

Statutory Immunity Application procedures

The application process

Agencies seeking to apply for statutory immunity under section 139 of the Health Services Act (1988), must submit an application consisting of all the following documents:

- a **completed statutory immunity checklist** attached as a coversheet to the application;
- a **covering letter**, addressed to the relevant contact point in the Department of Human Services (refer to advice below), indicating that statutory immunity is being sought for a specified committee or committees, whichever the case may be;
- a **letter to the Minister for Health** (refer to proforma letter) – seeking declaration of the specified committee or committees;
- a copy of the agency's **by-laws or constitution** which provide for the establishment of the specified committee;
- the **terms of reference** for each committee for which statutory immunity is sought, including its membership and reporting structure;
- a copy of the agency's **quality plan**; and
- supporting documentation demonstrating that it is in the **public interest** to provide statutory immunity for each committee specified in the application.

Applications should be submitted via the following contact points in the Department of Human Services:

- For **metropolitan health services, private hospitals, day procedure centres and professional associations** applications should be addressed to:

Quality and Safety Programs,
Statewide Quality Branch,
Department of Human Services,
Level 13, 50 Lonsdale Street,
Melbourne. Vic. 3000

- For all **rural public hospitals** applications should be addressed to the appropriate Regional Office of the Department of Human Services. The application will then be referred onto Head Office for an initial assessment.

When an application has been received it will be reviewed to ensure that the checklist has been completed, and all required documents have been provided. If all is in order, a letter acknowledging receipt of the applications will be sent to the agency. If the checklist is not completed in full, the entire application for statutory immunity will be sent back to the agency for amendment and resubmission.

Once an application is complete, it will then be assessed by the Statewide Quality Branch to determine whether it meets the criteria outlined in s.139. This includes obtaining advice from the Department's Legal Services Branch.

After it has considered the request, the Department will then seek a decision under s.139 from the Minister. (Under s.139, it is the Minister who determines whether a committee should be an approved quality assurance body).

Where a request has been submitted to the Minister by the Department, agencies should note that the Minister may request further information before making a decision.

If the Minister approves an application by declaring the specified committee 'an approved quality assurance body' for the purposes of s.139, a copy of this declaration will be published in the **Victorian Government Gazette**. The Minister for Health will also notify the agency in writing. The Department will also provide the agency with a copy of the published gazette notice. The statutory immunity protection afforded by this declaration will take effect from the date of publication of the gazette notice.

Please Note: To minimise delays, it is recommended that agencies clarify any queries with the Department prior to submitting their application. Further information regarding the application process may be obtained from:

Quality and Safety Programs
Statewide Quality Branch
Department of Human Services
on 9096 7201.

Some important information:

Committee functions-section 139(2):

The intent of s.139 of the Act is to provide statutory immunity protection for quality assurance bodies with a **clinical** focus that will facilitate improvements to health services and health care outcomes. It was designed to provide statutory immunity in quite specific circumstances where a committee's emphasis will be upon the review of clinical practice or clinical competence. It is the responsibility of the agency to demonstrate how it considers that the functions of each of the specified committees in respect of which statutory immunity is sought, meet the requirements of **section 139(2)**.

Public interest:

Under section 139 (2)(d), the Minister must not approve a committee, council or other body unless he or she is satisfied that:

'it is in the public interest that persons be prohibited from disclosing information given to it in the course of the carrying out of its functions'.

The following criteria will provide guidance to agencies in establishing

a public interest argument for the approval of a quality assurance committee as required under s.139 (2):

- the committee will be undertaking systemic quality assurance work in compliance with a detailed quality assurance plan;
- the committee will play a central and clearly defined role as part of a systemic approach to quality assurance on the part of the sponsoring organisation(s);
- the committee's work is likely to result in demonstrable improvements to health services and improvements in health care outcomes, and this work will not be done or is unlikely to be done without the benefit of statutory immunity;
- there is a clear strategy in place for communicating and implementing the committee's findings and recommendations for improvements within the relevant organisation, and for reporting in general terms on the activities and findings of approved quality assurance committees by the organisation;
- there are suitable mechanisms in place to review the effectiveness of the quality assurance committee; and
- overall, the benefits to be gained from approving the committee outweigh any disadvantages that may be caused to individuals or the public as a result of the granting of approval.

Whilst each case must be assessed on its merits, it is recommended that applications address the above criteria for each committee for which statutory immunity is sought, and also provide sufficient supporting information to demonstrate that these criteria are met in relation to each committee. For example, it is recommended that an application provide a detailed explanation of the organisation's system quality assurance strategy and how the activities of the committee seeking statutory immunity fits within, and contributes to, the achievement of the objects of this strategy. This should include a discussion of how the activities of the committee are expected to improve the identification and management of risks and systemic failures in the provision of health care, and that this would be facilitated by the granting of statutory immunity to the particular committee.

The above criteria are a guide only, additional material or other arguments supporting the application for statutory immunity are welcome.

Re-applying for statutory immunity:

Should the name and/or terms of reference of 'an approved quality assurance body' change from that specified in the approved application, the relevant agency will be required to reapply for statutory immunity.

Proforma letter to the Minister for health

See next page.

Proforma letter to the Minister for Health

(letter must be typed on hospital letterhead)

Hon Daniel Andrews MP
Minister for Health
Level 22
50 Lonsdale Street
MELBOURNE VIC 3001

Dear Minister Andrews

RE: [Insert name of quality assurance committee(s)]

I wish to inform you of the establishment of a quality assurance committee(s), to be known as the **[insert name of the quality assurance committee(s)]** on **[insert date the committee(s) was established]**.

I seek your declaration under section 139 of the Health Services Act 1988 of **[insert name of quality assurance committee(s)]** as an approved quality assurance body for the purposes of Part 7 of the Act.

To assist you in making your decision please note, that accompanying this letter is evidence supporting our application for statutory immunity. This evidence demonstrates that:

- the committee(s) is/are established under the by-laws/constitution of the **[insert name of the agency]**;
- the functions of the committee(s) include the assessment and evaluation of the quality of health service provided by the **[insert name of the agency]**;
- the carrying out of the functions and powers of the committee(s) would be facilitated by the provision of those immunities provided by section 139 of the Health Services Act 1988; and
- there is a strong enough public interest argument for each committee for which statutory immunity is sought.

Yours sincerely

[to be signed by the CEO of the relevant agency)