



**Queensland
Government**

Queensland Health

Health Services Act 1991
Part 7 Confidentiality Guidelines

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1. Background

Patient confidentiality in public sector health services in Queensland is strictly regulated.

Section 62A in Part 7 of the *Health Services Act 1991* sets out the duty of confidentiality (replacing the former section 63(1)), and the exceptions to the duty of confidentiality are also set out in Part 7. These Guidelines explain the duty of confidentiality and the circumstances when confidential information may be disclosed.

2. Why is Confidentiality Important?

Everyone who accesses public sector health services has a right to expect that information held about them will remain private. If the trust of members of the community in the confidentiality of records held by these services is eroded they will be unlikely to participate openly and willingly in their health care. If they are not open and honest with the various health professionals who care for them this may adversely affect the ability of these professionals to correctly diagnose and care for the individuals themselves. This will negatively impact on the continued integrity of the health system.

3. What is the Duty of Confidentiality and Who Does it Apply to?

Section 62A of Part 7 of the *Health Services Act 1991* sets out the duty of confidentiality. The section says:

- (1) A designated person or former designated person must not disclose to another person, whether directly or indirectly, any information (*confidential information*) acquired because of being a designated person if a person who is receiving or has received a public sector health service could be identified from the confidential information.
- (2) For subsection (1), another person includes another designated person or former designated person.
- (3) Subsection (1) applies even if the person who could be identified from the disclosure of confidential information is deceased.

A “**designated person**” includes employees and officers of Queensland Health; temporary staff; health professionals (including Visiting Medical Officers); anyone being educated or trained at Queensland Health facilities; and volunteers carrying out duties on behalf of the Department.¹

“**Health professional**” is defined in the Act and means a person who is registered, enrolled, or authorised under a Health Practitioner Registration Act or the Nursing Act. (for example, a doctor, physiotherapist, dentist, midwife, or registered nurse) or a person who provides a health service (for example, a social worker or dietician).

The duty applies to any “confidential information” that could identify someone who has received or is receiving a public sector health service. Confidential information includes any information collected by the Department during the course of providing a health service to an individual; for example:

¹ While the term “designated person” is used in the legislation for simplicity the word “staff” has been used throughout these Guidelines.

- ◆ name, address, date of birth, admission and discharge dates, billing information, and Medicare number
- ◆ health and medical information
- ◆ information generated by health professionals such as notes and opinions about an individual and their health
- ◆ information about physical or biological samples that can be linked to an individual (i.e. where they have a name or identifier attached). For example x-rays, CT scans, video imaging
- ◆ genetic information when collected or used in connection with delivering a health service; or genetic information when this is predictive of an individual's health.

The duty of confidentiality does not apply to ***de-identified information or statistical data sets which are non-identifiable*** (i.e. would not allow individuals to be identified).

4. Relationship Between Part 7, and Other Laws Dealing with Confidentiality and Privacy

The duty of confidentiality set out in Part 7 of the *Health Services Act 1991* applies to information that identifies someone who has received or is receiving public sector health services. In addition to this duty there are laws that contain confidentiality requirements relating to the disclosure of certain types of other confidential information that Queensland Health collects; for example, information provided to registries such as the Pap Smear Register through the *Public Health Act 2005*.

On 1 July 2009 the *Information Privacy Act 2009* commenced operation. The Act codifies the previous administrative information privacy regime. However, it is subject to the provisions of other Acts that deal with the collection, use, disclosure and handling of personal information, which includes health information about a person.

This means that the following rules apply to the disclosure of confidential information and other health information collected by the Department:-

- ◆ where **the information has been collected in the context of providing a public sector health service the information is regarded as “confidential information” and disclosure is governed by the duty of confidentiality in Part 7 of the *Health Services Act 1991***. However, this does not govern situations where information is “used” without being “disclosed” to any other person².
- ◆ where **the information has been collected under authority of other legislation administered by the Department** (for example, information provided to the Pap Smear Register under the *Public Health Act 2005*) it will be subject to **any legal requirements relating to disclosure set out in that legislation**.
- ◆ where **the duty of confidentiality in Part 7 does not apply, and there are no legislative requirements relating to disclosure, National Privacy Principle 2 in the *Information Privacy Act 2009* will apply**; for example, NPP2 will apply to health information

² If information is *used* without being *disclosed* to another person, the duty of confidentiality in Part 7 does not apply. For example, a health professional may collect personal information for the purpose of health service delivery and then decide at a later date to contact the person themselves and invite them to be part of a discussion group. In this instance, the health professional has not disclosed information to anyone else so the duty of confidentiality does not apply. The proposed *use* may however be subject to NPP 2 in the *Information Privacy Act 2009*.

collected by operational units of the Department where forensic services are being carried out, because forensic services are not considered to be “public sector health services”.

5. Disclosure and Access to Confidential Information

In privacy regimes *disclosure* normally refers to the transfer or release of information outside an organisation. For the purposes of the duty of confidentiality in Part 7 however, disclosure takes place when staff disclose confidential information to **any** other person, including another staff member.

The disclosure may be direct - for example, telling another person some confidential information about an individual, either in person, over the phone, or via email - or it can be indirect. Examples of indirect disclosure include discussing confidential information in a public place such as a cafeteria or a lift where the information may be overheard; leaving confidential information on a desk in view of people standing at the desk; or situating computer monitors so that the confidential information displayed is visible to people standing near them.

Disclosure for the purposes of Part 7 does not normally involve provision of access (in part or in full) to health records. In some instances, however, it may be appropriate to provide a copy of relevant information. For example, disclosure of information for public health monitoring purposes may require provision of access to relevant patient histories, and require copies of relevant information to be given to authorised staff for analysis (refer to section 6.6). Similarly it may be appropriate to provide a copy of relevant genetic information for the purpose of genetic counselling where the disclosure may assist in averting or preventing a serious risk to the life or health of a sibling or blood relative such as a child, provided the disclosure has been approved in writing by the Director-General or delegate (refer to section 6.8).

Decisions about access to health records need to be made on a case by case basis. Any requests for a copy of all or part of a health record held by the Department should be referred for advice in the first instance to a medico-legal officer or unit (where applicable), freedom of information decision-maker, or senior management.

6. Exceptions to the Duty of Confidentiality

The circumstances in which confidential information may be disclosed are set out in the following sections.

It is important to note that except where required by law (refer to section 6.1), or where disclosure takes place under an agreement between the State of Queensland, acting through Queensland Health and the Commonwealth Government, another State Government or a Commonwealth or State entity (refer to section 6.14), **disclosure of confidential information is discretionary.** Staff are not obliged to disclose the requested information.

Where confidential information is disclosed it is also important that only information that is relevant in the particular circumstances be disclosed i.e. the minimum necessary to satisfy the particular requirement. For example, if a request for confidential information relates to a particular condition or episode of care then only information relevant to that condition or episode should be disclosed.

6.1 Disclosure required or permitted by law (section 62B)

Section 62B says that the duty of confidentiality does not apply to the disclosure of confidential information by staff if the disclosure is required or permitted by an Act or another law. For example, disclosure may be required by either Commonwealth or Queensland legislation, Court ordered disclosure processes such as a subpoena, or Notice of Non-Party Disclosure. “Another law” also includes the common law, such as case law.

If the Department is required by law to disclose confidential information it must do so. For example, under s 128(1) of the *Veterans’ Entitlement Act 1986* (Cth) the Department is required to release to the Department of Veterans’ Affairs, relevant information relating to treatment received at any public health facility by repatriation beneficiaries.³

If the Department is permitted by law to disclose confidential information (as opposed to required to disclose) then some discretion is available as to whether to disclose or not. For example, section 281 of the *Public Health Act 2005* permits the chief executive (the Director-General) to disclose confidential information held by the Department for research purposes.

