

# Operating Guidelines – Memorandum of Understanding between Queensland Health and Queensland Corrective Services (Confidential Information Disclosure)

## Background

The *Hospital and Health Boards Act 2011* (HHBA) provides a legislative framework which supports Queensland clinicians in sharing information while recognising the consumer's right to confidentiality. The HHBA allows for information sharing in a number of situations. These situations range from those where clinicians are required by law to disclose information to protect the health, safety and well-being of consumers, carers or the community, to circumstances in which clinical judgement is required in deciding what information should be shared, when and with whom. There is never a barrier to services receiving information from anyone who has an interest in the health and well-being of the person.

The need to share information is an ongoing aspect of provision of health care and will require issues of consent to be considered at many points. As far as practicable, consumer consent to share information should be requested in all circumstances where disclosure may be considered.

To the extent that it is reasonably practicable, the consumer's preferences regarding release of information must be respected. If the consumer does not wish for particular information to be shared with certain people, this should be respected, unless there is a legal or clinical requirement for the information to be shared.

Decisions about the mechanism by which disclosure of confidential information occurs should be made on a case-by-case basis.

## Information Disclosure

### Consent

In seeking consent, it is important for clinicians to:

- explain the purpose and benefits of sharing specific information
- use language that is clear and concise to ensure understanding
- assure the consumer that they can withdraw their consent at any time
- close the discussion by clarifying that there is shared understanding of what has been agreed
- document this in the consumer's clinical record.

In addition, if the consumer is a child, the clinician must:

- seek the consent of their parent or guardian unless the clinician believes the child is old enough, and mentally and emotionally mature enough, to understand and consent to the requests.

If the consumer is too unwell, or lacks the capacity to consent, the clinician should as far as practicable:

- consider whether a relevant advance health directive has been made which applies
- identify and seek consent from their statutory health attorney (i.e. a partner, carer, friend), where possible

- make ongoing attempts to seek consent, particularly when the person's mental state improves
- where appropriate, share information without consent as permissible by law.

### **Sharing information without consent**

The HHBA identifies the exceptions to the duty of confidentiality under which information may be shared without the consent of the consumer. These exceptions apply whether the consumer, or a person empowered to act on their behalf, does not consent to information being shared, or it is not practical to obtain consent.

The duty of confidentiality for health professionals refers to upholding the consumer's legal right to privacy of his or 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. The clinician is required or allowed to report certain information by law**

In some circumstances, it is mandatory to report particular information in relation to a consumer. In providing this information, the clinician is not deemed to have breached any duty of confidentiality and is protected under the relevant legislation.

For example:

- A clinician must provide the Queensland Police Service personnel with relevant consumer information if they have a search warrant, court summons or subpoena.
- All health professionals are required to report any suspicion or evidence of child abuse or neglect to the Department of Child Safety, and notify the District Child Protection Liaison Officer or Child Protection Advisor.

#### **2. Sharing information is necessary for the consumer's treatment and care**

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

For example:

- If the consumer lives with a sibling or a parent, who provides assistance with medication or monitoring of their mental state, good clinical practice requires regular communication and sharing of information with them about the consumer's treatment plan and their mental health condition.

#### **3. Sharing consumer information with people who have a 'sufficient personal 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 health professional's opinion, has sufficient personal interest in the health and welfare of the consumer. If the consumer has made it clear that they do not want their information shared with a particular person, such as a former partner or adult child, this must be respected unless another exception to the duty of confidentiality applies.

For example:

- Relevant information about a consumer's mental health needs might be provided to their partner, close relative or friend or someone who has regular contact with the individual.

#### **4. 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, carer or others in the community.

Disclosure in these situations can only be made with the written authority of the Director-General, or a position that has been delegated authority by the Director-General in writing. In these circumstances clinicians should speak to their team leader to ascertain who has this delegation within the local service.

In this circumstance prompt disclosure of this information with Queensland Corrective Services is required.

For example:

- If a consumer expresses an intention to harm a relative, you need to consult with your team leader as soon as possible to decide whether relevant authorities or others in the community need to be alerted.

#### **5. Sharing information for the protection, safety or well-being of a child**

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

For 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 safety and well-being of the child.

#### **6. When 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.

For example:

- Queensland Health has a formal agreement with Queensland Corrective Services which allows sharing specific information about a mental health consumer to support their management and care (see below).

Please note the above list of example is non-exhaustive. Part 7 of the HHBA should be referred to for further circumstances that allow for the disclosure of information.

