



Agreement pursuant to section 151(1)(b) of the *Hospital and Health Boards Act 2011* (Qld)

Between

The State of Queensland through the Chief Executive of Queensland Health

and

The State of Queensland through the Parole Board Queensland

CONFIDENTIAL INFORMATION DISCLOSURE

THIS Agreement is made

BETWEEN: **The State of Queensland through the Chief Executive of Queensland Health, 1 William Street, Brisbane, Queensland 4000**

AND: **The State of Queensland through the President of the Parole Board Queensland, 50 Ann Street, Brisbane, Queensland 4000**

BACKGROUND

- A. The Parole Board Queensland (the Board) is established under Chapter 5 Part 2 of the *Corrective Services Act 2006* (Qld). The Board is an independent, professional parole board that plays a vital role in the Queensland criminal justice system.
- B. The Board makes independent decisions about Prisoners' release on parole.
- C. Parole is a method developed to prevent reoffending, and the Board's highest priority is the safety of the community.
- D. Primary Health Care, Specialised Health Care, and Mental Health Services are provided to people including Prisoners, throughout Queensland by relevant Hospital and Health Services (HHSs) and by private health providers.
- E. Since 2012, service agreements under the HHB Act between the Queensland Health and relevant HHSs have provided for the delivery of Health Services to Prisoners in most Corrective Services Facilities in Queensland.
- F. The Prison Mental Health Service provides Mental Health Services to Prisoners with a Mental Illness.
- G. The Prisoner Health Service provides Primary Health Care Services and Specialised Health Care Services to Prisoners. Specialised Health Care Services are largely delivered to Prisoners by HHSs.
- H. It is the intention of the Parties that Queensland Health and HHSs will disclose certain Confidential Information to the Board to enable the Board to fulfil its statutory functions in the circumstances outlined in this Agreement.
- I. This Agreement applies only to disclosure of certain Confidential Information to the Board by HHSs and excludes disclosure by any private health practitioner or privately delivered health services.
- J. The Parties acknowledge that this Agreement supports the principle that Prisoners may make decisions about disclosure of Confidential Information and are entitled to fair legal processes (including applications for Parole) and that these are upheld.
- K. Designated Persons owe a duty of confidentiality under section 142 of the HHB Act, which prohibits them from disclosing, directly or indirectly, Confidential Information to another person unless the disclosure is required or permitted under the HHB Act. It is an offence for a Designated Person to disclose Confidential Information unless one of the exceptions to

the duty applies. The duty applies even if the person who could be identified from the disclosure of Confidential Information is deceased.

- L. This Agreement is a prescribed agreement under section 151(1)(b) of the HHB Act, which allows disclosure of Confidential Information by a Designated Person in the circumstances specified in this Agreement. This Agreement does not preclude the disclosure of Confidential Information authorised under another exception in Part 7 of the HHB Act for purposes other than those covered by this Agreement.
- M. In addition to the duty of confidentiality owed by Designated Persons, Relevant Officers have privacy obligations under the IP Act with which they must comply when collecting, storing, using and disclosing Personal Information.
- N. The purpose of this Agreement is to set out the circumstances in which a Designated Person may disclose Confidential Information to the Board under section 151(1)(b) of the HHB Act.

THE PARTIES AGREE AS FOLLOWS:

1. Definitions and interpretation

- 1.1. In this Agreement, the following definitions will apply unless the context otherwise requires:

Agreement means this document and all of its schedules and attachments.

Board means Parole Board Queensland established under Chapter 5 Part 2 of the *Corrective Services Act 2006* (Qld).

Business Day means any day other than a Saturday, Sunday or public holiday in Brisbane, Queensland.

Chief Executive means the Director-General of Queensland Health.

Claim includes (and is not limited to) any claim (whether ascertained or unascertained), action, demand, application, proceeding, judgment, enforcement hearing or enforcement order.

Clause means a clause of this Agreement.

Community Corrections means that part of Queensland Corrective Services responsible for monitoring Prisoners in the community.