Before disclosing confidential information staff should refer the request to their medico-legal officer or unit (where applicable), right to information and information privacy decision-maker (where applicable), or senior management for advice. Corporate Office staff who require further information or clarification prior to any disclosure may need to contact the Department’s Legal Unit. District management may need to contact a nominated panel law firm for advice.

6.2 Disclosure with consent (section 62C)

Disclosing confidential information with the consent of the person concerned has always been (and will continue to be) the most common and preferable mechanism for disclosure. However there may be some circumstances where the consent of the person cannot be obtained; for example, due to incapacity.⁴ This will not prevent disclosure of the confidential information if one of the other exceptions under Part 7 is available; for example, for care or treatment.

Section 62C in Part 7 allows:

- ♦ staff to disclose confidential information if they have the consent of the person concerned (section 62C(a))
- ♦ a health professional⁵ to disclose a child’s confidential information to another person if the child has consented to the disclosure and the health professional considers that the child has sufficient capacity or competence to give their consent (section 62C(b))

³ Compliance with a Court ordered disclosure process may not require disclosure of all information about the patient. The subpoena, notice of non-party disclosure etc. will define the scope of documents required to be produced. If in doubt advice should be sought from senior management.

⁴ If an individual is unable to give consent due to incapacity health professionals should determine whether a substitute decision maker (including attorneys, or statutory health attorney) has been appointed under the *Powers of Attorney Act 1998* or the *Guardianship & Administration Act 2000*. Consider also whether the patient has made an advance health directive, where relevant.

⁵ Refer to the definition of “health professional” in Part 7

- ◆ a health professional to disclose a child's information with the consent of the child's parent⁶ or guardian where it is considered that the child does not have sufficient capacity or competence to consent to the disclosure (section 62C(c))
- ◆ a health professional to disclose a child's information *even where the child has capacity and has refused consent, and the child's parent has refused consent*, provided the disclosure is considered by the health professional to be in the child's best interests (section 62C(d)).

6.2.1 What do we mean by consent to disclose confidential information?

The key elements of consent are:-

Consent must be voluntary – The individual must have a genuine opportunity to provide or withhold consent. They must be able to say “yes” or “no” without pressure that would equate to an overpowering of will.

Consent must be informed – The individual must know what they are agreeing to in providing consent⁷. That is, the individual needs to be aware of the implications of providing or withholding consent, having received the information in a way meaningful to them and appropriate in the circumstances.

The individual must have capacity to consent – The individual must be capable of understanding the issues relating to the decision, forming a view based on reasoned judgement, and communicating their decision.

Consent in section 62C covers both express and implied consent:

Express consent refers to consent that is clearly and unmistakably stated. It can be obtained either in writing, orally, or in another form where the consent is clearly communicated. As a general rule if there is any doubt about whether a person is giving consent express consent should be sought, preferably in writing. If the disclosure could have serious consequences for the person concerned the Department would have to be able to show that the person could have been expected to understand what was going to happen to confidential information about them, and gave clear and unambiguous consent to the disclosure.

Implied consent refers to circumstances where staff may reasonably rely on a person's implied consent to disclose their confidential information in certain ways. Implied consent operates on the basis that the person concerned has been provided with information about the circumstances under which their confidential information may be disclosed and has considered whether or not they are happy to have the information disclosed in these circumstances. When relying on implied consent it should be clear that the person knows and understands what they are consenting to, and that they have clearly indicated by their behaviour that they have agreed. Information on disclosure practices can be provided in the form of written information or could be explained to the person verbally; for example, when a person agrees to be referred to a physiotherapy clinic by a doctor there is implied consent for the doctor to disclose relevant information to the physiotherapist. However, there should be open discussion and information sharing so the individual understands how their information may be used or disclosed.

⁶ Refer to the definition of “parent” in section 61 in Part 7

⁷ This includes the individual understanding that they are able to withdraw their consent at a subsequent time.

6.2.2 Disclosure when dealing with children and young people

Section 62C allows a health professional to disclose a child's confidential information to another person if the child has consented to the disclosure and the health professional considers that the child has sufficient capacity or competence to give their consent. It also allows a health professional to disclose a child's information with the consent of the child's parent or guardian where it is considered that the child *does not have* sufficient capacity or competence to consent to the disclosure; for example, an infant.

Determining capacity and competence can be complex. There is no particular age at which competency can be said to occur. Health professionals will need to carefully assess the child's maturity and their understanding of the relevant issues; for example, their understanding of "consent" and the consequences of disclosure. There will be younger children, in certain circumstances, who have sufficient maturity and understanding to make their own decisions. Conversely there may be older teenagers who lack such competence. There may be instances where the health professional and the parent/s (or guardian/s) disagree about the child's capacity to consent to disclosure. In these circumstances, the health professional will need to exercise their professional judgement and if necessary seek legal advice.

The purpose of the proposed disclosure of the child's information is also relevant when considering whether a child has sufficient maturity to consent. For example, a young teenager may have sufficient maturity to consent to the disclosure of information about an allergy, but may not have sufficient maturity to consent to the disclosure of information about results of genetic tests.

In circumstances where a child is assessed as capable of making their own decisions about disclosure of their confidential information, their wishes should be followed unless the child refuses to consent to a disclosure that, in the opinion of the treating health professional, is in the best interests of the child.

Overriding a competent child's express refusal to agree to disclosure is an action that should be taken with caution. The circumstances where a health professional would disclose information contrary to a young person's wishes are likely to be rare. For example, a diabetic teenager who refuses to take insulin may not want their parents to know. The health professional may decide that it is in the teenager's best interests to override their wishes. **A health professional should attempt to obtain consent before using their discretion to disclose information in the "best interests" of the child.**

A health professional's discretion to disclose information in the best interests of a child applies equally to very young children and to young people with sufficient maturity to consent. The "best interests" of the child must be considered objectively, and a health professional must exercise their professional judgement in determining whether to disclose information.

Situations may arise where a parent seeks information about their child but the child has asked that certain confidential information not be disclosed to their parent. For example, a competent child may seek health services about sexuality or pregnancy. **As a general rule, in such circumstances, confidentiality should be maintained unless the child expressly consents to disclosure.**

Where a child has been assessed as *not competent to consent to disclosure* confidential information may be disclosed by a health professional with the consent

of the child's parent or guardian. For example, a parent may consent to relevant confidential information being disclosed for research purposes. It is only necessary to obtain one parent's consent to disclose. However a health professional may have regard to the best interests of the child if there is an expressed or potential conflict between the parents. The best interests of the child will depend on the circumstances, but may include matters such as the family context, and the risks and benefits of disclosure.

6.3 Disclosure in general terms, or to a person who has sufficient interest in the health and welfare of an individual (section 62D)

The duty in Part 7 does not apply to the disclosure of confidential information if the information:

- ♦ is communicated by staff and is limited to general information about the condition of a current or recently discharged patient; for example, a switchboard operator or media staff at a hospital disclosing that a person's condition is "satisfactory"; or
- ♦ is communicated by a health professional to a person who the professional believes has "sufficient personal interest" in the health and welfare of a patient or client. Examples of people who may have "sufficient personal interest" include the person's spouse, child, parent or guardian; a friend who has a close personal relationship with the person and a personal interest in their welfare, or someone who may be providing home care to a person who has a chronic health condition. The question of who has a "sufficient personal interest" will need to be assessed on a case by case basis. The health professional should have a reasonable belief that the person has such an interest and if not satisfied may undertake further enquiries prior to disclosing any information.

