Government of **Western Australia**
Department of **Health**

Guidelines for the management of notifiable infectious disease transmission risk behaviours in Western Australia

Communicable Disease Control Directorate Guideline

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These guidelines have been developed by the Communicable Disease Control Directorate, Public and Aboriginal Health Division, Western Australian Department of Health.

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The Communicable Disease Control Directorate at the Department of Health acknowledge the Aboriginal people of the many traditional lands and language groups of Western Australia. We acknowledge the wisdom of Aboriginal Elders both past and present and pay respect to Aboriginal communities of today.

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1. Acronyms

the Act	*Public Health Act 2016*
Advisory Panel	Notifiable Infectious Diseases Case Management Advisory Panel
CDCD	Communicable Disease Control Directorate
CHO	Chief Health Officer
Guidelines	Guidelines for the management of notifiable infectious disease transmission risk behaviours in Western Australia
HIV	Human Immunodeficiency Virus
HSP	Health Service Provider
ICMP	Integrated Care Management Program
LLS	Legal and Legislative Services
LoW	Letter of Warning
MCDC	Metropolitan Communicable Disease Control
Minister	Minister for Health
NMHS	North Metropolitan Health Service
Order	Test Order or Public Health Order
PHO	Public Health Order
PHU	Public Health Unit
SAT	State Administrative Tribunal
SSO	State Solicitor's Office
TB	Tuberculosis
WA	Western Australia
WACHS	WA Country Health Service
WANIDD	WA Notifiable Infectious Diseases Database
WAPOL	WA Police
WATBCP	WA Tuberculosis Control Program

2. Background

Certain infectious diseases are legally required to be notified to the Chief Health Officer (CHO) under the *Public Health Act 2016* (the Act) in Western Australia (WA). The *Public Health Regulations 2017* lists the diseases that are notifiable under the Act. This requirement means that medical practitioners, nurse practitioners and pathologists are required to notify the CHO if they form the opinion that a patient has or may have a notifiable disease. Through these notifications, Public Health Officials such as public health units (PHU) and the Communicable Disease Control Directorate (CDCD), are able to prevent and reduce the spread of infectious diseases, protect the health of the community and reduce the associated public health impacts.

Transmission of infectious diseases is preventable. Under the Act, a person who is at risk of contracting a notifiable infectious disease must take reasonable precautions to avoid contracting the disease. A person who has a notifiable infectious disease must take all reasonable precautions to ensure that others are not unknowingly placed at risk of contracting the disease. Despite these responsibilities, some individuals continue to display transmission risk behaviours and put others at risk.

These Guidelines outline a policy framework for managing transmission risk behaviours for people who have acquired a notifiable infectious disease and place others at risk of infection. These Guidelines do not apply to the management of people with HIV with transmission risk behaviours who are managed under the *Guidelines for Managing HIV Transmission Risk Behaviours in Western Australia (2020)*. These Guidelines are intended for use in circumstances where an individual places other people at risk of contracting a notifiable infectious disease that may have material public health risk. For example, infectious syphilis, tuberculosis (TB), and extensively drug-resistant gonorrhoea are among the notifiable infectious diseases falling under this criterion.

Pursuant to the Act, the CHO is able to make Test Orders and Public Health Orders (PHOs) on individuals if they represent a risk to public health. These Orders have significant penalties if not followed. Furthermore, pursuant to the Act, the CHO may establish Case Management and Coordination Advisory Panels to advise the CHO on the management of a person or a group of persons with notifiable infectious diseases.

These Guidelines outline a four-stage management framework, from least restrictive to most restrictive measures, to manage people with a notifiable infectious disease who display transmission risk behaviours and represent a risk to public health. At each stage, the primary objective is to reduce the risk of transmission of the notifiable infectious disease, and thereby reduce the associated public health risk.

Information in this document is subject to change and it is essential that users of this document ensure they are accessing the most up to date publication. These Guidelines are subordinate to the Act (and any other applicable legislation). Where the Guidelines refer to provisions of the Act, or any other legislation, it is not and is not intended to be, a substitute for the relevant legislation.

3. Purpose

The purpose of these Guidelines is to:

1. Identify and explain the roles and responsibilities of various entities in respect of managing a person with a notifiable infectious disease (with the exception of HIV) who is placing others at risk.
2. Ensure a consistent approach to the management, under the Act, of a person with a notifiable infectious disease who is placing others at risk (with the exception of HIV), including describing processes in issuing a Test Order or PHO.

3. Set out the process and the four stages of management of a person who has a notifiable infectious disease (with the exception of HIV) who is placing others at risk.

4. Legislative Provisions

The Act is a legislative framework for the regulation of public health in WA. Within the Act, a framework exists to enable public health tools to aid in abating, preventing and controlling the spread of notifiable infectious diseases. The Act also includes appropriate penalties that can be used to deter unlawful conduct and thereby prevent or minimise harm to public health. The CHO administers the Act on behalf of the Minister for Health (the Minister) and is responsible for implementing policies and programmes to achieve the objectives of the Act.

5. Guiding Principles

A number of principles apply to the Act (see section 88) and its provisions in managing notifiable infectious diseases. These principles, therefore, underpin these Guidelines:

- The spread of notifiable infectious diseases should be prevented or limited without unnecessarily restricting personal liberty or privacy. In the application of this principle particular regard should be had to the principle of proportionality:
    - Decisions made and actions taken in the administration of this Act to prevent, control or abate a public health risk should be proportionate to the public health risk sought to be prevented, controlled or abated.
    - In the application of the principle of proportionality, decision-making and action should be guided by the aim that, where measures that adversely impact on an individual's or business's activities or a community's functioning are necessary, measures that have the least adverse impact are taken before measures with a greater adverse impact.
- A person who is at risk of contracting a notifiable infectious disease must take all reasonable precautions to avoid contracting the disease.
- A person who suspects that they may have a notifiable infectious disease must ascertain:
    - whether or not they have the disease; and
    - what precautions should be taken to prevent others from contracting the disease.
- A person who has a notifiable infectious disease must take all reasonable precautions to ensure that others are not unknowingly placed at risk of contracting the disease.
- To the extent to which the exercise of those rights does not infringe on the wellbeing of others, a person who is at risk of contracting, who suspects that they may have, or who has a notifiable infectious disease or a notifiable infectious disease-related condition has the right:
    - to be protected from unlawful discrimination;
    - to have his or her privacy respected;
    - to be given information about the medical and social consequences of the disease or condition and about any proposed medical treatment;
    - in the case of a notifiable infectious disease —
        - to have access to available and appropriate examination and treatment; and
        - to have that examination and treatment provided free of charge, but only if the requirements set out below are met.
- The right to have an examination or treatment provided free of charge applies:
    - only if the examination or treatment is provided by a public health official; and
    - only to the extent that the examination or treatment is necessary to prevent the transmission of the disease to another person.

