

Confidentiality General Principles

Hospital and Health Boards Act 2011

September 2017

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More information about confidentiality and privacy is available at:

<https://qheps.health.qld.gov.au/csd/business/records-and-information-management/privacy-rti/privacy>

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Purpose

This Confidentiality General Principles document has been written specifically for the Department of Health and explains the department's duty of confidentiality and the circumstances when confidential information may be disclosed.

Patient confidentiality in public sector health services in Queensland is strictly regulated.

Section 142 in Part 7 of the *Hospital and Health Boards Act 2011* sets out the duty of confidentiality and sections 143 to 161B set out the exceptions to the duty of confidentiality.

In addition, section 142A in Part 7 of the *Hospital and Health Boards Act 2011* sets out the duty of confidentiality for prescribed health practitioners.

If you are in doubt regarding the disclosure of confidential information or require further information on confidentiality in the department or a Hospital and Health Service, please contact your relevant Privacy Contact Officer.

For privacy and confidentiality matters relating to the Department of Health, please contact:

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Department of Health
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For Hospital and Health Services, a list of Privacy and Confidentiality Contact Officers (PCCOs) is available at: www.health.qld.gov.au/system-governance/contact-us/access-info/privacy-contacts/default.asp

Why is confidentiality important?

Everyone who accesses public sector health services has a right to expect that information held about them will remain private. If the trust of members of the community in the confidentiality of records held by these services is eroded, they will be unlikely to participate openly and willingly in their health care. If they are not open and honest with the various health professionals who care for them this may adversely affect the ability of these professionals to correctly diagnose and care for the individuals themselves. This will negatively impact on the continued integrity of the health system.

What is the 'Duty of Confidentiality' and who does it apply to?

The 'Duty of Confidentiality' set out in Part 7 of the *Hospital and Health Boards Act 2011* applies to any 'confidential information' that could identify an individual who has received or is receiving a public sector health service.

Confidential information, which is defined in the Act, includes any information collected by the Department of Health or the Hospital and Health Services during the course of providing a public health service to an individual, for example:

- name, address, date of birth, admission and discharge dates, billing information and Medicare number
- health and medical information
- information generated by health professionals such as notes and opinions about an individual and their health
- information about physical or biological samples that can be linked to an individual (i.e. where they have a name or identifier attached), for example, x-rays, CT scans, video imaging
- genetic information when collected or used in connection with delivering a health service; or genetic information when this is predictive of an individual's health.

The duty of confidentiality does not apply to ***de-identified information or statistical data sets which are non-identifiable*** (i.e. would not allow individuals to be identified).

It is an offence to disclose confidential information about a person unless one of the exceptions in Part 7 of the *Hospital and Health Boards Act 2011* applies.

Duty of confidentiality for designated persons

Section 142 of Part 7 of the *Hospital and Health Boards Act 2011* sets out the duty of confidentiality placed on a 'designated person'. This section states:

- (1) *A designated person must not disclose, directly or indirectly, confidential information to another person unless disclosure is required or permitted under this Act.*
- (2) *For subsection (1), another person includes another designated person.*
- (3) *Subsection (1) applies even if the person who could be identified from the disclosure of confidential information is deceased.*

A '**designated person**' is defined in the Act and includes current and previous employees and officers of the department and the Hospital and Health Services; the Director-General and Health Service Chief Executives; temporary staff; health professionals (including Visiting Medical Officers); anyone being educated or trained at a Queensland Health facility; contractors; and volunteers carrying out duties on behalf of the department or Hospital and Health Services.¹ Note that a designated person also includes any person who is, or was, the Commissioner for the Queensland Ambulance Service, or a Queensland Ambulance Service employee under the Department of Health.²

A '**health professional**' is also defined in the Act and means a person who is registered under a health practitioner registration Act (for example, a doctor, physiotherapist, dentist, midwife, or registered nurse) or a person who provides a health service (for example, a social worker or dietician).

Chief Executive means the chief executive of the department administering the Act. The **Director-General** is the chief executive for the Department of Health.

References to a '**relevant chief executive**' include the Director-General for the department and a Health Service Chief Executive for the Hospital and Health Services.

The duty of confidentiality set out in Part 7 of the *Hospital and Health Boards Act 2011* continues to apply to staff after they retire or leave employment with the department (including the Queensland Ambulance Service) or a Hospital and Health Service; this is because the definition of '*designated person*' in section 139 includes former employees. Accordingly, the exceptions to the duty of confidentiality specified in the Act applies equally to former employees and permits disclosure by those persons in the same circumstances as if they were still employed with the department (including the Queensland Ambulance Service) or a Hospital and Health Service.

Disclosing identifiable patient confidential information in contravention of Part 7 of the *Hospital and Health Boards Act 2011* could result in staff receiving a monetary penalty (maximum penalty – 100 penalty units) and/or disciplinary action for breach of the Code of Conduct for the Queensland Public Service.

¹ While the term 'designated person' is used in the legislation for simplicity the term 'staff' or 'staff member' has been used throughout these Confidentiality General Principles guide.

² Prescribed by regulation as designated persons for section 139A(1)(m) of the *Hospital and Health Boards Act 2011* and section 34C of the Hospital and Health Boards Regulation 2012.

Duty of confidentiality for prescribed health practitioners

Section 142A of Part 7 of the *Hospital and Health Boards Act 2011* sets out the duty of confidentiality placed on a 'prescribed health practitioner' (such as a local GP or private doctor). This section states:

- (1) *A prescribed health practitioner must not disclose, directly or indirectly, confidential information to another person unless disclosure is required or permitted under this Act.*
- (2) *For subsection (1), another person includes another prescribed health practitioner or a designated person.*
- (3) *Subsection (1) applies even if the person who could be identified from the disclosure of confidential information is deceased.*

A '**prescribed health practitioner**' is defined in the Act and means:

- (a) a relevant health practitioner, other than a person mentioned in section 139A(1), who is prescribed by a regulation; or
- (b) a person who was a relevant health practitioner mentioned in paragraph (a).

As a general example, a prescribed health professional may include a local GP, a private specialist, or a doctor working in a private hospital.

A '**relevant health practitioner**' means an individual who is registered under the Health Practitioner Regulation National Law to practise a health profession, other than as a student.

If a prescribed health practitioner discloses and/or accesses identifiable patient confidential information in contravention of Part 7 of the *Hospital and Health Boards Act 2011* this breach could result in the prescribed health practitioner receiving a monetary penalty (maximum penalty – 600 penalty units).

The duty of confidentiality set out in Part 7 of the *Hospital and Health Boards Act 2011* continues to apply to a prescribed health practitioner even where they have retired, are no longer registered under the National Law and/or are no longer practicing as a prescribed health practitioner.

Refer to section 161C in relation to a prescribed health practitioner's access to a prescribed information system and particular information.

Breaches of confidentiality and privacy

As previously mentioned, if a staff member discloses identifiable patient confidential information in contravention of Part 7 of the *Hospital and Health Boards Act 2011*; this will in fact be a breach of confidentiality and could result in staff receiving a monetary penalty (maximum penalty – 100 penalty units). The matter may also be referred to the Ethical Standards Unit, which may lead to staff disciplinary action for breach of the Code of Conduct for the Queensland Public Service.

