Where a number appears at the bottom of an amended page [e.g. 51(01/10/15) – amendment number, date] an alteration has been made or new section included. The amendments as indicated reflect the provisions of Policy Directives/Guidelines/Information Bulletins:

- **IB2015_057** - Notification of Acute Rheumatic Fever and Rheumatic Heart Disease – the NSW Public Health Act 2010
- **PD2016_036** - Adoption Act 2000 - Release of Information
- **IB2016_047** - Health Records and Medical/Clinical Reports – Rates
- **IB2016_060** - Fee for Cremation Certificates issued by Salaried Medical Practitioners of Public Hospitals
- **IB2016_012** - Public Health Act 2010 - Notification of Fees

as notified by Strategic Relations and Communications on
- 1 October 2015;
- 25 August 2016;
- 22 September 2016;
- 22 December 2016 and
- 7 April 2016, respectively.


If you choose to print the amendment, ensure you print it double sided.

If you are missing any amendments please email cgrm@doh.health.nsw.gov.au They can be emailed to you in an electronic version.

<table>
<thead>
<tr>
<th>PAGE(S) REMOVED</th>
<th>PAGE(S) INSERTED</th>
</tr>
</thead>
<tbody>
<tr>
<td>Index 1-346</td>
<td>Index 1-312</td>
</tr>
</tbody>
</table>
## Index

### A
- Aboriginal - Torres Strait Islander - Information .................................................. 137
- Adoption Act 2000 - Release - Information .......................................................... 23
- Adult-to-Adult - Living Donor Liver Transplant ....................................................... 115
- Acute Rheumatic Fever & Rheumatic Heart Disease – Notification of .................. 312

### C
- Charges - Convictions - Child Related Allegations ................................................. 197
- Charging - Health Records - Medical/clinical Reports ............................................. 76
- Child Protection - Policies - Child Wellbeing ......................................................... 127
- Child Related Allegations - Charges - Convictions ............................................. 197
- Child Wellbeing - Child Protection - Policies ......................................................... 127
- Confidentiality - Notifiable Conditions - Data Security ........................................ 129
- Consent - Disability Services - Guardianship Act ............................................... 122
- Consent - Forms ...................................................................................................... 116
- Consent - Medical Treatment - Patient Information ............................................. 85
- Convictions - Child Related Allegations - Charges ............................................. 197
- Cremation Certificates - Fees/Charges ................................................................. 84
- Criminal - Working with Children - Employment Checks .................................... 245

### D
- Data Security - Confidentiality - Notifiable Conditions ........................................... 129
- Disability Services - Guardianship Act - Consent ................................................. 122
- Diseases - Public Health Act - Notification ............................................................ 124
- Disposal Authority - GA45 - General Retention .................................................... 190
- Disposal Authority - GDA17 - General Retention ................................................. 148
- Documentation - Management - Health Care Records ........................................ 298

### E
- Electronic Information - Security Policy - NSW Health ........................................... 31
- Employment Checks - Criminal - Working with Children ..................................... 245

### F
- Fees/Charges - Cremation Certificates .................................................................. 84
- Forms - Consent ....................................................................................................... 116
- Forms - State Health ............................................................................................... 289

### G
- GA45 - General Retention - Disposal Authority ..................................................... 190
- GDA17 - General Retention - Disposal Authority .................................................. 148
- General Retention - Disposal Authority - GA45 .................................................... 190
- General Retention - Disposal Authority - GDA17 .................................................. 148
- Guardianship Act - Consent - Disability Services ................................................... 122

### H
- Health Care Records - Documentation - Management ........................................... 298
- Health Records - Medical/clinical Reports - Charging ......................................... 76
- Health Records - Medical/clinical Reports - Rates ................................................. 82
- Health Research - Intellectual Property ................................................................... 274
1 BACKGROUND

NSW Health is responsible for managing and funding health services in a wide range of settings, from multi-purpose health centres in remote communities to large metropolitan teaching hospitals.

There are more than 220 public hospitals and health services in NSW which provide free health care to Australian citizens and permanent residents. Services provided at public hospitals may include emergency care, elective and emergency surgery, medical treatment, maternity services, and rehabilitation programs.

More detailed information about the structure of NSW Health is available on the [NSW Health Website](http://www.health.nsw.gov.au).

1.1 NSW MINISTRY OF HEALTH

The NSW Ministry of Health supports the executive and statutory roles of the Health Cluster and Portfolio Ministers.

The NSW Ministry of Health also has the role of ‘system manager’ in relation to the NSW public health system, which operates more than 225 public hospitals, as well as providing community health and other public health services, for the NSW community through a network of local health districts, specialty networks and non-government affiliated health organisations, known collectively as NSW Health.

1.2 HEALTH ORGANISATIONS

NSW Health comprises:

- A number of state-wide or specialist health services including NSW Ambulance, Health Infrastructure, HealthShare NSW, NSW Health Pathology, eHealth, Health Protection

- Fifteen NSW Local Health Districts providing health services across NSW (eight Local Health Districts covering Sydney metropolitan regions and seven covering rural and regional areas) and 2 Specialty networks (Justice Health and Forensic Mental Health Network and the Sydney Children’s Hospital network)

- Pillar organisations (Agency for Clinical Innovation, Bureau of Health Information, Cancer Institute NSW, Clinical Excellence Commission, Health Education and Training Institute and NSW Kids and Families)

Affiliated Health Organisations (St Vincent’s Hospital, the Sacred Heart Hospice at Darlinghurst and St Joseph’s Hospital at Auburn).
2 PRIVACY MANAGEMENT PLAN FRAMEWORK

2.1 PURPOSE OF PRIVACY MANAGEMENT PLAN

This Privacy Management Plan (the plan) is intended to provide information about how personal information is managed within NSW Health in accordance with the Privacy and Personal Information Protection Act 1998 (NSW) (PPIP Act). The plan provides information about how a person can access and amend their personal information and how possible breaches of privacy in relation to personal information will be managed by NSW Health.

This plan explains how personal information is managed by NSW Health in accordance with the PPIP Act. It must be read in conjunction with the Privacy Manual for Health Information which comprehensively sets out how NSW Health manages health information under the Health Records and Information Privacy Act 2002 (NSW) (HRIP Act).

The Plain aims to:

- Meet the requirements of s33 of the PPIP Act
- Demonstrate to members of the public how we meet our obligations under the PPIP Act
- Provide staff information to enable them to manage personal information appropriately and in accordance with the law
- Illustrate our commitment to respecting the privacy rights of staff and members of the public.

2.2 KEY DEFINITIONS

Chief Executive – the Chief Executive of a Local Health District, Specialty Network, statutory health corporation, unit of the Health Administration Corporation, or the person responsible to the governing body of an affiliated health organisation for management of its recognised establishment and services.

Collection (of personal information) - the way the information is acquired by NSW Health. This can include a written form, a verbal conversation, an online form or a photographic image.

Disclosure (of personal information) - means providing personal information to an individual or entity outside of NSW Health.

Health information – personal information or an opinion about a person’s physical or mental health or disability, or a person’s express wishes about the future provision of health services for themselves or a health service provided, or to be provided to a person. Any personal information collected for the purposes of the provision of health care will generally be ‘health information, and will also include personal information that is not itself health-related but is collected in connection with providing health services.

Investigative agency – any of the following: the NSW Ombudsman’s office, the Independent Commission against Corruption (ICAC) or the ICAC inspector, the Police Integrity Commission (PIC) or the PIC Inspector, the Health Care Complaints Commission, the Office of the Legal Services Commissioner.
Law enforcement agency – the NSW Police Force, the NSW Crime Commission, the Australian Federal Police, the Australian Crime Commission, the Director of Public Prosecutions, Department of Corrective Services, Department of Juvenile Justice, Office of the Sherriff of NSW.

NSW Health – refers collectively to NSW health organisations.

NSW Health organisation – For the purposes of this policy directive, a public health organisation as defined under the Health Services Act 1997, NSW Ambulance, Health Infrastructure, HealthShare NSW, eHealth NSW, NSW Health Pathology, any other administrative unit of the Health Administration Corporation and all organisations under the control and direction of the Minister for Health or the Minister for Mental Health or the Secretary, NSW Health.

Personal Information - information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion. This includes such things as an individual’s fingerprints, retina prints, body samples or genetic characteristics. Exclusions to the definition of personal information are contained in s4 (3) of the PPIP Act and includes Health Information.

Public register – a register of personal information that is required by law to be, or is made, publicly available or open to public inspection (whether or not on payment of a fee).

Privacy obligations – the information privacy principles and any exemptions to those principles that apply to NSW Health.

Staff - any person working in a casual, temporary or permanent capacity in NSW Health, including volunteers, consultants, contractors, board members and any person performing a public official function whose conduct could be investigated by an investigating authority.

* Additional relevant definitions may be found in the Privacy Manual for Health (s1)

2.3 LEGISLATIVE AND POLICY FRAMEWORK

2.3.1 RELEVANT LEGISLATION

Privacy Legislation

- Privacy and Personal Information Protection Act 1998 NSW (PPIP Act)
- Privacy and Personal Information Protection Regulation 1998
- Health Records and Information Privacy Act 2002 NSW (HRIP Act)
- Health Records and Information Privacy Regulation 2006. Other
Legislation

Other legislation that may also affect the application of the privacy principles includes, but is not limited to:

- Criminal Records Act 1991 (NSW)
- Government Information (Public Access) Act 2009 (NSW)
- State Records Act 1998 (NSW)
- Workplace Surveillance Act 2005 (NSW)
- Surveillance Devices Act 2007 (NSW)
- Ombudsman Act 1974 (NSW)
- Public Interest Disclosures Act 1994 (NSW)
- Telecommunications Act 1997

2.3.2 RELEVANT POLICY DOCUMENTS NSW HEALTH INTERNAL REVIEW GUIDELINES

The NSW Health Internal Review Guidelines (GL2006_007) provides guidance and information about the internal review process at NSW Health organisations.

Privacy Manual for Health Information

The Privacy Manual for Health Information is a comprehensive policy document, which governs the management of health information (as opposed to general personal information), as required by the Health Records and Information Privacy Act 2002. The Privacy Manual for Health Information is the primary privacy policy for NSW Health, given that the core business of NSW Health involves managing a large volume of health information.

3 WHAT THIS PLAN COVERS

S33 (2) of the PPIP Act sets out the requirements of a privacy management plan. The plan must include:

- Information about NSW Health policies and practice to ensure compliance with the PPIP Act
- How staff are made aware of these policies and practices
- Internal review procedures for NSW Health
- Anything else we consider relevant to the plan.

For most organisations, the plan includes information about compliance with the HRIP Act, however for NSW Health, this information is covered in the Privacy Manual for Health.
Personal information is defined in s4 of the PPIP Act. Essentially, personal information is information or an opinion that identifies, or could reasonably identify, an individual. Examples of personal information include a person’s name, bank account details, a photograph or a video. Personal information also includes such things as an individual’s fingerprints, retina prints, voice recordings, body samples or genetic characteristics.

A person’s identity may be apparent where neither the name nor a photograph is involved, but the information about the person is such that it could not be referring to anyone else.

Section 4(3) excludes certain types of information from the definition. The most significant exceptions are:

- Information contained in a publicly available publication
- Information about an individual’s suitability for public sector employment
- Information about people who have been dead for more than 30 years
- Information about an individual contained in a public interest disclosure
- A number of exceptions relating to law enforcement investigations.

Section 4A excludes health information from the definition of personal information.

Some examples of information which is NOT personal information include: recruitment records and referee reports, as well as information that is published or available on the internet. The PPIP Act also excludes certain information that may be held in connection with some activities authorised under different legislation.

For detailed information about information excluded from the definition of personal information, consult ss 4(3) and 4A of PPIPA or contact the Privacy Contact Officer for your NSW Health organisation.

3.2 HEALTH INFORMATION

For guidance on the management of health information in NSW Health, refer to the Privacy Manual for Health Information.

Health information is excluded from the PPIP Act, and instead governed by the Health Records and Information Privacy (HRIP) Act 2002. It is defined in section 6 of the HRIP Act to include personal information or an opinion about:

- A person’s physical or mental health or disability
- A person’s express wishes about the future provision of health services for themselves
- A health service provided, or to be provided, to a person.

There are 15 Health Privacy Principles set out in Schedule 1 of the HRIP Act which govern health information.

50(17/09/15)

4 PERSONAL INFORMATION HELD BY NSW HEALTH
The functions of NSW Health are established primarily under the Health Services Act 1997 and the Health Administration Act 1982. Given the diversity of functions across NSW Health organisations, the range of personal information held is wide-ranging. Some of the types of personal information held by NSW Health are discussed below.

4.1 PERSONAL INFORMATION PROVIDED DURING ENQUIRIES

Across NSW Health, staff receive many different types of enquiries about issues in NSW Health. Enquiries are made by phone, email, in writing and in person.

People may provide NSW Health staff with personal information when they contact a NSW Health organisation with an inquiry. This could include names, contact details, opinions, health conditions and illnesses, family relationships, housing or tenancy information, work history, education and criminal history.

NSW Health decides what level of personal information is appropriate to be collected during enquiries on a case-by-case basis. Sufficient information will be collected to accurately record the management of the matter. In the majority of cases, the information will be health information, which is governed by the HRIP Act and the Privacy Manual for Health. Personal information will be collected, used and stored in compliance with the PPIP Act.

4.2 EMPLOYEE RECORDS

For various reasons, such as leave management, workplace health and safety and operational requirements, NSW Health keeps staff records including:

- Documents related to the recruitment process
- Payroll, attendance and leave records
- Banking details and tax file numbers
- Training records
- Workers compensation records
- Workplace health and safety records
- Records of gender, ethnicity and disability of employees for equal opportunity reporting purposes
- Medical conditions and illnesses
- Next of kin
- Secondary employment
- Conflicts of interests.

This information is collected directly from employees and will be managed in accordance with the provisions of the PPIP Act.

4.3 BUSINESS RECORDS
NSW Health maintains business records which contain personal information including contact details for public officials in other government entities, as well as other third party organisations. Contracts with other government and third party entities and individuals may include personal information. This information is managed in accordance with the provisions of the PPIP

4.4 INFORMATION MANAGEMENT SYSTEMS

NSW Health organisations use a variety of information management systems including paper based filing systems and electronic records forming part of a secure computerised database.

We follow strict rules in storing personal information in all its formats in order to protect personal information from unauthorised access, loss or other misuse.

5 HOW TO ACCESS AND AMEND PERSONAL INFORMATION

Individuals have the right to access personal information held by NSW Health. This can be accomplished in a number of ways.

5.1 INFORMAL REQUEST

A person wanting to access or amend their own personal or health information can make an informal request to the staff member or team managing their information. This request does not need to be made in writing, but a formal application may be required. If a person is unhappy with the outcome of their informal request, they can make a formal application.

5.2 FORMAL APPLICATION

Each NSW Health organisation has a privacy contact officer. A person can make a formal application to the manager or unit holding the information. More complex requests relating to personal information may be made directly to the privacy contact officer for the relevant NSW Health organisation by email, fax or post. The application should:

- Include the person’s name and contact details
- State whether the person is making the application under the PPIP Act or the HRIP Act
- Explain what personal or health information the person wants to access or amend
- Explain how the person wants to access or amend it.

The person managing the request will aim to respond to the formal application within 20 working days. They will contact the applicant to advise how long the request is likely to take, particularly if it may take longer than expected.

If the applicant thinks NSW Health is taking too long to deal with the request, we encourage them to contact the privacy contact officer and request an update and time frame for the matter to be dealt with. If they remain unsatisfied, they have the right to seek an internal review or make a complaint directly to the information and privacy commissioner.

5.3 LIMITS AND REASONS FOR REFUSAL
We cannot charge people to lodge their request for access. But we can charge reasonable fees for copying or inspection, if we tell people what the fees are up-front.

If there is personal information about other individuals or confidential information about third parties in any records identified by our searches, then the request will be more complex to manage. Requests of this nature ought to be referred to the privacy contact officer. This will ensure that the privacy and confidentiality of other people/third parties can also be properly considered.

6 REQUEST FOR AN INTERNAL REVIEW

6.1 INTERNAL REVIEW BY NSW HEALTH

If a person considers that NSW Health has breached the PPIP act or HRIP act relating to their personal or health information, they may request an internal review under the provisions of the PPIP Act. A person may not request an internal review in relation to a breach of another person’s privacy unless they are an authorised representative of the person whose privacy is alleged to have been breached.

Under s53 (3) of the PPIP Act, an application for an internal review must:

- Be in writing
- Be addressed to the appropriate NSW Health Organisation
- Specify an address within Australia to which a notice can be sent
- Be lodged within 6 months from when the applicant became aware of the conduct the subject of the application (however, NSW Health may consider a late application for internal review).

6.2 INTERNAL REVIEW PROCESS

An application for an internal review will be dealt with in accordance with the Internal Review Guidelines. (GL 2006_007). The review will be dealt with by the privacy contact officer for the NSW Health Organisation.

The review will be completed as soon as is reasonably practical, and within 60 days from the date the application is received.

Internal reviews follow the process set out in the Office of the Privacy Commissioner NSW’s internal review checklist.

When the internal review is completed, the Privacy Contact Officer will notify the applicant in writing (within 14 days) of:

- The findings of the review
- The reasons for the finding, described in terms of the IPPs and / or HPPs
- Any action we propose to take
• The reasons for the proposed action (or no action), and
• The applicant’s entitlement to have the findings and the reasons for the findings reviewed by the NSW Civil and Administrative Tribunal.

We will also send a copy of that letter to the Privacy Commissioner. Statistical information about the number of internal reviews conducted must be maintained for the Department’s Annual Report.

6.3 EXTERNAL REVIEW BY THE NSW CIVIL AND ADMINISTRATIVE TRIBUNAL

People may apply to the NSW Civil and Administrative Tribunal (NCAT) for an external review of the conduct which was the subject of their earlier internal review application. A person must seek an internal review before they have the right to seek an external review. Generally, a person has 28 days from completion of the internal review to seek an external review.

The NCAT has the power to make binding decisions on an external review. For more information on how to request an external review please contact the NCAT. The NCAT does not provide legal advice, however their website has general information about the process of seeking an external review.

7 HOW THE INFORMATION PRIVACY PRINCIPLES APPLY

The Privacy and Information Protection Act 1998 sets out 12 Information Protection Principles (IPPs). NSW Health must follow these principles for collecting, storing, using and disclosing personal information. Information about the application of Health Privacy Principles (HPPs) in relation to personal health information can be found in the Privacy Manual for Health Information.

This section sets out the NSW Health approach to these principles. Specific applications of these principles should be built into NSW Health policies and procedures relating to collection, storage, use or disclosure of personal or health information.

There are a number of exemptions to these IPPs, which are discussed in below at s8

COLLECTION

7.1 LAWFUL

NSW Health organisations will only collect personal information for a lawful purpose, which is directly related to our functions or activities and necessary for that purpose.

7.2 DIRECT

NSW Health organisation will only collect personal information directly from the person concerned, unless they have authorised collection from someone else or the person is under the age of 16 and the information has been provided by a parent or guardian.
NSW Health organisations inform people why their personal information is being collected, what it will be used for, and to whom it will be disclosed. We tell people how they can access and amend their personal information and the consequences if they decide not to give their personal information to us.

7.4 RELEVANT

NSW Health organisations ensure that personal information is relevant, accurate, is not excessive and does not unreasonably intrude into the personal affairs of people.

STORAGE

7.5 SECURE

NSW Health organisations store personal information securely, keep it no longer than necessary and destroy it appropriately. We protect personal information from unauthorised access, use or disclosure.

ACCESS AND ACCURACY

7.6 TRANSPLANT

NSW Health organisations are transparent about the personal information we store about people, why we use the information and about the right to access and amend it.

7.7 ACCESSIBLE

NSW Health organisations allow people to access their own personal information without unreasonable delay or expense.

7.8 CORRECT

NSW Health organisations allow people to update, correct or amend their personal information where necessary.

USE

7.9 ACCURATE

NSW Health organisations make sure that personal information is relevant, accurate and up to date before using it.

7.10 LIMITED

NSW Health organisations only use personal information for the purpose we collected it for, unless the person consents to us using it for an unrelated purpose.

50(17/09/15)
DISCLOSURE

7.11 RESTRICTED

NSW Health organisations only disclose personal information with a person’s consent, unless they were already informed that the information would be disclosed, if disclosure is directly related to the purpose for which the information was collected and there is no reason to believe the person would object, or the person has been made aware that information of that kind is usually disclosed, or if disclosure is necessary to prevent a serious and imminent threat to any person’s health and safety.

7.12 SAFEGUARDED

NSW Health organisations will take particular care not to disclose sensitive personal information without a person’s consent. For example, information about ethnic or racial origin, political opinions, religious or philosophical beliefs, sexual activities or trade union membership. We will only disclose sensitive information without consent in order to deal with a serious or imminent threat to any person’s health and safety.

8 EXEMPTIONS

Some of the exemptions to the IPPs are discussed below. Different exemptions may apply between an IPP and its equivalent HPP.

When considering whether an exemption applies, it is therefore important to determine if the information is simply personal or includes health information. If the information is health information, it is necessary to refer to the Privacy Manual for Health Information for further guidance.

When considering whether an exemption may apply to a particular situation, the wording of the exemptions contained within PPIP Act should be consulted, and guidance sought from the Privacy Contact Officer. Ss 22 – 28 of the PPIP Act detail specific exemptions to the IPPs. Common exemptions include unsolicited information (which contains personal information), personal information collected before 1 July 2000, health information collected before 1 September 2004, personal information used for law enforcement or investigative purposes, or to lessen or prevent a serious threat to public health or safety.

Under s25 of the PPIP Act, NSW Health may not be required to comply with IPP’s if lawfully authorised or required to do so.

Some relevant exemptions where compliance with the IPPs may not be required include:

COLLECTION:

- When collecting information in connection with proceedings (whether or not actually commenced) before any court or tribunal
- When collecting information during investigation or management of a complaint or a matter that could be made or referred to an investigative agency, or which has been referred to NSW Health by an investigative agency
- When compliance with the IPPs in relation to collection would prejudice the interests of the individual to whom the information relates.
USE:

- When the use of the information for a purpose other than the purpose for which it was collected is reasonably necessary for law enforcement purposes

- When the use of the information is reasonably necessary to enable investigation or management of a complaint which could be made or referred to an investigative agency, or which has been referred to NSW Health by an investigative agency

DISCLOSURE:

- When the individual to whom the information relates has expressly consented to the agency not complying with the IPPs in relation to disclosure

- When the information is disclosed by a NSW Health organisation to another public sector agency under the administration of the Minister for Health if the disclosure is for the purposes of informing that Minister about any matter within that administration

- When the information is disclosed by NSW Health to any public sector agency under the administration of the Premier if the disclosure is for the purposes of informing the Premier about any matter.

- When the disclosure is made in connection with proceedings for an offence, or for law enforcement purposes

- When the disclosure is made to a law enforcement agency for the purposes of ascertaining the whereabouts of a person who has been reported missing.

- Where sensitive information is required to be disclosed for law enforcement purposes where there are grounds to believe an offence may have been, or may be committed

- When the disclosure is to an investigative agency.

8.1 PUBLIC REGISTERS

The PPIP Act governs how NSW Health manages personal information in public registers (Part 6 – Public Registers).

Under the legislation, an agency responsible for keeping a public register must not disclose any personal information kept in the register unless satisfied that it is to be used for a purpose relating to the purpose of the register, or the Act under which the register is kept. A person applying to inspect information in the public register may be required to provide a statutory declaration as to the intended use of any information obtained.

A person whose information is contained in a public register, may request the agency responsible for the register to have their information removed from public availability on the register and not disclosed to the public.
In most cases, personal information held by NSW Health is not publicly available. However, there are some circumstances where personal information may be held on registers by NSW Health which are available to the public. For example, the Tobacco Retailer Notification Scheme, which requires Tobacco retailers to provide information including their trading name and business address and the name and address of the owners and directors of the business.

A person who wishes to access personal information contained in a public register managed by NSW Health should contact the relevant business unit responsible for the register to discuss their request.

8.2 PUBLIC INTEREST DIRECTIONS

Under section 41 of the PPIP Act, the Privacy Commissioner has made Public interest directions to waive or modify the requirement for a public sector agency to comply with an IPP. Details about Public interest directions can be found at the Information and Privacy Commission website (www.ipc.nsw.gov.au).

Public interest directions may permit NSW Health:

• To be exempt from some principles in relation to the conduct of investigations

• To be exempt from some principles when transferring enquiries to another NSW public sector agency

• To disclose personal information collected for research purposes.

Public interest directions which may be relevant to NSW health organisations include:

**Direction on Information Transfers between Public Sector Agencies**

This Direction covers most NSW state agencies. It was originally made on 30 June 2000. On 19 June 2015 the Privacy Commissioner renewed this Direction to commence from 1 July 2015 to 31 December 2015, or until legislative amendments are made to incorporate this Direction, whichever is earlier.

**Direction on the Collection of Personal Information about Third parties by NSW Public Sector (Human Services) Agencies from their clients**

This Direction replaced the Direction on the Better Service Delivery Program. It commenced on 1 July 2003 and affects some health, education, welfare, housing, juvenile justice and Aboriginal affairs agencies. On 19 June 2015 the Privacy Commissioner renewed this Direction to commence from 1 July 2015 to 31 December 2015, or until legislative amendments are made to incorporate this Direction, whichever is earlier.

**Direction on Disclosures of Information by Public Sector Agencies for Research Purposes**

This Direction affects most NSW state agencies. It was originally made on 28 September 2000. On 19 June 2015 the Privacy Commissioner renewed this Direction to commence from 1 July 2015 to 31 December 2015, or until legislative amendments are made to incorporate this Direction, whichever is earlier.

50(17/09/15)
Direction on Processing of Personal Information by Public Sector Agencies in relation to their Investigative Functions

This Direction covers most NSW state agencies. It was originally made on 30 June 2000. On 19 June 2015 the Privacy Commissioner renewed this Direction to commence from 1 July 2015 to 31 December 2015, or until legislative amendments are made to incorporate this Direction, whichever is earlier.

Direction on Disclosures of Information by the New South Wales Public Sector to the National Coronial Information System (NCIS)

This Direction affects some health and justice agencies. On 19 June 2015 the Privacy Commissioner renewed this Direction to commence from 1 July 2015 to 31 December 2015, or until legislative amendments are made to incorporate this Direction, whichever is earlier.

9 STRATEGIES FOR IMPLEMENTATION OF PRIVACY MANAGEMENT PLAN

Effective privacy governance can improve business productivity and help to develop more efficient business processes. Effective privacy governance assists NSW Health to manage both the risk of a privacy breach and our response should one occur.

Each NSW Health Organisation will develop tailored strategies suited to the organisation to assist compliance by the Health Organisation with the requirements of the PPIP Act.

NSW Health develops policies and procedure documents to assist NSW Health Organisations to comply with the IPPs and this plan.

When staff have a role that requires access to personal information, managers have a responsibility to ensure that these staff are aware of their privacy obligations in conducting their work.

9.1 STAFF AWARENESS

Strategies adopted by NSW Health organisations to promote general privacy awareness within NSW Health organisations may include:

- Staff are provided with access to this Privacy Management Plan and relevant resources to assists with education on privacy obligations.
- New staff members receive privacy training as part of their orientation process (this mandatory training requirement is set out in the Privacy Manual for Health Information)
- Privacy issues are reported annually in the Annual report.
- Privacy issues are identified and addressed during development and implementation of new systems
- Privacy notices are prepared as a standard inclusion in all projects where personal information will be collected
• Provision of regular privacy training and highlighting of privacy obligations (for example during Privacy Awareness Week)

• Liaison with Privacy Contact officers at their organisation or the NSW Ministry of Health where issues or queries arise that cannot be resolved locally

• Prompt referral of requests for privacy internal review (and complaints) to the privacy contact officer at the organisation

• Proactive reporting of any identified privacy breaches or risks to the privacy contact officer.

9.2 PUBLIC AWARENESS

Strategies adopted by NSW Health organisations to promote public awareness may include:

• Including links to the privacy management plan and other resources on NSW Health organisation websites

• Providing copies of the plan to members of the public on request.

• Referring to the privacy management plan in privacy notices

• Telling people about the plan when answering queries about personal information

• Referring enquiries to the privacy contact officer for the NSW Health organisation where appropriate.
10 LIST OF ATTACHMENTS

1. Implementation Checklist
2. Template Confidentiality Undertaking
3. Privacy Information Sheet for Personal Information

Attachment 1: Implementation checklist
<table>
<thead>
<tr>
<th>IMPLEMENTATION REQUIREMENTS</th>
<th>Not commenced</th>
<th>Partial compliance</th>
<th>Full</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
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I, ............................................................ (name), understand that while I am employed by the ............................................................ (name of health organisation) I will have access to personal health information collected from patients / clients that is protected by privacy law. I undertake not to knowingly access any personal information, (such as information contained in a patient’s health record, including in an electronic health record/ XXXX data collection(s)/ XXXX data warehouse) unless such information is essential for me to properly and efficiently perform my duties.

I recognise and accept that my access to, holding and use of this information is subject to the Information privacy Principles contained in the Privacy and Personal Information Protection Act 1998 (NSW) Health Privacy Principles contained in the NSW Health Records and Information Privacy Act 2002 (NSW) (copy of Information and Health Privacy Principles attached). In order to fulfil this undertaking, I will not divulge any personal information regarding individual persons, except as allowed by the legislation.

I undertake to comply with other information privacy and security procedures as stipulated by NSW Health policies* in relation to any personal information that I access in the course of my duties. In order to fulfil this undertaking I will ensure that, so far as is within my control, such information, whether in the form of paper documents, computerised data or in any other form, cannot be viewed by unauthorised persons, and that the information is stored in a secure and orderly manner that prevents unauthorised access.

I further undertake to inform (my supervisor/ title of relevant officer) immediately if I become aware of any breach of privacy or security relating to the information that I, or other staff, access in the course of my duties.

Signed

................................. .................................
(name) (signature) (position)

Witnessed

................................. .................................
(name) (signature) (position)

................................. .................................
Date Date
* Relevant NSW Health policy directives include:
  - NSW Health Privacy Manual for Health Information
  - Privacy Management Plan for NSW Health
  - Data Collections - Process for Approval of New or Modified
  - Electronic Information Security Policy – NSW Health
  - NSW State Digital Information Security Policy

Attachment 3: Privacy Information Sheet for Personal Information
NSW Health

NSW Health is committed to treating your personal information in accordance with privacy law.

This leaflet explains how and why we collect personal information about you, how you can access your information and how your information may be used within the NSW public health service or disclosed to other parties.

The Privacy and Personal Information Protection Act 1998

The Privacy and Personal Information Protection Act (PPIP Act) explains how NSW State and local government agencies should manage personal information.

The PPIP Act offers the people of NSW enforceable privacy rights. It gives you the opportunity to make a complaint about a public sector agency if you feel it has misused your personal information.

What do ‘Privacy’ and ‘Personal Information’ mean?

There is no simple definition of privacy. It can mean the right to a sense of personal freedom, the right to have information about oneself used fairly, and a ‘right to be left alone’. Many people confuse privacy with secrecy or confidentiality, but privacy is broader than both of these.

The fair use of ‘personal information’ is just one aspect of this broader concept of ‘privacy’.

*Personal information is any information or opinion about an identifiable person. This includes records containing your name, address, sex, etc., or physical information like fingerprints, body samples or your DNA.*
The 12 Rules of Personal Information Protection

The Information Protection Principles (IPPs) are the backbone of the Act, and all NSW government agencies must adhere to them unless they have a lawful exemption. They are summarised here:

Collection

1. **Lawful**
   When NSW Health collects your personal information, the information must be collected for a lawful purpose. It must also be directly related to the agency’s activities and necessary for that purpose.

2. **Direct**
   Your information must be collected directly from you, unless you have given your consent otherwise.

3. **Open**
   You must be informed that the information is being collected, why it is being collected and who will be storing and using it. We should also tell you how you can see and correct this information.

4. **Relevant**
   NSW Health must ensure that the information is relevant, accurate, up-to-date and not excessive. The collection should not unreasonably intrude into your personal affairs.

Storage

5. **Secure**
   Your information must be stored securely, not kept any longer than necessary, and disposed of appropriately. It should be protected from unauthorised access, use or disclosure.

Access

6. **Transparent**
   The agency must provide you with enough details about what personal information they are storing, why they are storing it and what rights you have to access it.

7. **Accessible**
   The agency must allow you to access your personal information without unreasonable delay and expense.
8. **Correct**
   
The agency must allow you to update, correct or amend your personal information where necessary.

Use

9. **Accurate**
   
   NSW Health must make sure that your information is accurate before using it.

10. **Limited**
    
    NSW Health can only use your information for the purpose for which it was collected, for a directly related purpose, or for a purpose to which you have given your consent. It can also be used in order to deal with a serious and imminent threat to any person’s health or safety.

Disclosure

11. **Restricted**
    
    NSW Health can only disclose your information with your consent or if you were told at the time we collected it from you that we would do so, or if it is for a related purpose and we don’t think that you would object. Your information can also be used without your consent in order to deal with a serious and imminent threat to any person’s health or safety.

12. **Safeguarded**
    
    NSW Health can only disclose your sensitive personal information without your consent in order to deal with a serious and imminent threat to any person’s health or safety. Sensitive information may be about your ethnic or racial origin, political opinions, religious or philosophical beliefs, health or sexual activities or trade union membership.

What to do if you think your privacy has been breached

If your complaint is about your personal information, and a NSW Health organisation you should normally seek an Internal Review.

An Internal Review is an internal investigation that NSW Health is required to conduct when you make a privacy complaint.

Contact us

If you have questions or a complaint about the privacy of your personal information, please contact the Privacy Contact Officer for the relevant NSW Health Organisation

The following link provides the names of the Privacy Contact Officers for NSW Health: [http://www.health.nsw.gov.au/patients/privacy/Pages/privacy-contact.aspx](http://www.health.nsw.gov.au/patients/privacy/Pages/privacy-contact.aspx)
ADOPTION ACT 2000 – RELEASE OF INFORMATION (PD2016_036)

PD2016_036 rescinds PD2010_050

PURPOSE

This Policy Directive provides:

- Information regarding the rights of adopted persons and their families to access information held by Information Sources under the Adoption Act 2000
- NSW Health Information Sources with direction and guidance as to what information should be disclosed to adopted persons and their families and the circumstances in which it should be disclosed.

MANDATORY REQUIREMENTS

Each NSW Health Information Source must have effective systems and procedures in place to ensure adopted persons and their families can access information in accordance with the Adoption Act 2000 and this Policy Directive.

IMPLEMENTATION

Roles and Responsibilities

Chief Executives must ensure:

- The principles and requirements of this Policy Directive are applied, achieved and sustained
- Their medical record staff are made aware of this Policy Directive.

Medical record staff have responsibility to:

- Be aware of this Policy Directive
- Release information to adopted person and their families in accordance with this Policy Directive and the Adoption Act 2000.

BACKGROUND

About this document

The Adoption Act 2000 is administered by the Department of Family and Community Services and sets out the information to which adoptees and their families are entitled to access and the manner in which a person may access that information.

Under the Adoption Act 2000, adopted persons, adoptive parents and birth parents are entitled to access prescribed information held by an “Information Source”. An Information Source includes:

- The NSW Ministry of Health
- A public hospital under the control of a Local Health District
- A statutory health corporation
- An affiliated health organisation, and
• A private health facility.

This Policy Directive provides specific information on how information about adoptees and their families held by Information Sources should be disclosed.

1.2 Legal and legislative framework
Adoption Act 2000
Adoption Regulation 2015

2 GENERAL MATTERS

2.1 Persons making general enquiries
Telephone enquiries should be directed by switchboard to the medical records department. Persons making enquiries should be informed that the Adoption Information Unit of the Department of Family and Community Services offers services regarding past adoptions, including accessing information.

The Adoption Information Unit can be contacted on 1300 799 023 or via email at adoption.information@facs.nsw.gov.au.

Where an enquirer is seeking information held by the NSW Ministry of Health, a public hospital, a statutory health corporation or an affiliated health organisation, this Policy Directive, in conjunction with the Adoption Act 2000 should be complied with.

2.2 Search fees
An Information Source may charge a fee for disclosing information held by the Information Source. Information Sources should refer to PD2006_050 Health Records and Medical / Clinical Reports - Charging Policy in respect of the fees to be charged.

2.3 Information to be provided
Adopted persons, adoptive parents and birth parents are entitled to a variety of information held by an Information Source. This policy only deals with the release of information most likely to be commonly held by NSW Health Information Sources that is health information. If there are further records relating to the adopted person, adoptive parents or birth parents held by an Information Source, you should contact your legal advisor to determine whether the information should be released.

2.4 Proof of identity
Before any information under the Adoption Act 2000 is released to an individual, that individual should provide proof of their identity and, in cases where the individual is seeking information about another person, the individual should provide proof of their relationship to the other person, such as adoption order and birth certificate(s).
2.5 Birth Parents and presumptive fathers

In this policy, a reference to an adopted person’s birth parent includes a reference to the “presumptive father” of the adopted person. Under the Adoption Act 2000, the presumptive father of an adopted person means a man who claims to be the birth parent of the adopted person and who:

(a) Is shown on the adopted person’s original birth certificate as the adopted person’s father, or
(b) Is a person whom the Information Source is entitled to presume under any law to be the adopted person’s father.

If you are unsure whether a particular person is the presumptive father of an adopted person, you should contact your legal advisor.

In some cases, an individual man will be named as the “father” in the medical records but will not be named as the father on the adopted person’s birth certificate. In these cases, the individual man’s identifying information cannot be disclosed to any person. However, in such cases, the medical records department of the Information Source should consider providing the individual man’s details to the Department of Family and Community Services who can determine whether the man would like to exchange information with the adopted person.

2.6 General guidelines for the release of information

Under s142 of the Adoption Act, an Information Source must comply with any guidelines prescribed by the Adoption Regulation before releasing information under the Act. Under clause 105 of the Adoption Regulation, the guidelines below must be complied with.

2.6.1 Confirmation of identity

The Information Source must make reasonable inquiries to confirm the applicant’s identity and relationship to the person to whom the information relates.

2.6.2 Sensitive information

The Adoption Regulation has special guidelines in relation to “sensitive information”. Sensitive information means:

(a) Information indicating that an adopted person was conceived as a result of incest or the sexual assault of his or her birth mother, and
(b) Information indicating that an adopted person has an hereditary condition seriously affecting the current, or that could seriously affect the future, physical or mental health of the adopted person or any descendant of the adopted person, and
(c) Information that could reasonably be expected to be distressing in nature to the person receiving the information.

Before disclosing sensitive information, the Information Source must:

• Make appropriate counselling and support available to the person, and
• Check whether the birth parent’s name is entered in the Reunion and Information Register. If the birth parent’s name is entered on the Reunion and Information Register, the Information Source must not disclose the sensitive information unless the Information Source has taken reasonable steps to ascertain whether the birth parent wishes to provide the information personally.
2.7 Supply Authority

Information may only be disclosed to an individual if that individual provides the Information Source with a Supply Authority issued by the Department of Family and Community Services if:

- The adoption occurred prior to 1 January 2010, or
- The adoption occurred after 1 January 2010 where the applicant is a birth parent or non-adopted sibling.

In some cases, where a Supply Authority is required before information can be released to an individual, that individual may instead produce to the Information Source an original or amended birth certificate issued under the *Adoption Information Act 1990* prior to October 1998 by the Registrar of Births Deaths and Marriages stamped with the words “Not for Official Use”.

If the Information Source is unclear whether the Supply Authority or birth certificate is valid, the Adoption Information Unit should be contacted.

3 RELEASE OF INFORMATION

3.1 Request to access information regarding adoptions occurring on or after 1 January 2010

If an adoption took place on or after 1 January 2010, an adopted person, their adopted parents and birth parents and non-adopted siblings have rights to access information held by an Information Source, including the NSW Ministry of Health, a public hospital, a statutory health corporation or an affiliated health organisation.

3.1.1 Adopted person’s rights

3.1.1 (a) Rights to access information by an adopted person who is over the age of 18

An adopted person who is over the age of 18, and was adopted on or after 1 January 2010, is entitled to receive:

- Information regarding the adopted person’s birth details (including the time of birth and weight and length at birth) and other medical records about the adopted person, and
- Any non-identifying background information about the adopted person’s birth parents, siblings, grandparents, aunts or uncles that will give the adopted person knowledge of his or her origins.

3.1.1 (b) Rights to access information by an adopted person who is under the age of 18

An adopted person who is under the age of 18, and who was adopted on or after 1 January 2010, is entitled to receive information only with the consent of the person’s adoptive parents or the Secretary of the Department of Family and Community Services.

If the adopted person produces a written consent of their adoptive parents or the Secretary of the Department of Family and Community Services, the following information should be provided to the adopted person who is under the age of 18:

- Information regarding the adopted person’s birth details (including the time of birth and weight and length at birth) and other medical records about the adopted person, and
- Any non-identifying background information about the adopted person’s birth parent, sibling, grandparent, aunt or uncle that will give the adopted person knowledge of his or her origins.
3.1.2 **Adoptive Parents’ rights**

An adoptive parent of an adopted person who was adopted on or after 1 January 2010 is entitled to receive the following information held by an Information Source:

- Information regarding the adopted person’s birth details (including the time of birth and weight and length at birth), and
- Any non-identifying background information about the adopted person’s birth parent, sibling, grandparent, aunt or uncle that will give the adoptive parent knowledge of the adopted person’s origins.

3.1.3 **Birth Parents’ rights**

3.1.3 (a) **Rights to access information by a birth parent where the adopted child is under the age of 18**

A birth parent of a person, under the age of 18, who was adopted on or after 1 January 2010 is entitled to receive information held by an Information Source only if the birth parent produces to the Information Source a Supply Authority issued by the Secretary of the Department of Family and Community Services authorising the disclosure of the information. Where a birth parent provides such a Supply Authority, the birth parent is entitled to receive the following information, subject to any conditions in the Supply Authority, held by an Information Source:

- Any non-identifying background information about an adopted person or his or her adoptive parents that will give the birth parent knowledge of the adopted child’s life, and
- Birth details of the adopted person (including the time of birth and weight and length at birth).

If the birth parent does not have a Supply Authority, information can be released if the head of the Information Source, that is the Health Secretary or the Chief Executive Officer of the relevant Information Source, is of the opinion that the information cannot be used to identify the adopted person or their adopted parents.

3.1.3 (b) **Rights to access information by a birth parent where the adopted child is over the age of 18**

A birth parent of a person, over the age of 18, who was adopted on or after 1 January 2010 is entitled to receive any of the following information held by an Information Source:

- Any non-identifying background information about an adopted person or his or her adoptive parents that will give the birth parent knowledge of the adopted child’s life, and
- Birth details of the adopted person (including the time of birth and weight and length at birth).

3.1.4 **Non-adopted sibling’s rights**

A non-adopted sibling, of a person adopted on or after 1 January 2010, is able to access any non-identifying background information held by an Information Source about the adopted person or his or her adoptive parents and adoptive family that will give the non-adopted sibling knowledge of the adopted person’s life. However, if the non-adopted sibling is under the age of 18, information can only be released with the written consent of the non-adopted sibling’s parents or the Secretary of Family and Community Services.
3.2 Request to access information regarding adoptions occurring before 1 January 2010

If an adoption took place before 1 January 2010, an adopted person, their adopted parents and birth parents have rights to access information held by an Information Source, including the NSW Ministry of Health, a public hospital, a statutory health corporation or an affiliated health organisation.

3.2.1 Adopted person’s rights

3.2.1 (a) Rights to access prescribed information by an adopted person who is over the age of 18

An adopted person who is over the age of 18, and was adopted before 1 January 2010, is entitled to receive information held by an Information Source only if the adopted person produces to the Information Source a Supply Authority issued by the Secretary of the Department of Family and Community Services authorising the disclosure of the information. Where the adopted person provides such a Supply Authority, the adopted person is entitled to receive the following information, subject to any conditions in the Supply Authority, held by an Information Source:

- Any relevant non-identifying information that is held by an Information Source about the physical and intellectual attributes, educational and vocational qualifications, social and cultural background, health and welfare, family and other relationships, religious beliefs, hobbies and interests of a birth parent, sibling, grandparent, aunt or uncle of the adopted person and that will give the adopted person knowledge of his or her origins, and
- Copies of medical reports of examinations of the adopted person made before the date of the adoption order.

3.2.1 (b) Rights to access prescribed information by an adopted person who is under the age of 18

An adopted person who is under the age of 18, and who was adopted before 1 January 2010, is entitled to receive information only with the consent of the person’s adoptive parents or the Secretary of the Department of Family and Community Services.

If the adopted persons produce a written consent of their adoptive parents or the Secretary of the Department of Family and Community Services, the following information should be provided to the adopted person who is under the age of 18:

- Any relevant non-identifying information that is held by an Information Source about the physical and intellectual attributes, educational and vocational qualifications, social and cultural background, health and welfare, family and other relationships, religious beliefs, hobbies and interests of a birth parent, sibling, grandparent, aunt or uncle of the adopted person and that will give the adopted person knowledge of his or her origins, and
- Copies of medical reports of examinations of the adopted person made before the date of the adoption order

3.2.2 Adoptive parent’s rights

An adoptive parent of a child, under the age of 18, who was adopted before 1 January 2010 is entitled to receive any relevant non-information that is held by an Information Source about the physical and intellectual attributes, educational and vocational qualifications, social and cultural background, health and welfare, family and other relationships, religious beliefs, hobbies and interests of a birth parent, sibling, grandparent, aunt or uncle of the adopted person and that will give the adoptive parent knowledge of the adopted person’s origins.
3.2.3  **Birth parent’s rights**

3.2.3  *(a) Where the adopted person is over the age of 18*

A birth parent of an adopted person over the age of 18 adopted before 1 January 2010, is only entitled to receive information about the adopted person if the birth parent produces a Supply Authority from the Secretary of the Department of Family and Community Services authorising the disclosure of relevant information. If the birth parent produces such a Supply Authority, the birth parent is entitled to receive the following information, subject to any conditions in the Supply Authority, held by an Information Source:

- Any relevant information that is held by an Information Source about the physical and intellectual attributes, educational and vocational qualifications, social and cultural background, health and welfare, family and other relationships, religious beliefs, hobbies and interests of an adopted person or his or her adoptive parent and that will give the birth parent knowledge of the adopted child’s life after adoption
- Birth details (including the time of birth and weight and length of the person at birth), and
- Copies of medical reports and examinations of the adopted person made before the date of the adoption order.

3.2.3  *(b) Where the adopted person is under the age of 18*

A birth parent of an adopted person under the age of 18 is only entitled to receive information about the adopted person if the birth parent produces a Supply Authority from the Secretary of the Department of Family and Community Services authorising the disclosure of relevant information. If the birth parent produces such a Supply Authority, the birth parent is entitled to receive the following information, subject to any conditions in the Supply Authority, held by an Information Source:

- Birth details (including the time of birth and weight and length of the person at birth), and
- Copies of medical reports and examinations of the adopted person made before the date of the adoption order.

If the birth parent does not have a Supply Authority, information can be released if the head of the Information Source, such as the Chief Executive Officer of the relevant Information Source, is of the opinion that the information cannot be used to identify the adopted person or their adopted parents.

52(25/8/16)
## ATTACHMENT 1: IMPLEMENTATION CHECKLIST

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Notes: [Provide specific notes for each requirement]
PD2013_033 rescinds PD2008_052.

PURPOSE

NSW Health is committed to the provision of appropriate levels of security across all of its information systems. Health information systems containing personal information are acknowledged as having particular security requirements, and are explicitly addressed in this policy.

This policy is based on a number of key principles. These are:
- NSW Health’s major objective is the provision of health care services underlined by the overall welfare of the people it treats.
- All personal health information will be securely managed and that privacy and confidentiality will be preserved. The community must be confident NSW Health observes this principle.
- All other critical and sensitive information will also be securely managed and privacy and confidentiality maintained.
- Personnel have a responsibility for the security and maintenance of critical and sensitive information including personal health information.
- Providing information security education and developing awareness for all people dealing with electronic information is an integral part of maintaining adequate protection over that information.
- The release of information will comply with relevant and current state and federal legislation.
- The implementation of information security controls to mitigate the risks to sensitive information without impacting the timely provision of those services.
- It is also the responsibility of all NSW Health personnel and their contractors to be aware of and comply with the requirements of the NSW Health Privacy Management Plan (PD2005_554).

Please refer to Sections 2 & 3 of the Electronic Information Security Policy which provide further guidance on the policy.

MANDATORY REQUIREMENTS


- **Confidentiality** – to uphold authorised restrictions on access to and disclosure of information including personal or proprietary information.
- **Integrity** – to protect information against unauthorised alteration or destruction and prevent successful challenges to its authenticity.
- **Availability** – to provide authorised users with timely and reliable access to information and services.
- **Compliance** – to comply with all applicable legislation, regulations, Cabinet Conventions, policies and contractual obligations requiring information to be available, safeguarded or lawfully used.
- **Assurance** – to provide assurance to Parliament and the people of NSW that information held by the Government is appropriately protected and handled.
To meet the above requirements and provide appropriate assurance, implementation guidance is included as Appendix A of the policy.

IMPLEMENTATION

This policy covers security requirements for NSW Health information including electronic personal health information.

This policy applies to all employees, contractors and other persons who, in the course of their work, have access to information (including electronic personal health information) in or on behalf of the NSW public health system.

Please refer to the Section 4 titled ‘Scope’ of the Electronic Information Security Policy for implementation and scope of policy requirements.

Where access is granted to information held by the public health system for research or other purposes, the person or organisation granted access must, under the conditions of access, also be required to comply with the terms of this policy.

Compliance with this policy and all relevant acts and regulations as they relate to information security is mandatory for management, personnel and all persons handling electronic information, whether directly or indirectly involved in client service delivery.

All personnel and organisations referred to above should be aware of their legislative confidentiality obligations and that the breach of those obligations may result in prosecution and the imposition of a penalty or disciplinary actions.

1. Introduction

This document is Version 3.0 of the “NSW Health Information Security Policy” (PD2005_314).

The first version of this policy was issued on 8 July 2003 as Circular 2003/47 and published as a Policy Directive (PD2005_314) on 27 January 2005. The policy was developed following extensive consultation with a wide range of stakeholders, including significant input from clinicians.

The Second version of this policy was issued on 15 September 2008 as Premiers Memorandum M2007-04 and published as a Policy Directive (PD2008_052).

Publication of New Versions has become necessary for the following reasons:

- The applicable national standards relating to information security have changed (the new standards are AS/NZS ISO/IEC 27001:2006 and AS/NZS ISO/IEC 27002:2006);
- Government policy has been updated accordingly and the actions required of agencies in achieving the Government’s objectives have changed. The updated policy is stated in Ministerial Memorandum [http://arp.nsw.gov.au/ofm blasts-2015-05-nsw-government-digital information-security-policy];
- The relevant NSW Health policies concerning the privacy of personal information have been updated. The updated policy is the “NSW Health Privacy Management Plan” (PD2005_554);
- As per scheduled periodic review cycle.
1. **Information Security Policy Statement**

NSW Health\(^1\) is committed to the provision of appropriate levels of security across all of its information systems. Health information systems containing personal information are acknowledged as having particular security requirements, and are explicitly addressed in this policy.

This policy is based on a number of key principles. These are:

- NSW Health’s major objective is the provision of health care services underlined by the overall welfare of the people it treats.
- All personal health information will be securely managed and that privacy and confidentiality will be preserved. The community must be confident NSW Health observes this principle.
- All other critical and sensitive information will also be securely managed and privacy and confidentiality maintained.
- Personnel have a responsibility for the security and maintenance of critical and sensitive information including personal health information.
- Providing information security education and developing awareness for all people dealing with electronic information is an integral part of maintaining adequate protection over that information.
- The release of information will comply with relevant and current state and federal legislation.
- The implementation of information security controls to mitigate the risks to sensitive information without impacting the timely provision of those services.

3. **Privacy Statement**

All public sector agencies in NSW, including the public health sector, are required to comply with the *Privacy and Personal Information Protection Act 1998* and the *Health Records Information Privacy Act 2002*, which set out a series of rules designed to protect the privacy of personal information, including personal health information, in NSW.

It is the responsibility of all NSW Health personnel and their contractors to be aware of and comply with the obligations imposed by the Act.

It is also the responsibility of all NSW Health personnel and their contractors to be aware of and comply with the requirements of the NSW Health Privacy Management Plan (PD2005_554).

These documents list the relevant NSW Health Policy Directives, other NSW Health and government policies and the relevant laws. It is the responsibility of all NSW Health personnel and their contractors to be aware of and comply with the obligations imposed by these policies and laws.

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1. In the context of this document the term NSW Health includes all NSW Health organisations. The NSW Health organisations are: Local Health Districts (including public health units, public hospitals and Community Health Centres)/Chief Executive Governed Statutory Health Corporations, Board Governed Statutory Health Corporations, Affiliated Health Organisations – Health Administration Corporation (including HealthShare), Dental Schools and Clinics, NSW Ambulance Service, and the NSW Ministry of Health.

2. All unclassified information should be treated as “For Official Use Only” information.
4. Scope

This policy covers security requirements for NSW Health information including electronic personal health information.

“Electronic information” is information that is electronically created, processed, held, maintained and transmitted by NSW Health. It also refers to information held electronically for or on behalf of other government agencies or private entities.

“Personal health information” is personal information which concerns a person/client’s health, medical history or past or future medical treatment. It also includes other personal information collected in the course of providing a health service or information collected in relation to donation of human tissue.

“Personal information” is information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual whose identity is apparent or can be reasonably be ascertained from the information or opinion.

Any identifiable information is subject to this policy.

This policy applies to all information created, processed, held, maintained or transmitted by the NSW Health information or communication infrastructure. This policy shall apply to all information held for, or on behalf of, other government agencies or private entities.

Information systems refer to any information or communication infrastructure used by NSW Health and all personnel that work with it, including computer hardware and software, to create, process, hold, maintain or transmit electronic information.

For example:
- file, database and communication servers;
- computers and/or devices whether connected to a network or stand-alone (notebooks, terminals, tablets, smart phones, storage devices etc.);
- NSW Health mainframes and mid-range computers;
- devices used to store or transmit electronic data (USB storage, switches, wireless access points, etc.);
- providers of information services for NSW Health, government agencies or private entities that have been granted access rights to NSW Health information systems.

This policy applies to all employees, contractors and other persons who, in the course of their work, have access to information (including electronic personal health information) in or on behalf of the NSW public health system. This includes but is not limited to:
- providers of health services such as doctors, nurses, case managers, visiting medical officers (VMO’s) etc.;
- providers and allied health personnel;
- ambulance officers;
- administrators, clerical and service personnel;
- support staff;
- technical, research, scientific and laboratory personnel;
- auditors;
- interpreters;
• volunteers;
• Students;
• Consultants;
• temporary and contract personnel;
• external custodians of information owned by the department.

The policy applies to:
• NSW Health organisations;
• non-government organisations receiving funding from the department where compliance is included in the terms of their funding agreement;
• private hospitals and day procedures centres treating public patients/clients on a contractual basis, where the contract includes requirements for compliance with NSW Health policies;
• personnel of Health Professional Registration Boards (excluding medical, Dental and Pharmacy boards).

Where access is granted to information held by the public health system for research or other purposes, the person or organisation granted access must, under the conditions of access, also be required to comply with the terms of this policy.

Compliance with this policy and all relevant acts and regulations as they relate to information security is mandatory for management, personnel and all persons handling electronic information, whether directly or indirectly involved in client service delivery.

All personnel and organisations referred to above should be aware of their legislative confidentiality obligations and that the breach of those obligations may result in prosecution and the imposition of a penalty or disciplinary actions.

5. Information Security Requirements

The use of information and information systems is an integral part of most NSW Government activities. Electronic information assets are critical in agencies operations and are key element in delivering trustworthy government services. The security threats to information assets are increasing. The government has a duty to safeguard its large information holdings and must provide credible assurance that it is doing so. In 2001 Cabinet recognised these trends and directed that all agencies were to appropriately protect electronic information. In 2006, the document ‘People First – A new direction for ICT in NSW’ reaffirmed the importance of information security.


1. **Confidentiality** – to uphold authorised restrictions on access to and disclosure of information including personal or proprietary information.
2. **Integrity** – to protect information against unauthorised alteration or destruction and prevent successful challenges to its authenticity.

41(17/10/13)
3. Availability – to provide authorised users with timely and reliable access to information and services.

4. Compliance – to comply with all applicable legislation, regulations, Cabinet Conventions, policies and contractual obligations requiring information to be available, safeguarded or lawfully used.

5. Assurance – to provide assurance to Parliament and the people of NSW that information held by the Government is appropriately protected and handled.

Agencies and shared services providers should adopt the following Core Requirements of the Digital Information Security Policy (DIS Policy):

1. Implement an Information Security Management System as set out in the Digital Information Security Policy;
2. Comply with the minimum controls as set out in the Digital Information Security Policy;
3. Certify the ISMS implementation where applicable;
4. Nominate a Senior Responsible Officer to represent the organisation in the Digital Information Security - Community of Practice where applicable; and
5. Provide attestation to compliance with policy if applicable.

To meet the above requirements and provide appropriate assurance, implementation guidance is included as appendix A.

Management must ensure that the implementation of information security is aligned with the organisation’s goals. This will be an important aspect for management to consider as it addresses the requirements specified by the national standards. While these standards specify particular practices to safeguard electronic information, these practices must not be adopted without regard for the organisation’s actual risk profile and business objective(s).

Guidelines should be developed where requirements specified by the standards need to be amended to meet the specific requirements of NSW Health. Not all the controls described in the standard will be relevant to every situation, nor can they take account of local environmental, budgetary or technological constraints, or be present in a form that suits every potential user in an organization.

The risk management approach allows for the tailoring of the controls to the situation. The National Standards AS/NZS ISO 31000 Risk management - Principles and guidelines, (or subsequent versions) should be used in implementing this approach.

6. National Standards

The national standards for an Information Security Management System (ISMS) are:

- AS/NZS ISO/IEC 27001:2006 Information technology – Security techniques – Information security management systems – Requirements; and

Both have been formally adopted unchanged as Australian & New Zealand standards and the previous standard 17799 has been renumbered as 27002. The standards are reviewed and updated about every 3 years and compliance is always to be to the current editions. Certification is to AS/NZS ISO/IEC 27001 and certifiers must be accredited by an accreditation body authorised by a national government.
The security standards are management standards and there are synergies between information security management and other management standards such as AS/NZS ISO 9001 Quality Management Systems or ISO/IEC 20000 Information technology - Service management (ITIL). It is strongly recommended that agencies that have or are seeking compliance with other management standards reduce their implementation effort by using the same management system infrastructure for compliance with different standards.

7. Roles and Responsibilities

The main objective of NSW Health is to deliver high quality care. The availability of reliable and accurate information is a key factor in the delivery of care. Clearly defined roles and responsibilities assist in the proper protection of the information assets of NSW Health.

Management (CEs or their delegates)
Management commitment to information security is demonstrated by ensuring that:
- this policy and other associated policies are implemented;
- an information security risk management system is established;
- adequate resources are allocated to policy implementation.

The CIO NSW Health
The CIO NSW Health is responsible for the management of the information security policy, procedures and guidelines.

Data/Business/Information Owners
The Data or Information Owners have the responsibility for defining the corporate information requirements and data governance policies which include development of standards and requirements for security, retention and disposal of corporate information for their information assets. They are responsible to also manage the risks to their information assets regardless if they have outsourced ICT or are sharing the risks with service providers.

Data Custodians
The Data Custodian has the responsibility for establishing and maintaining an acceptable level of data protection, for managing the disclosure of data, for ensuring that the data is used in accordance with the reasons for which it is collected and that the data is complete, of acceptable quality and is available to authorised users.

System Administrators
System administrators need to know and follow acceptable procedures for granting/revoking access, identifying and resolving known vulnerabilities, and monitoring system access. They are responsible for development of practices and procedures to support the policy and ensure compliance with the security requirements of information owners.

IT Technical and Support Staff
IT Technical and Support Staff are charged with ensuring the correct and secure configuration of systems such as servers, networks, firewalls and routers. Systems developers and maintenance staff are responsible for delivering reliable software. Technical staff should understand the business use and risks associated with the technologies being used so that security solutions match the criticality and sensitive nature of the systems. They are responsible for development of practices and procedures to support the policy and ensure compliance with the security requirements of information owners.
Users
Users of agency electronic information play an important role in overall electronic information security planning and risk management process. The effective participation of users requires a certain culture, as well as education. The culture must be supported by management directives, an education program and demonstrable support for the protection of electronic information. Users must be aware of their responsibilities with regards to Information Security and Privacy. Users have a role in identifying and reporting security concerns and incidents to management for investigation and review.

Third Party Businesses and Organisations, Consumers and Other Agencies
The growing existence of inter-connected networks requires the extension of the ‘boundaries’ of an agency. Agency executive management must ensure that third parties understand Information Security requirements and ensure that adequate security controls are in place in their own environment. All third parties must adhere to NSW Health and agency policy and procedures.

Independent Reviewer/Audit
The role of independent reviewers and auditors is to assess the effectiveness and efficiency of implemented controls, assess whether controls are being adhered to, and to check compliance against policy and legislative requirements. Review and audit reports should be noted by executive management and remedial action taken, if appropriate.

Policy Maintenance
This policy shall be reviewed by the NSW Ministry of Health and their delegates to ensure that it remains relevant and up to date with NSW Health business objectives and accurately reflects any changes in legislation or business practices that affect the security of electronic information including electronic personal health information, either directly or indirectly.
8. Appendix A – Implementation Guidelines

Intention and Principles
Technological advancement has provided significant benefits within Health and NSW Government; it has also equipped malicious users with more advanced means and tools to obtain unauthorised access to information. Any information system usage or implementation may be a target for a range of serious threats, including computer based fraud, espionage, sabotage, vandalism and other forms of systems failure or disaster. This may result in risk of data loss/leakage from accidental/malicious unauthorised access, misuse, misappropriation, modification or destruction of information and information systems that may impact service delivery. Moreover, sharing of information for business reasons, using new applications and inter-connected resources, increases the threat of information theft, loss and exposure to breaches.

Considering all the above threats, NSW Health intends to implement a structured and consistent approach to address information security risks within NSW Health. The intention is that all NSW Health agencies operate a comprehensive information security management system that meets their business-orientated security needs. This system is to comply appropriately with the national standard for such systems. Appropriateness is determined by the risks to the agency’s information assets and the potential ‘business’ implications of those risks. To provide assurance to stakeholders, including partners in government or business, the main part of the Information Security Management System (ISMS) is to address the risks based on priorities.

The principles for implementing information security are:
- Managing risks to information assets is the basis for selecting and operating information security countermeasures and controls;
- Information security countermeasures and controls are implemented and operated as elements of an Information security management system that is planned and controlled through effective management processes; and
- The cost of information security countermeasures and controls must be proportionate to the risks to information assets.

Risks and Threats
An information security risk is the combination of the likelihood and consequences of a potential information security incident or event. Information security risks arise from threats that may affect information assets in a way that adversely impacts information security objectives:
- Threats usually exploit vulnerabilities in information systems and the people that use them;
- Threats may originate internally or externally, they may be accidental or deliberate, malicious or well-meant and have human, technical or environmental sources;
- The motives behind malicious or criminal threats vary widely and will, in part, depend on how information assets can be exploited for unauthorised purposes;
- The potential value of unauthorised use of information is an important consideration and may indicate the likelihood of a threat; and
- Unacceptable information security risks are those that the ‘business’ cannot tolerate.

The key to managing information security risks in an agency is to understand the agency’s information assets, their ‘business’ significance and active involvement of the information owners in managing security of their information.

An information asset has a ‘business’ owner, ‘business’ purpose and ‘business’ value. Asset value includes both its legitimate value and its value to unauthorised users, as well as its importance to the ‘business’ and wider consequences of a security incident.
Generally an information security incident could have one or more of the following ‘business’ consequences:

- Loss of financial or material assets by agency or public - may include losses through theft or fraud, rectification costs, legal liabilities, other unbudgeted costs or lost entitlements. Losses will usually be a consequence of an information integrity failure but confidentiality or availability failures may create opportunities for loss or illegitimate gain.

- Injury or death of public or staff - could be the result of confidentiality, integrity or availability failures. If the consequences are a direct result of an ICT failure (e.g., in a real-time control system) then that system is ‘safety critical’ and appropriate methods must be applied to it.

- Inconvenience or distress to public or staff - may be a direct or secondary consequence of an event, e.g., a temporary financial loss may cause inconvenience and distress. Could arise from confidentiality, integrity or availability failures.

- Damage to standing or reputation of the Government, an agency or person, including the confidence or morale of stakeholders in a service or agency. It may be lost through confidentiality, integrity or availability failures. Treatments may include publicity campaigns to rebuild reputation or confidence and these have financial costs.

- Assist an offence or regulatory breech, hinder investigation or enforcement - may directly impact law enforcement or regulatory operations. Crime or regulatory avoidance may threaten confidentiality, integrity and availability elsewhere and have other consequences.

- Degrade the capability to deliver services internally or externally - a loss of operating capability is most likely from loss of information integrity or availability. The period required for a failure to become significant will depend on the nature of the information affected and the extent of operating dependency on it. Loss of capability may also cause regulatory non-compliance, adverse effects on stakeholders and loss of control over activities.

**Approach**

The overall objective of a management system is to ensure that current information security risks are properly identified and effectively and efficiently managed. This emphasises that information security is a management issue and a matter of information and communication technology (ICT) governance, not merely a technical problem. Deploying appropriate technical measures is necessary but insufficient to ensure continuing information security. When identifying possible threats a broad ‘business’ approach must be taken to the value of an agency’s information. This approach must consider at least agency, government and public perspectives.

Identification and assessment of the main risks enables suitable management arrangements and key policies to be established. These provide the information security management framework. Once this framework exists critical risks can be assessed more thoroughly and other risks considered. With management arrangements in place appropriate security measures, including procedures and processes, can be planned, adapted or implemented.

**Access Control**

Access control is one of the most important countermeasures in ensuring that individuals are restricted to information on a need-to-know basis and protect corporate information from unauthorised access. This concept is known as the principle of least privilege. Controls and standards for logical access should be detailed, comprehensive, and effective.

Access to NSW Health information assets will be granted based on the business need for such access. To maintain effective control over access to information, the various information asset owners should conduct a regular review of access rights.
User registration should be authorised and ensure that unique user identifier is assigned to all users. Passwords used for authentication must be kept secret and should align with appropriate password policies and standards for the agency.

No group or shared credentials and accounts are allowed for interactive login. User ID’s should be unique to each user to ensure audit and control over permissions. The information services director or their delegate may make an exception to this under appropriate circumstances.

Users are accountable for actions performed using their user ID’s.

The allocation and use of access privileges should be appropriately managed and restricted. Privileges should be assigned following the principle of least privilege access control and approved by the relevant information asset owner.

**Backup & Storage Media Handling**
Backup of data and information is required to maintain the integrity and availability of information processing and communication services.

A backup/restore strategy and procedures shall be developed for that purpose to ensure that such information is available in line with business requirements.

Storage media should be appropriately protected and managed based on the classification of information contained on that media.

Usage of personal storage media such as external storage devices is in accordance with the Use and Management of Misuse of NSW Health Communications System [PD2009_076](#).

All storage media which contains information classified “For Official Use Only or Sensitive” or higher should be disposed of securely and safely by, or on behalf of, the asset owner when the media is no longer required. This should be in compliance with the State Records Authority disposal and retention requirements.

**Business Continuity Management**
All NSW Health agencies should develop a business continuity plan for all the high risk and critical business functions. These plans should be periodically tested and regularly maintained.

**Clear Screen and Clear Desk**
Users should ensure that unattended equipment has appropriate protection. Computer screens should be locked when unattended and users should shut down or logoff the machines when not being used.

Users should maintain clean and secure storage and work areas and ensure sensitive documents are secured appropriately. Sensitive documents and information should not be left unattended.

All documents which are no longer required can be disposed of in a secure fashion. This should be in accordance with State Records Authority and any other disposal regulation or applicable policy.

All non-public documents when printed or scanned should be cleared from printers or scanners, as soon as practical, especially if they are classified as for official use only, sensitive or higher.
Confidentiality Agreements
Confidentiality or Non-Disclosure Agreements (NDA) for protection of “for official use only”, “sensitive” or higher classifications - NSW Health information should be signed before granting access to contractors and third parties.

Cryptographic Controls
Based on the risk profile of information systems appropriate cryptographic controls should be used. Cryptographic controls will be deployed and managed as directed by the regulations governing any such usage.

To maintain the security and integrity of the cryptographic keys and their underlying infrastructure, processes and procedures should be developed and documented to avoid risk exposure to information assets.

Electronic Messaging
Electronic messaging such as email can lead to accidental or deliberate disclosure of information to unauthorised users. For this purpose, the Management and Misuse of NSW Health Communications Systems (PD2009_076) Policy Directive should be adhered to by users of the email system.

Sending information that is classified as ‘sensitive’ or higher to the destinations external to the NSW Health should be encrypted using approved encryption technologies, in accordance with local laws and regulations. Communication standards such as email, FTP, telnet, Mobile SMS, instant messaging and web traffic (HTTP) are not considered secure and should be avoided.

Equipment Security
Only authorised equipment can be connected to NSW Health networks and equipment. This includes mobile devices, modems, PDAs, wireless access points, portable storage devices, CD/DVD burners and printers.

Where possible, equipment should be named and labeled as per a standard naming convention.

Fixed equipment such as servers, networking equipment and desktop computers belonging to NSW Health shall only be removed with proper authorisation. Procedures shall be used to secure equipment used outside of NSW Health premises.

All equipment should be maintained in accordance with the recommended service specification and should be disposed securely when no longer required.

Hardcopy Information
The primary focus of these guidelines is on electronic information. In practice the boundary between hard and softcopy is seldom clear-cut from a security perspective because of transformation between them. However, the inherent characteristics of the different media mean that the risks are different.

Generally, the integrity and confidentiality of hardcopy information is less vulnerable to large-scale loss but the difficulty of maintaining hardcopy “backups” can make the availability of this type of information more vulnerable to disasters. It is not the intention that agencies review and update the security measures for all their existing hardcopy information. However, improved physical security for electronic information assets will often improve the security of hardcopy information. Further guidance is given in Information Classification and Labelling Guidelines http://arp.nsw.gov.au/sites/default/files/DFS%20C2013-5%20Information%20Classification%20and%20Labelling%20Guidelines.pdf

41(17/10/13)
Human Resources/Personnel - Security
Recruitment and selection processes for personnel, contractors, vendors and contingent workers will be undertaken to ensure adequate background, reference and criminal record assessments. Adequate induction and ongoing training should be provided taking into account the sensitivity of the position, and the classification of information they have access to.

Documented processes managing the change or termination of employment will be followed.

ICT Operations
Controls shall be introduced in networks to segregate groups of information services, users and information systems based on the sensitivity of the information. NSW Health networks should provide segregation between internal and external networks.

Access to network equipment should be restricted to authorised personnel only.

All changes to the ICT environment should be approved through formal change management practices.

Information Asset
Narrowly defined, electronic information assets are the data and software; owned by, licensed, leased or entrusted to an agency. It may be at rest or in transit within an agency’s systems, or being communicated to an external party. An extended definition includes hardware, networks and intangibles such as reputation, goodwill, trust, staff morale and productivity. It may be appropriate to deal with the intangibles as possible consequences of security incidents affecting other information assets.

Each information asset has an owner or custodian within the agency. The ICT group may be the ‘owner’ of ICT infrastructure. However, business information is ‘owned’ by business units. These units are responsible for ensuring that the risks to their information assets are realistically assessed and appropriately treated in accordance with Government and agency policies, etc. The appropriate level of management must formally accept any residual risks to information assets.

Acceptable usage of information assets are broadly outlined in Use & Management of Misuse of NSW Health Communications Systems, PD2009_076.

Interconnection of business and health information systems
Adequate measures should be developed and documented to ensure only approved and authorised interconnection of the NSW Health information systems with other government agencies and any third parties.

Mobile Computing, Tele-working and Remote Access
The use of mobile computing facilities and devices should be strictly governed and controlled. All the mobile computing devices should be adequately secured utilising technologies such as encryption and pass or PIN codes. Where a device is lost or stolen the relevant Information Services department or equivalent should be notified to ensure at-risk services are suspended immediately.

Mobile users should ensure that assets like tokens/laptops/smart devices and mobile phones are not left unattended and visible in public places such as airports, cafes and the back seats of motor vehicles where the risk of theft is higher. Users working remotely should also consider their environment, and take steps to ensure that equipment and information is appropriately secured from theft or disclosure to unauthorised persons.
Tele-working uses communications technology to enable staff to work remotely from a fixed location outside of their branch site location, also known as Remote Access. Remote access should be appropriately authenticated (use of multi-factor authentication is recommended) and connectivity should be protected by approved controls.

**Monitoring and Logging**
Access of NSW Health networks and resources shall be granted to only those entities who agree on consent of monitoring. Adequate logging mechanism shall be deployed to record user activities, exceptions, and information security events. Logs should be kept for the appropriate retention period to assist in future audit and access control monitoring. These logs should be protected from any accidental or deliberate modification.

The correct setting of computer clocks is important to ensure the accuracy of audit logs, which may be required for investigations or as evidence in legal or disciplinary cases such as forensic investigations. Systems clocks shall be synchronised for accurate recording to a common time source.

**Outsourcing**
Agencies that outsource any of their electronic information operations retain ownership of and responsibility for their information assets. These agencies should maintain an inventory of the external/third-party service providers and any agency’s ISMSs must include these assets if they are in scope.

Agency policies, etc., are to define clearly the detailed security responsibilities of the agency and of the provider of outsourced services affecting the agency’s information assets. These will be reflected in contracts and service level agreements with service providers, including mechanisms to ensure they can be modified to reflect changing risks. The goal is to ensure there are no gaps or ambiguities between the ISMSs of the two parties.

Regular reviews of the outsourced services and operations shall be conducted to identify the changes or improvements to the provision of services. Such reviews should also assess ongoing access requirements and compliance to the NSW Health policies.

Generally, agencies are to require the certification of outsourced service providers’ ISMS’s to the national standard.

Agencies that have outsourced will still require their own compliant and certified ISMS, even when they have no residual ‘insourced’ ICT. Subject to risk assessment, the outsourcing agency’s ISMS Statement of Applicability will focus on the non-technical aspects of their information security environment. This will ensure that the agency has effective measures for the control of their information assets and the use of assets provided by the outsourcer.

Small agencies that function as units of larger ones or are supported by secretariats or staff from larger agencies should be treated as part of the larger agency for information security compliance and certification purposes. Their inclusion should be noted in the larger agency’s Statement of Applicability.

**Physical Security**
NSW Health agencies should ensure adequate physical security is applied on all information processing facilities. The selection and design of information processing premises should take into account the possibility of damage from fire, flood, explosion, accidents, malicious intent, and other forms of natural or man-made disasters.
In addition, all Health agencies should identify and maintain an inventory of physical locations/facilities especially where business critical/sensitive assets are hosted. Delivery and loading areas shall be controlled and, if possible, isolated from information processing facilities to avoid unauthorised access.

Access to sensitive information and information processing locations/facilities is restricted to authorised persons only. An audit trail of access should be maintained especially when access to facilities where sensitive information is located.

**Protection against Malicious code including Mobile Code**
Software and information processing facilities are vulnerable to the introduction of malicious software. Appropriate controls should be implemented to detect and prevent the introduction of malicious software, such as computer viruses, worms, Trojan horses, root-kits, spyware, and other malware. Users must not disable or interfere with these controls.

**Publicly Available Electronic Information**
Release of electronic information to the public or service provider should be approved by the relevant branch authority and/or Communications Department.

**Reporting Security Incidents & Managing Contacts**
To reduce the business consequences and to take appropriate action against all security concerns and incidents should be reported to senior management. Consistent and repeatable processes should be adopted to address security weaknesses and events across NSW Health.

The health agencies should maintain contacts with authorities and special interest groups for liaison on operational issues. Examples of some authorities and interest groups are:
- Fire and Rescue Department
- Law Enforcement authorities
- NSW Ministry of Police and Emergency Services
- State Emergency Services (SES)
- Telecommunications Service Providers
- Electricity/Energy Service Providers
- Internet Service Providers
- Digital Information Security Community of Practice
- AUSCERT
- Defense Signals Directorate
- Specialist industry forums and groups

**Separation of Development, Test and Operational Facilities**
The level of separation between production, testing and development environments needs to be considered to prevent operational impact to services. Testing and development environments should be separated from production (operational) facilities.

Use of production data in test and development environments should be carefully controlled, and where possible, sensitive information should be removed before being utilised for testing purposes.

**Security Requirements in Systems and Applications**
The design and/or implementation of new applications and systems should take into account the security requirements and objectives of the agency. These requirements should include consideration of the classification of the information to be maintained or managed by these systems or applications.
Requirements should also take into account information retention and business continuity requirements.

Changes to applications and systems should also take into consideration the information security requirements.

**Software licensing and use**
Only authorised software should be used. Any exceptions should be authorised from appropriate Information Services Director or their delegate. All software should be used in accordance with specified license or copyright terms and conditions. Unlicensed software shall not be installed for any reason.

**Technical Vulnerability Management**
Sensitive information systems should be subject to periodic vulnerability assessment. Adequate assessment and penetration testing processes should be used to identify the level of risk exposure for other Information systems due to these vulnerabilities. Vulnerabilities and system patches should be prioritised for remediation commensurate with the risk to the NSW agency’s information systems.

Technical audit and assessments reports should be considered sensitive and protected to prevent any possible misuse or exploit.

**Time Scale and Resources**
Agencies are to achieve the Government’s information security objectives as soon as possible. Progress will be monitored through a security status framework. Achievement of the objectives is marked by appropriate certified compliance with the standards and continuance of certification.

Information security, like physical security, is a routine function in which all staff has some role. Agencies are to act economically by making maximum use of their internal resources. Training may be necessary in some agencies. Agencies are also strongly encouraged to share security knowledge and resources. In some agencies external resources may be needed to advise, mentor inexperienced security staff and provide expert review of risk assessments and security plans.

**Online Financial Transaction**
All financial transactions carried out in the public domain or network should deploy the APRA and PCI-DSS recommended controls to protect the systems from fraudulent activity and unauthorised disclosures and modifications. This is in accordance with current regulatory compliance standards.
SUBPOENAS (PD2010_065)


PURPOSE

Outlines legislative provisions and procedures to be followed when the Department and public health organisations are required to produce documents in response to a subpoena.

MANDATORY REQUIREMENTS

Each NSW Health Agency must have effective systems and procedures in place in order to make sure that subpoenas issued on the agency are complied with appropriately.

IMPLEMENTATION

Roles and Responsibilities

Chief Executives must ensure that:

• The principles and requirements of this policy and attached procedures are applied, achieved and sustained.
• All staff are made aware of their obligations in relation to this Policy Directive.
• Documented procedures are in place to support the Policy Directive
• There are documented procedures in place to effectively respond to and investigate alleged breaches of this Policy Directive

Hospital Managers and Staff have responsibility to:

• Understand the legislative requirements of a Subpoena.
• Provide only the documents which are requested under the schedule of the subpoena.
• To be aware of whether any claim for privilege over the documents can be applied and take appropriate action.

2. BACKGROUND

1.1 About this document

The Department and public health organisations are often required to produce documents on subpoena. This policy directive reflects current legislation and assists public health organisations to comply with subpoenas.

1.2 Key definitions

Subpoenaed Party means the person who the subpoena is addressed to.

Issuing Party means the person who has caused the subpoena to be issued, or that person’s legal representative.

PHO means a public health organisation, or a part of a public health organisation

Patient also includes clients of PHOs.

Plaintiff is the person who has commenced the proceedings.
Defendant is the person against whom the action is brought by the Plaintiff.

Document includes
(a) any paper or other material on which there is writing,
(b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and
(c) any article or material from which sounds, images or writings are capable of being produced with or without the aid of any other article or device.

1.3 Legal and legislative framework
* Children and Young Persons (Care and Protection) Act 1998
* Coroners Act 2009
* Commonwealth Service and Execution of Process Act 1992
* Criminal Procedure Act 1986
* Evidence Act 1995
* Health Administration Act 1982
* Interpretation Act 1987
* Local Court Rules 2009
* Uniform Civil Procedure Rules 2005

3. INTRODUCTION

A subpoena is an order from a court or tribunal which directs someone that they must on a given date:
(i) produce to a court certain (existing) documents for use in legal proceedings;
(ii) attend a court on a particular date to be a witness in a hearing and give evidence; or
(iii) do both.

A subpoena can only be issued if legal proceedings have been commenced.

In some courts and tribunals subpoenas are called a “summons to produce documents”, “Orders to Produce Documents,” or “notices for non-party or third party production”. In coronial matters, subpoenas may be called “section 53 Directions.” The general principles that apply to these documents are the same.

A subpoena cannot be ignored. It must be dealt with promptly. Failure to comply with a subpoena is a serious matter. It can result in arrest and even being charged with contempt of court (failure to comply with a court order).

All PHOs should have designated officers to co-ordinate responses to subpoenas.

All subpoenas should be brought to the attention of the appropriate branch and the appropriate person within the PHO, for example the medico-legal officer or medical records officer, who should notify the chief executive officer or an executive officer of the PHO in particularly sensitive matters.

All subpoenas in matters in which a PHO, or a unit or employee of a PHO is a party must be brought to the attention of the solicitors acting on behalf of the PHO as soon as possible and certainly before any documents are forwarded to the court.
PART A - SUBPOENAS TO PRODUCE DOCUMENTS

PRELIMINARY ISSUES TO CONSIDER WHEN YOU RECEIVE A SUBPOENA

2.1 Who is the subpoena addressed to?

For a subpoena to be valid it must sufficiently identify the party in possession of the documents that have been subpoenaed. If a subpoena is defective in this regard, the PHO should promptly inform the issuing party in writing and return any conduct money provided. The letter should explain how the subpoena is defective and be copied to the Clerk or Registrar of the court.

If a subpoena is addressed, for example, to a particular hospital or community health service within a PHO only records held by that hospital or community health service need to be produced.

If a subpoena is addressed to the PHO (ie “X Area Health Service”), relevant records from all facilities within the PHO will need to be produced. If the subpoena is addressed to the PHO requesting all records relating to a particular patient, there are two options that can be considered:
(a) Contact the issuing party and ask the solicitor to nominate which facilities within the PHO they require records from. Ask for this to be confirmed in writing.
(b) Search all facilities within the PHO for records relating to the patient. If this needs to be done, a separate fee may be charged for each facility searched. The issuing party should be told that fees will be payable for each facility searched. It is not necessary for the issuing party to issue separate subpoenas each addressed to separate facilities within the PHO.

2.2 What if the PHO is a party to the proceedings?

If the subpoena lists the PHO or a unit of the PHO as a party to the proceedings, (for example as the Defendant) the subpoena should be referred to the solicitor who has been instructed to act for the PHO (or unit) in those proceedings. If no solicitor has been appointed to represent the PHO (or unit) in the proceedings, the executive officer (or delegate) of the PHO (or unit) should be notified so that a solicitor can be appointed.

If this occurs, that solicitor should be instructed to respond to the subpoena. If the PHO decides not to engage a solicitor, the subpoena should be processed in the normal way.

2.3 What if the subpoena relates to a coronial inquest?

A subpoena issued by the Coroner’s Court needs to be signed by the Coroner or Assistant Coroner issuing it and provide a date and place where the document is to be produced. The Coroner may serve a subpoena by way of facsimile and is not required to provide conduct money.

The subpoena should be referred to the solicitor who has been instructed to represent the PHO’s interests at the inquest, or in relation to the investigation. If no solicitor has been appointed, the relevant medical administrator should review the medical records of the deceased and an assessment should be made as to whether the executive officer (or delegate) of the PHO should be notified so that consideration can be given to instructing a solicitor to represent the PHO. It may be appropriate for the relevant medical administrator to also consider notifying the PHO risk manager and the Treasury Managed Fund of the incident, if they have not already been notified.

If the PHO decides to engage a solicitor that solicitor should be instructed to respond to the subpoena. If the PHO decides not to engage a solicitor, the subpoena should be processed in the normal way.

26(21/10/10)
2.4 Has the subpoena been validly issued?

In most matters, subpoenas must be issued by a court or a tribunal. This means that they should include a court stamp or signature of a court officer.

In some Local Court proceedings, Police Officers and Public Officers, rather than the Local Court can issue subpoenas. These subpoenas do not need to be stamped. For more detail on these types of subpoenas, see section 1.9.

If you are uncertain about whether a subpoena has been validly issued, contact the court in which the proceedings have been commenced and ask for confirmation.

2.5 What are the proceedings about?

From reading the subpoena you will be able to ascertain whether it is a civil or criminal matter and the identities of the parties.

