

Australian Capital Territory

Mental Health (Treatment and Care) (Interstate Application of Mental Health Laws) Agreement 2004

Notifiable instrument NI2004–500

made under the

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

Interstate agreement dated 6 May 2004 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** _____ **2004**

BETWEEN:

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

AND

The MINISTER FOR HEALTH FOR THE AUSTRALIAN CAPITAL TERRITORY of The ACT Legislative Assembly GPO Box 1020 Canberra ACT 2601 (“**the ACT Minister**”)

RECITALS***WHEREAS:***

- A.** Part 5A of the ACT Act and Chapter 5, Part 2 of the Queensland Act provide for the interstate application of mental health laws.
- B.** 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 matters and other matters ancillary to or consequential on to such matters.
- C.** The Queensland Minister may, in accordance with section 176 of the Queensland Act, enter into an agreement with another State about, among other things, 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.
- D.** On 30 August 2002, the Queensland Minister and the ACT Minister executed the Forensic Agreement enabling the commencement of provisions of the corresponding

laws to allow for the apprehension and return of Queensland classified and forensic patients who are required to return to a treating health service but who enter the ACT, and ACT mentally dysfunctional or mentally ill offenders, or persons ordered to be detained according to section 72 of the ACT Act who enter Queensland in contravention of an ACT Mental Health Tribunal order.

- E. By this Agreement, the ACT Minister and the Queensland Minister provide for the administration of Part 5A of the ACT Act and Chapter 5, Part 2 of the Queensland Act with respect to:
- (i) the transfer of persons between health facilities in Queensland and the ACT; and
 - (ii) the apprehension and return of interstate persons who abscond from the ACT to Queensland and from Queensland to the ACT and who are not covered by the Forensic Agreement.

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 and 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);

“Administrator” means the person declared, under section 497 of the Queensland Act, to be the Administrator for an authorised mental health service;

“Agreement” means this Agreement including the Schedules to it;

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

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

“authorised psychiatrist” means a psychiatrist who is an authorised doctor for an authorised mental health service as these terms are defined in the Queensland Act;

“Chief Psychiatrist” means the ACT Chief Psychiatrist appointed in accordance with section 112 of the ACT Act;

“Civil Interstate Apprehension Order” means the document that sets out the information specified in Part 5 and in the form set out in Schedule 2, as amended from time to time in accordance with clause 5.5;

“Civil Interstate Transfer Request Notice” means a document that sets out the information specified in Part 4 of the Agreement and in the form set out in Schedule 3, as amended from time to time in accordance with clause 4.10;

“community category of an involuntary treatment order” means an involuntary treatment order made under the community category according to Chapter 4, Part 1 of the Queensland Act;

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

“corresponding laws” means:

- (a) with respect to the ACT, the Queensland Act when declared as such in accordance with section 48D of the ACT Act; and
- (b) with respect to Queensland, the ACT Act as declared under the Queensland Act.

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

“facility” means an authorised mental health service or an approved facility;

“Forensic Agreement” means the agreement between the Queensland Minister and the

ACT Minister dated 30 August 2002 for the apprehension and return of Queensland classified and forensic patients who abscond into ACT, and ACT mentally dysfunctional or mentally ill offenders, or persons ordered to be detained according to section 72 of the ACT Act who enter Queensland in contravention of an ACT Mental Health Tribunal order. References to this document include the document as varied or replaced, and notwithstanding any change to the identity of the parties;

“in-patient category of involuntary treatment order” means an involuntary treatment order made under the in-patient category according to Chapter 4, Part 1 of the Queensland Act;

“Interstate Guidelines” means any guidelines developed in accordance with Part 11;

“interstate person” means with respect to the ACT, a person who at the relevant time is in Queensland; and with respect to Queensland, a person who at the relevant time is in the ACT;

“psychiatric treatment order” means a treatment order made under section 26(1) of the ACT Act;

