Subpoenas

Summary This Policy Directive outlines the legislative provisions and procedures to be followed when the Ministry of Health and public health organisations are required to produce documents on subpoena.

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Audience Administration, Corporate Records, Health Information Managers and all staff

Secretary, NSW Health

POLICY STATEMENT

SUBPOENAS

PURPOSE

This Policy Directive outlines legislative provisions and procedures to be followed when the Ministry of Health 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.

REVISION HISTORY

Version	Approved by	Amendment notes
January 2019 (PD2019_001)	Deputy Secretary	Replaces PD 2010_065. Updated to reflect the current law and changes in practice, as well as incorporating feedback received from relevant stakeholders including the Crown Solicitor's Office, Legal Aid, Local Health Districts and Statutory Health Organisations.
October 2010 (PD2010_065)	Director General	Replaced PD2005_405. Updated to incorporate the Uniform Civil Procedure Rules 2005
December 2004 (PD2005_405)	Director General	Replaced Circular 98/29. (Circular system number 2004/83)

30 April 1998 (Circular 98/29)	Director General	Updated to incorporate amendments to the Criminal Procedure Act 1986
16 April 1993 (Circular 93/35)	Director General	

ATTACHMENTS

1. Subpoena: Procedures

Subpoenas

NSW GOVERNMENT Health

PROCEDURES

Issue date: January 2019

PD2019_001

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1 BACKGROUND

1.1 About this document

The Ministry of Health and public health organisations are often required to produce documents on subpoena and a proper officer or staff member may be required to attend court and give evidence. This Policy Directive reflects current legislation and outlines procedures to be followed to assist public health organisations to comply with subpoenas issued by both NSW and interstate courts.

1.2 Key definitions

Approved form in relation to a document, means the form approved under Section 17 of the *Civil Procedure Act 2005* for the purposes of that document.

Care Proceedings are Court proceedings where an application for a "care order" is made for the protection of a child or young person.

Court includes tribunal. For a detailed list of Courts, refer to Appendix C.

Defendant or **Respondent** is the person against whom the action is brought by the Plaintiff/Applicant.

Document means any record of information and includes

(a) anything on which there is writing;

(b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; or

(c) anything from which sounds, images or writings are capable of being reproduced with or without the aid of anything else.

Health record is a documented account, whether in hard copy or electronic form, of a patient's health, illness and treatment during each visit or stay at a health service. This may include electronic correspondence regarding the patient's treatment and records (such as x-rays or a community mental health record) that are stored separately from the patient's medical record.

Note: Health record holds the same meaning as: 'health care record', 'medical record', 'clinical record', 'clinical notes', 'patient record', 'patient notes', 'patient file', and so on.

Issuing Party means the person who has caused the subpoena to be issued.

Legal Privilege Protects certain documents being disclosed in court proceedings. These documents are protected from release under subpoena due to a special statutory or legal relationship that applies to the information.

Patient Any person who receives a health service and to whom, as a result, a health practitioner owes a duty of care. Also includes clients of PHOs.

PHO under the *Health Services Act* 1997, a public health organisation is a Local Health District or a statutory health corporation (including Specialty Health Networks), or an affiliated health organisation in respect of its recognized establishments and services.

Proper Officer is a person within the organisation who will have access to the records pertained in the subpoena.

Plaintiff or **Applicant** is the person who has commenced the proceedings.

Record includes any document or other source of information compiled, recorded or stored in written form or on film, by electronic process or in any other manner or by any other means.

Return Date is the last day the documents must be produced to the Court.

Subpoenaed Party or **Addressee** means the person who is the subject of the order expressed in the subpoena. A subpoena can only be addressed to a person, which may be the proper officer of an organisation.

1.3 Legal and legislative framework

* *Children and Young Persons (Care and Protection) Act 1998* (NSW)
* *Civil and Administrative Tribunal Act 2013* (NSW)
* *Coroners Act 2009* (NSW)
* *Commonwealth Service and Execution of Process Act 1992* (Cth)
* *Criminal Procedure Act 1986* (NSW)
* *Evidence Act 1995* (NSW)
* *Health Administration Act 1982* (NSW)
* *Interpretation Act 1987* (NSW)
* *Local Court Rules 2009* (NSW)
* *Uniform Civil Procedure Rules 2005* (NSW)
* *State Records Act 1998* (NSW)

2 INTRODUCTION

2.1 What is a subpoena?

A subpoena is an order from a court requiring the Addressee to:

(i) Produce to a court a copy of the subpoena and documents or things as directed by the subpoena;

(ii) Attend a court to give evidence as directed by the subpoena; or

(iii) Do both,

"***A subpoena to attend and give evidence*** means that the person to whom the subpoena is addressed is required to attend court and give evidence.