6. Roles and Responsibilities

In managing an individual with a notifiable infectious disease under these Guidelines, a number of key stakeholders are involved. Specific responsibilities at each stage of the four-stage management framework are outlined in 8. The Four Stage Management Framework.

6.1 Authorised Officer

Under the Act, the CHO has the power to designate a person as an Authorised Officer. Authorised Officers have the authority to administer and enforce provisions of the Act. An Authorised Officer may require a person who is believed to have, or is diagnosed with a notifiable infectious disease, to provide specific information to prevent or minimise spread of the disease. An Authorised Officer can undertake contact tracing and enforce a Test Order or a PHO on a person on behalf of the CHO.

6.2 Advisory Panel

Under section 144 of the Act, the CHO may establish Case Management and Coordination Advisory Panels to advise the CHO on the management of a person who has, or a group of persons who have, a notifiable infectious disease and whether a Test Order or PHO applies to the person or persons. The Case Management and Coordination Advisory Panel, for the purposes of these Guidelines, is called the Notifiable Infectious Disease Case Management Advisory Panel (Advisory Panel). Information, including confidential information, may be lawfully disclosed, under the Act, to an Advisory Panel in connection with the performance of its functions.

6.3 The Chief Health Officer

Under the Act, the Minister can designate a person as the CHO, who functions as the administrator for the Act. The CHO has powers to make a Test Order or PHO which may obligate a person to undertake specific instructions to prevent the transmission of notifiable diseases. There are significant penalties for a person for failing to comply with a Test Order or PHO.

6.4 Communicable Disease Control Directorate

CDCD is a unit of the WA Department of Health, within the Public and Aboriginal Health Division, that is responsible for the prevention, control, and surveillance of notifiable infectious diseases. CDCD has oversight of policies, surveillance and reporting, as well as supporting Health Service Providers (HSPs), in the prevention of communicable disease and health care associated infections.

6.5 Legal and Legislative Services and State Solicitor's Office

The Legal and Legislative Services (LLS) Unit assists the WA Health system to operate within an appropriate legal framework. LLS provides a range of services including provision of legal advice and legislative assistance to the WA Health system on a wide range of matters including general advice on legal and compliance matters and statutory interpretation. LLS are also responsible for the management of the Minister's legislative portfolio. Legal advice from the State Solicitor's Office (SSO) must be sought via the LLS, in accordance with the Department of Health Obtaining Legal Advice Policy (MP 0023/16).

The SSO is an independent sub-department of the Department of Justice. It is the Western Australian Government law office responsible for the provision of a broad-based legal service to the Government, its departments, instrumentalities, and agencies including the Department of Health and HSPs.

6.6 Public Health Official

Public health officials are Department of Health officers, or a person employed or engaged in HSPs.

6.7 Public Health Units

PHUs are services that sit within HSPs and are responsible for the control and prevention of notifiable diseases. Under the Department of Health Public Health Policy Framework, PHUs undertake activities including case and contact management. The North Metropolitan Health Service (NMHS) provides a metropolitan-wide communicable disease control service (Metropolitan Communicable Disease Control, MCDC) located in Perth. WA Country Health Service (WACHS) provides communicable disease control services to country WA through PHUs located in each of the seven health regions (Kimberley, Pilbara, Midwest, Goldfields, Wheatbelt, South-West and Great Southern).

6.8 WA Tuberculosis Control program

The NMHS also provides a state-wide service for TB management, through the WA Tuberculosis Control Program (WATBCP). The WATBCP is based in metropolitan Perth and provides both public health and clinical management of TB cases via a case-management approach.

In regional areas WACHS PHUs provide implementation of the public health management of TB control, in collaboration with the WATBCP who provides oversight and clinical governance for the public health response.

6.9 Treating Clinicians

For the purposes of these Guidelines, treating clinicians include primary care services such as general practitioners, Aboriginal Medical Services, and other health care services that provide clinical management of people with a notifiable infectious disease such as sexual health providers. These providers operate under a shared care model and provide services which manage the medical requirements of an individual with a notifiable infectious disease including treatment, coordinating referrals to other specialists (e.g. mental health and alcohol and drug services), assisting with access to housing or support accommodation, and referral to services to assist with home care support.

7. Confidentiality

Regardless of the stage of management, it is important that the confidentiality of a person managed under these Guidelines is respected and that any communication regarding the person and their management is restricted to providers who are directly involved in management of the issues. De-identification or pseudonyms need to be employed where appropriate.

In the WA health system, the privacy of patients is protected through policies such as the *WA Health Code of Conduct*. The Department of Health's Information Access, Use and Disclosure Policy (MP 0015/16) outlines requirements pursuant to legislation and facilitates lawful and appropriate information access, use and disclosure. The Information Access, Use and Disclosure Policy Resource Compendium provides a broad overview of the duty of confidentiality imposed on persons by common law, the exceptions to that duty, and the statutory duty of confidentiality and permissible disclosures.

Under the Act, information, including confidential information, may be disclosed to an Advisory Panel in connection with the performance of its functions, with protections afforded to the person disclosing information. The Act also stipulates confidentiality requirements for members of the Advisory Panel.

8. The Four-Stage Management Framework

An overview of the four-stage management framework is presented in the table below. People who require management under these Guidelines will remain under the framework until the objective of reducing public health risk is achieved. In situations where a Test Order or PHO (an Order) has been served to an individual, the Order will apply until a revocation of the Order has been served.

The time taken for an individual's management under this Framework to progress through each stage depends on a number of factors, for example, the level of risk to public health posed by the individual and the ability to find the individual to provide counselling or serve an Order. This Guideline exists to set out processes, streamline administrative procedures and ensure consistency in managing people under the Act in a safe and timely manner.

