

Information Sharing

Between mental health staff, consumers, family, carers, nominated support persons and others



Sharing relevant information

For most people with a mental illness, the meaningful engagement of people who play a significant part in their lives is an important part of their recovery. It is fundamental to a consumer centred approach that information is shared as often as possible between clinicians, consumers and those involved in helping a person's recovery.

It is also imperative to share relevant information to protect the health, safety and well-being of consumers, their families, carers, support people and other people who may interact with the consumer.

In keeping with best practice, mental health clinicians should ensure that everyone identified as important to the consumer is appropriately engaged and involved in the consumer's treatment and care. Sharing relevant information may help enhance relationships between the consumer and their carer/family. It may also assist in reducing stress experienced by the carer/family member and be beneficial to their own mental and physical health. Mental health services will also receive and consider information from anyone who has an interest in a consumer's health and wellbeing.

This document provides information on the legislative framework within which consumer information can and should be shared, and how it can be applied in clinical practice.

Queensland legislation enables information sharing

Queensland legislation provides a flexible legislative framework which supports Queensland clinicians in sharing information in certain situations, while recognising the consumer's right to confidentiality and privacy. As far as possible, the consumer's preferences regarding disclosure of information should be respected.

The *Hospital and Health Boards Act 2011* (HHB Act) allows for information sharing in a range of circumstances, from those in which clinicians are required by law to disclose information to protect the health, safety and well-being of consumers, carers or the community, to those in which clinical judgement is required in deciding what information should be shared and with whom. The HHB Act provides for a designated person to share relevant confidential information where it is required or permitted under the HHB Act. The definition of designated person (part 7, section 139 of the HHB Act) is provided in Appendix 1.

The *Mental Health Act 2016* (MHA 2016) also allows for designated persons to share confidential information when carrying out their responsibilities under the MHA 2016. Chapters 9 and 17 of the MHA 2016 outline key provisions for sharing confidential information and enable confidential information to be shared with and by families, carers, independent patient rights advisers (rights advisers)¹ and other support persons.

¹ S293 of the MHA 2016 provides that a Chief Executive of a Hospital and Health Service (HHS) must appoint one or more rights advisers to advise patients and their nominated support persons, family, carers and other support persons of their rights under the MHA 2016. A rights adviser may be either an employee of an entity that a HHS has engaged to provide services (such as a non-government organisation) or an employee of a HHS but not employed in the HHS's mental health service. For more information see the [fact sheet for independent patient rights advisers](#).

Other legislation allows for information sharing in a range of circumstances to protect the health, safety and wellbeing of consumers, family, carers and the community, including:

- *Information Privacy Act 2009* (IP Act)
- *Child Protection Act 1999* (CP Act)
- *Domestic and Family Violence Protection Act 2012* (DFVP Act)
- *Weapons Act 1990* (Weapons Act)
- *Guardianship and Administration Act 2000* (GA Act)
- *Powers of Attorney Act 1998* (PA Act).

Sharing information with consent

The need to share information is an ongoing part of treatment and requires issues of consent to be considered at many points throughout a consumer's treatment and care.

The information to be shared will vary depending on the circumstances such as the context for sharing, the particular issues or needs being addressed and the consumer's relationship or involvement with the person who is to receive the information. The need for information sharing and its relationship to supporting recovery from mental illness should be regularly discussed with the consumer.

If the consumer is capable of understanding and consenting to information sharing, their consent to appropriate and relevant information sharing should be sought, taking into account the relevant legislation and information sharing provisions applicable to the situation.

In seeking consent, it is important for clinicians, other mental health staff and rights advisers to:

- explain the purpose and benefits of sharing specific information
- communicate in a way the consumer will understand, using clear and concise language
- assure the consumer they can withdraw their consent at any time
- close the discussion by clarifying the shared understanding of what has been agreed
- document the agreed outcome of the discussion in the consumer's clinical record.

Where a consumer provides general consent to share information with those involved in their treatment and care, consent does not need to be sought before every instance of information sharing.

