

Program Management Circular to Victorian AMHS

Cross-border Mental Health Services: Victoria and NSW

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¹ Legislation current as at 31 January 2003

Chapter A: Introduction

1 Purpose

- 1.1 To provide advice concerning the Ministerial Agreement and Interstate Guidelines agreed between Victoria and New South Wales (NSW) in relation to the provision of mental health services to NSW persons by Victoria, and to Victorian persons by NSW.

2 Background

- 2.1 Part 5A of the Victorian *Mental Health Act* 1986 (“the Victorian Act”) and Chapter 10A of the NSW *Mental Health Act* 1990 (“the NSW Act”) provide for the interstate application of mental health legislation. The provisions only come into effect when a Ministerial Agreement between Victoria and NSW commences.
- 2.2 A Ministerial Agreement (“the Agreement”) between Victoria and NSW, relating to cross-border mental health services, commenced on 21 February 2003.²
- 2.3 Interstate Guidelines to the Agreement have been approved by the NSW and Victorian Health Ministers. The Guidelines provide operational guidance for the implementation of the Agreement, and principles to be observed in the provision of cross-border mental health services. The Guidelines apply to services to both involuntary *and* informal patients.
- 2.4 This Circular consolidates the principles and procedures of the Ministerial Agreement and the Interstate Guidelines, providing general advice to Area Mental Health Services (AMHS) on the provision of cross-border mental health services.

3 Key principles

- 3.1 The Agreement and its Guidelines allow:
- the involuntary admission of Victorian and NSW persons to mental health facilities in the other State;
 - the transfer of involuntary patients between mental health facilities in NSW and Victoria;
 - the apprehension of involuntary patients who abscond from Victoria to NSW and from NSW to Victoria;

² This Circular does not apply to forensic patients apprehended and returned pursuant to the separate Vic/NSW Ministerial Agreement (the Forensic Agreement, see Appendix 6) which commenced on 19 February 2002, including:

- Victorian and NSW forensic patients;
- Victorian security patients; and
- involuntary patients admitted under section 16(3)(a) of the Victorian Act or Part 5 of the *Sentencing Act* 1991 (VIC).

Enquiries about the apprehension and return of these patients should be directed to the Office of the Chief Psychiatrist.

- community treatment orders made under the NSW Act and the Victorian Act for the care and treatment of persons living in the other State.
 - informal (voluntary) patients to receive cross-border mental health services.
- 3.2 This Circular applies to admitted and non-admitted cross-border mental health services provided to involuntary or informal patients.
- 3.3 AMHS in border regions are expected to develop their own local protocols based on this Circular, in collaboration with relevant NSW mental health services where appropriate, to provide for operational issues in their local areas (see Part 6).
- 3.4 Reference should be made to existing Victorian mental health program management circulars and clinical guidelines where appropriate in service provision.
- 3.5 Accurate tracking of service delivery to NSW residents through RAPID is essential as data will be used to plan for future funding for cross-border service delivery.

4 Status of this Circular

- 4.1 This Circular is intended to provide information and guidance to assist in:
- the provision of cross-border mental health services;
 - the proper understanding and implementation of the Agreement and its Guidelines; and
 - the promotion of best practice.
- 4.2 Service providers should ensure that procedures are in place to enable staff to respond to cross-border situations in an appropriate manner.
- 4.3 Matters relating to clinical assessment should be discussed with the Director of Clinical Services.
- 4.4 This Circular does not give an official interpretation of the law and is not a replacement for professional advice or a substitute for reading the legislation.
- 4.5 Reasonable efforts have been taken to ensure the accuracy of the information in this circular. This working draft was finalised on the date indicated on the cover page and does not reflect any changes that may have been made to the law after that date.
- 4.6 If staff have queries about their legal responsibilities in cross-border situations, service providers should obtain independent legal advice.

5 Definitions and appendices

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

“Agreement” means the Ministerial Agreement between Victoria and New South Wales executed on 19 August 2002;

“authorised psychiatrist” means a person appointed as such under section 96 of the Victorian Act;

“Civil Interstate Apprehension Order” means the document contained in Appendix 4 (Victorian designation PSY 29) for use when apprehending persons from Victoria and NSW who are absent without leave in the other State;

“continued treatment patient” has the same meaning as under Schedule 1 to the NSW Act;

“gazetted mental health service” means premises in relation to which the Director General of the NSW Department of Health has made an order under section 208 of the NSW Act;

“Home State” means the State (being either NSW or Victoria) in which the person lives;

“Inpatient facility” or **“facility”** means a NSW gazetted mental health service or a Victorian approved mental health service;

“interstate facility/mental health service” means, in relation to a State or a person who lives in that State (being either Victoria or NSW), a facility/mental health service in the other State;

“interstate person” means in relation to Victoria, a person who lives in NSW; and in relation to NSW, a person who lives in Victoria;

“Interstate Transfer Request Notice” is the document contained in Appendix 4 (Victorian designation PSY 30) for use in interstate transfers of involuntary patients between Victoria and NSW;

“involuntary patient” means a Victorian involuntary patient, a NSW temporary patient, or a NSW continued treatment patient;

“medical superintendent” means, in relation to a hospital, the medical practitioner appointed under the NSW Act as medical superintendent of the hospital;

“mental health service” means a mental health service provided by a Victorian Area Mental Health Service or a NSW Area Health Service;

“NSW Act” means the *NSW Mental Health Act 1990*;

“NSW Community Treatment Order” means an order made under section 131 of the NSW Act;

“prescribed person for the purposes of section 9 of the Victorian Act” means persons prescribed in section 5(7) of the *Mental Health Regulations 1998 (Vic)*:

(a) registered medical practitioners;

(b) registered nurses;

(c) psychologists registered under section 6 of the *Psychologists Registration Act 2000*;

(d) social workers;

(e) occupational therapists; who are

employed, appointed or engaged to provide care and treatment to persons with a mental disorder in an approved mental health service, a State child and adolescent psychiatry service, any premises licensed under section 75 of the Act, a hospital admitting or caring for persons with a mental disorder, a mental health service of a community health centre, a psychiatric outpatient clinic, or a community mental health service.