Table 1. The Four Stage Management Framework

Summary of case management	**Stakeholders involved**
Stage One – Managed by PHUs and treating clinicians[1]	
• Management is focused on counselling, education and supporting the person, in a culturally safe manner, to seek treatment and/or modify their transmission risk behaviours. • The PHU or WATBCP may issue a notice letter as a Public Health Official.	• PHUs • Treating clinicians • If TB, WATBCP[1]
Stage Two - CDCD, CHO and/or Advisory Panel review and/or Letter of Warning (LoW)	
• The PHU or WATBCP refers the case to CDCD.[1] A CDCD officer assists in collating evidence and presents a case summary to the CDCD Director. • If required, the CDCD Director will brief the CHO. This may be for a formal LoW from the CHO, to request to refer the case to the Advisory Panel, or for the CHO to be aware of the situation. • The CHO refers the case to the Advisory Panel to review and provide advice which may include advice to issue an Order.	In addition to stage one: • CDCD • CHO • Advisory Panel
Stage Three – Management under a Test Order or PHO (excluding detention or isolation)	
• The CHO issues an Order (excluding PHOs for detention or isolation), and an Authorised Officer serves the order. CDCD consults LLS in drafting the order.	In addition to stage two: • LLS / SSO • Authorised Officers
Stage Four – Management under a PHO to detain or isolate[2]	
• The CHO issues a PHO to detain or isolate the case and an Authorised Officer serves the order. CDCD consults LLS in drafting the order.	In addition to stage two: • LLS / SSO • Authorised Officers

[1] Specific roles and responsibilities for the management of TB patients in WACHS regions are outlined in the agreement between WACHS and the WATBCP. Where a TB case in regional WA is non-adherent to treatment and a public health risk, the WATBCP physician allocated to the case and the relevant PHU public health physician should discuss the need to apply these Guidelines and escalate case management as per the four-stage management framework.

[2] It is expected that this stage would rarely be taken, and when taken, as a last resort. Management efforts throughout Stage One to Three is expected to usually be successful in achieving the objective of reducing public health risk.

8.1 Framework Principles

Principles that apply throughout the four-stage management framework include:

- public health management is provided by NMHS or WACHS PHUs
- clinical management is provided by treating clinicians
- in respect to TB, public health management and clinical management is guided by the WATBCP *Guidelines for Tuberculosis Control in Western Australia*
- management should focus on counselling, education and support in a culturally safe manner

- in situations where the person is culturally and linguistically diverse or there is the belief that there may be a language barrier for the person to comprehend any advice, the LoW or an Order, professional interpreters and culturally secure services should be considered and co-opted. This is an important consideration when serving an Order, as the Authorised Officer must be satisfied that the person understood the Order. This also includes considering languages that must be spoken, not just written[1]
- the person must be advised of their rights and responsibilities (see 9. Rights and responsibilities) and made aware that they are being managed under these Guidelines,
- confidentiality of the individual is maintained (see 7. Confidentiality), and
- people managed under this framework should be supported by consumer representation or advocacy services.

8.2 Identification of a person to be managed under these Guidelines

Following notification of a person with a notifiable infectious disease to a PHU and the PHU undertaking relevant investigations, the PHU may identify that an individual behaves or has previously behaved in a way that put others at risk of infection. This may occur, for example, through the relevant person being named as a contact by multiple cases of a notifiable disease. The PHU may also identify an individual as a potential case of a notifiable infectious disease if there is reasonable belief that they have been in contact with a confirmed case or cases, even if the individual has not yet been diagnosed with the notifiable disease. When an individual displays transmission risk behaviours and places others at risk of a notifiable infectious disease, including where they have been named as a contact by other cases but refuse to seek testing, these Guidelines may apply.

8.3 Stage One

8.3.1 Counselling, Education and Support

Stage One management of a person with a notifiable infectious disease who displays transmission risk behaviours involves counselling, education, and support. The primary objective of this stage is to encourage the person to modify their behaviour or seek treatment. Achieving behaviour change may be facilitated by addressing barriers experienced by the person through referrals to other services. The clinical management of a person who is diagnosed with a notifiable infectious disease remains the responsibility of the treating clinician.

In applying these Guidelines and managing an individual under Stage One, the PHU should ensure that all recordkeeping and documentation is comprehensive (see 13. Documentation), as records may be required as evidence in escalating the management under these Guidelines. This includes comprehensive documentation of the counselling, education and support provided to the individual, and documentation of referrals to or consideration of services and initiatives. If referrals were made and the individual did not attend the service, this should also be documented.

Counselling, education and support provided by PHUs or treating clinicians must include reference to the public health risk posed by their behaviours, their notifiable infectious disease and actions the person needs to undertake to mitigate the risk of transmission to others. Furthermore, counselling, in relation to developing an evidence base to support the escalation of management under these Guidelines and the requirements under the Act, specifically refers to providing the individual:

- information about the risk of transmission of the disease in the particular circumstances
- the medical and social consequences of the transmission of the disease and
- how and where testing for the disease could be carried out.

[1] For example, a recording of the LoW in the appropriate Aboriginal or community language.

Individuals who display transmission risk behaviours despite support from health services often have complex and challenging social circumstances which may be associated with cognitive, behavioural and mental health issues. It is important to consider referring these individuals to services and initiatives that can offer additional support, with the goal to:

- address the individual's social, psychological and physical healthcare needs
- facilitate behaviour change to reduce public health risk and
- reduce barriers for the individual to access treatment.

Therefore, linking these individuals in with services and initiatives should be considered early and prior to escalating their management under these Guidelines, as these Guidelines may involve restricting the individual's liberty. It is also important to recognise that a number of these services and initiatives may not be readily available, particularly in a regional context or where services are in high demand. In circumstances where referral to services or initiatives is not feasible, the PHU and treating clinicians should focus on developing a therapeutic relationship with the individual to enable effective counselling, education and support of the individual to modify their behaviour or seek treatment.

The PHU and the treating clinicians should discuss any responsibilities in making referrals to services or initiatives. In some circumstances, the PHU may be able to manage referrals or offer their own internal services. However, ordinarily, the treating clinicians are responsible for coordinating referrals to additional services to ensure the individual receives the necessary support.