“involuntary treatment order” means an involuntary treatment order made under Chapter 4, Part 1 of the Queensland Act. The category of an involuntary treatment order must be either “in-patient” or “community” according to section 109 of the Queensland Act;

“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 the Queensland Act);

“receiving facility” means the facility to which it is proposed to transfer a person in accordance with Part 4;

“referring facility” means the facility from which it is proposed to transfer a person in accordance with Part 4;

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 a person include the legal personal representatives, successors and assignees of that person;
- (e) references to this or any other document include the document as varied or replaced, and notwithstanding any change to the identity of the parties;
- (f) references to a month shall be construed as references to a calendar month.

PART 2: COMMENCEMENT OF AGREEMENT

2.1 This Agreement will commence on the date of this Agreement as stated on page 1.

PART 3: AGREEMENT

3.1 The purpose of this Agreement is to provide for matters in connection with the administration and implementation of Chapter 5, Part 2 of the Queensland Act and Part 5A of the ACT Act.

3.2 This Agreement does not apply to any person covered by the Forensic Agreement, meaning, those persons who are:

- (a) mentally dysfunctional or mentally ill offenders within the meaning of those terms in section 4 of the ACT Act who may be apprehended in accordance with section 32A of the ACT Act;
- (b) 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; or
- (c) classified patients or forensic patients (as these terms are defined in the Queensland Act) or persons 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.

- 3.3 The application and effect of the Queensland Act and the ACT Act as corresponding laws of the ACT and Queensland respectively are subject to the express limitations, conditions and variations imposed by the terms of this Agreement.
- 3.4 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 Queensland Act or the ACT Act or a corresponding law declared under either Act, unless expressly provided.
- 3.5 The ACT Minister and the Queensland Minister agree that they will cooperate in a spirit of goodwill to facilitate the purposes of this Agreement.
- 3.6 Each party will, through the Contact Officers, advise the other party of any proposed amendment to legislation or other relevant instrument or authority that is likely to affect the obligations arising under this Agreement or the application and effect of the corresponding laws.

PART 4: TRANSFER

Operation of this Part

- 4.1 In the case of the ACT, notices and orders referred to in this Part will be provided by the Chief Psychiatrist. In the case of Queensland, notices and orders referred to in this Part will be provided by the Administrator of the person's treating authorised mental health service.
- 4.2 Subject to the terms and conditions set out in this Part:
 - (a) persons subject to an in-patient category of involuntary treatment order may be transferred to any approved facility in the ACT; and
 - (b) persons subject to a psychiatric treatment order may be transferred to any authorised mental health service in Queensland.

- 4.3 A transfer of a person subject to an in-patient category of involuntary treatment order from Queensland to the ACT must be made in accordance with section 181 of the Queensland Act and in accordance with section 48K of the ACT Act.
- 4.4 A transfer of a person subject to a psychiatric treatment order from the ACT to Queensland must be made in accordance with section 48G of the ACT Act and in accordance with section 183 of the Queensland Act.
- 4.5 The “responsible person” for the purpose of section 48H of the ACT Act is the Administrator of the authorised mental health service to which the person is transferred.
- 4.6 The “interstate authority” for the purpose of section 181 of the Queensland Act is the Chief Psychiatrist.

Civil Interstate Transfer Request Notice

- 4.7 Prior to making any transfer, the referring facility must provide the receiving facility with a Civil Interstate Transfer Request Notice.
- 4.8 The Civil Interstate Transfer Request Notice must be in the form attached as Schedule 3, and must include the following information:
- (a) the full name of the person and his or her date of birth;
 - (b) the status of the person under the relevant mental health legislation;
 - (c) the reason for the proposed transfer;
 - (d) date the notice signed;
 - (e) any information that may assist in the ongoing care and treatment of the person;
and
 - (f) the details, if any, of who is proposed to take the person to the receiving facility.
- 4.9 The Interstate Guidelines may specify further information to be included in the Civil Interstate Transfer Request Notice.
- 4.10 The form of the Civil Interstate Transfer Request Notice may be amended by the

written agreement of the Director and the Executive Officer of ACT Health.