“temporary patient” has the same meaning as under Schedule 1 to the NSW Act;

“Victorian Act” means the *Victorian Mental Health Act 1986*;

“responsible clinician” means the authorised psychiatrist or delegate in Victoria; or the medical superintendent in NSW.

- 5.2 The appendices to this Circular contain copies of:
- the Agreement – Appendix 1;
 - the Interstate Guidelines made pursuant to the Ministerial Agreement - Appendix 2;
 - Part 5A of the Victorian Act and Chapter 10A of the NSW Act – Appendix 3;
 - relevant orders, forms and notices – Appendix 4;
 - information on interstate professional registration procedures – Appendix 5.
 - the Forensic Agreement – Appendix 6.

6 Local protocols

- 6.1 AMHS in border regions are expected to develop local protocols, based on this Circular, in collaboration with relevant NSW mental health services where appropriate, to provide for operational issues in their local areas.
- 6.2 As set out in Part 14 of this Circular, Liaison Committees may identify where local protocols are appropriate.
- 6.3 Local protocols may provide for more flexible delivery of mental health services to NSW persons than provided for in this Circular. Local protocols should not be more restrictive than this Circular. For example, a local protocol may provide that persons from a particular area of NSW may receive non-admitted services on a continuing basis from a Victorian AMHS (see 7.11).
- 6.4 The development of protocols should be coordinated by the Mental Health Director(s) and Medical Superintendent(s) of the relevant Victorian Area Mental Health Services and NSW Area Health Services, in consultation with the local Liaison Committees, police and ambulance.

Chapter B: Principles

7 Referrals, triage and assessment

- 7.1 Assessments in one State take place under the legislation of that State:
- a person can only be made subject to a NSW Schedule 2 in NSW by persons authorised by the NSW Act; and
 - a person can only be made subject to a Victorian request, recommendation and/or authority to transport in Victoria by persons authorised by the Victorian Act.

Persons should be assessed in their home State rather than being referred interstate

- 7.2 A person who may require mental health services should be assessed in their home State by a mental health service or a medical practitioner, rather than being referred to an interstate mental health service for assessment. Assistance may be sought from telephone triage services in the home State.
- 7.3 If a person is assessed by a mental health service in their home State as requiring admission for inpatient treatment, that service should make arrangements with the closest appropriate facility - see Part 8.
- 7.4 Police and health professionals seeking to arrange an assessment of a person should liaise with mental health services in the person's home State.

Persons who telephone interstate mental health services

- 7.5 A person who telephones an interstate mental health service seeking assistance should receive a screening assessment to determine a service response:
- if the person requires non-admitted mental health services they should be referred to a mental health service in the person's home State if appropriate; or
 - if the person requires inpatient admission, the service contacted by the person should make arrangements with the closest appropriate facility - see Part 8.

Assessment by private medical practitioners

- 7.6 Where a general practitioner, private psychiatrist or other private medical practitioner assesses a person as requiring specialist mental health services, the practitioner should liaise with the appropriate mental health service in the person's home State. That service should determine the appropriate services to be provided to the person and, if admission is required, make arrangements with the closest appropriate facility - see Part 8.

Persons who are apprehended by Police

- 7.7 Where a person is apprehended by NSW police in NSW under section 24 of the NSW Act, they should be assessed in NSW where this is reasonably practicable. If not practicable, they should be taken by NSW police to the closest appropriate facility. See Part 8 for details on admission of the person.

Note: A local protocol may be developed to assist in the assessment of the person in Victoria before they are transported to a Victorian facility.

- 7.8 Where a person is apprehended by police under section 10 of the Victorian Act, they must be taken to a Victorian registered medical practitioner in Victoria for an examination.

Persons who require CAMHS or Aged Persons mental health services

- 7.9 Where it is proposed to admit a NSW person to a Victorian Child and Adolescent Mental Health Service (CAMHS) or Victorian Aged Persons Mental Health Service on the basis that the Service is the closest appropriate facility (see Part 8), an assessment of the person should be undertaken by the closest Victorian mental health service.

This assessment should still take place even if the person has already been assessed in NSW, to ensure admission to a Victorian CAMHS or Aged Persons Mental Health Service is appropriate.

Note: This principle can be varied by agreement between the relevant NSW Area Health Service, Victorian AMHS and Victorian CAMHS.

Persons who present at an interstate mental health service

- 7.10 A person who presents to an interstate mental health service seeking assistance should receive a screening assessment to determine a service response. Having regard to the person's mental state, that service should determine whether to:

- refer the person to a mental health service in the person's home State; or
- provide initial non-admitted treatment before transferring the care of the person to a mental health service in the person's home State - see Part 10; or
- make arrangements with the closest appropriate facility if the person requires immediate inpatient treatment - see Part 8.

- 7.11 It is not expected that persons will receive non-admitted services on a continuing basis from interstate mental health services, unless local protocols provide otherwise.