## **Memorandum of Understanding**

The Memorandum of Understanding (MOU) enables the sharing of Confidential Information between Queensland Health and Queensland Corrective Services in circumstances where other legislative avenues (such as those outlined above) of obtaining and sharing Confidential Information, in particular through obtaining consent of the person in custody, have been exhausted.

The sharing of Confidential Information under the MOU is intended to enable Queensland Health and Queensland Corrective Services' staff to undertake their respective roles and responsibilities in relation to persons in custody. The MOU is also intended to facilitate coordinated Health Services for individuals in custody.

Within the MOU, there are a range of examples for when the MOU may be appropriate for disclosure of information. This list of examples is not intended to be exhaustive, nor is it intended to require mandatory action. Rather, these examples are included within the MOU to enable consideration to be given to the types of circumstances that information may be shared under the MOU. Each matter must be considered on a case-by-case basis.

## Escalation Pathways

The MOU establishes an escalation pathway for resolving concerns across Queensland Health and Queensland Corrective Services in relation to information sharing under the MOU.

This escalation pathway outlined in the MOU provides that matters should attempt to be resolved between staff at the local (workplace) level in the first instance.

If a resolution at the workplace level cannot occur, a referral may be made to the relevant contact outlined in Table A. The positions can be contacted for advice with regards to disclosure of information and, where required, permission for disclosure of information.

For operational or systemic matters, the relevant contact person outlined in Table A may also refer the matter to the Steering Committee for resolution.

Importantly, the MOU stipulates that during the time when the matter is being considered for resolution, comply with the MOU must continue to occur.

**Table A.**

<b>Position</b>	<b>Contact details</b>
<b>Queensland Corrective Services</b>	
General Manager, Operational Service Delivery, Statewide Operations	Mr Peter Shaddock Queensland Corrective Service GPO Box 1054 Brisbane QLD 4001 Phone: 07 3239 0242
<b>Offender Health Services</b>	
	Brisbane Correctional Centre Nursing Director West Moreton OHS Locked Bag 500, Archerfield Queensland 4108 Phone: 07 3271 8222
	Brisbane Women's Correctional Centre Nursing Director West Moreton OHS Locked Bag 500, Archerfield Queensland 4108 Phone: 07 3271 8222
	Wolston Correctional Centre Nursing Director West Moreton OHS Locked Bag 500, Archerfield Queensland 4108 Phone: 07 3271 8222
	Borallon Training and Correctional Centre Nursing Director West Moreton OHS Locked Bag 500, Archerfield Queensland 4108 Phone: 07 3271 8222

Position	Contact details
	<p>Helana Jones Centre  Nursing Director West Moreton OHS  Locked Bag 500, Archerfield Queensland 4108  Phone: 07 3271 8222</p>
	<p>Lotus Glen Correctional Centre  Nursing Director Cairns OHS  PO Box 1055, Cairns North 4870  Phone: 07 4092 9294</p>
	<p>Capricornia Correctional Centre  Nursing Director Central Qld OHS  PO Box 501, Rockhampton QLD 4700  Phone: 07 4920 6900</p>
	<p>Townsville Correctional Centre  Nursing Director Townsville OHS  PO Box 1596, Thuringowa Central QLD 4817  Phone: 07 4433 0500</p>
	<p>Townsville Women's Correctional Centre  Nursing Director Townsville OHS  PO Box 1596, Thuringowa Central QLD 4817  Phone: 07 4433 0500</p>
	<p>Numinbah Correctional Centre  Nursing Director Gold Coast OHS  2 Campus Crescent, Robina QLD 4226  Phone: 1300 668 936</p>
	<p>Woodford Correctional Centre  Nursing Director Metro North OHS  Level 14, Block 7 Royal and Women's Hospital, Herston  QLD 4029  Phone: 07 3646 8111</p>
	<p>Palen Creek Correctional Centre  Nursing Director Metro South OHS  64 Tina Street, Beaudesert  Phone: 5541 9111</p>
	<p>Maryborough Correctional Centre  Nursing Director Wide Bay OHS  185 Walker Road, Maryborough QLD 4650  Phone 07 4122 8222</p>

Position	Contact details
	Southern Queensland Correctional Centre Nurse Unit Manager Serco Locked Bag 1008, Gatton QLD 4343 Phone: 07 5466 6888
	Arthur Gorrie Correctional Centre Nurse Unit Manager GEO Locked Bag 1300, Archerfield QLD 4108 Phone: 07 3212 0411
<b>Queensland Health Prison Mental Health Services</b>	
	Director - Queensland Forensic Mental Health Service 'Biala' Level 5, 270 Roma Street Brisbane QLD 4000 Phone: 07 3837 5820