

## ***Mental Health Act 2016***

### Chief Psychiatrist Policy

# Judicial Orders

## Examination Orders, Court Examination Orders and Other Judicial Orders

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## General

A Judicial Order is an order made by a Court authorising the detention of a person in an authorised mental health service (AMHS) and, authorises the examination of the person by an authorised doctor or a specified examining practitioner (determined by the Court).

A Judicial Order means:

- an Examination Order
- a Court Examination Order or
- another order made by a Court under the [Mental Health Act 2016](#) (the Act), requiring or permitting a person to be detained in an AMHS for a particular purpose (e.g. while court proceedings are underway).

Under certain circumstances, they may authorise ongoing detention in an AMHS or public sector health service facility (PSHSF).

A Judicial Order does not authorise involuntary treatment.

## Scope

This policy is mandatory for all authorised mental health services (AMHSs). An authorised doctor, authorised mental health practitioner, AMHS administrator, or other person performing a function or exercising a power under the Act **must** comply with this policy.

Staff should work collaboratively and in partnership with individuals in their care to ensure their unique-age related, cultural and spiritual, gender-related, religious and communication needs are recognised, respected and followed to the greatest extent practicable. This should include the timely involvement of appropriate local supports and a recovery-oriented focus.

This policy **must** be implemented in a way that is consistent with the objects and principles of the Act.

**This policy is issued under section 305 of the Mental Health Act 2016**

**Dr John Reilly**  
**Chief Psychiatrist, Queensland Health**

# Policy

## 1 Magistrates Court

The *Magistrates Examination Order flowchart* provides an overview of the Examination Order process.

### 1.1 Examination Orders

A Magistrate can make an Examination Order for a person charged with a simple<sup>1</sup> offence, if they are concerned about the mental condition of the person.

#### Key points

An Examination Order authorises an authorised doctor of the AMHS (or PSHSF) stated in the order, to examine the person without their consent and determine whether:

- the person requires treatment and care for a mental illness,
- to make a Treatment Authority for the person,
- to make a recommendation for the person's treatment and care, or
- to change the patient's treatment and care if the person is already subject to a Treatment Authority, Treatment Support Order or Forensic Order under the Act.

Once the Examination Order is made, if the charges have not already been dismissed, the Magistrate may adjourn the hearing until after the examination is completed.

- Where available, the Queensland Health Court Liaison Service (CLS) should assist the Magistrate in determining the nearest or most appropriate AMHS or PSHSF for the order. See *Chief Psychiatrist Policy Court Liaison Service*.
- However, it is not the role of CLS clinicians to conduct examinations under an Examination Order. These **must** be undertaken by an authorised doctor of the AMHS or PSHSF stated in the order.

In a PSHSF, the person in charge of the facility **must** ensure there is access to an authorised doctor to conduct the examination under an Examination Order.

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<sup>1</sup> **simple offence** means any offence (indictable or not) punishable, on summary conviction before a Magistrates Court, by fine, imprisonment, or otherwise.

- The Act does not place restrictions on the use of audio-visual technology for undertaking an examination.

The Registrar of the court **must** give written notice of the Examination Order to the administrator of the AMHS, or to the person in charge of the PSHSF, stated in the order.

A copy of the Examination Order **must** be uploaded to the Consumer Integrated Mental Health and Addiction Application (CIMHA).

### 1.1.1 Transportation under an Examination Order

#### Key points

An Examination Order may:

- direct an authorised person (see definitions) to transport the person immediately to an AMHS
- direct the person to attend an AMHS or PSHSF within a specific time, of not more than **twenty-eight (28) days**, after the order is made.
  - An order to attend may be made by the Magistrate for a person who has had their charges dismissed, or who is granted bail to remain in the community.

A person who is directed to attend an AMHS immediately may be transported by an authorised person (see definitions).

Where available, the CLS should assist with arrangements for immediate transportation.

If the person is in police, court or corrective services custody at the time the Examination Order is made (e.g. remanded in custody), the relevant custodian should transport the person to the AMHS as required.

If the person is not in custody at the time the Examination Order is made, the least restrictive way of transporting the person, having regard to clinical and risk matters, should be used. Transport options may include:

- family, carer or support networks
- non-emergency hospital or community transport services
- ambulance
- a health service vehicle driven by a health service employee, with additional escort where needed, or
- police, with health service employee escort where needed.

