



MEMORANDUM OF UNDERSTANDING

BETWEEN

THE CHIEF EXECUTIVE OF QUEENSLAND HEALTH

AND

**THE STATE OF QUEENSLAND ACTING THROUGH
THE DEPARTMENT OF JUSTICE AND ATTORNEY-GENERAL
REPRESENTED BY QUEENSLAND CORRECTIVE SERVICES**

CONFIDENTIAL INFORMATION DISCLOSURE

This **MEMORANDUM OF UNDERSTANDING** ('MOU') is made on the 29th day of March 2018.

BETWEEN

The Chief Executive of Queensland Health ('Queensland Health'), 147-163 Charlotte Street, Brisbane, in the State of Queensland

AND

The State of Queensland acting through the Department of Justice and Attorney-General, represented by Queensland Corrective Services ('Queensland Corrective Services'), 50 Ann Street, Brisbane, in the State of Queensland.

PURPOSE

The purpose of this MOU is to enable the sharing of Confidential Information between Queensland Health and Queensland Corrective Services ('the Parties') in circumstances where other legislative avenues for obtaining Confidential Information, in particular through obtaining consent of the Prisoner, have been exhausted.

The sharing of Confidential Information under this MOU will enable both Parties to undertake their respective roles and responsibilities, and to facilitate coordinated Health Services for Prisoners.

This MOU is supported by Operating Guidelines that provide additional detail for Queensland Health and Queensland Corrective Services Authorised Staff.

RECITALS

- A.** Queensland Health and Queensland Corrective Services acknowledge that each party has their respective roles and responsibilities with regard to Prisoners within the Queensland Corrective Services System.
- B.** Queensland Health and Queensland Corrective Services wish to work in full cooperation to ensure the effective and efficient delivery of Health Services to Prisoners by Queensland Health and the management of Prisoners by Queensland Corrective Services, through the exchange of Confidential Information between Queensland Health and Queensland Corrective Services.
- C.** Queensland Corrective Services is responsible for the humane containment, supervision and rehabilitation of Prisoners in Corrective Services Facilities.
- D.** Since 2012, service agreements under the *Hospital and Health Boards Act 2011* between the

Chief Executive of Queensland Health and relevant Hospital and Health Services have provided for the delivery of Health Services to Prisoners in most Corrective Services Facilities in Queensland. The Prison Mental Health Service provides Mental Health Services to Prisoners with a Mental Illness and the Prison Health Service and Offender Health Service provides Primary Health Care services such as medical, nursing, dental, optometry, radiology, pathology, dietary and sexual health care.

- E.** Authorised Staff have an obligation to maintain confidentiality with regard to Confidential Information. Designated Persons are prohibited from disclosing Confidential Information unless one of the exceptions to s.142 of the *Hospital and Health Boards Act 2011* apply. This MOU is prescribed under the exception provided at s.151(1)(b)(i) of the *Hospital and Health Boards Act 2011* to allow for disclosure of Confidential Information as described within this MOU. Informed Persons may only disclose Confidential Information under s.341 of the *Corrective Services Act 2006*.
- F.** The MOU is not intended to exclude other processes upon which either Party can rely for seeking information from the other party, including where disclosure is provided with the consent of the Prisoner.
- G.** The existence of this MOU cannot and does not preclude disclosure of Confidential Information by a Designated Person under any other exceptions in Part 7 of the *Hospital and Health Boards Act 2011*, where appropriate and/or allowable.
- H.** This MOU does not authorise the disclosure of Personal Information. Strict privacy obligations apply to the use and disclosure of Personal Information under the *Information Privacy Act 2009*, and Personal Information may only be disclosed under authority, and subject to, the relevant provisions of the Act, including compliance with the National Privacy Principles of the Act.
- I.** It is not intended that this MOU create any contractual relationship or that it be legally binding on the Parties.
- J.** This MOU revokes and replaces the MOU titled 'Memorandum of Understanding between the Chief Executive of Queensland Health and the State of Queensland acting through the Department of Justice and Attorney-General Queensland Corrective Services Confidential Information Disclosure' previously executed by the Parties on 24 November 2016.

