

# Confidential Information Disclosure between Queensland Health and the Parole Board Queensland

## Operating Guidelines

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# Operating Guidelines

## 1 Background

These Operating Guidelines apply to the Agreement pursuant to section 151(1)(b) of the *Hospital and Health Boards Act 2011 (Qld)* (HHB Act) 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 (2020) (the Agreement). These Guidelines are intended to assist Queensland Health (QH), Hospital and Health Services (HHSs) and the Parole Board Queensland (the Board) in operationalising the disclosure of a patient's confidential information under the Agreement.

QH and the Board are committed to working in partnership to ensure that the purpose of the Agreement is upheld and that their powers are exercised reasonably. They recognise that although the focus of healthcare and parole are different, they share an interest in the rehabilitation of patients who are also prisoners (in prison or on parole in the community) while ensuring the safety of the community.

QH and the Board acknowledge the continued overrepresentation of Aboriginal and Torres Strait Islander peoples within the criminal justice system and share a joint commitment to culturally safe practices.

The Agreement acknowledges that the preference of QH and HHS's is for relevant confidential information to be disclosed with consent. It also supports the principle that prisoners may make informed decisions about disclosure of confidential information and are entitled to fair process (including in relation to when and how parole applications are dealt with). The need to share information is an ongoing aspect of health care provision requiring issues of consent to be considered at many points. Consent requires regular review to ensure that it is relevant to current circumstances.

The Agreement is prescribed under section 151(1)(b) of the HHB Act. The purpose of the Agreement and these Guidelines is to facilitate the disclosure of relevant confidential information held by QH to the Board to support the Board to fulfil its statutory functions. The Agreement allows QH to disclose relevant confidential information to the Board on the basis that disclosure is in the public interest.

The Agreement does not preclude the disclosure of confidential information, by either QH, HHSs or the Board, where the disclosure is required or permitted by law, for example under the HHB Act with appropriate approval to prevent serious risk to life, health or safety.

## 2 Key Terms

### 2.1 Confidentiality and right to privacy

Patient confidentiality in Queensland public sector health services is strictly regulated under the HHB Act. The HHB Act imposes a duty on 'designated persons' to not disclose, directly or indirectly, confidential information to another person unless the disclosure is required or permitted under the HHB Act (section 142).

A 'relevant person' is defined in the HHB Act and includes current and previous employees and officers of QH and HHSs (section 139A).

Additional confidentiality obligations also apply to relevant persons providing treatment and care under the *Mental Health Act 2016 (Qld)*.

It is an offence for a designated person to disclose confidential information unless one of the exceptions to the duty of confidentiality applies. The duty applies even if the person who could be identified from the disclosure of confidential information is deceased (section 142(3) HHB Act).

In addition to the duty of confidentiality owed by designated persons, QH and HHS staff must comply with the *Information Privacy Act 2009 (IP Act)* when collecting, storing, using and disclosing personal information (except to the extent that Part 7 of the HHB Act governs the disclosure of a patient's confidential information).

Information is provided to all patients of Health Services at the point of entry regarding their rights to confidentiality and privacy. Discussions about consent and the limitations to confidentiality and privacy should occur at multiple points within a patient's journey.

### 2.2 Confidential information

Confidential information is defined in section 139 of the HHB Act as *meaning information, acquired by a person in the person's capacity as a designated person, from which a person who is receiving or has received a public sector health service could be identified; or information accessed by a prescribed health professional under section 161C(2)*.

### 2.3 Informed consent

A person has given informed consent if they are considered to have capacity and have made a decision based on material and information relevant to the disclosure of their confidential information. A person is presumed to have capacity to make decisions until proved otherwise. If a person is able to make decisions with the

assistance of someone else, they are taken to have capacity. Consent may also be provided by a substitute decision maker with relevant authority, including a guardian appointed for health care. Processes for gaining informed consent are discussed further in section 7 of these Guidelines (Information disclosure framework).

## 2.4 Other defined terms

Certain terms in these Guidelines are defined in the Agreement and have the same meaning as in the Agreement (see clause 1.1 of the Agreement and section 12.1 of these Guidelines).

## 3 The Purpose

The Agreement allows the disclosure of relevant confidential information by QH to the Board to enable the Board to fulfil its statutory functions. The provision of quality health information to the Board will assist the Board's decision-making. Informed decision-making by the Board will support community safety and the reintegration of prisoners back into the community.

## 4 Out of Scope

The Agreement and these Guidelines do not apply to disclosure of information by any private health practitioner or privately delivered health service. Additionally, the Agreement and these Guidelines do not apply to the sharing of information between QH and Queensland Corrective Services (QCS), which may be facilitated under alternative mechanisms.

