

Australian Capital Territory

Mental Health (Treatment and Care) Interstate Application of Mental Health Laws Agreement 2011

Notifiable instrument NI2011–196

made under the

Mental Health (Treatment and Care) Regulation 2003, s 5 (Notification of interstate agreements)

Interstate agreement dated 23 November 2010 between the Minister for Health for the ACT and the Minister for Mental Health of the State of Victoria

MEMORANDUM OF AGREEMENT

DATED this 23rd day of November 2010

BETWEEN:

The MINISTER FOR HEALTH FOR THE AUSTRALIAN CAPITAL TERRITORY
of the ACT Legislative Assembly, London Circuit, Canberra 2601

(“the ACT Minister”)

AND

The MINISTER FOR MENTAL HEALTH FOR THE STATE OF VICTORIA of
Level 22, 50 Lonsdale Street, Melbourne 3000 (**“the Victorian Minister”**)

RECITALS

WHEREAS:

- A. Part 5A of the *Mental Health Act 1986* ('Victorian Act') and Part 5A of the ACT *Mental Health (Treatment & Care) Act 1994* ('the ACT Act') provide for the interstate application of mental health laws.
- B. The Victorian Minister may, in accordance with section 93C of the Victorian Act, enter into an agreement with a Minister responsible for administering a corresponding law about any matters in connection with the administration of Part 5A of the Victorian Act or a corresponding law.
- C. The ACT Minister may, in accordance with section 48C of the ACT Act, enter into an agreement with a Minister of another State for or with respect to the application of interstate mental health laws, including transfer, detention and apprehension of persons in the ACT and the other State under mental health laws and any matter contained in or ancillary to Part 5A of the ACT Act.
- D. By this Agreement, the Victorian Minister and the ACT Minister provide for the administration of Part 5A of the Victorian Act and Part 5A of the ACT Act with respect to:
 - (i) the transfer of persons between facilities in the ACT and Victoria; and
 - (ii) the apprehension and return of persons who abscond from Victoria to the ACT and from the ACT to Victoria;
- E. This Agreement does not apply to:
 - (i) security or forensic patients as defined by section 3 of the Victorian Act, involuntary patients subject to orders under section 16(3)(a) of the Victorian Act or orders made under Part 5 of the *Sentencing Act 1991* (Vic); and
 - (ii) a mentally dysfunctional or mentally ill offender within the meaning of that term in the Dictionary of the ACT Act who may be apprehended in accordance with the ACT Act; or a person ordered by a court of the ACT to be detained in custody until the ACT Mental Health Tribunal orders otherwise, who may be apprehended in accordance with the ACT Act.

IT IS AGREED:

PART 1: DEFINITIONS AND INTERPRETATION

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

“ACT Act” means the *Mental Health (Treatment & Care) Act 1994*, including any regulations and orders made under that Act (but for the purposes of this Agreement a reference to the ACT Act does not, unless expressly provided, include a reference to the Victorian Act on the basis that the Victorian Act has been declared a corresponding law under that Act);

“ACT Chief Psychiatrist” means the ACT Chief Psychiatrist appointed in accordance with Part 10 of the ACT Act, and includes his or her delegate as appointed from time to time;

“Agreement” means this Memorandum of Agreement including the Annexures to it;

“Approved Facility” means a facility approved under section 48(1) of the ACT Act;

“Approved Mental Health Service” means a premises or a service as defined by the Victorian Act;

“Civil Interstate Apprehension Order” means an order in the same form as or in substantially the same form as Annexure 3;

“Civil Interstate Transfer Request Notice” means a notice in the same form as or in substantially the form as Annexure 2;

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

“Corresponding Law” means:

- (a) with respect to Victoria, the ACT Act as declared under section 93B of the Victorian Act; and
- (b) with respect to the ACT, the Victorian Act as declared as such by regulations made pursuant to section 48D of the ACT Act;

“Facility” means an Approved Facility in the ACT or an Approved Mental Health Service in Victoria;

“Interstate Authority” means:

- (a) for the purpose of the s 93A of the Victorian Act, the ACT Chief Psychiatrist; or
- (b) for the purpose of the ACT Act, the Victorian Authorised Psychiatrist of the receiving Victorian Facility;

“Interstate Person” means:

- (a) a person who is subject to an ACT Psychiatric Treatment Order or is detained under sections 38 or 41 of the ACT Act and is absent without leave from an ACT Facility and is required to return to an ACT Facility for assessment or treatment and for whom there are reasonable grounds to suspect is in Victoria or;
- (b) a Victorian Involuntary Patient, absent without leave from a Victorian Facility and liable to apprehension under section 43 of the Victorian Act and for whom there are reasonable grounds to suspect is in the ACT;

“Patient” means:

- (a) a person who is subject to an ACT Psychiatric Treatment Order or is detained under sections 38 or 41 of the ACT Act or;
- (b) a Victorian Involuntary Patient as defined by this Agreement;

“Psychiatric Treatment Order” means a psychiatric treatment order as defined in the ACT Act, and includes a restriction order made under section 30 of the ACT Act if that is made in addition to the psychiatric treatment order;

“State” also means territory;

“Transfer Order” means in relation to a transfer from Victoria to the ACT, an order made in accordance with section 93G of the Victorian Act;

“Victorian Act” means the Victorian *Mental Health Act 1986*, including any regulations and orders made under that Act (but for the purposes of this Agreement a reference to the Victorian Act does not, unless expressly provided, include a reference to the ACT Act on the basis that the ACT Act has been declared a Corresponding Law under that Act);

“Victorian Authorised Psychiatrist” means a person appointed pursuant to the Victorian Act to be the authorised psychiatrist for an Approved Mental Health Service and includes his or her delegate as appointed from time to time;

“Victorian Chief Psychiatrist” means the Chief Psychiatrist appointed pursuant to the Victorian Act, and includes his or her delegate as appointed from time to time;

“Victorian Involuntary Patient” has the same meaning as the Victorian Act excluding patients subject to orders under section 16(3)(a) of the Victorian Act or orders made under Part 5 of the *Sentencing Act 1991* (Vic);

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 corporations and bodies corporate;
- (c) references to clauses, Parts and Annexure are references to clauses of, Parts and Annexure 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.

PART 2: COMMENCEMENT OF AGREEMENT

- 2.1 The parties acknowledge that this Agreement cannot be given full effect unless and until:
- (a) Regulations pursuant to section 48D of the ACT Act are made and commenced; and
 - (b) Victoria promulgates an Order in Council in accordance with section 93B of the Victorian Act declaring the ACT Act to be a Corresponding Law for the purpose of Part 5A of the Victorian Act; and
 - (c) this Agreement has been executed by both parties
- 2.2 This Agreement shall commence as and from the date that all of the requirements listed in sub-clauses (a) – (c) of 2.1 are satisfied.

PART 3: PURPOSE AND SCOPE OF THE AGREEMENT

- 3.1 The purpose of this Agreement is to provide for matters in connection with the administration of Part 5A of the Victorian Act and Part 5A of the ACT Act.
- 3.2 The application of the ACT Act and the Victorian Act as Corresponding Laws of Victoria and the ACT respectively are subject to the express limitations and conditions imposed by the terms of this Agreement.
- 3.3 Nothing in this clause or in this Agreement is to be construed as extending, limiting or varying the provisions in the ACT Act or the Victorian Act, unless expressly provided.
- 3.4 The parties agree that they will cooperate in a spirit of goodwill to facilitate the purposes of this Agreement.
- 3.5 The parties agree that each 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.

PART 4: INTERSTATE GUIDELINES

- 4.1 The parties agree to develop interstate guidelines to support the administration and operation of this Agreement.
- 4.2 The parties further agree that they will act co-operatively and in good faith to develop and implement the interstate guidelines to facilitate the purposes of this Agreement.
- 4.3 Amendment to the interstate guidelines may only be by written agreement of the Contact Officers.