8 Inpatient admission of interstate persons

Involuntary and informal (voluntary) patients

- 8.1 The following principles (8.2-8.7) apply to the inpatient admission of both involuntary and informal patients.
- 8.2 The assessment of persons for inpatient treatment should follow the ‘Referrals, triage and assessment’ principles in Part 7.
- 8.3 A person should only be referred or transported to an interstate facility for admission if:
- it is the closest appropriate facility in either State to the person’s place of residence (if known) or the place of assessment (if more appropriate); and
 - it has an available bed, or can reasonably make a bed available; and
 - it has been contacted in order for arrangements for the admission to be made.
- Note:* The ‘appropriate’ facility may not be the closest facility. In determining the ‘appropriate’ facility, factors to consider include the facilitation of discharge planning (including likelihood of discharge onto a CTO) and continuity of care. It is recommended that Victorian Area Mental Health Services and NSW Area Health Services in border regions develop a joint local protocol to assist in determining the closest appropriate facility for persons from particular areas.
- 8.4 If no bed can be made available at the closest appropriate facility, that facility should offer reasonable assistance in locating the next closest appropriate facility in either State that has an available bed.
- Note:* If the person is being referred by a Victorian mental health service of one AMHS to a Victorian facility in another AMHS, for example under 7.5 and 7.10, the referring service would normally have responsibility for locating the next closest appropriate facility.
- 8.5 Where the distance between the closest NSW and Victorian facilities is similar, the person should generally be admitted to the facility in their home State.
- 8.6 If a person has been transported to an interstate inpatient facility without prior consultation with the facility, the facility has the responsibility of finding a bed for the person.
- Note:* It is recommended that the facility take steps to avoid similar incidents in the future, through negotiations with the service that made arrangements for the transport, and using the dispute resolution process in Part 14.5-14.6 if required.
- 8.7 Once admitted, the ‘Transfer of treatment and care of inpatients’ principles apply – see Part 9.³

³ Note: Part 9 does not apply to a person absent without leave from NSW who is, or can be made, subject to an Interstate Civil Apprehension Order. Such a person may be admitted to a Victorian facility pending being returned to a NSW facility - see Part 12, especially 12.18.

Involuntary patients

8.8 The following principles (8.9-8.17) apply to the transport and admission of involuntary patients.

When a person may be transported across the border for involuntary admission

8.9 In order to legally transport a person across the Victorian/NSW border to an interstate inpatient facility for involuntary admission, the following requirements must be observed⁴:

- in the case of a person being taken from NSW to a Victorian facility, the person *must* be:
 - subject to a NSW Schedule 2 certificate; or
 - have been apprehended by a NSW Police Officer in accordance with the NSW Act (section 24).
- in the case of a person being taken from Victoria to a NSW facility, the person *must* be subject to:
 - a request and recommendation; or
 - a request and ‘authority to transport without recommendation’ (section 9(7A)(c) of the Victorian Act).⁵

8.10 A person being transported interstate for involuntary admission must be admitted to the closest appropriate facility that can admit the person (see 8.3).⁶ The person must not be taken to another location (for example, an emergency department that is not part of a psychiatric inpatient facility) unless this is required for immediate treatment or to facilitate the transport.⁷

Admission of a person from NSW to a Victorian approved mental health service as an involuntary patient

8.11 Division 2 (‘Involuntary Patients’) of Part 3 (‘Admission of Patients’) of the Victorian Act applies to the transport and admission of a person subject to a NSW Schedule 2 as if that person were subject to a request and recommendation under section 9 of the Act.⁸

⁴ These requirements are due to the legislative provisions applying to cross-border admissions: sections 93E and 93F of the Victorian Act; and sections 286F and 286I of the NSW Act.

⁵ A person apprehended by police under section 10 of the Victorian Act must first be examined by a medical practitioner registered in Victoria and be made subject to a request and recommendation before being taken to a NSW facility.

⁶ The Victorian and NSW Acts require that the person be taken to and admitted to an approved mental health service or NSW gazetted facility.

⁷ Unless the person is from NSW and the Victorian authorised psychiatrist is considering placing the person on a Victorian CTO – see Part 11.

⁸ The person does not need to attend the approved mental health service if the Victorian authorised psychiatrist places the person on a Victorian CTO – see Part 11.

- 8.12 Where a person has been apprehended by a NSW Police Officer under the NSW Act and there is no NSW Schedule 2 certificate, the person may be detained in a Victorian approved mental health service to allow a Request and Recommendation to be completed as soon as possible.
- 8.13 On admission, the normal procedures for involuntary patients (including treatment and review) apply to the person as if they had been admitted pursuant to a request and recommendation under section 12 of the Victorian Act.

Admission of a person from Victoria to a NSW gazetted mental health service as an involuntary patient

- 8.14 A person subject to a request and recommendation, or request and authority to transport, can be admitted to a NSW gazetted mental health service as a NSW involuntary patient.
- 8.15 On admission, the person is treated as if they were admitted under the NSW Act.

Who may transport a person across the border for involuntary admission?

- 8.16 The persons authorised to transport a person from NSW to a Victorian approved mental health service, or from Victoria to a NSW gazetted mental health service, for admission as an involuntary patient, are:
- A NSW or Victorian Police Officer;
 - A NSW or Victorian Ambulance Officer;
 - a prescribed person for the purposes of section 9 of the Victorian Act⁹;
 - the person making the Victorian Schedule 1 Request;
 - a person authorized by the person making the Victorian Schedule 1 Request;
 - The medical superintendent of a NSW gazetted mental health service or any other person authorized to do so by the medical superintendent.
- 8.17 See Part 13 ('Transport') for more information.

9 Transfer of treatment and care of inpatients

General

- 9.1 If an interstate person is admitted to a facility as an involuntary or informal inpatient, and there is a facility in the person's home State which is closer to the person's usual place of residence, the person is to be transferred to that closer facility as soon as a bed becomes available and the transfer is appropriate. However, in respect of involuntary patients, the transfer can only take place if the Mental Health Review Board has reviewed and confirmed the transfer (see 9.10-9.11).
- 9.2 On request, the closer facility should make a bed available if reasonably practical.

⁹ The definition of 'prescribed person' is included in Part 5 (Definitions) of this Circular.

- 9.3 Where the facilities are of similar distances to the person's place of residence, the person should normally be transferred to the facility in their home State.
- 9.4 Transfer procedures should be commenced as soon as practicable so that the person can be transferred when appropriate, particularly for involuntary inpatients as the procedure will take days to complete (see 9.10-9.11).