In addition, the *Information Privacy Act 2009* also allows an individual to make a privacy complaint about the department's breach of the privacy principles which may result in financial compensation of up to \$100,000 payable to the affected individual.

If a prescribed health practitioner discloses and/or accesses identifiable patient confidential information in contravention of Part 7 of the *Hospital and Health Boards Act 2011* this breach could result in the prescribed health practitioner receiving a monetary penalty (maximum penalty – 600 penalty units).

The Director-General may, in writing, appoint an inspector in accordance with the requirements of section 203 of the *Hospital and Health Boards Act 2011* to investigate, monitor and enforce compliance with the Act. Accordingly, where a breach of Part 7 of the *Hospital and Health Boards Act 2011* occurs (including a breach of sections 142A or 161C by a prescribed health practitioner), the breach should be referred to a validly appointed inspector for review.

In situations involving a suspected breach by a prescribed health practitioner, we recommend you contact the department's Healthcare Improvement Unit to facilitate the management of this process. You may also wish to seek legal advice from the department's Legal Services Unit.

Relationship between Part 7 and other laws dealing with confidentiality and privacy

The duty of confidentiality set out in Part 7 of the *Hospital and Health Boards Act 2011* applies to information that identifies an individual who has received or is receiving public sector health services. In addition to this duty there are other laws regulating disclosure of certain types of confidential information that the department and Hospital and Health Services collects; for example, information provided to registries such as the Pap Smear Register under the *Public Health Act 2005*.

The *Information Privacy Act 2009* deals with the collection, use, disclosure and handling of personal information, which includes health information about a person. The *Information Privacy Act 2009* is subject to other legislation³ that may specifically restrict the disclosure of information, including the *Hospital and Health Boards Act 2011*.

This means that the following rules apply to the **disclosure** of confidential information and other health information collected by the department and Hospital and Health Services:

- where **the information has been collected in the context of providing a public sector health service the information is regarded as 'confidential information' and disclosure is governed by the duty of confidentiality in Part 7 of the *Hospital and Health Boards Act 2011***. However, this does not

³ s.7(2) of the *Information Privacy Act 2009* states - Other than as provided for in subsection (1), this Act is intended to operate subject to the provisions of other Acts relating to – (a) the collection, storage, handling, accessing, amendment, management, transfer, and use of personal information; and (b) the disclosure, within the meaning of section 23, of personal information.

govern situations where information is 'used' without being 'disclosed' to any other person⁴.

- where **the information has been collected under the authority of other legislation administered by the department and Hospital and Health Services** (for example, information provided to the Pap Smear Register under the *Public Health Act 2005*) it will be subject to any legal requirements relating to disclosure set out in that legislation.
- where the **duty of confidentiality in Part 7 does not apply, National Privacy Principle (NPP) 2 in the Information Privacy Act 2009 may apply** to permit disclosure of personal information (as described in the *Information Privacy Act 2009*). For example, the duty of confidentiality in Part 7 of the *Hospital and Health Boards Act* does not apply to staff employment details.

For further information on privacy, including the National Privacy Principles and the difference between personal and confidential information, please refer to the following information sheets:

- [National Privacy Principles \(NPPs\) in brief:](#)
- [What is the difference between confidential information and personal information?](#)

Disclosure and access to confidential information

In privacy regimes *disclosure* normally refers to the transfer or release of information outside of the organisation. For the purposes of the duty of confidentiality in Part 7 however, disclosure takes place when staff disclose confidential information to **any** other person, including another staff member.

The disclosure may be direct - for example, telling another person some confidential information about an individual, either in person, over the phone, or via email - or it can be indirect. Examples of indirect disclosure include discussing confidential information in a public place such as a cafeteria or a lift where the information may be overheard; leaving confidential information on a desk in view of people standing at the desk; or situating computer monitors so that the confidential information displayed is visible to people standing near them.

Disclosure for the purposes of Part 7 may not involve direct access to part or all of a patient record. In some instances, it may be appropriate to provide a copy of relevant information from the record. For example, disclosure of information for public health monitoring purposes may require authorised staff to view relevant patient histories, and be given copies of relevant information for analysis (refer to 6.7).

⁴ If information is *used* without being *disclosed* to another person, the duty of confidentiality in Part 7 does not apply. For example, a health professional may collect personal information for the purpose of health service delivery and then decide at a later date to contact the person themselves and invite them to be part of a discussion group. In this instance, the health professional has not disclosed information to anyone else so the duty of confidentiality does not apply. The proposed *use* may however be subject to NPP 2 in the *Information Privacy Act 2009*.

Similarly, it may be appropriate to provide a copy of relevant genetic information for the purpose of genetic counselling where the disclosure may assist in lessening or preventing a serious risk to the life or health of a sibling or blood relative such as a child, provided the disclosure has been approved in writing by the relevant chief executive or delegate (refer to 6.5).

Decisions about access to patient records need to be made on a case by case basis. Any requests for a copy of all or part of a patient record held by the department or Hospital and Health Services should be referred for advice to the relevant Privacy Contact Officer and/or legal officer as appropriate.

Exceptions to the ‘Duty of Confidentiality’

The circumstances in which confidential information may be disclosed are set out in the following sections.

Disclosure of confidential information is discretionary except where required by law (refer to 6.1) or where disclosure takes place under an agreement between the State of Queensland (acting through the department and/or Hospital and Health Services) and the Commonwealth Government or another State Government or a Commonwealth or state entity (refer to 6.9).

Some exceptions require the relevant Chief Executive to authorise or consider certain matters. The relevant Chief Executive must not delegate the authority to disclose confidential information in the public interest, but may delegate the other exceptions.

Where confidential information is disclosed it is also important that only information that is relevant to the particular circumstances be disclosed (i.e. the minimum necessary to satisfy the particular requirement). For example, if a request for confidential information relates to a particular condition or episode of care then only information relevant to that condition or episode should be disclosed.

Section 143 – Disclosure required or permitted by law

Section 143(1) states that the duty of confidentiality does not apply to the disclosure of confidential information by staff if the disclosure is required or permitted by an Act or law. For example, disclosure may be required by either Commonwealth or Queensland legislation or court ordered disclosure processes such as a subpoena.⁵

Section 143(2) further states that without limiting subsection (1), the disclosure of the following confidential information is a disclosure permitted by an Act:

- a) information provided to the chief executive by a Hospital and Health Service under a service agreement;
- b) information provided to the chief executive and other entities by a Hospital and Health Service in compliance with a health service directive;

⁵ Compliance with a court ordered disclosure process may not require disclosure of all information about the patient. The subpoena etc. will define the scope of documents required to be produced. If in doubt advice should be sought from the Privacy and Confidentiality Contact Officer and/or Legal Officer in the first instance.

- c) information provided under this Act by the chief executive to the Commonwealth or an entity established under an Act of the Commonwealth.