Confidential Information has the same meaning as in section 139 of the HHB Act.

Contact Person means an individual occupying a position listed in Schedule B of this Agreement.

Corrective Services Facilities has the same meaning as the definition of the term Corrective Service Facility in Schedule 4 of the *Corrective Services Act 2006*.

Designated Person has the same meaning as in section 139A of the HHB Act.

Health Care means any HHS health service provided to a person for maintaining, improving, restoring or managing people's health and wellbeing.

Health Services has the same meaning as the definition of the term Health Service in Schedule 3 of the *Mental Health Act 2016* and in section 15 of the *Hospital and Health Boards Act 2011*, and includes a service for maintaining, improving and restoring people's health and wellbeing.

HHB Act means the *Hospital and Health Boards Act 2011* (Qld).

HHS means the Hospital and Health Services established under section 17 of the HHB Act.

Information includes a document (as defined in section 36 and Schedule 1 of the *Acts Interpretation Act 1954* (Qld)) that is in the possession, or under the control, of a Relevant Agency, whether brought into existence or received by a Relevant Agency, and includes an opinion of an officer of a Relevant Agency (whether verbal or recorded in some form).

Information Privacy Principles means the information privacy principles as set out in Schedule 3 of the IP Act.

IP Act means the *Information Privacy Act 2009* (Qld).

Loss includes (and is not limited to) any loss, liability, tax, prohibition, penalty, fine or expense howsoever caused, including by way of negligence.

Mental Health Services has the same meaning as the definition of the term 'treatment' in Schedule 3 of the *Mental Health Act 2016* and includes, for a person who has a mental illness, anything done, or to be done, with the intention of having a therapeutic effect on the person's illness.

Mental Illness has the same meaning as the definition of the term in section 10 of the *Mental Health Act 2016*.

National Privacy Principles means the national privacy principles as set out in Schedule 4 of the IP Act.

Prisoner Health Service means the HHS service that provides Primary Health Care and Specialised Health Care to Prisoners.

Party or Parties means a party or the parties to this Agreement.

Personal Information has the same meaning as in section 12 of the IP Act.

Primary Health Care means general health care, delivered by a HHS, that includes the promotion of health, early diagnosis of disease and disability, treatment and prevention of disease. It is generally the first line of health care, covering a broad range of health issues. It includes for example screening and assessment, clinical consultations, diagnostic, medication management, chronic disease management and monitoring, immunisations, referral and liaison with specialist health services, health education and some therapies.

Prison Mental Health Service means HHS in-reach Mental Health Services that provide specialist mental health care to consumers incarcerated in Corrective Services Facilities in Queensland.

Prisoner has the same meaning as the definition of the term in Schedule 4 of the *Corrective Services Act 2006* and applies only to those Prisoners who are currently receiving, or have received a Health Service.

Queensland Corrective Services means the department in which the *Corrective Services Act 2006* is administered.

Queensland Health means the department in which the HHB Act is administered and does not include the HHSs.

Regulation means the *Hospital and Health Boards Regulation 2012* (Qld).

Relevant Agency means Queensland Health, the HHSs and the Board.

Relevant Officer means Designated Persons and all officers, employees and agents of the Board.

Relevant Third Party is a person to whom the Board may disclose information as part of satisfying its statutory obligations and for the purposes of this Agreement, and means personnel of Community Corrections responsible for the case management and supervision of Prisoners on parole through the monitoring of compliance with parole conditions and implementation of targeted intervention strategies, or a clinician commissioned by the Board to provide expert opinions.

Root Cause Analysis means an analysis commissioned under Part 6, Division 2 of the HHB Act.

Senior Representative means the individual occupying a senior representative position listed in Schedule B.

Specialised Health Care means Health Services other than Primary Health Care Services including, Mental Health Services, delivered by a HHS and includes emergency health, oral health, specialist outpatient, inpatient hospital, optometry, radiology, pathology, dietary and sexual health.

Termination Notice Period means a period of not less than 14 days from the date of issue of the notice under Clause 13.1.