Persons to whom this Part does not apply

- 9.5 Part 9 does not apply to persons on Community Treatment Orders (see Part 11).
- 9.6 Part 9 does not apply to a person absent without leave from NSW who is, or can be made, subject to an Interstate Civil Apprehension Order (see Part 12, especially 12.18). Such a person may be admitted to a Victorian facility pending being returned to a NSW facility. The Victorian Mental Health Review Board does not review the return of such a person to NSW.

Informal (voluntary) inpatients – transfer procedure

- 9.7 The responsible clinician at the treating facility will make decisions on appropriate arrangements for transfer in consultation with the relevant responsible clinician at the facility in the person's home State. The responsible clinician at the receiving facility will facilitate the transfer.
- 9.8 Informal (voluntary) inpatients cannot be transferred without their consent.

Involuntary inpatients – transfer procedure requirements

- 9.9 The following procedures apply to the transfer of an involuntary inpatient from a Victorian approved mental health service to a NSW gazetted mental health service, and vice versa.¹⁰

Procedure for transferring a Victorian involuntary patient to NSW

- 9.10 A Victorian approved mental health service may request the transfer of an involuntary inpatient to a NSW gazetted mental health service if:
- the inpatient could continue to be detained in a Victorian approved mental health service; and
 - the authorised psychiatrist or chief psychiatrist is satisfied that the transfer will be of benefit to the inpatient or is necessary for the inpatient's treatment.
- 9.11 The procedure is as follows:
- The Victorian service has initial consultations with the NSW service concerning the inpatient and the transfer request the Victorian service is proposing.

¹⁰ These requirements are due to the legislative provisions applying to cross-border transfers: sections 93G and 93H of the Victorian Act; and sections 286H and 286K of the NSW Act.

- The Victorian service provides the NSW service with an Interstate Transfer Request Notice (Victorian designation: PSY 30).
- If the medical superintendent of the NSW mental health service approves the transfer in writing, the Victorian service makes a section 93G Transfer Order (PSY 28) and sends the order and supporting material to the Victorian Mental Health Review Board (“the Board”) for review.
- The Board conducts the review of the Transfer Order in accordance with sections 31-35 of the Victorian Act. Reviews of Transfer Orders are likely to be heard by a single member of the Board.
- If the Board confirms the transfer order, the Victorian service arranges the transport of the inpatient (see 9.13) and forwards to the NSW service the Section 93G Transfer Order and any other information, including a copy of the relevant medical records of the patient, as is reasonably required for the continued care and treatment of the person by the NSW service.
- On admission to the NSW facility, the patient is dealt with as if that patient was an involuntary patient under the NSW Act (a continued treatment patient) and ceases to be an involuntary patient under the Victorian Act.

Note: The following issues should be considered by AMHS in relation to the review of the Transfer Order by the Mental Health Review Board:

- The Board has indicated it may reduce the usual notice period for the review of the Transfer Order to between 2-7 days if the patient does not object to the transfer. Evidence of the patient’s consent, views or wishes should be forwarded with the Order. Otherwise, the notice period may be at least seven days in accordance with section 32 of the Victorian Act.
- The Board must be satisfied that the transfer will be of benefit to the patient or is necessary for the patient’s treatment, so evidence of this should be supplied with the Transfer Order.
- Where a review of the continued detention of the involuntary patient is due, or an appeal against that detention has been lodged, the Board may determine to schedule that matter and the review of the Transfer Order on the same date.

Procedure for transferring a NSW involuntary patient to Victoria

9.12 A NSW involuntary patient (being a continued treatment patient or temporary patient) who is detained in a NSW gazetted mental health service may be transferred to a Victorian approved mental health service. The procedure is as follows:

- The NSW service has initial consultations with the Victorian service concerning the patient and the transfer request the NSW service is proposing;
- The NSW service provides the Victorian service with an Interstate Transfer Request Notice.
- If the authorised psychiatrist of the Victorian service approves the transfer request in writing, the NSW service arranges the transport of the patient (see 9.13) and forwards to the Victorian service a NSW Transfer Order and any other information, including a copy of the relevant medical records of the patient, as is

reasonably required for the continued care and treatment of the person by the Victorian service.

- A person subject to a NSW Transfer Order can be taken¹¹ and admitted to a Victorian approved mental health service.
- The person is admitted under section 12 of the Victorian Act as an involuntary patient, with the NSW Transfer Order being taken as a request and recommendation. The normal procedures for involuntary patients (including treatment and review) apply to the person. For example, the authorised psychiatrist must examine the person within 24 hours of the person being admitted; and the Victorian Mental Health Review Board must review the continued detention of the patient within 8 weeks after the patient is admitted.
- The patient ceases to be a patient subject to the NSW Act on admission to the Victorian approved mental health service.

Persons authorised to transport patients across the border

9.13 An involuntary patient may be transferred to an interstate facility by:

- A NSW or Victorian Police Officer;
- A NSW or Victorian Ambulance Officer;
- a prescribed person for the purposes of section 9 of the Victorian Act¹²;
- the medical superintendent of a gazetted mental health service or any other person authorized to do so by the medical superintendent;
- the authorized psychiatrist of the approved mental health service or any person authorized by the authorized psychiatrist;
- an employee of the Victorian Department of Human Services authorized by the Chief Psychiatrist.

9.14 See Part 13 ('Transport') for more information.

10 Transfer of treatment and care of non-admitted patients

10.1 The assessment and referral of persons for non-admitted treatment should follow the 'Referrals, triage and assessment' principles in Part 7.

10.2 A mental health service that provides a service to an interstate person should make arrangements for the transfer of care to an appropriate mental health service in the person's home State as soon as appropriate where:

- the person is discharged as an inpatient, or
- treatment in the community has been provided.

10.3 The treating service should contact the appropriate mental health service in the person's home State to arrange the transfer of the person's care with the person's case

¹¹ The person does not need to attend the approved mental health service if the Victorian authorised psychiatrist places the person on a Victorian CTO – see Part 11.

