

Deed Poll of Privacy and Confidentiality

Prevocational Medical Accreditation Queensland

By

#[Insert individual Recipient name]#

In favour of

The State of Queensland acting through

Queensland Health

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Deed Poll of Privacy

|  |  |
| --- | --- |
| By | **The person specified as the Recipient in the Schedule to this Deed**  (**Recipient**) |
| In favour of | **The State of Queensland acting through Queensland Health**  ABN 66 329 169 412 of 33 Charlotte Street, Brisbane  (**Queensland Health**) |
| Recitals | 1. Queensland Health is accredited by the Medical Board of Australia, through the Australian Medical Council as an Intern Training Accreditation Authority to undertake the Purpose. 2. The Recipient may have access to Confidential Information, in the possession of Queensland Health or a Facility. 3. The Recipient undertakes that it will comply with the terms of this Deed in relation to the Confidential Information. |
| This Deed witnesses as follows: | |

1. Definitions and Interpretation Clauses
   1. Definitions

In this Deed:

|  |  |
| --- | --- |
| 1. Business Day | means between 9.00 am and 5.00 pm on a day other than a Saturday, Sunday or public holiday in Brisbane, Queensland, Australia (except where another location is specified in the relevant clause). |
| 1. Commonwealth Personal Information | has the meaning as in section 6 of the Privacy Act, that is, information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not, and whether the information or opinion is recorded in a material form or not. |
| 1. Confidential Information | means all information disclosed by or on behalf of Queensland Health, or a Facility in connection to the Purpose, to the Recipient, or acquired or created by or on behalf of the Recipient in connection with this Deed or the Purpose, that:   * 1. is by its nature confidential to Queensland Health or a Facility;   2. Queensland Health or a Facility designates as confidential; or   3. the Recipient knows or ought to know is confidential to Queensland Health or a Facility.   and includes:   * 1. information which relates to Intellectual Property Rights of Queensland Health and its Personnel or a Facility and their Personnel;   2. information concerning clinical processes, policies, commercial operations, financial arrangements, information technology systems and programs or other affairs of Queensland Health or a Facility;   3. information that is defined as ‘confidential information’ by Queensland Health portfolio legislation, including the *Hospital and Health Boards Act 2011* (Qld) and *Public Health Act 2005* (Qld) or any other Queensland or Commonwealth legislation.   4. Personal Information;   5. Commonwealth Personal Information;   6. Health Information;   7. any information that is confidential at common law, including but not limited to information relating to the medical treatment or care of a person;   8. the terms of this Deed,   whether existing or disclosed to the Recipient before or after execution of this Agreement, and includes any information produced by the Recipient or any other person derived from or containing any of the Confidential Information, but does not include any information which:   * 1. is or becomes public other than through breach of a confidentiality obligation; or   2. the Recipient can demonstrate was:      1. already in the Recipient's possession before receipt from Queensland Health;      2. independently developed by the Recipient; or      3. received by the Recipient from a third party on a non-confidential basis. |
| 1. Deed | means this document, including the Schedule. |
| 1. Effective Date | means the date specified in Item 3 in the Schedule. |
| 1. Facility | means a health facility that is subject to an accreditation activity in connection with the Purpose. |
| 1. Health Information | has the meaning as in section 6FA of the Privacy Act. |
| 1. Information Privacy Act | means the *Information Privacy Act 2009* (Qld). |
| 1. Item | means an item in the Schedule. |
| 1. Notice | means a notice in writing under or in connection with this Deed from one Party to the other Party provided in accordance with the requirements of clause 6.1. |
| 1. Party | means Queensland Health or the Recipient. |
| 1. Personal Information | has the meaning as in section 12 of the Information Privacy Act, that is, information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent or can reasonably be ascertained, from the information or opinion. |
| 1. Personnel | means officers, employees, agents and contractors of an entity.. |
| 1. Privacy Act | means the *Privacy Act 1988* (Cth). |
| 1. Purpose | means the purpose specified in Item 4 of the Schedule, to the extent applicable to the Recipient. |
| 1. Queensland Government Body | means any of:   * 1. a body corporate or an unincorporated body established or constituted for a public purpose by the State of Queensland legislation, or an instrument made under that legislation (including a local authority);   2. a body established by the State of Queensland through the Governor or a Minister; or   3. an incorporated company over which the State of Queensland exercises control. |
| 1. Recipient | means the person specified as the Recipient in the Schedule. |
| 1. Schedule | means the Schedule to this Deed. |

* 1. Interpretation

In this Deed unless a contrary intention is expressed:

* + 1. headings do not affect interpretation;
    2. words in the singular include the plural and vice versa;
    3. other grammatical forms of a defined word or phrase have a corresponding meaning;
    4. a reference to a 'person' includes any legal entity;
    5. a reference to a clause, part, annexure, exhibit or Schedule is a reference to a corresponding part of this Deed;
    6. a reference to a document (including this Deed and any laws) includes all amendments or supplements to, or replacements or novations of, that document;
    7. a reference to law includes common law and statutory laws, regulations, orders, subordinate legislation, ministerial directions, directions of relevant regulators and binding codes of conduct;
    8. a reference to a Party includes that Party's executors, administrators, successors and permitted assignees;
    9. a promise, agreement, representation or warranty by two or more persons binds them jointly and severally;
    10. no rule of construction will apply to a provision of this Deed to the disadvantage of Queensland Health merely because Queensland Health drafted the provision or would otherwise benefit from it;
    11. 'include', 'including' and similar words must be read as if followed by the words 'without limitation';
    12. 'documents', 'information' and similar words include information recorded or stored in any form, tangible or intangible, including electronic media or devices;
    13. 'consent' and 'approval' mean prior written consent and prior written approval respectively;
    14. 'agreement' means agreement in writing;
    15. if anything under this Deed is required to be done by or on a day that is not a Business Day in the place where the thing is to be done, that thing must be done by or on the next Business Day;
    16. if there is any inconsistency between the Schedule and the remainder of this Deed, the Deed will prevail to the extent of the inconsistency; and
    17. despite the preceding paragraph, any Special Conditions specified in Item 5 of the Schedule are incorporated in this Deed and prevail over the remainder of this Deed to the extent of any inconsistency.

1. Effective Date

This Deed takes effect on and from the Effective Date.

1. Undertakings

The Recipient:

* + 1. irrevocably undertakes to comply with the terms of this Deed from the date of execution, and acknowledges that Queensland Health may enforce this Deed, despite not being a signatory to it;
    2. acknowledges that the obligations in this Deed are in addition to and do not detract from any other obligations owed to Queensland Health; and
    3. must comply with all applicable legislative privacy and confidentiality obligations including those under Part 7 of the *Hospital and Health Boards Act 2011* (Qld), section 147 of the *Private Health Facilities Act 1999* (Qld), Chapter 6 of the *Public Health Act 2005* (Qld), and Part 7, Division 1 of *the Ambulance Service Act 1991* (Qld), *Information Privacy Act* and *Privacy Act* to the extent that these provisions apply to the Recipient in relation to any Confidential Information.

Clauses (d) and 4 apply to Confidential Information:

* + 1. in Queensland Health's documents and other material or information systems; or
    2. collected or accessed by the Recipient in connection with the Purpose.

If the Recipient collects or has access to Confidential Information in connection with the Purpose, the Recipient must:

* + 1. comply with all legislative obligations that apply to the Confidential Information and this Deed as if the Recipient were Queensland Health;
    2. ensure that the Confidential Information is protected against misuse, loss and unauthorised access, modification or disclosure;
    3. not use the Confidential Information other than for the Purpose, unless required or authorised by law;
    4. not disclose the Confidential Information without the consent of Queensland Health, unless required or authorised by law;
    5. not transfer the Confidential Information outside of Australia without Queensland Health’s consent;
    6. immediately notify Queensland Health if the Recipient becomes aware that a disclosure of any of the Confidential Information obtained in connection with the Purpose is, or may be, required or authorised by law;
    7. ensure that access to the Confidential Information is restricted to its Personnel who require access in connection with the Purpose;
    8. ensure that its Personnel do not access, use or disclose the Confidential Information other than in connection with the Purpose;
    9. fully cooperate with Queensland Health to enable Queensland Health to respond to applications for access to, or amendment of, a document containing any of the Confidential Information, and to privacy complaints; and
    10. comply with such other privacy and security measures as Queensland Health reasonably advises the Recipient in writing from time to time.

1. Breach

The Recipient must immediately provide Notice to Queensland Health on becoming aware:

* + 1. of any breach of this Deed;
    2. of any actual or suspected unauthorised disclosure, access to, use, loss, modification of or other dealings with the Confidential Information; or
    3. that a disclosure or use of any of the Confidential Information is required or authorised by law, before such disclosure or use is made (if reasonably possible).

The Recipient must take all reasonable steps to mitigate any loss or damage suffered by Queensland Health or any other person including a Facility, as a result of any breach or other incident referred to in clause 4.1, including to prevent or minimise any further disclosure of the Confidential Information, and must immediately follow all reasonable directions of Queensland Health in connection with the breach or other incident.

1. Warranties

The Recipient warrants to Queensland Health that:

* + 1. there is no impediment to it entering into this Deed;
    2. it has relied upon its own enquiries and has not entered into this Deed in reliance on, or as a result of, any representation, promise, statement, conduct or inducement by, or on behalf of, any other party except as set out in this Deed; and
    3. it has taken, or has had the opportunity to take, independent legal advice as to the nature, effect and extent of this Deed.

1. General
   1. Notices
      1. Any Notice which may be given to or served on Queensland Health under this Deed must be sent or delivered to the address specified for Queensland Health in the Schedule (as varied from time to time by Notice to the Recipient).
      2. Any Notice or other communication sent to the Recipient by Queensland Health will be deemed to be given:
         1. within Australia by express post, within one Business Day after the date of posting;
         2. within Australia by any other post, within six Business Days after the date of posting;
         3. to or outside of Australia, 12 Business Days after the date of posting;
         4. if delivered by hand during a Business Day, on the date of delivery,

to the address specified for the Recipient in the Schedule (as varied from time to time by Notice to Queensland Health), and if emailed, on the date recorded on the device from which Queensland Health sent the email, unless Queensland Health receives an automated message that the email has not been delivered, except that a delivery by hand or email received after 5.00 pm (local time) on a Business Day at the address of the Recipient as specified in the Schedule will be deemed to be given on the next Business Day.