- 4.11 Prior to a referring facility issuing a Civil Interstate Transfer Request Notice, that facility will consult with the receiving facility concerning the person and the contents of the Civil Interstate Transfer Request Notice, which the referring facility proposes to deliver in accordance with this Part.

Transfer Subject to Prior Approval of Receiving Facility

- 4.12 A person subject to a psychiatric treatment order must not be transferred from the ACT to Queensland unless the Administrator of the receiving facility, or Director has approved the transfer in writing.
- 4.13 A person subject to an in-patient category of involuntary treatment order must not be transferred from Queensland to the ACT unless the Chief Psychiatrist has approved the transfer in writing.

Transfer

- 4.14 Where a person is transferred in accordance with this Part, the referring facility must forward to the receiving facility:
- (a) in respect of a transfer from the ACT to Queensland, a Transfer Order in accordance with the ACT Act;
 - (b) in respect of a transfer from Queensland to the ACT, a Transfer Order under section 181 of the Queensland Act; and
 - (c) such other information, including medical records, of the person as is reasonably necessary or required for the continued care and treatment of the person by the receiving facility.
- 4.15 A transfer will be deemed to have been completed once the person has been accepted into custody by the receiving facility.

Persons Authorised to Take a Transferring a Person to a Receiving Facility

4.16 The persons who may take a person to an approved facility in accordance with this Part are:

- (a) a member of the Australian Federal Police force;
- (b) an ACT Doctor;
- (c) an ACT Mental Health Officer;
- (d) a Queensland health practitioner; and
- (e) a Queensland Police Officer.

4.17 The persons who may take a person to an authorised mental health service in accordance with this Part are:

- (a) a member of the Australian Federal Police force;
- (b) an ACT Doctor;
- (c) an ACT Mental Health Officer;
- (d) a Queensland health practitioner; and
- (e) a Queensland health practitioner with the assistance of a Queensland Police Officer.

Status of Patient After Transfer

4.18 In the case of a person subject to an in-patient category of involuntary treatment order transferred to an approved facility, from the time the person is accepted into custody at the approved facility the person will be dealt with as if:

- (a) that person were a person for whom an psychiatric treatment order has been made under section 26 (1) of the ACT Act;
- (b) the person will cease to be dealt with as a person to whom the Queensland Act applies.

4.19 In the case of a person subject to a psychiatric treatment order transferred to an authorised mental health service, from the time the person is accepted into custody at

the authorised mental health service:

- (a) the person will, according to section 183 of the Queensland Act, thereafter be dealt with as if that person were a person for whom an involuntary treatment order has been made under section 112 of the Queensland Act;
- (b) the Transfer Order will be taken to be the involuntary treatment order for the purposes of subsection 183(4) of the Queensland Act; and
- (c) the person will cease to be dealt with as a person to whom the ACT Act applies.

PART 5: APPREHENSION OF PERSONS ABSENT WITHOUT LEAVE

5.1 This Part applies only to “interstate persons absent without leave”, meaning those persons to whom:

- (a) Chapter 14, Part 1 of the Queensland Act applies and there are reasonable grounds to suspect are in the ACT; or
- (b) liable to be apprehended under the ACT Act and there are reasonable grounds to suspect are in Queensland.

5.2 This Part does not apply to any person covered by the Forensic Agreement, meaning, those persons who are:

- (a) mentally dysfunctional or mentally ill offenders within the meaning of those terms in section 4 of the ACT Act who may be apprehended in accordance with section 32A of the ACT Act;
- (b) 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; or
- (c) classified patients or forensic patients (as these terms are defined in the Queensland Act) or persons 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.

