

4 Legal & Policy Requirements

4.1 Legal Obligations for Health Organisations

All organisations involved in the delivery or support of public health services are required to comply with the general law including obligations of duty of care to patients, as well as specific State and Commonwealth requirements designed to regulate the functioning of public sector or health related bodies.

A guide to key legal obligations of public health organisations is available on the NSW Health website at: www.health.nsw.gov.au/aboutus/legal/legal.asp

All persons employed by, or providing a service to, a public health organisation have legislative obligations, whether they are clinicians caring for patients / clients, contractors, administrative or support staff, senior managers or board members.

Local health district management has a role in ensuring and monitoring compliance with applicable legislation, the general law and NSW Health policy.

Clinical staff have a duty of care to their patient/clients; and these staff should be familiar with relevant legislation, professional standards of practice, and NSW Health policy directives and guidelines. Information is readily accessible from professional associations (such as Colleges, Guilds and registration and professional authorities); training bodies (such as universities) and NSW Health.

Chief executives have an obligation to ensure that all equipment is properly licensed and that all personnel are appropriately qualified, licensed and registered.

A brief outline of the key legislative obligations, from a management 'governance' perspective is provided in the following pages.

4.1.1 **Health Services Act and Health Administration Act**

The chief executive and the board must be mindful of the legislation under which the organisation is established and operates. For public health organisations the relevant Act is the *Health Services Act 1997*.

Extracts of sections of the *Health Services Act 1997* relevant to the structure and functions of public health organisations are provided at the end of this compendium.

The *Health Administration Act 1982* sets out the roles of the Minister and the Secretary in general terms in relation to the provision, conduct and operation of health services.

4.1.2 **Work Health and Safety**

The *Work Health and Safety Act 2011* substantially amended the previous *Occupational Health and Safety Act 2000*. The *Work Health and Safety Act 2011* (the Act) places obligations on "persons who conduct a business or undertaking" (PCBU) to ensure, as far as is reasonably practicable, the health and safety of workers³ and others who may be put at risk from work carried out as part of the conduct of the business or undertaking such as visitors to that workplace.

Chief executives and boards are responsible for public health organisations having health and safety systems implemented across the public health organisation to eliminate/minimise workplace injuries; as well as injury management plans in returning injured employees to work (including external employment).

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³ Workers under the Work Health and Safety Act 2011 include a range of parties including employees, volunteers and visitors.

Compliance with legislation, general law and NSW Health Policy
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Key health laws Health Services Act & Health Administration Act
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Under the Act these persons must discharge their duties to the extent that they have the capacity to influence or control the matter.

Other persons, such as visitors have a legal duty under the Act to take 'reasonable care' to ensure that their acts do not adversely affect the health and safety of themselves and others.

Mitigating violent behaviour in the workplace

An important workplace health and safety issue is having effective policies and procedures that are supported by risk management programs that address potential risks of violent behaviour occurring in the public health sector workplace.

The primary responsibility for achieving a violence-free workplace for staff, patients and the public rests ultimately with the chief executive and the board of the public health organisation. The organisation should consider the following strategies in mitigating risks of violent behaviour occurring within their organisation:

- giving emphasis to occupational health and safety in the design of new facilities, refurbishments and upgrades to facilitate risk reduction;
- conducting risk assessments to minimise, and where possible eliminate, risks – for example, identification of high risk environments (e.g. emergency departments, isolated sites, high dependence and critical care wards, mental health and dementia services); improved facility design; provision of specific training and development for frontline staff; development of safe work practice policies and procedures
- installation of appropriate communication systems, monitoring and duress alarm systems and protocols, particularly for staff working in the community or at isolated sites, or high risk facilities such as emergency departments and drug and alcohol clinics;
- restricting patient access through the use of key access, for example, to areas that hold cash, drugs or potentially dangerous equipment.

4.1.3 **Industrial relations**

Chief executives are required to ensure that employment arrangements comply with NSW Ministry of Health policy and instructions and that employment related delegations from the Secretary are exercised in an appropriate and lawful manner.

