

**MEMORANDUM OF AGREEMENT**

**ON INTERSTATE APPLICATION OF MENTAL HEALTH LAWS**

**DATED this** \_\_\_\_\_ **day of** \_\_\_\_\_ **2018**

**BETWEEN:**

**The MINISTER FOR HEALTH AND MINISTER FOR AMBULANCE SERVICES FOR THE STATE OF QUEENSLAND** of 1 William Street, Brisbane 4000 (“**the Queensland Minister**”)

**AND**

**The MINISTER FOR HEALTH FOR THE STATE OF NEW SOUTH WALES** of 52 Martin Place, Sydney 2000 (“**the NSW Minister**”)

## RECITALS

### WHEREAS:

- A. Chapter 11, Parts 5 and 6 of the Queensland *Mental Health Act 2016* ('Queensland Act') and Chapter 8 of the New South Wales (NSW) *Mental Health Act 2007* (NSW Act) provide for the interstate application of mental health laws.
- B. By this Agreement, the Queensland Minister and the NSW Minister provide for the administration of Chapter 11, Parts 5 and 6 of the Queensland Act and of certain parts of the NSW Act pursuant to Chapter 8 of the NSW Act with respect to:
- a) the involuntary admission of certain Interstate Persons to Facilities in NSW and Queensland;
  - b) the transfer of certain Involuntary Patients between Facilities in Queensland and NSW;
  - c) the apprehension and return of Interstate Persons who are absent without leave or approval from Queensland to NSW and from NSW to Queensland; and
  - d) the recognition and interstate application of the community category of Treatment Authorities made under the Queensland Act and Community Treatment Orders made under the NSW Act for the care and treatment of certain Interstate Persons.
- C. On 30 April 2002, the Queensland Minister and the NSW Minister executed a ministerial agreement (the **Forensic Agreement**) under corresponding laws to allow for the apprehension and return of forensic patients. The Queensland Minister and the NSW Minister agree to terminate the Forensic Agreement dated 30 April 2002, effective from the commencement of this Agreement so that the apprehension and return of the persons specified in Recital E of the Forensic Agreement will be governed by this Agreement from its commencement.
- D. On 18 October 2004, the Queensland Minister and the NSW Minister executed a ministerial agreement (the **Civil Agreement**) under corresponding laws to allow for:
- a) the involuntary admission of certain Interstate Persons to facilities in NSW and Queensland;
  - b) the transfer of certain Interstate Persons between Facilities in NSW and Queensland;
  - c) the apprehension and return of Interstate Persons who abscond from Queensland to NSW and from NSW to Queensland and who are not covered by the Forensic Agreement; and

- d) the recognition and interstate application of Community Treatment Orders made under the NSW Act and the community category of Involuntary Treatment Orders made under the Queensland Act for the care and treatment of certain Interstate Persons.
- E. The Queensland Minister and the NSW Minister agree to terminate the Civil Agreement effective from the commencement of this Agreement so that the arrangements for involuntary admission and transfer of certain Involuntary Patients to Facilities in NSW and Queensland and the apprehension and return of the persons specified in Recital F of the Civil Agreement will be governed by this Agreement from its commencement.

## **IT IS AGREED:**

### **1. DEFINITIONS AND INTERPRETATION**

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

**“Administrator”** means the person or position declared, under section 332 of the Queensland Act, to be the Administrator for an Authorised Mental Health Service and includes his or her delegate as appointed;

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

**“Authorised Doctor”** for an Authorised Mental Health Service, means a doctor who, under section 338 of the Queensland Act, is or holds appointment as an Authorised Doctor for the health service;

**“Authorised Medical Officer”** of a NSW Facility means, for the purposes of the NSW Act:

(a) the Medical Superintendent of the mental health Facility, or

(b) a medical officer, nominated by the Medical Superintendent, attached to the mental health Facility concerned;

**“Authorised Mental Health Practitioner”** means a health practitioner appointed as an Authorised Mental Health Practitioner under section 340 of the Queensland Act;

**“Authorised Mental Health Service”** means a health service, or part of a health service declared by the Queensland Chief Psychiatrist, by gazette notice, to be an Authorised Mental Health Service under section 329 or section 331 of the Queensland Act;

**“Authorised Person”** has the same meaning as under sections 359(1) and (3) of the Queensland Act being the Administrator of an Authorised Mental Health Service, a Queensland ambulance officer, a Queensland Health Practitioner, a Queensland police officer or a person appointed in writing by the Administrator of an Authorised Mental Health Service as an Authorised Person;

**“Authorised Psychiatrist”** means a psychiatrist who is an Authorised Doctor for an Authorised Mental Health Service;

**“Business Day”** means a day other than a Saturday, a Sunday or a public holiday in the place where an act is to be performed;

**“Civil Agreement”** means the ministerial agreement executed by the Minister for Health for the State of Queensland and the Minister for Health for the State of New South Wales under corresponding laws dated 18 October 2004.

