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3 August 2011

Mr Richard Killalea  
Solicitor  
Eddy Neumann Lawyers  
DX 11501 SYDNEY DOWNTOWN

**By email:** rk@eddyneumann.com.au

Dear Mr Killalea

**Collins B v Justice Health: Supreme Court 2011/90868**

I refer to your letter dated 4 July 2011. I am instructed that Justice Health will shortly adopt a policy in relation to the distribution of materials from external parties in the Forensic Hospital. All future requests for distribution of materials from external parties, including Justice Action, will be dealt with in accordance with this policy.

It is my hope that the process set out in the policy will be acceptable to your client as a basis for settling the current proceedings, without the need for either side to incur further costs in relation to an outcome which can have no direct bearing on any future decisions regarding the Just Us newsletter.

The essential elements of the policy are as follows:

- External organisations may send materials to Justice Health for distribution to patients in the Forensic Hospital.
- Materials must be examined to ensure that they are suitable for distribution to patients.
- The general principle is that materials should be allowed into the Hospital unless the material falls into one of the categories set out in the policy.

The procedure for seeking approval to distribute material within the Forensic Hospital is as follows:

1. An external organisation that wishes to have any written document or publication distributed to patients in the Forensic Hospital must send an electronic copy of the document to the Chief Executive at jhadmin@justicehealth.nsw.gov.au together with a request that the document be examined for its suitability for distribution to patients in the Forensic Hospital.

An organisation sending such a request must indicate the intended purpose and audience of the document and give sufficient details about the purpose of the organisation to enable a determination regarding the suitability of the document to be made.

2. Within 28 days of the receipt of the material, the Service Director must inform the requesting organisation of his or her determination regarding the suitability or otherwise of the material for distribution and the reasons for the determination.
3. Approved material will be distributed by Justice Health staff into a designated communal patient area on a unit or units of the Forensic Hospital.
4. An external organisation that is dissatisfied with a decision to refuse to allow material to be distributed in the Hospital may request an internal review of the decision and such a request must be made in writing to the Chief Executive within 28 days of date on which the decision was communicated to the organisation.

The procedure for determining whether material is suitable for distribution is as follows:

1. The Service Director must ensure that the material is examined and determine whether the material is suitable for distribution in the Hospital.
2. Material is not suitable for distribution in the Hospital if:
  - a. it is:
    - i. a publication, film or computer game that has been classified R 18+, X 18+ or RC7 or any such item that is not classified which if it were submitted for classification would likely be classified R18+ or higher;
    - ii. an indecent or obscene print, painting, photograph, lithograph, engraving, cinematograph film or other record of a picture or pictures, book, card or written communication, or any other indecent or obscene article;
    - iii. any written, audio or audio-visual material, publication, film, or computer game which a reasonable person would consider to incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the race, gender, sexual orientation or transgender of the person or members of the group;
  - b. there is a significant risk that, if distributed in the Hospital, the material would cause harm to any person;
  - c. there is a significant risk that, if distributed in the Hospital, the information in the material would thwart the security of the Hospital;
  - d. it incites or encourages actions that would interfere with the treatment of patients in the Hospital;
  - e. the distribution would place an unreasonable burden on the resources of the Forensic Mental Health Network;

- f. the material is otherwise prohibited by law or policy, for example, material that discloses health or personal information about an individual without the consent of the person, or
  - g. the material forms part of a series of materials that, as a whole, fall into one of the categories of a to f above, even if a material presented in isolation does not.
3. Harm includes physical, psychological, or social harm to a person.
  4. In determining whether material is suitable for distribution in the Hospital the Service Director should consult with any or all of the following officers or bodies:
    - a. Clinical Director, Forensic and Long Bay Hospitals
    - b. Statewide Clinical Director, Forensic Mental Health
    - c. Manager, Mental Health Nursing
    - d. Manager, Allied Health
    - e. NSW Consumer Advocacy Group or any other mental health consumer advocacy organisation recognised by NSW Health.
  5. Material may only be approved if it is suitable for all categories of patients in the Forensic Hospital, that is, men, women and adolescents.
  6. Determination regarding suitability requires a minimum of 14 days.
  7. The Executive Director Forensic Mental Health and Youth Health Services must review the determination and, if he or she agrees with the determination, forward the brief to the Chief Executive for communication to the requesting organisation.

Yours faithfully

  
Nicholas Kelly  
Senior Solicitor  
for Crown Solicitor