The public health organisation is responsible for customary employer responsibilities such as hiring, managing, reviewing performance and taking disciplinary action, terminations, work health and safety, and ensuring that staff receive the appropriate remuneration, conditions and other entitlements.

The Human Resources E-Compendium has been developed for the benefit of chief executives and human resource practitioners across the NSW Health public health system. The E-Compendium contains direct access to current human resource policies, guidelines, and information bulletins. It is updated and expanded as new policies are developed. The Human Resources E-Compendium can be accessed at <http://www.health.nsw.gov.au/careers/hrcompendium/pages/default.asp>.

Another useful reference is the employment, industrial relations, work health and safety, anti-discrimination and workers compensation section of the legal compendium accessible at <http://www.health.nsw.gov.au/legislation/Pages/Legal-Compendium.asp>.

Further information on workforce and development is provided in section 8 of the compendium.

4.1.4 Independent Commission Against Corruption

The *Independent Commission Against Corruption Act 1988* imposes obligations on principal officers of public authorities to notify the Independent Commission Against Corruption (ICAC) of any matter where the officer suspects, on reasonable grounds, that corrupt conduct has occurred.

An effective internal reporting system must be established in each NSW Health organisation to facilitate the flow of corruption reports to the chief executive: Further information is provided in PD2011_070, *Corrupt Conduct – Reporting to the Independent Commission Against Corruption (ICAC)* available at: http://www.health.nsw.gov.au/policies/pd/2011/PD2011_070.html and Policy Directive PD2015_027 *Public Interest Disclosures*. Further information is also provided in section 9 of the Compendium.

4.1.5 State Records Act

The *State Records Act 1998* applies to public health organisations. It provides for:

- protecting records in the custody of a public office;
- making and keeping full and accurate records of its activities;
- establishing and maintaining a records management program in conformity with standards and codes of best practice;
- making arrangements for monitoring and reporting on the records management program; and
- keeping technology-dependent records accessible.

All papers maintained by the public health organisation are considered to be state records and subject to the *State Records Act*. Organisations should be aware of the provisions as to retention, disposal and maintenance. Records can include work papers, electronic records, diaries, minutes of meetings etc.

Information on records management, including record retention, maintenance and disposal requirements is available on the internet via the State Records website. Health organisations are subject to specific records management requirements and should refer to the public health sector section of the State Records website.

4.1.6 Privacy obligations

Public health organisations have a legal obligation to comply with privacy law. Chief executives have ultimate responsibility for ensuring privacy obligations are met within the organisation.

Public health organisations in NSW are bound by the *Health Records and Information Privacy Act 2002 (HRIP Act)* which regulates the collection and use of personal health information and the *Privacy and Personal Information Protection Act 1988 (PPIP Act)* which regulates the collection and use of other personal information.

The obligations of public health organisations are addressed in the NSW Health Privacy Manual for Health Information (2015) and the Privacy Management Plan, and can be accessed by going to:

<http://www.health.nsw.gov.au/policies/manuals/Documents/privacy-manual-for-health-information.pdf> and http://www.health.nsw.gov.au/policies/pd/2005/PD2005_554.html.

Information about the privacy governance framework and the online privacy tool for NSW public sector agencies is available on the NSW Privacy website.

Chief executives must ensure that the public health organisation has in place processes to comply with these legislative requirements including:

- the notification to patients on the collection of their personal information and outlining their rights under privacy law;
- the establishment of internal review processes where patients wish to lodge a complaint where they believe their privacy has been breached;
- the establishment of internal processes for patients / others who wish to access records under privacy legislation
- training for staff on their privacy obligations and support for staff through local health information management processes; and
- the provision of a dedicated Privacy Contact Officer (PCO) in all health districts to coordinate privacy implementation and oversee internal reviews.

4.1.7 **Government Information (Public Access) Act (GIPA Act)**

On 1 July 2010, the *Government Information (Public Access) Act 2009 (GIPA Act)* came into effect, replacing the former *Freedom of Information Act 1989 (FOI)*.

The *GIPA Act* provides a framework for accessing information from New South Wales Government agencies, and seeks to promote a more proactive and transparent approach towards accessing and releasing government information.