**“Civil Patient”** means with respect to Queensland, an Involuntary Patient other than a Forensic Patient, a Treatment Support Order Patient, a Classified Patient, Judicial Order Patient or a person subject to an Examination Authority, and with respect to NSW, an Involuntary Patient under the NSW Act or a person subject to a Community Treatment Order;

**“Civil Interstate Transfer Notice”** means a document in the same form as or in substantially the form as Schedule 2, and as amended from time to time in accordance with Clause 7.9 ;

**“Classified Patient”** means with respect to Queensland, as defined under section 64 of the Queensland Act;

**“Community Treatment Order”** means an order made, and in force, under Part 3 of Chapter 3 of the NSW Act or section 33 of the NSW Forensic Act;

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

**“Corresponding Laws”** means:

- (a) with respect to Queensland, the NSW Act and the NSW Forensic Act as declared under the Queensland Act; and
- (b) with respect to NSW, the Queensland Act when declared as such under and in accordance with section 172 of the NSW Act;

**“Emergency Examination Authority”** means an Emergency Examination Authority made by a Queensland police officer or Queensland ambulance officer under section

157D of the *Public Health Act 2005(Qld)*;

**“Examination Authority”** means an authority made by the Queensland Mental Health Review Tribunal under Chapter 12, Part 8 of the Queensland Act;

**“Facility”** means an Authorised Mental Health Service, a Queensland Public Sector Health Service Facility or a NSW Facility;

**“Forensic Agreement”** means the ministerial agreement executed by the Minister for Health for the State of Queensland and the Minister for Health for the State of New South Wales under corresponding laws dated 30 April 2002;

**“Forensic Patient”** means with respect to Queensland, as defined in Schedule 3 of the Queensland Act, and with respect to NSW as defined under section 42 of the NSW Forensic Act;

**“Inpatient Hospital”** means a hospital at which a person may be discharged on a day other than the day on which the person was admitted to hospital;

**“Interstate Apprehension Order”** means an order in the same form as or in substantially the same form as Schedule 3 as amended from time to time in accordance with Clause 8.6;

**“Interstate Authority” means:**

(a) for the purpose of the sections 354 and 355 of the Queensland Act, the Medical Superintendent of the relevant NSW Facility; or

(b) for the purpose of the NSW Act, the Administrator of the relevant receiving Authorised Mental Health Service;

**“Interstate Facility”** means with respect to Queensland, a NSW Facility and with respect to NSW, a Queensland Facility;

**“Interstate Guidelines”** means any guidelines developed in accordance with Part 4;

**“Interstate Officer”** means with respect to Queensland, a person authorised under the NSW Act to transport a person to a Queensland Facility, and with respect to NSW, a person authorised under the Queensland Act to transport a person to a NSW Facility;

**“Interstate Person”** means with respect to Queensland, a person who is usually resident in Queensland and is at the relevant time in NSW; and with respect to NSW, a person who is usually resident in NSW and is at the relevant time in Queensland;

**“Involuntary Patient”** has the same meaning as section 11 of the Queensland Act or

section 4 of the NSW Act;

**“Judicial Order”** means with respect to the Queensland Act:

(a) a court order; or

(b) an examination order; or

(c) another order, requiring or permitting the detention of a person in an Authorised Mental Health Service, made by the Mental Health Court under any of the following:

i. section 124(1)(b);

ii. section 183(c)(ii);

iii. section 193(2);

iv. section 544(4);

v. section 551(4)(b);

**“Judicial Order Patient”** means with respect to Queensland, a person subject to a Judicial Order under the Queensland Act;

**“Less Restrictive Way”** has the same meaning as section 13 of the Queensland Act;

**“Magistrates Order”** means with respect to NSW, an order made by a Magistrate under section 33 of the NSW Forensic Act and referred to in section 24 of the NSW Act;

**“Medical Superintendent”** means a person appointed pursuant to the NSW Act to be the medical superintendent for a NSW Facility and includes his or her delegate as appointed from time to time;

**“Mental Health Certificate”** means a document issued by a medical officer or accredited person under section 19 of the NSW Act;

**“NSW Act”** means the *Mental Health Act 2007 (NSW)*, 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 the NSW Act);

**“NSW Facility”** means premises in relation to which the Secretary of the NSW Ministry of Health has made an order under section 109 of the NSW Act;

