



## Prisoner accommodation and medication

---

Summary of unresolved complaint report under  
section 88 *Human Rights Act 2019*

June 2023

## About this report

This is a summary of an unresolved complaint report for a complaint made to the Queensland Human Rights Commission (Commission) under the *Human Rights Act 2019* (HR Act). Under section 88 of the HR Act, the report may include details of actions the Commissioner considers the respondent should take to ensure its acts and decisions are compatible with human rights.

The approach to human rights under the HR Act favours discussion, awareness raising and education about human rights. The Commission has a dispute resolution function which aims to provide the community with an accessible and independent avenue to raise human rights concerns with public entities.

The goal of conciliation is to reach meaningful resolution of complaints in a way that is relatively informal. The Commission cannot settle or determine disputes of fact.

Complaints that cannot be resolved do not get referred for determination by a Tribunal, although nothing prevents a complainant from commencing other legal proceedings against the public entity respondent in another court or tribunal and attaching human rights allegations to that claim.

The Commissioner must prepare a report about all unresolved complaints. The report must include the substance of the complaint and actions taken to try and resolve the complaint.

At the discretion of the Commissioner, the report may also include details of actions the Commissioner considers the respondent to the complaint should take to ensure its acts and decisions are compatible with human rights.

A recommendation does not necessarily mean that rights have been unlawfully limited. Unresolved complaint reports aim to assist public entities to comply with their obligations, build a culture in the Queensland public sector that respects and promotes human rights, and to promote a dialogue about the nature, meaning and scope of human rights. The report is not admissible in a proceeding unless the parties otherwise agree.

## Introduction

1. The Commission received a complaint from an individual (**C**) involving various allegations against a Hospital and Health Service (**HHS**) and Queensland Corrective Services (**QCS**) about his period of incarceration, primarily concerning:
  - a) A significant delay in his transfer to single cell accommodation in accordance with medical recommendation;
  - b) A failure to provide continuity and equivalence of medical care to that available in the community, including a decision not to continue the prescription medication that had been prescribed to him prior to admission to prison.
2. The Commission is grateful for the submissions of the respondents which were received during the course of the complaint and these have been incorporated.

## Summary of recommendations

3. The Commission recommends that the Hospital and Health Service review whether its prison policies and procedures are compatible with rights in the Human Rights Act to ensure:
  - a) Subject to the prisoner's consent, medical recommendations about the accommodation of prisoners are communicated directly from the Hospital and Health Service to Queensland Corrective Services (QCS).
  - b) The consideration of factors such as risk of abuse and diversion in prescribing, ceasing and managing medication in prison are demonstrably justified.

The Office of Prisoner Health and Wellbeing should be consulted as part of this review.

Relevant QCS and HHS agreements, policies and guidance material should be updated to reflect the outcome of this review and whenever possible, these should be publicly available.

4. The Commission welcomes the response from QCS and the HHS that they are prepared to accept the Commission's recommendations and have already commenced implementation. This demonstrates a commitment to building a culture of human rights.
5. The full copy of this report has been provided to all the parties, who must agree before it can be used in any proceeding in relation to a contravention of the HR Act.
6. This summary version is published under section 90 of the HR Act.

## Substance of the complaint

7. Allegations made in the complaint include:
  - a) Prior to entering prison, C injured his back in a car accident in which he also suffered significant burns on his body. He began a period of incarceration on 1 May 2020, firstly at a watchhouse and then a correctional facility.
  - b) Two and half months later he was transferred to another correctional centre (**the centre**) and this report primarily considers C's care from this time.
  - c) C re-injured his back while incarcerated and was unable to walk or sleep without being in pain.
  - d) Prior to his incarceration, C was prescribed a number of medications for the pain from his burns, back injuries, and fractures including 'Lyrica'.
  - e) C was not prescribed Lyrica while incarcerated. While in the care of the HHS at the centre he was prescribed alternative medication.
  - f) As a result of his pre-existing medical conditions, C sought accommodation in a single person cell, and the HHS provided him with a medical certificate making that recommendation. C alleges he provided the medical certificate to QCS staff, yet his request was not received by the relevant staff for assessment and not granted until 4 months and 20 days later.

