

MEMORANDUM OF AGREEMENT

DATED this 9th day of SEPTEMBER 2011

BETWEEN:

The MINISTER FOR HEALTH FOR THE STATE OF NEW SOUTH WALES of Level 30, Governor Macquarie Tower, 1 Farrer Place, Sydney, NSW, 2000 ("the NSW 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. Chapter 8 of the *Mental Health Act 2007* (NSW) ('NSW Act') and Part 5A of the *Mental Health Act 1986* (Vic) ('Victorian Act') provide for the interstate application of mental health laws.
- B. The NSW Minister may, in accordance with section 171 of the NSW Act, enter into an agreement with a Minister of another State for or with respect to:
 - (a) the application of mental health laws of NSW or the other State;
 - (b) the transfer, detention, care, treatment and apprehension of persons in NSW and the other State under mental health laws;
 - (c) the making of community treatment orders in respect of residents of this State and another State;
 - (d) the recognition, implementation and enforcement of community treatment orders of NSW in another State or another State's in NSW; and
 - (e) administrative matters and other matters ancillary to, or consequential on, any such matter contained in Chapter 8 of the NSW Act.

- C. 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.
- D. On 19 February 2002, the NSW Minister and the Victorian Minister executed the Forensic Agreement pursuant to the corresponding laws, to allow for the apprehension and return of NSW forensic patients to NSW and for the apprehension and return of Victorian security, forensic and certain other patients to Victoria.
- E. By this Agreement, the NSW Minister and the Victorian Minister provide for the administration of Chapter 8 of the NSW Act and Part 5A of the Victorian Act and provide for or with respect to:
- (i) the involuntary treatment of persons from NSW in Victoria and of persons from Victoria in NSW; and
 - (ii) the transfer of involuntary patients between facilities in NSW and Victoria; and
 - (iii) the apprehension and return of involuntary patients who abscond from NSW to Victoria and from Victoria to NSW; and
 - (iv) the making, recognition and implementation of community treatment orders made under the NSW and Victorian Acts for the care and treatment of persons in the other State;
- in respect of persons who are not covered by the Forensic Agreement.

IT IS AGREED:

PART 1: DEFINITIONS AND INTERPRETATION

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

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

“Approved Mental Health Service” means premises or a service as defined in section 3 of the Victorian Act;

“Authorised Medical Officer” means, with respect to NSW, the Medical Superintendent of a Declared Mental Health Facility or a medical officer, nominated by the Medical Superintendent for the purposes of the NSW Act, attached to the Declared Mental Health Facility concerned;

“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;

“Community Treatment Order” means:

- (a) with respect to NSW, an order made under Part 3 of Chapter 3 of the NSW Act or section 33 of the NSW Forensic Act; and
- (b) with respect to Victoria, an order made under section 14 of the Victorian Act;

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

“Corresponding Law” means:

- (a) with respect to NSW, the Victorian Act as declared by clause 25 of the NSW Regulation; and
- (b) with respect to Victoria, the NSW Act and the NSW Forensic Act as declared under section 93B of the Victorian Act;

“Corresponding Order” means:

- (a) with respect to NSW, a Victorian Community Treatment Order as declared by clause 32 of the NSW Regulation; and
- (b) with respect to Victoria, a NSW Community Treatment Order as declared under section 93B of the Victorian Act;

“Declared Mental Health Facility” means premises that have been declared as a mental health facility by the Director-General of the NSW Department of Health under section 109 of the NSW Act;

“Facility” means a Declared Mental Health Facility in NSW or an Approved Mental Health Service in Victoria;

“Forensic Agreement” means the agreement between the NSW Minister and the Victorian Minister dated 19 February 2002 for the apprehension and return of:

- (a) forensic patients (as defined in section 4 of the NSW Act), who are liable to apprehension or retaking under section 68, 70 or 72 of the NSW Forensic Act and who are in Victoria; and
- (b) security or forensic patients (as defined in section 3 of the Victorian Act) who are absent without leave and who are in NSW; and
- (c) involuntary patients admitted to an approved mental health service under section 16(3)(a) of the Victorian Act or Part 5 of the *Sentencing Act* 1991 (Vic) who are absent without leave and who are in NSW;

