

**Queensland
Government**

Queensland Health

Memorandum of Understanding

between

The State of Queensland acting through

Queensland Health

and

**The State of Queensland acting through the Department of Justice
and Attorney-General**

**for the purpose of developing collaborative, interdepartmental
arrangements to deliver a state-wide mental health Court Liaison Service**

Memorandum of Understanding

Between The State of Queensland acting through Queensland Health, 147-163 Charlotte Street, Brisbane (“QH”)

And The State of Queensland acting through the Department of Justice and Attorney-General, State Law Building, 50 Ann St, Brisbane (“DJAG”)

BACKGROUND

- A This Memorandum of Understanding (“MoU”) sets out an arrangement between QH and DJAG to work together to deliver mental health Court Liaison Services (“CLS”) to Magistrates Courts in Queensland at designated sites, as resources become available.
- B QH and DJAG provide services to people who have contact with Queensland Courts and watch houses. Studies have shown that a significant proportion of this group have a mental disorder and many have multiple and complex disorders.
- C The proposal to deliver state-wide CLS has been endorsed by the Director of Mental Health, Chief Magistrate, Deputy Chief Magistrate, the Court Administrator and Watch house Managers. DJAG Regional Service Managers, Coordinating Magistrates and local Magistrates were also consulted about it.
- D Initial objectives of a project relating to this MoU that have been achieved through research and extensive consultation include:
 - i) identification of the mental health issues and service provision needs of people in contact with Queensland Courts and watch houses;
 - ii) identification of a range of models of good practice in the literature, within the State and in other jurisdictions;
 - iii) identification of mental health services delivered through a range of pathways from arrest and arrival in custody, through to bail and remand stages, taking account of departmental roles and responsibilities to collaboratively deliver a seamless continuum of care; and
 - iv) examination of funding and service delivery issues underpinning the CLS service model implemented in Queensland.
- E QH and DJAG wish to document in this MoU the terms of their understanding as to the role and responsibilities of each department.
- F QH and DJAG agree to act in the spirit of mutual cooperation with each other and agree to provide assistance to each other where reasonably practicable in achieving the purposes outlined in this MoU.

1.0 DEFINITIONS

In this MoU the following definitions apply:

“Confidential information” means information acquired because of being a designated person if a person who is receiving or has received a public sector health service could be identified from the confidential information (section 62A(1), *Health Services Act 1991* (Qld)). Designated person has the same meaning as under section 60 of that Act.

“Consumer” has the same meaning as “patient” in this MoU.

“Court Liaison Services” means mental health services delivered by QH in various sites in Health Service Districts across Queensland.

“Health matter” means, for an adult, a matter relating to health care, other than special health care, of the adult (Schedule 2, section 4, *Guardianship and Administration Act 2000* (Qld)).

“Health Service District” means a QH Health Service District declared under section 6 of the *Health Services Act 1991*.

“Impaired capacity” means, for a person for a matter, the person does not have capacity for the matter (schedule 4, *Guardianship and Administration Act 2000*).

“Local Health Networks” means the independent statutory bodies that will:

- a) be described as Local Health and Hospital Networks;
- b) be created under proposed State legislation for National Health Reform;
- c) be responsible for the delivery of health services within certain geographical boundaries within Queensland; and
- d) replace health service districts in QH.

“Memorandum of Understanding” means this document and all schedules attached to it.

“Mental health services” means specialist health services, specifically mental health assessment, treatment and care delivered by QH.

“National Health Reform” means legal arrangements that are to be introduced by the Federal and State Governments as part of the framework for National Health and Hospital Reform (as announced by the Federal Government in the 2009-2010 financial year).

“Offence” means an act or omission which renders the person doing the act or making the omission liable to punishment, and includes a criminal offence (crime, misdemeanour and simple offence) and a regulatory offence (sections 2 and 3, Criminal Code).

“Parties” means Queensland Health and Department of Justice and Attorney-General.

“Patient” means a person who is receiving or has received a health service within the meaning of section 3 of the *Health Services Act 1991*, and includes a patient who has died.

“Schedule” means a schedule at the back of this document of which it is a part.

“Steering Committee” means the Court Liaison Service Steering Committee comprising senior representatives of QH and DJAG to oversee implementation of the terms of this MoU.

2.0 PURPOSE AND DOCUMENTATION

2.1 This MoU outlines the responsibilities of the parties for the purpose of further developing collaborative, interdepartmental arrangements to deliver a state-wide CLS.