The Agreement does not permit designated persons to disclose certain types of information including, without limitation, any of the following:

- Confidential information that is not relevant to the purpose of the Agreement.
- Clinical opinions related to prospective risk attached to the person residing in the community under parole. The Agreement is intended to allow the disclosure of confidential information about a person's health. This may include information about health-related risks, for example, factual information about history of non-adherence with medication. Should the Board require a clinical opinion in relation to the risk attached to a person being granted parole, the Board may commission independent expert opinions.
- Information that has been collected as part of any of the registers that QH maintains for the purpose of meeting its obligations under the *Public Health Act 2005* (PH Act) including the Notifiable Conditions Register, will be governed by disclosure provisions in that Act. However, if that information has become known to a person in their capacity as a designated person, rather than through

involvement with a PH Act Register, for example a diagnosis has been made which forms the basis for treatment and care, then that confidential information may be disclosed under the Agreement.

- Information in the QH Monitoring of Dangerous Drugs Database or its successor.
- Root Cause Analysis (RCA) or Clinical Review reports or any associated documentation gathered or generated by RCA teams or Clinical Reviewers including Human Error and Patient Safety (HEAPS) reviews.
- Information that must not be disclosed under another law.

## 5 Collaborating Agencies

### 5.1 Queensland Health

Queensland Health is responsible for the management of the state's public health system, which comprises the department (including the Mental Health Alcohol and Other Drugs Branch (MHAODB) and the Office of Prisoner Health and Wellbeing (OPHW), Queensland Ambulance Service (QAS)), and 16 HHSs that deliver public sector health services in designated geographic areas.

The OPHW provides statewide leadership and is a coordination point for QH provided primary healthcare services for people in QCS custody. The MHAODB supports the statewide development, delivery and enhancement of safe, quality, evidence-based clinical and non-clinical services in the specialist areas of mental health and alcohol and other drugs treatment. It is also responsible, via the Office of the Chief Psychiatrist, for administering the *Mental Health Act 2016*.

Primary health care, specialised health care, and mental health services are provided to people, including prisoners in correctional centres and on parole, throughout Queensland by relevant HHSs.

The Prisoner Health Service provides primary health care services and specialised health care services to prisoners. Health care services delivered to prisoners in custody are comparable to community-based health services available to the wider community. The Prison Mental Health Service (PMHS) provides specialist mental health services to prisoners with a mental illness while they are in custody, supporting equivalent access to mental health care to that available in the community.

### 5.2 Parole Board Queensland

The Board is established under Chapter 5 Part 2 of the *Corrective Services Act 2006 (Qld)* (CS Act). The Board makes independent decisions about prisoners' release on parole. The purpose of parole is to reintegrate a prisoner into the community before the end of their prison sentence to reduce the risk of them reoffending. The Board's highest priority is the safety of the community.

The Board makes decisions about the amendment, suspension or cancellation of parole orders.

The President of the Board also makes decisions about whether a Restricted Prisoner Declaration should be made for each Restricted Prisoner. A Restricted Prisoner Declaration prevents a Restricted Prisoner from applying for parole while it is force.

The Board does not case manage prisoners once they are released into the community. Prisoners on parole are case managed by QCS.

In carrying out its functions, the Board considers information provided to it by a range of people and organisations, including the prisoner, QCS, Queensland Police Service (QPS), victims of crime, and community organisations. The Board requests information from agencies and other third parties, including confidential information from QH and HHSs.

## 6 Information Sharing

### 6.1 Who can disclose information?

#### Queensland Health staff

As discussed in section 2.1 above, the HHB Act authorises a designated person to disclose information in certain circumstances where an exception to the duty of confidentiality applies. A designated person is defined under section 139A and includes all health service employees and public service employees.

#### Parole Board Queensland members and staff

Any Board member or Secretariat staff member may disclose confidential information as authorised or required by law.

### 6.2 How and when can information be disclosed?

The Agreement and these Guidelines operate only in circumstances where a prisoner is, or has been within the previous six months, a patient of a public sector health service and has a current matter related to parole before the Board. However, there may be occasional requests outside of this group. The latter types of requests will be considered on a case-by-case basis by a designated person, with escalation to the QH or HHS contact person listed in Schedule B, if required.

Requests for confidential information by the Board must be made in writing (including via email) to a designated person. QH and HHSs will respond to requests for information during business hours. Designated persons are unable to respond to

requests after hours, on weekends or on public holidays. Receipt of requests will be acknowledged either the same day or on the next business day.

Confidential information may be disclosed when it is relevant to do so. A designated person responding to a request for information from the Board will determine what information is relevant in a patient's particular circumstances after considering information contained in the Board's request.

QH and HHSs will notify patients if their confidential information has been disclosed, however there may be times where QH and HHSs identify that there is a potential risk related to the prisoner receiving notification of either the disclosure of their confidential information, or the details contained in the disclosure to the Board. For these exceptional cases, there is an internal QH and HHS escalation pathway that will ensure these concerns are considered on a case-by-case basis and raised with the Board as appropriate.