If the department or a Hospital and Health Service is required by law to disclose confidential information it must do so. For example, under section 128(1) of the *Veterans' Entitlement Act 1986* (Cth) the department or Hospital and Health Service is required to release to the Department of Veterans' Affairs, relevant information relating to treatment received at any public health facility by repatriation beneficiaries.

If the department or Hospital and Health Services are permitted by law to disclose confidential information (rather than to 'required' to disclose) discretion may be exercised as to whether or not to disclose the information.

Before disclosing confidential information staff should refer the request to senior management or legal unit (where applicable) for advice.

Section 144 – Disclosure with consent

Disclosing confidential information with the consent of the person concerned has always been (and will continue to be) the most common and preferred mechanism for disclosure. However, in some circumstances the consent of the person cannot be obtained; for example, due to incapacity.⁶ This will not prevent disclosure of the confidential information if one of the other exceptions under Part 7 applies; such as care or treatment.

Section 144 allows a staff member or a prescribed health practitioner to disclose confidential information where:

- they have the consent of the person concerned (section 144(a))
- the disclosure relates to the confidential information of a child and the disclosure is by a health professional⁷ to another person if the child has consented to the disclosure, and the health professional considers that the child has sufficient capacity or competence to give their consent (section 144(b))
- a health professional discloses a child's confidential information with the consent of the child's parent⁸ or guardian where it is considered that the child does not have sufficient capacity or competence to consent to the disclosure (section 144(c))
- a health professional discloses a child's confidential information *even where the child has capacity and has refused consent, and the child's parent has refused consent*, provided the disclosure is considered by the health professional to be in the child's best interests (section 144(d)). It is recommended that legal advice is sought in these circumstances.

⁶ If an individual is unable to give consent due to incapacity, health professionals should determine whether a substitute decision maker (including attorneys, or statutory health attorney) has been appointed under the *Powers of Attorney Act 1998* or the *Guardianship & Administration Act 2000*. Consider also whether the patient has made an advance health directive, where relevant.

⁷ Refer to the definition of 'health professional' in Part 7.

⁸ Refer to the definition of 'parent' in Part 7, section 140.

What do we mean by consent to disclose confidential information?

The key elements of consent are:

1. **Consent must be voluntary** – The individual must have a genuine opportunity to provide or withhold consent. They must be able to say ‘yes’ or ‘no’ without pressure that would equate to an overpowering of will. Consent may be withdrawn at any time by the individual. Once given, consent is valid until it is withdrawn or the circumstances change, for example, beyond the admission or episode of care relating to the consent.
2. **Consent must be informed** – The individual must know what they are agreeing to in providing consent⁹. That is, the individual needs to be aware of the implications of providing or withholding consent, having received the information in a way meaningful to them and appropriate in the circumstances.
3. **The individual must have capacity to consent** – The individual must be capable of understanding the issues relating to the decision, forming a view based on reasoned judgement, and communicating their decision.

Consent in section 144 includes express and implied consent:

Express consent refers to consent that is clearly and unmistakably stated. It can be obtained either in writing, orally, or in another form where the consent is clearly communicated. As a general rule if there is any doubt about whether a person is giving consent, express consent should be sought, preferably in writing. If the disclosure could have serious consequences for the person concerned the Department of Health or Hospital and Health Service would have to be able to show that the person could have been expected to understand what was going to happen to confidential information about them, and gave clear and unambiguous consent to the disclosure.

Implied consent refers to circumstances where staff may reasonably rely on a person’s implied consent to disclose their confidential information in certain ways. Implied consent operates on the basis that the person concerned has been provided with information about the circumstances under which their confidential information may be disclosed and has considered whether or not they are happy to have the information disclosed in these circumstances. When relying on implied consent it should be clear that the person knows and understands what they are consenting to, and that they have clearly indicated by their behaviour that they have agreed. Information on disclosure practices can be provided in the form of written information or could be explained to the person verbally. For example, when a person agrees to be referred to a physiotherapy clinic by a doctor there is implied consent for the doctor to disclose relevant information to the physiotherapist. However, there should be open discussion and information sharing so the individual understands how their information may be used or disclosed.

⁹ This includes the individual understanding that they are able to withdraw their consent at a subsequent time.

Disclosure when dealing with children and young people

Section 144 allows a health professional to disclose a child's confidential information to another person if the child¹⁰ has consented to the disclosure and the health professional considers that the child has sufficient capacity or competence to give their consent.

It also allows a health professional to disclose a child's information with the consent of the child's parent or guardian where it is considered that the child *does not have* sufficient capacity or competence to consent to the disclosure; for example, an infant.

Determining capacity and competence can be complex. There is no particular age at which competency can be said to occur. Health professionals will need to carefully assess the child's maturity and their understanding of the relevant issues; for example, their understanding of 'consent' and the consequences of disclosure. There will be younger children, in certain circumstances, who have sufficient maturity and understanding to make their own decisions. Conversely, there may be older teenagers who lack such competence. There may be instances where the health professional and the parent/s (or guardian/s) disagree about the child's capacity to consent to disclosure. In these circumstances, the health professional will need to exercise their professional judgement and if necessary seek legal advice.

The purpose of the proposed disclosure of the child's information is also relevant when considering whether a child has sufficient maturity to consent. For example, a young teenager may have sufficient maturity to consent to the disclosure of information about an allergy, but may not have sufficient maturity to consent to the disclosure of information about results of genetic tests.

In circumstances where a child is assessed as capable of making their own decisions about disclosure of their confidential information, their wishes should be followed unless the child refuses to consent to a disclosure that, in the opinion of the treating health professional, is in the best interests of the child.

Overriding a competent child's express refusal to agree to disclosure is an action that should be taken with caution. The circumstances where a health professional would disclose information contrary to a young person's wishes are likely to be rare. For example, a diabetic teenager who refuses to take insulin may not want their parents to know. The health professional may decide that it is in the teenager's best interests to override their wishes. **A health professional should attempt to obtain consent before using their discretion to disclose information in the 'best interests' of the child.**

A health professional's discretion to disclose information in the best interests of a child applies equally to very young children and to young people with sufficient maturity to consent. The 'best interests' of the child must be considered objectively, and a health professional must exercise their professional judgement in determining whether to disclose information.

¹⁰ Under Queensland law a child is a person who is less than 18 years of age – refer to section 36 of the *Acts Interpretation Act 1954*.

Situations may arise where a parent seeks information about their child but the child has asked that certain confidential information not be disclosed to their parent. For example, a competent child may seek health services about sexuality or pregnancy. **As a general rule, in such circumstances, confidentiality should be maintained unless the child expressly consents to disclosure.**

Where a child has been assessed as *not competent to consent to disclosure* confidential information may be disclosed by a health professional with the consent of the child's parent or legal guardian. For example, a parent may consent to relevant confidential information being disclosed for research purposes. It is only necessary to obtain one parent's consent to disclose. However a health professional may have regard to the best interests of the child if there is an expressed or potential conflict between the parents. The best interests of the child will depend on the circumstances, but may include matters such as the family context, and the risks and benefits of disclosure.

