by seeking voluntary collaboration with the person. This stage involves engaging with the person to develop and participate in strategies that may lead to the behaviours in question being modified. These strategies will be recommended by the Director CDCB who may meet with the person and their support person and monitor the person's progress through the role of the HIV Case Coordinator. The Director CDCB may also consult with appropriate Departmental staff in order to inform their response. Where the person's consent has been obtained the Director CDCB may also convene case conferences of the person's service providers, with or without the person concerned being present.

The CPHO or delegate will communicate the recommended strategies and outline support measures available to the person to assist them in their voluntary participation. However, Level 2 does not involve the making of formal orders under the SAPH Act.

Diverse backgrounds require flexible approaches

The Code is activated acknowledging that certain individuals managed under the Code may be in poor health, financially constrained, marginalised, transient, have low literacy levels, low health literacy, or be cognitively impaired. Distance and cultural issues, including Aboriginality and Torres Strait Islander decent and cultural and linguistic diversity, may also impact upon an individual's ability to respond to and engage with the process, including attendance at meetings.

In addition, culturally and linguistically diverse and Aboriginal and Torres Strait Islander people may react differently to a HIV diagnoses due to cultural beliefs and personal experiences. This may also extend to experiences of shame and stigma, whether imposed on them by their communities or internalised by the person. Moreover, there may be past experiences of trauma or distrust in engaging with government services, either in this country or countries of origin. These potentialities are taken into consideration whilst implementing the Code, including an acknowledgment of the extra time that may be required in establishing a trusted working relationship.

Recommended strategies

Having assessed the person as part of the Level 1 process and determined the extent to which they present a risk of the transmission of HIV, consideration must be given to the likelihood that the person's behaviour presents an ongoing risk. In so considering, the CPHO or delegate may seek any relevant information from the HIV Case Coordinator or other sources, including persons who have been involved in providing services, counselling and support to the individual concerned.

Where, having considered the HIV Case Coordinator's reports and any other relevant information, it seems apparent that risk behaviour is likely to continue, the Director CDCB and the HIV Coordinator will invite the person and their support person to a voluntary meeting to determine, as far as possible, the contributors to and causes of this behaviour and the strategies that are needed to address them.

In determining these strategies the Director CDCB may consider:

- > a range of treatment and care options where it is believed that these interventions would have a positive effect, such as drug substitution therapy, provision of housing, training in living skills and therapeutic counselling,
- > whether there is a need to utilise any provisions in the *Mental Health Act 2009* or the *Guardianship and Administration Act 1993* and to make necessary referrals.

Ongoing monitoring by the CPHO or delegate

The CPHO through the Director CDCB will monitor information provided by the HIV Case Coordinator about the person's behaviour and the associated risks that it presents.

The CPHO may request detailed proposals from the Director CDCB for the modification and/or management of the behaviour and may approve any management measures for implementation by the HIV Case Coordinator. The HIV Case Coordinator will implement the management measures approved by the CPHO and provide reports to the CPHO through the Director CDCB on the person's adherence to risk reduction strategies as required.

The Director CDCB and the HIV Case Coordinator will continue to meet with the person on a voluntary basis as necessary to monitor their general management and adherence.

Warning letter

The Director CDCB may also recommend that the CPHO send a warning letter to the person:

- > requesting that the person discontinue any activity which may place others at risk of HIV transmission
- > explaining the person's general duty under the SAPH Act to prevent or minimise any harm to the public and the general public health offences in part 7 of the SAPH Act
- > explaining the person's responsibility to take precautions to avoid placing others at risk of HIV transmission (section 14(3) of the SAPH Act)
- > explaining the effect of HIV treatments on HIV viral load and the subsequent reduction or elimination of transmission risk
- > explaining the CPHO's powers under the SAPH Act including the options of restriction of movement and detention in a specified place
- > reiterating the availability of counselling, education and support services to better understand the implications of living with HIV and preventing transmission.

The HIV Case Coordinator, with the assistance of the support person should, as far as possible, ensure that the person understands the contents of this letter.

Support person

It is recommended that the person brings a support person with them to any meetings or case conferences to provide support and assistance. However, the support person may be excluded from the meeting if attendees feel that their presence is impeding the process or not assisting the person. Every effort will be taken to ensure this occurs as sensitively as possible, taking into account the nature of each individual situation. The person is encouraged to choose their own support person, however the HIV Case Coordinator may offer assistance in identifying a possible support person.

