Department of Health

health

Operation of the National and State Guidelines 5 years on from the Griew Review

Dr Danny Csutoros

Senior Medical Adviser

Office of the Chief Health Officer

Department of Health, Victoria

State Government Victoria

The Griew Review – a recap

- National Griew Review submitted to AHMC July 2007 and formed basis of the National Guidelines
- Aimed to achieve a uniform national framework, common standards, with transparent and accountable processes
- Acknowledged the small numbers of people who place others at risk – not the driver of infection on a population level
- Recommended against HIV specific criminal offences
- Health Authorities needed clarity around referral to police, not based on prevention of HIV at a population level but appropriateness of criminal sanction for criminal behaviours and maintaining credibility of public health response
- Health Authorities should develop protocols with police for information sharing and referral for appropriate public health or police response

The Griew Review - Recommendations

- Appropriate response should be based on the assessment of the mind of individuals who may place others at risk
  - If evidence that would support a charge of intentionally causing serious harm, then the individual should be immediately referred to police.
  - Others (recklessly or negligently causing or endangering serious harm), to be managed by Public Health Authorities – ie those who placed other at risk because of "knowledgeable unwillingness" or an inability
- No evidence that mandatory disclosure of HIV status to prospective partners will have preventative effect on transmission
- No mandatory reporting by clinicians (only when they cannot manage)
- 5 levels of management (replicated in National Guidelines)

National Guidelines 2008 - Guiding Principles

- Individuals have responsibility to prevent themselves /others from becoming infected
- HIV testing – voluntary (unless special circumstance)
- PLWHA not quarantined, excluded from social /sexual activities
- Most people with HIV are motivated to avoid infecting others and transmission best reduced by information, education, counselling, (post diagnosis), access to condoms/needles and treatment services
- Interventionist strategies may be needed, preference given to least restrictive
- Right to equitable, non-discriminatory and transparent dealings, including the right of review and appeal
- Clinicians / service providers role with client should remain distinct to that of public health officials role in enforcement
- As HIV is a lifetime infection - need long term behavioural change

National Guidelines - Management Tools

- Information /education regarding transmission and prevention
- Access to clinical care and condoms/ NSP
- Intensive case management, addressing social and welfare needs
- Escalating behavioural management techniques – counselling, a formal warning, orders, detention or referral to police
- Inter-jurisdictional communication and cooperation when required (if clients at level ≥2 travels interstate)
- Protocols with Police (refer if intent, serious crime – rape, child abuse or child pornography or unwillingness to alter behaviour after intervention)

National Guidelines - Levels of Management

Level 1 – Counselling, Education and Support (CES)

Level 2 – CES under advice from HIV Advisory Panel or CHO

Level 3 – Management under a Behavioural Order

Level 4 – Detention &/or Isolation

Level 5 – Referral to Police

Impact of National Guidelines

- State Guideline development
- Inter-jurisdictional communication undertaken when clients (level ≥2) travel
- Quarterly reporting of case load, policy development and interstate communication to BBVSS

Policy Directive

NSW HEALTH

HIV - Management of People with HIV Infection Who Risk Infecting Others

Queensland Government

Protocol for the Management of ... who Place Others at ...

ACT Health

THE MANAGEMENT OF PEOPLE WITH HIV INFECTION WHO KNOWINGLY RISK INFECTING OTHERS

Guidelines for

Case Management Program guidelines, 2012

A Program for individuals with HIV who knowingly expose others to the risk of infection

Delivering a Healthy WA

Policy

Directive: compliance is mandatory

SA Code for the Case Management of Behaviours that Present a Risk for HIV Transmission

Victorian Guidelines: A history

- Initially prepared in 1989 by a working party convened by the AIDS/STD Unit of the Health Department Victoria
- Rewritten in 2002 with the involvement of a working party
- Next major revision occurred in 2008 and incorporated
  - reviews undertaken in Victoria (Griew - Leach and Scott - Falconer)
  - the National Griew Review and National Guidelines
  - Charter of Human Rights and Responsibilities
  - Protocol with Victoria Police
- Further revision in end 2009 to account for Public Health and Wellbeing Act and outcomes of the NEAL trial
- Minor edit May 2012 related to the NEAL appeal

Public Health and Wellbeing Act 2008

Explicit about the principles of the public health approach

- Spread of infection should be limited with the **minimum restriction** on individual rights
- A person should take **all reasonable steps to avoid** contracting an infectious disease (ID)
- A person who has/suspects they have an ID should ascertain if they do and take **all reasonable steps to eliminate /reduce the risk of transmission**
- A person with or at risk of an ID is **entitled to information** about the disease and its treatment and **have access to treatment**
- If equally effective alternative measures are available, the **measure which is least restrictive of the rights** of the person should be chosen

Public Health and Wellbeing Act 2008

CHOs powers have been clarified and may require a person to

- Undergo testing
- Participate in counselling /education
- Attend meetings, receive visits or provide information
- Undertake psychiatric or cognitive assessments
- Refrain from certain activities /behaviours /visiting certain places
- Reside at a specified place or be detained /isolated
- Notify of change in name /address

Public Health and Wellbeing Act 2008

Removal of s120 - knowingly or recklessly infecting another person

Previously s120 Health Act 1958

- A person must not knowingly or recklessly infect another person with an infectious disease - 200 penalty unit.

