

# Magistrates Courts

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## Practice Direction No. 4 of 2016 (amended)

Issued: 30 May 2016  
Amended: 4 August 2016

### Queensland Integrated Court Referrals

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#### DEFINITIONS

- 1) The following definitions apply in this Practice Direction unless otherwise stated:
  - a) *Case Assessment Group (CAG)* refers to the various representatives from government and non-government organisations, which provide therapeutic intervention to defendants in each Queensland Integrated Court Referrals (QICR) court location.
  - b) *Facilitator* is a Department of Justice and Attorney-General employee appointed to:
    - i) administer QICR in each QICR court location;
    - ii) undertake QICR eligibility assessments;
    - iii) liaise with and manage the CAG;
    - iv) collect and provide to the court and the parties the Suitability Report; Progress Reports and Final Reports from service providers; and
    - v) case manage defendants involved in QICR.
  - c) A person who is *homeless* is a person:
    - i) without any conventional accommodation;
    - ii) moving from one temporary shelter to another; or
    - iii) staying in accommodation that falls below minimum community standards.

#### SCOPE

- 2) This Practice Direction sets out those procedures identified as best practice in the operation of QICR.
- 3) Nothing in this Practice Direction is to be taken as removing or limiting the discretion of the court.

## **NATURE AND PURPOSE**

- 4) QICR is a process that provides referral of eligible defendants to treatment and support services, on bail and on sentence, to address the underlying contributors to their offending. It seeks to use the authority of the court to monitor and encourage compliance with treatment and support services.
- 5) While QICR has many features in common with 'problem-solving courts' it is a different approach to improve access for people living in rural and regional areas to treatment and support services. While previous problem-solving courts have delivered benefits to the community and to offenders, these benefits have been largely confined to a limited proportion of offenders primarily residing in the greater Brisbane region.
- 6) QICR seeks to integrate features of therapeutic jurisprudence and 'problem-solving courts' into the mainstream Magistrates Court to endeavor to develop a sustainable way of delivering justice to all Queenslanders. Comprehensive monitoring and review of QICR will provide an evidence base to determine the effectiveness of this approach.

## **COMMENCEMENT**

- 7) This Practice Direction applies to all matters heard after the commencement of QICR in each location.

## **IDENTIFICATION OF DEFENDANTS FOR REFERRAL**

- 8) Referrals to QICR may only be made with the defendant's consent and may come from sources including, but not limited to:
  - a) the defendant;
  - b) the defendant's legal representative;
  - c) the Queensland Police Service;
  - d) the QICR facilitator;
  - e) family members or friends of the defendant;
  - f) treatment or support service providers, including government and non-government organisations; and
  - g) a presiding magistrate.

## **ELIGIBILITY CRITERIA**

- 9) To be eligible to participate in QICR the defendant must meet the following criteria:

- a) have current charges before the court which are to be dealt with summarily (by right or election). A defendant is ineligible for QICR where any offences must be dealt with on indictment;
- b) be on bail or have been granted bail but yet to sign an undertaking as to bail;
- c) intend to plead guilty or have entered a plea of guilty;
- d) has or is likely to have one or more of the following causes contributing to their offending:
  - i) problematic substance use;
  - ii) mental illness;
  - iii) impaired decision-making capacity;
  - iv) homelessness or risk of homelessness.
- e) the defendant must provide written informed consent:
  - i) to participate in QICR; and
  - ii) for the disclosure and exchange of personal information between the court and any government departments, organisation or person involved in QICR, for the purposes of facilitating the defendant's involvement in QICR.

The consent may be withdrawn at any time, at which time the defendant's involvement with the program will cease.

## **GENERAL PROCEDURE**

### **Eligibility Assessment**

- 10) Where a defendant is referred to QICR:
  - a) The facilitator will complete an Eligibility Assessment Form (EAF) and Screening and Referral Form (SRF) with the defendant.
  - b) The completed EAF is to be:
    - i) submitted to the court at the first appearance in order to seek a referral to QICR; and
    - ii) provided to the prosecution and the defendant's legal representative.
- 11) The SRF is completed by the QICR facilitator for the purpose of providing information on the defendant's personal circumstances to service providers.
- 12) Assessment and mention can occur on the same day.

