

MEMORANDUM OF AGREEMENT

DATED this

18th

day of

March

2009

BETWEEN :

The **MINISTER FOR HEALTH FOR THE STATE OF NEW SOUTH WALES** of Level 31, 1 Farrer Place, Sydney 2000 (“the New South Wales Minister”)

AND

The **MINISTER FOR MENTAL HEALTH AND SUBSTANCE ABUSE FOR THE STATE OF SOUTH AUSTRALIA** of Level 9, 31 Flinders Street, Adelaide 5000 (“the South Australian Minister”)

PART 1: RECITALS

WHEREAS

- A. Chapter 8 of the *Mental Health Act 2007* (NSW) (“the New South Wales Act”) provides for the interstate application of mental health provisions and laws and, in particular, the transfer of involuntary patients between States and the apprehension of interstate persons patients who are absent without leave.
- B. The *Mental Health Regulations 1995*, made pursuant to s37(2)(g) of the *Mental Health Act 1993* (SA) (“the South Australian Act”), authorise the transfer between South Australia and any other State or Territory of the Commonwealth of persons who are, as a result of mental illness, subject to orders for detention or treatment or who have been apprehended because of apparent mental illness.
- C. The New South Wales Minister may, in accordance with s171 of the New South Wales Act, enter into an agreement with a Minister of another State for or with respect to the application of interstate mental health laws, including transfer, detention and apprehension of persons and any matters contained in or ancillary to Chapter 8 of the New South Wales Act.

- D. The South Australian Minister may enter into an agreement with a Minister responsible for administering a corresponding law about the transfer between South Australia and another State or Territory of the Commonwealth of persons who are, as a result of mental illness, subject to orders for detention or treatment or who have been apprehended because of apparent mental illness.
- E. By this Agreement, the New South Wales Minister and the South Australian Minister provide for the administration of Chapter 8 of the New South Wales Act and the South Australian Act and provide for or with respect to:
- (i) the involuntary admission of interstate persons to facilities in New South Wales and South Australia;
 - (ii) the planned transfer of interstate persons between facilities in New South Wales and South Australia;
 - (iii) the apprehension of interstate persons who abscond from New South Wales to South Australia and from South Australia to New South Wales.

IT IS AGREED:

PART 2: DEFINITIONS AND INTERPRETATION

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

“Agreement” means this Agreement including the Schedules attached hereto;

“Approved treatment centre” or **“ATC”** means any hospital, clinic or other premises, or any particular part of such a place, declared under Part 2 of the South Australian Act to be an ATC for the purposes of the South Australian Act;

“Authorised Medical Officer” has the same meaning as under the definition of “authorised officer: in s4 of the New South Wales Act

“Civil Interstate Apprehension Order” means a document that sets out the information specified in Part 7 of the Agreement and is set out in Schedule 3 to this Agreement, as amended from time to time in accordance with clauses 7.2;

“Civil Interstate Transfer Request Notice” means a document that sets out the information specified in Part 6 of the Agreement and is set out in Schedule 2 to this Agreement, as amended from time to time in accordance with clauses 6.6;

“contact officer” means the person or persons so described in Schedule 1 to this Agreement;

“corresponding law” means:

- (a) with respect to New South Wales, the South Australian Act when declared as such under and in accordance with s170 of the New South Wales Act; and
- (b) with respect to South Australia, the New South Wales Act when declared as such in the *Mental Health Regulations 1995 (SA)*;

“declared mental health facility” means premises in relation to which the Director General of the Department of Health has made an order under s109 of the New South Wales Act;

“detained patient” with respect to South Australia, means any person who has a mental illness and who has been admitted to an ATC under the *Mental Health Act 1993 (SA)* notwithstanding that he or she may be unlawfully at large or on leave of absence from the centre;

“Director”, of an approved treatment centre (ATC) with respect to South Australia, has the same meaning as under the South Australian

Act;

“facility” means a declared mental health facility in New South Wales or an approved treatment centre (ATC) in South Australia;

“interstate person” with respect to New South Wales, means a person who at the relevant time is in South Australia; and, with respect to South Australia, a person who at the relevant time is in New South Wales;

“involuntary patient” in New South Wales has the same meaning as under paragraph (a) of the definition of ‘involuntary patient’ in s4 of the New South Wales Act;

“medical superintendent”, with respect to New South Wales, has the same meaning as under paragraph (a) of the definition of ‘medical superintendent’ in s4 of the New South Wales Act;

