



s.73 - Irrelevant information

### ISSUES

1. It is within the mandate of the UNSPT to visit places of detention and deprivation of liberty in Australia, including AMHSs. Due to the COVID-19 pandemic, proposed UNSPT visits in early 2020 were postponed.
2. On 29 July 2022, DJAG advised at officer level that the UNSPT is scheduled to visit Australia from 16 to 27 October 2022. The itinerary for the visit is not disclosed in advance, however, the UNSPT may wish to visit AMHS inpatient units. It is also possible the UNSPT will not visit Queensland or any QH facility.

s.73 - Irrelevant information

s.73 - Irrelevant information

3. [Redacted]
4. [Redacted] and all other agencies with the exception of the Department of Disability Services and Aboriginal and Torres Strait Islander Partnerships (DSDSATSIP), which administers the FDS, advised that they have identified non-legislative pathways to facilitate access.
5. The MH Act was drafted to ensure the safety and privacy of people with severe mental illness and associated cognitive impairments, and therefore appropriately restricts inpatient unit access to certain categories of visitors. This framework does not currently permit access by the UNSPT.

s.73 - Irrelevant information

6. [Redacted]
7. [Redacted]
8. The Minister may object to a visit in limited circumstances where there are urgent and compelling grounds of national defence, public safety, natural disaster, or serious disorder in the place to be visited. Those mirror the grounds for objection in OPCAT. A visit may also be objected to where the visit is likely to harm the safety or wellbeing of an individual at a place of detention.

s.73 - Irrelevant information

s.73 - Irrelevant information

Queensland Health is unable to allow the UNSPT entry to AMHSs. s.73 - Irrelevant information

s.73 - Irrelevant information

9. [Redacted]
10. Queensland Health is one of only two Queensland agencies unable to permit UNSPT access to its places of detention (i.e. inpatient units). With the exception of the DSDSATSIP, which administers the FDS, all other Queensland agencies responsible for places of detention have indicated they are able to facilitate UNSPT access, though this access may be limited and not fully compliant with OPCAT.

s.73 - Irrelevant information

11. [Redacted] there are a number of possible scenarios:
  - 11.1. (1) the UNSPT may wish not to visit Queensland or any inpatient AMHS units;
  - 11.2. (2) the UNSPT may not visit any inpatient unit of AMHS but may note in its report that it was prevented from doing so due to legislative barriers;
  - 11.3. (3) the UNSPT may attempt to visit an inpatient unit of an AMHS and be denied entry due to legislative barriers, and report negatively as a result.
12. It should be noted the UNSPT report may be critical if entry were refused in contravention of OPCAT, and the Commonwealth has indicated jurisdictions should expect the report to be published. This may draw negative commentary internationally.

13. s.73 - Irrelevant information

14. The reputational risk may be managed by proactively writing to the UNSPT, outlining QH's ability to facilitate the visit is limited but noting QH's commitment to upholding OPCAT, and outlining the ways in which QH can assist. This would mean that no physical access is permitted to inpatient units but QH could cooperate by sharing relevant information and facilitating patient and staff communications. This communication would need to be facilitated through DJAG and the Commonwealth, as the Commonwealth Attorney-General's Department is taking the lead on managing the UNSPT visit.

15. s.73 - Irrelevant information

### BACKGROUND

16. The Commonwealth ratified OPCAT in December 2017 and it entered into force in January 2018.

Queensland Health then began working with DJAG to support the Queensland response to OPCAT.

17. In 2020, the Queensland Government was made aware of a planned UNSPT visit. Queensland Health sought legal advice and identified necessary amendments to facilitate access. s.73 - Irrelevant information

18. s.73 - Irrelevant information

19. s.73 - Irrelevant information

20. OPCAT also confers an obligation to establish a National Preventive Mechanism to monitor places of detention. The Queensland Government has established an Inspector of Detention Services to monitor corrective services facilities, police watch houses, and youth detention centres. s.73 - Irrelevant information

s.73 - Irrelevant information

### RESULTS OF CONSULTATION

21. s.73 - Irrelevant information

22. Other Queensland Government agencies have reported the following positions (at officer level):

- 22.1. Queensland Corrective Services, Queensland Police Service and Department of Children, Youth Justice and Multicultural Affairs are all able to facilitate UNSPT access without legislative amendment, though the access may be limited (e.g. to escorted visits during working hours) and they will pursue amendments to allow fuller access to the UNSPT in future.
- 22.2. DSDSATSIP has received legal advice indicating it is not able to allow FDS entry, though at officer-level have reported they are seeking further advice. s.73 - Irrelevant information

s.73 - Irrelevant information

23. At this time Queensland Health has not identified any interstate facility that will refuse access entirely. Other states and territories have reported the following positions (at officer level):

- 23.1. The Australian Capital Territory, the Northern Territory and Tasmania can allow unrestricted access to all facilities.
- 23.2. New South Wales and Western Australia are likely to allow restricted access (for example, for announced visits only).



## MINISTERIAL BRIEFING NOTE

- 23.3. Victoria has a Bill before Parliament to allow access but this may not be passed before the visit.  
 23.4. South Australia has not yet settled its position.

## RESOURCE/FINANCIAL IMPLICATIONS

24. There are no resource or financial implications.

## SENSITIVITIES/RISKS

25. There is a risk of reputational damage for QH, in the event the UNSPT wishes to enter an AMHS and, on the basis of our legislative barrier, is either denied entry or does not attempt to visit on the basis they will be refused entry. This may be exacerbated if, as other agencies/jurisdictions confirm their positions, most or all other agencies can facilitate at least limited access.

## ATTACHMENTS


26. s.73 - Irrelevant information

27.

28.

29.

30.

<b>Author</b> Name: Elizabeth Edmiston Position: A/Director Unit: Legislative Projects Tel No: s.73 - Irrelevant information Date Drafted: 29 August 2022 Updated: 19 September 2022	<b>Cleared by (Dir/Snr Dir)</b> Name: Assoc Prof John Allan Position: Executive Director Branch: Mental Health Alcohol and Other Drugs Branch Tel No: s.73 - Irrelevant information Date Cleared: 30 August 2022 Updates cleared: 19 September 2022 <i>*Note clearance contact is also key contact for brief queries*</i>	<b>Content verified by (DDG/CE)</b> Name: Michelle Wilson <i>on behalf of</i> Liza-Jane McBride Position: A/DDG Division: Clinical Excellence Queensland Tel No: s.73 - Irrelevant information Date Verified: 31 August 2022	<b>Director-General Endorsement</b> Name: Shaun Drummond  Signed  Date 20/09/2022
<b>Updated Content verified by (DDG/CE)</b> Name: Michael Zanco Position: A/DDG Division: Clinical Excellence Queensland Tel No: s.73 - Irrelevant information Date Verified: 19 September 2022	<b>COO Endorsement</b> Name: Dr David Rosengren Position: Chief Operating Officer Queensland Health Tel No: s.73 - Irrelevant information Date Verified: 31 August 2022 Updates Verified: 19 September 2022		

Received in ESU – 31 August 2022. Received in SDLO – 31 August 2022. Provided to CAPS – 31 August 2022. CLLO consulting with Director LPU and Minister's Office. Revised brief received in CAPS 19/09/22, 3:44pm. Advice sought regarding location of Attachment 3 in clearance processes. Brief reviewed by CLLO 20/9/22 and progressed to DG. Progressed to M.O. 20/09/22.