However, if the person concerned has asked that their confidential information not be disclosed, either generally or to "specific person(s)", then **information can not be disclosed**; for example at admission a patient may have indicated that information should not to be given to their former spouse.⁸

In situations where a person has died without placing restrictions on disclosure section 62D(2) permits a health professional to disclose relevant confidential information about the deceased to someone who the practitioner believes had "sufficient personal interest" in the health and welfare of the patient when they were alive. Being related to a deceased person by blood or marriage does not automatically entitle a person to the confidential information of someone who has died. To have "sufficient personal interest" the person asking for the information needs to demonstrate that he or she had a close and ongoing personal relationship with the deceased that entailed a personal interest in their health and welfare.

Disclosure of relevant confidential information to someone with "sufficient personal interest" does not entitle the individual to have access to the deceased's entire health

⁸ Where a patient or client has asked that details of their confidential information not be disclosed to a specific person or persons this request continues to apply even if the patient subsequently dies. Information can not be disclosed unless one of the other exceptions to the duty of confidentiality applies; for example, the chief executive or delegate may approve disclosure to avert a serious risk to the life, health, or safety of a person (section 62I); the person may apply for access to the confidential information of the deceased under right to information (section 62B), where access will be subject to any public interest considerations. Staff should seek advice from their medico-legal officer or unit (where applicable), right to information and information privacy decision-maker (where applicable) or senior management.

record; for example, while it may be relevant to disclose confidential information about the immediate episode of care that preceded a patient's death, the fact that the person had been treated for depression or undergone a hysterectomy many years earlier may not be relevant.

Where a request is made for disclosure of confidential information relating to a deceased person staff should refer the request to their medico-legal officer or unit (where applicable), right to information and information privacy decision-maker (where applicable), or to senior management for advice.

If a decision is made to disclose confidential information the disclosure **must** be made by an appropriate health professional; for example, a doctor, nurse, physiotherapist, or speech therapist. The "appropriate" health professional is someone who has been involved in the treatment of the individual whose information it is proposed to disclose.

6.4 Disclosure required for care or treatment (section 62E)

The duty of confidentiality does not apply to the disclosure of confidential information by staff if the disclosure is required for the care⁹ or treatment of the person concerned and the information is disclosed:

- ♦ by a staff member to another staff member who is a health professional; for example, a receptionist at a Queensland Health community health facility disclosing information to a physiotherapist employed by the facility for the purpose of treating a patient
- ♦ by a staff member to a health professional engaged to deliver a health service to a public patient for any of the following Mater hospitals – Mater Adult Hospital (South Brisbane); Mater Children's Hospital (South Brisbane); Mater Mothers' Hospital (South Brisbane); Mater Misericordiae Private Hospital (South Brisbane), or the Mater Misericordiae Women's and Children's Private Health Service (South Brisbane)¹⁰.
- ♦ by a health professional to any other person provided that the disclosure is in accordance with the recognised standards of the relevant health profession; for example, by a Queensland Health doctor to a Queensland Ambulance Service officer, or by a Queensland Health nurse to a home carer for a person needing home care following release from hospital¹¹

This means that a health professional employed by the Department (for example, a doctor, nurse, physiotherapist) may disclose confidential information relevant to the care or treatment of a patient to someone outside of the Department. **Support staff can only disclose information to either a health professional employed by the Department, or a health professional engaged to deliver a health service to a public patient for one of the 5 Mater hospitals listed in dot point 2 above.**

Although Queensland Health does not legally require patient consent for disclosure of confidential information for treatment or health care it is still considered to be best

⁹ Care in this context means "health care". Health care is generally accepted to cover services provided to prevent, treat, or manage mental and physical health and well-being.

¹⁰ This amendment is set out in the *Mater Public Health Services Act 2008* (Qld).

¹¹ The "recognised standards" of a relevant health profession include, but are not limited to, a code of ethics, professional standards, or any relevant operational guidelines.

practice to discuss this with the patient prior to the disclosure to ensure the patient is fully informed, and is aware of what is going to happen with their information.

6.5 Disclosure in the public interest (section 62F)

Confidential information may be disclosed by staff if the chief executive of the Department (ie. the Director-General) believes, on reasonable grounds, that the disclosure is in the public interest and has authorised the disclosure in writing. **The Director-General cannot delegate the power to make a public interest determination.**

In order to make a determination under this section the Director-General must consider whether the public interest arguments in favour of release outweigh the public interest arguments favouring confidentiality. As a consequence, general determinations (such as broad or open-ended disclosures) cannot be made and each application must be considered on its merits. For example, although the Director-General may make a determination about a particular class of information that already exists it will be difficult to make a determination based on information that is expected to be brought into existence at a future time.

In order for the Director-General to make a determination staff must prepare a written brief and forward this to the Director-General for consideration. The exception set out in section 62Q of the Act will apply (refer to paragraph 6.17) enabling staff to disclose confidential information to the Director-General necessary for him or her to determine whether disclosure would be in the public interest.

The brief must address the following:

- ◆ what confidential information is proposed to be disclosed (including verification that the information is subject to the duty of confidentiality in Part 7)
- ◆ to whom it is proposed to disclose the confidential information, and how it is envisaged that this person(s) will use the confidential information
- ◆ the public interest arguments in favour of disclosure
- ◆ the public interest arguments in favour of maintaining confidentiality
- ◆ how the public interest arguments balance or outweigh each other
- ◆ who it is proposed should disclose the confidential information (i.e. the Director-General or a person authorised by the Director-General) and how it is proposed to disclose the confidential information
- ◆ how it is proposed to communicate to the recipient the scope and elements of any obligation of confidence that may be imposed or required in relation to the information being disclosed; for example, obtaining undertaking/s from the recipient
- ◆ any other relevant information; for example, whether there is any urgency attached to the disclosure.

Attached to the brief should be an “Authority for Public Interest Disclosure” form.¹² This form must be completed and submitted for the Director-General’s signature. The form should identify the relevant Queensland Health staff member(s) by name or by position; describe the confidential information to be disclosed (information that is capable of identifying an individual should not be included in the description of information to be disclosed); note the intended recipient(s) of the information, and set out the duration of the authority.

¹² Appendix 2 of these Guidelines contains a template “Authority for Public Interest Disclosure” form

It is Departmental policy that staff should be given an opportunity to look at a copy of the Authority and elect, at that time, to:

- ♦ have a copy of the Authority placed on their individual personnel file; or
- ♦ elect to retain the copy of the Authority for their own records and sign an acknowledgement of this decision.

This will ensure that if an alleged breach of confidentiality arises, the individual(s) will be able to produce the form to establish that they acted with authority in disclosing the information.

Non-identifying details of any public interest disclosures made under this section must be included in the Department's annual report. To facilitate this, a register of public interest determinations is maintained by Parliamentary and Ministerial Services in Queensland Health Corporate Office. A copy of the "Authority for Public Interest Disclosure" form will also be included on the register.

6.6 Disclosure for data collection and public health monitoring (section 62G)

With the written authority of the Director-General section 62G permits staff to disclose confidential information to another staff member to assist in managing a funding arrangement.

Section 62G also permits disclosure, with the written authority of the Director-General, for public health monitoring purposes. For example:

- ♦ accessing patient records to investigate emergent public health issues such as public concerns over a "cancer cluster"
- ♦ accessing clinical treatment histories of identified SARS victims to make determinations about treatment efficacy.