The *Interagency agreement between Queensland Health, Queensland Ambulance Service and Queensland Police Service, Safe transport of People with Mental Illness*, outlines factors that should be considered when determining transport options.

If police assistance is required for the transportation, a *Request for police assistance* form **must** be completed by an authorised doctor, AMHP or the administrator of an AMHS.

This requirement does not apply if the Court has ordered police to assist, or the person would otherwise be in police custody.

An authorised person transporting a person under an Examination Order **must** comply with the *Chief Psychiatrist Policy Transfers and transport*.

If the Court ordered that a person be immediately transported to an AMHS, the Examination Order also authorises an authorised person to transport the person from the AMHS to appear before the Court following the examination.

### 1.1.2 Attendance and non-attendance

#### Key points

If a person has been ordered to attend the AMHS or PSHSF within **twenty-eight (28) days** under an Examination Order, the AMHS or PSHSF will receive a copy of the order and should:

- contact the person named in the order,
- schedule an appointment for the examination within the required timeframe, and
- update CIMHA to reflect that the person has an Examination Order.

The person's Examination Order status in CIMHA will show as 'pending'. The patient is not 'opened' under the Examination Order until they present for the examination.

If a person does not follow the directions of an Examination Order (i.e. does not attend the service within 28 days or absconds while being taken to an AMHS), the *Chief Psychiatrist Policy Managing involuntary patient absences* applies.

Notification of the person's failure to comply with the Examination Order **must** be sent by email to the Registry of the Magistrates Court that made the Examination Order.

- A copy of the Examination Order should be included in the email.

### 1.1.3 Examination

#### Key points

A person may be detained for up to **six (6) hours** under an Examination Order, starting from when the person arrives at the relevant PSHSF.

- An authorised doctor can extend the examination period for a further **six (6) hours** (the total examination period **must** not exceed **twelve (12) hours**).

The *Chief Psychiatrist Policy Examination and assessment* **must** be complied with when undertaking the examination.

### 1.1.4 Examination Report

The purpose of an Examination Report is to provide advice to the Court in relation to a person's treatment and care needs.

The Examination Report **must not** provide commentary on the person's offence, criminal responsibility or fitness for trial.

#### Key points

The authorised doctor completing the examination **must** complete the *Examination Report* form. This form includes providing advice on the following:

- details of the examination carried out,
- the recommendation or decision reached regarding treatment and care, and
- if a recommendation for treatment and care has been made, details of the explanation given to the patient regarding the benefits of being treated voluntarily.

The Examination Report **must** be completed on the patient's clinical record on CIMHA.

A copy of the Examination Report **must** be emailed to the registry of the relevant Magistrates Court as soon as practicable, but within **twenty-one (21) days**.

The Examination Report is admissible at the trial of the person for an offence for which the Examination Order was made, and any future criminal proceedings to allow the Magistrates Court:

- to decide whether to make an Examination Order for the person at a future proceeding, or
- to decide whether to refer the matter to the Mental Health Court.

Any oral or written statements made by the person in the process of an examination are not admissible in any criminal or civil proceedings, except:

- where the proceedings relate to charges of contempt of court
- or an offence relating to the administration of justice (Chapter 16 of the Criminal Code),
- or in a proceeding before the Mental Health Court.

In all other circumstances where a report or oral or written statement is received in evidence, it can only be used with permission from the Court.

## 1.2 Outcomes of Examination Order

If an authorised doctor makes a Treatment Authority for the person, they **must** comply with the *Chief Psychiatrist Policy Treatment criteria, assessment of capacity, less restrictive way and advance health directives* and the *Chief Psychiatrist Policy Treatment Authorities*.

A Recommendation for Assessment is not required prior to a Treatment Authority being made as a result of an Examination Order.

If an authorised doctor makes a recommendation for a person's treatment and care, the doctor **must** explain to the patient the benefits of being treated voluntarily in accordance with the doctor's recommendation.

### 1.2.1 Classified admissions

A person with a custodial status (e.g. a person on remand or a sentenced prisoner) may require an admission to an AMHS beyond the time allowed under an Examination Order to enable treatment to be provided to the person.