**“NSW Forensic Act”** means the *Mental Health (Forensic Provisions) Act 1990* (NSW), including any regulations and orders made under that Act;

**“NSW Forensic Patient”** means a Forensic Patient as defined in section 42 of the NSW Forensic Act;

**“NSW Regulations”** means the *Mental Health Regulation 2007 (NSW)*;

**“NSW Secretary”** means the Secretary of the NSW Ministry of Health and includes his or her delegate as appointed from time to time;

**“NSW Tribunal”** means the NSW Mental Health Review Tribunal established under the NSW Act;

**“Patient”** means a Civil Patient, Forensic Patient, Treatment Support Order Patient, Classified Patient, Judicial Order Patient or person subject to an Examination Authority;

**“Person in charge of Queensland Public Sector Health Service Facility”** means the Chief Executive or Executive Officer of a Queensland Public Sector Health Service Facility and includes his or her delegate as appointed from time to time;

**“Queensland Act”** means the *Mental Health Act 2016 (Qld)*, 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 the Queensland Act);

**“Queensland Chief Psychiatrist”** means the Chief Psychiatrist in Queensland who is appointed by the Governor in Council in accordance with section 298 of the Queensland Act and includes his or her delegate as appointed from time to time;

**“Queensland Forensic Patient”** means a Forensic patient as defined in Schedule 3 of the Queensland Act;

**“Queensland Health Practitioner”** means a person registered under the Health Practitioner Regulation National Law, or another person who provides health services, including, for example, a social worker;

**“Queensland Health Service Employee”** means a person appointed as a health service employee in Queensland under section 67 of the *Hospital and Health Boards Act 2011* (Qld);

**“Queensland Public Sector Health Service Facility”** as defined in the *Hospital and*

*Health Boards Act 2011 (Qld)* means a Facility at which public sector health services are provided;

**“Queensland Regulations”** means regulations made pursuant to the Queensland Act;

**“Queensland Tribunal”** means the Queensland Mental Health Review Tribunal according to Chapter 16, Part 2 of the Queensland Act;

**“Receiving Facility”** means the Facility to which it is proposed to transfer a person in accordance with Part 7;

**“Referring Facility”** means the Facility from which it is proposed to transfer a person in accordance with Part 7;

**“Recommendation for Assessment”** means a recommendation for assessment made under section 39 of the Queensland Act by a doctor or an Authorised Mental Health Practitioner;

**“Risk Summary”** means a summary of assessed clinical risk factors in relation to the Patient;

**“Treatment Authority”** means an authority made by an Authorised Doctor under section 49 of the Queensland Act;

**“Treatment Criteria”** means for the purposes of the Queensland Act, the criteria set out in section 12 of the Queensland Act;

**“Treatment Support Order”** means an order made by the Mental Health Court under section 143 of the Queensland Act if the Court considers that a Treatment Support Order but not a Forensic Order is necessary, because of the person’s mental condition, to protect the safety of the community, including from the risk of serious harm to other persons or property;

**“Treatment Support Order Patient”** means a person subject to a Treatment Support Order made under section 143 of the Queensland 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 positions, corporations and bodies corporate;

(c) references to Clauses, Parts and Schedules are references to Clauses and Parts of and Schedules 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.

## **2. COMMENCEMENT OF AGREEMENT**

2.1 This Agreement will commence on the day that it has been executed by both parties and prescribed in the *Mental Health Regulation 2013* (NSW). The Agreement will continue to operate unless and until terminated by the parties.

2.2 The Queensland Minister and the NSW Minister agree to terminate the Forensic Agreement with effect from the commencement date of this Agreement.

2.3 Any forms and documents relating to the transfer or apprehension of a Queensland Patient or a NSW Patient as defined in the Forensic Agreement will be taken to be issued under this Agreement for the period of six months from the date of commencement of this Agreement.

2.4 All rights and obligations accrued under the Forensic Agreement will continue.

2.5 The Queensland Minister and the NSW Minister agree to terminate the Civil Agreement with effect from the commencement date of this Agreement.

2.6 Any forms and documents relating to the transfer or apprehension of a patient under the Civil Agreement will continue to be accepted under this Agreement for the period of six months from the date of commencement of this Agreement.

2.7 All rights and obligations accrued under the previous Civil Agreement will continue.

## **3. PURPOSE AND SCOPE OF THE AGREEMENT**

3.1 The purpose of this Agreement is to provide for matters in connection with the administration and implementation of Chapter 11, Parts 5 and 6 of the Queensland Act and Chapter 8 of the NSW Act.

