

Child Death Review Team – Access to Records

Document Number IB2014_028

Publication date 14-May-2014

Functional Sub group Clinical/ Patient Services - Baby and child
Clinical/ Patient Services - Records

Summary The information bulletin outlines the requirements applicable to NSW Health in current legislation relevant to the Child Death Review Team's access to medical/health records. The purpose of the information bulletin is to ensure that processes are in place to comply with these requirements and to support the work of the Child Death Review Team.

Replaces Doc. No. Records - Access by the Child Death Review Team [PD2005_286]

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Applies to Local Health Districts, Board Governed Statutory Health Corporations, Chief Executive Governed Statutory Health Corporations, Specialty Network Governed Statutory Health Corporations, Affiliated Health Organisations, Public Health System Support Division, Community Health Centres, Dental Schools and Clinics, Divisions of General Practice, Government Medical Officers, NSW Ambulance Service, Ministry of Health, Private Hospitals and Day Procedure Centres, Public Health Units, Public Hospitals

Audience All Staff

Distributed to Public Health System, Divisions of General Practice, Government Medical Officers, Health Associations Unions, NSW Ambulance Service, Ministry of Health, Private Hospitals and Day Procedure Centres, Tertiary Education Institutes

Review date 14-May-2019

Policy Manual Patient Matters

File No. 14/105

Status Active

CHILD DEATH REVIEW TEAM - ACCESS TO RECORDS

PURPOSE

The NSW Child Death Review Team (CDRT) reviews the deaths of children in NSW. The purpose of the CDRT is to prevent and reduce child deaths.

The purpose of this information bulletin is to provide advice to the NSW Health system regarding the requirements of current legislation in relation to the CDRT's access to medical/health records.

KEY INFORMATION

Amendments to the *Community Services (Complaints, Reviews and Monitoring) Act 1993 No 2* were made in 2011¹ in response to the Special Commission of Inquiry into Child Protection Services in NSW which was led by the Hon James Wood AO QC in 2008.

These changes had no ostensible impact on the existing requirements for NSW Health agencies in relation to providing full and unrestricted access to records reasonably required for the CDRT to perform its functions. One notable change however, was the transfer of responsibility for support and assistance of the CDRT from the then Commission for Children and Young People to the office of the NSW Ombudsman, and made the Ombudsman the Convenor of the CDRT.

Legislation providing for the Ombudsman to be the Convenor of the CDRT came into effect on 16 November 2011. Under the *Children and Young Persons (Care and Protection) Act 1998* and Section 38 of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*, there are provisions for the exchange of information about children and young people who have died. The Ombudsman can request full and unrestricted access to NSW Health records when investigating a reviewable death or a death reviewable by the CDRT.

Under Part 5A of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*, the CDRT's functions include:

- Maintaining the register of child deaths occurring in NSW
- Classifying those deaths according to cause, demographic criteria and other relevant factors
- Data analysis to identify relevant patterns and trends
- Undertake research to prevent or reduce the likelihood of child deaths
- Make recommendations as to legislation, policies, practices and services for implementation by government and non-government agencies and the community to prevent or reduce the likelihood of child deaths
- Identify further research required by the CDRT or other agencies or persons.

¹ Children Legislation Amendment (Child Death Review Team) Act 2011 No 60
http://www.austlii.edu.au/au/legis/nsw/num_act/cladrta2011n60480.pdf

The following persons are required under Section 34K to provide the CDRT with full and unrestricted access to records reasonably required for the purpose of the CDRT exercising its functions:

- The Director-General, the Department Head, Chief Executive Officer or senior member of any department of the government, statutory body or local authority
- The Commissioner of Police
- The State Coroner
- A medical practitioner or health care professional who, or the head of a body which, delivers health services to children
- A person who, or the head of a body which, delivers welfare services to children (including family support services, children's services, foster care or residential out-of-home care, and disability services)
- The principal of a non-government school (within the meaning of the *Education Act 1990*).

This includes the right to inspect and, on request, to be provided with copies of, any record referred to in that subsection and to inspect any non-documentary evidence associated with any such record. In the legislation, 'record' means *any document or other source of information compiled, recorded or stored in written form or on film, or by electronic process, or in any other manner or by any other means*.

The legislation also details the requirements of the CDRT related persons in relation to maintaining confidentiality of any information acquired for the purposes of the CDRT.

Each Local Health District must ensure requests for information by the CDRT are met as required, and should implement protocols to facilitate this.

It is noted that:

- Any request from the CDRT should be in writing and reference the legislative provisions relied upon by the CDRT for the release of patient information, namely section 34K of the *Community Services (Complaints, Reviews and Monitoring) Act 1993* ("the Act"). The release must be required for the purpose of the CDRT exercising its functions pursuant to section 34D of the Act.
- Any request from the Ombudsman should be in writing and reference the legislative provisions relied upon for the release of patient information, namely section 38 of the *Community Services (Complaints, Reviews and Monitoring) Act 1993* ("the Act"). The release must be required for the purpose of the Ombudsman's functions pursuant to section 36 of the Act."

NSW privacy legislation allows the release of personal and/or health information in circumstances where the organisation (a Local Health District for example) is lawfully authorised to disclose the information; as outlined above.

Where information requested by the Ombudsman or the CDRT contains any reference to reports of Risk of Significant Harm (ROSH), the Health service or health worker handling the request should confirm whether details of the reporter's identity and/or the ROSH report itself are required. If not, de-identified information should be provided. Refer to section 29 of the *Children and Young Persons (Care and Protection) Act 1998*

for further information regarding the protection of reporter identity and legal exceptions. Also see PD2013 007 Child Wellbeing and Child Protection Policies and Procedures for NSW Health Section 9.1.2 for legal and policy advice on the protection of a reporter's identity.