Before complying with requests to disclose confidential information for public health monitoring purposes staff should satisfy themselves that the request is valid by asking to see the written authority signed by the Director-General. **If in doubt consult senior management.**

6.7 Disclosure for purposes related to evaluation, management, monitoring, and planning of health services (section 62H)

Section 62H allows staff to disclose confidential information:

- ♦ to another staff member for the purposes of evaluating, managing, monitoring or planning health services; or,
- ♦ to an entity that has been prescribed under regulation for the purposes of evaluating, managing, monitoring, or planning health services.

The phrase "management of health services" has been used in these guidelines for readability purposes only. "Management of health services" encompasses activities for the purposes of evaluating, managing, monitoring, or planning health services.

6.7.1 Disclosure to other staff for management of health services

The Act allows information to be disclosed to other staff when it is necessary for management of health services. "Health service" is defined in the *Health Services Act 1991* to be a service for maintaining, improving, or restoring health and well being. It includes services provided at a hospital, nursing home, community health facility, or other place as well as services that deal with public health (such as an illness or injury prevention program). It also includes any administrative or other support service directly related to a health service; for example catering or laundry services.

While it is not possible to give an exhaustive list of activities that fall under this exception some examples are:

- ◆ routine management activities where it is necessary to disclose identifying information to senior managers
- ◆ approved quality assurance (QA) activities that demonstrate a link to improvement of health services
- ◆ approved use of diagnostic information for planning future health services; for example, use of diagnosis information provided to the Patient Travel Subsidy Scheme
- ◆ complaints management
- ◆ infection control surveillance
- ◆ incident monitoring and analysis; for example, investigation of falls and drug errors

The exception to the duty of confidentiality in section 62H **does not extend to disclosure of confidential information for the purpose of research.**¹³ The provision of confidential information for research purposes is dealt with in Part 4 of the *Public Health Act 2005*.

6.7.2 Approving activities for QA purposes

Generally an activity that involves evaluation of an *existing or current* health service practice or procedure, with the intention of improving the service (i.e. what are we currently doing, are we doing it well enough, or could we change it to do it better?) is considered a QA activity. Disclosure of confidential information for the activity would be acceptable *if it is not possible to undertake the activity successfully with de-identified information*.

While many routine management activities in health services activities may not require approval, local level policies and procedures **must** be put in place for the approval and reporting of all QA activities.

It is Departmental policy that any requests to undertake QA activities must be in writing and must address the following:

¹³ Information on research is available on the Department's web site at: http://www.health.qld.gov.au/ohmr/html/regu/regu_home.asp and is also accessible to staff through QHEPS. For further information on research staff should email: regu@health.qld.gov.au

- ◆ the purpose of the proposed QA activity and how the activity links to improvement of health services
- ◆ what information, de-identified or otherwise, is proposed to be used to undertake the QA activity and why
- ◆ if it is proposed to use identifying confidential information why the activity cannot be undertaken using de-identified information. For example the activity involves linking confidential information from two or more sources and identifying information is needed to correctly link records¹⁴
- ◆ an assurance that any document(s) or presentation(s) reporting on the activity will not contain information that could identify individual recipients of public sector health services and that any copies of confidential information used for the activity will be disposed of securely at the completion of the activity
- ◆ Any other relevant information.

Written proposals must be approved by the relevant Executive Director, District Manager, or their approved delegate. Each operational area must also maintain a list, database, or register of approved QA activities.

6.7.3 Disclosure to a prescribed entity for evaluating, monitoring, planning or managing health services

Under section 62H(b) staff may also disclose confidential information to an “entity” that has been approved and listed in the *Health Services Regulation 2002*.

Prior to disclosing confidential information under this exception staff should check the *Health Services Regulation 2002* to satisfy themselves that the entity requesting the confidential information is entitled to receive it. **If in doubt consult senior management.**¹⁵

6.8 Disclosure to prevent serious risk to life, health or safety of an individual, or to public safety (section 62I)

The exception in section 62I is aimed at situations where there is a serious risk to life, health or safety, or public safety, and disclosing confidential information will help prevent or avert the risk.

The risk does not need to be imminent but it must be considered serious. A serious risk must reflect significant danger, such as a life-threatening situation or one that might reasonably be expected to result in serious injury or illness to a patient, an employee of the Department, or any other member of the community. A serious risk to public safety relates to broader safety concerns affecting a number of people. This could include the potential spread of a communicable disease, or harm caused by an environmental disaster.

¹⁴ The *Health Service Act 1991* and regulations can be viewed online at: http://www.legislation.qld.gov.au/Acts_SLs/Acts_SL_H.htm.

¹⁵ The *Health Service Act 1991* and regulations can be viewed online at: http://www.legislation.qld.gov.au/Acts_SLs/Acts_SL_H.htm.

Disclosure in these situations can only be made with the written authority of the Director-General, a position that has been delegated authority by the Director-General in writing, or a position that has subdelegated authority in writing.¹⁶

In order for the Director-General or delegate to make a decision staff must prepare a written brief, or written recommendation, and forward this to the Director-General or delegate for consideration.¹⁷ In an emergency situation the recommendation may be made verbally. If the recommendation is verbal a written record of the discussion must be made as soon as possible, and placed on the relevant Departmental file or patient clinical record.

While the recommendation to disclose can be made verbally the Director-General or delegate must authorise the disclosure in writing before any disclosure is made. This can be in the form of an authorising email if necessary.

Any brief or recommendation (whether verbal or written) must address the following:

- ◆ the circumstances leading to the recommendation
- ◆ what confidential information is proposed to be disclosed. **Any disclosure must be limited to the minimum necessary to prevent or avert the serious risk.**
- ◆ why disclosure is considered appropriate i.e. the basis for the disclosure
- ◆ to whom it is proposed to disclose the confidential information, and how it is envisaged that this person(s) will use the confidential information. **Information must only be disclosed to a person(s) who needs the information in order to avert the risk. If appropriate, access to expert advice should be made available to assist the recipient to accurately interpret and use the information; for example, a consulting psychiatrist.**
- ◆ who it is proposed should make the disclosure (i.e. the Director-General, the delegate or someone authorised by the Director-General or delegate) and how it is proposed to disclose the information.
- ◆ any other relevant information; for example, the urgency attached to the disclosure.

Attached to the brief or recommendation should be an “Authority for Disclosure” form.¹⁸ This form must be completed and submitted for the Director-General’s or delegate’s signature. The form identifies the relevant Queensland Health staff member(s) by name or by position; describes the confidential information to be disclosed (information that is capable of identifying an individual should not be included in the description of information to be disclosed); notes the intended recipient(s) of the information, and sets out the duration of the authority.

As soon as possible a copy of all documentation must be placed on the relevant Departmental file or patient clinical file. Departmental staff that have made a disclosure are also entitled to have a copy of the “Authority for Disclosure” form placed on their individual personnel file. This process is intended to provide additional security for staff in the event of an alleged breach of confidentiality.

¹⁶ All District Chief Executive Officers, the Chief Health Officer, the Director of Mental Health, and the Principal Adviser in Psychiatry have been awarded delegation. A register of all delegated positions is maintained by the Administrative Law Team, Legal Unit, Corporate Office. If staff have any concerns about whether or not a position is appropriately delegated to make a disclosure decision they should contact the Administrative Law Team either via telephone on (07) 323 41735 or via email at: RTI-Privacy@health.qld.gov.au

¹⁷ Section 62Q enables staff to disclose information to the Director-General or delegate for this purpose.

¹⁸ Refer to Appendix 4 for a template “Authority for Disclosure” form.