2.2 This MoU is intended to establish a strategy and framework for a cooperative working relationship between the parties, but not a legally binding relationship.

2.3 Notwithstanding clause 2.2, implementation of this MoU will be impacted by the establishment of Local Health Networks, independent statutory bodies that will replace Health Service Districts under National Health Reform. Therefore, reviews of this MoU to which clause 3.5 refers must take account of changes relating to National Health Reform, which may require this MoU to become a legally binding contract on DJAG and relevant Local Health Networks.

2.4 Headings used in this MoU are for convenience only and do not form part of this MoU.

3.0 PERIOD OF MoU

3.1 This MoU shall commence on the date it is signed by the last of the parties to sign it, and continues until terminated in accordance with this clause 3, or until otherwise lawfully terminated.

3.2 Either party may terminate this MoU by giving six months written notice of termination to the other party.

3.3 If either party is in material breach of this MoU, the other party may, by notice in writing providing reasonably sufficient notice of that breach, require the other party to remedy the breach.

3.4 A party which has properly given notice pursuant to clause 3.3, may terminate this MoU if the other party has failed to remedy the breach referred to in the notice within thirty days of receiving the notice.

3.5 This MoU will be reviewed six monthly in the 2011-12 financial year by the Steering Committee, with outcomes approved in writing by the signatories to this MoU, and thereafter, reviewed annually on the anniversary of the initial review, or at such other earlier time when the goals of this MoU have been achieved and/or as agreed by the parties.

4.0 PRINCIPLES UNDERPINNING QH COURT LIAISON SERVICES DELIVERED IN MAGISTRATES COURTS AND WATCHHOUSES

4.1 The key principles underpinning this MoU are based on those in the Queensland Health Forensic Mental Health Strategic Framework 2011, which shapes QH's response to the challenges of providing services to mentally ill people who are involved in the criminal justice system. These principles are:

a) Recovery and individualised care

Queensland Health mental health services aim to promote recovery and wellbeing. Consumers have the right to individualised treatment and rehabilitation interventions in response to their unique needs including their social, cultural and geographical diversity and experience.

b) Balancing consumer rights with community rights

Queensland Health balances the rights and needs of consumers with the rights of victims and the broader community for the effective management of risk and the safety and protection of consumers and others.

c) Equivalency of services

Queensland Health provides mental health consumers in the criminal justice system with access to a range and quality of services that are of an equivalent standard to public mental health services available to the wider Queensland community.

d) Early identification and intervention

Through service design, processes and collaboration with our partners, Queensland Health identifies mental health consumers in the criminal justice system as soon as possible so that they can promptly receive the mental health care they need.

e) Access and continuity of care

Queensland Health supports continuity of care by providing an accessible and comprehensive spectrum of forensic mental health services and supports including court liaison, inpatient, prison and community components that correspond with key points along the justice continuum and across the age spectrum.

f) Collaboration and partnerships

Queensland Health is committed to inter-sectoral cooperation, collaboration and partnerships with a range of government and non-government stakeholders, consumers, carers, and families to produce the best outcomes for consumers involved with or at risk of entering the justice system.

g) Consumer, carer and family participation

Queensland Health respects the valuable knowledge held by consumers, carers and families and the importance of engaging these groups and supporting their participation in individual care planning, service planning and delivery, program development and policy development and implementation.

h) Transparency and accountability

Queensland Health will be accountable and transparent by ensuring that services are aligned with the National Standards for Mental Health Services 2010 and through participation in associated benchmarking activities.

- 4.2 The parties agree to work in full cooperation to prevent and safely resolve mental health issues and provide quality services to consumers.
- 4.3 People who have a mental health problem or mental disorder who are involved in the criminal justice system should have access to culturally appropriate services, which take account of language needs, family and social circumstances.
- 4.4 The parties recognise the unique mental health needs of indigenous consumers and agree to work in full cooperation to prevent and safely resolve mental health issues in a culturally appropriate manner.
- 4.5 Mental health services for persons in custody are delivered in a manner that ensures a key role for consumers and other key stakeholders in service planning, development and evaluation.