“New South Wales Act” means *the Mental Health Act 2007 (NSW)*, including any regulations and orders made under that Act (but for the purposes of this Agreement a reference to the New South Wales Act does not, unless expressly provided, include a reference to the South Australian Act on the basis that the South Australian Act has been declared a corresponding law under that Act);

“New South Wales Regulations” means the Regulations made pursuant to Chapter 9 of the New South Wales Act in relation to matters provided for in this Agreement;

“New South Wales Department of Health” means the Department of Health established by Administrative Changes Orders made in accordance with the Public Sector Employment and Management Act 2002 (NSW) and any successor in law to the said Department;

“receiving facility” means the facility to which it is proposed to transfer a person in accordance with Part 6 of this Agreement;

“referring facility” means the facility from which it is proposed to transfer a person in accordance with Part 6 of this Agreement;

“South Australian Act” means the *Mental Health Act 1993 (SA)*, including the *Mental Health Regulations 1995 (SA)* and any other regulations and orders made under that Act but for the purposes of this Agreement a reference to the South Australian Act does not, unless expressly provided, include a reference to the New South Wales Act on the basis that the New South Wales Act has been declared a corresponding law under that Act;

“South Australian Department of Health” means the Department of that name established pursuant to s7 of the *Public Sector Management Act 1995 (SA)* and any successor in law to the said department;

“South Australian Regulations” means Regulations made pursuant to the South Australian Act.

2.2 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, schedules and annexure are references to clauses of and schedules to and annexure to this Agreement (unless stated otherwise);
- (d) references to a person include the legal personal representatives, successors and assigns 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 a reference to a calendar

month.

PART 3: COMMENCEMENT OF AGREEMENT

- 3.1 The parties acknowledge that this Agreement cannot be given full effect unless and until:
- (a) the New South Wales Regulations, are made and commenced; and
 - (b) Regulations pursuant to s37(2)(g) of the South Australian Act are made and commenced; and
 - (c) this agreement has been executed by both parties.
- 3.2 The parties agree that this Agreement shall commence on the day that the last of each of the things listed in this clause occurs.

PART 4: PURPOSE AND SCOPE OF AGREEMENT

- 4.1 The purpose of this Agreement is to provide for matters in connection with the administration and implementation of Chapter 8 of the New South Wales Act and those provisions of the South Australian Act dealing with the interstate application of mental health laws.
- 4.2 The application of the New South Wales Act and the South Australian Act respectively is subject to the express limitations and conditions imposed by the terms of this Agreement;
- 4.3 Nothing in this clause or otherwise in this Agreement is to be taken or construed as extending, limiting or otherwise varying the provisions of the New South Wales Act or the South Australian Act or a corresponding law declared under either Act.
- 4.4 The parties agree that they will co-operate in a spirit of goodwill to facilitate the purposes of this Agreement.
- 4.5 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 which is likely to affect the obligations arising under this Agreement or the application and effect of the corresponding laws.

PART 5: INTERSTATE INVOLUNTARY ADMISSIONS

5.1 This Part applies only to the admission of interstate persons under a corresponding law.

Involuntary Admission under Corresponding Laws

5.2 The parties agree:

(a) a person

(i) subject to a certificate under s19 of the New South Wales Act indicating that the person is a "mentally ill person" or a "mentally disordered person", or a person

(ii) apprehended by a New South Wales Police Officer in accordance with s21 of the New South Wales Act

may be admitted to and detained in an ATC in South Australia;

and

(b) a person

(i) to whom an order for admission and detention under s12(1) of the South Australian Act applies; or

(ii) who has been apprehended under s23(1) of the South Australian Act by a police officer;

may be admitted to and detained in a declared mental health facility in New South Wales.

Documents for the Purposes of Involuntary Admission

5.3 The documents listed in Column 2 are the documents required for the purpose of allowing involuntary admission of persons to the facilities listed in Column 1:

<u>Column 1</u>	<u>Column 2</u>
(a) an Approved Treatment Centre	a Schedule 1 certificate issued pursuant to s19 of the New South Wales Act.
(b) a declared mental health facility	a Form 1 (Order for admission and detention in an ATC issued pursuant to s12(1)) of the South Australian Act and a Form 2 (Revocation or confirmation of initial detention order s12(4))

Admission after apprehension or detention by Police Officers

- 5.4 A person who has been apprehended under s21 of the New South Wales Act, may be transferred into the custody of a South Australian Police Officer who may apprehend or take or transfer custody of a person in particular circumstances under s23 of the South Australian Act.
- 5.5 A person who has been apprehended under s23 of the South Australian Act because of apparent mental illness, may be transferred into the custody of a New South Wales Police Officer authorised to apprehend or take or transfer custody of a person in particular circumstances under s173 of the New South Wales Act.