## Arrangement for health care in Queensland prisons

8. Under the *Corrective Services Act 2006 (CS Act)*, QCS is responsible for the humane containment, supervision and rehabilitation of prisoners. Through a Memorandum of Understanding (**Health Services MOU**)<sup>1</sup>, QCS engages Queensland Health (**QH**) to deliver health services for prisoners through the relevant Hospital and Health Service.
9. Each HHS has a dedicated prison health service based in health clinics in each correctional centre. These health clinics operate like general practice clinics in the community, providing assessment, diagnostics, treatment services and referral to specialist health services such as specialist outpatient services or in-patient treatment services.<sup>2</sup>

---

<sup>1</sup> *Corrective Services Act 2006* (Qld) s 3. See also *Memorandum of Understanding (Prisoner Health Services) between State of Queensland acting through Queensland Health and State of Queensland acting through Queensland Corrective Services* <<https://clinicalexcellence.qld.gov.au/sites/default/files/docs/priority-area/service-improvement/offender-health-project/prisoner-health-service-mou.pdf>>

<sup>2</sup> Queensland Health (Office for Prisoner Health and Wellbeing), *Prisoner Health Services factsheet* (Web Page) <<https://clinicalexcellence.qld.gov.au/sites/default/files/docs/about-us/what-we-do/office-prisoner-health-and-wellbeing/phs-factsheet.pdf>>

10. Under the CS Act, watchhouses are the responsibility of the Queensland Police Service (**QPS**) Commissioner.<sup>3</sup> The Health Services MOU does not address the provision of health services in watchhouses and the HHS was not responsible for health services at the watchhouse.

## Summary of response

### Health care

11. In relation to C's allegations concerning his health care, QCS has no authority to provide medication to prisoners and the agency's role is limited to assisting QH in safely treating prisoners. Unless a prisoner self-discloses, QCS ordinarily has no knowledge of the specific medication given to prisoners and QCS officers are there to provide security and to ensure prisoners do not attempt to divert medication.<sup>4</sup> QCS does not have authority to approve medications.
12. The HHS states that:
  - a) Prisoners are subject to an individualised assessment upon their initial reception into custody and their medical needs (including medications) are assessed and individualised on the basis of this assessment.
  - b) The range of medications which can be prescribed in a custodial setting are constrained by the QH List of Approved Medications (**LAM**) and the necessary security parameters implemented by QCS to appropriately manage risk factors in the custodial setting.
  - c) The prescription of medicines, listed in the LAM, must be based on a proven medical condition and assessed as being clinically appropriate at the time of the prisoner's reception into custody. While consideration is given to pre-existing prescriptions, the HHS must assess whether the prescription is required based on the assessment conducted at the time of the prisoner's reception into the corrective services facility.
  - d) There is no presumption that a pre-existing prescription will automatically be continued in the custodial setting. In respect of medications such as Lyrica, relevant information provided to prisoners states:
    - i. These prescriptions will be ceased or weaned;
    - ii. The medication will only be prescribed if the HHS medical staff or a specialist from the Princess Alexandra Hospital deem it clinically appropriate in their independent opinion; and

---

<sup>3</sup> *Corrective Services Act 2006* (Qld) s 8. See also the OPM Issue 91, effective 9 December 2022, Chapter 16 <[https://www.police.qld.gov.au/sites/default/files/2022-12/OPM-ch.16-Custody\\_0.pdf](https://www.police.qld.gov.au/sites/default/files/2022-12/OPM-ch.16-Custody_0.pdf)>

<sup>4</sup> Diversion is the practice of a prisoner secretly giving their prescription medication to another prisoner.

- iii. A prisoner's prescription will be reviewed where a diversion of medication is detected.
- e) This approach is consistent with community practice insofar as general practitioners in the community maintain autonomy in assessing a patient's medical needs and providing treatment accordingly. By virtue of each practitioner's discretion in assessing the patient's medical needs in light of their other co-morbidities, whether in the community or in a custodial setting, prescribing practices may vary between practitioners.
- f) In relation to C's matter specifically, based on his medical records, C's last community prescription for Lyrica was issued several days prior to his admission to the watchhouse. Two and a half months later, C was transferred to the centre. In accordance with the HHS policy, C's medical needs, including the prescription of any pain medication, were assessed 'afresh' by a medical officer.
- g) In this case, the custodial setting alone was not the sole determinative factor in the decision not to prescribe Lyrica for the management of C's pain. Rather, the decision to prescribe an alternative to Lyrica for pain management was informed by several relevant factors.
- h) Pain management through medication is complex due to the type and range of medications, risk of dependency and abuse, and potential adverse reactions with other medications. During C's incarceration at the centre, medical staff determined C's back pain could be better managed using alternative medications that are suitable to the correctional environment and mitigate the risks associated with the high prevalence of drug abuse in the custodial setting in accordance with specialist advice.

