

Australian Capital Territory

Mental Health (Treatment and Care) (Interstate Application of Mental Health Laws) Agreement 2002

Notifiable instrument NI2002–406

made under the

Mental Health (Treatment and Care) Regulation 2003, s 5

Interstate agreement dated 30 August 2002 between the Minister for Health for the ACT and the Minister for Health of the State of Queensland (the **Queensland agreement**)

MEMORANDUM OF AGREEMENT

DATED this day of JUNE 2002

BETWEEN :

The MINISTER FOR HEALTH FOR THE AUSTRALIAN CAPITAL TERRITORY of the ACT Legislative Assembly, London Circuit, Canberra 2601
(“the ACT Minister”)

AND

The MINISTER FOR HEALTH FOR THE STATE OF QUEENSLAND of Level 19, 147 – 163 Charlotte Street, Brisbane, 4000 **(“the Queensland Minister”)**

PART 1 : RECITALS

WHEREAS

- A. Chapter 5, Part 2 of the *Queensland Mental Health Act 2000* and Part 5A of the *ACT Mental Health (Treatment & Care) Act 1994* provide for the interstate application of mental health laws.
- B. The Queensland Minister may, in accordance with section 176 of the Queensland Act, enter into an agreement with another State about the application of the mental health laws of Queensland or the other State, the transfer, detention and apprehension of persons in Queensland and the other State under mental health laws and administrative and other matters incidental to such matters.
- C. The ACT Minister may, in accordance with section 48C of the ACT Act, enter into an agreement with a Minister of another State for or with respect to the application of mental health laws of the ACT or the other State, the transfer, detention and apprehension of persons in the ACT and the other State under mental health laws and administrative and other matters incidental to such matters.

- D.** The Queensland Minister and the ACT Minister now make this Agreement to provide for the administration of Chapter 5, Part 2 of the Queensland Act and Part 5A of the ACT Act and the corresponding laws declared under each of those Acts with respect to the apprehension of Queensland patients who enter the ACT in contravention of a Queensland order and ACT patients who enter Queensland in contravention of an ACT Mental Health Tribunal Order.

IT IS AGREED :

PART 1: DEFINITIONS AND INTERPRETATION

- 1.1** The following words and expressions have the following meanings unless the context otherwise requires:

“ACT Act” means the *ACT Mental Health (Treatment & Care) Act 1994*, including any regulations and orders made under that Act (but for the purposes of this Agreement a reference to the ACT Act does not, unless expressly provided, include a reference to the Queensland Act on the basis that the Queensland Act has been declared a corresponding law under that Act);

(a) **“ACT patient”** means a mentally dysfunctional or mentally ill offender within the meaning of that term in section 4 of the ACT Act who may be apprehended in accordance with section 32A of the ACT Act; or

(b) a person subject to an order for detention as defined under section 72 of the ACT Act who may be apprehended in accordance with section 37 of that Act;

“ACT Mental Health Tribunal” means the tribunal established by section 10 of the ACT Act;

“Agreement” means this Agreement including the Schedules and any Annexures;

“approved facility” means a health facility or mental health facility approved by the ACT Minister under section 48 (1) of the ACT Act;

“authorised mental health service” means a health service, or part of a health service, declared by the Queensland Director, by gazette notice, to be an authorised mental health service under section 495 of the Queensland Act.

“Chief Psychiatrist” means the ACT Chief Psychiatrist appointed in accordance with Part 10 of the ACT Act, and includes his or her delegate as appointed from time to time;

“Contact Officer” means the person or persons so described in Schedule 1 of this Agreement;

“corresponding laws” means:

- (a) with respect to the ACT, the Queensland Act when declared as such under and in accordance with section 48D (1) of the ACT Act; and
- (b) with respect to Queensland, the ACT Act as declared under the *Mental Health Regulation 2002*;

“Director of Mental Health” means the Director of Mental Health in Queensland appointed by Governor in Council in accordance with section 488 of the Queensland Act.