A subpoena to produce means that the person to whom the subpoena is addressed is required to provide documents or things. Producing documents to the court can also be done on behalf of the organisation by their legal representative."

Documents or things include written, printed or electronic material that provide information such as reports, emails, letters, photographs, video or audio recordings, diagnostic images, medical images or reports, laboratory results, cameras, phones, other electronic devices, CDs, USBs and so on.

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

In some courts and tribunals subpoenas are called "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 in NSW courts, the Federal Court and the Family Court due to the harmonising of the subpoena rules.

2.2 What to do when you receive a subpoena

A subpoena cannot be ignored and must be dealt with promptly. Failure to comply with a subpoena without lawful excuse is a contempt of court and can result in an arrest.

When a subpoena is received by a PHO, it should be brought to the attention of the appropriate branch and the appropriate person within the PHO. All PHO's should have designated officers to coordinate responses to subpoenas, for example a medico-legal officer or medical records officer.

For particularly sensitive matters, the designated officer should notify the Chief Executive Officer or an executive officer of the PHO about the subpoena.

For matters where a PHO, a unit or employee of the PHO is a party, the subpoena should 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.

3 GENERAL INFORMATION ON SUBPOENAES

3.1 Who is the subpoena addressed to?

A subpoena must be addressed to a person, or to "The Proper Officer" if directed to an organisation. If a subpoena to produce is addressed, for example to the Proper Officer a particular hospital or community health service within a PHO, only records held by that hospital or community health service will need to be produced.

If a subpoena to produce is addressed to the Proper Officer of PHO (i.e. "X Local Health District"), relevant records from all facilities within the PHO will need to be produced. If the subpoena is addressed to the Proper Officer of a PHO requesting all records relating to a particular patient, there are two options that can be considered:

(a) Contacting 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.

3.2 Is the subpoena in the approved court form?

A subpoena must also be in the approved court form. 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. A list of approved court forms can be found at www.ucprforms.justice.nsw.gov.au.

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

If the subpoena lists the PHO or unit of the PHO as a party to the proceedings (for example as the Defendant), the subpoena should be referred to the appropriate person who will then forward it 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 a solicitor has been appointed, 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 set out in Part 33 of the UCPR.

3.4 What if the subpoena relates to a coronial inquest?

A subpoena to produce 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 to respond to the subpoena. 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 not to engage a solicitor, the subpoena should be processed in the normal way.

3.5 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.

If a party to the proceedings is represented by a solicitor, a subpoena may be filed electronically with the court except for some Local Court proceedings. If a subpoena is filed electronically, there will be an electronic court stamp. They are still valid subpoenas and should be complied with.

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 3.10.

In criminal, AVO and some civil proceedings, if the subpoena is seeking "counselling communications" for a victim of sexual assault, then the subpoena can only be issued with the leave or permission of the Court. Look for an attached court order or letter from the lawyer who issued the subpoena stating that leave was granted on a particular date. A subpoena issued without such leave will be invalid. For further information, see Appendix A – Sexual Assault Communications Privilege.

3.6 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. 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. This information is contained within the Subpoena. Matters in the Family Court or Federal Circuit Court may involve children of the named 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.

The Addressee of a subpoena to produce may request a copy of the appropriate Statement of Claim to assist them with determining the relevant documentation so that they are able to comply with the subpoena.

For more information on relevance, or legitimate forensic purpose, see Section 6.2.

3.7 Has the subpoena been properly served and in time?

The subpoena must be personally served on the person to whom it is directed, unless the subpoenaed party agrees to accept service by other means such as by post.

A subpoena to attend and give evidence must specify the date, time and place for attendance.

A subpoena to produce 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 not be 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.

NB: The Federal Circuit Court requires the issuing party to serve the subpoena at least 10 clear working days before the date for producing documents, and 7 clear working days before giving of evidence. The Family Court is 7 clear working days for both giving of evidence and production of documents.

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 by the due date however you should contact the issuing party and ask that they obtain a further return date (an adjournment) so as to allow sufficient time for the documents to be collated.

Even where a subpoena to produce 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 to negotiate an extension of time directly.

3.8 Does it make any difference if the subpoena is a facsimile, photocopy or a scanned copy?

As a general rule the original subpoena should be served to ensure it is authentic. Upon receipt of a facsimile, photocopy or scanned copy the issuing party should be contacted. All reasonable steps should be taken to ensure that an authentic 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 an authentic 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.

In some instances the Court may give approval to a party to serve a subpoena via electronic means, such as email.

Finally, the NSW Coroner's Court can serve a subpoena by way of facsimile (Section 105 *Coroner's Act 2009*).

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

Where a PHO has been ordered to produce documents, a 'return date' should be listed on 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 (business) days before the date specified in the subpoena for production.