PART 5: PLANNED INTERSTATE TRANSFERS

- 5.1 This Part applies only to the planned interstate transfer of a Patient.
- 5.2 The parties agree that subject to the terms and conditions set out in this Part:
- (a) a Victorian Patient may be transferred to any Facility in the ACT;
 - (b) an ACT Patient may be transferred to any Facility in Victoria;
 - (c) a transfer from Victoria to the ACT shall be made in accordance with section 93G of the Victorian Act and section 48K of the ACT Act; and
 - (d) a transfer from the ACT to Victoria shall be made in accordance with the section 48G of the ACT Act and section 93H of the Victorian Act.

Civil Interstate Transfer Request Notice

- 5.3 The referring Facility shall, prior to making any transfer, provide the relevant Interstate Authority with a Civil Interstate Transfer Request Notice.
- 5.4 The Civil Interstate Transfer Request Notice is to be in the form, or substantially the same form, as Annexure 2 and is to include all the relevant information specified therein.
- 5.5 The Civil Interstate Transfer Request Notice must be signed:
- (a) in the case of a proposed transfer from Victoria to the ACT, by the Victorian Authorised Psychiatrist of the referring Facility or the Victorian Chief Psychiatrist;
 - (b) in the case of a proposed transfer from the ACT to Victoria, by the ACT Chief Psychiatrist.
- 5.6 The parties agree that the form of the Civil Interstate Transfer Request Notice may be amended by the written agreement of the Contact Officers.
- 5.7 Prior to issuing and delivering a Civil Interstate Transfer Request Notice, the referring Facility will consult with the relevant Interstate Authority in respect of the Patient to be transferred and the contents of the Civil Interstate Transfer Request Notice.

Transfer subject to prior approval of receiving Facility

- 5.8 A Patient shall not be transferred under this Part unless the relevant Interstate Authority has approved the transfer in writing.

Transfer Information

- 5.9 Where a Patient is transferred in accordance with this Part, the referring Facility shall forward to the receiving Facility:
- (a) a Transfer Order in accordance with section 93G of the Victorian Act, if the Patient is to be transferred from Victoria to the ACT; and
 - (b) such other information relating to the Patient as is reasonably necessary or required for the continued care and treatment of the Patient by the receiving Facility.

Status after Transfer

- 5.10 The parties agree that a Patient transferred and:
- (a) taken to an ACT Facility, shall thereafter be dealt with as if that Patient were detained in accordance with section 41 of the ACT Act and from the time of such transfer will cease to be dealt with as a Patient to whom the Victorian Act applies;
 - (b) taken to a Victorian Facility, shall thereafter be dealt with as if that Patient were a person for whom a request and recommendation have been made under section 9 of the Victorian Act and from the time of such transfer will cease to be dealt with as a Patient to whom the ACT Act applies.

PART 6: APPREHENSION OF INTERSTATE PERSONS

- 6.1 This Part applies only to the apprehension and return of an Interstate Person.
- 6.2 The apprehension and return of an Interstate Person shall be in accordance with Part 5A, Division 4 of the Victorian Act and s 36K and Part 5A, Division 5A.5 of the ACT Act.

Civil Interstate Apprehension Order

- 6.3 A person nominated in clause 6.6 may issue a Civil Interstate Apprehension Order for the apprehension and return of an Interstate Person.
- 6.4 The Civil Interstate Apprehension Order is to be in the form, or substantially the same form, as Annexure 3 and is to include all the relevant information specified therein.
- 6.5 The parties agree that the form of the Civil Interstate Apprehension Order may be amended by the written agreement of the Contact Officers.

- 6.6 A Civil Interstate Apprehension Order may be issued:
- (a) in the ACT, by the ACT Chief Psychiatrist; and
 - (b) in Victoria, by the Victorian Authorised Psychiatrist of the relevant Victorian Facility or by the Victorian Chief Psychiatrist.
- 6.7 Any person in the issuing State, authorised by clause 6.6 to issue a Civil Interstate Apprehension Order, may revoke the order prior to execution.
- 6.8 Each party undertakes to do all things that are reasonably required and within their power to facilitate the apprehension and return of an Interstate Person named in a Civil Interstate Apprehension Order.
- 6.9 An Interstate Person will not be apprehended pursuant to a Civil Interstate Apprehension Order unless and until an order has been issued in accordance with the terms of this Agreement.