The support person may be someone who already has an existing role or relationship with the person such as a nurse, counsellor, trusted friend or relative. Alternatively consideration should be given to seeking a support person from a community organisation with HIV expertise. Peer-based support and education is a demonstrated evidence-based activity that can provide assistance to persons coping with a diagnosis of HIV infection, and understanding and preventing HIV transmission risks. If such a referral were made it must be confidential and with the consent of the person.

Cultural expertise

In administering the Code process with Aboriginal, Torres Strait Islander or culturally and linguistically diverse people consideration will be given to seeking cultural advice from appropriate service

providers, without disclosing the identity of the individual person. In addition, the HIV Case Coordinator may discuss with the person the possibility of them engaging with specific culturally appropriate service providers who may offer them support in navigating the Code process.

Interpreting services

The services of a National Accreditation Authority for Translators and Interpreters (NAATI) certified interpreter will be engaged, at the expense of the Department, where necessary. Consideration must be given to the choice of interpreting agency, and/or individual interpreter, especially where the person comes from a small community, to ensure confidentiality is maintained. Engaging interstate telephone interpreting services and using a pseudonym for the person may assist in addressing this issue.

Appointment of a guardian

Where the person is unable to understand the process they are involved in and unable to give informed consent to any proposed actions, the Director CDCB should recommend that the CPHO ask the Office of the Public Advocate to consider appointing a guardian to represent the person. The recommendation shall only be made after discussion with the Guardianship Board or Public Advocate and shall have regard to any comments made in those discussions.

Level 3: Restrictions imposed by way of a formal order

Level 3 involves the CPHO or delegate imposing a formal order on the person under sections 74 and/or 75 of the SAPH Act. Such orders may require counselling, impose directions on a person's activities and medical care, place restrictions on their behaviours and impose restrictions on their activities and where they live or the work that they can or cannot do. Although escalation to Level 3 will involve more directive strategies, the intent is still to facilitate behaviour change and as such interactions should aim to be supportive rather than punitive.

Directions under Sections 74/75

Under section 74 the CPHO or delegate can impose a requirement on a person to participate in counselling, education or other activities relevant to understanding their HIV infection. The person must have been given a reasonable opportunity (such as described in Level 2 of the Code) to participate in the relevant counselling or activity before the CPHO or delegate issues a requirement under section 74.

If the CPHO, having received advice from the Director CDCB, believes that an order is reasonably necessary in the interests of public health (for instance the person continues to place other people at risk of HIV transmission) and that all other management options at Levels 1 and 2 have been utilised or considered, then the CPHO may issue a direction under section 75 of the SAPH Act.

Before imposing an order containing directions under section 75 the CPHO or delegate must be satisfied that:

- > the person has undertaken counselling that is appropriate in the circumstances, or has refused or failed to undertake counselling that has been made reasonably available to the person; or
- > counselling is not appropriate or necessary in the circumstances of the particular case; or
- > urgent action is required in the circumstances of the particular case and that counselling can be provided after the order is issued.

The CPHO or delegate may make directions that are considered appropriate and allowed under section 75 and these may include directions to:

- > attend meetings (such as the Advisory Panel)
- > reside at a specific place
- > be placed under the supervision of a member of the Department or a specified medical practitioner and to obey the reasonable directions of that person
- > submit to an examination as required
- > refrain from performing specified work
- > comply with other directions that the CPHO or delegate considers appropriate in the circumstances.

Section 80(2) allows that a combination of orders may be given or imposed on a person at any time. This allows for orders under sections 74 and 75 to be given at the same time.

The CPHO or delegate will consider the specific principles in section 14 of the SAPH Act when imposing an order, requirement or direction on a person.

Under the SAPH Act, an order, requirement or direction issued under Part 10, sections 74 and/or 75 must be served in person on the individual concerned, as set out in section 101(4) and be accompanied by a section 80 notice that sets out the grounds on which the order or notice is made, contains a statement of the person's rights and contains any other relevant information.

