

Research and Investigation Authorised Under the Health Administration Act 1982

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Summary The policy outlines the role and functions of the committees which have been authorised under Section 23 of the Health Administration Act. It describes the privilege applying to information obtained by authorised committees and provides guidance on the impact of the privilege and how public health organisations should interact with authorised committees.

Author Branch Quality and Safety

Branch contact Quality and Safety 9391 9200

Applies to Area Health Services/Chief Executive Governed Statutory Health Corporation, Board Governed Statutory Health Corporations, Affiliated Health Organisations - Non Declared, Public Health System Support Division, Dental Schools and Clinics, NSW Ambulance Service, NSW Dept of Health, Public Health Units, Public Hospitals

Audience All staff including managers, clinicians and contractors

Distributed to Public Health System, Community Health Centres, Dental Schools and Clinics, Health Associations Unions, Health Professional Associations and Related Organisations, NSW Ambulance Service, NSW Department of Health, Public Health Units, Public Hospitals, Tertiary Education Institutes

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Director-General

Compliance with this policy directive is mandatory.

AUTHORISED RESEARCH AND INVESTIGATION UNDER THE HEALTH ADMINISTRATION ACT 1982

1. BACKGROUND

The Health Administration Act 1982 establishes provisions which recognise a special approach can be warranted in dealing with information obtained for or in connection with research and investigations of morbidity and mortality in NSW.

Section 23 of the Act provides for certain investigations and research authorised by the Minister to be privileged, meaning restrictions are placed on when and how the information obtained/developed in such research or investigations can be disclosed.

2. PURPOSE

The purpose of this policy directive is to:

- Outline the role and function of committees which have been authorised under section 23 the Health Administration Act;
- Describe the privilege applying to information obtained by authorised committees;
- Provide direction on the impact of the privilege and how public health organisations are to interact with authorised committees, and retain records.

3. OTHER POLICIES

This PD is to be read in conjunction with:

- Incident Management Policy (PD2006_030);
- Reportable Incident Definition under section 20L of the Health Administration Act (PD2005_634);
- Coroners' Cases and Amendments to Coroners Act 1980 (PD2005_352);
- Deaths - Reporting of Maternal Deaths to the NSW Department of Health (PD2005_219);
- Deaths - Perinatal - Hospital Procedures for Review and Reporting of Perinatal Deaths (PD2006_006).

4. AUTHORISED COMMITTEES

Five Committees currently have special privilege under section 23 of the Health Administration Act.

4.1 NSW Maternal and Perinatal Committee

This Committee was originally established in 1939 to review and investigate the instance of maternal mortality in NSW. In 1969 the Committee's role was expanded to include perinatal morbidity and mortality, i.e. stillbirths and deaths

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occurring within 28 days of birth. The Committee also reviews aggregate data on maternal and perinatal morbidity and makes policy recommendations for prevention of these morbidities.

Information arising from reviews conducted by the Committee assists in the development of policies designed to improve the quality of health of mothers and newborns. Information from the Committee is published by the Department of Health in the annual NSW Mothers and Babies Report.

The Committee Secretariat is administered by the Department of Health.

The terms of reference for the Committee are available by contacting the Department of Health.

4.2 Special Committee Investigating Deaths Under Anaesthesia (SCIDUA)

The Special Committee Investigating Deaths Under Anaesthesia (SCIDUA) was originally convened in 1960 to look at deaths occurring during anaesthesia.

The primary objective of the Committee is to investigate deaths occurring under the Coroners Act where the person died while under, as a result of, or within 24 hours after the administration of, an anaesthetic given in the course of a medical, surgical or dental operation or procedure or an operation or procedure of a like nature. The Committee provides confidential feedback to practitioners in individual cases and provides aggregate data to the Australian and New Zealand College of Anaesthetists for inclusion in a national audit collated by the College which reports triennially.

The Committee Secretariat is administered through the Clinical Excellence Commission. More information on the work of the Committee can be found at <http://www.cec.health.nsw.gov.au>.

4.3 Special Committee Investigating Deaths Associated with Surgery (SCIDAWS)

The Special Committee Investigating Deaths Associated with Surgery (SCIDAWS) was established in 1994 to review and investigate deaths arising in the peri-operative period.

SCIDAWS functions were revised and expanded in 2006 to enable the Committee to undertake more systematic and comprehensive audits of surgical care, including cases where no operation was performed. The Committee receives notifications about relevant deaths from public health organisations, private facilities and individual surgeons, as well as deaths notified to a Coroner where a surgical operation is considered to be a contributory factor.

Prior to 2006, the Committee mainly provided direct feedback to individual practitioners. The 2006 terms of reference provides for wider reporting of de-identified aggregate data to health facilities to assist in improving care and to

the Royal Australasian College of Surgeons for benchmarking and education purposes.

The Committee Secretariat is administered through the Clinical Excellence Commission. More information on the work of the Committee can be found at <http://www.cec.health.nsw.gov.au>.