Services and initiatives that should be considered and utilised where appropriate and available include:

- Primary care services including Aboriginal Medical Services or homeless-specific healthcare
- Specialist health services including mental health services
- Alcohol and other drug services
- Counselling and education services
- Health consumer advocacy groups and/or services
- Peer group support and/or community organisations including mentorship programs
- Accommodation services including access to housing or supported accommodation
- Services which offer training in life skills such as budgeting and social skills
- Services which offer home care support (e.g. shopping, transport, cooking, cleaning)
- Utilising incentives and/or providing health hardware (e.g. condoms, lubricant, new syringes and needles)
- Disability services or other relevant services
- Income assistance services (e.g. Centrelink) and
- Employment Support and Employment Services.

8.3.2 Informing contact persons

In managing individuals with notifiable infectious diseases, a situation may arise where a contact person has been identified but is not aware of their exposure and risk of infection. Where this occurs, section 139 of the Act allows for the CHO or an Authorised Officer to undertake reasonable steps to ensure that the contact person is informed that they may be the source of or may have been exposed to a notifiable infectious disease. It is important to try and maintain confidentiality when disclosing any information to the contact and to carefully consider the consequences of disclosing information to a contact person as balanced against the benefit of such a disclosure. Situations should be assessed on a case-by-case basis by the Authorised Officer. In situations where the Authorised Officer believes it to be necessary to inform the contact, they should do so. Where the situation is complex, and the

benefit is not so clear, the Authorised Officer can consider discussing the situation with a CDCD Senior Medical Advisor. The Senior Medical Advisor can review, provide advice or escalate to the Director or CHO. Where legal advice may be required in deciding to inform a contact person, the PHU should discuss the situation with CDCD, who will be responsible for liaising with LLS.

8.3.3 Keeping the person informed

When a person is managed under these Guidelines, they should be kept informed of their rights and responsibilities under the Act (see 9. Rights and responsibilities). Furthermore, in providing counselling, education and support, they should be made aware that more assertive management may be used if they do not modify their behaviour or seek treatment.

8.3.4 Notice Letter

At this stage, the PHU may also consider the need to issue a notice letter to a person managed under these Guidelines. The notice letter is a non-statutory, non-binding notice and is not issued under the Act. The notice letter is not a formal LoW from the CHO. It is a tool that has been used by PHUs and the Integrated Case Management Program (ICMP) for HIV and has previously demonstrated success in facilitating behaviour change or encouraging the individual to seek appropriate treatment. The intention of a notice letter is to provide written correspondence to the case of:

- a summary of their situation and the risk they pose to public health
- what is expected of the person to reduce their risk to public health
- their roles and responsibilities under the Act and
- that they are being managed under these Guidelines and that more assertive management is possible if they do not take actions to address their risk to public health.

The PHU or WATBCP should issue a notice letter through their usual processes, which may be issued in person by a Public Health Official or sent via registered mail to a home address. It is important to consider the risk of breaching confidentiality when issuing the notice letter and appropriate steps should be taken by the PHU or WATBCP to ensure that only intended recipients receive the notice letter.

8.3.5 When to Escalate to Stage Two

If Stage One has not been effective in reducing the public health risk caused by an individual with a notifiable infectious disease, escalation under these Guidelines should be considered. This should be considered in both situations where the individual fails to respond to efforts of implementing Stage One interventions, or where services and initiatives have been carefully considered and are not feasible or practical, and the person continues to display transmission risk behaviours that puts others at risk.

To escalate the management to Stage Two, the case should be referred to CDCD (see 8.4 Stage Two). The Medical Director of the WATBCP or a public health physician from a PHU may also wish to raise concerns regarding an individual by initiating a discussion, either via telephone or email, with a Senior Medical Advisor in CDCD or the CDCD Director. This discussion is not considered a referral and does not escalate the management to Stage Two until the referral has been made and acknowledged.

8.4 Stage Two

Stage Two management of a person with a notifiable infectious disease who displays transmission risk behaviours involves the notification and referral of the case to CDCD. A public health physician from a PHU or the Medical Director of the WATBCP should complete the referral notification form (see Appendix 1) and email the form through the WA Health email server to

DoH_CDCDOnCall@health.wa.gov.au. A CDCD Senior Medical Advisor or the CDCD Director will acknowledge receipt of the referral within one business day.

Once a referral has been acknowledged, CDCD will be responsible for providing the ongoing oversight of the management of the case under these Guidelines, including undertaking any actions such as briefing the CHO, drafting legal requests and communicating any decisions made regarding the case with the PHU or WATBCP. Public health and clinical management responsibilities remain with the PHU and treating clinicians respectively.

The procedures under Stage Two are described sequentially, however, should the public health risk be significant or there is clear need to escalate the management, the CDCD Director may consider the need to trigger procedures in Stage Two in parallel. For example, if there is a clear a need to refer the case to the Advisory Panel, the CDCD Director may allocate a CDCD officer to collate evidence and draft a Briefing Note to the CHO at the same time to reduce any potential delays.

8.4.1 Collating Evidence

Upon receiving the referral and assessing the referral for merit, the CDCD Director, in discussion with CDCD Program Managers, will allocate a CDCD officer to the case. The CDCD officer is responsible for assisting the PHU in collating information evidence regarding the person, their notifiable infectious disease and their transmission risk behaviours. The CDCD officer will be responsible for establishing communication with the referring PHU, who should designate a point of contact with whom the CDCD officer can liaise with. To ensure a streamlined compilation process, evidence should be shared chronologically with the CDCD officer, who will compile the evidence using the List of Evidence Template. The following information may be requested by the CDCD officer:

- evidence of acquisition of a notifiable infectious disease e.g. pathology report
- evidence of transmission of a notifiable infectious disease to a person(s) e.g. named as a contact in case notes
- relevant case notes from WA Notifiable Infectious Diseases Database (WANIDD) or other disease control and surveillance systems identifying past and present transmission risk behaviours. Many case notes may be required to form sufficient and reasonable grounds for belief that the person should be managed under more assertive measures
- case notes on number and type of contact by health professionals to provide information to the person on testing, treatment and contact tracing, and case notes outlining contemporaneous conversations undertaken by the health professional showing counselling or attempts at counselling. This may include correspondence with primary care providers or treating clinicians who have provided counselling, education or support and the reported outcomes from the appointments
- evidence of services that were considered and utilised under Stage One and the outcomes from accessing these services e.g. referral to specialist health services but the person did not attend appointment or referral to specialist health service but wait time for an appointment is extensive
- evidence of range of methods used to contact the person e.g. phone calls, home visits, text messages, identification and contact with extended networks who may know the whereabouts of the index case. The evidence must be a contemporaneous record of the contact and
- emergency Department alerts and WA Police (WAPOL) alerts for welfare checks.