## **Magistrates Court mention – presentation of the Eligibility Assessment Form and adjournment**

- 13) The court will consider the EAF and all other relevant facts and circumstances, along with any submissions made by the parties, before deciding whether to refer a defendant for a QICR suitability assessment.
- 14) A defendant may only be referred for a QICR suitability assessment if the court is satisfied the eligibility criteria in paragraph 9 are met.

### Eligible defendants

- 15) A plea may be entered at any time from the defendant's first appearance before the court. If a defendant enters a plea of not guilty, or indicates they intend to do so, their involvement with QICR ends.
- 16) The prosecutor is to elect indictable or summary disposition of the charges at the earliest reasonable opportunity but no later than the second appearance.
- 17) Where the court is satisfied the criteria in paragraph 9 are met, there is a presumption in favour of referring the matter to QICR.
- 18) Where the court is satisfied a defendant is eligible, the matter may be adjourned for approximately three weeks, unless otherwise directed by the court. An adjournment of at least three weeks is required to allow the suitability assessment to be conducted.

### **Suitability Report**

- 19) Each service provider to which the defendant is referred will conduct a suitability assessment and prepare a Suitability Report, to assist the court in determining whether a defendant is suitable to participate in QICR.
- 20) The purpose of the Suitability Report is to:
  - a) provide recommendations on a defendant's suitability to participate in QICR; and
  - b) where a defendant is considered suitable, provide an engagement plan which identifies those services to which the defendant can be referred, and an appropriate timeframe for engagement.
- 21) The facilitator will provide a copy of the Suitability Report to the defendant or the defendant's legal representative, the prosecutor, and the court prior to or at the first QICR mention.

### **First QICR Mention**

- 22) The court will determine the defendant's suitability to participate in QICR having regard to the Suitability Report. Where the court requires more information on the defendant's personal circumstances, it may also consider the SRF, which will be provided to the court and all parties at the same time as the Suitability Report.

## Bail

- 23) Once the defendant has been found suitable, upon any adjournment of the matter, the court may grant bail or vary bail to impose a condition that the defendant participate in QICR.

## Adjournment

- 24) When determining an appropriate adjournment period the court should consider the service provider's recommendation about the timeframe required for engagement that is provided in the Suitability Report.
- 25) Where the court is of the view that the defendant should participate in QICR on bail, a date for a progress mention should be set.
- 26) The QICR pre-sentence referral period is intended to be no longer than 12 weeks, although may be extended where the court considers it is appropriate.

## **Progress Mention**

- 27) The defendant will be required to return to QICR for court ordered progress mentions after commencing the referral process.
- 28) While the defendant is on bail and participating in QICR, a progress mention should be conducted at three to four week intervals, taking into account the timeframes for engagement included in the Progress Reports.
- 29) At each progress mention the magistrate may:
  - a) discuss with the defendant their progress, and encourage the defendant to continue to engage with the treatment and support services available to them; and
  - b) invite the defendant to speak directly to the court about their offending, the steps they have taken to address the factors contributing to their offending, and their motivation to address their offending.

## **Progress Report**

- 30) The purpose of a Progress Report is to update the court regarding the defendant's attendance and engagement with service providers to which they have been referred, and to make recommendations regarding the defendant's continued participation in QICR. These reports are completed by service providers to which the defendant is referred.
- 31) The facilitator will provide a copy of all Progress Reports to the defendant or the defendant's legal representative, the prosecutor, and the court prior to or at the progress mention.

## **Final Report**

- 32) When the pre-sentence QICR process concludes and the matter proceeds to sentence, the service provider is responsible for providing a Final Report.

- 33) The purpose of the Final Report is to provide:
  - a) an update on the defendant's progress and achievements in addressing the factors thought to be contributing to their offending; and
  - b) identify a post-sentence referral, if appropriate.
- 34) The facilitator will provide a copy of the Final Report to the defendant or the defendant's legal representative, the prosecutor and the court prior to or at sentence.