As noted in paragraph 3.6 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.

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.

3.10 How can documents be produced to the court?

The subpoena allows the PHO to produce documents by 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 registered mail to the Registry at the address specified in the subpoena. As noted in paragraph 3.8 above, if documents are being posted, they should be received by the Court Registry at least 2 clear working days before the date specified in the subpoena to produce.

3.10.1 Providing documents electronically to Courts and Tribunals

Some Courts and Tribunals now accept subpoenaed material in an electronic format, such as on a DVD, CD or a USB device.

Sending information that is classified as 'sensitive' to destinations external to NSW Health, such as Courts and Tribunals, should be encrypted using approved encryption technologies or passwords in accordance with relevant regulations and Privacy Manual for Health Information.

Supreme Court of NSW

The Supreme Court of NSW accepts material in electronic formats. If the subpoena or covering letter from the issuing party does not specify that electronic formats are acceptable, you should contact the issuing party and see if they are agreeable to this. Documents should be provided as a PDF file.

Electronic subpoena documents can be emailed to the Registry at supremecourt.enquiries@courts.nsw.gov.au. The subject line of the email should state "Producing subpoena documents" and include the case name and number. A scanned copy of the subpoena should also be attached.

District Court

Subpoenaed material may be provided in any electronic form that the issuing party has indicated will be acceptable. If the issuing party does not specify that electronic formats are acceptable and you would like to provide the material electronically, you should contact the issuing party and see if they are agreeable to this.

Tribunals

The NSW Civil and Administrative Tribunal and Administrative Appeals Tribunal generally do not accept subpoenaed material electronically, and require hardcopies to be produced to the Registry.

Local Court Criminal Matter

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; and
- 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 NSW Police Force;
(b) an officer or employee of a statutory body representing the Crown;
(c) an employee of a council within the meaning of the *Local Government Act 1993*;
(d) a member of staff of Local Land Services; or
(e) the Director of Public Prosecutions, Deputy Director of Public Prosecutions or Solicitor for Public Prosecutions.

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.

Children's Court

Any party to care proceedings in the Children's Court may seek leave to issue subpoenas in the proceedings. Subpoenas issued in care proceedings are issued by the Children's Court, Children's Magistrate or Registrar pursuant to Section 109C the *Children and Young Persons (Care and Protection) Act 1998*, and will therefore always be stamped with the seal of the Children's Court and/or signed and dated by the Children's Magistrate or Registrar.

A subpoena issued in care proceedings must be served on the recipient no less than five clear working days, or any such other date specified in the subpoena as endorsed by the Children's Magistrate or Registrar, before the return date. The issuing party is also required by s 108E of the *Children and Young Persons (Care and Protection) Act 1998* to tender conduct money at the time of service for the reasonable expenses of the person in complying with the subpoena.

3.11 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 (known as notices of non-party disclosure) issued by courts in Queensland.

The Commonwealth *Service and Execution of Process Act* allows for interstate subpoenas to be validly served in NSW if they are accompanied by notice. 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 issued 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. There may however be circumstances where further time is needed to produce the material of the subpoena. In such circumstances, it is generally best for the recipient of a subpoena to contact the party issuing the subpoena.

PHO's are entitled to request that the original subpoena (or a copy of the original) is served, rather than a faxed copy.

4 CONDUCT MONEY AND/OR COSTS OF COMPLIANCE

4.1 What is conduct money?

When a subpoena to give evidence is served on a person or a Proper Officer of an organisation, the person named is not required to attend and give evidence under the subpoena unless conduct money has been paid. This means an amount sufficient to meet the 'reasonable expenses' of attending (which are often prescribed). Conduct money must be provided at the time the subpoena to attend and give evidence is served.

In relation to subpoenas to produce, the Addressee is able to claim the 'reasonable expenses' of complying with the subpoena.

The court in the event of a dispute will determine what is 'reasonable' conduct money or costs of compliance. 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 for production are advised annually by NSW Health in an information bulletin titled *Health Records and Medical/Clinical Reports – Rates* and the Policy Directive titled *Health Records and Medical/Clinical Reports – Charging Policy.*

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.

Conduct money does not need to be paid in the following circumstances:
- NSW Civil and Administrative Tribunal
- NSW Coroner's Court
- Local Court proceedings where a Police Officer or Public Officer have issued the subpoena (as discussed in section 3.10)

4.2 What if the conduct money is inadequate?

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. Information Bulletin 2017_035 is a useful guide that is updated each year to assist in determining costs of compliance.

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 Section 6.1 of this Policy Directive).

If the conduct money and/or amount paid for production expenses 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 additional conduct money or production expenses, or you consider it insufficient, contact the issuing party and attempt to negotiate some compromise on the amount.