See section 4 of this policy for requirements for classified admissions.



## 2 Mental Health Court

### 2.1 Court Examination Orders

#### Key points

References to the Mental Health Court are usually accompanied by a psychiatric or other clinical report. The Mental Health Court may order further examination/s (a Court Examination Order - CEO) of a person whose matter has been referred to the Mental Health Court.

A CEO requires the person to be assessed by the stated examining practitioner. The Mental Health Court will determine the matters which are required to be addressed in the CEO.

If the Court makes a CEO, the registrar of the Court **must** give written notice of the order to the parties and the stated examining practitioner.

The specified examining practitioner **must** provide a written report back to the Court.

#### 2.1.1 Recommendation and request for CEO

An assisting clinician may recommend to the Mental Health Court that a CEO be made.

The Director of Public Prosecutions may ask the Mental Health Court to make a CEO.

If a recommendation or request is made, the registrar of the Court must give written notice to the parties to the proceedings of the request or recommendation, with a time frame for providing submissions related to this request.

The Court will consider any submissions made by the parties to the proceedings in relation to the recommendation or request when determining whether to make a CEO.

## 2.1.2 Detention under a CEO

### Key points

If the Mental Health Court cannot find another way of ensuring a thorough examination of the person's mental condition, the Court may order that the person be detained in an inpatient unit of an AMHS for:

- the period of time stated in the CEO, or
- a maximum of **three (3) days**, starting from when the person arrives at the AMHS.

If detention is ordered, an authorised person may transport a person who is the subject of a CEO to an inpatient unit of an AMHS for the examination.

If the CEO does not state that police can transport the person (i.e. it authorises a health practitioner or ambulance officer), and police assistance is required, a *Request for police assistance* form **must** be completed by an authorised doctor, authorised mental health practitioner or the administrator of an AMHS.

An authorised person transporting a person under CEO **must** comply with the *Chief Psychiatrist Policy Transfers and transport*.

If the CEO requires the person to be detained for the examination, and they are not already in an AMHS when the order is made, the authority to transport absent person provision of the Act can be applied. In this case, an authorised person transporting a person **must** comply with the *Chief Psychiatrist Policy Managing involuntary patient absences*.

## 2.1.3 Examination under a CEO

The examining practitioner may examine the person without the consent of the person or anyone else.

- If the person is detained in an AMHS for the examination, the specified examining practitioner and anyone lawfully helping the practitioner may use the force that is necessary and reasonable in the circumstances to examine the person.

## 2.1.4 Ending of a CEO

After the examination time period has elapsed, or the examination has been completed (if earlier) an authorised person may transport the person back to lawful custody (e.g. if the person was transported from another AMHS, prison, or the Forensic Disability Service).

If the person was transported for the CEO from a community setting (e.g. the person is not in lawful custody), the administrator of the AMHS **must** ensure arrangements are made to:

- transport the person back to the place from which the person was taken for the examination, or
- transport the person to another reasonable location the person has asked to be taken.

This does not apply if the person is, or becomes, an involuntary patient requiring detention in the AMHS (e.g. on an inpatient-category authority or order) or a voluntary classified patient.

### 2.1.5 Classified admissions

A person with a custodial status (e.g. a person on remand or sentenced prisoner) may require an admission to an AMHS beyond the time allowed under an Examination Order to enable treatment to be provided to the person.

See section 4 of this policy for requirements for classified admissions.

## 3 Other Judicial Orders

### 3.1 Magistrate, District and Supreme Court

#### Key points

A Magistrate, District or Supreme Court may order the detention of a person in an AMHS if court proceedings are adjourned and the Court is satisfied that the person should be detained in an AMHS due to the person's mental condition.

If a person has pleaded guilty, a District or Supreme Court may:

- order a plea of not guilty be entered and refer the matter of a person's mental state or condition to the Mental Health Court for further examination, and
- order that the person be detained in an AMHS during an adjournment of the District or Supreme Court proceedings.

### 3.1.1 Detention in an AMHS

#### Key points

A person may only be detained in an AMHS under a Judicial Order made by the Magistrates, District or Supreme Court if written agreement has been given by the administrator of the relevant AMHS or the Chief Psychiatrist.