## Requests for Confidential Information Disclosure

### Standard requests

Standard requests for confidential information relate to matters where the Board has a longer statutory timeframe in which they are required to make a decision. For example:

- standard applications for parole;
- where consideration is required as to whether to reinstate parole for a prisoner in custody following parole suspension;
- applications for exceptional circumstances (EC) parole; and
- where the President of the Board must consider whether to make a Restricted Prisoner Declaration

### Urgent requests

Urgent requests for confidential information relate to circumstances in which the Board is required to make a determination, usually within a condensed legislated timeframe. These requests include:

- situations where the Board has received an *Advice to Parole Board* report from QCS Community Corrections recommending the suspension of a prisoner's parole order and there is information that indicates the prisoner may have a health matter that could affect the Board's decision. Decisions about suspension applications must be made within two days.

## Timeframes

Timeframes for the disclosure of confidential information will vary according to the particular request. QH, HHSs and the Board acknowledge the benefit in the timely provision of information to the Board.

The Board will send a formal written request for information to a designated person in QH or an HHS who will facilitate the provision of relevant confidential information.

For standard requests, QH and HHSs will endeavour to provide the Board with information within **six weeks** of receiving a request. However, it is acknowledged that at times it may be beneficial and possible for the Board to receive this information sooner, for example in relation to applications for exceptional circumstances parole. For those matters, the Board may contact the designated person by phone to discuss the specific information that is required. Information **must not** be disclosed until a formal written request is received. The formal request should include information on the date and time of the Board meeting (if known), and any relevant information as to why the Board may require the information in a shorter timeframe.

For urgent requests, QH and HHSs will facilitate disclosure of confidential information as **soon as practicable**. The Board may contact the relevant designated person by phone to discuss the information required, prior to sending a formal written request, however confidential information **must not** be disclosed until the formal written request is received.

## 6.3 What information can be disclosed?

All requests by the Board under the Agreement will be assessed by QH and HHSs to determine whether the disclosure is authorised by law, and if so whether disclosure under the Agreement or under another exception to the duty of confidentiality in Part 7 of the HHB Act is more appropriate. The Agreement allows the disclosure of confidential information which is relevant information. Schedule A of the Agreement contains a non-exhaustive list of the types of confidential information that the Board may request, or that QH and HHSs may disclose. In assessing what confidential information will be relevant to a request for information from the Board a designated person should consider an individual's circumstances and any information included in the Board's request for information.

## 6.4 Decisions not to disclose confidential information

The parties acknowledge that designated persons have discretion as to whether or not they disclose confidential information. If a designated person decides not to disclose all or part of confidential information requested by the Board, the designated person should provide reasons in general terms for the decision.

If the matter is in dispute, an escalation pathway exists to escalate a dispute to senior operational officers, nominated in writing by the parties. See clause 10 of the Agreement and section 10 of these Guidelines.

## 7 Information Disclosure Framework

As outlined above, the HHB Act permits designated persons to disclose relevant confidential information in specified circumstances, while recognising a person's right to privacy.

This section provides guidance on available mechanisms for information disclosure by designated persons in QH and HHSs. Decisions about the mechanism used to disclose information are made on a case-by-case basis, with consent the preferred authority for disclosure.

|                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>Disclosure with consent</b></p> <p>Disclosing relevant confidential information with the person's consent is always preferable.</p>                                                                                                                                                                                                                                                                                                 |
| <p>HHB Act section 144</p>                                                                                                                                                                                                                                                                                                                                                                                                                |
|                                                                                                                                                                                                                                                                                                                                                          |
| <p><b>Disclosure under the Agreement</b></p> <p>Designated persons may disclose confidential information without the person's consent.</p> <p>In these instances, designated persons in QH and HHSs may disclose confidential information to the Board under the Agreement.</p> <p>The HHB Act allows a designated person to exercise discretion in their decision as to whether or not to share a person's confidential information.</p> |
| <p>HHB Act section 151(1)(b)</p>                                                                                                                                                                                                                                                                                                                                                                                                          |
| <p><b>Other means of disclosing information outside the scope of the Agreement</b></p> <p>The provisions listed below may apply in circumstances where designated persons disclose information for a purpose outside of the Agreement.</p> <p>Local advice from a manager or legal service in QH or an HHS (as applicable) may be sought before relying on these provisions to disclose information.</p>                                  |
| <p><b>Disclosure required or permitted by law (e.g. a court order/legislation)</b></p> <p>HHB Act section 143</p>                                                                                                                                                                                                                                                                                                                         |
| <p><b>Disclosure to lessen or prevent serious risk to life, health or safety of a person or public safety</b></p> <p>HHB Act section 147</p>                                                                                                                                                                                                                                                                                              |

## 7.1 Queensland Health framework

Requests for confidential information by the Board are made in writing. Requests relating to mental health patients are sent to the Statewide Program Coordinator, Mental Health Liaison (Parole Board Queensland). All other health information requests are sent to the Release of Information Service for the relevant HHSs (see Appendix 13.3).