(iii) In the event that conduct money was not provided by the issuing party and / or the amount of conduct money or amount paid for production expenses 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/or the amount of any reasonable loss or expense incurred in complying with the subpoena.

4.3 What if too much conduct money has been provided?

The PHO is entitled to retain the minimum amount of conduct money and/or production expenses.

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 amount should be refunded to the issuing party.

4.4 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 a reasonable amount 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 amount paid should be refunded.

5 WHAT DOCUMENTS HAVE BEEN REQUESTED IN THE SUBPOENA TO PRODUCE

5.1 How do I determine the scope of the subpoena?

The schedule to the subpoena must be read very carefully to determine the scope and document required. 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.

The PHO should take care only to copy and produce documents that are within the scope of the subpoena. Do not provide any documents that are outside of the scope of the subpoena.

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. This may also mean redacting portions of documents if there is extraneous, irrelevant or privileged information contained within a document to be released. 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.

The schedule will generally address one patient, who is mostly a party to the proceedings. Care needs to be taken to protect the information of those parties who are not represented in the proceedings and would not anticipate their personal information being released to a Court without their knowledge.

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 been 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 although the PHO should consider contacting the specialist as an interested party before producing those documents.

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

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.

On 30/9/2000 Sara also visits the Chesterfield Sexual Assault Service, (a separate facility of the Chester Local Health District, located in Main St, Chester) in relation to the sexual assault, 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 Local Health District 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 caught by 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 caught 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 captured, including notes on the unrelated surgical procedures. The subpoena does not, however, capture any records generated by the Sexual Assault Service which are not in the possession of or under the control of the Hospital. The Sexual Assault Service is a separate facility of the Local Health District, and is located outside the hospital campus. As such, the LHD is not required to, nor should it volunteer any information on visits made by Sara X to the Chesterfield Sexual Assault Service. Had the Sexual Assault Service been located within the hospital campus, and its records been in the possession of or under the

control of the Hospital (and related to a visit to the Hospital), 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 Local Health District, all LHD 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 LHD does not hold any records covered by the subpoena. The LHD 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 Local Health District, 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 captures all the relevant documents held by the LHD on Sara X. The only documents not captured would be those dealing with the unrelated surgical procedures. Note however, the reference to "Chesterfield Local Health District", when the actual legal entity is the "Chester Local Health District". If the subpoena also wrongly names the LHD, arguments could be raised against complying with it.

5.2 What documents need to be produced?

This will depend on the scope of the subpoena to produce. It is important to read the schedule of the subpoena carefully in order to determine what documents are being requested. If this is not clear, contact the solicitor issuing the subpoena.

If the subpoena requests "*any records*" or "*all records*", this means the entire file relating to the patient, including correspondence and x-rays, including when the documents are stored separately to the medical record. For example, a patient's community mental health record, clinical record of sleep studies record would also need to be produced should a PHO receive a subpoena requesting all records within the PHO relating to that patient.

The definition of 'document' captures any electronically held documents and hard copy documents. Electronically held documents are those held, for example, in an electronic medical record, other clinical information systems or information contacted on a computer file, such as photos and / or videos. This would also include emails exchanged by clinicians regarding the particular patient along with any clinical records/reports from other PHO's or referring doctors.

With the continuing expansion of information technology systems across NSW Health, PHO's should keep in mind that a patient's health information may be stored on an electronic database that is an extension of the patient's health record, for example the HealtheNet Clinical Portal. Depending on the scope of the schedule to the subpoena issued to a PHO, records from state-wide databases or databases that are in the possession of or under control of a particular PHO may need to be collated and produced if they form part of the patient's record at the PHO (whether they have been accessed by clinicians or not).

5.3 What if the subpoena captures reports to Family and Community Services?

Under Section 29 of the *Children and Young Persons (Care and Protection) Act 1998*, risk of harm reports made to the Secretary, Department of Family and Community Services are not produced in response to a subpoena, summons or notice to produce other than:

(i) Care proceedings in the Children's Court;

(ii) Proceedings in relation to a child or young person under the *Family Law Act 1975* (Cth);

(iii) Proceedings in relation to a child or young person before the Supreme Court or Civil and Administrative Tribunal;

(iv) Proceedings before the Civil and Administrative Tribunal that are allocated to the Guardianship Division of the Tribunal or are commenced under the *Victims' Rights and Support Act 2013*;

(v) Proceedings under the *Coroners Act 2009*.

Section 27A(7) of the *Children and Young Persons (Care and Protection) Act 1998* 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.