The *GIPA Act* is predicated on government agencies practising proactive disclosure by creating a presumption in favour of disclosure of information unless there is an overriding public interest against disclosure. As a result, New South Wales Government agencies are expected to release a wider range of information either free of charge or at a reasonable cost.

- Information about i) an organisation's obligations to publicly disclose certain information and ii) its processes for granting access to information are available at: <http://www.oic.nsw.gov.au/oic>
- Each organisation should have a nominated Right to Information Officer to co-ordinate and process applications for information submitted under GIPA.

Under the *GIPA Act* any person may complain about an agency's conduct in relation to its functions under the *GIPA Act* to the Office of the Information Commissioner. A complaint cannot be made in relation to an agency decision that is reviewable under the *GIPA Act*. If the Information Commissioner decides to deal with the complaint, the aim will be to help the parties resolve the complaint using any measures considered appropriate including bringing the parties together for conciliation. The Commissioner may also conduct investigations into a complaint and, in certain circumstances, report the matter to the Minister responsible for the agency.

4.1.8 Public Interest Disclosures

The *Public Interest Disclosures Act 1994* (the *PID Act* – formerly the *Protected Disclosures Act 1994*) offers protection for public officials who, in the public interest, disclose information on:

- Corrupt conduct;
- Maladministration;
- Serious and substantial waste;
- Government information access contravention.

Policy Directive PD2015_027 Public Interest Disclosures provides the framework for management of public interest disclosures within NSW Health.

Under the *PID Act*, Principal Officers of Agencies are responsible for ensuring that:

- their organisation has an internal reporting policy;
- their staff are aware of the policy and the protections of the *PID Act*;
- their organisation complies with the policy and its obligations under the *PID Act*;
- at least one officer is responsible for receiving public interest disclosures for their organisation.

Under the Act, organisations are required to:

- manage public interest disclosures in accordance with legislative and policy requirements;
- establish appropriate systems in order to minimise the risk of reprisal following a PID, and deal appropriately with any reprisal which occurs;
- maintain confidential records of public interest disclosures received;
- report information on public interest disclosures received in the Annual Report;
- report information on public interest disclosures as specified in the regulations to the NSW Ombudsman twice annually (30 January and 30 July each year);
- ensure that a person who has made a written disclosure is provided with a copy of the policy and a written acknowledgement of the disclosure within 45 days;
- ensure that a person who has made a disclosure is provided with appropriate information about the outcome of their disclosure within 6 months.

4.1.9 Notification of legal matters to the Ministry of Health

Public health organisations are required to notify the Corporate Governance and Risk Management Unit, Legal and Regulatory Services Branch, of the NSW Ministry of Health of certain legal matters in accordance with Policy Directive PD2014_011.

Legal matters which have implications beyond the local affairs of the public health organisation must be reported to the Ministry. These are legal matters which:

- raise issues which are fundamental to the responsibilities of the Minister or NSW Ministry of Health;
- involve significant medico-legal, ethical or health policy issues;
- concern legal proceedings to which a public health organisation or any of its officers are a party which raise a significant question of interpretation of Ministry policy or legislation administered by the Minister for Health; and
- concern legal proceedings involving more than one public health organisation.

Legal matters requiring notification by the Minister to the Attorney General under Department of Premier and Cabinet's Memorandum 1995-39 must also be reported to the Ministry. These are matters which:

- have implications for Government beyond the NSW Health Minister's portfolio; and
- involve the constitutional powers and privileges of the State and/or the Commonwealth.

Public health organisations must also carry out compliance and enforcement of health legislation in accordance with NSW Health's prosecution policy and guidelines (Policy Directive PD2014_021).

The NSW Ministry of Health provides guidance to the NSW Health Service and Ministry staff on how to conduct investigations in relation to suspected breaches of health legislation.

4.2 Government Policy Requirements

4.2.1 NSW Government policy

Whole of government policies are issued from time to time by central agencies including the Department of Premier and Cabinet, NSW Treasury or the Department of Finance & Services (DF&S)⁴. These policies can include mandatory requirements across the whole government sector in relation to financial accountability and reporting, procurement or other issues.