### Preferred mechanism: disclosure with informed consent

As noted above, it is the preferred position of QH and HHSs that disclosure of confidential information to the Board be with the informed consent of the person, pursuant to section 144 of the HHB Act. Where consent is provided information can be disclosed to the Board without reliance on the Agreement. A person who has consented to disclosure of their confidential information retains the right to withdraw their consent, verbally or in writing.

In seeking informed consent, QH clinicians will:

- Confirm the person has capacity has capacity to give informed consent, including reviewing whether the person has a substitute decision maker appointed for health matters;
- use language that is clear and concise to ensure understanding;
- offer the use of appropriate cultural support including interpreters and or liaison officers/health workers;
- explain the request for the disclosure including the specific information requested;
- inform the person that the Board may share any information disclosed with QCS Community Corrections and others;
- inform the person that consent can be withdrawn, however be clear regarding the timeframe in which the report will be submitted to the Board;
- close the discussion by clarifying that there is shared understanding of what confidential information has been agreed;
- ensure that any consent is given voluntarily; and
- document information on the above steps in the patient's clinical record and use the *Consent to Disclose Information to the Parole Board Queensland* form (see Appendix 13.2).

If the patient lacks the capacity to consent, the clinician should:

- seek consent from a substitute decision maker in the following order: a Tribunal-appointed Guardian, Enduring Power of Attorney or Statutory Health Attorney (see Appendix 13.6 - *Information on Substitute Decision Makers*);

- make ongoing attempts to seek consent if time allows, particularly when the person's health improves;
- where appropriate, disclose information without consent under the Agreement or as otherwise permitted by law;
- for involuntary mental health patients this information should also be provided to any nominated support persons.

In the absence of consent, the Agreement allows designated persons to disclose relevant confidential information to the Board including the types of confidential information listed in Schedule A of the Agreement (see Appendix 13.1). The list in Schedule A is not exhaustive. The designated person must assess the type of confidential information that is relevant to the request.

When a person does not have capacity to consent or has capacity but does not provide consent, this information must be communicated to the Board. The Board will assess whether to request disclosure in the absence of consent under the Agreement.

Queensland Health, the HHSs and the Board acknowledge that disclosures made under the Agreement are made with a balanced assessment of competing interests. The Agreement supports disclosure on the basis that disclosure to the Board has been determined by the QH Chief Executive to be in the public interest and can occur in a manner compatible with the *Human Rights Act 2019*.

## Queensland Health consent form

A QH *Consent to Disclose Information to the Parole Board Queensland* form is available for use by health services (Appendix 13.2), however, HHSs may choose to use their own form, provided that it contains all key fields relating to patient's rights in relation to providing informed consent.

The *Consent to Disclose Information to the Parole Board Queensland* form enables a clinician to record their discussion with the patient about:

- the confidential information which may be disclosed to the Board; and
- specified purposes and any potential consequences of either disclosing or not disclosing the information.

If a different form is used, the clinician must ensure the same type of information is recorded in that form. In all instances, the completed form must be retained in the person's clinical record.

If the patient declines to sign a consent form, the details of a conversation between the patient and the designated person outlining the consent process and the person's decision must be documented in the clinical record.

Consent is limited to time and context. Although consent forms need not be a 'one off', signed consent forms do not operate in perpetuity. Consent lasts for as long as is reasonable in the circumstances. For that reason, consent forms should be reviewed regularly. Designated persons should consider if there are any changes that may affect the consent following the initial signing, how long a period has passed and the specificity and sensitivity of the information etc.

## Disclosure under the Agreement

Designated persons may disclose confidential information to the Board under the Agreement.

Disclosure under the Agreement may occur in a number of circumstances including:

- when it is not possible to gain consent from a patient because of time constraints (for example, an urgent request), the person has not been contactable, or the person is unable to provide informed consent and a substitute decision maker is not available;
- when a patient is no longer a current recipient of a public sector health service and has not been contactable;
- when consent has been declined, the Board has been advised of the decision and the Board confirms that despite the person's informed choice they still seek disclosure of the confidential information.

## Confidential information sharing outside the scope of the Agreement

The HHB Act provides a number of exceptions to the duty of confidentiality owed by designated persons. These include:

- disclosure required or permitted by an Act or law: section 143(1);
- disclosure to lessen or prevent serious risk to life, health or safety of a person or public safety: section 147.