In criminal matters, one of the parties will usually be the Director of Public Prosecutions, (DPP), or ‘Regina’ or ‘R’. It is also possible (but less common) that one of the parties in a criminal matter will be a government department with the power to prosecute offences, such as the Australian Taxation Office or the Environmental Protection Agency.

As well as looking at the names of the parties, subpoenas should state what court, and sometimes what division of the court the matter is to be heard in, which might help ascertain what the proceedings are about. For a description of common courts, see Appendix C.

2.6 Has the subpoena been served in time?

The subpoena should be served in sufficient time to allow the collection of documents and delivery to court. The subpoena will say on it that you need not comply with it if it is served after the due date. The due date will be not less than five working days prior to the return date (ie. the date that the documents are required by the court) unless the court that issued the subpoena has shortened the time for serving it. If the court has made an order to shorten the period in which you must comply, the subpoena will be marked accordingly.

If the subpoena is served after the due date and there is no note or endorsement on the subpoena from the court stating that the time for service has been shortened, then the subpoena need not be complied with. If the subpoena is not to be complied with, the Clerk or Registrar of the court should be contacted and advised in writing that the subpoena will not be complied with and reasons given. The issuing party (or their solicitor if named on the subpoena) should also be informed. The issuing party may then obtain a further return date, (an adjournment) so as to allow sufficient time for the documents to be collated.

Where the subpoena has been served in time, it may be possible to negotiate an extension of time within which to produce the documents with the issuing party. If the PHO has solicitors acting on its behalf in the matter, those solicitors may be able to negotiate an extension of time on behalf of the PHO. If the PHO has not engaged solicitors, the person responsible for responding to the subpoena can contact the issuing party negotiate an extension of time directly.
2.7 Does it make any difference if the subpoena is a facsimile or a photocopy?

As a general rule the original subpoena should be served to ensure it is authentic. Upon receipt of a facsimile the issuing party should be contacted. All reasonable steps should be taken to ensure that the original subpoena is served. This will protect the PHO from claims by patients that their privacy and confidentiality have been breached by the production of the documents without a valid subpoena.

However, this must be balanced against the requirements of the Uniform Civil Procedure Rules (UCPR) which applies to all NSW Courts, the NSW Industrial Relations Commission and the Dust Diseases Tribunal only. The UCPR states that despite the requirement that a subpoena must be served personally on the subpoenaed party, the subpoenaed party must comply with the requirements of a subpoena even if it has not been served personally, even if the subpoenaed party has by the last date of service for the subpoena, actual knowledge of the subpoena and its requirements.

Finally, the NSW Coroner’s Court can serve a subpoena by way of facsimile. (S105 Coroner’s Act 2009)

2.8 What is the date the subpoena must be complied with?

A failure to comply with a subpoena is a serious matter, the return date of each subpoena served on the PHO should be carefully noted as soon as it is received.

The Subpoena allows the PHO to produce documents by either attending the Court at the date, time and place specified and produce the subpoena or a copy of it and the documents or things to the court. Alternatively the PHO may deliver or send the subpoena and the documents or things requested in the schedule of the subpoena, via a courier or mail to the Registry at the address specified in the subpoena. If electing to send the documents or things via mail they should be received at the Court Registry at least 2 clear working days before the date specified in the subpoena for production.

As noted in paragraph 2.6 above, it may be possible to negotiate an extension of time within which to produce the documents with the solicitor or person who issued the subpoena. This should be done prior to the original return date.

2.9 What if the subpoena has been issued in a Local Court Criminal Matter or Children’s Court proceedings?

Police Officers and a Prosecutor who is a Public Officer have the power to issue subpoenas in the following types of Local Court proceedings:
- Local Court criminal summary and committal hearings;
- Local Court Application Notice proceedings;
- Children’s Court criminal proceedings;
- Apprehended Violence Proceedings.

Under the Criminal Procedure Act, prosecutor means the Director of Public Prosecutions or other person who institutes or is responsible for the conduct of a prosecution and includes (where the subject-matter or context allows or requires) an Australian legal practitioner representing the prosecutor.

Public Officer is defined as any of the following persons, if acting in an official capacity:
(a) an employee in the Public Service or the Police Service,
(b) an officer or employee of a statutory body representing the Crown,
Subpoenas issued by police officers or a Prosecutor who is a public officer will not have been signed and dated by a registrar of the Local Court. They will not have a court stamp. They are still valid subpoenas and should be complied with. Except where the Court otherwise makes an order, it is not necessary for a police officer or a prosecutor who is a public officer to tender conduct money when serving a subpoena.

Any other party who issues and serves a subpoena on a party is required by section 224 of the Criminal Procedure Act 1986 to tender conduct money at the time of service for the reasonable expenses of the person in complying with the subpoena.

2.10 What if an interstate court issued the subpoena?

It is common for some hospitals in NSW to receive subpoenas issued by interstate courts. For example, hospitals in northern NSW often receive subpoenas issued by courts in Queensland.

The Commonwealth Service and Execution of Process Act allows for interstate subpoenas to be validly served in NSW. The general rule is that subpoenas served interstate should be served 14 days prior to the return date. This time can be shortened by the court that issues the subpoena, if a shorter time period is necessary in the interests of justice and there will be enough time for the subpoenaed party to comply without serious hardship or inconvenience.

PHOs are entitled to request that the original subpoena (or a copy of the original), rather than a faxed copy of the subpoena is served. They are also entitled to the usual amount of conduct money.

4. CONDUCT MONEY

3.1 What is conduct money?

Subpoena to Give Evidence

When a subpoena to give evidence is served on a person, the person named is not required to attend court unless conduct money has been handed or tendered to the named person a reasonable time before the date on which attendance is required. This means “an amount sufficient to meet the reasonable expenses” of the person named is paid or tendered at the time of service.

If there is a dispute about conduct money the named person should contact the person who has issued the subpoena and negotiate further conduct money. If no agreement has been reached, but some conduct money has been provided at the time the subpoena was served, the person should still attend the court on the date specified in the subpoena, but advise the court that the conduct money provided is not reasonable and seek an Order from the court that additional conduct money be paid by the person who issued the subpoena.
Subpoena to Produce Documents

When a subpoena is served on a person or corporation, the person named is not required to attend or produce any document or thing under the subpoena unless conduct money has been paid. This means an amount sufficient to meet the ‘reasonable expenses’ of the person named is paid or tendered at the time of service.

The court in the event of a dispute will determine what is ‘reasonable’ conduct money. In reaching a decision the court is likely to take into account NSW Health policy when determining what is reasonable.

The rates to be applied for servicing a subpoena are advised annually by NSW Health in an information bulletin titled *Health records and medical/clinical reports – rates*.

Even if original documents are being produced to court, the photocopying charge will still apply. It will cover the cost of copying the records so that the PHO can maintain a copy whilst the originals are removed.

If a subpoena asks for records relating to more than one patient, the PHO has the discretion to charge separate fees for each patient.

If a subpoena requires searches for records to be undertaken at more than one facility of the PHO, the PHO has the discretion to charge separate fees for each facility searched.

For subpoenas issued by Police Officers and Prosecutors who are Public Officers (as discussed in section 1.9), conduct money does not need to be paid.

There is also no requirement for the Victims Compensation Tribunal or the NSW Coroner’s Court to tender conduct money if they are the issuing party.

3.2 What if the conduct money is inadequate?

If the conduct money is inadequate, the PHO representative should:

(i) Call the issuing party to inform him or her of your requirements.

(ii) If there is still a refusal to provide conduct money, or you consider it insufficient, contact the issuing party and attempt to negotiate some compromise on the amount.

(ii) In the event that conduct money was not provided by the issuing party and/or the amount of conduct money is considered to be ‘unreasonable’ the PHO or solicitor acting on behalf of the PHO should advise the Court on the day the documents are produced to the Court and request the Court make an order to the issuing party that they pay conduct money and the amount of any reasonable loss or expense incurred in complying with the subpoena.

3.3 What if too much conduct money has been provided?

The PHO is entitled to retain the minimum amount of conduct money.

If more than the minimum amount is provided and the cost of producing the records is less than the amount provided, the records should be copied and delivered to the court and the excess conduct money should be refunded to the issuing party.
3.4 Are there any special procedures with respect to conduct money if the subpoena involves a lot of work?

If the record is lengthy, or will require a number of files to be searched or otherwise take up staff time so that it will cost more than the amount provided to produce the record, the issuing party should be contacted and advised of the estimated cost of compliance including staff time in searching and locating the relevant records, photocopy costs and mail or courier fees. Such contact may be by telephone but should be confirmed in writing.

In the event that the actual costs exceed the estimate, a further account should be raised against the issuing party.

If compliance with a subpoena involves a significant amount of work, consideration should be given to discussing with the issuing party whether they are prepared to narrow the scope of the subpoena. (See 5.1 of this Policy Directive)

3.5 Can the PHO keep the conduct money if it has no documents to produce?

If the PHO receives a subpoena, conducts searches for the records requested, and has no records to produce, it may retain the conduct money to cover the cost of conducting the searches, and the cost of writing to the Court explaining that it has no records to produce.

If the records have been lost, misplaced or destroyed, then the court should be advised that there are no records to be produced and the conduct money should be refunded.

4. WHAT DOCUMENTS HAVE BEEN REQUESTED IN THE SUBPOENA?

4.1 How do I determine the scope of the subpoena?

The subpoena must be read very carefully to ascertain its breadth. This is critical because the PHO is under an obligation to produce only those documents covered by the description set out in the subpoena. A subpoena may call for the production of health and/or non-health related records. The applicable procedures are the same.

The next task is to undertake appropriate inquiries to determine whether the PHO is in possession of any records which fall within the scope of the subpoena, the likely location of the records and the number of files that may have to be searched.

Where files are located containing documents which fall within the scope of the subpoena, care should be taken to ensure that only those documents which fall within the subpoena are collated for the purposes of copying and production.

Documents that do not come within the scope of the subpoena should be removed from the medical record before it is copied and documents are sent to court. A clear record of which documents have and have not been produced and a copy of the subpoena should be kept by the PHO. This may involve keeping an additional copy of the records that were sent to the Court, if the records that were sent are a small extract from the medical record.

If the subpoena requests “any records” or “all records”, this includes the entire file relating to the patient, including correspondence and x-rays, even if they are stored separately to the medical record. The definition of ‘document’ captures an electronic medical record or information contained on a computer file, such as photos and/or video.

26(21/10/10)
Sometimes there may be letters from specialists who state that the letter should not be released to a third party without the consent of the author, contained within the clinical record of a patient whose records have been subpoenaed. If the letters are included in the clinical record which has requested in the schedule of the subpoena, the documents must be sent to Court. There is no need to obtain the permission of the specialist.

Only material specifically referred to in the subpoena should be collated.

26(21/10/10)
Examples

Scenario: A patient, Sara X, attends Chester Public Hospital on 28/9/2000 after being sexually assaulted. There are several later attendances to the hospital over the next three months. Some of these admissions being for surgical procedures unrelated to the sexual assault.

Sara also visits the Chesterfield Sexual Assault Service, (a separate facility of the Chester Area Health Service, located in Main St, Chester) in relation to the sexual assault on 30/9/2000, and there are several sessions with a sexual assault counsellor Jenny K, after this initial presentation.

Some months later, the defence in a criminal trial decide to issue a subpoena to the Chester Area Health Service, seeking access to documents held on Sara X. Some of the requests they consider putting in the subpoena include:

“All notes relating to the visit by Sara X to the Chester Hospital on 28/7/2000”

The Hospital holds no records relating to an admission of Sara X on 28/7/2000. The hospital is not required to, nor should it volunteer any information in relation to other visits Sara X may have made to the Hospital.

“All notes of the visit by Sara X to the Chester Hospital on 28/9/2000”

The only records relevant to the subpoena are the actual notes which relate to the visit on 28/9/2000. No reference is made to other visits Sara X made to the Hospital, or the Community Health Centre at later dates, so these documents are not covered by the subpoena.

“All notes relating to the visit by Sara X to the Chester Hospital on 28/9/2000 or any time thereafter”

All notes included on Hospital records are covered, including notes on the unrelated surgical procedures. The subpoena does not, however, cover any records generated by the SAS. The SAS is a separate facility of the Area Health Service, and is located outside the hospital campus. As such, the AHS is not required to, nor should it volunteer any information on visits made by Sara X to the Chesterfield Sexual Assault Service. Had the SAS been located within the hospital campus, the result in this case would have been different.

“All notes and counselling records prepared by counsellor Mary G in relation to any counselling sessions conducted with Sara X.”

The subpoena does not identify the records of a particular facility. As such, and as the subpoena is addressed directly to the Area Health Service, all AHS records should be checked, including those held by the SAS. Note, however, that the subpoena names a specific counsellor, and only requests her notes. Mary G did not see Sara X, so the AHS does not hold any records covered by the subpoena. The AHS is not obliged to inform the court that another counsellor saw Sara X.

“Any records, notes reports or any other written material held by any facility of the Chesterfield Area Health Service, including but not limited to the facilities at the Chester Hospital and the Chesterfield Sexual Assault Service relating to Sara X and dealing with an alleged sexual assault on 28/9/2000.

This is a more usual approach. The terms of the subpoena are broad, and clearly covers all the relevant documents held by the AHS on Sara X. The only documents not covered would be those dealing with the unrelated surgical procedures. Note however, the reference to “Chesterfield Area Health Service”, when the actual legal entity is the “Chester Area Health Service”. If the subpoena also wrongly names the AHS, arguments could be raised against complying with it.
4.2 What if the subpoena captures reports to Community Services (Department of Human Services)

Under section 29, Children and Young Persons (Care and Protection) Act 1988 risk of harm reports made to the Director-General, Human Services, are not produced in response to a subpoena, summons or notice to produce (other than care proceedings in the Children’s Court, or any appeal arising from those care proceedings).

Section 27(A) (7) of the Children and Young Persons (Care and Protection) Act 1988 provides that a referral by a mandatory reporter to their relevant Child Wellbeing Unit is also protected from production under Section 29 of the Act.

It is possible for a court or other body before which proceedings relating to the report are conducted to grant leave to a party or a witness to disclose the identity of the mandatory reporter if the court or other body is satisfied that the evidence is of critical importance in the proceedings and that failure to admit the evidence would prejudice the proper administration of justice. If a court or other body grants leave for this to occur reasons must be provided as to why leave is granted, and the court or body must ensure that the holder of the report is informed that evidence as to the identity of the person who made the report, or from which the identity of that person could be deduced, has been disclosed.

4.3 What if the subpoena captures sensitive records?

For medical records, the prime criterion of sensitivity is whether the patient would consider the data sensitive. Examples of sensitive records include: sexual assault, drug and alcohol, HIV/AIDS, domestic violence, genetic information, transgender status, mental health and records of children considered to be at risk and records containing information on other persons. Records relating to people or patients who are not directly involved in the legal proceedings can also be classified as sensitive. Examples include where genetic counselling or medical records contain information relating to persons other than the patient.

The fact that records are sensitive does not itself mean that privilege can be claimed over them, or that they do not need to be produced. If a subpoena requests sensitive records and there are no grounds for challenging the subpoena or claiming privilege (see section 5), the procedure set out in section 6.4 may be followed.

4.4 What if there are no documents?

If there are no records, a letter should be written to the court advising the court that there are no records to be produced. This letter should be copied to the issuing party. The conduct money may be retained.

However, if there are no records but there is evidence that there were relevant records that have been lost, misplaced or destroyed, then the court should be advised that there are no records to be produced and the conduct money should be refunded.

A file note should be created outlining efforts made to find the relevant records. If records were destroyed in accordance with a disposal authority approved under the State Records Act 1998, a copy of the disposal authorisation should be included and the relevant disposal category cited.
5. ON WHAT GROUNDS CAN A SUBPOENA BE CHALLENGED?

5.1 The subpoena is too wide and/or oppressive

A subpoena may be set aside:

• where its terms are so wide and insufficiently precise that compliance (i.e. collation and production of documents) would impose an onerous obligation on the PHO; or
• where a subpoena is used for the purpose of “fishing” for information which a party hopes, but does not reasonably expect is in existence. This may apply particularly to broad requests for protocols and investigation documents.

Subpoenas which request the production of medical records relating to persons who are not parties to the proceedings, or which request records relating to multiple, unrelated patients may be an abuse of process or oppressive.

The subpoena may also be oppressive if it is not clear what documents are sought by a subpoena, or if it appears that the documents sought will have little, or no relevance to issues in the proceedings. The scope of a subpoena can be narrowed in two ways:

(i) by agreement with the issuing party; and
(ii) by successfully challenging the subpoena in court. (See section 6 of this Policy Directive)

If you believe that the scope of the subpoena is too broad and calls for documents to be produced which are demonstrably not relevant to the proceedings, an option available is to approach the issuing party with a view to seeking a compromise on the range of documents that are required. If a compromise is reached, written confirmation should be obtained from the issuing party.

If the issuing party refuses to negotiate the scope of the subpoena as is suggested above and you still wish to challenge a subpoena on the basis that it is an abuse of process or oppressive, you should consult your immediate manager, who may need to consult the PHO Executive, and obtain advice from the PHO’s solicitors if appropriate.

You should be aware that where a subpoena is challenged unsuccessfully, the PHO may be liable to pay the court costs (associated with argument over the subpoena) of the party which issued the subpoena.

5.2 The subpoena is an abuse of process or lacks a legitimate forensic purpose

A subpoena that has been issued for reasons other than for the purpose of obtaining relevant evidence for the proceedings may be set aside.

In criminal matters, an accused person must have an objective basis for demonstrating a real possibility that the subpoenaed material would assist his or her defence. Only documents that have a legitimate forensic purpose need to be produced. Legal advice is recommended in order to argue that records have no legitimate forensic purpose.

5.3 Public interest immunity

Where the public interest that would be served by withholding certain documents is so strong that it overrides the public interest in the following of due process, a subpoena may be set aside. A challenge on this basis applies only to very limited types of documents and will usually only be available to documents which may affect national security, the workings of the NSW Cabinet or some other extraordinary public interest.
NB If you wish to challenge a subpoena on a public interest immunity basis, you should contact the Legal Branch on telephone (02) 9391 9606.

5.4 Client legal privilege

Client legal privilege can protect certain documents from being disclosed in court proceedings. This privilege applies to confidential communications between a client and another person, or between a lawyer acting for the client and another person, if the communication was for the dominant purpose of the client being provided with professional legal services relating to a court proceedings or an anticipated or pending court proceedings in which the client is or may be, or was or might have been, a party.

If a claim for legal professional privilege is contested, evidence will be required from the author of the documents and/or the person who requested that the document be created, that it meets this test; and/or other investigations will need to be undertaken as to the document’s dominant purpose. If a PHO wishes to claim client legal privilege over documents it has created for legal proceedings, the lawyer that the PHO instructs in those proceedings will be responsible for claiming the privilege.

5.5 Qualified Privilege

NSW qualified privilege legislation (Division 6B of the Health Administration Act) applies to approved quality assurance committees. It operates to prevent committee members and documents produced by the committee from being used in any legal proceedings.

Qualified privilege applies to records that are under the control of an approved quality assurance committee, or a member of an approved quality assurance committee and were created at the request of or solely for the purpose of the committee. If documents created by an approved quality assurance committee but have been disclosed to other units of the PHO, the privilege may be waived, however, if the committee has not waived privilege over the documents and a subpoena is received for these records, the PHO should write to the party who issued the subpoena and to the court stating that the records are protected by qualified privilege legislation and will not be produced.

If records relating to quality assurance activities and morbidity and mortality case reviews or committees are requested, the PHO Executive should be contacted to confirm whether the records are records created by an approved quality assurance committee.

In addition to approved quality assurance committees, the Minister has approved the following committees under section 23 of Health Administration Act 1982, to be specially approved committees:
- Special Committee Investigating Deaths Under Anesthesia
- Special Committee Investigating Deaths Associated with Surgery
- Maternal and Perinatal Committee
- Mental Health Sentinel Events Review Committee

These committees do not need to comply with subpoenas. If one of these committees is subpoenaed, it should not comply with the subpoena unless it has the approval of the Minister to do so, or the consent of the person from whom the information was obtained. A letter should be sent to the solicitor issuing the subpoena explaining the committee’s special status and stating that records will not be produced.
5.6 Sexual Assault Communications Privilege

Records relating to the counselling of victims of sexual assault (protected confidences) may be protected from production if they are covered by sexual assault communications privilege. Sexual assault communications privilege can only be claimed in criminal proceedings, including proceedings relating to Apprehended Violence Orders (AVOs) in NSW Courts. The sexual assault communications privilege may also be claimed in NSW Courts in civil proceedings, in limited circumstances, usually when the privilege was granted in criminal proceedings. The privilege cannot be claimed in federal courts, such as the Family Court.

PHOs have an obligation to their patients to take steps to protect confidential sexual assault counselling communications from being disclosed where disclosure would harm the patient.

See Appendix A for further detail about the privilege.

5.7 Professional Confidential Relationship Privilege

This privilege may apply to a communication made by a person, in confidence, to another person in the course of a relationship in which the confidant was acting in a professional capacity and where the confidant was under an express or implied obligation not to disclose the contents of the communication. The privilege can only be claimed in NSW courts. The privilege cannot be claimed in federal courts, such as the Family Court.

A protected confidence may include a communication between a health professional and a patient. The definition potentially covers many aspects of clinical records. See Appendix B for further detail about the privilege.

6. PROCEDURES FOR RESPONDING TO A SUBPOENA

6.1 Should I notify anyone of the subpoena?

All subpoenas should be brought to the attention of the relevant person or branch within the PHO to whom the subpoena relates, for example the medical records department or, to medico-legal person or risk manager if the PHO has one. Subpoenas should also be brought to the attention of the CEO of the PHO if the subpoena requests sensitive information. In addition, the senior health care provider and the treating health care provider are to be advised (where possible) of subpoenas for health records, even if neither they nor the PHO are party to the proceedings.

Where a patient whose health record has been subpoenaed is not named on the subpoena as a party to the proceedings before the court, he or she should be notified by the PHO that the subpoena has been received and advised of the “return date” on the subpoena (i.e. the date the documents must be provided to the court) in sufficient time to allow the patient to arrange to attend the court if the patient wishes. Telephoning the patient, or writing to the patient’s last known address is sufficient. A note should be made outlining measures taken to advise the patient of the subpoena.

NB If you have concerns about the scope of a subpoena you should consult your immediate manager who may need to consult the PHO Executive and obtain advice from the PHO’s solicitors if appropriate.
6.2 Are photocopies sufficient or must originals be produced?

Documents can be provided to the Court by way of:
(a) a photocopy
(b) in PDF format on a CD-ROM or,
(c) in any other electronic form that the issuing party has indicated will be acceptable.

Unless a subpoena specifically requires the production of the original document, photocopies of the records or a CD-ROM should be provided. If the PHO is required to produce originals, it should ensure that a complete copy of the records remains with the PHO to ensure continuity of care.

6.3 What is the procedure for delivering subpoenaed documents to the court?

Documents produced under NSW subpoenas must be produced to the court at the address referred to in the subpoena and not to the issuing party. They should not be provided to the person who serves the subpoena, even if the matter is ‘urgent’.

Documents produced on subpoena should be delivered to the Registrar or Clerk of the court in question. They should be:
(i) sealed in an envelope;
(ii) the PHO should allocate a unique number to the envelope from a register held by the PHO in which the name of the patient, the court to which the record is sent and the date of the hearing should be entered against the number;
(iii) a copy of the subpoena should be secured inside the envelope. (If the Court requires the original subpoena, the PHO should make a copy for its records.);
(iv) the PHO should keep a copy of the subpoena (and any original documents being sent to court with the subpoena); and
(v) the envelope should be delivered by hand by an employee of the PHO, registered post or courier not less than 2 clear working days before the return date specified in the subpoena.

On delivery, if practicable, a receipt should be obtained from the court which indicates the number of the record, the date the record was received at the court, the name of the court and the signature of the court official receiving the record.

If the PHO is a party to the proceedings in which the subpoena has been issued, or has sought legal advice in relation to the subpoena, the documents collated in response to the subpoena should be forwarded to the solicitor who is acting on behalf of the PHO. That solicitor will review the documents and arrange for them to be forwarded to the court on behalf of the PHO.

6.4 Can any additional precautions be taken for sensitive records?

A subpoena cannot be challenged merely because it requests sensitive records.

When responding to a subpoena that requests sensitive information, (and where there are no grounds for challenging the subpoena or claiming privilege over the documents), the following steps should be followed.

a. Contact the issuing party and ascertain why the information is required. It may be possible to negotiate with the issuing party to either exclude these records from production, or produce copies of the records with the names of the affected people deleted.

26(21/10/10)
b. Request that the court limit access to the documents to certain people. For example, courts can give orders limiting access to the parties’ legal representatives and independent experts on the condition that they give confidentiality undertakings. The responsibility for raising this issue rests with the subpoenaed party. A letter should be sent to the court setting out the concerns arising if the documents are provided in open court. The letter should not contain any sensitive information itself.

c. If sensitive records are to be produced, they could be placed in a separate envelope marked “sensitive”, however, this is no guarantee that the Court will treat these records differently.

7. PROCEDURES FOR CHALLENGING A SUBPOENA IN COURT

7.1 Subpoenas for records that are privileged (other than sexual assault and confidential communications privilege)

A solicitor’s assistance will be necessary depending on the complexity of the case.

If a PHO decides to challenge a subpoena without legal representation the following procedures will apply:

(i) Follow 6.1 - should I notify anyone of the subpoena
(ii) Follow 6.3 - procedure for delivering subpoenaed documents to the court
(iii) Place the records which are to be produced in a sealed envelope. Place any records over which a claim for privilege will be made in a separate envelope and mark the word “privileged” on the envelope.
(iv) Attach a copy of the subpoena to the outside of each envelope.
(v) Place the envelope(s) marked “privileged” inside another envelope and send to the court with a letter to the Registrar setting out:
(a) what type of privilege is claimed; and
(b) the reasons supporting the claim for privilege.
(vi) Consider attending in person on the return date, or instructing the PHO’s solicitor to attend, in order to argue in support of the claim for privilege.

7.2 Steps to follow when a subpoena for sexual assault records or confidential communications records is received

7.2.1 Determine whether either privilege can be claimed in the proceedings

See Appendix A for a discussion of the types of proceedings in which sexual assault communications privilege can be claimed.

See Appendix B for a discussion of the types of proceedings in which it is possible to claim professional confidential relationship privilege.

7.2.2 Family Court subpoenas

Sexual assault communications privilege and professional confidential relationship privilege are created by NSW legislation. This means that they only apply in NSW courts. They do not apply in federal courts, such as the Family Court.

If you receive a Family Court subpoena requesting a patient’s sexual assault counselling communications records and the subpoena was not issued by the patient or the patient’s legal representative, and you are concerned about producing the records, although privilege cannot be claimed, you could consider treating the records as ‘sensitive records’ (see section 6.4).
Keep in mind that sexual assault communications records relating to children can be important evidence and highly relevant for the Family Court to have available when determining parenting orders for the care of a child.

7.2.3 Protected Confidence Notice

A protected confidence means a counselling communication that is made by a victim of a sexual assault. If the issuing party wants a document containing a protected confidence produced, they must give notice to the patient that production has been sought. Notice should also be given to the other parties. This is a requirement of the Criminal Procedure Act 1986.

This means that if the issuing party is aware that the documents sought contain protected confidences, the patient should have been made be aware that they can seek to appear in court on the return date to challenge the subpoena.

7.2.4 Determine whether the PHO should claim privilege on behalf of the patient

The following issues should be considered when deciding if the PHO should claim either sexual assault communications privilege or professional confidential relationships privilege:

- The views of the patient and whether the patient proposes to claim either privilege themselves;
- Whether harm is likely to occur to the patient if the material is disclosed.

7.2.5 The views of the patient

Sexual assault communications privilege and professional confidential relationships privilege belong to the patient.

When a subpoena requesting sexual assault counselling records or records of a protected confidence is received the PHO should contact the patient and inform them that the subpoena has been served. The PHO should then:

(a) explain nature of the privilege which may apply;
(b) ask the patient whether s/he will consent to waive the privilege. If so, a consent to waive the privilege should be obtained from the patient in writing;
(c) if the patient does not want to waive the privilege, advise the patient of the steps (if applicable) that the PHO is taking to claim the privilege on the patient’s behalf.

If the patient chooses to waive the privilege, the documents must be produced to the court.

Reasonable attempts should be made to contact the patient if a subpoena for sexual assault counselling records is received. What constitutes reasonable steps will vary depending on the individual circumstances of the patient. If the file shows that there is a potential that the patient will suffer serious harm if the records are disclosed, taking reasonable steps to locate the patient may involve doing more than attempting to telephone the patient or writing a letter, such as contacting the police for assistance. If the patient cannot be contacted, the PHO should write a letter to the court explaining this, and noting that the records contain confidential counselling material. This letter should be sent to the court with the records.

In proceedings where the patient is represented, the PHO will meet its obligation by referring the matter to the patient’s legal representative.
7.2.6 Whether harm is likely to occur to the patient of the material is disclosed

The treating counsellor (or, if that person is not available, another qualified professional) should review the file and form a preliminary view as to whether harm is likely to occur to the patient from disclosure.

This preliminary view will need to later be supported by the preparation of a harm statement or an affidavit. A harm statement or affidavit made by a professional with appropriate qualifications is an essential element to claiming the privilege. Before a decision is made to claim privilege, the professional/s involved should be comfortable they can adequately prepare a harm statement or affidavit for the court. If a decision is made to claim privilege, the most appropriate way to ensure the claim is argued effectively is for the PHO to obtain legal representation.

7.2.7 Instructions to be given to lawyers engaged by the PHO to argue a privilege claim

If the PHO decides to engage lawyers to argue a claim for privilege, a letter of instruction setting out the following should be sent to the lawyers. The letter should include the following information:

- When the subpoena is returnable (attach a copy of the subpoena);
- The nature of the documents held;
- The patient’s views on disclosure;
  - If the patient does not wish to waive the privilege, an indication that the PHO is of the view that harm will occur to the patient if the documents are released;
- The name and contact details of the other party/parties to the proceedings (or their legal representatives). If the matter is a criminal matter, the name and contact details for the police officer in charge of the criminal investigation;
- The name of appropriate contact officer at the PHO;
- The date that the hearing starts. This information can be obtained from the issuing party. The date that the hearing starts will usually be a date some time after the return date for the subpoena. This allows time for the return date for the subpoena to be adjourned by the court if the PHO wishes to put forward arguments objecting to disclosure. Where the subpoena is returnable at the start of the trial it is more difficult to negotiate additional time.
- Whether the documents have been subpoenaed before. This is important, as if the records were previously released, it will be more difficult to argue for their non-release in response to a later subpoena. Alternatively, the court may have prevented disclosure in earlier cases and made comments which may assist in arguing for non-disclosure in relation to the later subpoena.

7.2.8 The harm statement or affidavit

In order to support a claim for privilege, it is necessary for the patient or the PHO to provide the court with evidence about the nature and extent of the harm that the patient would suffer if the documents were disclosed. However, specific details about the patient should not be provided – to do this would negate the purpose for the privilege claim.

If the PHO has instructed a lawyer to argue the privilege, the lawyer will advise staff on whether affidavits, or harm statements, or a combination of both, are required, and will assist staff in preparing these documents.

If the PHO does not instruct a lawyer, it may consider asking staff to draft a harm statement. When drafting harm statements, keep in mind that they are likely to be read by all parties to the proceedings.
A professional with appropriate qualifications should prepare a harm statement. It should include:

(a) the qualifications and experience of the professional preparing the statement;
(b) the employed position of the professional at the time of preparing the statement;
(c) if the person preparing the statement is the treating counsellor, the statement should state this, and explain for how long the counselling relationship has been established;
(d) if the person is not the treating counsellor, the statement should state that fact. It should explain why the treating counsellor is not available to make the statement and state that the person who is preparing the statement has read all the relevant counselling notes;
(e) a statement that the counselling notes that have been subpoenaed were made in confidence and relate to the impact of alleged sexual assaults.
(f) a statement to the effect that the symptoms, concerns, and worries of the patient would be seriously aggravated if the contents of the documents were disclosed.
(g) if applicable, a statement to the effect that the patient expected the counselling records to remain confidential.
(h) a statement that the writer of the harm statement claims sexual assault communications privilege in respect of the records.

8. WHAT HAPPENS AFTER THE DOCUMENTS HAVE BEEN PRODUCED?

8.1 Who can see the documents after they have been produced to the court?

After documents have been produced to court, the court will make orders about who may access them. Usually, the parties to the proceedings and their legal representatives will be granted access to the documents.

If a patient’s medical record has been produced to court, and the patient is also a party to the proceedings, his or her legal representative may ask for ‘first access.’ This means that the patient’s legal representative can inspect the records before the other parties, in order to determine whether a privilege claim can be made to limit further access to the documents.

The question of who may have access, whether a party will have first access, or whether any other special access orders will be made, is often determined on the return date.

The following courts determine access issues in particular ways.

District Court – civil claims

The issuing party in a District Court civil matter is required to include a ‘proposed access order” on the subpoena. This is an order for access that the issuing party thinks is appropriate. For example, the proposed access order may be “plaintiff to have first access to the documents for 7 days”. This type of access order may be appropriate if the plaintiff was the patient whose records had been produced, as it would allow the plaintiff/patient’s solicitor to view the records and determine whether any claims for privilege should be made, prior to the other parties accessing the records.

If the PHO wishes to object to the proposed access order (for example, if a privilege is being claimed), the PHO should first notify the issuing party to attempt to negotiate an agreement as to what the proposed access order should be. If an agreement cannot be reached, a representative of the PHO, or the PHO’s legal representative will be required to appear at Court on the return date and argue the question before the presiding registrar.

26(21/10/10)
In any District Court civil case where there is no appearance at the return date, the proposed access order will be made automatically by default.

**Supreme Court**

If a general access order allowing all parties access to the subpoenaed documents at the same time is not objected to, the Supreme Court will automatically make a default order for general access to the documents at the return date.

If PHO wishes to object to a general access order being made (for example, by claiming a privilege), it should notify the party that issued the subpoena and attend court, or arrange for a lawyer to attend court, on the return date and inform the Registrar of its position.

**8.2 What if I receive a request for permission to ‘uplift’ documents?**

Courts have photocopying facilities available on site; however, occasionally parties to litigation seek permission from the court to uplift, or temporarily remove the documents from the court to arrange for them to be copied externally, or reviewed in a more convenient setting. A party may request to uplift x-rays or scans which have been provided to the Court in order to obtain a copy to provide to a medical expert for an opinion. The documents are then returned to the court.

As the documents still belong to the subpoenaed party while they are at the court, some courts seek the consent of the subpoenaed party before they will allow the documents to be uplifted.

If a PHO is asked to consent to a party uplifting records, it is recommended that:

- If original documents have been produced, consent to uplift should generally be refused;
- If copies have been produced, consent can be granted on the basis that the documents do not leave the custody of the parties’ legal representatives and/or the medical or other professional expert whom the parties’ legal representatives have engaged to provide an expert opinion and the document/s are returned to the court in the same condition.

If a court allows documents to be uplifted, it will normally require the legal representative uplifting them to sign a receipt, accepting responsibility for the records whilst they are in the legal representative’s possession.

**8.3 Are subpoenaed documents returned?**

Original documents should always be returned to the PHO.

Subpoenaed documents that are copies should be returned by the court at the conclusion of the matter, unless the PHO has informed the court that the documents may be shredded. If you have any queries contact the Clerk or Registrar of the court.

**9. REQUESTS FOR INFORMATION UNDER CHAPTER 16A OF THE CHILDREN AND YOUNG PERSONS (CARE AND PROTECTION) ACT**

Chapter 16A of the *Children and Young Persons (Care and Protection) Act* provides a mechanism for NSW Health staff exchange information with other human services and justice agencies, to ensure the safety, welfare and wellbeing of children and young people in NSW.

26(21/10/10)
These changes have been introduced under *Keep Them Safe - A shared approach to child wellbeing 2009 - 2014*, the NSW Government’s response to the Report of the Special Commission of the Inquiry into Child Protection Services in NSW. The legislation introduced as part of *Keep Them Safe* is intended to free up information exchange between certain human service and justice agencies including NSW Health, to facilitate improved interagency collaboration.

10. REQUESTS FOR INFORMATION FROM COMMUNITY SERVICES

Pursuant to s248 of the *Children & Young Persons (Care and Protection) Act*, PHOs may be required to provide information to Community Services. Section 248 is designed to allow an exchange of information about the safety, welfare and wellbeing of children and young people between an agency and Community Services.

Information can only be provided in response to a s248 request if it relates to the safety, welfare and well being of a particular child or young person.

Once records have been provided to Community Services in answer to a s248 request, Community Services may use them as evidence in legal proceedings. If records are to be used in legal proceedings, they are usually annexed to an affidavit (a sworn statement) prepared by Community Services staff in accordance with arrangements agreed upon between NSW Health and Community Services. Community Services staff are not to attach confidential information provided in response to a s248 requests to affidavits without the consent of the person who provided the information.

If the document that Community Services wish to attach to their affidavit is particularly sensitive, the PHO should refuse to consent, (unless the patient’s guardian does not object) and ask Community Services to issue a subpoena seeking a copy of the document instead. Once a subpoena has been served, the PHO may consider whether production can be opposed, or whether any type of privilege can be claimed in respect of the document.

11. PRIVACY

Compliance with a subpoena is required by law. Complying with a subpoena will not breach the PHOs obligations under the *Health Records Information Privacy Act 2002*. For further information about privacy obligations, see [NSW Privacy Manual for Health Information](#).

**PART B - SUBPOENAS TO GIVE EVIDENCE**

1. A subpoena to give evidence is addressed to a specific individual. It will indicate the time and place the person will be required to give evidence as a witness.

2. A person who receives a subpoena should report that fact to his/her administrator/supervisor as soon as practicable.
   A person who has been subpoenaed should contact the solicitor who requested the issue of the subpoena to:
   a. confirm that their attendance is still required;
   b. to obtain some better guidance as to when he or she might be required to give evidence; and
   c. confirm that if the solicitor who has issued the subpoena requires the witness to remain on ‘standby’ rather than come to Court, sufficient notice will be provided if the witness is to be called to Court so that alternative work arrangements can be made.

3. If a solicitor indicates that a person’s attendance is not required, this should be confirmed in writing.

26(21/10/10)
4. Witnesses are entitled to receive conduct money and reasonable expenses from the solicitor or person who has issued the subpoena. Conduct money means a sum of money, or its equivalent, such as pre paid travel, sufficient to meet the reasonable expenses incurred by the subpoenaed party in attending court as required by the subpoena, and returning from court after attending.

For medical officers, the AMA has published guidelines relating to reasonable expenses.
Appendix A

Sexual Assault Communications Privilege

The Sexual Assault Communications Privilege is set out in the *Criminal Procedure Act 1986*. This privilege allows courts, to exclude evidence which would disclose confidential communications made in the course of a professional or sexual assault counselling, relationship. “Professional” is not defined in the Act but would include a health care worker, social worker, counsellor or youth worker.

The Act not only restricts the use of material as evidence in court, it also places restrictions on who can have access to documents which have been requested under a subpoena. The onus is on the person requesting the documents to show why they should have access to the victim’s counselling notes.

The privilege does not apply to federal courts, for example the Family Court.

1. **What is a protected confidence for the purpose of claiming sexual assault communications privilege?**

A protected confidence means a counselling communication that is made by, a victim or alleged victim of a sexual assault offence.

A counselling communication is a protected confidence even if:

(a) it was made before the relevant sexual assault offence occurred, or is alleged to have occurred, or
(b) was not made in connection with a sexual assault offence or alleged sexual assault offence.

This means that the privilege could apply to any counselling communications, and not just to counselling following a sexual assault. (For example, the privilege could apply to drug and alcohol counselling provided prior to the sexual assault taking place.)

A counselling communication may be made in confidence even if it was made in the presence of a third party if the third party was present to facilitate communication or to otherwise further the counselling process. For example a counselling communication will be protected by the privilege in cases where a parent, carer or other supportive person was present during the counselling process to facilitate communication between the counselled person and the counsellor.

A person counsell’s another person if the person has undertaken training or study or has experience that is relevant to the process of counselling persons who have suffered harm and the person

- listens to and gives verbal or other support or encouragement to the other person, or
- advises, gives therapy to or treats the other person whether or not for fee or reward.

2. **Can the sexual assault communications privilege be claimed in all types of court proceedings?**

The sexual assault communications privilege can be claimed in criminal proceedings, including proceedings relating to Apprehended Violence Orders (AVOs).
The sexual assault communications privilege can also be claimed in NSW civil proceedings, but only if:
(a) substantially the same acts are in issue in the civil proceedings as were in issue in relation to previous criminal proceedings; and
(b) the evidence was found to be privileged in the previous criminal proceedings.

The privilege cannot be claimed in federal courts, such as the Family Court.

3. **Principles applying to sexual assault subpoenas**

(a) PHOs have an obligation to their patients to take steps to protect confidential sexual assault counselling communications from being disclosed where disclosure would harm the patient.

(b) This obligation is most critical where the patient is a child, or where the disclosure is sought in relation to criminal proceedings and the victim of the assault does not have legal representation. In these cases, the PHO may consider obtaining legal representation to challenge the production of material in response to the subpoena.

(c) In cases where there is a high risk of serious harm such as, for example, a high likelihood of suicide or self-harm, to the patient if the records are disclosed, the PHO should consider obtaining legal representation to challenge the production of material in response to the subpoena. Harm can be actual physical bodily harm, financial loss, stress or shock, damage to reputation or emotional or psychological harm (such as shame, humiliation and fear).

(d) In proceedings where the patient is represented, the PHO may meet its obligation by referring the matter to the patient’s legal representative.

(e) If the patient has legal capacity and chooses to waive the privilege, the PHO must respect that decision.

4. **How does sexual assault communications privilege operate?**

**Preliminary Criminal Proceedings**

Preliminary criminal proceedings are committal or bail proceedings (whether or not they relate to a sexual assault offence).

A person cannot be required (by subpoena or otherwise) to produce a document recording a protected confidence in connection with any preliminary criminal proceedings. Evidence that would disclose a protected confidence, or the contents of a document recording a protected confidence cannot be used in any preliminary criminal proceedings.

**Criminal Proceedings**

Evidence is not be used in any criminal proceeding if the court decides that using it would disclose a protected confidence, or the contents of a document recording a protected confidence.

Before a court can make a decision about the documents, they must be produced to court, with an objection to their production noted, so the court can rule on the objection. This means that the PHO must produce the documents to the court in a sealed envelope marked “sexual assault communications privilege claimed”. The court will inspect the documents in order to determine whether the claim for privilege will be upheld. Some courts will not uphold a claim for privilege without hearing legal argument from the issuing party and the subpoenaed party. PHOs should recognise that producing the documents marked privilege may not be sufficient for a claim for privilege to be successful. Legal argument may be necessary.

26(21/10/10)
The court will not allow evidence about a protected confidence or the contents of a document recording a protected confidence to be used unless the court is satisfied that:

(a) the evidence could affect the assessment of a fact in issue in the proceedings; and
(b) other evidence of the protected confidence or the contents of the document recording the protected confidence is not available; and
(c) the public interest in preserving the confidentiality of protected confidences and protecting the confider from harm is substantially outweighed by the public interest in admitting into evidence information or the contents of a document that will affect the assessment of a fact in issue.

The person seeking to adduce the evidence (the issuing party) must provide the patient with notice that they are seeking to adduce the protected confidence, and inform the patient that they may, with the leave of the court, appear in the proceedings.

The court can also make orders to limit the possible harm, or the extent of the harm caused, for example, by ordering that evidence is to be heard ‘in camera’ (in a closed court), or making orders suppressing the publication of the evidence, or part of the evidence, or the identity of the confider. The court may also make orders limiting who may inspect documents produced.
Appendix B

Professional Confidential Relationship Privilege

1. **What is a protected confidence for the purpose of claiming professional confidential relationship privilege?**

A protected confidence is a communication made by a person, in confidence, to another person in the course of a relationship in which the confidant was acting in a professional capacity and where the confidant was under an express or implied obligation not to disclose the contents of the communication.

A protected confidence may include a communication between a health professional and a patient. The definition potentially covers many aspects of clinical records.

The aim of the privilege is to protect marginalised groups (other than victims of sexual assault in relation to whom the sexual assault communications privilege may apply) such as mental health patients and HIV positive patients, who may not seek medical treatment if they are concerned that professional confidentiality will not be maintained.

The rationale for the privilege is that some relationships between health professionals and patients will be severed, if trust and confidentiality are not maintained. This rationale may not apply to a patient’s relationship with a Hospital or PHO, where the patient is treated by a team, and may not form a special relationship with a particular health professional.

2. **Can the professional confidential relationship privilege be claimed in all types of court proceedings?**

No - the privilege cannot be claimed in federal courts, such as the Family Court.

3. **How does professional confidential relationship privilege operate?**

The court may direct that evidence not be used in proceedings, if the court finds that using it would disclose a protected confidence, or the contents of a document recording a protected confidence.

The court can come to this decision on its own initiative, or on an application from the protected confider (the patient) or the confidant (the health professional).

The court must decide not to use evidence about a protected confidence if, it is likely that harm would be caused to the protected confider (the patient) if the evidence is used and if the nature and extent of the harm outweighs the desirability of the evidence being given. It is generally desirable, however, for the evidence to be given. The more important the evidence is, particularly if it is not available from an alternative source, the more desirable it is.

Harm includes actual physical bodily harm, financial loss, stress or shock, damage to reputation or emotional or psychological harm (such as shame, humiliation and fear).

The court can also make orders to limit the possible harm, or the extent of the harm caused, for example, by ordering that evidence is to be heard ‘in camera’ (in a closed court), or making orders suppressing the publication of the evidence, or part of the evidence.

The privilege can be waived if the confider consents.
4. What will the court take into account when deciding whether the privilege applies?

The court will consider a range of factors, including the following:

1. the extent to which the evidence could affect the assessment of a fact in issue in the proceedings;
2. the importance of the evidence in the proceeding;
3. the nature and seriousness of the relevant offence, cause of action or defence and the nature of the subject matter of the proceeding,
4. the availability of any other evidence concerning the matters to which the protected confidence or protected identity information relates,
5. the likely effect of using evidence of the protected confidence, including the likelihood of harm, and the nature and extent of harm that would be caused to the patient,
6. the means available to the court to limit the harm or extent of the harm that is likely to be caused if evidence of the protected confidence or the protected identity information is disclosed,
7. if the proceeding is a criminal proceeding - whether the issuing party is a defendant or the prosecutor, and
8. whether the substance of the protected confidence or the protected identity information has already been disclosed by the patient or any other person.
Appendix C

Common Courts and Tribunals

The Family Court of Australia

The Family Court resolves and determines family disputes, including disputes about the care, custody and maintenance of children.

The Family Court also provides consent for special medical treatment (such as sterilisation, surgical gender reassignment & the harvest of bone marrow blood cells from a disabled child for transplantation into a relative) to be carried out on minors.

The Supreme Court of New South Wales

The highest court in the State is the Supreme Court of NSW. It has unlimited civil jurisdiction and handles the most serious criminal matters.

The Court of Appeal and Court of Criminal Appeal hear appeals from decisions made in most of the Courts of New South Wales and from decisions made by a single judge of the Supreme Court.

District Court

The District Court is the intermediate Court in New South Wales and deals with criminal and civil cases. The District Court has jurisdiction to hear:

- all indictable criminal offences (except murder, treason and piracy); and
- civil matters with a monetary value up to $750,000 - or greater with the consent of the parties.
  
  The Court also has an unlimited jurisdiction in respect of motor accident cases.

The Court can also deal with applications under the De Facto Relationships Act 1984, and the Family Provision Act 1982, that involve property worth up to $250,000. The Court’s judges hear appeals from the Local Court and also preside over a range of administrative and disciplinary tribunals.

Local Courts

The Local Courts are the courts of general access in New South Wales. There are 157 Local Courts in NSW. They have jurisdiction to deal with:

- the vast majority of criminal and summary prosecutions;
- civil matters with a monetary value of up to $60,000;
- committal hearings;
- family law matters;
- child care proceedings;
- juvenile prosecutions and care matters; and
- coronial inquiries.

In the Local Court, Magistrates hear criminal cases that do not need a judge and jury. There are called summary offences and include traffic matters, minor stealing, offensive behaviour, and some types of assault. Magistrates also hear applications for apprehended violence orders where one person is seeking a restraining order against another.
A magistrate conducts committal proceedings to decide if there is enough evidence for a serious
matter, such as armed robbery, or attempted murder, to go before the District Court or the Supreme
Court.

Children’s Courts deal with criminal matters involving children who are younger than 18 and with
children who are in need of care or protection.

**Administrative Appeals Tribunal**

The main role of the Administrative Appeals Tribunal is to review administrative decisions of New
South Wales government agencies, including freedom of information decisions. The Tribunal also
has original decision-making jurisdiction in:
- disciplinary proceedings relating to certain professions;
- equal opportunity complaints under the *Anti-Discrimination Act* 1977; and
- retail lease claims.

**Workers Compensation Commission**

The Workers Compensation Commission deals with workers compensation disputes arising out of
work related injury or disease suffered by a worker in New South Wales. In addition, the
Commission administers medical panels which assess a worker’s condition or fitness for employment
in circumstances specified in legislation.

**Coroners Court**

Coroners are situated around New South Wales in Local Courts. They inquire into the circumstances
surrounding deaths that are reported to them.

The State Coroner’s role is to ensure that all deaths, suspected deaths, fires and explosions which are
under the Coroner’s jurisdiction are properly investigated, and where the law requires an inquest to be
held, or in cases whether the Coroner believes an inquest is necessary, a full inquest is undertaken.

**Drug Court**

The Local or District Court in the defined catchment area must refer offenders who appear to meet the
Drug Court obligatory criteria, to the Drug Court.

The aim of the Drug Court is to protect the public by ensuring drug dependent offenders engage in
longer term treatment. The Court works in collaboration with a number of other organisations. These
include the Department of Corrective Services, including the Probation and Parole Service, and the
Department of Health.

**Dust Diseases Tribunal**

The Dust Diseases Tribunal hears and determines claims for dust related diseases suffered as a result
of exposure to dust. Dust diseases include mesothelioma, asbestosis, silicosis and certain types of
lung cancer. The Dust Diseases Tribunal follows the procedural rules of the Supreme Court of New
South Wales.

26(21/10/10)
HEALTH RECORDS AND MEDICAL/CLINICAL REPORTS – CHARGING POLICY  
(PD2006_050)

The contents of this policy directive are to be effective from the date of issue and replaces PD2005_235 (dated 14 February 2002).

The following relates to charges for health records and medical/clinical reports that are to apply unless specific legislation specifies a lesser rate or exemption from fees. Health Services should develop local policies, which detail the content of records and reports as they relate to these charges. These policies should take into account the function of the health facility, the type of report produced and the amount of information to be provided.

Rates are advised separately via Information Bulletin.

The decision to charge for requests for health records and medical/clinical reports from researchers is a matter for local determination depending upon the type of request and possible future benefit to the health system. Such charges should be determined on a cost recovery basis.

For the purposes of this policy directive a health record is defined as a documented account, whether in hard or electronic form, of a client/patient’s health, illness and treatment during each visit or stay at a health service (and includes a medical record).

Charges relating to categories A, B and C (below) are taxable supplies (ie subject to GST) unless deemed GST – free under the provisions of the ‘A New Tax System (Goods and Services Tax) Act 1999’ (GST Act). The criteria to be followed by the Area Health Services/Hospitals in assessing the GST status are advised in the GST section of this circular. Please note that where the service is determined as being ‘GST-free’ the rates as advised by Information Bulletin apply. Where the GST free test is not satisfied the service is therefore a taxable supply (subject to GST) and the rates as advised by Information Bulletin are to be grossed-up by 10%.

A CHARGES FOR MEDICAL/CLINICAL REPORTS apply based on the following categories:

1. Preparation of a medical report by a medical practitioner appointed to or employed by the health institution/hospital requiring no further examination of the patient. This applies to the treating medical practitioner or a medical practitioner who has not previously treated the patient.

2. A report made by a treating medical practitioner appointed to or employed by the health institution/hospital where a re-examination of the patient is required.

3. A report made by a medical practitioner appointed to or employed by the health institution/hospital who has not previously treated the patient where an examination is required.

4. Preparation of a report by an allied health professional, other than a medical practitioner, appointed to or employed by the health institution/hospital.
B OTHER CHARGES apply based on the following criteria:

1 (a) Charges for access to clinical notes requested by a patient/client, or by a person acting on behalf of the patient.

A patient/client can apply for access to their own personal health information held by a public health organisation, by contacting the medical records department for that organisation. In addition, the Freedom of Information Act 1988 and the Health Records and Information Privacy Act 2002 provide a statutory right for individuals to apply for access to information held about them.

These laws also allow for other persons to apply for access to a client/patient’s personal health information. A person can apply for access on behalf of the patient/client with their consent, such as a solicitor, interpreter or employer. Alternatively, where the patient lacks the capacity to consent, or is deceased, a person who is the authorised representative for the patient/client can apply for access to the patient/client’s personal health information.

NB. Further details are contained in NSW Privacy Manual for Health Information.

Copies of clinical notes supplied in response to the above requests may typically include, as a minimum: patient registration/front sheet, consent to treatment, discharge summary, referral/transfer letters, ambulance report, continuation notes, operation reports (including anaesthetists and nursing reports), radiology and pathology reports, and nursing care plan.

Where additional information is held by a hospital but not routinely released, the person making the request should be made aware that such additional information exists but has not been supplied. A further request for such additional information should be considered as forming part of the original request and no additional charge (other than photocopying, where appropriate) should be raised.

(b) Charges for information requested by an insurer.

Health facilities should not provide clinical notes or photocopies of notes to the insurer, but may supply a “Medical Report” or “Summary of Injuries” (Section A or C) if provided with a Statutory Declaration signed by the claimant on the insurer’s claim form in respect of Compulsory Third Party (CTP) insurance or a declaration signed by the claimant on the insurer’s claim form in respect of Workers Compensation Insurance. Such reports should only provide information relevant to the claim. This will necessitate the insurer detailing the nature of the claim. Health facilities will be required to exercise their judgement in determining what is relevant information. A photocopy of the CTP Statutory Declaration is acceptable irrespective of the date of signing.

If clinical notes, or part of the clinical notes, are requested by an insurer, the insurer should be requested to provide written consent from the patient stating that the patient:

• agrees to allow the insurer to have a copy of all or part of the clinical notes and
• the patient is aware that clinical notes, or part of the clinical notes, will inevitably include confidential medical information, which is irrelevant to the claim.

In the absence of clearly documented written consent, as detailed above, hospitals are not required to provide clinical notes to insurers.

22(1/07)
The charge applicable in respect of 1(a) and 1(b) (above), which includes search fee, photocopying charges, labour costs, administrative charges and postage, is based on the following criteria:

- A set fee for the provision of a copy of the medical record, or part thereof, eg continuation notes, pathology reports, charts. (Maximum eighty pages.)
- An additional per page rate in excess of eighty
- An additional charge at cost recovery for the provision of other material (eg reproduction of X-rays, audiovisual tapes, copies of photographs & operation footage contained on DVD's).

Where a patient wishes to access her/his records under the Freedom of Information Act, the requirements of that Act (including charges) apply.

2 Search Fees - Other than requests made by a party concerned with a patient’s continued treatment or future management.

The search fee should be charged:

- for searching for the health record, irrespective of whether the health record is found. If however, the Patient Master Index (PMI) or other indexes showed that the patient was treated in that health institution but the record cannot be found because it has been destroyed, misplaced or lost, the fees should be refunded in full;
- where the applicant subsequently advises that a report/record is no longer required, or where a thorough search has ascertained that the patient has never attended that health institution for that particular episode of illness;
- for information on date or time of birth, including requests from the Registry of Births Deaths and Marriages in relation to enquiries on hospitals to verify birth details;
- for Motor Accident and Work Cover medical certificates completed at other than time of consultation;
- **NOTE** - The search fee is a component of the fees charged for the preparation of reports, summaries or the production of health records required by subpoena, ie additional fees should **not** be charged on top of those for the preparation of reports, summaries and the production of health records required by subpoena.

The fee covers processing time, which includes time for locating the information, decision-making and consultation where necessary.

C SUMMARY OF INJURIES - charges apply based on the following:-

“Summary of Injuries” - this is generally requested by Compulsory Third Party Insurers for patients whose fees are covered by the Bulk Billing Agreement.

The “Summary of Injuries” should include:

- Identifying information (name, date of birth, medical record number)
- Date of first attendance,
- Whether patient was admitted. If so, specify dates,
- Positive findings on examination,
- Level of consciousness, if documented,
- Diagnosis, if known.

A standard form letter may be appropriate.
If a discharge summary, or appropriate correspondence that provides this minimum information, is available at the time of the request, a copy of this may be sufficient. Should further information be required, the appropriate report charge as applicable to Section A or B should be raised. There is no requirement to provide the full clinical notes to third party insurers.

The purpose of the “Summary of Injuries” in relation to the bulk-billing agreement is to establish that the admission occurred as a result of a motor vehicle accident.

If the information contained in the “Summary of Injuries” is insufficient or unavailable and a medical practitioner (or other treating health professional, where appropriate) is required to prepare a report, charges for a medical report (or report by a treating health professional) should be raised.

Health Information Managers should consult with the requesting solicitor/insurer/other party to determine which is required before a fee is raised or report is prepared.

**Goods and Services Tax (GST) in relation to categories A, B & C (above).**

In relation to categories A, B & C above the fees/charges set by NSW Health that are taxable supplies or that Health Services are to consider for GST implications are as follows:

- Where revenue derived from the preparation of Clinical Reports is in the context of the Medical Officers Rights of Private Practice the service is to be regarded as a taxable supply.
- Where the income derived is treated as public hospital revenue, consideration is to be given as to whether it satisfies GST-free status under section 38-250 of the ‘A New Tax System (Goods and Services Tax) Act 1999’ (GST Act).
  - ie. Supplies are GST-free if:
    - the charge is less than 50% of the GST inclusive market value of the supply; or
    - the charge is less than 75% of the cost to the supplier of providing the supply.
- NB. Further details are contained in section 3.3 (pages 22 to 24) of the “NSW Health – Finance and Commercial Services – Tax Reform – GST Manual” which is available on the NSW Health Intranet.
- All Area Heath Services need to ensure that documentation/systems exist to compare the costs (including overheads) of providing health records and medical reports, and being able to assess the GST status as detailed above.
- Where the service is determined as being ‘GST-free’ the rates advised by Information Bulletin apply, or
- Where the GST free test is not satisfied the service is therefore a taxable supply (subject to GST) and the rates advised by Information Bulletin are to be grossed-up by 10%.

**D HEALTH RECORDS REQUIRED TO BE PRODUCED BY SUBPOENA**

This refers to the retrieval of all the information required by the schedule noted on the subpoena and forwarding it to Court.

Charges apply based on the following:
1. where at least 5 working days notice is given for the production of the record to Court
2. where less than 5 working days notice is given
plus a photocopying charge per page as advised by Information bulletin.

- Multiple requests on a subpoena should be charged on a fee-per-patient basis.
- In a situation where no record is found, it is appropriate to raise a Search Fee for each record, particularly in situations where incorrect details are given or “blanket” subpoenas are issued and considerable time is spent in locating the record. However, if the PMI or other indexes shows that the patient was treated in that health institution but the record cannot be found because it has been destroyed, misplaced or lost, the search fee should not be charged.
- Charges under this category are not subject to GST as they are ‘out of scope’ under a Division 81 Determination.
- Reference should also be made to PD2010_065 headed ‘Subpoenas’, which outlines legislative provisions and procedures to be followed when public health organisations are required to produce documents on subpoena.

E ADMINISTRATIVE PROCEDURES

1 Policies and procedures regarding access to health records and disclosure of personal information should be made in accordance with the NSW Privacy Manual for Health Information.

2 Applicants should be asked to put all requests in writing and to provide as much information as possible. A patient’s solicitor should include consent by the patient for access to personal records as detailed in the Information Privacy Code of Practice.

3 Where the original of a health institution’s health record leaves the institution (eg health records being tendered to a Court under subpoena), a copy of those records should generally be made beforehand and kept in the institution. Charges for photocopying should be charged at the appropriate per page rate as advised by Information Bulletin. This charge does not apply to Coroner’s or Complaints Unit cases.

4 Charges should be collected in advance, where appropriate. For government departments, reimbursement may be sought subsequently from the relevant department or authority. Even where health records are required to be produced by subpoena, payment should still be sought in advance. It is emphasised that a hospital or organisation is expected to comply in due time with the requirements of a subpoena. Non-compliance may result in contempt of Court, which is punishable by fine or in certain cases imprisonment.

5 It may be decided that an examination of the patient (by either the treating medical practitioner or a medical practitioner who has not previously treated the patient) is required. Under such circumstances, the applicant should be asked to pay the balance of the money for the higher fee before proceeding with the request.

6 Fees collected are to be recorded as revenue in the General Fund.

7 Where there are disputes regarding fees or the amount of information, attempts should be made to resolve the matter between the parties involved. This would normally involve the Chief Health Information Manager and/or the General/Medical administration of the health facility.

F CIRCUMSTANCES UNDER WHICH A CHARGE SHOULD NOT BE RAISED

1 When the request has been made by a party concerned only with the patient’s continued treatment and/or future management, no charge should be raised (eg where a medical practitioner requests information from a health institution to assist him/her with that patient’s treatment);
2 The GIO or EML as Managers, Treasury Managed Fund or solicitors acting for the GIO or EML in such matters, in respect of claims for workers compensation for employees of Public Hospitals, Public Psychiatric Hospitals (former 5th schedule hospitals), the NSW Ambulance Service and the NSW Department of Health. Health facilities should ensure that solicitors acting for the GIO or EML specify in writing that this is the case;

3 Medical Services Committees of Inquiry established by the Commonwealth Government for purposes of detecting fraud and controlling over servicing;

4 The Department of Community Services or the Police in respect of children suspected of being abused, or of a parent of a child so suspected;

5 The completion of medical certificates at the time of consultation - no charge should be made as the forms for motor accident and WorkCover certificates are in the nature of a certificate and not a report. If not completed at the time of consultation, a search fee may be raised.

G CIRCUMSTANCES UNDER WHICH CHARGES SHOULD BE RAISED

In all cases where the conditions in Section F have not been met including:

1 When medical reports/records are requested by individuals, solicitors, insurance companies, health professionals and government departments (with the exception of those indicated in Section F) for purposes other than the patient’s continued treatment or future management.

2 The Department of Veterans’ Affairs and Centrelink for the purpose of pension/benefits assessment;

3 Interstate Health Authorities in respect of the eligibility of candidates for appointment to the relevant Public Service.

4 NSW Compulsory Third Party Insurers, in respect of a “Summary of Injuries”. (Refer to Section C).

5 Release of information under the NSW Adoption Information Act 1990. Charges should be raised in accordance with PD2010_050 or any document subsequently amending its provisions.

ENQUIRIES

- pertaining to the level of charges and GST implications refer to the latest Information Bulletin on ‘Charges for Health Records and Medical/Clinical Reports and the “NSW Health – Finance and Commercial Services – Tax Reform – GST Manual” (available on the NSW Health Intranet site) respectively or contact Trevor Smith, Finance and Business Management on (02) 9391 9158.

- pertaining to access of information contact Legal Branch on 9391 9606.

- pertaining to records management policy should be referred to the Informatics Senior Project Officer on (02) 9391 9155.
HEALTH RECORDS AND MEDICAL/CLINICAL REPORTS – RATES (IB2016_047)

IB2016_047 rescinds IB2015_044

PURPOSE
This Information Bulletin provides an update on charges for Health Records and Medical / Clinical Reports.

The advised charges are to be effective from the date of issue and replace those advised in Information Bulletin IB2015_044 issued on 5 August 2015. This Information Bulletin is to be read in conjunction with Policy Directive PD2006_050.

KEY INFORMATION

The following are charges for health records and medical/clinical reports and are to apply unless specific legislation specifies a lesser rate or exemption from fees.

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A CHARGES FOR MEDICAL / CLINICAL REPORTS

<table>
<thead>
<tr>
<th>Category</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Category 1</td>
<td>$310</td>
</tr>
<tr>
<td>Category 2</td>
<td>$443</td>
</tr>
<tr>
<td>Category 3</td>
<td>$797</td>
</tr>
<tr>
<td>Category 4</td>
<td>$310</td>
</tr>
</tbody>
</table>

The above categories are described in PD2006_050.

B OTHER CHARGES

1. The charge applicable in relation to categories “1(a) Charges for access to clinical notes requested by a patient / client, or by a person acting on behalf of the patient” and “1(b) Charges for information requested by an insurer”, which include search fees, photocopying charges, labour costs, administrative charges and postage is as follows:
   - Provision of a copy of the medical record, or part thereof, e.g. continuation notes, pathology reports, charts. (Maximum eighty pages). $30
   - Pages in excess of eighty (per page) $0.40
   - Cost recovery for the provision of other material  (e.g. reproduction of X-rays, audiovisual tapes, copies of photographs and operation footage contained on DVD’s). Cost recovery

2. Search Fees - Other than requests made by a party concerned with a patient's continued treatment or future management. $30

Please note that in relation to the Royal Hospital for Women, section B fees (above) are to be waived in relation to former patients (prior to 1993) who were affected by adoption.

53(22/9/16)
C  SUMMARY OF INJURIES  $30

Are generally requested by Compulsory Third Party (CTP) insurers for patients whose fees are covered by the Bulk Billing Agreements.

**GST in relation to categories A, B and C (above)**

Are taxable supplies (i.e. subject to GST) unless deemed GST-free under the provisions of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

The criteria to be followed by Local Health Districts / Hospitals in assessing the GST status are advised in PD2006_050. Please note that where the service is determined as being ‘GST-free’ the rates specified above apply. Where the GST free test is not satisfied the service is therefore a taxable supply (subject to GST) and the rates specified above are to be grossed-up by 10%.

D  HEALTH RECORDS REQUIRED TO BE PRODUCED BY SUBPOENA

This refers to the retrieval of all the information required by the schedule noted on the subpoena and forwarding it to Court.

1  $71*
2  $107*

* plus a photocopying charge of $0.40 per page

Please note that WorkCover is not to be charged in complying with notices to produce documents issued by its inspectors in accordance with the *Work Health and Safety Act 2011*.

Charges under Category D are not subject to GST as they are *out of scope* under a Division 81 Determination.
FEE FOR CREMATION CERTIFICATES ISSUED BY SALARIED MEDICAL PRACTITIONERS OF PUBLIC HOSPITAL (IB2016_060; IB2016_012)

IB2016_060; IB2016_012 rescinds IB2014_069, IB2011_015

PURPOSE

This Information Bulletin provides an update on fees under the Public Health Act 2010 following a recently completed review. The advised fees are effective from 19 February 2016. This Information Bulletin replaces (IB2011_015) issued on 17 March 2011.

KEY INFORMATION

The revised fees, as advised below, were notified in the Public Health Amendment (Miscellaneous) Regulation 2016 under the Public Health Act 2010, which was published on the NSW legislation website on 19 February 2016 (2016 No 78).

- An application fee for approval to install a warm-water system in a hospital:
  
  **Clause 6(4)** - $171 (was $160)

- An application fee for approval to exhume the remains of the body of a dead person:
  
  **Clause 70(2)(c)** - $342 (was $320).

The above fees are not subject to GST as they are ‘out of scope’ under a Division 81 Determination.

Action should be taken to advise the new charges to all appropriate sections of your administration.

This Information Bulletin provides updates to the fee for the issue of cremation certificates and referee’s permits issued by salaried medical practitioners of public hospitals following a recently completed review. The advised fee is effective from the date of issue of this Information Bulletin and replaces the fee advised in Information Bulletin IB2015_067, issued on 16 December 2015.

Public Health Regulation 2012

The revised fee for cremation certificates and referee’s permits issued by salaried medical practitioners of public hospitals is advised below:

**Clause 81(1)** – cremation certificate issued by attending practitioner

$95 (was $94)

**Clause 81(2)** – cremation certificate issued by medical practitioner expert in anatomical pathology

$95 (was $94)

**Clause 82(1)** – medical referee’s cremation permit (dead persons who are not still-born children

$95 (was $94)

**Clause 84(1)** – medical referee’s permit: still-born children

$95 (was $94)

The fee has been increased by administrative action as the above regulation clauses do not specify rates.

The fee is not subject to GST as it is ‘out of scope’ under a Division 81 determination.

It would be appreciated if immediate action could be taken to advise the new charges to all appropriate sections of your administration.

55(7/4/16), 54(22/12/16)
PATIENT INFORMATION AND CONSENT TO MEDICAL TREATMENT (PD2005_406)

Introduction

This Circular contains NSW Health’s policy for the provision of information to patients and consent to medical treatment. The Circular emphasises the importance of ensuring that patients are provided with adequate information to enable them to make informed decisions as to whether to undergo medical or other treatment in health organisations. The Circular is designed to foster the improved provision of information to patients to enable them to make informed decisions regarding treatment and to assist medical practitioners to discharge their legal obligations.

Mandatory Policy

Compliance with this policy is mandatory.

Application

This Circular applies to all public health organisations (Area Health Services, Statutory Health Corporations and Affiliated Health Corporations in respect of their recognised establishments and recognised services). The Circular also applies to all people who work within these organisations and are involved in the provision of health care, including employees, contractors and other health service providers. The policy and procedures in this Circular apply to people whose employment is part time, temporary, contractual, casual or short term.

Main Points

The Department released PD2005_406 – Patient Information and Consent to Medical Treatment in March 1999. This Circular updates that policy. In particular, the following changes have been made:
• The Circular allows local polices to be developed for the administration of blood products by nursing staff, where certain conditions are met. This is to overcome difficulties in remote areas where a hospital may not have medical officers immediately available at the time a blood transfusion is required.

• The revised Circular provides additional detail on procedure to follow where conflicts arise between minors and their parent/s guardians in relation to consent for treatment for the minor.

• The revised Circular also includes new sections on issues such as refusal of treatment, Advance Care Directives, consent for treatment provided by Nurse Practitioners, delegation of consent and consent for the use of tissue removed during surgery to be used for other purposes, such as research.

• New Request/Consent Forms are attached which should be adopted by all public health organisations as soon as practicable. The Forms have been amended to comply with requirements of the Human Tissue Act 1983.

Consultation

All Area Health Services were consulted. Consultation also took place with the Department of Community Services, the NSW Guardianship Tribunal, The Royal College of Medical Administrators, the Medical Services Committee, the AMA, the NSW Nurses Association, the College of Nursing, The Royal Australasian College of Pathologists, the Australian and NZ College of Anaesthetists, ICE, Health Ethics Branch, Aboriginal Health Branch, and others.
A: HOW TO OBTAIN CONSENT

1. Why is it necessary to obtain patient consent?

As a general rule, no operation, procedure or treatment may be undertaken without the consent of the patient, if the patient is a competent adult. Adequately informing patients and obtaining consent in regard to an operation, procedure or treatment is both a specific legal requirement and an accepted part of good medical practice. The NSW Health Patient Charter also contains a commitment to patients that public health organisations will clearly explain proposed treatment including significant risks and alternatives in a way patients can understand and obtain patient consent before treatment, except in an emergency or where the law says patients must have treatment.

Consent to the general nature of a proposed operation, procedure, or treatment must be obtained from a patient. Failure to do this could result in legal action for assault and battery against a practitioner who performs the procedure.

The obligation to obtain consent is distinct from the obligation disclose information to a patient and warn a patient of material risks.

2. Why is it necessary to warn a patient about material risks?

As a general rule, all patients have a choice as to whether or not to undergo a proposed procedure, operation or treatment. Whilst a patient might consent to a procedure once he or she has been informed in broad terms of the nature of the procedure, this consent will not amount to the exercise of choice unless it is made on the basis of relevant information and advice.

Patients must also be provided with sufficient information about the condition, investigation options, treatment options, benefits, possible adverse effects or complications, and the likely result if treatment is not undertaken, in order to be able to make their own decision about undergoing an operation, procedure or treatment. A medical practitioner has a legal duty to warn a patient of a material risk inherent in the proposed treatment. What amounts to a material risk is explained in section 7. Failure to do this may be a breach of the practitioner’s duty of care to the patient and could give rise to legal action for negligence.

Patients have a legal right to refuse treatment. This is discussed in section 6. Consent of the patient is therefore required to be obtained in nearly all cases.

3. When is the consent of the patient not required or when do different arrangements apply to obtaining consent?

There are a number of exceptions to the general rule that the consent of a patient must be obtained before commencing treatment. In some cases, consent from another authority or person may be required before treatment can proceed. The circumstances where consent is not required or a different arrangement applies for seeking consent are as follows:

a. Consent is not required where immediate treatment is necessary to save an adult person’s life or to prevent serious injury to an adult person’s health where the person is unable to consent, subject to there being no unequivocal written direction by the patient to the contrary (See section 22).
b. Except in the above emergency situation where a person aged sixteen years or over is unable to consent, a guardian, a “person responsible” or the Guardianship Tribunal may be authorised to give consent on behalf of the patient in accordance with the provisions of the Guardianship Act 1987. In limited circumstances, minor treatment may proceed without the need to obtain consent (although specific requirements must be met). The requirements for determining whether a person is unable to consent are set out in section 21 of this Circular. The requirements for seeking a ‘substitute’ consent or proceeding without consent are set out in Attachment A.

c. Specific arrangements apply for the obtaining of consent from a parent or guardian of a child patient. The arrangements for seeking consents are outlined in section 25.

d. Pursuant to section 174 of the Children and Young Persons (Care and Protection) Act 1998, consent is not required to treat a child or young person if treatment is required urgently to save the life, or prevent serious damage to the health of the child or young person (see section 25).

e. Consent of the patient is not required for treatment which is authorised by an order of a Court, for example, an order of the Supreme Court for specific treatment of a minor.

f. Some procedures authorised by statute may proceed without consent, eg compulsory blood drug and alcohol estimation on the request of a police officer.

g. Specific methods and forms of consent are provided under the Mental Health Act for patients receiving ECT or psychosurgery and for treatment provided to an involuntary patient. (See section 23)

4. Does “written” consent need to be obtained?

Generally, the law does not require consent or the provision of information, including warnings about material risks, to be documented in writing. (Exceptions to this general rule include some consents obtained under the Guardianship Act 1987.) Indeed, patient consent can be “express”, either orally or in writing, or it can be “implied” from a person’s conduct, for example a patient may hold out their arm to receive an injection. Irrespective of whether the consent is obtained orally or is documented in writing, a consent will only be valid where it satisfies the requirements outlined in section 5 of this Circular. Consent documented in writing is only as valid as the consent it represents.

However, consent obtained in writing will assist practitioners in any subsequent legal proceedings as it will support their view that the treatment has been discussed with the patient and that consent has been obtained. The absence of a consent form could give rise to the implication that the procedure has not been discussed or that consent has not been obtained. The use of an adequate consent form will also assist practitioners in providing appropriate and adequate information to their patients under their care in line with community expectations and legal requirements.

It is the Department’s policy that written consent using the attached model consent form is to be sought for major procedures including:

(i) all operations or procedures requiring general, spinal, epidural, or regional anesthesia or intravenous sedation;
(ii) any invasive procedure or treatment where there are known significant risks or complications;
(iii) blood transfusions or the administration of blood products;
(iv) experimental treatment for which the approval of an ethics committee is required (unless there are sound reasons for doing otherwise).

Abbreviations should not be used on consent forms.
The consent form should remain a separate ‘stand alone’ form and form part of the patient’s clinical record. This should not be read as preventing consent forms from being printed on the reverse side of admission forms, or from being published as part of an admission booklet. It is essential however that the patient information and consent processes be given adequate emphasis when admission decisions are made. Where the consent form is published as part of an admission booklet, the relevant sections of the form must not be separated.

Signed consent forms are not required for minor procedures performed under local anesthesia, eg insertion of IV cannulae, urethral catheterisation, or suture of minor lacerations. However, the criteria for obtaining a valid consent must still be met, the procedure must still be explained to the patient and it is advisable for a written note to be made in the patient’s medical records for this effect.

If the consent is provided orally, or is implied (ie by body language), the procedure must still be explained to the patient and it is advisable for a written note to be made in the patient’s medical records indicating that they consented to treatment and how they consented. If there is a particular reason why consent was not obtained in writing, this should also be documented.

5. What are the requirements for obtaining a ‘valid’ consent?

For a patient’s consent to be valid a number of criteria will need to be met.

First, the person must have the capacity to give consent, that is, the person must be able to understand the implications of having the treatment. Some examples of where patients are not considered as having this capacity include: a child under the age of fourteen, some people affected by mental illness, and some people who are affected by dementia, brain damage or intellectual disability, and some people who are temporarily or permanently impaired by drugs or alcohol. As noted above, where a patient is found to be lacking in capacity, there may be alternatives to obtaining consent. These are addressed later in this document.

A patient who is not fluent in English, is deaf or has other special communication needs does not lack capacity to make decisions, unless another factor, such as those listed above, is also present.

The second requirement is that consent must be freely given. The patient must not be pressured into giving consent. This would include pressure from hospital staff, a medical practitioner or family. Pressuring a patient into making a quick decision could be considered coercion.

Thirdly, the consent must be specific, and is valid only in relation to the treatment or procedure for which the patient has been informed and has agreed to. Medical practitioners need to be aware that there is legal precedent whereby practitioners have been found liable for damages for trespass to the person if, when performing a procedure for which consent has been obtained, they undertake an additional procedure without obtaining specific consent for that procedure, even where the additional procedure appears desirable. Such specific consent is not required where during a procedure, further immediate treatment becomes necessary to save an adult person’s life or to prevent serious injury to that person’s health where that person is unable to consent.

Finally, the patient must be informed in broad terms of the procedure which is intended, in a way the patient can understand.

These criteria must be met irrespective of whether the consent is obtained in writing or orally. The mere mechanical signing of a consent form is, of itself, of limited value. The requirements for obtaining a valid consent as outlined above must be met.
6. Can a patient refuse treatment?

A competent patient is entitled to refuse medical treatment. The High Court of Australia first articulated this principle in Marion’s case, stating that a legally competent person has a right “to chose what occurs with respect to his or her own person.”¹ For a competent patient, the right to refuse treatment exists, notwithstanding that the reasons for making the choice are rational, irrational, unknown or even non-existent. Treating a competent patient who has validly refused treatment could constitute an assault or battery.

Like consent to medical treatment, a refusal must be freely given, and be specific. As with consent, if the patient’s circumstances change significantly, the refusal may not remain valid and may need to be confirmed.

A refusal can be express, implied or in writing, however, it is preferable that a refusal of treatment is recorded in writing and signed by the patient. Any discussions with patients about refusal of treatment should be recorded in detail in the medical record.

6.1 Pregnant patients

Australian law does not recognise a foetus as a separate legal entity until it is born alive. Therefore, legally, a competent pregnant woman has the right to make decisions about her own treatment.

Pursuant to section 25 of the Children and Young Persons (Care and Protection) Act 1998, a person who has reasonable grounds to suspect, before the birth of a child, that the child may be at risk of harm after his or her birth may make a report to the Director-General of the Department of Community Services. The intention of this section is to provide assistance and support to the pregnant woman to reduce the likelihood that her child, when born, will need to be placed in out-of-home care. The principle is that of supportive intervention rather than interference with the rights of pregnant women.

6.2 Refusal via Advance Care Directives

Health practitioners should not provide treatment or perform a procedure where there is an unequivocal written direction, such as an Advance Care Directive, by the patient that such treatment is not to be provided in the circumstances which now apply to the patient.

Advance Care Directives may not contain instructions for illegal activities, such as euthanasia.

Should a patient give such a written direction, the medical practitioner should consider whether it is specific enough to apply to the clinical circumstances which have arisen. Consideration should also be given to the currency of the advance care directive, and whether it appears to be made in contemplation of the current circumstances (for example, was it made after the diagnosis of the current illness). Medical practitioners should also consider whether there is any reason to doubt the patient’s competence at the time that the advance care directive was signed, or whether the patient was under undue pressure to make the directive. If the practitioner establishes that the refusal is invalid, or based on a false assumption or misinformation, s/he can treat the patient in accordance with his or her professional judgment of the patient’s best interests.

Concerns may arise about the legality applicability of an advance care directive, especially where the patient refuses treatment considered to be usual medical practice, and/or where the refusal may be life threatening. In an emergency, the medical practitioner can treat the patient in accordance with his or

¹ Secretary, Department of Health and Community Services v JWB and SMB (1992) 175 CLR 218 – 58 (Marion’s case).
her professional judgment of the patient’s best interests, until legal advice can be obtained. Where there are concerns about an Advance Care Directive in a non-emergency situation, the medical practitioner may wish to consult with the patient’s relatives, or those close to the patient, seek legal advice, discuss the issue with colleagues, or other clinicians involved in the patients care. All discussions should be documented in the patient’s medical record.

If a patient presents with an Advance Care Directive or other document that refuses treatment, a copy of the document should be made and placed on the patient’s medical record.

Further information can be found in “Using Advance Care Directives”–

7. How do I properly inform a patient about a procedure and warn of material risks?

In addition to meeting the requirements for obtaining a valid consent, the patient must be provided with sufficient and material information for there to be a genuine understanding of the nature of the operation, procedure or treatment. Failure to warn a patient about the material risks inherent in a proposed procedure is a breach of the medical practitioner’s duty of care to the patient and could give rise to legal action for negligence.

The legal duty of practitioners to disclose information regarding treatment was defined by the High Court of Australia in the case of Rogers v. Whitaker (1992). The principles concerning the provision of information to patients have been developed by the courts with regard to the paramount consideration that a person is entitled to make their own decisions about their treatment.

Practitioners should give information about the ‘material’ risks of any intervention, especially those likely to influence a patient’s decision. A risk is ‘material’ if, in the circumstances, a reasonable person in the patient’s position, if warned of the risk, would be likely to attach significance to it, or if the medical practitioner is or should reasonably be aware that the particular patient, if warned of the risk, would be likely to attach significance to it (Rogers v. Whitaker). Known risks should therefore be disclosed when an adverse outcome is a common event though the detriment is slight, or when an outcome is severe even though its occurrence is rare. Further, practitioners should carefully consider whether knowing about a risk is likely to influence a patient’s decision. In addition practitioners should carefully consider patients’ reactions to specific risks, however unlikely those risks might be, particularly where specific concerns regarding adverse outcomes are raised, however unlikely.

8. What are the NHMRC guidelines for in forming patients about the risks associated with medical treatment?

The National Health and Medical Research Council (NHMRC) in 1993 produced a set of guidelines for medical practitioners on providing information to patients which is largely in accord with the findings in Rogers V. Whitaker. The NSW Health Department strongly favours the use of the NHMRC guidelines by practitioners when informing patients on the risks associated with medical treatment. The NHMRC recommends that practitioners discuss:

(i) the possible or likely nature of the illness;
(ii) the proposed approach to investigation and treatment including:
   - what the proposed approach entails,
   - the expected benefits;
   - common side effects and material risks;
   - whether the procedure is conventional or experimental; and
   - who will undertake the intervention.

2 NHMRC General Guidelines for Medical Practitioners on Providing Information to Patients, Canberra: Commonwealth of Australia June 1993. As at August 2004, these guidelines were under review. They can be accessed at https://www.nhmrc.gov.au/guidelines-publications/e57
(iii) other options for diagnosis and treatment;
(iv) the degree of uncertainty of the diagnosis and any therapeutic outcome;
(v) the likely outcome of not having the diagnostic procedure or treatment, or of not having any procedure or treatment at all;
(vi) any significant long term physical, emotional, mental, social, sexual, or other outcome which may be associated with the proposed intervention; and
(vii) the time and cost involved including any out of pocket expenses.

The NHMRC guidelines note that a practitioner’s judgment about how to convey risks will be influenced by a number of factors. These include: the seriousness of the patient’s condition, the nature of the intervention (complex interventions require more information); the likelihood of harm and the degree of possible harm; the questions asked by the patient; the patient’s temperament, attitude and level of understanding (including literacy and intelligence level); and accepted medical practice. Information should be provided in a form and manner which helps patients to understand the problem and the treatment options available, and which is appropriate to the patient’s circumstances.

9. Can a patient information form, brochure or other material about a treatment be used to inform a patient when obtaining consent?

Pre-prepared material (translated where relevant) about a procedure or treatment may be useful if given to the patient as a means of stimulating discussion and for guiding the medical practitioner when informing the patient. However pre-prepared material should not be used as a substitute for ascertaining whether a person understands the nature of, and risks involved in, the procedure or treatment, as the provision of the pre-prepared material alone will not discharge the legal duty in most cases. The practitioner should assist the patient to understand the material and explain any information that the patient finds unclear. The practitioner must give the patient an opportunity to read the material and raise any specific issues of concern either at the time the information is given to the patient or subsequently.