THE PARTIES TO THIS MOU AGREE AS FOLLOWS:

1. DEFINITIONS

In this MOU the following definitions apply:

At Risk Assessment means the process of gathering, analysing and interpreting information to support decision making about a Prisoner who is considered to be at-risk of self-harm or suicide.

Authorised Mental Health Service has the same meaning as the definition of the term 'Authorised Mental Health Service' in Schedule 3 of the *Mental Health Act 2016*.

Authorised Staff means:

- i. for Queensland Health, a Designated Person; and
- ii. for Queensland Corrective Services, an Informed Person who has delegation to disclose Confidential Information under s.341 of the *Corrective Services Act 2006*.

Business Day means between 9.00am and 5.00pm on a day other than a Saturday, Sunday or public holiday at Brisbane in the State of Queensland.

Chief Executive means the Chief Executive of Queensland Health and has the same meaning as the definition of the term 'Chief Executive' in Schedule 2 of the *Hospital and Health Boards Act 2011*.

Classified Patient has the same meaning as the definition of the term 'Classified Patient' in Schedule 3 and s.64 of the *Mental Health Act 2016*.

Commissioner means the Commissioner of Queensland Corrective Services.

Confidential Information means:

- i. for information held by Queensland Health, the same meaning as the definition of the term 'Confidential Information' in s.139 of the *Hospital and Health Boards Act 2011* ; and
- ii. for information held by Queensland Corrective Services, the same meaning as the definition of the term 'Confidential Information' in s.341(4) of the *Corrective Services Act 2006*, but does not include:
 - a) information already disclosed to the general public, unless further disclosure of the information is prohibited by law; or
 - b) statistical or other information that could not reasonably be expected to result in the identification of the person to whom the information relates.

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

CS Act means the *Corrective Services Act 2006* (Qld).

Custody means held in the custody of the chief executive of Queensland Corrective Services in a Corrective Services Facility, whether on remand or incarcerated under State or Federal law.

Death in Custody has the same meaning as the term 'Death in Custody' in s.10 of the *Coroners Act 2003* and includes one month after Release Date.

Designated Person for Queensland Health has the same meaning as the term 'Designated Person' in s.139A of the *Hospital and Health Boards Act 2011*.

Director-General, DJAG for the purposes of this MOU means the Director-General of the Department of Justice and the Attorney-General; or another chief executive who may have responsibility for the administration of the CS Act from time to time.

Disclosure includes providing Confidential Information orally, in writing, and in any other format.

DJAG means the Department of Justice and Attorney-General.

Engaged Service Provider has the same meaning as the definition of the term 'Engaged Service Provider' in s.272 of the CS Act.

Forensic Patient has the same meaning as the definition of the term 'Forensic Patient' in Schedule 3 of the *Mental Health Act 2016*.

Health Facility has the same meaning as the definition of the term Public Sector Health Service Facility in Schedule 2 of the *Hospital and Health Boards Act 2011*.

Health Service has the same meaning as:

- i. the definition of the term 'Health Service' in Schedule 3 of the *Mental Health Act 2016*; and
- ii. the definition of the term 'Health Service' in s.15 of the *Hospital and Health Boards Act 2011*;

and includes the prevention, treatment, and management of physical and mental illness and the preservation of physical and mental well-being.

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

HHS means a Hospital and Health Service.

Hospital and Health Service has the same meaning as the definition of the term 'Hospital and Health Service' in Schedule 2 of the *Hospital and Health Boards Act 2011*.

Immediate Risk Needs Assessment identifies any immediate risks or needs that require immediate attention upon a Prisoner's admission to the Queensland custodial system or arrival after transfer from community supervision to a custodial facility.

