

- D.** The NSW Minister and the Queensland Minister now make this Agreement in accordance with their respective powers under section 286C of the NSW Act and section 176 of the Queensland Act to provide for the administration of Chapter 10A of the NSW Act and Chapter 5, Part 2 of the Queensland Act and the corresponding laws declared under each of those Acts.
- E.** By this Agreement, the NSW Minister and the Queensland Minister provide for the administration of Chapter 10A of the NSW Act and Chapter 5, Part 2 of the Queensland Act and provide for or with respect to the apprehension of persons in Queensland and NSW only in relation to NSW patients who escape into Queensland and Queensland patients who abscond into NSW.

IT IS AGREED :

PART 1: DEFINITIONS AND INTERPRETATION

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

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

“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.

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

“corresponding laws” means:

- (a) with respect to NSW, the Queensland Act when declared as such by the NSW Regulations;
- (b) with respect to Queensland, the NSW Act as declared under the *Mental Health Regulation 2002*;

“gazetted mental health service” means premises in relation to which the Director General of the NSW Department of Health has made an order under section 208 of the NSW 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;

“NSW Act” means the *NSW Mental Health Act 1990*, including any regulations and orders made under that Act (but for the purposes of this Agreement a reference to the NSW 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);

“NSW Director” means an authorised officer appointed under section 235 of the NSW Act.

“NSW patient” means a forensic patient as defined in Schedule 1 to the NSW Act, and who is liable to apprehension or retaking under section 93 or 111 of the NSW Act;

“NSW Regulations” means regulations made pursuant to Part 10A of the NSW Act;

“patient” means a NSW patient or a Queensland 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 NSW Act on the basis that the NSW Act has been declared a corresponding law under that Act);

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

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 and Annexures to, this Agreement (unless stated otherwise);

- (d) references to a person include the legal personal representatives, successors and assigns 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.

PART 2: COMMENCEMENT OF AGREEMENT

- 2.1** The parties acknowledge that this Agreement cannot be given full effect unless and until:
- (a) Queensland makes regulations declaring the NSW Act to be a corresponding law for the purposes of the Queensland Act; and
 - (b) The NSW Regulations, including provisions declaring the Queensland Act to be a corresponding law for the purposes of the NSW Act and such other regulations as may be required in accordance with section 286Q of the NSW Act, are made and commenced.
- 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 Part 4 of Chapter 10A of the NSW Act and Division 4 of Part 2 of Chapter 5 of the Queensland Act but only insofar that these apply to and provide for the apprehension and return of Queensland patients in NSW and NSW patients in Queensland and other matters ancillary and incidental to such matters.
- 3.2** The application and effect of the Queensland Act and the NSW Act as corresponding laws of NSW and Queensland 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 Queensland Act or the NSW 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 Queensland Act or the NSW 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;
 - (e) the name and address of the gazetted mental health service or the 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 Director General of the Queensland Department of Health and the Director General of the NSW 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 NSW PATIENTS

- 5.1** This Part applies only to NSW patients who are in Queensland.
- 5.2** The NSW Minister undertakes to ensure that the NSW Director provides to the Queensland Director an appropriate Interstate Apprehension Order when the NSW Minister becomes aware or has reasonable grounds to suspect that a NSW patient is in Queensland.
- 5.3** The NSW Minister (or the NSW Director) shall, for the purposes of requesting the apprehension of a NSW Patient, provide to the Queensland Director 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 NSW patient required for the patient's management during the return process.
- 5.4** The NSW Minister shall ensure that relevant NSW authorities will do all things that are required and within power to facilitate the apprehension and return of the NSW patient named in the Interstate Apprehension Order.
- 5.5** The parties acknowledge and agree that the persons who may apprehend a NSW patient in Queensland are as follows:
- (a) a NSW police officer, as provided under section 93(2) or section 111(1)(b) of the NSW Act;
 - (b) a Queensland health practitioner or police officer as provided under section 184(1)(b) of the Queensland Act.
- 5.6** Subject to clause 5.7, the parties agree that on being apprehended the NSW patient will be taken to the gazetted mental health service named in the Interstate Apprehension Order and that service will immediately accept and receive the patient.