3.2 Nothing in this Agreement is to be construed as extending, limiting or varying the provisions of the Queensland Act, the NSW Act, the NSW Forensic Act or a Corresponding Law declared under these Acts.

3.3 Nothing in this Agreement prevents the issuing of a warrant under the terms of the Queensland Act, the NSW Act, the NSW Forensic Act or any other legislation and reliance on the *Service and Execution of Process Act 1992 (Cth)* to apprehend a Patient.

- 3.4 The parties will cooperate in a spirit of goodwill to facilitate the purposes of this Agreement.
- 3.5 A 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.

#### **4. INTERSTATE GUIDELINES**

- 4.1 The parties may develop Interstate Guidelines to facilitate the purposes of this Agreement and support its administration and operation.
- 4.2 Any amendment of Interstate Guidelines may only be by written agreement of the Contact Officers.

#### **5. INTERSTATE APPLICATION OF ORDERS FOR TREATMENT IN THE COMMUNITY**

- 5.1 This Part applies only to the interstate application of Community Treatment Orders and the community category of Treatment Authorities under a Corresponding Law.
- 5.2 A Treatment Authority under the Queensland Act may be made in respect of a person who resides in NSW if the health care facility implementing the order is located in Queensland.
- 5.3 For the purposes of providing assessment and treatment for a person who is subject to the community category of a Treatment Authority and who resides in NSW, a person who is authorised to perform functions or exercise powers in relation to a person subject to a Treatment Authority may perform those functions or exercise those powers in NSW.
- 5.4 A Community Treatment Order may be made in respect of a person who resides in Queensland, if the facility implementing the order is located in NSW. However, a person who is authorised to perform functions or exercise powers under a Community Treatment Order may only perform those functions or exercise those powers in NSW.
- 5.5 Where a person subject to a Community Treatment Order in NSW or a community category of Treatment Authority in Queensland, proposes to relocate to the other State, the treating Facility and the proposed treating Facility in the other State will act co-operatively to facilitate, as far as practicable, the smooth transition of the person's community treatment and care.

## **6. TRANSPORT TO INTERSTATE FACILITY FOR INVOLUNTARY EXAMINATION, TREATMENT OR CARE OR FOR INVOLUNTARY ASSESSMENT**

- 6.1 This Part applies only to the transport of persons to an Interstate Facility under a corresponding law for:
- (a) emergency involuntary examination or treatment and care relating to a mental illness; or
  - (b) involuntary assessment of whether the person should be involuntarily treated for a mental illness.

### **Recognition of Emergency Involuntary Examination Relating to a Mental Illness Under Corresponding Laws**

- 6.2 A Queensland person who appears to have a mental illness and who may be detained and transported to a Queensland Public Sector Health Facility by a Queensland ambulance officer or a Queensland police officer under section 157B of the *Public Health Act 2005 (Qld)* may instead be detained and transported to any NSW Facility.
- 6.3 A NSW person who may be taken to a NSW Facility for emergency involuntary examination relating to a mental illness by a:
- (a) NSW ambulance officer (under section 20 of the NSW Act); or
  - (b) NSW police officer (under section 22 of the NSW Act);
- may instead be detained and transported to any Authorised Mental Health Service or any Queensland Public Sector Health Service Facility.
- 6.4 If the Queensland Public Sector Health Service Facility is not an Inpatient Hospital, the person may be transported to the Queensland Public Sector Health Service Facility only with the approval of the Person in Charge of the Queensland Public Sector Health Service Facility.
- 6.5 Under section 371 of the Queensland Act, immediately after transporting the NSW person to the Queensland Facility, the NSW ambulance officer or NSW police officer must make an Emergency Examination Authority for the person under section 157D of the *Public Health Act 2005 (Qld)* and give the Authority to a Queensland Health Service Employee at the Queensland Facility.

**Recognition of Involuntary Assessment Relating to a Mental Illness Under Corresponding Laws**

- 6.6 A Queensland person for whom a Recommendation for Assessment is made by a doctor or Authorised Mental Health Practitioner under Chapter 2, Part 2 of the Queensland Act may instead be detained and transported to any NSW Facility.
- 6.7 A Queensland person who is detained and transported to a NSW Facility under Clause 6.6 shall thereafter be dealt with in accordance with Part 2 of Chapter 3 of the NSW Act as if the person were a person in relation to whom a Mental Health Certificate has been made under section 19 of the NSW Act.
- 6.8 A NSW person who may be detained and taken to a NSW Facility for involuntary assessment of whether the person should be involuntarily treated for a mental illness subject to:
- (a) a Mental Health Certificate issued under section 19 of the NSW Act indicating that the person is a mentally ill person or a mentally disordered person; or
  - (b) an order of a magistrate in accordance with section 24 of the NSW Act;
- may instead be detained and transported to any Authorised Mental Health Service.
- 6.9 The Mental Health Certificate or Magistrates Order is taken to be a Recommendation for Assessment for the purposes of the Queensland Act.
- 6.10 Immediately after transporting the person to the Queensland Facility, the Interstate Officer must give the Mental Health Certificate or Magistrates Order to a Queensland Health Service Employee at the Queensland Facility and the Queensland Health Service Employee must record the time when it is given on the document.
- 6.11 A NSW person who is detained and transported to an Authorised Mental Health Service under Clause 6.8 shall thereafter be dealt with in accordance with Chapter 2, Part 3 of the Queensland Act.