1.1. In this Agreement:

- (a) words importing a gender include any other gender;
- (b) the singular includes the plural and vice versa;
- (c) a reference to any legislation includes any subordinate legislation made under it and any legislation amending, consolidating or replacing it;
- (d) a reference to an individual or person includes a corporation or other legal entity;
- (e) headings will not form part of the Clauses of this Agreement and will not be an aid to interpreting this Agreement;
- (f) if any expression is defined, other grammatical forms of that expression will have corresponding meanings;
- (g) a reference to days or months means calendar days or months;
- (h) if the day on which any act or thing is to be done under this Agreement is a Saturday, Sunday or public holiday in the place where the act or thing is to be done, the act or thing may be done on the next Business Day in that place;
- (i) in the event that a government department or agency mentioned in this Agreement:
 - i) ceases to exist; or
 - ii) is reconstituted, renamed or replaced,

and its powers or functions are transferred to another government department or agency, a reference to the government department or agency will be to that other government department or agency.

2. Commencement and duration

This Agreement will commence on the date it is prescribed in the Regulation and continue in force until the Regulation is repealed, or until Clause 11 (Variation) or Clause 13 (Termination) is invoked.

3. Operation of this Agreement

3.1. The operation of this Agreement is contingent on:

- (a) this Agreement having been prescribed under the Regulation in satisfaction of section 151(1)(b)(i)(B) of the HHB Act; and
- (b) the disclosure by a Designated Person of Confidential Information required or allowed under this Agreement is considered by the Chief Executive to be in the public interest in satisfaction of section 151(1)(b)(ii) of the HHB Act.

3.2. In satisfaction of section 151(1)(b)(ii) of the HHB Act and Clause 3.1(b), the Chief Executive considers that the disclosure by a Designated Person of Confidential Information required or allowed under this Agreement is in the public interest.

3.3. Requests for disclosure of Confidential Information to the Board in the public interest under this Agreement will be actioned in accordance with this Agreement. Disclosures made under this Agreement are made with a balanced assessment of competing interests. This Agreement supports disclosure of the types of Confidential Information specified in Schedule A of this Agreement as having been determined by the Chief Executive as being in the public interest and compatible with the *Human Rights Act 2019*.

4. Confidential Information Disclosure

4.1. It is the preferred position of Queensland Health and HHSs that disclosure of Confidential Information to the Board, regarding Prisoners who are current patients, in the first instance, be with the written consent of the Prisoner, pursuant to section 144 of the HHB Act. Confidential information can be disclosed to the Board with the consent of the Prisoner without reliance on the provisions of this Agreement.

4.2. Designated Persons in Queensland Health and HHSs may disclose Confidential Information in the absence of consent under this Agreement, if the type of Confidential Information is listed in Schedule A.

4.3. The Parties acknowledge the benefit in the timely provision of information to the Board. Requests for information are to be actioned in a mutually agreed timeframes, which the Parties may provide for in agreed operational policy or guidelines, as amended from time to time.

4.4. The procedures for disclosure are set out in Schedule A. Relevant Officers will work cooperatively to comply with the procedures.

4.5. The Parties each acknowledge that:

- (a) Schedule A does not contain an exhaustive list of the types of Information that Relevant Officers of the Board may request or that Designated Persons may disclose; and

- (b) where Confidential Information requested by a Relevant Officer of the Board, is not listed in Schedule A and therefore cannot be disclosed under this Agreement, the request will be assessed by a Designated Person to determine whether the disclosure is authorised under another exception to the duty of confidentiality in Part 7 of the HHB Act, prior to determining whether or not to disclose.