Referral to the HIV Risk Behaviour Advisory Panel

Once a person is the subject of an order, requirement or direction under sections 74 and/or 75 of the SAPH Act, the CPHO may establish a Case Management and Coordination Advisory Panel under section 82 of the SAPH Act to advise on the management of a person. For the purposes of the Code this Case Management and Coordination Advisory Panel is known as the HIV Risk Behaviour Advisory Panel (the Advisory Panel).

Composition of the HIV Risk Behaviour Advisory Panel

Under section 82(1) of the SAPH Act an Advisory Panel will consist of a legal practitioner, a person who is considered by the CPHO to be an expert in infectious diseases and any other person who is considered by the CPHO to be an appropriate member.

Thus, the CPHO or delegate may establish the HIV Risk Behaviour Advisory Panel on a case-by-case basis with core membership as follows:

- > the Director CDCB or their nominee (as an appropriate member, who will also convene the Panel)
- > a person who is considered by the CPHO or delegate to be an expert in infectious diseases and/or sexual health, and/or other appropriate expertise
- > a person living with HIV, who is aware of services available to people living with HIV, who can bring insight into the lived experience of HIV, and who can provide the Panel with a broad understanding of the interests of people living with HIV (as an appropriate member)
- > the HIV Case Coordinator (as an appropriate member)
- > a legal practitioner.

In addition, the CPHO or delegate may invite additional appropriate members with specific expertise related to the individual person's circumstances.

Any person in a therapeutic or other relationship with the person that the CHPO or delegate might perceive as having a conflict of interest shall not be a member of the Advisory Panel.

The CPHO or delegate may determine the scope or performance of an Advisory Panel's functions in the circumstances of each particular case (section 82(4)).

Assessment by the HIV Risk Behaviour Advisory Panel

Under section 82(6) of the SAPH Act, confidential information may be disclosed to the Advisory Panel without the breach of any law or principle of professional ethics. Health professionals and agencies external to SA Health may be informed of this protection when asked to provide information to the Department in connection with the performance of the Advisory Panel's functions.

The Advisory Panel will meet as soon as necessary and reasonably practicable after the issuing and service of directions on a person to further assess the risks the person presents. In undertaking its assessment the Advisory Panel may:

- > consider any case notes relating to the person or any other information that is relevant to its determinations and is provided to it under the SAPH Act
- > interview the person
- > interview any other person who can assist in its decision
- > decide that more information is warranted and if necessary request further medical and psycho-social assessments of the person be undertaken.

Recommendations by the HIV Risk Behaviour Advisory Panel to the CPHO

Having undertaken an assessment, the Advisory Panel may advise that the CPHO:

- > request additional information if the information before the Advisory Panel is insufficient to reach a recommendation
- > vary, revoke or replace directions placed upon the person
- > have the Advisory Panel monitor the person's behaviour until such time as they no longer presents a risk proportionate to management at Level 3 of the Code
- > initiate management under Level 4 of the Code because, in the Advisory Panel's view, the person is likely to be either unwilling or unable to change their behaviour and may warrant the making of an order for detention under section 77 of the SAPH Act
- > refer the matter to the SA Police because the Advisory Panel has formed a reasonable suspicion that the behaviour is intentional.

The Advisory Panel's convener will notify the CPHO of its advice as soon as possible.

Ongoing monitoring by the Advisory Panel

The Advisory Panel through its convener, the Director CDCB, will monitor information provided by the HIV Case Coordinator about the person's behaviour and the associated risks.

The CPHO or delegate may request detailed proposals from the Advisory Panel for the modification and/or management of the behaviour.

The CPHO or delegate may approve any management measures arising from Advisory Panel meetings and refer their implementation to the HIV Case Coordinator. The HIV Case Coordinator will implement the management measures approved by the CPHO or delegate and provide reports to the CPHO or delegate and to subsequent reviews by the Advisory Panel as required.

Meetings of the Advisory Panel

The Advisory Panel will meet as often as is necessary to discharge its functions in accordance with section 82(4) which may, according to the CPHO, include:

- > monitoring the person's adherence to any management strategies and directions imposed on them by the CPHO or delegate
- > meeting with the person (and their support person) as detailed in any order, requirement or direction imposed on them, as often as is necessary to monitor their general management and adherence
- > requesting the CPHO provide reports and information relevant to carrying out its ongoing functions.

The Advisory Panel may exclude the support person from meetings if it believes that their presence is impeding the process or not assisting the person.