The content of these policies and any mandatory requirements will generally be notified to public health organisations through the NSW Health Policy Directive system.

4.2.2 NSW Health Policy Directives

The NSW Health Accounts and Audit Determination (Determination) requires all public health organisations to comply with policy directives issued by the Secretary and the Ministry of Health. Compliance with the Determination is a condition of subsidy received under s127 (4) of the *Health Services Act 1997*.

NSW Health Policy Directives

A Ministry of Health *policy* directive is any document that contains material that must be understood by, complied with and implemented across NSW Health as a part of ongoing operations. Policy directives include a policy statement outlining the purpose, mandatory requirements and implementation responsibilities associated with the policy position taken by the Ministry of Health.

Direction of mandatory requirements applicable broadly to the system are notified by way of these policy directives, in addition to any other means for particular requirements and advice.

Policy directives may include:

- *strategic policy* that articulates a direction that NSW Health may be taking with respect to a certain policy area or
- *operating policy* which establishes practices (including protocols, standards or procedures) that must be followed by all organisations delivering public health services.

4 Note: the Department of Finance & Services (DF&S) was formally i) the Department of Services, Technology and Administration (DSTA) and ii) the Department of Commerce (DoC)

NSW Health Guidelines

Guidelines issued by the Ministry of Health establish best practice for NSW Health organisations. Whilst not requiring mandatory compliance, NSW Health organisations must have sound reasons for not implementing standards or practices set out within guidelines issued by the Ministry of Health. Guidelines are issued with a guideline summary outlining the purpose, key principles and the application of the guideline.

Guidelines may also be issued to provide details as to how a policy directive or requirements under legislation should be implemented, or to assist NSW Health organisations implement practices considered best practice by external authorities such as Standards Australia or the Australian Council on Healthcare Standards (ACHS). The key factor that differentiates a guideline from a policy directive is that the actions articulated by the document are recommended rather than mandatory.

NSW Health organisations must have sound reasons for not implementing the recommended standards established within Ministry for Health guidelines.

NSW Health Policy on the web

To ensure a central repository for policy documents issued by the Ministry of Health and that all policy is approved by the appropriate authority, policy directives and guidelines are reviewed by the Strategic Relations and Communications Branch of the NSW Ministry of Health and issued through the policy distribution system also managed by that branch.

All NSW Health policy directives and guidelines, as well as information bulletins issued by the Ministry, can be accessed at <http://www.health.nsw.gov.au/policies/Pages/default.aspx>

4.2.3 **Local procedures**

Local operating procedures may be developed by public health organisations to document a process or standard required in that area of responsibility. These procedures must be consistent with statute and common law, and with Government policy.

These documents must also be consistent with NSW Health policy directives and guidelines; and should generally only be developed to clarify local implementation issues where there is no other instruction, or there is a gap in instruction.

Ministry of Health policy directives or guidelines must not be redrafted or re-badged to incorporate local operating procedures. When developed and circulated, local procedures should reference Ministry of Health policies or guidelines, with appropriate links to facilitate access.

Local procedures must be properly identified, appropriately retained and readily accessible to all personal (as needed) and must remain compliant with Ministry of Health policies and guidelines, and should be reviewed at least every 5 years.

4.2.4 **Policy and procedure manuals**

A range of policy and procedure manuals for NSW Health are published on the Ministry of Health internet and are updated continually to incorporate the latest policies issued by the Ministry. These are summarised below.

Accounting Manual for Ministry of Health

The Accounting Manual for Ministry of Health is a resource for staff involved with accounting functions within the Ministry of Health and the Ambulance Service.

Accounting Manual for Public Health Organisations

This manual contains the financial, accounting and audit policy and procedures applicable to public health organisations.

Accounts & Audit Determination for Public Health Organisations

Identifies responsibilities of NSW Health organisations in respect to accounting procedures; the accuracy of accounting, financial and other records; the proper compilation and accuracy of statistical records; and, observance of the directions and requirements issued by the Minister, Secretary, NSW Health and the Ministry.

Fees Procedures Manual for Public Health Organisations

The Fees Manual contains policy and procedures relating to revenue and charging for services and accommodation provided to inpatients and non-inpatients of hospitals, nursing homes and multi-purpose services.