Although risk of harm reports, or documents evidencing the contents of a risk of harm report, may be produced in response to subpoena, summons or notice to produce issued in certain proceedings, Section 29(f) of the *Children and Young Persons (Care and Protection) Act 1998* prohibits the disclosure of the identity of a person who made a report, except with:

(i) The consent of the person who made the report, or

(ii) With leave of the Commissioner.

Section 29AA of the *Children and Young Persons (Care and Protection) Act 1998* similarly prohibits the disclosure of the identity of a person who made a report to a Royal Commission, except in the circumstances described above.

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.

5.4 What if the subpoena captures sensitive records?

For medical records, the prime criterion of sensitivity is whether the patient would consider the data sensitive. 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 6), the procedure set out in Section 7.4 may be followed.

5.5 What if there are no documents or information?

If there are no documents or information, a letter should be written to the court advising the court that there are no documents or information 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 once 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 Section 24 of the *State Records Act 1998*, a copy of the disposal authorisation should be included and the relevant disposal category cited. Disposal authorisation is the consent of public office that is required before records can be disposed of.

6 SUBPOENA TO PRODUCE – GROUNDS TO OBJECT OR SET ASIDE

In most instances, when a subpoena to produce is issued, the issuing party must also serve a copy of the subpoena on all active parties to the proceeding as soon as practicable after the subpoena has been served on the Addressee.

The court may, on the application of a party to the proceedings, or the Addressee, or any person having a sufficient interest, set aside a subpoena in whole or in part. If any party or person files a motion to set aside a subpoena issued to a PHO, the PHO must be notified.

If a subpoena issued to the PHO is set aside, the PHO is no longer required to comply with the subpoena.

The information provided below applies when the PHO itself seeks to set aside a subpoena or object to access to documents required to be produced under subpoena.

6.1 The subpoena is too wide and/or oppressive

A subpoena to produce may be set aside:

- where its terms are so wide and/or 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 8 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 as to the terms of the amended schedule to the subpoena.

If the issuing party refuses to negotiate the scope of the subpoena as is suggested above and you still wish to set aside 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 issuing party.

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

A subpoena to produce 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.

6.3 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.

6.4 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.

6.5 Qualified privilege

NSW qualified privilege legislation (Division 6B of the *Health Administration Act 1982*) applies to approved quality assurance committees. Qualified privilege 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 were 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,
- Collaborating Hospitals Audit of Surgical Mortality Committee,
- NSW Maternal and Perinatal Mortality Review Committee,
- Mental Health Sentinel Events Review Committee, and
- Clinical Risk Action Group 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, as well as the Court, explaining the committee's special status and stating that records will not be produced

6.6 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 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, when the privilege was granted in criminal proceedings. The privilege may also be claimed in federal courts, such as the Family Court or Federal Circuit Court, if exercising jurisdiction in NSW and in the courts of other States and Territories of Australia.

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.

6.7 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 be claimed in NSW courts. The privilege may also be claimed in federal courts, such as the Family Court or Federal Circuit Court, if exercising jurisdiction in NSW and in the courts of other States and Territories of Australia.

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.

7 COURT PROCEDURE FOR CHALLENGING ACCESS TO DOCUMENTS PRODUCED UNDER SUBPOENA

7.1 Subpoenas for records where the Addressee objects to inspection on grounds that they are privileged (other than sexual assault and confidential communications privilege)

A solicitor's assistance will be necessary depending on the complexity of the case. Discussion should be undertaken with the appropriate PHO Unit (e.g. CGU) to ensure that a solicitor is consulted or appointed if necessary.

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

(i) Follow 7.1 – should I notify anyone of the subpoena?

(ii) Follow 7.3 – procedure for delivering subpoenaed documents to the court?

(iii) Place the records which are to be produced in a sealed envelope.

(iv) Place any records over which a claim for privilege will be made in a separate envelope and mark the word “privileged” on the envelope.

(v) Attach a copy of the subpoena to the outside of each envelope.

(vi) Place the envelope(s) marked “privileged” inside another envelope and send to the court with a letter to the Registrar notifying the court that the Addressee objects to the documents or things being inspected by any party to the proceedings and setting out :

(a) What type of privilege is claimed; and
(b) The reasons supporting the claim for privilege.

(vii) 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.

NB: For matters in NSW Civil and Administrative Tribunal (NCAT) (called a ‘summons’), if the Addressee is unable to resolve the objection to the summons with the issuing party before the time for compliance, the Addressee who is objecting is required to:

a. Inform the registrar and the issuing party of the basis for the objection;
b. Attend NCAT on the date for compliance and be prepared to explain the basis for objection.
c. Objections that cannot be resolved by discussion and agreement will be referred to a Member for decision.

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 must be considered and how the privilege operates.

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, Federal Circuit Court and Children’s Court subpoenas

Sexual assault communications privilege and professional confidential relationship privilege are created by NSW legislation and apply in NSW courts, and may also apply in

Federal Courts where a matter is heard in NSW and in the courts of other States and Territories of Australia.