**Persons Authorised to Transport a Person to an Authorised Mental Health Service or a NSW Facility**

- 6.12 The persons who may detain and transport a person to an Authorised Mental Health Service, or NSW Facility under Clauses 6.6 and 6.8 are:
- (a) an Authorised Person under section 359 of the Queensland Act being:
    - (i) the Administrator of an Authorised Mental Health Service;
    - (ii) a Queensland ambulance officer;

- (iii) a Queensland Health Practitioner;
  - (iv) a Queensland police officer;
  - (v) a person appointed in writing by the Administrator of an Authorised Mental Health Service as an Authorised Person;
- (b) a person authorised under sections 174 and 177 of the NSW Act and clauses 24 and 26 of the NSW Regulation being:
- (i) the Medical Superintendent of a NSW Facility or a person authorised to do so by the Medical Superintendent;
  - (ii) a NSW police officer.

6.13 The authority set out in Chapter 11, Part 6, Division 5 of the Queensland Act and set out in section 81 of the NSW Act in relation to transport powers apply to the administration of Clauses 6.6 and 6.8.

## **7. INTERSTATE TRANSFERS OF CIVIL PATIENTS**

7.1 This Part only permits the interstate transfer of a Civil Patient who:

- (a) with respect to Queensland, is subject to a Treatment Authority (inpatient category) under Chapter 2, Part 4 of the Queensland Act; and
- (b) with respect to NSW, is a NSW Involuntary Patient.

7.2 This Part does not apply to interstate transfers of Forensic Patients or Treatment Support Order Patients.

7.3 Subject to the requirements set out in this Part:

- (a) a Queensland Patient may be transferred to any NSW Facility;
- (b) a NSW Involuntary Patient may be transferred to any Queensland Authorised Mental Health Service;
- (c) a transfer of a Queensland Patient to NSW must be made in accordance with section 354 of the Queensland Act and section 179 of the NSW Act;
- (d) a transfer of a NSW Involuntary Patient to Queensland must be made in accordance with section 176 of the NSW Act and section 355 of the Queensland Act.

### **Transfer Subject to Prior Approval of Receiving Facility**

7.4 A Patient must not be transferred under this Part unless the relevant Interstate Authority has given prior approval of the transfer in writing by notation and signature on the Civil Interstate Transfer Notice.

- 7.5 Prior to issuing a Civil Interstate Transfer Notice, the Referring Facility must consult with the proposed Receiving Facility about the reasons for the proposed transfer and whether the Patient's treatment and care can be provided by the proposed Receiving Facility.
- 7.6 As part of the consultation process, the Referring Facility must provide the proposed Receiving Facility with a written summary of the Patient's treatment and care requirements, including:
- (a) current mental state;
  - (b) past psychiatric history;
  - (c) any pending legal matters;
  - (d) involvement of family, carers and other supports; and
  - (e) Risk Summary.
- 7.7 The Civil Interstate Transfer Notice is to be in the form as Schedule 2 and is to include all the relevant information specified therein.
- 7.8 The Interstate Guidelines may specify further information to be provided with the Civil Interstate Transfer Notice.
- 7.9 The form of the Civil Interstate Transfer Notice may be amended by written agreement of the Contact Officers.
- 7.10 In the case of a transfer from Queensland to NSW, the transfer must be approved by the Medical Superintendent of the Receiving NSW Facility.
- 7.11 In the case of a transfer from NSW to Queensland, the transfer must be approved by the Administrator of the Receiving Facility.
- 7.12 Where a Patient is transferred under this Part, the Referring Facility must forward to the Receiving Facility;
- (a) the Civil Interstate Transfer Notice which has been approved in writing by the Referring and Receiving Facilities, and
  - (b) any such other information, including medical records, of the Interstate Person as is reasonably necessary or required for the continued care and treatment of the person by the Receiving Facility.