## Attachment 1

### Letter of Authority

#### Access to Queensland Health Facilities by the Delegation of the United Nations Subcommittee on the Prevention of Torture (UNSPT)

##### *Access to patients*

The UNSPT is not authorised under the *Mental Health Act 2016* (Qld) to visit patients detained in an authorised mental health service.

Pursuant to s 284 of the *Mental Health Act 2016* (Qld), the UNSPT may communicate with patients in an authorised mental health service in a reasonable way by:

- post;
- a fixed line telephone in the authorised mental health service; or
- a mobile telephone or other electronic communication device.

The patient must provide written consent to the communication with the UNSPT.

Communication is also subject to the discretion of the administrator of an authorised mental health service. Pursuant to s 284(3) of the *Mental Health Act 2016* (Qld), the administrator retains the right to prohibit or restrict a patient from communicating in the manner described above if communication is likely to be detrimental to the health and wellbeing of the person or others. In exercising the discretion, the administrator must have regard to the privacy of the patients and others in the service.

##### *Access to facilities*

The UNSPT is not authorised to access inpatient units of an authorised mental health service under the *Mental Health Act 2016* (Qld).

Reasonable access will be provided to the UNSPT at Queensland Health facilities for the purposes of meeting with staff members, and for communicating with patients of an authorised mental health service in accordance with s 284 of the *Mental Health Act 2016* (Qld).

However, the person in control of the facility retains the discretion to refuse or limit access where it is clinically or operationally appropriate.

##### *Access to staff members*

The UNSPT may communicate with staff members of an authorised mental health service or Queensland Health facility, subject to the following conditions:

- staff members must provide their written consent to the communication;
- the communication must not be conducted within an inpatient unit of an authorised mental health service;
- staff members remain subject to their duties of confidentiality imposed under law, including the *Hospital and Health Boards Act 2011* (Qld), the *Mental Health Act 2016* (Qld), and the *Information Privacy Act 2009* (Qld);

## Attachment 1

- in particular, staff members are not authorised to identify patients or other staff; and
- the person in control of the relevant facility retains the discretion to refuse or limit access where it is clinically or operationally appropriate.

### *Access to records*

The UNSPT is not authorised to access records of Queensland Health, as disclosure is prohibited by legislation.

Sections 142 and 142A of the *Hospital and Health Boards Act 2011* (Qld) prohibit the disclosure of confidential information by designated persons and prescribed health practitioners to another person unless the disclosure is required or permitted under the Act. Chapter 17 of the *Mental Health Act 2016* (Qld) regulates the circumstances in which confidential information may be used or disclosed under the Act.

Section 31 of the *Information Privacy Act 2009* (Qld) and the National Privacy Principles contained in schedule 4 also prohibit the disclosure of personal information by health agencies unless permitted under the Act.

RTI Release

**Attachment 2**

**Staff Consent**

**Meeting with the Delegation of the United Nations Subcommittee on the Prevent of Torture (UNSPT)**

I, ..... , agree to meet with a delegate of the UNSPT, subject to the following undertakings:

- I will comply with my legislative obligations regarding privacy and confidentiality, including under the:
  - *Information Privacy Act 2009* (Qld);
  - *Hospital and Health Boards Act 2011* (Qld); and
  - *Mental Health Act 2016* (Qld).
  
- In particular, I understand that:
  - sections 142 and 142A of the *Hospital and Health Boards Act 2011* (Qld) prohibit the disclosure of confidential information by designated persons and prescribed health practitioners to another person unless the disclosure is required or permitted under the Act;
  - chapter 17 of the *Mental Health Act 2016* (Qld) regulates the circumstances in which confidential information may be used or disclosed, and creates offences for the publication of information relating to particular judicial proceedings; and
  - section 31 of the *Information Privacy Act 2009* (Qld) and the National Privacy Principles contained in schedule 4 prohibit the disclosure of personal information about an individual by health agencies unless permitted under the Act.
  
- I will not provide access to the UNSPT to an inpatient unit of an authorised mental health service, as such access is not authorised under the *Mental Health Act 2016* (Qld).

Dated this                      of                      2020 at

.....

Name:

**Attachment 2**

**Adult Patient Consent**

**Meeting with the Delegation of the United Nations Subcommittee on the Prevent of Torture (UNSPT)**

**Clinical assessment**

I, ..... [name] ..... [position], advise the administrator that it would not be detrimental to the health or wellbeing of .....[patient name] or others, for .....[patient name] to communicate with members of UNSPT by:

- post,
- a fixed line telephone in an authorised mental health service,
- a mobile telephone, or
- other electronic communication device (eg, email).

[Please delete any of the above forms of communication that may be detrimental].

**Patient Consent:**

I, ..... [name], agree to communicate with a delegate of the UNSPT by:

- post;
- a fixed line telephone in the authorised mental health service; or
- a mobile telephone or other electronic communication device.

I understand that I can withdraw my consent to communicate with the UNSPT.

I understand that if at any time my communication with UNSPT becomes detrimental to my health and wellbeing, or others' health and wellbeing, it may be prohibited or restricted.

I will not disclose any information which identifies, or might identify, another person as a person who has been a party to a proceeding under the *Mental Health Act 2016*.

I agree that I will not disclose information about another patient receiving treatment.

Dated this                      of                      2020 at

.....

Name:



**Attachment 2**

**Young Patient Consent**

**Meeting with the Delegation of the United Nations Subcommittee on the Prevent of Torture (UNSPT)**

**Clinical assessment**

I, ..... [name] ..... [position], advise the administrator that it would not be detrimental to the health or wellbeing of .....[patient name] or others, for .....[patient name] to communicate with members of UNSPT by:

- post,
- a fixed line telephone in an authorised mental health service,
- a mobile telephone, or
- other electronic communication device (eg, email).

[Please delete any of the above forms of communication that may be detrimental].

**Patient Consent:**

I, ..... [name], agree to communicate with a delegate of the UNSPT by:

- post;
- a fixed line telephone in the authorised mental health service; or
- a mobile telephone or other electronic communication device.

I understand that I can withdraw my consent to communicate with the UNSPT.

I understand that if at any time my communication with UNSPT becomes detrimental to my health and wellbeing, or others' health and wellbeing, it may be prohibited or restricted.

I will not disclose any information which identifies, or might identify, another person as a person who has been a party to a proceeding under the *Mental Health Act 2016*.

I agree that I will not disclose information about another patient receiving treatment.

Dated this                      of                      2020 at

.....