The practitioner informing a patient must consider that individual patient’s circumstances. This can be done by considering any personal knowledge of the patient, their prior medical history and other issues directly raised by the patient. The practitioner will also need to consider whether pre-prepared material is up to date, accurate and appropriate for the patient.

It is essential that patient information material discloses all “material risks”, at least in general terms. The more likely the risk the more specific the detail that should be provided. An inadequate or inaccurate information sheet could have significant implications in subsequent litigation because it could be inferred the patient has not been properly informed. It must be emphasised that since a patient’s reactions and views plays an important part in determining what “material risks” should be disclosed, an information form cannot be a substitute for a full and frank discussion with the patient. Any additional information provided should be specifically noted on the information sheet by hand. The NHMRC guidelines on the provision of information to patients should be followed as a guide to the information that must be provided in preparing such material. Such material should be regularly reviewed to ensure it remains accurate.

10. What if the person is from a non-English speaking background?

To ensure that a valid consent is obtained, interpreters should be used for any non-English speaking patients in accordance with the Department’s current policy on the use of interpreters (PD2006_053).

A professional interpreter should be present to ensure patient consent and understanding when a recommendation for surgery, treatment or research is communicated to a non-English speaking patient.
The consent form signed by a non-English speaking patient must contain a statement signed by the Interpreter that he/she has interpreted the content of the form and all the information supplied by the treating practitioner to the patient.

Consent for treatment may not be valid if it is obtained through a child or family members other patients, visitors or non-accredited staff acting as interpreters.

11. Can information be withheld from the patient?

The circumstances in which information can be withheld from the patient are limited. The withholding of information on the grounds of ‘therapeutic privilege’ denies the patient the right to participate in decision making. The scope of the privilege is uncertain and the discretion to exercise ‘therapeutic privilege’ should only be used in very limited cases having regard to the basic legal rights of patients to make decisions about their own medical treatment and uncertainty surrounding the scope of the ‘privilege’. Consideration should be given to consultation with other colleagues before such a decision is made.

The only situations where the duty to inform can be breached are as follows:

(i) The patient expressly directs the practitioner to make the decisions, and does not want the offered information. Even in this case the practitioner should give the patient basic information about the diagnosis and treatment.

(ii) The practitioner may exercise “therapeutic privilege,” that is the practitioner can withhold information if they hold a reasonable belief that disclosure of a risk would prove damaging to the patient’s health. To withhold information in these circumstances, the practitioner would need to make a judgment, on reasonable grounds, that the patient’s physical or mental health might be seriously harmed by the information. The types of factors governing therapeutic privilege include the patient’s personality, temperament or attitude; their level of understanding; the nature of the treatment and the likelihood of adverse effects resulting from the treatment.

Information cannot be withheld from substitute decision makers appointed pursuant to the Guardianship Act. Therapeutic privilege is not recognised by the Guardianship Act as a ground for failing to provide information to the person responsible. If, for some reason, information cannot be provided to the person responsible, consent to the treatment should be sought from the Guardianship Tribunal.

12. Does ‘written’ consent need to be obtained for every procedure or step in a ‘treatment program’?

Some treatments involve a number of separate procedures or the administration of medication or blood products over a period of time or a series of patient visits. Chemotherapy and the administration of blood products to patients with haemophilia are examples where this may be the case.

Where such a treatment program is proposed, the patient should be provided with information and advice about the procedure, including advice about the material risks and consent should be obtained and documented, in the normal fashion prior to beginning treatment. An explanation of the treatment program, the steps or separate treatments/procedures involved and the ‘material’ risks associated with the treatment program should be provided. Generally a form documenting that this has occurred for each stage of the treatment program will generally not be necessary as patient consent can be implied from continuing conduct.
However, a new form should be completed if a new treatment is proposed which was not previously explained to the patient, where alternative treatments become available or if new risks associated with the treatment are identified. Medical officers and hospital staff should remain alert to any issues or concerns raised by the patient during the treatment program. Before continuing with the treatment program, such concerns should be discussed with the patient and documented in the patient’s medical record. If the issues raised are significant, a ‘new’ form should be completed.

13. **Can a consent form be faxed?**

A consent form constitutes evidence that a patient has consented to a procedure and has been provided with relevant information and is important in protecting the hospital and attending medical officer from certain legal liabilities. It is the Department’s view that an original consent form is preferable to a faxed or photocopied form and that originals should always be obtained where possible. If it is not possible to obtain an original consent form, the reasons why the original could not be obtained should be noted in the patient’s medical record. When faxing or photocopying consent forms, special care should be taken to ensure that double sided documents are transmitted or copied in their entirety.

14. **For how long does consent remain valid?**

The general rule is that consent will remain valid until it is withdrawn by the patient or until the patient’s circumstances change in a material respect.

Hospitals and practitioners should bear in mind, however, that a change in patient’s circumstances could encompass a number of situations. This would include a change in the patient’s condition which would affect treatment, the development of alternative treatments to the recommended procedure or the identification of new risks or side effects associated with the recommended procedure.

It is suggested, therefore, that a new consent form be obtained or the patient be asked to affirm their previous consent if a significant period of time has lapsed since the original consent was obtained. What constitutes a “significant amount of time” will depend on the individual circumstances of the case.

**B: WHO SHOULD OBTAIN CONSENT**

15. **Who is legally responsible for ensuring a patient has the necessary information and advice and for obtaining consent?**

A practitioner who performs a procedure, operation or treatment without obtaining consent may be liable in an action for assault and battery. This does not mean the practitioner cannot ask another practitioner to seek consent on their behalf, although they should be aware they could still be held responsible if a valid consent has not been obtained.

Where a practitioner recommends or advises that a patient undergo an operation, procedure or treatment, they will be responsible for ensuring they provide sufficient, appropriate and relevant information and advice to enable the patient to make their own decision to undergo the operation, procedure or treatment. Once again, this does not mean that they cannot have another person undertake that task, although they may be held responsible in some circumstances if this is not done properly.

In general, the attending medical officer (AMO) under whose care a patient is admitted either as a private or a public patient will have, or may share, legal responsibility for the overall care of the patient. Health services and hospitals also may have legal responsibilities in this area, depending on the circumstances of the individual patient. For many of the patients admitted under its care, the hospital may have certain duties, including a duty to take reasonable steps to ensure that consent has been obtained.
In many cases, the AMO who recommends a procedure may not perform the procedure. This is likely to arise in two main situations: (i) For patients who are not admitted as private patients of a particular practitioner, the task of performing a procedure may be delegated in accordance with hospital protocol to a hospital staff member by the AMO under whose care the patient is admitted; and (ii) Certain major radiological procedures, invasive investigations and some operations are often initiated by the primary AMO but are performed by another medical practitioner, radiologist, physician or surgeon. Practitioners should be aware that even though the AMO will not be performing the procedure, both the AMO and the practitioner performing the procedure (or providing advice to a patient) will have legal and professional responsibilities to the patient in regard to the provision of information and advice and to ensure consent has been sought.

16. Can information be provided to a patient or consent obtained by another practitioner on my behalf?

To ensure that hospitals’ resources are utilised appropriately and that treating practitioners are able to manage their time effectively, arrangements may be put in place to delegate the task of providing the necessary information to patients to enable them to make a decision to undergo a treatment and for seeking consent. The arrangements set out below have been developed having regard to: the respective legal obligations of hospitals (independently and through its staff) and AMOs arising from the admission status of patients; the rights and expectations of patients; and the appropriate use of practitioner time and hospital resources.

These arrangements apply where consent is required to be documented in writing in accordance with this policy.

Where the task of informing the patient and seeking consent has been delegated, the AMO must be satisfied that the practitioner is competent to undertake that task and, in appropriate cases, take reasonable steps to ensure that the patient has been properly informed and that a consent form has been completed. However, the AMO should be aware that the practitioner performing the task will also have legal and professional responsibilities to provide all necessary and proper information to assist the patient in making a decision and for obtaining a valid consent. Senior practitioners should be aware that more junior practitioners have a responsibility to refuse to undertake the task if they do not consider they have sufficient skill or experience. Decisions made by junior staff in this regard must be respected. The medical practitioner performing the procedure cannot always assume that someone else has properly informed the patient and obtained a valid consent. Therefore, the medical practitioner performing the procedure should verbally confirm that the patient understands the procedure and that the material risks have been discussed prior to the procedure commencing.

It is the Department’s policy that every public patient should know which practitioner the hospital has arranged to be primarily responsible for their care. The issue of which practitioner will be performing the procedure should be canvassed with the patient at the time of providing information to the patient and obtaining consent. Public patients should be advised accordingly where the doctor who is to perform the procedure has not yet been nominated.

17. Who may obtain patient consent and when should it be obtained?

17.1 Admission from a practitioner’s private rooms

It is the Department’s policy that prior to admission to a public hospital, a patient who is seen by an AMO in their private rooms should be provided with the necessary information about the procedure, including information about the material risks involved, in the AMO’s rooms. The AMO should also satisfy themselves as to the other requirements for obtaining a valid consent, as outlined in section 5.
The relevant sections of the consent form should be completed by the AMO and the form provided to the patient. The patient can give consent and complete the form either at the same time or prior to admission into hospital. This arrangement will apply irrespective of whether the patient is to be admitted as a public or private patient. However, the following points should be noted.

(i) In some cases it may be necessary for information about the procedure to be provided to the patient and for the consent to be obtained in the practitioners rooms, for example where an interpreter has been in attendance. In such cases the form may need to be completed by the patient in the rooms. Where this occurs care should be taken to ensure that the patient is not pressured or rushed into signing the form as such consent of the patient will not be valid. (See the requirements for obtaining a valid consent in part 5.)

(ii) In all cases where the patient wishes to have more time to consider the proposed treatment, the AMO should sign the relevant parts of the form and provide the form to the patient who can subsequently complete the consent form. In such cases, the patient should be made aware that admission to the hospital will be conditional on production of a completed consent form.

(iii) Admissions staff should be aware that on occasions, admission may be arranged through an AMO’s private rooms, without the patient having been seen there. This situation is likely to arise in the case of recurring conditions or long term treatment programmes. Where this reasonably appears to be the case, the provision of information to the patient and the seeking of consent from the patient should be arranged in accordance with the procedures outlined below for patients that present to the hospital.

(iv) An AMO may provide the necessary information to a patient and seek consent in their rooms for a procedure that will be carried out by, or that will require the involvement of, another practitioner. In light of the nature of and risks involved with the procedure, the AMO should consider whether an additional consultation with the other proceduralist should be arranged. A common example of this may be where the risks of anesthesia need to be explained separately by the attending anesthetist.

17.2 Admission through the hospital Emergency or Outpatients Department

Where a patient presents to the hospital for treatment and is to be admitted through Emergency, the AMO should inform the patient, seek consent and complete the consent form at the pre-operative consultation. The necessary information should be provided and a valid consent should be obtained and documented prior to any pre-operative medication being given, and prior to the operation, procedure or treatment. The tasks may be delegated in the following circumstances:

(i) **Where the patient is to be admitted as a public patient**, and the AMO is to perform the procedure, registrars and resident medical officers may be delegated the task of informing a patient and obtaining consent where:
   (a) it is not possible for the AMO to obtain consent personally;
   (b) the delegated practitioner does not object to undertaking the task; and
   (c) the AMO is satisfied that the delegated practitioner has the necessary skills and experience to inform the patient so as to discharge the respective legal obligations of the AMO and the hospital.

(ii) **Where the patient is to be admitted as a public patient** and the performance of a procedure or treatment has been delegated to a registrar or resident by the AMO, that staff member may obtain consent where the AMO is satisfied that the delegated practitioner has the necessary skills and experience to inform the patient.
(iii) **Where the patient is to be admitted as a private patient** - As the AMO will ordinarily provide the necessary information, including information about material risks, and obtain consent from a patient who elects to be admitted as a private patient of the AMO, hospital staff will not be required to be involved in the provision of such information or in obtaining consent from such patients. AMOs should ensure they are available to seek patient consent for their private patients prior to the administration of pre-medication. In exceptional circumstances senior experienced hospital medical staff may be required to seek consent from private patients of an AMO where:

(a) the AMO is unable to obtain consent personally; and
(b) the procedure is required as a matter of urgency; and
(c) the delegated practitioner does not object to undertaking the task; and
(d) the AMO is satisfied that the delegated practitioner has the necessary skills and experience to inform the patient so as to discharge the legal obligations of the AMO.

Outpatients being booked for elective procedures/treatments may be informed by a registrar who shall complete the patient consent form and ensure that patient consent is given. Such patients should be advised by the registrar that they will not necessarily be carrying out the procedure when the patient is admitted.

Interns are not to be delegated the task of seeking consent and informing the patient for operations or procedures unless the AMO is satisfied, in addition to the requirements outlined above at 17.1(i), that:

(a) the procedure is a minor procedure; and
(b) the intern has, under the supervision of a senior experienced practitioner, undertaken and discharged in a competent manner the task of informing a patient with the same condition or similar circumstances. This does not prevent an intern from having a form completed in the circumstances outlined in the next paragraph.

18. **What is the role of other nurses and other health professionals in providing information and obtaining consent for procedures that are performed by medical staff?**

Administrative and nursing staff cannot be delegated the task of informing a patient about the material risks of an operation, procedure or treatment and obtaining consent, where consent is required to be documented in writing in accordance with this policy. However in some cases, an AMO may inform the patient and obtain verbal consent and subsequently ask a hospital staff member to have the patient complete the form. (Note that the AMO is still required to complete the “Provision of Information to Patient “ or “Medical Advice” section of the form.) While this practice should not be encouraged, it is recognised this may be necessary in some circumstances. In these situations the staff member is not seeking the consent, they are simply having the patient confirm their prior consent. Any outstanding issues of concern to the patient should be brought to the attention of the AMO.

Many other procedures are performed in hospitals which are not performed by medical practitioners. In most cases, consent will be implied from the patient acquiescing to the procedure.

19. **What is the role of other nurses and other health professionals in providing information for procedures?**

Patients may seek advice from another medical practitioner, nurse or other health care professionals regarding the nature of a treatment, operation or procedure. All health care professionals need to be aware they are under a general duty to exercise reasonable care where they provide any advice or information to a patient. All practitioners, including nurses, are responsible for the advice they give to patients.
In circumstances where information is sought from a health care professional who is not the practitioner responsible for ensuring that the patient is appropriately informed about a procedure and seeking consent, the health care professional should ensure that any additional advice is accurate and documented in the patient’s record. If a health care professional becomes concerned that the patient lacks a sufficient understanding about the procedure, operation or treatment to have made a valid decision to undergo that operation, procedure or treatment, the health professional should take reasonable steps to ensure the person receives the necessary additional information from the treating practitioner.

20. Can nurse practitioners obtain consent for the treatment they perform?

Nurse practitioners are registered nurses working at an advanced practice level. They are authorised by the Nurses Registration Board of New South Wales to use the title ‘nurse practitioner’.

Authorised nurse practitioners may initiate medications, order diagnostic tests and make referrals only when they are operating within guidelines approved by the Director-General. Nurse practitioners have the same obligations as do medical practitioners, when obtaining consent for the procedures which they are authorised to perform.

C: PATIENTS WHO ARE INCAPABLE OF GIVING CONSENT

21. When is a person incapable of giving consent?

A person is incapable of giving consent if they are not “competent”. There is no single legal test or definition of competency. However, in order to be competent to consent to or refuse treatment, a patient must be able to comprehend and retain treatment information and consider the information in order to reach a decision. At determination of competency is a determination of the particular patient’s capacity to perform a particular decision-making task at a particular time. It is possible that a patient could be competent to make some, but not all decisions concerning their treatment.

A patient may lack competency due to a number of reasons. These include:

- Temporary factors such as the patient’s medical condition (i.e. unconsciousness). (For treatment in an emergency, see section 23);
- Mental illness (See section 24);
- Intellectual impairment, dementia, or brain damage (See Attachment A);
- A child aged 14 or less (See section 25).

The Guardianship Act provides methods for obtaining consent to treat those persons aged 16 years or over who are incapable of giving consent. A person is incapable of giving consent, within the meaning of that Act, where the person is incapable of understanding the general nature and effect of the proposed treatment, or is incapable of indicating whether or not the patient consents to the treatment. A summary of relevant provisions is provided at Attachment A.

The Department is aware that in some instances a patient will have been administered pre-medication without a consent form having being completed. All hospitals should adopt procedures to prevent this situation from occurring. However if such a situation arises, staff should be aware that the absence of a signed form does not prevent the procedure from proceeding provided that a valid verbal consent was previously obtained and the patient had been provided with sufficient information. If the AMO is satisfied that this has occurred, such a procedure may proceed. Of course, this should be documented in the medical record.
22. Is the consent of a patient’s spouse required for any procedure?

Where the patient is capable of giving consent, there is no specific requirement to obtain the consent of the spouse (or any other family member) and this should only be done with the specific authority of the patient.

If a person is 16 years of age or over and incapable of giving consent, the provisions of the Guardianship Act 1987 will apply and the consent of the patient’s “person responsible” will be required (unless consent is not required, or the consent of the Tribunal is necessary). (See Attachment A)

The person responsible for a patient will often be the patient’s spouse. Spouse includes husband or wife or de facto, and can include a same sex de facto.

23. What if treatment is urgently required but the person is incapable of giving consent?

In an emergency, where the patient is unable to give consent and the treatment is required immediately:
(i) to save the person’s life; or
(ii) to prevent serious injury to a person’s health; or
(iii) except in the case of special medical treatment - to prevent the patient from suffering or continuing to suffer significant pain or distress;

the procedure/treatment may be carried out in the absence of consent. See Attachment A for further information concerning ‘special medical treatment’.

Legal authority suggests that a medical practitioner should not provide treatment or perform a procedure in an emergency where there is an unequivocal written direction by the patient that such treatment is not to be provided in any circumstances. Should a patient give such a written direction, a medical practitioner should take reasonable steps to ascertain the true scope of the patient’s refusal to consent and whether the patient had the capacity to decide at the time the direction was signed. In such a case, if the medical practitioner establishes that the patient’s refusal was invalid or if the patient lacked the capacity to give the direction, the medical practitioner can treat the patient in accordance with his or her professional judgment of the patient’s best interests. The circumstances surrounding an event of this sort should be carefully documented. See section 6 for further information on refusal of treatment and Advance Care Directives.

24. What if the patient involved is affected by a mental illness?

If a voluntary patient does not have the capacity to consent due to mental illness, the substitute consent provisions of the Guardianship Act will apply (See Attachment A).

The remainder of this section relates to the treatment of patients under the Mental Health Act.

24.1 Emergency Surgery

A medical superintendent can consent to emergency surgery on behalf of an involuntary patient suffering from a mental illness, if, in the medical superintendent’s opinion, the patient is incapable of giving consent, or is capable of giving consent and refuses to do so, or neither gives nor refuses consent and the surgery is necessary, as a matter of urgency, in order to save the life of the patient or to prevent serious danger to the health of the patient.

A medical superintendent can consent to emergency surgery on behalf of a voluntary patient or a forensic patient not suffering from mental illness, if in the medical superintendent’s opinion, the patient is incapable of giving consent, and the surgery is necessary, as a matter of urgency, in order to save the life of the patient or to prevent serious danger to the health of the patient.
Consent given by a medical superintendent should be in writing and signed.

In this section, references to a medical superintendent also include a deputy medical superintendent, responsible medical officer or authorised officer.

24.2 Operations and Treatment other than Emergency Treatment

A medical superintendent may apply to the Mental Health Review Tribunal, or to an authorised officer, for consent to perform a surgical operation or special medical treatment (see below) on a temporary patient, continued treatment patient, forensic patient (suffering from mental illness) or any other patient detained in a hospital if, the patient is incapable of giving consent, or is capable of giving consent and refuses to do so, or neither gives nor refuses consent and the medical superintendent is of the opinion that the surgery or special treatment is desirable, having regard to the patient’s interests.

A medical superintendent may apply to the Mental Health Review Tribunal or to an authorised officer, for consent to perform a surgical operation or special medical treatment on an informal patient or a forensic patient (not suffering from mental illness), if in the medical superintendent’s opinion, the patient is incapable of giving consent, and the medical superintendent is of the opinion that the surgery or special treatment is desirable, having regard to the patient’s interests.

Applications to perform surgical applications can only be made to the Tribunal, or to an authorised officer, 14 days after written notice of the intention to obtain consent from the Tribunal or the authorised officer, for the surgery, has been given to the patient’s nearest relative.

In this section, references to a medical superintendent also include a deputy medical superintendent, responsible medical officer or authorised officer.

24.3 Electro-Convulsive Therapy (ECT)

ECT treatment cannot be given to involuntary patients without the consent of the Mental Health Review Tribunal. For further information on ECT treatment for involuntary patients see http://www.mhrt.nsw.gov.au/assets/files/mhrt/pdf/ECTInformSheet.pdf

24.4 Special Medical Treatment

Any treatment, procedure, operation or examination that is intended, or is reasonably likely, to render a patient permanently infertile cannot be provided to psychiatric patients unless the medical practitioner providing the treatment is of the opinion that the treatment is necessary in order to save the patient’s life, or prevent serious damage to the patient’s health, or the Mental Health Review Tribunal has consented to the treatment. This type of treatment cannot be performed on patients under the age of 16 years.

25. What if the patient is a minor?

25.1 Emergency Treatment

Pursuant to section 174 of the Children and Young Persons (Care and Protection) Act 1998, a medical practitioner may carry out medical treatment on a child (a person aged under 16 years) or young person (a person aged 16 or 17) without the consent of the child or young person or a parent of the child or young person, if the medical practitioner is of the opinion that it is necessary, as a matter of urgency, to carry out the treatment on the child or young person in order to save his or her life or to prevent serious damage to his or her health. This means that emergency medical treatment, and emergency first aid treatment (including any procedure, operation or examination) may be provided without the consent of the minor or a parent or guardian.
25.2 Non-Emergency Treatment

It is NSW Health policy that if the patient is under the age of 14 years, the consent of the parent or guardian is necessary.

A child aged 14 years and above may consent to their own treatment provided they adequately understand and appreciate the nature and consequences of the operation procedure or treatment. However, where the child is 14 or 15 years of age, it is prudent for practitioners or hospitals to also obtain the consent of the parent or guardian, unless the patient objects.

Generally, the age at which a young person is sufficiently mature to consent independently to medical treatment depends not only on their age but also on the seriousness of the treatment in question relative to their level of maturity. The health practitioner must decide on a case-by-case basis whether the young person has sufficient understanding and intelligence to enable him or her to fully understand what is proposed.

Pursuant to the Minors (Property and Contracts) Act 1970, if a minor aged 14 and above consents to their own medical treatment the minor cannot make a claim against the medical practitioner for assault or battery. Also, where medical treatment of a minor aged less than sixteen years is carried out with the consent of a parent or guardian of the minor, the minor cannot make a claim against the medical practitioner for assault or battery.

For patients 16 years or over, their own consent is sufficient.

Suggested procedure to follow where treatment is not urgent and consent is refused by either the parents of a minor, or a minor aged 14 or above.

1. Establish that there is no suitable alternative treatment available to which consent would be forthcoming;
2. Obtain a second medical opinion and discuss this with the parent(s) or guardian and/or patient;
3. Attempt to reach agreement by counseling and mediation with the family. These efforts should be documented;
4. If applicable, explain to the parent(s) and patient that although the treatment is not urgent at this stage, if it is not provided in a timely manner, the situation may become urgent. Explain how delay would affect the patient. Explain that in urgent circumstances, treatment can be provided without parental consent, or the consent of the patient, but that the PHO would prefer to provide the treatment now, with consent;
5. If the parents do not consent to treatment on behalf of their child, consider making a report to DoCS that the child is a child at risk. Parents should be told that the PHO intends to notify DoCS before the notification is made. Once DoCS receives a notification, it will appoint a case manager to investigate the situation. This may ultimately lead to a guardian being appointed to consent to the treatment in place of the parents;
6. As a last resort, a court order can be sought authorising the treatment.

Legal Branch, NSW Health, or the Department of Community Services can be contacted for advice at any stage in this process.

26. Who gives consent for a minor if their parents have separated?

The Family Law Act makes it clear that each parent has full responsibility for each of their children who is under 18. Parental responsibility is not affected by changes to relationships (ie if the parents separate). Each parent has the responsibility for their child’s welfare, unless the Court has made an order stipulating that one parent has certain responsibilities to the exclusion of the other parent.
This means that the consent of either parent to their child’s medical treatment is usually sufficient. There are two circumstances where the consent of either parent may not be sufficient:

1. Where no formal court orders have been made, and one parent consents and the other refuses. The best way of handling this situation is by counselling the parents and trying to reach agreement on what is in the child’s best interests.

2. Where the Court has made an order stipulating that a particular parent has particular responsibilities, i.e. for health care decisions, in which case, consent will have to be obtained in accordance with that order.

The Court can make four types of parental orders. The four types are residence orders, contact orders, child maintenance orders and specific issues orders.

A residence order or specific issues may stipulate that one parent has sole responsibility for the child’s day-to-day care welfare and development. If this type of order has been made, that parent will be the only parent that can consent to medical treatment.

If there is an arrangement for a child to live with one parent for part of the time and the other for part of the time, this is a residence order. Both parents would retain full parental authority for the child, however, the consent of either parent would be sufficient to authorise medical treatment.

If a specific issues order is made granting one parent the sole responsibility for health care decisions, that parent will be the only parent that can consent.

Health care workers should assume that either parent can consent (alone) unless a court order stipulating something different is brought to their attention.

27. Can a parent or guardian of a minor delegate their responsibility for providing consent to another adult?

Occasionally, a parent delegates their responsibility for consenting to medical treatment on behalf of their minor child, to another adult. This may occur for example, in relation to Aboriginal children, where an extended family member, rather than the child’s mother or father, is responsible for giving consent on their behalf.

A parent or legal guardian can authorise another adult to consent to treatment on behalf of their minor child. Ideally, this delegation would be in writing. If a written delegation exists, a copy of it should be placed on the minor’s medical record.

If the delegation was given verbally, it should be documented in the minor’s medical record.

If a minor presents with an adult other than a parent, the attending medical officer should attempt to ascertain the adult’s relationship to the child and whether the adult is the child’s guardian. Where the adult does not appear to be the child’s guardian, but bears some relationship to the child, and confirms that the parent/guardian is aware that they are accompanying the child, it is reasonable to assume that the parent or guardian has delegated responsibility to that person, unless there is any indication to the contrary (i.e. a previous objection by the parent to that person exercising any authority in relation to the child).

28. What is ‘special medical treatment’ in relation to children?

Practitioners should be aware that the Children and Young Persons (Care and Protection) Act 1998 classes some procedures as “special medical treatment”. These procedures cannot be carried out on a child under 16 years unless:
(i) the treatment is required as a matter of urgency to save the child’s life or to prevent serious
damage to the child’s health; or
(ii) if the treatment is described in paragraphs (a), (b) or (c) below, the Guardianship Tribunal
consents to the treatment.

The definition of ‘special medical treatment’ under the Children and Young Persons (Care and
Protection) Act is different from that which is used under the Guardianship Act (See Attachment A).
The definition of ‘Special medical treatment’ under the Children and Young Persons (Care and
Protection) Act includes the following:
(a) procedures or treatments that are intended to remediate a life threatening condition intended or
reasonably likely to have the effect of rendering the child permanently infertile,
(b) any medical treatment that involves the administration of a long-acting injectable hormonal
substance (such as medroxyprogesterone acetate in aqueous suspension) for the purpose of
contraception or menstrual regulation,
(c) any medical treatment in the nature of a vasectomy or tubal occlusion,
(d) any medical treatment that involves the administration of a drug of addiction within the
meaning of the Poisons and Therapeutic Goods Act 1966 over a period or periods totalling
more than 10 days in any period of 30 days, except for medical treatment in circumstances
where the drug is administered in accordance with a written exemption granted, either generally
or in a particular case, by the Director-General of the Department of Community Services on
the written request of the Director-General of the Department of Health,
(e) any medical treatment that involves an experimental procedure that does not conform to the
document entitled National Statement on Ethical Conduct in Research Involving Humans
published by the National Health and Medical Research Council in 1999,
(f) any medical treatment that involves the administration of a psychotropic drug to a child in out-
of-home care for the purpose of controlling his or her behaviour.

The Guardianship Act applies to adults who are unable to consent to their own treatment, however,
the Guardianship Tribunal’s consent is also required in order to provide some special medical
treatment to children under 16, as set out above.

D: CONSENT FOR SPECIFIC TREATMENT/PROCEDURES

29. Blood Transfusions

Section 4 of this Circular requires consent to be documented in writing for certain procedures. This
includes the administration of a blood transfusion or the administration of blood products. Blood
products includes red cells, white cells, platelets, albumin products, fresh frozen plasma, Anti-D
Immunoglobulin, coagulation factors, autologous transfusions and any biologically derived products
such as thrombin products.

Section 20 of the Circular provides that administrative and nursing staff cannot be delegated the task
of informing a patient about the material risks of an operation, procedure or treatment and obtaining
consent, where consent is required to be documented in writing in accordance with this Circular.
Taken together, these two parts require that consent must be obtained and a consent form must be
completed by the attending medical officer, or a medical officer to whom that task is properly
delegated in accordance with section 16 of the circular.

The provision of information to patients and the obtaining of a valid consent for blood transfusions
should, whenever practicable, be documented using a consent form, except of course in emergency
situations where the patient is unable to give a valid consent. These arrangements however, may not
be practical in small rural hospitals where there are no resident medical staff. In some cases, it may
not be practical for a medical practitioner to be present to provide the information to the patient, and obtain a completed consent form and instead, nursing staff are required to administer the transfusion. To address these practical problems where necessary, Area Health Services may develop local policies so that senior nursing staff administering a transfusion can provide the necessary information to patients, obtain a valid consent and complete the consent form.

In developing such policies, Area Health Services should have regard to the following:
1. A local policy may only be developed to be used in circumstances where there is no resident medical officer on duty.
2. The decision to recommend a blood transfusion or administer blood products to a patient must be made on a case by case basis. To ensure that the clinical need for such treatment is established, appropriate arrangements should be put in place so that such decisions are made by a medical officer who is fully informed of the clinical circumstances of the patient.
3. Area health services should provide, where necessary, additional training to senior nursing staff so that they can provide clinically relevant, and accurate information. The need for additional training as circumstances change should be considered.
4. Consideration should be given to developing patient information sheets in English and other languages to assist with the consent process. These should be reviewed on a regular basis.

30. Obstetric procedures

Written consent is not required for a normal delivery. Should an operation such as a Caesarean section or a blood transfusion be required, the consent process as detailed should be completed, insofar as it is practicable to do so in the circumstances.

If implied or oral consent is given to a particular procedure, (such as the use of forceps) this should be noted in the patient’s medical record. Discussions about alternatives and material risks should be documented in the record. It may be appropriate for practitioners to discuss these additional procedures during the term of the pregnancy.

31. Anaesthetics

Patients must be informed about the material risks associated with anaesthesia for their planned procedure. If alternative types of anaesthetic, eg regional or general, are commonly used for the procedure, these must also be discussed. Where alternatives exist, options should be outlined, together with their advantages and disadvantages. This information can be provided by an anaesthetist if a separate consultation occurs, or by the attending medical officer.

Section 17.1(iv) states that the attending medical officer should consider whether a separate consultation with an anaesthetist is required, and if so, arrange for that separate consultation to take place.

Where an attending medical officer refers a patient for a separate anaesthetic consultation, the anaesthetist should have the patient sign a separate consent form in relation to the anaesthetic. The attending medical officer should make a note that the patient has been referred for a separate anaesthetic consultation.

This provision is not intended to infer that a separate anaesthetic consultation is generally required, however, where anaesthesia involves particularly high risks, an anaesthetist should explain these. Whether a consultation with an anaesthetist is appropriate is a decision for the attending medical officer exercising his or her professional judgment, in the circumstances of the particular case.
32. Autopsy and tissue donation

These matters are specifically covered by the Human Tissue Act 1983 and specific consent forms are provided for these situations under that Act. For detailed information see PD2005_341 & PD2012_014.

33. Use of tissue removed for the purposes of medical, surgical or dental treatment

The Human Tissue Act 1983 requires the written consent of a person if tissue removed from their body during medical, surgical or dental treatment is to be used for any medical, therapeutic or scientific purposes, other than the ongoing treatment of the patient. Tissue includes any organ, or part of a human body, and any substance, including blood, extracted from a part of the human body. If, for example, tissue is removed during medical treatment for diagnostic purposes, a separate consent for a pathological examination is not required. However, if a tumour removed from a person’s body is to be retained, and used in the future for the education of students and other medical professionals, or for research or for quality assurance purposes, then the consent of the person from whom the tumour was removed is required before the tumour can be used for these other purposes.

If the person is a person who is a patient to whom the Part 5 of the Guardianship Act applies (ie the patient is 16 years of age or over and incapable of giving consent) their “person responsible” who is consenting to the medical, surgical or dental treatment may also consent to other uses of the tissue.

If the person is a child, the senior available next of kin may consent to the use of the child’s tissue. The senior available next of kin are the child’s parents, or if there are no parents available, the child’s guardian. However, tissue removed from children who are in the care of the State may not be used for any other medical, therapeutic or scientific purposes.

Tissue removed during a medical, dental or surgical procedure may be retained for a period not exceeding 72 hours, if the tissue was removed from the person during a procedure performed as a matter of urgency in order to save the life of the person, or prevent serious damage to the health of the person (if the person was an emergency patient). This means that if the person is unable to consent to the procedure and the use of any tissue removed before the procedure takes place, they may consent to the use of the tissue removed within the 72 hours following the surgery. If the person is a child, or dies during the course of their treatment, a senior available next of kin may consent to the use of the deceased person’s tissue. A separate form is available for this. (See PD2005_341 & PD2012_014)

However, if possible, it is best to obtain the consent of the person themselves, or their person responsible (as the case may be) prior to treatment taking place. Accordingly, the consent form allows a person to consent to the use of any tissue removed during their treatment, for medical, therapeutic or scientific purposes.

It is noted that this applies only to tissue which must necessarily be removed as part of the procedure. It does not authorise the removal of any additional tissue from the person’s body. For this to occur lawfully, the person must specifically consent to the removal of that tissue under different provisions of the Human Tissue Act 1983.

The patient should be given a brief description of the sort of uses to which their tissue may be put (scientific and medical research, teaching, study etc). The patient must also be informed that their consent to the use of tissue is separate from their consent to treatment, and their treatment is in no way affected by a decision not to consent to use of tissue. The optional use of removed tissue section of the consent form should be completed by the patient after discussion with the AMO or a delegate of the AMO.
If the patient does not consent to their tissue being used for other medical, therapeutic or scientific purposes, it should be disposed of in accordance with usual waste management procedures, or in accordance with the patient’s wishes if possible.

34. Consent for procedures that a medical practitioner does not “recommend”

The consent forms attached to this Circular require the medical practitioner to sign a section which states s/he has informed the patient about the nature, results and risks of the “recommended procedure”. The patient also signs an acknowledgement which states that the medical practitioner has recommended the treatment.

NSW Health’s policy is that public health organisations use these consent forms.

However, it is recognised that some procedures, such as terminations of pregnancy and elective circumcisions, are performed which may not be “recommended” by a medical practitioner, or which a medical practitioner may feel uncomfortable about recommending.

PHOs may adopt the following alternative wording on consent forms used for these types of procedures (changes in bold type):
I, Dr ……………………insert name of medical practitioner ………………….have discussed the following:
…………………………………………………………………………………………………………………………………..
…………………….INSERT NAME OF PROCEDURE OR TREATMENT. DO NOT USE ABBREVIATIONS …………………………………………………
…………………………………………………………………………………………………………………………………..
I have informed this patient of the matters as detailed below including the nature, likely results, and material risks of the above procedure or treatment.
………………………………    …../…../20….        ………………..
SIGNATURE OF MEDICAL PRACTITIONER.  DATE  TIME

Interpreter present *    ……………………………………    …../…../20….    …………….
SIGNATURE OF INTERPRETER         DATE  TIME

Dr ……………………………………..and I have discussed my present condition and the
various ways in which it might be treated. I have requested the above procedure or treatment:

35. Research or experimentation?

The approval of the hospital institutional ethics committee must be sought for specific consent
protocols for all operations, procedures and treatments involving experimentation. Patient consent
should also be obtained in writing.

Special arrangements apply where a person is sixteen years of age or above and is unable to consent. (See Attachment A).

36. Procedures that may affect persons other than the patient

Some procedures, such as HIV testing and genetic testing, may have implications for persons other
than the patient undergoing the test or procedure.

In these situations, it is advisable to discuss the possible test results with the patient, and ascertain
whether the patient intends to inform identifiable potentially affected third parties of the results. It
may even be possible to obtain the patient’s written consent to disclose results to an identifiable third
party at this stage.
ATTACHMENT A

GUARDIANSHIP ACT 1987 - SUBSTITUTE CONSENT

This attachment sets out the circumstances in which substitute consent can be obtained, from whom and the legal requirements for ensuring that substitute consent is valid.

1. What is the purpose of the Guardianship Act 1987?

The Guardianship Act 1987 establishes who can give valid substitute consent in circumstances where a person is unable to consent to medical or dental treatment. The object of the Act is to ensure that:

- people are not deprived of necessary treatment merely because they lack the capacity to consent to the carrying out of such treatment; and
- any treatment that is carried out for such people is carried out to promote their health and well being.

The Act therefore identifies a substitute decision maker for patients unable to consent which is consistent with the level of treatment proposed. In some cases (outlined below) treatment may proceed without consent.

2. When do the provisions of the Guardianship Act apply?

The Act applies to a patient who is of or above the age of sixteen years and who is incapable of giving consent to the carrying out of medical or dental treatment. Section 33(2) of the Guardianship Act provides that a person is incapable of giving consent if the person is incapable of understanding the general nature and effect of the proposed treatment, or is incapable of indicating whether or not he or she consents or does not consent to the treatment.

3. What if the treatment is required in an emergency?

The Guardianship Act provides that treatment may be provided to a person who is unable to consent where the medical practitioner or dentist carrying out or supervising the treatment considers treatment is necessary as a matter of urgency to save life, to prevent serious damage to patient’s health, or (except in the case of special medical treatment), to alleviate significant pain or distress. A substitute consent is not required in these circumstances.

4. Is medical or dental treatment defined in the Guardianship Act?

Medical or dental treatment is defined to mean:

- medical treatment (including any medical or surgical procedure, operation or examination and any prophylactic, palliative or rehabilitative care) normally carried out by or under the supervision of a medical practitioner; or
- dental treatment (including any dental procedure operation or examination) normally carried out by or under the supervision of a dentist.

In the case of a clinical trial, medical treatment is taken to include the giving of placebos to some participants in the trial.

However, the Act specifies that this does not include:

(i) any non intrusive examination made for diagnostic purposes (including a visual examination of the mouth, throat, nasal cavity, eyes or ears);
(ii) first aid medical or dental treatment; or
(iii) the administration of a pharmaceutical drug for the purpose, and in accordance with the dosage level, recommended in the manufacturer’s instructions for which a prescription is not normally required and which is normally self administered.
These minor procedures may proceed without consent.

5. **What must a medical practitioner do before they carry out treatment when a person is unable to consent?**

Practitioners should be aware, it is an offence under section 35 of the Act to provide medical or dental treatment to a person who is 16 years or older who is incapable of giving consent unless:
- a substitute consent for the treatment has been obtained in accordance with the *Guardianship Act 1987* NSW; or
- the carrying out of the treatment is authorised by the *Guardianship Act* and no consent is required.

Therefore practitioners need to determine whether treatment can proceed without consent or whether a substitute consent is required, and from whom.

The Act makes different arrangements for obtaining consent depending on the level of intervention proposed. Distinctions are drawn between *minor treatment, major treatment* and *special medical treatment*.

It is the legal responsibility of the medical practitioner carrying out the treatment to ensure that consent has been obtained.

6. **What is special medical treatment?**

Special medical treatment is defined as:
(a) any treatment that is intended, or is reasonably likely, to have the effect of rendering permanently infertile the person on whom it is carried out;
(b) any new treatment that has not yet gained the support of a substantial number of medical practitioners or dentists specialising in the area of practice concerned; or
(c) any treatment declared by the regulations to be special treatment for the purposes of the *Guardianship Act*

The following treatments have been declared by the Regulations to be special treatment:
(a) any treatment that involves the administration of a drug of addiction (other than in association with the treatment of cancer or palliative care of a terminally ill patient) over a period or periods totaling more than 10 days in any 30 days;
(b) any treatment that is carried out for the purpose of terminating pregnancy;
(c) any treatment in the nature of a vasectomy or tubal occlusion;
(d) any treatment that involves the use of an aversive stimulus, whether mechanical, chemical physical or otherwise.

Special medical treatment does not include treatment administered in the course of a clinical trial. Special arrangements apply to such treatment - see paragraph 11.

7. **Who provides substitute consent to special medical treatment?**

Consent to the initial administration of special medical treatment may only be granted by the Guardianship Tribunal. The process for making an application to the Tribunal is detailed later in the document.

Once the initial consent of the Guardianship Tribunal has been obtained, the guardian of a person may consent to the carrying out of continuing or further special treatment if the Tribunal has authorised the guardian to give consent to the continuation of treatment or to further treatment of a similar nature.
Practitioners should note that the Guardianship Regulations identify two specific types of special medical treatment for which different criteria apply for obtaining consent from the Tribunal. These include: (i) any special treatment that involves the administration to a patient of one or more restricted substances for the purpose of affecting the central nervous system of the patient, but only of the dosage levels, combination of the numbers of restricted substances used or the duration of the treatment are outside the accepted mode of treatment; and (ii) any special treatment that involves the use of androgen reducing medication for the purpose of behavioral control. If these treatments are to be administered, the matters should be discussed with the Tribunal.

8. What is major medical treatment?

The definition of major medical treatment is broad. It includes:
(i) any treatment that involves the administration of a long acting injectable hormonal substance for the purpose of contraception or menstrual regulation;
(ii) any treatment that involves administration of a drug of addiction (except where classified as special medical treatment as outlined above);
(iii) Any treatment that involves the administration of a general anesthetic or other sedation, but not involving treatment involving:
   (a) sedation used to facilitate the management of fractured or dislocated limbs; or
   (b) sedation used to facilitate the insertion of an endoscope into a patient’s body for diagnostic purposes unless the endoscope is inserted through a breach or incision in the skin or a mucous membrane.
(iv) Any treatment used for the purpose of eliminating menstruation;
(v) Any treatment that involves the administration of a restricted substance for the purpose of affecting the central nervous system, but not a treatment;
   (a) substance that is intended to be used for analgesic, antipyretic, anti-Parkinsonian, anticonvulsant, anti-nauseant or antihistaminic purposes; or
   (b) that is to be given only once; or
   (c) that is a PRN treatment (that is, given when required, according to the patients needs that may be given not more than 3 times a month); or
   (d) given for sedation in minor medical procedures.
(vi) Any treatment that involves a substantial risk to the patient (that is risk that amounts to more than a mere possibility) of: (a) death; or (b) brain damage; or (c) paralysis; or (d) permanent loss of function of any organ or limb; or (e) permanent and disfiguring scarring; or (f) exacerbation of the conditions being treated; or (g) an unusually prolonged period of recovery; or (h) a detrimental change of personality; or (i) a high level of pain and stress.
(vii) Any treatment involving testing for the HIV virus.

Major dental treatment is defined to include treatments involving the administration of a general anesthetic or simple sedation, a procedure intended or likely to result in removal of all teeth, a treatment likely to result in the patient’s ability to chew food being significantly impaired for an indefinite or prolonged period.

Major treatment does not include treatment administered in the course of a clinical trial.

9. What is minor treatment?

Minor treatment is any medical or dental treatment which does not fall within the meaning of special medical treatment or major treatment. As noted at point 4, this does not include a number of specific minor procedures for which no consent is required.

Minor treatment does not include treatment administered in the course of a clinical trial.
10. How is consent obtained for major and minor medical treatment?

Consent to carry out major and minor medical treatment can be obtained from the person responsible for the patient within the meaning of the Act. A consent given by a person responsible has effect as if the treatment had been consented to by the patient. However, the consent of a person responsible is not valid if the practitioner carrying out or supervising the treatment is aware or ought to be aware the patient objects to the procedure or treatment or if the proposed treatment is to be carried out for any purpose other than that of promoting or maintaining the health and well-being of the patient.

An objection by the patient may be disregarded if
(a) the patient has minimal or no understanding of what the treatment entails, and
(b) the treatment will cause the patient no distress or, if it will cause the patient some distress, the distress is likely to be reasonably tolerable and only transitory.

If the patient objects to the treatment and the objection cannot be disregarded, the request for consent must be referred to the Tribunal except where a legal guardian of the patient has been specifically authorised by the Tribunal to override the patient’s objection. This applies whether the proposed treatment is major or minor.

In the case of major medical treatment the Guardianship Tribunal may also consent to treatment. However, in all instances, practitioners should first ascertain if there is a person responsible for a patient unable to consent before seeking the consent of the Guardianship Tribunal.

Whilst the Guardianship Tribunal can also provide consent to minor treatment, such treatment may be carried out on a patient without consent if there is no person responsible for the patient or the person responsible is unavailable or unwilling to make a decision concerning the patient. In such cases, the practitioner carrying out the minor treatment is required to certify in writing in the patient’s clinical record that the treatment is necessary and is the form of treatment that will most successfully promote the patients health and well-being; and the patient does not object to the carrying out of the treatment.

If consent is refused by a person responsible and the practitioner remains of the view that the treatment is in the best interests of the patient, the matter should be referred to the Guardianship Tribunal.

11. Treatment administered in the course of a clinical trial

A clinical trial is defined as a trial of drugs or techniques that necessarily involves the carrying out of medical or dental treatment on the participants in a trial. This includes the administration of placebos to patients.

A person unable to consent may not participate in a clinical trial unless the trial has been approved by the Guardianship Tribunal under the Act. In approving such a trial, the Guardianship Tribunal will decide whether consent can be granted by person responsible or should be granted by the Tribunal.

12. Who is the person responsible for a patient?

The Act establishes a hierarchy for determining who is the person responsible for a person unable to consent to treatment.
- If the person is under guardianship, the guardian is the person responsible.
- If there is no guardian, an enduring guardian appointed by the patient with authority to make decisions regarding medical care (see section 13 of this Attachment)
- If there is no enduring guardian, a spouse (including a de facto spouse) with whom the person has a close continuing relationship is the person responsible.
• If there is no guardian or spouse, a person who has the care of the patient unable to consent is the person responsible. Such a person is regarded to have the care of the patient if they have provided, or have arranged to be provided, domestic services and support otherwise than for remuneration. Where the patient has been cared for by a person in a nursing home, hostel, boarding house or other group accommodation, that person does not have care of the person. In such cases the patient remains in the care of the person he or she was immediately with before residing in the institution.

• If there is no guardian, spouse, or carer, a close relative or friend may act as the person responsible provided they are not receiving remuneration for any services provided.

If the person is in the care of the Director-General under s 13 of the Guardianship Act, the Director-General of the Department of Community Services is the person responsible.

13. Who is an enduring guardian?

Until 1997, guardians were appointed by either the Tribunal or the Supreme Court. However, amendments to the Act provided that an individual may appoint an enduring guardian to carry out certain roles and functions where the individual lacks sufficient capacity to make appropriate decisions.

A person 18 years of age or above may appoint an enduring guardian. Such an appointment must be made on the prescribed form, copies of which are available from the Guardianship Tribunal, and be witnessed by a legal practitioner or a clerk of the local court.

An appointment only has effect during a period in which the person is in need of a guardian. Further, the decisions which an enduring guardian may make on behalf of the person in need of a guardian are determined by the prescribed form appointing the person. As the person appointing the enduring guardian may limit the decisions which may be made by the appointee, practitioners should ask to review the appointment form to ensure that the enduring guardian has power to make decisions in relation to medical or dental treatment.

14. Guardians appointed under interstate or NZ legislation

A person who has been appointed as a guardian of another person and is able to consent to medical treatment on behalf of that person pursuant to the guardianship legislation of another State or Territory or the Protection of Personal and Property Rights Act 1988 of New Zealand, may apply to the NSW Guardianship Tribunal for recognition of their status as such in NSW. If the NSW Guardianship Tribunal recognises the interstate or NZ guardian as such, that person is to be taken as having been appointed as a guardian under the NSW Guardianship Act.

15. What is required to obtain consent from a person responsible?

A request to a person responsible for consent may be made by any person. Such a request shall specify the following information:

(a) the grounds on which it is alleged that the patient is a patient to whom this part applies;
(b) the particular condition of the patient that requires treatment;
(c) the alternative courses of treatment that are available in relation to that condition;
(d) the general nature and effect of each of the courses of treatment;
(e) the nature and degree of the significant risks (if any) associated with each of these courses of treatment; and
(f) the reasons for which it is proposed that any particular course of treatment should be carried out.
A request to a person responsible is to be made in writing. However:

(i) if the request is for major medical treatment, it may be made orally if it is not practicable to make the request in writing because of the need to provide the treatment quickly.

(ii) if the request is for minor medical or dental treatment, the request may be made orally, if it is not practicable to make the consent in writing or the person whose consent is sought does not require the consent to be made in writing.

Written confirmation of an oral request for consent must be provided for major treatment or for minor treatment where the person whose consent was sought requires confirmation.

16. **What must the person responsible do to grant a valid consent?**

In all cases, the person responsible must consider the views (if any) of the patient, the information provided by the person requesting consent and the objectives of the Act. Consent to the carrying out of major medical treatment is to be given in writing, however, the consent may be given orally if it is not practicable to do so in writing because of the need to provide treatment quickly. Written confirmation of the consent must be provided where oral consent is provided.

Consent to the carrying out of minor medical treatment is also to be given in writing, although it may be given orally if: (i) it is not practical to give written consent; and (ii) the person by whom the treatment is to be carried out does not require it to be given in writing. However, written confirmation of the consent may be requested.

17. **Do records need to be kept?**

A person who carries out treatment pursuant to a substitute consent is to keep a written record of the name of the person by whom consent was given, the date, conditions on the consent and the treatment. If written consent was obtained, the form should be kept. Such records must be retained for seven years.

18. **The Public Guardian**

Guardianship Tribunal may appoint the Public Guardian as a person’s guardian with the functions of providing consent to medical or dental treatment. If the patient’s guardian is the Public Guardian, you should contact the Office of the Public Guardian to seek consent for the proposed treatment from the officer responsible for the patient’s guardianship decisions. The Office of the Public Guardian has an application form for this purpose. It is entitled “Application to carry out medical or dental treatment for a person under the guardianship of the Public Guardian.

19. **What if an application needs to be made to the Guardianship Tribunal?**

Requests to the Guardianship Tribunal for consent generally require the same information that needs to be provided to a person responsible. A standard request form is available from the Guardianship Tribunal. Further information, including brochures can be found on the Tribunal’s website, [http://www.gt.nsw.gov.au](http://www.gt.nsw.gov.au).
USEFUL CONTACTS

Department of Community Services

Street address: 4-6 Cavill Avenue
               Ashfield NSW 2131
Postal Address: Locked Bag 28
               Ashfield NSW 1800
Phone: DoCS Helpline 13 3627 (or 13 DoCS) to make a report. (24hours)
               (02) 9716 2222 (Head Office)
Fax: (02)9716 2999 (Head Office)
Website: http://www.community.nsw.gov.au

Guardianship Tribunal

Street address: Level 3
               2a Rowntree Street
               Balmain NSW 2041
Postal Address: Locked Bag 9
               Balmain NSW 2041
Phone: (02) 9555-8500 or
        1800 463 928
Fax: (02) 9555-9049
Website: http://www.gt.nsw.gov.au
Email: gt@gt.nsw.gov.au

Mental Health Review Tribunal

Street address: Building 40 Digby Road
               Gladesville Hospital
               Gladesville NSW 2111
Postal Address: PO Box 2019
               Boronia Park
               NSW 2111
Phone: (02) 9816 5955
        1800 815 511
Fax: (02) 9817 4543
Website: http://www.mhrt.nsw.gov.au
Email: mhrt@mhrt.nsw.gov.au
NSW Health Legal Branch

Street address: 73 Miller Street
Postal Address: Locked Mail Bag 961
Phone: (02) 9391 9606
Fax: (02) 9391 9604
Email: legal@doh.health.nsw.gov.au

The Public Guardian

Street address: Level 15, Piccadilly Tower
Postal Address: PO Box A231
Phone: (02) 9265 3184
Fax: 02 9283 2645
Website: http://www.lawlink.nsw.gov.au/opg

If you need to contact the Public Guardian for an urgent decision outside of office hours, call 02 9265 3184 and you will hear a recorded message which will give you the number for a pager service. Give the pager service your name and number and a staff member from the Office of the Public Guardian will return your call. Do not give any information regarding the client to the paging service.

ADULT-TO-ADULT LIVING DONOR LIVER TRANSPLANTATION GUIDELINES (GL2008_019)

The purpose of the guideline is to provide guidance to health professionals and additional protection for prospective adult Living Donor Liver Transplantation (LDLT) donors. This guideline is aimed primarily at the jurisdictions that will endorse LDLT, the institutions that will provide LDLT, and the health professionals directly involved in this practice. To the extent that it is adopted by all jurisdictions in line with the particular requirements of their human tissue legislation, and applied in participating liver transplant units, it will promote ethical, lawful and consistent application of quality processes in provision of this complex procedure to donors, recipients and their families.

These Guidelines should be in conjunction with PD2005_406.


23(02/10)
CONSENT FORMS (Information Bulletin 99/16)

Please note that there have been minor format amendments made to the consent forms which were attached to PD2005_406. Copies of the new forms are attached and can be used as pro-formas. However the forms are printed in purple to comply with medical records colour coding.

These forms can be obtained from the NSW Government Printing Service - telephone number 9743-8777 (Fast Forms Division), facsimile 9743-8603. The following numbers MUST be quoted when ordering:

- Request/Consent Form (over 14 years) MR3A Item No. 606006
- Request/Consent Form (Guardianship) MR3B Item No. 606007
- Request/Consent Form (Children) MR3C Item No. 606008

Please note that form MR3B B 606007 is a double-sided form.

Major medical treatments are also defined in the regulations. Generally speaking, major medical treatments are those requiring a general anaesthetic or involving more significant risks or consequences for the patient. Minor treatments are those not listed as special or major treatments.

Area Health Services, Hospitals, etc. should obtain and be aware of the provisions of the Act.

Further Information

Further information about guardianship, financial management or medical and dental consent and applications forms are available from:

Office of the Public Guardian
1st Floor
491 Kent Street
Sydney. 2000
Phone: (02) 9265-3184
Fax: (02) 9283-2645

Medical consents:
Phone: (02) 9265-3181
Toll free: (008) 45-1510

The Protective Commissioner
2nd Floor
491 Kent Street
Sydney. 2000
Phone: (02) 9265-3131
Fax: (02) 9261-4305

The Guardianship Tribunal
357 Glebe Point Road
Glebe. 2037
Phone: (02) 9552-8555
Fax: (02) 9692-8745
Toll free: (008) 46-3928
Copies of the *Disability Services and Guardianship Act* (NSW), the *Protected Estates Act* (NSW) and Regulations under these Acts may be purchased from the NSW Government Information Centres at:

- Goodsell Building
  - OR 130 George
  - Cnr. Phillip & Hunter Streets
  - Parramatta 2150
  - Sydney 2000
  - Phone: 9743-7200
REQUEST/CONSENT FOR MEDICAL PROCEDURE TREATMENT

For patients 14 years and above - not for Guardianship Act purposes.

PROVISION OF INFORMATION TO PATIENT

I, Dr. [INSERT NAME OF MEDICAL PRACTITIONER] have informed this patient as detailed below including the nature, likely results, and material risks of the recommended procedure or treatment.

Interpreter present *

[Signature of Interpreter]

[Signature of Medical Practitioner]

PATIENT CONSENT

Dr. [INSERT NAME OF MEDICAL PRACTITIONER] and I have discussed my present condition and the various ways in which it might be treated. The doctor has recommended:

[INSERT NAME OF PROCEDURE OR TREATMENT]

The doctor has told me that:

- the procedure/treatment carries some risks and that complications may occur;
- an anaesthetic, medicines, or blood transfusion may be needed, and these may have some risks;
- additional procedures or treatments may be needed if the doctor finds something unexpected;
- the procedure/treatment may not give the expected result even though the procedure/treatment is carried out with due professional care.

I understand the nature of the procedure and that undergoing the procedure/treatment carries risks.

I have had the opportunity to ask questions and I am satisfied with the explanation and the answers to my questions.

I understand that I may withdraw my consent.

* I have been told that the procedure/treatment may be performed by another doctor.

I request and consent to the procedure/treatment described above for me.

While I consent to the above procedure/treatment, after discussing this matter with doctor, I refuse consent to the following aspects of the recommended procedure or treatment:

[INSERT OBJECTION]

This part must be countersigned by your doctor if refused.

[Practitioner's Acknowledgement]

I also consent to anaesthetics, medicines or other treatments which could be related to this procedure/treatment.

I consent/do not consent* to a blood transfusion if needed.

[Signature of Patient]

[Print Name of Patient]

[Address]

* Delete where applicable
REQUEST/CONSENT FOR MEDICAL PROCEDURE TREATMENT

(For parents/guardians of patients less than 18 years of age)

NAME OF HOSPITAL

PROVISON OF INFORMATION TO PATIENT

To be completed by Medical Practitioner

I, Dr. [insert name of medical practitioner] have informed this parent/guardian * as detailed below including the nature, likely results, and material risks of the recommended procedure or treatment.

Interpreter present *

[Signature of interpreter]

[Signature of medical practitioner]

PATIENT CONSENT

To be completed by Patient

[Dr. [insert name of medical practitioner] and I have discussed [insert name of child]’s present condition and the various ways in which it might be treated. The doctor has recommended:]

[Insert name of procedure or treatment]

The doctor has told me that:

the procedure/treatment carries some risks and that complications may occur;
an anaesthetic, medicines, or blood transfusion may be needed, and these may have some risks;
additional procedures or treatments may be needed if the doctor finds something unexpected;
the procedure/treatment may not give the expected result even though the procedure/treatment is carried out with due professional care.

I understand the nature of the procedure and that undergoing the procedure/treatment carries risks.
I have had the opportunity to ask questions and I am satisfied with the explanation and the answers to my questions.
I understand that I may withdraw my consent.
*I have been told that the procedure/treatment may be performed by another doctor.

I request and consent to the procedure/treatment described above for [insert name of child]

[While I consent to the above procedure/treatment, after discussing this matter with doctor, I refuse consent for my child to the following aspects of the recommended procedure or treatment:]

[Insert objection by your doctor if required]

[Practitioner’s acknowledgment]

I note that the Children (Care and Protection) Act 1987 provides that such treatment may be provided notwithstanding my objection if it is necessary to prevent death or serious injury to my child.

I also consent to anaesthetics, medicines or other treatments which could be related to this procedure/treatment.

[Signature of parent or guardian]

[Address]

* Delete where applicable
SUBSTITUTE CONSENT FOR MEDICAL TREATMENT

GUARDIANSHIP ACT 1987
(For patients 16 years and above where consent is provided by a person responsible)

Medical Advice

I, Dr. ____________________________ confirm that ____________________________ is
incapable of consenting to medical treatment because:

☐ he/she cannot understand the nature and effect of the treatment

☐ he/she cannot indicate whether or not he/she consents

The patient’s condition that requires treatment is ____________________________________________________

Significant risks in not treating are ________________________________________________________________

The site of the proposed procedure or treatment and its general nature and effect are

DO NOT USE ABBREVIATIONS

The proposed procedure/treatment has the following significant risks and/or side effects ______________________

Reasonable alternatives (if any) to the proposed procedure/treatment and significant risks and/or side
effects associated are ______________________________________________________________

The proposed treatment is the most appropriate form of treatment to promote the patient’s health and well-being.

__________________________________________________________________________ and I have discussed the patient’s present condition and

I have also explained:

- that other forms of treatment, such as anaesthetics, medicines, or blood transfusions, may be associated
  with the procedure/treatment and that these may carry some risks;

- that other unexpected procedures or treatments are sometimes necessary;

- that complications may occur or the expected result may not be achieved even though the
  procedure/treatment is carried out with due professional care.

__________________________________________________________________________ /__________ /20

SIGNATURE OF PERSON RESPONSIBLE DATE SIGNATURE OF MEDICAL PRACTITIONER DATE

Interpreter present * ____________________________ /__________ /20

SIGNATURE OF INTERPRETER

DATE

1/85 666687 NR33
Acknowledgement of advice

To be completed by the person responsible/guardian

Dr. [INSERT NAME OF MEDICAL PRACTITIONER] and I have discussed [INSERT NAME OF PATIENT]'s present condition and the various ways in which it might be treated as above. The doctor has told me that:
- The procedure/treatment carries some risks and that complications may occur;
- The patient may need an anaesthetic, medicines or blood transfusion, and these may have some risks;
- Additional procedures or treatments may be needed if the doctor finds something unexpected;
- The procedure/treatment may not give the expected result even though the procedure/treatment is carried out with due professional care.

I understand the nature of the procedure and that undergoing the procedure/treatment carries risk.

I have had the opportunity to ask questions and I am satisfied with the explanation and the answers to my questions.

[Signature of person responsible or guardian] /20

[Print name of person responsible or guardian]

Substitute consent

To be completed by the person responsible/guardian

I consent to the procedure/treatment described above for [INSERT NAME OF PATIENT].

DELETE IF NOT REQUIRED This part must be countersigned by the doctor if retained

Except that after discussing this matter with the doctor, I do not agree to the patient having the following aspects of the recommended procedure or treatment. [INSERT QUOTATION]

[Practitioner's acknowledgment]

I have considered the views of [INSERT NAME OF PATIENT] and consider the treatment should be provided to the patient. I am satisfied the treatment will promote the health and wellbeing of the patient.

I accept the risks involved in the procedure/treatment.

I also consent to anaesthetics, medicines or other treatments which could be related to this procedure/treatment.

I consent/do not consent* to a blood transfusion if needed.

[Signature of person responsible or guardian] /20

[Print name of person responsible or guardian]

Use of removed tissue - (See Section 35 of Circular)

I understand that the above procedure may involve the removal of some bodily tissue, which may be required for the diagnosis, or management of [INSERT NAME OF PATIENT]'s condition.

I consent/do not consent* to the use of such tissue for any medical, therapeutic or scientific purpose, in addition to purposes related to the diagnosis or management of [INSERT NAME OF PATIENT]'s condition.

My consent is conditional on the following terms:

[Insert terms if any]

This consent extends only to tissue, which is removed for the purposes of the above procedure.

[Signature of person responsible or guardian] /20

[Print name of person responsible or guardian]

1966 90907 95128

*Delete where not applicable

22(1/07)
CONSENT - **DISABILITY SERVICES & GUARDIANSHIP ACT NSW** (PD2005_406)

The Guardianship and Financial Management provisions of the *Disability Services and Guardianship Act* (NSW) has become effective from 1 August 1989. The Medical and Dental consents provisions have become effective from 21 August 1989.

The new legislation will have important implications for hospital administrators, doctors, dentists, nurses and other health professionals.

Until now, such professionals have been faced with a legal and ethical dilemma, where to treat a person who is unable to give a valid consent may lead to charges of assault whilst failure to treat such a person may lead to allegations of negligence or breaches of ethical responsibilities. In addition, interference by any person with a disabled person’s body, personal liberty, personal possessions or money without the consent of that person or of a legal guardian or financial manager, can also lead to civil or criminal liability.

The new Act provides a solution to these dilemmas by establishing mechanisms for obtaining consents to medical and dental procedures where the patient is unable personally to give such a consent. It also provides for the appointment of guardians and financial managers who can act on behalf of people who are unable to act or manage for themselves.

It is important to note that the medical consent provisions require consents under the Act to be obtained for all non-emergency medical and dental procedures where the patient is not capable of providing an informed consent. Failure to obtain such a consent is an offence which can, in the more serious cases, lead to conviction and imprisonment for up to seven years.

**Consent to Medical & Dental Treatment**

People who have a disability are entitled to be given adequate information and opportunity to consider and consent to their own medical treatments. The Act will, however, deal with the issue of who is to give medical or dental consent for a person who is unable to give informed consent for themselves.

Where treatment is needed urgently and is necessary to save a patient’s life or prevent serious damage to the person’s health, a doctor may proceed without consent.

The Act divides medical treatments into three kinds: “special”, “major” and “minor”. Special medical treatments include sterilisation operations and other particularly sensitive or controversial treatments. These are listed in regulations made under the Act. For special medical treatments an application would have to be made to the Guardianship Board for consent in all cases.

Major medical treatments are also defined in the regulations. Generally speaking, major medical treatments are those requiring a general anaesthetic or involving more significant risks or consequences for the patient. Minor treatments are those not listed as special or major treatments.

Area Health Services, Hospitals, etc. should obtain and be aware of the provisions of the Act.

**Further Information**

Further information about guardianship, financial management or medical and dental consent and applications forms are available from:
Office of the Public Guardian
1st Floor
491 Kent Street
Sydney NSW 2000
Phone: (02) 265-3184
Fax: (02) 283-2645
Medical consents:
Phone: (02) 265-3181
Toll free: (008) 45-1510

The Protective Commissioner
2nd Floor
491 Kent Street
Sydney NSW 2000
Phone: (02) 265-3131
Fax: (02) 261-4305

The Guardianship Board
357 Glebe Point Road
Glebe NSW 2037
Phone: (02) 552-8745
Toll free: (008) 46-3928

Copies of the Disability Services and Guardianship Act (NSW), the Protected Estates Act (NSW) and Regulations under these Acts may be purchased from the NSW Government Information Centres at:

Goodsell Building or 130 George Street
Cnr Phillip & Hunter Sts Parramatta 2150
Sydney 2000

NOTIFICATION OF THE DEPARTMENT OF VETERAN'S AFFAIRS OF DEATHS OF REPATRIATION PATIENTS

The Department of Veterans’ Affairs requires written or verbal communication of death reports in every case of the death of a repatriation patient. Hospitals should advise in writing or verbally giving the following details:

- full name and address;
- date of birth;
- repatriation number (if known);
- next-of-kin;
- marital status;
- date of death.

REPORT TO THE AUSTRALIAN DRUG EVALUATION COMMITTEE

Adverse Drug Reactions

The Australian Drug Evaluation Committee has written to each registered medical practitioner requesting his support in reporting any adverse drug reactions.
Since it is probable that a substantial proportion of any adverse reactions will be discovered at public hospitals, the Department seeks the co-operation of hospitals in maintaining a supply of the report forms and in granting any necessary co-operation to the Medical Officers.

Supplies of the report form are available from the Committee, C/- Post Office Box 100, Woden, ACT.

Medical practitioners are advised to keep children under observation for at least 20 minutes following a measles vaccination. Practitioners are required to report to the Committee any reactions noted during this period.

REPORT TO THE COMMONWEALTH DEPARTMENT OF HEALTH - EXAMINATION OF APPLICANTS FOR INVALID PENSIONS

Difficulty is being experienced by the Commonwealth Department of Health in obtaining medical information which is of assistance in determining the eligibility of claimants to receive an invalid pension.

The information requested need only be furnished in the form of a discharge summary or resume - there is no suggestion that the full clinical papers are required.

It is therefore necessary that the information, when requested, be despatched promptly in the form mentioned above, provided the patient gives a written authorisation.

NOTIFICATION OF INFECTIOUS DISEASES UNDER THE PUBLIC HEALTH ACT 2010

(IB2013_010)

IB2013_010 rescinds IB2012_011.

PURPOSE

Under the provisions of the Public Health Act 2010 and the Public Health Regulation 2012, doctors, hospital chief executive officers (or general managers), pathology laboratories, directors of child care centres and school principals are required to notify certain medical conditions listed on the Ministry of Health website.

NOTIFICATION MECHANISMS

- Infectious disease notifications should be directed to the local Public Health Unit, and should be initiated as soon as possible within 24 hours of diagnosis.
- In order to protect patient confidentiality, notifications must not be made by facsimile machine except in exceptional circumstances and when confidentiality is ensured.

37(28/02/13)
NOTIFICATION FORMS

Doctors and Hospitals

- Doctors and hospital chief executive officers (or general managers) must notify scheduled medical conditions and provide information specified in the **Doctor/Hospital Notification Form**, either by telephone or in writing. The notification can be found at: [http://www.health.nsw.gov.au/Infectious/Documents/doctor-hospital-notification-form.pdf](http://www.health.nsw.gov.au/Infectious/Documents/doctor-hospital-notification-form.pdf)
- Notifications for AIDS must only include the first 2 letters of the patient’s first and last names, and date of birth. Full name and addresses are not to be included.

Laboratories

- Laboratories must notify scheduled medical conditions and provide information specified in the **Laboratory Notification Form**, either by telephone or in writing.
- Notifications for HIV infection should only include the first 2 letters of the patient’s first and last names, and date of birth. Full name and addresses are not to be included.

NOTIFICATION OF MIDDLE EAST RESPIRATORY CORONAVIRUS (MERS-CoV) INFECTIONS UNDER THE PUBLIC HEALTH ACT 2010 (IB2013_054)

PURPOSE

To provide guidance on the addition of Middle East respiratory syndrome coronavirus to the list of medical conditions in Schedule 1 of the **NSW Public Health Act**, and to the list of notifiable diseases in Schedule 2 of the Act.

Under the provisions of the **NSW Public Health Act 2010** and the Public Health Regulation 2012, doctors, hospital chief executive officers (or general managers), pathology laboratories, directors of child care centres and school principals are required to notify certain medical conditions listed on the Ministry of Health website.

KEY INFORMATION

On 19 September 2013, the **NSW Public Health Act 2010** was amended to add Middle East respiratory syndrome coronavirus to:

(a) The list of medical conditions in Schedule 1 to that Act:
   (i) that must be notified by medical practitioners and pathology laboratories to the Director-General of the Ministry of Health, and
   (ii) for which the Director-General of the Ministry of Health may direct a person to undergo medical examination, and
   (iii) for which an authorised medical practitioner may make a public health order, and
(b) The list of notifiable diseases in Schedule 2 to that Act:
   (i) that must be notified by health practitioners providing care in hospitals to the Chief
       Executive Officer of the hospital concerned, and
   (ii) that must be notified by the Chief Executive Officer of a hospital to the Director-General
        of the Ministry of Health.

NOTIFICATION MECHANISMS

- Information on the notification of infectious diseases under the Public Health Act 2010 is detailed
- Infectious disease notifications should be directed to the local Public Health Unit, and should be
  initiated as soon as possible within 24 hours of diagnosis.
- In order to protect patient confidentiality, notifications must not be made by facsimile machine
  except in exceptional circumstances and when confidentiality is ensured.
- Disease notification guidelines and notification forms for notifiers are available at:

REPORT ON POSITIVE RESULTS ON ANY TEST FOR SYPHILIS

The *Venereal Diseases Act of 1918*, (Section 9[2AA]) was amended in 1973. The abovementioned
was repealed.
CHILD WELLBEING AND CHILD PROTECTION POLICIES AND PROCEDURES FOR NSW HEALTH (PD2013_007)


PURPOSE

This policy articulates the professional and legal responsibilities of all health workers to promote the health, safety, welfare and well-being of children and young people, working collaboratively with interagency partners in the shared system of child protection in NSW. These responsibilities apply whether workers are providing health care directly to children and young people or to adult clients who are parents/carers or are pregnant.

This policy informs Local Health Districts, Specialty Health Networks, other health services and health workers about the tools and resources available and the interagency arrangements in place to assist them to meet their responsibilities and provide a consistent NSW Health response to child protection and wellbeing.

MANDATORY REQUIREMENTS

Every health worker has a responsibility to protect the health, safety, welfare and wellbeing of children or young people with whom they have contact.

The legal responsibilities of health services and health workers are identified in the following legislation:

*Children and Young Persons (Care and Protection) Act 1998*

- Collaborate with interagency partners and comply with information exchange provisions to promote the safety, welfare and wellbeing of children and young people, including taking reasonable steps to coordinate the provision of services with other agencies;
- Meet requirements for mandatory reporting of children and reporting of young people (or classes/groups of children or young people) at suspected risk of significant harm (ROSH);
- Report unborn children where it is suspected they may be at ROSH after their birth;
- Respond to the needs of children and young people after making a report to Community Services or to the NSW Health Child Wellbeing Unit;
- Respond to Community Services’ and Children’s Court requests to provide health services and or Community Services and Police Force requests to provide medical examinations and treatment;
- Assist with Children’s Court proceedings when required.


- Meet requirements to ensure that only people with valid Working with Children Checks are engaged in child related work (where a child is under the age of 18 years).

*Ombudsman Act 1974*

- Maintain systems to prevent ‘reportable conduct’ by health workers and for reporting and responding to alleged reportable conduct involving NSW Health employees.
The policy responsibilities of health workers are to:

- Recognise and respond appropriately to the vulnerabilities, risks and needs of families, children and young people when providing any health service;
- Collaborate across NSW Health services and with interagency partners to support and strengthen families and promote child health, safety, welfare and wellbeing;
- Use the Mandatory Reporter Guide and seek assistance from the NSW Health Child Wellbeing Unit to help identify children or young people at suspected risk of significant harm (ROSH);
- Seek assistance from the NSW Health Child Wellbeing Unit and the Family Referral Services to help respond to vulnerable families, children and young people below the ROSH threshold;
- Actively seek feedback from Community Services after making a child protection report and continue to support the child, young person or family consistent with the health worker’s roles and responsibilities;
- Follow the Child Wellbeing and Child Protection - NSW Interagency Guidelines and other agreed interagency procedures when working with children, young people and families, including in relation to information exchange, High Risk Birth Alerts, Prenatal Reporting, escalation of child protection concerns, assumption of care by Community Services and out of home care health assessments;
- Collaborate in joint investigation and response to matters involving alleged child sexual assault or serious child abuse or neglect leading to criminal proceedings; and
- Participate in mandatory and/or other child protection training for NSW Health workers.

IMPLEMENTATION

Chief Executives across the NSW public health system are responsible and accountable for:

1. Ensuring that this policy and the associated Child Wellbeing and Child Protection Fact Sheet for NSW Health Workers are understood and implemented by all health workers; and
2. Enabling frontline staff to operationalise this Policy Statement in accordance with the attached Child Wellbeing and Child Protection Policies and Procedures for NSW Health.

To download the complete document please go to
NOTIFIABLE CONDITIONS DATA SECURITY AND CONFIDENTIALITY (PD2012_047)

PURPOSE

The purpose of this policy is to provide guidance for NSW Health staff to manage the security and confidentiality of Notifiable Conditions data in any form, either unit records or aggregated form. This includes:

- Paper notification records;
- Electronic notification records;
- The Notifiable Conditions Information Management System (NCIMS);
- The Secure Analytics for Population Health Research and Intelligence (SAPHaRI); and/or
- Any other form of data that has not been approved for release in the public domain.

MANDATORY REQUIREMENTS

All NSW Health and Local Health District staff must comply with this policy when accessing, managing or analysing notifiable conditions data.

Prior to accessing notifiable conditions data, NSW Health staff must sign each page of the Notifiable Conditions Data Security and Confidentiality Policy Directive, to confirm that they have read, understood and agreed to comply with the policies, procedures and conditions set out in it.

Release of notifiable conditions data must be managed according to section 4 – Data and information release.

IMPLEMENTATION

This policy directive should be distributed to all NSW Health staff. Staff with access to notifiable conditions data must follow the procedure set out in this policy directive.

All staff with access to notifiable conditions data in any form must sign the Notifiable Conditions Data - Confidentiality and Security Agreement at Appendix 1.

1. INTRODUCTION

1.1 About this document

Notifications of Scheduled Medical Conditions made under the Public Health Act include highly confidential information. NSW Health staff from Local Health Districts and the NSW Ministry of Health with access to such information should always protect the security and confidentiality of this information.

1.2 Key definitions

This policy refers to the security and confidentiality of Notifiable Conditions data in any form, either unit records or aggregated data. This includes paper or electronic notifications, the Notifiable Conditions Information Management System (NCIMS), the Secure Analytics for Population Health Research and Intelligence (SAPHaRI), or any other form that has not been approved for release in the public domain.
Notifiable Condition | A medical condition listed under Schedule 1, 2 or 3 in the NSW Public Health Act (excluding category 1 conditions and cancer).
--- | ---
Unit record data | For the purpose of this policy directive, ‘unit record data’ are line listed electronic records of information that relate to the health of an individual which are held by NSW state data collections and owned by NSW Health.
Identifiable data | Information that allows identification of a specific individual.
De-identified data | Information from which identifiers have been permanently removed, or where identifiers have never been included. De-identified information cannot be re-identified.
Aggregate data | Summary data from analysis of unit record data by broad categories (such age group, sex or geographic location) so that it is not possible to identify the individual.
Disclosure | Communication or transfer of information outside NSW Health or Local Health District to Universities, and all other organisations or individuals.
Data custodian | The person with responsibility and administrative control over the ongoing development, data collection, maintenance, review of the data collection and granting access to data.

2. LEGAL AND LEGISLATIVE CONTEXT

The conditions and procedures set out in this document are supplemental and subordinate to any State or Commonwealth statutes, legislation or regulations and any NSW Health policies or guidelines subsequently issued by the Director-General which relate to confidentiality and data security.

Specifically, management of confidential notification data are referred to in the following legislation:

- NSW Public Health Act 2010
- Health Administration Act 1982

NSW Health Employees with access to notifiable conditions data must also acquaint themselves with the NSW Health Records and Information Privacy Act 2002.

3. ACCESS TO SCHEDULED MEDICAL CONDITIONS DATA

3.1 Personnel

Access to notifiable conditions data for NSW Health Staff should be limited to the minimum level required to fulfil the functions of their position. Individuals requesting access to scheduled medical conditions data (and their managers) must:

- Be aware of their responsibilities with regard to information privacy.
- Undertake training on the operation of any databases or systems which they will operate to record or access personal health information in relation to notifiable conditions data.
- Complete the Confidentiality Agreement (Appendix 1) and identify the appropriate level of access according to their position and role.

3.2 Security

3.2.1 Password Security

NSW Health staff with access to databases containing information on notifiable conditions must observe the following measures in order to maintain security:

- Each individual is assigned a unique username. Access to the data will be controlled by a password. The password must be known only to the individual.
- Passwords are required to be a minimum 6 and maximum 12 characters and contain at least one numeric and at least one text character.
The individual must not record their password in any file or other electronic document, no matter where or how such a file or document is stored. Individuals must change their passwords when requested by system administrators.

### 3.2.2 Electronic Security

- Access to notifiable conditions data through the NCIMS web based application is to be through individual login passwords only.
- When an individual’s access to the notifiable conditions data is no longer required (i.e. the role of the staff member changes, or their employment by the organisation at which they worked when the Confidentiality Agreement was signed), the staff member and or manager must notify the System Administrators of their changed circumstance, so that role changes can be made or logins disabled.
- System administrators will undertake an audit of NSW Health staff with access at least twice annually.

### 3.2.3 Physical Security and Storage of Data

- Electronic notifiable conditions data should be password protected and stored on secured networks with appropriately restricted access, not standalone PCs.
- Where access to notifiable conditions data through the NCIMS application is required externally (outside the usual work environment), individuals must ensure that information is not downloaded or saved to a PC.
- Network hardware and any back up or copies of notifiable conditions data must be password protected and stored in a secure location.
- Hard copies of identifiable notifiable conditions data related scheduled medical conditions should be stored in locked cabinets in a secure location.
- Secure document disposal facilities must be available.
- Secure printers and faxes must be available for confidential data management.

### 3.2.4 Workstation Security

- Care must be taken not to leave documents containing personal health information related to notifiable conditions data on work benches or anywhere they may be visible to unauthorised people.
- Personal health information should be unloaded from computer monitors (or the screen locked) if the monitor is to be left unattended.
- These requirements also apply where notifiable conditions data is handled externally (outside the physical confines of the usual work environment).

### 3.3 Acceptable use of notifiable conditions data

Notifiable conditions data must only be used for official NSW Health/Local Health District business related to notification or public health action, unless authorised in writing by an appropriate officer (see section 4 - Data and Information Release).

Notifiable conditions data should not be used for personal study. Use of the data for research purposes is subject to the NSW policy directive PD2015 _037: ‘Data Collections - Disclosure of Unit Record Data Held for Research or Management of Health Services’ referred to in section 4 - Data and Information Release. Where an individual holds external organisation (e.g. academic) and NSW Health/Local Health District appointments, access to notifiable conditions data must not be used for any academic or teaching purposes without prior approval.

33(16/08/12)
4. DATA AND INFORMATION RELEASE

4.1 Legal context for release of data

This section should be read in conjunction with ‘Data Collections - Disclosure of Unit Record Data Held for Research or Management of Health Services’ (PD2015_037).

NSW Health staff with access to notifiable conditions data must not release, pass on or otherwise make available to third parties (where the first party is NSW Health and the second party is the notifiable conditions data user) any data, subset of data or any tables, graphs or other aggregations or manipulations of data obtained or derived from notifiable conditions data where this data or information allows the identification of individual persons, institutions, communities or organisations by any means.

NSW Health staff with access to notifiable conditions data should note that identification of individuals, communities or organisations may occur through the release of specific identifying information such as addresses, or by inference from the combination of multiple non specific or less specific data items (such date of birth plus postcode).

The authority to disclose notifiable conditions data is vested in:

a) the Director-General or his/her delegate (for identified unit record data) under the Health Administration Act 1982 and the Health Administration Regulation 2012 (subject to the conditions of that Act and Regulation).

b) The Chief Health Officer (for epidemiological data) under the Public Health Act 2010 and Health Administration Act and Health Administration Regulation (subject to the conditions of those Acts and Regulation).

There are no delegations relating to the disclosure of identified unit record notifiable conditions data under the Public Health Act.


Other persons are not authorised to disclose notifiable conditions data.

4.2 Applications for release of data

Applications for release of notifiable conditions data should be made through the relevant data custodian using the appropriate form and will be assessed in accordance with PD2015_037 (Appendix 2).


Specific guidelines for the release of Aboriginal health information related to notifiable conditions data are required to protect Aboriginal people from the risk of identification as individuals or communities. Disclosure of Aboriginal health information must comply with the NSW Aboriginal Health Information Guidelines.

33(16/08/12)
4.3 Exceptions for release of identifying data

Under the *Public Health Act 2010* (Section 130), it is an offence to disclose information obtained in connection with the Act unless the disclosure is made:

- with the consent of the person whom the information was obtained;
- in connection with the administration or execution of the Act or regulations;
- for the purposes of legal proceedings arising out of the Act or the regulations, of a report of any such legal proceedings;
- with the approval of the Chief Health Officer, or a person authorised by the Chief Health Officer, to a person specified in the approval and the information consists of epidemiological data specified in the approval;
- in any other prescribed circumstances; or
- with other lawful excuse.

4.4 Acknowledgement of use of data in publications

Where notifiable conditions data is approved for release in research or management of health services, all approvals must include a condition that data recipients agree to include a written acknowledgement of the role of NSW Health and the Centre for Health Protection in the fulfilment of any data requests and in the preparation of any report, scientific paper or on-line document (such as a World-Wide Web page). Typically the acknowledgement will appear in the covering letter, foreword or, in the case of electronic documents, as part of the introductory or top-level pages.

The source of notifiable conditions data should be attributed to the underlying data collection. For example, a graph which displays notifiable disease information derived from Notifiable conditions data should have the following attribution: “Source: Notifiable Conditions Information Management System, NSW Health”.

Where data is accessed via a secondary interface, such as SAPHaRI, the underlying data collection should be referenced along with the method of extraction: “Source: Notifiable Conditions Information Management System (Secure Analytics for Population Health Research and Intelligence), NSW Health”.

5. DURATION OF THIS AGREEMENT

The applicant agrees to be bound by the conditions of this Agreement indefinitely or until they sign a new Confidentiality and Data Security Agreement which supersedes this agreement.

The applicant is bound by this Agreement regardless of whether they continue to be an active user of the notifiable conditions data or database system and regardless of whether they remain an employee of or associated with the NSW Health or Local Health District.

LIST OF ATTACHMENTS

1. Notifiable conditions Confidentiality and Security Agreement
2. Data request template
Appendix 1

Notifiable Conditions Data - Confidentiality and Security Agreement

1. (full name of applicant) ________________________________

   (Work phone number) ___________________ (work e-mail address) ________________________________

   (employed as position) ________________________________

   By (Name of business unit employing the person) ________________________________

   Agree to abide by the confidentiality and data security conditions and procedures set out in this document.

   By signing this document and each page of the Notifiable Conditions Data Security and Confidentiality Policy Directive, I confirm that I have read, understood and have agreed to comply with the policies, procedures and conditions set out in it.

   I undertake not to knowingly access any personal health information unless such information is essential for me to properly and efficiently perform my duties. I undertake strictly to preserve the confidentiality of this information and I understand that a breach of this undertaking will result in disciplinary action.