Section 145 – Disclosure of confidential information for care or treatment of person

The duty of confidentiality does not apply to the disclosure of confidential information by staff or prescribed health practitioners if the disclosure is required for the care¹¹ or treatment of the person concerned.

For example, if the information is disclosed:

- by a staff member to another staff member at the same facility; for example, a receptionist at a Hospital and Health Service community health facility disclosing information to a physiotherapist employed by the facility for the purpose of treating a patient
- by a staff member to another staff member within the same Hospital and Health Service; for example, a staff member at one facility in the Hospital and Health Service providing documents to another facility for the purpose of patients being placed on a waiting list for treatment at the second facility
- by a staff member to a health professional engaged to deliver a health service to a public patient in another Hospital and Health Service, for example, an administrative officer in the Release of Information area providing clinical notes to an emergency department of other hospital
- by a health professional or any other staff member to a health care provider as long as it is relevant for care and treatment purposes; for example, by a Hospital and Health Service doctor to a Queensland Ambulance Service officer, or by a Hospital and Health Service nurse to a home carer for a person requiring home care following release from hospital.

Although the department or Hospital and Health Service does not legally require patient consent for disclosure of confidential information for treatment or health care it is still considered to be best practice to discuss this with the patient prior to the disclosure to

¹¹ Care in this context means 'health care'. Health care is generally accepted to mean *care or treatment of, or a service or procedure to diagnose, maintain or treat a physical or mental condition which is carried out by, or at the direction of, or supervised by, a health provider.*

ensure the patient is fully informed, and is aware **of what is going to happen with their information**.

In addition, section 161 of the *Hospital and Health Boards Act* allows necessary or incidental disclosure of confidential information, for example disclosing information to support staff for the purpose of administrative tasks. Depending on the circumstances support staff may be able to disclose confidential information under the instruction of a health professional. Refer to [section 161](#) for further information.

Section 146 – Disclosure to a person who has sufficient interest in the health and welfare of person

The duty of confidentiality in Part 7 does not apply to the disclosure of confidential information by staff of a prescribed health practitioner if the information:

- communicated is limited to general information about the condition of a current or recently discharged patient; for example, a switchboard operator or media staff at a hospital disclosing that a person's condition is 'satisfactory'; or
- is communicated by a health professional to a person who the professional believes has 'sufficient personal or professional interest' in the health and welfare of a patient or client to whom the information relates. Examples of people who may have 'sufficient personal or professional interest' include the person's spouse, child, parent or guardian; a friend who has a close personal relationship with the person and a personal or professional interest in their welfare, or an individual who may be providing home care to a person who has a chronic health condition or a disability; a general practitioner who has had responsibility for the care and treatment of the person.

The question of who has a 'sufficient personal or professional interest' will need to be assessed on a case by case basis. The health professional should have a reasonable belief that the person has such an interest and if not satisfied may undertake further enquiries prior to disclosing any information.

However, if the person concerned has asked that their confidential information not be disclosed, either generally or to 'specific person(s)', then the **information cannot be disclosed unless required by law**; for example at admission a patient may have indicated that information should not to be given to their former spouse.¹²

In situations where a person has died without placing restrictions on disclosure section 146(2) permits a health professional to disclose relevant confidential information about the deceased to an individual who the practitioner believes had '*sufficient personal interest*' in the health and welfare of the patient when they were alive. Being related to a deceased person by blood or marriage does not automatically entitle a person to the confidential information of an individual who has died. To have

¹² Where a patient or client has asked that details of their confidential information not be disclosed to a specific person or persons this request continues to apply even if the patient subsequently dies. Information can not be disclosed unless one of the other exceptions to the duty of confidentiality applies; for example, the relevant chief executive or delegate may approve disclosure to avert a serious risk to the life, health, or safety of a person (section 147); the person may apply for access to the confidential information of the deceased under right to information (section 143), where access will be subject to any public interest considerations. Staff should seek advice in the first instance from their Hospital and Health Service lawyer, or if the Hospital and Health Service does not have a lawyer, a nominated panel law firm for advice.

'sufficient personal interest' the person asking for the information needs to demonstrate that he or she had a close and ongoing personal relationship with the deceased that entailed a personal interest in their health and welfare.

Disclosure of relevant confidential information to an individual with 'sufficient personal interest' does not entitle the individual to have access to the deceased's entire patient record. For example, while it may be relevant to disclose confidential information about the immediate episode of care that preceded the patient's death, the fact that the person had been treated for depression or undergone a hysterectomy many years earlier may not be relevant.

Where a request is made for disclosure of confidential information relating to a deceased person staff should refer the request to their Privacy Contact Officer in the first instance.

If a decision is made to disclose confidential information the disclosure **must** be made by an appropriate health professional; for example, a doctor, nurse, physiotherapist, or speech therapist. The 'appropriate' health professional is an individual who has been involved in the treatment of the individual whose information it is proposed to disclose.

Section 147 – Disclosure to lessen or prevent serious risk to life, health or safety

The exception in section 147 applies in situations where disclosing confidential information is believed to be necessary to assist in lessening or preventing a serious risk to life, health or safety, or public safety.

Section 147 allows staff or a prescribed health practitioner to disclose confidential information where:

- a) the relevant chief executive believes on reasonable grounds that the disclosure is **necessary to assist** in lessening or preventing a **serious risk** to:
 - i. the life, health or safety of a person, including the person to whom the confidential information relates; or
 - ii. public safety; and
- b) the relevant chief executive has in writing, authorised the disclosure.

Section 147 will allow for disclosure where a risk or potential risk cannot, in the relevant chief executive's view, reasonably be lessened or prevented without disclosure of the confidential information.

Section 147 also operates more broadly, allowing disclosure where it is necessary **to assist** in lessening or preventing a serious risk or potential risk. To this extent, section 147 allows disclosure where, in the relevant chief executive's view, prevention or assistance measures with respect to a risk or potential risk necessitate disclosure of the confidential information.

In all cases, the relevant chief executive's belief, with respect to the necessity of disclosure to assist in lessening or prevention a risk or potential risk, must be **on reasonable grounds**.

This exception contains two important elements of which, among other things, a relevant chief executive must be satisfied. The risk or potential risk **must be serious**, and the disclosure **must be necessary** to assist in lessening or preventing the risk.

A serious risk to a person must reflect significant danger – such as a life-threatening situation or one that might reasonably be expected to result in serious injury or illness – to any person, including the person to whom the information relates (whether or not a current patient), such as a patient, the patient’s family, an employee of the department or Hospital and Health Service, or any other member of the community.

A serious risk to public safety relates to broader safety concerns affecting a number of people. This could include the potential spread of a communicable disease, or harm caused by an environmental disaster.