Name:

Prepared by: Elizabeth Edmiston  
A/Director  
Legislative Projects, MHAODB  
s.73 - Irrelevant information  
19 September 2022

Submitted through: John Allan  
Executive Director  
Mental Health, Alcohol and Other Drugs Branch  
s.73 - Irrelevant information  
19 September 2022

Cleared by: Michael Zanco  
A/Deputy Director-General  
Clinical Excellence Queensland  
s.73 - Irrelevant information  
19 September 2022

Cleared by: Dr David Rosengren  
Chief Operating Officer  
Queensland Health  
s.73 - Irrelevant information  
19 September 2022

RTI Release

**SUBJECT: Letter of authority for United Nations Subcommittee on the Prevention of Torture visit**

<input type="checkbox"/> Approved <input type="checkbox"/> Not approved <input checked="" type="checkbox"/> Noted <input type="checkbox"/> Further information required (see comments)	Signed:  Date: 11, 10, 2022 Hon Yvette D'Ath MP, Minister for Health and Ambulance Services, Leader of the House Comments:
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**ACTION REQUIRED BY 7 October 2022** as the UNSPT visit commences on 16 October 2022.

**RECOMMENDATION**

It is recommended the Minister:

- **Note** the attached letter from the Attorney-General (Attachment 1)
- **Sign** the attached letter to the Attorney-General (Attachment 2)
- **Sign** the attached letter of authority to the United Nations Subcommittee on the Prevention of Torture (UNSPT) (Attachment 3).

**ISSUES**

1. The UNSPT is scheduled to visit Australia from 16-27 October. As noted in previous briefs (Attachment 4) necessary legislative amendments to allow full access to the UNSPT have not progressed. The UNSPT visit will therefore be managed by consent, by way of communication with the UNSPT about the ways in which Queensland Health (QH) can assist. The itinerary of the visit is unknown.
2. On advice from the Department of Justice and Attorney-General (DJAG), which is coordinating the agency response to the visit within Queensland, QH has prepared the attached letter of authority to the UNSPT, outlining QH's commitment to OPCAT, the legislative constraints, and the ways in which QH can support the visit.
3. Legislative barriers <sup>s.73 - Irrelevant information</sup> mean the UNSPT cannot be permitted physical access to Authorised Mental Health Services (AMHSs). However, QH can support the visit by facilitating interviews with patients (with their consent), meetings with staff, and provision of documents (subject to confidentiality requirements).
4. The Mental Health, Alcohol and Other Drugs Branch (MHAODB), which is leading the QH response to the UNSPT visit, is communicating with Hospital and Health Services to ensure AMHSs are aware of their legal position and appropriately prepared if they should receive a visit.
5. QH's primary responsibility in relation to the UNSPT visit is AMHS access. However, QH also provides primary health care services onsite to adults in correctional facilities, which are managed by Queensland Corrective Services (QCS) and are within the remit of the UNSPT. The letter of authority provides a contact from the Office of Prisoner Health and Wellbeing, in the event the UNSPT request information regarding provision of health services to people in prison.
6. The UNSPT will conduct a briefing with all affected agencies when its visit commences. At the end of the visit the UNSPT will hold another briefing, to provide agencies with its preliminary findings and recommendations. Agencies may have an opportunity to comment prior to the publication of the UNSPT report. You will be further briefed if any matters of significance are raised.

**BACKGROUND**

7. Australia ratified OPCAT in 2017. <sup>s.73 - Irrelevant information</sup>
8. You have previously approved QH managing the visit by way of communication with the UNSPT regarding the ways in which the visit can be supported.
9. Queensland Advocacy Incorporated (QAI) have written to the UNSPT, raising concerns about certain AMHSs. The MHAODB will provide additional proactive support to those AMHSs, as they may be more likely to receive a visit.

**RESULTS OF CONSULTATION**

10. DJAG has provided advice on managing visits by consent. DJAG has reviewed a draft of the letter of authority and supported the approach.
11. QH has met with the Commonwealth Attorney-General's Department (CAGD), which is coordinating the visit Australia-wide. QH has advised the CAGD of QH's legislative barriers and understands this information will be provided to the UNSPT.

12. s.73 - Irrelevant information**RESOURCE/FINANCIAL IMPLICATIONS**


13. There are no resource or financial implications.

**SENSITIVITIES/RISKS** There is a risk of reputational damage for QH, in the event the UNSPT wishes to enter an AMHS and, on the basis of our legislative barrier, is either denied entry or does not attempt to visit on the basis they will be refused entry.

**ATTACHMENTS**

14. Attachment 1. Letter from Attorney-General regarding UNSPT visit  
 Attachment 2. Response letter to Attorney-General  
 Attachment 3. Letter of authority to UNSPT  
 Attachment 4. Previous brief on QH position regarding UNSPT visit

s.73 - Irrelevant information

<b>Author</b> Name: Liz Edmiston Position: Director, Legislative Projects Unit: MHAODB Tel No: <span style="color: red;">s.73 - Irrelevant information</span> Date Drafted: 05/10/2022	<b>Cleared by (Dir/Snr Dir)</b> Name: Assoc Prof John Allan Position: Executive Director Branch: MHAODB Tel No: <span style="color: red;">s.73 - Irrelevant information</span> Date Cleared: 06/10/2022 <i>*Note clearance contact is also key contact for brief queries*</i>	<b>Content verified by (DDG/CE)</b> Name: Dr Helen Brown Position: Deputy Director-General Division: Clinical Excellence Queensland Tel No: <span style="color: red;">s.73 - Irrelevant information</span> Date Verified: 7 October 2022	<b>Chief Operating Officer Endorsement</b> Name: Kyle Fogarty <i>on behalf of</i> Dr David Rosengren, COO Position: A/Executive Director Tel No: <span style="color: red;">s.73 - Irrelevant information</span> Date Endorsed: 7 October 2022
<b>Director-General Endorsement</b> Name: Shaun Drummond  Signed    Date: 7 October 2022			

Received CAPS: 7/10/22. To DG: 7/10/22. To: MO 7/10/22





Attorney-General and Minister for Justice  
 Minister for Women and Minister for the Prevention of  
 Domestic and Family Violence

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 GPO Box 149 Brisbane Q 4001  
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Our ref: 595588/6, 6319228

29 SEP 2022

The Honourable Yvette D'Ath MP  
 Minister for Health and Ambulance Services  
 Member for Redcliffe  
[health@ministerial.qld.gov.au](mailto:health@ministerial.qld.gov.au)

e-m@iled

29 SEP 2022

s.73 - Irrelevant information

Dear Minister

I am writing in relation to the Optional Protocol to the Convention Against Torture (OPCAT) and the upcoming visit to Australia by the United Nations Subcommittee on the Prevention of Torture (UNSPT). The purpose of this correspondence is to provide you with details (provided by the Commonwealth) on the upcoming UNSPT visit and to seek your formal cooperation to manage the visit by consent under existing legislation. Department of Justice and Attorney-General (DJAG) officers have been discussing these matters with your departmental officers on a regular basis.

As you may be aware, the UNSPT has announced that it will visit Australia from 16 to 27 October 2022 and will be departing on 28 October 2022.

Under OPCAT, ratifying state parties undertake to grant the UNSPT with:

- a. unrestricted access to all places of detention and their installations and facilities;
- b. the opportunity to privately interview persons deprived of their liberty, as well as any other person the UNSPT believes may have relevant information;
- c. the liberty to choose the places it wants to visit and persons to interview;
- d. unrestricted access to all information concerning the number of persons deprived of their liberty in places of detention, as well as the number of places and their location; and
- e. unrestricted access to all information referring to the treatment of persons detained and conditions of detention.