“Interstate Authority” means:

- (a) with respect to NSW, the Victorian Authorised Psychiatrist of the relevant Victorian Facility; and
- (b) with respect to section 93A of the Victorian Act, the Medical Superintendent of the relevant NSW Facility;

“Interstate Person” means:

- (a) a NSW Involuntary Patient or person detained in a mental health facility in accordance with Chapter 3 of the NSW Act absent without leave from a NSW Facility and liable to apprehension under section 48 of the NSW Act and for whom there are reasonable grounds to suspect are 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 are in NSW;

“Involuntary Treatment Order” has the same meaning as in the Victorian Act;

“Medical Superintendent” means a person appointed pursuant to the NSW Act to be the Medical Superintendent for a Declared Mental Health Facility and includes his or her delegate as appointed from time to time;

"NSW Act" means the *NSW Mental Health Act 2007*, including any regulations and orders made under that Act (but for the purposes of this Agreement a reference to the NSW 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 the NSW Act);

"NSW Forensic Act" means the *NSW Mental Health (Forensic Provisions) Act 1990*, including any regulations and orders made under that Act;

"NSW Involuntary Patient" has the same meaning as that of "involuntary patient" in section 4 of the NSW Act;

"NSW Regulation" means the *Mental Health Regulation 2007* (NSW);

"Patient" means:

- (a) NSW Involuntary Patient; or
- (b) Victorian Involuntary Patient;

"Receiving Facility" means the interstate Facility to which a detained Patient has been or is proposed to be transferred;

"Referring Facility" means the Facility that is transferring, or proposing to transfer, a detained Patient interstate;

"Transfer Order" means:

- (a) in relation to a transfer from NSW to Victoria, an order made in accordance with clause 29 of the NSW Regulation; and
- (b) in relation to a transfer from Victoria to NSW, 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 NSW Act on the basis that the NSW 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 as defined in section 3 of the Victorian Act, and includes his or her delegate as appointed from time to time; and

“Victorian Involuntary Patient” has the same meaning as "involuntary patient" in section 3 of the Victorian Act excluding those persons covered by the Forensic Agreement.

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 and Annexure are references to clauses of 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 this Agreement shall commence as and from the date on which all of the following requirements are satisfied:

- (a) Victoria promulgates an Order in Council in accordance with section 93B of the Victorian Act, declaring the NSW Act and the NSW Forensic Act to be a Corresponding Law and a NSW Community Treatment Order to be a Corresponding Order for the purposes of Part 5A of the Victorian Act; and
- (b) 90 days have elapsed since the date of execution of this Agreement by both parties.

2.2 The parties agree as and from the commencement of this Agreement, the previous ministerial agreement dated 19 August 2002 will cease to operate. However, any forms and documents relating to the transfer or apprehension of a patient under the ministerial agreement dated 19 August 2002 will continue to be accepted under this Agreement for the period of 6 months from the date of commencement of this Agreement.

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 Chapter 8 of the NSW Act and Part 5A of the Victorian Act.
- 3.2 The application of the Victorian Act and the NSW Act as Corresponding Laws of NSW and Victorian 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 NSW Act or the Victorian Act or a Corresponding Law declared under either Act.
- 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 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: INTERSTATE INVOLUNTARY ADMISSION AND TREATMENT

- 5.1 This Part applies only to the involuntary admission in NSW and the involuntary treatment in Victoria of persons under a Corresponding Law.
- 5.2 The parties acknowledge it may be appropriate for a person located in one State to be taken to the other State for involuntary admission or treatment.

Persons who may be admitted to a NSW Facility

5.3 The parties agree that a person in Victoria, subject to a request and recommendation under section 9 or a request and an authority to transport under section 9A of the Victorian Act, may be taken and involuntarily admitted to a NSW Facility under section 93E of the Victorian Act and section 177(1) of the NSW Act.