Leave/Salaries Manual – Public Service

The Leave/Salaries Manual contains policy and procedures for Public Service staff in relation to leave and salaries, complementing the Public Service Personnel Handbook.

Patient Matters Manual for Public Health Organisations

The Patient Matters Manual is a compilation of NSW Health policies and procedures relating to the care and treatment of clients of the health system and includes health record and privacy policies.

Protecting People & Property: NSW Health Policy & Standards for Security Risk Management in NSW Health Agencies

Outlines NSW Health policy on key aspects of personal and property security that assist local health districts to maintain an effective security program that is based on a structured, on-going risk management process, consultation, appropriate documentation and record keeping and regular monitoring and evaluation.

Goods and Services Procurement Policy Manual

This manual ensures high ethical standards and conduct in commercial engagements in NSW Health that complies with the NSW Procurement Board's Agency Accreditation Scheme requirements for the procurement of goods and services.

4.3 Delegations of Authority

4.3.1 Delegating statutory powers

The Minister, Secretary and the Health Administration Corporation may delegate their statutory functions under section 21 of the *Health Administration Act 1982*. There are also specific provisions for financial delegations under the *Public Finance and Audit Act 1983* and specific provisions for public service staff-related delegations under the *Government Sector Employment Act 2013*.

Public Health Organisations may also delegate powers they have under statute. Consistent with section 40 and section 61 of the *Health Services Act 1997* a chief executive can delegate to any of the officers or employees of the organisation the exercise of any functions other than:

- the power of delegation itself;
- the exercise of its functions to close or restrict health services;
- the authority to offer displaced staff members' voluntary redundancy or terminate staff of the NSW Health Service; and
- the power to make by-laws.

Although chief executives and boards can delegate their authority, they remain accountable to the Minister or Secretary for the performance of the organisation and for the implementation of any directions from the Secretary and the Minister for Health.

When an officer delegates functions or authority to another person, that person becomes accountable to the officer for the delivery of that function or the exercise of the authority. However, the officer who delegates a function or authority remains responsible for ensuring the delegate effectively exercises the delegated functions or authority.

The Delegations Manual for the Organisation

The chief executive must ensure that a written manual of delegations is maintained to record details of delegations of authority. A formal written instrument of delegation is to be signed and be available for audit. The written manual of delegations must set out what function of authority has been delegated, to whom, when, and any conditions or limits to the delegation.

In deciding what to delegate, chief executives and boards should consider:

- the structure of the organisation and the appropriate level to hold the delegation;
- an assessment of the risk of delegating the authority;
- an assessment of the knowledge and skill of the person to whom they plan to delegate; and
- processes needed to regularly monitor and review the exercise of delegation of authority.

4.3.2 **NSW Ministry of Health Delegation Manuals**

Manuals outlining the delegations of the Minister, the Secretary and the Health Administration Corporation are published at: <http://www.health.nsw.gov.au/policies/manuals/Pages/default.aspx>

Combined Delegations

The Combined Delegations Manual contains administrative, financial and staff type delegations of powers and functions that have been delegated by the Minister for Health, the Secretary and the Health Administration Corporation for the Ministry of Health.

Public Health Delegations

The Public Health Delegations Manual incorporates delegations derived from powers and functions specified in public health type Acts and Regulations including Poisons, Public Health and Mental Health Acts and Regulations.

HealthShare NSW Delegations

HealthShare NSW is an administration unit within the Public Health System Support Division of the Health Administration Corporation. The delegations contained in this Manual are based on the Health Administration Corporation (HAC) being the overarching entity under the auspice of which the work of HealthShare NSW will occur. It outlines the administrative, financial and staff type delegations conferred on HealthShare NSW by the HAC.

eHealth NSW Delegations

eHealth NSW is an administration unit within the Public Health System Support Division of the Health Administration Corporation (HAC). The delegations manual has been compiled to ensure both eHealth's appointed office holders and staff, and where eHealth NSW is an entity undertaking goods and services procurement under Agency Accreditation (issued by the Ministry), have clearly set out levels of authority and clarified accountability and responsibility for day-to-day operations.