Evidence shared by the PHU to the CDCD officer must be shared via secure transfer means. For example, the WA Health system utilises Microsoft 365 for its email server, employing industry-standard email encryption technologies to guarantee secure email content and end-to-end data encryption. Internal WA Health email servers are sufficient for communications between the PHU and the CDCD officer. However, when communicating externally beyond WA Health agencies, secure transfer systems such as My File Transfer must be utilised. The CDCD officer will compile the evidence and store the evidence in an appropriate place in accordance with the Department of Health Information Management Governance Policy (MP 0152/21) and the Information Storage Policy (MP 0145/20).

During the process of compiling the evidence, the CDCD officer will be supported by a Senior Medical Advisor in CDCD. After compiling sufficient evidence, the CDCD officer will work with the PHU to create a case summary to be presented to the CDCD Director. The CDCD Director will then assess the merit of the case summary and consider notifying the CHO.

8.4.2 Notifying the CHO

If determined appropriate by the CDCD Director, the CDCD Director will brief the CHO via a Briefing Note. This may be to advise the CHO of the person or provide recommendations to refer the case to an Advisory Panel or issue a formal LoW from the CHO.

The Briefing Note will provide information on:

- the person and their notifiable disease
- their past behaviours and the risk they represent to public health
- a summary of their case management to date and
- any recommendations.

Any decisions made by the CHO will be communicated to the PHU or WATBCP by CDCD.

8.4.3 The Advisory Panel

The role of the Advisory Panel is to provide expert advice to the CHO and support the CHO's decision-making in relation to complex and challenging cases of notifiable infectious diseases who display transmission risk behaviours. Cases are referred to the Advisory Panel on a needs basis when recommended by the CDCD Director and approved by the CHO. The advice provided by the Advisory Panel is not binding and the CHO is not required to follow the advice. Ultimately the responsibility in managing people with greater assertive measures under the Act falls with the CHO.

The Advisory Panel membership will typically include:

- a lawyer and
- a person who is considered by the CHO to be an expert in infectious disease and
- a person who is considered by the CHO to have knowledge of, and experience in representing, community or consumer interests and
- a public health physician from the relevant PHU and
- others who are considered by the CHO to be an appropriate member of the Advisory Panel. This may include sexual health physicians or practitioners, TB specialists, Aboriginal people, mental health practitioners or other relevant specialists.

The Advisory Panel will meet, review the case summary, and provide written advice to the CHO with regards to the ongoing management of the person. Under Stage Two of these Guidelines, advice from the Advisory Panel may include other counselling, education and support initiatives that have not yet been utilised, or for the CHO to issue a formal LoW. Advice provided by the Advisory Panel to the CHO

should include timeframes for which actions are expected to occur. As the Advisory Panel exists to provide expert advice to the CHO, the CHO may wish to communicate the recommendations made by the Advisory Panel to the PHU or treating clinician. CDCD will be responsible for facilitating any communication on the CHO's behalf. The clinical and public health management of a person remains the responsibility of treating clinicians and PHUs, respectively.

When the PHU identifies any updates in the management of the person, which may include absence of behaviour change or failure to receive treatment in the timeframe expected, the PHU should notify CDCD. CDCD will liaise with the Chair of the Advisory Panel so they can consider if further meetings to review the case is required, or if further recommendations to the CHO should include more assertive measures under these Guidelines.

8.4.4 Principles for consideration by the Advisory Panel

When an individual represents a risk to public health and restrictive measures are under consideration by the Advisory Panel, it is important to consider the complex interplay of legal and ethical issues. The Advisory Panel should consider the following principles when making recommendations to the CHO regarding the case under review, particularly if there is consideration to escalate the management to Stage Three or Stage Four:

- Autonomy of the individual: Individuals have a right to make informed decisions about their own health; however, when they are posing a risk to public health, their right to autonomy needs to be balanced against the threat to public health.
- The bioethics intervention ladder: the least restrictive means should be used to achieve public health goals. Restrictive means should only be used as a last resort and where the risk to public health persists.
- Beneficence and non-maleficence: recommended public health measures should promote well-being and avoid harm.
- Proportionality: any recommended restrictions on an individual should be proportional to the public health risk.
- Cultural sensitivity: cultural beliefs and practices should be carefully considered and respected.

The aim of management under these Guidelines and review by the Advisory Panel is to de-escalate or discharge individuals from management under these Guidelines. Advice to the CHO for escalation under these Guidelines should only occur if it is necessary to protect public health.

8.4.5 A formal Letter of Warning from the CHO

A formal LoW from the CHO has previously been used when managing individuals under the Act. A LoW is a non-binding non-statutory notice and is not issued under the Act; however, it may advise the person on the powers available under the Act if they continue to display transmission risk behaviours related to their notifiable infectious disease, which includes a Test Order or PHO. The CDCD Director or the Advisory Panel may make recommendations to the CHO to issue a formal LoW.

The decision to issue a LoW needs to be supported by evidence and facts that support the requirement for an Order. Consequently, the Advisory Panel and CDCD should carefully consider the potential necessity of an Order when making recommendations for a LoW to the CHO. If the CHO decides to issue a LoW, CDCD will be responsible for liaising with the PHU and LLS, if required, to draft the LoW.

The letter should outline the:

- responsibility of the person with the notifiable infectious disease under the Act
- material public health risk posed by the person with the notifiable infectious disease

- available counselling, education and support services to the person to assist them to comply with management
- behaviours or actions that should be refrained from, or actions to be taken by the person to satisfactorily comply with management
- timeframe in which the person is expected to undertake behaviours and/or actions and
- legal powers under the Act which are available to the CHO to take more assertive action against the person if they do not modify their behaviour and/or seek treatment.

8.4.6 Issuing a Letter of Warning

The LoW will be issued to the person to whom it applies to, or on a responsible person in the case of a protected person. Depending on the situation, a third-party messenger may be utilised. Circumstances that may involve a third-party messenger include the need to issue the LoW after business hours. The third-party messenger's role is to provide uninterested confirmation that the LoW has been issued on the correct person.