5.0 SERVICES/AGREED ARRANGEMENTS

Resources

- 5.1 The parties agree to work in full cooperation to promote a coordinated system of mental health care to ensure effective and efficient delivery of assessments and other interventions to meet the needs of people with a mental disorder, at the earliest possible point in their contact with the criminal justice system.
- 5.2 In some circumstances, each department provides services to the same people who have a mental disorder and have been charged with an offence or sentenced. The parties acknowledge that each department has various and respective roles and responsibilities to people with a mental disorder entering the criminal justice system.
- 5.3 Queensland Health will deliver a CLS that is consistent with the *CLS Service Delivery Guidelines* contained in Schedule 1 which has been developed by Queensland Health. The CLS will be based in Cairns, Townsville, Mt Isa, Rockhampton, Mackay, Maroochydore, Caboolture, Pine Rivers, Brisbane, Beenleigh, Southport, Ipswich and Toowoomba Magistrates Courts and watch houses.
- 5.4 QH will also deliver CLS outreach services via a consultation liaison model to surrounding Magistrate Courts and Watch houses. As funds become available, further expansion of the CLS throughout Queensland may occur.
- 5.5 QH staff employed in the CLS may disclose information, which would otherwise be confidential under part 7 of the *Health Services Act 1991*, to the Magistrate about a person's status under the *Mental Health Act 2000* and how it impacts on a person's court proceedings. Disclosure is permitted under section 530 of the *Mental Health Act 2000*.

- 5.6 If a person does not have capacity to consent to health care or to disclosure of confidential information, CLS staff will determine whether or not a substitute decision maker has been appointed under the *Guardianship and Administration Act 2000* (Qld) or *Powers of Attorney Act 1998* (Qld). If the person lacks capacity but does not require urgent health care pursuant to section 63 of the *Guardianship and Administration Act 2000*, CLS staff should obtain a determination in accordance with section 66 of that Act, which stipulates that if an adult has impaired capacity for a 'health matter', the matter may only be dealt with under the first of listed priorities in that section and set out in Schedule 2 of this MoU.
- 5.7 CLS staff will provide training and guidance to Magistrates, court staff and other stakeholders about relevant provisions in the *Mental Health Act 2000*.
- 5.8 QH delivers CLS during normal business hours, with out-of-hours assistance being provided by local Mental Health Services. The CLS does not operate on weekends or public holidays and is, in some instances, subject to stand-down over the Christmas and New Year period.
- 5.9 DJAG undertakes to fund and provide adequate office accommodation at identified Magistrates Courts, which includes at each site:
- a) two telephone points and direct telephone lines to service a fax machine and incoming/outgoing phone calls;
 - b) a data port;
 - c) a desk and chairs;
 - d) wherever possible, secure overnight car parking for any government cars used in the provision of the CLS.
- 5.10 QH will fund information technology requirements, which will be sourced by DJAG. DJAG agrees to approve 'read only' access for CLS staff to obtain daily court lists from the Court Registry Queensland Wide Interlinked Courts (QWIC) information system. *NB: There is a separate MoU between the Department of Justice and Attorney General and Queensland Health governing the access and use of criminal court data from QWIC by mental health liaison officers.*

System and service development

- 5.11 In a spirit of cooperation, the parties agree to:
- a) define respective roles and responsibilities relating to strategies to improve and develop formal arrangements at the system level, and resolve issues impeding effective interventions;
 - b) develop arrangements at the local level i.e. court and Health Service District level, which will be reflected in agreements, policies, implementation standards, protocols and guidelines to improve service delivery;
 - c) develop mechanisms to ensure these arrangements are sustainable over time;
 - d) explore options to protect confidentiality, enhance information sharing and support tracking of consumers receiving treatment for a mental disorder, as they move through the criminal justice system;

- e) work collaboratively to address mental health crisis situations;
- f) identify and progress any amendments to existing agreements between the parties, which may be required as a result of legislative and policy changes, or strategies for improving mental health services to people with a mental disorder in custody;
- g) continue to improve knowledge, skills, attitudes and values of relevant staff in both departments to ensure a coordinated system of care, for example, through quality improvement initiatives;
- h) establish a committee known as the “Court Liaison Service Steering Committee” (“the Steering Committee”) comprising senior representatives of QH and DJAG to oversee implementation of this MoU including:
 - i) an agreed model for optimal CLS delivery in line with the *CLS Model of Service Guideline*;
 - ii) agreed roles and responsibilities of the departments;
 - iii) a plan for implementation of improvements identified as achievable within current resources;
- i) ensure that the Steering Committee meets bi-annually as per Terms of Reference yet to be developed. An extraordinary meeting may be held if formal discussion of a dispute is required pursuant to clause 8 of this MoU.

6. LIAISON

- 6.1** Nominated contact officers for the parties and their contact details are listed in Schedule 3 of this MoU. Each party may vary its appointment of nominated officers by giving notice in writing to the other party.