   I acknowledge my statutory duty under Section 22 and Section 23 of the NSW Health Administration Act 1982 and Section 150 of the NSW Public Health Act 2010, in relation to the disclosure of information. In order to fulfil this undertaking, I will not divulge any identifying personal or health information regarding individual persons, except to authorised staff of the NSW Ministry of Health, Local Health District or other staff who require such information to carry out their medical or public health duties.

   I further undertake to inform my supervisor immediately if I become aware of any breach of privacy or security relating to the information which I access in the course of my duties.

   Signature of applicant ________________________________ Date: ________________________________

   Position Title: ________________________________

   Witnessed by (Name of witness): ________________________________

   Signature of witness: ________________________________ Date: ________________________________

To be completed by Unit manager employing the applicant:

   I confirm that, to properly fulfil the functions of their position, the above signed has reasonable need for access to notifiable conditions data. I also confirm that, in order to properly undertake the business of NSW Health or Local Health District, the business unit has a valid requirement for access to this data.

   Manager’s Name: ________________________________

   Signature: ________________________________ Date: ________________________________

   Position Title: ________________________________

   Business Unit Name: ________________________________ Local Health District

   for access to notifiable conditions data through the NCIMS application - please tick all that apply

   Applicant position: ________________________________ Intended role:

   Administration [ ] Administration [ ]

   Immunisation staff [ ] Data entry [ ]

   Project Officer [ ] Data cleaning/analysis [ ]

   Public Health Nurse [ ] Epidemiological analysis [ ]

   Surveillance Officer [ ] Outbreak response [ ]

   Tuberculosis Nurse [ ] Surge Capacity [ ]

   Other (describe) [ ]

   Other (describe) [ ]

   End of Agreement
Appendix 2

Request for Release of Notifiable Conditions Data

Request for release of notifiable conditions data by requesters external to NSW Health or Local Health District.

To be completed by person making the request

1. Person and/or agency making request:

2. Purpose for which data is sought:

3. □ Epidemiological/aggregate data  □ Unit record data
   Where unit record data are sought, please provide a copy of the NSW Population and Health Services Research Ethics Committee approval (according to PD 2012_010)

4. Description of data requested (disease/condition, fields of interest, & time period of interest)

5. What (if any) publication of data is intended?

6. Date data requested by: (allow up to 6 weeks from the date of request) ______ / ______ / ______

7. Person taking responsibility for appropriate use of data:
   Name: __________________________  Position: __________________________
   Organisation name: __________________________
   Phone: __________________________  Email: __________________________
   Signature: __________________________  Date: __________________________

Fax this form to the Surveillance Manager, Communicable Diseases Branch on 02 9391 9189

NSW Health reserves the right of comment on use of data and interpretation prior to publication.

Request Received: __________________________  Request Approved: __________________________
Date request completed: ______ / ______ / ______  Data prepared by: __________________________
PRINCIPLES FOR THE MANAGEMENT OF TUBERCULOSIS IN NSW (PD2014_050)

PD2014_050 rescinds PD2008_019.

PURPOSE

This policy sets out the mandatory principles for the provision of Tuberculosis (TB) services in New South Wales (NSW).

TB Services are required to operate in accordance with this policy in conjunction with the current relevant guidelines for the prevention and control of tuberculosis in NSW, which reflect best practice for the clinical and public health management of TB.

MANDATORY REQUIREMENTS

All staff must adhere to these principles. All services related to the screening, care and management of people with active, latent, or suspected TB are available at no charge to patients within the NSW Public Health system. The treatment for people with active TB is to be administered by directly observed treatment.

IMPLEMENTATION

Chief Executives must ensure that:

• The principles and requirements of this policy are applied, achieved and sustained
• Relevant staff are made aware of their obligations in relation to the Policy Directive
• Documented procedures are in place to support the Policy Directive.

Clinicians:

• Must comply with this Policy Directive.


OTHER MEDICO-LEGAL ASPECTS

CORRECTION AND ERASURE

(i) Health Professional Correction
   If a health professional has entered information in error into a patient’s health record, the procedure for correction is as follows:
   (a) Draw a line through entry to be deleted.
   (b) State that the information was written in error, sign, date and designate statement.

(ii) Patient Requested Amendment
   If a patient wishes an amendment to be made in their health record, a health professional designated by the hospital may mark the statement to which the patient objects and append the patient’s written version to the relevant page in the record.

REPRODUCTION OF DOCUMENTS - EVIDENCE ACT 1995

Hospitals are advised to make themselves familiar with the provisions of the Evidence Act 1995.

Reproductions of documents, the originals of which have been destroyed, lost or unavailable, are admissible in legal proceedings in certain conditions. Similarly transparencies may be admitted as evidence in certain conditions.

Hospitals utilising a microfilm system for management of health records should obtain copies of the abovementioned Act through the Government Information Service, in order to ensure that the requirements of the Act are adhered to in respect of the production of hospital records as evidence in legal proceedings.

45(18/12/14)
ABORIGINAL AND TORRES STRAIT ISLANDER ORIGIN – RECORDING OF INFORMATION OF PATIENTS AND CLIENTS (PD2012_042)

PD2012_042 rescinds PD2005_547.

PURPOSE

The policy directive and the associated procedures document outlines the requirements for collecting and recording accurate information on whether clients of NSW Health services are Aboriginal and/or Torres Strait Islander. Aboriginal and Torres Strait Islander people are under-reported in many health related data collections in NSW. Self-report in response to the standard Australian Bureau of Statistics question about a person’s Aboriginality is the most accurate means of ascertaining whether a client is Aboriginal and/or Torres Strait Islander. The standard question must be asked of all clients of NSW Health services, and the information needs to be recorded accurately according to national standards.

MANDATORY REQUIREMENTS

1. All NSW Health services are required to collect consistent and comprehensive data on Aboriginal and Torres Strait Islander health.

2. The *Aboriginal and Torres Strait Islander Origin – Recording of Information of Patients and Clients: Procedures* document describes the standards required for the accurate collection and recording of data.

3. The standard question seeking information about a person’s Aboriginality should be asked of all clients of NSW Health services to establish whether they are Aboriginal and/or Torres Strait Islander:

   ‘Are you (is the person) of Aboriginal or Torres Strait Islander origin?’

4. These standard response options should be provided to the clients to answer the questions (either verbally or on a written form):
   - No
   - Yes, Aboriginal
   - Yes, Torres Strait Islander
   - Yes, both Aboriginal and Torres Strait Islander

5. Asking the question:
   - Staff responsible for registering a client should ask the standard question when the client is first registered with the service.
   - The question should be asked of all clients irrespective of appearance, country of birth, or whether or not the staff know the client or their family background.
   - Clients may be asked the question directly, or asked to complete a form with the question included, and the client should answer this question themselves.
   - Specific situations related to asking the question are described in Section 2 and Section 4 of the Procedures document.

6. Recording the Information:
   - Information systems should record whether a client is Aboriginal or Torres Strait Islander using the standard categories, which are outlined in Section 3 in the Procedures document.
   - Responses to the standard questions should be coded as described in Section 3 in the Procedures document.
A response to the standard question should be a mandatory requirement when registering or entering client details in electronic recording systems.

Local data management systems must be able to identify those records that are coded as not stated/inadequately described which require follow-up.

7. Training in the correct and consistent recording of whether a client is Aboriginal and/or Torres Strait Islander must be delivered to all staff. See Section 5 in the Procedures document.

8. Data quality assurance and validation activities must be undertaken at the local level (Section 6 Procedures document) and by NSW Ministry of Health (Section 7 Procedures document).

IMPLEMENTATION

1. Roles and Responsibilities of NSW Health agencies:
   - Chief Executives, Health Service Executives, and Managers are responsible for the implementation of this policy and procedures at the local level.
   - All NSW Health employees are responsible for the accurate recording of Aboriginality when ever this is part of their role.

2. Roles and Responsibilities of NSW Ministry of Health:
   - NSW Ministry of Health is responsible for providing the mandatory requirements and procedures, and to support the implementation and evaluation of this policy.

3. Activity Based Funding
   With the implementation of activity based funding in July 2012, accurate and consistent recording of Aboriginality is essential for the effective application of associated weighting and will enable LHDs/SHNs to:
   - Monitor expenditure on health care against funding for Aboriginal clients.
   - Enable clinicians and managers to understand the factors contributing to cost variations including the extent to which these relate to patient complexity or differences in the way services are delivered to Aboriginal clients.
   - Make decisions about where to invest additional resources to meet increasing demand in the most cost effective way for Aboriginal clients.
   - Contribute information about costs to the national “price setter”, the Independent Hospital Pricing Authority.
   - Be appropriately funded according to the efficient pricing for treating Aboriginal patients.

1. BACKGROUND

1.1 About this document

This Policy Directive replaces Policy Directive PD2005_547 ‘Aboriginal and Torres Strait Islander Origin - Recording of Information of Patients and Clients’. This policy directive revises and updates the previous policy.

1.2 Legal and legislative framework

The ‘National best practice guidelines for collecting Indigenous status in health data sets’ (AIHW, 2010) documents the national approach for collecting and recording accurate information on whether a client is Aboriginal and/or Torres Strait Islander.
The Council of Australian Governments (COAG) National Indigenous Reform Agreement requires all jurisdictions, including NSW, to implement the National Best Practice Guidelines.

This policy and procedures document incorporate the activities outlined in the National Best Practice Guidelines. The implementation of these will ensure NSW meets their National Indigenous Reform Agreement obligations in relation to identification of Aboriginal and Torres Strait Islander people.

2. **ASKING THE QUESTION**

2.1 **The Standard Aboriginal and Torres Strait Islander Origin Question**

The following question should be asked of all clients to establish whether they are Aboriginal and/or Torres Strait Islander:

'Are you (is the person) of Aboriginal or Torres Strait Islander origin?'

2.2 **The standard response options**

2.2.1 Three standard response options should be provided to the clients to answer the questions (either verbally or on a written form):

- [ ] No
- [ ] Yes, Aboriginal
- [ ] Yes, Torres Strait Islander
- [ ] Yes, both Aboriginal and Torres Strait Islander

2.2.2 If the question has not been completed on a returned form, this should be followed up and confirmed with the client.

2.3 **How to ask the question**

2.3.1 Staff responsible for registering a client should ask the standard question seeking information about a person’s Aboriginality when the client is first registered with the service.

2.3.2 The question should be asked of all clients irrespective of appearance, country of birth, or whether the staff know of the client or their family background.

2.3.3 The question should be placed within the context of other questions related to cultural background, such as country of birth and main language spoken.

2.3.4 Clients may be asked the question directly, or asked to complete a form with the question included, and the client should answer this question themselves.

2.3.5 In some situations (such as in the case of birth and death registrations) the client will be unable to answer the question themselves. In this case it is acceptable for certain others (such as mother, father, close friend, relative, or household member) to be asked the question and to answer the question on the client’s behalf if they feel confident to provide accurate information.

2.3.6 In instances where the client is temporarily unable to answer the question, it is also acceptable for certain others who know the client well to respond on their behalf; however this response should be verified with the client wherever possible.
3. RECORDING RESPONSES

3.1 How to record responses

3.1.1. Information systems should record information on whether a client is Aboriginal and/or Torres Strait Islander using the standard national categories, which are:
1. Aboriginal but not Torres Strait Islander origin
2. Torres Strait Islander but not Aboriginal origin
3. Both Aboriginal and Torres Strait Islander origin
4. Neither Aboriginal nor Torres Strait Islander origin
9. Not stated/inadequately described
In addition databases in NSW should use the following additional category:
8. Declines to respond

3.1.2 Responses to the standard questions should be coded to the following national standards.

<table>
<thead>
<tr>
<th>Response</th>
<th>Coding Category</th>
</tr>
</thead>
<tbody>
<tr>
<td>‘Yes, Aboriginal’ is ticked, but ‘Yes, Torres Strait Islander’ is not ticked.</td>
<td>1</td>
</tr>
<tr>
<td>‘Yes, Torres Strait Islander’ is ticked, but ‘Yes, Aboriginal’ is not ticked.</td>
<td>2</td>
</tr>
<tr>
<td>‘Yes, Aboriginal’ is ticked, and ‘Yes, Torres Strait Islander’ is ticked.</td>
<td>3</td>
</tr>
<tr>
<td>‘Yes, both Aboriginal and Torres Strait Islander’ is ticked</td>
<td>3</td>
</tr>
<tr>
<td>‘No’ is ticked</td>
<td>4</td>
</tr>
<tr>
<td>‘No’ is ticked and either/both ‘Yes, Aboriginal’, and ‘Yes, Torres Strait Islander’ is ticked.</td>
<td>1, 2 or 3</td>
</tr>
<tr>
<td>Client is capable of responding but declines to respond following prompting/follow-up</td>
<td>8</td>
</tr>
<tr>
<td>Where it is impossible for the question to be asked during the contact period</td>
<td>9</td>
</tr>
<tr>
<td>Response to the question has been left blank or is incomplete</td>
<td>9</td>
</tr>
</tbody>
</table>

(Note these categories represent national standards, with the addition of the code 8, used by NSW to identify clients who have declined to respond. In the national categories, the NSW Code 8 would be coded as 9. See Section 3.3 for further information.)

3.2 Mandatory completion

A response to the standard question on a person’s Aboriginality should be a mandatory requirement when registering or entering client details in electronic recording systems. Staff registering or entering details of a client should not be able to proceed with registration until a response has been completed.

3.3 Identifying records for follow up

3.3.1 Local data management systems should be able to identify those records that require follow up. In NSW the code 8 is used (as described in 3.1.2) to identify clients who have declined to answer, and therefore do not require follow up. Client’s coded as 9 (not stated/inadequately described) because of situations where it was impossible for the question to be asked during the contact episode, and other situations where the response was left blank or incomplete, require follow up with the client, to determine the correct code.

3.3.2 Additional categories used by NSW or in local systems for the purposes of workflow management and follow-up must be mapped to the correct national category (Categories 1, 2, 3, 4, and 9) before the data are provided to the national data custodian. In NSW, data coded as category 8 (declined to respond) must be recoded to category 9 before submission to national data custodians.

32(26/07/12)
4. IMPLEMENTING THE PROCEDURES IN SPECIFIC SITUATIONS

4.1 In the event of a birth

4.1.1 For perinatal data collections, the standard questions on whether a client is Aboriginal and/or Torres Strait Islander should be asked directly of the mother, regardless of the information separately recorded in the hospital database.

4.1.2 In NSW, information on whether the mother and the newborn baby are Aboriginal and/or Torres Strait Islander must be recorded in the NSW Perinatal Data Collection (See NSW Policy Directive PD2015_025).

4.1.3 The mother should be asked to provide the information on whether her baby is Aboriginal and/or Torres Strait Islander in addition to her own Aboriginality.

4.1.4 It should not be assumed that the baby will share the mother’s origin. In particular, if the mother does not report her origin as Aboriginal and/or Torres Strait Islander, it should not be assumed that the newborn is therefore not Aboriginal or Torres Strait Islander.

4.2 If the client is a child under 15

4.2.1 Where the client is a child under 15 years of age, the parent or guardian is asked to declare whether the client is Aboriginal and/or Torres Strait Islander on their behalf.

4.2.2 If the parent or guardian is not available, certain others may be asked to provide this information (see 2.3.4).

4.2.3 If the accompanying adult is unable to provide this information, the child’s parent/guardian should be contacted as follow-up to establish whether the child is Aboriginal and/or Torres Strait Islander.

4.3 If the client is too ill to be questioned or is unable to respond

4.3.1 When the client is unable to respond to the standard question because they are too ill, unconscious, or too ill due to psychiatric condition or dementia, in the first instance the staff member should ask the client’s carer, relative, or any other person accompanying the client (see 2.3.4).

4.3.2 The response provided by this person should be verified with the client when they have recovered sufficiently to be able to answer the questions themselves.

4.3.3 If the person accompanying the client does not know whether the client is Aboriginal and/or Torres Strait Islander, the client should be asked the question directly when they are capable of responding.

4.3.4 In the event that the person accompanying the client does not know whether the client is Aboriginal and/or Torres Strait Islander and the client does not recover sufficiently to provide this information, the answer to the standard question on Aboriginality should be recorded as a non-response.
4.4 If the client does not speak English, or cannot read or write

4.4.1 If the client does not speak English, but is accompanied by someone who can interpret for them, it is recommended that the person accompanying them is asked to translate the question and their response.

4.4.2 If there is no-one with the client who can speak English, it is recommended that an interpreter, or Aboriginal or Torres Strait Islander liaison officer (who can interpret the relevant Aboriginal or Torres Strait Islander language spoken by the client) be called to assist.

4.4.3 If a form is to be provided and the client cannot read or write, it is recommended that an appropriate staff member (e.g. an interpreter, social worker, Aboriginal or Torres Strait Islander Liaison Officer) go through the questions with the client.

4.4.4 All clients’ should be given the opportunity to respond to the standard Aboriginality question for themselves. While a client who speaks an Aboriginal language may be highly likely to be an Aboriginal person, their Aboriginality cannot be assumed; the client may be of both Aboriginal and Torres Strait Islander for example.

4.4.5 Non-English speaking clients from various cultural backgrounds should also be asked the question and given the opportunity to self-report in response to the standard question.

4.5 If the client is deceased

4.5.1 Funeral directors, undertakers, medical practitioners and coroners responsible for registering a death or assessing the cause of death must ask the next-of-kin about whether the deceased is Aboriginal and/or Torres Strait Islander. If no next-of-kin is available, then the question should be asked of the broader family. If this information is not able to be obtained from either of these sources, another person who knew the deceased well may be asked to provide this information.

4.5.2 If information on whether the deceased is Aboriginal and/or Torres Strait Islander is missing on the death registration form, the funeral director should follow up with the next-of-kin before the form is sent to the registry. Similarly, medical practitioners or the coroner responsible should attempt to complete this item before the deceased’s information is sent to the registry.

4.6 If staff are reluctant to ask the question

4.6.1 Staff should be encouraged to collect information from all clients in a professional and respectful manner, without anticipating or making assumptions about the client’s identity or about how the client is likely to react or respond to any given question. Staff should be encouraged to regard the standard question on a person’s Aboriginality as no more or less sensitive or problematic than other items of personal data routinely collected from clients.

4.6.2 All client’s, whether Aboriginal, Torres Strait Islander, or non-Aboriginal or Torres Strait Islander, have the right to self-report, rather than have their identity assumed and recorded on their behalf. To refrain from asking any client the standard question on a client’s Aboriginality is an act of discrimination which infringes upon the client’s right to respond to this question for themselves.

4.6.3 Staff should not modify the standard question in any way. The question should be asked correctly, consistently, and uniformly of all clients, using the wording precisely as stated in this policy and procedure.
4.7 If the client wants to know why they are being asked the question

4.7.1 The following provides several responses that may assist staff in explaining to clients the reasons for asking the standard question on a client’s Aboriginality:

a. The question on whether a person is Aboriginal and/or Torres Strait Islander is one of several questions related to a client’s identity and demographic characteristics that are asked of all clients who attend a health service, enrol with Medicare, or are involved in the registration of a birth or death.

b. The collection of information on whether a person is Aboriginal and Torres Strait Islander is necessary for government and other services to plan and deliver appropriate services for all Australians, to assess the impact of services on particular groups in the community, and to improve health care and to monitor changes in health and wellbeing over time.

c. The response to this question allows service providers to ensure that Aboriginal and Torres Strait Islander clients have an opportunity to access relevant services such as Aboriginal liaison officers and Aboriginal health workers, health checks, Aboriginal and Torres Strait Islander specific immunisation considerations and PBS listings if they choose.

d. Service providers cannot make assumptions about whether a person is Aboriginal, Torres Strait Islander, or non-Aboriginal and Torres Strait Islander, therefore this information can only be determined by asking the client the standard question.

e. All personal information is protected by privacy law.

4.7.2 Should a client request a more detailed explanation of where the data go or the ways they are used, staff may wish to refer the client to the Australian Institute of Health and Welfare website www.aihw.gov.au or the Australian Bureau of Statistics website www.abs.gov.au.

4.8 If the client objects to the question or declines to answer

4.8.1 Where a client objects to the question or declines to answer they should be informed of their right to decline to answer the standard question on whether a client is a Aboriginal and/or Torres Strait Islander person and be advised that their level of care and access to services will not be affected if they choose not to answer the question.

4.8.2 While staff have a duty to collect and record information on whether a client is Aboriginal and/or Torres Strait Islander from all clients as correctly as possible, they are not obliged to convince a disgruntled, upset or unwilling client to respond to the question.

4.8.3 While staff have a duty, if queried, to explain to clients why this question is being asked, they are not obliged to justify the use of the standard question.

4.9 If the client chooses not to answer the question ‘correctly’

4.9.1 There may be occasions where a client is known to staff as an Aboriginal or Torres Strait Islander person yet the client chooses not to report as such in response to the standard question. Conversely there may be occasions where a known non-Aboriginal or Torres Strait Islander person chooses to report themselves as Aboriginal or Torres Strait Islander in response to this question.
Clients have a right to self-report whether they are Aboriginal and/or Torres Strait Islander and staff should therefore always record the response that the client provides; they should not question or comment on the client’s response.

4.9.2 The client’s recorded response should not be altered or annotated in any way to reflect the views of the staff member collecting the information.

4.10 If a client identifies as Aboriginal and/or Torres Strait Islander

4.10.1 Any client who self-reports as Aboriginal and/or Torres Strait Islander should be offered the services of Aboriginal liaison officers or Aboriginal health workers where available; however, the client’s choice to engage or not engage with such services should be respected.

4.10.2 Information about a person’s Aboriginality should be included on the client’s discharge summary.

4.11 If the client wishes to change personal information on their record

4.11.1 All clients should have the opportunity to confirm or update any previously recorded personal information on a regular basis, including confirmation or alteration of a record that they are Aboriginal and/or Torres Strait Islander.

4.11.2 The NSW Health Client Registration Policy (PD2007_094) describes when to update client registration details. Client/patient details, including information on Aboriginal and Torres Strait Islander origin, should be checked and confirmed or updated, as appropriate each time a client presents for a new phase of treatment.

4.11.3 Any changes to the previously recorded information on whether a client is Aboriginal and/or Torres Strait Islander should be received without comment and clients should not be required to provide a reason for changing their record.

5. STAFF TRAINING

5.1 Training in the correct and consistent collection of information on whether clients are Aboriginal and/or Torres Strait Islander must be delivered to all staff.

5.2 This training may be delivered as part of a training that focuses on overall data collection and data quality.

5.3 While it is recommended that all staff receive training in cultural safety for Aboriginal and/or Torres Strait Islander clients, such training should not be considered a pre-requisite for the collection of information on whether a client is an Aboriginal and/or Torres Strait Islander person using the standard question.

5.4 All staff must complete training requirements as outlined in the Respecting the Difference: An Aboriginal Cultural Training Framework for NSW Health (PD2011_069).

5.5 All persons responsible for collecting, recording and validating information on whether clients are Aboriginal and/or Torres Strait Islander should be able to demonstrate the following competencies:
   a. An ability to ask the standard questions Are you of Aboriginal or Torres Strait islander origin? correctly, and to correctly record responses on paper forms and/or computer systems.
b. An ability to clearly explain to clients the reason for collecting this information.
c. An understanding of why it is important to collect and record information on whether all clients are Aboriginal and/or Torres Strait Islander.
d. An understanding of why it is important to collect this information correctly and consistently, using the standard question.
e. An understanding of the voluntary nature of self-reporting a client’s Aboriginality, and of a client’s right to decline to answer this question or to change the information recorded.
f. Knowledge of available information and services for Aboriginal and Torres Strait Islander clients, and ability to convey this to clients as required.
g. Knowledge of and ability to conduct follow-up procedures for obtaining missing information, including whether a client is Aboriginal and/or Torres Strait Islander.

6. **DATA QUALITY ASSURANCE AND VALIDATION AT LOCAL SERVICE LEVEL**

   For data quality assurance and validation at the local service level, local service providers must:

6.1 Review all forms and data recording systems to ensure the standard question on whether a client is Aboriginal and/or Torres Strait Islander is included and that coding categories are consistent with this policy and procedure.

6.2 Provide appropriate training, supervision and support to staff in primary data collection and data management roles, to ensure data items such as the item recording a client’s Aboriginality are collected correctly and consistently.

6.3 Ensure data collection processes and systems are streamlined and user friendly for staff in data collection roles.

6.4 Review client intake procedures to ensure client privacy is maintained, particularly in areas where clients are interviewed to obtain personal information.

6.5 Ensure staff across various levels and disciplines within the service are prompted to check for and follow up on missing client registration details, including information on a client’s Aboriginality, in their contact with clients.

6.6 Establish business rules for distinguishing between ‘not stated/inadequately described’ records that are a result of a client’s inability to answer (and are therefore to be followed up) and ‘not stated/inadequately described’ records in which the client declined to answer (which do not require further follow up).

6.7 Establish policies and procedures for correctly following up and correctly coding records with incomplete information on whether a client is Aboriginal and/or Torres Strait Islander.

6.8 Establish business rules for checking information on a client’s Aboriginality against other data items, particularly country of birth, language spoken, and Medicare eligibility.

6.9 Monitor trends in the number and proportion of Aboriginal and/or Torres Strait Islander clients by comparing with the previous year’s data, to determine whether there have been any obvious errors in coding.

6.10 Conduct data quality surveys involving direct surveys or interviews with clients, to determine the consistency and accuracy of the collection of information on whether clients are Aboriginal and/or Torres Strait Islander and to develop estimates of under-reporting.
7. DATA QUALITY ASSURANCE AND VALIDATION AT NSW MINISTRY OF HEALTH

For data quality assurance and validation state-wide, NSW Ministry of Health must:

7.1 Ensure data providers are aware of the policy and procedure.

7.2 Ensure the correct business rules are applied to cope with different identifications when there are two sources of data (e.g. cause of death forms and death registrations). For example, if one data source identifies the client as Aboriginal or Torres Strait Islander, the record relating to this client should be coded accordingly.

7.3 Regularly monitor information on whether clients are Aboriginal and/or Torres Strait Islander and provide continuing feedback on data quality to local services. In particular, monitor levels of ‘not stated’ reported from local service providers to determine whether further education or assistance is required.

7.4 Regularly check that codes used for recording a client’s Aboriginality in local systems are consistent with the policy and procedures, in particular check that invalid or inappropriate codes are not being used.

7.5 Compare data for Aboriginal and Torres Strait Islander persons with variables such as country of birth, language spoken, and Medicare eligibility, and follow up with local service providers to ensure any issues are investigated.

7.6 Regularly check that local service providers have not set default values for the standard question seeking information on whether a client is Aboriginal and/or Torres Strait Islander. This would be evidenced by no reporting of records with a ‘not stated’ response to the standard question.

7.7 For each local service, compare the number and proportion of records with information indicating clients are Aboriginal and/or Torres Strait Islander with the previous year’s data to determine whether there have been any probable errors in coding.

7.8 Establish a system of review and audit of data collection processes and data quality for local service providers, including review and audit of Aboriginal and Torres Strait Islander data.

7.9 Inform the national data custodian of any events or issues that may have affected the quality of data recording whether clients are Aboriginal and/or Torres Strait Islander for a given period.

7.10 Establish a procedure for the prompt investigation and response to data validation requests from the national data custodian.

8. MONITORING

Monitoring of the implementation and impact of this policy directive will be undertaken by NSW Ministry of Health and Local Health Districts:

8.1 In partnership with the Australian Institute of Health and Welfare, NSW Ministry of Health conducts a biannual survey which estimates the level of correct reporting of Aboriginal and Torres Strait Islander people in NSW public hospital data.
8.2 Local Health Districts will be required to determine appropriate indicators to monitor the adherence to this policy.

9. REFERENCES

GENERAL RETENTION AND DISPOSAL AUTHORITY – PUBLIC HEALTH SERVICES:
PATIENT/CLIENT RECORDS (GDA 17) (IB2004/20)

This Information Bulletin supersedes Departmental circular 99/78 and should be read in conjunction
with PD2012_069 “Health Care Records – Documentation and Management”.

The attached Authority applies to any organisation, facility or service which is part of the New South
Wales public health system and covers records documenting the provision of health care to patients
and clients of the public health system and is effective from 19 May 2004. The Authority has been
approved by the Board of the State Records Authority in accordance with section 21(3) of the
State Records Act 1998 and supersedes the General Disposal Authority – Public Health Services:
Patient/Client records (GDA 5) as the legal authority for disposing of records under the State Records

GDA 17 is a more comprehensive authority than the superseded GDA 5 and specifies a substantial
number of additional descriptive types of records that will assist users in determining the appropriate
retention period. The comprehensive nature of this disposal authority will assist public health
organisations to better plan for the management and storage of health care records to meet their
operational, regulatory and accountability requirements. Record managers should make themselves
fully conversant with the content of the Authority to identify retention periods that are at variance
with present practices eg. mental health care, x-ray films.

Public health services are reminded that the authorisations for destruction of records are given in
terms of the State Records Act only. A public health service must not destroy any records where they
are aware the records may be required as evidence for the purposes of possible legal action or an
investigation or inquiry.

See also Information Bulletin IB2005_027, issued 11 July 2005, General Retention & Disposal
General Retention and Disposal Authority
Public Health Services: Patient/Client Records

STATE RECORDS AUTHORITY OF NEW SOUTH WALES
Sydney, Australia

May 2004

GENERAL RETENTION & DISPOSAL AUTHORITY – PUBLIC HEALTH SERVICES : PATIENT/CLIENT RECORDS
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20(8/04)
Table of contents

Part 1: General Retention and Disposal Authority

1.1 Statement of authority
1.2 Scope of patient/client health care records
1.3 Quick reference to classes of records covered
1.4 Retention periods and disposal actions
   Patient/client treatment and care
   Patient/client registration and identification
   Patient diagnosis – imaging services
   Patient diagnosis – pathology and laboratory services
   Pharmaceutical supply and administration
   Notifications
   Patient/client finance and property management
   Research management
   Records imaging
   Pre 1930 records

Part 2: Understanding and using the authority

2.1 Overview
2.2 Guidelines for implementation
2.3 Records required as State archives
2.4 Records that have been imaged

Part 3: Acknowledgements and sources

Index
Part 1: General Retention and Disposal Authority

1.1 Statement of authority

<table>
<thead>
<tr>
<th>GDA No</th>
<th>GDA 17</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public office</td>
<td>This authority applies to any organisation, facility or service which is part of the New South Wales public health system.</td>
</tr>
<tr>
<td>Scope</td>
<td>This general retention and disposal authority covers records documenting the provision of health care to patients and clients of the public health system.</td>
</tr>
<tr>
<td>Authority</td>
<td>This general retention and disposal authority is issued under section 21(2)(c) of the State Records Act. It has been approved by the Board of the State Records Authority in accordance with section 21(3) of the State Records Act.</td>
</tr>
<tr>
<td>Authorised</td>
<td>19 May 2004</td>
</tr>
</tbody>
</table>

1.2 Scope of patient/client health care records

Patient and client health care records document an individual’s health evaluation, diagnosis, treatment, care, progress and health outcome. These records should be created and maintained in accordance with:

- the principles outlined in NSW Department of Health PD2012_069 Health Care Records – Documentation and Management;
- policies and procedures contained in the Department’s Patient Matters Manual and Health Records and Information Manual for Community Health Facilities;
- any guidelines or directives that may be issued by the Department from time to time.

Records relating to the provision of treatment and care to a patient/client include (but are not limited to) records relating to or of a patient’s/client’s:

- admission, including medical and nursing records
- history (medical and social of the patient or their family)
- examination results (physical or other)
- transfer, referral or assessment documentation
- correspondence between the patient or their representative and the health care service
- consultation reports (medical or other)
- principal diagnosis and any other significant diagnosis
- medication or drug orders and medication administered or prescribed (including oral, parenteral and incident reports)
- nursing care (including all versions or revisions of nursing care plans) and clinical pathways observations
- counselling, allied health, social work or other health care professional notes
- allergies or special conditions
- doctor’s or physician’s orders
- all observations and progress notes (including those recorded on separate sheets)
- problem lists (master or other)
- requests for and results or reports of all laboratory, diagnostic or investigative tests or procedures performed (including pathology, X-ray or other medical imaging examinations)
- consent or authority to carry out any treatment, procedure or release of information and certification that consent is informed (including removal or donation of tissue or organs, consent to special procedures etc. See also NSW Health Department PD2005_406 Patient information and consent to medical treatment)
- refusal of treatment or withdrawal of consent
- prenatal, obstetric, newborn and perinatal treatment, care and outcomes (includes newborn records and perinatal morbidity statistics)
- surgical procedure or operation (including pre-operative checklists, anaesthetic records and peri operative nurses reports including instrument and swab count records and post operative observations)
- all therapeutic treatments or procedures (including anti-coagulant, diabetic, dialysis, electric shock therapy (EST) and electro convulsive therapy (ECT))
- statements made for the Police and Coronial Inquest Reports
- discharge (includes final diagnosis, operative procedures, summary or letter of discharge and discharge at own risk or against advice)
- death (includes autopsy or post-mortem reports).

1.3 Quick reference to classes of records covered

<table>
<thead>
<tr>
<th>Records</th>
<th>Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>PATIENT/CLIENT TREATMENT AND CARE</td>
<td>Hospital care</td>
</tr>
<tr>
<td>Community health care</td>
<td>1.2.0</td>
</tr>
<tr>
<td>Oral (dental) health care</td>
<td>1.3.0</td>
</tr>
<tr>
<td>Obstetric/maternal health care</td>
<td>1.4.0</td>
</tr>
<tr>
<td>Psychiatric and mental health care</td>
<td>1.5.0</td>
</tr>
<tr>
<td>Genetic or inherited disorders</td>
<td>1.6.0</td>
</tr>
<tr>
<td>Assisted Reproductive Technology (ART)</td>
<td>1.7.0</td>
</tr>
<tr>
<td>Sexual assault patients</td>
<td>1.8.0</td>
</tr>
<tr>
<td>PANOC Specialist Services</td>
<td>1.9.0</td>
</tr>
<tr>
<td>Radiotherapy treatment</td>
<td>1.10.0</td>
</tr>
<tr>
<td>Electronic health records</td>
<td>1.11.0</td>
</tr>
<tr>
<td>Patient records of significance</td>
<td>1.12.0</td>
</tr>
<tr>
<td>Correspondence</td>
<td>1.13.0</td>
</tr>
<tr>
<td>Legal matters and incident management</td>
<td>1.14.0</td>
</tr>
<tr>
<td>Clinical audits</td>
<td>1.15.0</td>
</tr>
<tr>
<td>Medical certificates</td>
<td>1.16.0</td>
</tr>
<tr>
<td>Sterilisation (instruments)</td>
<td>1.17.0</td>
</tr>
<tr>
<td>Surgical procedures (accountable items)</td>
<td>1.18.0</td>
</tr>
</tbody>
</table>

| PATIENT/CLIENT REGISTRATION AND IDENTIFICATION | Registers and indexes | 2.1.0 |
| Lists and schedules                          | 2.2.0     |
| Diaries and appointment books or registers   | 2.3.0     |
| Censuses and returns                         | 2.4.0     |
| Ward records                                 | 2.5.0     |
| Electronic patient administration systems    | 2.6.0     |
| Health Information Exchange (HIE)            | 2.7.0     |

<p>| PATIENT DIAGNOSIS – IMAGING SERVICES         | Requests | 3.1.0 |
| Diagnostic reports                           | 3.2.0     |
| Recordings                                   | 3.3.0     |
| Registers                                    | 3.4.0     |</p>
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>PATIENT DIAGNOSIS – PAThOLOGY AND LABORATORY SERVICES</td>
<td>Requests</td>
<td>4.1.0</td>
</tr>
<tr>
<td></td>
<td>Diagnostic results and reports</td>
<td>4.2.0</td>
</tr>
<tr>
<td></td>
<td>Specimens and samples</td>
<td>4.3.0</td>
</tr>
<tr>
<td></td>
<td>Blood bank and blood collection services</td>
<td>4.4.0</td>
</tr>
<tr>
<td></td>
<td>Semen supply</td>
<td>4.5.0</td>
</tr>
<tr>
<td></td>
<td>Quality assurance</td>
<td>4.6.0</td>
</tr>
<tr>
<td></td>
<td>Equipment maintenance</td>
<td>4.7.0</td>
</tr>
<tr>
<td></td>
<td>Procedures and methods</td>
<td>4.8.0</td>
</tr>
<tr>
<td>PHARMACEUTICAL SUPPLY AND ADMINISTRATION</td>
<td>Dispensation and supply</td>
<td>5.1.0</td>
</tr>
<tr>
<td>NOTIFICATIONS</td>
<td>Births and deaths</td>
<td>6.1.0</td>
</tr>
<tr>
<td></td>
<td>Health reporting</td>
<td>6.2.0</td>
</tr>
<tr>
<td>PATIENT/CLIENT FINANCE AND PROPERTY MANAGEMENT</td>
<td>Patient property</td>
<td>7.1.0</td>
</tr>
<tr>
<td></td>
<td>Patient/client accounts and finances</td>
<td>7.2.0</td>
</tr>
<tr>
<td></td>
<td>Program of Appliances for Disabled People (PADP)</td>
<td>7.3.0</td>
</tr>
<tr>
<td>RESEARCH MANAGEMENT</td>
<td>Research projects, trials or studies</td>
<td>8.1.0</td>
</tr>
<tr>
<td>RECORDS IMAGING</td>
<td>Records that have been imaged</td>
<td>9.1.0</td>
</tr>
<tr>
<td>PRE 1930 RECORDS</td>
<td></td>
<td>10.0.0</td>
</tr>
</tbody>
</table>
1.4 Retention periods and disposal actions

The following table contains the authorised retention periods and disposal actions applying to the classes of patient and client health care records maintained by public health services.

<table>
<thead>
<tr>
<th>No</th>
<th>Classes of records</th>
<th>Disposal Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.0.0</td>
<td>PATIENT/CLIENT TREATMENT AND CARE&lt;sup&gt;1&lt;/sup&gt;</td>
<td>The provision of health assessment, diagnosis, management, treatment and care services and/or advice to individual patients/clients&lt;sup&gt;4&lt;/sup&gt;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>For records created prior to 1930 see 10.0.0</td>
</tr>
<tr>
<td></td>
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<td>For records relating to:</td>
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<tr>
<td></td>
<td></td>
<td>- Assisted Reproductive Technology (ART) see 1.7.0</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- genetic or inherited disorders see 1.6.0</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- obstetric/maternal health care see 1.4.0</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- PANOC Specialist Services patients see 1.9.0</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- psychiatric and mental health care see 1.5.0</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- radiotherapy treatment see 1.10.0</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- sexual assault patients see 1.8.0</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- clinical trial participants see 8.0.0</td>
</tr>
<tr>
<td></td>
<td></td>
<td>For records that have been duplicated by means of imaging technologies such as microfilming or digital scanning see 9.0.0</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Records of private hospitals, services, nursing homes, centres etc are not State records and should be retained and disposed of in accordance with any requirements of the Act, or any regulations made under the Act, under which the establishment is licensed.</td>
</tr>
<tr>
<td>1.1.0</td>
<td>Hospital care</td>
<td>Records relating to the provision of treatment and care to individual acute care in-patients, out-patients and accident and emergency patients.</td>
</tr>
<tr>
<td>1.1.1</td>
<td>Group A Hospitals&lt;sup&gt;5&lt;/sup&gt; (viz Principal Referral Groups A and B, Paediatric Specialist and ungrouped Acute hospitals) - records of discharged or deceased in-patients</td>
<td>Retain:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- minimum of 15 years after last attendance or official contact or access by or on behalf of the patient&lt;sup&gt;6&lt;/sup&gt;, or</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- until patient attains or would have attained the age of 25 years, whichever is the longer, then destroy</td>
</tr>
</tbody>
</table>

<sup>1</sup>See Part 1, section 1.2 above for the scope of records relating to or of a patient’s/client’s treatment and care.

<sup>4</sup>Health care records are to incorporate original observations. Transcribing is not an endorsed practice and should be avoided. Summary records are to be managed in accordance with the purpose for which they were created.

<sup>5</sup>The term ‘teaching’ previously used to categorise hospitals has been replaced with the groups as listed in the NSW Health Department document *NSW Peer Hospital Groups 2001/02*. Hospitals listed under 1.1.1 are groups A1a, A1b, A2 and A3. Hospitals listed under 1.1.2 (Groups B to F) cover all hospitals, nursing homes, rehabilitation facilities, hospices, Multi Purpose Services etc that are not Group A Principal Referral, Paediatric Specialist or ungrouped Acute hospitals. If any further groups are added beyond F they will fall into this category and should retain records in accordance with the minimum retention periods identified for this category.

<sup>6</sup>Access by or on behalf of the patient’ refers to any use made of the record or access to the records for any purpose directly concerning the patient, such as attendance by the patient, provision of a report to another health care worker or agency, access under subpoena, inspection by the patient or their legal representative. Access for research, quality assurance, audit or educational purposes or by next of kin checking medical history does not constitute ‘access by or on behalf of the patient’.
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Retention Policy</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1.2</td>
<td>Groups B-F Hospitals - records of discharged or deceased in-patients</td>
<td>Retain: minimum of 10 years after last attendance or official contact or access by or on behalf of the patient, or until patient attains or would have attained the age of 25 years, whichever is the longer, then destroy.</td>
</tr>
<tr>
<td>1.1.3</td>
<td>Records of patients attending or presenting to Emergency or Out-Patient Departments not admitted as in-patients – all hospital groups. This includes records of patients who are dead on arrival (DOA) and records maintained as part of the Emergency Department Information System (EDIS).</td>
<td>Retain: minimum of 7 years after last attendance (in respect of DOA’s date of death) or official contact or access by or on behalf of the patient, or until patient attains or would have attained the age of 25 years, whichever is the longer, then destroy.</td>
</tr>
<tr>
<td>1.2.0</td>
<td>Community health care</td>
<td>Records relating to clients of community health services or centres. This includes records of unregistered clients, clients who are only ‘visitors’, clients who are screened without follow up, potential clients or clients who are referred elsewhere. See 1.3.0 for records relating to oral (dental) health care.</td>
</tr>
<tr>
<td>1.2.1</td>
<td>Client health records. Records documenting the provision of health care, assessment or screening services to registered or unregistered clients, including records relating to confidential referrals or temporary records of transfers or ‘visitors’. This includes records of deceased clients, ie records relating to clients where the facility has been officially notified of the death of the client, and sensitive or registered records documenting or reporting instances of abuse, family disharmony, developmental disorders, pregnancy etc. See 1.8.0 and 1.9.0 for records relating to instances of sexual assault and PANOC Specialist Services patients/clients.</td>
<td>Retain: minimum of 7 years after last attendance or official contact or access by or on behalf of the client, or until client attains or would have attained the age of 25 years, whichever is the longer, then destroy.</td>
</tr>
<tr>
<td>1.2.2</td>
<td>Immunisation records not maintained as part of the main client record and where there is no adverse or other reaction.</td>
<td>Retain minimum of 7 years after date of immunisation or after last official contact or access by or on behalf of the client, then destroy.</td>
</tr>
<tr>
<td>1.2.3</td>
<td>Immunisation records not maintained as part of the main client record and where there is an adverse or other reaction.</td>
<td>Retain: minimum of 7 years after last official contact or access by or on behalf of the client, or until client attains or would have attained the age of 25 years, whichever is the longer, then destroy.</td>
</tr>
<tr>
<td>No</td>
<td>Classes of records</td>
<td>Disposal Action</td>
</tr>
<tr>
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<td>-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>1.2.4</td>
<td>Child/baby health care screening records documenting the screening and monitoring of the health of infants from birth to 4-5 years where there is no abnormality detected. This includes progress notes, centile charts, immunisation schedule etc.</td>
<td>Retain until child attains or would have attained the age of 6 years, then destroy</td>
</tr>
</tbody>
</table>
| 1.2.5 | Child/baby health care screening records where there is an abnormality detected or with possible legal implications. This includes sensitive or registered records documenting or reporting instances of abuse, family disharmony, developmental disorders etc.  
See 1.8.0 and 1.9.0 for records relating to instances of sexual assault and PANOC Specialist Services patients/clients | Retain:  
- minimum of 7 years after last official contact or access by or on behalf of the client, or  
- until client attains or would have attained the age of 25 years, whichever is the longer, then destroy |
| 1.2.6 | School screening records documenting the screening and monitoring of the health of pre-primary, primary and secondary school students where there is no abnormality detected | Retain until student completes either primary or secondary school in which the screening was undertaken, then destroy                                                                                   |
| 1.2.7 | School screening records where there is an abnormality detected or with possible legal implications. This includes sensitive or registered records documenting or reporting instances of abuse, family disharmony, developmental disorders, pregnancy etc.  
See 1.8.0 and 1.9.0 for records relating to instances of sexual assault and PANOC Specialist Services patients/clients | Retain:  
- minimum of 7 years after last official contact or access by or on behalf of the client, or  
- until client attains or would have attained the age of 25 years, whichever is the longer, then destroy |
| 1.2.8 | Criminal histories held on files of clients under the Magistrates Early Referral into Treatment (MERIT) Program                                                                                                                      | Retain until the conclusion of the client’s active involvement in the program, then destroy                                                                                                                  |
| 1.3.0 | Oral (dental) health care                                                                                                                                                                                                                | Retain:  
- minimum of 7 years after last attendance or official contact or access by or on behalf of the patient/client, or  
- until patient/client attains or would have attained the age of 25 years, whichever is the longer, then destroy |
| 1.3.1 | Records relating to the examination, assessment and treatment of patients/clients. This includes dental charts, x-rays etc for both adults and minors.                                                                                           | Retain minimum of 2 years from date of consent, then destroy                                                                                                                                          |
| 1.3.2 | School dental risk assessment consent forms                                                                                                                                                                                              | Retain minimum of 2 years from date of consent, then destroy                                                                                                                                          |

1 If an abnormality is detected then the record should be incorporated into the main Community Health client record system.
<table>
<thead>
<tr>
<th>No</th>
<th>Classes of records</th>
<th>Disposal Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.4.0</td>
<td>Obstetric/maternal health care</td>
<td></td>
</tr>
<tr>
<td>1.4.1</td>
<td>Records documenting birth episodes</td>
<td>These records are currently required to be retained indefinitely by the organisation responsible for their management</td>
</tr>
<tr>
<td>1.4.2</td>
<td>Social work records relating to instances of arrangements for adoptions</td>
<td>These records are currently required to be retained indefinitely by the organisation responsible for their management</td>
</tr>
<tr>
<td>1.5.0</td>
<td><strong>Psychiatric and mental health care</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>See 2.1.12 for registers required to be maintained under the <em>Mental Health Act</em> 1990</td>
<td></td>
</tr>
<tr>
<td>1.5.1</td>
<td>Records of patients/clients of former Crown operated/5th Schedule psychiatric hospitals where the records were wholly or partly created prior to 1960</td>
<td>Required as State archives</td>
</tr>
<tr>
<td>1.5.2</td>
<td>Records of patients/clients receiving psychiatric treatment and care and/or treatment and care (including community health care) under the <em>Mental Health Act</em>. This includes records of deceased patients/clients (ie records of patients receiving treatment and care under the <em>Mental Health Act</em> who die while in or receiving treatment from a facility or where the facility has been officially notified of death). Records relating to the treatment and care of patients not covered by the <em>Mental Health Act</em> who have mental disorders are to be retained in accordance with 1.1.0 or 1.2.0</td>
<td>Retain: - minimum of 15 years after last attendance or official contact or access by or on behalf of the patient, or until patient attains or would have attained the age of 25 years, whichever is the longer, then destroy</td>
</tr>
<tr>
<td>1.6.0</td>
<td><strong>Genetic or inherited disorders</strong></td>
<td></td>
</tr>
<tr>
<td>1.6.1</td>
<td>Records documenting the diagnosis of a genetic or inherited disorder&lt;sup&gt;5&lt;/sup&gt;</td>
<td>These records are currently required to be retained indefinitely by the organisation responsible for their management</td>
</tr>
<tr>
<td>1.6.2</td>
<td>Records relating to the management of patients with genetic or inherited disorders</td>
<td>To be retained and disposed of in accordance with the requirements for the type of patient/client records they comprise eg hospital or community health care</td>
</tr>
</tbody>
</table>

<sup>5</sup> Where possible these records should be filed, maintained and stored separately from the main (unit) patient record. Diagnostic results held in other departments should be returned to the genetics department. Where records are maintained as part of the individual’s main (unit) patient record the records must be maintained for the minimum retention period specified in this section.
<table>
<thead>
<tr>
<th>No</th>
<th>Classes of records</th>
<th>Disposal Action</th>
</tr>
</thead>
</table>
| 1.7.0 | Assisted Reproductive Technology (ART)  
Records relating to ART procedures (including In Vitro Fertilisation (IVF), gamete intrafallopian transfer (GIFT) and artificial insemination).<sup>9</sup> This includes case records of each individual person or family unit, consent to ART procedures, donation and use of semen, ova, embryos and the withdrawal of consent for such procedures or processes. | Retain minimum of 75 years from date of birth (or estimated date of birth if not known), then destroy |
| 1.7.1 | Records relating to ART patients/clients where a child is born or, if it is not known whether a child is born, where a pregnancy is achieved | Retain minimum of 15 years after last attendance or last official contact with the service or after last access by or on behalf of the patient, then destroy |
| 1.7.2 | Records relating to any other ART patients/clients | Retain minimum of 30 years after any legal action is completed and resolved (where known) or after last contact for legal access, or 30 years after the individual attains or would have attained the age of 18, whichever is the longer, then destroy |
| 1.8.0 | Sexual assault patients  
1.8.1 | Records relating to instances of sexual assault | Retain minimum of: 30 years after any legal action is completed and resolved (where known) or after last contact for legal access, or 30 years after the individual attains or would have attained the age of 18, whichever is the longer, then destroy |
| 1.9.0 | Physical Abuse and Neglect of Children (PANOC) Specialist Services  
1.9.1 | Client records of PANOC Specialist Services | Retain minimum of: 30 years after any legal action is completed and resolved (where known) or after last contact for legal access, or 30 years after the individual attains or would have attained the age of 18, whichever is the longer, then destroy |

<sup>9</sup> Where possible these records should be filed, maintained and stored separately from the main (unit) patient record. Where records are maintained as part of the individual’s main (unit) patient record the records must be maintained for the minimum retention period specified in this section. For further information concerning recordkeeping requirements for the accreditation of Reproductive Medicine Units refer to NSW Department of Health GL2006_011 and the National Health and Medical Research Council (NHMRC) Ethical Guidelines on Assisted Reproductive Technology.
<table>
<thead>
<tr>
<th>No</th>
<th>Classes of records</th>
<th>Disposal Action</th>
</tr>
</thead>
</table>
| 1.10.0 | Radiotherapy treatment                                                             | Retain minimum of:  
- 10 years after patient would have attained the age of 70 or after last attendance, whichever is the longer, or  
- where the service has received notification of the date of death, 10 years after date of death, then destroy |
| 1.10.1 | Records documenting radiation dose delivery in respect to patients                   | Retain until no longer required for administrative purposes, then review, if no longer required, then destroy                                      |
|       | (admitted and non-admitted) who have undergone radiotherapy treatment.               | To be retained and disposed of in accordance with the requirements for the type of patient/client records they comprise eg hospital or community health care |
|       | (These records are generally maintained in Radiotherapy Departments.)                |                                                                                                                                                  |
| 1.11.0 | Electronic health records                                                           |                                                                                                                                                   |
| 1.11.1 | Extract summary data created to facilitate the making of treatment decisions where the source records still exist and are retrievable for and at any particular point in time |                                                                                                                                                  |
| 1.11.2 | Extract summary data created to facilitate the making of treatment decisions where the source records are not retrievable or no longer exist |                                                                                                                                                  |
| 1.11.3 | Original data where the electronic record is the only record                        |                                                                                                                                                  |
| 1.12.0 | Collections or samples of patient records of significance                            | Required as State archives                                                                                                                       |
| 1.12.1 | Collections or samples of patient records identified as being of continuing value for medical or social research purposes |                                                                                                                                                  |
| 1.13.0 | Correspondence                                                                     |                                                                                                                                                  |
|       | Incoming and outgoing correspondence relating to the treatment and care of individual patients and/or clients, including referrals |                                                                                                                                                  |
|       | See section 2.3 of Part 2 of this Authority for guidance on the identification of these records |                                                                                                                                                  |
|       | See also 10.0.0 for records created prior to 1930                                   |                                                                                                                                                  |
### Classes of records

<table>
<thead>
<tr>
<th>No</th>
<th>Classes of records</th>
<th>Disposal Action</th>
</tr>
</thead>
</table>
| 1.13.1 | Routine correspondence with individual patients/clients, or others on behalf of patients/clients, of a health care facility or service. Correspondence includes records of telephone contact and a record of any medical advice given is to be retained.  
Where possible these records should be filed and maintained as part of the main (unit) patient/client record and retained accordingly. If there is no record of the patient, note receipt of the correspondence in the correspondence log book or register and return to sender. | Retain:  
- minimum of 7 years after last attendance or official contact or access by or on behalf of the patient, or  
- until patient attains or would have attained the age of 25 years, whichever is the longer, then destroy |
| 1.13.2 | Correspondence logs or registers                                                                                                                                                                                     | Retain minimum of 7 years after last entry, then destroy                       |
| 1.13.3 | Copies of requests or referrals for other services, eg diagnostic, where the medical record does not incorporate details or where the patient did not attend the service for which the referral was provided. This includes private patient referrals/requests.  
Where possible a copy of any request/referral form is to be filed and maintained as part of the main (unit) patient/client record and retained accordingly. This retention period encompasses Health Insurance Commission requirements to retain private patient referrals/requests for at least 18 months. | Retain minimum of 3 years after last action, then destroy                      |
| 1.14.0 | **Legal matters and incident management**  
Records relating to the management and handling of complaints, incidents, investigations or litigation involving the health facility and its patients/clients. Records include but are not necessarily restricted to correspondence between the health facility and solicitors or legal defence organisations regarding a patient of the facility, complaint files, incident reports and associated records of investigations into the incident or complaint. |  
| 1.14.1 | Records relating to issues, claims or case matters:  
• of major public interest or controversy, or  
• which are precedent setting in nature, or  
• which result in significant changes to the service’s or facility’s policy or procedures | Required as State archives  
Where possible a copy of any request/referral form is to be filed and maintained as part of the main (unit) patient/client record and retained accordingly. This retention period encompasses Health Insurance Commission requirements to retain private patient referrals/requests for at least 18 months. |
| 1.14.2 | Records relating to other issues, claims or case matters involving legal action  
A copy of any incident report or notification is to be filed and maintained as part of the main (unit) patient/client record and retained accordingly. Correspondence and associated records relating to the handling of these matters should be filed and maintained separately from the individual patient record. | Retain minimum of 15 years after legal action is completed and resolved (where known) or after last contact for legal access purposes, then destroy |
| 1.14.3 | Records relating to complaints and incidents not involving legal action  
Where possible any investigation into or analysis of the cause of an incident (Root Cause Analysis) are to be appropriately managed and retained in accordance with the retention periods identified in this section. | Retain for minimum of 7 years after last action, then destroy |

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10 Where possible these records should be filed and maintained as part of the main (unit) patient/client record and retained accordingly. If there is no record of the patient, note receipt of the correspondence in the correspondence log book or register and return to sender.

11 Where possible a copy of any request/referral form is to be filed and maintained as part of the main (unit) patient/client record and retained accordingly. This retention period encompasses Health Insurance Commission requirements to retain private patient referrals/requests for at least 18 months.

12 A copy of any incident report or notification is to be filed and maintained as part of the main (unit) patient/client record and retained accordingly. Correspondence and associated records relating to the handling of these matters should be filed and maintained separately from the individual patient record.

13 Records of an investigation into or analysis of the cause of an incident (Root Cause Analysis) are to be appropriately managed and retained in accordance with the retention periods identified in this section.
<table>
<thead>
<tr>
<th>No</th>
<th>Classes of records</th>
<th>Disposal Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.14.4</td>
<td>Subpoenas and discovery orders relating to legal action involving the health service or facility. Records covered by this class are records of correspondence etc concerning the service’s or facility’s receipt of and compliance with a subpoena or discovery order. It does not apply to the records that are the subject of the subpoena or discovery order.</td>
<td>Retain minimum of 7 years after finalisation of legal proceedings (where known) or after last contact for legal access purposes, then destroy</td>
</tr>
<tr>
<td>1.14.5</td>
<td>Subpoenas and discovery orders relating to other litigation not directly involving the health service or facility. Records covered by this class are records of correspondence etc concerning the service’s or facility’s receipt of and compliance with a subpoena or discovery order where the service or facility is not a respondent or plaintiff to the litigation. It does not apply to the records that are the subject of the subpoena or discovery order.</td>
<td>Retain minimum of 2 years after finalisation of legal proceedings (where known) or after last contact for legal access purposes, then destroy</td>
</tr>
<tr>
<td>1.14.6</td>
<td>Registers of patient injuries</td>
<td>Retain minimum of 30 years after last entry, then destroy</td>
</tr>
<tr>
<td>1.15.0</td>
<td>Clinical audits</td>
<td></td>
</tr>
<tr>
<td>1.15.1</td>
<td>Records relating to the conduct of clinical audits for the purposes of evidence based quality management e.g. an audit of the outcome of pain management treatment</td>
<td>Retain minimum of 5 years after completion of the audit, then destroy</td>
</tr>
<tr>
<td>1.16.0</td>
<td>Medical certificates</td>
<td></td>
</tr>
<tr>
<td>1.16.1</td>
<td>Copies of medical certificates issued to patients detailing dates of attendance and where appropriate reason for attendance not maintained as part of the main (unit) patient/client record.</td>
<td>Retain minimum of 7 years after date of issue, then destroy</td>
</tr>
<tr>
<td>1.17.0</td>
<td>Sterilisation (instruments)</td>
<td></td>
</tr>
<tr>
<td>1.17.1</td>
<td>Sterilisation print-outs</td>
<td>Retain minimum of 15 years after date of printout, then destroy</td>
</tr>
<tr>
<td>1.17.2</td>
<td>Log books/sterilisation register used to keep a record of a steriliser’s performance</td>
<td>Retain minimum of 15 years after last entry, then destroy</td>
</tr>
<tr>
<td>1.18.0</td>
<td>Surgical procedures (accountable items)</td>
<td></td>
</tr>
<tr>
<td>1.18.1</td>
<td>Duplicates of records of accountable items (MR18) used in operating theatres e.g. instruments and swab counts. (The original is required to be placed on the patient’s file.)</td>
<td>If used as a Register of surgically implanted devices see 2.1.11, otherwise retain minimum of 1 year after date of completion, then destroy</td>
</tr>
</tbody>
</table>

14 Where possible a copy of any medical certificate issued is to be filed and maintained as part of the main (unit) patient/client record and retained accordingly.

15 A photocopy of the print-out should be made and kept with the original as fading may occur.
### Classes of records

<table>
<thead>
<tr>
<th>No</th>
<th>Classes of records</th>
<th>Disposal Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.0.0</td>
<td><strong>PATIENT/CLIENT REGISTRATION AND IDENTIFICATION</strong></td>
<td>Management of the identification, registration, admission, transfer and discharge of new or readmitted patients/clients and the treatments or procedures performed on them. For records created prior to 1930 see 10.0.0. For records that have been duplicated by means of imaging technologies such as microfilming or digital scanning see 9.0.0.</td>
</tr>
<tr>
<td>2.1.0</td>
<td><strong>Registers and indexes</strong></td>
<td>See 3.4.0 and 4.3.0 for registers of diagnostic services and 5.1.0 for drug registers. Registers etc of private hospitals, services, nursing homes, centres etc are not State records and should be retained and disposed of in accordance with any requirements of the Act, or any regulations made under the Act, under which the establishment is licensed.</td>
</tr>
<tr>
<td>2.1.1</td>
<td>Patient Master Index (PMI), Number register (eg card register) or equivalent</td>
<td>Retain until no longer required for administrative purposes, then destroy</td>
</tr>
<tr>
<td>2.1.2</td>
<td><strong>Disease and operation index</strong></td>
<td>Required as State archives</td>
</tr>
</tbody>
</table>

**Notes:**

16. Records relating to the registration, identification, admission, discharge, transfer etc of patients/clients maintained in electronic formats must be maintained in a readily accessible format for as long as they are required to be retained in accordance with the identified minimum retention period for the class of record they constitute.

17. Services are required to create and maintain these records. The PMI or Number register is the key to locating an individual’s patient record in the medical records filing system as it provides a link between the name of the patient and the facility’s medical record number.

18. The index or register will need to be retained for as long as it is required for the purpose of locating individual patient records and, where the index or its equivalent records the details of the disposal of individual records, for an appropriate period thereafter to account for the disposal of individual patient records. Depending on other types of records maintained, the PMI may be required to be retained indefinitely.

19. Services are required to create and maintain these records. In addition to the patient’s name, medical record number and disease/condition and operation/procedure codes relevant to each episode of care, details recorded may also include age, sex, date of admission, length of stay, discharge status and destination, responsible doctor or unit (name or code identifier), ward.
<table>
<thead>
<tr>
<th>No.</th>
<th>Classes of records</th>
<th>Disposal Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.1.3</td>
<td>Physicians index</td>
<td>Retain minimum of 15 years after date of last entry, then destroy.</td>
</tr>
<tr>
<td></td>
<td>A record for each medical practitioner with admitting rights of the details of each patient attended by the practitioner during the period covered by the index. In addition to the patient’s name, medical record number and all disease, condition, operation and procedure codes relating to each patient attended, details recorded may also include age, sex, date of admission, length of stay, discharge status and destination.</td>
<td></td>
</tr>
<tr>
<td>2.1.4</td>
<td>Admission and discharge registers</td>
<td>Required as State archives</td>
</tr>
<tr>
<td></td>
<td>In addition to the details of the patient’s date of admission and discharge, details recorded may also include time of admission, patient’s medical record number, address, sex, date of birth, next of kin, admitting diagnosis, discharge diagnosis and length of stay. Where the details recorded in the discharge register are duplicated in the admission register see 2.1.13</td>
<td></td>
</tr>
<tr>
<td>2.1.5</td>
<td>Register of births</td>
<td>Required as State archives</td>
</tr>
<tr>
<td></td>
<td>A record of each birth occurring in the service or facility. This includes Birth and Labour Ward registers, confinement books or their equivalent.</td>
<td></td>
</tr>
<tr>
<td>2.1.6</td>
<td>Death register</td>
<td>Required as State archives</td>
</tr>
<tr>
<td></td>
<td>A record of each death occurring in the hospital or facility, including deaths on arrival (DOA’s). See 6.1.2 for death certificates</td>
<td></td>
</tr>
<tr>
<td>2.1.7</td>
<td>Emergency Department register</td>
<td>Required as State archives</td>
</tr>
<tr>
<td></td>
<td>In addition to date of attendance and name of patient, details recorded may also include patient’s medical record number, address, sex, date of birth, reason for attendance and outcome of any follow up arrangements.</td>
<td></td>
</tr>
<tr>
<td>2.1.8</td>
<td>Surgical procedures, Operation or Theatre register</td>
<td>Required as State archives</td>
</tr>
<tr>
<td></td>
<td>A record of each operation or surgical procedure carried out.</td>
<td></td>
</tr>
<tr>
<td>2.1.9</td>
<td>Community health registers</td>
<td>Retain:</td>
</tr>
<tr>
<td></td>
<td>A record of details of individual client contact, demographics, presenting problem, transfers in and out etc. This includes Baby health registers.</td>
<td>- minimum of 15 years after date of last entry, or - until youngest child in the register attains the age of 25 years, whichever is the longer, then destroy</td>
</tr>
<tr>
<td>2.1.10</td>
<td>Ward register</td>
<td>Retain minimum of 7 years after date of last entry, then destroy.</td>
</tr>
<tr>
<td></td>
<td>A record of dates of reception of individual patients into a ward. Information recorded should include date of reception and name of individual patient.</td>
<td></td>
</tr>
</tbody>
</table>

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20 Services are required to create and maintain these records. Information recorded should include date and time of birth, mother’s name, sex of child and names of medical and nursing staff in attendance. Details recorded may also include mother’s medical record number, age and address.

21 Services are required to maintain this register in accordance with NSW Department of Health PD2007_094 Client Registration Policy.

22 Services are required to maintain this register in accordance with NSW Department of Health PD2014_049 Register of surgical operations.
### PROCEDURE MANUAL FOR COMMUNITY HEALTH FACILITIES

<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>2.1.11</td>
<td>Register of surgically implanted devices(^{23})&lt;br&gt;A record of details of any surgically implanted prostheses or devices.</td>
<td>These records are currently required to be retained indefinitely by the organisation responsible for their management.</td>
</tr>
<tr>
<td>2.1.12</td>
<td>Electro Convulsive Therapy (ECT)(^{24}); Sedation(^{25}) and Seclusion(^{25})&lt;br&gt;registers and Rapid tranquillisation journals</td>
<td>Retain minimum of 15 years after date of last entry, then destroy.</td>
</tr>
<tr>
<td>2.1.13</td>
<td>Duplicate registration and index records. This applies to records in&lt;br&gt;hard copy or electronic format that duplicate details or information&lt;br&gt;recorded in and accessible from a centrally maintained or alternate&lt;br&gt;registration system.</td>
<td>Retain until no longer required for administrative or reference purposes(^{26}), then destroy.</td>
</tr>
<tr>
<td>2.2.0</td>
<td>Lists and schedules</td>
<td></td>
</tr>
<tr>
<td>2.2.1</td>
<td>In-patient admission, transfer, discharge or death lists</td>
<td>Where the admission, discharge or death register does not exist sentence in accordance with 2.1.4 or 2.1.6, otherwise retain minimum of 2 years after date of last entry or list, then destroy.</td>
</tr>
<tr>
<td>2.2.2</td>
<td>Operation/theatre lists or schedules eg theatre bookings</td>
<td>Retain minimum of 2 years after list or schedule completed, then destroy.</td>
</tr>
<tr>
<td>2.2.3</td>
<td>Clinical lists. This includes out-patient lists, attendance books etc&lt;br&gt;See 2.3.1 for records of client contact not recorded elsewhere</td>
<td>Retain minimum of 1 year after date of last entry or list, then destroy.</td>
</tr>
<tr>
<td>2.2.4</td>
<td>Waiting lists - quarterly waiting list surveys (Form A’s)</td>
<td>Retain minimum of 1 year after date of survey, then destroy.</td>
</tr>
<tr>
<td>2.2.5</td>
<td>Waiting lists - clerical audit reports</td>
<td>Retain minimum of 3 years after audit, then destroy.</td>
</tr>
<tr>
<td>2.2.6</td>
<td>Recommendation for admission forms where the patient did not attend and no medical record was created</td>
<td>Retain minimum of 3 years after creation, then destroy.</td>
</tr>
<tr>
<td>2.3.0</td>
<td>Diaries and appointment books or registers</td>
<td></td>
</tr>
<tr>
<td>2.3.1</td>
<td>Personal/work diaries or appointment books/registers recording&lt;br&gt;details of appointments and client contact or attendance not recorded elsewhere</td>
<td>Retain minimum of 7 years after date of last entry, then destroy.</td>
</tr>
</tbody>
</table>

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\(^{23}\) Services are required to create and maintain these records for the purposes of product recall. If details of surgically implanted devices are retained in a form other than a register it is to be ensured that such details are retained and recoverable in accordance with the requirements of this section.

\(^{24}\) A Register of Electro Convulsive Therapy is required to be maintained under s.196 of the Mental Health Act 1990 and in accordance with the form prescribed by the Mental Health Regulation 2000.

\(^{25}\) Services are required to maintain this register in accordance with PD2012_035, Aggression, Seclusion & Restraint in Mental Health Facilities in NSW and GL2012_005, Aggression, Seclusion & Restraint in Mental Health Facilities – Guideline focused Upon Older People.

\(^{26}\) Where records are created and used for the purposes of data entry the determination of appropriate retention periods must allow adequate time for data verification and audit requirements.
<table>
<thead>
<tr>
<th>No</th>
<th>Classes of records</th>
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</tr>
</thead>
<tbody>
<tr>
<td>2.3.2</td>
<td>Personal/work diaries or appointment books used to record basic information or details such as dates and times of meetings and appointments</td>
<td>Retain until no longer required for administrative or reference purposes, then destroy</td>
</tr>
</tbody>
</table>
| 2.4.0 | **Censuses and returns**  
See 6.2.0 for records relating to the reporting of notifiable diseases etc | Retain minimum of 1 year after date of creation or until completion of audit, if sooner, then destroy |
| 2.4.1 | Records reporting numbers of patients admitted or transferred, eg bed returns or daily in-patient census | Retain until no longer required for administrative or reference purposes, then destroy |
| 2.4.2 | Originals of data collection forms, returns etc held by the Department of Health. This includes data related to sexual assault, brain injury, admitted patient statistics, midwife data collection etc. | Retain until no longer required for administrative or reference purposes, then destroy |
| 2.4.3 | Copies of data collection records/returns held by public health organisations | Retain minimum of 1 year after date of submission, then destroy |
| 2.5.0 | **Ward records**  
See 5.1.3 for drug registers maintained on the ward | |
| 2.5.1 | Records relating to the management, treatment and care of patients on the ward not incorporated into the main (unit) patient record eg ward reports, report books and related records | Retain minimum of 7 years after date of last entry or action, then destroy |
| 2.6.0 | **Electronic patient administration systems**  
27 | To be retained and disposed of in accordance with the requirements for the type of records they comprise |
| 2.6.1 | Systems (eg Cerner/I Soft systems) that consist of and manage patient personal (PMI), admission, transfer and separation (ATS) and disease index (DI) details | |
| 2.7.0 | **Health Information Exchange (HIE)** | |
| 2.7.1 | Extracted electronic data from existing source systems which is aggregated for reporting, analysis and service planning purposes | Retain until no longer required for administrative or reference purposes, then review, if no longer required, then destroy |
| 3.0.0 | **PATIENT DIAGNOSIS - IMAGING SERVICES**  
Imaging procedures and tests performed for the purposes of patient/client diagnosis. This includes diagnostic radiology, tomography, nuclear medicine, ultrasound, magnetic resonance imaging and related diagnostic digital imaging procedures.  
For records created prior to 1930 see 10.0.0  
For records that have been duplicated by means of imaging technologies such as microfilming or digital scanning see 9.0.0 | |

27 Records maintained within these systems are to be sentenced in accordance with entries 2.1.1 to 2.2.6. Organisations should have in place strategies for managing the deletion of records from the system when they are no longer required and for the ongoing maintenance of access to patient registration details that are required to be retained permanently as State archives.
## NO. 3.1.0 Requests

### Disposal Action

- Requests\textsuperscript{38}
  - Medical officer’s requests for diagnostic imaging procedures
  - Retain minimum of 3 years after receipt of the request\textsuperscript{29}, then destroy

### No. 3.1.1 Diagnostic service copy of requests for imaging procedures

- Retain minimum of 3 years after receipt of the request\textsuperscript{29}, then destroy

### No. 3.2.0 Diagnostic reports\textsuperscript{39}

- Records and reports documenting findings based on an analysis, evaluation or interpretation of recordings or procedures

#### No. 3.2.1 Patient record copy

- See 1.0.0 for patient health care records
- To be retained and disposed of in accordance with the type of patient record they comprise

#### No. 3.2.2 Diagnostic service copy (that is originals or copies of diagnostic reports or findings maintained by the diagnostic service)

- Retain minimum of 3 years after date of report, then destroy

### No. 3.3.0 Recordings\textsuperscript{40}

- Recordings produced for or created as a result of diagnostic processes

#### No. 3.3.1 Diagnostic visual, image or pictorial recordings. This includes x-rays, videotapes, films, photographs or equivalent image recordings.

- Release to patient upon request\textsuperscript{32} or retain:
  - minimum of 7 years after last attendance for diagnostic procedure, or
  - until patient attains or would have attained the age of 25 years, whichever is the longer, then recycle or destroy\textsuperscript{33}

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\textsuperscript{28} Details of requests for diagnostic procedures or tests should be recorded and maintained as part of the main (unit) patient record, ie as part of the progress notes or a copy of the request is attached to the file, and retained accordingly.

\textsuperscript{29} This retention period encompasses Health Insurance Commission requirements to retain private patient referrals/requests for at least 18 months.

\textsuperscript{30} The original or a copy of any diagnostic report should also be maintained as part of the main (unit) patient record and retained accordingly.

\textsuperscript{31} Recordings produced by diagnostic services should be retained in the originating department or area, for example radiographic films or diagnostically equivalent recordings should be retained in the Radiography/Radiology Department. If recordings are digitally stored the retention periods specified in this section are the minimum retention requirements for the records.

\textsuperscript{32} If a patient requests a diagnostic recording and the recording is not required for possible future treatment or other requirements, for example litigation, then the recording can be released subsequent to the patient signing for its release.

\textsuperscript{33} If it is known that the recordings could possibly be required for legal action or compensation claims, the recordings should be retained for appropriate time periods, that is at least until the legal action has been completed. If it is known that an adverse event has occurred the visual recording associated with that event should be retained until the matter has been resolved or for the minimum retention period as specified, whichever is the longer.
<table>
<thead>
<tr>
<th>No</th>
<th>Classes of records</th>
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</tr>
</thead>
</table>
| 3.3.2 | Diagnostic graphical recordings, that is recordings or tracings of a graphical nature created via diagnostic measuring processes eg electroencephalograms, electrocardiograms, electromyograms or cardiotocograms, where there is an abnormality detected | Retain:  
- minimum of 7 years after last attendance for diagnostic procedure, or  
- until patient attains or would have attained the age of 25 years, whichever is the longer, then recycle or destroy |
| 3.3.3 | Diagnostic graphical recordings where there is no abnormality detected | Subject to results being noted in the patient’s record, retain until no longer required for administrative purposes, then destroy |
| 3.4.0 | Registers | Retain until no longer required for administrative purposes, then destroy |
| 3.4.1 | Registers or associated control records maintained for the purposes of identifying or locating diagnostic recordings and reports | Retain until no longer required for administrative purposes, then destroy |
| 4.0.0 | PATIENT DIAGNOSIS - PATHOLOGY AND LABORATORY SERVICES |  
Records of procedures and tests performed on body specimens for the purposes of patient/client diagnosis  
For records created prior to 1930 see 10.0.0  
For records that have been duplicated by means of imaging technologies such as microfilming or digital scanning see 9.0.0 |
| 4.1.0 | Requests  
Medical officer’s requests for a diagnostic test or procedure | Retain minimum of 3 years after receipt of the request, then destroy |
| 4.1.1 | Diagnostic service copy of requests for tests or procedures |  
This retention period encompasses Health Insurance Commission requirements to retain private patient referrals/requests for at least 18 months. |
| 4.2.0 | Diagnostic results and reports  
Records documenting diagnostic results, including copies or originals of diagnostic reports maintained by the pathology or laboratory service. This includes records relating to the analysis, evaluation or interpretation of the results of pathology or laboratory processes generated by an instrument or operator and the records of test result validity. |  
The original or a copy of any diagnostic report, including autopsy/post-mortem reports, should also be maintained as part of the main (unit) patient record and retained accordingly. |

34 The records should be retained for as long as they might conceivably be required for the purposes of locating a recording or, where the records contain the details of the disposal of individual recordings, accounting for the disposal of the recording.  
35 Retention periods for these records reflect current minimum standards considered acceptable for good laboratory practice in relation to the retention of laboratory records and diagnostic material established by the National Pathology Accreditation Advisory Council (NPAAC) Retention of Laboratory Records and Diagnostic Material, 3rd edition, 2002. Laboratories involved in biochemical, molecular genetics or newborn screening should refer to current NPAAC standards for details of specific requirements applying to them.  
36 Details of requests for diagnostic procedures or tests should be recorded and maintained as part of the main (unit) patient record, ie as part of the progress notes or a copy of the request is attached to the file, and retained accordingly.  
37 This retention period encompasses Health Insurance Commission requirements to retain private patient referrals/requests for at least 18 months.
<table>
<thead>
<tr>
<th>No</th>
<th>Classes of records</th>
<th>Disposal Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.2.1</td>
<td>Anatomical pathology, cytology (exfoliate and non exfoliate) and autopsy or post-mortem reports/records, registers, diagrams and copies of any representative images prepared</td>
<td>Retain minimum of 20 years from date of report, then destroy</td>
</tr>
<tr>
<td>4.2.2</td>
<td>Histopathology and bone marrow reports/records</td>
<td>Retain minimum of 20 years from date of report, then destroy</td>
</tr>
<tr>
<td>4.2.3</td>
<td>Blood alcohol reports/records. This includes medical practitioner declarations.</td>
<td>Retain minimum of 3 years from date of report or declaration, then destroy</td>
</tr>
<tr>
<td>4.2.4</td>
<td>Haematology, clinical chemistry/chemical pathology, microbiology and immunology records</td>
<td>Retain minimum of 3 years from date of report, then destroy</td>
</tr>
<tr>
<td>4.2.5</td>
<td>Genetics reports/records. This includes karyotypes and digital images. See also 1.6.0 for records documenting the diagnosis of genetic or inherited disorders</td>
<td>These records are currently required to be retained indefinitely by the organisation responsible for their management</td>
</tr>
<tr>
<td>4.2.6</td>
<td>Neonatal screening (Guthrie) cards</td>
<td>Retain:</td>
</tr>
<tr>
<td></td>
<td>- until child attains or would have attained the age of 25 years, or</td>
<td>- minimum of 7 years after last action, whichever is the longer, then destroy</td>
</tr>
<tr>
<td>4.2.7</td>
<td>Reports documenting diagnostic findings (including autopsy/post-mortem reports) - patient record copy See 1.0.0 for patient health care records</td>
<td>To be retained and disposed of in accordance with the type of patient record they comprise.</td>
</tr>
<tr>
<td>4.3.0</td>
<td>Specimens and samples&lt;sup&gt;40&lt;/sup&gt;</td>
<td></td>
</tr>
<tr>
<td>4.3.1</td>
<td>Bodily specimens, samples or materials examined in a diagnostic pathology procedure. This includes slides, films, blocks, cultures and related material.</td>
<td>To be retained in accordance with current NPAAC minimum standards for the retention of diagnostic material</td>
</tr>
<tr>
<td>4.3.2</td>
<td>Registers or equivalent records of specimens collected and received. This includes laboratory information management systems.</td>
<td>Retain until no longer required for administrative purposes&lt;sup&gt;41&lt;/sup&gt;, then destroy</td>
</tr>
<tr>
<td>4.3.3</td>
<td>Extract summary data from the register used to undertake management activities (eg printouts of reports to facilitate the tracking or monitoring of testing completion) and where no additional data or actions are noted on that extract data</td>
<td>Retain until no longer required for administrative purposes, then destroy</td>
</tr>
<tr>
<td>4.3.4</td>
<td>Extract summary data from the register used to undertake management activities and where additional data or actions are noted on the extract data and not recorded on the main register (that is the extract data in effect becomes a unique record containing information not recorded elsewhere)</td>
<td>Retain minimum of 1 year after action is completed, then destroy</td>
</tr>
</tbody>
</table>

<sup>39</sup> Regard should be had to potential retention requirements for legal purposes. See 1.14.0

<sup>40</sup> Bodily specimens and samples do not constitute ‘recorded information’ for the purposes of the State Records Act.

<sup>41</sup> Retention periods should be in accordance with the minimum retention periods required for the type/s of specimens recorded in the register, see 4.3.1, and, where these records contain the details of the disposal of individual specimens, the records should be retained for as long as they might conceivably be required for the purposes of accounting for the disposal of the specimen.
### PROCEDURE MANUAL FOR COMMUNITY HEALTH FACILITIES

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<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>4.3.5</td>
<td>Retained human tissue records. Where any tissue, organ or body part is retained for purposes (eg teaching or research) other than for which originally taken or examined (eg for the purposes of treatment, diagnosis, autopsy or post-mortem) then the provisions of the Human Tissue and Anatomy Legislation Amendment Act 2003 apply.</td>
<td>Retain minimum of 20 years after tissue disposed of, then destroy.</td>
</tr>
</tbody>
</table>
| 4.4.0 | **Blood bank and blood collection services**<sup>43</sup> (autologous and homologous) | Retain:  
- minimum of 10 years after last action, or  
- until donor attains or would have attained the age of 30 years, whichever is the longer, then destroy. |
| 4.4.1 | Diagnostic results and reports<sup>44</sup>                                           | Retain:  
- minimum of 20 years after last action, or  
- until donor attains or would have attained the age of 30 years, whichever is the longer, then destroy. |
| 4.4.2 | Laboratory records of blood donations and administration of blood and blood products<sup>44</sup> | Retain:  
- minimum of 20 years after last action, or  
- until donor attains or would have attained the age of 30 years, whichever is the longer, then destroy. |
| 4.4.3 | Registers of blood products. Recorded details of fresh and pooled blood products.<sup>45</sup> | Retain minimum of 20 years after date of last entry, then destroy.                                        |
| 4.4.4 | Statements by persons intending to donate blood. This includes records of consents, questionnaires and associated donor records.<sup>46</sup> | Retain:  
- minimum of 20 years after last action, or  
- until donor attains or would have attained the age of 30 years, whichever is the longer, then destroy. |
| 4.5.0 | **Semen supply**<sup>47</sup>  
See 1.7.0 for retention periods for donor records relating to Assisted Reproductive Technology |                                                                                                           |

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<sup>42</sup> Where any tissue, organ or body part is retained for purposes (eg teaching or research) other than for which originally taken or examined (eg for the purposes of treatment, diagnosis, autopsy or post-mortem) then the provisions of the Human Tissue and Anatomy Legislation Amendment Act 2003 apply.

<sup>43</sup> These records should be created and maintained in accordance with the requirements of the Human Tissue Act 1983, Human Tissue and Anatomy Legislation Amendment Act 2003, Human Tissue Regulation 2000 and the Therapeutic Goods Administration (TGA) Australian Code of Good Manufacturing Practice (GMP) for Therapeutic Goods: Blood and Blood Products. The retention periods identified for these records reflect current minimum standards established by the GMP code and NPAAC.

<sup>44</sup> See Human Tissue Regulation 2000 Schedule 3 for full details of recordkeeping requirements.

<sup>45</sup> Details recorded should include date of receipt, identification number of donation or batch/s, including the quantity in each batch, date of transfusion, date of issue to ward and blood group of product if applicable.

<sup>46</sup> See Human Tissue Regulation 2000 Schedule 3 for full details of recordkeeping requirements.

<sup>47</sup> See Human Tissue Regulation 2000 Schedule 4 for full details of recordkeeping requirements.
### PROCEDURE MANUAL FOR COMMUNITY HEALTH FACILITIES

#### NO. CLASSES OF RECORDS

<table>
<thead>
<tr>
<th>No.</th>
<th>Classes of records</th>
<th>Disposal Action</th>
</tr>
</thead>
</table>
| 4.5.1 | Records relating to the business of semen supply. This includes records of:  
  - full name and date of birth of donor  
  - donor’s written consent  
  - the results of tests and identification of all details  
  - the name of the medical practitioner to whom semen supplied | Retain:  
  - minimum of 10 years after last action, or  
  - until donor attains or would have attained the age of 30 years, whichever is the longer, then destroy |

| 4.6.0 | Quality assurance | Retain minimum of 3 years from date of review, then destroy |

| 4.7.0 | Equipment maintenance | Retain minimum of 3 years after the equipment has been replaced or disposed of, then destroy |

| 4.8.0 | Procedures and methods | Retain minimum of 3 years after methods/procedures superseded, then destroy |

| 5.0.0 | PHARMACEUTICAL SUPPLY AND ADMINISTRATION  
Management of the supply, administration, dispensing and use of pharmaceuticals, encompassing drugs, poisons and other substances.  
For records created prior to 1930 see 10.0.0  
For records that have been duplicated by means of imaging technologies such as microfilming or digital scanning see 9.0.0 | Retain minimum of 2 years after date of supply, then destroy |

| 5.1.0 | Dispensation and supply  
This includes requisitions, prescriptions, records of medication chart orders, records of supply other than on prescription and receipts/records of delivery. | Retain minimum of 7 years after date of last entry, then destroy |

| 5.1.2 | Medication charts and incident reports  
See 1.0.0 for patient health care records | To be retained and disposed of in accordance with the type of patient record they comprise |

---

48 The Poisons and Therapeutic Goods Act 1966 and the Poisons and Therapeutic Goods Regulation 2002 require certain records to be created and maintained by those responsible for the control, storage and supply of certain substances and drugs of addiction. These records should be maintained by the relevant area, department or ward of the service, for example pharmacy records should be maintained in the Pharmacy Department, ward records in the ward. The minimum retention periods for these records incorporate current minimum retention requirements in accordance with the Regulation. The National Health Act 1953 (C’wth) also regulates the retention of prescription and order forms.

49 Requisitions, prescriptions, orders etc for drugs of addiction, pentazocine or drugs listed in the Poisons and Therapeutic Goods Regulation 2002 Appendix B are to be maintained separately to other pharmaceutical supply records. Refer also to NSW Ministry of Health PD2013_043 Medication Handling in NSW Public Health Facilities.