Facilities to which an Interstate Person can be taken

- 6.10 Where the Civil Interstate Apprehension Order specifies that an Interstate Person should be taken to a specific Facility, every effort should be made to take the person to that Facility unless this is not reasonably practicable.
- 6.11 Subject to clauses 6.12 and 6.13, an Interstate Person who is apprehended under this Part may be taken to a Facility in the State of apprehension, pending return to the Facility specified in the Civil Interstate Apprehension Order. Where practicable the ACT Chief Psychiatrist or the Victorian Authorised Psychiatrist of the relevant Facility will be consulted prior to the person being taken to that Facility.

Status of Interstate Person after apprehension

- 6.12 The parties acknowledge and agree that:
- (a) pursuant to section 93K of the Victorian Act, an ACT Interstate Person who is taken to a Victorian Facility may be detained under Division 2 of Part 3 of the Victorian Act pending the person's return to the ACT; and
 - (b) the Interstate Person shall be detained at the Victorian Facility until either:
 - i) the person is taken to an ACT Facility; or
 - ii) the person is discharged from the Victorian Facility pursuant to the Victorian Act.

6.13 The parties acknowledge and agree that:

- (a) a Victorian Interstate Person who is taken to an ACT Facility may be detained in accordance with section 41 of the ACT Act pending the person's return to Victoria; and
- (b) the Interstate Person shall be detained at the ACT Facility until either:
 - (i) the person is taken to a Victorian Facility; or
 - (ii) the person is discharged from the ACT Facility pursuant to the ACT Act.

PART 7: REVIEW OF AGREEMENT

7.1 The parties may agree to the periodic review of this Agreement by the Contact Officers or their nominees.

PART 8: AMENDMENT OF AGREEMENT

8.1 Amendments to this Agreement may only be made by the written agreement of the parties and should be initiated through the Contact Officers.

8.2 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.

PART 9: CONFIDENTIALITY OF INFORMATION

9.1 The parties agree to treat all information acquired from the other party or otherwise acquired or created in the implementation of the Victorian Act, the ACT Act and the Corresponding Laws and this Agreement as confidential except to the extent that such information is in the public domain or as is otherwise permitted by law to be disclosed.

9.2 Any party who receives information from the other party, obtains or creates information in respect of a person from the other State agrees to treat that information in accordance with the legislation and policies relating to privacy and the collection, keeping and disclosure of information that is in force in the receiving party's State.

9.3 The parties further agree that each State will take all reasonable steps to ensure that information obtained from the other State or obtained or created in respect of a person from the other State shall be dealt with so as not to cause the other State to offend any of that State's own privacy or confidentiality obligations.

PART 10: DISPUTE RESOLUTION

- 10.1 Disputes arising under this Agreement shall be referred to the Contact Officers for resolution.
- 10.2 Pursuant to clause 10.1, the Contact Officers shall attempt in good faith to resolve any dispute arising under this Agreement within 7 business days.
- 10.3 In the event that the Contact Officers cannot resolve the dispute, the dispute will be referred to the Victorian Minister and the ACT Minister for resolution.
- 10.4 The parties acknowledge that failure to resolve a dispute arising under this Agreement will jeopardise the continued existence of the Agreement and acknowledge that they will cooperate and act in good faith to bring about a satisfactory resolution of any such dispute.

PART 11: TERMINATION OF AGREEMENT

- 11.1 Either party may terminate the 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.
- 11.2 The parties further agree that as soon as possible after the Agreement has been terminated under clause 11.1, both parties will take such other action within their power as is necessary to give effect to the termination of this Agreement.
- 11.3 The parties agree that a patient transfer, made under this Agreement, which is underway immediately before the termination of this Agreement, continues to enable the transfer to be effected.