Documents required for admission to a NSW Facility

5.4 The following documents are required for the purpose of the taking to and admission of persons to a NSW Facility:

- (a) a request and recommendation made under section 9 of the Victorian Act; or
- (b) a request and authority to transport issued in accordance with section 9A of the Victorian Act.

Persons who may be taken to a Victorian Facility

5.5 The parties agree a person in NSW:

- (a) subject to a certificate under section 19 of the NSW Act indicating that the person is a mentally ill person or a mentally disordered person; or
- (b) liable to be taken to and detained in a NSW Facility:
 - i) after being apprehended by a NSW police officer in accordance with section 21 or 22 of the NSW Act, or
 - ii) by an ambulance officer in accordance with section 20 of the NSW Act, or
 - iii) on order of a magistrate in accordance with section 24 of the NSW, or
 - iv) after being transferred from a NSW health facility in accordance with section 25 of the NSW Act,

may be made subject to an Involuntary Treatment Order and may be taken to and involuntarily admitted in a Victorian Facility for that purpose under section 93F(1) of the Victorian Act.

Documents required to take a person to a Victorian Facility

5.6 Subject to clause 5.7 below, one of the following documents is required for the purpose of the taking a person to a Victorian Facility:

- (a) in the case of a patient who is liable for detention under section 19 of the NSW Act, a Schedule 1 certificate issued pursuant to section 19 of the NSW Act; or
- (b) in the case of a patient liable to be detained in a NSW Facility in accordance with section 24 of the NSW Act, a copy of the order of the Magistrate under section 33 of the NSW Forensic Act.

Taking a person to a Victorian Facility without documentation

5.7 The following persons may be taken to a Victorian Facility without documentation, pursuant to section 93F of the Victorian Act:

- (a) a person who may be taken to a NSW Facility by a NSW Police Officer under section 21 or 22 of the NSW Act;
- (b) a person who may be taken to a NSW Facility by a NSW Ambulance officer under section 20 of the NSW Act; and
- (c) a person who may be taken to a NSW Facility following the transfer of the patient from a NSW health facility in accordance with section 25 of the NSW Act.

Persons authorised to transport

5.8 The parties agree that a person may be taken to a Facility for the purposes of this Part by a person set out in Annexure 4.

Status of person

5.9 The parties agree that:

- (a) a person taken to and detained in a NSW Facility in accordance with this Part shall thereafter be dealt with under Part 2 of Chapter 3 of the NSW Act as if that person were a person in relation to whom a mental health certificate has been made under section 19 of the NSW Act;

- (b) a person taken to a Victorian Facility in accordance with this Part shall thereafter be dealt with under Part 3, Division 2 of the Victorian Act and, for that purpose:
- (i) any document authorising the person's detention under the NSW Act shall be treated as if a request and recommendation has been made under section 9 of the Victorian Act;
 - (ii) where there are no documents authorising the person's detention under the NSW Act, the person may be detained in a Victorian Facility for the minimum time reasonably necessary to allow a request and recommendation to be completed under section 9 of the Victorian Act.

PART 6: COMMUNITY TREATMENT ORDERS

Making a Community Treatment Order for a resident of other State

6.1 The parties agree:

- (a) a NSW Community Treatment Order may be made in respect of a person who resides in Victoria provided that the Facility implementing the order is in NSW, in accordance with section 181 of the NSW Act. A person who is authorised to perform functions or exercise powers under a NSW Community Treatment Order may perform those functions or exercise those powers in Victoria ; and
- (b) a Victorian Community Treatment Order may be made in respect of a person who resides in NSW, in accordance with section 93I of the Victorian Act provided the Facility implementing the order is in Victoria.

Electro convulsive therapy

6.2 Nothing in this Part or a Corresponding Law allows a person to be given electro convulsive therapy in NSW in accordance with a Victorian Community Treatment Order.

Relocation of persons subject to Community Treatment Orders

6.3 The parties agree where a person subject to a Community Treatment Order, made in the State where the person usually resides, proposes to relocate to the other State, the treating Facility and the proposed treating Facility in the destination State will act co-operatively to facilitate, as far as practicable, the smooth transition of the person's community treatment and care.