5. Refusal to share Confidential Information

- 5.1. The Parties each acknowledge that Designated Persons have discretion as to whether or not they disclose Confidential Information under this Agreement.
- 5.2. If a Designated Person decides not to disclose all or part of the Confidential Information requested by a Relevant Officer of the Board, including a type of Confidential Information not listed in Schedule A, the Designated Person may provide reasons in general terms for the decision to the Relevant Officer.
- 5.3. In the situation described in Clause 5.2, the Designated Person and Relevant Officer of the Board will cooperate in good faith and with a view to the Designated Person disclosing to the Relevant Officer as much Confidential Information as is lawful and appropriate in the circumstances.
- 5.4. If a matter in dispute is not resolved in accordance with clause 5.3, the Parties may escalate a dispute to senior operational officers, nominated in writing by the Parties, for resolution prior to escalation to the Senior Representative listed in Schedule B.

6. Legal obligations of Designated Persons, Queensland Health and HHSs in relation to privacy and confidentiality

- 6.1. The Parties each acknowledge that:
 - (a) Designated Persons must comply with the HHB Act and the IP Act, including the National Privacy Principles, when collecting, storing, using and disclosing Confidential Information;
 - (b) the laws identified in this Clause 6.1 override this Agreement to the extent of any inconsistency; and
- 6.2. The Parties each acknowledge that this Agreement does not permit Designated Persons to disclose certain types of Information, including without limitation, any of the following:
 - (a) Confidential Information not specified as being for the purposes of this Agreement, including for example, clinical opinions related to prospective risk;
 - (b) Information collected as part of any of the registers which Queensland Health maintains for the purposes of meeting its obligations under the *Public Health Act 2005* (Qld);
 - (c) Information in the Queensland Health *Monitoring of Dangerous Drugs Database* or its successor;
 - (d) Root Cause Analysis or Clinical Review reports or any associated documentation gathered or generated by Root Cause Analysis teams or Clinical Reviewers; or
 - (e) Information that must not be disclosed under another law.

7. Legal obligations of the Board in relation to privacy and confidentiality

- 7.1. The Parties each acknowledge that the Board must satisfy all relevant legal requirements including the IP Act and Information Privacy Principles, when collecting, storing, using and disclosing Personal Information.
- 7.2. The Parties each acknowledge that for the Board to fulfil its functions, the Board may be required to disclose to a Relevant Third Party Confidential Information it receives under this Agreement.
- 7.3. Pursuant to section 151(2) of the HHB Act, the Board acknowledges that, in receiving Confidential Information under this Agreement, it:
- (a) must not give it to anyone else, including to a Relevant Third Party, unless permitted:
 - i) by this Agreement; or
 - ii) authorised in writing by the Chief Executive; and
 - (b) must ensure the Confidential Information is used only for the purpose for which it was given under this Agreement.

8. Additional privacy and confidentiality obligations of Relevant Agencies and Relevant Officers

- 8.1. The Parties each acknowledge that they will ensure the Relevant Agencies implement procedures and practices to support compliance with the guiding principles of the HHB Act, and with the objects of the IP Act and other applicable legislation governing confidentiality and privacy.
- 8.2. The Parties agree that:
- (a) the privacy rights afforded to individuals in the context of this Agreement are to be interpreted broadly; and
 - (b) requests for disclosure of Confidential Information are to be interpreted narrowly.
- 8.3. The Board will implement procedures to ensure that a Relevant Officer of the Board will not disclose Confidential Information disclosed to them under this Agreement, other than in accordance with this Agreement.
- 8.4. The Parties each acknowledge that a Relevant Officer (the 'Receiving Officer') of the Board may disclose Confidential Information disclosed to them by another Relevant Officer of the Board:
- (a) to the extent necessary for the performance of this Agreement, provided that the person to whom the Receiving Officer intends to disclose the Information is legally bound not to disclose the Information;
 - (b) where required by law; or
 - (c) where this Agreement permits disclosure to a Relevant Third Party in accordance with Clauses 7.2 and 7.3.

8.5. To ensure compliance with section 33 of the IP Act, Relevant Officers of the Board to whom Confidential Information is disclosed under this Agreement are not permitted to transfer the Confidential Information outside of Australia without the prior written consent of an authorised officer in Queensland Health or the HHS that disclosed the Confidential Information.

9. Privacy breaches

9.1. The Parties each acknowledge that there is a risk of privacy breaches associated with Relevant Officers handling Confidential Information in the context of this Agreement.