6.9 Disclosure to or by an inspector (section 62J)

Under the Act the Director-General may appoint an inspector to investigate a possible breach of the duty of confidentiality. Conditions or limits may be placed on the inspector's powers under Part 7A of the Act. Staff may disclose confidential information to an inspector appointed under Part 7A of the *Health Services Act 1991*.

An inspector is required to show their identity card when exercising their powers under the Act. Staff should view the identity card before providing the inspector with confidential information. **If in doubt consult senior management.**

6.10 Disclosure to an official (section 62K)

Under Part 6 of the *Health Services Act 1991* the Director-General may appoint someone as an official; i.e. either as an auditor or an investigator:

- ♦ the functions of an **auditor** are to verify patient and statistical data reported under a funding arrangement
- ♦ the functions of an **investigator** are to investigate and report to the chief executive on any matters relating to the management, administration or delivery of public sector health services, including, for example, matters relating to clinical practices and standards of health care in the delivery of public sector health services.

In order to carry out their function an official has the power under the Act to ask staff to provide documentation that may contain confidential information. Before complying with a request, staff should first ask to see the official's instrument of appointment which sets out the conditions of the appointment, and may stipulate a time period for which the appointment is valid. Once satisfied that any request(s) are valid, staff should provide the information in a timely manner to assist the audit or investigation. **If in doubt consult senior management.**

6.11 Disclosure to a health practitioner registration board or the Queensland Nursing Council (section 62L)

Staff may disclose relevant confidential information to the Queensland Nursing Council (commonly called the QNC), or a board established under a health practitioner registration Act, for the purpose of:

- ♦ making, or giving information about, a complaint about someone who is or was enrolled, authorised to practice, or registered (as the case may be); or, if requested
- ♦ assisting with an investigation or disciplinary proceeding being undertaken by the QNC or a health practitioner registration board, about someone who is or was enrolled, authorised to practice, or registered.

6.11.1 Making complaints

Queensland Health has a clear corporate responsibility to address incidences of unacceptable professional conduct or workplace behaviour by its staff. Staff should therefore raise concerns they may have about the competence or professional conduct of a Departmental health professional with senior management in the first instance.

6.11.2 Assisting with an investigation

When the QNC or a health practitioner registration board undertake official investigations or disciplinary proceedings, any request for confidential information will be on official letterhead. **Before complying with a request staff should consult senior management for advice.** Depending on the circumstances management may consider it appropriate to seek legal advice before complying with the request.

6.12 Disclosure to the Health Quality and Complaints Commission (section 62LA)

Staff may disclose relevant confidential information to the Health Quality and Complaints Commission (HQCC) for the purpose of:

- making, or giving information about, a complaint about a provider of health services; or,
- answering questions or otherwise giving information as part of an investigation under the *Health Quality and Complaints Commission Act 2006* about a person who is or was a provider of health services; or
- giving the HQCC information about health services including information requested by the Commission under the *Health Quality and Complaints Commission Act 2006*, section 21; or
- giving the HQCC aggregated data, including data that identifies persons, about complaint management, patient safety or another matter relating to the quality of health services.

Before complying with a request from the HQCC for confidential information staff should consult senior management for advice. Depending on the circumstances management may consider it appropriate to seek legal advice before complying with the request.

6.13 Disclosure to an approved quality assurance committee (section 62M)

While there are numerous quality assurance committees in hospitals, approved quality assurance committees (QACs) are those that have been declared by the Minister for Health as approved for the purposes of sections 30-38 of the *Health Services Act 1991*. The Office of the Chief Health Officer maintains a list of approved QACs and staff should contact the Office to verify whether or not a committee is an approved QAC. If there is any doubt staff should consult senior management.

Confidential information may also be disclosed to a “person authorised by the committee to receive the confidential information”. This is considered to be a “relevant person” as defined in section 30 of the *Health Services Act 1991*.

6.14 Disclosure to the Commonwealth Government, another State Government, or a Commonwealth or State entity (section 62N)

Staff may disclose confidential information under an agreement with the Commonwealth or a Commonwealth entity, another State or an entity of another State, or to a Queensland State entity if the Director-General considers the disclosure to be in the public interest.

Agreements must be prescribed i.e. they must be listed in the *Health Services Regulation 2002*.

Prior to disclosing any confidential information under this exception staff should:

- ♦ check the *Health Services Regulation 2002* to confirm that the entity requesting the confidential information is entitled to receive it¹⁹
- ♦ satisfy themselves that the Director-General has determined that the particular disclosure is in the public interest. If in doubt consult senior management
- ♦ satisfy themselves that the agreement specifically authorises the release of that particular information. It is important that the agreement sets out what information can be disclosed, how and when information may be disclosed and to whom.

Another jurisdiction or entity that receives confidential information must not disclose it to anyone else unless the prescribed agreement allows it, or the Director General has given written approval.

6.15 Disclosure to the Australian Red Cross Society (section 62O)

Section 62O enables disclosure of confidential information to the Australian Red Cross Society for the purpose of tracing infected blood, blood products, tissue (for example, human skin), or the recipients or donors of infected blood, blood products, or tissue.

Any requests to disclose confidential information to the Red Cross should be referred to senior management for advice.

6.16 Disclosure to a person performing a function under the Coroners Act 2003 (section 62P)

Staff may disclose confidential information to the Coroner, police, or others who have been directed to assist the Coroner to perform a function under the *Coroners Act 2003* (other than preparation of an annual report).

Staff may be asked to disclose confidential information (or provide copies of confidential information) in cases of “reportable deaths”; for example, where a death was not reasonably expected to be the outcome of a health procedure (for example, where someone has been injected with a drug and they suffer an adverse reaction and die).

Any requests to disclose confidential information to the Coroner, police, or others assisting the Coroner should be referred to senior management in the first instance. **Note that disclosure to the police under this section is limited to disclosure in circumstances where a police officer is exercising powers or acting in accordance with a direction under the *Coroners Act*.**

6.17 Disclosure that is necessary or incidental to a disclosure made under another exception to the duty of confidentiality (section 62Q)

Staff may disclose confidential information where the disclosure is necessary or incidental to a disclosure made under another exception to the duty of confidentiality.

Examples of disclosures that may be necessary or incidental to another exception include:

¹⁹ The *Health Service Act 1991* and regulations can be viewed online at: http://www.legislation.qld.gov.au/Acts_SLs/Acts_SL_H.htm . Queensland Health staff can access this site via desktop browsers.

- ◆ disclosing information to support staff to make appointments for treatment (under section 62E). While it may be arguable that the patient has impliedly consented to the disclosure to support staff, the exception in section 62Q puts the issue beyond doubt.
- ◆ disclosing information to the Director-General to enable a decision to be made about a disclosure in the public interest under section 62F
- ◆ giving confidential information to staff who compile reports required by an agreement that is prescribed under section 62N
- ◆ permitting ICT staff, or ICT contractors, to maintain authorised databases containing confidential information that are required for the management of health services (under section 62H).

Note that disclosure should always be limited to the minimum necessary in the particular circumstances.

7. Information that can be disclosed by former staff members

The duty of confidentiality set out in Part 7 continues to apply to staff after they retire or leave employment with Queensland Health. However, there may be situations where disclosure may be appropriate. Section 62R specifies the exceptions to the duty which may apply to former staff.