50 Drug or medication charts comprising the medication orders written by medical staff and records of administration written by nursing or medical staff should be filed and maintained as part of the main (unit) patient record and retained accordingly.

51 Services should note that this is longer than the 2 year period required by the Regulation.
<table>
<thead>
<tr>
<th>No.</th>
<th>Classes of records</th>
<th>Disposal Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.1.4</td>
<td>Stock and inventory control records. This includes requisitions and orders for</td>
<td>Retain minimum of 2 years after date of last entry or action, then destroy</td>
</tr>
<tr>
<td></td>
<td>pharmaceutical products or substances and receipts/records of delivery.</td>
<td></td>
</tr>
<tr>
<td>5.1.5</td>
<td>Section 100 (highly specialised) drugs. This includes prescriptions and declaration</td>
<td>Retain minimum of 7 years after date of receipt, then destroy</td>
</tr>
<tr>
<td></td>
<td>forms signed by the prescriber.</td>
<td></td>
</tr>
<tr>
<td>5.1.6</td>
<td>Special Access Scheme (SAS) drugs consent forms for non-admitted patients</td>
<td>Retain:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- minimum of 7 years after last action, or</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- until child attains or would have attained the age of 25 years, whichever is</td>
</tr>
<tr>
<td></td>
<td></td>
<td>the longer, then destroy</td>
</tr>
<tr>
<td>5.1.7</td>
<td>Therapeutic Drugs Administration (TGA) application forms, eg form no. 2949 (0105),</td>
<td>Retain minimum of 7 years after last action, then destroy</td>
</tr>
<tr>
<td></td>
<td>where only copies are held by the public health organisation.</td>
<td></td>
</tr>
<tr>
<td>5.1.8</td>
<td>Records relating to applications to prescribe drugs of addiction for persons. This</td>
<td>Retain minimum of 7 years after date of last entry, then destroy</td>
</tr>
<tr>
<td></td>
<td>includes Methadone or Buprenorphine Program records, medical reports, authorities,</td>
<td></td>
</tr>
<tr>
<td></td>
<td>treatment proposals, correspondence etc.</td>
<td></td>
</tr>
<tr>
<td>5.1.9</td>
<td>Records relating to reports of lost or stolen drugs or lost or stolen drug registers</td>
<td>Retain minimum of 10 years after action completed, then destroy</td>
</tr>
<tr>
<td>6.0.0</td>
<td><strong>NOTIFICATIONS</strong></td>
<td></td>
</tr>
<tr>
<td>6.1.0</td>
<td>Births and deaths</td>
<td></td>
</tr>
<tr>
<td>6.1.1</td>
<td>Copies of birth registration forms</td>
<td>To be retained and disposed of in accordance with the type of patient record</td>
</tr>
<tr>
<td></td>
<td>See 1.0.0 for patient health care records</td>
<td>they comprise</td>
</tr>
<tr>
<td>6.1.2</td>
<td>Copies of death certificates retained separately from the main patient record</td>
<td>Retain minimum of 1 year after date of notification, then destroy</td>
</tr>
<tr>
<td>6.2.0</td>
<td><strong>Health reporting</strong></td>
<td></td>
</tr>
</tbody>
</table>

---

52 See NSW Ministry of Health PD2013_055 Accreditation of Community Prescribers - Highly Specialised Drugs for HIV, Hepatitis B & Hepatitis C.
53 Consent forms for admitted patients are to be placed on the main patient (unit) record and retained and disposed of in accordance with the type of patient record they comprise. See 1.0.0 for patient health care records.
54 These records are held by the NSW Health Pharmaceutical Services Branch.
55 A copy of the birth registration form is given to the parents and where possible a copy is to be filed and maintained as part of the main (unit) patient record.
56 Where possible a copy of the death certificate is to be filed and maintained as part of the main (unit) patient record and retained accordingly.

20(8/04)
<table>
<thead>
<tr>
<th>No</th>
<th>Classes of records</th>
<th>Disposal Action</th>
</tr>
</thead>
</table>
| 6.2.1| Records of notification maintained by hospitals, community health services etc fulfilling obligations to report notifiable diseases etc under the Public Health Act 1991[^57] | Retain:  
- minimum of 15 years after last attendance, date of death or still birth or after last official contact or access by or on behalf of the patient, or  
- until patient attains or would have attained the age of 25 years, whichever is the longer, then destroy |
| 6.2.2| Records relating to the initial report of an incidence of a notifiable disease maintained by Public Health Units | Retain minimum of 7 years after receipt of the notification, then destroy |
| 6.2.3| Duplicate records of notifications received by Public Health Units subsequent to the initial notification | Retain until no longer required for administrative or reference purposes, then destroy |

### 7.0.0 PATIENT/CLIENT FINANCE AND PROPERTY MANAGEMENT

Management of patient/client finances and property during their admission to a facility or service

- For records created prior to 1930 see 10.0.0
- For records that have been duplicated by means of imaging technologies such as microfilming or digital scanning see 9.0.0

### 7.1.0 Patient property

Records relating to the management of patient property

<table>
<thead>
<tr>
<th>7.1.1</th>
<th>Patient Property and Wearing Apparel books</th>
<th>Retain minimum of 6 years after date of last entry, then destroy</th>
</tr>
</thead>
<tbody>
<tr>
<td>7.1.2</td>
<td>Patient Money and Valuables register</td>
<td>Retain minimum of 6 years after date of last entry, then destroy</td>
</tr>
<tr>
<td>7.1.3</td>
<td>Patient Money and Valuables register where a copy page from the register is maintained in the main (unit) patient record and the copy page is used to record the movement and disposal of property and money to the patient etc[^58]</td>
<td>Retain minimum of 1 year after date of last entry, then destroy</td>
</tr>
<tr>
<td>7.1.4</td>
<td>Patient/client authorities to make payment or transfer property</td>
<td>Retain minimum of 6 years after date of last entry, then destroy</td>
</tr>
</tbody>
</table>

### 7.2.0 Patient/client accounts and finances

Records relating to the management of patient finances including accounts, benefits and claims

| 7.2.1 | Assigned Benefits Claim books | Retain minimum of 1 year after last completed entry, then destroy |

[^57]: Notification requirements are outlined in NSW Ministry of Health IB2013_010 Notification of diseases under the Public Health Act 2010. Documents maintained as part of the patient record are to be retained and disposed of in accordance with the type of patient record they comprise. For the retention and disposal of cancer notification forms and registers, including the PAP Test Register, maintained by the NSW Department of Health see Disposal Authority DA25, entry 7.2.0 re data collections.

[^58]: Services or facilities must have in place a system to be able to undertake an inventory of items held at any time.
<table>
<thead>
<tr>
<th>No</th>
<th>Classes of records</th>
<th>Disposal Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>7.2.2</td>
<td>Hospital Private Patient Claim and Assignment form (HC21) and Patient Election forms</td>
<td>Retain minimum of 6 years after action completed, then destroy</td>
</tr>
<tr>
<td>7.2.3</td>
<td>Register of Patient Admission and Account forms</td>
<td>Retain minimum of 6 years after date of last entry, then destroy</td>
</tr>
<tr>
<td>7.3.0</td>
<td><strong>Program of Appliances for Disabled People (PADP)</strong>&lt;sup&gt;59&lt;/sup&gt;</td>
<td>Retain minimum of 3 years after last contact with or use of service, then destroy</td>
</tr>
<tr>
<td>7.3.1</td>
<td>Applications for PADP aids, appliances and services</td>
<td>Retain minimum of 3 years after last contact with or use of service, then destroy</td>
</tr>
<tr>
<td>7.3.2</td>
<td>Records relating to the provision and maintenance of PADP services</td>
<td>Retain minimum of 5 years after action completed, then destroy</td>
</tr>
<tr>
<td>8.0.0</td>
<td><strong>RESEARCH MANAGEMENT</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Management of the conduct of clinical and non-clinical research, trials or studies etc&lt;sup&gt;60&lt;/sup&gt;</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Note:</strong> This does not apply to records created and maintained by Committees formed to oversee the conduct of research activities (eg Research Ethics Committees)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>For records created prior to 1930 see 10.0.0</td>
<td></td>
</tr>
<tr>
<td></td>
<td>For records that have been duplicated by means of imaging technologies such as microfilming or digital scanning see 9.0.0</td>
<td></td>
</tr>
<tr>
<td>8.1.0</td>
<td><strong>Research projects, trials or studies</strong></td>
<td></td>
</tr>
<tr>
<td>8.1.1</td>
<td>Records relating to the conduct of clinical research. This includes records or documentation relating to the recruitment and consent of research participants, the collection and analysis of data, preliminary findings, surveys, and results.</td>
<td>Retain minimum of 15 years after date of publication or termination of the study, then destroy&lt;sup&gt;61&lt;/sup&gt;</td>
</tr>
<tr>
<td>8.1.2</td>
<td>Records relating to the conduct of non clinical research or research not involving humans. This includes records or documentation relating to the recruitment and consent of research participants, the collection and analysis of data, preliminary findings, surveys and results.</td>
<td>Retain minimum of 5 years after date of publication or completion of the research or termination of the study, then destroy</td>
</tr>
<tr>
<td>8.1.3</td>
<td>Records of requests to access records for approved clinical research purposes where the research proceeds&lt;sup&gt;62&lt;/sup&gt;</td>
<td>Retain minimum of 15 years after the expected research completion date or date of termination of the study, then destroy</td>
</tr>
</tbody>
</table>

<sup>59</sup> Regard should be had to the expected life span of the equipment before destruction of records proceeds.

<sup>60</sup> Retention periods are based on recommendations for the retention of research data in Section 2.3 of the Joint National Health and Medical Research Council (NHMRC)/Australian Vice-Chancellor’s Committee (AVCC) Statement and Guidelines on Research Practice (May 1977). See also the International Committee for Harmonisation (IHC) Guidelines for Good Clinical Practice, sections 4.9.4 and 4.9.5 and the NHMRC National Statement on Ethical Conduct in Research Involving Humans (1999).

<sup>61</sup> NHMRC guidelines recommend that where materials of a biological origin are being used in a clinical trial or research project records should be retained for appropriate periods of time to monitor effects and trace all participants in the event that late or long term effects emerge. Where the data is crucial to the substantiation of research findings and cannot readily be duplicated elsewhere, longer retention periods may also be appropriate.

<sup>62</sup> Where possible requests to access records for research purposes should be maintained as part of the main (unit) patient record and retained accordingly.
<table>
<thead>
<tr>
<th>No</th>
<th>Classes of records</th>
<th>Disposal Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>8.1.4</td>
<td>Records of requests to access records for approved non clinical research purposes where the research proceeds</td>
<td>Retain minimum of 5 years after the expected research completion date or date of termination of the study, then destroy</td>
</tr>
<tr>
<td>8.1.5</td>
<td>Records of requests relating to projects where the research does not proceed</td>
<td>Retain minimum of 3 years after last action, then destroy</td>
</tr>
<tr>
<td>9.0.0</td>
<td><strong>RECORDS IMAGING</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Duplication of records by means of imaging technologies for storage, access, reference or related management purposes</td>
<td></td>
</tr>
<tr>
<td>9.1.0</td>
<td><strong>Records that have been imaged</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>This refers to records identified in the previous sections which have been subject to processes resulting in the creation of authentic, complete and accessible copies of the records in digital or microform format and which are not required as State archives. 63</td>
<td></td>
</tr>
<tr>
<td>9.1.1</td>
<td>Originals of records that have been imaged and that are not required as State archives</td>
<td>Retain until all requirements for the retention of the originals have been fulfilled 64, then destroy</td>
</tr>
<tr>
<td>9.1.2</td>
<td>Master copies of imaged records</td>
<td>Retain in accordance with the retention period and disposal action that applied to the original record</td>
</tr>
<tr>
<td>9.1.3</td>
<td>Reference, working or superseded copies of imaged records</td>
<td>Retain until no longer required for reference purposes, then destroy</td>
</tr>
<tr>
<td>9.1.4</td>
<td>Affidavits and documentation relating to records authenticity</td>
<td>Retain until the master copy of the records to which they relate is destroyed or superseded, then destroy</td>
</tr>
<tr>
<td>10.0.0</td>
<td><strong>PRE 1930 RECORDS</strong></td>
<td></td>
</tr>
<tr>
<td>10.1.0</td>
<td>Patient/client records created prior to 1930. This refers to records identified in the previous sections created wholly or in part prior to 1930. See section 2.3 of Part 2 of this Authority for further guidance concerning proposals for the transfer of these records</td>
<td>Required as State archives</td>
</tr>
</tbody>
</table>

63 Originals of records required as State archives that have been imaged are not to be destroyed.

64 The determination of appropriate retention periods for the originals of records that have been imaged must allow adequate time for data verification and audit requirements. Originals of records that have been imaged or duplicated in a way that does not comply with the requirements of the Evidence Act 1995 will need to be retained and disposed of in accordance with the requirements for the type of records they comprise.

20(8/04)
Part 2: Understanding and using the authority

2.1 Overview

Purpose
The purpose of issuing the General Retention and Disposal Authority - Public Health Services: Patient/Client records is to permit public health services and facilities to destroy certain health care records of patients and clients, after appropriate minimum retention periods have been met, and to identify which patient/client records are required as State archives.

Previous disposal authorisations superseded

This disposal authority supersedes previous disposal authorisation in the following authority:

<table>
<thead>
<tr>
<th>General Disposal Authority</th>
<th>Parts superseded</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public Health Services: Patient/Client Records (GDA5)</td>
<td>Whole</td>
</tr>
<tr>
<td>1999</td>
<td></td>
</tr>
</tbody>
</table>

Changes to retention periods to note:

<table>
<thead>
<tr>
<th>Assisted Reproductive Technology</th>
<th>see 1.7.0</th>
</tr>
</thead>
<tbody>
<tr>
<td>Diagnostic recordings, including x-rays, graphical recordings etc</td>
<td>see 1.3.1 and 3.3.0</td>
</tr>
<tr>
<td>Diagnostic results and reports maintained by pathology or laboratory services</td>
<td>see 4.2.0</td>
</tr>
<tr>
<td>Drugs registers</td>
<td>see 5.1.3</td>
</tr>
</tbody>
</table>

What records does this authority cover?
This Authority authorises the disposal of:

- records relating to the treatment and care of individual patients and clients within the NSW public health system, including records relating to the provision of allied health care and to research participants
- patient administration registers, systems and databases used to record summary information about patients and clients
- records relating to diagnostic imaging and pathology and laboratory services
- records relating to the supply and administration of pharmaceuticals, encompassing drugs, poisons and other substances
- records of notifications to prescribed bodies concerning patient medical conditions
- records relating to the management of patient/client finances and property during the period of their admission to a facility or service

Date range of records covered
Patient/client records listed in this authority created wholly or in part prior to 1930 are required as State archives (see also 2.3 below). For records created wholly after 1930 the minimum retention periods and disposal actions identified in this authority apply to the various classes of records listed.
What records are not covered

This Authority does not cover records relating to the management and administration of public health organisations. Services should consult the following for disposal authorisation.

<table>
<thead>
<tr>
<th>For records relating to the function or activity of:</th>
<th>Use the following General Retention and Disposal Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>General administration (ie not health sector specific)</td>
<td>General Retention and Disposal Authority – Administrative records</td>
</tr>
<tr>
<td>Personnel</td>
<td>General Retention and Disposal Authority – Personnel records</td>
</tr>
<tr>
<td>Financial management</td>
<td>General Retention and Disposal Authority – Finance and Accounting records</td>
</tr>
</tbody>
</table>

How long is this authority in force?

This authority will remain in force until it is superseded by a new authority or it is withdrawn from use by State Records.

Providing feedback

To suggest amendments or alterations to this authority please contact us via email disposal@records.nsw.gov.au or phone (02) 8247 8636.

Further assistance

To obtain assistance in the interpretation or implementation of this authority, or any of our general retention and disposal authorities, contact us via email disposal@records.nsw.gov.au or phone (02) 8247 8636.

2.2 Guidelines for implementation

Introduction

Comprehensive information about implementation of disposal authorities is found in State Records’ guideline on sentencing records, guideline on destruction of records and procedures for transferring records as State archives.

Minimum retention periods

The authority specifies minimum retention periods for all records not required as State archives. A Service must not destroy or otherwise dispose of records before the minimum retention period has expired. Services may retain records for longer periods of time, subject to organisational need, without further reference to State Records. Reasons for longer retention can include legal requirements, administrative need, on-going research use or government directives.

Retention of electronic records

Electronic records must be protected and readily accessible for the specified minimum retention period. See Future Proof: Ensuring the accessibility of equipment/technology dependent records for information relating to managing the accessibility of electronic and other technology dependent records.
**Destroying records**

When the authorised minimum retention period has been reached, appropriate arrangements for the destruction of records may be undertaken without further reference to State Records, unless otherwise advised. Persons using the Authority should apply it with caution, bearing in mind that the authorisations for disposal are given in terms of the *State Records Act* only. It is the responsibility of the public office to ensure that all legal and other organisational requirements for retention of records have been met before disposing of any of its records. A public office must not destroy any records where the public office is aware of possible legal action, investigation or inquiry where the records may be required as evidence.

**Transferring records required as State archives**

Records identified in the Authority as being required as State archives should be prepared for transfer to State Record’s custody and/or control only when they are no longer required for ongoing business use.

**Transfer of ownership must be authorised**

Regardless of whether a record has been authorised for destruction or is required as a State archive, a public office must not transfer ownership of a State record to any person or organisation without the explicit authorisation of State Records.

### 2.3 Records required as State archives

**Introduction**

Records which are to be retained as State archives are identified with the disposal action *Required as State archives*.

**Pre 1930 records**

Patient/client records listed in this authority created wholly or in part prior to 1930 are required as State archives (for example a file started in 1913 and ending shortly after 1930). Prior to proposing to transfer pre 1930 records as State archives services should contact State Records to discuss the condition, types, content and quantities of records involved. Some records may be subject to further appraisal and review if State Records does not consider their retention as State archives is warranted.

**Identifying significant and unique collections of records**

The provisions relating to significant or unique collections of patient records (see 1.12.0 in the table of authorised disposal actions) are included for special exceptions that may arise from time to time. Individual services may identify exemplary or significant collections or samples of records amongst their holdings that warrant ongoing retention as State archives. This may be because the service has taken a leading role in the development and delivery of new or specialised treatments or because the records:

- illustrate or provide comparative insight into the provision of services to particular community groups
- illustrate or provide comparative insight into aspects of treatment, care and the delivery of services over time
- document significant achievements or break throughs in research or relate to research of major national or international significance, interest or controversy
- document significant outbreaks of disease that represented major public health risks and their impact
document critical points of change or developments in the treatment or management of a particular type of condition, illness or disease

relate to the diagnosis, management, treatment of or research into particularly rare diseases or conditions and would significantly enhance and contribute to the existing body of knowledge of these diseases or conditions

This may encompass records relating to a particular time period or to the treatment of a particular illness or condition or records of a specific service, facility or research project.

Services that think that they hold records of significance should contact State Records.

2.4 Records that have been imaged

This authority authorises the destruction of original health care records that have been imaged provided that the following conditions have been met:

- the records are not identified in the authority as State archives
- all requirements for retaining the originals have been assessed and fulfilled
- copies are made which are authentic, complete and accessible for the authorised minimum retention period

See Future Proof: Ensuring the accessibility of equipment/technology dependent records for information relating to managing the accessibility of technology dependent records and Digital Imaging and Recordkeeping for guidance concerning the use of imaging technologies.

Part 3: Acknowledgements and sources

Introduction

The General Retention and Disposal Authority – Public Health Services: Patient/Client Records has been developed as a result of extensive research and consultation. Drafts of the Authority were circulated widely for comment and feedback was received from many health sector organisations. Written sources used include legislation, publications and web sites.

Acknowledgements

State Records would like to acknowledge the following organisations who provided assistance and feedback in the development of the Authority:

- NSW Health - NSW Department of Health, Area Health Services, Children’s Hospital Westmead and Corrections Health Service
- Australian Medical Association
- Centre for the Study of Health and Society, University of Melbourne
- Health Information Management Association of Australia (NSW Branch)
- Institute of Nursing Executives (NSW & ACT)
- Dr Milton Lewis, Senior Research Fellow, School of Public Health, University of Sydney
- National Health and Medical Research Council
- NSW Chief Radiation Therapist Group
- NSW College of Nursing
- NSW Operating Theatre Association
- Red Cross Blood Transfusion Services
- Royal Australasian College of Radiologists
- School of Health Information Management, Faculty of Health Science, University of Sydney
- School of Health Services Management, University of NSW
- South Western Pathology Services
Health Administration Act 1982
Health Services Act 1997
Human Tissue Act 1983
Human Tissue and Anatomy Legislation Amendment Act 2003
Human Tissue Regulation 2000
Mental Health Act 1990
Mental Health Regulation 2000
Poisons and Therapeutic Goods Act 1966
Poisons and Therapeutic Goods Regulation 2002
Public Health Act 1991

Sources: Publications
International Committee for Harmonisation (IHC) Guidelines for Good Clinical Practice 1996
National Health and Medical Research Council Joint National Health and Medical Research Council (NHMRC)/Australian Vice-Chancellor’s Committee (AVCC) Statement and Guidelines on Research Practice May 1977
National Health and Medical Research Council Ethical Guidelines on Assisted Reproductive Technology 1996
National Health and Medical Research Council Human Research Ethics Handbook 2002
National Health and Medical Research Council National Statement on Ethical Conduct in Research Involving Humans 1999
National Pathology Accreditation Advisory Council (NPAAC) Retention of Laboratory Records and Diagnostic Material, 3rd edition, 2002
NSW Department of Health Circulars
NSW Department of Health Health Records and Information Manual for Community Health Facilities
NSW Department of Health Patient Matters Manual
Therapeutic Goods Administration Guidelines for Good Clinical Research Practice in Australia 1991
# Index

The following index is provided to enable easy reference to records covered by the *General Retention and Disposal Authority - Public Health Services: Patient/Client Records*.

## References

The index provides the reference number for either a specific entry or a section. Where the reference is to a section the index term may appear in several entries within that section. The index also includes cross references where appropriate.

### A

<table>
<thead>
<tr>
<th>Term</th>
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**see also** Physical Abuse or Neglect of Children (PANOC) Specialist Services

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### Admission

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**see also** Electronic patient administration systems

<table>
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### Admitted patients

**see** Patients

### Adoptions

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### Affidavits

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### Anatomical pathology

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### Applications

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<tr>
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<td>PADP aids, appliances and services</td>
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<td>Therapeutic Drugs Administration application forms</td>
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<td>To prescribe drugs of addiction</td>
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### Appointment books

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### Appointment registers

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### ART

**see** Assisted Reproductive Technology (ART)

### Artificial insemination

<table>
<thead>
<tr>
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<th>Reference</th>
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<tbody>
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### Assault

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### Audits

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### Autopsy

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<tr>
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<td>4.2.1</td>
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20(8/04)
B
Baby health
  registers ................................................................. 2.1.9
  screening see Health care screening
Bed returns ............................................................. 2.4.1
Births
  adoptions ............................................................. 1.4.2
  Assisted Reproductive Technology (ART) .................... 1.7.0
  neonatal screening (Guthrie) cards ............................ 4.2.6
  obstetric/maternal health care .................................... 1.4.0
  registers ............................................................... 2.1.5
  registration forms .................................................. 6.1.1
Blood bank and blood collection services ......................... 4.2.3
Blood donations
  diagnostic results and reports .................................... 4.4.1
  donor statements .................................................... 4.4.4
  laboratory records .................................................. 4.4.2
Blood products
  laboratory records .................................................. 4.4.2
  registers ............................................................... 4.4.3
Bodily specimens and samples ........................................ 4.3.0
Bone marrow
  diagnostic results and reports patient record copy ........ 1.0.0, 4.2.7
  diagnostic service copy ............................................ 4.2.2
Brain injury statistics ................................................... 2.4.0
Buprenorphine Program records ....................................... 5.1.8
C
Cancer
  notifications ........................................................ 6.2.0
  radiotherapy treatment .......................................... 1.10.0
Card register ............................................................ 2.1.1
Cardiotocograms
  abnormality detected ............................................ 3.3.2
  no abnormality detected ........................................ 3.3.3
Casualty
  patient records ..................................................... 1.1.3
  registers ............................................................. 2.1.7
Censuses ............................................................... 2.4.0
Certificates
  death ...................................................................... 6.1.2
  medical .................................................................. 1.16.1
Certification
  Pathology and laboratory services ............................... 4.6.1
Chemical pathology
  diagnostic results and reports patient record copy .......... 1.0.0, 4.2.7
  diagnostic service copy ............................................ 4.2.4
Child health care screening see Health care screening
Claims
  Assigned Benefits Claim books .................................. 7.2.1
  litigation ................................................................ 1.14.0
  Private patient claim forms (HC21) ............................ 7.2.2
Clerical audit reports .................................................. 2.2.5
Clients see Patients
Clinical chemistry
  diagnostic results and reports patient record copy .......... 1.0.0, 4.2.7
  diagnostic service copy .......................................... 4.2.4
Clinical lists ........................................................... 2.2.3
Clinical research ........................................................ 8.0.0
Community health care .................................................. 1.2.0
<table>
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<th>Page</th>
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<td>- diagnostic service copy</td>
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20(8/04)
Diaries ...................................................................................................................... 2.3.0
Discharges
  lists ................................................................................................................. 2.2.1
  registers ..................................................................................................... 2.1.4
  see also Electronic patient administration systems
statistics ...................................................................................................... 2.4.0
treatment and care .................................................................................. 1.0.0

Discovery orders .................................................................................... 1.14.0
Disease and operation index ..................................................................... 2.1.2

Donors
  Assisted Reproductive Technology (ART) .................................................. 1.7.0
  blood bank and blood collection services .................................................. 4.4.0
  semen supply .......................................................................................... 4.5.1

Drugs
  addictive ...................................................................................................... 5.1.0
  dispensing ................................................................................................. 5.1.0
  highly specialised ..................................................................................... 5.1.5
  medication charts .................................................................................... 1.0.0, 5.1.2
  pharmaceutical supply and administration ........................................ 5.0.0
  rapid tranquillisation journals ............................................................... 2.1.12
  registers .................................................................................................. 5.1.3
  reports
    incidents ................................................................................................. 1.0.0, 5.1.2
    lost or stolen drugs .............................................................................. 5.1.9
    section ................................................................................................. 100 5.1.5
  sedation registers ................................................................................... 2.1.12
  therapeutic drugs administration application forms ............................... 5.1.7

Duplicate records
  imaged records .......................................................................................... 9.0.0
  patient registration and index records .................................................. 2.1.13
  surgical procedures (accountable items) ................................................. 1.18.1

E
  EDIS see Emergency Department Information System (EDIS)
  Election forms (patient accounts and finances) ......................................... 7.2.2
  Electro Convulsive Therapy (ECT) register ............................................. 2.1.12

  Electrocardiograms
    abnormality detected ............................................................................ 3.3.2
    no abnormality detected ..................................................................... 3.3.3

  Electroencephalograms
    abnormality detected ............................................................................ 3.3.2
    no abnormality detected ..................................................................... 3.3.3

  Electromyograms
    abnormality detected ............................................................................ 3.3.2
    no abnormality detected ..................................................................... 3.3.3

  Electronic health records ........................................................................ 1.11.0
  Electronic patient administration systems ........................................... 2.6.1
  Emergency Department Information System (EDIS) ................................ 1.1.3
  Emergency patients
    hospital care ......................................................................................... 1.1.3
    registers ............................................................................................... 2.1.7
    see also Electronic patient administration systems

  Equipment
    appliances for disabled people .............................................................. 7.3.2
    sterilisation (instruments) .................................................................... 1.17.0
    maintenance (diagnostic services) ......................................................... 4.7.1

F
  5th Schedule hospitals (psychiatric) .......................................................... 1.5.1
  Family disharmony .................................................................................. 1.2.0
  Films (diagnostic recordings) ................................................................... 3.3.1
  Finances and accounts (patient/client) ..................................................... 7.2.0
**G**

Gamete intrafallopian transfer (GIFT) .................................................................................. 1.7.0

Genetic or inherited disorders
  - patient/client diagnosis and management .................................................................. 1.6.0
  - pathology and laboratory services .......................................................................... 4.2.5

GIFT see Gamete intrafallopian transfer (GIFT)

Graphical recordings (diagnostic services)
  - abnormality detected .......................................................................................... 3.3.2
  - no abnormality detected .................................................................................... 3.3.3

Guthrie cards ....................................................................................................................... 4.2.6

**H**

Haematology
  - diagnostic results and reports
    - patient record copy ...................................................................................... 1.0.0, 4.2.7
    - diagnostic service copy .................................................................................. 4.2.4

Health care screening
  - baby (community health care)
    - abnormality detected .................................................................................. 1.2.5
    - no abnormality detected ............................................................................... 1.2.4
    - with possible legal implications .................................................................. 1.2.5
  - child (community health care)
    - abnormality detected .................................................................................. 1.2.5
    - no abnormality detected ............................................................................... 1.2.4
    - with possible legal implications .................................................................. 1.2.5
  - neonatal screening (Guthrie) cards ........................................................................ 4.2.6
  - school (community health care)
    - abnormality detected .................................................................................. 1.2.7
    - no abnormality detected ............................................................................... 1.2.6
    - with possible legal implications .................................................................. 1.2.7

Health Information Exchange (HIE) ................................................................................... 2.7.1

Health reporting
  - admitted patient statistics ................................................................................... 2.4.0
  - data collection returns and forms ........................................................................ 2.4.0
  - notifiable diseases .................................................................................................. 6.2.0

HIE see Health Information Exchange (HIE)

Histopathology
  - diagnostic results and reports
    - patient record copy ...................................................................................... 1.0.0, 4.2.7
    - diagnostic service copy .................................................................................. 4.2.2

Hospices ............................................................................................................................. 1.1.0

Hospital care ....................................................................................................................... 1.1.0
  - Group A hospitals ............................................................................................ 1.1.1
  - Groups B-F hospitals .......................................................................................... 1.1.2

Human tissue (retention of) .................................................................................................. 4.3.5

**I**

Imaged records .................................................................................................................. 9.0.0

Image recordings (diagnostic) .......................................................................................... 3.3.1

Imaging services (diagnostic) .......................................................................................... 5.0.0

Immunisation (community health care)
  - adverse or other reaction ................................................................................... 1.2.3
  - no adverse or other reaction ............................................................................. 1.2.2

Immunology
  - diagnostic results and reports
    - patient record copy ...................................................................................... 1.0.0, 4.2.7
    - diagnostic service copy .................................................................................. 4.2.4

Implants see Surgically implanted devices

In Vitro Fertilisation (IVF) .................................................................................................. 1.7.0
## PROCEDURE MANUAL FOR COMMUNITY HEALTH FACILITIES

### Incidents
- Drug incident reports ................................................................. 1.0.0, 5.1.2
- Investigations ............................................................................. 1.14.0
- Legal matters ........................................................................... 1.14.0
- Management ............................................................................ 1.14.0
- Reports or notifications .............................................................. 1.0.0, 1.14.0, 5.1.2

### Indexes
- Disease and operation .............................................................. 2.1.2
- Patient Master Index (PMI) ....................................................... 2.1.1
- Physicians ................................................................................. 2.1.3

### Inherited disorders
- Patient/client diagnosis and management .................................. 1.6.0
- Pathology and laboratory services ........................................... 4.2.5

**In-patients see Patients**

- Inventory control records (pharmaceuticals) .................................. 5.1.4
- IVF see In Vitro Fertilisation (IVF)

### L
- Labour ward registers ................................................................ 2.1.5
- Laboratory services (diagnostic)
  - Blood bank and blood collection services .......................... 4.4.0
  - Equipment maintenance ...................................................... 4.7.1
  - Methods ............................................................................. 4.8.1
  - Procedures ........................................................................ 4.8.1
  - Quality assurance ............................................................. 4.8.1
  - Reports ............................................................................. 4.1.2
  - Results ............................................................................... 4.2.0
  - Semen supply ..................................................................... 4.5.0
  - Specimens and samples .................................................... 4.3.0
- Legal matters ........................................................................ 1.14.0
- Letters see Correspondence
- Lists and schedules .................................................................. 2.2.0
- Litigation ................................................................................ 1.14.0
- Log books
  - Correspondence ................................................................ 1.13.2
  - Sterilisation equipment ..................................................... 1.17.2
- Lost or stolen drugs or drug registers ......................................... 5.1.9

### M
- Magistrates early Referral into Treatment (Merit) Program .......... 1.2.8
- Magnetic Resonance Imaging (MRI) ........................................ 3.0.0
- Maintenance
  - Appliances for disabled people ........................................... 7.3.2
  - Diagnostic equipment ......................................................... 4.7.1
- Master copies (imaged records) .............................................. 9.1.2
- Maternal health care ............................................................. 1.4.0
- Medical certificates .............................................................. 1.16.1
- Medical practitioner declarations (blood alcohol) .................. 4.2.3
- Medication charts ................................................................. 1.0.0, 5.1.2
- Mental health care
  - Patient/client treatment and care ...................................... 1.5.0
  - Pre 1960 patient records .................................................... 1.5.1
  - Registers .......................................................................... 2.1.12
- MERIT see Magistrates early Referral into Treatment (Merit) Program
- Methadone program records ................................................. 5.1.8
- Methods
  - Pathology and laboratory services ..................................... 4.8.1
- Microbiology
  - Diagnostic results and reports patient record copy ............. 1.0.0, 4.2.7
  - Diagnostic service copy .................................................... 4.2.4
- Midwife data collection ........................................................ 2.4.0
- Money and valuables register ................................................ 7.1.0
- MRI see Magnetic Resonance Imaging (MRI) Multi purpose services ..................................................... 1.1.0

20(8/04)
### N
- Neonatal screening (Guthrie) cards ......................................................... 4.2.6
- Non-clinical research .............................................................................. 8.0.0

### Notifiable diseases
- treatment and care ............................................................................... 1.0.0
- health reporting ................................................................................. 6.2.0
- Public Health Unit records ................................................................. 6.2.0

### Notifications
- ........................................................................................................ 6.0.0

### Number register
- ........................................................................................................ 2.1.1

### Nursing homes
- ........................................................................................................ 1.1.0

### O
- Obstetric health care ........................................................................... 1.4.0

### Operation
- index ................................................................................................... 2.1.2
- lists ..................................................................................................... 2.2.2
- register .............................................................................................. 2.1.8
- schedules .......................................................................................... 2.2.2

### Oral (dental) health care
- ........................................................................................................ 1.3.0

### Out-patients see also Patients
- lists ..................................................................................................... 2.2.3
- attendance books .............................................................................. 2.2.3

### P
- PADP services see Program of Appliances for Disabled People (PADP)
- Paediatric Specialist hospitals ............................................................. 1.1.0
- PANOC Specialist Services see Physical Abuse and Neglect of Children Specialist Services
- PAS see Electronic patient administration systems
- Pathology and laboratory services ...................................................... 4.0.0
- Patient Administration Systems (PAS) see Electronic patient administration systems
- Patient Master Index (PMI) see Electronic patient administration systems

### Patients
- accounts and finances ........................................................................ 7.2.0
- administration .................................................................................. 2.0.0
- assisted reproductive technology ...................................................... 1.7.0
- claims (accounts and finances) ......................................................... 7.2.0
- community health care .................................................................... 1.2.0
- dental/oral health care ..................................................................... 1.3.0
- election forms (accounts and finances) ........................................... 7.2.2
- electronic health records ................................................................. 1.11.0
- finance and property management .................................................. 7.0.0
- genetic or inherited disorders .......................................................... 1.6.0
- hospital care .................................................................................... 1.1.0
- money and valuables register ......................................................... 7.1.0
- mental health care .......................................................................... 1.5.0
- pre 1960 records ............................................................................. 1.5.1
- obstetric/maternal health care ............................................................ 1.4.0
- PANOC Specialist Services ............................................................... 1.9.1
- pre 1930 records ............................................................................. 10.1.0
- pre 1960 psychiatric and mental health care records ...................... 1.5.1
- property ............................................................................................ 7.1.0
- property and wearing apparel books .............................................. 7.1.1
- psychiatric care ................................................................................ 1.5.0
- pre 1960 records ............................................................................. 1.5.1
- radiotherapy treatment ................................................................. 1.10.0
- registration and identification ......................................................... 2.0.0
- sexual assault .................................................................................. 1.8.1
- statistics ........................................................................................... 2.4.0
- transfer lists ..................................................................................... 2.2.1
- treatment and care ........................................................................... 1.0.0

### Payment authorities
- ........................................................................................................ 7.1.4

### Personal diaries
- ........................................................................................................ 2.3.0
Pharmaceutical supply and administration ............................................................... 5.0.0
Photographs (diagnostic) ........................................................................................... 3.3.1
Physical Abuse and Neglect of Children Specialist Services (PANOC) ................ 1.9.1
Physicians index ......................................................................................................... 2.1.3
Pictorial recordings (diagnostic) ................................................................................. 3.3.1
PMI see Patient Master Index (PMI) Post-mortem see Autopsy
Pre 1930 records ......................................................................................................... 10.1.0
Pre 1960 records (Crown operated/5th schedule psychiatric hospitals) ............... 1.5.1
Pregnancy
assisted Reproductive Technology (ART) .......................................................... 1.7.1
obstetric/maternal health care ........................................................................... 1.4.0
Principal referral hospitals ............................................................................................ 1.1.0
Private hospitals/centres/clinics/services
patient records ........................................................................................................... 1.0.0
registers ..................................................................................................................... 2.0.0
Private patient claim and assignment forms ........................................................... 7.2.2
Procedures
Pathology and laboratory services ........................................................................ 4.8.1
Program of Appliances for Disabled People (PADP) ........................................... 7.3.0
Property transfer authorities ..................................................................................... 7.4.0
Prosthesis (surgically implanted) ............................................................................... 2.1.11
Psychiatric health care see Mental Health care

Q  
Quality assurance
pathology and laboratory services ......................................................................... 4.6.1
Quarterly waiting list surveys ................................................................................... 2.2.4

R  
Radiotherapy treatment ......................................................................................... 1.10.1
Rapid tranquillisation journals ............................................................................... 2.1.12
Recommendation for admission forms .................................................................... 2.2.6
Recordings (diagnostic)
graphical
abnormality detected .......................................................................................... 3.3.2
no abnormality detected ...................................................................................... 3.3.3
visual ..................................................................................................................... 3.3.1
Records imaging ........................................................................................................... 9.0.0
Recruitment
research participants ............................................................................................... 8.1.0
Registers
admission .................................................................................................................. 2.1.4
appointments .......................................................................................................... 2.3.0
autopsy .................................................................................................................... 4.2.1
baby health .............................................................................................................. 2.1.9
birth ......................................................................................................................... 2.1.5
blood products ........................................................................................................ 4.4.3
card ......................................................................................................................... 2.1.1
casualty ................................................................................................................... 2.1.7
community health .................................................................................................... 2.1.9
correspondence ...................................................................................................... 1.13.2
death ......................................................................................................................... 2.1.6
diagnostic recordings ............................................................................................... 3.4.1
discharge .................................................................................................................. 2.1.4
drugs ......................................................................................................................... 5.1.3
Electro Convulsive Therapy (ECT) ....................................................................... 2.1.12
emergency department ............................................................................................ 2.1.7
operation .................................................................................................................. 2.1.8
human tissue ........................................................................................................... 4.3.5
labour ward ............................................................................................................. 2.1.5
patient admission and account forms ................................................................. 7.2.3
patient injuries .................................................................................................. 1.14.6
patient money and valuables ........................................................................... 7.1.0
pharmaceutical supply ...................................................................................... 5.1.3
seclusion ........................................................................................................... 2.1.12
sedation ............................................................................................................ 2.1.12
specimens and samples .................................................................................... 4.3.2
sterilisation (instruments) ................................................................................ 1.17.2
surgical procedures .......................................................................................... 2.1.8
surgically implanted devices ............................................................................. 2.1.11
theatre ............................................................................................................... 2.1.8
ward ................................................................................................................... 2.1.10
Rehabilitation facilities ...................................................................................... 1.1.0
Reports
  imaging services (diagnostic)
    patient record copy ...................................................................................... 1.0.0, 3.2.1
diagnostic service copy .................................................................................... 3.2.2
  pathology/laboratory services (diagnostic)
    blood bank and blood collection services ...................................................... 4.4.1
    patient record copy ..................................................................................... 1.0.0, 4.2.7
diagnostic service copy .................................................................................... 4.2.0
Reproductive medicine
  Assisted Reproductive Technology (ART) ....................................................... 1.7.0
  obstetric/maternal health care ....................................................................... 1.4.0
Requests
  imaging services (diagnostic)
    patient record copy ...................................................................................... 1.0.0
diagnostic service copy .................................................................................... 3.1.1
  pathology and laboratory services (diagnostic)
    patient record copy ...................................................................................... 1.0.0
diagnostic service copy .................................................................................... 4.1.1
  research .......................................................................................................... 8.1.0
Research management ...................................................................................... 8.0.0
  Research projects, trials or studies
    clinical .......................................................................................................... 8.1.1
    non-clinical ................................................................................................ 8.1.2
Retained human tissue ...................................................................................... 4.3.5
Retuns (statistical and data collection) ............................................................... 2.4.0
S
  Schedules ......................................................................................................... 2.2.0
  School dental risk assessment consent forms .................................................. 1.3.2
  School screening see Health Care Screening see Health care screening
  Seclusion register ............................................................................................ 2.1.12
  Section 100 (highly specialised) drugs ............................................................ 5.1.5
  Sedation register ............................................................................................ 2.1.12
  Semen supply .................................................................................................. 4.5.0
  Sexual assault
    patients ......................................................................................................... 1.8.1
    statistics ....................................................................................................... 2.4.0
  Social work records ........................................................................................ 1.5.2
  adoption arrangements .................................................................................... 1.5.2
  Special Access Scheme (SAS) drugs ............................................................... 5.1.6
  Specimens and samples
    bodily specimens and samples .................................................................... 4.3.1
    registers ..................................................................................................... 4.3.2
  Sterilisation
    surgical instruments and equipment ............................................................. 1.17.0
  Stock control
    pharmaceuticals ............................................................................................ 5.1.0
Studies see Research projects, trials or studies
Subpoenas .......................................................... 1.14.0
Summary data
  electronic health records ....................................... 1.11.0
  Health Information Exchange (HIE) .......................... 2.7.1
  patient/client registration .................................... 2.0.0
  specimen and samples registers ............................... 4.3.0
Supply
  pharmaceuticals .................................................. 5.0.0
Surgically implanted devices ....................................... 2.1.11
Surgical instruments and equipment ............................. 1.17.0
Surgical procedures
  accountable items ................................................. 1.18.1
  register ............................................................ 2.1.8
T
Theatre bookings .................................................... 2.2.2
Theatre lists .......................................................... 2.2.2
Theatre schedules .................................................. 2.2.2
Therapeutic Drugs Administration application forms .......... 5.1.7
Transfer lists .......................................................... 2.2.1
see also Electronic patient administration systems
Trials see Research projects, trials or studies
V
Videotapes (diagnostic) ............................................. 3.3.1
Visual recordings (diagnostic) ................................... 3.3.1
W
Waiting lists
  clerical audit reports ............................................ 2.2.5
  quarterly surveys ................................................ 2.2.4
Ward records
  drugs register ..................................................... 5.1.3
  labour ward registers ......................................... 2.1.5
  other registers .................................................. 2.1.10
  reports etc ......................................................... 2.5.1
X
X-rays ................................................................. 3.3.1
  dental .............................................................. 1.3.1
GENERAL RETENTION AND DISPOSAL AUTHORITY – ORIGINAL SOURCE RECORDS THAT HAVE BEEN COPIED (GA45) (IB2015_052)


PURPOSE

To notify the Health system that State Records Authority General Retention and Disposal Authority: *Original or source records that have been copied (GA 45)* has been issued to replace General Retention and Disposal Authority: *Imaged records (GA36).*

GA 45 provides for the authorised destruction of original or source records that have been copied, provided that certain conditions are met.

KEY INFORMATION

GA 45 provides for the authorised disposal of certain State records which have been successfully copied using microfilming or digital imaging processes. In particular, it describes the circumstances and conditions under which the destruction of certain original or source records is permitted under the provisions of the *State Records Act 1998* after they have been copied.

Whereas GA36 established the conditions under which original records that had been microfilmed or imaged could be destroyed, it primarily applied to paper and excluded records identified as State archives or those required to be retained where created prior to 2000.

The main changes from GA36 to GA45 are:

- Records that are required as State archives or required to be retained in agency may now be destroyed after copying (if the conditions have been met and they do not fall within the exclusions categories) if they were created after 1980, rather than 2000.
- The scope of the authority was widened from original records copied using microfilming or digital imaging processes, to original or source records that have been copied.
- The requirement to assess all requirements for retaining originals was removed, as this condition has become less relevant due to digital copies of paper records being widely accepted.
- Additional exclusions have been included in GA 45 to cover State archives on loan from State Records and records that have high personal value to individuals who were subject to Government control.

Further information on GA45 can be accessed on the State Records website: [http://www.records.nsw.gov.au/recordkeeping/rules/retention-and-disposal-authorities/general-retention-and-disposal-authorities/original-or-source-records-that-have-been-copied-1/frequently-asked-questions-re-original-or-source-records-that-have-been-copied](http://www.records.nsw.gov.au/recordkeeping/rules/retention-and-disposal-authorities/general-retention-and-disposal-authorities/original-or-source-records-that-have-been-copied-1/frequently-asked-questions-re-original-or-source-records-that-have-been-copied)

HEALTH RECORD SYSTEMS

RECORD NUMBERING

Health records in most community health facilities should be filed numerically according to the client’s unique record number.

It is recommended that a unit numbering system be adopted. On registration each client is issued with a unit record number. This number is unique to each client and the client retains this number for all subsequent visits. All documents relating to the client are then identified with this unit record number and the client’s name.

NUMBER REGISTER

The number register is a record of all the health record numbers (or unit record numbers) issued to clients who have attended a particular community health facility. The number register should contain at least the following information:
- health record number
- surname and given names
- date of registration

The register should be set out as follows and may include additional information of local interest, see example:

<table>
<thead>
<tr>
<th>Unit No.</th>
<th>Client Name</th>
<th>Case Mgr</th>
<th>Discipline</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>00-00-01</td>
<td>Brown John</td>
<td>Smith Max</td>
<td>Soc. Worker</td>
<td>20-01-90</td>
</tr>
<tr>
<td>00-00-02</td>
<td>Pappas George</td>
<td>Spiros Chris</td>
<td>Physio</td>
<td>23-01-90</td>
</tr>
</tbody>
</table>

The register may be a manual listing or a computerised listing utilising a data base software package. If the number register is computerised it is important to maintain a back up on another disk or on hard copy.

The number register is an essential means of controlling the issuing of numbers and as such is a permanent record which should be retained indefinitely.

CLIENT MASTER INDEX

The client master index is a catalogue (either manual or computerised), containing the names of all clients who have attended the community health facility.

There should only be one card per client and the cards should be updated for each new episode of care. The minimum information on the index must include full name of client, alias if applicable (cross referenced), health record number, address, telephone number, sex, age, date of birth and date of first contact.

Additional information may be added to the index card, e.g., case manager and other family members if desired. However, it is important that no problem/diagnostic information is recorded on the index as this in no way replaces the record.

The client master index should be filed in strict alphabetical order and must be retained permanently.
RECORD FILING

The purpose of an adequate filing system is to facilitate the complete and quick retrieval of information.

There are three methods of record filing which could be used in the community health setting. The method used will be dependent upon the size of the community health centre and the specific needs of the centre.

Alphabetical Filing

This method refers to filing the record in strict alphabetical order. This method of filing should only be used in very small community health settings. Problems of accurate record identification can occur when clients have the same name.

Straight Numerical Filing

This method of filing entails filing the records in exact numerical order according to the client record number.

For example, the following four records would be filed in consecutive order on a shelf:

000592, 000593, 000594, 000595

The disadvantages of using this system are:

- Transposition of numbers can occur
- Filing activity is concentrated in one area
- Colour coding of numbers cannot be utilised to reduce misfiles.

The major advantage of this system is that it is simple to use and therefore could be used in small community health care settings.

Terminal Digit Filing

 Usually a six digit number is used and is divided into three parts each containing two digits. For example, the number 58 63 92 is broken up to:

<table>
<thead>
<tr>
<th>58</th>
<th>63</th>
<th>92</th>
</tr>
</thead>
<tbody>
<tr>
<td>tertiary digits</td>
<td>secondary digits</td>
<td>primary digits</td>
</tr>
</tbody>
</table>

There are 100 primary sections ranging from 00-99 (these can be more broadly classified into 10 sections, 00-09, 10-19, …… 90- 99).

When filing, the clerk considers the primary digits first and takes the record to the appropriate section (e.g. 92 section in the 90’s filing area).

Within each primary section, groups of records are matched according to secondary digits. After locating the correct secondary digit (63 in the example) the clerk files in numerical order by the tertiary digit.
There are advantages in using terminal digit filing - records are equally distributed throughout the 100 primary sections and hence there is even distribution of activity, misfiles are reduced as transposition of numbers is less likely when only two digits are needed to be remembered at a time. Therefore it is the preferred method of numerical filing.

Colour coding may also be used with Terminal digit filing. Colour codes can be linked to one or more digits and this system considerably reduces misfiles. (Ref. E. K. Huffman. Medical Record Management 6th Ed. Physicians Record Company. ILLINOIS 1972.)

**Colour Coding**

Medical Record covers can be colour coded to assist with easy and rapid retrieval from the filing area and also to minimise misfiles

The colours are matched to one or more of the numbers in the medical record number. For example, in the community health setting single colour coding could be used. The colour block on the folder would correspond to the second last digit in the unit number.

(e.g. if ‘9’ corresponded with a red colour code then all records with primary digits from 90-99 would be colour coded red.)

Community health record covers can also be marked to signify year of last contact and whether the client was less than 18 years of age. The year of last contact and age of the client are essential considerations in the retention of community health records (see 9A.5 Disposal/Retention).

Culling of records for removal to an inactive filing area or for destruction is made easier if the record cover is marked appropriately.

Year of last contact can be marked on the record cover by crossing through the last year which has been printed on the cover or by applying the appropriate tape colour to signify the current year of attendance.

Similarly, clients who are less than 18 years of age can be highlighted on the medical record cover using a pre-determined coloured label (or tape).

**RECORD CONTROL**

In any record filing system, control over the movements of records is of utmost importance. If adequate procedures of record control are not implemented, file location becomes extremely difficult and confidentiality may be breached.

No record should be removed from file without being replaced by a tracer card (or outguide). The “tracer” remains on file until the record is returned and filed.

The tracer should contain the following details:
- health record number
- client’s name
- file destination (health care worker)
- date the record was removed

The control of the movement of records facilitates client service within the health care facility and protects the confidentiality of clients. In general, records should not leave the health care facility unless there is a legal requirement.
Within Community Health Centre

The health records of clients currently attending the community health centre may be filed either alphabetically or numerically, within filing cabinets/shelves designated for specific staff, in the record room.

In some community health centres with 24 hour access to records, record control may be facilitated by setting up a current file area as well as the main file area.

In these circumstances when a record is removed, two tracers should reflect the location of the record:

1. The main file area would show the current case manager and the date the client’s record commenced.
2. The current file area would indicate the name of the staff member removing the record from the case manager’s file together with the date the record removed. As soon as the client is discharged from the health facility the record should be returned to the main file and all tracers removed.

Transfer within Regions/Area Health Services

Community health records may be transferred between health centres within a specific area health service or region if it is known that the client has changed address permanently and has presented at another community health centre.

A permanent tracer should also be inserted in the file to reflect the new location and a notation on the client index effected.

Records must always be transferred under seal, marked confidential and where possible sent by courier.

A signed receipt from the centre receiving the record should be stapled to the tracer at the previous community health centre.

Transfer Outside Regions Offices/Area Health Services

It is not advisable to transfer community health records outside the Region Office/Area Health Service. In this case a report by the team leader or relevant health professional should be forwarded on request.

However, for Early Childhood and School Screening cards, photocopies of the original record may be transferred if the client specifically gives permission to do so.

CLASSIFICATION SYSTEMS

There are a number of Primary Care Classification Systems but very few have proved adequate in the Community Health setting in New South Wales. The recognised Classifications are:

Classifications developed by the World Organisation of National Colleges of Academics and Academic Association (WONCA).

(a) International Classification of Primary Care (ICPC). This latest publication by WONCA (1987) brought a group of Family Physicians together to develop a classification suitable for coding encounters in the primary health care setting. The WONCA Classification Committee used the International Classification of Diseases, 9th Edition to obtain compatibility for coding according to the World Health Organisation’s (WHO) criteria.

The WONCA Classification Committee working in close liaison with WHO developed a classification with almost complete correspondence to coding systems used in the International Classification of Diseases, 9th Ed. (ICD 9). The latest reprint included a new section “Reasons for Encounter”.

OXMIS Problem Codes for Primary Medical Care (1978), Oxford Community Health Project. Based on the International Classification of Surgical Diseases (8th Revision) and the Classification of Surgical Operations (1975) of the Office of Population, Census and Surveys (OXNIS Publications, Headington, Oxford OX37UG, UK).

Ambulatory Visit Groups (AVGs) developed at Yale University (USA) to enable case-mix studies for non-inpatients to be conducted, and ultimately be allied to government funding.

Two existing classification systems were used to develop AVGs, namely the International Classification of Diseases 9th Ed. – Clinical Modification (ICD9-CM) and Current procedural Terminology (CPT), 4th Edition.

The NSW Health Department began a national ambulatory casemix development project in April 1991.

This national project is funded from the Commonwealth Casemix Development Program and will be of twelve months duration. They aim to produce, at the end of this time, an ambulatory casemix classification which will be able to be implemented across Australia.

From the inception of Community Health programs in New South Wales there has been no requirement by the Department of Health to use a specific classification system to code the reasons for client registration. However, District Health Services and Area Health Services have been encouraged to develop their own systems based on available classifications.

QUALITY ASSURANCE

Each Area/District should have a Quality Assurance program to ensure quality community based health record standards are maintained. Quality Assurance Studies on health records should be carried out on a regular basis.

Community Health Quality Assurance Guidelines to be developed.

COMMUNITY HEALTH RECORD AUDITS

It is the responsibility of the Regional Director or CEO of Area Health Services to inspect, or cause to be inspected, health records in the Community Health Centres at suitable intervals to ensure that an acceptable standard of adequate and appropriate medical/service documentation of health records is maintained. This would promote Quality Assurance.

The Hospital and Health Service Inspection program requires auditors to carry out qualitative analyses of Community Health Records during the audit process.

The role of Medical Administrators/Practitioners, Medical Record Administrators and Allied Health Professionals in this process should be acknowledged.
HEALTH RECORD AUDIT

Objective:

To ensure that an adequate system of Health Records is maintained to meet the needs of Community Health, e.g. evidence of
  •  POMR
  •  Group/Program Records
  •  One Visit Only Records

Criteria:
1. Hospital/Area/District Medical Record Committees should be responsible for the maintenance of health records systems so that they meet the requirements of appropriate notation by all treating health professionals.
2. Health records will be numbered for client identification. This number will be obtained from a Number Register either manual or computerised.
3. The Client Master Index (CMI) should contain full identification information on the client and should be filed alphabetically either by a manual or computerised system. The CMI should be cross-referenced with the local hospital Patient Master Index (PMI).
4. The health record should contain sufficient social information to clearly identify the client. The health record should also contain sufficient documentation by health professionals to support the management of the client.
5. There must be clear evidence that the confidentiality policy of the Department of Health is adhered to in both access to and release of information from health records.
6. The retention of records complies with Department of Health policy.
7. There should be an adequate tracer system implemented to retrieve records promptly. In general, records should not leave the health facility unless there is a legal requirement.
8. Data Collection Systems should be in place according to Department of Health District/Area requirements.
9. Departmental Policy on charges for Medical reports and production of records to court must be adhered to. At the same time no report should be released without the properly signed authority of the client.

The District Medical Record Administrator or other seconded MRA should accompany the inspector and conduct a qualitative check on the record system. If this is impossible then the Inspector must confer with an appropriate MRA. The findings of the MRA should form part of the final inspection report.
CHILD RELATED ALLEGATIONS, CHARGES AND CONVICTIONS AGAINST EMPLOYEES (PD2006_025)

1. Introduction

1.1 Purpose and scope of the Policy Directive

This Policy Directive applies to the Department of Health, Area Health Services, Statutory Health Corporations, declared and non-declared Affiliated Health Organisations, and the Ambulance Service of NSW, collectively referred to as “Health Services” for the purposes of this Directive.

A child-related allegation is an allegation that something has happened to a child or in the presence of a child.

The Directive outlines requirements for handling and responding to child-related allegations, charges and convictions made against persons working in Health Services (including contractors, subcontractors, volunteers and trainees) and employees of the Government of New South Wales (NSW Health Service) for whom Health Services have delegated employment responsibilities, collectively referred to as “employees” for the purposes of this Directive.

1.2 Related NSW Health Policy Directives

In cases where criminal conduct is alleged or established but does not concern persons under 18 years old at the time of the alleged conduct, the NSW Health Policy Directive PD2014_042 Managing Misconduct, should be followed.

NSW Health Policy Directive PD2009_076 Communications - Use & Management of Misuse of NSW Health Communication Systems provides that any person facing disciplinary proceedings involving the use of NSW Health communication systems and devices to produce, disseminate or possess child pornography should be suspended from duty until those disciplinary proceedings are finalised.

Where an allegation involves the conduct of a health practitioner or health service provider, the NSW Health Policy Directive concerning the management of a complaint or concern about a clinician should be consulted and appropriate action should be taken to inform registration authorities and other bodies, as relevant.

This Policy Directive should also be read in conjunction with relevant Policy Directives concerning employment screening (PD2013_028).

2. Glossary

The following are definitions for some terms used in this Directive:

CCYP: Commission for Children and Young People.

Chief Executive: The principal officer of a Health Service.

Child: A person under the age of 18. (Ombudsman Act 1974, Section 25A(1))
Child-related employment: Employment of the following kind [selected with possible relevance to Health Services] that primarily involves direct contact with children where that contact is not directly supervised:

- Employment in wards of public or private hospitals in which children are patients;
- Employment involving the direct provision of child health services;
- Employment involving the provision of counselling or other support services to children;
- Employment in detention centres (within the meaning of the Children (Detention Centres) Act 1987);
- Employment in schools or other educational institutions (not being universities);
- Employment in pre-schools, kindergartens and child care centres (including residential child care centres);
- Employment in refuges used by children;
- Employment at overnight camps for children;
- Employment involving the provision of child protection services;
- Employment in entertainment venues where the clientele is primarily children. (Child Protection (Prohibited Employment) Act 1998, Section 3)

Employee\(^2\): A person engaged in employment by or in connection with a Health Service.

Employment: Employment means:

- Performance of work under a contract of employment or as the holder of a remunerated position;
- Performance of work as a self-employed person or as a sub-contractor;
- Performance of work as a volunteer for an organisation;
- Undertaking practical training as part of an educational or vocational course; or
- Performance of work as a minister of religion or other member of a religious organisation. (Commission for Children and Young People Act 1998, Section 33(1))

Employment Screening and Review Unit (ESRU): The Unit within the Department of Health that provides Health Services with advice and support in responding to child-related and criminal allegations, charges and convictions, and which monitors performance in responding to such matters. The Unit also coordinates employment screening for the NSW Health system.

Grooming Behaviour: Involves a pattern of behaviour aimed at engaging a child as a precursor to sexual abuse. The grooming process can include:

- Persuading the child that a “special” relationship exists – spending inappropriate special time with the child, inappropriately giving gifts, showing special favours to them but not other children, allowing the child to overstep rules etc.;
- Testing of boundaries – undressing in front of the child, allowing the child to sit on the lap, talking about sex, ‘accidental’ touching of genitals etc.

These behaviours may not indicate risk if occurring in isolation but if there is a pattern of behaviour occurring, it may indicate grooming.

Health Service: The Department of Health, Area Health Services, Statutory Health Corporations, declared and non-declared Affiliated Health Organisations, and the Ambulance Service of NSW.

\(^2\) Whilst s25A(1) of the Ombudsman Act 1974 restricts the definition of employee to persons subject to a contract of employment, and other persons engaged to provide services to children (including in the capacity of a volunteer), it is NSW Health policy that employee is defined with reference to the broader definition of employment used in this Directive in reporting matters to the Ombudsman under Part 3A of the Ombudsman Act.
**Ombudsman:** An independent review body, whose primary role is to promote good conduct and fair decision-making in the interests of the NSW community. The Ombudsman also has a child protection responsibility to ensure that reportable allegations and convictions against employees are effectively and fairly investigated and that any risk posed by those employees is properly assessed and managed.

**Procedural Fairness:** In terms of investigations and risk assessments, procedural fairness involves informing the employee of the substance, with as much detail as possible, of the allegation made against them; providing the employee opportunity to put forward their case; making reasonable inquiries during the investigation stage; considering all relevant evidence, ensuring that there is no conflict of interest; acting fairly and without bias; conducting investigations and risk assessments without undue delay; and, maintaining good records in relation to these matters.

**Relevant employment proceedings:** Disciplinary proceedings (in NSW or elsewhere) against an employee by the employer or by a professional or other body that supervises the professional conduct of the employee, being proceedings involving:

(a) Reportable conduct by the employee, or
(b) An act of violence committed by the employee in the course of employment and in the presence of a child,

Unless there is a finding that the allegation in such proceedings was not reportable conduct, was false, was vexatious, or was misconceived (Commission for Children and Young People Act 1998, Section 33(1) and Section 39(1) – Commission for Children and Young People Regulation 2000, Clause 8).

**Reportable allegation:** An allegation of reportable conduct against a person or an allegation of misconduct that may involve reportable conduct (Ombudsman Act, Section 25A.)

A reportable allegation includes a charge for an offence involving reportable conduct, where there has been no conviction in respect of that charge.

**Reportable Conduct (Ombudsman Act, section 25A(1)):**

a) Any sexual offence, or sexual misconduct, committed against, with or in the presence of a child (including a child pornography offence); or

b) Any assault, ill treatment or neglect of a child; or

c) Any behaviour that causes psychological harm to a child,

Whether or not, in any case, with the consent of the child.

Reportable conduct does not extend to:

a) Conduct that is reasonable for the purposes of the discipline, management or care of children, having regard to the age, maturity, health or other characteristics of the children and to any relevant codes of conduct or professional standards, or

b) The use of physical force that, in all the circumstances, is trivial or negligible, but only if the matter is to be investigated and the result of the investigation recorded under workplace employment procedures, or

c) Conduct of a class or kind exempted from being reportable conduct by the Ombudsman under section 25CA of the Ombudsman Act 1974.

**Reportable conviction:** A conviction (including a finding of guilt without the court proceeding to a conviction), in NSW or elsewhere, of an offence involving reportable conduct (Ombudsman Act 1974, Section 25A(1)).
Sexual misconduct (as it applies to children): Describes a range of behaviours or a pattern of behaviour aimed at the involvement of children in sexual acts. Some of these behaviours may include:

- Inappropriate conversations of a sexual nature;
- Comments that express a desire to act in a sexual manner;
- Unwarranted and inappropriate touching;
- Sexual exhibitionism;
- Personal correspondence (including electronic communication) with a child or young person in respect of the adult’s sexual feelings for a child or young person;
- Deliberate exposure of children and young people to sexual behaviour of others, including the display of pornography.

Sexual misconduct includes ‘grooming behaviour’ (see separate definition).

Support Person: A person nominated by an employee to support them during any investigation or inquiry into the employee. The support person’s role is to offer support to the employee and does not include direct involvement in the investigation or inquiry, other than when the employee requests the support person attend meetings and interviews. The support person in these circumstances may advise the employee in respect to answering questions and discussing issues, however may not interrupt or bring into consideration issues on behalf of the employee.

Where an employee has limited communication skills, the support person may be nominated to talk on the employee’s behalf.

3. Overview of legislation

3.1 Ombudsman Act 1974 and Ombudsman Regulation 2005

Part 3A of the Ombudsman Act 1974 and the Ombudsman Regulation 2005 require Health Services to notify the Ombudsman of allegations (including charges) and convictions against employees that involve or may involve “reportable conduct” - that is, allegations or convictions of conduct that may constitute:

- A sexual offence, or sexual misconduct, committed against, with or in the presence of a child (including a child pornography offence);
- Assault, ill treatment or neglect of a child; or
- Behaviour that causes psychological harm to a child,

subject to the exceptions identified in the definition of “reportable conduct” in the Glossary to this Directive.

This extends to allegations and convictions for conduct or alleged conduct that occurred outside the course of, or prior to, the employee’s employment with a Health Service.

The Act also requires Health Services to inform the Ombudsman of the results of investigations into reportable allegations and convictions and the action taken, or proposed to be taken, in response to such an allegation or conviction.

Under the Act, the Chief Executive is required to establish policies and procedures for preventing reportable conduct by employees, and for responding to allegations and convictions involving reportable conduct by employees.
Chief Executives must also ensure that employees are informed of their obligation to notify the Chief Executive when they become aware of any reportable allegation or conviction, and that there are clear internal reporting lines to facilitate this.

### 3.2 Commission for Children and Young People Act 1998 and Commission for Children and Young People Regulation 2000

The *Commission for Children and Young People Act 1998* and Regulation, and NSW Health delegations, require Health Services to notify CCYP of relevant employment proceedings, being disciplinary proceedings against an employee by the employer or by a professional or other body that supervises the professional conduct of the employee, involving:

(a) Reportable conduct by the employee, or
(b) An act of violence committed by the employee in the course of employment and in the presence of a child,

unless there is a finding that reportable conduct did not occur or the allegation was false, vexatious, or misconceived.

Matters where there is some evidence that reportable conduct has occurred but the finding is inconclusive, or that are not sustained because of insufficient evidence, must also be reported to CCYP.

Relevant employment proceedings include proceedings that have been completed through the actions of the employee, for example where the employee resigns before the disciplinary investigation is finalised.

### 3.3 Child Protection (Prohibited Employment) Act 1998

The Act makes it an offence for a person who has been convicted of a serious sex offence, or a person who is a registrable person within the meaning of the *Child Protection (Offenders Registration) Act 2000*, to apply for, undertake or remain in child-related employment, unless CCYP, the Industrial Relations Commission or the Administrative Decisions Tribunal has made an order (which may be subject to conditions) that the Act does not apply to the person.

Persons who cannot lawfully work in child-related employment are known as “prohibited persons”.

The Act also makes it an offence for an employer to commence employing, or continue to employ, a person that the employer knows to be a prohibited person in child-related employment.

This means that the Act will need to be considered in determining appropriate action in response to some reportable convictions.

### 3.4 Children and Young Persons (Care and Protection) Act 1998

The Act focuses on children and young persons at ‘risk of harm’ and prescribes the role of the Department of Community Services (DoCS) and the role of families, agencies and communities in relation to child protection.

Under the Act and ministerial directives, Health Service employees must report to the DoCS ‘helpline’ any reasonable belief that a person or class of persons under the age of 16 is ‘at risk of harm’.
The Act also enables Health Service employees to report to DoCS a reasonable belief that a young person (child aged 16 or 17) or class of young persons is at risk of harm.

4. Chief Executive and employee responsibilities

4.1 Employee responsibilities

Employees who become aware of a child-related allegation, charge or conviction against another employee of their Health Service must report that matter to their supervisor or the designated person within their Health Service.

In accordance with the NSW Health Code of Conduct, employees must also report to their supervisor or the designated person within their Health Service any behaviour or circumstances that lead them to suspect another employee has engaged in reportable conduct.

Where an employee becomes aware of a child-related allegation, charge or conviction concerning the employee of another Health Service, or the Chief Executive or senior member of staff of their Health Service, these matters must be reported to ESRU and may also be reported to the Ombudsman.

Under the Public Sector Employment and Management (General) Regulation 1996 an officer of the Department of Health who is charged with having committed, or is convicted of, a serious offence is required to immediately report that fact to the Director-General (clause 100A). A serious offence is an offence that may be punishable by imprisonment for 12 months or more.

Under the Health Services Act 1997, a member of the NSW Health Service or a visiting practitioner of a Health Service who is charged with having committed, or is convicted of, a serious sex or violence offence, must report the fact in writing to the Chief Executive of the Health Service within 7 days of the charge or conviction.

Serious sex or violence offences are offences committed in any jurisdiction that involve sexual activity, acts of indecency, physical violence or the threat of physical violence that, if they were or if they had been committed in NSW, may be punishable by imprisonment for 12 months or more.

In accordance with the NSW Health Code of Conduct, all employees are required to report to their Chief Executive any charges brought against them relating to the production, dissemination or possession of child pornography.

4.2 Chief Executive responsibilities

Chief Executives must:

- Have in place procedures for ensuring that all employees are made aware of their responsibilities in responding to child-related allegations, charges or convictions;
- Have in place procedures for Chief Executives to be notified of all child-related allegations, charges or convictions;
- Identify persons responsible for conducting risk assessments and investigating such allegations, charges and convictions; and,
- Ensure all appropriate bodies, such as Police, the Department of Community Services and NSW Ombudsman are notified as relevant.
4.2.1 Notifying the Ombudsman of reportable allegations and convictions

In accordance with Part 3A of the *Ombudsman Act 1974*, Chief Executives of Health Services must notify the NSW Ombudsman of the following:

- Any reportable allegation, or reportable conviction, against an employee of the Health Service,
- Whether or not the Health Service proposes to take any disciplinary or other action in relation to the employee and the reasons why it intends to take or not to take any such action,
- Any written submissions made to the Chief Executive concerning any such allegation or conviction that the employee concerned wished to have considered in determining what (if any) disciplinary or other action should be taken in relation to the allegation or conviction.

The notification of a reportable allegation or reportable conviction must be undertaken as soon as practicable and must be made, in any event, within 30 days of the Chief Executive becoming aware of the allegation or conviction (or within such further period as may be agreed to by the Ombudsman).

Chief Executives must provide the Ombudsman with any documents or information the Ombudsman requests in respect to the Health Service’s handling of the reportable allegation or conviction, and must allow an officer of the Ombudsman to attend interviews or confer with the Health Service’s investigator, if requested.

Upon being satisfied that the investigation into the reportable allegation or conviction is concluded, the *Ombudsman Act* also requires Chief Executives to, as soon as practicable:

- Send the Ombudsman a copy of any report prepared by or provided as to the progress or results of the investigation, and copies of all statements taken in the course of the investigation and of all other documents on which the report is based, and
- Provide the Ombudsman with such comments on the report and statements as the Chief Executive thinks fit, and
- Inform the Ombudsman of the action that has been taken or is proposed to be taken with respect to the reportable allegation or conviction.

4.2.2 Responding to reportable allegations and convictions

In responding to reportable convictions or allegations of reportable conduct, irrespective of when and where the conduct occurred or allegedly occurred, Chief Executives must ensure that Health Services:

- Conduct an immediate risk assessment to determine whether there is any risk of further or ongoing harm to the child and whether the employee subject to the allegation or conviction requires relocation, supervision or suspension.
- Notify NSW Police where an allegation involves possible criminal conduct.
- Notify DoCS where there is a reasonable belief that a child or class of children is at risk of harm.
- Submit a Reportable Incident Brief to the Director-General within 24 hours of the Chief Executive becoming aware of the allegation or conviction.
- Notify the Ombudsman in accordance with the *Ombudsman Act 1974* and provide a copy of the formal notification to ESRU.
- Ensure a suitably qualified person undertakes an investigation into the matter in a transparent, accountable and confidential manner.
- Keep appropriate records of the investigation.
- Provide copies of the final investigation report and other relevant material to the Ombudsman and ESRU within 7 days of completion of the investigation.
- Notify CCYP of any completed relevant employment proceedings. 22(1/07)

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3 At any point during either a risk assessment or investigation where there is a reasonable belief that conduct has occurred that would constitute a serious criminal offence, the employee should be suspended pending investigation and a decision with respect to disciplinary action.
5. Procedure for responding to child-related allegations, charges and convictions

The procedure for responding to child related allegations (including charges) and convictions is depicted in Figure 1 below.

Figure 1: Responding to allegations (including charges) and convictions concerning children.

- Health Service employee is made aware of an allegation of, or conviction for, inappropriate child-related conduct.
- Employee records details of allegation/conviction: what happened, when and where, who was involved.
- Is any child/children at risk of harm?
  - N: Notify DoCS9 Helpline.
  - The NSW Ombudsman Guide to Child Protection in the Workplace should be consulted.
  - A Reportable Incident Brief must be submitted within 24 hours of the allegation being made.
  - The Ombudsman must be notified as soon as practicable and in any event within 30 days of the allegation being made.
  - Investigations and disciplinary action must be finalised in a timely manner.

At all stages in this process the NSW Ombudsman Child Protection Team (02 9286 1000) and the NSW Health, Employment Screening and Review Unit (02 9391 9800) are available to provide advice and assistance.

Investigations should be conducted by an appropriately trained and experienced investigations officer.

NOTE: If the allegation is against an employee of another Health Service, a Chief Executive or Senior Manager, ESFR should be notified.

- Notify Chief Executive (via Mgr) CE or delegate to notify Police if criminal conduct alleged.
- CE or delegate assesses whether the employee should be directly supervised, relocated or suspended.
- Health Service initiates investigation.
- Is allegation/conviction reportable under the Ombudsman Act 1998?
  - N: Reportable Incident Brief sent to the Director-General.
  - The Ombudsman notified using Ombudsman notification form. ESFR provided a copy.
  - NSW Ombudsman notified using Ombudsman notification form. ESFR provided a copy.
  - Health Service completes investigation and determines any disciplinary action.
  - Was the finding that the allegation was false, vexatious, misconceived or not involved reportable conduct?
    - Y: Notify CCVP using the Relevant Employment Proceedings Notification Form. ESFR provided a copy.
    - N: Final Report and Part 8 of Ombudsman notification form sent to Ombudsman. ESFR provided a copy.

NOTE: Where an allegation/conviction involves an act of violence in the course of employment and in the presence of a child, CCVP must be notified unless the finding is that the allegation was false, vexatious or misconceived.
Before an investigation is conducted, there are a number of steps that need to be taken in order to protect the interests of the child and the employee.

5.1 **Recording the details of a child-related allegation or conviction**

Where the allegation has not been received in writing, the allegation should be recorded to clarify what is being alleged. The words used by the person making the allegation must be recorded, in verbatim if possible, and clarified with the person making the verbal allegation.

If it is necessary to seek clarification of a verbal allegation, ensure that the person making the allegation explains events in their own words. Asking leading questions (e.g.: Did he touch you there?) may compromise future criminal investigations.

Details of any child-related charge or conviction should also be recorded.

5.2 **Considering risk of harm to a child or class of children**

Under that Directive and section 24 of the *Children and Young Persons (Care and Protection) Act 1998*, a Health Service employee may also report concerns about risk of harm to a person aged 16 or 17 (a young person) or class of young persons. Where a Health Service employee is concerned that a young person or class of young persons is at risk of harm from abuse or neglect, they should make a report to DoCS.

In assessing whether a child-related allegation, charge or conviction should be reported to DoCS, consideration needs to be given to whether the person who is the subject of the allegation may continue to pose a risk to classes of children and young people (such as patients).

For example, a report should be made to DoCS where a person who has previously abused a child works with children.

If there are concerns about the immediate safety of a child or young person, a class of child or young person, or any other staff, patient or client, Health Service employees should also contact Police (000) and security staff.

According to Section 23 of the *Children and Young Persons (Care and Protection) Act 1998*, a child or young person is at risk of harm if current concerns exist for the safety, welfare and well-being of the child or young person because of the presence of one or more of the following circumstances:

- The child or young person has been or is at risk of being physically or sexually assaulted or ill-treated;
- The child or young person’s basic physical or psychological needs are not being met or are at risk of not being met;
- The parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive necessary medical care;
- The child or young person is living in a household where there have been incidents of domestic violence and, as a consequence, the child young person is at risk of serious physical or psychological harm; or,
- A parent or caregiver has behaved in such a way towards the child or young person that the child or young person has suffered or is at risk of suffering serious psychological harm.
5.3 Notifying the Chief Executive or ESRU/the Ombudsman

Health Service employees should immediately report all child-related allegations and convictions to the Chief Executive (via their manager, if available). An appropriate initial response is extremely important in order to:

- Protect children and other vulnerable clients/patients from potential harm.
- Protect employees from malicious gossip or unfounded accusations.
- Demonstrate that such allegations and convictions are treated seriously.

Where an employee becomes aware of a child-related allegation, charge or conviction concerning the employee of another Health Service, or the Chief Executive or senior member of staff of their Health Service, these matters should be immediately reported to ESRU and may also be reported to the Ombudsman’s Child Protection Team. ESRU and the Ombudsman Child Protection Team can assist in determining the appropriate course of action, including assessing the immediate risk to patients, clients and other staff, assessing whether any other Health Services or external agencies may need to be notified, and whether an external investigator should undertake an investigation.

5.4 Assessing the risk to patients, clients and employees

Upon being informed of a child-related allegation, charge or conviction against an employee, the Chief Executive must ensure that the allegation, charge or conviction is assessed in terms of the immediate risk to patients, clients and employees.

Appropriate counselling and medical services must be arranged immediately for any alleged victim or any employee, as appropriate.

Note that where a conviction prior to employment has previously been risk assessed as part of the employment screening process and it has been determined that the conviction does not pose an unacceptable risk to patients, clients, staff or the NSW Health system, it should not be investigated again. ESRU should be consulted where this may be the case and the Ombudsman should still be notified of the conviction and the action that was undertaken.

The process of risk assessment should continue throughout the investigation of an allegation or charge, and at the conclusion of the process when a decision is made concerning any disciplinary action to be taken against the employee.

For all child-related allegations and charges the Chief Executive or an appropriately delegated officer must decide whether the employee/volunteer should be placed under direct supervision or re-located immediately on a “without prejudice” basis to a work area where there is no direct contact with patients/clients. If this is not possible, and if necessary to protect the safety of others, the employee should be suspended, pending investigation and a decision concerning any disciplinary action to be taken. This will involve an assessment of the duties of the employee and the risk posed to other patients, clients or employees of the Health Service. If a visiting practitioner is to be suspended, the Health Service should refer to the contract with the visiting practitioner.

During risk assessment, factors that should be considered in determining whether to leave an employee in a position include (but are not limited to):

- The nature and seriousness of the allegation or conviction
- The vulnerability of children and other patients/clients
- The nature of the position occupied by the employee and their level of supervision
- The period of time since the relevant conduct occurred or allegedly occurred

22(1/07)
The age of the employee at the time the relevant conduct occurred or allegedly occurred
The age of any victims or alleged victims at the time the relevant conduct occurred or allegedly occurred, and the difference in age between the employee and each such victim or alleged victim
The disciplinary history of the employee
The safety of the employee
Any risk to the investigation or to criminal or child protection investigations that may be conducted by NSW Police and/or DoCS.

The protection of children and a Health Service’s patients, clients and employees is to be paramount.

If at any point in the assessment or investigation of an allegation there is a reasonable belief that conduct may have occurred that constitutes a serious offence, that is one that may be punishable by imprisonment for 12 months or more, the employee should be suspended immediately pending finalisation of the investigation and a decision concerning any disciplinary action to be taken.

For all serious child-related charges or convictions, including serious sex and violence offences, the employee should be suspended immediately pending finalisation of the investigation and a decision concerning any disciplinary action to be taken.

Health Services and Health Service employees should be mindful of the fact that a decision to take administrative action or make administrative changes in relation to the employee due to the risk assessment process is in no way an indication as to whether the allegation will be substantiated.

At the stage of initial risk assessment, it is not appropriate to inform the employee of the full details of the allegation, as this may compromise criminal investigations or expose any victim or witness to additional risk. The circumstances in which these details can be disclosed are addressed later in this Directive.

If the employee is to be placed on alternate or restricted duties, or is to be suspended, then the employee should be informed that an allegation has been made against them (without going into detail) and provided with an explanation about the process to be followed by the Health Service.

5.5 Notifying appropriate bodies.

After the initial risk assessment is completed, the Health Service must commence an investigation. Section 6 of this Directive outlines procedures for undertaking an investigation.

Prior to undertaking the investigation Health Services must ensure that appropriate bodies are notified of the allegation, charge or conviction.

NSW Police must be informed if any child-related allegation against an employee involves or may involve criminal conduct. Where NSW Police is undertaking a criminal investigation, or advises that it may undertake such an investigation, an ongoing liaison should be maintained to ensure that criminal and disciplinary investigations are coordinated effectively. ESRU and the Ombudsman’s Office can facilitate communication with NSW Police.

Where there is a reasonable belief that a child or class of children are at risk of harm, and DoCs has not already been notified, they should be notified at this point.

The Chief Executive or delegate must also assess whether the allegation or conviction involves or may involve conduct that is reportable to the Ombudsman under Part 3A of the Ombudsman Act 1974. 22(1/07)
A definition of reportable conduct appears in the Glossary to this Directive. For detailed information on determining whether an allegation or conviction is reportable, please consult Part 3 of the NSW Ombudsman Guide to Child Protection in the Workplace (http://www.ombo.nsw.gov.au).

Where an allegation or conviction is reportable to the Ombudsman:
- The Director-General must be notified no later than 24 hours after the allegation is made, using the Reportable Incident Briefing system.
- The Ombudsman must be notified as soon as practicable and in any event within 30 days of the Chief Executive receiving notice of the allegation or conviction, using the Ombudsman Notification Form (Attachment 9.1). A copy of this notification must also be submitted to ESRU.

6. Investigating an allegation of reportable conduct

Child-related convictions, and child-related allegations involving criminal conduct, that do not involve reportable conduct are to be investigated and managed in accordance with the process of investigation outlined in Policy Directive PD2014_042 Managing Misconduct – responding to.

Child-related allegations that do not involve reportable or criminal conduct are to be investigated in accordance with the NSW Health Policy Directive concerning the disciplinary processes for NSW Health (PD2014_042) or in the case of the Department of Health the Personnel Handbook for the NSW Public Service.

Where a Health Service becomes aware that an employee has a reportable conviction, no independent investigation of the employee’s conduct is required. In such cases, risk assessment is to take place, pending the determination of any disciplinary action.

6.1 Objectives of an investigation into a reportable allegation

The Health Service must coordinate an internal investigation into an allegation of reportable conduct, irrespective of whether the allegation is or has been investigated by NSW Police or any other investigative body.

Although Police may decide against taking further investigative action where they believe the matter will not be prosecuted successfully, this does not mean the alleged behaviour did not occur. Irrespective of any action the Police or any other investigative body may take, Health Services need to investigate allegations to make sound risk management and disciplinary decisions.

The investigation should determine whether there is evidence for the allegation to be sustained, not sustained (insufficient evidence), false (the matter did not occur), vexatious, misconceived (the allegation was made in good faith but made on a misunderstanding of what actually occurred) or whether it does not involve reportable conduct.

It should be noted that the strict rules of evidence that apply in court do not apply to investigations of allegations against employees. The civil standard of proof, that is, the ‘balance of probabilities’ applies to this type of investigation. This means that the Chief Executive need only be satisfied that it is more likely than not that the allegation is true in order to sustain an allegation.

The Health Service should not conduct investigations to establish proof to a criminal standard (‘beyond a reasonable doubt’) or for the purpose of obtaining statements or other evidence that may be used at trial. These are matters for NSW Police and the Director of Public Prosecutions.

22(1/07)
The investigation process must be conducted in accordance with the principles of procedural fairness and be transparent, accountable and treated as highly confidential in order to protect the alleged victim, person making the allegation and the employee.

For detailed information on conducting an investigation into reportable allegations, please consult Part 5 of the NSW Ombudsman Guide to Child Protection in the Workplace.

### 6.2 Appointing an Investigator

An appropriately trained and experienced investigations officer or external investigator must conduct investigations into allegations of reportable conduct. When appointing an investigator, any actual or potential conflicts of interests must be considered, particularly in relation to the employee or the child. Any cultural issues and/or special needs should also be considered.

Investigations officers with experience in child related matters are preferred. It is desirable that investigators can show proof or evidence that they have experience or have had training in conducting investigations of a similar nature, and previous experience in health related investigations, including timeliness in conducting and reporting on investigations.

All investigators used by Health Services should be able to provide at least two recent referees who are able to be contacted for a referee check.

In appointing an external investigator, Health Services should consider the panel of investigators established by the Department.

Where a Health Service is unable to source an appropriate investigator, ESRU should be contacted for advice.

Whilst ESRU will provide Health Services with advice concerning investigations, it will not conduct investigations outside the Department of Health except in exceptional circumstances, including matters where:

- A Health Service has a conflict of interest;
- There are cross-Health Service impacts; and/or
- The Director-General directs ESRU to conduct an investigation.

When interviewing children as a part of the investigation process, permission must be sought from the child’s parent or guardian before an interview takes place. Only persons with sufficient skill or expertise in obtaining children’s evidence may interview children with respect to serious matters.