Section 147 of the HHB Act authorises a designated person or prescribed health practitioner (as defined in section 139) to disclose confidential information if the relevant Chief Executive believes, on reasonable grounds, the disclosure is necessary to assist in lessening or preventing a serious risk to the life, health or safety of a person, including the person to whom the confidential information relates; or public safety; and the relevant Chief Executive has, in writing, authorised the disclosure.

## 7.2 Parole Board Queensland framework

### Mechanism

The release of confidential information by the Board to QH without the consent of the person is authorised under section 341 of the CS Act, which provides, in section 341(3)(a), that the informed person may disclose confidential information for the purposes of the Act.

## 8 Documentation and Recordkeeping

QH, HHSs and the Board must satisfy all relevant legal requirements including those in the IP Act and applicable privacy principles, when collecting, storing, using and disclosing personal information.

### 8.1 Obligations of the Board when receiving information

Under the Agreement, the Board may disclose confidential information to relevant third parties for purposes relating to the Board's role. For example, the Board may disclose confidential information to:

- QCS Community Corrections officers.
- Private health practitioners, to gain their professional opinions.

Relevant Officers are not permitted to transfer the confidential information outside of Australia without the prior written consent of an authorised officer in QH or the HHS that disclosed the confidential information.

### 8.2 Obligations of Queensland Health when receiving information

Correspondence sent to and received from the Board in relation to a request for confidential information must be filed in accordance with the relevant QH or HHS record management policy.

For requests related to mental health information correspondence sent to, and received by the Board, must be recorded in a patient's Consumer Integrated Mental Health and Addictions Application (CIMHA) record.

## 9 Privacy Breaches

There is a risk of privacy breaches associated with relevant officers and designated persons handling confidential information in the context of the Agreement.

Each relevant party must:

- notify relevant contact persons for resolution immediately upon becoming aware of a privacy breach in relation to this Agreement;
  - for Queensland Mental Health Alcohol and other Drugs Services: Director, Queensland Forensic Mental Health Service.
  - for all other Queensland Health: Director, Office for Prisoner Health and Wellbeing.
    - These QH representatives will liaise with the HHS where the privacy breach is alleged to have occurred to assist with the resolution of the breach.
  - for Parole Board Queensland: Director, Parole Board Queensland Secretariat.
- co-operate with each other to ensure privacy breaches are responded to appropriately and in accordance with the relevant party's privacy breach management process, including reporting breaches; and
- comply with the IP Act when responding to a privacy breach.

## 10 Resolution of Disputes

Where there is a conflict or dispute over any matter relating to the Agreement, the Board, QH and the relevant HHS will seek to resolve the issue at a local level in accordance with clause 10 of the Agreement. If the matter cannot be resolved within the relevant HHS, then it may be escalated. A dispute under the Agreement will have arisen when a party gives notice in writing to that effect to the relevant director specified in the Agreement (see information relating to Contact Persons in clause 10 of the Agreement, and Schedule B of the Agreement extracted at section 13.3 of these Guidelines). Initially negotiation will occur between the:

- Director, Queensland Forensic Mental Health Service (for disputes relating to mental health) or the Director, Office for Prisoner Health and Wellbeing (for disputes relating to all other health conditions); and
- Director, Parole Board Queensland Secretariat.

Any dispute not resolved will be referred to the Senior Representatives for resolution:

- Executive Director, Mental Health Alcohol and Other Drugs Branch; and
- President, Parole Board Queensland.

Information relating to Senior Representatives are in clause 10 of the Agreement, and Schedule B of the Agreement extracted at section 13.4 of these Guidelines. If the matter is not resolved by the Senior Representatives, the matter will be referred to the Deputy Director-General, Clinical Excellence Queensland, QH, and the President of the Board, for final resolution.

It is recognised that statewide oversight of disputes is beneficial to ensuring a consistent approach to the disclosure of confidential information.

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

## 11 Audits

### **Audit of Confidential Information disclosure**

The Agreement requires that QH conduct targeted audits of confidential information disclosed under the Agreement at regularly defined intervals. It is the responsibility of individual HHSs disclosing information under the Agreement to establish and administer an audit program to ensure that disclosure of confidential information to the Board is consistent with the Agreement, to comply with clause 19 of the Agreement. Any breaches of privacy identified through audit must be reported in accordance with clause 9.2 of the Agreement.

## 12 Resources and Further Information

### 12.1 Definitions and interpretation

**Agreement** means the Information Sharing Agreement 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)*.

**Chief Executive** means the Director-General of Queensland Health.

**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.

**Culturally Safe Practices** are the delivery of responsive accessible services that are free of racism by recognising power differentials, reflecting on the application of skills, behaviours, attitudes and knowledge and ensuring cultural needs are considered in decision-making processes.

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

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

**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 to 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 which administers the *Corrective Services Act 2006*.