OPCAT provides that a state party may object to a visit to a particular place of detention only on urgent and compelling grounds of national defence, public safety, natural disaster or serious disorder at the place to be visited.

(2)

s.73 - Irrelevant information

**and managing the visit by consent**

The Commonwealth Government and the Queensland Government have not passed legislation to implement the obligation to facilitate a visit by the UNSPT in Queensland.

s.73 - Irrelevant information

Accordingly, I am writing to seek your formal cooperation to facilitate the upcoming visit by the UNSPT by consent under existing legislation. I have also written to the other relevant portfolio Ministers, being the Honourable Mary Ryan MP, Minister for Police and Corrective Services and Minister for Fire and Emergency Services, the Honourable Craig Crawford MP, Minister for Seniors and Disability Services and Minister for Aboriginal and Torres Strait Islander Partnerships, and the Honourable Leanne Linard MP, Minister for Children and Youth Justice and Minister for Multicultural Affairs, for their formal confirmation of this position.

I consider this approach is appropriate, s.73 - Irrelevant information

s.73 - Irrelevant information

s.73 - Irrelevant information

I understand that this may result in some restrictions to access provided to the UNSPT due to legislative and operational barriers.

It is noted that the main risk s.73 - Irrelevant information is reputational as the UNSPT may criticise a particular agency or the Government as a whole if access to a facility is restricted or prohibited. s.73 - Irrelevant information

s.73 - Irrelevant information

In addition, DJAG understands that a number of other jurisdictions are in a similar position to Queensland, and that there will likely be restrictions on the UNSPT's ability to access certain facilities across Australia.

DJAG, in consultation with your department, is engaging in ongoing discussions with the Commonwealth Attorney-General's Department (CAGD) to work through legislative and other potential issues to provide UNSPT access. The CAGD has acknowledged that it will not be possible for all jurisdictions to pass legislation for UNPST access prior to its visit. The CAGD has advised that it will continue to work with states and territories in the lead up to the visit to determine any available workarounds. It has also advised that if the UNSPT is not able to access a facility within 15 to 20 minutes of arrival, they will move on to the next facility.

**Details of the visit**

The CAGD is acting as a conduit between the UNSPT and states and territories and has provided information about the UNSPT's visit. Information on the visit provided by the CAGD is **enclosed** for your information.

The UNSPT will visit Australia from 16 to 27 October 2022. On 17 and 18 October 2022, the UNSPT intends to meet with Commonwealth and state and territory officials, including focal points and statutory bodies, and will meet with non-government organisations and other entities. I understand the UNSPT may also request to meet with ministers with responsibility for places of detention.



(3)

The UNSPT will split into two groups and will likely visit places of detention 18 to 26 October 2022. The UNSPT's visiting itinerary will remain confidential and I understand the UNSPT has begun engaging with community organisations to inform its itinerary.

The CAGD has advised that the UNSPT expects that it will be able to enter any place of detention at any time, unannounced, and will expect to have the ability to interview any detained person or staff member at the facility, with the consent of that person. The visiting delegation is understood to be vaccinated for COVID-19, will carry vaccination certificates and will comply with necessary COVID-19 protocols at facilities.

On 26 or 27 October 2022, the UNSPT will seek to meet with Commonwealth, state and territory officials to provide an overview of the visit and recommendations likely to be made in its report.

Following the visit, the UNSPT will prepare the report which will make observations and recommendations to improve the treatment of persons deprived of their liberty and may comment on the cooperation of jurisdictions with the visit. The UNSPT will publish this report with the consent of the state party. The CAGD has advised that states and territories should expect that this report will be published.

#### **Letter of authority and focal point**

DJAG has informed the CAGD that there are legislative and operational barriers that will restrict the UNSPT's access to particular facilities. The CAGD has advised that it is able to communicate caveats to the UNSPT, however this will not prevent the UNSPT from visiting a particular facility and requesting access.

I propose that each department prepares a letter of authority for facilities within its responsibility. This letter should explicitly outline any requirements that the UNSPT will need to comply with while in a facility and any legislative or operational barriers that may restrict access or its ability to move throughout a facility.

The UNSPT has also asked for the nomination of focal points, which are intended to be a senior government official who may be contacted at any point during the visit to resolve issues with access to a facility. One focal point should be nominated for each type of facility. It is understood that the UNSPT will meet with focal points from all jurisdictions at the beginning, and potentially end, of the visit.

To assist DJAG in advising the CAGD, could you please provide the following information by **Wednesday, 5 October 2022**:

- a. your position on facilitating the upcoming visit by consent;
- b. contact details of one senior departmental official to act as a focal point for each type of detention facility within your portfolio;
- c. specific operational or legislative restrictions that the UNSPT may be subject to, including in relation to access to information; and
- d. any requirements for allowing UNSPT to access to places of detention within your portfolio responsibility.

Following provision of the template for the letter of authority from the CAGD, this will be provided to your department for completion.

(4)

I invite officers from your department to contact Ms Sakitha Bandaranaike, Director, Strategic Policy and Legal Services, DJAG, on <sup>s.73 - Irrelevant information</sup> or at <sup>s.47(3)(b)</sup> @justice.qld.gov.au to discuss any matters outlined in this letter.

I appreciate your ongoing cooperation with OPCAT implementation.

Yours sincerely



**Shannon Fentiman MP**

Attorney-General and Minister for Justice

Minister for Women and Minister for the Prevention of Domestic and Family Violence

Member for Waterford

Enc.

cc Mr Shaun Drummond  
Acting Director-General  
Queensland Health  
<sup>s.47(3)(b)</sup> @health.qld.gov.au  
dg\_correspondence@health.qld.gov.au

RTI Release





Hon Yvette D'Ath MP  
 Minister for Health and Ambulance Services  
 Leader of the House

1 William Street Brisbane Qld 4000  
 GPO Box 48 Brisbane  
 Queensland 4001 Australia  
 Telephone +61 7 3035 6100

CAPS2477

11 OCT 2022

The Honourable Shannon Fentiman MP  
 Attorney-General and Minister for Justice,  
 Minister for Women and  
 Minister for the Prevention of Domestic and Family Violence  
 Member for Waterford  
 GPO Box 149  
 BRISANE QLD 4001

Email: [attorney@ministerial.qld.gov.au](mailto:attorney@ministerial.qld.gov.au)

Dear Attorney-General *Shannon*

Thank you for your letter dated 29 September 2022, in relation to the upcoming visit of the United Nations Subcommittee for the Prevention of Torture (UNSPT). For the purpose of that visit, inpatient units of Authorised Mental Health Services (AMHSs) are defined as places of detention.

As you are aware, s.73 - Irrelevant information  
 Queensland Health (QH) is significantly limited in the support it can provide the UNSPT. In particular, due to legislative barriers QH is unable to permit the UNSPT entry to inpatient units of AMHSs.

Within those limitations, QH will support the visit by consent. QH is able to support the UNSPT visit by facilitating patient interviews (with patient consent), interviews with staff, and provision of information (with patient consent where relevant).