If the consumer lacks the capacity to consent, the clinician should as far as practicable:

- consider whether a relevant advance health directive has been made
- where possible, identify and seek consent from their appointed guardian or attorney
- make ongoing attempts to seek consent, particularly when the consumer's mental state improves
- where appropriate, share information without consent as permissible by law.

If the consumer is a child

If the consumer is a child, the clinician must seek the consent of their parent or guardian unless the clinician believes the child is mentally and emotionally mature enough to understand and consent to the information sharing. A clinician should apply the Gillick Test² to determine if a child is capable of making their own decision about information sharing.

The Gillick Test refers to the common law as it applies to a young person's ability to consent to medical treatment. Consent is based on the capacity of the young person to understand the nature and extent of treatment, the side effects of treatment and the ability of the young person to communicate their decision.

Sharing in the best interest of the child

In circumstances where a child is assessed as capable of making their own decision about information sharing, their wishes should be followed unless the child refuses to consent to a disclosure that, in the opinion of the treating clinician, is in the best interests of the child. A clinician should always attempt to obtain consent before using their discretion to disclose information considered to be in the child's best interests.

Sharing information without consent

Mandatory information sharing or information permitted to be disclosed by law

In certain circumstances, it is mandatory to report particular information in relation to a consumer, or discretion may be exercised in deciding whether to disclose particular information where permitted by law. In providing this information, the clinician is not deemed to have breached the duty of confidentiality and is protected under the relevant legislation.

Information disclosed or shared under a legislative authority should always be documented in the consumer's health record.

Examples:

- Under the CP Act, doctors and registered nurses are mandated to report to the Department of Communities, Child Safety and Disability Services when they form a reasonable suspicion that a child has suffered, is suffering, or is at unacceptable risk of suffering significant harm caused by physical or sexual abuse, and may not have a parent willing and able to protect the child from the harm.
- All clinicians have a duty of care to report any reasonable suspicion or evidence of any child abuse or neglect to the Department of Communities, Child Safety and Disability Services, and must notify the Hospital and Health Service Child Protection Liaison Officer or Child Protection Advisor of suspicion or evidence of any form of child abuse or neglect.

² The Gillick Test was established by the English House of Lords decision in *Gillick v West Norfolk and Wisbech Area Health Authority* (1986) AC 112, which was approved by the High Court of Australia in *Secretary, Department of Health and Community Services v JWB and SMB* (1992) 175 CLR 218. In *Gillick*, it was held that the authority of a parent decreases as their child becomes increasingly competent. *Gillick* prescribes that the parental right to determine their child's treatment terminates once a child under the age of 16 is capable of fully understanding the medical treatment proposed. More information on the Gillick Test can be found in Part 3 of the QH Guide to Informed Decision-making in Health Care.

- Under the Weapons Act, certain clinicians³ may inform the Queensland Police Service of a consumer's unsuitability to possess a weapon e.g. a consumer with a history of attempted suicide, aggression and/or violence may be unsuitable to have a firearm because it poses a risk to their health and safety or the safety of others.
- Under the GA Act, health providers⁴ are to give all necessary information to a guardian or attorney of an adult who has power for health matters to enable the guardian or attorney to make an informed decision regarding the adult's treatment and care.
- Under the DFVP Act, a clinician or other staff member should share information with prescribed entities, specialist domestic and family violence services and support service providers where there is an assessed risk of domestic and family violence. For more information on the DFVP Act, see page 6 and Appendix 2.

Circumstantial information sharing without consent under the HHB Act

In some circumstances, where permissible by law, clinicians must consider sharing information without consumer consent. This decision should be made on a case-by-case basis based on the clinician's professional judgement.

The HHB Act identifies the exceptions to the duty of confidentiality under which information may be shared without the consent of the consumer. These exceptions apply when the consumer, or a person empowered to act on their behalf, does not consent or cannot consent (e.g. the person lacks capacity) to information being shared, or it is not practicable to obtain consent.

The duty of confidentiality for health professionals refers to upholding the consumer's legal right to privacy of his/her personal information. A decision to share confidential information under any of the following conditions must be made in accordance with recognised standards of the relevant health profession and documented in the consumer's clinical record.

1. Sharing information that is necessary for the consumer's treatment and care

Relevant information about the consumer's assessment and treatment may be shared with a key person involved in the consumer's care and recovery from mental illness.