A person who is subject to a section 74/75 direction will, through the HIV Case Coordinator, continue to have access to any treatment, counselling, education and support as recommended by the Advisory Panel and determined by the CPHO or delegate.

The HIV Case Coordinator, in collaboration with the person's support person, will explain the consequences of any order made under sections 74/75 and elaborate on the section 80 notice accompanying the order. The section 80 notice contains a statement of the person's rights under the SAPH Act however the CPHO is under no obligation under the Code or the SAPH Act to ensure that the person has legal advice.

Failure to comply with Section 74/75 directions

It is an offence for the person to fail to comply with an order, requirement or direction in part 10 of the SAPH Act without reasonable excuse (section 81). The maximum penalty is \$25,000, however, an expiation notice in the amount of \$750 can be issued by an authorised officer.

If a person fails to comply with a direction made under sections 74/75 and the CPHO or delegate considers that the person's behaviour will continue to pose a significant risk to public health, the CPHO may:

- > detain the person as provided for by section 77 of the SAPH Act (see below)
- > utilise section 79 of the SAPH Act in order to have the person apprehended for detention under section 77.

Interstate orders

As described in section 83 of the SAPH Act, individuals who enter South Australia from another state or territory where they are subject to orders made there under a corresponding law (that is, the relevant state or territory's public health legislation), will immediately be subject to the same orders, as if they had been made in South Australia.

The CPHO or delegate may vary that order whilst the person is in this state by serving a notice on the person, containing the variations.

The order will otherwise remain in force until it expires or is revoked under the interstate law or until revoked by the CPHO or delegate.

Interstate travel or re-location

Where there is reasonable suspicion or knowledge that a person under Level 2 management, has travelled, or is planning extended travel or to relocate to another jurisdiction, the CPHO or delegate should consider notifying the relevant jurisdictional Chief Health Officer (CHO), or relevant delegate, about the person. If the person is being managed at Level 2 and has been issued with, or meets the criteria for, a letter of warning, or anyone at Level 3 or above, then the CHO or delegate must make the referral. All necessary case information, including information that allows the identification of the person, to enable effective public health follow-up should be provided, where legally permitted.

Level 4: Isolation or detention

Section 77 of the SAPH Act allows the CPHO to detain a person with HIV if that 'person presents, or is likely to present, a risk to public health.' Detention and / or isolation for the purposes of managing HIV public health risk are expected to be rare occurrences, as public health legislation and the Code provide for a flexible range of responses, with detention and isolation considered to be strategies of last resort.

The Advisory Panel may recommend detention

With or without the advice of an Advisory Panel, the CPHO may make an order under section 77 of the SAPH Act that a person be detained in a specified place. This order may contain other requirements considered appropriate in the circumstances.

Detention is for an initial period not exceeding 30 days and may be extended by the CPHO for periods not exceeding 60 days. If the CPHO considers that detention will be required beyond an initial period of 30 days the CPHO must apply to the Supreme Court for a review of the order. A person must not be detained under section 77 for more than six months in total unless the Supreme Court has, on application by the CPHO, confirmed the order. The Legal and Legislative Policy Unit of the Department will coordinate the necessary instructions to the Crown Solicitor's Office with respect to any applications to the Supreme Court on behalf of the CPHO.

When considering whether to make an order to require that a person be detained under section 77, the CPHO may have regard to the Advisory Panel's recommendations in relation to that person, or may make an order without the Advisory Panel's recommendation. The CPHO may make an order for detention where a person:

- > has been the subject of one or more directions under section 75 and has contravened or failed to comply; or
- > there is a material risk that the person would not comply with one or more directions should they be imposed; and
- > the person presents, or is likely to present, a risk to public health and detention under section 77 is justified.

Under section 77(2), the CPHO should not make an order to detain a person unless satisfied that:

- > the person has undertaken counselling that is appropriate in the circumstances, or has refused or failed to undertake counselling that has been made reasonably available to the person; or
- > counselling is not appropriate in the circumstances of the particular case; or
- > urgent action is required in the circumstances of the particular case and that counselling can be provided after action is taken under this section.

A person who may be the subject of a detention order is entitled to expect that the CPHO and the Advisory Panel will be guided by the specific principles in section 14 of the SAPH Act and in particular section 14(5)(f) which states that, 'the least restrictive means necessary to prevent the spread of [HIV] be adopted when isolating or quarantining a person'. However, the overriding principle is that the community is protected from the risk of transmission.