If you receive a Family Court or Federal Circuit 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 7.4).

Keep in mind that sexual assault communications records relating to children can be important evidence and highly relevant for the Family Court or Federal Circuit Court to have available when determining parenting orders for the care of a child.

You must file the 'notice of objection' form contained on the last page of the subpoena and serve copies of the notice of objection on each of the parties to the proceedings prior to the return date if you are objecting to the production of documents in response to a subpoena. The court will then assign a date for your objection to be heard and you will need to attend court on that day.

The Children's Court may take different approaches to objections to subpoenas depending upon the location of the court. However, if objecting to a subpoena you must ensure that the relevant Children's Court is given notice of your application to set aside the subpoena or to object to access either by mail, fax, email or in person prior to the return of subpoena. For example if the Children's Court at Parramatta receives notice of an application, the matter will be listed for directions.

7.2.3 Protected Confidence Notice

A protected confidence means a counselling communication that is made by a victim of a sexual assault. The counselling communication does not need to relate to the sexual assault and may predate the sexual assault. If a party wants production and access to a document containing a protected confidence, they must seek leave of the Court and 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 The view 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.

Legal Aid NSW's Sexual Assault Communications Privilege Service (SACPS)is a state wide service that assists victims to protect the privacy of counselling notes and other confidential therapeutic records in criminal proceedings.

SACPS can assist the LHD and the victim by:

1. Providing information to health workers about privilege;
2. Advising sexual assault victims about using privilege; and
3. Providing representation in court for sexual assault victims to enforce the privilege.

SACPS can be contacted by phoning (02) 9219 5888 or emailing sacp@legalaid.nsw.gov.au.

7.2.5 Whether harm is likely to occur to the patient if 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.

7.2.6 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. You may wish to refer the patient for independent legal advice. Legal Aid's SACP Service can be contacted by phoning (02) 9219 5888 or emailing sacp@legalaid.nsw.gov.au.
- Whether harm is likely to occur to the patient if the material is disclosed.

7.2.7 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.

7.2.8 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 sometime 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.

8 PROCEDURES FOR RESPONDING TO A SUBPOENA TO PRODUCE

8.1 Should I notify anyone of the subpoena?

All subpoenas should be brought to the attention of the relevant person or branch with-in 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. Where appropriate, 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.

8.2 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;
(c) On a USB; or
(d) 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 or USB 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.

8.3 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. If the documents are produced to the court, the following procedures should be followed:

(i) The documents should be 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 to the registry by hand by the return date by an employee of the PHO or by 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.

8.4 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 setting aside 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.

(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.

The documents to be produced, should be placed in a separate envelope marked "Sensitive – access restricted", however, this is no guarantee that the Court will treat these records differently.

9 WHAT HAPPENS AFTER THE DOCUMENTS HAVE BEEN PRODUCED

9.1 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 (see Section 8.1).

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

A subpoena in the Supreme Court must include either a proposed access order for the documents to be produced and reasons for that order, or default access orders. Default access orders means general access to all parties, and includes permission to copy documents.

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.

9.2 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 record, 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.

9.3 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.

10 REQUESTS FOR INFORMATION UNDER THE CHILDREN AND YOUNG PERSONS (CARE AND PROTECTION) ACT

10.1 Requests for information under Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998 (NSW)*

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

Please refer to the NSW Health Policy Directive *Child Wellbeing and Child Protection Policies and Procedures for NSW Health* PD2013_007 where NSW Health's policy on child protection information exchange is set out in full.

10.2 Requests for information from Family and Community Services

Pursuant to Section 248 of the *Children and Young Persons (Care and Protection) Act*, PHOs may be required to provide information to Family and 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 Family and Community Services.

Information can only be provided in response to a Section 248 request if it relates to the safety, welfare and wellbeing of a particular child or young person.

Once records have been provided to Family and Community Services in answer to a Section 248 request, Family and 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 Family and Community Services staff in accordance with arrangements agreed upon between NSW Health and Family and Community Services. Family and Community Services staff are not to attach confidential information provided in response to a Section 248 request to affidavits without the consent of the person who provided the information.

If the document that Family and Community Services wish to attach to the affidavit is particularly sensitive, the PHO should refuse to consent (unless the patient's guardian does not object), and ask Family and 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.

For more information regarding responding to S248 requests refer to to the NSW Health Policy Directive *Child Wellbeing and Child Protection Policies and Procedures for NSW Health* PD2013_007.

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* and *Privacy and Personal Information Protection Act 1998* as it is a lawful excuse to release information as long as you provide documents within the scope of the subpoena. For further information about privacy obligations, see Privacy Manual for Health Information.