In determining whether a risk or potential risk is ‘serious’, relevant chief executives may wish to consider, among other things, factors including:

- the number of people likely to be at risk
- location and immediacy of the risk
- the nature, scale, and effects of the harm or injury that may develop
- the likely duration of the risk
- the likelihood that a potential risk may arise

Not all of the above factors may necessarily apply, depending on the situation. For example, to satisfy section 147, **the risk or potential risk does not need to be imminent, but it must be considered serious**. Accordingly, a risk or potential risk may not be likely to arise immediately, but it may nevertheless be serious enough to warrant disclosure.

Because disclosure must be **necessary** to assist in lessening or preventing the risk or potential risk, section 147 will not apply where the same effect could be achieved through the release of de-identified versions of that information. Relevant chief executives should consider, for example, whether it is necessary for the potential recipient of confidential information to know a particular person’s name in order to reasonably lessen or prevent the relevant risk.

Staff must provide a written brief or a written recommendation to enable the relevant chief executive or delegate to make a decision.¹³ In an emergency, the recommendation may be made verbally. If the recommendation is verbal, a written record of the discussion must be made as soon as possible, and placed on the relevant departmental or Hospital and Health Service file.

While the recommendation to disclose can be made verbally the relevant chief executive or delegate must authorise the disclosure in writing before any disclosure is made. This can be in the form of an authorising email if necessary.

Any brief or recommendation (whether verbal or written) must address the following:

- the circumstances leading to the recommendation
- identification of the serious risk, or the potential for a serious risk to arise

¹³ Section 161 enables staff to disclose information to the chief executive or delegate for this purpose.

- what confidential information is proposed to be disclosed, **noting any disclosure must be limited to the minimum necessary to prevent or avert the serious risk**
- why disclosure is necessary to lessen or prevent the risk, including why the disclosure of de-identified information will not suffice
- to whom it is proposed to disclose the confidential information, and how it is envisaged that the person(s) will use the confidential information. **Information must only be disclosed to a person(s) who needs the information to avert the risk. If appropriate, access to expert advice should be made available to assist the recipient to accurately interpret and use the information; for example, a consulting psychiatrist**
- who it is proposed should make the disclosure (i.e. the relevant chief executive, the delegate or an individual authorised by the relevant chief executive or delegate) and how it is proposed to disclose the information
- any other relevant information; for example, the urgency attached to the disclosure.

An 'Authority for Disclosure' form should be attached to the brief or recommendation.¹⁴ The form must be completed and submitted for the relevant chief executive or delegate signature. The form identifies the relevant department or Hospital and Health Service staff member(s) by name and position; describes the confidential information to be disclosed (information that is capable of identifying an individual should not be included in the description of information to be disclosed); notes the intended recipient(s) of the information, and sets out the duration of the authority.

Section 148 – Disclosure for the protection, safety or wellbeing of a child

This section does not negate the obligation of medical practitioners and registered nurses to report all reasonable suspicions of potential harm to a child to the Department of Communities, Child Safety and Disability Services under the *Child Protection Act 1999*. Nor does it negate the responsibility of health professionals to consider whether involuntary assessment and treatment of a person is required under the *Mental Health Act 2016*, particularly if the person is considered to be a danger to themselves or others because of mental illness.

Disclosure by a staff member (i.e. designated person)

Section 148(1) allows confidential information to be disclosed by staff for the protection, safety or wellbeing of a child where the confidential information relates to another person. This section enables the disclosure of information about an individual who is receiving, or has received a public sector health service, to people who are willing and able to provide support to a child in circumstances where a child may be placed at some risk.

To release the child's own information refer to [section 144](#) of the Act.

¹⁴ Refer to [Appendix 1](#) for a template 'Authority for Disclosure' form.

Section 148(1)(b) clarifies that the confidential information being released relates to an individual other than the child. However, if a child presents to a health service facility and confidential information about the child (child 1) must be disclosed for the protection, safety or wellbeing of a second child (child 2) the information about child 1 may be released, even if child 1 refuses to consent to the disclosure.

It is also important to note that this exception does not facilitate the provision of information to the Department of Communities, Child Safety and Disability Services or the Queensland Police Service in instances where a child has been, or is at risk of being harmed. These scenarios are provided for in the extensive legislative framework already in place in Queensland for the protection of children and are permitted under section 143 of the *Hospital and Health Boards Act 2011*.

Some examples of disclosure for the protection, safety or wellbeing of a child include:

- A situation where a child's parent has suffered serious injuries from a car accident and is unable to give informed consent to release of their information. This exception allows hospital staff to contact the other parent, school, grandparent or neighbour to alert them to the situation. This will allow appropriate arrangements to be made for the care of the child. In these circumstances, if a suitable person cannot be readily identified by staff, they may contact the police to assist in making arrangements for the care of the child.
- Clinical staff disclosing patient information to family members to help keep a child safe where the mental health of the patient may raise concerns about the patient's behaviour around the child. This section allows discussions to be held with the grandparents or other relatives about a person's mental illness to facilitate the protection, safety or wellbeing of the child. For example, discussion may relate to medication, support needs, future appointment times and possible warning signs that would require further intervention or notification to the health service.

Disclosure by a prescribed health practitioner

Section 148(2) allows for a prescribed health practitioner to disclose confidential information only where:

- a) the relevant chief executive believes, on reasonable grounds, the disclosure is necessary for the protection, safety or wellbeing of a child; **and**
- b) the confidential information relates to someone other than the child mentioned in (a); **and**
- c) the relevant chief executive has, **in writing**, authorised the disclosure.

All of the requirements of this section must be met in order for the prescribed health practitioner to be permitted under the Act to disclose confidential information for the protection, safety or wellbeing of a child.

Section 149 – Disclosure for funding arrangements and public health monitoring

Section 149 permits staff, with the written authority of the relevant chief executive, to disclose confidential information to another staff member who is authorised in writing by the relevant chief executive or delegate to receive the information to assist in managing a funding arrangement.

Section 149 also permits disclosure, with the written authority of the relevant chief executive, for public health monitoring purposes. For example:

- accessing patient records to investigate emergent public health issues such as public concerns over a ‘cancer cluster’
- accessing clinical treatment histories of identified Severe Acute Respiratory Syndrome (SARS) victims to make determinations about treatment efficacy.

Before complying with requests to disclose confidential information for public health monitoring purposes staff should satisfy themselves that the request is valid by asking to see the **written authority signed by the relevant chief executive**.

Section 150 – Disclosure for purposes relating to health services

Section 150 allows staff to disclose confidential information for the management of health services¹⁵, for example:

- to another staff member for the purposes of evaluating, managing, monitoring or planning health services; or
- to an entity that has been prescribed under a regulation for the purposes of evaluating, managing, monitoring or planning health services.

Disclosure to other staff for management of health services

Section 150 allows information to be disclosed to other staff when it is necessary for management of health services.

‘**Health service**’ is defined in the *Hospital and Health Boards Act 2011* to be a service for maintaining, improving, restoring or managing people’s health and wellbeing. It includes services provided at a hospital, nursing home, community health facility, or other place as well as services that deal with public health (such as an illness or injury prevention program). It also includes any administrative or other support service directly related to a health service; for example catering or laundry services.