PART 7: PLANNED INTERSTATE TRANSFERS

7.1 This Part applies only to the planned interstate transfer of:

- (a) with respect to NSW, a person detained as a NSW Involuntary Patient; and
- (b) with respect to Victoria, a person detained as a Victorian Involuntary Patient.

7.2 The parties agree that subject to the terms and conditions set out in this Part:

- (a) a person detained as a NSW Involuntary Patient may be transferred to any Facility in Victoria;
- (b) a person detained as a Victorian Involuntary Patient may be transferred to any Facility in NSW;
- (c) a transfer from NSW to Victoria shall be made in accordance with section 93H of the Victorian Act and section 176 of the NSW Act and the NSW Regulation; and
- (d) a transfer from Victoria to NSW shall be made in accordance with the section 179 of the NSW Act and section 93G of the Victorian Act.

Civil Interstate Transfer Request Notice

7.3 The Referring Facility shall prior to making any transfer, provide the relevant Interstate Authority with a Civil Interstate Transfer Request Notice.

7.4 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.

7.5 The Civil Interstate Transfer Request Notice must be signed:

- (a) in the case of a proposed transfer from Victoria to NSW, by the Victorian Authorised Psychiatrist of the Referring Facility or the Victorian Chief Psychiatrist;
- (b) in the case of a proposed transfer from NSW to Victoria, by the NSW Medical Superintendent of the Referring Facility.

7.6 The parties agree that the form of the Civil Interstate Transfer Request Notice may be amended by the written agreement of the Contact Officers.

- 7.7 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

- 7.8 A Patient to whom this Part applies shall not be transferred under this Part unless the relevant Interstate Authority of the Receiving Facility has approved the transfer in writing.

Transfer Order

- 7.9 Where a Patient to whom this Part applies is transferred in accordance with this Part, the Referring Facility shall forward to the Receiving Facility:
- (a) in respect of a transfer from Victoria to NSW, a Transfer Order under section 93G of the Victorian Act; and
 - (b) in respect of a transfer from NSW to Victoria, a Transfer Order under clause 29 of the NSW Regulation; and
 - (c) 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.

Persons authorised to transfer

- 7.10 The parties agree that the persons set out in Annexure 5 are authorised to take a Patient to an interstate Facility in accordance with this Part.

Status after Transfer

- 7.11 The parties agree that a Patient transferred under this Part:

- (a) to a NSW Facility, shall thereafter be dealt with as if that Patient were a NSW Involuntary Patient, and from the time of such transfer will cease to be dealt with as a Patient to whom the Victorian Act applies;
- (b) 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 NSW Act applies.

PART 8: APPREHENSION OF INTERSTATE PERSONS

- 8.1 This Part applies only to the apprehension and return of an Interstate Person.
- 8.2 This Part does not apply to any person covered by the Forensic Agreement.
- 8.3 The apprehension and return of an Interstate Person shall be in accordance with this Part and with Part 5A, Division 4 of the Victorian Act and Chapter 8 of the NSW Act.

Civil Interstate Apprehension Order

- 8.4 A person nominated in clause 8.7 may issue a Civil Interstate Apprehension Order for the apprehension and return of an Interstate Person when a person becomes an Interstate Person.
- 8.5 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.
- 8.6 The parties agree that the form of the Civil Interstate Apprehension Order may be amended by the written agreement of the Contact Officers.
- 8.7 A Civil Interstate Apprehension Order may be issued for:
- (a) a NSW Interstate Person by an Authorised Medical Officer of the relevant NSW Facility; and
 - (b) a Victorian Interstate Person by the Victorian Authorised Psychiatrist of the relevant Victorian Facility or the Victorian Chief Psychiatrist.
- 8.8 A person authorised by clause 8.7 to issue a Civil Interstate Apprehension Order may also revoke the order prior to it being executed, by written notice to the person(s) nominated to apprehend the Interstate Person.
- 8.9 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.
- 8.10 Subject to clause 8.11 an Interstate Person will not be apprehended unless a Civil Interstate Apprehension Order has been issued in accordance with the terms of this Agreement.
- 8.11 In an emergency, a person referred to in clause 8.7(a) may make a verbal or written request for the apprehension of the Interstate Person by the person(s) specified in Annexure 6 (b), without a Civil Interstate Apprehension Order provided that:

- (a) the request outlines the nature of the emergency, being a situation where the delay involved in obtaining a Civil Interstate Apprehension Order may place the Interstate Person's health or safety at risk through deterioration of the Interstate Person's physical or mental condition or otherwise, or place members of the public at risk; and
- (b) a copy of the Civil Interstate Apprehension Order is provided within 24 hours of the initial request for apprehension.

Persons authorised to apprehend an Interstate Person

8.12 The parties agree that the persons nominated in Annexure 6 may apprehend an Interstate Person in accordance with this Part.

8.13 The parties agree that the powers set out in sections 9B(2) and (3) of the Victorian Act may be exercised by a person authorised to apprehend an Interstate Person for the purposes of taking the person to a NSW Facility.

Facilities to which an Interstate Person can be taken

8.14 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.

8.15 Subject to clause 8.14, an Interstate Person who is apprehended under this Part may be taken to a NSW Facility (subject to consultation with the Medical Superintendent of the Facility) or to a Victorian Facility (subject to consultation with the Victorian Authorised Psychiatrist of the Facility) in the State of apprehension, pending return to the Facility specified in the Civil Interstate Apprehension Order.

Status of Interstate Person after apprehension

8.16 The parties acknowledge and agree that:

- (a) pursuant to section 93K of the Victorian Act, a NSW 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 NSW; and

- (b) the NSW Interstate Person shall be detained at the Victorian Facility until either:
 - i) the person is taken to a NSW Facility; or
 - ii) the person is discharged from the Victorian Facility pursuant to the Victorian Act.

8.17 The parties acknowledge and agree that:

- (a) pursuant to section 186 of the NSW Act, a Victorian Interstate Person who is taken to a NSW Facility is subject to Part 2 of Chapter 3 of the NSW Act pending the person's return to Victoria; and
- (b) the Victorian Interstate Person shall be detained at the NSW Facility until either:
 - i) the person is taken to a Victorian Facility; or
 - ii) the person is discharged from the NSW Facility pursuant to the NSW Act.

PART 9: REVIEW OF AGREEMENT

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

PART 10: AMENDMENT OF AGREEMENT

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

10.2 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 11: CONFIDENTIALITY OF INFORMATION

11.1 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 NSW 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 or required by law to be disclosed.

- 11.2 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.
- 11.3 The parties further agree that each party will take all reasonable steps to ensure that information obtained from the other party or obtained or created in respect of a person from the other State shall be dealt with so as not to cause the other party to offend any of that party's or State's own privacy or confidentiality obligations.

PART 12: DISPUTE RESOLUTION

- 12.1 Disputes arising under this Agreement shall be referred to the Contact Officers for resolution.
- 12.2 The Contact Officers shall attempt in good faith to resolve any dispute arising under this Agreement within 7 business days.
- 12.3 In the event that the Contact Officers cannot resolve the dispute, the dispute will be referred to the Victorian and the NSW Ministers for resolution.
- 12.4 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 13: TERMINATION OF AGREEMENT

- 13.1 Either party may terminate the Agreement by giving the other party three months' notice in writing. If both parties agree, the notice requirement under this clause can be waived.
- 13.2 The parties further agree that as soon as possible after the Agreement has been terminated under clause 13.1, both parties will take such other action within their power as is necessary to give effect to the termination of this Agreement

13.3 The parties further agree that a patient transfer, made under the terms of this Agreement, which is underway immediately before the termination of this Agreement, continues to have effect for the purposes of the patient transfer.