* + 1. Notwithstanding clause 6.1(b), if the Recipient is a company then Queensland Health may serve a Notice at any time on the Recipient's registered office.
    2. Notices under clauses 4.1 and 6.11 will only be deemed to be given by posting or delivery by hand.
    3. For the purposes of the *Electronic Transactions (Queensland) Act 2001* (Qld), the Recipient consents to the giving of Notices by email, subject to clause 6.1(d).
  1. Waiver

Rights, remedies or powers under this Deed can only be waived by Queensland Health in writing signed by an authorised delegate. Queensland Health does not waive a right, remedy or power if it delays in exercising, fails to exercise or only partially exercises that right, remedy or power, or has on a previous occasion waived that right, remedy or power in relation to a particular obligation or breach.

* 1. Severance

If a provision or part of this Deed is wholly or partly void, illegal or unenforceable in any relevant jurisdiction that provision or part must, to that extent, be treated as deleted from this Deed for the purposes of that jurisdiction. This does not affect the validity or enforceability of the remainder of the provision or part or any other provision or part of this Deed.

* 1. Governing Law and Jurisdiction

This Deed is governed by the laws in force in Queensland, Australia, and the Recipient submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Queensland and courts of appeal from them in respect of any proceedings arising out of or in connection with this Deed.

* 1. Further Assurances

The Recipient must, at its own expense, do all things and execute all further documents reasonably necessary to give full effect to this Deed and the transactions contemplated by it.

* 1. Remedies Cumulative

Except as expressly provided in this Deed and permitted by law, the rights, powers and remedies of Queensland Health provided in this Deed are cumulative with and not exclusive of the rights, powers or remedies provided by law or equity independently of this Deed.

* 1. Costs and Expenses

The Recipient must pay its own costs (including legal costs) and expenses in connection with the negotiation, preparation, execution and delivery of this Deed.

* 1. Variation

This Deed may only be varied by agreement between Queensland Health and the Recipient signed by their authorised delegates.

* 1. Assignment and Novation by Recipient

The Recipient must not assign or novate any of its rights or obligations in connection with this Deed without the consent of Queensland Health.

* 1. Assignment and Novation by Queensland Health
     1. Queensland Health may assign, transfer or novate this Deed or any of its rights or obligations under this Deed from Queensland Health to another Queensland Government Body by providing Notice to the Recipient, provided that if Queensland Health gives Notice to the Recipient under clause 6.11(a):
        1. from the date of that Notice that other Queensland Government Body will assume the rights of Queensland Health as if it were Queensland Health; and
        2. if required by Queensland Health, all parties will execute a deed of novation or any other document reasonably required to effect the novation.
     2. For clarity, transfer of Queensland Health's rights or obligations within the same legal entity is not an assignment.
  2. Execution

In the event that the signature of the Recipient executing this Deed is delivered by email delivery of a scanned '.pdf' format data file or equivalent of the entire Deed to Queensland Health or its legal representative, the Recipient intends this to constitute the Recipient signing, sealing and delivering the Deed so as to create a valid and binding obligation of the Recipient with the same force and effect as if the signature were an original.

Schedule

1. **Queensland Health details**

|  |  |
| --- | --- |
| Name: | The State of Queensland acting through Queensland Health |
| ABN/ACN: | 66 329 169 412 |
| Address: | 33 Charlotte Street, Brisbane, Queensland, 4000 |
| Contact name and position, unit/branch/division name: | Faith White, Manager, PMAQ, CMOHRB, Prevention Division |
| Telephone: | 3708 5315 |
| Facsimile: | n/a |
| Email: | pmaq@health.qld.gov.au |

1. **Recipient details**

|  |  |
| --- | --- |
| Name: |  |
| ABN/ACN: |  |
| Address: |  |
| Contact name and position, organisational unit/entity name: |  |
| Telephone: |  |
| Facsimile: |  |
| Email: |  |

1. **Effective Date (clause 2)**

|  |
| --- |
| The date on which this Deed is executed by the Recipient |

1. **The Purpose (clause 1.1)**

|  |
| --- |
| The accreditation of Facilities and associated activities by Queensland Health as an Intern Training Accreditation Authority |

1. **Special Conditions**

|  |
| --- |
| Nil |

Signing page

Executed as a deed poll on the date below:

|  |  |  |
| --- | --- | --- |
| **Signed, sealed and delivered** by **the Recipient** |  |  |
| Full name of Recipient (print) |  | Signature of Recipient |
| in the presence of: |  |  |
| Full name of witness (print) |  | Signature of witness |
| Address of witness (print) |  |  |
| Date |  |  |