While it is not possible to give an exhaustive list of activities that fall under this exception, some examples include:

- routine management activities where it is necessary to disclose identifying information to senior managers

¹⁵ The phrase ‘management of health services’ has been used in this document for readability purposes only. ‘Management of health services’ encompasses activities for the purposes of evaluating, managing, monitoring or planning health services.

- approved use of diagnostic information for planning future health services; for example, use of diagnosis information provided to the Patient Travel Subsidy Scheme
- complaints management
- infection control surveillance
- incident monitoring and analysis; for example, investigation of falls and drug errors.

The exception to the duty of confidentiality in section 150 **does not extend to disclosure of confidential information for the purpose of research.**¹⁶ The provision of confidential information for research purposes is dealt with in Part 4 of the *Public Health Act 2005*.

Disclosure to a prescribed entity for evaluating, monitoring, planning or managing health services

Under section 150(b) staff may also disclose confidential information to an 'entity' that has been approved and listed in the Hospital and Health Boards Regulation 2012 (Qld). Prior to disclosing confidential information under this exception staff should check the Regulation to satisfy themselves that the entity requesting the confidential information is entitled to receive it.¹⁷

Section 150A – Disclosure for purposes related to approved research

Section 150A applies if the relevant chief executive gives a researcher written approval to carry out research.

In these circumstances, a staff member may disclose confidential information about a person (a participant) for the purpose of conducting the research if:

- a) the disclosure is to the researcher; **and**
- b) the participant is an adult who has impaired capacity for consenting to participation in the research; **and**
- c) the tribunal under the *Guardianship and Administration Act 2000* or another person authorised by law to make decisions for the participant (such as an enduring power of attorney) consents to the participant's participation in the research.

All of the requirements of this section must be met in order for the disclosure to be permitted under this provision.

¹⁶ Access for research purposes is coordinated through the Health Innovation, Investment and Research Office (HIIRO) <http://www.health.qld.gov.au/ohmr/default.asp>

¹⁷ The Hospital and Health Boards Regulation 2012 can be viewed online at: <https://www.legislation.qld.gov.au/view/pdf/2013-05-10/s1-2012-0024>

Section 151 – Disclosure to the Commonwealth, another State or Commonwealth or State entity

Staff may disclose confidential information under an agreement with the Commonwealth or a Commonwealth entity, another State or an entity of another State, or to a Queensland State entity if the relevant chief executive considers the disclosure to be in the public interest and the relevant chief executive states this in writing. Agreements must be prescribed i.e. they must be listed in the Hospital and Health Boards Regulation 2012.

Prior to disclosing any confidential information under this exception staff should:

- check the Regulation to confirm that the entity requesting the confidential information is entitled to receive it; and
- satisfy themselves that the relevant chief executive has determined that the particular disclosure is in the public interest and the relevant chief executive states this in writing. If in doubt consult senior management.

Another jurisdiction or entity that receives confidential information must not disclose it to anyone else unless the prescribed agreement allows it, or the relevant chief executive has given written approval.

Section 152 – Disclosure to or by inspector

Under Part 10 of the *Hospital and Health Boards Act 2011* the chief executive may appoint an inspector to investigate a possible breach of the duty of confidentiality. Conditions or limits may be placed on the inspector's powers under the Act. Staff may disclose confidential information to an inspector appointed under the Act.

An inspector is required to show their identity card when exercising their powers under the Act. Staff should view the identity card before giving the inspector confidential information. An inspector may disclose confidential information if the disclosure is necessary for performing the inspector's functions.

Section 153 – Disclosure to Act officials

Section 153 of the *Hospital and Health Boards Act 2011* provides that staff may disclose confidential information if the disclosure is to an act official and the confidential information is relevant to the functions being performed by the Act official'.

Under section 282(3)(f), an **Act official** may be appointed by regulation. An Act official is defined in section 141(2) of the Act, and may include a health service auditor, a clinical reviewer or a health service investigator.

The function of **health service auditors**¹⁸ is to conduct health service audits.

The functions of **clinical reviewers**¹⁹ are to conduct a clinical review and to provide expert clinical advice.

¹⁸ Refer to part 4, division 2 of the *Hospital and Health Boards Act 2011*.

¹⁹ Refer to part 6, division 3 of the *Hospital and Health Boards Act*

The functions of **health service investigators**²⁰ are to investigate and report to the chief executive on any matters relating to the management, administration or delivery of public sector health services, including employment matters.

In order to carry out their function, an Act official has the power under the *Hospital and Health Boards Act 2011* to ask staff to provide documentation that may contain confidential information.

Before complying with a request, staff should first ask to see the Act official's instrument of appointment which sets out the conditions of the appointment, and may stipulate a time period for which the appointment is valid. Once satisfied that any request(s) are valid and the confidential information is relevant to the functions being performed by the Act official, staff should provide the information in a timely manner to assist the audit, review or investigation.

Section 154 – Disclosure to or by relevant chief executive

Section 154 enables staff or prescribed health practitioner to disclose confidential information to the relevant chief executive, if it is relevant to the object of the *Hospital and Health Boards Act 2011* (i.e. to establish a public sector health system that delivers high quality hospital and other health services to persons in Queensland having regard to the principles and objectives of the national health system).

The relevant chief executive may also disclose any confidential information received if the disclosure is to fulfill the relevant chief executive's functions under the *Hospital and Health Boards Act 2011*. Significantly, these functions include providing strategic leadership and direction for the delivery of public sector health services in the State; monitoring and promoting improvements in the quality of health services delivered by Services. (See functions of chief executive under section 45 of the Act).

For the purposes of Part 7 of the Act, relevant chief executives are also designated persons and are therefore subject to the same duty of confidentiality as all other employees in the department or the Hospital and Health Services. Consequently, the relevant chief executives are obliged to maintain confidentiality and to only disclose patient information in those circumstances outlined in the exceptions to the duty of confidentiality under Part 7.

The **Director-General** is the relevant chief executive for the Department of Health.

Section 155 – Disclosure to health practitioner registration board

Section 155 permits staff or a prescribed health practitioner to disclose relevant confidential information to a board established under the Health Practitioner Registration National Law or to the National Agency, for the purposes of:

²⁰ Refer to part 9 of the *Hospital and Health Boards Act 2011*.

- making, or giving information about, a complaint or notification about an individual who is or was registered under the Health Practitioner Registration National Law; or
- answering questions or otherwise giving information as part of an investigation or proceeding about a person who is or was registered under the Health Practitioner Registration National Law.

Making complaints

The department or Hospital and Health Service has a legal responsibility to address incidents of unacceptable professional conduct or workplace behaviour by its staff.

In the first instance, if managers, Patient Liaison Officers, Complaint Managers or other staff managing an issue require information about privacy and confidentiality in the context of an allegation of unprofessional conduct or workplace behaviour, line management, medical administration, or the relevant Executive Director should be contacted.

It should be noted that under the Health Practitioner Regulation National Law registered health practitioners who, in the course of practising their profession, form a reasonable belief that another registered health practitioner has behaved in a way that constitutes notifiable conduct under the Health Practitioner Registration National Law Act must notify the health ombudsman.