PART 14: SERVICE OF DOCUMENTS

14.1 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 15: SEVERANCE

15.1 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 16: COUNTERPARTS

16.1 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 State of NSW)

(through the Department of Health) but)

not so as to incur personal liability)

in the presence of:)

Jillian Skinner

Jillian Skinner MP

Minister for Health

for the State of NSW

A. Kirk

.....
Signature

A. KIRK

.....
Print Name

SIGNED, SEALED AND DELIVERED)

by the MINISTER FOR MENTAL HEALTH for)

and on behalf the State of Victoria (through the)

Department of Health)

but not so as to incur personal liability)

in the presence of:)

Mary Wooldridge

Mary Wooldridge MP

Minister for Mental Health

for the State of Victoria

Lynette Jean Hall

.....
Signature

LYNETTE JEAN HALL

.....
Print Name

Annexure 1**Contact Officers**

The Contact Officer for any issue arising out of the administration or application of the Agreement or the corresponding laws is:

For NSW: the person holding the position of
Director of Mental Health and Drug and Alcohol Programs
(however described)
NSW Department of Health
73 Miller Street North Sydney NSW 2060
Tel: (02) 9391 9262
Email: damcg@doh.health.nsw.gov.au
Fax: (02) 9391 9042

For Victoria: the person holding the position of
Director (or his/her delegate)
Policy, Planning and Strategy,
Mental Health, Drugs and Regions Division
Department of Health
Level 17, 50 Lonsdale Street, Melbourne Vic 3000
Tel: (03) 9096 5238
Email: pier.decarlo@health.vic.gov.au
Fax: (03) 9096 9169

NSW / Victoria Civil Interstate Transfer Request Notice

REQUEST TO TRANSFER:

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

Name and address of *facility*/service in which patient currently detained.....

PATIENT STATUS:

Involuntary patient defined under section 4 of the Mental Health Act 2007 (NSW) Involuntary Patient under the *Mental Health Act 1986* (Vic)

Patient is a person eligible for transfer under the *Mental Health Act 2007* (NSW) or the *Mental Health Act 1986* (Vic) (see note 1).

TO BE TRANSFERRED TO:

.....
 name of proposed *declared mental health facility (NSW) / *approved mental health service (Vic)

.....
 address of proposed *facility*/service

DETAILS OF PERSON MAKING TRANSFER REQUEST: (see note 2)

Name: Signature: Date of request: / /

GIVEN NAME FAMILY NAME (BLOCK LETTERS)

*Medical Superintendent (NSW) / *Authorised Psychiatrist or *Chief Psychiatrist (Vic)

Telephone:

Facsimile:

Email:

REASON FOR PROPOSED TRANSFER: (see note 3)

.....
 Extra details attached: *Yes / No

PROPOSED TRANSPORT ARRANGEMENTS: (See note 4)

.....
 Extra details attached: *Yes / No

INFORMATION FOR THE TREATMENT AND CARE OF THE PATIENT:

.....
 Extra details attached: *Yes / No

RECEIVING FACILITY APPROVAL: (See note 5)

Date request received:/...../.....

Date transfer approved:/...../.....

Signature of *Medical Superintendent (NSW) / *Authorised Psychiatrist (Vic) approving transfer.

Name and designation of *Medical Superintendent/*Authorised Psychiatrist providing approval

Telephone:

Facsimile:

Email:

* Delete where not applicable

1. The planned interstate transfer of a patients (known as involuntary patients in Victoria and involuntary patients in New South Wales) is governed by Part 7 of the Ministerial Agreement between the two States and sections 93G and H of the *Mental Health Act 1986 (Vic)* and sections 174 – 180 of the *Mental Health Act 2007 (NSW)*.