9.2. Each Relevant Agency must:

- (a) notify relevant Contact Persons listed in Schedule B of this Agreement for resolution immediately upon becoming aware of a privacy breach in relation to this Agreement;
- (b) co-operate with each other to ensure privacy breaches are responded to appropriately and in accordance with the Relevant Agency's privacy breach management process, including reporting breaches; and
- (c) comply with the IP Act when responding to a privacy breach.

10. Resolution of disputes

10.1. For the purpose of this Clause 10, a dispute under this Agreement will have arisen when a Party gives notice in writing to that effect to the other Party.

10.2. Where there is a conflict or dispute over any matter relating to this Agreement, the Parties will seek to resolve the issue by negotiation initially between the relevant Contact Persons listed Schedule B of this Agreement.

10.3. Any dispute not resolved pursuant to Clause 10.2 will be referred to the Senior Representatives listed in Schedule B for resolution.

10.4. The Parties agree that, if the matter is not resolved by the Senior Representatives, the matter will be referred to the Deputy Director-General, Clinical Excellence Queensland, Queensland Health, and President of the Board, for final resolution.

10.5. Despite the existence of a dispute, the Parties will (unless agreed otherwise in writing) continue to perform their obligations under this Agreement.

11. Variation

11.1. This Agreement may be varied at any time by an agreement in writing signed by the Parties.

11.2. The Parties agree that this Agreement will be reviewed within three months of the date it commences, and thereafter at such other time as may be agreed by the Parties.

12. Entire Agreement

This Agreement constitutes the entire agreement between the Parties and supersedes any prior arrangements, agreements, warranties, representations or undertakings.

13. Termination

- 13.1. Either Party may at any time terminate this Agreement by providing written notice to the other Party that this Agreement will terminate at the expiration of the Termination Notice Period.
- 13.2. If a Party is in breach of the terms of this Agreement, the other Party may give the Party in breach written notice of the breach and a reasonable period in which to remedy the breach. If the Party receiving notification does not remedy the breach within the period specified in the notice, then the Party claiming there has been a breach may immediately terminate this Agreement.
- 13.3. Should a Party breach this Agreement in such a way that the breach is not capable of remedy, the other Party may immediately terminate this Agreement by giving written notice.

14. Further cooperation

The Parties will sign all documents and do all things necessary or desirable to give effect to this Agreement and will procure their officers, employees and agents to sign all documents and do all things necessary or desirable to give full effect to this Agreement.

15. Notices

- 15.1. Any notice or other communication to be given under this Agreement must be in writing and may be delivered by hand, pre-paid post, facsimile or e-mail transmission using the contact details set out in Schedule C of this Agreement.
- 15.2. Each Party may change the details of its Contact Person by notice, in writing, to the relevant Senior Representative set out in Schedule B.

16. Governing law

This Agreement is governed by and construed in accordance with the laws of Queensland and the Parties submit to the non-exclusive jurisdiction of the courts of Queensland.

17. Counterparts

- 17.1. This Agreement may be executed in two or more identical copy counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 17.2. In the event that any signature executing this Agreement or any part of this Agreement is delivered by facsimile transmission or by scanned e-mail delivery of a 'pdf' format data file or equivalent, that signature will create a valid and binding obligation of the Party executing (or on whose behalf the signature is executed) with the same force and effect as if the signature page were an original.
- 17.3. For execution under this Clause 17 to be valid, the entire Agreement upon execution by each Party must be delivered to the other Party.

18. Costs

Each Party will bear its own costs incurred in negotiating and settling the terms of this Agreement.

19. Audit of Confidential Information disclosure

Queensland Health will conduct targeted audits of Confidential Information disclosed under this Agreement at regularly defined intervals, which will be specified in an agreed operational policy or guidelines, as amended from time to time.