Please refer to the Health Practitioner Regulation National Law for further information concerning mandatory notifications by health practitioners.

Assisting with an investigation

When a health practitioner registration board undertakes official investigations or disciplinary proceedings, any request for confidential information will be on official letterhead. **Before complying with a request, staff should consult with their line management in the first instance.** Depending on the circumstances management may consider it appropriate to seek legal advice before complying with the request.

Section 156 – Disclosure to the health ombudsman

Section 156 permits staff or a prescribed health practitioner to disclose relevant confidential information to the health ombudsman for the purpose of:

- making, or giving information about, a complaint under the *Health Ombudsman Act 2013 or the Health Practitioner Regulation National Law (Queensland)*
- answering questions or otherwise giving information as part of an investigation under the *Health Ombudsman Act 2013* about a person who is or was a health service provider under that Act
- giving the health ombudsman information about health services
- giving the health ombudsman aggregated data, including data that identifies persons, about complaint management, patient safety or another matter relating to the quality of health services.

Before complying with a request from the health ombudsman for confidential information staff should consult their Privacy Contact Officer in the first instance. Depending on the circumstances management may consider it appropriate to seek legal advice before complying with the request.

Section 157 – Disclosure to person performing functions under *Coroners Act 2003*

Section 157 permits staff or a prescribed health practitioner to disclose confidential information to the Coroner, police, or others who have been directed to assist the Coroner to perform a function under the *Coroners Act 2003* (other than preparation of an annual report).

Staff may be asked to disclose confidential information (or provide copies of confidential information) in cases of ‘reportable deaths’; for example, where a death was not reasonably expected to be the outcome of a health procedure (for example, where an individual has been injected with a drug and they suffer an adverse reaction and die).

Any requests to disclose confidential information to the Coroner, police, or others assisting the Coroner should be referred to the relevant Privacy Contact Officer in the first instance.

Note that disclosure to the police under this section is limited to disclosure in circumstances where a police officer is exercising powers or acting in accordance with a direction under the *Coroners Act 2003*.

Section 158 – Disclosure to lawyers

Section 158 allows for disclosure only by the relevant chief executive, or by a duly authorised delegate of the relevant chief executive.

The relevant chief executive or delegate may disclose confidential information to a lawyer in relation to a matter, **where the lawyer is representing the State or a Hospital and Health Service in relation to the same matter.** To ensure the effective operation of this provision, the relevant chief executive is able to delegate this power to appropriately qualified staff.

This exception does not allow disclosure to lawyers representing staff in a personal capacity.

Section 159 – Disclosure to Australian Red Cross Society

Section 159 enables disclosure of confidential information by staff or a prescribed health practitioner to the Australian Red Cross Society for the purpose of tracing infected blood, blood products, tissue (for example, human skin), or the recipients or donors of infected blood, blood products or tissue.

Any requests to disclose confidential information to the Red Cross should be referred to the relevant Privacy Contact Officer in the first instance for advice.

Section 160 – Disclosure of confidential information in the public interest

Confidential information may be disclosed under section 160 by staff only if the relevant chief executive of a Hospital and Health Service or department believes, on reasonable grounds, that the disclosure is in the public interest and has authorised the disclosure in writing. **The relevant chief executive must not delegate the power to make a public interest determination.**

In order to make a determination under this section the relevant chief executive must consider whether the public interest arguments in favour of release outweigh the public interest arguments favouring confidentiality. As a consequence, general determinations (such as broad or open-ended disclosures) cannot be made and each application must be considered on its merits. For example, although the relevant chief executive may make a determination about a particular class of information that already exists it will be difficult to make a determination based on information that is expected to be brought into existence at a future time.

In order for the relevant chief executive to make a determination staff must provide a **written brief** to the relevant chief executive for consideration. The exception set out in sections 154 and 161 of the Act will apply (refer to 6.12 and 6.19) enabling staff to disclose confidential information to the relevant chief executive necessary for him or her to determine whether disclosure would be in the public interest.

The brief must address the following:

- what confidential information is proposed to be disclosed (including verification that the information is subject to the duty of confidentiality in Part 7)
- to whom it is proposed to disclose the confidential information, and how it is envisaged that the confidential information will be used
- the public interest arguments in favour of disclosure
- the public interest arguments in favour of maintaining confidentiality
- how the public interest arguments balance or outweigh each other
- who it is proposed should disclose the confidential information (i.e. the relevant chief executive or a person authorised by the relevant chief executive) and how it is proposed to disclose the confidential information
- how it is proposed to communicate to the recipient the scope and elements of any obligation of confidence that may be imposed or required in relation to the information being disclosed; for example, obtaining undertaking/s from the recipient
- any other relevant information; for example, whether there is any urgency attached to the disclosure.

Attached to the brief should be an 'Authority for Public Interest Disclosure' form.²¹

This form must be completed and submitted for the relevant chief executive's signature. The Authority must identify the relevant staff member(s) by name and

²¹ [Appendix 2](#) of these Confidentiality General Principles contains a template 'Authority for Public Interest Disclosure' form

position; describe the confidential information to be disclosed (information that is capable of identifying the relevant individual should not be included in the description of information to be disclosed); note the intended recipient(s) of the information, and set out the duration of the authority.

Non-identifying details of any public interest disclosures made under this section must be included in the Hospital and Health Service or department's annual report as required by section 160(2).

Section 161 – Necessary or incidental disclosure

Staff may disclose confidential information where the disclosure is necessary or incidental to a disclosure made under another exception to the duty of confidentiality. Examples of disclosures that may be necessary or incidental to another exception include:

- disclosing confidential information to support staff to make appointments for treatment (under section 145). While it may be arguable that the patient has impliedly consent to the disclosure to support staff, the exception in section 161 puts the issue beyond doubt.
- disclosing confidential information to the relevant chief executive to enable a decision to be made about a disclosure in the public interest under section 160.

Importantly, this type of disclosure must be necessary or incidental to the disclosure made under another exception to the duty of confidentiality.

Caution must be exercised when providing access to information systems because, unless system functionality is able to limit access to specific records, access to the systems will not be limited, as could be required. As noted in clauses 6.21 and 6.22 below, the relevant chief executive may authorise access to information systems in certain circumstances.

Section 161A – Chief executive may authorise access to information system

Section 161A provides that the chief executive may authorise an external service provider, or a person engaged by the external service provider, to access an information system. The system could be electronic, paper based or both.

The authorisation **must** be in writing, and **must** describe the information system to which the authorisation relates and be given on conditions stated in the authorisation.

The chief executive may authorise the access only if satisfied the access is necessary to enable the external service provider to provide a health service under an agreement between the chief executive or a Hospital and Health Service and the service provider.

Section 161B – External service provider may access confidential information under authorisation

Section 161A provides that the chief executive may authorise an external service provider to access a Queensland Health information system. The system could be electronic, paper-based or both.