**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 in the course of performing its statutory obligations and for the purposes of the Agreement, and means personnel of Community Corrections officers 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 and clinicians commissioned by the Board to provide expert opinions.

**Restricted Prisoner** is a person who has been sentenced to life imprisonment for a conviction of murder where the person killed was a child, or has been convicted of more than one murder, including in separate proceedings.

**Restricted Prisoner Declaration** is a declaration which prevents a Restricted Prisoner from applying for parole during the period for which the declaration remains in place.

**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.

## 12.2 Relevant legislation

1. *Hospital and Health Boards Act 2011*

2. *Corrective Services Act 2006*
3. *Mental Health Act 2016*
4. *Human Rights Act 2019*
5. *Information Privacy Act 2009*

## 12.3 References

1. Queensland Government. (2020). 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 (2020).
2. Parole Board Queensland. (2019). Parole Board Queensland Parole Manual.
3. Queensland Health, Clinical Excellence Division (2017), Information Sharing Between Mental Health Staff, Consumers, Family, Carers, Nominated Persons and Others.

# 13 Appendices

## 13.1 Schedule A of the Agreement

### 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.

## 13.2 Queensland Health consent form

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                       |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  <p><b>Queensland Government</b></p> <p style="text-align: center;"><b>CONSENT TO DISCLOSE<br/>CONFIDENTIAL<br/>INFORMATION TO PAROLE<br/>BOARD QUEENSLAND</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | <p>(Affix patient identification label here)</p> <p>URN:</p> <p>Family name:</p> <p>Given name(s):</p> <p>Address:</p> <p>Date of birth: <span style="float: right;">Sex: <input type="checkbox"/> M <input type="checkbox"/> F <input type="checkbox"/> I</span></p> |
| <p><b>Purpose</b></p> <p><input type="radio"/> This form may be used to obtain patient consent to disclose confidential information* to the Parole Board Queensland.</p> <p><input type="radio"/> Capacity to consent must be assessed by a health practitioner. If the patient does not have capacity to provide consent, substitute decision makers should be considered**.</p> <p><input type="radio"/> Consent provided on this form is not enduring and should be reviewed regularly</p> <p><input type="radio"/> A health practitioner must discuss with the patient the specific confidential information which will be disclosed to the Parole Board Queensland.</p> <p><small>*Confidential information means information acquired by a person in the person's capacity as a designated person, from which a person who is receiving or has received a public sector health service could be identified (Part 7, Hospital and Health Boards Act 2011)</small></p> <p><small>** If consent is unable to be provided, information may be shared as detailed in the Confidential Information Disclosure Agreement between Queensland Health and Parole Board Queensland. Alternative information disclosure processes may be considered if relevant provisions of Part 7 of the Hospital and Health Boards Act 2011 apply.</small></p> |                                                                                                                                                                                                                                                                       |
| <p><b>Is an Interpreter Required?</b></p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If yes, the interpreter has:</p> <p><input type="checkbox"/> provided a sight translation of this informed consent form in person</p> <p><input type="checkbox"/> translated the informed consent form over the telephone.</p> <p>Name of the interpreter: <span style="float: right;">Interpreter code: <span style="float: right;">Language:</span></span></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                       |
| <p><b>Patient declaration</b></p> <ul style="list-style-type: none"> <li>• I consent to relevant confidential information being disclosed by my treating health service to the Parole Board Queensland.</li> <li>• I understand that this information will be used to inform decisions by the Parole Board Queensland.</li> <li>• A health practitioner has discussed with me the specific information that will be disclosed to the Parole Board Queensland.</li> <li>• I have been offered culturally appropriate support in providing my consent.</li> <li>• I understand that I have the right to withdraw my consent at any time and that I am responsible for communicating (either verbally or in writing) any variation of my consent to staff of the treating health service.</li> </ul> <p>Name of patient: .....Signature of patient: .....</p> <p>Date signed: ..... / ..... / .....</p>                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                       |
| <p><b>Patients who lack capacity to consent</b></p> <p>Name of Substitute Decision Maker: .....</p> <p>Signature of Substitute Decision Maker: ..... Date signed: ..... / ..... / .....</p> <p>Category of decision-making authority (tick one):</p> <p><input type="checkbox"/> Appointed Guardian for personal matters <input type="checkbox"/> Public Guardian</p> <p>Please provide copies of any relevant paperwork (e.g. AHD, Enduring Power of Attorney) pertaining to substitute decision makers.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                       |
| <p><b>Health practitioner's statement</b></p> <p>I have explained this consent form to the patient and I am of the opinion that the patient/substitute decision maker has understood the information.</p> <p>Name: ..... Designation: .....</p> <p>Signature: ..... Date signed: ..... / ..... / .....</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                       |
| <p><b>Examples of confidential information that may be disclosed</b></p> <p>If consent is provided to disclosure of information, the following types of confidential information may be disclosed:</p> <ul style="list-style-type: none"> <li>• personal and demographic details;</li> <li>• treatment &amp; Care;             <ul style="list-style-type: none"> <li>○ history;</li> <li>○ diagnostic and treatment information;</li> <li>○ transition and discharge planning.</li> </ul> </li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                       |