### **QICR Sentence**

- 35) An order to refer a defendant to QICR on sentence should only be considered where:
  - a) the defendant has participated in QICR on bail; and
  - b) the CAG has identified an appropriate post-sentence referral.
- 36) At the time of sentence the court may:
  - a) discuss with the offender their progress, and draw attention to the offender's successes, encourage the offender to make positive changes in their life and continue to engage with the treatment and support available to them; and
  - b) invite the offender to speak directly to the court about their offending, the steps they have taken to address the factors contributing to their offending, and their motivation to address their offending behaviour.
- 37) Successful completion or engagement in QICR is a matter which the court may take into account when sentencing the defendant.
- 38) If court considers the defendant may benefit from participation in QICR post sentence, they may make a probation order or recognisance order, in accordance with the *Penalties and Sentences Act 1992*. The court should impose a condition on these orders that the offender continue to participate and engage in the activities contained in their QICR engagement plan.
- 39) In determining a sentence, the court should have regard to information contained in the Progress Reports and Final Report, and the personal circumstances of the defendant including opportunities to continue treatment and rehabilitation commenced prior to sentence.

### **WITHDRAWAL FROM QICR, NON-COMPLIANCE AND INCARCERATION**

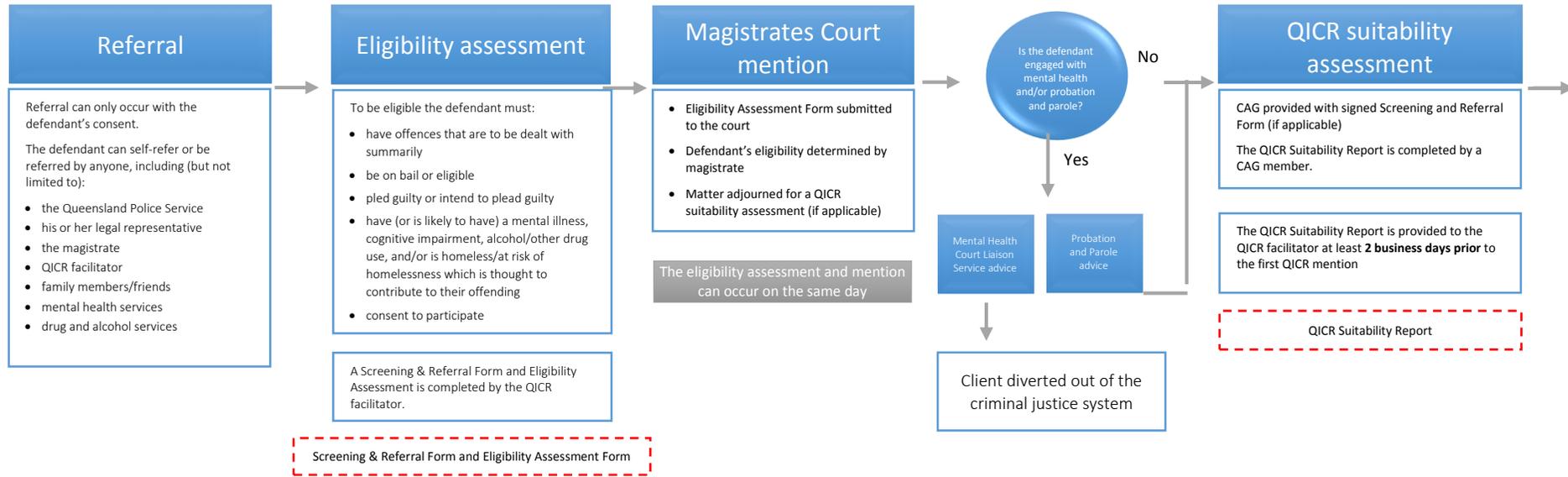
- 40) During the QICR pre-sentence referral process, the facilitator must notify the court, the prosecutor, and the defendant's legal representative, via a Progress Report and prior to the next nominated adjournment date, if the defendant:
  - a) fails to comply with the directions of the facilitator or service provider;
  - b) engages in behaviour that breaches the engagement plan, or endangers a member of the public; or
  - c) advises that they no longer wish to participate in QICR.

