**Privacy, Legislation and Applications for Waiver of Consent**

The [Guidelines under Section 95 of the Privacy Act 1988](http://www.nhmrc.gov.au/guidelines/publications/e26) (s95 Guidelines) provide a framework for the conduct of medical research using information held or collected by agencies where personal information needs to be used and where it is not practicable to obtain the individual's consent.

**When do I need to apply for a waiver?**

Generally, consent or a waiver of consent is not required where a study involves the use of data derived from routine clinical practices for the purposes of quality assurance.

The Office of the Federal Privacy Commissioner's Guidelines on Privacy in the Private Health Sector states that an organisation's quality assurance or clinical audit activities may constitute secondary activities that are directly related to the purpose for which consent was given, and therefore that consent may not be required for these types of activities.

Use the checklist below to determine if your research can use or access data without consent or a waiver of consent.

|  |  |
| --- | --- |
| **Access or use of data (both de-identified and identified) for the purpose of research****does not require consent or a waiver in the following circumstances:** | **Yes/No** |
| **DATA COLLECTION PURPOSES**1. The data to be accessed or used has already been collected as a part of routine business (e.g. clinical care, training, planning, or management of the health service); or

1. The data will be collected as a matter of routine business (e.g. clinical care, training, planning, or management of the health service)
 |  |
| **RESEARCH PURPOSES**1. The data that will be used for the purpose of research, audit or quality improvement or other research activities that are directly related to the primary purpose for which the data was/will be collected
 |  |
| 1. Access to data is sought by a person who would normally have access to the data as part of their employment with Barwon Health for the purpose of their work.
 |  |

**If you answered ‘NO’ to any of the above, you should seek consent or a waiver of consent for the use or access of data to be used for your research.**

For more detailed information about different forms of consent, including opt in and opt out, implied consent, and waivers of consent, please view the Guidelines for 'Seeking Consent and Waiver of Consent' on the [Guidelines and advice webpage](http://www.barwonhealth.org.au/guidelines-and-advice).

For detailed guidance on how to apply for a waiver of consent, see the [Consent, Waivers & PICFs webpage](http://www.barwonhealth.org.au/consent-waivers-picfs).