| <b>Withdrawal of consent</b>                                                                                   |                                    |
|----------------------------------------------------------------------------------------------------------------|------------------------------------|
| Consent has been withdrawn on ..... / ..... / .....                                                            |                                    |
| <ul style="list-style-type: none"><li>• Name of patient: .....</li><li>• Signature of patient: .....</li></ul> |                                    |
| Health Practitioner's Name: .....                                                                              | Designation: .....                 |
| Signature: .....                                                                                               | Date signed: ..... / ..... / ..... |

## 13.3 Contact details for QH or HHS designated persons

- Mental health requests for information – Statewide Program Coordinator, Mental Health Liaison (Parole Board Queensland)
  - Email: [paroleboardliaison@health.qld.gov.au](mailto:paroleboardliaison@health.qld.gov.au)
  - Telephone: (07) 3837 5820
  - Post: QFMHS, GPO Box 8161, Brisbane 4000
- Non-mental health requests for information

| Prisoner Location                                                                                                                                                                                                                                                                        | Release of Information Service Contact Information                                             |                                                                                                                          |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------|
| Arthur Gorrie Correctional Centre<br>Borallon Training & Correctional Centre<br>Brisbane Correctional Centre<br>Brisbane Women's Correctional Centre<br>Brisbane Youth Detention Centre<br>Helena Jones Centre<br>Southern Queensland Correctional Centre<br>Wolston Correctional Centre | Release of Information<br>Prison Health Services<br>Locked Bag 500<br>Archerfield, QLD 4108    | <a href="mailto:MD09-WestMoreton-HSD@health.qld.gov.au">MD09-WestMoreton-HSD@health.qld.gov.au</a><br>(07) 3271 8640     |
| Capricornia Correctional Centre                                                                                                                                                                                                                                                          | Release of Information Unit<br>Rockhampton Hospital<br>Canning Street<br>Rockhampton, QLD 4700 | <a href="mailto:CQHHS.ROI.PRIVACY@health.qld.gov.au">CQHHS.ROI.PRIVACY@health.qld.gov.au</a><br>(07) 4920 6208           |
| Lotus Glen Correctional Centre                                                                                                                                                                                                                                                           | Release of Information Unit<br>Cairns Hospital<br>PO Box 902<br>Cairns, QLD 4870               | <a href="mailto:CHHHS-RTI-Privacy@health.qld.gov.au">CHHHS-RTI-Privacy@health.qld.gov.au</a><br>(07) 4226 8680           |
| Maryborough Correctional Centre                                                                                                                                                                                                                                                          | Legal Services Unit<br>Harvey Bay Hospital<br>PO Box 592<br>Pialba, QLD 4655                   | <a href="mailto:WBHHS-LegalServices@health.qld.gov.au">WBHHS-LegalServices@health.qld.gov.au</a><br>(07) 4325 6857       |
| Numinbah Correctional Centre                                                                                                                                                                                                                                                             | Information Access Unit<br>Gold Coast Hospital<br>1 Hospital Boulevard<br>Southport, QLD 4215  | <a href="mailto:GCHHSInformationAccess@health.qld.gov.au">GCHHSInformationAccess@health.qld.gov.au</a><br>(07) 5687 3849 |
| Palen Creek Correctional Centre                                                                                                                                                                                                                                                          | Information Access Unit<br>Logan Hospital<br>PO Box 6031<br>Yatala, QLD 4207                   | <a href="mailto:IAU.LBC@health.qld.gov.au">IAU.LBC@health.qld.gov.au</a><br>(07) 3299 8979                               |
| Townsville Correctional Centre<br>Townsville Women's Correctional Centre<br>Cleveland Youth Detention Centre                                                                                                                                                                             | Clinical Information Service<br>Townsville Hospital<br>PO Box 670<br>Townsville, QLD 4810      | <a href="mailto:TSV-TTH-ROI@health.qld.gov.au">TSV-TTH-ROI@health.qld.gov.au</a><br>(07) 4433 1319                       |
| Woodford Correctional Centre                                                                                                                                                                                                                                                             | Information Access Unit<br>Caboolture Hospital<br>Locked Mail Bag 3<br>Caboolture, QLD 4510    | <a href="mailto:Cab-HIS-IAU@health.qld.gov.au">Cab-HIS-IAU@health.qld.gov.au</a><br>(07) 5316 3943                       |