The administrator can only agree to the detention of the person if they are satisfied the AMHS has the capacity to detain the person for treatment and care. The administrator **must** be satisfied the person's detention in the AMHS does not pose an unacceptable risk to the person or others having regard to:

- the person's mental state and psychiatric history
- the person's treatment and care needs, and
- the security requirements for the person.

If the administrator of the AMHS has not given agreement to the person's detention in the service, the Chief Psychiatrist may provide this agreement having regard to the same criteria outlined above.

- The Chief Psychiatrist's agreement has the same effect as the administrator's agreement.
- Prior to making a decision, the Chief Psychiatrist will contact the administrator of the relevant AMHS to discuss the matter.

If the Chief Psychiatrist gives agreement to the detention, a copy of the written agreement will be provided to the relevant administrator.

If a Judicial Order is for a minor and relates to the High Security Inpatient Service, the administrator of the AMHS cannot provide agreement for the detention unless the Chief Psychiatrist has provided written approval.

### 3.1.2 Mental Health Court

If the Mental Health Court orders that proceedings are to continue against the person, the Court can order that the person be detained in a stated AMHS until the person is granted bail or brought back to the Court to continue proceedings.

If an appeal has been made to the Mental Health Court, the Court can stay (postpone) that decision to secure the effectiveness of the appeal.

- The Court can order that the person subject to the appeal be detained in a stated AMHS for the duration of the stay.

If an appeal is made to the Court of Appeal against a decision of the Mental Health Court, and the Court of Appeal returns the matter to the Mental Health Court, the Court of Appeal may order the person to be detained in a stated AMHS.

### 3.1.3 Transportation

An authorised person may transport a person the subject of a Judicial Order under this section to an AMHS.

If the order does not state that police can transport the person (i.e. it authorises a health practitioner or ambulance officer), and police assistance is required, a *Request for police assistance form* **must** be completed by an authorised doctor, authorised mental health practitioner or the administrator of an AMHS.

At the end of the period of detention specified in the order, an authorised person may transport the person back to lawful custody if required (e.g. if the person was transported from another AMHS, prison, or the Forensic Disability Service).

This does not apply if the person is, or becomes, an involuntary patient requiring detention in the AMHS (e.g. on an inpatient-category authority or order) or a voluntary classified patient.

An authorised person transporting the person **must** comply with the *Chief Psychiatrist Policy Transfers and transport*.

If the person is not already in an AMHS when the order is made, the authority to transport absent persons provision of the Act can be applied. In this case, an authorised person transporting a person **must** comply with the *Chief Psychiatrist Policy Managing involuntary patient absences*.

## 4 Classified admissions

A person with a custodial status (e.g. a person on remand or sentenced prisoner) requiring an admission to an AMHS beyond the time allowed under an Examination Order or CEO to enable treatment to be provided to the person, is a classified patient.

## Key points

The person can remain in the AMHS as a classified patient provided:

- the person either:
  - consents to receiving treatment and care in an AMHS, or
  - is subject to a Treatment Authority, Forensic Order (mental health) or a Treatment Support Order
- a *Transfer Recommendation* is made by an authorised doctor
- an *Administrator consent form* is signed by the administrator of the AMHS where the patient is admitted, and
- a *Custodian consent form* is signed by the relevant custodian.

If the authorised doctor undertaking the examination decides the person requires admission as a classified patient following an Examination Order or CEO, the person may be detained under section 74 of the Act for up to seven (7) days in the AMHS to enable the relevant forms to be completed.

The AMHS is responsible for the person's detention.

If a person absconds from the AMHS during this period, an *Authority to transport absent patient form* may be issued and the processes set out in the *Chief Psychiatrist Policy Managing involuntary patient absences* **must** be followed.

If a person is to be detained as a classified patient, the Chief Psychiatrist Policy Classified patients **must** be complied with including notification to the Statewide Coordinator – Classified Patients of the patient's classified status.

**Statewide Coordinator – Classified Patients**

Email: [ClassifiedPatientsMHA2016@health.qld.gov.au](mailto:ClassifiedPatientsMHA2016@health.qld.gov.au)

Phone: 3837 5820

## 5 Leave from an AMHS for persons subject to Judicial Orders

### 5.1 Limited Community Treatment

A patient subject to a Judicial Order can access limited community treatment (LCT) under certain circumstances.