Queensland's Chief Psychiatrist, Dr John Reilly, will act as the focal point for the UNSPT visit. Dr Reilly can be contacted on mobile telephone s.73 - Irrelevant information or by email at s.47(3)(b) [@health.qld.gov.au](mailto:john.reilly@health.qld.gov.au). If Dr Riley is temporarily unavailable, a delegate Chief Psychiatrist can be contacted on mobile telephone s.73 - Irrelevant information


QH's primary responsibility in relation to the UNSPT visit is AMHS access. However, QH also provides primary health care services to adults in correctional facilities, which are managed by Queensland Corrective Services (QCS) and are within the remit of the UNSPT. The letter of authority provides a contact from the Office of Prisoner Health and Wellbeing, in the event the UNSPT requests information regarding provision of health services to people in prison.

Further detail regarding QH's legislative and operational considerations for the visit is provided in the letter of authority to the UNSPT. I have attached that letter for your information.

I would like to pass on my thanks to your officers for the significant support the Department of Justice and Attorney-General has provided to agencies in relation to arrangements for the UNSPT visit.

Should officers of your department require any further information in relation to this matter, I have arranged for Ms Liz Edmiston, A/Director, Legislative Projects, Mental Health, Alcohol and Other Drugs Branch, to be available to assist. Ms Edmiston can be contacted on telephone <sup>s.73 - Irrelevant information</sup> [redacted] or by email at <sup>s.47(3)(b)</sup> [redacted]@health.qld.gov.au .

Yours sincerely



**YVETTE D'ATH MP**  
**Minister for Health and Ambulance Services**  
**Leader of the House**

RTI Release



Hon Yvette D'Ath MP  
 Minister for Health and Ambulance Services  
 Leader of the House

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CAPS2477

11 OCT 2022

Ms. Aisha Shujune MUHAMMAD, Head of Delegation, Maldives  
 Mr. Jakub Julian CZEPEK, Poland  
 Ms. Marija DEFINIS-GOJANOVIC, Croatia  
 Mr. Nika KVARATSKHELIA, Georgia

Mr. Bardia JEBELI (Human Rights Officer, Head of Secretariat)  
 Mr. Jack Matthew Pope (Associate Human Rights Officer)

Mr. Dmitry CHEREPANOV (OHCHR Security Officer)

**Letter of Authority**

**Access to health facilities in Queensland's Hospital and Health Services by the Delegation of the United Nations Subcommittee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNSPT)**

Queensland's Chief Psychiatrist may declare a health service (or part of a health service) in Queensland to be an Authorised Mental Health Service (AMHS) under the *Mental Health Act 2016* (Qld), and AMHSs are captured as places of detention for the purpose of the UNSPT visit to health facilities in Queensland's Hospital and Health Services (HHS) [which are separate legal entities to the department under the *Hospital and Health Boards Act 2011* (Qld)]. Patients at these facilities include people being treated involuntarily under the *Mental Health Act 2016*.

Queensland Health (the department) wishes to acknowledge the Optional Protocol for the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment (OPCAT) and to support the UNSPT visit to the greatest extent possible. However, there are legislative constraints under the *Mental Health Act 2016* which place significant limitations on the UNSPT's ability to facilitate the visit to AMHSs under current law. These constraints exist because the *Mental Health Act 2016* was drafted with a focus on the safety and privacy of people with severe mental illness and associated cognitive impairments, and therefore appropriately restricts inpatient unit access to certain categories of visitors. The legislation does not contemplate access to patients by entities such as the UNSPT, and none of the permitted categories of visitors to AMHSs allowed under the *Mental Health Act 2016* lawfully permit the UNSPT access to AMHSs. Work is ongoing to explore how to address these legislative barriers to allow Queensland to more fully support UNSPT visits in future. The department regrets the need to place limitations on the UNSPT's access to AMHSs at this time.

*Access to patients*

The primary constraint is that the department is unable to permit the UNSPT to physically enter the inpatient unit of an AMHS. However, section 284 of the *Mental Health Act 2016* allows the UNSPT to communicate with patients remotely, for example, via telephone or videoconference. That communication would require the patient's consent.



The department understands that the UNSPT is responsible for consent processes, although it is able to provide assistance to facilitate this process. For example, departmental staff may work with the UNSPT to identify patients who may wish to be interviewed, and provide the UNSPT consent form to those patients. Please note that, in accordance with section 284(3) of the *Mental Health Act 2016*, patient communication may be limited by the AMHS administrator if the communication is likely to be detrimental to the health or wellbeing of the person or others.

#### *Access to staff members*

The UNSPT may communicate with staff members of an AMHS or other facility in an HHS, although staff will remain subject to legislative confidentiality and privacy obligations when doing so (for example, a patient may not be identified without their consent). Staff interviews must also occur outside of an AMHS inpatient unit.

#### *Access to records*

The department will provide the UNSPT with access to documents about the operation and conditions of AMHSs. However, documents that may identify an individual, such as patient records, are subject to strict confidentiality and privacy laws, and may only be provided if the patient consents to their disclosure.

If confidential information under the *Mental Health Act 2016* is disclosed by consent, the UNSPT must comply with Chapter 17, Part 4 of the *Mental Health Act 2016*, which prohibits the publication of information relating to certain judicial proceedings. More specifically:

- section 789 prohibits the publication of a report of a proceeding in the Mental Health Court or the Court of Appeal on a reference in relation to a person, or a decision on the proceeding, before the end of the prescribed day for the decision on the proceeding;
- section 790 prohibits the publication of a report of a proceeding of the tribunal, the Mental Health Court relating to an appeal against a decision of the tribunal, or the Mental Health Court relating to a review under section 673;
- section 791(1) prohibits the publication of information that identifies, or is likely to lead to the identification of, a minor who is or has been a party to a proceeding under this Act in the tribunal, Mental Health Court or Court of Appeal; and
- section 792(2) prohibits the publication of information that identifies, or is likely to lead to the identification of, a person other than a minor who is or has been a party to a proceeding mentioned in section 790(1).

Information that does not identify an individual, such as the number of persons in a facility, may be provided by either the relevant HHS or the department's Mental Health Alcohol and Other Drugs Branch on request.

The operation of AMHSs, including conditions of detention, are generally governed by Chief Psychiatrist policies. These are publicly available and can be accessed at <https://www.health.qld.gov.au/clinical-practice/guidelines-procedures/clinical-staff/mental-health/act/policies-guidelines>.

#### *Operational considerations*

The department is committed to supporting the UNSPT visit to the extent possible. However, in addition to the legislative constraints outlined above, certain practical considerations may also limit the ability of AMHSs to fully engage with the UNSPT. For example, staff availability for interviews will be contingent on ensuring sufficient staff remain available to ensure clinical needs are met, and patient safety in a facility. If patient records are requested, it may be necessary to review these to ensure individuals are not inappropriately identified. For these reasons, while the department will cooperate with unannounced visits at any time in the ways outlined above, AMHSs will likely be better equipped to engage with the UNSPT during normal working hours. AMHSs will also be better equipped to support the UNSPT if prior notice of a visit is provided.