- 41) Non-compliance with a QICR recognisance or probation order will be dealt with in accordance with the usual procedure where such orders are breached.
- 42) In the event the defendant is sentenced to a term of imprisonment while in QICR, the defendant's participation in QICR will automatically cease.
- 43) If for any reason the defendant ceases to participate in the QICR, any order made requiring the defendant to participate in QICR should be amended to remove any QICR condition.
- 44) Annexure 1 of this Practice Direction provides a pictorial representation of the QICR process.

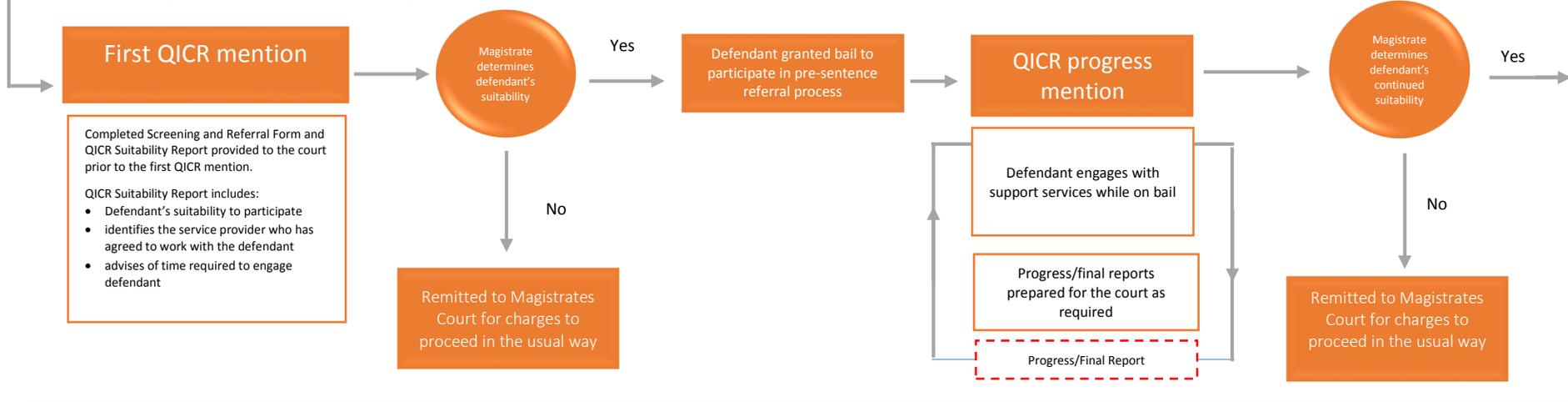
Judge Orazio Rinaudo  
Chief Magistrate  
Date:

# Queensland Integrated Court Referrals (QICR) Flow Chart

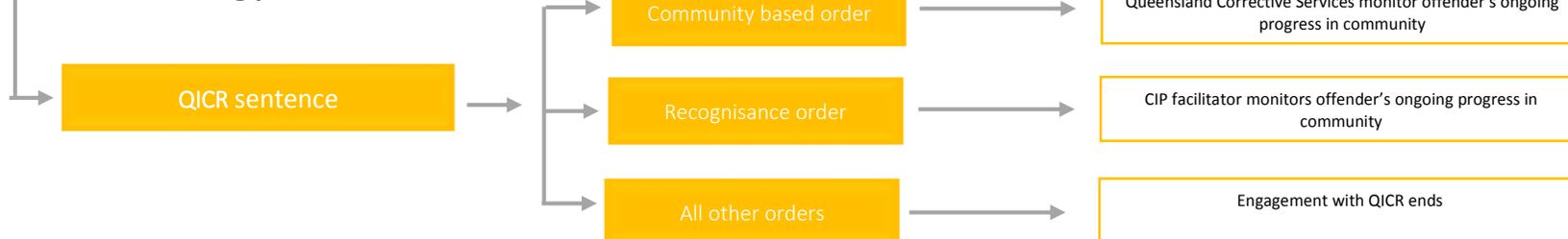
## Eligibility assessment



## QICR pre-sentence referral process



## Sentencing phase



12 week program