



27 August 2009

Legal and Legislative Services Branch  
NSW Department of Health  
Locked Mail Bag 961  
North Sydney  
NSW 2059

Attn: Mr Dean Bell  
debel@doh.health.nsw.gov.au

**Subject: NSW Health Discussion Paper: Statutory privilege for root cause analysis and quality assurance committees**

Dear Mr Bell,

The Mental Health Coordinating Council (MHCC) is the state peak body for non-government organisations (NGOs) working for mental health throughout NSW representing the views and interests of over 200 NGOs. Our member organisations specialise in the provision of services and support for people with a disability due to mental illness. MHCC provides leadership and representation to its membership and seeks to improve, promote and develop quality mental health services to the community. Facilitating effective linkages between government, non-government and private sectors,

MHCC participate extensively in public policy development and sit on numerous State and Federal Committees including the HCCC Consumer Consultative Committee. We wish to add our voice to concerns raised by the Health Care Complaints Commission in their submission to the Health Department in July 2009.

We fully appreciate that any discussion on RCA privilege gives rise to tension between systems improvement and individual accountability and that the process of analysis needs to balance the need for confidentiality with quality improvement. However, the system must satisfactorily respond to patients and their families' 'need to know' after and adverse event, something clearly not happening at the moment.

It is critical that a broad community consultative process be established to discuss how the current system operates in relationship to NSW Health open disclosure policy, and how the system might be improved without clinicians assuming that this will give rise to increased litigation.

**Mental Health Coordinating Council**  
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As things stand, quite understandably, patients and their families report feeling that they not only are offered less than adequate responses to their questions but that a veil of secrecy shrouds events, making them suspicious and untrusting. This is extremely detrimental to moving through the natural grieving process for anyone who has experienced loss. Usually it leaves them feeling angry and denied natural justice.

We fully appreciate that the purpose of RCA investigations is primarily concerned with systems problems rather than individual responsibility, and that they do not have authority to act on matters of individual competence. However, we understand that they must notify the appropriate health organization which in turn may refer findings onto the relevant registration body to be dealt with as a complaint under the Act.

Whilst the RCA process may result in report recommendations for quality improvements, there seems little evidence that audits have been conducted to check implementation or evidence of improved quality outcomes.

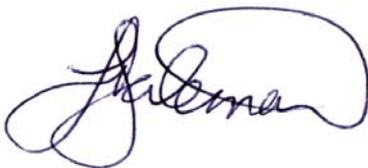
RCA privilege is incompatible with a policy of open disclosure, since it prevents inquiry findings from being available even to explain reasons for adverse events to patients and their families, and the process is hampered by the absence of details concerning individuals involved in an event, and findings may not be used in any way in progressing complaints. RCA privilege renders the quality assurance process somewhat 'toothless' and in our view is not in the best interests of patients and their families it seeks to serve.

MHCC hope that the outcome of these discussions will that a broad community consultative process will be initiated, and we express our willingness in being involved in future discussions concerning this matter.

For further information regarding this letter please contact Corinne Henderson, Senior Policy Officer at [corinne@mhcc.org.au](mailto:corinne@mhcc.org.au) or Tel: (02) 9555 8388 ext 101.

We look forward to your response on this matter.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Jenna Bateman', with a large, stylized flourish at the end.

Jenna Bateman  
Chief Executive Officer