### Accommodation recommendation by the HHS

- 13. In relation to the allegations regarding C's accommodation in a single cell, QCS and the HHS state that if the relevant health service makes a medical recommendation about a person's placement, it is the responsibility of the prisoner to ensure that the written medical recommendation certificate reaches the correct person at QCS to assess the recommendation.
- 14. Further, QCS say that:
  - a) Prisoners in corrective service facilities are placed in suitable accommodation and consideration is given to their needs and risks. Where practical, each prison in a corrective services facility must be provided with his or her own cell. Due to capacity issues and high prisoner numbers, this is not always achievable, and prisoners may be required to share cells.
  - b) All reasonable efforts are made to ensure that shared cell accommodation placements do not impact adversely on safety or security, or reduce prisoners' access to amenities, cell access, visits and progression opportunities. Consideration of shared cell accommodation is also

individually assessed and recorded. Physical impairments are not an automatic criterion for a prisoner to be placed in their own cell. QCS continually monitors and reviews shared cell accommodation to identify any concerns in relation to prisoner's placements.

- c) Prisoners are given the opportunity to liaise with unit staff as to any concerns they may have with their shared cell arrangements
- d) C was asked many times whether he had any concerns about sharing a cell and did not raise any concerns. No evidence has been located to confirm that C gave the relevant documentation to QCS staff in September 2020.

## Human Rights Act obligations

- 15. QCS and the HHS are public entities under the HR Act with obligations to:
  - a) act and make decisions in a way that is compatible with human rights; and
  - b) give proper consideration to human rights when making a decision.<sup>5</sup>
- 16. A decision or action is compatible with human rights if it does not limit any human rights or limits a human right only to the extent that is reasonably and demonstrably justifiable.<sup>6</sup>
- 17. The Health Services MOU acknowledges several rights under the HR Act including the right to **humane treatment when deprived of liberty**. This right requires that persons deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person.<sup>7</sup>
- 18. The right creates a positive obligation on public entities to treat persons in detention with humanity and respect for dignity. It complements the prohibition on torture and cruel, inhuman or degrading treatment,<sup>8</sup> although the latter is a more general protection for all people against the worst forms of conduct.<sup>9</sup>
- 19. The *United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules)* are considered the international standard for the humane treatment of prisoners.<sup>10</sup> The parties to the Health Services MOU agree that the Mandela Rules provide a strong foundation for the humane treatment of prisoners and commit to work with each other to ensure adherence to these rules as far as possible. Without limiting the application of other Mandela Rules, QH and QCS specially acknowledge in the Health Services MOU that:

<sup>5</sup> *Human Rights Act 2019* (Qld) s 58(1).

<sup>6</sup> *Human Rights Act 2019* (Qld) ss 8 and 13

<sup>7</sup> *Human Rights Act 2019* (Qld) s 30.

<sup>8</sup> *Human Rights Act 2019* (Qld) s 17.

<sup>9</sup> *Castles v Secretary to the Department of Justice* (2010) 28 VR 141; [2010] VSC 310 [99].

<sup>10</sup> United Nations, *Standard Minimum Rules for the Treatment of Prisoners* (30 August 1955); *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, GA Res 70/175, UN Doc A/RES/70/175 (17 December 2015)

Prisoners should enjoy the same standards of health care that are available in the community and should have access to necessary health care services free of charge without discrimination on the grounds of their legal status. (Rule 24 (1))<sup>11</sup>

20. The principle of equivalency of care is also protected by the **right to access health services** in the HR Act, and is reflected in both the QH *Medication formulary and prescribing practices for prison health services* guideline (**medication guideline**),<sup>12</sup> and the *Queensland Prisoner Health and Wellbeing Strategy 2020-2025*.

## Provision of health care

21. Many of C's allegations concern decisions by health professionals regarding his clinical care. There are also significant disputes of fact between the parties about the prisoner's health care while detained. The Commission does not reach any concluded position on these matters and the Commission does not seek to review clinical decisions made by the HHS staff.
22. However, the Commission is concerned about the potential limitation on rights that may eventuate from the current arrangements for health care in custodial settings whereby different providers are responsible for health care as a prisoner is transferred from watchhouses to prisons. These arrangements may result in a prisoner's no longer having access to prescription medication by virtue of their incarceration at several facilities over a period of time. Depending on the medication, such cessation may cause significant side effects including pain and discomfort. The Commission will continue to monitor this issue.
23. Further, at a systemic level, the material provided by the HHS indicates its policies and procedures may be inconsistent with QH policies, and in particular the relevant QH medication guideline. The Commission notes that QCS are responsible for determining the necessary security parameters to appropriately manage risk factors in the custodial setting. QCS may discipline detainees for breaches under the CS Act and relevant policies.<sup>13</sup>
24. The Commission agrees that each health professional charged with treating persons in custody must form their own opinion about the most appropriate care and that a decision to cease or wean medication should be made by a health professional with full knowledge of the prisoner's medical history.
25. The Commission accepts that by their very nature, medication guidelines are to be used by the HHS practitioners as a guide in relation to prescribing practices. The medication guideline does not impose a standardised approach nor specific

