

Magistrates Courts

Practice Direction No. 1 of 2016 (Amended)

Issued: 27 January 2016
Amended: 19 March 2018

QUEENSLAND MAGISTRATES EARLY REFERRAL INTO TREATMENT (QMERIT) PROGRAM

1. This Practice Direction repeals Practice Direction No. 2 of 2008.

NATURE AND PURPOSE

2. The QMERIT program ('the Program') is a bail-based diversion program for defendants who:
 - have illicit drug use issues (other non-illicit drug misuse or alcohol may be an associated or secondary problem) ; and
 - meet the eligibility criteria for the Program; and
 - are prepared to voluntarily undertake the Program.
3. The Program is a pre-plea diversion program that is not dependant on the person's guilt or innocence. A plea is not generally required to be entered until completion of the Program. Any contested charges will follow the usual progress of such matters through court processes simultaneously with the matters subject to the Program.
4. Notwithstanding paragraph 3:
 - a plea may be entered at any time from the person's first appearance before the court until the conclusion of the Program; and
 - magistrates may also give consideration to making post-plea referrals in appropriate cases.
5. The Program provides for early referral for assessment of defendants who:
 - are eligible for bail;
 - are motivated and voluntarily agree to engage in treatment and rehabilitation for their drug use; and
 - otherwise meet the eligibility criteria to participate in the program.

6. The Program:
 - directs eligible defendants to available and appropriate treatment, rehabilitation and support services with a focus on reducing offending behaviour related to drug use; and
 - is supported by the health and justice systems.
7. Successful engagement in the Program can be taken into account with a view to mitigation of penalty during sentence proceedings.
8. The Program is implemented in the Queensland Magistrates Courts at Maroochydore and Redcliffe. Procedures may vary dependent on resources.

IDENTIFICATION OF PARTICIPANTS

9. Referrals to the Program may come from sources, including:
 - police;
 - the defendant;
 - the defendant's legal representative (including duty lawyers and the Aboriginal and Torres Strait Islander Legal Service);
 - State Government agencies;
 - the presiding magistrate; and
 - any other person (such as family, friend, community organisations, or health professionals).

ELIGIBILITY CRITERIA

10. To be eligible to participate in the Program the defendant must meet the following criteria:
 - (a) the defendant is an adult at the time the alleged offence(s) were committed and charged as an adult in the Magistrates Court;
 - (b) the defendant must have a demonstrable drug problem;
 - (c) the charges must be related to illicit drug use;
 - (d) the alleged offences for which the defendant is to be placed on QMERIT are to be dealt with summarily (by right or election). A defendant will still be eligible for QMERIT in relation to charges connected to a charge which is to be dealt with on indictment. A defendant is ineligible for QMERIT where the offence/s are wholly indictable. Matters proceeding on indictment should proceed to committal without delay;
 - (e) QPS are to place the prosecution election of indictable or summary disposition of the charges on the record at the earliest opportunity;
 - (f) the defendant must be eligible for bail and suitable to be endorsed onto the Program;
 - (g) the defendant must be assessed as suitable to participate in the Program on the basis of information obtained during a clinical assessment by the QMERIT Health Team ('Treatment Suitability Court Report' previously known as an Initial Assessment Report); and

- (h) the defendant should usually reside in an area where he/she can participate in the Program.
11. A defendant who meets the eligibility criteria for the Program must also satisfy the following requirements in order to be considered by the court for acceptance into the Program:
- (a) the defendant must provide written informed consent to participate in the Program;
 - (b) the defendant must provide written informed consent for the disclosure of personal information, and exchange of personal information between the court and any relevant government departments, non-government organisations or persons involved in the Program.

GENERAL PROCEDURE

The QMERIT Health Team assumes procedural responsibilities of the QMERIT Court Coordinator in Redcliffe.

