

HEALTH QUALITY AND SAFETY COMMISSION

PROSECUTION POLICY

GLOSSARY

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| NZPHD Act | New Zealand Public Health and Disability Act 2000 |
| HQSC | Health Quality and Safety Commission |
| MRC | Mortality Review Committee |
| Policy | Mortality Review Committee Prosecution Policy |

INTRODUCTION

- 1 The Health Quality and Safety Commission (HQSC) was established under the New Zealand Public Health and Disability Amendment Act 2010, s 59A. The HQSC can appoint Mortality Review Committees (MRCs) under s 59E of the NZPHD Act.
- 2 MRCs are dedicated to reviewing the deaths of various groups of people. The four MRCs are:
 - 2.1 Child and Youth Mortality Review Committee.
 - 2.2 Perinatal and Maternal Mortality Committee.
 - 2.3 Family Violence Death Review Committee.
 - 2.4 Perioperative Mortality Review Committee.
- 3 The functions of an MRC are to:
 - 3.1 review and report to the HQSC on specified classes of deaths of persons, or deaths of persons of specified classes, with a view to reducing the numbers of deaths of those classes or persons, and to ensure continuous quality improvement through the promotion of ongoing quality assurance programmes; and
 - 3.2 advise on any other matters related to mortality that HQSC specifies by notice.
- 4 The NZPHD Act provides the chairperson of MRCs with a power to require information from people. It also provides for the prosecution of a person for failing to provide information without reasonable excuse.
- 5 The NZPHD Act also provides for the prosecution of a person for disclosing information contrary to cl 4 of sch 5.
- 6 This Policy sets out how the HQSC is to exercise its discretion to prosecute. It is to be read together with, and subject to, the Solicitor-General's Prosecution Guidelines. The purpose of this Policy is to provide general guidance. It does not provide a binding set of rules about how the HQSC will exercise its powers in particular cases. The touchstone in any case will always be whether the proposed exercise of prosecution powers is likely to further the HQSC's functions.

POWER TO PROSECUTE

- 7 An MRC is entitled to commence a prosecution in respect of the following two offences:

Every person who fails, without reasonable excuse, to comply with a requirement imposed under Schedule 5 of the New Zealand Public Health and Disability Act by the chairperson of a mortality review committee commits an offence and is liable on conviction to a fine not exceeding \$10,000.

Every person who discloses information contrary to Schedule 5 of the New Zealand Public Health and Disability Act commits an offence and is liable on conviction to a fine not exceeding \$10,000.

- 8 Any member of a registered occupational profession who commits one of these offences is liable to any disciplinary proceedings of that profession in respect of the offence, whether or not he or she is fined. The HQSC will send notification of conviction to the appropriate professional body.

APPROACH TO USE OF PROSECUTION POWER

- 9 An MRC is guided in the exercise of its prosecution power by the following principles:

Proportionality: The decision to prosecute will reflect an MRC's assessment of the seriousness of the breach, including the nature and importance of the information, the previous record of the person (good or bad history in terms of meeting the requirements of the law), the level of knowledge of the breach, and the attitude towards the breach.

Consistency: This means treating like cases alike. It does not mean that every case will be treated in the same way; every situation will have its own distinguishing features.

Accountability: An MRC undertakes its work on behalf of all New Zealanders, including future generations. Sometimes prosecutions will be informed by legitimate public expectations of accountability.

Prioritisation: The cost of a potential prosecution, relative to the seriousness of the breach, is one relevant consideration.

THE PROSECUTION PROCESS

- 10 An MRC will generally take the following steps as part of its prosecution process under the NZPHD Act:

10.1 Investigation of the suspected breach.

10.2 Correspondence with the person suspected of breaching the NZPHD Act, during which an opportunity is provided to respond to the allegations.

10.3 Obtaining external legal advice about the merits of prosecution.

10.4 Where appropriate, laying charges in the District Court.

- 10.5 Where appropriate, considering alternatives to prosecution such as attending mediation, issuing a written warning, agreeing that an amount be paid to a charity by way of penalty, or requiring that there be a public acknowledgement of the breach.
- 11 An MRC can decide to take no further action in relation to an alleged breach.

DECISION TO PROSECUTE

- 12 Any decision to prosecute a person for a breach of the NZPHD Act will be made by the Board of the HQSC following a recommendation in writing by the relevant MRC. The decision to prosecute is made by the Board of the HQSC, not by an MRC.
- 13 Any prosecution that is commenced will aim to:
- 13.1 penalise non-compliance with the NZPHD Act; and
 - 13.2 inform and guide the behaviour of others.
- 14 Any decision to prosecute is subject to and guided by the Solicitor-General's Prosecution Guidelines.

SOLICITOR-GENERAL'S PROSECUTION GUIDELINES

- 15 The Solicitor-General's Prosecution Guidelines provide a framework for an MRC's decision to prosecute under the NZPHD Act.
- 16 Accordingly, the HQSC will only initiate a prosecution if it is satisfied that:
- 16.1 the evidence able to be put before the court provides a reasonable prospect of conviction; and
 - 16.2 prosecution is required in the public interest.
- 17 Prosecution is more likely to be required in the public interest when one or a number of the following factors apply:
- 17.1 The breach is serious.
 - 17.2 The breach is blatant.
 - 17.3 Breaches of the relevant sort are prevalent.
 - 17.4 There are previous relevant breaches.
 - 17.5 The breach is likely to be continued or repeated.

THE HQSC WILL OBTAIN LEGAL ADVICE

- 18 Before deciding to commence a prosecution, the HQSC will obtain external legal advice as to the appropriateness of prosecution as a response to the alleged breach.

PUBLICITY

- 19 The HQSC will generally publicise the outcome of prosecutions for the purposes of education and deterrence (unless such publicity is not in the public interest or is not allowed by law).

ADDITIONAL GUIDANCE

- 20 The HQSC encourages stakeholders to:
- 20.1 Access information about the MRCs via their website, legislation, and other relevant information.
 - 20.2 Work with MRCs to ensure that obligations are met.
 - 20.3 Contact an MRC as soon as possible if a breach of obligations is suspected.
 - 20.4 If there has been a breach, discuss potential remedial action as early in the process as possible.

REVIEW

- 21 This Policy will be reviewed when necessary.