¹² The definition of 'prescribed person' is included in Part 5 (Definitions) of this Circular.

manager. The duty worker (or equivalent) in the service in the person's home State will perform the function of case manager if one has not been assigned. The treating service is responsible for ensuring the person is successfully linked with the mental health service in their home State before closing the case.

- 10.4 Upon the transfer of care, the mental health service in the person's home State is responsible for ensuring subsequent service provision and continuity of care to the person.

11 Community Treatment Orders

Introduction

- 11.1 A Victorian Community Treatment Order (CTO) may be made by Victoria for a person who resides in NSW, and a NSW CTO may be made by NSW for a person who resides in Victoria.¹³
- 11.2 However, a CTO should only be made and administered by one State in relation to a resident of the other State where a local protocol has been made between the relevant Victorian and NSW mental health services. The protocol should ensure appropriate communication takes place between the local Victorian and NSW services.
- 11.3 Due to the provisions of the NSW Act, the limitations on the implementation of a Victorian CTO in relation to a person who is in NSW at the time of treatment are:
- electro convulsive therapy cannot be administered in NSW under a Victorian CTO; and
 - only staff of an approved mental health service can treat a person subject to a Victorian CTO in NSW (for example, any registered medical practitioner who provides treatment under the CTO must be a staff member of the approved mental health service).

These limitations do not apply if the person subject to the CTO is in Victoria at the time of treatment.

Who can implement a CTO in the other State?

- 11.4 CTOs can *only* be implemented (for example, treatment provided or other functions exercised) in the other State by the following people, due to the legislative provisions for interstate CTOs:
- Staff of an approved mental health service in relation to a Victorian CTO.
 - Staff of a NSW Health Care Agency¹⁴ in relation to a NSW CTO.

¹³ The legislative provisions applying to cross-border CTOs are sections 93I and 93J of the Victorian Act; and sections 286M and 286N of the NSW Act.

¹⁴ 'NSW Health Care Agency' means a hospital or other health care service declared by an order under section 114 of the NSW Act to be a health care agency.

Making a CTO for a person living in the other State

- 11.5 CTOs are made in the usual way under each State's legislation
- A Victorian CTO can only be made by the authorised psychiatrist under section 14 of the Victorian Act (see the November 2001 'Community Treatment Order Guidelines' issued by the Chief Psychiatrist).
 - A NSW CTO can only be made by the NSW Mental Health Review Tribunal or a NSW Magistrate for a NSW involuntary patient detained in NSW gazetted mental health services (section 131 of the NSW Act).

Making a Victorian CTO for a NSW person without an inpatient admission

- 11.6 Under the Victorian Act a person may be admitted as an involuntary patient to an approved mental health service without being required to be taken to an approved mental health service (section 12(4A)). Therefore, a person subject to a request and recommendation can be made subject to a CTO as an alternative to inpatient admission.
- 11.7 Similarly, a NSW person can be placed on a Victorian CTO without being taken to an approved mental health service if the person is subject to:
- a NSW Schedule 2 certificate and the person has not been admitted to a NSW facility on the basis of that certificate - see 8.11; or
 - a NSW Transfer Order if the person has been admitted to a NSW facility – see 9.12.

An authorised psychiatrist must examine the person within 24 hours of admission to the approved mental health service and must be satisfied that the requirements for making a CTO are met.¹⁵

- 11.8 In practice, a person being placed on the CTO in this manner would usually be known either by the community team or by the authorised psychiatrist. It is this prior contact with the person that helps to inform the authorised psychiatrist's judgement as to the requirement of a CTO, the appropriateness of its initiation in this manner, and the formulation of a treatment plan.
- 11.9 A person apprehended in NSW by NSW Police who is not subject to a NSW Schedule 2 certificate may be taken to an approved mental health service to allow a request and recommendation to be completed – see 8.12. They can then be placed on a CTO if appropriate.

Transfer required before an involuntary inpatient of one State can be discharged onto a CTO of the other State

- 11.10 An involuntary inpatient admitted to a facility in one State cannot be discharged directly onto a CTO of the other State. If the responsible clinician considers the patient

¹⁵ The Chief Psychiatrist's "Community Treatment Order Guidelines" issued in July 2001 provide guidance as to the procedure and when admission is considered to occur – see 5.1.2 of the Guidelines.

should be discharged onto a CTO of the other State, the clinician should request a transfer to a facility in that State (see Part 9). The receiving facility has responsibility for appropriate discharge planning, if it accepts the transfer.

- 11.11 Note that where a Transfer Order exists authorizing the transfer of a NSW inpatient to a Victorian facility, the authorized psychiatrist of the Victorian service can place the person on a Victorian CTO without requiring that the person be taken to an approved mental health service – see 11.7.

Transfer from a CTO of one State to a CTO of the other State

- 11.12 There is no legislative power to directly transfer a person on a CTO of one State onto a CTO of the other State. However, there are indirect procedures to achieve this aim, outlined below.
- 11.13 If a CTO is revoked in accordance with section 14(4) of the Victorian Act and the person is returned to the inpatient facility, an application can be made to transfer the person to the other State (see Part 9). The receiving facility has responsibility for appropriate discharge planning, if it accepts the transfer.
- 11.14 Alternatively, the health service implementing the CTO arranges for assessment of the person in the other State. If the other State makes a CTO for that person, the first State may discharge its CTO when appropriate.

However, the person will need to be admitted as an involuntary treatment in the other State before a CTO can be made. This means that:

- in respect of a NSW CTO, the person will need to be admitted to a NSW inpatient facility as a temporary patient or a continued treatment patient (section 131 of NSW Act);
- in respect of a Victorian CTO, the person will need to be subject to a request and recommendation.¹⁶

Revocation of a CTO

- 11.15 If a Victorian CTO is revoked and the patient is absent without leave in NSW, the patient may be apprehended in NSW (see Part 12). The person will usually be returned to a Victorian facility but may be admitted to a facility in NSW – see 12.17.
- 11.16 There are two *other* scenarios in which a person whose Victorian CTO has been revoked can be admitted to a NSW facility:
- the person is first returned as an inpatient to a Victorian facility, and the person is subsequently transferred to NSW in accordance with Part 9; or
 - the person is made subject to a NSW Schedule 2 Certificate in NSW in accordance with NSW assessment and admission procedures (for example, if the person comes to the attention of NSW mental health services who are not aware of the Victorian CTO).