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 Act 2007 (NSW)* and the *Mental Health Regulation 2007 (NSW)* may be accessed at <http://www.legislation.nsw.gov.au>

The Ministerial Agreement may be accessed at http://www.health.vic.gov.au/mentalhealth/crossborder/1_civil_agree.pdf or <http://www.health.nsw.gov.au/aboutus/legal/agreements.asp>

2. The planned transfer of a patient from Victoria to NSW under section 93G of the *Mental Health Act 1986 (Vic)* may occur 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>

The planned transfer of a patient from NSW to Victoria under section 176 of the *Mental Health Act 2007 (NSW)* and regulation 29 of the *Mental Health Regulation 2007 (NSW)* may occur at the request of the medical superintendent of the treating NSW declared mental health facility. The form of interstate transfer order may be accessed at: http://www.health.nsw.gov.au/resources/aboutus/legal/interstate_transfer_order_pdf.asp

3. The planned transfer of a patient from Victoria to NSW under section 93G of the *Mental Health Act 1986 (Vic)* requires the Victorian Mental Health Review Board to confirm the transfer order. 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.

4. **PERSONS AUTHORISED TO TRANSFER A PERSON IN ACCORDANCE WITH THE CIVIL INTERSTATE TRANSFER REQUEST NOTICE**

The following are authorised to transfer a person:

- The Medical Superintendent of a declared mental health facility in NSW or a person authorised by the Medical Superintendent;
- A NSW police officer;
- A NSW ambulance officer;
- 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.

5. 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.

Transfers into NSW must be approved by the Medical Superintendent of the receiving NSW facility. Approval should be sought in accordance with s176(4) of the *Mental Health Act 2007 (NSW)* and regulation 31(2) of the *Mental Health Regulation 2007 (NSW)*.

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)*.

NSW / Victoria Civil Interstate Apprehension Order

REQUEST TO APPREHEND:

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

STATUS OF PATIENT:

Patient subject to the *Mental Health Act 2007* (NSW)

Liable to apprehension under s.48

Patient subject to the *Mental Health Act 1986* (Vic)

Liable to apprehension under s.43

Patient is absent without leave or otherwise liable to be apprehended under the *Mental Health Act 2007* (NSW) or the *Mental Health Act 1986* (Vic) (see note 1).

RETURN TO:

The patient is to be returned to:
 name of *declared mental health facility (NSW) / *approved mental health service (Vic)
 (from which the person is absent without leave or is required to return)

.....
 address of *service/facility

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

PERSON MAKING REQUEST TO APPREHEND:

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

GIVEN NAME/S

FAMILY NAME (BLOCK LETTERS)

*Authorised Medical Officer (NSW) / *Authorised Psychiatrist of approved mental health service or *Chief Psychiatrist(Vic)

Telephone:

Fax:

Email:

DESCRIPTION OF THE PATIENT:

* Male/Female

Height:

Colour of Eyes:

Include any distinguishing characteristics
 (e.g. tattoos or scars)

Build:

Weight:

Complexion:

.....
 Extra Details Attached: *Yes / No

Information that will assist with Apprehension (e.g. Other names used, address where person may be found) (see Note 2):

.....
 Extra Details Attached: *Yes / No

Treatment and care requirements:

.....
 Extra Details Attached: *Yes / No

Risk Summary (include date of last assessment):

.....
 Extra Details Attached: *Yes / No

24 Hour Contact Person at facility/service requesting patient's apprehension:

Name: Designation:

*Mobile or

*Telephone:

Fax:

Email:

NOTES

1. The apprehension and return of an involuntary patient absent without leave from Victoria or an assessable person or involuntary patient either absent without leave or required to return to NSW, is governed by Part 8 of the Ministerial Agreement between the two States and Division 4 of Part 5A of the *Mental Health Act 1986* (Vic) and Chapter 8 of the *Mental Health Act 2007* (NSW).

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 Act 2007* (NSW) and the *Mental Health Regulations 2007* (NSW) may be accessed at <http://www.legislation.nsw.gov.au>

The Ministerial Agreement may be accessed at http://www.health.vic.gov.au/mentalhealth/crossborder/1_civil_agree.pdf or <http://www.health.nsw.gov.au/aboutus/legal/agreements.asp>

2. PERSONS AUTHORISED TO APPREHEND AND TRANSPORT A PATIENT SUBJECT TO A CIVIL INTERSTATE APPREHENSION ORDER

The following persons are authorised to apprehend and return a patient absent without leave to an approved mental health service under s93K and 93L of the *Mental Health Act 1986* (Vic) or absent without leave or required to return to a declared mental health facility under s186 of the *Mental Health Act 2007* (NSW) :

- 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 (NSW declared) mental health facility;
- A NSW Police Officer;
- A person authorised by the NSW Minister or a NSW Authorised Medical Officer; or
- A person assisting:
 - an Authorised Medical Officer or other suitably qualified person employed at the (NSW declared) mental health facility,
 - a NSW Police Officer,
 - a person authorised by the NSW Minister or a NSW Authorised Medical Officer.