Where a LoW is issued, a Public Health Official and witness from the PHU or CDCD should be present, where possible. The Public Health Official should provide an explanation of the letter. If a third-party messenger was utilised, they should not be a witness to the discussion of the contents of the letter as the individual's health information is confidential. The letter should be read to the individual by the Public Health Official. In these situations, a witness from the PHU or CDCD is still required to confirm that the LoW was issued on the correct person.

For the purposes of delivering a LoW, WAPOL assistance may be considered in the context where past behaviours indicate a risk to staff (see 11. Involvement of WA Police).

8.4.7 When to Escalate to Stage Three

If the PHU becomes aware that person managed under these Guidelines continues to pose a public health risk, even after a LoW has been issued, the PHU should inform CDCD. If the person's case has not already been reviewed by the Advisory Panel, CDCD will brief the CHO and recommend that the case be referred to the Advisory Panel. Alternatively, if the Advisory Panel is already aware of the case, they may reconvene to make further recommendations to the CHO, including consideration of recommending to the CHO to issue a Test Order or PHO.

8.5 Stage Three

Stage Three management of a person with a notifiable infectious disease who displays transmission risk behaviours involves the CHO issuing a Test Order or PHO.

Only the CHO can make the decision to issue a Test Order or PHO; however, the Advisory Panel may make a written recommendation to the CHO to issue a Test Order or PHO. When a Test Order or PHO is recommended by the Advisory Panel, CDCD will consult LLS on the CHO's behalf to ensure that the relevant requirements of the Act are satisfied. The Advisory Panel should consider recommending a Test Order or PHO where all measures under Stages One and Two have failed.

8.5.1 Test Order and PHO – requirements of the person

A Test Order issued by the CHO can require a person to submit for testing for a specified notifiable infectious disease. All requirements of the person will be specified in the Test Order as outlined under section 101 of the Act.

A PHO issued by the CHO can require the person to refrain from conduct, carrying out activities, visiting places, associating with persons or undergo counselling, submit to medical examination or treatment, or submit to specified supervision or take action to prevent or minimise public health risk.

All requirements of the person will be specified in the PHO as outlined under section 116 of the Act. Any PHO to detain or isolate an individual escalates the management to Stage Four under these Guidelines.

8.5.2 Process to Issue an Order

When the Advisory Panel has provided a written recommendation to the CHO to issue a Test Order or PHO, CDCD will submit a Briefing Note for approval by the CHO to proceed with organising the Order. The Briefing Note will outline requirements of the person which are requested under the proposed Order and provide supporting evidence for the CHO to form the belief that the Order is required. Once approved by the CHO, CDCD will consult with LLS in accordance with the Department of Health's Obtaining Legal Advice Policy (MP 0023/16). CDCD will complete and submit the 'Request for Legal Advice or Legislative Assistance Form', with relevant supporting documentation including the Advisory Panel's recommendations, the case summary, and collated evidence that supports the legislative basis of each component of the Order to LLS.

In making the determination if an Order is lawful, LLS will seek assistance from SSO in reviewing the evidence and ensure that there are sufficient facts to support the CHO to form the belief that a PHO is required, as outlined in section 116 under the Act. SSO will provide legal advice to the CHO and the Department of Health on the circumstances of the proposed Order. The CHO has the final decision-making authority regarding the appropriateness of the Order based on the advice and information they are provided.

8.5.3 Serving and enforcing an Order

An Order must be personally served to the person to whom it applies to or on a responsible person in the case of a protected person. The original instrument should be served (signed copy by the CHO). An Authorised Officer will serve the Order and provide an explanation of the Order with a witness present (from the PHU or CDCD). The witness is required to confirm that the Order was served on the correct person. The Order must be read to the client. This process is normally facilitated by the Authorised Officer reading a plain language version of the Order word for word to the person to whom it applies to or on a responsible person in the case of a protected person. This plain language version will be drafted ahead of time. Once read, it will be signed afterwards by the serving Authorised Officer and the witness.

The person should be made aware of their rights and responsibilities under the Act including the right to: apply to the State Administrative Tribunal (SAT) for review of the decision to make an Order (see 9. Rights and responsibilities); to obtain legal advice; the purpose, effect and enforcement of the Order; and any consequences with failing to comply with the Order.

An Order may be enforced by an Authorised Officer. For the purposes of enforcing an Order, an Authorised Officer may also request the assistance of WAPOL (see 11. Involvement of WA Police).

8.5.4 Revocation or variation of an Order

When an Order has been served on a person or on a responsible person in the case of a protected person, it remains in effect until a variation or revocation of the Order is subsequently served. Any variation or revocation of an Order must be served personally on the person to whom it applies to, or on a responsible person in the case of a protected person. A revocation or variation to an Order does not take effect until it has been served.

An Authorised Officer will serve the variation or revocation of an Order and provide a verbal explanation of the revocation or variation with a witness present (from the PHU or CDCD). Plain language versions will be drafted ahead of time to facilitate the Authorised Officer serving the

variation or revocation of the Order. The witness is required to confirm that the variation or revocation of a PHO was served on the correct person. If a translator or culturally secure service was co-opted in serving the original Order, then they should be utilised again to ensure that the person understands the variation or revocation of an Order.

8.6 Stage Four

Stage Four management of a person with a notifiable infectious disease who displays transmission risk behaviours involves the CHO issuing a PHO that requires the person to whom it applies to be detained at a specific place for the purpose of undergoing a medical examination or medical treatment; or to submit to being detained or isolated, or detained and isolated, at a specified place. This is an extreme restriction on the liberty of a person and is the most assertive and coercive measure available under the Act. These measures should only be recommended by the Advisory Panel to the CHO where all other efforts have failed, and the individual continues to represent a risk to public health.

The processes for issuing, serving, enforcing and revocation of a PHO under Stage Four are the same under Stage Three.

8.6.1 Duration of a PHO – detaining a person

If a person is detained under the Act, the CHO must review the person's detention at intervals not greater than 28 days to determine if the detention of the person continues to be required. The CHO may require legal advice under these circumstances. CDCD will be responsible for coordinating legal requests and drafting relevant Briefing Notes to the CHO for approval. Under these circumstances, the Advisory Panel may meet to provide ongoing written recommendations and any significant updates regarding the person to the CHO.