  Defence was partner knew of and voluntarily accepted the risk

  (This remains policy – disclosure with consent or safe sex)

- Initial legal view based on the NEAL trial was that the Crimes Act does not recognise “negotiated consent” to unsafe sex as a defence, but this is likely to be taken into account at sentencing.
- NEAL Appeal found that where a sexual partner is aware of the risk of HIV transmission and accepts this risk, the defence of informed consent may be raised in response to a charge of recklessly endangering a person with HIV

Public Health and Wellbeing Act 2008

Stronger protections for individual rights

- Public Health Orders last a maximum of 6 months
- Public Health Orders must contain details about
- how long the Order has effect
- the client's rights and entitlements and process for VCAT review
- that the client should seek legal advice
- what may happen if non-compliance, including a max penalty of $14,000

Reviews of Public Health Orders

- request a review of the Order by CHO
- request a statement of reason from the CHO for the decision to make that Order
- apply to VCAT for a review of the decision to make the Order

Current Victorian Guidelines - Acknowledges

- The principles in the Public Health and Wellbeing Act
- HIV is not transmitted through every day casual contact
- As HIV is preventable, information, education and prevention programs are necessary to encourage safe sex and safe injecting
- The community as a whole has right to appropriate protection against infection
- Clients have a right to privacy and confidentiality but this does not prevent the department sharing essential information to reduce public health risk
- Public health objectives are best realised through the establishment of a working relationship with client based on respectful, equitable and non-discriminatory interactions, with the individual informed of their rights, including the right of appeal

The Five Stage Approach

Transparent process of incrementally coercive and restrictive stages of intervention to achieve a long term behavioural change and protection of public health.

Consistent with National Guidelines

- Stage 1 Counselling, Education and Support (CES)
- Stage 2 CES under advice from the HIV Advisory Panel or CHO
- Stage 3 Letter of Warning
- Stage 4 Behavioural Order
- Stage 5 Detention or Isolation Order