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

- 7.13 The persons who may take an Interstate Person to an Authorised Mental Health

Service, or NSW Facility in accordance with this Part are:

- (a) An Authorised Person under section 359 of the Queensland Act being:
  - (i) the Administrator of an Authorised Mental Health Service;
  - (ii) a Queensland ambulance officer;
  - (iii) a Queensland Health Practitioner;
  - (iv) a Queensland police officer;
  - (v) a person appointed in writing by the Administrator of an Authorised Mental Health Service as an Authorised Person;
- (b) a person prescribed under the NSW Regulations in accordance with section 179(2) of the NSW Act, being:
  - (i) the Medical superintendent of a NSW Facility or any other person authorised to do so by the Medical Superintendent;
  - (ii) a NSW Police Officer.

7.14 The authority set out in Chapter 11, Part 6, Division 5 of the Queensland Act and set out in section 81 of the NSW Act in relation to transport powers apply to the administration of this Part.

#### **Transfers from Queensland to NSW**

7.15 The Treatment Authority for the person ends when the person leaves Queensland.

7.16 A Queensland Patient who is transferred to a NSW Facility must, from the time of arrival at the NSW Facility, be dealt with under Chapter 3 of the NSW Act as if the person was an Involuntary Patient under the NSW Act.

#### **Transfers from NSW to Queensland**

7.17 A NSW Involuntary Patient who is transferred to a Queensland Authorised Mental Health Service must be assessed on arrival by an Authorised Doctor to decide whether:

- (a) the Treatment Criteria under the Queensland Act apply to the person; and
- (b) there is a Less Restrictive Way for the person to receive treatment and care for the person's mental illness.

7.18 The person may be detained for assessment in the Authorised Mental Health Service for a period of not more than six hours starting from when the person arrives at the Authorised Mental Health Service.

## **8. APPREHENSION OF INTERSTATE PERSONS**

8.1 This Part applies to those persons who are:

(a) Queensland Involuntary Patients, other than persons subject to an Examination Authority, and Classified Patients who are absent without approval from an Authorised Mental Health Service or a Queensland Public Sector Health Service Facility under section 363 of the Queensland Act, and for whom there are reasonable grounds to suspect are in NSW;

(b) and:

(i) NSW Involuntary Patients who are liable to apprehension under section 48 of the NSW Act;

(ii) NSW Forensic Patients who have been ordered to be apprehended under section 68 of the NSW Forensic Act;

(iii) NSW Forensic Patients who are liable for retaking under section 70 of the NSW Forensic Act; or

(iv) NSW Patients who are subject to an order for apprehension for breach of a Community Treatment Order under section 58 of the NSW Act;

where there are reasonable grounds to suspect they are in Queensland.

8.2 The apprehension and return of an Interstate Person must be in accordance with Chapter 11, Part 6 of the Queensland Act, Chapter 8 of the NSW Act and Division 2 of Part 8 of the NSW Regulation.

### **Interstate Apprehension Order**

8.3 A person authorised by Clause 8.7 may issue an Interstate Apprehension Order for the apprehension and return of an Interstate Person.

8.4 The Interstate Apprehension Order is to be in the form as Schedule 3 and is to include all the relevant information specified therein.

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

8.6 The form of the Interstate Apprehension Order may be amended by the written agreement of the Queensland and NSW Contact Officers.

8.7 An Interstate Apprehension Order may be issued:

(a) for a Queensland Interstate Person by the Administrator of the relevant Authorised

Mental Health Service, the Person in Charge of the relevant Queensland Public Sector Health Service Facility, an Authorised Doctor or an Authorised Mental Health Practitioner of the relevant Queensland Facility; and

(b) for persons referred to in clause 8.1(b)(iii), by the Medical Superintendent, Authorised Officer of the relevant NSW Facility, or the NSW Contact Officer; and

(c) for persons referred to in clause 8.1(b)(ii) by the President, a Deputy President, the Registrar of the NSW Tribunal or the NSW Contact Officer.

8.8 Except as outlined in clauses 8.18 - 8.22 of this Agreement, an Interstate Person must not be apprehended under this Part unless an Interstate Apprehension Order has been issued in accordance with this Agreement.

8.9 A person authorised by clause 8.7 to issue an Interstate Apprehension Order may revoke the order by written notice.

8.10 Each party must ensure all things that are reasonably required and within their power are done to facilitate the apprehension and return of an Interstate Person named in an Interstate Apprehension Order.

8.11 Where the Interstate Apprehension Order specifies that an Interstate Person should be transported to a specific Facility, every effort should be made to take the person to that Facility unless this is not reasonably practicable, and that Facility must immediately accept and receive the Patient.