Confidential information may be disclosed by a former staff member if:

- ◆ the disclosure is required or permitted by law; for example, the former staff member may have been subpoenaed to give evidence at a hearing or trial (section 62B)
- ◆ the patient, former patient, or client of the Department is a competent adult and has consented to his or her confidential information being disclosed (section 62C(a))
- ◆ the disclosure is in the public interest and has been authorised in writing by the Director-General (section 62F)
- ◆ the disclosure is to an inspector and the confidential information is relevant to the performance of the inspector's function under Part 7A such as monitoring, investigating, or enforcing the duty of confidentiality (section 62J)
- ◆ the disclosure is to a health practitioner registration board or the QNC in connection with a complaint, investigation, or disciplinary proceeding (section 62L), or
- ◆ the disclosure is necessary or incidental to a disclosure made under one of the above disclosures (section 62Q).

8. Investigation and Enforcement

Part 7A of the *Health Services Act 1991* enables the Director-General to appoint inspectors to monitor or investigate breaches or possible breaches of the duty.

Inspectors have powers to collect confidential information if considered necessary. It also gives an inspector the power to require someone who may have information about a breach of the duty of confidentiality to give the information to the inspector.

The requirement to provide information applies equally to staff and to any member of the public that an inspector reasonably believes can assist in an investigation.

An inspector is required to show their identity card when exercising their powers under the Act. Staff should view it before providing the inspector with confidential information. **If in doubt consult senior management.**

APPENDIX 1

DISCLOSURE FLOWCHART

Was the health information collected in the context of providing a “public sector health service”? A public sector health service is a health service (i.e. a service for maintaining, improving or restoring health and well being provided by the State. It includes services provided at a hospital, nursing home, community health facility or other place as well as services that deal with public health (such as an illness or injury prevention program). It also includes any administrative or other support service (eg. catering or laundry services) directly related to a health service).

NO



If the information was collected under legislation, and the legislation contains disclosure provisions, then the disclosure requirements in the legislation will apply (e.g. Cancer registry provisions in the Public Health Act 2005). If in doubt seek advice from senior management.

If the legislation does not contain any disclosure provisions, or the information was not collected under legislation, then the disclosure rules set out in NPP2 in Queensland Government Information Standard 42A will apply. (Refer to paragraph 6.1 of these Guidelines)

YES



Do you have the informed consent of the individual concerned to the disclosure (whether adult or child), or the consent of the parent or guardian of a child not considered competent to provide consent? (section 62C – see paragraph 6.2 of these Guidelines).

OR

Are you a health professional and you consider the disclosure to be in the ‘best interests of the child’ even though the child does not consent to the disclosure? (section 62C – see paragraph 6.2 of these Guidelines).

NO



YES



*You can disclose the health information.
You should document the fact that consent was given, or the circumstances around your decision to disclose in the child’s best interests.*

Is the disclosure necessary for the treatment or health care of the individual concerned? (section 62E – see paragraph 6.4 of these Guidelines).

NO



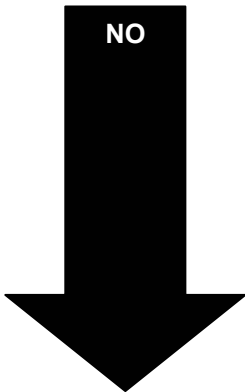
YES



- If you are a health professional working for Queensland Health you can disclose relevant information to any person if you consider it appropriate and the disclosure is in accordance with recognised standards (section 62E).
- If you are not a health professional you can only disclose relevant information to a health professional who works for Queensland Health.

Is the disclosure required or permitted by law? (section 62B – see paragraph 6.1 of these Guidelines)

NO



YES



*You can disclose the health information.
If in doubt consult senior management.*

Is the disclosure necessary to prevent or avert a serious risk:
• to an individual's life, health or safety; or
• to public safety
and you have written authority to disclose? (section 62I – see paragraph 6.8 of these Guidelines)

NO



YES



*You can disclose the health information.
You should document the details of any disclosures, and keep a copy of the written authority on file*

Is the disclosure:

- limited to general information about the condition of a current patient; eg. “satisfactory”;
- **or**
- to be made by a health professional working for Queensland Health to someone that has sufficient personal interest in the health and welfare of the individual concerned? (section 62D – see paragraph 6.3 of these Guidelines)

NO



YES



*You can disclose relevant information. However, if the individual concerned has asked that information **not** be disclosed, either generally or to specific person(s,) then you can not disclose any information.*

Is the disclosure:

- to another Queensland Health employee for evaluating, managing, monitoring or planning health services; or
- to an entity prescribed under regulation to evaluate, manage, monitor or plan public health services (section 62H – see paragraph 6.7 of these Guidelines).

NO



YES



You can disclose the relevant information. If in doubt consult senior management.

Is the disclosure to another Queensland Health employee:

- to give effect to or manage a funding arrangement for a public sector health service; or
- for analysing, monitoring or evaluating public health and the disclosure has been authorised in writing by the Director-General? (section 62G – see paragraph 6.6 of these Guidelines).

NO



YES



You can disclose relevant information. If in doubt consult senior management.

Has the request for information been made by an approved quality assurance committee, or someone authorised by such a committee? (section 62M – see paragraph 6.12 of these Guidelines).

NO



YES



You can disclose relevant information to the committee or their authorised representative.

Has the Director-General authorised the disclosure in writing, as being in the public interest? (section 62F – see paragraph 6.5 of these Guidelines).

NO



YES



You can disclose information in accordance with the Director-General's written authorisation. You should keep a copy of the authorisation on file.

Is the disclosure to an inspector appointed to investigate a breach, or possible breach, of the duty of confidentiality? (section 62J – see paragraph 6.9 of these Guidelines)

NO



YES



You can disclose relevant information. Before disclosure you should satisfy yourself that the request is valid by checking the inspector's identity card, and their instrument or notice of appointment.

Is the disclosure to an official appointed under the authority of the *Health Services Act 1991*? (section 62K – see paragraph 6.10 of these Guidelines).

NO



YES



You can disclose relevant information. Before disclosure you should satisfy yourself that the request is valid by checking the official's instrument of appointment.

Has the request for information come from the Queensland Nursing Council, or a health practitioner registration board, for the purpose of:

- dealing with a complaint about someone who is or was enrolled, authorised to practice, or registered; or
- assisting with an investigation or disciplinary hearing about someone who is or was enrolled, authorised to practice, or registered?

(section 62L – see paragraph 6.11 of these Guidelines).

NO



YES



You can disclose relevant information. If in doubt consult senior management.

Is the disclosure to the Health Quality and Complaints Commission (HQCC) for the purpose of:

- making or giving information about a complaint about a provider of health services; or,
- answering questions or otherwise giving information as part of an investigation under the *Health and Quality and Complaints Commission Act 2006* about a person who is or was a provider of health services; or
- giving the HQCC information about health services including information requested by the Commission on the *Health Quality and Complaints Commission Act 2006*, section 21; or
- giving the HQCC aggregated data, including data that identifies persons, about complaint management, patient safety or another matter relating to the quality of health services?

(section 62LA – see paragraph 6.12 of these Guidelines)

NO



YES



You can disclose relevant information. If in doubt consult senior management before complying with a request.

Is disclosure required or allowed under a prescribed agreement with the Commonwealth or another State, an entity of the Commonwealth or another State, or a Queensland entity, and considered by the Director-General to be in the public interest? (section 62N – see paragraph 6.13 of these Guidelines).

NO



YES



You can disclose the health information. If in doubt consult senior management.

Is the disclosure to the Australian Red Cross to assist in tracing infected blood, blood products or tissue, or a donor or recipient? (section 62O – see paragraph 6.14 of these Guidelines).

NO



YES



You can disclose the health information. If in doubt consult senior management.

Is the disclosure to a person performing a function (other than preparing the annual report) under the *Coroner's Act 2003*? (section 62P – see paragraph 6.15 of these Guidelines).