Civil Interstate Apprehension Order

5.3 The Civil Interstate Apprehension Order must be in the form attached as Schedule 2, and must include the following information:

- (a) the full name of the person and his or her date of birth;
- (b) a description of the person;
- (c) date and time the order signed;
- (d) the status of the person under the relevant mental health legislation;
- (e) any information that may assist in the apprehension of the person; and
- (f) the name and address of the approved facility or the authorised mental health service to which the person is to be returned.

5.4 The Interstate Guidelines may specify further information to be included in the Civil Interstate Apprehension Order.

5.5 The form of the Civil Interstate Apprehension Order may be amended by the written agreement of the Director and the Executive Officer of ACT Health.

5.6 A Civil Interstate Apprehension Order may be issued by:

- (a) the Director;
- (b) an authorised psychiatrist from the person's treating authorised mental health service, or
- (c) the Chief Psychiatrist.

5.7 The Interstate Guidelines may specify the requirements for consultation and distribution following the issue of a Civil Interstate Apprehension Order.

Basis for Apprehension of an Interstate Person Absent Without Leave

5.8 Each party undertakes to do all things that are reasonably required and within power to facilitate the apprehension and return of an interstate person absent without leave

named in a Civil Interstate Apprehension Order.

- 5.9 Subject to clause 5.10, an interstate person absent without leave will not be apprehended unless a Civil Interstate Apprehension Order has been issued in accordance with the terms of this Agreement and the Interstate Guidelines.
- 5.10 In an emergency, a person referred to in clause 5.6 may request the apprehension of the interstate person absent without leave without a Civil Interstate Apprehension Order provided that:
- (a) the request outlines the nature of the emergency;
 - (b) a copy of the relevant Civil Interstate Apprehension Order is provided within 24 hours of the initial request for apprehension; and
 - (c) any other relevant documents required under the mental health legislation of the State requesting the apprehension have been made.

In this clause, “emergency” means those situations where the delay involved in obtaining an Civil Interstate Apprehension Order may place the interstate person’s health or safety at risk, or place members of the public at risk (through deterioration of the interstate person’s physical or mental condition or otherwise).

Persons Authorised to Apprehend an Interstate Person Absent Without Leave

- 5.11 The persons who may apprehend an interstate person absent without leave from an approved facility in accordance with this Part are:
- (a) a member of the Australian Federal Police force;
 - (b) an ACT Doctor;
 - (c) an ACT Mental Health Officer;
 - (d) a Queensland health practitioner;
 - (e) a Queensland police officer.

5.12 The persons who may apprehend an interstate person absent without leave from an

authorised mental health service in accordance with this Part are:

- (a) a Queensland health practitioner;
- (b) a Queensland police officer;
- (c) a member of the Australian Federal Police force;
- (d) an ACT Doctor;
- (e) an ACT Mental Health Officer.

Facilities to Which a Person Absent Without Leave can be Returned

5.13 Subject to clause 5.14, an interstate person absent without leave who is apprehended under this Part may be taken to an approved facility (subject to consultation with the Chief Psychiatrist) or an authorised mental health service (subject to consultation with the Administrator).

5.14 If the Civil Interstate Apprehension Order specifies that an interstate person should be taken to a specific facility, every effort should be made to return the person to that facility unless this is not reasonably practicable.

Status of a Person Who is Absent Without Leave After Apprehension

5.15 An interstate person absent without leave who is taken to an approved facility will:

- (a) from the time the person is accepted into custody at the approved facility be dealt with as if that person were first detained at the approved facility in accordance with section 41 of the ACT Act;
- (b) be detained at the approved facility until either:
 - (i) that person is formally transferred to an authorised mental health service according to the provisions in Part 4 of the Agreement; or
 - (ii) that person is released from detention according to section 41 of the ACT Act where either an application to the ACT Mental Health Tribunal for further detention is made by a psychiatrist but is unsuccessful, or where the

period of detention under section 41 of the ACT Act expires without an application for further detention being made.