## 13.4 Schedule B contact persons

### Queensland Health

- Director, Queensland Forensic Mental Health Service
  - Email: [MNMH-Forensic@health.qld.gov.au](mailto:MNMH-Forensic@health.qld.gov.au)
  - Telephone: (07) 3837 5820
  - Post: QFMHS, GPO Box 8161, Brisbane QLD 4000

### Parole Board Queensland

- Director, Parole Board Queensland Secretariat
  - Email: [ParoleBoardQLD@pbq.qld.gov.au](mailto:ParoleBoardQLD@pbq.qld.gov.au)
  - Telephone: (07) 3565 7567
  - Post: GPO Box 1054, Brisbane Queensland 4001

## 13.5 Schedule B senior representatives

### Queensland Health

- Executive Director, Mental Health Alcohol and Other Drugs Branch
  - Email: [MHAODB-ED@health.qld.gov.au](mailto:MHAODB-ED@health.qld.gov.au)
  - Telephone: (07) 3328 9536
  - Post: GPO Box 48, Brisbane QLD 4001

### Parole Board Queensland

- President, Parole Board Queensland
  - Email: [ParoleBoardQLD@pbq.qld.gov.au](mailto:ParoleBoardQLD@pbq.qld.gov.au)
  - Telephone: (07) 3565 7567
  - Post: GPO Box 1054, Brisbane Queensland 4001

## 13.6 Substitute decision makers

Consent may be obtained from a substitute decision maker in the following order: 1. tribunal-appointed guardian; 2. enduring power of attorney; or 3. statutory health attorney (s66 *Guardianship and Administration Act 2000 (Qld)*).

The *Powers of Attorney Act 1998 (Qld)* (POA Act) authorises a statutory health attorney for an adult's health matter to make any decision about the health matter that the adult could lawfully make if the adult had capacity for the matter (see s62 POA Act below).

The POA Act provides that an adult's statutory health attorney is the first, in listed order, of specified people who is readily available and culturally appropriate to exercise power for the matter (information sharing if relevant to a health matter) (see s63 POA Act below).

### Section 62 - Statutory health attorney

- (1) This Act authorises a statutory health attorney for an adult's health matter to make any decision about the health matter that the adult could lawfully make if the adult had capacity for the matter.

*Note—*

Note this does not include a special health matter.

- (2) A statutory health attorney's power for a health matter is exercisable during any or every period the adult has impaired capacity for the matter.

*Note—*

However, the priority of an attorney's power is decided by the [Guardianship and Administration Act 2000, section 66](#) (Adult with impaired capacity—order of priority in dealing with health matter). See, in particular, section 66(5).

### Section 63 - Who is the statutory health attorney

- (1) For a health matter, an adult's **statutory health attorney** is the first, in listed order, of the following people who is readily available and culturally appropriate to exercise power for the matter—

- a. a person who is 18 years or more and who is a spouse of the adult if the relationship between the adult and the spouse is close and continuing;

*Note—*

See the [Acts Interpretation Act 1954, schedule 1](#) for the definition *spouse*.

- b. a person who is 18 years or more and who has the care of the adult and is not—
  - (i) a paid carer for the adult; or
  - (ii) a health provider for the adult; or
  - (iii) a service provider for a residential service where the adult is a resident;

- c. a person who is 18 years or more and who is a close friend or relation of the adult and is not—
  - (i) a paid carer for the adult; or
  - (ii) a health provider for the adult; or
  - (iii) a service provider for a residential service where the adult is a resident.

*Note—*

If there is a disagreement about which of 2 or more eligible people should be the statutory health attorney or how the power should be exercised, see the [Guardianship and Administration Act 2000, section 42](#) (Disagreement about health matter).

- (2) If no-one listed in subsection (1) is readily available and culturally appropriate to exercise power for a matter, the public guardian is the adult's **statutory health attorney** for the matter.
- (3) Without limiting who is a **person who has the care of the adult**, for this section, a person has the care of an adult if the person—
  - a. provides domestic services and support to the adult; or
  - b. arranges for the adult to be provided with domestic services and support.
- (4) If an adult resides in an institution (for example, a hospital, nursing home, group home, boarding-house or hostel) at which the adult is cared for by another person, the adult—
  - a. is not, merely because of this fact, to be regarded as being in the care of the other person; and
  - b. remains in the care of the person in whose care the adult was immediately before residing in the institution.
- (5) For subsection (1)(c), a **relation** of the adult is a person, other than a person mentioned in subsection (1)(a) or (b)—
  - a. who has a close personal relationship with the adult and a personal interest in the adult's welfare; and
  - b. who—
    - (i) is related to the adult by blood, spousal relationship, adoption or a foster relationship; or
    - (ii) for an Aboriginal person—is a person who, under Aboriginal tradition, is regarded as a relative of the adult; or
    - (iii) for a Torres Strait Islander—is a person who, under Island custom, is regarded as a relative of the adult.