¹⁶ Although the person does not need to be taken to an approved mental health service – see 11.6.

12 Apprehension of persons absent without leave

Introduction

- 12.1 The VIC/NSW Ministerial Agreement relating to cross-border services provides¹⁷ for the apprehension and return of:
- persons absent without leave from an approved mental health service and liable to apprehension under section 43 of the Victorian Act and who are suspected on reasonable grounds to be in NSW;
 - persons absent without leave from an approved mental health service due to the revocation of a Community Treatment Order and liable to apprehension under section 14(4A) or 36(5) of the Victorian Act and who are suspected on reasonable grounds to be in NSW;
 - persons absent without leave from a NSW gazetted mental health service and liable to apprehension under section 76 of the NSW Act and who are suspected on reasonable grounds to be in Victoria;
 - persons subject to an order for apprehension for breach of a community treatment order under section 139 of the NSW Act and who are suspected on reasonable grounds to be in Victoria.
- 12.2 A 'Civil Interstate Apprehension Order' ("the Order") is used to authorise the apprehension of the person absent without leave (Victorian designation: PSY 29).
- 12.3 There is a separate 'forensic' VIC/NSW Ministerial Agreement (see Appendix 6) relating to the apprehension and return of forensic patients. This Circular does not apply to the forensic Agreement. The Office of the Chief Psychiatrist in Victoria should be contacted in relation to queries about absconding forensic patients, including:
- NSW forensic patients as defined in Schedule 1 to the NSW Act; or
 - Victorian security patients or forensic patients as defined in section 3 of the Victorian Act; or
 - Victorian 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) including patients on Restricted Community Treatment Orders.

Apprehension of Victorian involuntary patients absent without leave in NSW

- 12.4 The following principles apply to the apprehension and return of Victorian involuntary patients absent without leave in NSW.
- Note:* Reference should be made to the 'Apprehension of Patients without Leave' Clinical Practice Guidelines (April 1997). A 'Revocation of CTO' form (PSY 9) or 'Authority to Apprehend Involuntary Patient Absent without Leave' (PSY 15) should be completed where necessary.

¹⁷The following legislative provisions apply to cross-border apprehensions: sections 93K and 93L of the Victorian Act; and sections 286P of the NSW Act

- 12.5 The Victorian patient cannot be apprehended and returned from NSW unless a Civil Interstate Apprehension Order has been issued (Victorian designation: PSY 29). The only exception is in an emergency situation (see 12.9).
- 12.6 Before or after the Order is issued, reasonable efforts should be made to persuade a patient who is absent without leave to voluntarily return to Victoria.
- 12.7 The Order may be issued by:
- the authorized psychiatrist of the Victorian facility from which the patient absconded; or
 - the chief psychiatrist of Victoria.
- 12.8 If assistance with the apprehension is required, the person issuing the Order should supply copies to, and consult with, the relevant mental health services, police and/or other persons requested to apprehend the patient. Part 12.12 below lists the persons authorised to apprehend the patient.
- 12.9 In an emergency¹⁸, a person who could issue the Order may instead immediately request the apprehension of the patient provided:
- the request outlines the nature of the emergency;
 - a copy of the Civil Interstate Apprehension Order is provided within 24 hours of the initial request for apprehension.

Apprehension of NSW involuntary patients absent without leave in Victoria

- 12.10 A similar process to that outlined above (12.7-12.11) applies for the apprehension of NSW involuntary patients absent without leave in Victoria, except that the Civil Interstate Apprehension Order is issued by the medical superintendent of the NSW mental health service from which the patient absconded.
- 12.11 Victorian persons authorised to apprehend the patient (see 12.14 below) may be asked for assistance in apprehending and returning the NSW involuntary patient.

Persons authorised to apprehend the patient

- 12.12 Persons authorised to apprehend and transport an involuntary patient absent without leave are:
- a NSW or Victorian Police Officer;
 - an authorized psychiatrist or any person authorized by the authorized psychiatrist;
 - a prescribed person for the purposes of section 9 of the Victorian Act;¹⁹
 - a Victorian Ambulance Officer;
 - the NSW medical superintendent of the facility or a person authorized by the NSW Minister or the medical superintendent;

¹⁸ An emergency situation arises when the delay involved in obtaining an Order may place the patient's health or safety at risk or place members of the public at risk (through deterioration of the patient's physical or mental condition or otherwise).

¹⁹ The definition of 'prescribed person' is included in Part 5 (Definitions) of this Circular.

- A member of staff of the NSW health care agency named in the order; and
 - an employee of the Victorian Department of Human Services authorized by the Chief Psychiatrist.
- 12.13 See Part 13 ('Transport') for more information.

After the patient is apprehended

- 12.14 Once apprehended, the facility from which the person absconded is responsible for arranging the return of the person and meeting transport costs, unless otherwise agreed.
- 12.15 Where the Civil Interstate Apprehension Order specifies that a patient should be taken to a particular facility, every effort should be made to return the person to that facility unless this is not reasonably practicable.
- 12.16 If this is not reasonably practicable, the patient may be taken to a facility in either State, preferably a facility in the State from which they absconded, being:
- a NSW gazetted mental health service (subject to consultation with the medical superintendent);
 - or a Victorian approved mental health service (subject to consultation with the authorized psychiatrist).