*Focal point*

Queensland's Chief Psychiatrist, John Reilly, will act as the focal point for the UNSPT visit. Dr Reilly can be contacted on <sup>s.73 - Irrelevant information</sup> or by email at <sup>s.47(3)(b)</sup> [@health.qld.gov.au](mailto:_____@health.qld.gov.au). If Dr Riley is temporarily unavailable, a delegate Chief Psychiatrist can be contacted on <sup>s.73 - Irrelevant information</sup>

*Working hours*

Standard working hours are from 8.00am to 4.30pm Monday to Friday, for routine clinical and administrative purposes, including for service managers and clinical or executive directors. The UNSPT may wish to take these hours into consideration when scheduling visits.

*COVID-19 restrictions*

Face masks are required at all public and private hospitals, including AMHSs. People who have been diagnosed with COVID-19 and close contacts are subject to certain restrictions, and may not visit hospitals (with exceptions for end of life visits and to receive care). Proof of vaccination is not required for entry to hospitals.

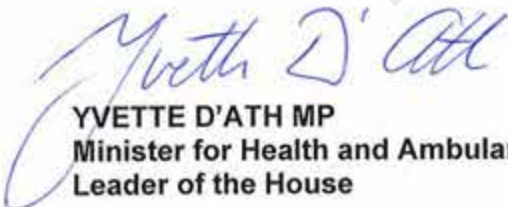
More detail about COVID-19 restrictions is available in the *Management of Diagnosed Cases of COVID-19 and Close Contacts Direction (No. 5)* found at: [Management of Diagnosed Cases of COVID-19 and Close Contacts Direction \(No. 5\) | Queensland Health](#) and the *Public Health Face Mask Requirements Direction (No. 6)* found at: [Public Health Face Mask Requirements Direction \(No. 6\) | Queensland Health](#).

If the UNSPT delegation would like any further information prior to the visit, they are invited to contact Chief Psychiatrist John Reilly. Dr Reilly can be contacted on <sup>s.73 - Irrelevant information</sup> or by email at <sup>s.47(3)(b)</sup> [@health.qld.gov.au](mailto:_____@health.qld.gov.au).

**Prisoner health services**

Queensland Health also provides primary health care services onsite to adults in correctional facilities, which are managed by Queensland Corrective Services (QCS). QCS will brief the UNSPT about the operating hours of correctional centres and their associated health centres and will facilitate access for the UNSPT. If the delegation would like any further information regarding provision of health services to people in prison they may contact Mr Graham Kraak, Director Office for Prisoner Health and Wellbeing on <sup>s.73 - Irrelevant information</sup> or by email at <sup>s.47(3)(b)</sup> [@health.qld.gov.au](mailto:_____@health.qld.gov.au).

Yours sincerely



**YVETTE D'ATH MP**  
**Minister for Health and Ambulance Services**  
**Leader of the House**





s.73 - Irrelevant information

**ISSUES**

1. It is within the mandate of the UNSPT to visit places of detention and deprivation of liberty in Australia, including AMHSs. Due to the COVID-19 pandemic, proposed UNSPT visits in early 2020 were postponed.
2. On 29 July 2022, DJAG advised at officer level that the UNSPT is scheduled to visit Australia from 16 to 27 October 2022. The itinerary for the visit is not disclosed in advance, however, the UNSPT may wish to visit AMHS inpatient units. It is also possible the UNSPT will not visit Queensland or any QH facility.

3. s.73 - Irrelevant information

s.73 - Irrelevant information

and all other agencies with the exception of the Department of Disability Services and Aboriginal and Torres Strait Islander Partnerships (DSDSATSIP), which administers the FDS, advised that they have identified non-legislative pathways to facilitate access.

4. The MH Act was drafted to ensure the safety and privacy of people with severe mental illness and associated cognitive impairments, and therefore appropriately restricts inpatient unit access to certain categories of visitors. This framework does not currently permit access by the UNSPT.

5. s.73 - Irrelevant information

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8. The Minister may object to a visit in limited circumstances where there are urgent and compelling grounds of national defence, public safety, natural disaster, or serious disorder in the place to be visited. Those mirror the grounds for objection in OPCAT. A visit may also be objected to where the visit is likely to harm the safety or wellbeing of an individual at a place of detention.

9. s.73 - Irrelevant information

s.73 - Irrelevant information

allow the UNSPT entry to AMHSs.

s.73 - Irrelevant information

s.73 - Irrelevant information

Queensland Health is unable to

10. Queensland Health is one of only two Queensland agencies unable to permit UNSPT access to its places of detention (i.e. inpatient units). With the exception of the DSDSATSIP, which administers the FDS, all other Queensland agencies responsible for places of detention have indicated they are able to facilitate UNSPT access, though this access may be limited and not fully compliant with OPCAT.

11. s.73 - Irrelevant information

there are a number of possible scenarios:

- 11.1. (1) the UNSPT may wish not to visit Queensland or any inpatient AMHS units;
- 11.2. (2) the UNSPT may not visit any inpatient unit of AMHS but may note in its report that it was prevented from doing so due to legislative barriers;
- 11.3. (3) the UNSPT may attempt to visit an inpatient unit of an AMHS and be denied entry due to legislative barriers, and report negatively as a result.

12. It should be noted the UNSPT report may be critical if entry were refused in contravention of OPCAT, and the Commonwealth has indicated jurisdictions should expect the report to be published. This may draw negative commentary internationally.

13. s.73 - Irrelevant information

14. The reputational risk may be managed by proactively writing to the UNSPT, outlining QH's ability to facilitate the visit is limited but noting QH's commitment to upholding OPCAT, and outlining the ways in which QH can assist. This would mean that no physical access is permitted to inpatient units but QH could cooperate by sharing relevant information and facilitating patient and staff communications. This communication would need to be facilitated through DJAG and the Commonwealth, as the Commonwealth Attorney-General's Department is taking the lead on managing the UNSPT visit.

15. s.73 - Irrelevant information

## BACKGROUND

16. The Commonwealth ratified OPCAT in December 2017 and it entered into force in January 2018.

Queensland Health then began working with DJAG to support the Queensland response to OPCAT.

17. In 2020, the Queensland Government was made aware of a planned UNSPT visit. Queensland Health sought legal advice and identified necessary amendments to facilitate access. s.73 - Irrelevant information

s.73 - Irrelevant information

18.

19.

20. OPCAT also confers an obligation to establish a National Preventive Mechanism to monitor places of detention. The Queensland Government has established an Inspector of Detention Services to monitor corrective services facilities, police watch houses, and youth detention centres. s.73 - Irrelevant information

s.73 - Irrelevant information

## RESULTS OF CONSULTATION

21. s.73 - Irrelevant information

22. Other Queensland Government agencies have reported the following positions (at officer level):

22.1. Queensland Corrective Services, Queensland Police Service and Department of Children, Youth Justice and Multicultural Affairs are all able to facilitate UNSPT access without legislative amendment, though the access may be limited (e.g. to escorted visits during working hours) and they will pursue amendments to allow fuller access to the UNSPT in future.