8.12 Subject to Clause 8.11, an Interstate Person who is apprehended under this Part may, pending return to the Facility specified in the Interstate Apprehension Order, be transported to:

(a) a Queensland Authorised Mental Health Service (subject to consultation with the Administrator); or

(b) a NSW Facility (subject to consultation with the Medical Superintendent of the relevant facility);

in the State of apprehension.

8.13 The authority set out in Chapter 11, Part 6, Division 5 of the Queensland Act and set out in section 81 of the NSW Act in relation to transport powers apply to the administration of this Part.

## **Apprehension and Return of Queensland Interstate Persons in NSW**

### **Civil Patients**

8.14 The persons who may apprehend a Queensland Civil Patient in NSW under this Part are:

- (a) a person authorised to apprehend such a person under section 48 of the NSW Act, being:
  - (i) a NSW police officer;
  - (ii) an Authorised Medical Officer or any other suitably qualified person employed at the NSW Facility;
  - (iii) a person authorised by the Minister or the Authorised Medical Officer; or
  - (iv) a person assisting a person referred to above;
- (b) a person authorised or requested to transport an absent person under section 364 of the Queensland Act, being:
  - (i) a Queensland ambulance officer;
  - (ii) an Authorised Doctor;
  - (iii) an Authorised Mental Health Practitioner;
  - (iv) A Queensland Health Practitioner
  - (v) a Queensland police officer;
  - (vi) a person appointed in writing by the Administrator of an Authorised Mental Health Service as an Authorised Person.

8.15 A Queensland Interstate Person:

- (a) who is transported to a NSW Facility shall on admission and thereafter be dealt with as if that person had been detained under Chapter 3, Part 2 of the NSW Act; and
- (b) be detained in the NSW Facility until either:
  - (i) the person is transported to a Queensland Facility; or
  - (ii) the person is discharged from the NSW Facility under the NSW Act.

### **Forensic Patients, Treatment Support Order Patients, Classified Patients, and Judicial Order Patients**

8.16 The persons who may apprehend a Queensland Forensic Patient, a Treatment Support Order Patient, a Classified Patient, or a Judicial Order Patient in NSW under this Part are:

- (a) a person authorised to retake a NSW Forensic Patient under section 70(1) of the NSW Forensic Act, those persons being:
- (i) the Medical Superintendent of a NSW Facility or any other suitably qualified person employed by the NSW Facility who is authorised to do so by the Medical Superintendent;
  - (ii) a NSW police officer;
  - (iii) a person authorised by the NSW Secretary or the Medical Superintendent;
  - (iv) a person assisting a person referred to above;
- (b) a person authorised or requested to transport an absent person under section 364 of the Queensland Act, being:
- (i) a Queensland ambulance officer;
  - (ii) an Authorised Doctor;
  - (iii) an Authorised Mental Health Practitioner;
  - (iv) a Queensland Health Practitioner
  - (v) a Queensland police officer;
  - (vi) a person appointed in writing by the Administrator of an Authorised Mental Health Service as an Authorised Person.

8.17 If a Queensland Patient is transported to a NSW Facility under this Part, that Facility will only hold the Patient temporarily subject to the Patient's return to the relevant Authorised Mental Health Service. In this Clause, temporarily means up to 7 days or such longer period as may be approved by the NSW Secretary.

### **Apprehension and return of NSW Interstate Persons in Queensland**

#### **Civil Patients**

8.18 If a NSW Civil Patient meets the criteria for urgent examination, treatment or care under section 157B of the *Public Health Act 2005 (Qld)*, a Queensland police officer or Queensland ambulance officer may detain the person and transport the person to an Authorised Mental Health Service or Queensland Public Sector Health Service Facility under Part 6.

8.19 Otherwise, the Medical Superintendent of the relevant NSW Facility will notify the Administrator of the nearest Authorised Mental Health Service of a NSW Civil Patient whose whereabouts in Queensland are known, and provide any relevant information which may assist the Authorised Mental Health Service to engage the person in treatment and care.

- 8.20 Any proposed examination, assessment and treatment of a NSW Civil Interstate Person who has been transported to a Queensland Facility under clause 8.18 or 8.19 above, must be in accordance with the Queensland Act.
- 8.21 If a person known to be a NSW Civil Patient is located by a Queensland Facility, the Administrator will notify the Medical Superintendent of the person's treating Facility in NSW.
- 8.22 A NSW Civil Interstate Person may be transported to a NSW Facility in accordance with Part 7.

