Obtaining Legal Advice Policy

1. Purpose

The purpose of this policy is to outline the process to be followed by WA health entities (Health Service Providers and Department of Health) for obtaining legal advice.

Hospitals and health services within the WA public health system have traditionally obtained legal advice from the Department of Health's Legal and Legislative Services or the State Solicitor's Office. Health Service Providers have also obtained legal advice from their General Counsel, where General Counsel has been appointed.

The State Solicitor's Office provides both core and non-core services to Government and will charge fees for non-core work. As a provider of commercial services, external firms will also charge fees for any legal services provided.

This policy is a mandatory requirement for Health Service Providers under the *System Governance, Risk and Assurance Policy Framework* pursuant to section 26(2)(l) of the *Health Services Act 2016*.

This policy is a mandatory requirement for the Department of Health pursuant to section 29 of the *Public Sector Management Act 1994*.

2. Applicability

This policy is applicable to WA health entities.

3. Policy Requirements

3.1 Seeking Legal Advice

3.1.1 Health Service Providers and Divisions of the Department of Health must only seek legal advice directly from Legal and Legislative Services, or their Health Service Provider's General Counsel. Advice from the State Solicitor's Office should only be sought via Legal and Legislative Services, or the General Counsel of their Health Service Provider. Seeking advice direct from the State Solicitor's Office (SSO) should only occur with prior approval from the Director of Legal and Legislative Services, or the General Counsel of their Health Service Provider.

3.1.2 A copy of any formal legal advice received directly from the State Solicitor's Office must be provided to Legal and Legislative Services and the General Counsel of their Health Service Provider for record purposes.

3.1.3 Health Service Providers and Divisions of the Department of Health must not obtain legal advice directly from private law firms. Any legal advice obtained from private law

firms must only be obtained through the State Solicitor's Office, or the legal panel of the Insurance Commission of Western Australia (Government Insurance Division).

3.1.4 Health Service Providers and the relevant Department operational unit seeking legal advice are responsible for the payment of fees incurred from the State Solicitor's Office (for non-core work) or when the State Solicitor's Office have engaged external legal advice.

3.2 Seeking Legal Advice from Legal and Legislative Services

3.2.1 Health Service Providers and Divisions of the Department of Health seeking legal advice from the Legal and Legislative Services, legal advice must be sought (except in urgent or exceptional circumstances) in the manner outlined below in 3.2.1.1 or 3.2.1.2.

3.2.1.1 Submit the completed 'Request for Legal Advice or Legislative Assistance Form' with relevant supporting documentation, to Legal and Legislative Services at legal.services@health.wa.gov.au. Approved by:

- Tier 2 in Child and Adolescent Health Service, Health Support Services, PathWest Laboratory Medicine WA, South Metropolitan Health Service and Quadriplegic Centre;
- Tier 2a in East Metropolitan Health Service and North Metropolitan Health Service; and
- Tier 3 in WA Country Health Service and the Department of Health.

3.2.1.2 Contact the 'Legal and Legislative Services' Duty Solicitor service for verbal advice on urgent matters.

3.2.2 'Request for Legal Advice or Legislative Services Form' is available from the Legal and Legislative Services intranet page.

3.2.3 All legal advice provided by the Legal and Legislative Services is free of charge.

4. Compliance Monitoring

The Legal and Legislative Services (LLS) unit, on behalf of the System Manager will monitor compliance with this policy using information data sources available to the System Manager such as completed Request for Legal Advice or Legislative Assistance Forms and State Solicitor's Office invoices. The System Manager may undertake an assessment or audit should a non-compliance issue be identified.

5. Related Documents

The following documents are mandatory pursuant to this policy:

- 'Request for Legal Advice or Legislative Assistance Form' – must be used when requesting advice from the Legal and Legislative Services in accordance with paragraph 3.2.1.1 above.

6. Supporting Information

The following information is not mandatory but informs and/or supports the implementation of this policy:

- Government of Western Australia, Department of Justice WA, State Solicitor's Office, The Office Briefing and Engagement 2024.

7. Definitions

The following definition(s) are relevant to this policy.

Term	Definition
WA health entity	WA health entities include: (i) Health Service Providers as established by an order made under section 32 (1)(b) of the *Health Services Act 2016*. (ii) Department of Health as an administrative division of the State of Western Australia pursuant to section 35 of the *Public Sector Management Act 1994*.

8. Policy Contact

Enquiries relating to this policy may be directed to:
Title: Director of Legal and Legislative Services
Directorate: Governance and System Support
Email: legal.services@health.wa.gov.au

9. Document Control

Version	Published date	Review date	Amendment(s)
MP 0023/16	1 July 2016	1 July 2017	Original version
MP 0023/16 v.2.0	12 August 2021	August 2024	Major amendment as listed below.
• Policy transitioned to the current policy template. • As a full policy review was undertaken, a new review cycle will commence			
MP 0023/16 v.2.1	23 April 2024	August 2024	Minor amendment as listed below.
• Supporting information title and hyperlink updated.			
MP 0023/16 v.3.0	28 November 2024	November 2027	Policy review and amendment, details below.
• Purpose section updated and refined. • Applicability statement updated to WA health entities. • Policy requirements section amended to reflect changes in seeking legal advice, responsibility of payment of SSO invoices, record keeping, and approval tiers of the WA health system. • Compliance monitoring updated to reflect policy requirements and policy owner's responsibility. • Hyperlinks updated in various sections. • Definition: 'WA health entity' term updated.			

• Policy contact updated.

10. Approval

Approval by	Dr David Russell-Weisz, Director General, Department of Health
Approval date	28 June 2016

This document can be made available in alternative formats on request for a person with a disability.

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