PART 12: SERVICE OF DOCUMENTS

- 12.1 All documents or notices that may or are required to be delivered or served under this Agreement may be delivered or served as permitted by law. The address for service on the parties is as set out in Annexure 1.

PART 13: SEVERANCE

- 13.1 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.

PART 14: COUNTERPARTS

- 14.1 This Agreement may be executed in any number of counterparts each of which shall be deemed an original but all of which shall constitute one and the same instrument.

SIGNED, SEALED AND DELIVERED)

by the **MINISTER FOR HEALTH** for)

and on behalf of the ACT but not so as to)

incur personal liability in the presence of:)

.....

Katy Gallagher
Minister for Health
for the Australian Capital Territory

.....
Signature

.....
Print Name – Vicki Bates

SIGNED, SEALED AND DELIVERED)

by the **MINISTER FOR MENTAL HEALTH** for)

and on behalf the State of Victoria (through the)

Department of Health))

Lisa Neville

but not so as to incur personal liability)

Minister for Mental Health

in the presence of:)

for the State of Victoria

.....
Signature

.....
Print Name – Barbara Sapwell

1. The planned interstate transfer of patients is governed by Part 5 of the Ministerial Agreement between the two States and sections 93G and H of the *Mental Health Act 1986* (Vic) and sections 48K and 48G of the *Mental Health (Treatment and care) Act 1994* (ACT).

The *Mental Health Act 1986* (Vic) and the *Mental Health Regulations 2008* (Vic) may be accessed at <http://www.legislation.vic.gov.au>

The *Mental Health (Treatment and Care) Act 1994* (ACT) and the *Mental Health (Treatment and Care) Regulation 2003* (ACT) may be accessed at <http://www.legislation.act.gov.au/>

The Ministerial Agreement may be accessed at <http://www.health.vic.gov.au/mentalhealth/crossborder/index.htm> or <http://www.legislation.act.gov.au> under notifiable instruments.

2. The planned transfer of a patient **from Victoria to the ACT** under section 93G of the *Mental Health Act 1986* (Vic) occurs by order of the authorised psychiatrist of the treating Victorian approved mental health service or the Victorian Chief Psychiatrist. Refer to Victorian Mental Health Act form 36 for the form of the order. The form of interstate transfer order may be accessed at: <http://www.health.vic.gov.au/mentalhealth/mh-act/forms07/mha36-transfer.pdf> Transfers out of Victoria must be confirmed by the Victorian Mental Health Review Board. The Board may only confirm the proposed transfer if they consider either it would be of **benefit to the patient** or it is **necessary for the patient's treatment**.

The planned transfer of a patient **from the ACT to Victoria** under section 48G of the *Mental Health (Treatment and Care) Act 1994* (ACT) is authorised by the ACT Chief Psychiatrist.

3. PERSONS AUTHORISED TO TRANSPORT A PATIENT TO THE RECEIVING FACILITY / SERVICE
IN ACCORDANCE WITH THE CIVIL INTERSTATE TRANSFER REQUEST NOTICE

The following are authorised to transport a patient:

- A Police Officer of the ACT
- A Mental Health Officer of the ACT
- A Doctor in the ACT
- A prescribed person within the meaning of s7 of the Victorian Act and regulation 5(2) of the *Mental Health Regulations 2008* (Vic) (including a member of the Victorian police force and a Victorian ambulance officer);
- An authorised psychiatrist for the purposes of the Victorian Act or any person authorised by the authorised psychiatrist; or
- An employee of the Victorian Department of Health authorised by the Victorian Chief Psychiatrist.

4. The planned interstate transfer of a patient can only occur with the prior consent of the receiving facility or service. This form notifies the interstate facility/service and seeks their consent to the proposed transfer. Consent should be in writing, endorsed on this Notice.