Annexure 4

The parties agree that the following persons are authorised to take a person to a Facility for the purposes of Part 5 of this Agreement:

(a) a person authorised to transport in accordance with section 174 or 177 of the NSW Act, being:

- the Medical Superintendent of a Declared Mental Health Facility or any other suitably qualified person authorised to do so by the Medical Superintendent;
- a NSW Police Officer;
- a NSW Ambulance Officer.

(b) a person authorised under sections 93E, 93F, 9 and 7 of the Victorian Act to take a person to a Facility, being:

- a member of the Victorian Police Force;
- a Victorian Ambulance Officer;
- the person making the request for the purposes of section 9(1)(a);
- a person authorised by the person making the request for the purposes of section 9(1)(a) of the Victorian Act;
- a Victorian registered medical practitioner, registered nurse, registered psychologist, social worker or occupational therapist; who is employed or engaged by a relevant psychiatric service (within the meaning of regulation 5(2) of the Mental Health Regulations 2008 (Vic)) and who is engaged in the provision of care and treatment to persons with a mental disorder.

Annexure 5

The parties agree that the persons who may transfer a person in accordance with Part 7 are as follows:

- (a) a person authorised to transport under sections 176 and 179 of the NSW Act and clauses 29 and 31 of the NSW Regulation, being:
 - the Medical Superintendent of a Declared Mental Health Facility in NSW or a person authorised by the Medical Superintendent;
 - a NSW Police Officer;
 - a NSW Ambulance Officer.

- (b) a person authorised under sections 93H(2), 93G(7) and 7 of the Victorian Act to take a person to a Facility, being:
 - (i) a Victorian registered medical practitioner, registered nurse, registered psychologist, social worker or occupational therapist; who is employed or engaged by a relevant psychiatric service (within the meaning of regulation 5(2) of the Mental Health Regulations 2008 (Vic)) and who is engaged in the provision of care and treatment to persons with a mental disorder;
 - (ii) an Authorised Psychiatrist or any person authorised by the Authorised Psychiatrist;
 - (iii) an employee of the Department of Health authorised by the Victorian Chief Psychiatrist;
 - (iv) a Victorian Police Officer; or
 - (v) a Victorian Ambulance officer.

Annexure 6

The parties agree the following persons may apprehend an Interstate Person subject to Civil Interstate Apprehension Order in accordance with Part 8:

- (a) a person authorised to apprehend such a person under section 93K and section 7 of the Victorian Act, those persons being:
 - (i) a Victorian registered medical practitioner, registered nurse, registered psychologist, social worker or occupational therapist; who is employed or engaged by a relevant psychiatric service (within the meaning of regulation 5(2) of the Mental Health Regulations 2008 (Vic)) and who is engaged in the provision of care and treatment to persons with a mental disorder;
 - (ii) an Authorised Psychiatrist or any person authorised by the Authorised Psychiatrist;
 - (iii) an employee of the Department of Health authorised by the Victorian Chief Psychiatrist;
 - (iv) a Victorian Police Officer; or
 - (v) a Victorian Ambulance officer
- (b) a person authorised to apprehend such a person under section 186 of the NSW Act and clause 27 of the NSW Regulation, being:
 - (i) an Authorised Medical Officer or any other suitably qualified person employed at the mental health facility;
 - (ii) a NSW Police Officer;
 - (iii) a person authorised by the NSW Minister or the Authorised Medical Officer;
 - (iv) a person assisting a person referred to in (i), (ii) or (iii).