The CPHO may consider the advice of the Advisory Panel and have regard to the following:

- > where the person is the subject of an order and is ill or in need of medical assessment, consider detention in hospital for as long as medical treatment is needed
- > where the person has a psychiatric condition or may also have committed criminal offences, take into account the views of other relevant agencies as to the most appropriate placement for the person
- > the appropriateness of the environment in which the person may be detained, particularly where the person may put other residents of the place of detention at risk
- > a place of detention that can be staffed by those who, in its view, can best meet the needs of the person involved, including ensuring the person continues to receive support and treatment appropriate to their circumstances, with particular regard to ongoing, uninterrupted access to HIV treatments.

A person who is detained under section 77 must be examined by a medical practitioner at intervals not exceeding 30 days or at periods determined by a Supreme Court Judge.

An order under section 77, accompanied by a section 80 notice, must be served in person on the individual concerned. Should the person not submit to being detained the CPHO may, under section 79, apply to a magistrate for the issue of a warrant for the apprehension, by an authorised person, of the person for failing to comply with an order or direction under section 77.

The Legal and Legislative Policy Unit of the Department will coordinate the necessary instructions to the Crown Solicitor's Office to achieve this.

The person may apply to the Supreme Court for a review of the order as set out in section 78 of the SAPH Act.

The time periods quoted in this section are as written in the SAPH Act. In practice the CPHO will have due regard to the specific principles of the SAPH Act and in particular the 'least restrictive means necessary' and, as such, periods of detention may in fact be less than the maximums quoted from the SAPH Act.

10. Referral to the SA Police

The Code acknowledges that management of risk behaviours should occur in the community, primary and allied health care settings. Where additional measures are necessary, the SAPH Act and the Code set out clear guidelines for managing risk behaviours within a public health context.

The Code also acknowledges the extensive local and international literature which documents the greater public health harms that may be caused by criminalisation of HIV transmission²⁰⁻²². However, behaviours that risk the transmission of HIV can amount to an offence under criminal law (*Criminal Law Consolidation Act 1935*) and under part 7 and part 10 of the SAPH Act. As such the following procedures will apply:

- > in cases where the CPHO considers that the Code should not, or should no longer, be applied, the CPHO should also consider whether or not it is appropriate to refer the matter to the

SA Police, normally through the Special Crimes Investigation Branch, in relation to any offence that might have been committed

- > where a view can reasonably be formed that the person is intentionally seeking to infect others, the CPHO will make the referral immediately
- > where a person appears to be unwilling to change the behaviours that are placing others at risk, the CPHO will make the referral as soon as it appears reasonable to conclude that those behaviours will continue, and that further intervention under the Code is unlikely to curtail that risk.

A referral to the SA Police in this part of the Code does not preclude the person to whom the referral relates from continuing to receive support, treatment or the application of orders under the SAPH Act.

The levels of management envisaged in the Code may cease to apply if the person is in custody within the criminal justice system. However it is important at all times to ensure effective prevention and management of infection, therefore, delegates and authorised officers performing official duties under the SAPH Act **must** continue to apply public health measures. This may include the application of sections 73-75 of the SAPH Act where necessary and appropriate, whether or not the provisions of the Code are in operation.

Should the SA Police decide not to take any action against a person who has been referred to them, the CPHO may reconsider whether or not the SAPH Act and/or the Code should apply to the person.

Referrals to the SA Police can also be made outside of the provisions of the Code by any member of the public who is concerned that there has been a breach of the criminal law or that there is a material risk to the life, health or safety of a person.

11. Appeals

In general terms, the SAPH Act allows appeals from Part 10 orders that occur at Levels 3 and 4 of the Code (Levels 1 and 2 do not involve the making of orders).

Section 76 provides that a person may appeal to the District Court, orders made under section 73 (examination or tests), section 74 (counselling) or section 75 (directions). For orders made under section 77 (detention) a review can only be sought on an application to the Supreme Court as provided for by sections 77(7), (8) and (9).

12. When management under the Code ceases

Once the CPHO or delegate decides that a person will be managed under the Code, the person continues to be managed until either of the following occurs:

- > the person's behaviours are such that the Code specifically provides that it no longer applies
- > the Director CDCB, usually on the advice of the Advisory Panel, is of the opinion that the person's behaviours no longer pose a risk to public health.