9. Rights and Responsibilities

Under the Act, when a person is served an Order, they must be made aware of their rights, including the right to apply to the SAT for a review of the decision to make the Order and the right to obtain legal advice and to communicate with a lawyer. An Authorised Officer who serves an Order on a person does not have to plan for a lawyer to be present when the Order is served.

If a person is managed under these Guidelines, at the latest, they must be made aware of their rights under the Act at the time the Order is served. It is recommended that individuals managed under these Guidelines are made aware of their rights and responsibilities under the Act as early as possible. For example, an individual should be counselled on their rights and responsibilities under the Act when managed in Stage One. In practice, when an Order is served on a person, the plain language version of the Order will include information on the individual's rights and responsibilities and the Authorised Officer will read this out to the person word by word.

9.1 Rights under the Act

To the extent to which the exercise of those rights does not infringe on the wellbeing of others, a person who is at risk of contracting, who suspects that they may have, or who has a notifiable infectious disease, or a notifiable infectious disease-related condition has these rights:

- to be protected from unlawful discrimination
- to have his or her privacy respected
- to be given information about the medical and social consequences of the disease or condition and about any proposed medical treatment.
- In the case of a notifiable infectious disease:

    - to have access to available and appropriate examination and treatment and
    - to have that examination and treatment provided free of charge, but only if the requirements set out below are met.
- The right to have an examination or treatment provided free of charge, as noted above, applies:
    - only if the examination or treatment is provided by a public health official and
    - only to the extent that the examination or treatment is necessary to prevent the transmission of the disease to another person.

9.2 Responsibilities under the Act

The Act outlines a list of responsibilities that an individual has, regarding notifiable infectious diseases. These include:

- A person who is at risk of contracting a notifiable infectious disease must take all reasonable precautions to avoid contracting the disease.
- A person who suspects that they may have a notifiable infectious disease must ascertain:
    - whether or not they have the disease; and
    - what precautions should be taken to prevent others from contracting the disease.
- A person who has a notifiable infectious disease must take all reasonable precautions to ensure that others are not unknowingly placed at risk of contracting the disease.

9.3 The State Administrative Tribunal

Sections 109 and 127 of the Act outline the right, for a person to whom an Order applies to, to apply to the SAT for a review of the decision to make the Order or vary an Order. The SAT must hear and determine the application as a matter of priority and urgency. When an Order is served upon an individual, the individual must be made aware of their right to apply to the SAT to review the PHO.

In circumstances where the individual wishes to apply to the SAT for a review of the decision to make the order, the Order remains in effect until the SAT reviews the appeal and determines that the Order ceases. Otherwise, only the CHO can revoke or vary an Order (see 8.5.4 Revocation or variation of an Order).

10. Reporting

Under section 131 of the Act, the annual report submitted under the *Financial Management Act 2006*, must include information about Test Orders and PHOs. Each year the CHO will provide a report to the Director-General of the Department of Health describing the number and type of Orders made and the number of interstate health orders that were brought into operation, and the reasons for these. No patient identifiers, or information likely to identify a person, are to be included in the report.

10.1 Informing the Minister regarding a detention Order

Under section 193 of the Act, the Minister must be notified by the CHO that a person has been detained under the Act, continues to be detained under the Act after review, or has been released from detention. The CHO will be responsible for notifying the Minister. CDCD will liaise with LLS to coordinate the notification. Where a person is expected to be detained or released from detention, CDCD will ensure that appropriate documentation is prepared ahead of time to allow for the notice to the Minister to be given as soon as practicable.

11. Involvement of WA Police

WAPOL may be able to assist in identifying or finding an individual managed under these Guidelines. The PHU or WATBCP should liaise with CDCD if WAPOL assistance is required to identify or find individuals with a notifiable infectious disease for public health management purposes.

The decision to request the assistance of the WAPOL needs to be considered specifically in relation to Stages Three and Four. Under the Act, an Authorised Officer may request the assistance of a police officer to enforce an Order. A number of factors will need to be considered when requesting WAPOL assistance, including:

- The logistics and practicality of WAPOL attendance when serving an Order opportunistically.
    - For example, if the PHU conducts outreach work and identifies an individual who is managed under these Guidelines, it is unlikely that WAPOL assistance will be able to be coordinated in a timely manner. However, if the PHU is aware that an individual is due for an appearance at a court, then WAPOL assistance can be arranged ahead of time.
- The relationship of people with complex and challenging social circumstances and WAPOL. In some instances, the presence of WAPOL may unnecessarily escalate the situation.
- The extent of the powers conferred on Police under the Act (section 124).
- WAPOL may have other priorities that do not allow them to resource a response, even if arranged prior.

In situations where an Authorised Officer believes WAPOL assistance is required to locate an individual or that a WAPOL officer should be present to serve and/or enforce an Order, they should advise the CDCD in the first instance. CDCD will liaise with WAPOL to coordinate assistance from WAPOL and may convene an initial meeting with the PHU or WATBCP and WAPOL.

If WAPOL has identified an individual in which an Order applies to, WAPOL can notify the PHU; however, WAPOL cannot detain the individual to enable the Order to be issued, unless a warrant has specifically been requested and issued by a magistrate for the purpose of apprehending a person to whom a PHO applies, under section 125 of the Act.

12. Special Circumstances

Protected person

It may be identified in the process of managing a person with a notifiable infectious disease who displays transmission risk behaviours that they may be a child, lack the capacity to provide consent or comprehend the implications of their management under these Guidelines. In such circumstances, it is acknowledged that the person may have a responsible person as defined under the Act, existing guardian or that a guardian may need to be appointed by the Department of Child Protection and Family Support (under age 18) or by the SAT (over age 18).

12.1.1 Child

Where a person is managed under these Guidelines for a Test Order and is under 16 years of age, relevant counselling and Test Order must be made to a responsible person.

Where a person is managed under these Guidelines for a PHO and is under 18 years of age, relevant counselling and PHOs must be made also to a responsible person.

In relation to a child for both Test Orders and PHOs, a responsible person includes a parent of the child, a guardian of the child or another person who has responsibility for the day-to-day care of the child. If a parent, guardian or another person who has responsibility for the day-to-day care of the child is not available, a person or person in a class of persons can be prescribed by the *Public Health Regulations 2017* to be a responsible person for the purposes of the Act under section 99 and section 115 for Test Orders and PHOs, respectively. If this situation arises, CDCD will seek LLS advice to ensure that a type of responsible person can be appropriately prescribed for the purposes of section 99 and section 115 of the Act.