Information includes verbal information; a document (as defined in s.36 of the *Acts Interpretation Act 1954* (Qld)); a statement; or any other form of media whatsoever, including electronic communication, on which Information is recorded.

Informed Person for Queensland Corrective Services has the same meaning as the definition of the term in s.341 of the CS Act.

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

Legal Proceeding includes, but is not limited to, an application under the *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld) and an initial notice under s.9A of the *Personal Injuries Proceedings Act 2002* (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 means, 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 means has the same meaning as the definition of the term 'Mental Illness' in s.10 of the *Mental Health Act 2016*.

MH Act means the *Mental Health Act 2016* (Qld).

MOU means this Memorandum of Understanding.

Notice means a notice in writing under or in connection with the MOU from one Party to the other Party.

Offender Health Services means the HHS that provides Prisoners with access to health practitioners for the purpose of Primary Health Care, dental, optometry, radiology, pathology, dietary and sexual health care provision.

Operating Guidelines means the guidelines that are used by Authorised Staff to operate the MOU.

Parole Board has the same meaning as the definition of the term 'Parole Board' in s.204 of the CS Act.

Parties mean the signatories to this MOU.

Patient means any individual who is receiving either Primary Health Care Services or other Health Services from the Offender Health Service or Prison Health Service or Mental Health Services from Prison Mental Health Services.

Personal Information has the same meaning as the term 'Personal Information' in s.12 of the IP Act.

Primary Health Care means a basic level of health care that includes the promotion of health, early diagnosis of disease and disability and prevention of disease. It is generally the first line of health care, covering a broad range of health issues.

Prison Health Services includes Offender Health Services and means the HHS that provides Prisoners with access to health practitioners for the purpose of Primary Health Care, dental, optometry, radiology, pathology, dietary and sexual health care provision.

Prison Mental Health Service means the 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 'Prisoner' in Schedule 4 of the CS Act and applies only to those Prisoners who have received, are currently receiving, or may receive Primary Health Care or Mental Health Services.

QCS means Queensland Corrective Services.

Queensland Health means the department and Hospital and Health Services, as described in s.8 of the HHB Act. Queensland Health is administered by the Queensland Minister for Health and Minister for Ambulance Services under Administrative Arrangements Orders issued under the *Constitution of Queensland 2001* (Qld).

Queensland Corrective Services System means the system responsible for community safety and crime prevention through the humane containment, supervision and rehabilitation of offenders.

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

Release Date means the date of release from a Corrective Service Facility.

Security and Classification Placement means the process of assigning a prisoner's security classification in accordance with legislative requirements and informs the prisoner's level of supervision, placement and management requirements, taking into account their individual circumstances.

Steering Committee is the committee with the function to oversee the state-wide partnership between Queensland Health Prison Mental Health Services, Prison Health Services and Offender Health Services; and Queensland Corrective Services to ensure the effective provision of mental health services in Queensland Correctional Centres. For the purposes of this MOU, this Committee's function includes addressing implementation issues that arise in relation to the MOU.

2. COMMENCEMENT AND DURATION

- 2.1 This MOU will commence on the date it is prescribed in the Regulation and continue until the following occurs:
- i. the Regulation is repealed; or
 - ii. all obligations under the MOU are satisfied and completed; or
 - iii. clauses 8 or 9 of this MOU are invoked.

3. OPERATION OF MOU

3.1. The operation of this MOU is contingent on:

- i. the MOU having been prescribed in the Regulation pursuant to s.151(1)(b)(i)(B) of the HHB Act; and
- ii. the Chief Executive having made a determination that disclosure of Confidential Information by a Designated Person in the circumstances described in this MOU is in the public interest pursuant to s.151(1)(b)(ii) of the HHB Act; and
- iii. the Chief Executive stating in writing that disclosure of Confidential Information by a Designated Person in the circumstances described in this MOU is in the public interest pursuant to s.151(1)(b)(ii) of the HHB Act, as evidenced by the signature of the Chief Executive, Queensland Health on this MOU; and
- iv. the Director-General, DJAG having made a determination that disclosure of Confidential Information by an Informed Person in the circumstances described in this MOU complies with the provisions detailed under s.341(3) of the CS Act.

