



Government of **Western Australia**
Department of **Health**

LEGAL ARRANGEMENTS POLICY

No longer Applicable
Rescinded 13 December 2021
Refer to:
Guidelines - Sign-off clauses for legal arrangements (PDF 166KB)

Title: Legal Arrangements Policy

1. Background

Following the introduction of the *Health Services Act 2016 WA* (HS Act), five board-governed and one Chief Executive (CE) governed statutory Health Service Providers (HSPs) were established. Accordingly, from 1 July 2016 the legal arrangements in place for the execution of Legal Documents and naming of the correct legal entity in legal proceedings have changed.

2. Scope

This policy is mandatory and applies to all HSPs.

3. Policy statement

The purpose of this policy is to ensure HSPs are informed of, and comply with, certain procedures which apply from 1 July 2016 in relation to Legal Documents.

HSPs should seek legal advice from Legal and Legislative Services or the State Solicitor's Office if they have any doubt about what they are required to do in any given situation.

4. Definitions

Authorised Officer	Officer of an identified tier/position authorised in the applicable local Authorisations Schedule to make the applicable decision or execute the relevant Legal Document
Board Governed Health Service Provider	North Metropolitan Health Service South Metropolitan Health Service East Metropolitan Health Service Child and Adolescent Health Service WA Country Health Service as the context requires
Chief Executive Governed Health Service Provider	Health Support Services
Health Service Provider	Health Service Provider established under section 32 of the HS Act

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Legal Documents	Includes agreements, deeds, contracts, mortgages, declarations, applications, court documents and any other document or instrument that is intended to create, record, enforce, vary or terminate a legally enforceable right or obligation
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5. Roles and responsibilities

For all matters and documents requiring a decision or execution (signing), refer to the relevant local Authorisations Schedule to identify the correct tier/ position authorised to make a decision or execute a document.

A. DECISIONS AND LEGAL DOCUMENTS

5.1 If a Legal Document would have been referred to the Director General of Health for decision or execution before this policy was issued, the Legal Document should be referred for decision or execution to:

- (a) the Authorised Officer identified in the applicable local Authorisations Schedule in relation to making decisions on or executing the Legal Document or
- (b) The HSPs board or CE, as the case may be, if no Authorised Officer is identified in the applicable local Authorisations Schedule in relation to making decisions on or executing the Legal Document.

5.2 Legal Documents that would, prior to 1 July 2016 have been referred for execution (signing) to the Director General should be referred to the Authorised Officer as set out in the applicable local Authorisations Schedule.

5.3 Subject to the applicable local Authorisations Schedule any matter which would, prior to 1 July 2016, have been decided at the hospital level, should continue to be decided at that level.

5.4 Subject to the applicable local Authorisations Schedule, any Legal Document which would, prior to 1 July 2016 have been executed (signed) at the hospital level by a person with appropriate authority should continue to be executed (signed) at the hospital level.

B. Execution (Signing) of Legal Documents

5.5 Letters, hospital forms, day-to-day administrative documents and contracts which would usually be entered into by way of standard forms or exchange of letters and which are to be signed at the hospital level in accordance with this policy should be:

- (a) under the name of the applicable HSP and
- (b) signed by the appropriate Authorised Officer pursuant to the applicable local Authorisations Schedule.

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- 5.6 Legal Documents which are to be executed under seal by a board-governed HSP in accordance with this policy are to:
- (a) describe the HSP as the relevant party
 - (b) have the common seal of the HSP affixed to the document in the presence of the chairperson of the board and either another member of the board or a person employed in the HSP
 - (c) use the following execution clause

DATED THIS [INSERT DAY] OF [INSERT MONTH AND YEAR]

THE COMMON SEAL OF THE [INSERT HSP] WAS HEREUNTO AFFIXED IN THE PRESENCE OF:

.....