12.1.2 Incapable person

Where a person is managed under these Guidelines for a Test Order or PHO and is an incapable person, which is a person who is not a child and who has a disability that impairs the person's capacity to make decisions, relevant counselling and the Order must be made to a responsible person.

In relation to an incapable person, a responsible person means any of the following: relative of the incapable person, person who is a guardian of the incapable person under the *Guardianship and Administration Act 1990*, a person who is an enduring guardian of the incapable person under the *Guardianship and Administration Act 1990* and is authorised to perform functions in relation to the incapable person in the circumstances in which this Division applies; a person recognised as the incapable person's representative under the *Disability Services Act 1993* section 32(2); and a person who is a carer (as defined in the *Carers Recognition Act 2004* section 4) in relation to the incapable person.

If no person mentioned in the above paragraph is available, a person or person in a class of persons can be prescribed by the *Public Health Regulations 2017* to be a responsible person for the purposes of the Act under section 99 and section 115 for Test Orders and PHOs, respectively. If this situation arises, CDCD will seek LLS advice to ensure that a type of responsible person can be appropriately prescribed for the purposes of section 99 and section 115 of the Act.

13. Documentation

At all stages of management under these Guidelines, clear and comprehensive documentation about the rationale for decisions must be maintained. The WATBCP and PHUs should ensure that the documentation of case notes for people who have a notifiable infectious disease and display transmission risk behaviours are comprehensive and include: details on counselling attempts; reference to counselling and education specifically on the public health risk posed by their behaviours and their notifiable infectious disease; and any other significant notations such as failure to attend scheduled appointments or failed attempts at contacting the person.

Records must be kept and disposed of in accordance with the Department of Health's Information Storage Policy (MP 0145/20) and Information Retention and Disposal Policy (MP 0144/20). Any information or documentation compiled and collected in relation to this Guideline will be stored securely on TRIM, the Department of Health's recordkeeping system. Access to these documents will restricted to relevant persons. To protect people's privacy, pseudonyms should be used in place of names wherever possible.

Following issuing a formal LoW or serving an Order, signed copies of witness statements and any paper documentation, including the original instruments if maintained, should be returned to CDCD to store in accordance with MP 0145/20.

14. Guideline Contact

Communicable Disease Control Directorate
Email: CDCD.Directorate@health.wa.gov.au
Phone: 08 9222 2131

15. Document Control

Guideline number	Version	Published	Date of review	Amendments
0022	1.0	04/12/2023	04/12/2025	Original version

16. Approval

Approved by	Clare Huppatz Acting Director Communicable Disease Control Directorate
Approval date	4 December 2023

Appendices

Appendix 1

Referral template for a person with a notifiable infectious disease and transmission risk behaviours

NOTIFIABLE INFECTIOUS DISEASE WITH TRANSMISSION RISK BEHAVIOURS REFERRAL TO CDCD

CDCD Contact: 08 9222 2131 *complete all fields*

Email referrals to: DoH_CDCDOnCall@health.wa.gov.au *complete electronically where possible*

REFERRER DETAILS				
Name of referring PH physician:				
Date of referral:				
Public health unit:				
CASE DEMOGRAPHIC DETAILS				
WANIDD ID:				
Full name:				
Date of Birth:				
SOCIAL CIRCUMSTANCES (*provide information on family, cultural factors, support structures, and any strengths of the individual)*				
TREATING CLINICIAN DETAILS (*if different to WANIDD entry, or multiple treating clinicians*)				
Treating clinician name:				
Treating clinician address:				
Treating clinician contact (phone & email):				
CLINICAL FACTORS	**Yes**	**No**	**Unknown**	**Comments** *Provide as much detail as possible*
Has a notifiable infectious disease (*include disease*)	☐	☐	N/A	
At risk of developing a notifiable infectious disease (*include disease*)	☐	☐	N/A	
Has a treatment resistant notifiable infection (*include details*)	☐	☐	☐	
Has a mental health diagnosis (*include details*)	☐	☐	☐	

BEHAVIOURAL FACTORS	**Yes**	**No**	**Unknown**	**Comments** *Provide as much detail as possible*
Disengaged from clinical services	☐	☐	☐	
Not adherent to medication / not amenable to treatment	☐	☐	☐	
Homeless / transient living situation	☐	☐	☐	
Significant alcohol dependency	☐	☐	☐	
Illicit drug user (including IVDU)	☐	☐	☐	
History of violence / aggression	☐	☐	☐	
Family / domestic violence victim or perpetrator	☐	☐	☐	
Child protection concerns	☐	☐	☐	
IF STI/BBV DISEASE:	**Yes**	**No**	**Unknown**	**Comments** *Provide as much detail as possible*
Sex industry worker	☐	☐	☐	
High number of sexual contacts	☐	☐	☐	
Reported unsafe sex	☐	☐	☐	
OTHER ISSUES	**Yes**	**No**	**Unknown**	**Comments** *Provide as much detail as possible*
Incapable person (i.e. no capacity to make decisions or has a guardian)	☐	☐	☐	
Literacy issues	☐	☐	☐	
Income concerns	☐	☐	☐	
Visa issues	☐	☐	☐	

COUNSELLING OFFERED				
Outline the counselling that has been given to the person regarding their infectious disease.				
Outline the attempts that have been made at giving counselling to the person regarding their infectious disease.				
Outline why it might not be practical to give the person counselling regarding their infectious disease.				
NOTICE LETTER	**Yes**	**No**	**Comments**	
Has a Notice Letter been sent to the person from the PHU?	☐	☐	*If yes, please attach the letter with this referral*	
How was the Notice Letter issued?				
PUBLIC HEALTH RISK	**Yes**	**No**	**Unknown**	**Comments** *Provide as much detail as possible*
Has the person transmitted a notifiable infectious disease to other people?	☐	☐	☐	
If yes, how many other people known to have been infected by this person?	☐	☐	☐	
Is the person behaving in a way that will put others at risk of infection?	☐	☐	☐	
OTHER (any other comments)				
Once completed, please send to DoH_CDCDOnCall@health.wa.gov.au If a confirmation email has not been received within a business day, contact a CDCD Senior Medical Advisor via 08 9222 2131 during business hours.				

Government of **Western Australia**
Department of **Health**

This document can be made available in alternative formats on request for a person with disability.