### 6.3 Informing the employee

Any communication with the employee about the details of a reportable allegation that involves or may involve criminal conduct should only be made in consultation with NSW Police and DoCS, to avoid contaminating their investigations and to prevent reinterviewing.

ESRU and the Ombudsman’s Office can facilitate communication with NSW Police and DoCS.

Where the Police or DoCS have requested non-disclosure, due to a risk of jeopardising a Police or DoCS investigation, Health Services should obtain advice from ESRU or the NSW Ombudsman’s Office on how to progress the matter.

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When the employee can safely be informed of the details of the allegation, this must be done in writing. The employee must also be informed in writing of their right to make contact with a support person or organisation of their choosing, including a union, legal representative, staff counsellor or (if appropriate) employee assistance program.

Due consideration must be given to the welfare of the employee during an investigation, with counselling services being offered, where applicable. Likewise, a direction is to be given to the employee to maintain confidentiality about the allegation (particularly important where there is more than one person the subject of an investigation).

The employee must be given the opportunity to discuss the circumstances surrounding the allegation with the investigator or with a relevant senior line manager, and also to respond to the allegation, putting forward any matters they believe relevant, before any disciplinary action is taken.

Employees must also be notified in writing of any interviews they need to attend relating to the investigation, whether they are a witness or the subject of the allegation. Notice should be given within a reasonable timeframe and not less than 24 hours prior to an interview date. Employees must be informed of their right to bring a support person of their choosing to the interview, and that any failure to fully cooperate with the investigation may result in disciplinary action.

6.4 Investigation Length

Investigations must be completed in a timely manner.

Investigations of low risk allegations should be able to be completed within three months. Investigations of more complex matters should generally take no longer than six months.

If an investigation cannot be completed within these timeframes, for example, whilst a police investigation is ongoing or court proceedings are pending, written notification must be sent to relevant persons and bodies, including ESRU, the Ombudsman’s Office, the employee, and the person making the allegation, advising of the circumstances resulting in the delay.

6.5 Concluding the investigation and taking disciplinary action

An investigation into a child-related allegation will be concluded upon the submission of an investigation report to the Chief Executive and the Chief Executive being satisfied that the investigation is complete.

If, at the conclusion of the investigation, there is appropriate evidence to support the allegation, the Health Service must conduct a risk assessment to assist in determining the further action required. If the matter is considered sufficiently serious, the investigator may make a recommendation to take disciplinary action.

Where the matter involves a child-related conviction, the Health Service is to conduct a risk assessment to assist in determining any disciplinary action that is required.

If the allegation is found to have been made in bad faith, a decision should be made regarding what action to take, if any, against the person making the allegation.

The employee and, when appropriate, the person making the allegation should be notified in writing within 7 days of completion of the investigation and of the findings in relation to each allegation.
Where applicable, the employee should also be informed of the date it is estimated a decision will be made in relation to disciplinary action. An offer to discuss the findings should also be made to the employee in circumstances where a decision may be made to relocate the employee or impose conditions on their employment.

The employee must be given a reasonable opportunity to respond to these findings and to proposed disciplinary action.

Reportable convictions may also be serious sex and violence offences within the meaning of the Health Services Act 1997.

Serious sex or violence offences are offences committed in any jurisdiction that involve sexual activity, acts of indecency, physical violence or the threat of physical violence that, if they were or if they had been committed in NSW, may be punishable by imprisonment for 12 months or more.

Section 118 of that Act requires members of the NSW Health Service to be given a reasonable opportunity to make written submissions concerning convictions for serious sex or violence offences and the proposed disciplinary action to be taken (Chief Executives have delegated responsibility for all of the Director-General’s functions under section 118).

Non-declared affiliated health organisations are required to put in place systems that reflect section 118 as part of their conditions of subsidy.

Section 100 of the Health Services Act provides for similar arrangements before terminating visiting practitioners contracted to public health organisations who have been convicted of a serious sex or violence offence, except that final responsibility for approving termination lies with the Department of Health’s Director-General or Deputy Director-General, Health System Support.

Disciplinary action may include, but is not limited to, terminating the employee’s employment, imposing conditions on the employee, or transferring the employee to a position that does not involve child-related employment (defined in the Glossary).

Disciplinary action must be undertaken in accordance with Policy Directive PD2014_042, Managing Misconduct, or, in the case of the Department of Health, in accordance with the Personnel Handbook for the NSW Public Service.

6.5.1 Child Protection (Prohibited Employment) Act 1998

That Act makes it an offence for a person who has been convicted of a serious sex offence, or a person who is a registrable person within the meaning of the Child Protection (Offenders Registration) Act 2000, to apply for, undertake or remain in child-related employment.

Disciplinary action should accord with any restrictions on employment resulting from a conviction imposed by the Child Protection (Prohibited Employment) Act 1998.

Serious sex offences include offences involving sexual activity or acts of indecency (if the indecent act would be an offence in a private place) that carry a penalty of more than 12 months imprisonment, sexual servitude offences, child prostitution offences, and child pornography offences, whether committed in NSW or elsewhere.

A person who has a conviction for a serious sex offence that is no longer an offence (for example, an offence involving consensual homosexual intercourse with a 16 or 17 year old male) is not covered by the Act.
NSW Police has information on whether particular persons are registrable persons.

Persons who cannot lawfully work in child-related employment are known as “prohibited persons”.

This restriction on employment can only be overturned if CCYP, the Industrial Relations Commission (IRC) or the Administrative Decisions Tribunal (ADT) have made an order (which may be subject to conditions) that the Act does not apply to the person. Such an order can only be made if the body making the order considers that the person does not pose a risk to child safety.

It is an offence for a Health Service to knowingly employ or continue to employ a prohibited person in child-related employment. Health Services must also not employ a person in a manner that is inconsistent with any conditions imposed by CCYP, the IRC or ADT.

If the Health Service does not terminate a person’s employment following being made aware that a person is a prohibited person, then it must ensure that the person does not undertake any child-related employment within the Health Service.

6.6 Notifying the Ombudsman following investigation into reportable allegations or convictions

The Chief Executive of a Health Service must, within 7 days of being satisfied that the investigation has been concluded:

(a) Send to the Ombudsman a copy of any report prepared by or provided to the Chief Executive as to the progress or results of the investigation, and copies of all statements taken in the course of the investigation, and all other documents on which the report is based;

(b) Provide the Ombudsman with such comments on the report and statements as the Chief Executive thinks fit; and

(c) Inform the Ombudsman of the action that has been taken or is proposed to be taken with respect to the reportable allegation or conviction.

The report to the Ombudsman should be made using Part B of the Ombudsman Notification Form and include a copy of the investigation report. A copy of the form and investigation report must also be sent to ESRU.

The Ombudsman must be informed of the outcome of all matters involving reportable allegations or convictions, not just those that are sustained.

6.6 Notifying CCYP of prohibited employment and completed relevant employment proceedings

6.7.1 Prohibited employment

Where a Health Service is made aware that a prohibited person has been working in child-related employment within the Health Service, the Health Service is to notify ESRU and CCYP to enable the consideration of laying criminal charges against the employee.

6.7.2 Completed relevant employment proceedings

Health Services must advise CCYP of all completed disciplinary proceedings by the Health Service or a relevant professional body that supervises the professional conduct of the employee (for example, the Health Care Complaints Commission or a professional registration board) involving:
(a) Reportable conduct by an employee (i.e., reportable allegations and convictions);
(b) An act of violence committed by the employee in the course of employment and in the presence of a child,

Unless there is a finding that the allegation in such proceedings was not reportable conduct, was false, was vexatious, or was misconceived.

For such matters, the Chief Executive must send a completed Relevant Employment Proceedings Notification form (Attachment 9.2) to CCYP within 7 days. A copy of this notification must also be sent to ESRU.

The employee must also be advised of any notification to CCYP by way of a Relevant Employment Proceedings Employee Notification form.

Health Services should advise ESRU within 7 days of any investigation where the respondent leaves the Health Service. Health Services must still complete the investigation to the best of their ability, make a finding, and notify CCYP if required.

7. Keeping Records

Whilst responding to child related allegations, charges and convictions, it is important to ensure adequate records are kept and stored in a file which is readily located and separate to the employee’s HR file. In addition, the following information must be documented for future audits and assessment:

- Any allegation which was made, and who made the allegation.
- Any conviction which was advised, and who advised of the conviction.
- The initial response that was taken by the Health Service, such as any counselling that was offered to the alleged victim and the employee who is the subject of the allegation.
- An investigation plan listing the steps that will be taken to undertake the investigation, possible witnesses to be interviewed and relevant documents which need to be considered.
- The initial risk assessment and any subsequent risk assessments.
- All interviews undertaken, including the initial questions that were asked and the responses.
- Any decision made during the investigation and at the conclusion of the investigation. The rationale for these decisions must also be documented as well as the name and position of the person who made the decision.
- The investigation report.
- Any written submissions received from the employee in response to a conviction or the findings of an investigation, or to proposed disciplinary action.
- A signed and dated File Note must be kept of each telephone conversation, interview, notification sent and advice received during an internal investigation.
- All e-mail correspondence.

Good record keeping is imperative. Not only does it protect the investigator if challenged regarding process, it is important for future audits. Under section 25B of the Ombudsman Act, the Ombudsman may request any investigation file at any time in order to scrutinise the process undertaken. Poor record keeping reflects on the decisions made by the Health Service and the process undertaken by the investigator.

The Freedom of Information Act 1989 entitles any person to access documents held by their employer, whether public or private, pertaining to relevant employment proceedings taken against them (subject to relevant exemptions in that Act).

Such documents may also be subpoenaed and used in court proceedings.
8. Contact information

NSW Ombudsman Child Protection Team - (02) 9286 1000

Employment Screening and Review Unit - (02) 8848 5175

Department of Community Services Helpline - 13 36 27

9 List of Attachments

9.1 Ombudsman Notification Form

9.2 Relevant Employment Proceedings Notification Form

9.3 Responding to Allegations involving children flowchart
For printing and display on notice boards etc – for quick reference
Attachment 9.1

Notification form

Instructions for completing and sending the notification form to the Ombudsman

Completing the form

Part A of the notification form, relating to the details of the people involved, the allegation and the agency’s initial response, is to be sent to the Ombudsman’s office within 30 days of the head of agency becoming aware of the reportable allegation or conviction against an employee.

If the investigation has been completed within those 30 days, please also complete Part B of the notification form, which details the findings of the investigation. This Part of the form can also be used as the basis for the final report to the Ombudsman if the investigation takes longer than 30 days to finalise.

If some sections of the form cannot be completed, please leave them blank.

The notification form can be photocopied for multiple use.

Delivery instructions

To maintain a high level of confidentiality, the notification form and any other documents relating to the investigation of an allegation or conviction of reportable conduct against an employee should be sent to the Ombudsman either by:

- registered mail
- hand delivery, or
- courier

Addressed to:

Attention – Child Protection Team
NSW Ombudsman
Level 24
580 George Street
Sydney NSW 2000

Note: Parts A & B of the notification form and accompanying documents should NOT be sent to the Ombudsman by normal mail, by email or fax.
Attachment 9.1

PART A

1. Details of Agency

| 1.1 | Name of agency: | Your case/ref number: |
| 1.2 | Type of agency: | |
|     | ☐ Designated government agency | ☐ Designated non-government agency |
|     | ☐ Non-government school | ☐ Public authority (other than a designated government agency) |
|     | ☐ Child care centre | ☐ Substitute residential care service (i.e. out of home care service) |
| 1.3 | Nature of service provided by your agency: |
| 1.4 | Does your agency have a policy or procedures specifically relating to allegations of reportable conduct against employees or members of staff? | ☐ Yes | ☐ No |
| 1.5 | Has your agency already supplied the Ombudsman with a copy of the most current policies or procedures? | ☐ Yes | ☐ No |

If the agency has not already supplied the Ombudsman with a copy of the most current policies or procedures, please attach.

2. Head of agency details

| 2.1 | Head of agency name: |
| 2.2 | Position title: |
| 2.3 | Address (Agency address: not a home address): |
| 2.4 | Telephone: | Fax: |
|     | Signature: | Date: |

If another officer of the agency is preferred as the contact for any further inquiries in relation to this notification from the Ombudsman, please also provide their details below. Unless other arrangements have been made, formal correspondence from the Ombudsman will be addressed to the nominated head of agency.

| 2.5 | Contact officer name: |
| 2.6 | Position title: |
| 2.7 | Address: |
| 2.8 | Telephone: | Fax: |

Please identify the person in your agency who is responsible for investigating the reportable allegation(s) or who is responsible for liaison with any other agency that may be investigating the reportable allegations(s):

| 2.9 | Investigating officer: |
| 2.10 | Position title: |
| 2.11 | Address: |
| 2.12 | Telephone: |
| 2.13 | If this notification relates to any other notifications made to the Ombudsman, please provide our reference number(s) or other details |

NSW Ombudsman Child protection in the workplace 2004
### Attachment 9.1

#### 3. Details of the person against whom the allegation has been made

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>3.1</td>
<td>Does this notification contain allegations of reportable conduct against more than one employer?</td>
</tr>
<tr>
<td>3.1a</td>
<td>If yes, how many? (Please copy this page for each employee)</td>
</tr>
<tr>
<td>3.2</td>
<td>Family name:</td>
</tr>
<tr>
<td>3.3</td>
<td>Given name:</td>
</tr>
<tr>
<td>3.4</td>
<td>Sex: Male □ Female □</td>
</tr>
<tr>
<td>3.5</td>
<td>Date of birth:</td>
</tr>
<tr>
<td>3.6</td>
<td>Place of birth:</td>
</tr>
<tr>
<td>3.7</td>
<td>Home address:</td>
</tr>
<tr>
<td>3.8</td>
<td>Home phone:</td>
</tr>
<tr>
<td>3.9</td>
<td>Position title at time allegation made:</td>
</tr>
<tr>
<td>3.10</td>
<td>Employee identification no. (if relevant):</td>
</tr>
<tr>
<td>3.10</td>
<td>Current employment status with agency (tick all applicable):</td>
</tr>
<tr>
<td>3.10</td>
<td>□ Permanent □ Part-time □ Foster carer □ Casual □ Contractor</td>
</tr>
<tr>
<td>3.10</td>
<td>□ Volunteer □ Other (state)</td>
</tr>
<tr>
<td>3.11</td>
<td>Current work address:</td>
</tr>
<tr>
<td>3.12</td>
<td>Work phone:</td>
</tr>
<tr>
<td>3.13</td>
<td>Is the employee aware that a reportable allegation has been made against them? □ Yes □ No □ Unknown</td>
</tr>
<tr>
<td>3.13a</td>
<td>If yes, who informed the employee:</td>
</tr>
<tr>
<td>3.13a</td>
<td>Your agency (name of person):</td>
</tr>
<tr>
<td>3.13a</td>
<td>Another agency (state which):</td>
</tr>
<tr>
<td>3.13a</td>
<td>Other (describe):</td>
</tr>
<tr>
<td>3.13b</td>
<td>Unknown:</td>
</tr>
<tr>
<td>3.13b</td>
<td>Date informed:</td>
</tr>
<tr>
<td>3.13b</td>
<td>Is the employee aware of: □ Full details of the reportable allegation?</td>
</tr>
<tr>
<td>3.13b</td>
<td>□ Type of reportable conduct or broad nature only?</td>
</tr>
<tr>
<td>3.13b</td>
<td>□ Only that there has been a reportable allegation not the type?</td>
</tr>
<tr>
<td>3.14</td>
<td>Has counselling or other support been offered/provided to the employee? □ Yes □ No □ Unknown</td>
</tr>
<tr>
<td>3.15</td>
<td>If yes, what kind?</td>
</tr>
<tr>
<td>3.16</td>
<td>If no, why not?</td>
</tr>
</tbody>
</table>
### 4. Details of the alleged victim(s)

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
</table>
| 4.1 | Does this notification contain allegations of reportable conduct upon more than one child or young person?  
   | Yes ☐ No ☐ |
| 4.1a | If yes, how many? (Please copy and complete this page for each child) |
| 4.2 | Family name: |
| 4.3 | Given name: |
| 4.4 | Sex: ☐ Male ☐ Female |
| 4.5 | Date of birth or current age: |
| 4.6 | Age of the child at the time of the alleged reportable conduct (if different from above): |
| 4.7 | Is the child: Aboriginal or Torres Strait Islander? ☐ Yes ☐ No ☐ Unknown  
   | From a non-English speaking background? ☐ Yes ☐ No ☐ Unknown |
| 4.8 | Does the child have a disability or disorder? ☐ Yes ☐ No ☐ Unknown  
   | If yes, (tick all relevant and describe):  
   | ☐ Intellectual  ☐ Physical  
   | ☐ Sensory  ☐ Behavioural  
   | ☐ Other |
| 4.9 | Home address: |
| 4.10 | Home phone: |
| 4.11 | Is the child a state ward? ☐ Yes ☐ No ☐ Unknown |
| 4.12 | Are the child’s parents or guardians aware of the allegations? ☐ Yes ☐ No ☐ Unknown ☐ Not applicable |
| 4.12a | If no, why not? |
| 4.12b | If yes, who informed them? ☐ Child  
   | ☐ Your Agency (name of person):  
   | ☐ Unknown |
| 4.13 | Has counselling or other support been offered/provided to the alleged victim? ☐ Yes ☐ No |
| 4.13a | If yes, what kind? |
| 4.13b | If no, why not? |
5. Details of the allegation(s)

5.1 Does this notification concern more than one incident* of reportable conduct?  Yes  No

5.1a If yes, how many?

*Note: Please use this page for the primary or most serious incident and copy for additional incidents.

5.2 Date of alleged incident:

5.3 Location of alleged incident:

5.4 Description of reportable allegation (attach documentation where available):

5.5 Type of reportable conduct alleged (tick all relevant to incident described above)

<table>
<thead>
<tr>
<th>Physical assault</th>
<th>Psychological harm*</th>
<th>Sexual offence</th>
<th>Neglect</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hitting / kicking</td>
<td>Persistent hostility/rejection</td>
<td>Assault (indecent / touching / molestation)</td>
<td>Clothing / food</td>
</tr>
<tr>
<td>Shaking / throwing</td>
<td>Exposure to violence (including domestic violence)</td>
<td>Penetration / intercourse</td>
<td>Medical care</td>
</tr>
<tr>
<td>Pushing / shoving / grabbing / pinching / poking</td>
<td>Scapegoating</td>
<td>Production, dissemination or possession of child pornography</td>
<td>Shelter</td>
</tr>
<tr>
<td>Inappropriate restraint / excess force</td>
<td>Humiliation / belittling</td>
<td>Sexual misconduct</td>
<td>Supervision</td>
</tr>
<tr>
<td>Indirect - use of object / substance / threat</td>
<td></td>
<td>Exploitation: non physical</td>
<td>Environmental / not supportive</td>
</tr>
</tbody>
</table>

*Note: There must be evidence of related harm to the child that was alleged to have been caused by the employee. See 3.5.7 in the Ombudsman guidelines for more information about this definition. For more information about definitions of reportable allegations see 3.5 of the guidelines.

5.6 Date your agency became aware of the allegation(s):

5.7 Name of person initially informed:

5.7a Position title and location:

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NSW Ombudsman Child protection in the workplace 2004

22(1/07)
### 6. -Interim action taken or proposed in respect of the reportable allegation(s)

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>6.1</td>
<td>Has DoCS been informed by your agency? □ Yes □ No □ Unknown □ Not applicable</td>
</tr>
<tr>
<td>6.1a</td>
<td>Date of report to DoCS:</td>
</tr>
<tr>
<td>6.2</td>
<td>Is DoCS investigating this reportable allegation? □ Yes □ No □ Unknown</td>
</tr>
<tr>
<td>6.2a</td>
<td>If yes, name of DoCS officer:</td>
</tr>
<tr>
<td>6.2b</td>
<td>Which Community Service Centre or Joint Investigation Response Team?</td>
</tr>
<tr>
<td>6.2c</td>
<td>Contact number (if known):</td>
</tr>
<tr>
<td>6.3</td>
<td>Have the Police been informed? □ Yes □ No □ Unknown □ Not applicable</td>
</tr>
<tr>
<td>6.3a</td>
<td>Are the police investigating this reportable allegation? □ Yes □ No □ Unknown</td>
</tr>
<tr>
<td>6.3b</td>
<td>If yes, name of police officer:</td>
</tr>
<tr>
<td>6.4</td>
<td>Which police station or Local Area Command?</td>
</tr>
<tr>
<td>6.4a</td>
<td>Contact number (if known):</td>
</tr>
<tr>
<td>6.5</td>
<td>Have prior reportable allegations been made against the employee? □ Yes □ No □ Unknown</td>
</tr>
<tr>
<td>6.5a</td>
<td>If yes, when was the most recent?</td>
</tr>
<tr>
<td></td>
<td>Within 3 yrs. □ 2-5 yrs □ More than 5 yrs ago</td>
</tr>
<tr>
<td>6.5b</td>
<td>What was the result or finding of the investigation into the prior allegation(s)?</td>
</tr>
<tr>
<td></td>
<td>False</td>
</tr>
<tr>
<td></td>
<td>Vexatious</td>
</tr>
<tr>
<td></td>
<td>Misconceived</td>
</tr>
<tr>
<td></td>
<td>Allegation sustained</td>
</tr>
<tr>
<td></td>
<td>Not sustained – insufficient evidence</td>
</tr>
<tr>
<td></td>
<td>Not reportable conduct</td>
</tr>
<tr>
<td>6.6</td>
<td>What action has been taken or is proposed by the agency in respect of the employee pending completion of investigation?</td>
</tr>
<tr>
<td></td>
<td>No action (state why)</td>
</tr>
<tr>
<td></td>
<td>Increased supervision (describe)</td>
</tr>
<tr>
<td></td>
<td>Restriction on current duties (specify)</td>
</tr>
<tr>
<td></td>
<td>Transferred to alternate duties (specify)</td>
</tr>
<tr>
<td></td>
<td>Suspended with pay</td>
</tr>
<tr>
<td></td>
<td>Suspended without pay</td>
</tr>
<tr>
<td></td>
<td>Not re-engaged</td>
</tr>
<tr>
<td></td>
<td>Not relevant as matter finalised</td>
</tr>
<tr>
<td>6.6a</td>
<td>Is this standard procedure when responding to allegations of child abuse made against your employee?</td>
</tr>
<tr>
<td></td>
<td>Yes □ No □ Unknown □ Not applicable</td>
</tr>
</tbody>
</table>
### Attachment 9.1

**PART B**

*(To be completed at the conclusion of the investigation)*

#### 7. Findings

If the investigation of the allegation is completed, please attach copies of supporting final documentation and complete the following:

<table>
<thead>
<tr>
<th>7.1</th>
<th>7.1.1 Allegation 1: category of reportable conduct</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>Physical assault</strong></td>
</tr>
<tr>
<td></td>
<td>□ Hitting/ kicking</td>
</tr>
<tr>
<td></td>
<td>□ Shaking/ throwing</td>
</tr>
<tr>
<td></td>
<td>□ Pushing/ shoving/ grabbing/ pinching/ poking</td>
</tr>
<tr>
<td></td>
<td>□ Inappropriate restraint/excess force</td>
</tr>
<tr>
<td></td>
<td>□ Indirect – use of object/substance/threat</td>
</tr>
<tr>
<td></td>
<td><strong>Psychological harm</strong></td>
</tr>
<tr>
<td></td>
<td>□ Persistent hostility/rejection</td>
</tr>
<tr>
<td></td>
<td>□ Exposure to violence (including domestic violence)</td>
</tr>
<tr>
<td></td>
<td>□ Scapegoating</td>
</tr>
<tr>
<td></td>
<td>□ Humiliation/belittling</td>
</tr>
<tr>
<td></td>
<td><strong>Neglect</strong></td>
</tr>
<tr>
<td></td>
<td>□ Clothing/food</td>
</tr>
<tr>
<td></td>
<td>□ Medical care</td>
</tr>
<tr>
<td></td>
<td>□ Shelter</td>
</tr>
<tr>
<td></td>
<td>□ Supervision</td>
</tr>
<tr>
<td></td>
<td>□ Environment not supportive</td>
</tr>
<tr>
<td></td>
<td><strong>Ill-treatment</strong></td>
</tr>
<tr>
<td></td>
<td>□ Excessive discipline/punishment</td>
</tr>
<tr>
<td></td>
<td>□ Other excessive behaviour</td>
</tr>
<tr>
<td></td>
<td><strong>Sexual misconduct</strong></td>
</tr>
<tr>
<td></td>
<td>□ Exploitation: non physical</td>
</tr>
<tr>
<td></td>
<td>□ Deliberate exposure to sexual behaviour/sexual exhibition / exploitation/ pornography</td>
</tr>
<tr>
<td></td>
<td>□ Obscene language/gestures</td>
</tr>
<tr>
<td></td>
<td>□ Harassment (inappropriate words/gestures/correspondence)</td>
</tr>
<tr>
<td></td>
<td><strong>Sexual offence</strong></td>
</tr>
<tr>
<td></td>
<td>□ Assault (indecency/ touching/ molestation)</td>
</tr>
<tr>
<td></td>
<td>□ Penetration / intercourse</td>
</tr>
<tr>
<td></td>
<td>□ Production, dissemination or possession of child pornography</td>
</tr>
<tr>
<td></td>
<td><strong>Note:</strong> There must be evidence of related harm to the child that was alleged to have been caused by the employee. See 3.5.7 in the Ombudsman guidelines for more information about this definition.</td>
</tr>
</tbody>
</table>

**Misconduct which may involve reportable conduct**

- □ Unwarranted / inappropriate touching (not indecent)
- □ Inappropriate relationship with child (not sexual)
- □ Inappropriate comments / jokes of a sexual nature
- □ Other

**Description of reportable allegation:**

**Employee response:**
### 7.1.2 Agency Finding on first reportable allegation:

- False
- Vexatious
- Misconceived
- Allegation sustained
- Not sustained – insufficient evidence
- Not reportable conduct

**Note:** If there was only one allegation, go to Part 7.2. Please attach additional pages if there were more than two allegations.

### 7.1.3 Allegation 2:

<table>
<thead>
<tr>
<th>Physical assault</th>
<th>Psychological harm*</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Throwing/kicking</td>
<td>- Persistent hostility/rejection</td>
</tr>
<tr>
<td>- Shaking/throwing</td>
<td>- Exposure to violence (including</td>
</tr>
<tr>
<td>- Pushing/shoving/grabbing/pinching/poking</td>
<td>domestic violence)</td>
</tr>
<tr>
<td>- Indirect – use of objects/substance/threat</td>
<td>Scapegoating</td>
</tr>
<tr>
<td></td>
<td>- Humiliation/belittling</td>
</tr>
<tr>
<td>Sexual offence</td>
<td></td>
</tr>
<tr>
<td>- Assault (indecent/touching/molestation)</td>
<td>- Neglect</td>
</tr>
<tr>
<td>- Penetration / intercourse</td>
<td>- Clothing/food</td>
</tr>
<tr>
<td>- Production, dissemination or possession of</td>
<td>- Medical care</td>
</tr>
<tr>
<td>child pornography</td>
<td>- Shelter</td>
</tr>
<tr>
<td>Sexual misconduct</td>
<td>- Supervision</td>
</tr>
<tr>
<td>- Exploitation: non physical</td>
<td>- Environment not supportive</td>
</tr>
<tr>
<td>- Deliberate exposure to sexual behaviour</td>
<td></td>
</tr>
<tr>
<td>/sexual exhibitionism / exploitation</td>
<td></td>
</tr>
<tr>
<td>/porngaphy</td>
<td></td>
</tr>
<tr>
<td>- Obscene language / gestures</td>
<td>- Iltreatment</td>
</tr>
<tr>
<td>- Harassment (inappropriate words / gestures /</td>
<td>- Excessive discipline / punishment</td>
</tr>
<tr>
<td>correspondence)</td>
<td>- Other excessive behaviour</td>
</tr>
</tbody>
</table>

*Note: There must be evidence of related harm to the child that was alleged to have been caused by the employee. See 3.5.7 in the Ombudsman guidelines for more information about this definition.

### Misconduct which may involve reportable conduct

- Unwarranted / inappropriate touching (not indecent)
- Inappropriate relationship with child (not sexual)
- Inappropriate comments/jokes of a sexual nature
- Other

### Description of the reportable allegation:

### Employee response:

---

**NSW Ombudsman Child protection in the workplace 2004**
Attachment 9.1

7.1.4 Agency Finding on second reportable allegation:

- False
- Vexatious
- Misconceived
- Allegation sustained
- Not sustained – insufficient evidence
- Not reportable contact

7.2 If no reportable allegations were put to the employee, please state why not (eg person left the agency and refused to be interviewed):

7.3 State the reason(s) for your finding(s):

8. Final action taken at the end of the agency investigation

8.1 Describe the action taken by your agency at the conclusion of the investigation in respect to the person the subject of the reportable allegation:

8.2 What other issues arose during the investigation which your agency considers relevant?

8.3 What other action has been taken or is proposed by your agency as a result of the investigation? (eg general staff training, changes to policies).

8.4 Date investigation completed:

8.5 Was the matter required to be notified to the Commission for Children and Young People (CCYP) as a completed relevant employment proceeding? □ Yes □ No

8.6 If yes, has the matter been sent to the CCYP? □ Yes * □ No

* Note: Please attach a copy of the CCYP notification form

8.7 Date sent to CCYP:

8.8 Name and signature of person completing notification to Ombudsman:

Name: __________________________ Signature: __________________________

8.9 Date notification completed:

---

NSW Ombudsman Child protection in the workplace 2004
ATTACHMENT 8

RELEVANT EMPLOYMENT PROCEEDINGS
NOTIFICATION FORM

Under Section 39 of the Commission for Children and Young People Act 1998 employers are required to provide details to the Commission for Children and Young People of any employee (either paid or unpaid) who has been the subject of relevant employment proceedings completed since 3 July 1999.

The employment proceedings that are considered relevant are all disciplinary proceedings involving reportable conduct by the employee or an act of violence committed by the employee in the course of employment and in the presence of a child.

DO NOT NOTIFY the Commission for Children and Young People of employment proceedings which found such allegations to be false, vexatious or misconceived, or which found that reportable conduct or an act of violence did not occur. Further information in relation to relevant completed employment proceedings are contained in the Working With Children Check Guidelines.

In notifying the Commission for Children and Young People, employers must determine whether the relevant employment proceeding is a Category One or Category Two employment proceeding. Information to assist employers in determining the category of the employment proceeding is provided in the Working With Children Check Guidelines.

No additional details other than the information below are required by the Commission for Children and Young People.

EMPLOYEE DETAILS
First name: ___________________________ Middle names: ___________________________
Surname: ___________________________
Previous names/aliases: ___________________________
Gender: ___________________________
Date of birth: ___________________________
Place of birth (city, state, country): ___________________________

EMPLOYER DETAILS
Employer/organisation name: ___________________________
ABN: ___________________________
Address: ___________________________
Phone: ___________________________
Fax: ___________________________
Email Address: ___________________________
Name of relevant contact person: ___________________________
Position of relevant contact person: ___________________________
Date of completion of proceedings: ___________________________

Is the above individual currently an employee of your organisation? ☐ Yes ☐ No

ATTACHMENT 8 (CONTINUED)

Employer name:

Employee name:

CATEGORY OF RELEVANT EMPLOYMENT PROCEEDING

(Please tick the appropriate box)

☐ This is a Category One proceeding  ☐ This is a Category Two proceeding

I certify that the above mentioned individual has been the subject of employment proceedings involving reportable conduct or an act of violence and that I have the authority to submit these details to the Commission for Children and Young People for employment screening purposes.

This information may be used for monitoring and auditing compliance with the procedures and standards for employment screening in accordance with Section 38 (1) (d) of the Commission for Children and Young People Act 1998.

Name:  

Position:  

Signature:  

Date:  

Note: This form must be forwarded to the Commission for Children and Young People only by employers and is not to be provided to any other person or organisation.

Please fax this form to the Commission for Children and Young People on (02) 9286 7291.

NSW Commission for Children and Young People

ATTACHMENT 9.3

Responding to allegations (including charges) and convictions concerning children.

Health Service employee is made aware of an allegation of, or conviction for, inappropriate child related conduct.

Employee records details of allegation/conviction. What happened, when and where, who was involved.

Is any child/children at risk of harm?

Y

Notify DoCS Helpline.

Consult NSW Health Policy Directive 2005-266.

The NSW Ombudsman Guide to Child Protection in the Workplace should be consulted.

A Reportable Incident Brief must be submitted within 24 hours of the allegation being made.

The Ombudsman must be notified as soon as practicable and in any event within 30 days of the allegation being made.

Investigations and disciplinary action must be finalised in a timely manner.

NOTE: If the allegation is against an employee of another Health Service, a Chief Executive or Senior Manager, ESRU should be notified.

N

Notify Chief Executive (incl. Mgr), CEO or delegate to notify Police if criminal conduct alleged.

CE or delegate examines whether the employee should be directly suspended, relocated or suspended.

Health Service initiates investigation.

Is allegation/conviction reportable under the Ombudsman Act 1999?

Y

Reportable Incident Brief sent to the Director-General.

ESRU notified that investigation has been undertaken & concluded.

NOTE: Where an allegation/conviction involves an act of violence in the course of employment and in the presence of a child, CDYP must be notified unless the finding is that the allegation was false, vexatious or misconceived.

N

NSW Ombudsman notified using Ombudsman notification form. ESRU provided a copy.

Health Service completes investigation and determines any disciplinary action.

Was the finding that the allegation was false, vexatious, misconceived or did not involve reportable conduct?

Y

CCYP and Ombudsman must be notified within 7 days of investigation being finalised.

N

Notify CDYP using the Relevant Employment Proceedings Notification Form. ESRU provided a copy.

Final Report and Part B of Ombudsman Notification form sent to Ombudsman. ESRU provided a copy.

At all stages in this process the NSW Ombudsman Child Protection Team (02 9286 1000) and the NSW Health, Employment Screening and Review Unit (02 9391 9800) are available to provide advice and assistance.

Investigations should be conducted by an appropriately trained and experienced investigations officer.
MANAGING MISCONDUCT (PD2014_042)

PD2014_042 rescinds PD2006_026.

PURPOSE

This Policy Directive sets out the requirements for managing potential and/or substantiated misconduct by staff of the NSW Health Service and by visiting practitioners. Further guidance and support in managing misconduct are provided by non-mandatory Information Sheets, including flowcharts, checklists and templates, which are available online on the NSW Health intranet site.

MANDATORY REQUIREMENTS

- The protection of an organisation’s patients and clients, including the children for whom it is responsible, is to be the primary consideration when managing and making decisions related to potential and substantiated misconduct.
- Potential misconduct must be treated seriously and an initial review of any apparent or potential misconduct must take place without delay.
- Where an initial review indicates there is a credible allegation or possibility of misconduct, or that the matter involves a child-related allegation, charge or conviction, further action to pursue the matter in accordance with this policy should take place in a timely manner consistent with the requirements of procedural fairness.
- Any ongoing risks related to potential or substantiated misconduct must be identified, assessed, managed, and regularly reviewed throughout the management process, including any requirements arising from the Service Check Register policy.
- Those involved in a potential misconduct process have both the right to confidentiality and the responsibility for maintaining confidentiality, subject always to the overriding need to be able properly to undertake any inquiries or investigation that may be necessary, and to take the action required by this Policy Directive.
- A person who is subject of a misconduct process must be given adequate opportunity to respond to any allegations, adverse findings, and proposed disciplinary action, prior to any final decision being made.
- A person who is subject of a misconduct process must be afforded the right to a support person being present at any meetings. Other support may also need to be offered to all affected persons, where appropriate.
- Any findings made must be based on relevant available information that is established ‘on the balance of probabilities’.
- Any action to be taken as a response to a misconduct finding must be proportionate to the nature of the misconduct, after consideration of any extenuating circumstances, previous work performance and history, and any identified ongoing risks.
- A termination of employment in NSW Health Service following a finding of misconduct will apply to all roles or multiple assignments undertaken as an employee in the NSW Health Service unless the person can show cause as to why this should not occur. NSW Health organisations must provide dismissed staff access to the show cause mechanism outlined in Section 9.3 of the following Procedures.

44(27/11/14)
• Where the appointment of a visiting practitioner is terminated following a finding of misconduct, the relevant Health organisation must notify any other Health organisation(s) where the visiting practitioner also holds an appointment contract to allow them to assess and manage any local risks.
• Any required internal or external notifications concerning potential or substantiated misconduct (such as to registration authorities) must be made without delay in accordance with the relevant statutory and/or policy provisions.
• Appropriate records of all stages of the process (including the initial review and any investigation) and outcomes must be kept and stored securely.

IMPLEMENTATION

This Policy Directive applies to all staff of the NSW Health Service and to visiting practitioners. It does not apply to staff employed in the NSW Health Executive Service, contractors who are not visiting practitioners, or to agency staff, students, volunteers or researchers who are not staff employed in the NSW Health Service. However, where it is decided to conduct an investigation into alleged misconduct by any person in these categories, this Policy Directive may nevertheless be used to guide the process.

Any complaints or concerns related to the clinical performance, practice or outcomes of a health practitioner or other health service provider (as defined under the Health Practitioner Regulation National Law (NSW)) must be managed in line with the NSW Health policy on managing a complaint or concern about a clinician.

The following staff have key responsibilities in relation to this Policy Directive:

Chief Executives are required to:
• Ensure that this Policy Directive is communicated to, and complied with by staff involved in managing potential or substantiated misconduct.

Workforce Directorates/Human Resources Departments/Internal Audit Units/Governance or Professional Conduct and Standards units are required to:
• Ensure provision of information and advice as necessary to support effective implementation of this policy.

Supervisors/Managers are required to:
• Comply with this Policy Directive in dealing with all cases of potential and substantiated misconduct.

1. BACKGROUND

1.1 About this document

These Procedures outline the requirements for managing potential or substantiated misconduct of staff of the NSW Health Service. Information Sheets have also been developed to provide guidance and support in meeting the requirements of this Policy Directive. Links to Information Sheets have been provided throughout the Procedures, and a complete list is available on the Ministry of Health’s intranet site at http://internal.health.nsw.gov.au/jobs/conduct/index-conduct.html.
A summary flowchart of the overall process for managing potential misconduct is provided at Information Sheet 1. Suggested timelines are at Information Sheet 2. The rights and responsibilities of all parties involved in managing misconduct (including the need to maintain appropriate confidentiality throughout the process) are outlined in Information Sheet 3.

1.2 Key definitions

Misconduct – includes:
- Behaviour or conduct which seriously or repeatedly breaches expected standards, as identified in relevant legislation (such as the Health Services Act 1997 or the Health Practitioner Regulation National Law (NSW)), registration standards or codes/guidelines approved by a National Health Practitioner Board or NSW Health policies (such as the Code of Conduct). 65
- Refusal to carry out a lawful and reasonable direction given by a line manager or another member of staff authorised to give the direction.
- Reportable (ie child-related) conduct as defined under the Ombudsman Act 1974 (including allegations relating to conduct outside the workplace).
- Corrupt conduct as defined under the Independent Commission Against Corruption Act 1988.
- Serious wrongdoing that could be the subject of a public interest disclosure under the Public Interest Disclosures Act 1994, ie relating to corrupt conduct, maladministration, serious and substantial waste, or failure to deal appropriately with Government Information.
- Criminal charges or convictions that have an adverse impact on the workplace or the role or performance of the staff member (including such offences committed outside the workplace and/or work hours, or prior to appointment to NSW Health).
- For staff of the Ambulance Service of NSW, misconduct as defined under Part 4 of the Health Services Regulation 2013.
- Making vexatious allegations, or knowingly making false or misleading public interest disclosures.
- A failure to comply or cooperate with the processes for investigating or managing misconduct set out in this Policy Directive.

NSW Health organisation - For the purposes of this policy directive, any public health organisation as defined under the Health Services Act 1997, the Ambulance Service of NSW, Health Infrastructure, HealthShare NSW, NSW Health Pathology, any other administrative unit of the Health Administration Corporation, and Albury-Wodonga Health in respect of staff who are employed in the NSW Health Service.

NSW Health Service - All persons employed under Chapter 9, Part 1 of the Health Services Act 1997.

Staff member - For the purposes of this policy directive, any person who is employed in the NSW Health Service, or engaged in the NSW public health system as a visiting practitioner.

65 Note: Complaints or concerns about the clinical performance, practice or outcomes of a health practitioner or other health service provider must be managed under the current NSW Health policy on managing a complaint or concern about a clinician.
2. INITIAL REVIEW AND RESPONSE

2.1 Purpose of an initial review

A staff misconduct issue may arise or be identified from a number of sources, such as: internally or
externally raised allegations; complaints or concerns; managers’ or colleagues’ observations;
notifications including self-disclosure by a staff member; inquiries or investigations; or other
workplace processes.

There must be an initial review of any allegation or concern about potential misconduct which is
raised without delay (Information Sheet 4). An initial review seeks to gather all readily available
information that may assist in clarifying an allegation or concern in order to:

- Identify any immediate risks to the safety and welfare of patients and/or staff (including any
  complainant) that need to be managed immediately.
- Determine, as far as practical, the credibility, nature and seriousness of the matter.
- Determine whether the matter should be managed under this policy or another policy (eg
grievance etc) (Information Sheet 5).
- Identify and consult all relevant policy directives and their process requirements (Information
  Sheet 5).
- Identify any immediate internal and external notification requirements (Information Sheet 6),
  including the NSW Health Service Check Register. All allegations that involve possible
  criminal conduct must be reported to the NSW Police.

2.2 Determining further action

Where an initial review indicates that the matter does not involve a misconduct issue (eg is assessed
as a low level, low risk grievance or Code of Conduct issue, a performance issue etc), this outcome is
to be clearly documented and the provisions of this Policy Directive are no longer applicable. Any
further action appropriate to the circumstances should be taken in accordance with any other relevant
policies (Information Sheet 5).

Where an initial review indicates that an allegation is credible or there is an indication of apparent
misconduct, or that the matter involves a child-related allegation, charge or conviction, appropriate
action must be taken to address the matter in accordance with this Policy Directive (and, as
appropriate, the current NSW Health policy on child-related allegations, charges and convictions).

Such action must be taken irrespective of whether the matter is being investigated by an external
regulatory or investigative body (such as the Police and/or Community Services), and irrespective of
the outcome of any such external proceeding. However, consultation with any external regulatory or
investigative bodies must take place to ensure that any external investigations are not compromised.

In circumstances involving serious criminal allegations or child-related allegations, discussions should
occur with NSW Police and/or Community Services at an early stage, which may result in a decision
to defer any investigation by the NSW Health organisation pending the resolution of the criminal or
child protection proceedings. Where this occurs the organisation must still undertake a risk
assessment (see Section 3) to determine whether any immediate action is required to manage risks.
This will normally involve a consideration of suspension of the staff member from duty or other
available strategies in accordance with Section 3 and 4 of this document.

Where a matter relates to the clinical performance, practice or outcomes of a health practitioner or
other health service provider, it must be assessed and managed in accordance with the current NSW
Health policy on managing a complaint or concern about a clinician.
Where a matter relates to conduct outside the workplace, its relevance to the workplace must be assessed to determine if any action is required. (However, specific requirements apply to child-related matters outside the workplace - see the current NSW Health policy on child-related allegations, charges and convictions.)

An investigation into an allegation or apparent incident of misconduct should only occur where there is uncertainty about the relevant facts (Information Sheet 4). Where the facts are clear and uncontested, findings arising from the initial review can at that stage be provided to the decision-maker, who must either accept or reject them, and then decide what action should be taken in response to the findings. A staff member subject to an adverse finding in such circumstances must be provided with an opportunity to respond to such a finding, as well as to any proposed disciplinary action (refer to 7.5.2 for further information).

Appropriate documentation about an allegation or incident of potential misconduct, the initial review, and any recommendations for further action, or a decision not to proceed further, must be kept.

2.3 Advising the staff member

A staff member who is the subject of an initial review regarding potential misconduct should be informed that an issue has been raised about him or her as soon as credible details indicating potential misconduct have been identified, and it is deemed safe and appropriate to do so (Information Sheet 7). Any verbal advice should be confirmed in writing.

3. MANAGING RISKS

3.1 General

Where managing potential misconduct needs to involve more than just an initial review, a risk assessment must be conducted and a risk management strategy put in place as soon as possible. The purpose of a risk assessment is not to determine whether misconduct took place, but purely to assess whether there are any significant ongoing risks in the workplace that require managing (Information Sheet 8). The need to continue with any immediate risk response put in place at the time of the initial review should also be assessed as part of the risk assessment.

A suggested risk assessment template is available at Information Sheet 9.

Any action to manage the identified risks must be communicated to the staff member who is to be subject to that action in writing (Information Sheet 7) and include advice of any creation of a record in the NSW Health Service Check Register. It may also be necessary to manage communications to other affected staff, patients or others.

Appropriate support should be offered to a staff member who is subject to risk management action, and may also need to be provided to other affected staff/patients/other parties.

Any notification requirements must be attended to without delay.

The position of a staff member must not be permanently filled while that staff member is suspended or on interim work arrangements as a risk management measure.
3.2 Options to manage risks

Action to manage risks arising from a risk assessment must be specific and proportionate to the circumstances. Where risk management action is necessary, consideration must be given to appropriate and available administrative action by way of alternative interim work arrangements.

Suspension from duty is a last resort risk management strategy (see Section 4).

See also Section 4.3 regarding payment of shift-penalties and other allowances while undertaking alternative duties or during suspension on pay.

3.3 Ongoing review

While a potential misconduct matter is ongoing, any risk management measures must be reviewed and any risks reassessed, at a minimum every 30 days, or when new information, relevant to the risk management strategy in place, comes to light. Where the review results in a change in risk management measures, any relevant NSW Health Service Check Register record must also be reviewed and amended as appropriate.

3.4 Requests for review of risk management measures

A staff member subject to risk management action may request a review of the risk management measures by application in writing to the relevant manager or person who conducted the risk assessment, on the grounds that:

• The risks have not been identified or assessed appropriately or
• The risks have changed or no longer exist.

4. SUSPENSION OF STAFF

4.1 General

Suspension of a staff member from duty can only occur as a risk management strategy where:

• A risk assessment has been conducted.
• A potential risk is posed by the staff member remaining at his or her current work; and
• The potential risk cannot be appropriately managed in any other way.

In addition, Section 120A(1) of the Health Services Act 1997 outlines specific circumstances in which a staff member who is subject to actions taken by an external body can be suspended. Whether suspension is appropriate in these circumstances will depend on:

1) Whether the staff member can continue to perform the role for which he or she was employed, having regard to the following circumstances:
   (a) Suspension of the registration of a staff member as a registered health practitioner by a health professional council under s150 of the Health Practitioner Regulation National Law (NSW) - the staff member cannot practise as a health practitioner.
   (b) Conditions imposed on the registration of a staff member as a registered health practitioner imposed by a health professional council under s 150 of the Health Practitioner Regulation National Law (NSW) – the staff member may not provide some or all of the services which he or she was employed to provide, or cannot do so without adjustment to working arrangements.
(c) An interim prohibition order by the Health Care Complaints Commission during an investigation into a staff member as an unregistered health practitioner prohibiting the provision of health services or specified health services by that staff member – the staff member may not provide some or all of the services which he or she was employed to provide.

(d) An interim prohibition order by the Health Care Complaints Commission during an investigation into a staff member as an unregistered health practitioner that places conditions on the provision of health services – the staff member may not be able to provide all the services he or she was employed to provide, or cannot do so without adjustment to working arrangements.

(e) Charged with a serious criminal offence and is remanded in custody or has bail conditions imposed that prevent or restrict the ability to present for work – the staff member cannot fulfil the terms of his or her employment.

(f) Charged of a serious criminal offence (other than in the circumstances in (e) above) – a risk assessment must be conducted to determine whether it is appropriate for the staff member to continue to provide the services he or she was employed to provide.

2) Whether alternative interim work arrangements are appropriate, available and can be safely provided without adverse impact on the operational efficiency and budgetary constraints of the NSW Health organisation.

4.2 Whether suspension under s120A of the Health Services Act 1997 should be with or without pay

Where a staff member is suspended, the payment of salary at the applicable ordinary time rate (ie without shift penalties and other allowances, but refer to 4.3 regarding reimbursement in certain circumstances) should usually continue. Suspension may be without pay in the circumstances set out in Section 120A(1) of the Health Services Act 1997 if the Secretary of the Ministry of Health, or the Chief Executive of the relevant NSW Health organisation (acting under his or her delegated employer function), so directs.

A staff member who is suspended without pay must be allowed to access any paid annual or long service leave entitlements accrued prior to the suspension. While accessing such leave entitlements, his or her employment will remain suspended.

4.3 Final decisions regarding salary which has been withheld during suspension without pay

Where a staff member is suspended due to action taken against the staff member by an external body under s120A(1) of the Health Services Act 1997, and the staff member’s salary has been withheld during that action (under s120A(2)), and the outcome of the external body action is one of the following:

(a) The staff member’s registration is suspended or cancelled by the Civil and Administrative Tribunal under Section 149C of the Health Practitioner Regulation National Law (NSW).

(b) Conditions are imposed by the Tribunal on the registration of the staff member as a registered health practitioner under Section 149A (1) (b) of the Health Practitioner Regulation National Law that, in the opinion of the Secretary of the Ministry of Health, or the Chief Executive of the relevant NSW Health organisation (acting under his or her delegated employer function), are inconsistent with any of the inherent requirements of the terms of employment of the staff member.

(c) A prohibition order is made by the Health Care Complaints Commission in respect of the staff member as an unregistered health practitioner under Section 41A of the Health Care Complaints Act 1993 that prohibits the staff member from providing health services or specified health services.
(d) A prohibition order is made by the Health Care Complaints Commission in respect of the member of staff under Section 41A of that Act that places conditions on the provision of health services or specified health services by the staff member that, in the opinion of the Secretary of the Ministry of Health, or the Chief Executive of the relevant NSW Health organisation (acting under his or her delegated employer function), are inconsistent with any of the inherent requirements of the terms of employment of the staff member, or

(e) The person is convicted of a serious criminal offence.

The Act provides that the staff member’s salary is to be forfeited to the State, unless the Secretary of the NSW Ministry of Health, or the Chief Executive of the relevant NSW Health organisation (acting under his or her delegated employer function), directs otherwise (s120A(3)).

Conversely, where the action against the staff member by the external body does not result in any of the final actions in (a)-(d) above being taken against the staff member, the Act provides that any salary withheld is to be paid to the staff member, unless the Secretary of the NSW Ministry of Health, or the Chief Executive of the relevant NSW Health organisation (acting under his or her delegated employer function), directs that the salary is to be forfeited to the State (s120A(4)).

Where withheld salary is paid to the staff member, it should include any relevant allowances and shift penalties (calculated as outlined in Section 4.3 of these Procedures). If the staff member had accessed any paid annual or long service leave while suspended without pay, this leave should be re-credited to him or her.

There may be circumstances where it is not appropriate to provide public money to a staff member for a job that he or she did not, and could not, perform, particularly where the Health organisation has incurred an additional expense to provide the services during the staff member’s period of suspension. In these circumstances the Secretary of the NSW Ministry of Health, or the Chief Executive of the relevant NSW Health organisation (acting under his or her delegated employer function), may, in accordance with the Act, direct that the withheld salary is to be forfeited to the State. Relevant considerations may include:

- The extent to which the conduct of the staff member contributed to the issue in the first place.
- Whether the staff member has complied with statutory duties to report certain criminal conduct and disciplinary matters.
- Where a risk assessment suggests that the continued employment of the staff member poses an unacceptable risk to the Health organisation.
- The length of the period the staff member was unable to meet the inherent requirements of his or her employment.

4.4 Reimbursement of shift penalties and other allowances following suspension on pay or alternative duties

Where a staff member is engaged as a shift worker on a permanent or regular basis, or has undertaken shift work regularly in the previous 3 months, and where

- The staff member is suspended or allocated alternative duties as a risk management strategy pending the outcome of an investigation and/or decision-making process in relation to a misconduct allegation against him or her, and
- The suspension or alternative duties result in a loss of shift penalties and/or other work related allowances, and
- No adverse finding is subsequently made against the staff member,
the staff member is to be reimbursed for the loss of shift penalties and/or work related other allowances. The reimbursement is based on the average of any shift penalties and/or other work related allowances for the preceding 6 months or, if the period of shift work is less than 6 months, the average for the period worked.

4.5 Suspension of visiting practitioners

The Visiting Medical Officer Determinations provide that an organisation may suspend the appointment of a visiting medical officer where it is considered necessary in the interests of the hospital to which the visiting medical officer is appointed. The suspension of any visiting practitioner is without pay. Note that the Health Services Act 1997 provides for an appeal mechanism for visiting practitioners whose appointment is suspended.

As visiting practitioner appointments are made under statutory powers and with statutory powers of appeal against suspension, it is important to be able to demonstrate procedural fairness in reaching any decision to suspend (which would usually involve providing notice to the visiting medical officer of the possibility of suspension and of reasons, and an opportunity to respond).

Further advice can be sought from each NSW Health organisation’s medical administration.

5. INVESTIGATION

5.1 The purpose of an investigation

An investigation is a formal process of collecting and analysing all available relevant information to ascertain facts in order to make findings. An investigation precedes, and is separate from, any final decision by a decision-maker about whether to accept or not accept findings, and about whether and what further action (disciplinary or other) is required.

The purpose of an investigation is to determine whether:
- The alleged or suspected misconduct has occurred and, if so, to put forward findings to that effect.
- The substantiated conduct breached expected standards, or relevant policies or legislation.
- There are any extenuating circumstances or other contributing factors that may need to be considered.

An investigation need only occur into potential misconduct where there is uncertainty about the relevant facts. Even where no investigation is necessary, the decision-making process set out in Sections 7 and 8 of these Procedures should be followed. The requirements of any additional relevant policies identified during the initial review must also be complied with (Information Sheet 5).

Any investigation must be completed as expeditiously as possible without compromising procedural fairness.

If a matter has been referred to an external regulatory or investigative body, ongoing liaison with that body must occur to coordinate, as appropriate, the timing and conduct of any internal investigation with any action being undertaken by the external body (see also Section 2.2 re serious criminal allegations and child-related allegations).
A flowchart of the investigation process is provided at Information Sheet 10. The following publications also provide guidance on conducting internal investigations:

- NSW Ombudsman: Investigating Complaints - A manual for Investigators

5.2 Selecting investigators

Investigators must have suitable skills and experience, an understanding of the investigation process, and, if an external investigator, no direct involvement with or interest in the matter under investigation.

In most cases, an investigation can be conducted by someone internal to the NSW Health organisation, supported by local HR, internal audit, governance, or professional conduct and standards units, as necessary.

External investigators may be used, for example, where a Health organisation considers that there is no one available within the organisation or elsewhere in NSW Health with the appropriate skills, or where very senior executive staff are involved. A government-wide panel of pre-qualified service providers is available and can be accessed through NSW Government ProcurePoint at https://www.procurepoint.nsw.gov.au/performance-and-management-services-scheme, although persons not on this panel can also be used.

External investigators must sign a contract (a standard services/consultancy contract is available at http://internal.health.nsw.gov.au/legal/goods.html), as well as a declaration that they understand the expectations for the investigation and have received information about any relevant NSW Health policies. Appropriate checks must also be conducted to confirm the capacity of an external investigator to carry out the investigation appropriately.

The decision-maker should not be involved in any investigation.

5.3 Advice to a staff member who is subject to a misconduct process

Written advice must be provided to the staff member about the allegations against him or her and about the investigation process. The advice must contain sufficient information about the allegations to allow the staff member to provide a considered response (Information Sheet 7).

5.4 Interviews

The investigator must put the substance of the allegations and any key relevant evidence to the staff member subject to the allegations as part of the interview process. In order to do this, it is usually best to interview any complainants and/or witnesses first to gain as much detail about the alleged misconduct as possible.

An investigator may decide to accept receipt of information in a written statement instead of, or in addition to, an interview, although an interview is usually preferable, particularly where additional detail is required or to explore issues in greater detail.

Reasonable notice of an interview must be given in writing (usually 48 hours). All persons to be interviewed must be advised that they may have a support person of their choosing present, and that the reasons for the interview and its content must remain confidential.
The support person does not represent the staff member nor advocate or make representations on behalf of that person.

Records of interviews should be taken and kept. (Note that under the Surveillance Devices Act 2007, electronic/tape recordings can only be made with the agreement of all parties to the interview.) Persons interviewed should be provided with a copy of a summary or record of interview for review and signature as soon as possible. See also Section 6.8 regarding disputes over interview records.

6. ISSUES ARISING DURING INITIAL REVIEW, INVESTIGATION OR DECISION-MAKING PROCESSES

6.1 Unreasonable conduct by complainants

Complainants may demonstrate unreasonable persistence, demands or arguments, lack of cooperation, aggression etc.

- Refer to the NSW Ombudsman publication Managing Unreasonable Complainant Conduct for guidance in managing complainants.
- Any aggression or threats of violence by staff are to be managed as a breach of the NSW Health Code of Conduct.

6.2 Frivolous, vexatious or misconceived allegations/concerns

If at any point in the process it becomes apparent that an allegation of, or concern about, misconduct is frivolous, vexatious, misconceived or otherwise lacking in substance:

- The process must stop.
- This must be communicated to the decision-maker for assessment.
- The decision to conclude the process must be recorded with reasons.
- If the staff member subject to the allegation or enquiry has already been notified, he or she must be advised as soon as possible that allegations or concerns were not supported (it may also be appropriate to provide an apology).
- Vexatious allegations amount to misconduct. If a complainant is a staff member, such an allegation must be separately managed in line with this policy directive.

6.3 When a staff member does not cooperate

All staff members are expected to cooperate in any process to manage potential misconduct.

- If a staff member fails or refuses to attend an interview or provide a written statement within the timeframe advised, any reasons for the failure put forward or otherwise identified must be considered, any reasonable accommodation made as required, and the staff member advised of a final date for the interview/written statement.
- If the staff member continues to refuse to attend an interview/provide a written statement without reasonable grounds, he or she is to be directed in writing to attend an interview or provide a written statement by a specific date and advised in writing that a refusal may constitute a breach of the NSW Health Code of Conduct with potential disciplinary consequences, and that the investigation will continue in any case and a decision will be made based on available information.
- If the staff member attends an interview but refuses to engage or to provide relevant information sought by the interviewer, he or she must be advised that the content of the interview will nevertheless be recorded, and that the investigation will continue and a decision will be made based on available information. This advice is to be confirmed in writing following the interview.
6.4 When a staff member is on approved leave during an investigation

It may be appropriate to recall the person from leave to be interviewed or seek a written statement from him or her where a timely completion of the investigation is necessary.

6.5 When a staff member is on sick leave/workers compensation leave during an investigation

Consideration must be given to whether the medical condition of a staff member reasonably prevents him or her from taking part in an interview or providing a written statement.

If the staff member is on workers compensation leave, any return-to-work restrictions in place must be considered.

If the staff member is on sick leave due to a non-work related injury or illness, the Health organisation should rely on the available medical advice from the employee’s treating doctor in the first instance to determine the staff member’s ability to participate in the investigation. Where there are ongoing concerns or a lack of clarity over the staff member’s prognosis, action may include seeking the staff member’s consent to discuss their prognosis with their treating doctor, or, if the staff member does not consent to this, referring them for a further medical assessment (the process is set out in the current NSW public sector procedures for managing non-work related injuries or health conditions).

If the staff member is not able to attend an interview, but is able to provide, or arrange for the provision of, a written statement, this should be formally sought on the basis that a timely completion of the investigation is necessary. In these circumstances, the staff member should be advised of the deadline for the provision of the written statement, and that the investigation will continue in any case, and a decision will be made based on available information.

6.6 Where the staff member resigns prior to completion of a misconduct management process

The process must still be completed, including making findings and decisions about any action that would have been taken against the staff member had he or she still been in the position, and all relevant notifications.

The management process must be fair to the former staff member (including the timely completion of any investigation and providing the former staff member with an opportunity to respond to any allegations or adverse findings).

An entry into the Service Check Register may have to be made or amended – see the current NSW Health policy on Service Check Register.

6.7 Delays in completing the management process

If the completion of the process is delayed beyond the recommended 12 weeks (Information Sheet 2) or any timeframe previously advised, all key parties must be advised of this in writing.

6.8 Disputes over interview records

Any issues about the content of the record of interview are to be discussed and resolved if possible, and the record altered to reflect any agreed changes.

If the issues cannot be resolved, the interviewee is to be asked to submit a statement giving reasons for not signing the record, the investigator must record reasons for not agreeing to the requested changes, and both statements must be appended to the interview record.

44(27/11/14)
Complaints about the investigation/investigator

Complaints about the investigation or the investigator are to be referred for review to the manager responsible for the process and assessed without delay to ensure continued integrity of the process.

7. MAKING FINDINGS

7.1 Options for findings

Generally, the findings arising from an investigation or, in appropriate circumstances, an initial review, fall into one of the following:

- Misconduct is substantiated
- Misconduct is partially substantiated (eg part of an allegation is substantiated)
- Misconduct is not substantiated (no evidence that misconduct has occurred, or evidence that it did not)
- Misconduct is not substantiated due to insufficient or inconclusive information (ie not able to make a finding).

Note: Specific requirements apply to findings that can be made for child-related allegations that are notifiable to the Ombudsman (refer to current NSW Health policy on child related allegations, charges and convictions).

The strength, sufficiency, relevance and reliability of any information must be carefully assessed to determine whether it can support a finding, and where clarification is required, more information should be gathered.

7.2 Standard of proof

Findings of misconduct must be proved to the civil standard, that is, “on the balance of probabilities”. In other words, based on available evidence, it must be more probable that misconduct has occurred than that it has not.

In addition, consistent with the “Briginshaw v Briginshaw principle”, the more serious the potential misconduct, and therefore the more serious the consequences for the staff member, the stronger the evidence must be to support an adverse finding.

7.3 Investigation findings and investigation report

Where an investigation has been conducted, the person conducting the investigation should provide a report setting out findings arising from the investigation and the facts supporting those findings to the decision-maker (Information Sheet 11).

The investigation report should not contain information that is not relevant to the conduct under investigation. Where new allegations arise during an investigation, these must be assessed: allegations or concerns not closely related to the investigation, or any counter-allegations, must be managed separately in line with this Policy Directive. Where appropriate, an investigator should include in a report any material which may set out mitigating factors or be otherwise exculpatory in respect of the staff member subject to the investigation.

All supporting documentation should be available to be examined by the decision-maker.
7.4 Findings where no investigation has taken place

As set out in Section 2.2, an investigation is only necessary where there is uncertainty about the facts. Where an initial review determines that the facts are clear and/or uncontested, findings arising out the initial review should be set out together with the supporting facts in a report which should be provided to the decision-maker.

7.5 Final decisions about findings

7.5.1 The role of the decision-maker

The decision-maker should not have any direct conflict of interest involving the complaint. He or she must act in an objective and impartial manner, and have regard to procedural fairness requirements and risk management.

It is the role of the decision-maker to:

- Accept or reject findings arising from the investigation, or the initial review. The decision-maker may accept some but not all of the findings. Any decision to reject a finding, and the reason for it, must be documented. It is also open to the decision-maker to ask that the person or persons who conducted the investigation make further enquiries, or otherwise to initiate or undertake further enquiries, where he or she is concerned that more information is needed to support findings.
- Make decisions about any action to be taken by the Health organisation as a response to the findings (see Section 8).

7.5.2 Seeking a response to adverse findings

An adverse finding is a finding that is unfavourable to the staff member subject to a misconduct process, ie supports the allegation or apparent incident of misconduct. Adverse findings do not include inconclusive findings.

Where the decision-maker is proposing to support an adverse finding against a staff member, the staff member must be so advised and given an opportunity to provide any additional information, or raise any concerns about an investigation process or the proposed findings to the attention of the decision-maker.

In order to be able to provide a considered response, the staff member has a right to access relevant information that has been taken into consideration by the decision-maker in making an adverse finding. The material should be sufficient to enable the staff member to understand fully any alleged misconduct, but need not include all information in the possession of the decision-maker, particularly where the interests of other members of staff may need to be protected or the material is not relevant to the findings.

In certain circumstances (eg public interest disclosures, in respect of confidential information about third parties, or where there may be a potential risk to the wellbeing of the staff member or others) it may be appropriate to withhold some information. What information is withheld and for what reason should be appropriately recorded.

A response from the staff member should be required within a reasonable time period (usually two calendar weeks unless otherwise agreed).
Where the staff member’s response provides additional information that has not been raised before and may materially affect the findings, the findings should be reviewed accordingly. In some instances further investigative action may need to take place.

The staff member must also be provided with an opportunity to make submissions about any proposed disciplinary action. The response to proposed disciplinary action may be sought at the same time as the response to proposed adverse findings (after considering what may be appropriate action in line with Section 8). However, where the staff member’s response affects the findings, the proposed action will need to be reviewed accordingly, and the staff member must be given an opportunity to respond to any revised proposed disciplinary action.

8. MAKING DECISIONS ABOUT ACTION TO BE TAKEN

8.1 Considering an appropriate response to findings

The decision-maker must form a view of the appropriate outcome of the process based on the material available. In deciding what action is appropriate the following must be considered:

- As the paramount consideration, the protection of a NSW Health organisation’s patients and clients and of children for whom it is responsible. In particular, Section 119 of the Health Services Act 1997 specifies this as the paramount consideration in relation to determining whether to take disciplinary action against a member of staff in respect of serious sex or violence offences.
- The health, safety and well-being of the organisation’s staff.
- The seriousness of the misconduct, and the extent to which it constitutes a breach of any relevant legislation, registration standard or the Code of Conduct or any other NSW Health or Health organisation policies.
- Any penalties prescribed by legislation or other relevant policy directives (eg the hand hygiene policy, the policy on misuse of NSW Health communication systems).
- Any action taken by external regulatory bodies in relation to the staff member (eg deregistration etc).
- Whether the misconduct involved a pattern of behaviour or was an isolated incident.
- The staff member’s length of service and previous work history, including the period of time since any previous conduct issues (this may involve a review of the Service Check Register).
- Any factors affecting the staff member’s behaviour. Where information obtained during the initial review or investigation suggests an underlying health issue may have caused or contributed to the conduct, it may be appropriate to refer the staff member to a medical assessment. For further information, refer to the current NSW public sector procedures for managing non-work related injuries or health conditions. Note also that employers have statutory notification requirements in relation to potential impairment of a health practitioner under the Health Practitioner Regulation National Law (NSW).
- Any matters raised by the staff member about the findings or about the penalty or action that should be taken in response to the misconduct (see Section 8.3 following).
- The impact of the conduct on the organisation and other staff.
- The potential impact that any action may have on the staff member’s personal circumstances and professional reputation.
8.2 Options for action in response to findings of misconduct

The following options exist for a decision-maker (refer also to Information Sheet 12):

- **No further action** – relevant where conduct did not seriously breach expected standards, or misconduct occurred but no further action is warranted because of mitigating circumstances.

- **Remedial (ie non-disciplinary corrective) managerial action** – may be relevant where findings of misconduct were made but not considered to warrant disciplinary action, or in conjunction with disciplinary action, or can be appropriate where allegations have not been substantiated as misconduct but the staff member’s conduct nevertheless needs to be addressed (eg low level breach of the Code of Conduct, performance issue, other policy requirements – refer to Information Sheet 5).

- **Disciplinary action**, which can take the following form:
  - A formal warning, clearly stating the improved standard of conduct that is required within a given timeframe and the possible consequences of failing to reach that standard, and indicating any assistance available to help the staff member meet the expectations.
  - An annulment of appointment, where a staff member is on probation.
  - For staff of the Ambulance Service of NSW only, reduction of the staff member’s classification or position.
  - Dismissal from the NSW Health Service, or termination of a visiting practitioner’s appointment. Termination of employment must be approved by the Chief Executive, who must be independently satisfied that this action is warranted. (See also Section 9.3 regarding other action arising from a termination of employment.)

Note that some other NSW Health policy directives (such as those dealing with hand hygiene, and misuse of NSW Health communication systems) also contain provisions for disciplinary action.

Note also that specific provisions exist under the *Health Services Act 1997* in relation to a member of staff (Section 118) or a visiting practitioner (Section 100) who has been convicted of a serious sex or violence offence.

- **Addressing systems/organisational issues** – these may be appropriate even where allegations have not been substantiated or findings are inconclusive.

Any action proposed must be proportionate to the seriousness of the conduct and any identified ongoing risks, after consideration of any mitigating circumstances. In some instances, more than one of the above responses may be appropriate.

8.3 Seeking a response from a staff member regarding proposed disciplinary action

Any disciplinary action proposed by a decision-maker in response to a staff member’s misconduct must be communicated to the staff member in writing. The staff member must be given an opportunity to make submissions to the decision-maker in relation to the proposed disciplinary action before a final decision about it is taken.

The decision-maker can seek a response to proposed adverse findings and proposed action at the same time (see also Section 7.5.2).

A reasonable period of time (usually two calendar weeks, unless otherwise agreed) must be allowed for a response. Any such response must be considered by the decision-maker before a final decision is made about the action to be taken.
9. IMPLEMENTING DECISIONS AND FINALISING THE PROCESS

9.1 Advice about the outcome

At the completion of the process a final risk assessment must be conducted regardless of the outcome to identify any issues requiring ongoing management.

All persons involved must be advised of the outcome of the process in so far as it relates to them, having regard to the confidentiality rights of other people involved in the matter. (Further guidance is provided by the NSW Ombudsman publication Managing information arising out of an investigation.) It may also be necessary to offer appropriate support (such as the employee assistance program) to affected persons.

The person subject to the misconduct process must be advised of any disciplinary or remedial action the NSW Health organisation will take (including its effective date), or any other outcome of the process (including any issues that will be referred to the relevant line manager for local management). He or she must also be advised of any final notifications made (including the NSW Health Service Check Register). (See also Section 9.3 regarding action arising from termination of employment or appointment.)

Where allegations or concerns were not substantiated, there should be a discussion with the staff member involved about any support he or she may require to continue with or resume his or her role in the organisation.

9.2 Visiting practitioner appeals

Visiting practitioners have a right of appeal regarding certain decisions against them. These are detailed in Part 4 of the Health Services Act 1997. Further advice can be sought from each NSW Health organisation’s medical administration.

9.3 Action arising from termination of employment or appointment

Where a staff member’s appointment is terminated in one part of the NSW Health Service following a finding of misconduct, the termination will apply to any other employment across the NSW Health Service. All other NSW Health organisations where the staff member holds employment must be notified of the termination.

However, a process is available to staff members to ‘show cause’ as to why the termination should not apply to their other employment in the NSW Health Service. The process is outlined in Information Sheet 13 (flow chart) and Information Sheet 14 (checklist), including advice to be provided to the staff member. Any decision made by a Health organisation about a show cause application must be endorsed by the Ministry of Health’s Director, Workplace Relations before implementation.

Where the contract of a visiting practitioner with one Health organisation is terminated following a finding of misconduct, any other Health organisation(s) where the visiting practitioner holds a contract must be advised of the termination to allow them to assess and manage any risks arising from the finding(s) for the other organisation. (See also current NSW Health policy on the Service Check Register.)
9.4 Finalising the process

Once any investigation and all decisions about findings and further action are finalised, any relevant final internal and external notification requirements as outlined in legislation and relevant policies must be attended to, including the NSW Health Service Check Register (Information Sheet 6).

Appropriate records of all stages of the process (including the initial review and any interviews) and outcomes must be kept. All documentation must be managed in line with State Records NSW requirements for keeping personnel records (General Retention and Disposal Authority GA28) and kept on a dedicated and confidential file, separate to a staff member's personnel file (Information Sheet 15).
EMPLOYMENT CHECKS – CRIMINAL RECORD CHECKS AND WORKING WITH CHILDREN CHECKS (PD2013_028)


PURPOSE

This Policy Directive and the following Procedures outline the mandatory requirements for National Criminal Record Checks (‘NCRCs’) and Working with Children Checks (‘WWCCs’) for persons engaged or employed within the NSW Health Service and for persons seeking to be employed or engaged in NSW Health.

This policy includes the requirements of the Child Protection (Working with Children) Act 2012 and the Child Protection (Working with Children) Regulation 2013 that commenced on 15 June 2013 for child related workers, together with the requirements of the (Commonwealth) Aged Care Act 1997 for aged care workers.

SCOPE

This policy applies to all paid and to non paid workers in NSW Health.

It includes staff on rotation, overseas applicants, volunteers, students undertaking clinical or research placements, Visiting Health Practitioners, temporary or casual ‘locum’ or nursing or midwifery agency staff, contract staff, eligible midwives and nurse practitioners appointed to Public Health Organisations otherwise than as employees and honorary appointments.

This policy applies to all public health organisations and all other bodies and organisations under the control and direction of the Minister for Health or the Director-General Ministry of Health, including the NSW Ministry of Health and Albury Wodonga Health in respect of staff employed in the NSW Health Service and affiliated health organisations in respect of their recognised establishments and services.

MANDATORY REQUIREMENTS

- NSW Health agencies must identify the type of checks required for each position and ensure that workers have the required NCRC and WWCC, in accordance with the requirements of this Policy.

- NCRCs are mandatory as part of the recruitment process for preferred applicants for positions in the NSW Health Service, including for visiting health practitioners and for volunteers as specified in this Policy. The mandatory requirement for a NCRC is subject to the exemption for existing staff members, and the special arrangements around the use of the NSW Health Criminal History Declaration and WWCC probity flag.

- For new child related workers (paid or unpaid), a signed NSW Health Criminal History Declaration stating no criminal history and a WWCC probity flag that indicates no criminal history meets the requirement for a NCRC.

- The use of the Criminal History Declaration and WWCC probity flag may only be used in strict accordance with the requirements of this Policy.

- All applicants for positions in the NSW Health Service, including for Visiting Health Practitioners and volunteers, must complete a NSW Health NCRC consent form and provide the associated 100 points of identification, regardless of whether or not they are existing staff members.
Existing staff members or volunteers moving to a new role within the NSW Health Service are not required to undergo a NCRC unless required for aged care purposes or because they have not previously had one or the name on the previous NCRC does not match their current name.

- Students attending clinical placements within NSW Health agencies are exempt from the WWCC requirements but must have a valid NCRC.
- Any person seeking to work in NSW Health in ‘child-related work’ must have a valid WWCC number in addition to any requirements for a NCRC in accordance with the requirements in this policy.
- Locum or nursing and midwifery agencies must provide evidence that staff supplied to NSW Health have a valid NCRC and a valid WWCC, as required.
- NSW Health agencies must validate and keep records of WWCC numbers obtained from the Children’s Guardian.
- Existing staff members and volunteers are not required to obtain a WWCC until the compliance date in the Transition Schedule (Appendix 2).
- NSW Health agencies must ensure compliance with the Transition Schedule (Appendix 2) for existing child related workers to obtain a WWCC.
- Visiting Medical Officers are required to obtain a WWCC number on renewal of their contract, or by December 2017, whichever is first, in addition to any requirements for a NCRC.
- All aged care workers must have a NCRC every three years in accordance with the (Commonwealth) Aged Care Act 1997.
- Community transport drivers are required to have NCRCs every three years in accordance with funding arrangements with Transport for NSW.
- All child related workers must have a WWCC every five years in accordance with the (NSW) Child Protection (Working with Children) Act 2012.
- NSW Health agencies must register designated risk assessors with HealthShare’s Employment Screening and Review Unit for the management of criminal history and risk assessments.
- NSW Health agencies must manage and assess criminal history identified through criminal record checks in accordance with the requirements of this policy, and any other requirements specified by the Employment Screening and Review Unit.
- NSW Health agencies must determine the need for criminal record checks for positions not mandated by this policy on the basis of risks, including the length of the engagement, responsibilities of the role and access to patients, clients and confidential information.

**IMPLEMENTATION**

**Roles and responsibilities**

**Chief Executives**

Are to ensure that their organisation has systems in place to implement this policy.

**Workforce Directorates/Human Resource Departments**

Are to ensure the provision of instruction, information and training as necessary to support establishment of local procedures for effective implementation of this policy.

**Workers**

All workers in NSW Health are required to comply with the mandatory requirements of this policy.
1. Background

The safety, welfare and wellbeing of NSW Health clients and patients is paramount. NSW Health is committed to ensuring that there are effective systems for protecting patients, clients and assets. One way to do that is to ensure that any person engaged to work in NSW Health has undergone appropriate criminal record checks, in addition to all other pre-employment screening requirements detailed in relevant NSW Health recruitment policies.

Apart from the special legislative provisions for children and older persons, NSW Health also has a duty of care to other vulnerable patients and clients.

A person’s prior convictions may be relevant to the performance of their duties. Therefore, all preferred applicants for engagement within NSW Health agencies must undergo criminal record checks prior to engagement to ensure that any identified relevant criminal convictions may be assessed in terms of potential risk.

This document provides the mandatory procedures for the criminal record checking of preferred applicants for paid and unpaid positions (including for volunteers and students) in NSW Health and includes the legislative requirements relating to ‘child related work’ and to ‘aged care work’.

This document also provides the mandatory criminal record check requirements for existing NSW Health workers.

2. Key Definitions

For the purpose of this Policy Directive and Procedures, the following definitions apply:

**Children’s Guardian** refers to the Office of the Children’s Guardian, who have responsibility for the issuing of Working With Children Check clearances. The Working With Children Check functions were previously held by the Commission for Children and Young People.

**Child related roles** are:
- An approved provider or manager of an education and care service.
- A certified supervisor of an education and care service.
- An authorised carer.
- An Assessment Officer within the meaning of section 27A of the *Children and Young Persons (Care and Protection) Act 1998*.
- The Principal Officer of a designated agency, as defined by the *Children and Young Persons (Care and Protection) Act 1998*.
- The Principal Officer of an accredited adoption service provider within the meaning of the *Adoption Act 2000*.

**Child related work** is work in a child related role or in paid or unpaid work, involving face to face or physical contact with anyone under the age of 18 years, in an area prescribed as child related work. These areas include but are not limited to:

- Work as a health practitioner providing health services in wards of hospitals where children are treated or elsewhere if the work includes the provision of health services to children; this includes work in paediatric or adolescent health services and in adult health services (including wards of hospitals) that include the provision of health services to under 18 year olds.
• Work by persons (other than health practitioners) who provide health and care services in paediatric or adolescent health services.
• Administrative, corporate, clerical, maintenance, or other ancillary work in paediatric or adolescent health services if the work involves contact with children for extended periods.
• Work in mentoring and counselling services for children if the mentoring and counselling services are provided to children as part of a formal mentoring program.
• Work in providing family welfare services is child-related work, if clients to whom the services are provided ordinarily include children.
• Work in child protection services.
• Work in education and care services, child care centres, nanny services and other child minding services provided on a commercial basis.
• Work at sporting, cultural or other entertainment venues where services, activities or entertainment is provided on a commercial basis primarily for children.
• Work that involves providing entertainment services primarily for children on a commercial basis.
• Work at detention centres and juvenile correctional centres.
• Work for a residential parent and child program involving inmates or detainees, and their children, at a correctional centre, juvenile correctional centre or detention centre or other place.
• Work for a religious organisation where children form part of the congregation or organisation if the work is carried out as a minister, priest, rabbi, mufti or other like religious leader or spiritual officer of the organisation, or in any other role in the organisation involving activities primarily related to children, including youth groups, youth camps, teaching children and child care.

Children means persons under the age of 18 years as defined in the Child Protection (Working with Children) Act 2012.

Clinical Placement is also known as a student placement or fieldwork education and refers to the provision of supervised tertiary or post graduate education or research in a clinical setting by University/TAFE/other Registered Training Organisation students.

CrimTrac Agency is the executive agency within the Commonwealth Attorney General’s portfolio that provides, on behalf of Australian Police Services, national criminal history record checking services to accredited third party agencies for the purpose of employment risk management.

Existing child related workers are persons who are engaged or employed in child related work as at 15 June 2013 and who remain with the same employer.

Health Practitioner, for the purpose of this policy are persons registered under the Health Practitioner Regulation National Law (NSW), and any other individual who provides a health service where a health service includes the following:
• medical, hospital and nursing and midwifery services
• dental services
• mental health services
• pharmaceutical services
• ambulance services
• community health services
• health education services
• welfare services necessary to implement health services
• services provided in connection with Aboriginal and Torres Strait Islander health practices and medical radiation practices
• Chinese medicine, chiropractic, occupational therapy, optometry, physiotherapy, podiatry and psychology services
• optical dispensing, dietitian, massage therapy, naturopathy, acupuncture, speech therapy, audiology and audiometry services
• services provided in other alternative health care fields.

National Criminal Record Check (‘NCRC’) is an Australian-wide check of a person’s criminal history, which may be in the form of a ‘National Police Certificate’ or ‘Police Certificate’ prepared by the Australian Federal Police, a State or Territory police service, or a CrimTrac accredited agency (such as NSW Health); or which may also be referred to as an ‘Aged Care Check’ if being undertaken for the purpose of working in an Australian Government subsidised aged care service.

National Police Certificate is a National Criminal Record Check, see above.

NSW Health, for the purpose of this policy, consists of NSW Health agencies and the Ministry of Health.

NSW Health agency refers to a local health district, a statutory health corporation, the Ambulance Service of NSW, NSW Health Pathology and Health Infrastructure and Public Health System Support Divisions of the Health Administration Corporation, and Albury Wodonga Health.

NSW Health Service consists of all persons employed under Chapter 9, Part 1 of the Health Services Act 1997.

Overseas Applicant is a person who is employed or engaged directly from overseas, including from New Zealand.

Police Certificate is a National Criminal Record Check, see above.

Preferred Applicant is an individual who is the recommended or preferred person for a vacant or volunteer position, but who has not yet been formally offered that position.

Staff member, for the purpose of this policy, refers to any person who is employed or engaged in paid work in the Ministry of Health or the NSW Health Service (including as a temporary or casual), or as a visiting practitioner. It does not include locum and nursing agency staff, students or volunteers.

Student Supervisor/Facilitator is a person nominated by the education provider and approved by the NSW Health agency to provide education and supervision to students on clinical placement.

Visiting Practitioner is a medical practitioner or dentist, appointed to practice (otherwise than as a staff member) at an agency under section 76 of the Health Services Act 1997.

Volunteer includes, for the purpose of this policy, anyone engaged to work in NSW Health without being paid or remunerated except for out of pocket expenses.

Working With Children Check (‘WWCC’) is a State based legislative requirement, managed by the Children’s Guardian, for anyone in child related work in NSW. The NSW Working With Children Check consists of a national criminal history check and a review of reported workplace misconduct. Individuals are given either a clearance to work with children for five years, or a bar against working
with children. The Children’s Guardian monitors individuals for the duration of the clearance for any “trigger” or “disqualifying” charges or convictions arising in NSW, as defined in Schedules 1 and 2 of the Child Protection (Working with Children) Act 2012.

Valid WWCC is either a WWCC application or clearance number or a WWCC provided for an existing child related worker by NSW Health or the Catholic Commission for Employment Relations.

WWCC Application number is the WWCC number that has been activated at the NSW Motor Registry Office/NSW Council Agency that provides Roads and Maritime Services as part of the person’s application for a clearance to work with children.

WWCC Clearance number is the number provided by the Children’s Guardian clearing the person to work with children.

WWCC Exemptions are workers who are exempt from the requirements of the WWCC and include:

- A worker who provides administrative, clerical or maintenance services, or other ancillary services, if the work does not ordinarily involve contact with children for extended periods;
- A health practitioner who is working in and visiting New South Wales from outside the State, if the period of work does not exceed a total of 5 days in any period of 3 months;
- A worker who is working in and visiting New South Wales from outside the State for the purpose of child-related work if the worker is the holder of an interstate working with children check in the jurisdiction in which the person ordinarily resides, or is exempt from the requirement to have such a check in that jurisdiction, and the period of the child-related work in New South Wales does not exceed a total of 30 days in any calendar year;
- A health practitioner who works exclusively in the provision of geriatric health services.
- A worker who works for a period of not more than a total of 5 working days in a calendar year, if the work involves minimal direct contact with children or is supervised when children are present;
- A worker who carries out the work in the course of an informal domestic arrangement that is not carried out on a professional or commercial basis;
- A worker whose work involves direct contact only with children who are close relatives of the worker, other than a worker who carries out the work in the capacity of an authorised carer;
- A parent, or close relative, of a child who attends a school, an education and care service or other educational institution when volunteering at or for activities of the school, service or institution;
- A worker who is under the age of 18 years;
- A worker who is a health practitioner in private practice, if the provision of services by the practitioner in the course of that practice does not ordinarily involve treatment of children without one or more other adults present;
- A worker who is a co-worker of a child or who is a work supervisor or work placement supervisor of a child; A visiting speaker, adjudicator, performer, assessor or other similar visitor at a school or other place where child-related work is carried out if the work of the person at that place is for a one-off occasion and is carried out in the presence of one or more other adults; or
- Students attending clinical placements are not in child related work and are not required to obtain a WWCC. They are however required to sign a declaration that they have read and understood the NSW Health Code of Conduct and that they will notify NSW Health if they are charged with any criminal offences.