[INSERT NAME OF CHAIRPERSON]	[INSERT NAME OF OTHER PERSON]
CHAIRPERSON	[INSERT POSITION OF OTHER PERSON]

IN ACCORDANCE WITH SECTION 41 OF THE *HEALTH SERVICES ACT 2016*

- 5.7 Legal Documents which are to be executed under seal by a Chief Executive governed HSP in accordance with this policy are to:
- (a) describe the HSP as the relevant party
 - (b) have the common seal of the HSP affixed to the document in the presence of the Chief Executive of the HSP
 - (c) use the following execution clause

DATED THIS [INSERT DAY] OF [INSERT MONTH AND YEAR]

THE COMMON SEAL OF THE [INSERT HSP] WAS HEREUNTO AFFIXED IN THE PRESENCE OF:

.....

[INSERT NAME OF CHIEF EXECUTIVE]

CHIEF EXECUTIVE

IN ACCORDANCE WITH SECTION 41 OF THE *HEALTH SERVICES ACT 2016*

- 5.8 Legal Documents which are to be executed by an Authorised Officer (ie not under seal) in accordance with this policy are to:
- (a) describe the HSP as the relevant party
 - (b) include in the 'Recitals' to the document (sometimes described as the 'Background') the following statement:

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FOR BOARD GOVERNED HSP

The Minister established the [INSERT HSP] pursuant to section 32 of the *Health Services Act 2016*. Pursuant to section 41(7) of the *Health Services Act 2016*, the [INSERT AUTHORISED OFFICER TITLE] has been authorised by the [INSERT HSP] to execute this [INSERT DEED IF THE DOCUMENT IS BEING EXECUTED AS A DEED OR DOCUMENT IF IT IS NOT BEING EXECUTED AS A DEED] on its behalf.

FOR CHIEF EXECUTIVE GOVERNED HSP

The Minister established the [INSERT HSP] pursuant to section 32 of the *Health Services Act 2016*. Pursuant to section 41(8) of the *Health Services Act 2016*, the [INSERT AUTHORISED OFFICER TITLE] has been authorised by the [INSERT HSP] to execute this [INSERT DEED IF THE DOCUMENT IS BEING EXECUTED AS A DEED OR DOCUMENT IF IT IS NOT BEING EXECUTED AS A DEED] on its behalf.

- c use the following execution clause:

FOR BOARD-GOVERNED HSP

SIGNED BY [INSERT NAME], [INSERT POSITION]
FOR AND ON BEHALF OF [INSERT HSP]
IN ACCORDANCE WITH SECTION 41 OF THE *HEALTH SERVICES ACT 2016*

[INSERT DATE]

FOR CHIEF EXECUTIVE GOVERNED HSP

SIGNED BY [INSERT NAME], [INSERT POSITION]
FOR AND ON BEHALF OF [INSERT HSP]
IN ACCORDANCE WITH SECTION 41 OF THE *HEALTH SERVICES ACT 2016*

[INSERT DATE]

HSPs should ensure that before a deed or document is executed, the authority of the Authorised Officer is confirmed.

C. LEGAL PROCEEDINGS

- 5.9 Determination of the proper party for new or existing legal proceedings needs to be determined by reference to the individual circumstances of the matter and is ultimately a matter for the solicitor managing the matter to determine.
- 5.10 Questions regarding identifying the correct entity to be named in legal proceedings should be referred to the solicitor managing the litigation on behalf of HSPs.

6. Compliance

This policy is binding on all HSPs.

7. Evaluation

Performance measures of this mandatory policy are to be carried out by the mandatory policy owner.

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8. Relevant legislation

- *Health Services Act 2016*
- *Health Services (Health Services Providers) Order 2016*

9. Related documents

All local Authorisations Schedules

10. Authority

This policy has been approved and issued by the Director General of the Department of Health as the System Manager.

Title:	Legal Arrangements Policy		
Contact:	Director, Legal and Legislative Services Tel: 9222 4038 Email: legal.services@health.wa.gov.au		
Directorate:	Legal and Legislative Services		
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