Persons authorised to transport for admission

- 5.6 The parties agree that the persons who may take an interstate person to a declared mental health facility or an ATC for the purposes of this Agreement are as follows:
- (a) a person prescribed under the New South Wales Regulations in accordance with s176 or s179 of the New South Wales Act, being:
- (i) The medical superintendent of a declared mental health facility

or any other suitably qualified person authorised to do so by the medical superintendent;

- (ii) A New South Wales police officer;
 - (iii) A New South Wales ambulance officer.
- (b) a person prescribed under the *Mental Health Regulations 1995* (SA) in accordance with s12(1) and s23(1) of the South Australian Act, being :
- (i) The Director of an ATC;
 - (ii) An employee of an ATC authorised by the Director for the purpose;
 - (iii) A South Australian police officer;
 - (iv) A South Australian ambulance officer (when summoned by a person exercising powers under the *Mental Health Act 1993*).

Status of person after admission

5.7 The parties agree that:

- (a) an interstate person admitted to a declared mental health facility shall thereafter be dealt with as if that person had been taken to and detained in a gazetted unit under Part 2 of Chapter 3 of the New South Wales Act;
- (b) an interstate person admitted to an ATC shall thereafter be dealt with as if that person were a person in relation to whom an order for the admission and detention of the person has been made under s12(1) of the South Australian Act.

PART 6: TRANSFER OF INVOLUNTARY PATIENTS

Operation of this Part

6.1 This Part applies only to the transfer of interstate persons who:

- (a) with respect to New South Wales, are detained as involuntary patients;
and
- (b) with respect to South Australia, are detained patients.

- 6.2 In the case of South Australia, forms referred to in this part will be provided by the Director of an ATC. In the case of New South Wales, Notices and Orders referred to in this part will be provided by the medical superintendent.
- 6.3 The parties agree that subject to the terms and conditions set out in this Part:
- (a) persons detained as involuntary patients under the New South Wales Act may be transferred to any ATC in South Australia; and
 - (b) persons who are detained patients under the South Australian Act may be transferred to any declared mental health facility in New South Wales;
 - (c) A transfer from New South Wales to South Australia shall be made in accordance with the terms of the New South Wales Regulations and the *Mental Health Regulations 1995 (SA)*;
 - (d) A transfer from South Australia to New South Wales shall be made in accordance with the terms of the *Mental Health Regulations 1995 (SA)* and the New South Wales Regulations.

Interstate Transfer Request Notice

- 6.4 The referring facility shall, prior to making any transfer, provide the receiving facility with an Interstate Transfer Request Notice.
- 6.5 The Interstate Transfer Request Notice is to be in the form attached as Schedule 3 to this Agreement, and is to include the following information:
- (a) the full name of the patient and his or her date of birth;
 - (b) the status of the patient under the relevant mental health legislation;
 - (c) the reason for the proposed transfer;
 - (d) any information that may assist in the ongoing care and treatment of the patient; and
 - (e) the details, if any, of who is proposed to transport the interstate person.
- 6.6 The parties agree that the form of Interstate Transfer Request Notice may be amended by the written agreement of the Director General of the New South Wales Department of Health and the Director Mental Health Operations,

Department of Health (SA).

- 6.7 Prior to a referring facility issuing an Interstate Transfer Request Notice, that facility will consult with the receiving facility concerning the patient and the contents of the Interstate Transfer Request Notice which the referring facility proposes to deliver in accordance with this Part.

Transfer subject to Prior Approval of Receiving Facility

- 6.8 A person detained as an involuntary patient under the New South Wales Act shall not be transferred from New South Wales to South Australia unless the Director of the receiving facility has approved the transfer in writing.
- 6.9 A person who is a detained patient under the South Australian Act shall not be transferred from South Australia to New South Wales unless the medical superintendent of the receiving facility has approved the transfer in writing.

Transfer

- 6.10 Where an interstate person is transferred in accordance with this Part, the referring facility shall forward to the receiving facility:
- (a) in respect of a transfer from New South Wales to South Australia, a transfer order in accordance with the New South Wales Regulations; and
 - (b) in respect of a transfer from South Australia to New South Wales, written authorisation in accordance with the *Mental Health Regulations 1995 (SA)*;
 - (c) such other information, including medical records, of the interstate person as is reasonably necessary or required for the continued care and treatment of the person by the receiving facility.