#### Forensic Patients

- 8.23 A NSW Forensic Patient for whom a warrant for the person's apprehension has been issued, may be apprehended in Queensland by a Queensland police officer under section 368 of the Queensland Act.
- 8.24 A NSW Forensic Patient who is transported to an Authorised Mental Health Service under section 368 of the Queensland Act may be detained and treated in accordance with the Queensland Act until the person is transported to a NSW Facility.
- 8.25 A NSW Forensic Patient may be detained in an Authorised Mental Health Service for the period reasonably necessary to enable the Administrator of the Facility to make arrangements for the person's return to a NSW Facility.

### **9. COSTS**

- 9.1 Unless otherwise agreed, the costs of planned transfers will be the responsibility of the referring state and the costs of apprehension and return of Interstate Persons will be the responsibility of the state issuing the Interstate Apprehension Order.

### **10. REVIEW OF AGREEMENT**

- 10.1 The parties may agree to the periodic review of this Agreement by the Queensland and NSW Contact Officers or their nominees.

### **11. AMENDMENT OR VARIATION OF AGREEMENT**

- 11.1 Amendments to this Agreement may only be made by the written agreement of the parties, initiated through the Contact Officers and executed by both parties.
- 11.2 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.

## **12. CONFIDENTIALITY AND PRIVACY OF INFORMATION**

12.1 All information obtained or created in the implementation of this Agreement is subject to the laws of each party governing confidentiality and privacy obligations.

## **13. DISPUTE RESOLUTION**

13.1 Disputes arising under this Agreement must be referred to the Queensland and NSW Contact Officers for resolution.

13.2 The Queensland and NSW Contact Officers must attempt in good faith to resolve any dispute arising under this Agreement within seven (7) Business Days.

13.3 In the event that the Queensland and NSW Contact Officers cannot resolve the dispute, the dispute will be referred to the Queensland Minister and the NSW Minister for resolution.

13.4 The parties acknowledge that failure to resolve a dispute arising under this Agreement will jeopardise its continued existence and acknowledge that they will cooperate and act in good faith to seek a satisfactory resolution of any such dispute.

## **14. TERMINATION OF AGREEMENT**

14.1 Either party may terminate this Agreement by giving the other party three months' notice in writing of an intention to terminate. If both parties agree, the notice requirement under this clause can be waived.

14.2 As soon as possible after the Agreement has been terminated under clause 14.1, both parties will take such other action within their power as is necessary to give effect to the termination of this Agreement.

14.3 A patient transfer made under this Agreement, which is underway immediately before the termination of this Agreement, will continue to enable the transfer to be effected.

## **15. SERVICE OF DOCUMENTS AND NOTICES**

15.1 Any notice or other communication under this Agreement must be in writing and may be delivered by hand, pre-paid post or e-mail transmission to the other party through the Queensland and NSW Contact Officers detailed in Schedule 1.

15.2 All legal documents or notices that may or are required to be delivered or served may be delivered or served as permitted by law.

15.3 The contact details and address for service may be amended by written notice of the Queensland and NSW Contact Officers at any time.

## **16. SEVERANCE**

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

## **17. COUNTERPARTS**

17.1 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.

## **18. COSTS OF NEGOTIATING AND SETTLING THIS AGREEMENT**

18.1 Each party will bear its own costs incurred in negotiating and settling the terms of this Agreement.

**EXECUTION**

Signed by the parties on the dates set out below

**SIGNED** for and on behalf of )

**THE STATE OF QUEENSLAND ACTING )  
THROUGH QUEENSLAND HEALTH )**

this                      day of                      2018 )

by the Honourable Steven Miles MP )

Minister for Health and Minister for Ambulance )  
Services )

.....  
(signature)

**SIGNED** for and on behalf of )

**THE STATE OF NEW SOUTH WALES )**

this                      day of                      2018 )

by the Honourable Brad Hazzard MP )  
Minister for Health )

.....  
(signature)

## **SCHEDULES**

Schedule 1: Contact Officer Details

Schedule 2: Civil Interstate Transfer Notice

Schedule 3: Interstate Apprehension Order

## Schedule 1

### 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 Chief Psychiatrist (or his/her delegate)

Mental Health Alcohol and Other Drugs Branch

Queensland Health

Level 1, 15 Butterfield Street, Herston, 4006

Tel: 07 3328 9899

Tel: 0408 750 369 (after hours)

Email: [MHAODB-OCP@health.qld.gov.au](mailto:MHAODB-OCP@health.qld.gov.au)

For NSW the person holding the position of Executive Director (or his/her delegate),

Mental Health Branch

NSW Ministry of Health

73 Miller Street, North Sydney

Tel: 02 9391 9000

Email: [MentalHealthBranch@doh.health.nsw.gov.au](mailto:MentalHealthBranch@doh.health.nsw.gov.au)