As noted in [Powers of the Chief Public Health Officer](#), the CPHO retains the power to act and is not bound by the recommendations of the Director CDCB.

Depending on individual circumstances and recommendations of the Director CDCB and/or the Advisory Panel, there may be a staged approach to exiting management under the Code. Individuals may enter management under the Code at any level, may vary levels during the course of their management and may exit from any level.

Where a person's management under the Code ceases or levels of management vary, the CPHO or delegate shall inform the person, and any organisations engaged by the Director CDCB and/or the

Advisory Panel to provide services to that person, of the changes in writing as soon as practicable. The advice will include information regarding timeframes for review.

The written advice will also include information for the person and their service providers in regard to the person's ongoing obligation to maintain safe behaviours and the potential for re-engagement with the Code process should new concerns be raised in the future.

13. Statutory requirements

The Code is set within wider clinical and public health responsibilities for the protection of the public's health.

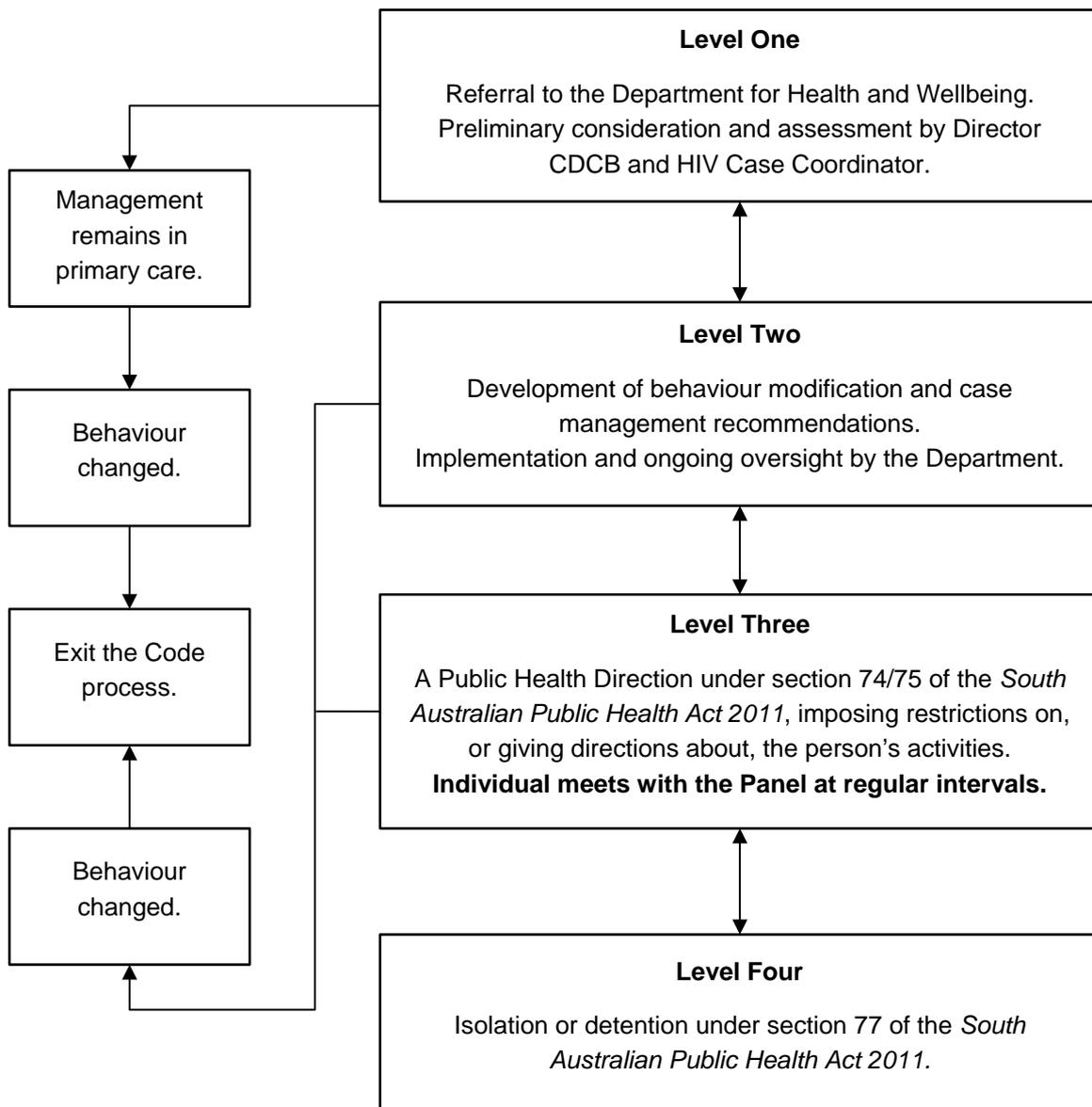
In particular this means that the Code does not detract from or diminish the responsibility of statutory officers (e.g. CHPO) or their delegates under the SAPH Act, the *Health Care Act 2008*, *Mental Health Act 2009* or from any other persons performing official duties under those Acts from the requirement to exercise their statutory responsibilities to the full extent allowed by those Acts.