4.4 NSW Mental Health Sentinel Events Review Committee (SERC)

NSW Mental Health Sentinel Events Review Committee (SERC) was established in 2002 to review aggregate and other data on deaths and serious injuries caused or suffered by persons with a mental illness, with a view to making systemic recommendations to improve mental health service provision in NSW. The Committee reports to the Minister, and issues regular public reports on its findings.

The Committee Secretariat is provided by the Department of Health.

4.5 NSW Reportable Incident Review Committee (RIRC)

The Committee was originally established as the Safety Improvement Program Steering Committee in 2003, and was renamed as RIRC in December 2004.

The Committee is responsible for examining and monitoring serious clinical adverse events collected by the Committee in Reportable Incident Briefs (RIBs). The Committee analyses information and identifies issues relating to morbidity and mortality that may have Statewide implications and provides advice on policy development to effect health care system improvement.

RIRC also acts as a clearing house for other authorised committees, enabling the RIBs reported to RIRC to be distributed to those committees for any necessary investigation, advice or research.

The Committee Secretariat is provided by the Department of Health, and the Committee prepares an annual report on incident management in the NSW health system. The full terms of reference of the Committee can be found at: <http://www.health.nsw.gov.au>.

5. STATUTORY PRIVILEGE

5.1 What the Privilege means

Authorisation under Section 23 imposes restrictions on the disclosure of information developed for or by an authorised committee.

The privilege operates on two levels. First, section 23(3) makes it an offence for a person who obtains information in connection with the work of the authorised committee to disclose the information. The penalty for breaching this provision is a fine of \$550 or a term of imprisonment for 6 months.

Information can only be released with the consent of the person who provided the information, or the approval of the Minister.

Secondly, section 23(4) prevents information obtained in connection with the work of the authorised committee from being produced in any proceedings. The section also prevents a person who obtains this information from being able to answer any questions about that information. Documents can be produced and oral evidence given only with the approval of the Governor.

5.2 What is protected by the privilege

The privilege provided under the Health Administration Act 1982, applies to authorised committee members and persons who prepare information, reports, summaries or opinions for a committee. It also generally covers any material prepared by or for the Committee since the date of its establishment.

It prevents Committee members and those who have assisted a Committee in its work (through for example the preparation of expert reports) from being compelled to produce that information or give evidence about it.

5.3 What the privilege does not cover

While the Privilege provided to an authorised Committee is broad, it is not absolute. The privilege does not cover:

- Pre-existing documents created for other purposes, such as medical records or other records created providing general care of patients or management of the health service, and not as part of or in response to a request from an authorised Committee;
- Any information held by the Department or a public health organisation generated by any investigation or other action taken in managing an adverse incident or complaint which is generated outside the authorised committee or RIB process.

5.4 What disclosures are allowable?

The privilege does not prevent:

- Release of information or reporting of aggregated data provided for in the respective committees terms of reference or functions;
- Any other disclosure authorised by the Minister;
- Provision of information in any kind of proceedings where the Governor has approved the disclosure;
- Release of RIBs by RIRC to another authorised committee to assist RIRC or that other Committee in the performance of its functions.

5.5 What systems must be put in place to support committees

The purpose and effect of the privilege is to limit the movement and dissemination of material that is subject to consideration by an authorised person or body. A direction from a court or other official body to produce information may arise years after the information was created, or may be directed to persons who are unaware of the application of the privilege to particular documents. Processes need to be put in place to ensure the privilege is complied with and information and individual documents covered by the privilege can be readily identified.

To this end, Committee Secretariats have procedures in place to:

- Control movement of information covered by the privilege to prevent breaches of the confidentiality provisions;
- Keep a record of bodies or persons authorised to obtain information so there is ready identification of persons who are protected by the privilege and not compellable to give evidence;
- Ensure Committee members are aware of the privilege, and their obligations under the Health Administration Act 1982;
- Ensure any material generated by the Committee is appropriately notated “privileged” and stored separately and securely to ensure ready identification in the event of a subpoena or other direction to produce or release.

Public Health Organisations which provide clinical RIBs, expert reports or who develop other specific information to assist an authorised committee in performance of its functions are to ensure:

- Clinical RIBs are maintained securely and not used for purposes other than providing information to RIRC;
- Any request for advice, assistance or support from an authorised committee is recorded and any material generated in response to such a request is appropriately notated “privileged” and stored separately and securely to ensure ready identification in the event of a subpoena or other direction to produce or release;
- The relevant Section 23 Committee is notified in the event access is sought to privileged papers.

5.6 Authorised Committees and RCA Teams

The privilege granted to authorised committees operates independently of the RCA privilege. Under clause 14 of the Health Administration Regulation 2005, an RCA Team is entitled to share information if it is provided to one of the authorised committees listed in the regulation.

Robyn Kruk
Director General