Where a patient absconding from one State is taken to a facility in the other State

- 12.17 If a patient absent without leave from Victoria is apprehended and taken to a facility in NSW, that patient shall be dealt with as if the patient had been taken to and detained in a hospital under the NSW Act, and cease to be an involuntary patient under the Victorian Act. The patient can later be transferred to Victoria pursuant to Part 9 of this Circular, if appropriate.
- 12.18 If a patient absent without leave from NSW is apprehended and taken to an approved mental health service in Victoria, that service may admit the patient as a Victorian involuntary patient pending their return to NSW. The Victorian Act requires that such a person *must* be returned to an interstate facility, but allows for admission to an approved mental health service pending the return of the patient.²¹

Note: The Mental Health Review Board does not review the return of the person.

13 Transport

Deciding who should transport a person

- 13.1 This Circular lists the services and officers who are legally authorised to transport persons between NSW and Victoria in various scenarios. It is recognised, however, that which service/officer will be appropriate to provide transport in any particular case will vary.

²¹ This requirement is pursuant to sections 93K(3) and 93K(5) of the Victorian Act.

- 13.2 Transport of persons with a mental illness shall preferably be by ambulance. However, ambulance resources are limited and in non-urgent cases other forms of transport, such as a mental health service vehicle, must be considered before a request for an ambulance is made.
- 13.3 Where a person cannot be safely transported by any other means, it will be necessary to call for:
- An ambulance (with or without an accompanying mental health professional or police member in the ambulance); and/or
 - A police vehicle.

Ambulance transport – protocols and costs

- 13.4 Ambulance transport of persons shall be pursuant to the Victorian Department of Human Services *Ambulance Transport of People with a Mental Illness* Protocol where transport is by Victorian Ambulance services and NSW Ambulance Service policies and protocols where transport is by NSW Ambulance.
- 13.5 Ambulance transport must be used for all persons who have been sedated for the purpose of safe transport to a mental health service.
- 13.6 The costs of ambulance transports pursuant to this Circular for the transfer of a NSW resident between two Victorian hospitals/mental health facilities will be met by the NSW Area Health Service in the person's area of origin. The ambulance transport costs for the transfer of a Victorian resident between two NSW hospitals/mental health facilities will be met by the Area Mental Health Service in the person's area of origin.
- 13.7 The costs of ambulance transports pursuant to this Circular between NSW and Victorian hospitals / mental health facilities will be met by the relevant health service in the person's home State (being the relevant NSW Area Health Service or Victorian Area Mental Health Service).
- 13.8 The costs of ambulance transports for a person transported from the community to a facility in the other State for involuntary admission will be met by the Ambulance Service in the person's home State.

Police transport

- 13.9 Police involvement in the transport of persons is an option of last resort, where there is a significant risk of harm to the person or others. Police involvement in transport shall be pursuant to the Victorian 'Protocol Between Victoria Police and the Department of Human Services Mental Health Branch' where transport is by Victoria Police and the 'Memorandum of Understanding between NSW Police and NSW Health' where transport is by NSW Police.
- 13.10 Where police assistance is requested for transport to an interstate location (including an accident and emergency department or mental health service), triage/mental health service staff must take all reasonable steps to expedite the management of the situation so that police resources will not be further required following the transport.

Entry of premises, restraint, and sedation for the purposes of transporting a person

- 13.11 The Victorian Act provides, for the purpose of taking a person subject to a recommendation to an approved mental health service, sections determining whether:
- premises may be entered in order to find the person - section 9(5);
 - the person may be reasonably restrained in order to be safely transported – section 9(5);
 - the person may be sedated in order to be safely transported – section 9(6);
 - prescribed forms relating to restraint and sedation must be completed – section 9(7).

- 13.12 Part 5A of the Victorian Act allows the section 9(5-7) powers to be used in the following interstate transport scenarios as if the person being transported were subject to a recommendation and being taken to a Victorian approved mental health service:

Admission

- a person subject to a NSW Schedule 2 certificate being transported from NSW to a Victorian facility for involuntary admission pursuant to Part 8;
- a person subject to a request and recommendation being transported from Victoria to a NSW facility for involuntary admission pursuant to Part 8;
- *Note:* A person being transported under an ‘authority to transport without recommendation’ (section 9(7A)(c) of the Victorian Act) may be reasonably restrained under section 9(5) if this is necessary for the person to be safely transported, but should not be sedated. If a prescribed medical practitioner registered in Victoria is available to prescribe sedation, the practitioner should complete a recommendation.

Transfer

- an involuntary patient being transferred from a NSW facility to a Victorian facility, or from a Victorian facility to a NSW facility, pursuant to Part 9.

Apprehension and Return

- an involuntary patient being transported from Victoria to a NSW facility following apprehension of the patient pursuant to Part 12.
- an involuntary patient being transported from NSW to a Victorian facility, following apprehension of the patient pursuant to Part 12, but only during the Victorian component of the journey. In respect of the NSW component of the journey, section 9(5-7) of the Victorian Act does not apply. However, section 286P of the NSW Act provides the person may be apprehended and taken to and detained in a inpatient facility. The person can be restrained to the minimum extent necessary to secure the person safely during the NSW component of the journey.

- 13.13 Refer to section 9(5-7) of the Victorian Act for the persons authorised to exercise these powers. Note that:

- other than in an emergency, a prescribed medical practitioner with Victorian registration should also be registered by the NSW Medical Board if exercising the section 9(6) power to sedate a person while that practitioner is in NSW (see Part 15 for information on registration requirements).

Note: events such as transport for an unplanned admission or apprehension of an involuntary patient may constitute an emergency, but planned events such as the transfer of an involuntary patient would not constitute an emergency.