12 SUBPOENA TO GIVE EVIDENCE

12.1 What should I do if I receive a subpoena to give evidence?

A subpoena to give evidence will require the named person to attend a court on a particular date to be a witness in a hearing and give evidence. The subpoena will be addressed to a specific individual and will indicate the time and place the person will be required to give evidence as a witness.

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.

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

12.2 How much conduct money should I receive if I am required to attend court to give evidence?

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.

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.

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.

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

13 APPENDIX A – SEXUAL ASSAULT COMMUNICATIONS PRIVILEGE

The Sexual Assault Communications Privilege is set out in the *Criminal Procedure Act 1986*. This privilege protects counselling communication made by, to or about a victim or alleged victim of a sexual assault offence. The Act does this by:

- Requiring the leave (permission) of the court prior to issuing a subpoena seeking access to this information;
- Requiring the leave (permission) of the court prior to accessing documents produced in response to a subpoena; and
- Requiring the leave (permission) of the court prior to this information being used in evidence.

The privilege applies to information regardless of whether it is in written form (for example, a client's file) or in oral form (for example, a health worker being subpoenaed to give evidence).

The privilege applies to criminal, Apprehended Violence orders and some civil proceedings in NSW and may also apply in the courts of other States and Territories of Australia.

13.1 What are counselling communications?

Counselling communications are defined in the Act to include communications made by a person in confidence to a counsellor who is counselling the person in relation to any harm the person may have suffered.

Counselling communications also include communications made in confidence by the counsellor, or by a parent, carer or other support person who is present in the counselling to facilitate communication or to otherwise further the counselling process.

The Act provides that a person counsels 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:

(a) listens to and gives verbal or other support or encouragement to the other person, or

(b) advises, gives therapy to or treats the other person

whether or not for fee or reward.

This wide definition is likely to include counselling provided by a counsellor, health care worker, social worker or youth worker.

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).

13.2 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. 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 privilege applies in any courts that exercises criminal jurisdiction, any may also apply in federal courts, such as the Family Court or Federal Circuit Court, and in the courts of other States and Territories of Australia. The federal court or courts of other States and Territories will consider the application of the privilege in the context of their local laws.

The sexual assault communications privilege can also be claimed in civil proceedings in NSW, 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.

13.3 Principles applying to sexual assault subpoenas

In the first instance, where a subpoena is received for patient records that may contain sexual assault communications, attempts should be made to contact the patient and advise that a subpoena has been received for their records and indicate they should seek legal advice. If the patient is not a party to the proceedings (for example, in criminal proceedings) they may not be aware that their records have been subpoenaed.

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.

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 documents under the subpoena.

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).

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

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

13.4 How does sexual assault communications privilege operate?

13.4.1 Preliminary Criminal Proceedings

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

In preliminary criminal proceedings:

(a) a person cannot seek to compel any other person (whether by subpoena or any other procedure) to produce a document recording a protected confidence;

(b) a document recording a protected confidence cannot be produced; and

(c) evidence cannot be adduced if it would disclose a protected confidence or the contents of a document recording a protected confidence.

13.4.2 Criminal Proceedings

Criminal proceedings include those relating to the trial or sentencing of a person for an offence (whether or not they relate to a sexual assault offence) and also proceedings for an AVO.

In criminal proceedings, unless the court grants leave:

(a) a person cannot seek to compel any other person (whether by subpoena or other procedure) to produce a document recording a protected confidence;

(b) a document recording a protected confidence cannot be produced; and

(c) evidence cannot be adduced if it would disclose a protected confidence or the contents of a document would recording a protected confidence.

The court will not grant leave unless the court is satisfied that;

(a) the document or evidence will have substantial probative value; and

(b) other documents or evidence concerning the matters to which the protected confidence relates are not available; and

(c) the public interest in preserving the confidentiality of protected confidences and protecting the victim from harm is substantially outweighed by the public interest in admitting into evidence information or the contents of a document of substantial probative value.

The court is also required to take into account certain matters, including the need to encourage victims of sexual offences to seek counselling and the fact that disclosure is likely to undermine the relationship between counsellor and patient.

13.4.3. Civil Proceedings

The privilege can only be claimed in a civil proceeding where substantially the same acts are in issue as the acts that were in issue in relation to a criminal proceeding.

Where evidence was found to be subject to sexual assault communications privilege in the criminal proceeding, that evidence may not be adduced in the civil proceeding.

In civil proceedings where the *Uniform Civil Proceedings Rules 2005* apply, a party can also object to production of a document on the basis of the privilege in these circumstances, and cannot be compelled to produce the document until the objection is overruled.

If you have received a subpoena to produce in a civil proceeding where the documents cover sexual assault communications, you should make enquiries as to whether there were criminal proceedings in relation to the acts which are the subject of the communications.