NO



YES



You can disclose the health information. If in doubt consult senior management.

Is the disclosure necessary or incidental to a disclosure made under another of the exceptions to the duty of confidentiality? (section 62Q – see paragraph 6.16 of these Guidelines).

NO



YES



You can disclose the health information. Disclosure should be limited to the minimum necessary in the particular circumstances. If in doubt consult senior management.

YOU CAN NOT DISCLOSE THE INFORMATION.

APPENDIX 2

Health Services Act 1991
Section 62F

AUTHORITY FOR PUBLIC INTEREST DISCLOSURE OF INFORMATION

This Authority is given this day of **<insert month>**, **<insert year>** by **<insert full name of>**, Director-General, Queensland Department of Health, 147 – 163 Charlotte Street, Brisbane.

1. In accordance with s.62Q of the *Health Services Act 1991* (“the Act”), I am in receipt of information that is subject to the statutory duty of confidentiality described in s.62A(1) of the Act. I consider that it is in the public interest to disclose this information on the terms set out below.
2. Accordingly, in accordance with s.62F of the Act, I now authorise:
 - ♦ the Queensland Health officers listed in Item 1 of the Schedule attached to this Authority, to disclose
 - ♦ the information described in Item 2 of the Schedule
 - ♦ to the persons, officers or entities listed in Item 3 of the Schedule
 - ♦ for the purposes listed in Item 4 of the Schedule.
3. This authority may not be relied upon to permit the disclosure of the information described in Item 2 where disclosure may lawfully be given in reliance upon another provision set out in Part 7 of the Act.
4. This authority is effective from the date of this document and is valid for the duration of the purposes described in Item 4 of the Schedule **<or insert specific date>**.

.....
(signature)
Director-General
Queensland Department of Health

SCHEDULE

Item 1	Authorised Queensland Health Officers	<Insert names or titles of officers>
Item 2	Information authorised to be disclosed	<Insert description of information>
Item 3	Persons to whom information may be disclosed	<Insert names or titles of persons or organisations>
Item 4	Purposes for which information may be disclosed	<Insert description of purpose; for example, police investigation>

APPENDIX 3 – FREQUENTLY ASKED QUESTIONS

A. Can I disclose confidential information (including patient names) to our hospital foundation?

The only way information can be disclosed is with the patient's consent (section 62C). The other exceptions do not apply.²⁰

Foundation staff (or suitably trained foundation volunteers) are permitted to visit hospital wards to introduce themselves to patients to promote the valuable work of the foundation. Foundations may produce and distribute information on their work which can be placed in hospital waiting rooms and left in bedside tables for patients to read at their leisure.

Patient consent is not required for foundation visits because no confidential information needs to be given to the foundation. However the timing of visits may need to be negotiated to ensure that patients' clinical needs are not affected. Official foundation visitors need to be sensitive to the wishes of patients.

B. Can Queensland Health staff still participate in multidisciplinary forums to discuss patient/client management?

Section 62E allows health professionals to disclose confidential information "for the care or treatment" of a patient in accordance with the recognised standards of the relevant health profession. In this context "care" means "health care".

Discussion of a patient's ongoing management in a multidisciplinary team meeting is acceptable, as it is in connection with the patient's treatment. . This would also be the case if the discussion involved, for example, Home and Community Care service providers such as Blue Care.

While it is generally considered that health professionals involved in the care and treatment of the patient will form the "multidisciplinary team" there will be instances where individuals providing other health services (in a clinical context) will be recognised as forming part of the "multidisciplinary team". If in doubt seek advice from senior management.

²⁰ A memorandum dealing with release of patient information to hospital foundations was issued by the former Senior Executive Director, Health Services on 8 December 2004.

C. Someone who says they are a friend of a patient phones asking about the patient's condition. Can I tell them anything?

It would be acceptable for administrative staff to give the caller general information about the condition of the patient. If the caller wants to know anything further administrative staff should either forward the query to a health professional (eg. nursing staff) or explain that patient information is confidential. A health professional may provide more detailed information if they are satisfied the caller is a person with "sufficient personal interest" (section 62D).

If the patient has asked that their confidential information not be disclosed either generally or to specific person(s) then no confidential information may be **disclosed**; for example, you may not be able to tell the caller anything about the condition of the patient. If a caller is irritated or frustrated by this you could suggest that they speak to the immediate family of the patient who may be able to help them.

D. Can a discharge summary be sent to the patient's referring doctor?

Yes. Section 62E allows health professionals to disclose confidential information "for the care or treatment" of a patient in accordance with the recognised standards of the relevant health profession. While it is not legally necessary to get the patient's consent to the disclosure best practice would be to let the patient know, prior to discharge, what is going to happen. By doing this the patient can notify the hospital if they do not want a summary sent to their local doctor.

This exception needs to be considered in light of the time that has elapsed since the patient was discharged and the time a discharge summary is requested by, for example, an individual's local doctor. Where a significant amount of time has passed since the episode of care to which the discharge summary relates it may be necessary to check why the local doctor requires the report as it may no longer be appropriate to disclose the information; for example, if the doctor is not currently treating the patient but requires the discharge summary for his or her records (i.e. for administrative reasons) then section 62E cannot be relied on to disclose the information, and the doctor should be asked to submit a copy of the patient's written consent.

E. Can we disclose confidential information to a tissue bank (such as the Eye Bank) when someone has just died?

Section 23A of the *Transplantation and Anatomy Act 1979* allows the senior available next of kin of a deceased person to consent to the health record of the deceased being given to a health professional for the purposes of transplantation of tissue to another person. The processes for approval for transplantation are set out in section 22 or section 23 of the Act. The section applies despite the general duty of confidentiality in section 62A of the *Health Services Act 1991*.

The exceptions to the duty of confidentiality in the *Health Services Act 1991* do not provide a mechanism for giving information to a tissue bank except with the express prior consent of the person to whom the information relates (i.e. the deceased must have given their consent

before they died). A tissue bank is not considered to have “sufficient personal interest” in the health and welfare of the deceased nor will it have any input into the care or treatment of the deceased. It is unlikely that disclosure of an individual’s confidential information to a tissue bank will be in the public interest.

There may be very limited circumstances (for example, involving contaminated or infected tissue samples) where disclosure to the tissue bank may be warranted to “avert a serious risk to the life, health, or safety of a person or to public safety”, however this would be rare.

F. Can a health professional disclose genetic confidential information about a patient to someone else for the purpose of genetic counselling? What if the patient has died?

Each request for access to genetic confidential information - which in the context of counselling may include provision of copies of relevant information - will need to be considered on a case by case basis.

If the patient concerned is still living then they should be approached in the first instance for consent to any disclosure. However, if the patient concerned does not consent to the disclosure, or has died, a senior health professional will need to consider the request to determine if it may be appropriate to disclose relevant genetic information. If a decision to disclose is considered appropriate then depending on the particular circumstances one of following exceptions could be considered to permit disclosure:

- section 62I permits disclosure of confidential information by a designated person if the Director-General or delegate believes on reasonable grounds that the disclosure is necessary to assist in averting a serious risk to the life or health of a person, and authorises the disclosure in writing. Depending on the particular circumstances disclosure of genetic information may be possible under section 62I to, for example, a person’s siblings, children or grandchildren, or to a clinician treating or counselling these individuals. It should be noted that while the risk to life or health does not have to be imminent it must be serious in the sense that the likelihood or probability that an individual(s) life or health will be affected is high.²¹
- section 62D(1) permits a health professional to disclose relevant confidential information (which could include genetic information or familial medical information) about a patient to someone who the practitioner believes had “sufficient personal interest” **in the health and welfare of the patient themselves when they were alive.** In the case of genetic information this could be a sibling, or blood relative such as a child or grandchild, or the parent or guardian of a child or grandchild if they lack capacity. However, if the patient has asked that their confidential information not be disclosed, either generally or to specific person(s), then **disclosure can not take place under this exception.**

²¹ In a situation where the patient concerned is alive but has refused to give consent to a proposed disclosure they should be advised that Queensland Health does have authority to disclose without their consent if the Director-General or delegate believes on reasonable grounds that the disclosure is necessary to assist in averting a risk to an individual’s life, health or safety. The patient should be offered the opportunity of putting their argument(s) against disclosure in writing so that these can be forwarded to the delegated decision-maker to enable the delegate to consider all factors when making their decision.