Worker is any person who is employed or engaged in paid or unpaid work in NSW Health, (including as a temporary, casual, or ‘locum’ or nursing or midwifery agency staff member), visiting practitioners, students, volunteers, agency staff, contractors etc.

40(29/08/13)
2.1 Legal and Legislative Framework

This policy outlines the:

- Working with Children Check requirements for work defined as ‘child related’ in accordance with the (NSW) Child Protection (Working With Children) Act 2012 and Child Protection (Working with Children) Regulation 2013; and
- Police Certificate requirements for work in NSW Health services and aged care facilities that receive Australian Government funding in accordance with the (Commonwealth) Aged Care Act 1997.

3. General Criminal Record Check Requirements

NCRCs are required for all new appointments to NSW Health (the requirements for existing NSW Health workers are dealt with in Section 9).

In addition to a NCRC at the time of appointment:

- Workers in ‘child related work’ must have a valid WWCC (renewed every five years) in accordance with the requirements of the (NSW) Child Protection (Working With Children) Act 2012 and Child Protection (Working with Children) Regulation 2013.
- Workers in ‘aged care work’ must have a new NCRC every three years in accordance with the (Commonwealth) Aged Care Act 1997.

To ensure appropriate criminal record checking and compliance with relevant legislation, all positions, including for volunteers, should be categorised as one of the following:

- Child related work – requiring a valid WWCC and NCRC on appointment and thereafter a WWCC every five years – refer to Section 5.
- Aged care work – requiring a valid NCRC (for aged care purposes) on appointment and thereafter every three years - refer to Section 6.
- Child related work and aged care work – requiring a valid WWCC and NCRC (for aged care purposes) on appointment and thereafter a WWCC every five years and a NCRC (for aged care purposes) every three years – refer to Sections 5 and 6.
- Non child related (and non aged care) work – requiring a NCRC on appointment only – refer to Section 7.
- Other work - roles not mandated by this Policy to have NCRCs – requiring a position risk assessment to determine the need for NCRC – refer to Section 8.

Applicants for positions in NSW Health must be advised of the criminal record check requirements as part of the recruitment process.

Refer to Appendix 12 for a summary of NCRC and WWCC recruitment requirements for staff members and volunteers, and Appendix 13 for the requirements for locum, nursing and midwifery agency staff.

4. NSW Health’s Role in Criminal Record Checking

NSW Health only conducts NCRCs on preferred applicants for positions in NSW Health, including for visiting health practitioners and volunteers, or on existing staff members in permanent, temporary or casual positions. This is done as part of pre-employment screening during recruitment or every three years for existing workers where required under the Aged Care Act 1997.
NSW Health does not conduct the NCRCs on workers engaged through a locum or nursing and midwifery agency, or on other workers not employed by NSW Health or otherwise employed by a third party organisation. In these circumstances, it is the responsibility of the locum or nursing and midwifery agency, the individual or the third party organisation.

The Employment Screening and Review Unit (ESRU) in HealthShare NSW has responsibility for the lodgement of NCRCs for NSW Health and for coordinating the appropriate management of criminal history information in accordance with its contract with CrimTrac.

ESRU’s responsibilities include ensuring NSW Health’s compliance with contractual requirements around access to, and management of, criminal history information across NSW Health.

Criminal history information may only ever be viewed or accessed by designated NSW Health risk assessors that are registered with ESRU, who are aware of, and who have agreed to abide by, the strict confidentiality requirements around the management of the information and who have responsibilities in managing the associated risk assessment process.

4.1 Obtaining Consent for a NCRC

NCRCs may not be lodged without informed consent from the individual and the required evidence of their identification.

All applicants for positions within the NSW Health Service or Ministry of Health whether new or existing staff members or volunteers must, at the time of application, complete the NCRC consent form (Appendix 7) and provide 100 Points of Identification (Appendix 8).

NSW Health agencies must ensure that existing staff members or volunteers have a valid NCRC for the role for which they have applied. Refer to Section 9 for information about NCRC requirements for existing staff members or volunteers.

4.2 Identification Checking Requirements for the NCRC

The NSW Health agency must complete the 100 Point Identification Checklist after sighting the applicant’s original documentation. There is no requirement to keep copies of identification documents.

For overseas applicants who are not in the country at the time of their application, verified copies of the original documents may be accepted until the applicant arrives in Australia at which time the original copies must be sighted and the 100 Point Identification Checklist completed (Appendix 8).

4.3 The NSW Health Criminal History Declaration (Appendix 4)

The NSW Health Criminal History Declaration (‘Declaration’) may be used in place of conducting separate NCRCs in recruitment for child related work, for new staff members or volunteers when supported by the WWCC probity flag and where there is no requirement for a NCRC for aged care purposes. The Declaration requires applicants to make a declaration about criminal history (including pending charges).

The use of the Declaration must comply with all the following mandatory requirements:

- It may only be used for new child related workers and not for existing workers.
- It may only be used if the WWCC validation process has access to the WWCC probity flag.

40(29/08/13)
It must not be accessible or disclosed to the selection panel or used as part of the process for selecting the preferred applicant.

- It must be maintained securely and confidentially.
- It should only be accessible to staff with responsibility for processing NCRCs, and may only be used after the person has been selected as a preferred person and for the purpose of determining whether a separate NCRC is required.

When a Declaration indicates no criminal history and the WWCC probity flag confirms that the person has no criminal history, there is no further need to undertake a NCRC unless one is required for aged care purposes.

A Declaration indicating no criminal history must be retained on a successful applicant’s personnel file or on the recruitment file for unsuccessful applicants.

Declarations where the applicant has indicated criminal history must be retained in a secure file along with the documented risk assessment or file note confirming that either no actual criminal history was disclosed in the NCRC or that the disclosed criminal history was not relevant to the inherent requirements of the position.


### 4.3.1 Information disclosed in the Declaration

Applicants are only required to disclose criminal history as lawfully allowed in accordance with the relevant State or Territory spent convictions legislation. They are not required to disclose spent criminal history, and NSW Health may not consider spent criminal history in its assessment of the person’s suitability for work.

Spent convictions are not disclosed in the NCRC undertaken by NSW Health.

The Declaration requires applicants to state whether they have any of the following matters recorded against their name (including bonds but excluding minor traffic offences, matters that have been quashed, dismissed, withdrawn or which are otherwise spent):

- convictions in the last 10 years; or
- convictions for sexual offences; or
- convictions for which a prison sentence of more than 6 months was imposed; or
- criminal charges which are yet to be finalised or heard in court.

A NCRC must be obtained if the person has disclosed that they have criminal history. The disclosure of criminal records or charges does not automatically preclude a person from a position; each case must be considered on its merits and in accordance with the requirements of this Policy.

If an applicant is found to have deliberately withheld or provided false information in the Declaration about convictions or pending charges that are subsequently identified as relevant to the inherent requirements of the role, the application may be rejected or if the person has been appointed, it may be grounds for dismissal.
4.3.2 The WWCC probity flag

When NSW Health validates WWCC clearances with the Children’s Guardian through designated web servers, including the eRecruit system, the WWCC probity flag may identify whether or not the person has criminal history.

The WWCC probity flag indicating no records is equivalent to a NCRC undertaken at the date of the WWCC clearance. The flag indicates if the person had any charges or convictions (including non child related matters) at the time of their WWCC clearance or any “trigger” or “disqualifying” charges or convictions (as listed in Schedules 1 and 2 of the Child Protection (Working with Children) Act 2012) in NSW after the date of the WWCC clearance.

The WWCC probity flag does not distinguish between spent and disclosable criminal records, all released as part of the WWCC. A NCRC conducted as a result of a WWCC probity flag may be returned clear because the person does not have records that are disclosable in a NCRC.

The WWCC probity flag indicating no records is only available if the applicant has provided consent for this information to be released to NSW Health. In the absence of consent, the flag defaults to the position that the person may have criminal history.

The WWCC probity flag is not available for validations conducted manually through the website of the Children’s Guardian.

4.3.3 Use of the Declaration and WWCC probity flag instead of a NCRC

The WWCC probity flag indicating no records may be used instead of a NCRC for new staff members and volunteers only when it is attached to a WWCC clearance number and the person has signed the Declaration stating that they have no criminal history.

NCRCs are still required for new child related staff members or volunteers if:
- the WWCC probity flag is not available in the recruitment process (because the validation process is being managed manually or not through eRecruit or another designated web server); or
- the applicant has not completed the Declaration; or
- there is information indicating that the preferred applicant may have criminal history (for example, from the Declaration or from the WWCC probity flag); or
- the person is going into aged care work and their last NCRC (including from the WWCC probity flag) was undertaken three or more years ago.

For preferred applicants for positions identified as ‘child related work and aged care work’, if the WWCC probity flag is under three years old and indicates the person had no criminal records, and the Declaration states they have no criminal history, there is no further requirement for a NCRC.

Refer to Section 9 for the requirements for existing workers.

4.4 Where the NCRC reveals criminal records

Where a NCRC reveals criminal records, ESRU will identify whether the convictions or pending charges may be relevant to the position and, if so, forward them to the designated risk assessor within the NSW Health agency for further assessment.
The NSW Health agency’s risk assessor must determine if the records are relevant and if they are likely to affect the individual’s ability to undertake the key responsibilities of the position for which they are being considered.

If it is determined that the risks are not relevant or do not impact on the individual’s ability to undertake the key responsibilities of the position, the appointment should proceed.

If it is determined that the risks may be relevant and may impact on the role, the applicant must be contacted, and a risk assessment undertaken.

4.5 Contacting the applicant

The applicant must be asked to confirm their full name, date of birth and current address and be told of the purpose of the NCRC. Once the person’s identity has been confirmed, they may verbally be given a summary of the substance of the police history information, including dates, and asked to confirm the accuracy of the information. The applicant must not, under any circumstances, be given a copy of the criminal history information.

If the applicant states that the record does not belong to them or is inaccurate, ESRU must be contacted for further advice.

If the applicant confirms the criminal records, they should be advised of the relevance of the record to the position for which they are being considered, the type of information that may assist the risk assessment, and be given an opportunity to provide additional information to support their application.

At all times, the principles of procedural fairness, privacy and confidentiality must be maintained when conducting employment risk assessments.

4.6 Conducting the risk assessment

The risk assessment may only be carried out by designated risk assessors; those persons, who are registered as risk assessors with the ESRU, have undergone NCRCs and met any other requirements as specified by ESRU. No other persons may be involved in the management of the risk assessment process.

Only designated NSW Health risk assessors may sight or have access to criminal records or documents used in an employment risk assessment. This information must not to be given, sent or disclosed to any third party person including to any other NSW Health agency worker.

The following information may be considered as part of the risk assessment:

- The seriousness and nature of the convictions, and how they relate to the key responsibilities of the position (including ensuring they are not precluding convictions if in aged care work).
- How many convictions, was it a pattern or an isolated matter?
- What period of time has elapsed since the last offence?
- The amount and type of penalty awarded by the court may be indicative of the seriousness of the offence.
- Any mitigating information in relation to the offences. These might include such factors as peer pressure, difficult family circumstances or other stress factors in the person’s life at the time such as drug or alcohol abuse etc.
- Submissions from the applicant regarding action they have taken or changes to their circumstances that may have contributed to the offending.
• References – the type of reference will depend on the nature and circumstances of the offence(s), but could include workplace references as well as information from professionals from whom the applicant has sought treatment, counselling or other help. This may include references from probation or parole officers.

• The degree of direct or unsupervised contact the person will have with patients, clients’ confidential information, property, finances etc, whether the person will be working alone or as part of a team and the environment in which the work will be conducted.

Based on the information obtained, a determination must be made about whether any risks arising from the criminal record or charges, identified as relevant to the position for which the person is being considered, affect their ability to undertake the full range of responsibilities and tasks associated with the role, including whether any such risks can be, or have already been, satisfactorily mitigated.

4.7 Outcome of the risk assessment

Once the risk assessment is completed, the NSW Health agency must advise the applicant of its determination.

The NSW Health agency must also inform ESRU of the determination and provide any other information as required by ESRU, including confirmation that all criminal history information has been destroyed.

The NSW Health agency should document in a risk assessment report its reasons either to continue with the appointment or to decline the appointment because of the criminal history.

4.8 The risk assessment report

The risk assessment report should include a summary of the criminal records (including the nature of the convictions or charges, their date, and the penalty), their relevance to the key responsibilities of the role, any mitigating or risk factors associated with the role, a summary of any information provided by, or obtained from, the applicant or referees or any other body, and an analysis of the resulting risks and the decision whether or not to appoint.

4.9 Management of criminal history

Only designated risk assessors are allowed access to information about criminal history, which must be kept securely and confidentially at all times.

Information obtained about a person’s criminal history must not be used for any purpose other than for determining their suitability for engagement or ongoing engagement within NSW Health.

4.10 Retention of records

Criminal history information must be deleted as soon as the risk assessment is complete or within three months at the latest; this includes criminal history information sent or received or stored electronically.

All other records, including Declarations and Risk Assessment Reports, created or obtained in connection with NCRCs or WWCCs (including for volunteers and students) must be kept in accordance with the requirements of the NSW State Records General Retention and Disposal Authority. For the current requirements for retaining records obtained during the recruitment and selection of staff members, refer to the NSW Policy Directive ‘Recruitment and Selection of Staff of the NSW Health Service’, accessible at http://www.health.nsw.gov.au/policies/pages/default.aspx.
5. Child Related Work

5.1 Definition of Child Related Work

Refer to the definitions of Child Related Work and WWCC exemptions in Section 2.


5.2 Recruitment requirements for child related work

People seeking to be employed or engaged in NSW Health in child related work are required to have the following two criminal record checks as part of the recruitment process:

1. A valid WWCC number from the Children’s Guardian:
   - A WWCC number should be validated as a WWCC clearance before the person commences in NSW Health, subject to the emergency provisions in Section 5.4; and

2. A satisfactory NCRC:
   - For all direct NSW Health engagements, the applicant (whether an existing worker or not) is required to complete a NCRC consent form and provide 100 points of identification as required in the 100 Point Identification Checklist; and
     - The applicant should also complete a NSW Health Criminal History Declaration if they are not an existing worker and the recruitment process meets the requirements specified in Section 4.3.
   - The NCRC should be finalised before the person commences in NSW Health, subject to the emergency provisions in Section 5.4.
   - For locum or nursing and midwifery staff, it is the responsibility of the locum or nursing and midwifery agency to ensure that the person has a valid NCRC before they commence placements in NSW Health (refer to Section 5.6).

The following exceptions apply:
   - A NCRC is not required if the applicant’s WWCC probity flag indicates they do not have any criminal history and they have completed a Declaration stating that they have no criminal records or pending charges (subject to any further requirements relating to aged care work - refer to Section 6).
   - There are special arrangements for existing NSW Health Service workers changing roles. Refer to Section 9.

5.3 Obtaining a Working with Children Check

WWCCs are only available from the Children’s Guardian. Individuals wishing to be engaged in child related work are responsible for obtaining and paying for their WWCC number from the Children’s Guardian.

NSW Health agencies may not apply for or pay for WWCCs on behalf of individuals.

The individual requiring a WWCC clearance must apply to the Children’s Guardian for a non volunteer clearance which will allow them to be engaged in either paid or unpaid work; or a volunteer clearance which will only allow them to be engaged in unpaid child related work.
Applicants are required to apply online for a WWCC number, which then must be activated and paid for (if for paid work), in person, with identification at a NSW Motor Registry Office or a NSW Council Agency that provides Road and Maritime Services (for the full list, refer to the NSW Guardian’s “Fact Sheet: How to apply” available at http://www.kidsguardian.nsw.gov.au/working-with-children/working-with-children-check.)

Individuals should include their activated WWCC number with their application, at interview or as otherwise directed in the recruitment process. Information for applicants about obtaining the WWCC is available from http://www.kidsguardian.nsw.gov.au/working-with-children/working-with-children-check.

5.4 Emergency conditional appointments - child related workers

Child related workers are required to have a WWCC clearance before they commence work in NSW Health, except in the following circumstances:

1. Where the person has been unable to lodge their application at the NSW Motor Registry Office or NSW Council Agency before commencing work because they are an overseas or interstate applicant and a delay to them commencing work is likely to significantly affect service delivery; or
2. Where there are other reasons for the person being unable to lodge an application before commencing work that the NSW Health agency determines are valid and the engagement of that worker is necessary in the circumstances to prevent an increased risk to the safety and wellbeing of children; or
3. Where the person has lodged the application at the NSW Motor Registry Office or NSW Council Agency but has not yet received a clearance and a delay to them commencing work is likely to significantly affect service delivery.

The NSW Health agency is responsible for determining if the criteria for an emergency conditional appointment has been met, and for mitigating any risks associated with the applicant commencing work without a WWCC clearance, including ensuring that only delegated staff authorise such conditional appointments, and that all other relevant pre-employment screening checks are completed, including, where possible, a NCRC.

Further exemptions from the NSW WWCC apply to interstate and overseas workers (Refer to Section 5.7).

5.4.1 Emergency conditional appointments – requirements when appointing workers without a WWCC clearance

Where a new staff member or volunteer commences work without a WWCC clearance for the reasons cited in Section 5.4, they should have either completed a Declaration stating that they have no criminal history or undergone a NCRC, and the appointment must be conditional on a WWCC clearance being provided (and a satisfactory NCRC if waiting on the WWCC probity flag to support the Declaration). If the WWCC probity flag will not be available through the WWCC validation process, the NSW Health agency must immediately lodge a NCRC.

Where the emergency appointment relates to locum or nursing and midwifery agency staff, they should have met the NCRC requirements (Section 5.6) before commencing work; the Declaration and WWCC probity flag are not available for locum and nursing or midwifery agency staff.
If the person has been unable to obtain a WWCC application number from the NSW Motor Registry Office or the NSW Council Agency before commencing work, they must provide one within five days of commencing work. If after five days the person has not provided a valid WWCC number, the appointment should be suspended until the person has provided one.

Additional requirements relate to emergency appointments in aged care work - refer to Section 6.

The NSW Health agency must ensure that the ongoing appointment of all child related workers in NSW Health is dependent on valid WWCC clearance numbers and satisfactory NCRCs.

Individuals who do not have a valid WWCC number must not be engaged in child related work except in the circumstances outlined in Section 5.4.

There are penalties under the Child Protection (Working with Children) Act 2012 for employers and for individuals who fail to comply with the WWCC requirements.

5.4.2 Emergency conditional appointments without a NCRC

The NSW Health agency is responsible for determining if the criteria for an emergency conditional appointment has been met and for mitigating any risks associated with an applicant commencing work without a finalised NCRC, including ensuring that only delegated staff authorise such conditional appointments, and that all other relevant pre-employment screening checks are completed, including, where required a WWCC clearance.

Where a person has neither a WWCC clearance nor a finalised NCRC, the criteria in Section 5.4 must be met for the appointment to proceed.

A WWCC clearance probity flag and Declaration both indicating no criminal history meet the requirement for a finalised NCRC.

5.5 Validation of WWCCs

NSW Health agencies must validate WWCCs numbers with the Children’s Guardian for all new child related workers, including for agency and locum staff.

For each child related worker, records must be kept of the:
- worker’s full name;
- WWCC number;
- date and outcome of the WWCC validation; and
- WWCC clearance expiry date.

These records may be electronic or in hard copy format, but must be made available to the Children’s Guardian if required for audit and monitoring purpose.

NSW Health agencies must use the “log on” details provided by the ESRU.

For existing workers, where it is identified as part of the recruitment process that the applicant’s WWCC from the Children’s Guardian has previously been validated, and is still current and valid for the work being undertaken (eg, for paid workers the WWCC is a non-volunteer WWCC) there is no further requirement to revalidate the number.
Once a worker has been validated, should the Children’s Guardian withdraw the WWCC clearance, they will contact ESRU, who will identify whether the person is still currently engaged in NSW Health and provide advice to the relevant NSW Health agencies.

If a worker’s WWCC is withdrawn by the Children’s Guardian, they must immediately be removed from child related work.

5.6 Locum and nursing and midwifery agency staff

All locum, nursing and midwifery agency staff must have a valid WWCC and NCRC before commencing in a NSW Health agency (unless they are only working in aged care work in which case they are only required to have a valid NCRC for aged care purposes – refer to Section 6), or unless the criteria in Section 5.4 has been met for emergency appointments, or they fall within the exemptions for short term overseas or interstate workers referenced in Section 5.7.

The locum or nursing and midwifery agency is required to provide confirmation to the NSW Health agency that the person has a valid WWCC and NCRC, in accordance with this policy.

For the purpose of locum or nursing and midwifery agency staff, a valid WWCC may be one from NSW Health or a WWCC number from the Children’s Guardian, depending on when the person registered with the locum or nursing and midwifery agency.

For WWCC numbers from the Children’s Guardian, the NSW Health agency must validate the WWCC number with the Children’s Guardian.

For the purpose of locum or nursing and midwifery agency staff, a valid NCRC is:

- A National Police Certificate obtained within the last three years and a Declaration relating to any offences committed since the date of the Certificate (if the Certificate was obtained before registration with the agency); or
- A NCRC obtained by the locum or nursing and midwifery agency as part of the person’s engagement with the agency; or
- A NCRC included in a WWCC obtained from NSW Health (NSW Health WWCCs lodged by agencies before March 2012 included a NCRC; NSW Health WWCCs lodged by agencies after March 2012 did not include a NCRC).

The NSW Health Criminal History Declaration and WWCC probity flag may not be used for locum and nursing and midwifery agency staff.

It is the responsibility of the locum or nursing and midwifery agency to sight the person’s relevant documentation and to assess any criminal history to determine the person’s suitability for the placement.

The locum or nursing and midwifery agency must provide the NSW Health agency with the reference number for the Police Certificate or the NCRC, the date it was undertaken and confirmation that they have assessed any identified criminal records and there is nothing in the person’s criminal record history preventing them from undertaking all the key responsibilities of the role.

The Police Certificate is not required to be provided to the NSW Health agency. Locum and nursing agencies may use the ‘Template Letter for Locum and Nursing and Midwifery Agencies’ at Appendix 3.
Refer to the NSW Health Policy Directive PD2013_022 ‘Locum Medical Officers – Employment and Management’ for further information about Locum Agency requirements.

The table at Appendix 13 summarises the NCRC and WWCC requirements for locum and nursing and midwifery agency staff.

5.7 Overseas and Interstate applicants

WWCC application numbers are only available from NSW Motor Registry Offices or NSW Council Agencies that provide Roads and Maritimes Services located in New South Wales.

Overseas and interstate applicants, including those appointed through locum or nursing and midwifery agencies, may be unable to obtain a WWCC application number until after they have commenced work in a NSW Health agency.

The NSW Health agency should consider whether the person is exempt from the WWCC for the reasons provided in Sections 5.7.1 or 5.7.3.

If the position is not exempt from the WWCC, and the criteria in Section 5.4 has been met, the appointment may proceed, but be conditional on a WWCC clearance. The person must attend the NSW Motor Registry Office or NSW Council Agency and provide the NSW Health agency with the WWCC application number within five days of commencing work.

Interstate and overseas applicants are subject to the same Australian NCRC requirements as other applicants.

Refer to Sections 5.6 and 9.3 for further information about locum, nursing and midwifery agency staff.

5.7.1 Overseas applicants

Overseas workers engaged in child related work in NSW Health are required to obtain a WWCC, unless they will be working for fewer than five days in any three month period.

If the appointment needs to proceed, conditionally, in the absence of a WWCC application number, the applicant must still meet the requirements for overseas criminal record checks and have an Australian NCRC, in accordance with this policy.

NCRCs may be lodged before the person arrives in Australia as long as they complete the NSW Health NCRC consent form with verified copies of original documents for the 100 Point ID Check. Once they arrive in NSW, the original documents must be sighted by the NSW Health agency and the 100 Point ID Checklist completed.

Certified copies are copies authorised, or stamped as being true copies of originals, by a person or agency recognised by the law of the country in which the person is currently residing as having the authority to authorise or stamp such documents.

Department of Immigration and Citizenship (‘DIAC’) offices outside Australia may have the facility to certify or witness documents. A ‘Service Delivery Partner’ may be able to provide this service on behalf of the department if there is an agreement in place with the Australian Office. Applicants can visit the DIAC website for more information on offices outside Australia:

5.7.2 Additional requirements for overseas applicants

In addition to requirements for the WWCC and Australian NCRC, applicants recruited directly to NSW Health from overseas (including New Zealand) must provide:

• A Police Clearance from their home country and any country they have been citizens or permanent residents since turning 16 years of age (incorporating any charges the preferred applicant may have against their name).

• If unable to provide a Police Clearance from any country they have lived in, they must complete a Statutory Declaration stating they have no pending criminal charges or convictions from any country they have been citizens, permanent residents since turning 16. If they do have such records, they must list date of offence, type of offence and court outcome (refer to Appendix 5).

Any criminal record check in a language other than English must be accompanied by a ‘certified copy’ of an English translation of the criminal record.

5.7.3 Interstate applicants

Interstate workers engaged in child related work in NSW Health are required to have a NSW WWCC if they will be working for more than five days in any three month period or more than 30 days in a calendar year.

If the appointment needs to proceed conditionally, in the absence of a WWCC application number, the applicant should still have a NCRC, in accordance with this policy.

The following exemptions from the WWCC relate to interstate workers:

• Interstate health practitioners engaged by a NSW Health agency for fewer than five days in any three month period do not require a NSW WWCC.

• Health practitioners/workers working in NSW for more than five days in a three month period but fewer than 30 days in a calendar year do not require a NSW WWCC if they have an interstate WWCC number or they are exempt from the WWCC in their home State or Territory. Health practitioners in Queensland and ACT are currently exempt from their local WWCC requirements.

NSW Health agencies must ensure that interstate workers are compliant with the WWCC requirements.

5.8 Volunteers

Volunteers in paediatric or adolescent health services are in child related work if they are providing health and care services or if they are in an administrative, clerical, maintenance or ancillary role and the role involves contact with children for extended periods.

In other health services, volunteers providing health and care services are not in child related work unless they are in one of the other specified categories of child related work (refer to the definitions of ‘child related work’ and ‘WWCC exemptions’ in Section 2).

From 15 June 2013, all new volunteers engaged to work in child related work must have a valid WWCC number from the Children’s Guardian, and a valid NCRC in accordance with Section 5.
6. Aged Care work

6.1 Definition of aged care work

The Australian Government Department of Health and Ageing is responsible for the legislative criminal record checking requirements for workers in aged care work. Further information may be obtained from their website at: https://www.dss.gov.au/about-the-department/doing-business-with-dss/vulnerable-persons-police-checks-and-criminal-offences

Aged care workers include all paid staff members aged 16 years or over and relevant volunteers in NSW Health services and aged care facilities that receive Australian Government funding. These include:

- Residential aged care facilities;
- Flexible Care services, such as:
  - Home Care Packages (formerly known as Community Aged Care Packages, Extended Aged Care at Home & Extended Aged Care at Home-Dementia Packages);
  - Multi-Purpose Service residential aged care services; and
  - Transitional Aged Care services.

6.2 Requirements for aged care workers

Aged care staff members and volunteers are required to have a valid NCRC on appointment to NSW Health. The NCRC must be identified as being for the purpose of aged care and be repeated every three years for those:

- Staff, contractors (including agency staff) or consultants within a residential aged care facility, who have, or are reasonably likely to have, access to care recipients or with access to the care recipient’s own home through a Home Care Package or other community service;
- Volunteers visiting care recipients under the Community Visitors Scheme; and
- Volunteers who have or are reasonably likely to have, unsupervised access to care recipients, and have turned 16 years of age or, if for full-time students, have turned 18 years of age.

The following are not aged care workers for the purpose of the Australian Government’s criminal record check requirements:

- Visiting medical practitioners, pharmacists and other allied health professionals who have been requested by, or on behalf of, a care recipient but are not contracted by the approved provider; or
- Tradespeople who perform work otherwise than under the control of the approved provider (that is, independent contractors). For example, plumbers, electricians or delivery people who are utilised on an ‘adhoc’ basis;
- Visiting people who attend the service at the invitation of a care recipient (e.g. family and friends); and
- Aged Care Assessment Teams who are visiting professionals not contracted by the approved provider.

People are precluded from working in Australian Government funded aged care services if they have a conviction for murder or sexual assault or a conviction for, and sentence to imprisonment (including one that is suspended) for any other form of assault.

The NSW Health agency must undertake NCRCs on all new staff members and volunteers to aged care. Refer to Section 4.3 for further information about the use of the Declaration and WWCC probity flag for preferred applicants for positions identified as ‘aged care work and child related work’.

40(29/08/13)
NSW Health agencies must ensure that aged care workers have NCRCs every three years, and that persons with convictions precluding their employment are not engaged or allowed to continue to work in aged care.

6.3 Additional requirements for aged care applicants who have resided overseas

In addition to the Australian NCRC, if staff members or volunteers have been citizens or permanent residents of a country other than Australia since turning 16 years of age, they must make a Statutory Declaration before starting work stating that they have never been convicted of murder or sexual assault, or been convicted of, and sentenced to imprisonment for, any other form of assault.

The template Statutory Declaration for aged care must be used (Appendix 11).

6.4 Locum and nursing agency staff

For aged care workers engaged through a locum or nursing and midwifery agency, the locum or nursing and midwifery agency must ensure that the person has a valid NCRC, including in relation to the requirements for applicants who have resided overseas, before being placed in the NSW Health agency.

The NSW Health agency is responsible for confirming that locum or nursing and midwifery agency staff members have NCRCs in accordance with the aged care requirements.

The table at Appendix 13 summarises the NCRC and WWCC requirements for locum and nursing and midwifery agency staff.

6.5 Emergency appointments in aged care

A person may commence conditionally in aged care work without a valid NCRC only if:
• the care or other service to be provided by the person is essential; and
• an application for a NCRC or police certificate has been made before the date on which the person first becomes a staff member or volunteer; and
• the person will be subject to appropriate supervision during periods when the person has access to care recipients; and
• the person makes a statutory declaration (Appendix 11) stating that they have never been convicted of murder or sexual assault or convicted of, and sentenced to imprisonment for, any other form of assault.

7. Non child related work

Non child related work is any work that is not child related or aged care work and includes, but is not limited to:
• administrative, corporate, clerical, maintenance, ancillary, volunteer work or any work by persons other than health practitioners in paediatric or adolescent health services where the work does not involve contact with children for extended periods.
• administrative, clerical, maintenance, corporate, ancillary or volunteer work or any work by persons other than health practitioners in all other health services (other than those defined as aged care work in Section 6) or in the Ministry of Health;

All new staff members and volunteers engaged to work in NSW Health in non-child related roles must undergo a NCRC through NSW Health as part of the appointment process.
As long as the person remains in non-child related work within the NSW Health Service with no break in service, there is no requirement for a further NCRC.

7.1 Agency staff - non clinical

Long term non clinical agency staff should have a NCRC. For short term non clinical agency staff, the NSW Health agency should determine whether a NCRC is necessary based on a risk assessment of the position (refer to Section 8).

7.2 Contractors - Service/Utilities (non-clinical services)

For short term/one off delivery/repair work, no criminal record checking is required. If a contractor is required to enter hospital wards or premises for the delivery or repair of equipment, the person is to be supervised and informed of the areas they are permitted to enter.

For long term contracts/tendered agreements where the company/organisation is contracted for building services and where the contractor is not providing any direct services to clients or patients, NSW Health does not undertake any criminal record checking.

If as a result of a risk assessment, it is determined that the workers engaged by the contractor should undergo NCRCs, it is the responsibility of the contracted company to organise them.

7.3 University/TAFE/other Registered Training Organisation (‘RTO’) students undertaking clinical placements in NSW Health agencies

All students are required to obtain a National Police Certificate for the purpose of undertaking clinical placements in NSW Health agencies, regardless of whether or not they are an existing NSW Health worker.

Students are responsible for obtaining their own Police Certificates from a State or Territory Police service.

Overseas students, whether enrolled in an Australian or Overseas Tertiary Institution, must in addition to obtaining an Australian National Police Certificate, also obtain Police Certificates from their home country or any country that they have been permanent residents of or citizens in since turning 16 years of age (translated in to English). If they are unable to obtain a Police Certificate, the student must complete the Template Statutory Declaration at Appendix 5 that details whether or not they have a criminal history from their home country or any country that they have resided in, or been a citizen of since turning 16 years of age.

The name on the Police Certificate must match the name on the student’s ID card from the Tertiary Institution.

The Template Statutory Declaration at Appendix 5 must be completed once the student is in New South Wales.

Students attending clinical placements are not in child related work and are not required to obtain a WWCC. They are however required to sign the Code of Conduct Agreement for Students Undertaking a Clinical Placement at Appendix 6 stating that they have read and understood the NSW Health Code of Conduct and that they will notify NSW Health if they are charged with any criminal offences.

40(29/08/13)
Students must provide NSW Health with original documentation to meet compliance requirements.

7.3.1 Students with criminal history or pending charges

Criminal history does not necessarily constitute a barrier to clinical placement. Each application is considered on its merits, and its relevance to undertaking clinical placements in NSW Health facilities. Mitigating factors, including but not limited to, the length of time since the convictions, the nature of the convictions and action taken since by the student will be considered.

Students with criminal history or pending charges are not allowed to commence or continue in clinical placements in NSW Health agencies until they have obtained a Clinical Placement Authority Card (or Conditional Letter) from HealthShare NSW’s Employment Screening and Review Unit (ESRU).

Students must apply directly to ESRU, by completing the ‘Application for authority to undertake clinical placements in NSW Health facilities’ at Appendix 10 if convictions are disclosed in a Police Certificate or Statutory Declaration or if they are charged with, or convicted of, an offence after the issuing of their Police Certificate.

If the risks relating to the criminal history are not relevant or are sufficiently mitigated, the student will be provided with a Clinical Placement Authority Card or a Conditional Letter with authority to undertake clinical placements subject to certain conditions.

If the risks relating to the criminal history are unacceptable, or the student has not provided the required documentation, NSW Health may decline the application or withdraw authority for the student to undertake placements if it had been previously provided. The student will be informed of this decision in writing and of the requirement to inform the Tertiary Institution’s Clinical Placement Supervisor or Facilitator.

ESRU will notify the ClinConnect Application Manager if it determines that a student, previously identified as clear to undertake clinical placements should now be refused authority to undertake placements.

7.3.2 Managing student compliance

NSW Health agencies must ensure that all students attending clinical placement are compliant with the requirements of this and other relevant polices, including those relating to immunisation status.

Original documentation must be sighted and checked against the student’s Tertiary Institution’s ID card.

If the student fails to provide the required compliance documentation, which includes original documentation or the NSW Health facility is not able to manage the placement in accordance with any conditions stipulated by ESRU, they should not be allowed to commence their placement. Students should be referred to their Tertiary Institution.

One way of managing compliance is through the use of ClinConnect, a web-based application to assist in the management of clinical placements for Nursing and Midwifery, Dental and Oral Health, Allied Health and Medical students.

The Student Clinical Placement Checklist (Appendix 9) may also be used to assist in managing student compliance requirements.

7.4 Other students

Students from High School or TAFE completing work experience for their secondary school qualifications at a NSW Health agency do not require NCRCs as they must be supervised at all times by a staff member of the service who is allocated responsibility for them.

7.5 Student Supervisors/Facilitators

Student supervisors/facilitators, who are engaged by a Tertiary Institution or a recruitment agency, must provide evidence of a NCRC. This NCRC must have been completed either in the last three years or at the time of their appointment with the Tertiary Institution or recruitment agency.

Student supervisors/facilitators who are existing NSW Health workers are not required to undergo a further NCRC to undertake the role of student supervisor/facilitator.

Student supervisors/facilitators are required to have a WWCC number if the work meets the definition of child related work. Refer to the definitions of child related work and WWCC exemptions in Section 2, as well as the special arrangements for existing workers in Section 9.

Where student supervisors/facilitators are required to have a WWCC, the NSW Health agency must validate the number with the Children’s Guardian.

7.6 Volunteers (non child related)

NCRCs are required for all volunteers who are engaged to provide services in NSW Health facilities, in clients’ or patients’ homes or in other services where they are required to have direct face to face or physical contact with patients or clients or have access to confidential information about NSW Health patients, clients or staff, or high level access to finances.

7.7 Community Transport

Any drivers engaged to provide community transport in connection with a funding contract with Transport for NSW Health under the Home and Community Care Program or the Community Transport Program must every three years have NCRCs, satisfactory driving records verified by a driving record check and health assessments.

NSW Health agencies with funding contracts with the NSW Government Department ‘Transport for NSW’ for community transport services should check their contracts for full details of the requirements.

8. Other work

There may be some roles that fall outside the mandatory requirements of this Policy in relation to NCRCs. In these cases, the decision to undertake a NCRC will be based on a risk assessment in relation to the level of inherent risk to client safety, service delivery and community confidence.
The decision to undertake a NCRC for any roles not mandated by this Policy should include the following considerations:

- Whether the person is, or will be, a staff member or a volunteer in a NSW Health agency. NSW Health may only undertake NCRCs on persons it directly engages. If a NCRC is required but the person is employed by another organisation, it is the responsibility of the employing agency, or of there is no other employer, it is the responsibility of the individual.

- The length of time of the engagement, e.g. engagements that are for less than two weeks or one-off engagements may not require a NCRC, unless there are particular risks inherent in the position.

- The type of work being undertaken, including whether it requires direct contact with patients/clients, whether it involves the handling of confidential information such as that relating to patients/clients, the level of supervision involved, any protective factors that mitigate any risks relating to the role, the consequences to clients and to the organisation of any incident, and any other factors that will affect the level of risk.

A NCRC would normally be required if the role usually involves one or more of the following:

- the care of vulnerable persons;
- working in the immediate vicinity of, or having regular access to, vulnerable persons;
- high levels of financial accountability;
- high level access to information about staff, clients or patients; or
- access to drugs.

NSW Health agencies should document decisions around NCRC requirements for roles not mandated by this Policy.

9. Existing NSW Health workers

There are special arrangements in the Child Protection (Working With Children) Regulation 2013 for existing child related workers to be transitioned to the new WWCC.

Existing child related workers (i.e. those employed or engaged in child related work as at 15 June 2013 but not including Visiting Medical Officers) are not required to apply for a WWCC number from the Children’s Guardian when changing roles for as long as they continue to be employed or engaged in NSW Health, or until the compliance date relevant to that worker (as specified in Appendix 2), whichever is sooner.

NSW Health agencies must ensure existing child related or aged care workers renew their WWCC or NCRC when required.

9.1 Visiting Medical Officers

Visiting Medical Officers are required to obtain a WWCC from the Children’s Guardian on renewal of their contract, or by 2017 if their contract is not due for renewal until after 2017.

9.2 NSW Health staff members and volunteers

Existing NSW Health child related staff members and volunteers are not required to obtain a WWCC until the compliance date relevant to that worker.
Existing NSW Health staff members or volunteers changing roles (whether child related or not) are not required to undergo a further NCRC, unless:

- it has been identified that they have never previously had a criminal record check (NCRC or NSW Health WWCC); or
- a criminal record check has never been undertaken on the person’s correct or full name or aliases; or
- a NCRC is required for the purpose of aged care work; or
- they are undertaking a tertiary qualification and wish to undertake clinical placements in NSW Health facilities (students must obtain their own police certificate).

Once an existing staff member or volunteer has obtained a WWCC from the Children’s Guardian and it has been validated by a NSW Health agency, it does not need to be revalidated with the Children’s Guardian every time the person changes roles within NSW Health, however, the employing NSW Health agency must ensure that it is has not expired and that it is the correct type of WWCC (i.e. a non volunteer WWCC for paid workers).

### 9.3 Locum and nursing and midwifery agency staff

Locum and nursing agency staff, including from interstate and overseas, are not required to obtain a WWCC clearance from the Children’s Guardian until they move to a new locum or nursing and midwifery agency or until the relevant compliance date in the Transition Schedule at Appendix 2, unless they are commencing a placement in NSW Health for the first time, and the agency has not previously obtained a NSW WWCC for that person.

The relevant compliance date for existing locum and nursing and midwifery agency staff will be determined by their placement within NSW Health.

From 15 June 2013, locum or nursing and midwifery agency staff are required to demonstrate that they have either a NSW Health WWCC or a WWCC number from the Children’s Guardian depending on when they registered with the locum or nursing and midwifery agency – refer to Section 5.6 and Appendix 13 for further information.

### 9.4 Overseas and interstate workers

Existing Interstate or overseas workers directly engaged by NSW Health agencies (i.e. those who are on existing contracts or appointments as at 15 June 2013 and remain within NSW Health) are not required to obtain a WWCC until the compliance date in the Transition Schedule at Appendix 2.

### 9.5 Medical officers on rotation

Medical officers on rotation to NSW Health from external host employers are not required to obtain a WWCC clearance from the Children’s Guardian for the period of their contract with the host employer if they were an existing child related worker with the host employer at 15 June 2013.

Refer to the requirements of the NSW Health policy on ‘Medical Officers - Employment arrangements in the NSW Public Health System’, which is accessible at: http://www.health.nsw.gov.au/policies/pages/default.aspx

### 9.6 Volunteers

Existing volunteers (i.e. those already engaged as at 15 June 2013 in paediatric or adolescent services) are not required to have a WWCC until the relevant compliance date in the Schedule at Appendix 2.
10. List of Attachments

Appendix 1: Policy Directive checklist for implementation
Appendix 2: WWCC transition schedule for existing workers
Appendix 3: Template letter for Locum and Nursing and Midwifery agencies
Appendix 4: NSW Health Criminal History Declaration
Appendix 5: Statutory Declaration (overseas applicants/students)
Appendix 6: Code of conduct agreement for students undertaking clinical placement
Appendix 7: National Criminal Record Check consent form
Appendix 8: 100 Point ID checklist
Appendix 9: Student clinical placement checklist
Appendix 10: Application for authority to undertake clinical placements in NSW Health facilities
Appendix 11: Statutory Declaration for aged care purposes
Appendix 12: Table of requirements for staff members and volunteers
Appendix 13: Table of requirements for locum and nursing and midwifery agency staff
APPENDIX 1

Checklist for the implementation of the Employment Checking - Criminal Record Checks and Working with Children Checks Policy Directive

<table>
<thead>
<tr>
<th>Requirement:</th>
<th>Self Assessment:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>In development</td>
</tr>
</tbody>
</table>

A. STRATEGIC FUNDAMENTALS

1. A plan has been developed to implement the requirements of this policy.

2. There are resources and support to implement the requirements of the policy and an appropriate officer has been identified as responsible for the regular monitoring of progress.

3. Key Performance indicators are developed to monitor and measure the implementation.

B. INTEGRATION INTO NORMAL BUSINESS SYSTEMS

4. The requirements of this Policy Directive are included in all recruitment processes.

5. Preferred applicants for positions are given information about the requirements of this policy.

6. There are documented procedures in place regarding the management of students undertaking clinical placements and volunteers in accordance with this Policy Directive.

7. 'Designated officers' are all registered with ESRU, have undergone the appropriate checks, training etc and are deregistered with ESRU when they leave the position.

8. Documentation collected as part of the criminal record checking process is maintained and deleted in accordance with the requirements outlined in the

June 2013

40(29/08/13)
APPENDIX 1

Checklist for the implementation of the Employment Checking – Criminal Record Checks and Working with Children Checks Policy Directive

<table>
<thead>
<tr>
<th>Requirement:</th>
<th>Self Assessment:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>In development</td>
</tr>
</tbody>
</table>

9. Federally funded Aged Care Facilities have procedures for ensuring that all staff have valid National Criminal Record Checks.

C. ORGANISATIONAL IMPLEMENTATION

10. Information about the requirements of this policy is provided to interview convenors

11. There a systems in place to identify the criminal record check requirements on positions being recruited for

June 2013
## APPENDIX 2

**Working With Children Checks**

Transition Arrangements For *Existing* Child Related Workers

Child related work is work involving face-to-face contact with under 18 year olds in an area prescribed as child related work.

<table>
<thead>
<tr>
<th>Category of child related work</th>
<th>Sub category</th>
<th>Compliance date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Justice Centres</td>
<td>Work at detention centres and juvenile correctional centres</td>
<td>31 December 2013</td>
</tr>
<tr>
<td>Child Protection</td>
<td>Work in child protection services</td>
<td>31 December 2013</td>
</tr>
</tbody>
</table>
| Child development and family welfare services   | Work in mentoring and counselling services for children                      | 31 December 2014
| and mentoring and counselling services for      | Work in providing family welfare services if the clients to whom the        | Earliest date for obtaining a WWCC clearance issued by the CCYP is 1 January 2014. |
| children                                        | services are provided ordinarily include children                            |                                                                                 |
| Children's Health Services -                   | Work as a health practitioner providing health services in wards of         | 31 December 2016
| Central Coast Local Health District,            | hospitals where children are treated or elsewhere if the work includes the  | Earliest date for obtaining a WWCC clearance issued by the CCYP is 1 January 2016.
| Hunter New England Local Health District,       | provision of services to children; this includes in paediatric               |                                                                                 |
| Illawarra Shoalhaven Local Health District,     | or adolescent services or in adult health services that include the         |                                                                                 |
| Mid North Coast Local Health District,          | provision of health service to under 18 year olds                           |                                                                                 |
| Northern NSW Local Health District,             |                                                                              |                                                                                 |
| South Eastern Sydney Local Health District      |                                                                              |                                                                                 |
| Children's Health Services -                   | Work by persons (other than health practitioners) who provide health and    | 31 December 2017
| Northern Sydney Local Health District,          | care services in paediatric or adolescent health services.                   | Earliest date for obtaining a WWCC clearance issued by the CCYP is 1 January 2017.
| Sydney Local Health District,                   | **Note:** Visiting Medical Officers must obtain a WWCC on renewal of        |                                                                                 |
| South Western Sydney Local Health District,     | contract or by December 2017, whichever comes first.                        |                                                                                 |
| Western Sydney Local Health District,           |                                                                              |                                                                                 |
| Nepean Blue Mountains Local Health District,    |                                                                              |                                                                                 |
| Murrumbidgee Local Health District,             |                                                                              |                                                                                 |
| Southern NSW Local Health District,             |                                                                              |                                                                                 |
| Western NSW Local Health District,              |                                                                              |                                                                                 |
| Far West Local Health District,                 |                                                                              |                                                                                 |
| The Sydney Children's Hospitals Network         |                                                                              |                                                                                 |
| Justice Health and Forensic Mental Health Network, |                                                                              |                                                                                 |
| Ambulance Service of New South Wales            |                                                                              |                                                                                 |
| Any remaining Children's Health Services -      |                                                                              |                                                                                 |
| not captured in the groupings above.            |                                                                              |                                                                                 |
| Early Education and child care                  | Work in education and care services, child care centres, nursery services    | 31 December 2017
|                                                | and other child minding services provided on a commercial basis             | Earliest date for obtaining a WWCC clearance issued by the CCYP is 1 January 2016. |

Refer to Policy Directive Employment Checking — Criminal Record Checks and Working with Children Checks Based on Schedule 1 of the Child Protection (Working with Children) Regulation 2013 June 2013
APPENDIX 3
Locum or Nursing agency letter - Evidence of NCRC and WWCC compliance

EMPLOYER LETTERHEAD [insert letterhead]

To whom it may concern,

This letter confirms that the person detailed below has a valid National Criminal Record Check ('NCRC') and a valid Working With Children Check ('WWCC') for undertaking working in NSW Health facilities.

<table>
<thead>
<tr>
<th>Name</th>
<th>Check type</th>
<th>Check number</th>
<th>Date of check</th>
<th>Expiry date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>WWCC clearance</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>NCRC</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The letter confirms that the person named above has either:

a) Provided to us a National Police Certificate (NPC) issued to them within the last three years and has signed a declaration regarding any criminal charges or conviction since the date of the NPC, or

b) Been subject to a NCRC obtained as part of the employment /engagement / registration process with [Name of Employer/Agency], and

c) That [Name of Employer/Agency] is satisfied that there is no information on the person's record (or in any declaration provided by the person) to indicate any risks preventing them from undertaking work in NSW Health facilities.

This letter is also confirmation that the person does / does not have any convictions precluding them from working in facilities that receive aged care funding from the Australian Government in accordance with the requirements of the Aged Care Act 1997 (Commonwealth).

This letter confirms that the person named above has either:

a) A Working with Children Check clearance obtained from NSW Health (attached) which 08/08/13 include a NCRC or

b) A Working With Children Check clearance issued to them by the Children's Guardian, which [Name of Employer/Agency] has validated as current with the CCYP.

Any questions regarding this letter should be directed to [Name, Position and Contact Number].

Yours sincerely

[Name]
[Position, Employer/ Agency]

June 2013

40(29/08/13)
APPENDIX 4

Criminal History Declaration
For child related work in NSW Health

This declaration supports NSW Health's requirements for new starters to NSW Health to undergo a National Criminal Record Check as part of the recruitment process. This declaration is only for applicants for child related work; it is not for existing workers already engaged in NSW Health.

<table>
<thead>
<tr>
<th>Personal details</th>
</tr>
</thead>
<tbody>
<tr>
<td>FAMILY NAME</td>
</tr>
<tr>
<td>ALIASES/PREVIOUS NAMES (if any)</td>
</tr>
<tr>
<td>DATE OF BIRTH</td>
</tr>
<tr>
<td>ROLE APPLIED FOR</td>
</tr>
<tr>
<td>NSW HEALTH ORGANISATION</td>
</tr>
</tbody>
</table>

Declaration
I understand that:
- It is a condition of engagement with NSW Health that I disclose any criminal history as lawfully allowed in accordance with the relevant State or Territory Spent Convictions legislation, noting that I am not required to disclose spent criminal history.
- I have separately provided consent for NSW Health to undertake a National Criminal Record Check (NCRC) to confirm information I have provided in this declaration, and that a NCRC may be undertaken should I be selected as a preferred person for this role.
- The disclosure of criminal records does not automatically preclude me from this role, and I understand that each case is considered on its merits.
- If disclosed criminal records are considered relevant to the requirements of the role, I may be asked to provide additional information in support of my application.
- Information disclosed in this declaration will be treated in strict confidence and will only be viewed by authorised staff, it will only be considered if I am a preferred person for this role and for the purpose of determining if further information is required in respect of any criminal records.
- If I have deliberately withheld or provided false information about convictions or pending charges that are subsequently identified as relevant to the inherent requirements of the role, my application may be rejected or if I have been appointed, it may be grounds for dismissal.

I make the following declaration in relation to criminal records recorded against my name:

I have had one or more of the following recorded against my name (including bonds but excluding minor traffic offences, matters that have been quashed, dismissed, withdrawn or which are otherwise spent):
- convictions in the last 10 years, or
- convictions for sexual offences, or
- convictions for which a prison sentence of more than 6 months was imposed, or criminal charges which are yet to be finalised or heard in court.

I confirm that the information I have given in this declaration is true and complete to the best of my knowledge and belief.

Name: ____________________________________________
Signature: __________________________________________
Date: ____________________________________________

June 2013
# STATUTORY DECLARATION

**OATHS ACT 1900, NSW, EIGHTH SCHEDULE**

(for overseas applicants or students)

---

**[name, address and occupation of declarant]**

I do solemnly and sincerely declare that I have/ have not (listed below) any criminal convictions/pending charges in my country of origin or any country, outside of Australia, which I have resided in or been a citizen of since turning 16 years of age.

<table>
<thead>
<tr>
<th>Date of charge/conviction</th>
<th>Details of pending charge or conviction</th>
<th>Country</th>
<th>Penalty / Sentence</th>
</tr>
</thead>
<tbody>
<tr>
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</tbody>
</table>

and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the *Oaths Act 1900*.

Declared at: [place] on [date]

[signature of declarant]

in the presence of an authorised witness, who states:

**[name of authorised witness]**

**[qualification of authorised witness]**

I certify the following matters concerning the making of this statutory declaration by the person who made it:

1. *I saw the face of the person OR I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering, and*

2. *I have known the person for at least 12 months OR I have not known the person for at least 12 months, but I have confirmed the person’s identity using an identification document and the document I relied on was* [describe identification document relied on]

[signature of authorised witness] [date]

*Cross out any text that does not apply*

---

**NOTE 1:** A person who intentionally makes a false statement in a statutory declaration is guilty of an offence, the punishment for which is imprisonment for a term of 5 years – see section 35 of the *Oaths Act 1900* (NSW).

**NOTE 2:** A statutory declaration under the *Oaths Act 1900* (NSW) may be made only before a Justice of the Peace, a Legal Practitioner, a Judicial Officer, or a person authorised to witness a declaration in the jurisdiction in which it is sworn.

**NOTE 3:** Identification document means either a primary identification document within the meaning of the *Real Property Regulation 2006*, or a Medicare card, pensioner concession card, Department of Veterans’ Affairs entitlement card or other entitlement card issued by the Commonwealth or a State Government, a credit card or account (or a passbook or statement of account) from a bank, building society or credit union, an electoral enrolment card or other evidence of enrolment as an elector, or a student identity card, or a certificate or statement of enrolment, from an educational institution.

**NOTE 4:** Applicants for aged care work must use the Commonwealth Aged Care Statutory Declaration.

June 2013
Code of Conduct Agreement
for Students undertaking Clinical Placements

Instructions for Students:
Complete this form and provide it to the NSW Health organisation when requested.

SECTION A: PERSONAL DETAILS

(Name details provided must be same as the details on the Student ID)

Family Name: ______________________  Given Names: ______________________

Address: __________________________

Student ID: ______________________  Phone Number: ______________________

Date of Birth: ________________  Gender: ______________________

University/TAFE: ______________________

SECTION B:

I undertake that if I am charged or convicted of any criminal offence after the date of issue of my National Police Certificate or while I am completing my course, I will notify NSW Health before continuing with any clinical placement.

I have read and understood the NSW Health Code of Conduct, accessible at:
and agree to abide by the provisions set out in the Code of Conduct at all times during all of my clinical placements within NSW Health Facilities. Failure to do so may lead to withdrawal of my clinical placements within NSW Health.

Name: ______________________ (please print)

Signature: ______________________

Date: ______________________

June 2013
# National Criminal Record Check Consent Form

Please read the General Information sheet attached and complete all sections of this Form. Provide all names which you are currently known by, or have ever been known by, including aliases and any name changes, including by Marriage or by Deed Poll. NSW Health is required to sight your original identifying documents as per NSW Health’s 100 point ID Checklist.

**Is this a renewal check (Aged Care Only)?** □ Yes □ No

## Family Name

<table>
<thead>
<tr>
<th>Given Name (Primary)</th>
<th>Given Name 2</th>
<th>Given Name 3</th>
</tr>
</thead>
<tbody>
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## Primary Name

<table>
<thead>
<tr>
<th>Maiden Name</th>
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## Previous/Alias Name

<table>
<thead>
<tr>
<th>Name</th>
<th></th>
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<tbody>
<tr>
<td>1</td>
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<tr>
<td>2</td>
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<tr>
<td>3</td>
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<td>4</td>
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## Gender

<table>
<thead>
<tr>
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<th>Female</th>
<th>Other</th>
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## Date of Birth

<table>
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<th>(dd/mm/yyyy)</th>
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## Suburb/Town

<table>
<thead>
<tr>
<th>State</th>
<th>Country</th>
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<tbody>
<tr>
<td></td>
<td></td>
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</table>

## Current Residential Address

<table>
<thead>
<tr>
<th>No/Street</th>
<th>Suburb/Town</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
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</tbody>
</table>

## Postal Address

(If same as Residential Address, write ‘As Above’)

<table>
<thead>
<tr>
<th>State</th>
<th>Postcode</th>
<th>Country</th>
</tr>
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<tbody>
<tr>
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</table>

## Previous Address

(Over the last 3 years): If full details of previous addresses are unavailable, names of towns and States/Territories of residence will suffice.

<table>
<thead>
<tr>
<th>No/Street</th>
<th>Suburb/Town</th>
</tr>
</thead>
<tbody>
<tr>
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</tbody>
</table>

## Email

<table>
<thead>
<tr>
<th>Mobile</th>
<th>Business</th>
<th>Private</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td></td>
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</table>

## Telephone No

<table>
<thead>
<tr>
<th>Type of Position</th>
<th>□ Paid □ Volunteer □ Other</th>
</tr>
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## Drivers Licence Number

<table>
<thead>
<tr>
<th>Issue State</th>
</tr>
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<tbody>
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## Firearms Licence Number

<table>
<thead>
<tr>
<th>Issue Agency</th>
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</thead>
<tbody>
<tr>
<td></td>
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</table>

## Passport Details

<table>
<thead>
<tr>
<th>Type</th>
<th>Private</th>
<th>Government</th>
<th>UN Refugee</th>
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</tbody>
</table>

## If you have used one of these documents to verify your identity, please fill in these details:

1. I acknowledge that I have read the General Information sheet and understand that Spent Convictions Legislation. In the Criminal Records Act 1991 in the Commonwealth and many States and Territories projects "spent convictions" from disclosure and understand that the position for which I am being considered may be in a category for which exclusions from Spent Convictions legislation apply.
2. I have fully completed this Form, and the personal information I have provided in it relates to me, contains my full name and all names currently and previously used by me, and is correct.
3. I acknowledge that the provision of false or misleading information is a serious offence and acknowledge NSW Health is collecting information in this Form to provide to CrimTrac Agency (an Agency of the Commonwealth of Australia) and the Australian Police Agencies.
4. I consent to:
   1. NSW Health forwarding details obtained from this form to the CrimTrac Agency and to Australian police agencies or other relevant law enforcement agencies, if required.

ESRI 7.3 rev Updated June 2013

40(29/08/13)
National Criminal Record Check Consent Form

6. I consent to:
   i. The CrimTrac Agency disclosing personal information about me to the Australian police agencies;
   ii. The Australian police agencies disclosing to CrimTrac Agency, from their records, details of convictions and outstanding charges, including findings of guilt or the acceptance of a plea of guilty by a court, that can be disclosed in accordance with the laws of the Commonwealth and States and Territories and, in the absence of any laws governing disclosure of this information, disclosing in accordance with the policies of the police agency concerned; and
   iii. The CrimTrac Agency providing the information disclosed to the Australian police agencies, to NSW Health in accordance with the laws of the Commonwealth so that NSW Health may assess my suitability in relation to my employment.

   iv. ; and

6. I acknowledge that any information provided by me on this form and information provided by the Australian police agencies or the CrimTrac Agency relates specifically to the position detailed above.

7. ; and

   ii. I acknowledge that it is usual practice for an applicant's personal information to be disclosed to the Australian police agencies for them to use for their respective law enforcement purposes including the investigation of any outstanding criminal offences.

   I am aware that if any such records are identified, NSW Health may seek additional information relating to that record from sources such as courts, police, prosecutors and past employers. I understand that the purpose of seeking this information is to enable a full and informed employment risk assessment and that where other information is available, NSW Health will obtain that information for employment risk assessment purposes only. I acknowledge that any information obtained as part of this process may be used by Australian Police Services for law enforcement purposes including the investigation of any outstanding criminal offences.

   Note: The information you provide on this form, and which the CrimTrac Agency provides to NSW Health on receipt of this Form, will only be used for the purposes stated above, unless statutory obligations require otherwise.

   Applicant's Name: ______________________ Signature: ______________________ Date: ______________________

   Parent/Guardian Consent - If you are under 18 years of age, a parent or guardian must provide consent.

   Parent / Guardian Details

   Name: ______________________ (printed in full): ______________________ Signature: ______________________ Date: ______________________
GENERAL INFORMATION - National Criminal Record Check Consent Form

This Form is used by NSW Health as part of the assessment process to determine whether a person is suitable for employment or other engagement for work.

Unless statutory obligations require otherwise, the information provided on this Form will not be used without your prior consent for any purpose other than in relation to the assessment by NSW Health of your suitability for the position identified in the consent form. You may be required to complete another consent form in the future in relation to employment in other positions.

NATIONAL CRIMINAL RECORD CHECK

a) National criminal record checks are an integral part of the assessment of your suitability. You should note that the existence of a record does not mean you will be assessed automatically as being unsuitable. Each case will be assessed on its merit, so it is in your interest to provide full and frank details on this form. Information extracted from the Form will be forwarded to the CrimTrac Agency and to the Australian State and Territory police agencies for checking action. By signing this Form you are consenting to these agencies accessing their records to obtain and to disclose criminal history information that relates to you to NSW Health.

Criminal history information may include outstanding charges, and criminal convictions/findings of guilt recorded against you that may be disclosed according to the laws of the relevant jurisdiction and, in the absence of any laws governing the release of that information, according to the relevant jurisdiction’s information release policy.

SPENT CONVICTIONS SCHEMES

The aim of Spent Convictions legislation is to prevent discrimination on the basis of certain previous convictions. Spent conviction legislation limits the use and disclosure of older, less serious convictions and findings of guilt.

Spent convictions of specific offences will be released where the check is required for certain purposes regardless of how old the convictions are. Each Australian police agency will apply the relevant Spent Convictions legislation/information release policy prior to disclosure. If further information or clarification is required please contact the individual police agency directly for further information about their release policies and any legislation that affects them.

COMMONWEALTH

Part VICA of the Crimes Act 1914 (Cth) deals with aspects of the collection, use and disclosure of old conviction information. The main element of this law is a “Spent Convictions Scheme.” The aim of the Scheme is to prevent discrimination on the basis of certain previous convictions, once a waiting period (usually 10 years) has passed and provided the individual has not reoffended during this period. The Scheme also covers situations where an individual has had a conviction “quashed” or has been “pardoned.” A “spent conviction” is a conviction of a Commonwealth, Territory, State or foreign offence that satisfies all of the following conditions:

- It is 10 years since the date of the conviction (or 5 years for juvenile offenders); AND
- the individual was not sentenced to imprisonment or was not sentenced to imprisonment for more than 30 months; AND
- the individual has not re-offended during the 10 years (6 years for juvenile offenders) waiting period; AND
- a statutory or prescribed exclusion does not apply. (A full list of exclusions is available from the Office of the Australian Information Commissioner).

NEW SOUTH WALES

In New South Wales the Criminal Records Act 1991 (NSW) governs the effect of a person’s conviction for a relatively minor offence if the person completes a period of crime-free behaviour, and makes provision with respect to quashed convictions and pardons.

A "quashed" conviction is a conviction that has been set aside by the Court. A "pardoned" means a free and absolute pardon that has been granted to a person because they were wrongly convicted of a Commonwealth, Territory, State or foreign offence.

In relation to NSW convictions, a conviction generally becomes a "spent conviction" if a person has had a ten year crime-free period from the date of the conviction. However, certain convictions may not become spent convictions. These include:

- where a prison sentence of more than 6 months has been imposed (periodic or home detention is not considered a prison sentence);
- convictions imposed against companies and other corporate bodies;
- sexual offences pursuant to the Sexual Offences Act 2000, and
- convictions prescribed by the Regulations.
APPENDIX 7

GENERAL INFORMATION - National Criminal Record Check Consent Form

Queensland

Under the Criminal Law (Rehabilitation of Offenders) Act 1960 (Qld) a conviction automatically becomes spent upon completion of the prescribed (rehabilitation) period. This period is:
- 10 years for convictions of indictable offences where the offender was an adult at the time of conviction; and
- 5 years for other convictions (summary offences or where the offender was a juvenile).
Where a person is convicted of a subsequent offence (an offence other than a simple or regulatory offence) during the rehabilitation period, the period runs from the date of the subsequent conviction. Convictions where the offender is sentenced to more than 30 months imprisonment (whether or not that sentence is suspended) are excluded from the regime.

Once the rehabilitation period has expired, it is lawful for a person to deny (including under oath) that the person has been convicted of the offence, and the conviction must be disregarded for occupational licensing purposes (subject to certain exceptions, see below). It is unlawful for any person to disclose the conviction unless:
- the convicted person consents;
- the Minister has granted a permit authorising disclosure (where there is a legitimate and sufficient purpose for disclosing);
- the disclosure is subject to an exemption.

South Australia

Release of information on a National Police Check is governed by the Spent Convictions Act 2009 (SA). It is an offence to release information regarding the convictions of a person if those convictions are deemed to be 'spent' under the Act.

A spent conviction is one that cannot be disclosed or taken into consideration for any purpose. Eligible convictions become spent following a 10 year conviction and proven offence-free period for adults, and a 6-year conviction and proven offence-free period for juveniles. The Act defines a conviction as:
- a formal finding of guilt by a Court;
- a finding by a Court that an offence has been proved.

Certain convictions can never be spent. These include but are not limited to:
- convictions of sex offences;
- convictions where a sentence is imposed of more than 12 months;
- imprisonments for an adult, or 24 months imprisonment for a juvenile.

Schedule 1 of the Act sets out a number of exceptions to the rule where spent convictions can be released. Some examples of this include: the care of children; the care of vulnerable people (including the aged and persons with a disability, illness or impairment); activities associated with statutory character tests for licensing.

Interstate offences are released in accordance with that State or Territory's spent conviction / rehabilitation legislation and policy. Intelligence-type information is not released.

Victoria Police

For the purposes of employment, volunteer work or occupational licensing/registration, police may restrict the release of a person's police record according to the Victoria Police "Information Release Policy." If you have a police record, the "Information Release Policy" may take into account the age of the police record and the purpose for which the information is being released. If 10 years have elapsed since you were last found guilty of an offence, police will, in most instances, advise that you have no disposable court outcomes. However, a record over 10 years may be released if:
- it includes a term of imprisonment longer than 30 months;
- it includes a serious, violent or sexual offence and the check is for the purpose of working with children, elderly people or disabled people;
- it is in the interests of crime prevention or public safety.

Findings of guilt without conviction and good behaviour bonds may be released. Recent charges or outstanding matters under investigation that have not yet gone to court may also be released.

Western Australia

Under Section 7(1) of the Spent Convictions Act 1988 (WA) only "lesser convictions" can be spent by Western Australia Police, after a time period of '10 years plus any term of imprisonment that may have been imposed'. A lesser conviction is one for which imprisonment of 12 months or less, or a fine of less than $15,000 was imposed. All other convictions, such as "serious convictions" applicable under Section 6 of the Act can only be spent by applying to the District Court. At the time of sentencing, the Court may make a "spent conviction order" under the Sentencing Act 1995 (WA) that the conviction is a spent conviction for the purposes of the Spent Convictions Act 1988 (WA).
GENERAL INFORMATION - National Criminal Record Check Consent Form

Northern Territory
Under the Criminal Records (Spent Convictions) Act 1992 (NT), a conviction becomes spent automatically (in the case of an adult or juvenile offender convicted in a Juvenile Court) and by application to the Police Commissioner (in the case of a juvenile convicted in an adult court) upon completion of the prescribed period. The prescribed period is:

- 10 years for offences committed while an adult;
- 5 years for offences committed as a juvenile.

The period starts on completion of any sentence of imprisonment. A subsequent traffic conviction is only taken into account for prior traffic offences (except more serious traffic offences which cause injury or death).

Once a conviction becomes spent:

- a person is not required to disclose the existence of the conviction;
- questions relating to convictions and a person’s criminal record will be taken only to apply to unspent convictions;
- it is unlawful for another person to disclose the existence of a spent conviction except as authorised by the Act;
- spent convictions are not to be taken account in making decisions about the convicted person’s character or fitness.

Australian Capital Territory
Generally, under the Spent Convictions Act 2000 (ACT), a conviction becomes spent automatically at the completion of the prescribed (crime-free) period. This period is:

- 10 years for convictions recorded as an adult;
- 5 years for convictions recorded as a juvenile.

The period begins to run from the date a sentence of imprisonment is completed, or, where no sentence of imprisonment is imposed, from the date of conviction. A person must not be subject to a control order or convicted of an offence punishable by imprisonment during this period. If a person is convicted of an offence, which was committed in the crime-free period, but the conviction is not incurred until after the crime-free period, the spent conviction may be revived and will not become spent again until the offender has achieved the relevant crime-free period in respect of the later offence.

The effect of conviction becoming spent is that:

- the convicted person is not required to disclose any information concerning the spent conviction;
- any question concerning criminal history is taken only to apply to unspent convictions;
- references in Acts or statutory instruments to convictions or character or fitness does not include spent convictions, and it is an offence to disclose information regarding spent convictions; it is unlawful for a person who has access to a person’s criminal record held by a public authority to disclose a spent conviction; it is unlawful for a person to fraudulently or dishonestly obtains information about a spent conviction from records kept by a public authority.

Tasmania
Under the Annulled Convictions Act 2003 (Tas) a conviction is annulling upon completion of the prescribed period of good behaviour. This period is:

- 10 years where the offender was an adult at the time of conviction;
- 5 years where the offender was a juvenile at the time of conviction.

A person is taken to be of good behaviour for the required period if, during that period, he or she is not convicted of an offence punishable by a term of imprisonment. If the person is so convicted, the qualifying period (for the original offence) starts to run from the date of the subsequent conviction. A subsequent traffic conviction is only taken into account for prior traffic offences (except more serious traffic offences which cause injury or death).

Only “minor” convictions can become annulled. A minor conviction is a conviction other than one for which a sentence of imprisonment of more than 6 months is imposed, a conviction for a sexual offence or a prescribed conviction. A minor conviction is also annulled if the offence ceases to be an offence. Once an offence is annulled the convicted person is not required to disclose any information concerning the spent conviction. Any question concerning criminal history is taken only to apply to unspent convictions, and references in Acts or statutory instruments to convictions or character or fitness do not include spent convictions. An annulled conviction or the non-disclosure of the annulled conviction is not grounds for refusing the person any appointment, post, status or privilege or revoking any appointment, post, status or privilege.

- a person is not required to disclose the existence of the conviction;
- questions relating to convictions and a person’s criminal record will be taken only to apply to unspent convictions;
- it is unlawful for another person to disclose the existence of a spent conviction except as authorised by the Act;
- spent convictions are not to be taken account in.

PROVISION OF FALSE OR MISLEADING INFORMATION

You are asked to certify that the personal information you have provided on this form is correct. If it is subsequently discovered, for example as a result of a check of police records, that you have provided false or misleading information, you may be assessed as unsuitable or, if already employed, may lead to your dismissal.

It is a serious offence to provide false or misleading information.

ESR1.7blast Updated June 2013

40(29/08/13)
100 Point Identification Checklist
Appendix 8

Instructions:
(a) The 100 point identification check must be completed and checked against the applicant’s completed NSW Health National Criminal Record Check Consent Form prior to lodgment of a National Criminal Record Check (or National Criminal Record Check for Aged Care purposes).
(b) Employers are required to sight original identifying documents (scanned or photocopied certified copies are not acceptable), as listed on page 2, and ensure that an appropriately delegated officer checks the details and completes the record of identifying documents below. There is no requirement to retain copies of the identifying documents.
(c) Identification must be current and must include at least one type of photographic ID and identification that contains a signature and date of birth. Passport and/or Driver’s License are preferred.
(d) The point score of documents produced must total at least 100 points (refer to page 2).
(e) The applicant must provide evidence of ability to work in Australia: If their documents do not include an Australian or New Zealand passport or an Australian birth or citizenship certificate, an appropriate visa or work permit allowing the person to work in Australia must be sighted.

Applicant’s Full Name: ____________________________

<table>
<thead>
<tr>
<th>Description of document</th>
<th>Full name on document</th>
<th>Date issued</th>
<th>Place/Office of issue/issuing organisation</th>
<th>Expiry date</th>
<th>Checked Against Consent Form</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tr>
<tr>
<td>Mandatory record of document sighted that confirm person’s ability to work in Australia</td>
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</tbody>
</table>

Total points

I have checked the details provided above against the applicant’s National Criminal Record Check consent form as required at point (a) above, and I confirm:
The names in the ID documents are included in the consent form, and
Any reference numbers for documents detailed in the consent form match those I have sighted today, and
The applicant has provided evidence that they are allowed to work in Australia, as required at point (e) above.

I have also confirmed with the applicant that all aliases / former / middle names are included in the consent form.
(Note: Failure to include all names may warrant the check invalid).

Name: ____________________________
Position: ____________________________
Signature: ____________________________ Date: ____________________________

100 Point ID Checklist June 2013
## 100 Point Identification Checklist

### Appendix 8

#### DOCUMENTS

<table>
<thead>
<tr>
<th>Document Description</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Birth Certificate/Birth Extract</td>
<td>70</td>
</tr>
<tr>
<td>Australian Citizenship Certificate</td>
<td></td>
</tr>
<tr>
<td>Australian passport (current or expired within the past two years but not cancelled)</td>
<td></td>
</tr>
<tr>
<td>International passport (current or expired within the past two years but not cancelled)</td>
<td></td>
</tr>
<tr>
<td>Other document of identity having same characteristics as a passport e.g. diplomat’s identity (Photo or signature)</td>
<td></td>
</tr>
</tbody>
</table>

#### Secondary – the initial secondary document will score 40 points, any additional documents will be awarded 25 points each:

<table>
<thead>
<tr>
<th>Document Description</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current Licence or Permit (Government issued)</td>
<td>40 or 25</td>
</tr>
<tr>
<td>Current driver photo licence issued by an Australian state or territory</td>
<td></td>
</tr>
<tr>
<td>ASC/MSC Card</td>
<td></td>
</tr>
<tr>
<td>Working with Children/Teachers Registration Card</td>
<td></td>
</tr>
<tr>
<td>Public Employee Photo ID (Government issued)</td>
<td></td>
</tr>
<tr>
<td>Department of Veterans Affairs Card</td>
<td></td>
</tr>
<tr>
<td>Centrelink Pensioner Concession Card or Health Care Card</td>
<td></td>
</tr>
<tr>
<td>Current Tertiary Education Institution Photo ID</td>
<td></td>
</tr>
<tr>
<td>Reference from a Doctor (must have known the applicant for a period of at least 12 months)</td>
<td></td>
</tr>
<tr>
<td>Foreign driver’s licence</td>
<td></td>
</tr>
<tr>
<td>Proof of aged card (Government issued)</td>
<td></td>
</tr>
<tr>
<td>Medicare Card / private Health Care Card</td>
<td></td>
</tr>
<tr>
<td>Council rates notice</td>
<td></td>
</tr>
<tr>
<td>Property Leasing agreement</td>
<td></td>
</tr>
<tr>
<td>Property Insurance Papers</td>
<td></td>
</tr>
<tr>
<td>Tax Declaration</td>
<td></td>
</tr>
<tr>
<td>Superannuation Statement</td>
<td></td>
</tr>
<tr>
<td>Seniors Card</td>
<td></td>
</tr>
<tr>
<td>Electoral roll compiled by the Australian Electoral Commission</td>
<td></td>
</tr>
<tr>
<td>Motor Vehicle Registration or Insurance Documents</td>
<td></td>
</tr>
<tr>
<td>Professional or Trade Association Card</td>
<td></td>
</tr>
</tbody>
</table>

#### Additional Documents

- More than one of these documents are used, they must be from different organisations:
  - Current Utility bills (e.g. telephone, water, gas or electricity)
  - Credit/Debit card
  - Bank Statement, Facebook

### SPECIAL PROVISIONS ONLY TO BE USED IF 100 POINT CHECK ABOVE CANNOT BE MET

- For recent arrivals in Australia (6 weeks or less) – proof of arrival date required, current passport
  - 100
- Aboriginal or Torres Strait Islander resident in a remote area community
  - Identity of applicant and family member in an isolated area verified by two persons recognised as ‘Community Leaders’ of the community to which the applicant belongs
  - 100
- Child under 18 years of age
  - Birth Certificate/Birth Extract
  - Australian Citizenship Certificate
  - Australian passport (current or expired within the past two years but not cancelled)
  - International passport (current or expired within the past two years but not cancelled)
  - Other document of identity having same characteristics as a passport e.g. diplomat’s identity (Photo or signature)
  - Or statement from an educational institution, signed by the principal or deputy principal, confirming that the child attends the institution (statement must be on the institution’s letterhead)
  - 100

---

100 Point ID Checklist: June 2013

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40(29/08/13)
### Section 1: Complete either Part A or Part B

<table>
<thead>
<tr>
<th>Criminal Record Checks</th>
<th>Reference Number</th>
<th>Expiry Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australian National Police Certificate with no convictions / charges (issued by an Australian State / Territory Police Service) dated within the last three years.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>A</strong> For Overseas Students</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Along with the Australian National Police Certificate, an original of one of the following has also been sighted and a copy is attached for the records:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Police Certificate with no convictions / charges from their home country or any country that they have resided in (translated into English); or</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Signed Statutory Declaration with no convictions / charges complete and signed in Australia</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>B</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Clinical Placement Authority card issued by NSW Health pre 1 June 2010 (no expiry date) but which is valid for the duration of the course; or</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Clinical Placement Authority card issued by NSW Health post 1 June 2010 (with expiry date); or</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Conditional letter issued by NSW Health (with expiry date).</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conditions on student’s placement</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Section 2: Code of Conduct

<table>
<thead>
<tr>
<th>Code of conduct</th>
<th>Date signed</th>
</tr>
</thead>
<tbody>
<tr>
<td>The student has signed the NSW Health Code of Conduct Agreement.</td>
<td></td>
</tr>
</tbody>
</table>

### Section 3: Complete either Part A or Part B

<table>
<thead>
<tr>
<th>Immunisation</th>
<th>Date assessed/sighted</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A</strong> The student has been assessed by the LHD for compliance with the requirements of the Occupational assessment, screening and vaccination against specified diseases policy directive: Information Sheet 2.</td>
<td></td>
</tr>
<tr>
<td><strong>B</strong> A Certificate of Compliance has been sighted.</td>
<td></td>
</tr>
</tbody>
</table>

### Section 4: To be completed by the person sighting the documents

I confirm that I have sighted original documents as detailed above and kept copies.

Name: __________________________ Position Title: __________________________

Signature: __________________________ Date: __________________________

Organisation: __________________________ Health Facility: __________________________

Note: Police certificates are valid for three years from the date they were issued. All other documents are valid for the duration of the student’s course unless otherwise stated on the document.

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Updated June 2013 Version 5
Workplace Relations & Management
Application for authority to undertake clinical placements in NSW Health facilities

Students must apply to NSW Health for authority to undertake Clinical Placements within the NSW Health Service, or authority to continue with Clinical Placements if they:

- have offences or pending charges disclosed in their National Police Certificate, Overseas Police Certificates or Statutory Declaration; or
- have been charged or convicted of offences after the issuing of their Police Certificate.

The following documents must be submitted:

- a completed 'Application for Clinical Placement Authority' form;
- a certified copy of the National Police Certificate (issued within last 3 years);
- a certified copy of overseas Police Certificate/s and/or Statutory Declaration (for overseas students only);
- a certified copy of the Student ID issued by the Tertiary Education Institution;
- relevant supportive documents such as independent references, evidence that you have successfully completed relevant training, education or treatment courses etc.

Students are required to send the required documentation to:

Employment Screening and Review Unit
Westmead Service Centre
NSW Health (HealthShare NSW)
PO Box 292
WESTMEAD NSW 2145

Ph: (02) 8848 5175
Fax: (02) 8848 5188
Email: enquiries@hss.health.nsw.gov.au

Criminal history does not necessarily constitute a barrier to clinical placement. Each application is considered on its merits, and its relevance to undertaking clinical placement in NSW Health facilities. Mitigating factors, including but not limited to the length of time since the convictions, the nature of the convictions and action taken since by the student will be considered.

If the risks relating to the criminal history are not relevant or are considered sufficiently mitigated, NSW Health will provide a Clinical Placement Authority Card or a Conditional Letter with authority to undertake clinical placement subject to certain conditions.

If the risks relating to the criminal history are unacceptable, or the student has not provided the required documentation, NSW Health may decline the application and withdraw such authority if it had been previously provided. The student will be informed of this decision in writing and of the requirement to inform the educational Institution’s Clinical Placement Supervisor or Facilitator.

Students should allow sufficient time (a minimum of 15 working days) for NSW Health to process the Clinical Placement Authority Card or the Conditional Letter.


June 2013
**Student Application for clinical placement authority**

**SECTION A: PERSONAL DETAILS**

<table>
<thead>
<tr>
<th>Family Name:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Given Names:</td>
<td></td>
</tr>
<tr>
<td><strong>Other Name/s:</strong> (including alias and previous)</td>
<td></td>
</tr>
<tr>
<td><strong>Home Address:</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Country:</strong></td>
<td><strong>Contact Number:</strong></td>
</tr>
<tr>
<td><strong>Date of Birth:</strong></td>
<td><strong>Gender:</strong></td>
</tr>
<tr>
<td><strong>Correspondence address during enrolment (if different):</strong></td>
<td></td>
</tr>
<tr>
<td><strong>University/TAFE:</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Student ID:</strong></td>
<td><strong>Date of Enrolment:</strong></td>
</tr>
<tr>
<td><strong>National Police Certificate No:</strong></td>
<td><strong>Issued on:</strong></td>
</tr>
<tr>
<td><strong>Previous Risk Assessment Completed:</strong></td>
<td>Yes</td>
</tr>
</tbody>
</table>

**SECTION B – PLEASE CIRCLE WHICH BEST REPRESENTS YOU**

- **Australian Student:** Enrolled in Australian Tertiary Institution
- **Overseas Student:**
  1. On Exchange Program; or
  2. Enrolled in Australian Tertiary Institution

June 2013
SECTION C – STATEMENT AND CONSENT

Instructions:
- For additional offences, photocopy and complete Section E as required and attach additional pages if there is insufficient space.
- If assistance is required in completing the statement, please contact Employment Screening & Review Unit on (02) 8848 5175 or email esruenquiries@hss.health.nsw.gov.au.

Charge / Conviction (No.1)

1. Details of the charge/conviction (e.g. drink driving – High PCA; Shoplifting, etc) including the court date.

2. Please describe the event(s) that led to you being charged:

3. Were there any mitigating circumstances at the time of the offence/s (i.e. personal difficulties, relationship issues etc) that you think should be considered as part of this risk assessment? If so, describe them.

4. State how your life has changed or what action you have taken that demonstrates your commitment to avoiding criminal charges in the future.

I give consent to NSW Health to obtain any additional information, relating to any offences or pending charges shown on the National Police Certificate that I have provided, from sources such as courts, police and prosecutors. I understand that the purpose of seeking this information is to enable a full and informed risk assessment and that where other information is available, NSW Health will obtain that information for clinical placement risk assessment purposes only.

Signature: ___________________________ Date: ___________________________

June 2013
SECTION D – ATTACH DOCUMENTS

Please attach a certified copy of the following documents where applicable:

(Do not send original police certificates / statutory declaration and student ID card)

- Valid National Police Certificate (issued within last 3 years) *
- Overseas Police Certificate/s or Statutory Declaration (for overseas student) *
- Student ID card *
- Additional pages for statement (if applicable)
- Character reference (optional)
- Evidence of relevant training, education or treatment courses completed following the offence/s that demonstrate your commitment to avoiding criminal charges in the future (optional)

Please send the completed documentation to:

Post: Employment Screening and Review Unit
Westmead Service Centre
NSW Health (HealthShare NSW)
PO Box 292
WESTMEAD NSW 2145

Fax: 02 8848 5188

Email: esruenquiries@hss.health.nsw.gov.au

* Compulsory documents to be attached with your application. The name on your National Police Certificate must match the name on your Student ID card. Your application will not be processed if the name on your National Police Certificate does not match the name on your Student ID card and you will not be allowed to commence clinical placement with a NSW Public Health Facility.

June 2013
SECTION E – STATEMENT AND CONSENT (ADDITIONAL PAGE) – Photocopy if required

Charge / Conviction (No. __)  

1. Details of the charge / conviction (e.g. drink driving – High PCA; Shoplifting, etc) including the court date:

________________________________________________________________________

________________________________________________________________________

2. Please describe the event/s that led to you being charged:

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

3. Were there any mitigating circumstances at the time of the offence/s (i.e. personal difficulties, relationship issues etc) that you think should be considered as part of this risk assessment? If so, describe them.

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

4. State how your life has changed or what action you have taken that demonstrates your commitment to avoiding criminal charges in the future.

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

I give consent to NSW Health to obtain any additional information, relating to any offences or pending charges shown on the National Police Certificate that I have provided, from sources such as courts, police and prosecutors. I understand that the purpose of seeking this information is to enable a full and informed risk assessment and that where other information is available, NSW Health will obtain that information for clinical placement risk assessment purposes only.

Signature: ___________________________ Date: ___________________________

June 2013
Commonwealth of Australia

STATUTORY DECLARATION

Statutory Declarations Act 1959

I, [insert name, address and occupation of person making the declaration]

make the following declaration under the Statutory Declarations Act 1959:

1. I declare that (please tick or cross in applicable box):
   - Since turning 16 years of age, I have been a citizen or permanent resident of a country/countries other than Australia.
   - Since turning 16 years of age, I have never been a citizen or permanent resident of a country/countries other than Australia.

2. I declare that I have never been:
   (a) convicted of murder or sexual assault; or
   (b) convicted of, and sentenced to imprisonment for, any other form of assault.