14. Review of the Code

The CPHO shall review the Code on a periodic basis and at least every five years.

Appendix A: Summary flow chart

Individuals may enter or exit at any level and may move between levels during management:



Appendix B: Specific principles - Section 14, *South Australian Public Health Act 2011*

14 – Specific principles - Parts 10 and 11

- (1) The principles set out in this section apply for the purposes of Part 10 and Part 11.
- (2) The overriding principle is that members of the community have a right to be protected from a person whose infectious state or whose behaviour may present a risk, or an increased risk, of the transmission of a controlled notifiable condition.
- (3) A person who has a controlled notifiable condition that is capable of being transmitted to 1 or more other persons has a responsibility to take reasonable steps or precautions to avoid placing others at risk on account of the controlled notifiable condition.
- (4) A person must not, insofar as is reasonably practicable, act in a manner that will place himself or herself at risk of contracting a controlled notifiable condition that is capable of being transmitted.
- (5) Subject to the overriding principle and any steps reasonably necessary to protect, or to minimise risks to, public health, and without limiting any power under Part 10 or Part 11, a person who may be the subject of an order, direction or requirement under either Part is entitled to expect—
 - (a) to have his or her privacy respected and to have the benefit of patient confidentiality; and
 - (b) to be afforded appropriate care and treatment, and to have his or her dignity respected, without any discrimination other than that reasonably necessary to protect public health; and
 - (c) insofar as is reasonably practicable and appropriate, to be given a reasonable opportunity to participate in decision-making processes that relate to the person on an individual basis, and to be given reasons for any decisions made on such a basis; and
 - (d) to be allowed to decide freely for himself or herself on an informed basis whether or not to undergo medical treatment or, in a case involving a child under the age of 16 years, to have his or her parent or guardian allowed to decide freely on an informed basis whether or not the child should undergo medical treatment; and
 - (e) to be subject to restrictions (if any) that are proportionate to any risks presented to others (taking into account the nature of the disease or medical condition, the person's state of health, the person's behaviour or proposed or threatened behaviours, and any other relevant factor); and
 - (f) that the least restrictive means necessary to prevent the spread of disease be adopted when isolating or quarantining a person at the person's home or on other premises under this Act; and
 - (g) that his or her needs, including, but not limited to the provision of—
 - (i) adequate food, clothing, shelter and medical care; and
 - (ii) a telephone or other appropriate method by which the person may communicate with others,will be addressed in a reasonable and competent manner to the extent that the person is unable or restricted in his or her own capacity to meet such needs; and
 - (h) that any premises at which the person must reside as a result of an order, direction or requirement (other than the person's home), are—
 - (i) maintained according to safe and hygienic standards; and
 - (ii) to the extent possible, maintained in a way that is respectful to the person's cultural and religious beliefs; and

- (iii) designed or managed to minimise the likelihood that —
 - (A) infection may be transmitted; and
 - (B) the person may be subjected to harm or further harm.
- (6) Any requirement restricting the liberty of a person should not be imposed unless it is the only effective way remaining to ensure that the health of the public is not endangered or likely to be endangered.
- (7) Without limiting subsection (6), if a power is to be exercised under Part 10 or Part 11, so far as is reasonably practicable, the power that least infringes on the rights of individuals must be the power that is exercised, unless to do so would involve the use of measures that are likely to be less effective in protecting or minimising risk to public health.
- (8) Any requirement restricting the liberty of 2 or more members of the 1 family should ensure, so far as is desirable and reasonably practicable and so far as is appropriate to the requirements for the protection of public health, that the family members reside at the same place.
- (9) If a requirement restricting the liberty of a person is imposed, all reasonably practicable steps must be taken to ensure that the person's next of kin, or a nominated person, is informed (unless the person to whom the requirement relates instructs otherwise).