#### Key points

An authorised doctor may authorise LCT for a patient if:

- the Chief Psychiatrist has given written approval for the LCT, and
- the authorised doctor is satisfied the patient is unlikely to abscond from the AMHS while receiving LCT.

Leave **must** be:

- escorted (i.e. in the physical presence of a health service employee), and
- limited to the grounds and buildings of the AMHS.

The authorised doctor **must** request the Chief Psychiatrist's written approval by completing the *Chief Psychiatrist Approval – Temporary absences and limited community treatment for particular patients* form.

- This form is to be completed electronically or, if this is not practicable, completed in hard copy and uploaded to CIMHA.

To authorise LCT the authorised doctor must complete the *Order / Authority amendment* form detailing:

- the conditions of LCT
- the actions to be taken if conditions are not adhered to
- the duration of LCT and the duration of the authorisation

LCT taken by the patient must be recorded on the *Limited community treatment access and return* form and must be recorded in, or uploaded to, CIMHA.

## 5.2 Temporary Absences

The Chief Psychiatrist may approve a temporary absence for a person subject to a Judicial Order.

### Key points

Temporary absence from an AMHS may be approved:

- to receive medical, dental or other health treatment
- to appear before a court, tribunal or other body
- to look for accommodation for the patient for when the patient is discharged from the service
- for a purpose based on compassionate grounds, or
- for another purpose the Chief Psychiatrist is satisfied is justified.

The authorised doctor **must** request the Chief Psychiatrist's written approval by completing the *Chief Psychiatrist Approval – Temporary absences and limited community treatment for particular patients* form.

- This form is to be completed electronically or, if this is not practicable, completed in hard copy and uploaded to CIMHA.

The Chief Psychiatrist will make a determination on the request as soon as practicable and provide the outcome to the administrator on the *Chief Psychiatrist Approval – Temporary absences and limited community treatment for particular patients* form.



## 6 Further information

### Definitions and abbreviations

Term	Definition
AMHS	Authorised mental health service– a health service, or part of a health service, declared by the Chief Psychiatrist to be an authorised mental health service. AMHSs include both public and private sector health services. While treatment and care is provided to both voluntary and involuntary patients, additional regulation applies under the Act for persons subject to involuntary treatment and care.
Authorised Person	Means a health practitioner, an ambulance officer, a police officer, a corrective services or youth detention officer, the administrator of an AMHS, and a health service employee appointed by the administrator <sup>2</sup> .
CIMHA	Consumer Integrated Mental Health and Addiction application– the statewide clinical information system and designated patient record for the <i>Mental Health Act 2016</i>
Specified examining practitioner	Means the health practitioner nominated by the Mental Health Court to undertake a CEO. The specified examining practitioner may be a psychiatrist, medical officer, or other health practitioner such as a psychologist.

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<sup>2</sup>The administrator may appoint a specific health service employee, or a class of health service employees (for example all consumer consultants employed in the AMHS) as authorised persons.

## Referenced policies and resources

### Chief Psychiatrist policies

- [Classified patients](#)
- [Court Liaison Service](#)
- [Examination and assessment](#)
- [Managing involuntary patient absence](#)
- [Treatment criteria, assessment of capacity, less restrictive way and advance health directives](#)
- [Transfers and transport](#)
- [Treatment Authorities](#)

### Mental Health Act 2016 forms and other resources

- Agreement - [Interagency agreement between Queensland Health, Queensland Ambulance Service and Queensland Police Service, Safe transport of People with Mental Illness](#)
- Flowchart - [Magistrates Examination Order](#)
- Form - [Administrator Consent](#)
- Form - [Chief Psychiatrist Approval – Temporary absences and limited community treatment for particular patients](#)
- Form - [Authority to transport absent patient](#)
- Form - [Custodian consent](#)
- Report - [Examination report](#)
- Form - [Limited community treatment access and return](#)
- Form - [Order/Authority amendment](#)
- Form - [Request for police assistance](#)
- Form - [Transfer Recommendation](#)

### Legislation

- [Mental Health Act 2016](#)

### Document status summary

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