Health Infrastructure Delegations

Health Infrastructure is an administration unit within the Public Health System Support Division of the Health Administration Corporation.

The delegations detailed in this Manual, similar to those for HealthShare NSW, are based on the HAC being the overarching entity under the auspice of which the work of Health Infrastructure occurs.

Legal & Policy Requirements – Resources & References

Legal

Australian legal database

Australasian Legal Information Institute; for all Australian Acts of Parliament (Commonwealth and State) and access to law journals and databases: <http://www.austlii.edu.au/>

NSW Government legal database

NSW Government NSW Legislation website: <http://www.legislation.nsw.gov.au/>

NSW Health legal, policy and procedural resources

NSW Health Legal compendium:

<http://www.health.nsw.gov.au/legislation/Pages/legal-compendium.aspx>

NSW Health Human Resources E-Compendium:

<http://www.health.nsw.gov.au/careers/hrcompendium/pages/default.aspx>

NSW Health Policy Distribution System:

<http://www.health.nsw.gov.au/policies/pages/default.aspx>

NSW Health Policy and procedure manuals and delegation manuals:

<http://www.health.nsw.gov.au/policies/manuals/pages/default.aspx>

For information on public health sector record keeping, visit the State Records website:

<http://www.records.nsw.gov.au/recordkeeping/resources-for/public-health-sector/public-health-sector>

NSW Health Policy Directive Delegations of Authority – Local Health Districts and Specialty Health Networks (PD2012_059):

http://www.health.nsw.gov.au/policies/pd/2012/PD2012_059.html

NSW Health Policy Directive, Corrupt Conduct – Reporting to the Independent Commission Against Corruption (ICAC): (PD2011_070)

http://www.health.nsw.gov.au/policies/pd/2011/PD2011_070.html

NSW Health Policy Directive, Legal Matters of Significance to Government (PD2014_011):

http://www.health.nsw.gov.au/policies/PD/2014/PD2014_011.html

NSW Health Policy Directive, Prosecution Policy and Guidelines (PD2014_021):

http://www.health.nsw.gov.au/policies/PD/2014/PD2014_021.html

Combined Delegations Manual

<http://www.health.nsw.gov.au/policies/manuals/Pages/combined-delegations.aspx>

Health Infrastructure Delegations

<http://www.health.nsw.gov.au/policies/manuals/Pages/hlth-infras-delegations.aspx>

Public Health Delegations

<http://www.health.nsw.gov.au/policies/manuals/Pages/public-health-delegations.aspx>

HealthShare NSW Delegations

<http://www.health.nsw.gov.au/policies/manuals/Pages/healthshare-delegations.aspx>

eHealth NSW Delegations

<http://www.health.nsw.gov.au/policies/manuals/Pages/ehealth-delegations.aspx>

Useful websites

Commonwealth

Australian Health Practitioner Regulation Agency
<http://www.ahpra.gov.au/>

NSW Government Bodies & Agencies

Privacy NSW
http://www.ipc.nsw.gov.au/privacy/ipc_index.html

NSW Ombudsman
<http://www.ombo.nsw.gov.au/>

Advocate for Children and Young People
<http://www.acyp.nsw.gov.au/>

NSW Health Care Complaints Commission
<http://www.hccc.nsw.gov.au/>

Health Professional Councils of Australia (HPCA)
<http://www.hpca.nsw.gov.au>

Independent Commission Against Corruption
<http://www.icac.nsw.gov.au/>

NSW Office of Environment and Heritage
<http://www.environment.nsw.gov.au/>

Industrial Relations Commission of NSW
<http://www.industrialrelations.nsw.gov.au/Home.html>

For information on public health sector record keeping, visit the State Records website:
<http://www.records.nsw.gov.au/recordkeeping/resources/for-the-public-health-sector/for-the-public-health-sector>

Local Documentation

Model By Laws

Delegations Manuals

Local Registers – for example for licensing, litigation and potential breaches, industrial action, practice restrictions

Reports on compliance monitoring, compliance and corrective actions

Policies and procedures – which provide direction and guidance to staff / contractors