4. GUIDING PRINCIPLES

4.1. The Parties agree that this MOU is based on mutual respect, cooperation and shared principles to ensure that Confidential Information can be shared to facilitate the management of Prisoners and enable the provision of a coordinated system of health care.

4.2. The Parties agree that in situations where there is a risk to the safety of Prisoners, staff members of Queensland Health, QCS or Engaged Service Providers, or members of the community, the primary consideration is ensuring the safety of all persons. In such a situation both Parties agree that maintaining the health needs of the Prisoner and the preservation of the Prisoner's rights and dignity will be significant considerations within the overall objective of ensuring the safety of all persons.

5. INFORMATION NOT COVERED BY THIS MOU

5.1. This MOU only applies to the disclosure of Confidential Information regarding Prisoners.

5.2. This MOU does not permit Designated Persons to disclose the following to QCS:

- i. Confidential Information regarding persons who are not Patients or Prisoners (for the purpose of the MOU) and who are receiving Health Services.
- ii. Information in the possession of Queensland Health for the purpose of Queensland Health meeting its obligations under the *Public Health Act 2005* (Qld), for example, Information contained within the Notifiable Conditions Register as defined within that Act.
- iii. Information within the Queensland Health Monitoring of Dangerous Drugs (MODDS)

database.

- iv. Information for the Parole Board. Prisoner consent is required before Confidential Information is provided to the Parole Board.

6. INFORMATION SHARING

6.1. The following describes the protocols to be followed by the Parties for the sharing of Confidential Information with regard to Prisoners.

6.2. Information provided by Queensland Health to QCS

- 6.2.1 It is the preferred position of Queensland Health that disclosing Confidential Information to QCS should, in the first instance, be with the written consent of the Prisoner, pursuant to s.144 of the HHB Act.
- 6.2.2 If a prisoner has impaired capacity, the preferred position in relation to disclosing Confidential Information is in accordance with the supported decision making regimes established under the *Guardianship and Administration Act 2000*, the *Public Guardian Act 2014* and the *Powers of Attorney Act 1998*.
- 6.2.3 However, the Parties recognise that there will be situations where consent to disclose Confidential Information from a Prisoner cannot be obtained, and the disclosure is required to facilitate the safe and effective management of the Prisoner by the Parties.
- 6.2.4 The following table provide examples of the situations where Confidential Information may be disclosed by a Designated Person to QCS under this MOU.
- 6.2.5 The scenarios are not an exhaustive list, and there may be other circumstances where Confidential Information may be disclosed under this MOU. If a situation arises that is not described in the table below, a Designated Person should refer to the relevant contact person listed in the Operating Guidelines to this MOU and referred to under clause 10 'Dispute Resolution' for guidance on whether or not to disclose Confidential Information.
- 6.2.6 In all the situations, a Designated Person has the discretion not to disclose Confidential Information to QCS. However, this MOU has been entered into under the spirit of cooperation between the Parties.