Example:

- A clinician or other staff member may share information about a consumer's mental health needs and treatment with their general practitioner or other health service provider e.g. community health service worker who has an ongoing role in the consumer's treatment and care.

³ Part 7, s151 (4) of the Weapons Act 1990 provides for professional carers to disclose certain information. Professional carers include: a doctor; a person registered under the Health Practitioner Regulation National Law to practise psychology (other than a student); a person registered under the Health Practitioner Regulation National Law to practise nursing and midwifery (other than a student) and a person prescribed under a regulation who provides health services.

⁴ A health provider, as per schedule 4 of the GA Act, means a person who provides health care, or special health care, in the practice of a profession or the ordinary course of business.

2. Sharing information with people who have a “sufficient interest” in the consumer’s health and welfare

Information about a consumer’s assessment and/or treatment may be shared with anyone who, in the treating clinician’s opinion, has sufficient personal or professional interest in the health and welfare of the consumer. If the consumer has made it clear that they do not want their information to be shared with a particular person, this must be respected unless another exception to the duty of confidentiality applies.

Examples:

- If the consumer lives with a family member who provides assistance with medication or monitoring their mental state, regular communication and sharing of information about the consumer’s treatment plan and their mental health condition can occur.
- Relevant information about a consumer’s mental health needs might be provided to a relative or close friend or another person who has ongoing contact with the consumer e.g. a non-government organisation/worker providing support and assistance to the consumer.

3. Sharing information to prevent serious risk to life, health or safety

All Queensland Health staff have a duty of care to disclose any relevant information about a consumer to avert a serious risk to the life, health or safety of the consumer or another person or to public safety.

Under the HHB Act, disclosure in these situations can be made by a designated person with the written authority of the Hospital and Health Service Chief Executive or delegate. Clinicians should be aware of which positions have this delegation within their local service.

Note that the Memorandum of Understanding between Queensland Health and the Queensland Police Service for Mental Health Collaboration allows for the sharing of relevant confidential information to prevent serious risk to life, health or safety. For more information, see section 5 below.

Example:

- If a consumer expresses an intention to harm themselves or another person, or gives cause for a clinician to believe they may harm another person, the clinician should assess the level of risk and immediately consult with their team leader or senior manager about the appropriate action to be undertaken. The course of action carried out should be commensurate to the level of assessed risk of the situation and the relevant legislative authority under which the circumstance falls.

4. Sharing information for the protection, safety or wellbeing of a child

All Queensland Health staff have a duty of care to disclose information for the purpose of protecting the safety and wellbeing of a child.

Example:

- A clinician may provide information to a grandparent who shares the care of a child whose parent has a mental illness. The consumer’s mental health condition and treatment requirements should be discussed with the grandparent if it will assist in ensuring the child’s safety and wellbeing.

5. Sharing information permitted under a memorandum of understanding or formal agreement

A clinician may disclose information about a consumer if there is a formal agreement between Queensland Health and another State or Commonwealth government department which allows for the disclosure.

Example:

- Queensland Health has a formal agreement with the Queensland Police Service which allows sharing specific information about a mental health consumer to prevent or resolve a crisis situation involving risk to the consumer or others.

MOU between QH and the QPS for Mental Health Collaboration

Under the Memorandum of Understanding between Queensland Health and the Queensland Police Service for Mental Health Collaboration⁵, a designated person can disclose relevant confidential information without the written consent of a Hospital and Health Service Chief Executive to reduce the likelihood of a mental health incident from occurring and to assist with the safe resolution of a mental health incident. Any confidential information disclosed must be recorded in the consumer's file as soon as reasonably practicable and disclosed to the consumer at a time deemed clinically advisable.

Sharing information where there is a risk of family and domestic violence

All consumer assessments should include considerations of domestic and family violence – actual or potential. The clinician should discuss any identified domestic and family violence or risk of violence and proposed actions with their team leader or senior manager or equivalent. Guidance on recognising and supporting consumers and their families, carers or support people who may be at risk of domestic and family violence can be found at <https://www.health.qld.gov.au/clinical-practice/guidelines-procedures/patient-safety/duty-of-care/domestic-family-violence/healthcare-workers> .