20. Clauses to survive termination

The following Clauses will survive termination or expiration of this Agreement:

- (a) Clause 1 – Definitions and interpretation;
- (b) Clause 6 - Legal obligations of Designated Persons, Queensland Health and HHSs in relation to privacy and confidentiality;
- (c) Clause 7 - Legal obligations of the Board in relation to privacy and confidentiality;
- (d) Clause 8 - Additional privacy and confidentiality obligations of Relevant Agencies and Relevant Officers;
- (e) Clause 9 - Privacy breaches;
- (f) Clause 10 – Resolution of disputes; and
- (g) Clause 16 - Governing law.

SCHEDULE A

PROCEDURES FOR CONFIDENTIAL INFORMATION DISCLOSURE

- (a) Requests for Confidential Information must be made in writing to the designated persons nominated in writing by Queensland Health or the HHS. Requests in writing for Confidential Information include requests made via the use of e-mail transmission,
- (b) In response to a written request from the Board for the purposes of this Agreement:
 - i) Designated Persons employed by HHSs may disclose Confidential Information to the Board;
 - ii) Designated Persons employed by Queensland Health may disclose Confidential Information to the Board.
- (c) If Confidential Information is to be disclosed in response to a written request, the Confidential Information must be disclosed to relevant Contact Persons listed in Schedule B, or other Relevant Officers as notified in writing to Queensland Health and/or an HHS.
- (d) All requests for Confidential Information resulting from Health Services received by a Prisoner are to be actioned in a mutually agreed timeframe, which the Parties may provide for in agreed operational policy or guidelines, as amended from time to time.
- (e) The details of Confidential Information that may be disclosed may vary. However, the Parties acknowledge that the following Information, as is relevant to the Board's request, may be disclosed under this Schedule A:
 - i) patient surname;
 - ii) patient first name;
 - iii) date of birth;
 - iv) address;
 - v) whether the person identifies as Aboriginal or Torres Strait Islander;
 - vi) sex;
 - vii) location;
 - viii) HHS name;
 - ix) treating service name;
 - x) whether patient is open or closed to a service;
 - xi) diagnosis, including diagnoses related to physical or mental health conditions;
 - xii) physical and/or psychiatric history;
 - xiii) date treatment commenced or period of time treatment was received;

- xiv) current mental state;
- xv) current physical health state;
- xvi) *Mental Health Act 2016* status;
- xvii) current care plan, including medication, frequency of contact with a health service and prognosis if relevant;
- xviii) identified issues relating to the person's engagement with treatment and care, such as compliance issues and willingness to engage with care plan;
- xix) anticipated discharge date/s, if known;
- xx) transition and discharge planning:
 - (A) whether care is to be transitioned to the community if released from prison, and if known, the name of the HHS, community care provider, including a Non-Government Organisation; and
 - (B) whether the Prisoner has been referred to the Prison Mental Health Service transition coordination program and details of the transition plan (if known); and
- xxi) any other issues or considerations relating to the Prisoner's treatment and care, as determined by the Designated Person as being relevant to the Board's request.

SCHEDULE B

CONTACT PERSON

FOR QUEENSLAND HEALTH AND HOSPITAL AND HEALTH SERVICES

Position: Director - Queensland Forensic Mental Health Service

Telephone: 07 3837 5820

E-mail: MNMH-Forensic@health.qld.gov.au

FOR PAROLE BOARD QUEENSLAND

Position: Director, Parole Board Queensland Secretariat

Telephone: 07 3565 7563

E-mail: Michelle.Moore@Correction.qld.gov.au

SENIOR REPRESENTATIVES

FOR QUEENSLAND HEALTH AND HOSPITAL AND HEALTH SERVICES

Position: Executive Director, Mental Health Alcohol and Other
Drugs Branch

Address for Service: Level 1, 15 Butterfield Street, Herston, Queensland,
4006

Telephone: 07 3328 9536

Facsimile: 07 3328 9619

E-mail: MHAODB-ED@health.qld.gov.au

FOR PAROLE BOARD QUEENSLAND

Position: President, Parole Board Queensland

Address for Service: Level 24, 50 Ann Street, Brisbane Qld 4001

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