7.0 VARIATION

- 7.1** This MoU may only be varied by mutual agreement of the parties. Any proposed alterations must be approved by the Steering Committee and agreed in writing by the signatories to this MoU.

8.0 RESOLUTION OF DISPUTES

- 8.1** Where a conflict arises over any matter relating to this MoU, the parties will seek to resolve the issue by negotiation initially between the contact persons named in Schedule 3, and in consultation with the Steering Committee to which clause 5.11(h) refers.
- 8.2** Any dispute not resolved pursuant to clause 7.1 will be subject to mediation for a period of up to 14 days (or longer period agreed between the parties) by a mediator appointed by agreement between the parties.
- 8.3** For the purposes of this clause 7, a dispute will have arisen between the parties when one party gives notice to that effect to the other party.
- 8.4** Both parties will share equally the cost of mediation.

9.0 NOTICES

9.1 Any notice or communication given under or about this MoU must be:

- a) in writing; and
- b) delivered, sent by ordinary prepaid post, email or facsimile to the addressee's address notified by the addressee from time to time.

9.2 A notice or other communication given under or about this MoU is taken to be received:

- a) if delivered personally, on the business date it is delivered;
- b) if sent by ordinary prepaid post, three business days after posting; or
- c) if sent by facsimile, when the sender receives confirmation that the facsimile has been transmitted to the addressee's facsimile number in its entirety.

10.0 GOVERNING LAW

10.1 The laws in force in Queensland govern this MoU.

11.0 ENTIRE MoU

11.1 This MoU constitutes the entire MoU between the parties in relation to its subject matter.

11.2 Where existing arrangements, agreements, representations or undertakings are in place prior to the commencement of this MoU, the parties agree to negotiate transitional arrangements to:

- a) allow the existing arrangements, agreements, representations or undertakings to expire; or
- b) commence any further clinical and/or field education vocational placements in accordance with this MoU.

Transitional arrangements must be documented and agreed by all parties to this MoU.

12.0 FURTHER ASSISTANCE

12.1 The parties shall sign all documents and do all things necessary or desirable to give effect to this MoU and will procure their officers, employees and agents to sign all documents and do all things necessary or desirable to give full effect to this MoU.

SIGNED for and on behalf of the State of Queensland acting through the Department of Justice and Attorney-General this 2nd day of September 2011 by:

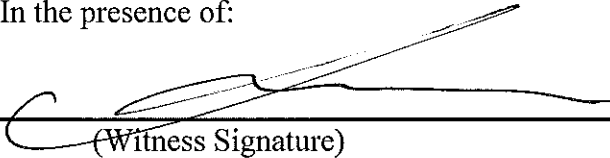


(Signature)

Paul Marschke
Executive Director
~~Magistrates Courts Service~~

(Name Printed)

In the presence of:



(Witness Signature)

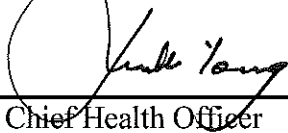
ANGELA SPAHALIC

(Name)

J.P. QUALIFIED (94227)

(Position)

SIGNED on behalf of The State of Queensland acting through Queensland Health this 22nd day of February 2011 by:

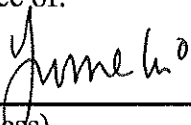


Chief Health Officer

DR JEANNETTE YOUNG

(Name Printed)

In the presence of:



(Witness)

Yunne Li^o

(Name)

Senior Director

(Position)

Schedule 1

Queensland Forensic Mental Health Service Statewide Court Liaison Service Service
Delivery Guidelines are Schedule 1

Schedule 2

Priority in decision making process for persons lacking capacity to consent pursuant to section 66 of the *Guardianship and Administration Act 2000*

If a person lacks capacity but does not require urgent health care pursuant to section 63 of the *Guardianship and Administration Act 2000*, CLS staff should obtain a determination in accordance with section 66 of that Act, which stipulates that if an adult has impaired capacity for a 'health matter', the matter may only be dealt with under the first of the following subsections to apply:

- a) direction in advance health directive;
- b) Queensland Civil and Administrative Tribunal order or guardian appointed by the Tribunal;
- c) attorney appointed under an enduring power of attorney; or
- d) statutory health attorney (i.e. first, in listed order, of the following people who is readily available and culturally appropriate to exercise the power for the health matter: a spouse if the relationship is close and continuing; a person over 18 who has the care of the person and is not a paid carer for the person; a person over 18 who is a close friend or relation of the person and is not a paid carer for the person).

Schedule 3

CONTACT OFFICERS

Department of Justice and Attorney-General Contact:

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