22.2. DSDSATSIP has received legal advice indicating it is not able to allow FDS entry, though at officer-level have reported they are seeking further advice. s.73 - Irrelevant information

s.73 - Irrelevant information

23. At this time Queensland Health has not identified any interstate facility that will refuse access entirely. Other states and territories have reported the following positions (at officer level):

23.1. The Australian Capital Territory, the Northern Territory and Tasmania can allow unrestricted access to all facilities.

23.2. New South Wales and Western Australia are likely to allow restricted access (for example, for announced visits only).



- 23.3. Victoria has a Bill before Parliament to allow access but this may not be passed before the visit.  
 23.4. South Australia has not yet settled its position.

**RESOURCE/FINANCIAL IMPLICATIONS**

24. There are no resource or financial implications.

**SENSITIVITIES/RISKS**

25. There is a risk of reputational damage for QH, in the event the UNSPT wishes to enter an AMHS and, on the basis of our legislative barrier, is either denied entry or does not attempt to visit on the basis they will be refused entry. This may be exacerbated if, as other agencies/jurisdictions confirm their positions, most or all other agencies can facilitate at least limited access.

**ATTACHMENTS**

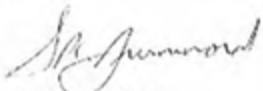
26. s.73 - Irrelevant information

27.

28.

29.

30.

<b>Author</b> Name: Elizabeth Edmiston Position: A/Director Unit: Legislative Projects Tel No: s.73 - Irrelevant information Date Drafted: 29 August 2022 Updated: 19 September 2022	<b>Cleared by (Dir/Snr Dir)</b> Name: Assoc Prof John Allan Position: Executive Director Branch: Mental Health Alcohol and Other Drugs Branch Tel No: s.73 - Irrelevant information Date Cleared: 30 August 2022 Updates cleared: 19 September 2022 <i>*Note clearance contact is also key contact for brief queries*</i>	<b>Content verified by (DDG/CE)</b> Name: Michelle Wilson <i>on behalf of</i> Liza-Jane McBride Position: A/DDG Division: Clinical Excellence Queensland Tel No: s.73 - Irrelevant information Date Verified: 31 August 2022	<b>Director-General Endorsement</b> Name: Shaun Drummond  Signed  Date 20/09/2022
<b>Updated Content verified by (DDG/CE)</b> Name: Michael Zanco Position: A/DDG Division: Clinical Excellence Queensland Tel No: s.73 - Irrelevant information Date Verified: 19 September 2022	<b>COO Endorsement</b> Name: Dr David Rosengren Position: Chief Operating Officer Queensland Health Tel No: s.73 - Irrelevant information Date Verified: 31 August 2022 Updates Verified: 19 September 2022		

Received in ESU – 31 August 2022. Received in SDLO – 31 August 2022. Provided to CAPS – 31 August 2022. CLLO consulting with Director LPU and Minister's Office. Revised brief received in CAPS 19/09/22, 3:44pm. Advice sought regarding location of Attachment 3 in clearance processes. Brief reviewed by CLLO 20/9/22 and progressed to DG. Progressed to M.O. 20/09/22.

**From:** CEQCorro  
**Sent:** Friday, 7 October 2022 1:08 PM  
**To:** DL-Group QLDCE  
**Cc:** MHAODB-corro; Graham Kraak; Prisonerhealth; COO Correspondence; Elizabeth Edmiston  
**Subject:** C-ECTF-22/16102 - DDG CEQ Memo - Visit by the United Nations Subcommittee for the Prevention of Torture to Authorised Mental Health Services  
**Attachments:** DDG CEQ MEM - Visit by the United Nations Subcommittee for the Prevention of Torture to Authorised Mental Health Services.PDF; ATTACHMENT 1.PDF  
**Importance:** High  
**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Good afternoon

Please see attached memorandum from Dr Helen Brown, Deputy Director-General, Clinical Excellence Queensland, for your attention and distribution as required.

Should you have any queries, please contact the Dr John Reilly, Chief Psychiatrist, on s.73 - Irrelevant information or by email at s.73 - Irrelevant information [@health.qld.gov.au](mailto:ceq@health.qld.gov.au).

Kind regards  
 Vanessa



### CEQ Correspondence Team

**Vanessa Walsh:** Ph: via [MS Teams](#)

**Taylor Hailes:** Ph: via [MS Teams](#)

**Jessica Laubscher:** Ph: via [MS Teams](#)

#### Senior Correspondence Officers

Office of the Deputy Director-General | Clinical Excellence Queensland | Queensland Health

**E** s.73 - Irrelevant information [@health.qld.gov.au](mailto:ceq@health.qld.gov.au)

**W** [health.qld.gov.au](http://health.qld.gov.au)

**A** [lvl 14, 33 Charlotte St, Brisbane, 4001.](#)

**MENTAL  
WELLBEING**

Dear mind, remember to make time for you  
 Visit [qld.gov.au/mentalwellbeing](http://qld.gov.au/mentalwellbeing)



Queensland Health acknowledges the Traditional Custodians of the land across Queensland, and pays respect to First Nations Elders past, present and future.



# MEMORANDUM

**To:** Chief Executives, Hospital and Health Services

**Copies to:** Mental Health Alcohol and Other Drugs Executive Group  
Manager, Office of Prisoner Health and Wellbeing  
Chief Operating Officer, Department of Health

**From:** Dr Helen Brown, Deputy Director-  
General, Clinical Excellence  
Queensland

**Enquiries to:** Elizabeth Edmiston,  
Director, Legislative  
Projects, Mental  
Health Alcohol and  
Other Drugs Branch

**Subject:** Visit by the United Nations Subcommittee for the Prevention of Torture to  
Authorised Mental Health Services

**File Ref:** C-ECTF-22/16102

s.73 - Irrelevant information

Australia is a signatory to the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (OPCAT). Under OPCAT, participating jurisdictions may receive visits from the United Nations Subcommittee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNSPT). The UNSPT is scheduled to make its first visit to Australia from **16 – 27 October 2022**.

The purpose of the UNSPT visit is to inspect places of detention, which may include interviews with staff and people who are detained. Inpatient units of Authorised Mental Health Services (AMHSs) are defined as places of detention for the purposes of the UNSPT visit.

The UNSPT itinerary is unknown and will not be announced. It is therefore not possible to advise which, if any, AMHS may receive a visit, and visits are expected to be unannounced.

Although the Commonwealth Government has ratified OPCAT, it has not been implemented into domestic law and is therefore not legally binding in Queensland. However, Queensland Health (i.e. the Department) (and other affected departments) have taken a policy position that the visit should be supported as far as possible. Where OPCAT is implemented in local law (which it is not, in Queensland) jurisdictions are obliged to allow the UNSPT unrestricted access to any place of detention, as well as access to records, the ability to interview any person detained, and the ability to meet with staff.

Under the *Mental Health Act 2016* (Qld) physical access to inpatient units by the UNSPT cannot be lawfully permitted. This is because the *Mental Health Act 2016* was drafted to ensure the safety and privacy of patients, and appropriately restricts inpatient unit access to certain categories of visitors, and did not contemplate including the UNSPT.



Legislative options are being explored to resolve this issue in future, however, cannot be implemented prior to the scheduled visit.