“Interstate Apprehension Order” means the document that sets out the information specified in Part 4 of this Agreement and in the form set out in Schedule 2, as amended from time to time in accordance with clause 4.3;

“Interstate Guidelines” means any guidelines developed in accordance with Part 7;

“patient” means a Queensland patient or an ACT patient;

“Queensland Act” means the Queensland *Mental Health Act 2000*, including any regulations and orders made under that Act (but for the purposes of this Agreement a reference to the Queensland Act does not, unless expressly provided, include a reference to the ACT Act on the basis that the ACT Act has been declared a corresponding law under that Act);

“Queensland patient” means a classified patient or forensic patient (as these terms are defined in the Queensland Act) or a patient described in subsection 508(1)(c) of the Queensland Act, who may be taken to the in-patient facility of an authorised mental health service in accordance with section 508 of that Act;

“State” includes Territory.

1.2 In this Agreement, unless the context requires otherwise:

- (a) words importing the singular include the plural and vice versa;
- (b) references to persons include corporations and bodies corporate;
- (c) references to clauses, parts, Schedules and Annexures are references to clauses and parts of and Schedules to and Annexures to, this Agreement (unless stated otherwise);
- (d) references to this or any other document include the document as varied or replaced, and notwithstanding any change to the identity of the parties.

PART 2: COMMENCEMENT OF AGREEMENT

- 2.1** The parties acknowledge that this Agreement cannot be given full effect unless and until:
- (a) The ACT declares, in accordance with Part 5A of the ACT Act, the Queensland Act to be a corresponding law for the purposes of the ACT Act; and
 - (b) Queensland makes regulations declaring the ACT Act to be a corresponding law for the purposes of the Queensland Act;
- 2.2** The parties agree that this Agreement shall commence on the day that the last of each of the things listed in this clause are done.

PART 3: SCOPE AND PURPOSE OF AGREEMENT

- 3.1** The purpose of this Agreement is to provide for matters in connection with the administration and implementation of Division 4 of Part 2 of Chapter 5 of the Queensland Act and Part 5A of the ACT Act but only insofar that these apply to and provide for the apprehension and return of ACT patients in Queensland and Queensland patients in the ACT and ancillary matters.
- 3.2** The application and effect of the ACT Act and the Queensland Act as corresponding laws of Queensland and the ACT respectively is subject to the express limitations, conditions and variations imposed by the terms of this Agreement.
- 3.3** Nothing in this clause or otherwise in this Agreement is to be taken or construed as extending, limiting or otherwise varying the provisions of the ACT Act or the Queensland Act or a corresponding law declared under either Act, unless expressly provided.
- 3.4** The parties agree that they will co-operate in a spirit of goodwill to achieve the purposes of this Agreement.
- 3.5** Nothing in this Agreement prevents the issuing of a warrant under the terms of the ACT Act or the Queensland Act or any other legislation and reliance on the *Service and Execution of Process Act 1992 (Cth)* to apprehend a patient.

PART 4: INTERSTATE APPREHENSION ORDERS

- 4.1 The Interstate Apprehension Order is to include the following information:
- (a) the full name of the patient and his or her date of birth;
 - (b) a description of the patient;
 - (c) the status of the patient under the relevant mental health legislation;
 - (d) any information that may assist in the apprehension of the patient; and
 - (e) the name and address of the approved facility or authorised mental health service to which the patient is to be returned.
- 4.2 The Interstate Guidelines may specify further information to be included in the Interstate Apprehension Order.
- 4.3 The parties agree that the form of Interstate Apprehension Order may be amended by the written agreement of the Chief Executive Officer of the ACT Department of Health and Community Care and the Director General of the Queensland Department of Health.
- 4.4 Prior to a party issuing an Interstate Apprehension Order, that party agrees to consult with the other party concerning the patient and the contents of the Interstate Apprehension Order which that party proposes to deliver in accordance with this Part.

PART 5: APPREHENSION AND RETURN OF QUEENSLAND PATIENTS

- 5.1 This Part applies only to Queensland patients who are in the ACT.
- 5.2 The Queensland Minister undertakes to ensure that the Director of Mental Health provides to the ACT Minister an appropriate Interstate Apprehension Order when the Queensland Minister becomes aware or has reasonable grounds to suspect that a Queensland patient is in the ACT.
- 5.3 The Queensland Minister (or the Director of Mental Health) shall for the purposes of requesting the apprehension of a Queensland patient provide to the Chief Psychiatrist in

addition to the Interstate Apprehension Order:

- (a) any information not contained in the Interstate Apprehension Order which may assist in the apprehension of the patient; and
- (b) a summary of the clinical and treatment history of the Queensland patient required for the patient's management during the return process.