- Victorian registered nurses employed by a health service in Victoria do not need to hold NSW registration if they exercise any 'prescribed function' in NSW for a period of less than 24 hours (see Part 15 for more information on registration requirements). Pursuant to this exemption, a Victorian registered nurse does not need to be registered in NSW for the purposes of administering sedation, under the direction of a prescribed medical practitioner with Victorian registration, in the scenarios outlined in 13.12 above

14 Liaison Committees

- 14.1 The effective operation of the Agreement relies on collaborative relationships based on good communication and regular liaison between stakeholders including Victorian and NSW mental health services, police, ambulance services, carers and consumers.
- 14.2 Victorian Area Mental Health Services have mental health services / ambulance / police liaison committees, with representatives from each of the services, as well as consumer and carer representatives. The committees meet on a regular basis to discuss local issues regarding interaction between services, and discuss and resolve problems that may arise.
- 14.3 NSW Area Health Services and/or Health Networks will establish similar liaison committees.
- 14.4 Relevant members of Victorian and NSW committees should liaise to assist with efficient cross-border service delivery and to discuss and resolve problems that arise. Liaison meetings should begin by 31 March 2003 and be held as often as necessary.
- 14.5 Any disputes arising over the implementation of these guidelines, the Agreement or any other issues arising in relation to the interstate movement of persons covered by the Agreement will at first instance be addressed through the local NSW and Victorian liaison committees.
- 14.6 Where disputes cannot be resolved via the local committees, they should be referred to:
 - where the issue relates to an agency other than a mental health service, the appropriate management of that agency; or
 - where the issue relates to mental health services, the Mental Health Director or Medical Superintendent of the relevant Victorian Area Mental Health Service and NSW Area Health Service.
- 14.7 If disputes cannot be resolved in this manner, they shall be referred to the Contact Officers for resolution pursuant to the Agreement. The Contact Officers are the Director of NSW Health's Centre for Mental Health, and the Director of the Department of Human Services' Mental Health Branch, or their delegates.
- 14.8 The liaison committees may identify where local protocols (see Part 6) by and/or between particular services may be appropriate.

Chapter C: Miscellaneous

15 Professional Registration

- 15.1 Clinical staff of Victorian Area Mental Health Services (nurses, medical practitioners and psychologists) who are registered in Victoria and who may need to carry out professional duties in NSW after the commencement of the Ministerial Agreement between Victoria and NSW should apply to the relevant NSW board for registration.
- 15.2 The Nurses Registration Board NSW, the NSW Medical Board and the Psychologists Registration Board of NSW have agreed to facilitate applications to waive the annual registration fee and any applicable application fee.
- 15.3 However, it is not necessary for clinical staff to hold NSW registration if the only basis on which they may need to be in NSW is to apprehend a person who is absent without leave, or to transport a person across the border.
- 15.4 Victorian registered nurses employed by a health service in Victoria do not need to hold NSW registration if they exercise any 'prescribed function' in NSW for a period of less than 24 hours. 'Prescribed functions' include functions exercised when entering NSW to pick up a patient, and functions exercised while a nurse is on escort duty accompanying a patient on a journey that begins or ends outside NSW.
- 15.5 Victorian registered medical practitioners do not need to hold NSW registration if carrying out professional duties in an emergency. The Medical Board of NSW has advised that emergencies may arise where mental health patients are in crisis situations and no NSW medical practitioner is available. It is recommended, however, that Victorian practitioners who anticipate being called out to emergencies in NSW on a regular basis should hold NSW registration.²²
- Note:* events such as transport for an unplanned admission or apprehension of an involuntary patient may constitute an emergency, but planned events such as the transfer of an involuntary patient would not constitute an emergency.
- 15.6 Further information on the procedure for applying for NSW registration is contained in Appendix 5.

16 Insurance

- 16.1 Insurance coverage for mental health services is provided under the insurance program arranged by DHS for funded healthcare agencies. The insurer for the program is the Victorian Managed Insurance Authority. The program is a Managed Fund incorporating various insurance policies including but not limited to:
- Medical Malpractice;
 - Public/Products Liability;
 - Professional Indemnity (non-treatment risk);
 - Directors' & Officers' Liability

²² Therefore, other than in an emergency, a prescribed medical practitioner with Victorian registration should also be registered by the NSW Medical Board if exercising the section 9(6) power to sedate a person while that practitioner is in NSW (see Part 13 for information on section 9 powers).

- 16.2 The insurance cover protects an AMHS as either an incorporated body or part of an incorporated body auspiced to provide mental health services such as a public hospital, and which is subject to a DHS service agreement.
- 16.3 The geographical boundaries for the cover provided under the program includes the Commonwealth of Australia. The legal entity, being the AMHS or public hospital, is indemnified for legal liability arising from the authorised provision of services including cross-border activities. Indemnity extends to employed staff carrying out such services.
- 16.4 External contractors/sub-contractors are not covered under the insurance program and need to have their own insurance if working interstate, which should be stipulated on any contract for service between the entity and the contractor.

17 Workcover

- 17.1 The entitlement of Victorian employees to compensation for injuries occurring while undertaking work activities outside Victoria is detailed in the *Accident Compensation Act 1985*, at Part 84 – ‘Compensation for Workers Injured Outside Victoria’.
- 17.2 In effect, a worker is entitled to make a claim for compensation if the employer resides or has a place of business in Victoria and the worker was engaged in Victoria. Entitlement to compensation for injuries occurring interstate requires that the person would have been entitled to compensation under the Act if the injury had occurred in Victoria

18 Cross-border project coordinator

- 18.1 Neil Brewer has been employed by the Bendigo Health Care Group as a coordinator for the cross-border project:
- Telephone: 03 54547601
 - Email: NBrewer@bendigohealth.org.au

Appendices

1. Ministerial Agreement

2. Interstate Guidelines

3. Interstate legislation

- Part 5A of the Victorian Act
- Chapter 10A of the NSW Act

4. Forms

Common

- Civil Interstate Apprehension Order (PSY 29)
- Interstate Transfer Request Notice (PSY 30)

Victoria

- PSY 28 (Section 93G) Transfer Order

NSW

- Schedule 2

5. Information on interstate professional registration procedures

6. Forensic Ministerial Agreement