Under part 5A of the DFVP Act, prescribed agencies may share relevant information with other prescribed agencies, specialist domestic and family violence services and support service providers (Appendix 2) where there is an assessed level of risk of domestic and family violence. The Department of Health and associated agencies, including public health services and public hospitals (Authorised Mental Health Services), and the Ambulance Service are prescribed agencies under the DFVP Act.

A person employed or engaged by a prescribed agency (e.g. a mental health clinician working in an Authorised Mental Health Service, or an Independent Patient Rights Adviser engaged by the Hospital and Health Service) may give, receive or use information under the DFVP if the person's duties include:

- assessing threats to life, health or safety because of domestic violence; or
- taking action to lessen or prevent threats to life, health or safety because of domestic violence, including by providing assistance or a service to a person involved in the domestic violence.

While recommending consent be sought whenever safe, possible and practicable, the DFVP Act recognises that, in almost all situations involving domestic and family violence, consent should not be

⁵ For more information see the [MOU between the State of Qld acting through Qld Health and the State of Qld acting through the QPS Mental Health Collaboration](#)

sought from perpetrators and the safety and protection of victims takes precedence over gaining a perpetrator's consent to share information⁶.

As such, under the DFVP Act, mental health staff may share relevant information with any other prescribed agency, specialist domestic and family violence service provider or support service provider if they reasonably believe a person fears or is experiencing domestic violence, and, giving the information may help the receiving agency to lessen or prevent a serious threat to the person's life, health or safety because of domestic violence. The DFVP Act provides protection from liability for giving information for this purpose. If a person, acting honestly, shares information they believe to be in compliance with Part 5A of the DFVP Act, they are not liable civilly, criminally or under an administrative process, for giving the information. More guidance on information sharing under the DFVP Act can be found in the [Domestic and Family Violence Information Sharing Guidelines](#).

⁶ Department of Communities, Child Safety and Disability Services, *Domestic and Family Violence Information Sharing Guidelines May 2017*