Appendix C: Confidentiality - Sections 99 & 100, *South Australian Public Health Act 2011*

99 – Confidentiality

- (1) If a person, in the course of official duties, obtains personal information relating to another, the person must not intentionally disclose that information except to the extent that the person is authorised to do so under subsection (2).

Maximum penalty: \$25 000.

- (2) A person is authorised to disclose information if the person is —
- (a) disclosing information in the course of official duties, or for any other purpose connected with the administration of this Act or a law of another State or a Territory of the Commonwealth or of the Commonwealth; or
 - (b) disclosing information as required by law; or
 - (c) without limiting paragraph (b), disclosing information as required by a court or tribunal constituted by law; or
 - (d) disclosing information at the request, or with the consent, of the person to whom the information relates or a guardian or medical agent of the person; or
 - (e) disclosing information to a relative, carer or friend of the person to whom the information relates if —
 - (i) the disclosure is reasonably required for the treatment, care or recovery of the person; and
 - (ii) there is no reason to believe that the disclosure would be contrary to the person's best interests; or
 - (f) subject to the regulations (if any) —
 - (i) disclosing information to a health or other service provider if the disclosure is reasonably required for the treatment, care or recovery of the person to whom the information relates; or
 - (ii) disclosing information by entering the information into an electronic records system established for the purpose of enabling the recording or sharing of information between persons or bodies involved in the provision of health services; or
 - (iii) disclosing information to such extent as is reasonably required in connection with the management or administration of a hospital or ambulance service; or
 - (g) without limiting a preceding paragraph, disclosing information to the extent to which it is reasonably necessary —
 - (i) to provide treatment to the person; or
 - (ii) to prevent the transmission of any disease constituting a controlled notifiable condition; or
 - (h) without limiting a preceding paragraph, disclosing information if the disclosure is reasonably required to lessen or prevent a serious threat to the life, health or safety of a person, or a serious threat to public health; or
 - (i) disclosing information for medical, research or statistical purposes if —
 - (i) there is no reason to believe that the disclosure would be contrary to the person's best interests; and
 - (ii) the disclosure is of a kind approved by the Chief Public Health Officer for the purposes of this paragraph; or

- (j) disclosing information in accordance with the regulations.
- (3) Subsection (2)(e) does not authorise the disclosure of information in contravention of a direction given by the person to whom the information relates.

(4) In this section —

domestic partner – a person is a domestic partner of another if the person is a domestic partner of the other within the meaning of the Family Relationships Act 1975, whether declared as such under that Act or not;

personal information means –

- (a) medical information; or
- (b) information relating to a person's personal affairs;

relative – a person is a relative of another if the person is a spouse, domestic partner or parent of the other of or over 18 years of age or a brother, sister, son or daughter of the other.

100 – Confidentiality and provision of certain information

- (1) This section applies to a person employed or engaged by the State for the purpose of —
 - (a) monitoring public health in the State; or
 - (b) investigating public health problems within the State; or
 - (c) assessing and improving the quality of public health in the State.
- (2) The Minister may, by instrument in writing, authorise a person to whom this section applies to have access to personal information relating to the performance of any function referred to in subsection (1).
- (3) Personal information may be disclosed to a person authorised under subsection (2), and to any person providing technical, administrative or secretarial assistance to that person, without breach of any law or any principle of professional ethics.
- (4) A person must not disclose personal information obtained directly or indirectly pursuant to this section unless —
 - (a) the disclosure is made in the course of official duties; or
 - (b) the disclosure is made with the consent of the person to whom the information relates; or
 - (c) the disclosure is required by a court or tribunal constituted by law; or
 - (d) the disclosure is authorised under the regulations.

Maximum penalty: \$25 000.

(5) In this section —

personal information means –

- (a) medical information; or
- (b) information relating to a person's personal affairs.

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