Eligibility Screening

12. Where a defendant is identified as a potential participant:
- (a) the defendant is to be initially screened using a checklist for participation in the program by the QMERIT Court Coordinator or Court Officer, duty lawyer or representative from the Aboriginal and Torres Strait Islander Legal Service to check the available information relevant to eligibility against the eligibility criteria described in paragraph 10, with the exception of paragraphs 10(b) and 10(g) requiring a clinical health assessment.
 - (b) where the defendant has previously been convicted or is charged (currently or outstanding) with offences involving allegations of a sexual nature or of personal violence, the Eligibility Screening Report will disclose this information (with the defendant's consent) in order that the QMERIT Health Team can take that circumstance into account in assessing suitability for the program with a mind to the protection of treating staff;
 - (c) the resulting Initial Eligibility Screening Report should be placed on the court file by the QMERIT Court Coordinator or Court Officer or and a copy of that report should be offered to the prosecution and defence simultaneously;
 - (d) the court will consider the Initial Eligibility Screening Report and all other relevant facts and circumstances, with any submissions made by the parties, before making a determination as to whether the defendant is eligible to participate in the Program.
13. If the court is satisfied that the defendant meets the eligibility criteria set out in paragraphs 10(a), 10(c)-(f) and 10(h), the court may adjourn the matter and grant bail to the defendant, in accordance with the *Bail Act 1980*, for a short period of up to two weeks or to the next QMERIT callover if it is time proximate, to allow the QMERIT Health Team to complete a

Comprehensive Assessment of the defendant, unless one has already occurred.

Suitability Assessment

14. The court will also order that a written Treatment Suitability Court Report be prepared by the QMERIT Health Team. This report will include recommendations with respect to:
 - (a) whether or not the defendant is a suitable participant for the Program;
 - (b) the type of available drug treatment services;
 - (c) other services that address the health problems related to the offending behaviour;
 - (d) other available support that can be provided to the defendant; and
 - (e) the defendant's initial goals and treatment plan.
15. As part of the Comprehensive Assessment, the QMERIT Health Team will:
 - (a) assess the nature of the defendant's drug use and other problems related to the defendant's offending behaviour;
 - (b) consider whether the defendant is suitable for treatment and rehabilitation for their drug use; and
 - (c) develop an initial treatment plan with initial treatment goals for the defendant.
16. The QMERIT Health Team will also obtain the informed written consent of the defendant to:
 - (a) participate in the Program; and
 - (b) disclose personal information and exchange personal information about the defendant between the court and any relevant government departments, non-government organisations or persons involved in the Program.
17. If the defendant is considered by the QMERIT Health Team to be suitable for the Program the QMERIT Health Team will:
 - (a) formulate a proposed treatment plan for the defendant to undertake, and
 - (b) prepare a written Treatment Suitability Court Report, described in paragraph 14, to be submitted to the court.
18. The QMERIT Health Team will provide the Treatment Suitability Court Report to the QMERIT Court Coordinator or Court Officer who will provide a copy of the report to prosecution, defence and the court simultaneously.
19. If the defendant advises the QMERIT Health Team that he/she does not consent to being assessed or is assessed as not suitable for participation in the Program a Treatment Suitability Report advising the same will be provided to the QMERIT Court Coordinator or Court Officer who will provide a copy of the report to prosecution, defence and the court simultaneously to be dealt with in the usual way.

20. The court will determine whether the defendant is eligible and suitable to participate in the Program, having regard to the Treatment Suitability Court Report and all other relevant facts and circumstances, including those specified in section 11(9) of the *Bail Act 1980* and any submissions by the parties.
21. If the court does not consider the defendant to be eligible or suitable to participate in the Program, the matter will proceed in the usual way.
22. If the court considers the defendant to be eligible and suitable to participate in the Program, the magistrate may adjourn the matter and grant bail or vary/extend the grant of bail to the defendant in accordance with the *Bail Act 1980* in the usual way.
23. **QMERIT Bail Condition** - Where appropriate, the court may consider imposing a condition under section 11(9) of the *Bail Act 1980* that the defendant participate in the Program, including the defendant reporting to the program within a specified period and/or complying with the requirements of the Program (including house rules of any residential rehabilitation centre the defendant is placed at) and all reasonable directions of the QMERIT Health Team. The court may also have reference to whether the Program is a prescribed program in the *Bail Act 1980* (and whether the defendant is exposed to a breach of bail charge for failure to comply with the condition) in considering including such a condition on the defendant's bail.

Endorsement onto Program and Judicial Monitoring

24. Once the Magistrate formally endorses the defendant onto the Program, if the treatment program has not already commenced during the assessment period, it will be commenced.
25. Where the defendant is endorsed to participate in the Program, the court effectively case manages the process by conducting reviews at appropriate intervals to monitor the progress of the defendant, through the attendance of the defendant at the QMERIT callover (unless excused or is a resident in in-house rehabilitation).
26. At each adjournment for the purpose of a review:
 - (a) The QMERIT Health Team will, through a representative, appear before the court and provide a written Progress Court Report, including:
 - (i) the extent of the defendant's compliance with the Program;
 - (ii) the results of all urine drug screens;
 - (iii) the defendant's progress in terms of the effectiveness of the treatment program and progress towards the defendant's treatment goals; and
 - (iv) the length of the further adjournment required.