Key principles of information sharing

1. Appropriate and relevant information sharing is essential for quality treatment and care.

2. Information sharing to protect the health, safety and well-being of consumers and others is paramount.

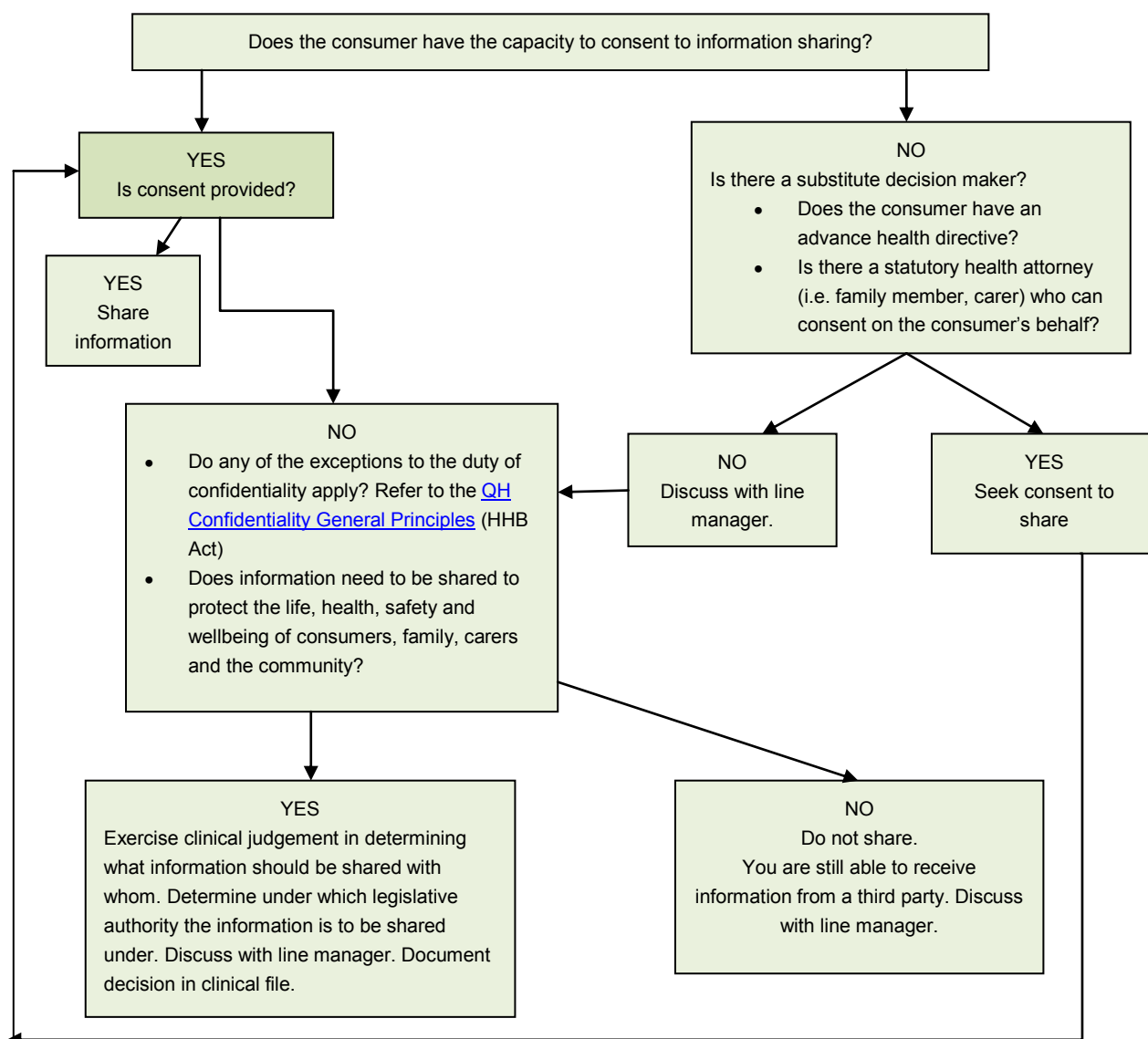
3. Sharing information with consumer consent is always preferable.

4. Where it is not practicable to obtain consent, good clinical practice requires that sharing certain information as permitted by law should be considered.

5. Where the consumer lacks capacity to consent, ongoing attempts should be made to seek consent as the consumer's mental health improves.

6. There is no barrier to receiving information.

Decision flowchart for sharing information



References and related documents

Department of Communities, Child Safety and Disability Services, *Child Safety Practice Manual*,

<https://www.communities.qld.gov.au/childsafety/child-safety-practice-manual>

Department of Communities, Child Safety and Disability Services, National Council on Crime and Delinquency, *The Structured Decision Making System for Child Protective Services, Queensland Child Protection Guide, July 2015*

<https://www.communities.qld.gov.au/resources/childsafety/partners/government/child-protection-procedures-manual.pdf>

Department of Communities, Child Safety and Disability Services, *Queensland Domestic and Family Violence Information Sharing Guideline*

<https://www.communities.qld.gov.au/gateway/end-domestic-family-violence/our-progress/strengthening-justice-system-responses/domestic-family-violence-information-sharing-guidelines>

Commonwealth Government, *National standards for mental health services*, 2010

<http://www.health.gov.au/internet/main/publishing.nsf/content/mental-pubs-n-servst10>

The Memorandum of Understanding between the State of Queensland acting through Queensland Health and the state of Queensland acting through Queensland Police Service for Mental Health Collaboration

https://www.health.qld.gov.au/_data/assets/pdf_file/0034/573991/mou_qh_qps_mhcollab.pdf

Queensland Health, *Hospital and Health Boards Act 2011 Confidentiality General Principles*, June 2015, http://qheps.health.qld.gov.au/governance/privacy-rti/docs/confidentiality_guidelines.pdf

Queensland Health, *Consumer, carer and family participation framework*

<http://qheps.health.qld.gov.au/mentalhealth/resources/ccfpf.htm>

Queensland Health, *Guide to Informed Decision-making in Health Care, 2nd Edition*

https://www.health.qld.gov.au/_data/assets/pdf_file/0019/143074/ic-guide.pdf

Queensland Health, *Understanding Domestic Violence*, August 2016

https://www.health.qld.gov.au/_data/assets/pdf_file/0025/465154/understanding-dfv-booklet.pdf

Queensland Health, *Domestic and Family Violence – Referral to specialist support services model*, August 2016

https://www.health.qld.gov.au/_data/assets/pdf_file/0021/465132/dv-referral-model.pdf

Appendix 1 – Definition of confidential information and designated person

The *Hospital and Health Boards Act 2011* provides definitions for *confidential information* and *designated person* in part 7, division 1, section 139, as follows:

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.