5.4 The Queensland Minister shall ensure that relevant Queensland authorities will do all things that are required and within power to facilitate the apprehension and return of the Queensland patient named in the Interstate Apprehension Order.

5.5 The parties agree that the persons who may apprehend a Queensland patient in the ACT are as follows:

- (a) a Queensland health practitioner or police officer as provided under sections 185(2)(b) and 508(2) of the Queensland Act; and
- (b) an ACT police officer, mental health officer or doctor;

5.6 Subject to clauses 5.7 and 5.8 the parties agree that on being apprehended, the Queensland patient shall be taken to the authorised mental health service named in the Interstate Apprehension Order and that service will immediately accept and receive the patient.

5.7 Where the Queensland patient is apprehended by a person listed in subclause 5.5(b), the Chief Psychiatrist shall notify the Director of Mental Health that the Queensland patient has been apprehended and consult with the Director of Mental Health concerning the arrangements for the patient's return to Queensland.

5.8 The parties agree that section 48Q of the ACT Act allows the person apprehending a Queensland patient in the ACT to take the Queensland patient to an approved facility in the ACT prior to the return of the patient to the authorised mental health service in accordance with Clause 5.6 of this Agreement.

5.9 Where the Queensland patient is temporarily detained at an approved facility under clause 5.8, the Chief Psychiatrist shall, for the purposes of giving effect to this Agreement:

- (a) consult with the Director of Mental Health concerning arrangements for the return of the Queensland patient to the relevant authorised mental health service, including timing and transport arrangements; and
- (b) as close as possible to the time at which the Queensland patient is returned to the relevant authorised mental health service, provide the Director of Mental Health with a statement of the clinical condition of the Queensland patient as at the date of the patient's return, details of any treatment provided to the Queensland patient since the apprehension of that patient and any recommendations for future treatment or management of that patient.

PART 6: APPREHENSION AND RETURN OF ACT PATIENTS

6.1 This Part only applies to ACT patients who are in Queensland.

6.2 The ACT Minister undertakes to ensure that the Chief Psychiatrist provide to the Director of Mental Health an appropriate Interstate Apprehension Order when the ACT Minister becomes aware or has reasonable grounds to suspect that an ACT patient is in Queensland.

6.3 The ACT Minister (or the Chief Psychiatrist) shall, for the purposes of requesting the apprehension of an ACT patient, provide to the Director of Mental Health in addition to the Interstate Apprehension Order:

- (a) any information not contained in the Interstate Apprehension Order which may assist in the apprehension of the patient; and
- (b) a summary of the clinical and treatment history of the ACT patient required for the patient's management during the return process;

6.4 The ACT Minister shall ensure that relevant ACT authorities will do all things that are required and within power to facilitate the apprehension and return of the ACT patient named in the Interstate Apprehension Order.

- 6.5** The parties agree that the persons who may apprehend an ACT patient in Queensland are as follows:
- (a) an ACT police officer, mental health officer or doctor;
 - (b) a Queensland health practitioner or police officer as provided under section 184(1)(b) of the Queensland Act.
- 6.6** Subject to clauses 6.7 and 6.8, the parties agree that on being apprehended, the ACT patient apprehended shall be taken to the approved facility named in the Interstate Apprehension Order and that facility will immediately accept and receive the patient.
- 6.7** Where the ACT patient is apprehended by a person listed in subclause 6.5(b), the Director of Mental Health shall notify the Chief Psychiatrist that the ACT patient has been apprehended and consult with the Chief Psychiatrist concerning the arrangements for the patient's return to ACT.
- 6.8** The parties agree that section 184(3) of the Queensland Act allows the person apprehending an ACT patient in Queensland to take the ACT patient to an authorised mental health service in Queensland prior to the return of the patient to the approved facility.
- 6.9** Where the ACT patient is temporarily detained at a Queensland authorised mental health service under clause 6.8, the Director of Mental Health shall, for the purposes of giving effect to this Agreement:
- (a) consult with the Chief Psychiatrist concerning arrangements for the return of the ACT patient to the relevant approved facility, including timing and transport arrangements; and
 - (b) as close as possible to the time at which the ACT patient is returned to the relevant ACT approved facility, provide the Chief Psychiatrist with a statement of the clinical condition of the ACT patient as at the date of the patient's return, details of any treatment provided to the ACT patient since the apprehension of that patient and any recommendations for future treatment or management of that patient.