- (b) The defendant will attend unless excused by the court with the concurrence of the QMERIT Health Team.
- (c) A copy of each Progress Court Report is to be provided to the QMERIT Court Coordinator or Court Officer who will provide a copy to the prosecution, defence and the court simultaneously.

Treatment

27. The Program:

- (a) is planned as a 12-16 week intensive program; and
- (b) may be extended in special circumstances pursuant to an order by the court, and with the agreement of the QMERIT Health team, the defendant and the prosecution.

28. Once on the Program:

- (a) the defendant is subject to the supervision of the QMERIT Health Team with respect to program treatment and rehabilitation matters; and
- (b) the defendant is aware that the QMERIT Health Team will report any non-compliance with treatment requirements to the court as soon as practicable.

29. The determination of an appropriate treatment modality is a matter solely for the discretion of the QMERIT Health Team. Their role is to identify the needs, risks, long and short term goals of the participant and then to oversee the provision of available treatment services in the best interests of that participant and with a view to addressing the underlying health issues related to the offending behaviour. Examples of available drug treatment services include:

- medically supervised and community-based withdrawal;
- in-house residential rehabilitation;
- individual counselling (incorporating goal setting, motivational interviewing and decision making, problem solving, and relapse prevention and management strategies);
- pharmacotherapies (eg. Methadone, buprenorphine and acamprosate);
- family therapy;
- day treatment and welfare support programs (eg psycho-education and relapse prevention);
- group programs.

30. Should there be a recommendation/need for treatment beyond the standard Program, when making an order extending the defendant's participation in the Program, the court may make such orders and directions as the court considers appropriate.

Graduation / Completion of Program

31. At the conclusion of the Program a representative of the QMERIT Health Team will prepare a Final Court Report, appear before the court and provide a copy of the report to the QMERIT Court Coordinator or Court Officer who

will provide a copy to the prosecution, defence and the court simultaneously.

The Final Court Report will:

- set out the achievements, or otherwise, of the defendant under the Program, including the progress of the defendant towards the set treatment goals;
 - contain a relapse prevention plan and after care plan which has previously been discussed with the defendant; and
 - not make any sentence recommendation.
32. The Magistrate considering sentence may seek from the QMERIT Health Team a further report if necessary commenting on drug treatment sentencing options.
33. At the conclusion of the Program, the court will call upon the defendant to enter a plea (if not previously entered) and proceed to sentence the defendant in accordance with the *Penalties and Sentences Act 1992*. Successful completion or the extent of unsuccessful completion of the Program is a matter which the court may take into account in sentencing the defendant with a view to consideration of mitigation of penalty.
34. The final sentencing outcome should be communicated by the court to the QMERIT Health Team for record keeping purposes.

Non-compliance/Withdrawal

35. An appropriate policy regarding breach of Program rules should be established by the magistrates at each court implementing the Program.
36. If the defendant breaches bail in some way, such as committing further offences, failing to appear, or non-compliance with other bail conditions, or commits further offences whilst on the Program, the court may give consideration to removing the defendant from the Program, in which case, if removed, the charges will proceed in the usual way, and, bail should be varied to remove the QMERIT bail condition.
37. If the QMERIT Health Team is aware of or suspects action by the defendant that involves a significant threat to the community or the defendant himself/herself then the information should be reported as a matter of urgency by the QMERIT Health Team to the police, any legal representative for the defendant and to the Court for direction to the QMERIT Court Coordinator as to an appropriate listing/action on the matter.
38. While minor issues of non-compliance with the agreed treatment plan need not necessarily be actioned, reference to such conduct should appear in the progress or final reports to the court.
39. Should the defendant fail to comply with the Program, despite sufficient opportunities to comply with the directions of the QMERIT Health Team, the QMERIT Health Team must, as soon as possible, notify the court,

prosecution and defence simultaneously. The defendant's continuation on the Program is a matter for the court's discretion following submissions made by the prosecution and defence.

40. The defendant may withdraw consent at any stage of the process. If this occurs the defendant may plead guilty and be sentenced or be referred to another court to be sentenced or otherwise dealt with in the normal way. If the defendant is removed from the Program by the magistrate, or withdraws voluntarily at any time, the matter should be re-listed as soon as possible.



Judge Orazio Rinaudo
Chief Magistrate
Date: 19 March 2018