health

The Five Stage Approach

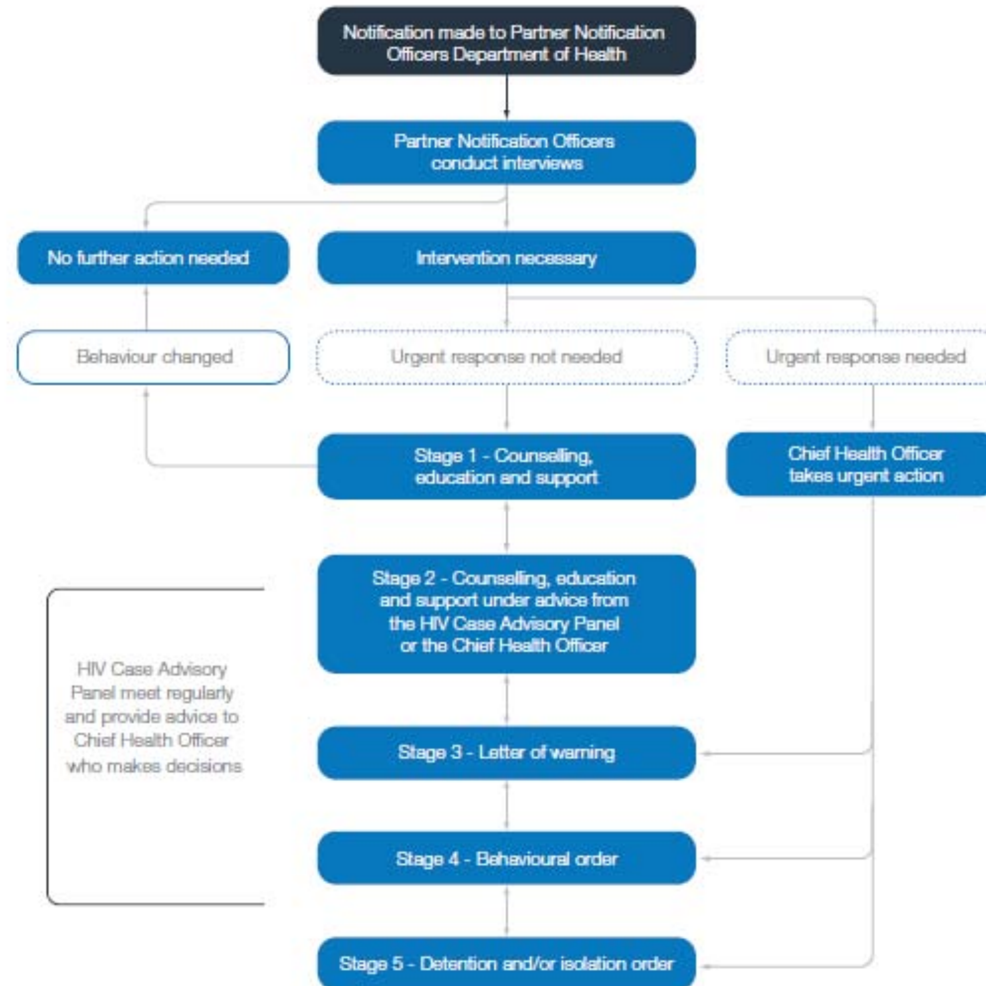

Figure1. The five-stage approach

Assessment of the Allegation

Great care taken to ensure State resources are not mobilised to vexatious allegations or allegations that cannot justify intrusion and significant disruption (heard from a friend…)

- PNO interview person making allegation (may be a health professional)
- If appropriate the PNOs interview the client and put the claim of risky behaviour
- Assessment of risky behaviours, past history (medical, psychiatric, social, forensic), mini mental status examination and may seek permission to gather information from other health providers
- Advise of legislation, the Guidelines and the process that will be undertaken
- Begin referrals to service providers and improve case coordination if required
- Report to Case Management Meeting with CHO (fortnightly)

Three broad Categories of Clients

1 Individuals who lack capacity to alter risky behaviours (ID, ABI etc)

- mobilisation of all required supports and strategies to contain the risks

2 Individuals identified as intentionally infecting others (rare)

- will be managed under PHW Act but also immediately referred to Police for investigation under the Crimes Act.

3 Individuals involved in “knowledgeable unwillingness” to comply with requirements

- require education of the legal position in the PHW Act and Crimes Act
- resolution of drivers of risk behaviours and
- possibly more coercive measure such as a LOW or Behavioural Order

Stage 1 Counselling, Education and Support

health

PNO case manage client and have regular contact to

- support client

  ensure all appropriative health and welfare services are invo

- explain what is expected

  take all reasonable precaution to prevent / minimise the risk of HIV transmission (ie safe sex /injecting)

- build a relationship overt time and make longitudinal assessment of the prevailing public health risk

- all actions undertaken voluntarily

Stage 2 CES under advice from the HIV Advisory Panel or CHO

If measures of Stage 1 are not taken up or not proving effective, then the client may be presented to the HIV Advisory Panel for advice.

HIV Advisory Panel

- HIV specialist & primary care sexual health specialist
- Psychiatrist & mental health counsellor
- Lawyer & social epidemiologist
- 2 people living with HIV

Independent of Government

Source of expert advice

Stage 3 Letter of Warning from the CHO

May be required to

- Make clear and concrete the requirements of PLWHA

  take all reasonable steps to eliminate or reduce the risk of disease transmission
- Make explicit the powers of the CHO to make Orders
- Make transparent the possible consequences if they fail to exercise responsible and appropriate behaviour in reducing the risk of transmission
- LOW is read to client and explained by PNOs (translated if required).
- First step towards coercive action

Stage 4 Public Health Behavioural Order

Behavioural orders can only be served if the Chief Health Officer believes that;

- The person has HIV and is a serious risk to public health
- The person needs to take or refrain from certain actions that constitutes that public health risk
- A reasonable attempt has been made to provide information to the person about their risks, or it is impractical to do so and
- It is necessary to make the Order to eliminate or reduce the risk of the person causing a serious risk to public health.

Stage 4 Public Health Behavioural Order

Public Health Order may require the client to

- Participate in counselling /education (how to disclose and negotiate safe sex, understand drivers of risk behaviours and learn modifying techniques, drug and alcohol counselling)
- Attend meetings, receive visits or provide information relevant to the public health risk
- Undergo psychiatric or cognitive assessment
- Refrain from certain activities /behaviours or visiting certain places (eg only have safe sex, not attend Beats /SOPVs)
- Notify of change in name /address

Stage 5 Detention Order

The CHO can make an Order requiring a person reside at a specified place, or be detained /isolated.

Very infrequent (2 cases in last 7 years)

Relationship with Victoria Police - A parallel process

- DH has a Specific Protocol with Victoria Police (under Overarching MOU)
- Clarifies communication pathways, management of information requests, warrant processes & police assistance to enforce Public Health Order (eg isolation order)
- Police will refer all persons who appear to place others at risk to the CHO
- CHO refer to Victoria Police only if

  Reasonable grounds for suspecting that a client has intentionally tried to infect others with HIV

  Reasonable grounds for suspecting a serious criminal offence such as rape, child sexual abuse or involvement with child pornography

  In spite of all interventions, the client continues to place others at risk

- During the course of an investigation into suspected unlawful activity Victoria Police may request information /documents from DH and if permitted by legislation, DH will do so

Thank you