5.16 An interstate person absent without leave taken to an authorised mental health service will:

- (a) be examined under section 112 of the Queensland Act;
- (b) be detained at the authorised mental health service until either:
 - (i) that person is formally transferred to an approved facility according to the provisions in Part 4 of the Agreement; or
 - (ii) that person is released from detention following the revocation of the involuntary treatment order under section 112 of the Queensland Act.

PART 6: REVIEW OF AGREEMENT

6.1 The Interstate Guidelines may provide for periodic review of the Agreement and Interstate Guidelines by the Contact Officers or their nominees.

PART 7: AMENDMENT OR VARIATION OF AGREEMENT

7.1 If 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 will agree to consult and will do so in the first instance through the Contact Officers.

7.2 Amendments to this Agreement may only be made by the written agreement of the parties.

7.3 Any agreed amendments to the Agreement must be contained in a document distributed to both parties and must include a reference to the date on which the amendment will come into force.

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 ACT Act, the Queensland Act and 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 will 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: DISPUTE RESOLUTION

- 9.1 Disputes arising under this Agreement will be resolved in the manner, if any, provided for by the Interstate Guidelines. If the dispute cannot be resolved under the Interstate Guidelines, it will be referred to the Contact Officers for resolution.
- 9.2 Pursuant to clause 9.1, the Contact Officers will attempt in good faith to resolve any dispute arising under this Agreement within 7 business days.
- 9.3 In the event that the Contact Officers cannot resolve the dispute, the dispute will be referred to the ACT Minister and the Queensland Minister for resolution.
- 9.4 The parties acknowledge that failure to resolve a dispute arising under this Agreement will jeopardise the continued existence of the Agreement and acknowledge that they will cooperate and act in good faith to bring about a satisfactory resolution of any such dispute.

PART 10: TERMINATION OF AGREEMENT

- 10.1 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 three month's written notice in advance of the first party's intention to terminate. The parties may agree to waive the requirement to give three months notice of an intention to terminate the Agreement.

10.2 If the Agreement is terminated under clause 10.1, as soon as is reasonably possible after that termination, both parties will take all such other action within their power as is necessary to effect the termination of this Agreement, including the revocation and/or revision of any orders, regulations or other statutory instruments made under the ACT Act or the Queensland Act in support of this Agreement.

PART 11: INTERSTATE GUIDELINES

11.1 The parties will act co-operatively and in good faith to develop Interstate Guidelines, which will include:

- (a) any matter required or provided for under this Agreement; and
- (b) any other matter considered necessary by the parties to support the administration and operation of this Agreement, and the corresponding laws.

11.2 Amendment to the Interstate Guidelines may only be by written agreement of the Director and the Executive Officer of ACT Health.

PART 12: CONTACT OFFICERS AND SERVICE OF DOCUMENTS

12.1 All documents or notices that may or are required to be delivered or served under this Agreement must, unless otherwise stated, be delivered to the Contact Officers and may be delivered or served as permitted by law.

PART 13: SEVERANCE

13.1 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 14: COUNTERPARTS

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

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

.....
 Signature

.....
 Print Name

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) Simon Corbell
 in the presence of:) Minister for Health
 for the Australian Capital Territory

.....
 Signature

.....
 Print Name

AGREEMENT DETAILS

Contact Officer

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

For Queensland: the person holding the position of Director of Mental Health (or his/her delegate)

Mental Health Unit

Queensland Health

147–163 Charlotte Street, Brisbane

Tel: 07 3225 2062

Email: arnold_waugh@health.qld.gov.au

Fax: 07 3234 1362

For The Australian Capital Territory

the person holding the position of General Manager (or his/her delegate)

Mental Health ACT

ACT Health

The Health Building, Moore Street, Canberra

Tel: 02 6207 1066

Email: brian.jacobs@act.gov.au

Fax: 02 6205 2037