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CIRCUMSTANCES	EXAMPLE SCENARIO
Suicide attempt / self-harm history	A Designated Person may identify that a Prisoner has current risk factors which increase their risk of suicidal or self-harm behaviour, including a history of suicidal and self-harm behaviour. This Confidential Information may be provided to QCS to establish that the Prisoner has an elevated risk of suicide or self-harm and would inform a more intensive management regime to monitor the risk than would otherwise be provided without this Information.
<p>Any of the following:</p> <ul style="list-style-type: none"> • Notable behavioural changes e.g., increased affective instability and associated challenging behaviours • Notable mental state changes e.g., emergence of symptoms of major mental illness, such as hallucinations and paranoia • Observable risk factors e.g., reported violent ideation/intent/plan. 	<p>To inform the management of the Prisoner, Confidential Information may be provided to QCS when a Prisoner presents a possible risk that:</p> <ul style="list-style-type: none"> - they may cause harm to themselves or other persons, or - suffer serious mental or physical deterioration.
<p>QCS management assessment, planning and intervention regarding a Prisoner – for example, conducting Immediate Risk Needs Assessments, and assessments informing Security Classification and Placement decisions regarding a Prisoner</p>	<p>To inform the management of the Prisoner, Queensland Health may disclose to QCS, Confidential Information in its possession that may impact upon travel arrangements and /or may impact upon the management and placement of a Prisoner by QCS in a Corrective Services Facility. This may include, for example, where a Prisoner has a history of self-harm attempts; or has an existing medical condition.</p>
QCS psychologists or counsellors	<p>When a QCS psychologist or counsellor is conducting an At Risk Assessment, a Designated Person may provide Confidential Information regarding that Prisoner to facilitate an appropriate Security Classification and Placement for that Prisoner that is commensurate with the Prisoner’s medical condition.</p>
<p>Illness, medical condition or medication that may impact upon the behaviour of a Prisoner</p>	<p>To assist with the management of a Prisoner who may present with behaviours that relate to cognitive impairment or psychiatric disorder that may impact upon a Prisoner’s vulnerability in a Corrective Services Facility, a Designated Person may disclose relevant Confidential Information to QCS.</p>
<p>Transportation and escort of Prisoners</p>	<p>To inform transportation planning, a Designated Person may disclose Confidential Information about a Prisoner to QCS where a Prisoner’s health or well-</p>

	being; or the health and well-being of other Prisoners or QCS officers, may be adversely impacted by the transportation or escort of that Prisoner.
Death in Custody	Confirmation of the deceased status of a Prisoner may be provided to QCS to enable QCS to commence their obligations regarding a Prisoner's Death in Custody.
Significant Health Risks	To inform management decisions about the Prisoner, Confidential Information may be provided to QCS when a Prisoner's health condition requires specialised management or self-monitoring equipment. This includes, but is not limited to, when a Prisoner is at risk of serious health consequences including death (e.g. Prisoners with a Terminal Illness).

6.3. Information provided by QCS to Queensland Health

6.3.1 QCS Informed Persons may disclose Confidential Information about a Prisoner to Queensland Health pursuant to s.341 of the CS Act, and in accordance with relevant procedures and delegations.

6.3.2 Section 341(3) of the CS Act lists the circumstances in which Informed Persons can disclose Confidential Information about a Prisoner. QCS may disclose Confidential Information to Queensland Health for the purpose of this MOU in the following circumstances:

- deterioration or significant changes in Prisoner behaviour or mental state;
- self-harm or suicide concerns, or Prisoner being placed on suicide observations;
- assault (prisoner either alleged victim or alleged perpetrator);
- major psychosocial stressor experienced by the Prisoner (for example, death in family or relationship breakdown), or exposure to other potentially destabilising events (for example, participation in intensive intervention);
- any mental health concerns;
- any new charges or convictions;
- sentence calculations (including offence and sentence details);
- court outcomes (including pending court dates);
- daily movement lists (including court escorts, medical escorts, reception and discharge lists);
- planned or actual movements (for example, transportation or placement to another Corrective Services Facility / Health Facility or significant accommodation change);
- Release Dates;

- concerns about a Prisoner's risk of harm to themselves or towards others;
- child safety concerns, including, but not limited to, potential harm to children;
- Death in Custody;
- injuries that occur to Prisoners in Corrective Services Facilities and require treatment at a Health Facility;
- when a Prisoner is required to be taken to an Authorised Mental Health Service as a Classified Patient or on release:
 - Security Classifications and Placement assessments;
 - escape from custody risk assessments;
 - custodial breach / incident history (including violence risk).