Planned transfers into the ACT are approved by the Chief Psychiatrist and must be in accordance with s48K of the *Mental Health (Treatment and Care) Act 1994*. (ACT)

Planned transfers into Victoria must be approved by the Authorised Psychiatrist of the receiving Victorian approved mental health service and must be in accordance with s 93H *Mental Health Act 1986* (Vic).

ACT / Victoria Civil Interstate Apprehension Order

REQUEST TO APPREHEND: * Delete any notes that do not apply

.....Date of birth:...../...../.....
 GIVEN NAME/S OF PATIENT FAMILY NAME (BLOCK LETTERS) OF PATIENT

1. STATUS OF PATIENT:

Patient subject to the *Mental Health(Treatment and Care) Act 1994 (ACT)* Patient subject to the *Mental Health Act 1986 (Vic)*

Liable to apprehension under s.36K Liable to apprehension under s.43

Patient is absent without leave or otherwise liable to be apprehended under the *Mental Health (Treatment and Care) Act 1994 (ACT)* or the *Mental Health Act 1986 (Vic)* (see note 1).

2. RETURN TO:

The patient is to be returned to:
 Insert the name of the proposed *approved facility (ACT) or *approved mental health service (Vic) from which the person is absent without leave

 address of proposed *facility/*service

Pending return, the patient may be taken to an approved facility (ACT) or an approved mental health service (Vic) in the State where they were apprehended.

2. PERSON MAKING THE REQUEST TO APPREHEND

To be completed by the *Chief Psychiatrist (ACT) or the *Authorised Psychiatrist of the approved mental health service (Vic) or the Chief Psychiatrist (Vic)

Signed.....Dated...../...../..... Time.....:.....hrs (24hr)

GIVEN NAME/S FAMILY NAME (BLOCK LETTERS)

Telephone:

Fax:

Email:

4. DESCRIPTION OF THE PATIENT:

*Male/Female

Height:

Colour of Eyes:

Include any distinguishing characteristics

Build:

Weight:

Complexion:

Extra Details Attached: *Yes / No..

5. INFORMATION THAT WILL ASSIST WITH APPREHENSION:

Include other names used address where person may be found etc. (see note 2):

Extra Details Attached: *Yes / No.

6. TREATMENT AND CARE REQUIREMENTS:

Extra Details Attached: *Yes / No

7. RISK SUMMARY (include date of last assessment):

Extra Details Attached: *Yes / No

8. 24 HOUR CONTACT PERSON AT FACILITY/SERVICE REQUESTING PATIENT'S

Name:.....Designation:.....

*Mobile or

*Telephone:

Fax:

Email:

1. The apprehension and return of an involuntary patient absent without leave from Victoria or from the ACT is governed by Part 6 of the Memorandum of Agreement between the ACT and Victoria and Division 4 of Part 5A of the *Mental Health Act 1986* (Vic) and Part 5A of the *Mental Health (Treatment and Care) Act 1994* (ACT).

The *Mental Health Act 1986* (Vic) and the *Mental Health Regulations 2008* (Vic) may be accessed at <http://www.legislation.vic.gov.au>

The *Mental Health (Treatment and Care) Act 1994* (ACT) and the *Mental Health (Treatment and Care) Regulation 2003* (ACT) may be accessed at <http://www.legislation.act.gov.au>

The Ministerial Agreement may be accessed at <http://www.health.vic.gov.au/mentalhealth/crossborder/index.htm> or <http://www.legislation.act.gov.au> under notifiable instruments.

2. PERSONS AUTHORISED TO APPREHEND AN INTERSTATE PERSON

- A prescribed person within the meaning of s7 of the Victorian Act and regulation 5(2) of the *Mental Health Regulations 2008* (Vic) (including a member of the Victorian police force and a Victorian ambulance officer);
- An authorised psychiatrist for the purposes of the Victorian Act or any person authorised by the authorised psychiatrist;
- An employee of the Victorian Department of Health authorised by the Victorian Chief Psychiatrist;
- An Authorised Medical Officer or any other suitably qualified person employed at the mental health facility;
- A Police Officer of the ACT;
- ACT Mental Health officer;
- An ACT Doctor;