- 5.7 Where the NSW patient is apprehended by a person described in subclause (b) of clause 5.5 above, the Queensland Director shall notify the NSW Director that the NSW patient has been apprehended and consult with the NSW Director concerning the arrangements for the patient's return to NSW.
- 5.8 The parties acknowledge and agree that:
- (a) the powers set out in section 184(3) of the Queensland Act allows the person apprehending a NSW patient in Queensland to take the NSW patient to a authorised mental health service in Queensland prior to the return of the patient to the gazetted mental health service;
 - (b) where a NSW patient is taken to an authorised mental health service in accordance with subclause (a) that service will only hold the person temporarily, subject to return to the gazetted mental health service;

In this clause “*temporarily*” means up to 7 days, or such longer period as may be approved by the Queensland Director.

- 5.9 The parties acknowledge and agree that the powers set out in sections 184(4), (5), (6) and (7) of the Queensland Act may be exercised in respect of a NSW patient for the purposes of the apprehension and return of the patient to the gazetted mental health service.

PART 6: APPREHENSION AND RETURN OF QUEENSLAND PATIENTS

- 6.1 This Part only applies to Queensland patients who are in NSW.
- 6.2 The Queensland Minister undertakes to ensure that the Queensland Director provides to the NSW Director an appropriate Interstate Apprehension Order when the Queensland Minister becomes aware or has reasonable grounds to suspect that a Queensland patient is in NSW.
- 6.3 The Queensland Minister (or the Queensland Director), shall for the purposes of requesting the apprehension of a Queensland patient, provide to the NSW Director, 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.
- 6.4 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.
- 6.5 The parties acknowledge and agree that the persons who may apprehend a Queensland patient in NSW 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;
 - (b) A NSW Police Officer as provided for under section 286P(1)(a) of the NSW Act;
 - (c) A person authorised to retake a NSW forensic patient under section 111(1) of the NSW Act, those persons being:
 - (i) the medical superintendent of a NSW gazetted unit or any other suitably qualified person employed in the gazetted unit and authorised to do so by the medical superintendent;
 - (ii) a person authorised by the Director General or the medical superintendent;
or
 - (iii) a person assisting a person listed in (i) or (ii);
 - (d) A person authorised under the NSW Regulations for the purposes of section 286P(1)(b) of the NSW Act.
- 6.6 Subject to clause 6.7, the parties agree that on being apprehended, the Queensland patient apprehended 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.
- 6.7 Where the Queensland patient is apprehended by a person listed in subclause (b), (c) or (d) of clause 6.4 above, the NSW Director shall notify the Queensland Director that the Queensland patient has been apprehended and consult with the Queensland Director concerning the arrangements for the patient's return to Queensland.

- 6.8 The parties acknowledge and agree that:
- (a) the powers set out in section 286P of the NSW Act allows the person apprehending a Queensland patient in NSW to take the Queensland patient to a gazetted mental health service in NSW prior to the return of the patient to the authorised mental health service;
 - (b) where a Queensland patient is taken to a gazetted mental health service in accordance with subclause (a) that service will only hold the person temporarily, subject to return to the authorised mental health service;

In this clause “*temporarily*” means up to 7 days, or such longer period as may be approved by the NSW Director of Mental Health.

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 NSW 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 Director-General of the NSW Department of Health 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 NSW 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 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 NSW 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: CONTACT OFFICERS AND SERVICE OF DOCUMENTS

11.1 The Contact Officer for NSW and Queensland for the purposes of this Agreement is set out in Schedule 1.

11.2 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 State of NSW)
 but not so as to incur personal liability) **Craig Knowles**
 in the presence of:) **Minister for Health**
) **for the State of NSW**

.....
 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 NSW: the person holding the position of Director, Centre for Mental Health, NSW Department of Health (or his/her delegate)

Address: 73 Miller Street, North Sydney

Tel: 02 9391 9299

Email: braph@doh.health.nsw.gov.au

Fax: (02) 9391 9041

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

Email: Peggy_Brown@health.qld.gov.au

Fax: 07 323 41362