7. NOTIFICATION OF BREACH

7.1. If a Party becomes aware of any breach of this MOU that involves an unauthorised use and/or disclosure of Confidential Information that Party must:

- i. immediately notify the other Party of that breach; and
- ii. fully cooperate with the other Party when dealing with any unauthorised use and/or disclosure of Confidential Information; and
- iii. use its best endeavours to immediately rectify the breach and prevent the recurrence of any such breaches.

8. VARIATION AND REVIEW

8.1. This MOU may be varied by agreement between the Parties in writing. Any proposed alterations shall be raised and addressed through the Chief Executive of Queensland Health and the Commissioner, QCS.

8.2. The Parties agree that this MOU will be reviewed within 24 months of the date of its taking effect, and thereafter bi-annually on the anniversary of the initial review, or at such other time as may be agreed between the Parties.

9. TERMINATION

9.1. Either Party may terminate this MOU by giving the other party 28 days prior Notice in writing of its intention to terminate.

9.2. Where this MOU is terminated under Clause 9.1, the Parties agree to provide all reasonable assistance and cooperation necessary to ensure a smooth transition to a new working arrangement.

10. DISPUTE RESOLUTION

10.1. For any matter in relation to this MOU that may be in dispute, the Parties:

- i. will use their best endeavours to resolve the matters in dispute at the workplace level in the first instance, between the Authorised Staff of Queensland Health and QCS;
- ii. will, if the matter in dispute is not resolved in accordance with clause 10.1(i), refer the matter to the relevant contact person identified in the Operating Guidelines to this MOU for resolution;
- iii. will, if the matter impacts on systemic or operational planning, refer the matter in dispute to the Steering Committee for consideration
- iv. agree that during the time when the Parties are endeavouring to resolve the matter in dispute, the Parties will continue to comply with this MOU.

11. NOTICES

11.1. Any Notice or communication given under clauses 8 or 9 of this MOU may be delivered to the other Party by way of:

- i. registered post;
- ii. ordinary prepaid post;
- iii. by email; or
- iv. by facsimile to the Parties facsimile number (as the case may be) notified by the Party from time to time.

11.2. A Notice or other communication given under or about this MOU is taken to be received:

- i. if delivered personally, on the Business Day it is delivered;
- ii. if sent by registered post, the date the Notice is signed for;
- iii. if sent by ordinary post, six Business Days after posting;
- iv. if sent by email, on the date recorded on the device from which the Party sent the email, unless the sending Party receives an automated message that the email has not been delivered;
- v. if sent by facsimile, when the sender receives confirmation that the facsimile has been transmitted in its entirety to the addressee's facsimile number.

11.3. Unless otherwise advised in writing, the addressees for each Party are set out in the Operating Guidelines to this MOU and are available at:

https://www.health.qld.gov.au/publications/clinical-practice/guidelines-procedures/clinical-staff/mental-health/guidelines/info_share_opp_guide.pdf

THIS MOU IS EXECUTED

For and on behalf of **the State of Queensland**

acting through **Queensland Health**

on this 1 June 2017 by

Signature provided

(signature)

Michael Walsh
Chief Executive, Queensland Health

I, Michael Walsh, Chief Executive, Queensland Health, state that in signing this MOU, pursuant to s.151(1)(b)(ii) of the *Hospital and Health Boards Act 2011* (Qld), I consider the disclosure of Confidential Information for the purpose of this MOU is in the public interest.

Signature provided

1 June 2017

(signature of witness and date)

Axele-Brigitte Mary
Senior Administration Officer

(name and designation of witness)

For and on behalf of **the State of Queensland**

acting through the Department of Justice and Attorney-General,

Queensland Corrective Services

on this 4 July 2017 by

Signature provided

(signature)

I, Mark Rallings, Commissioner, Queensland Corrective Services, state that in signing this MOU, I consider the disclosure of Confidential Information for the purpose of this MOU complies with the provisions of s.341(3) of the *Corrective Services Act 2006* (Qld).

Signature provided

4 July 2017

(signature of witness and date)

Emily Bradshaw
Executive Services Officer, Office of
the Commissioner

(name and designation of witness)