However, the UNSPT's visit can be supported in other respects. Information can be provided, and patients and staff can be interviewed, with certain restrictions. Further detail about those arrangements is below.

#### Managing physical access

Queensland's legislative position on access to AMHSs will be communicated to the UNSPT prior to the visit, so they are aware they may not lawfully be permitted entry. However, it is possible that the UNSPT will still choose to visit facilities. The Chief Psychiatrist is the point of contact for any issues that arise during the UNSPT visit to Australia, and should be contacted in the event that the UNSPT visits an AMHS and requests access. The UNSPT visit to Australia is from 16-27 October 2022, but visits to places of detention will occur between 18-26 October 2022.

AMHSs should make appropriate contingency arrangements for such a visit, noting that it is possible, though unlikely, that the UNSPT will choose to visit outside of normal working hours. Staff should be advised of an appropriate contact person within the AMHS and Hospital and Health Service (HHS), including any modifications for out of hours visits – for example, the administrator of an AMHS may be notified. Each HHS should make arrangements to ensure the Chief Psychiatrist (or if unavailable the delegate or after hours on call Chief Psychiatrist) is notified if the UNSPT arrives at a facility.

The Mental Health, Alcohol and Other Drugs Branch (MHAODB) understands that the UNSPT delegation is vaccinated for COVID-19, will carry proof of vaccination and will comply with necessary COVID-19 protocols. The UNSPT will be advised of current COVID-19 requirements regarding mask wearing and limitations on access to facilities if a person has tested positive for COVID-19. It should be noted that, as the UNSPT cannot access inpatient units, these requirements are relevant only in the event the UNSPT accesses other parts of hospital grounds (for example, for the purpose of meeting with staff).

#### Access to information

The Commonwealth Government, which is coordinating the visit, have advised that the UNSPT is highly unlikely to request any patient records. Any document that does not in any way identify a patient or is otherwise captured by confidentiality provisions can be provided to the UNSPT on request. The MHAODB will proactively advise the UNSPT of key operational documents such as Chief Psychiatrist policies. Copies of identifying documents, such as patient records, can be provided at the UNSPT's request, where a person consents. If a patient consents, records can be provided by AMHSs as print-outs of an electronic medical record or a copy of a physical record or chart.

#### Interviewing patients

A patient can be interviewed by the UNSPT, if the UNSPT requests it and the patient consents. The UNSPT will seek the person's informed consent, and will ask them to sign a consent form. As the UNSPT cannot enter an inpatient unit, AMHSs will need to work with the UNSPT to identify patients who may wish to be interviewed. In practice, this might mean that the UNSPT identifies a certain category of patient they are interested in interviewing (for example, patients who have been in the facility for a certain period of time) and AMHS staff approach those patients to identify those who are interested in being interviewed. Staff will also need to make arrangements for the appropriate form (provided by the UNSPT) to be signed by those who consent to an interview.

The Commonwealth has advised that any person to be interviewed will be informed by the UNSPT that the interview deals with systemic matters and the UNSPT has no ability to directly influence the person's circumstances. Though the UNSPT is responsible for this consent process, in practice each AMHS will be responsible for identifying where a person has capacity to consent (as the UNSPT cannot physically access an inpatient unit for this purpose). Communication with patients may also be subject to the discretion of the AMHS administrator, and may be restricted where the administrator believes the communication will be detrimental to the person or others. As the UNSPT cannot access inpatient units, interviews can be facilitated by phone or videoconference. Consideration will need to be given to ensuring patient privacy for this purpose.

#### Staff interviews

There is no impediment to the UNSPT interviewing staff, providing it does not take place in an inpatient unit. Administrators are encouraged to support staff to meet with the UNSPT, where they wish to do so and it is operationally possible. Staff must be advised that strict confidentiality and privacy obligations under the *Mental Health Act 2016*, the *Hospital and Health Boards Act 2011* and the *Information Privacy Act 2009* apply to all communication with the UNSPT.

#### UNSPT report

Following the visit, the UNSPT will prepare a report, which will make observations and recommendations (where relevant) to improve the treatment of persons deprived of their liberty. This report will be published. The UNSPT will be advised of confidentiality obligations with respect to identifying individuals, however, UNSPT reports are generally systemic and do not identify individuals.

#### Support for AMHSs

The Chief Psychiatrist is the key point of contact for the UNSPT prior to and during the visit, and is responsible for communicating with the UNSPT to resolve any issues that may arise. Administrators are encouraged to contact the Chief Psychiatrist if the UNSPT arrives at a facility.

#### Crown Law advice

s.73 - Irrelevant information



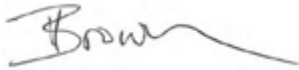
#### Communication with UNSPT

The MHAODB is liaising with the Commonwealth Government, which is coordinating the visit Australia-wide, and the Department of Justice and Attorney-General, which is coordinating the visit for Queensland agencies.

The Chief Psychiatrist will attend a briefing by the UNSPT following their arrival in Australia, and will advise AMHSs if any further information about the conduct of the visit is provided.

The Minister is writing to the UNSPT to inform the delegation of the legislative barriers to physical access, and of the ways in which the Department and HHSs can assist, as outlined in this memo.

Should you require further information prior to the visit, the Department of Health's contact is Chief Psychiatrist John Reilly, on s.73 - Irrelevant information or by email at s.73 - Irrelevant information@health.qld.gov.au. Outside of normal working hours (8.30am-4.30pm) or if temporarily unavailable, a delegate Chief Psychiatrist can be contacted on s.73 - Irrelevant information



Dr Helen Brown  
**Deputy Director-General**  
**Clinical Excellence Queensland**  
7 / 10 / 22

RTI Release



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**From:** John Reilly  
**Sent:** Saturday, 22 October 2022 9:15 AM  
**To:** Elizabeth Edmiston  
**Subject:** Fwd: UNSPT visit to Princess Alexandra Hospital acute mental health inpatient unit

FYI. As anticipated!

Thanks for all your work in preparing for this, in view of which I thought I should let you know even on a Saturday. No need to call unless you feel the need.

Thanks,

John

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**From:** John Reilly  
**Sent:** Saturday, October 22, 2022 9:07:30 AM  
**To:** SDLO s.73 - Irrelevant information @health.qld.gov.au>  
**Subject:** UNSPT visit to Princess Alexandra Hospital acute mental health inpatient unit

As discussed per phone, I received a call at 0848 from Jack Pope, s.73 - Irrelevant information, UN Subcommittee for the Prevention of Torture, has called to inform that UNSPT have attended Princess Alexandra Hospital to visit an acute mental health inpatient unit. Their process requires full access and they understand that they are not allowed that in Queensland from previous briefings. I have confirmed that advice and explained that we could assist in other ways. He has informed me that they will make further visits to allow us the option of a change in our approach. I have explained this will not be possible and will be called each time.

Colin Minihan, s.73 - Irrelevant information, Commonwealth liaison person has called to confirm our advice. He has been called by UNSPT following the phone call to me.

I have informed Metro South MHS Executive and discussed with the on-call psychiatrist at PAH who had also been called.

There are previous briefings relating to this matter and a PPQ yesterday.

Let me know if you need anything further.

Thanks,

John

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