Being related to a patient by blood however does not automatically entitle someone to be given genetic information. If the individual seeking disclosure of the information would not normally be entitled to be given information, the fact that the proposed disclosure would involve genetic information will not change this and the information should not be released.

Disclosure of a deceased patient's genetic information raises complex issues that need to be considered on a case by case basis. In determining whether to disclose or not it may be appropriate to consult senior management, a medico-legal officer or unit, or the Department's corporate Legal Unit for advice.

G. Can we disclose relevant information to community support services (such as Meals on Wheels) or boarding house proprietors?

While consent remains the preferable mechanism for disclosure a health professional can disclose information without consent "for the **care**" of a patient, provided the disclosure is in accordance with the recognised standards of the relevant health profession. Provision of meals through a service such as Meals on Wheels contributes to the physical health and well-being of patients unable to shop or prepare meals for themselves. Note however that any disclosure for care **must** be made by a health professional, not administrative support staff. While consent is not required it is considered to be best practice to discuss the intended disclosure with the patient to ensure that they are fully informed.

It is less clear whether or not disclosure to boarding house proprietors or managers can be said to be "for the care" of a patient. In some cases the proprietor will be involved in providing care but in other cases the relationship may not be straightforward. In such situations a health professional could disclose relevant information to the proprietor, without obtaining consent, if the practitioner believes the proprietor has "sufficient personal interest" in the health and welfare of the patient. Each decision to disclose will need to be made on a case by case basis however, and any disclosure should be limited to what is relevant in the particular circumstances.

H. Universities frequently send nursing and other health students to hospitals to gain practical experience. Are students bound by the duty of confidentiality?

Yes. The duty of confidentiality applies to anyone being educated or trained at a Queensland Health facility to fulfil requirements to be registered, enrolled, or authorised as a health professional. For example, a student doctor, nurse, occupational therapist, social worker, or dietician must maintain confidentiality. Student health professionals can only disclose confidential information if it is permitted under one of the exceptions to the duty set out in the *Health Services Act 1991*. Facilities that accept student health professionals must ensure that they are fully informed of their confidentiality obligations under the *Health Services Act*.

I. Does the duty of confidentiality impact on volunteers working for Queensland Health?

Yes. The duty of confidentiality applies to volunteers carrying out duties **on behalf of Queensland Health**. Examples of volunteers bound by the duty of confidentiality include volunteers who:

- ◆ greet hospital visitors at an information desk
- ◆ staff the hospital gift shop or sell goods in wards
- ◆ assist mental health clients with grocery shopping, cooking, and other day-to-day activities.

Generally, volunteers cannot disclose confidential information they obtain in the course of their duties. Services must ensure that volunteers are fully informed of their confidentiality obligations under the *Health Services Act* and that they undergo an induction process.

Only those volunteers who carry out duties on behalf of a Queensland Health service are bound by the duty of confidentiality in the *Health Services Act*. Volunteers working for other organisations are not subject to the duty; for example, volunteers for community based support groups, hospital foundations, or religious organisations. In these circumstances volunteers may be bound by the confidentiality requirements of the organisation they represent.

J. Does the duty impact on providing information in response to a request from a member of parliament?

Members of parliament have no greater right than any other third party to be given a patient's confidential information.

It has always been the Department's position that a member of parliament acting on behalf of a constituent needs to demonstrate that they have the express consent of the person concerned to any disclosure (section 62C); for example, a copy of the constituent's letter sent to their local member asking the local member to approach Queensland Health on their behalf.

Complexities may arise where the request for information relates to a child or adolescent. For example, a parent may approach their local member seeking information about their child but the child, who is considered to be competent, has asked that certain information not be disclosed to their parent(s). As a general rule, in such circumstances, confidentiality should be maintained unless the child expressly consents to the disclosure.

Where a child has been assessed as *not competent to consent to disclosure* confidential information may be disclosed by a health professional with the consent of the child's parent or guardian. Before making the disclosure however the health professional should have regard to the best interests of the child.

If it is considered appropriate to disclose information the information disclosed should not contain information about third parties; for example, other family members.

K. Our service is moving from an old information management system to a new database. Before we migrate our patient records to the new system we need to test it, and we will need to use a subset of patient records as part of the testing process. Does the duty of confidentiality prevent us from doing this?

No, providing the information system, database or software has official approval.

The exception to the duty set out in section 62Q permits staff to disclose relevant confidential information that is necessary, or incidental, to a disclosure that is made under another one of the exceptions to the duty. Section 62H allows staff to disclose information, to another staff member, for the purposes of evaluating, managing, monitoring or planning health services. "Health service" is defined in the *Health Services Act*, and includes administrative or support services that are directly related to provision of a health service. This would include information management or ICT support services.

In order to rely on the section 62H exception in situations where contractors will be providing database or system support (rather than in-house ICT staff) the information custodian for the database or their approved delegate will need to be responsible for managing, monitoring or evaluating the activities of contract staff – contract staff will need to report to the custodian or their delegate on testing, maintenance activities undertaken etc. The exception set out in section 62H will not be satisfied if only contract ICT staff have the role of managing, evaluating or monitoring.

APPENDIX 4

*Health Services Act 1991
Section 62I*

**Authority for Disclosure of Information to Avert Serious Risk to Life,
Health or Safety, or Public Safety**

This Authority is given this day of <insert month>, <insert year> by <insert full name of>, Director-General/authorised delegate of the Director-General, Queensland Department of Health for the purposes of section 62I of the *Health Services Act 1991* (the Act).

1. In accordance with section 62Q of the Act, I am in receipt of information that is subject to the statutory duty of confidentiality described in section 62A(1) of the Act. I consider that disclosure of information on the terms set out below is necessary to avert serious risk to:-
 - a. life, health or safety of a person, or
 - b. public safety.
2. Accordingly, in accordance with section 62I of the Act, I now authorise:
 - ◆ the Queensland Health officers listed in Item 1 of the Schedule attached to this Authority, to disclose
 - ◆ the information described in Item 2 of the Schedule
 - ◆ to the persons, officers or entities listed in Item 3 of the Schedule
 - ◆ for the purposes listed in Item 4 of the Schedule.
3. This Authority may not be relied upon to permit the disclosure of the information described in Item 2 where disclosure may lawfully be given in reliance upon another provision set out in Part 7 of the Act.
4. This authority is effective from the date of this document and is valid for the duration of the purpose described in Item 4 of the Schedule.

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**Director-General/Authorised Delegate
Queensland Department of Health**

Schedule

Item 1	Authorised Queensland Health Officers	<Insert names or titles of officers>
Item 2	Information authorised to be disclosed	<Insert description of information>
Item 3	Persons to whom information may be disclosed	<Insert names or titles of persons or organisations>
Item 4	Purpose for which information may be disclosed	<Insert description of purpose; for example, police investigation>