I acknowledge that continued employment with a NSW Health agency is conditional upon a satisfactory outcome of the check which I have consented to.

I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the Statutory Declarations Act 1959, and I believe that the statements in this declaration are true in every particular.

3. Signature of person making the declaration

4. Place

5. Day

6. Month and year

7. Signature of person before whom the declaration is made (see over)

8. Full name, qualification and address of person before whom the declaration is made (in printed letters)

Note 1 A person who intentionally makes a false statement in a statutory declaration is guilty of an offence, the punishment for which is imprisonment for a term of 4 years — see section 11 of the Statutory Declarations Act 1959.

Note 2 Chapter 2 of the Criminal Code applies to all offences against the Statutory Declarations Act 1959 — see section 5A of the Statutory Declarations Act 1959.


Before me,


40(29/08/13)
A statutory declaration under the Statutory Declarations Act 1923 may be made before—

(1) a person who is currently licensed or registered under a law to practise in one of the following occupations:

- Chiropractor
- Dentist
- Legal practitioner
- Medical practitioner
- Nurse
- Optometrist
- Patent attorney
- Pharmacist
- Physical therapist
- Psychologist
- Trademarks attorney
- Veterinary surgeon

(2) a person who is enrolled on the roll of the Supreme Court of a State or Territory, or the High Court of Australia, as a legal practitioner (however described); or

(3) a person who is in the following list:

- Agent of the Australian Postal Corporation who is in charge of an office supplying postal services to the public
- Australian Consular Officer or Australian Diplomatic Officer (within the meaning of the Consular Fees Act 1955)
- Bank officer with 5 or more continuous years of service
- Building society officer with 5 or more years of continuous service
- Chief executive officer of a Commonwealth court
- Clerk of a court
- Commissioner for Affidavits
- Commissioner for Oaths
- Credit union officer with 5 or more years of continuous service
- Employee of the Australian Trade Commission who is:
  - (a) in a country or place outside Australia; and
  - (b) authorised under paragraph 3 (d) of the Consular Fees Act 1955; and
  - (c) exercising his or her functions in that place
- Employee of the Commonwealth who is:
  - (a) in a country or place outside Australia; and
  - (b) authorised under paragraph 3 (c) of the Consular Fees Act 1955; and
  - (c) exercising his or her functions in that place
- Fellow of the National Tax Accountants' Association
- Finance company officer with 5 or more years of continuous service
- Holder of a statutory office not specified in another item in this list
- Judge of a court
- Justice of the Peace
- Magistrate
- Mortgagee who is a mortgagor registered under Subdivision C of Division 1 of Part IV of the Mortgage Act 1941
- Master of a court
- Member of Chartered Secretaries Australia
- Member of Engineers Australia, other than at the grade of student
- Member of the Association of Taxation and Management Accountants
- Member of the Australasian Institute of Mining and Metallurgy
- Member of the Australian Defence Force who is:
  - (a) an officer; or
  - (b) a non-commissioned officer within the meaning of the Defence Force Discipline Act 1952 with 5 or more years of continuous service; or
  - (c) a warrant officer within the meaning of that Act
- Member of the Institute of Chartered Accountants in Australia, the Australian Society of Certified Practising Accountants or the National Institute of Accountants
- Member of:
  - (a) the Parliament of the Commonwealth; or
  - (b) the Parliament of a State; or
  - (c) a Territory legislature; or
  - (d) a local government authority of a State or Territory
- Minister of religion registered under Subdivision A of Division 1 of Part IV of the Marriage Act 1941
- Notary public
- Permanent employee of the Australian Postal Corporation with 5 or more years of continuous service who is employed in an office supplying postal services to the public
- Permanent employee of:
  - (a) the Commonwealth or a Commonwealth authority; or
  - (b) a State or Territory or a State or Territory authority; or
  - (c) a local government authority;
  - with 5 or more years of continuous service who is not specified in another item in this list
- Person before whom a statutory declaration may be made under the law of the State or Territory in which the declaration is made
- Police officer
- Registrar, or Deputy Registrar, of a court
- Senior Executive Service employee of:
  - (a) the Commonwealth or a Commonwealth authority; or
  - (b) a State or Territory or a State or Territory authority
- Sheriff
- Sheriffs' officer
- Teacher employed on a full-time basis at a school or tertiary education institution
# NSW Health National Criminal Record Check ("NCRC") and Working with Children Check ("WWCC") requirements for staff members and volunteers

## Appendix 12

<table>
<thead>
<tr>
<th>Type of Work</th>
<th>Sub category of work (includes paid and unpaid work)</th>
<th>Category of worker</th>
<th>New Workers</th>
<th>Declaration &amp; WWCC Priority Flag</th>
<th>Existing workers</th>
<th>Requirements</th>
</tr>
</thead>
</table>
| **Child related work** | Work involving face to face or physical contact with under 16 year olds for:  
  - health practitioners in wards of hospitals where children are treated or elsewhere if the work includes the provision of health services to children,  
  - non-health practitioners providing health and care services in paediatric or adolescent services,  
  - administrative, clerical, maintenance or ancillary workers in paediatric or adolescent services only where the work involves contact with children for extended periods.  
  For full list of other workers, refer to Section 2. | Staff members & volunteers (not VMOs) | Section 5 | Yes | Yes | Yes | No WWCC until pension in Appendix 2  
No new NCRC (subject to Section 9.2). |
| | | VMOs | Section 5 | Yes | Yes | Yes | WWCC on renewal of contract  
No new NCRC (subject to Section 9.2). |
| | | Overseas applicants | Section 5.7 Appendix 6 | Yes | Australian NCRC plus Overseas Police Certificate or Statutory Declaration | Yes | See relevant category of worker |
| **Aged Care Work** | All paid staff members aged 16 years or over and all relevant volunteers in NSW Health services and aged care facilities that receive Australian Government funding.  
Refer to Section 6.1 | Staff members, including VMOs & volunteers | Section 6.2 | No | Yes | No | NCRC every three years or if criteria in Section 9.2 met |
| | | Applicants who have resided overseas | Section 6.3 Appendix 11 | No | Australian NCRC plus Statutory Declaration | No | NCRC every three years or subject to Section 9.2. |
| | | Aged Care & Child Related | Sections 5 & 4.6 | Yes | Yes | Subj ect to Section 4.5 | No WWCC until pension in Appendix 2  
NCRC every three years or subject to Section 9.2. |
| **Non Child related work** | Non child related work is any work that is not child related or aged care work and includes, but is not limited to:  
  - any non-health practitioners, administrative, clerical, maintenance, corporate, ancillary or volunteer work in adult health services or in the Ministry of Health; or  
  - administrative, corporate, clerical, maintenance, or other ancillary or work in paediatric or adolescent services where the work does not involve contact with children for extended periods.  
Refer to Section 7. | Staff members or volunteers | Section 7 | No | Yes | No | No new NCRC (subject to Section 9.2) |
| | | Contractors - non clinical | Section 7.2 | No | Risk assessment – refer to Section 3 | No | No new NCRC subject to Section 9.2 |
| | | Students on clinical placements | Section 7.3 | No | Yes – provided by student | No | NCRC still required for placements |
| | | Students on work experience | Section 7.4 | No | No | No | No |
| | | Student Supervisors / Facilitators | Section 7.5 | Only if child related work | Yes – either by the Recruitment Agency (Refer to Section 5.6), Tertiary Institution or a Police Certificate | No | No WWCC until transition schedule Appendix 2  
No new NCRC for existing workers. |

This table should be read in conjunction with the relevant sections of the NSW Health Policy Employment Checking - Criminal Record Checks and Working With Children Checks available from [http://www.health.nsw.gov.au/ocs/DocsPages/default.aspx](http://www.health.nsw.gov.au/ocs/DocsPages/default.aspx). Refer to Appendix 13 for Locum and Nursing and Midwifery agency requirements.
<table>
<thead>
<tr>
<th>Type of work</th>
<th>WWCC requirement</th>
<th>Information required by NSW Health</th>
<th>NCRC</th>
<th>Information required by NSW Health</th>
</tr>
</thead>
<tbody>
<tr>
<td>Child related work</td>
<td>NSW Health WWCC clearance obtained pre March 2012</td>
<td>Copy of NSW Health WWCC clearance</td>
<td>No additional requirement as included in WWCC</td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td>NSW Health WWCC clearance obtained between March 2012 and June 2013</td>
<td>Copy of NSW Health WWCC clearance (which states no NCRC included)</td>
<td>A National Police Certificate (under three years old) plus a declaration of any conviction/pending charges if the Certificate was obtained before registration with agency or a NCRC by the agency</td>
<td>The NCRC/Police Certificate number, the date it was conducted and confirmation that the agency is satisfied that there is no information on the person's record (or in any declaration provided by the person) to indicate any risks preventing them from undertaking work in NSW Health facilities</td>
</tr>
<tr>
<td></td>
<td>WWCC clearance obtained from Children's Guardian from 15 June 2013 validated by the agency</td>
<td>The WWCC number, the date of its clearance and its expiry date</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>NSW Health also validates the number with the Children's Guardian</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Overseas staff (including from New Zealand)</td>
<td>WWCC as above Note the emergency conditional appointment requirements in Section 5.4, available for overseas and interstate workers</td>
<td>As above Note the emergency conditional appointment requirements in Section 5.4, available for overseas and interstate workers</td>
<td>As above plus police clearances from their home country and any country that they have been citizens or permanent residents of since turning 16 years of age, or a Statutory Declaration Appendix 4</td>
<td>In addition, if the role is in aged care work, the date of expiry of the Police Certificate/NCRC is required and confirmation that the person does not have any convictions predating them from working in facilities that receive aged care funding from the Australian Government.</td>
</tr>
<tr>
<td>Aged care work</td>
<td>No requirement</td>
<td>No requirement</td>
<td>Either a Police Certificate (under three years old) plus a declaration of any convictions/pending charges if the Certificate was obtained before registration with the agency, or a NCRC by the agency undertaken within the last three years.</td>
<td>Confirmation that overseas clearances or Statutory Declarations have been completed as required</td>
</tr>
<tr>
<td></td>
<td>Staff who have resided overseas</td>
<td>No requirement</td>
<td>As above, plus a Statutory Declaration stating that they have never been convicted of murder, sexual assault or been convicted and sentenced to prison for any other assault.</td>
<td></td>
</tr>
</tbody>
</table>

NSW DEPARTMENT OF HEALTH – POLICY ON INTELLECTUAL PROPERTY ARISING FROM HEALTH RESEARCH (PD2005_370)

Mandatory Policy

This document states the Department’s policy in relation to intellectual property arising from health research. Compliance with this policy is mandatory. The Minister for Science and Medical Research supports the policy. The policy may be amended or revoked from time to time.

Application

The policy applies to all public health organisations, Area Health Services, Statutory Health Corporations and Affiliated Health Corporations in respect of their recognised establishments and recognised services. Health research means laboratory, pre-clinical and clinical research and development in all its forms.

This policy does not apply to intellectual property which arises in the course of any other endeavour. It does not apply to commissioned works, that is, work that is specifically commissioned or contracted by public health organisations for a fee.

The main points of this policy are as follows:

- It requires public health organisations to establish intellectual property (IP) committees to manage their IP interests;
- It requires employees to notify any IP they create in the course of their employment to the committee;
- It sets up structures to deal with managing IP created by visitors (including visiting practitioners and conjoint employees such as clinical academics);
- It allows for the proceeds of the commercialisation to be shared between the creator(s) of the IP, the department or section of the public health organisation which originated the IP, and the public health organisation on a 1/3, 1/3, 1/3 basis.

1. Introduction

1.1 This policy recognises the value of health research undertaken within public health organisations. It recognises that the acquisition and dissemination of knowledge and skills in the area of research and clinical practice is of major public benefit and a primary role of public health organisations. Occasionally, the outcomes of health research may have a significant commercial value. The objectives of this policy are to:

- encourage health research in the public health system and the acquisition and dissemination of knowledge and skills;
- manage intellectual property with a potential commercial value in a manner which benefits the public health system as a whole;
- foster an environment within which intellectual property issues can be identified and developed; and
- recognise and reward innovation by staff of public health organisations.

2. Definitions

2.1 Intellectual property as it should be understood in this policy is the legally recognised outcome of creative effort and economic investment in creative effort. IP rights are rights to:

- the protection of intellectual activity or the protection of ideas and information that have been created;
procedure manual for community health facilities

- control the distribution of such activity, ideas or information;
- receive benefits from such activities, ideas or information by way of exploitation and commercialisation;
- recognition and acknowledgement.

Intellectual property in a broad sense includes:
- inventions, and patents granted in respect of such inventions and applications for such patents;
- unpatented know-how, which comprise an invention or a way of doing something which is not public knowledge;
- confidential information and trade secrets;
- registered and unregistered designs and applications for registered designs;
- copyright;
- circuit layout rights;
- registered and unregistered trademarks and applications for registration of trademarks;
- get-up and trade dress associated with products and services;
- plant variety rights;
- all other rights resulting from intellectual activity in the scientific, industrial, literary or artistic fields; and
- any contractual rights to use or exploit any of these rights.

A brief description of some forms of intellectual property and the nature of intellectual property rights is to be found at Attachment A.

2.2 This policy also uses other defined terms set out below.

“Health research” means laboratory, pre-clinical and clinical research and development in all its forms. This includes:
- development of treatment procedures and methods;
- development of equipment or other goods which may have application in a clinical setting or a public health application;
- biomedical research;
- research and development of pharmaceuticals; and
- epidemiological and research methods.

“Committee” means an Intellectual Property Committee constituted in accordance with section 4 of this policy.

“Creator” in relation to any intellectual property means an employee(s) who made a significant contribution to the creation or invention of the subject matter (eg the work, product or process) in which the intellectual property subsists, or a visitor(s) or student(s) who made a significant contribution to the creation or invention of the subject matter (eg the work, product or process) in which the intellectual property subsists and assigned his or her rights and interests in the intellectual property to the public health organisation.

“Establishment costs” in relation to intellectual property means any costs paid by the public health organisation to establish and develop the intellectual property for protection or commercialisation, once it has been determined by the public health organisation that commercialisation of the intellectual property should take place. Establishment costs do not

include costs that the public health organisation would normally have incurred in carrying out
the research as its core function, for example, the costs of employing/retaining the creators in
their regular capacity or providing infrastructure for medical research. Examples of
establishment costs would include:

• any costs paid to consultants or other professionals for advice on commercialisation or
  further development of the intellectual property for the purposes of commercialisation;
• any costs incurred in setting up a commercial vehicle for the purposes of developing or
  commercialising the intellectual property, or any costs paid to third parties for the
  purposes of commercialising the intellectual property, or further developing the
  intellectual property for commercialisation;
• legal costs incurred in relation to the intellectual property or its commercialisation, for
  example, in drafting joint venture agreements, licence agreements or assignments, or
  providing advice on the commercialisation of the intellectual property; and
• any taxes, or similar outgoings to third parties.

“Gross commercialisation proceeds” means all amounts receivable in consideration of the
assignment or licensing of intellectual property rights. These amounts may be lump sum
payments made up-front or periodically, or may be in the nature of royalties payable on the
happening of future events such as product sales.

“Net commercialisation proceeds” means gross commercialisation proceeds received by the
public health organisation, less establishment costs and protection costs.

“Protection costs” in relation to intellectual property means any costs incurred in taking any
step towards obtaining registration or protection of the intellectual property including fees for
preparing and filing patent applications, renewals, extensions, taxes, stamp duty, and legal and
patent attorney’s fees expended in the course of obtaining protection.

“Visitor” means:

• any person providing services at a public health organisation other than as an employee
  in either a remunerated or honorary position (for example, visiting practitioners, visiting
  medical officers, honorary medical officers);
• any person (other than a student) not employed by a public health organisation who
  utilises the resources of a public health organisation at any time (for example, a visiting
  researcher).

3. Application

3.1 This policy applies to all public health organisations within the meaning of the Health Services
Act 1997 (Area Health Services set out in Schedule 1 of the Act, statutory health corporations
set out in Schedule 2 of the Act, and affiliated health organisations in respect of their
recognised establishments and recognised services set out in Schedule 3 of the Act).

3.2 This policy applies to intellectual property which arises, or may arise, from health research. It
does not apply to intellectual property which arises in the course of any other endeavour.

3.3 This policy does not apply to commissioned works, that is, any intellectual property arising
from work specifically commissioned or contracted by the public health organisation for a fee.
The intellectual property in such work is governed by the terms of the commissioning
agreement.
3.4 All public health organisations which are involved in health research must have an intellectual property policy which is consistent with this policy. A public health organisation is involved in health research if:
- any of its employees or visitors carry out health research; or
- it is a party to any agreements, arrangements or collaborations with other bodies to carry out health research.

3.5 A copy of the intellectual property policy of the public health organisation must be provided to:
- all current employees and visitors who are, or may be, engaged in health research;
- all new employees who will be, or may be, engaged in health research, at the commencement of their employment;
- all visitors and students who will be, or may be, engaged in health research at the commencement of their association with the public health organisation.

The policy which is provided to the individuals listed above, must contain a clear statement to the effect that any or all of the provisions contained in the policy, including provisions relating to the sharing of any proceeds from the commercialisation of intellectual property, may be amended or revoked at anytime.

4. Intellectual Property Committee

4.1 Establishment

Each public health organisation involved in health research shall have an Intellectual Property Committee. Some public health organisations which do not undertake a significant amount of health research may:
- agree to utilise the Committee of another public health organisation;
- may constitute an ad hoc committee from time to time; or
- utilise an existing committee to carry out the IP Committee’s functions, such as the research committee, provided that the membership of such a committee is in accordance with this policy.

4.2 Composition

4.2.1 The composition of a Committee is a matter for the public health organisation and may include co-opted members appropriate to the matter under consideration. However, the standing membership is to include:
- the Chief Executive Officer or a senior executive nominated by the Chief Executive Officer;
- the Director Finance of the organisation or senior financial employee nominated by the Director Finance;
- a senior officer in charge of research within the organisation (except that such a senior officer shall not participate in the making of recommendations in relation to research in which he or she is directly involved or has an interest); and
- a person designated by the CEO of the public health organisation.

4.2.2 Specialist legal advice should be available to the Committee, either by having a legal adviser as a member, or by seeking advice as appropriate. Public health organisations may wish to include members with expertise in commercialising intellectual property.

4.2.3 The Committee shall have a secretariat or responsible officer who is available to coordinate the business of the Committee when it is not sitting, and to receive notifications.
4.2.4 Public health organisations may also have staff who are responsible for intellectual property matters within the organisation, such as IP identification, education, encouragement etc. Such staff may be members of the Committee.

4.3 Functions

4.3.1 The functions of the Committee shall include the receipt and consideration of notifications, the provision of advice, and the making of recommendations to the CEO of the public health organisation as set out in this policy. The Committee shall also act as a resource for staff on intellectual property matters, particularly in relation to the provision of advice on prior disclosure (see section 13).

4.3.2 The Committee may delegate any of its functions, except the function of making recommendations to the CEO of the public health organisation regarding protection and commercialisation of intellectual property.

4.4 Records

4.4.1 The proceedings of the Committee, and any records of those proceedings, shall be treated as commercial in confidence, in so far as they relate to the organisation’s intellectual property interests. See section 13 on prior disclosure.

5. Intellectual property created by employees

5.1 Ownership of intellectual property created by employees

5.1.1 As is the case under the general law, this policy mandates that all intellectual property created by employees of a public health organisation in the course of their employment, is owned by the public health organisation.

5.1.2 For the purposes of this policy, intellectual property which is created by an employee through any significant utilisation of the resources of the organisation (eg, funding, other employees, laboratory facilities, equipment, existing intellectual property of the organisation) is taken to be intellectual property created in the course of the employee’s employment. This shall be the case unless the employee has the prior written agreement of the Chief Executive Officer to utilise the organisation’s resources outside the course of his or her employment to perform the work in the course of which the intellectual property was created.

5.1.3 Public health organisations are not to assert ownership of any intellectual property in scholarly books, articles, audiovisuals, lectures or other such scholarly works (unless commissioned by the public health organisation). However, public health organisations may reserve the right to use such works or subject matter generated by employees.

5.1.4 Nothing in this policy shall be taken to detract from the moral rights conferred on creators under Part X of the Copyright Act 1968.

5.2 Notification by employees of intellectual property

5.2.1 An employee of a public health organisation is to notify the Committee as early as possible of the creation, or anticipated imminent creation, of any work, product or process as a result of, or in the course of, health research undertaken in the course of the employee’s employment which may have, or which the employee believes may have, commercial application.
5.2.2 Each notification must be in writing marked “confidential” and must identify:
- the work, product or process in detail;
- each person involved in the creation of the work, product or process;
- the period in which the work, product or process was created;
- the research project or program in the course of which the work,
- product or process was created; and
- any known details as to the likely commercial significance of the work, product or process.

5.2.3 Notifications are to occur whether the employee is carrying out the research alone or with other employees, or as part of a collaborative research project with *visitors* or persons from other organisations.

5.2.4 Only one notification need be made where the research is being carried out by more than one employee, or by employees from different areas of the organisation, provided the notification covers the whole of the research and identifies all employees and other persons involved in the research.

5.2.5 In no case is an employee to take steps to apply for any registration of intellectual property created in the course of their employment in his or her own name (eg file a patent application, or lodge an application for registration of a design etc), unless the intellectual property has been assigned to him or her by the public health organisation in accordance with this policy (see paragraph 5.3.7).

5.3 **Role of the Committee on notification**

5.3.1 The *Committee* shall examine and consider all notifications under paragraph 5.2. If a notification does not contain sufficient information about the work, product or process for the *Committee* to properly consider the notification, the notifying employee shall provide to the *Committee* such further information as the *Committee* requests.

5.3.2 After consideration of each notification, the *Committee* shall make a recommendation to the CEO of the public health organisation as to whether any steps toward protection and/or commercialisation of intellectual property notified to it should be undertaken. Such recommendation should be made in a timely manner without undue delay. Recommendations as to protection and commercialisation may not be made at the same time, or be decided upon at the same time. A recommendation may be made to take steps to protect the intellectual property, pending a later consideration and recommendation as to commercialisation.

5.3.3 The public health organisation’s approval is not required for every step of the commercialisation process. The public health organisation may approve a general commercialisation strategy, with details of the strategy to be implemented by the public health organisation (or persons engaged by them for that purpose).

5.3.4 Where protection and/or commercialisation is to proceed, the *Committee* shall consult the *creators* in relation to appropriate protection and commercialisation strategies.

5.3.5 Prior to taking any step toward protection or commercialisation, the *Committee* is to ensure that all relevant *creators* have been identified.
5.3.6 Where there is more than one creator the Committee shall elicit as soon as possible a written agreement from each creator as to the relative contribution of each of them to the creation of the intellectual property.

5.3.7 If the public health organisation determines that no steps be taken toward protection and/or commercialisation of the intellectual property, the Committee is to consider making a further recommendation to the public health organisation that:

- the intellectual property be assigned to the creator(s) on appropriate terms and conditions (including any retention by the public health organisation of a share of the net proceeds of commercialisation appropriately reflecting the effort and risk taken by the creator in such commercialisation); OR

- the intellectual property be retained by the public health organisation, but that the creator(s) be allowed to act as agent for the public health organisation solely for the purpose of seeking commercial partners, with the public health organisation agreeing to participate in negotiations with such commercial partners (if found) regarding commercialisation.

5.3.8 The appropriate recommendation will depend upon the circumstances of the case and the creator should be consulted in this regard.

5.4 Distribution of proceeds of commercialisation

5.4.1 Where intellectual property developed by an employee is commercialised by, or on behalf of, a public health organisation, and such commercialisation gives rise to income or other benefits to the public health organisation, the benefits to the public health organisation shall be dealt with as outlined in section 5.5.

5.5 Formula for distributing proceeds of commercialisation

5.5.1 The public health organisation shall deduct all establishment costs and protection costs expended by the public health organisation as a first call on all gross commercialisation proceeds.

5.5.2 Following deduction by the public health organisation of establishment costs and protection costs any net commercialisation proceeds will be distributed as follows:

- one third to the creator(s) of the intellectual property;
- one third to the department or section of the public health organisation which originated the intellectual property; and
- one third to the public health organisation.

5.5.3 The public health organisation shall divide the one third share of net commercialisation proceeds payable to the creators amongst the individual creators in accordance with the contributions identified by them in the agreement referred to in paragraph 5.3.6. If no such agreement has been made, the public health organisation shall distribute the one third share in accordance with its own reasonable estimate of the relative contributions of each creator. In making such an estimate, consideration should be given to the role of any creators who have left the employ of the public health organisation. The estimate of the Committee shall be final and binding on the creators until such time as an agreement has been reached between them. This must be noted in the deed of release which is required by paragraph 9.1.

5.5.4 Monies paid to employees under this policy shall be paid as income.

21(11/05)
5.5.5 The eligibility of an employee under section 6 is conditional upon the employee having acted in good faith in accordance with the requirements of the intellectual property policy of the public health organisation.

6. Clinical academics and joint teaching hospital/University facilities

6.1 Significant issues arise in relation to intellectual property created by clinical academics, who work in both the University sector and the public hospital sector. Both the relevant university and the public health organisation are likely to have contributed significantly to the remuneration of the clinical academic, as well as providing the clinical academic with resources, support and infrastructure. It will not always be possible to determine which resources were utilised in the creation of intellectual property by clinical academics.

6.2 Similar issues arise in relation to joint teaching hospital/University facilities, where health research may be undertaken jointly by a mixture of University and hospital staff.

6.3 It is in the interests of both universities and public health organisations that issues regarding intellectual property created by clinical academics and at joint facilities be clarified as early as possible in the identification/protection/commercialisation process.

6.4 Public health organisations which have affiliations with universities are encouraged to negotiate fair and equitable agreements as to the rights of respective parties to the intellectual property created in joint facilities or by clinical academics. Such agreements should take into account the rights of creators as set out in both this policy and the university policy, and the equitable contributions of all parties to the creation of the intellectual property.

7. Intellectual property created by visitors

7.1 Ownership of intellectual property created by visitors

7.1.1 The ownership of intellectual property created by visitors will depend upon the terms of any agreements between the visitor (or the visitor’s employer) and the public health organisation. In general, however, intellectual property created by visitors is owned by the visitor or his or her employer (subject to any applicable agreements).

7.2 Agreements with visitors regarding intellectual property

7.2.1 Where a visitor is to use the resources of a public health organisation to carry out research which may result in the creation of commercially valuable intellectual property, it is appropriate for a prior written agreement to be reached regarding the basis upon which those resources are used. Where the visitor is an employee of another body (for example, an independent research institute or a practice company) the agreement will need to be between the public health organisation and that body. Heads of clinical and research departments of public health organisations should ensure that, where visitors are utilising the resources of their department to create potentially valuable intellectual property, the issue of an appropriate agreement is raised with the visitor and referred to the Committee at the earliest opportunity.

7.2.2 The Committee shall provide advice to the CEO of the public health organisation on appropriate agreements between the public health organisation and visitors who utilise the resources of the public health organisation to conduct health research.
7.2.3 Appropriate agreements may include an assignment of intellectual property by the visitor to the public health organisation on certain terms and conditions, or may include terms under which the public health organisation receives a share of the income of commercialisation of the intellectual property. Whether such terms are appropriate will depend upon a number of factors, including:

- the extent and nature of the research;
- the use of the resources of the public health organisation;
- the source of funding of the research;
- the involvement of other public health organisation staff; and
- any other relevant factors.

7.2.4 The visitor (and his or her employer, if any) is to be fully informed and consulted by the Committee when it considers these issues. Before entering into any agreements with a public health organisation regarding intellectual property, visitors should be given an opportunity to seek their own legal advice.

8. Intellectual property created by students

8.1 Students may be involved in health research utilising a range of resources of the public health organisation. Generally, public health organisations should not claim ownership over intellectual property created by students. However, it may be appropriate for public health organisations to assert rights over intellectual property created by students in the following circumstances:

- the intellectual property has been created utilising substantial resources of the public health organisation;
- the intellectual property is created as a result of pre-existing intellectual property owned by the public health organisation;
- the intellectual property has been created by a team of which the student is a member;
- the intellectual property has been created as a result of funding provided by or obtained by, the public health organisation.

8.2 Heads of research departments should be cognisant of any students undertaking health research within their department that may lead to the creation of valuable intellectual property. Appropriate agreements as to ownership should be concluded at that time, considering the same matters as set out in paragraph 7.2.3.

8.3 Where the student is a student of a University with which the public health organisation has an arrangement under paragraph 6.4, the public health organisation and the University may come to an agreement on how to equitably deal with the intellectual property of students, bearing in mind any claims the students may have under this Policy and the intellectual property policy of the University.

9. Payment of monies under this policy.

Where a share in the proceeds of commercialisation of intellectual property is to be paid to creators under this policy, no monies shall be paid unless the creator first signs a written agreement with the public health organisation acknowledging:

- that the creators’ rights to receive monies under the agreement is in full and final satisfaction of any rights or entitlement that the creator has in respect of the commercialisation of the intellectual property;
9.2 Such agreements should not be signed or accepted by the public health organisation unless it appears to the public health organisation that the creator has been given an opportunity to seek his or her own advice in relation to the agreement.

10. Independent research institutes funded by public health organisations

10.1 Ownership of intellectual property created by independent research organisations

10.1.1 Public health organisations may house, or be associated with, independent research institutes which carry out health research. Public health organisations may support or resource the development of health research by such institutes in a number of ways, including through the provision of research and administrative staff, infrastructure and equipment, or direct funding. Where such institutes are independent legal entities, they will, generally speaking, be the owners of any intellectual property created by their employees (subject to the terms of the Institute’s constitution and any applicable agreements).

10.2 Agreements with independent research institutes

10.2.1 Public health organisations which provide substantial resources to independent research institutes should have in place agreements with the institute which make appropriate arrangements regarding the rights of the public health organisation in relation to intellectual property created by the institute, utilising the resources of the public health organisation.

10.2.2 Such agreements should ensure that the benefits of research undertaken by such institutes and funded or resourced by the public health organisation are preserved for the public health system. This may be achieved in a variety of ways including (but not limited to):

- provisions whereby the public health organisation is the owner of intellectual property generated by the institute utilising the resources provided by the public health organisation; or
- obtaining for the public health organisation a share of the proceeds flowing from the commercialisation of any intellectual property created by the institute utilising resources provided by the public health organisation; or
- ensuring that all proceeds flowing to the institute from the commercialisation of intellectual property are preserved for the continuing research of the institute.

10.2.3 The advice of the Committee may be sought in relation to such agreements.

11. Collaborative research, joint ventures, arrangements with third parties

11.1 Public health organisations may create intellectual property in conjunction with other organisations in the public or private sector, for example, under collaborative research projects or joint venture arrangements for specific research and development projects. The ownership of intellectual property which arises from such ventures will depend upon the contractual arrangements between the parties.
11.2 Where public health organisations enter into collaborative research activities, joint ventures, or similar arrangements with third parties, the public health organisation should ensure that there is a written agreement between the parties which sets out:

- the rights (if any) of each party to use the intellectual property which the other party brings to the project;
- the ownership of any intellectual property created by the research partners, both individually and jointly;
- where valuable intellectual property may arise, the rights and obligations of the parties regarding the protection and commercialisation of the intellectual property;
- the benefits flowing back to each of the parties with respect to any proceeds of commercialisation.

11.3 Any such agreement should protect the interests of the public health organisation proportionately to its contribution to the research project.

11.4 The public health organisation should obtain legal advice regarding proposed agreements on joint ventures and collaborative research projects.

11.5 The requirements of the Public Authorities (Financial Arrangements) Act 1987 in relation to joint ventures must be complied with (including the requirement that joint venture arrangements have the Treasurer’s approval).

12. Commercialisation by outside bodies

12.1 It is recognised that public health organisations may not have the expertise to undertake commercialisation of their intellectual property, and will contract with a third party to do so on their behalf.

12.2 Arrangements of this kind will vary in their terms and conditions, and may or may not involve the following aspects:

- Assignment of the intellectual property to the commercialising entity;
- Provisions for profit sharing with creators (rather than relying on the intellectual property policy of the public health organisation).

12.3 Where such arrangements are entered into, the public health organisation should ensure that the return to the organisation is equitable, and that any profit sharing arrangements with employees do not disadvantage employees by providing a lesser entitlement than that envisaged by this policy. The advice of the Committee may be sought in relation to such arrangements.

13. Need for confidentiality – prior disclosure

13.1 Much health research does not, and is not intended to, lead to commercial application. Researchers, however, should be cognisant of the possibility of research leading to a commercial application. Where a researcher is in doubt as to whether research may lead to a commercial application or have any possible commercial value, the advice of the Committee should be sought at the earliest opportunity.

13.2 The confidentiality provisions set out below do not apply to research which does not have a potential commercial application or commercial value. This policy is not intended to unnecessarily restrict the flow of information in the course of collaboration and communication between researchers and practitioners which this policy recognises is essential in health research.
13.3 Where it is considered that commercially valuable intellectual property has been created (in particular, patentable innovations, know-how or other secret information) it is critical that no disclosure, or publication of such innovation be made to any third party outside the public health organisation, until appropriate steps have been taken to secure statutory protection. Disclosure within the public health organisation should be kept on a “need to know” basis, and all Committees must have procedures in place to ensure that the confidentiality of information presented to them is preserved.

13.4 Prior publication of an innovation can be fatal to the ability to obtain a patent, as it may lead to the loss of “novelty” of an invention, a prerequisite for the granting of a patent. Prior publication can be fatal to a patent, whether the publication is made in Australia or overseas. Prior publication may include verbal and written disclosures made in any forum. The presentation of papers at scientific conferences, the publications of papers in peer journals, and the discussion of the innovation or aspects of it with colleagues who are not under obligations of confidentiality will generally constitute prior publication.

13.5 Where a creator wishes to make disclosure relating to an innovation which has potential commercial value (e.g., a publication or a presentation at a scientific conference), the creator must first seek the permission of the Committee. The Committee can obtain legal advice as to whether the nature of the publication will jeopardise patent or other intellectual property rights, and advise the creator appropriately regarding what disclosures may and may not be made. This advice may include appropriate amendments to the proposed publication or presentation. Researchers should ensure that the advice of the Committee is sought a reasonable time prior to the planned publication or presentation date.

13.6 Public health organisations must ensure that advice on prior disclosure is provided in a timely manner, so as not to unnecessarily prejudice appropriate publication of research results. Students should not be prevented from publishing a thesis under this policy for a period greater than two years.

14. Miscellaneous

14.1 Taxation matters

14.1.1 Public health organisations should ensure that they comply with any relevant taxation obligations which may flow from the commercialisation of intellectual property. Relevant taxation advice may be required in this respect.

14.1.2 Public health organisations should inform employees or visitors who receive a share in the proceeds of commercialisation of intellectual property under this policy that taxation obligations which flow as a result of the receipt of such money are a matter for them and that they should obtain their own taxation advice.

14.2 Audit matters

14.2.1 The audit treatment of any monies received as a result of the commercialisation of intellectual property (either by the Area alone, or as a result of a joint venture or similar arrangement) must be undertaken in accordance with the Department’s Accounts and Audit Determination for Area Health Services and Public Hospitals.
14.3 Risk Management

In commercialising intellectual property, public health organisations are not to incur undue risk of liabilities to the public health system. Legal and risk management advice must be obtained as part of the commercialisation process. Approval for incurring any risks as part of the commercialisation process must be obtained from the Department’s Chief Financial Officer prior to the commercialisation being commenced. No monies shall be paid by a public health organisation to creators of intellectual property where there are any extant risks outstanding to the public health organisation, unless the Chief Financial Officer has given approval in writing. Such approval shall only be given on the basis that the risks have been appropriately managed.

14.4 Variations from this policy

- Any arrangements in relation to intellectual property which depart from this policy must be approved in writing by the Director-General (or delegate). Such variations include:
- Any profit sharing arrangement which involves employees sharing in commercialisation other than by payment of monies (eg through equity in a start-up company);
- Any profit sharing arrangement that involves creators sharing the proceeds of commercialisation in greater share than envisaged in Para 5.5.2.

14.5 Dispute resolution

Public health organisations should agree on an appropriate dispute resolution process for disputes arising under this policy. Where public health organisations enter into individual agreements for the commercialisation of health research it is recommended that appropriate dispute resolution procedures are included in the agreement.

15. Review of this policy

15.1 It is proposed that this policy be reviewed within a reasonable period after its implementation by the Department of Health. Comments on the operation of this policy by public health organisations are encouraged.
ATTACHMENT A: DESCRIPTIONS OF INTELLECTUAL PROPERTY

This guide is designed to provide a simple outline of some types of intellectual property. It is not intended to be a comprehensive legal guide. The advice of the Committee should be sought for a more detailed understanding.

1. Copyright

There are three categories of protection under the Commonwealth Copyright Act 1968 being:

a) literary, musical, dramatic and artistic works, including adaptations and arrangements of works;
b) films, sound recordings, television broadcasts, radio broadcasts, published editions;
c) performers’ protection (not strictly copyright but included in Copyright Act).

Copyright protection is automatic on the creation of a work. It gives the owner the exclusive right to do various acts in relation to the work, including reproducing the work.

There is no copyright in an “idea”. Copyright protects the author’s particular way of expressing an idea. An example of a work created through health research which may attract copyright would be a manual developed explaining a particular product or process, or diagrams and charts explaining a product or process. It is the expression of the product or process which is protected by copyright law, not the product or the process itself. Copyright law only gives protection against the copying of the work and does not protect against the independent creation of a similar work.

Moral rights also exist in relation to literary, musical, dramatic and artistic works and in relation to cinematograph films. Moral rights seek to protect the individual creator’s honour and reputation.

2. Patents

A patent is a right granted in respect of a method, process, device or substance that is new, inventive and useful. Patents are regulated by the Commonwealth Patents Act 1990. If it can be shown that the invention was already known publicly or that it was the subject of an earlier patent, a patent will not be granted. A patent gives the owner the exclusive right to commercially exploit the invention. Unlike copyright, a patent must be applied for and protection is not automatic.

Patent rights are extremely fragile and can easily be lost if the nature of the invention is disclosed, published, sold or otherwise commercialised before a patent is applied for.

3. Registered Designs

Industrial designs can be protected by registration under the Commonwealth Designs Act 1906. The visual appearance of articles is protected – a distinctive shape, configuration, ornamentation or pattern. This protection may protect a design in relation to all sorts of items eg computer keyboards, furniture, toys and spare parts. A design must be new or original in order to be registered. It will not be possible to obtain a registration where there has been prior publication or use of the design. A design registration gives the exclusive right to apply the design to the article in respect of which the design is registered.

4. Trade Marks

The relevant legislation is the Commonwealth Trade Marks Act 1995. A trade mark is a sign used to distinguish goods or services dealt with or provided in the course of trade by a person from goods or services so dealt with or provided by any other person. Trademarks include letters, words, names,
signatures, numerals, devices, brands, headings, labels, tickets, aspects of packaging, shape, colour, sound, scent or any combinations, eg “Vegemite”. Registration can be applied for under the Trade Marks Act. A registered trade mark gives the exclusive right to use the trade mark for the goods or services for which it is registered.

5. **Trade Secrets**

The protection of trade secrets is an aspect of the law of confidential information and this law tends to be used when traditional areas of intellectual property provide no relief. Trade secrets include manufacturing techniques, customer lists, engineering designs, marketing procedures and some government information.

Employees owe a duty of confidentiality to their employer. This does not mean that information cannot be transferred from one scientist or researcher to another. However, if the information is particularly sensitive or relates to potentially valuable intellectual property, the secrecy of the information can be maintained and protected by confidentiality agreements. Confidentiality is an important concept and is useful in research and development. It can be used to assist the flow of scientific or medical information while maintaining legal secrecy and safeguarding patenting rights.

6. **Circuit Layout Rights**

Circuit layout rights protect original layout designs for computer chips and integrated circuits. The owner of an original circuit layout has the exclusive right to copy and commercially exploit the layout in Australia. Protection is automatic.
STATE HEALTH FORMS (PD2009_072)

PURPOSE

This policy and attached procedures define the processes for the creation and management of State Health Record Forms incorporated in Health Care Records.

The scope of the policy is to have clinical statewide forms filed in the Health Care Record and the standardisation of the physical Health Care/Medical Record Cover as well as other health record documents such as labels and dividers. This policy includes but is not limited to Inpatient facilities, Community Health Centres and outpatient clinics/areas.

MANDATORY REQUIREMENTS

Health services are required to use standardised forms developed by the NSW Health State Forms Management Committee.

All State Health Record Forms for inclusion (or potential for inclusion) in the Health Care Record must be approved by the NSW Health State Forms Management Committee (SFMC) or Health Service forms for use only within the Health Service must be endorsed by the local forms committee.

Health Services must establish:

- A functional health service Health Records Forms Committee
- Processes to ensure all line managers are accountable for the effective implementation of standard health record forms across the health service, including Directors of Clinical Operations, Clinical Governance and Nursing and Midwifery Services, Health Information Management units and facility based Health Information services.

All NSW Health State Record forms can only be obtained from the State Print and Print Management contracted supplier.

IMPLEMENTATION

The Health Service Chief Executive is responsible for:

- Establishing a functional health service Health Records Forms Committee, a member of which must act as representative to the NSW Health State Forms Management Committee (SFMC).
- Establishing processes to ensure all line managers are accountable for the effective implementation of standard health record forms across the health service, including Directors of Clinical Operations, Clinical Governance and Nursing and Midwifery Services, Health Information Management units and facility based Health Information services.

The Health Service Records Forms Committee is responsible for:

- Reviewing clinical forms intended for statewide use.
- Approving all clinical forms to be used by its Health Service.
- Ensuring all clinical forms meet the requirements of relevant Australian Standards (e.g. AS2828), NSW Health Policy Directives, a Health Service and State Health Records Forms templates.
- Working with the NSW Health, appointed Print and Print Management Services contracted provider, to facilitate Statewide implementation of the Policy.

23(02/10)
To standardise clinical forms across their health service where possible.
To provide a formalised communication network between Health Service forms users, Executive, the contracted Print Management Services provider and the SFMC.
To make recommendations for ongoing introduction/amendment/deletion of forms.
Ensuring that the terms of reference includes a requirement that direct clinical contribution is obtained as required.

The custodians and authors of Health Records Forms (including the NSW Department of Health) are responsible for:
- Ensuring all steps in the health record forms development processes adhere to policy.
- Submitting relevant forms through their health service representative to the SFMC for review and endorsement.
- If NSW Health Policy Directive or Guideline requires a Health Record form to be used or created in order to comply with that policy or guideline the form must be submitted directly to and processed through the NSW Health SFMC and form a part of that Policy Directive or Guideline before it is distributed for implementation.

Health Support is responsible for:
- Monitoring and Reporting:
  - Supplier (Print and Print Management Services) performance
  - Quality issues (product, artwork and supply)
  - Health Service usage and expenditure
  - Health Records Forms gallery
- Management and support of the SFMC.
- Implementation of a Communication Plan.
- Collaboration with Health Item Master File program.
- Maintenance of the State Health Record Forms and bar-code number allocation register.
- Management of print supplier contract and meeting costs associated with contract, (e.g. destruction of obsolete forms etc).

Persons undertaking the evaluation of forms are responsible for:
- Confirming that the form is compliant with the current Australian Standards on Hospital Medical Records (AS2828).
- Ensuring the form has a consistent format and template.
- Ensuring that the form meets the criteria as per stated throughout the Appendices to this policy.
- There is clear evaluation criteria against which the form is to be evaluated.
- A diverse group is selected to evaluate where applicable and possible and that consultation with any Health Service which is taking part in the evaluation has been consulted with at the highest level.
- Evaluation report is clearly documented and that any changes made to a form are within the boundaries of any policy directive which the form maybe written from.
- That any change which is outside a policy within which the form has been written from is referred back to the content owners for approval.
- That the form is in and remains in State Forms Management Committee State forms template.
1. BACKGROUND

1.1 About this document

In line with the strategic reform initiative, NSW Department of Health has instructed Health Support Services to include forms rationalisation and print management across NSW Health. This project will ultimately cover all forms however initially health records rationalisation is being addressed.

It is estimated that there are approximately 15,000 commercially printed health record forms being used across NSW Health. There is not a common Statewide process to develop or review health (clinical) record forms. Not all forms comply with current Australian standards (e.g. AS2828). NSW Department of Health develops policies and guidelines with health records forms incorporated for implementation across NSW Health without always making provision for:

- A co-coordinated implementation plan across all Health Services and agencies
- Compliance with the current Australian Standards (i.e. for paper-based health care records - AS2828)
- Review of the printing and distribution requirements and impact across all Health Services and agencies.

1.2 Key definitions

Health Record Form: A record of the provision of care, assessment, diagnosis, management and/or professional advice given to a person. This term is used inter-changeably with clinical form. A Health Record Form is a Clinical form that is endorsed by Health Service Forms Committee for use within the area/service.

State Health Record Form is considered to be a:

- Clinical Form that is mandated by NSW Department of Health for statewide usage. See appendix 3 for the Statewide forms templates.
- Clinical Form that Health Services have devised for health service or agency use.
- Clinical Form that has undergone a NSW Health State Forms Management Committee (SFMC) approval process.

Health Care Record: A Health Care Record is a documented account of a patient’s/client’s health evaluation, diagnosis, illness, treatment, care, progress and health outcome that provides a means of communication for all health care personnel during each visit or stay at a health service. It is the primary repository of all information regarding patient/client care.

The record is used to care for the patient/client during an episode of care but may also be used for future episodes of care, communication with external health care providers and regulatory bodies, planning, research, education, financial reimbursement, quality improvement and public health. The health care record may also become an important piece of evidence in protecting the legal interests of a patient/client, clinician or Health Service.

The health care record may be in hard copy, electronic or other form, and unless otherwise indicated, the provisions of this policy directive apply equally to all health care records regardless of the media in which they are kept.

Health Service: a Health Service within the boundaries of the Health Service Act 1997 (which includes Area Health Services/Chief Executive Governed Statutory Health Corporation, Board Governed Statutory Health Corporations, Affiliated Health Organisations - Non Declared, Affiliated Health Organisations - Declared, Public Hospitals).
The introduction of statewide health records forms will assist in:

- Promoting quality processes through
  - Consistent business practices when designing and implementing clinical forms across NSW Health.
  - Statewide standardised document control for all Health Record Forms included in NSW Health Policies.
- Health Services and agencies transferring to electronic medical records systems.
- Streamlining the implementation of NSW Health Policy and forms at the Health Service and agency level.
- Supporting scanning of health care records, including a standardised bar-coding system and the maintenance of a State Health Record Forms Register.
- Promoting effective and efficient work practice by:
  - Decreasing the workload at Health Services and Agencies, who are currently responsible for the implementation of forms incorporated in NSW Health policies and guidelines.
  - Standardising information and formatting to assist staff across NSW Health to accurately and consistently collect patient information, regardless of the health care facility or service.

2. **NSW Health State Forms Management Committee**

2.1 **Terms of Reference**

The Committee has the following Terms of Reference:

- Co-ordinate the development of State Health Record Forms and documents.
- Standardise State Health Record Forms and documents and across the whole of NSW Health where possible.
- Ensure compliance with relevant Australian Standards where appropriate.
- Ensure liaison and co-ordination with the Electronic Medical Records Project (eMR) and other related electronic information systems.
- Provide a formalised communication network between form users, NSW Department of Health, Health Support and the contracted Print and Print Management Services Supplier.
- Disseminate forms and related information across NSW Health.
- Approve statewide health record forms and allocate a unique form number.
- Oversee the maintenance of the State Health Record Forms Register.
- Ensure actions and issues are assigned to the appropriate personnel either within Health Support, Health Services/Agencies, NSW Department of Health or the contracted Print and Print Management Services Supplier.
- Regularly review the statewide electronic forms web-site, when developed, for accuracy and initiate remedial action as required.
- Make recommendations for ongoing introduction/amendment/deletion of forms.
- To complement existing Health Service Forms Committees to ensure only endorsed approved (local or state) health record forms are produced for filing in the Health Care Record.
2.2 Governance

The Committee will be responsible to the Deputy Director-General, Health System Support.

2.3 Representation

NSW Health Services (NSCCAHS/HNEAHS/SESIAHS/SSWAHS/SWAHS/GSAHS/GWAHS/ NCAHS/CHW and Justice Health)

Health Support

By Invitation as required

- Standards Australia representative
- NSW Department of Health representative
- eMR Project Team representative
- Ambulance Service NSW representative
- MH-OAT representative
- Print and Print Management Services Contractor representative
- Other persons involved with special projects involving clinical forms and health records

3. Development of Statewide Health Record Forms

3.1 Identification of need for new or revised health record forms

Sources for identifying the need for the development or revision of a State Health record form include, but are not limited to:

- State executive sources including legislative requirements, NSW Health Policy Directives, Guidelines, Australian Standards and specific industry requirements, better practice or research evidence
- Service reviews, Incident Information Management System (IIMS), complaints, root cause analysis (RCAs) and peer review
- Internal and External audit reports

3.2 Development Stage

Custodians and authors of proposed State Health Record forms are required to:

- Search for an existing or similar form.
- Source relevant documentation where possible and ensure forms comply with Best Practice, both in forms design and clinical practice.
- Ensure compliance with NSW Health policy directives, guidelines and information bulletins.
- Ensure there is endorsement from Health Services and supply confirmation of this in writing to the SFMC.
- Ensure that the form utilises the SFMC Forms Template.
- Contact relevant Health Service Forms Committee to identify which form is to be replaced and provide reasons for replacement.
- Through their SFMC representative, send an electronic version of the form and completed application package for approval to the SFMC – see appendix 7 for application checklist.
- Consider usage when stock numbers are being established.
- Specify colour, print and other specifications at the time of form submission.
- Comply with relevant Australian Standards (e.g. AS2828).
• Ensure forms are developed in liaison with appropriate clinical representation at both State and Area level.
• Ensure forms meet medico-legal requirements.
• Ensure relevant stakeholders are alerted to form development.
• Ensure training and/or implementation guidelines and materials are developed and distributed to appropriate Area representatives prior to the introduction of the form.
• The AHS is to establish a single line of communication with the SFMC; and the process for submission to the SFMC should confirm the above has been undertaken and the proposal endorsed at an Area Health Service level, prior to submission.

3.3 Considerations

The impact of creating new Health Record forms is to be considered. This impact may include:
• Increased staff work load due to staff completing the form and Medical Record/Clinical/Health Information Department filing the form.
• Increased size of medical records, which may impact on storage space and have potential OH&S issues due to the weight.
• Costs – for example the colour of form or print, NCR paper, A3 size and booklets.

Instructions/protocols/checklists should not, as a general rule, be included on the back of forms. Rather, alternate approaches should be explored to minimize interference with clinical documentation and unnecessary space requirements in the health care record. For example, instructions can be laminated and placed in an obvious area when introducing the form and/or be included in a procedure.

Only Health Record forms endorsed by the SFMC (or Health Service Forms endorsed by the local Forms Committee) will be filed in the Health Care Record. If a Health Record form is released for use without an authorized form number and bar-code identifier when one is required, then it will be deemed ineligible to be filed into the Health Care Record.

Revised forms, once approved, will be printed for use when the current supply is depleted. If a form is deemed to pose a clinical risk it is to be destroyed at the contracted printers and the artwork removed.

Photocopying of blank State Health Record forms for use and filing in the Health Care Record is not permitted.

3.4 Validation Stage

The NSW Health State Forms Management Committee (SFMC) will review the proposed Health Record form based on the following criteria:
• Form must comply with NSW Health State templates and current Health Record Standards (e.g. AS2828).
• A unique form number must be allocated from the State Forms Register.
• A bar code identifier must be allocated based on the determined state form number.
• Working with the NSW Health contracted Print and Print Management supplier, to manage printing of the form using the approved SFMC template.
• Informing author or custodian of approval or non-approval
• Managing the gallery of State Health Record Forms.
• Provide support to authors in design and concepts (e.g. colours of print, paper, scanning requirements).
3.5 Consultation Phase

A consultation phase will occur for a two week period from the time the form is released to the AHS’s or relevant Health Bodies for comments to be received back.

3.6 Evaluation Criteria

All Health Record Forms will be evaluated on:

- best practice through
  - Consistent format and standardised template.
  - Compliance with current Australian Standards on Hospital Medical Records (AS2828)
- provision of supporting policy and guidelines
- current clinical policy
- clinical work flow
- financial resources
- implementation requirements and the provision of training materials
- decrease in duplication of data items
- decrease in space requirements of health records i.e. storage requirements.

The evaluation process shall include consultation with the Health Services.

3.7 Transition Period

Implementation

High usage clinical forms will be identified for standardisation into the NSW Health statewide template. It is expected that this is where the greatest impact should be gained for cost saving and standard work practice. Examples of these forms are; Medical record covers, Progress notes, Fluid Balance charts, etc.

Phased Transition

The SFMC will determine based on usage and/or clinical criteria the priority for the standardisation of Statewide forms. If more than one form exists then there will need to be consultation with the key stake holders via the members of the SFMC about the design of the most clinically functional and cost effective solution.

Once the SFMC has developed a new form the Print Management Services vendor will be advised not to replace current stock of previous old forms. When the stock is low or no longer available the “Flag” on the Print Management Services vendor’s web site will direct users to the NSW Health Statewide standardised form that must be used.

The replacement Statewide form must be available on the Print Management Services vendor’s web site before old stock is depleted to ensure continuity of supply.

If old stock is still available after 6 months the Print Management Services vendor will identify this issue with the SFMC for a decision to either:
- Contact the owner of the form and advise them of “The option to write off old stock”.
- Make the stock redundant.
- Discuss with the relevant Health Service to determine who will bear this cost.
The Option to Write Off Old Stock

If a Health Service or NSW Department of Health Division needs to write off excess “old” stock (in order to introduce “new” stock rapidly), they must be advised that:

a. The Service Level Agreement Contract allows that the Print Management Services vendor is responsible for the (write off) cost of the first 3 months of stock held.
b. The Health Service would be responsible for the cost of the remaining (unused) “old” stock, and the costs of destruction.
c. Where there is stock held which has not moved in the last 12 months, the Print Management Services contractor would notify the owner of the stock of their intent to write off and destroy (noting the above incurred costs), unless advised otherwise within 2 months time.
d. If no response or advice is given after that period, then the stock will be written off and the entire cost of the stock and destruction costs will be invoiced to the initiating source.

State Mandated Forms (those included in a NSW Health Policy Directive)

a. If the form is Print on Demand (POD), it can be transitioned to the NSW State Forms Template immediately as there is no stock on hand.
b. If the form is warehoused existing stock will be run out and the form transitioned into the NSW State Forms Template ready to be printed on the next reprint.
c. New forms required by Policy Directives in the process of formulation will follow the requirements of this policy elsewhere described.

3.8 Health Record forms that require a trial

The following guidelines are to be followed for introduction of a new State Health Record Forms which are not available in the NSW Health Print and Print Management Contractor’s State Health Record Forms Library:

a. Complete the request and forward it to the Health Service Forms Committee Representative advising of the need to develop/introduce a State Health Record Form. See Appendix 7 for the Application Checklist.
b. The Health Service or agency Forms Representative is to advise the NSW Health State Forms Management Committee (SFMC) Convenor of the proposed form.
c. The SFMC is to formulate the appropriate Working Party who will be responsible for co-ordinating, providing education and supervising the form trial.
d. The time period required for the trial of a form will be dependent on the usage of form. For forms that have a high usage, a minimum trial period of up to 3 months may be required, whilst forms that have a low usage may require up to a 12 month trial period.
e. During the trial period, stocks of the “old” form (if a revised form) must be withdrawn from circulation, to enable a true and accurate trial of the “new” form to occur.
f. All trial forms to adopt the State Forms Template and to be allocated a ‘Trial State Forms Number category and bar code’.
g. At the end of the trial period, the outcome of the trial must be evaluated to determine whether the new form has been accepted by users (results of a compliance audit). If the trial is unsuccessful the current version should be deleted from the State Health Record Forms website as a State form or re-designed. If a local area wishes to continue using the trial form they must give it a local form number.
h. The final form to be registered with State Forms Number, category and barcode.
3.9 Low Usage Forms

Those forms that are identified by the SFMC as extremely low usage can be made available via the relevant website (primarily the NSW Health authorised Print and Print Management suppliers’ website). These forms can be viewed and printed direct from the website. These forms must adhere to this policy including usage of the approved NSW Health clinical forms artwork and must be approved by the NSW Health SFMC. As identified by the SFMC by usage at the present time this is expected to be in the realm of 100 per annum per site.

4. REFERENCES

4.1 External

Australian Standard AS2828 - Paper Based Health Care Records

4.2 Internal

Electronic Information Security Policy – NSW Health (PD2013_033)
Health Care Records – Documentation and Management (PD2012_069)
NSW Health Patient Matters Manual

4.3 Glossary

SFMC = NSW Health Statewide Forms Management Committee
HIMS = Health Information Managers
HS = Health Service
PD = NSW Health Policy Directive
POD = Print On Demand
HSS = Health Support
MHOAT = Mental Health Outcomes Assessment Tool

4.4 Appendices

Appendix 1 - Forms Committee Process and Procedure
   a – State Health Care Record Form Process – New Form Process
   b – State Health Care Record Form Process – Targeted Form standardisation
Appendix 2 - Health Forms Design
Appendix 3 - State Forms Templates
Appendix 4 - State Health Care Record Cover Artwork
Appendix 5 - Terminal Digit Colours for Health Care Record Covers
Appendix 6 - Strip Colours and Patterns
Appendix 7 - NSW Health State Health Record Form Design Checklist

23(02/10)
HEALTH CARE RECORDS – DOCUMENTATION AND MANAGEMENT (PD2012_069)


PURPOSE

The purpose of this policy is to:

- Define the requirements for the documentation and management of health care records across public health organisations (PHOs) in the NSW public health system.
- Ensure that high standards for documentation and management of health care records are maintained consistent with common law, legislative, ethical and current best practice requirements.

MANDATORY REQUIREMENTS

Documentation in health care records must provide an accurate description of each patient/client’s episodes of care or contact with health care personnel. The policy requires that a health care record is available for every patient/client to assist with assessment and treatment, continuity of care, clinical handover, patient safety and clinical quality improvement, education, research, evaluation, medico-legal, funding and statutory requirements.

Health care record management practices must comply with this policy.

IMPLEMENTATION

Chief Executives are responsible for:

- Establishing mechanisms to ensure compliance with the requirements of this policy.
- Ensuring health care personnel are advised that compliance with this policy is part of their patient/client care responsibilities.
- Ensuring line managers are advised that they are accountable for implementation of this policy.
- Ensuring implementation of a framework for auditing of health care records and reporting of results.
- Ensuring health care records are audited and results reported within the PHO.

Facility/service managers are responsible for:

- Ensuring the requirements of this policy are disseminated and implemented in their hospital/department/service.
- Ensuring health care personnel within their facility/service have timely access to paper based and electronic health care records.
- Monitoring compliance with this policy, including health care record audit programs, and acting on the audit results.

Health care personnel are responsible for:

- Maintaining their knowledge, documentation and management of health care records consistent with the requirements of this policy.
- Ensuring they are aware of current information about the patient/client under their care including where appropriate reviewing entries in the health record.
1. OVERVIEW

1.1 Introduction

This standard sets out the requirements for documentation and management for all models of health care records within the NSW public health system. Health care records promote patient safety, continuity of care across time and care settings, and support the transfer of information when the care of a patient/client is transferred eg. at clinical handover, during escalation of care for a deteriorating patient and transfer of a patient/client between settings.

1.2 Key definitions

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attending medical practitioner</td>
<td>Visiting Medical Officer or Staff Specialist responsible for the clinical care of the patient for that episode of care.</td>
</tr>
<tr>
<td>Approved clinician</td>
<td>A clinician, other than a medical practitioner, approved to order tests eg Nurse Practitioner.</td>
</tr>
<tr>
<td>Health care personnel</td>
<td>A person authorised to provide assessment, diagnosis, treatment/care, observation, health evaluation or professional advice or those personnel who have access to the patient/client health care records on behalf of the NSW public health system to facilitate patient/client care. Health care personnel include clinicians (and students) and clinical support staff. Clinicians include registered health practitioners and others including Assistants in Nursing, social workers, dieticians, occupational therapists and Aboriginal Health Workers. Clinical support staff include Health Information Managers, Clinical Governance and Patient Safety staff, ward clerks, health care interpreters and accredited chaplains.</td>
</tr>
<tr>
<td>Health care record</td>
<td>The main purpose of a health care record is to provide a means of communication to facilitate the safe care and treatment of a patient/client. A health care record is the primary repository of information including medical and therapeutic treatment and intervention for the health and well being of the patient/client during an episode of care and informs care in future episodes. The health care record is a documented account of a patient/client’s history of illness; health care plan/s; health investigation and evaluation; diagnosis; care; treatment; progress and health outcome for each health service intervention or interaction. The health care record may also be used for communication with external health care providers, and statutory and regulatory bodies, in addition to facilitating patient safety improvements; investigation of complaints; planning; audit activities; research (subject to ethics committee approval, as required); education; financial reimbursement and public health. The record may become an important piece of evidence in protecting the legal interests of the patient/client, health care personnel, other personnel or PHO. The health care record may be paper, electronic form or in both. Where a health care record exists in both paper and electronic form this is referred to as a hybrid record. Where PHOs maintain a hybrid record health care personnel must at all times have access to information that is included in each part. This policy applies to health care records that are the property of, and maintained by, PHOs, including health care records of private patients seen in the PHO. The policy does not apply to records that may be maintained by patients/clients and records that may be maintained by clinicians in respect of private patients seen in private rooms.</td>
</tr>
<tr>
<td>Must</td>
<td>Indicates a mandatory action required by a NSW Health policy directive, law or industrial instrument.</td>
</tr>
</tbody>
</table>

67 Health practitioners registered under the following National Boards - Chiropractic, Dental, Medical, Nursing and Midwifery, Optometry, Osteopathy, Pharmacy, Physiotherapy, Podiatry and Psychology – are required to comply with the health care records section of their relevant code of conduct/guidelines/competency standards. On 1 July 2012 the following healthcare personnel will be represented by a national registration board – Aboriginal and Torres Strait Islander health practitioners, Chinese medicine practitioners, medical radiation practitioners, and occupational therapists http://www.ahpra.gov.au.
Medical Practitioner: A person registered under the Health Practitioner Regulation National Law (NSW) in the medical profession.

Public health organisation (PHO):
- a) Local health district
- b) Statutory health corporation that provides patient/client services,
- c) Affiliated health organisation in respect of its recognised establishment or recognised service that provides patient/client services, or
- d) Ambulance Service of NSW.

Should: Indicates an action that ought to be followed unless there are justifiable reasons for taking a different course of action.

1.3 Privacy and confidentiality

All information in a patient/client’s health care record is confidential and subject to prevailing privacy laws and policies. Health care records contain health information which is protected under legislation.\(^{68}\) The requirements of the legislation, including the Privacy Principles, are explained in plain English in the [NSW Privacy Manual for Health Information].\(^{69}\) Health care personnel should only access a health care record and use or disclose information contained in the record when it is directly related to their duties and is essential for the fulfilment of those duties, or as provided for under relevant legislation.

1.4 Auditing

Health care records across all settings and clinical areas must be audited for compliance with this policy. PHOs must establish a framework and schedule for auditing of records and approve and designate audit tools and processes.

Clinical audits of documentation in health care records should involve a team based approach with the clinical team consisting of medical practitioners, nurses, midwives, allied health practitioners and other health care personnel, as appropriate.

Health care record audit results should be:
- a) Provided to relevant clinical areas and health care personnel.
- b) Included in PHO performance reports.
- c) Referred to PHO quality committees to facilitate quality improvement.

1.5 Education

PHOs must establish a framework for the development and delivery of suitable education on documentation and management of health care records. All health care personnel who document or manage health care records must be provided with appropriate orientation and ongoing education on the documentation and management of health care records.

The content and delivery of education programs should be informed by health care record audits. The results of such audits should be used to target problem areas relating to particular health care personnel groups or facets of documentation and management.

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Specific education must be conducted for the introduction of any new complex health care record forms and for changes in documentation models.

2. **DOCUMENTATION**

2.1 **Identification on every page/screen**

The following items must appear on every page of the health care record, or on each screen of an electronic record (with the exception of pop up screens where the identifying details remain visible behind):

- **a)** Unique identifier (e.g., Unique Patient Identifier, Medical Record Number).
- **b)** Patient/client’s family name and given name/s.
- **c)** Date of birth (or gestational age/age if date of birth is estimated).
- **d)** Sex. The exception is ObstetriX records where sex of the mother is not recorded.

2.2 **Standards for documentation**

Documentation in health care records must comply with the following:

- **a)** Be clear and accurate.
- **b)** Legible and in English.
- **c)** Use approved abbreviations and symbols.
- **d)** Written in dark ink that is readily reproducible, legible, and difficult to erase and write over for paper based records.
- **e)** Time of entry (using a 24-hour clock – hhmm).
- **f)** Date of entry (using ddmmyy or ddmmyyyy).
- **g)** Signed by the author, and include their printed name and designation. In a computerised system, this will require the use of an appropriate identification system e.g. electronic signature.
- **h)** Entries by students involved in the care and treatment of a patient/client must be co-signed by the student’s supervising clinician.
- **i)** Entries by different professional groups are integrated i.e. there are not separate sections for each professional group.
- **j)** Be accurate statements of clinical interactions between the patient/client and their significant others, and the health service relating to assessment; diagnosis; care planning; management/treatment/services provided and response/outcomes; professional advice sought and provided; observation/s taken and results.
- **k)** Be sufficiently clear, structured and detailed to enable other members of the health care team to assume care of the patient/client or to provide ongoing service at any time.
- **l)** Written in an objective way and not include demeaning or derogatory remarks.
- **m)** Distinguish between what was observed or performed, what was reported by others as happening and/or professional opinion.
- **n)** Made at the time of an event or as soon as possible afterwards. The time of writing must be distinguished from the time of an incident, event or observation being reported.
- **o)** Sequential - where lines are left between entries they must be ruled across to indicate they are not left for later entries and to reflect the sequential and contemporaneous nature of all entries.

36(10/01/13)

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71 Each registered health practitioner is required to comply with the health care records section of the code of conduct/guidelines/competency standards under their relevant National Board.

p) Be relevant to that patient/client.
q) Only include personal information about other people when relevant and necessary for the care and treatment of the patient/client.
r) **Addendum** – if an entry omits details any additional details must be documented next to the heading ‘Addendum’, including the date and time of the omitted event and the date and time of the addendum. For hardcopy records, addendums must be appropriately integrated within the record and not documented on additional papers and/or attached to existing forms.
s) **Written in error** - all errors are must be appropriately corrected.

   No alteration and correction of records is to render information in the records illegible.

   An original incorrect entry must remain readable i.e. do not overwrite incorrect entries, do not use correction fluid. An accepted method of correction is to draw a line through the incorrect entry or ‘strikethrough’ text in electronic records; document “written in error”, followed by the author’s printed name, signature, designation and date/time of correction.

   For electronic records the history of audited changes must be retained and the replacement note linked to the note flagged as “written in error”. This provides the viewer with both the erroneous record and the corrected record.

2.3 **Documentation by medical practitioners**

   Documentation by medical practitioners must include the following:
   a) Medical history, evidence of physical examination.
   b) Diagnosis/es (as a minimum a provisional diagnosis), investigations, treatment, procedures/interventions and progress for each treatment episode. A principal diagnosis must be reported for every episode of admitted patient care.
   c) Medical management plan.
   d) Where an invasive procedure is performed and/or an anaesthetic is administered, a record of the procedure including completion of all required procedural checklists. Where a general anaesthetic is administered, a record of examination by a medical practitioner prior to the procedure is also required.
   e) Comprehensive completion of all patient/client care forms.
   f) A copy of certificates, such as Sick and Workers Compensation Certificates, provided to patients/clients must be retained in the patient/client’s health care record.

2.3.1 **Attending Medical Practitioner**

   The Attending Medical Practitioner (AMP) is responsible for the clinical care of the patient/client for that episode of care and is responsible for ensuring that adequate standards of medical documentation are maintained for each patient/client under their care.

   When documentation is delegated to a medical practitioner e.g. Intern, Resident, Registrar, the AMP remains responsible for ensuring documentation is completed to an appropriate standard that would satisfy their professional obligations.

   The AMP should review the preceding medical entries and make a written entry in the health care record (print name, signature, designation and date/time) to confirm they have been read at the same time as they are reviewing the medical management plan for the patient/client to ensure it remains current and clinically appropriate, consistent with the AMP’s duty of care to the patient/client.
2.4 Documentation by nurses and midwives

Documentation by nurses and midwives must include the following:

a) Care/treatment plan, including risk assessments with associated interventions.
b) Comprehensive completion of all patient/client care forms.
c) Any significant change in the patient/client’s status with the onset of new signs and symptoms recorded.
d) If a change in the patient/client’s status has been reported to the responsible medical practitioner documentation of the name of the medical practitioner and the date and time that the change was reported to him/her.
e) Documentation of medication orders received verbally, by telephone/electronic communication including the prescriber’s name, designation and date/time.

2.5 Frequency of documentation

The frequency of documentation entries should conform to the following as minimum requirements.

2.5.1 Acute Care Patient/clients

a) Registered Nurse/Midwife, Enrolled/Endorsed Nurse should make an entry in the patient/client’s health care record a minimum of once a shift. An entry by an Assistant in Nursing should not be the only entry for a shift. Entries should reflect in a timely way the level of assessment and intervention. The results of significant diagnostic investigations and significant changes to the patient/client’s condition and/or treatment should be documented as these occur.
b) Medical practitioners should make an entry in the health care record at the time of events, or as soon as possible afterwards, including when reviewing the patient/client.

c) Other health care personnel should make entries to reflect their level of assessment and intervention consistent with the medical management plan.

2.5.2 Long Stay or Residential Patients/Clients

Depending on the health care setting and the length of stay (or expected length of stay) of the patient/client, health care personnel should make an entry at least weekly in the health care record particularly when warranted by the patient’s medical condition or frailty. Additional entries should be made to reflect changes in the patient/client status, condition and/or treatment or care plan as these occur.

2.5.3 Non-Admitted Patient/Clients

An entry must be made in the health care record for each patient/client attendance (including video conference sessions) and for failures to attend.

Entries should reflect the level of assessment and intervention. The results of significant diagnostic investigations and significant changes to the patient/client’s condition and/or treatment should be documented.

Attendance of individual patient/clients at sessions of a formal multiple session group program should be noted. Such attendances may be documented in an attendance register or scheduling system rather than the patient/client’s health care record. Where a patient/client receives specific individual care or treatment in addition to the group session interaction, this care or treatment should be documented in their health care record.

2.6 Alerts and allergies

Clinicians must flag issues that require particular attention or pose a threat to the patient/client, staff or others including:

a) Allergies/sensitivities or adverse reactions, and the known consequence.

b) Infection prevention and control risks.

c) Behaviour issues that may pose a risk to themselves or others.

d) Child protection/well being matters including

i. alerts and flags for High Risk Birth Alerts or prenatal reports

ii. children at risk of significant harm

iii. where NSW Police or the Department of Family and Community Services have issued a general alert to a PHO.

e) Where patients/clients have similar names and other demographic details.

PHOs must implement systems for the identification of such alerts and allergies. If a label is used on the outside folder of a paper based health care record this does not negate the need for documentation in the health care record of the alert/allergy, and known consequence.

Any such issue should be ‘flagged’ or recorded conspicuously on appropriate forms, screens or locations within the health care record. Where alerts relate to behaviour issues or child protection matters the alert should be discreet to ensure the privacy and safety of the patient/client, staff or others.

These flags, especially where codes or abbreviations are used, must be apparent to and easily understood by health care personnel; must not be ambiguous; and should be standardised within the PHO.

A flag should be reviewed at each admission. When alerts and allergies are no longer current this must be reflected in the health care record and inactivated where possible.

2.7 Labels

Non-permanent adhesive labels should be avoided. Where considered essential the label must be relevant to the patient/client and placed so that all parts of the health care record are able to be read and patient/client privacy maintained. State approved labels must be used.

2.8 Tests – requests and results

The health care record must document pathology, radiology and other tests ordered, the indication and the result.

When tests are ordered the name of the ordering medical practitioner/approved clinician and their contact number must be clearly printed (if written) or entered (if computerised) on the request form.

Pathology, radiology and other test results must be followed up and reviewed with notation as to action required. The results must be endorsed by the receiving medical practitioner/approved clinician, with endorsement involving the name, signature, designation of the medical practitioner/approved clinician, and date/time.
PHOs must develop local procedures, including steps to be taken, when:

a) Relevant details on the request form are incomplete or illegible.
b) The ordering medical practitioner/approved clinician is not on duty or contactable.

Critical/unexpected/abnormal results should be documented in the patient/client’s health care record by the responsible medical practitioner/approved clinician as soon as practicable and any resultant change in care/treatment plans documented.

2.9 Patient/client clinical incidents

All actual clinical incidents must be documented in the patient/client’s health care record.\textsuperscript{74} Staff must document in the health care record.

a) Incident Information Management System (IIMS) identification number.
b) Clinically relevant information about the incident.
c) Interactions related to open disclosure processes.\textsuperscript{75}

2.10 Complaints

Complaint records are not to be kept with the patient’s health care record.\textsuperscript{76}

2.11 Emergency Department records

Emergency Department records must include the following:

a) Date and time triaged including triage score.
b) Presenting problem and triage assessment.
c) Date and time seen by a medical practitioner, other clinicians such as a Clinical Initiatives Nurse, Nurse Practitioner, nursing, midwifery and allied health staff.
d) Medical, nursing, midwifery and allied health assessment.
e) Pathology, radiology and other tests ordered. Pathology, radiology and other test results must be followed up and reviewed with notation as to action required.
f) Description of critical/unexpected/abnormal pathology, radiology and other test results. If the patient/client has left the Emergency Department and not been admitted, document the steps taken to contact the patient/client or their carer if the test results indicate that urgent treatment/care is required.
g) Details of treatment.
h) Follow up treatment where applicable.
i) Transfer of care date and time, destination (eg. home, other level of health care) method and whether accompanied.

2.12 Anaesthetic reports

Anaesthetic reports must include the following:

a) Pre-operative assessment, including patient anaesthetic history.
b) Risk-rating eg. American Society of Anaesthesiologists (ASA) score.
c) Date and time anaesthetic commenced and completed.
d) Anaesthesia information and management ie. medications, gases, type of anaesthetic.
e) NSW safety checklists including patient assessment and equipment checklists consistent with Australian and New Zealand College of Anaesthetists requirements.
f) Operative note/monitor results.
g) Post-operative notes/orders.

\textsuperscript{76} Complaint Management Policy (section 7.9) \url{http://www.health.nsw.gov.au/policies/pd/2006/PD2006_073.html}
2.13 Operation/procedure reports

Operation/procedure reports must include the following:

a) Date of operation/procedure.
b) Pre-operative and post-operative diagnosis.
c) Indication for operation/procedure.
d) Procedure safety checklist.
e) Surgical operation/procedure performed.
f) Personnel involved in performing the operation/procedure.
g) Outline of the method of surgery/procedure.
h) Product/device inserted and batch number.
i) Changes to, or deviations from, the planned operation/procedure, including any adverse events that occurred.
j) Operative/procedural findings.
k) Tissue removed.
l) Pathology ordered on specimens.
m) Post-operative orders.

2.14 Telephone/electronic consultation with patient/clients

When clinical information is provided to a patient/client, or their carer/guardian/advocate, the consultation must be documented in the health care record. The identification of the caller must be documented.

Where the caller is not the patient/client, or their carer/guardian/advocate obtain consent from the patient/client, or their carer/guardian/advocate prior to the consultation. Document the

a) Caller’s name,
b) Relationship to the patient/client, and
c) That the patient/client, or their carer/guardian/advocate has consented to the caller seeking clinical information about the patient/client

in the patient/client’s health care record.

2.15 Telephone/electronic consultation between clinicians

Where a clinician involved in the care and treatment of a patient/client formally consults another clinician, via telephone/electronic means, about the patient/client and the consulted clinician provides advice, direction or action, that advice, direction or action must be documented in the health care record by the clinician seeking the advice. The name and designation of the consulted clinician, and the date/time of the consultation must also be documented as soon as practical following consultation with the other clinician and in a manner as to ensure continuity of care for patients.

2.16 Leave taken by patients/clients

Any leave taken by the patient/client should be documented in their health care record with the date/time the patient/client left and returned. The patient/client should be assessed before proceeding on leave and the outcome of that assessment documented in the health care record, together with the documented approval of the AMP noting the assessment.
2.17 Leaving against medical advice

A patient/client who decides to leave the health service/program against medical advice must be asked to sign a form to that effect with the form filed in the patient/client’s health care record. If the patient/client refuses to sign the form this must be documented in the health care record, including any advice provided.

Examples of advice that could be provided to the patient/client include:

a) The medical consequences of the patient’s decision, including the potential consequences of no treatment.

b) The provision or offering of an outpatient management plan and follow-up that is acceptable and relevant to the patient.

c) Under what circumstances the patient should return, including an assurance that they can elect to receive treatment again without any prejudice.

3. MANAGEMENT

3.1 Responsibility and accountability

The Chief Executive of the PHO must comply with the State Records Act and its regulation in respect of health care records. 77

Responsibility for the maintenance of appropriate health care records must be included in the terms and conditions of appointment (including position descriptions) for all health care personnel as defined in this policy.

Documentation must be included as a standing item in annual performance reviews of clinicians. Failure to maintain adequate health care records will be managed in accordance with current NSW Health policies and guidelines for managing potential misconduct.

3.2 Individual health care record

An individual health care record with a unique identifier (e.g., unique patient identifier, medical record number) must be created for each patient/client who receives health care. Every live or still born baby must be allocated a unique identifier that is different to the mother.

Where multiple patient identifiers exist for the same patient/client within a PHO there must be processes established for their reconciliation and linkage, with the ability to audit those processes.

A reference notation should be placed on the health care record to identify any relevant other documents that relate to the patient’s health care. Index or patient administration systems must reference the existence of satellite/decentralised health care records that address a specific issue and that are kept separate from the principal health care record. Due to the nature of the information contained in sexual assault records these must be maintained separately from the principal health care record and be kept secure at all times; as should child protection/wellbeing and genetics records.

Staff screening and vaccination records are considered as personnel rather than health care records and must be maintained separately.

36(10/01/13)


3.3 Access

Health care records should be available at the point of care or service delivery. Health care records must not be removed from the campus unless prior arrangements have been made with the PHO eg. required for a home visit, required under subpoena.

Health care records are only accessible to:

a) Health care personnel currently providing care/treatment to the patient/client.

b) Staff involved in patient safety, the investigation of complaints, audit activities or research (subject to ethics committee approval, as required).

c) Staff involved in urgent public health investigations for protecting public/population health, consistent with relevant legislation.

d) Patient/client to whom the record relates, or their authorised agent, based on a case by case basis in accordance with health service release of information policies and privacy laws.

e) Other personnel/organisations/individuals in accordance with a court subpoena, statutory authority, valid search warrant, coronial summons, or other lawful order authorised by legislation, common law or NSW Health policy.

All requests for information, that is contained in a patient/client’s health care record, from a third/external party should be handled by appropriately qualified and experienced health care personnel, such as Health Information Managers, due to the sensitive nature of health care records; the special terminology used within them; and regulatory requirements around access to, and disclosure of, information.

3.4 Ownership

The health care record is the property of the PHO providing care, and not individual health care personnel or the patient/client.

Where shared care models or arrangements exist for clinicians to treat private patient/clients within PHO facilities/settings, responsibility for the management of those health care records must be included in the terms of the arrangement between the PHO and the clinician.

3.5 Retention and durability

Health care records must be maintained in a retrievable and readable state for their minimum required retention period.

Entries should not fade, be erased or deleted over time. The use of thermal papers, which fade over time, should be restricted to those clinical documents where no other suitable paper or electronic medium is available e.g. electrocardiographs, cardiotocographs.

Electronic records must be accessible over time, regardless of software or hardware changes, capable of being reproduced on paper where appropriate, and have regular adequate backups.

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3.6 Storage and security

The *Health Records and Information Privacy Act 2002* establishes statutory requirements for the storage and security of health care records, which are also included in the NSW Privacy Manual for Health Information. A summary of these requirements is provided below. However, the Privacy Manual should be consulted for further detail in this area.

Personal health information, including healthcare records, must have appropriate security safeguards in place to prevent unauthorised use, disclosure, loss or other misuse. For example, all records containing personal health information should be kept in lockable storage or secure access areas when not in use.

Control over the movement of paper based health care records is important. A tracking system is required to facilitate prompt retrieval to support patient/client care and treatment and to preserve privacy.

A secure physical and electronic environment should be maintained for all data held on computer systems by the use of authorised passwords, screen savers and audit trails. If left unattended, no personal health information should be left on the screen. Screen savers and passwords should be used where possible to reduce the chance of casual observation. Consideration may be given to providing staff with different levels of access to electronic records where appropriate (i.e. full, partial or no access).


3.7 Disposal

Health care records, both paper based and electronic, must be disposed of in a manner that will preserve the privacy and confidentiality of any information they contain.

Disposal of data records should be done in such a way as to render them unreadable and leave them in a form from which they cannot be reconstructed in whole or in part.

Paper records containing personal health information should be disposed of by shredding, pulping or burning. Where large volumes of paper are involved, specialised services for the safe disposal of confidential material should be employed.

The disposal of health care records must be documented in the PHO’s Patient Administration System and undertaken in accordance with the relevant State General Disposal Authority.

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4. IMPLEMENTATION SELF ASSESSMENT CHECKLIST

An Implementation Self Assessment Checklist is provided to support implementation of this policy.

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Self Assessment:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nil</td>
<td>In development</td>
</tr>
<tr>
<td></td>
<td>Partial</td>
</tr>
<tr>
<td></td>
<td>Mature</td>
</tr>
</tbody>
</table>

A. STRATEGIC FUNDAMENTALS

PHO has documented processes to manage health care records

PHO uses an approved abbreviation list

There are resources and support to implement the Health Care Records policy and regular monitoring of progress by a responsible officer

Key performance indicators are developed to monitor and measure implementation of the Health Care Records policy in the PHO

Examples of performance measures:

1. Patient identification is on every page of the health care record or on each screen of the electronic record.
2. Handwritten entries are legible to a reader other than the author.

B. INTEGRATION INTO NORMAL BUSINESS SYSTEMS

Responsibility and accountability for documentation and management of health care records is clearly stated in position descriptions and incorporated into performance review for all relevant health care personnel.

The design, approval and implementation of health care records forms (including electronic systems) is consistent with state policies and procedures.
C. ORGANISATIONAL IMPLEMENTATION

A schedule is in place for auditing of health care records across clinical settings. This should include both record completeness and clinical audits.

All clinical areas are audited for compliance with the Health Care Record policy according to the schedule noted above.

Results and analysis of health care record audits are provided to clinicians and managers, and are used to inform remedial quality improvement activities.

Results and analysis of health care record audits are used to inform education on clinical documentation.

There is a process for recognition of excellence in the documentation and management of health care records.

Health care records key performance indicators are monitored at ward/unit, hospital/service and PHO level and benchmarked with appropriate peers.
NOTIFICATION OF ACUTE RHEUMATIC FEVER AND RHEUMATIC HEART DISEASE – THE NSW PUBLIC HEALTH ACT 2010 (IB2015_057)

PURPOSE

This Information Bulletin provides guidance on the addition of Acute Rheumatic Fever (ARF) and Rheumatic Heart Disease (RHD) to the list of medical conditions in Schedule 1 of the NSW Public Health Act, and to the list of notifiable diseases in Schedule 2 of the Act.

Under the provisions of the Public Health Act 2010 and the Public Health Regulation 2012, doctors, hospital chief executive officers (or general managers), pathology laboratories, directors of child care centres and school principals are required to notify certain medical conditions listed on the NSW Ministry of Health website.

KEY INFORMATION

On 2 October 2015 the NSW Public Health Act 2010 was amended to add ARF and RHD in a person under the age of 35 to:

a) The list of medical conditions in Schedule 1 to that Act:
   i. That must be notified by medical practitioners to the Secretary of the NSW Ministry of Health, and

b) The list of notifiable diseases in Schedule 2 to that Act:
   i. That must be notified by health practitioners providing care in hospitals to the chief executive officer of the hospital concerned, and
   ii. That must be notified by the chief executive officer of a hospital to the Secretary of the NSW Ministry of Health.

NOTIFICATION MECHANISMS

Information on the notification of infectious diseases under the Public Health Act 2010 is detailed in the Information Bulletin IB2013_010.

Infectious disease notifications should be directed to the local Public Health Unit, and should be initiated as soon as possible within 24 hours of diagnosis.

In order to protect patient confidentiality, notifications must not be made by facsimile machine except in exceptional circumstances and when confidentiality is ensured.

Disease notification guidelines and notification forms for notifiers are available at: www.health.nsw.gov.au/Infectious/Pages/notification.aspx