Designated person means a person who is or was –

- (a) a public service employee employed in the department; or
- (b) a health service employee; or
- (c) the chief health officer; or
- (d) the director of mental health; or
- (e) a health professional (other than a person mentioned in paragraphs (a) to (d)) engaged in delivering a public sector health service, whether at a public sector health service facility or another place; or
- (f) a member of a board of a Service; or
- (g) a person (other than a person mentioned in paragraph (a) or (b)) engaged temporarily to provide administrative support services for a Service or the department; or
- (h) a person being educated or trained at a public sector health service facility as part of the requirements for—
 - i. registration, enrolment or other authorisation (however described) to practise as a health professional; or
 - ii. completion of a course of study qualifying a person for registration, enrolment or authorisation mentioned in subparagraph (i); or
- (i) a person providing education or training at a public sector health service facility to a person mentioned in paragraph (h); or
- (j) a contractor who accesses confidential information under a contract to provide information and communication technology or information management services to a Service or the department; or
- (k) a volunteer carrying out duties at a public sector health service facility on behalf of a Service or the department; or
- (l) an inspector; or
- (m) another person prescribed under a regulation for this paragraph to be a designated person.

The *Mental Health Act 2016* (MHA 2016) also allows for designated persons to share confidential information when carrying out their responsibilities under the MHA 2016. Chapter 17 of the MHA 2016 outlines the provisions for sharing confidential information and enables confidential information to be shared with and by independent patient rights advisers.

Appendix 2 – Sharing information under the DFVP Act

Under Part 5A of the *Domestic and Family Violence Protection Act 2012* (the DFVP Act) the following organisations can share confidential information.

Prescribed agencies:

- Queensland Corrective Services
- Queensland Police Service
- Department of Communities, Child Safety and Disability Services
- Department of Justice and the Attorney-General
- Department of Education and Training and accredited state and non-state schools.
- Department of Housing and Public Works
- Department of Health and associated agencies, including public health services and public hospitals, and the Ambulance Service.

In addition, a prescribed entity includes the chief executive of any other department that provides services to persons who fear or experience domestic violence or who commit domestic violence.

Specialist domestic and family violence services

A “specialist domestic and family violence service provider” means a non-government entity funded by the State or Commonwealth to provide services to persons who fear or experience domestic violence or who commit domestic violence (pt 5A div 1 s169C of the DVFP Act). This includes services that work with men who use violence. Under the Act sexual assault services are not treated as “specialist domestic and family violence services” unless the State or Commonwealth specifically funds them to also provide domestic and family violence services.

Support service providers

A “support service provider” means a non-government entity, other than a specialist domestic and family violence service provider, that provides assistance or support services to persons who may include persons who fear or experience domestic violence or who commit domestic violence (pt 5A div 1 s169C(1) of the DVFP Act). This includes a range of services for people who fear or experience domestic violence or who commit domestic violence. Examples may include, but are not limited to: counselling, disability, private health services (including private hospitals and general practitioners), housing, legal services (including solicitors and barristers), and sexual assault service providers.

These services may be provided either in a specific service entity or private practice.

Individuals who are allowed to share information

In addition to being an employee of a prescribed agency, a specialist domestic and family violence service or a support service, a person planning to share information without consent under the DVFP Act must ensure they are an appropriate person to share the information. Section 169H of the DVFP Act specifies that people employed or engaged by the agency may give, receive or use information if their duties include assessing domestic violence threats, taking action to lessen or prevent domestic violence threats, or are otherwise authorised by the prescribed agency, specialist service or support service.