If you are unable to make such enquiries, you should place the documents into a sealed envelope marked "**Sexual assault communications – may be subject to s 126H of the Evidence Act 1995**" when producing the documents to the court.

13.5 What happens if there is a dispute about whether a document or evidence contains a protected confidence?

If a party has requested leave to subpoena documents that contain a protected confidence or to adduce evidence that contains a protected confidence, notice must be given in writing to each other party and the patient. A patient who is not a party may appear in criminal proceedings if this occurs.

If you have received a subpoena that covers sexual assault communications and you are unsure if leave has been sought, you should contact the relevant Registry and object to production until such time as the Registry confirms leave has been granted.

If leave has been granted, objection to access may still be made.

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.

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.

14 APPENDIX B – PROFESSIONAL CONFIDENTIAL RELATIONSHIP PRIVILEGE

14.1 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 communication may be made in confidence even if it is made in the presence of a third party if the third party's presence is necessary to facilitate 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.

14.2 Can the professional confidential relationship privilege be claimed in all types of court proceedings?

The privilege can be claimed in all NSW courts or federal Courts operating in NSW, such as the Family Court or Federal Circuit Court, and in the courts of other States and Territories of Australia. The federal court or courts of other States and Territories will consider the application of the privilege in the context of their local laws.

14.3 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.

14.4 What will the court take into account when deciding whether the privilege applies?

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

(a) the extent to which the evidence could affect the assessment of a fact in issue in the proceedings;

(b) the importance of the evidence in the proceeding;

(c) the nature and seriousness of the relevant offence, cause of action or defence and the nature of the subject matter of the proceeding,

(d) the availability of any other evidence concerning the matters to which the protected confidence or protected identity information relates,

(e) 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,

(f) 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,

(g) if the proceeding is a criminal proceeding—whether the issuing party is a defendant or the prosecutor, and

(h) whether the substance of the protected confidence or the protected identity information has already been disclosed by the patient or any other person.

15 APPENDIX C – COMMON COURTS AND TRIBUNALS

15.1 The Family Court of Australia and Federal Circuit Court of Australia

The Family Court and Federal Circuit Court resolve and determine 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 and the harvest of bone marrow blood cells from a disabled child for transplantation into a relative) to be carried out on minors.

15.2 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 Supreme Court also deals with Adoption matters and has *parens patri* jurisdiction which can include applications related to the care and protection of children and young persons, medical treatment, and secure detention.

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.

15.3 The District Court of New South Wales

The District Court deals with criminal and civil cases. The District Court has jurisdiction to hear:

(a) all indictable criminal offences (except murder, treason and piracy); and

(b) 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 and work injury damages cases.

The Court's judges hear appeals from the Local Court and also preside over a range of administrative and disciplinary tribunals.

15.4 The Local Court of New South Wales

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 $100,000;
- 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. These 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 care applications concerning children who are in need of care or protection.

15.5 The NSW Civil and Administrative Tribunal

The NSW Civil and Administrative Tribunal ("NCAT") was established on 1 January 2014 by the *Civil and Administrative Tribunal Act 2013* (NSW), consolidating the work of 22 former tribunals (including the Guardianship Tribunal, Administrative Decisions Tribunal and the occupational tribunals) into a single specialist tribunal service. NCAT is made up of four divisions:

- Consumer and Commercial;
- Occupational;
- Guardianship; and
- Administrative and Equal Opportunity.

NCAT deals with a broad range of matters including review of administrative decisions made by government agencies, discrimination matters, complaints concerning professional conduct and discipline and determining applications for guardianship.

15.6 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.

15.7 Coroner's Court of New South Wales

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.

15.8 Drug Court of New South Wales

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 Corrective Services NSW and NSW Health.

15.9 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.

15.10 Children's Court of New South Wales

The Children's Court is a specialist court to deal with criminal cases, applications for apprehended violence orders, applications for compulsory schooling orders and cases involving the care and protection of children.

15.11 Industrial Relations Committee

The NSW Industrial Relations Commission is the court which hears matters relating to the workplace. The role of the Commission is to regulate workplace affairs in NSW and arbitrate to resolve industrial disputes.

Attachment 1: Implementation checklist

LHD/Facility:			
Assessed by:		**Date of Assessment:**	
IMPLEMENTATION REQUIREMENTS	**Not commenced**	**Partial compliance**	**Full compliance**
1.	❑	❑	❑
	Notes:		
2.	❑	❑	❑
	Notes:		
3.	❑	❑	❑
	Notes:		
4.	❑	❑	❑
	Notes:		
5.	❑	❑	❑
	Notes:		
6.	❑	❑	❑
	Notes:		