---

<sup>11</sup> This is also included in principle 41.4 of the *Guiding Principles for Corrections in Australia*,  
<sup>12</sup> Queensland Health, *Medication formulary and prescribing practices for prison health services*, Guideline number: QH-GDL-501:2022 (7 November 2022)

<<https://www.health.qld.gov.au/system-governance/policies-standards/guidelines/medication-formulary-and-prescribing-practices-for-prison-health-services>>

<sup>13</sup> *Corrective Services Act 2006* (Qld) Chapter 3 and Queensland Corrective Services, *Custodial Operations Practice Directive: Breaches of Discipline* (19 May 2022).



requirements regarding the prescription of medication to persons entering custody with pre-existing prescriptions obtained in the community.

26. The Commission reaches no conclusions about the adequacy or equivalence of health care provided to C, and recognises the risks of diversion and abuse in a prison environment. Nonetheless, the material considered indicates that current practices and policies should be reviewed to ensure they are consistent with relevant human rights, and material published by QH; in particular, to justify references to treatment being based on security measures (such as alleged diversion) or risk of abuse.

### Accommodation based on health needs

27. The Commission concludes the delay in transferring C to single cell accommodation *may* have been avoided, or otherwise justified, had QH shared the medical recommendation regarding accommodation directly to QCS for processing, rather than relying on the prisoner to provide that material to QCS.

**Recommendation 1:** The Hospital and Health Service review whether its prison policies and procedures are compatible with rights in the Human Rights Act to ensure:

- a) Subject to the prisoner's consent, medical recommendations about the accommodation of prisoners are communicated directly from the Hospital and Health Service to QCS.
- b) The consideration of factors such as risk of abuse and diversion in prescribing, ceasing and managing medication in prison are demonstrably justified.

### HHS Response:

The HHS has commenced an internal review of the compatibility of the HHS' policies and procedures (relevant to the administration of health services at the centre) with human rights in respect of the communication of medical recommendations about the accommodation of prisoners directly from the HHS to QCS, and in respect of the equivalence of health care provided to persons in custody and the consideration of non-clinical factors in the provision of health care to persons in custody.

The HHS will continue this review until all the HHS policies and procedures relevant to the administration of health services at centre have been reviewed.

Within three months the HHS will engage with QCS in relation to the review to ascertain whether a procedure can be developed in collaboration with QCS whereby the HHS communicates any medical recommendations regarding accommodation directly to QCS. the HHS will continue this review until all the HHS policies and procedures relevant to the administration of the health services at the centre have been reviewed.

### QCS Response:

Consideration is given to various factors in making accommodation decisions. Physical impairments are not an automatic criterion for a prisoner to be placed in their own cell, however recommendations from Queensland Health are considered when assessing a prisoner's accommodation, subject to QCS being aware of the recommendation.

QCS is open to assisting where possible in such a review and is committed to continuing to work collaboratively with Queensland Health and the Hospital and Health Service to improve the delivery of services to promote and support prisoners' health and wellbeing in QCS custody.

**Recommendation 2:** The Office of Prisoner Health and Wellbeing should be consulted as part of this review.

### HHS Response:

The HHS will consult the Office of the Prisoner Health and Wellbeing in conducting the internal reviews outlined above in respect of Recommendations 1(i) and 1(ii).

**Recommendation 3:** Relevant QCS and the HHS agreements, policies and guidance material should be updated to reflect the outcome of this review and whenever possible, these should be publicly available.

### HHS Response:

Where, in conducting the above reviews, the HHS identifies an inconsistency in its policies and procedures with human rights which the HHS considers is not reasonable or demonstrably justifiable, the HHS will update its policies and procedures in relation to the outcome of the above reviews.

### QCS Response:

Should Queensland Health or the Hospital and Health Service wish to implement or amend their policies in light of the proposed review, QCS is willing to engage in necessary discussions to assist the continued safe treatment of prisoners and to improve, promote and support health and wellbeing for those in QCS custody. QCS is open to considering any recommendations directed to the agency as a result of the review and agrees to consider updating any operational policies, directives or agreements flowing from the review

QCS is committed to the highest levels of transparency, accountability and integrity. QCS makes its operational practice directives publicly available, subject to any

concerns that the release of the information may pose a risk to the security, safety or good order of facilities or the management of prisoners and offenders. Should any relevant operational practice directives be amended as a result of the proposed review, these will be made publicly available, subject to abovementioned safety, security or management concerns.