PART 7: INTERSTATE GUIDELINES

- 7.1** The parties agree that during the course of this Agreement they will give consideration to whether written Interstate Guidelines to assist ACT and Queensland in the better administration of this Agreement are necessary or useful.
- 7.2** If the parties agree to develop Interstate Guidelines, they further agree that they will act co-operatively and in good faith to agree on their content.
- 7.3** The parties further agree that any Interstate Guidelines shall be reviewed and amended from time to time by negotiation and agreement between the Contact Officers.
- 7.4** Amendment to the Interstate Guidelines may only be by written agreement of the Chief Executive Officer of ACT Department of Health and Community Care and the Director-General of the Queensland Department of Health.

PART 8: CONFIDENTIALITY OF INFORMATION

- 8.1** The parties agree to treat all information acquired from the other party or otherwise acquired or created in the implementation of the Queensland Act, the ACT Act, the corresponding laws and this Agreement as confidential except to the extent that such information is in the public domain or as is otherwise permitted by law to be disclosed.
- 8.2** Any party who receives information from the other party or obtains or creates information in respect of a person from the other State agrees to treat that information in accordance with the legislation relating to privacy and the collection, keeping and disclosure of information that is in force in the receiving party's State.
- 8.3** The parties further agree that each State will take all reasonable steps to ensure that information obtained from the other State or obtained or created in respect of a person from the other State shall be dealt with so as not to cause the other State to offend any of that State's own privacy or confidentiality obligations.

PART 9: AMENDMENT OR VARIATION OF AGREEMENT

- 9.1** The parties agree that they will review this Agreement at such intervals as are agreed between the parties.
- 9.2** Where a party considers that this Agreement should be amended, that party may request consultations with the other party to this end. A party so requested shall agree to consult and shall do so in the first instance through the Contact Officers of ACT and Queensland.
- 9.3** Amendments to this Agreement may only be made by the written agreement of the parties.
- 9.4** Any agreed amendments to the Agreement shall be contained in a document distributed to both parties and shall include a reference to the date on which the amendment shall come into force.

PART 10: TERMINATION OF AGREEMENT

- 10.1** The parties agree that either party may terminate the Agreement at any time by writing delivered to the other party provided that the first party has given the other party a minimum of 28 days written notice in advance of the first party's intention to terminate. The parties may agree to waive the requirement to give 28 days notice of an intention to terminate the Agreement.

PART 11: SERVICE OF DOCUMENTS

- 11.1** All documents or notices which may or are required to be delivered or served under this Agreement may be delivered or served as permitted by law. The address for service on the parties is as set out in Schedule 1.

PART 12: SEVERANCE

12.1 Any provision in this Agreement will be read down to the extent necessary to prevent that provision being invalid, voidable or unenforceable in the circumstances.

PART 13: COUNTERPARTS

13.1 This Agreement may be executed in any number of counterparts each of which shall be deemed an original but all of which shall constitute one and the same instrument.

SIGNED SEALED AND DELIVERED)
 by **the MINISTER FOR HEALTH** for and on)
 behalf of the Australian Capital Territory)
 but not so as to incur personal liability) **Jon Stanhope**
 in the presence of:) **Minister for Health**
) **for the Australian Capital Territory**

.....
 Signature

.....
 Print Name

SIGNED SEALED AND DELIVERED)
 by **the MINISTER FOR HEALTH** for)
 and on behalf of the State of Queensland but)
 not so as to incur personal liability) **Wendy Edmond**
 in the presence of:) **Minister for Health**
) **for the State of Queensland**

.....
 Signature

.....
 Print Name

SCHEDULE 1
AGREEMENT DETAILS

Contact Officer

The Contact Officer for any issue arising out of the administration or application of the Agreement or the Corresponding Law is:

For ACT: the person holding the position of (or his/her delegate)
Manager
Mental Health and Corrections Health Unit
Department of Health and Community Care
Address: North Building, London Circuit Canberra 2601
Tel:02 6207 1066
Fax: 02 6205 2037

For Queensland: the person holding the position
Director of Mental Health
Queensland Department of Health
Address 147-163 Charlotte Street, Brisbane, 4000
Tel: 07 322 52062
Fax: 07 323 41362