Before authorising access, the chief executive must be satisfied the access is necessary to enable the external service provider to provide a health service under an agreement between the chief executive or a Hospital and Health Service and the service provider. Further, the authorisation must be in writing and must describe the information system or systems to which the authorisation relates. The section provides a safeguard to ensure scrutiny of a proposal to enable an external service provider to access confidential information.

Section 161B provides the authority for an external service provider, or a person engaged by that provider, to access a Queensland Health information system under an authorisation in section 161A.

As a further safeguard, section 161B states that the external service provider is taken to be a bound contracted service provider under the *Information Privacy Act 2009*, for the purposes of chapter 2, part 4 of that Act. This ensures that the privacy principles, which include the National Privacy Principles, in the *Information Privacy Act 2009* apply to the external service provider. This requirement will help to manage risks relating to further disclosure, use, security, quality, etc. of the confidential information, as significant penalties apply to non-compliance with the *Information Privacy Act 2009*.

Access by prescribed health practitioner to prescribed information systems

Section 161C of the *Hospital and Health Boards Act 2011* provides prescribed health practitioners with legal authority to access certain prescribed Queensland Health information systems.

Under section 161C(2) of the Act, prescribed health practitioners must not access a prescribed information system unless:

- a) the information is necessary for the prescribed health practitioner to facilitate the care or treatment of an individual; or
- b) the prescribed health practitioner accesses the information incidentally while accessing information mentioned in paragraph (a).

The Hospital and Health Boards Regulation 2012 states that **the prescribed information system provided by the department is called ‘The Viewer’** (with asset number 326492) .

Exceptions to a prescribed health practitioner’s duty of confidentiality are where disclosure:

- is required or permitted by law (section 143(3));
- occurs with consent (section 144);
- is for the care or treatment of the person to whom the information relates (section 145);

- where disclosure is to a person who has sufficient interest in the health and welfare of the person (section 146);
- is to lessen or prevent serious risk to life, health or safety (section 147);
- is for the protection, safety or well-being of a child (section 148(2));
- is to a relevant chief executive (section 154);
- is to a health practitioner registration board (section 155);
- is to the health ombudsman (section 156);
- is to a person performing functions under the *Coroners Act 2003* (section 157); and
- is to the Australian Red Cross Society (section 159).

A breach of section 161(2) can attract a maximum penalty of 600 penalty units.

Under section 161C(3) of the Act, a prescribed health practitioner must comply with any conditions prescribed by regulation in relation to access to a prescribed information system. Non-compliance with a condition prescribed by regulation can attract a maximum penalty of 600 penalty units.

In addition to the restrictions on access placed in section 161C, prescribed health practitioners must not disclose, directly or indirectly, the confidential information obtained from a prescribed information system to another person unless the disclosure is required or permitted under the *Hospital and Health Boards Act 2011*. A breach of this provision can attract a maximum penalty of 600 penalty units.

An inspector appointed under section 203 of the *Hospital and Health Boards Act 2011* is the appropriate person to investigate, monitor and enforce compliance with the Act. Accordingly, where a breach of section 142A or 161C occurs, the breach should be referred to a validly appointed inspector for review.

Disclosure should always be limited to the minimum necessary in the particular circumstances

Appendices

APPENDIX 1 – Authority for Disclosure of Information to Lessen or Prevent Risk to Life, Health or Safety

Hospital and Health Boards Act 2011
Section 147

Authority for Disclosure of Information to Lessen or Prevent Serious Risk to Life, Health or Safety

This Authority is given this day of <insert month>, <insert year> by <insert full name of>, Chief executive/authorised delegate of the chief executive, **Queensland Health** for the purposes of section 147 of the *Hospital and Health Boards Act 2011* (the Act).

1. In accordance with section 161 of the Act, I am in receipt of information that is subject to the statutory duty of confidentiality described in section 142(1) / section 142A(1) of the Act. I consider that disclosure of confidential information on the terms set out below is necessary to lessen or prevent serious risk to:-
 - a. life, health or safety of a person; or
 - b. public safety.
2. In accordance with section 147 of the Act, I authorise the Designated Person / Prescribed Health Practitioner listed in Item 1 of the Schedule attached to this Authority, to disclose the Confidential Information described in Item 2 of the Schedule to the persons, officers or entities listed in Item 3 of the Schedule, for the purposes listed in Item 4 of the Schedule.
3. This Authority may not be relied upon to permit the disclosure of Confidential Information described in Item 2 where disclosure may lawfully be given in reliance upon another provision set out in Part 7 of the Act.
4. This Authority is effective from the date of this document and is valid for the duration of the purposes described in Item 4 of the Schedule <or insert specific date>.

.....
(signature)
Chief Executive/Authorised Delegate
Queensland Health

Schedule

Item 1	Designated Person / Prescribed Health Practitioner	<Name, position title, work unit>
Item 2	Confidential Information authorised to be disclosed	<Insert specific type of confidential information to be disclosed>
Item 3	Persons to whom Confidential Information may be disclosed	<Insert name, position title and organisation>
Item 4	Purpose for which Confidential Information may be disclosed	E.g. The Confidential Information listed at Item 2 may be disclosed to the persons listed at Item 3 for the specific purposes of <insert name of organisation to whom confidential information will be disclosed and the specific purpose for which the persons may use the information (include relevant beginning/completion dates)>.

APPENDIX 2 – Authority for Public Interest Disclosure Information

Hospital and Health Boards Act 2011
Section 160

AUTHORITY FOR PUBLIC INTEREST DISCLOSURE OF INFORMATION

This Authority is given this day of <insert month>, <insert year> by <insert full name of>, chief executive, Queensland Health for the purposes of section 160 of the *Hospital and Health Boards Act 2011* (the Act).

1. In accordance with section 161 of the Act, I am in receipt of information that is subject to the statutory duty of confidentiality described in section 142(1) of the Act. I consider that it is in the public interest to disclose Confidential Information on the terms set out below.
2. In accordance with section 160 of the Act, I authorise the Designated Persons listed in Item 1 of the Schedule attached to this Authority, to disclose the Confidential Information described in Item 2 of the Schedule to the persons, officers or entities listed in Item 3 of the Schedule, for the purposes listed in Item 4 of the Schedule.
3. This Authority may not be relied upon to permit the disclosure of Confidential Information described in Item 2 where disclosure may lawfully be given in reliance upon another provision set out in Part 7 of the Act.
4. This Authority is effective from the date of this document and is valid for the duration of the purposes described in Item 4 of the Schedule <or insert specific date>.

.....
(signature)
Chief executive
Queensland Health

Schedule

Item 1	Designated Person	<Name, position title, work unit>
Item 2	Confidential Information authorised to be disclosed	<Insert specific type of confidential information to be disclosed>
Item 3	Persons to whom Confidential Information may be disclosed	<Insert name, position title and organisation>
Item 4	Purpose for which Confidential Information may be disclosed	E.g. The Confidential Information listed at Item 2 may be disclosed to the persons listed at Item 3 for the specific purposes of <insert name of organisation to whom confidential information will be disclosed and the specific purpose for which the persons may use the information (include relevant beginning/completion dates)>.