Persons authorised to transport

- 6.11 The parties agree that the persons who may transport an interstate person in

accordance with this Part are as follows:

- (a) a person prescribed under the New South Wales Regulations in accordance with s176 or s179 of the New South Wales Act, being:
 - (i) The medical superintendent of a declared mental health facility or any other suitably qualified person authorised to do so by the medical superintendent;
 - (ii) A New South Wales police officer;
 - (iii) A New South Wales Ambulance Officer.
- (b)
 - (i) The Director of an ATC;
 - (ii) an employee of an ATC, authorised by the Director for the purpose;
 - (ii) A South Australian police officer;
 - (iii) A South Australian ambulance officer (when summoned by a person exercising powers under the *Mental Health Act 1993*).

Status of patient after transfer

6.12 The parties agree that:

- (a) An interstate person transferred to a declared mental health facility shall thereafter be dealt with as if that person was an involuntary patient under the New South Wales Act and from the time of such transfer, the person will cease to be dealt with as a person to whom the South Australian Act applies.
- (b) An interstate person transferred to an ATC in South Australia shall thereafter be dealt with as if that person was a person in relation to whom an order for admission and detention has been made under s12(1) of the South Australian Act, as required by the *Mental Health Regulations 1995 (SA)* and, from the time of such transfer, will cease to be dealt with as a person to whom the New South Wales Act applies.

PART 7: APPREHENSION OF PERSONS ABSENT WITHOUT LEAVE

- 7.1 This Part applies only to "interstate persons absent without leave", those being persons who are:
- (a) absent without leave from a declared mental health facility and liable to apprehension under to s186 of the New South Wales Act and who there are reasonable grounds to suspect are in South Australia; or
 - (b) absent without leave from an ATC and liable to apprehension under s23of the South Australian Act and who there are reasonable grounds to suspect are in New South Wales.

Civil Interstate Apprehension Order

- 7.2 The Civil Interstate Apprehension Order is to be in the form attached as Schedule 2 to this Agreement, and is to include the following information:
- (a) the full name of the patient and his or her date of birth;
 - (b) a description of the patient;
 - (c) the status of the patient under the relevant mental health legislation;
 - (d) any information that may assist in the apprehension of the patient; and
 - (e) the name and address of the declared mental health facility or the ATC to which the patient is to be returned.
- 7.3 The parties agree that the form of the Civil Interstate Apprehension Order may be amended by the written agreement of the Director General of the New South Wales Department of Health and the Director Mental Health Operations, Department of Health (SA).
- 7.4 A Civil Interstate Apprehension Order may be issued by:
- (a) an authorised medical officer as defined in s4 of the New South Wales Act.
 - (b) the Director of the relevant ATC;
 - (c) the Chief Psychiatrist in New South Wales;
 - (d) the Director Mental Health Operations in South Australia.

Basis for Apprehension of a Patient Absent Without Leave

- 7.5 Each party undertakes to do all things that are reasonably required and within power to facilitate the apprehension and return of an interstate person absent without leave who is named in the Civil Interstate Apprehension Order.
- 7.6 Subject to clause 7.7, an interstate person absent without leave will not be apprehended unless a Civil Interstate Apprehension Order has been issued in accordance with the terms of this Agreement.
- 7.7 In an emergency, a person referred to in clause 7.4 may request the apprehension of the interstate person absent without leave without a Civil Interstate Apprehension Order provided:
- (a) the request outlines the nature of the emergency;
 - (b) a copy of the relevant Civil Apprehension Order is provided within 24 hours of the initial request for apprehension.

In this clause "emergency" means those situations where the delay involved in obtaining a Civil Apprehension Order may place the interstate person's health or safety at risk, or place members of the public at risk (through deterioration of the interstate person's physical or mental condition or otherwise).

Persons Authorised to apprehend a Patient Absent Without Leave

- 7.8 The parties agree that the persons who may apprehend an interstate person absent without leave are as follows:
- (a) A person authorised to apprehend such a person under s186 of the New South Wales Act, those persons being:
 - (i) A New South Wales police officer;
 - (ii) An authorized medical officer or any other suitably qualified person employed at the declared mental health facility;
 - (iii) a person authorised by the Minister; or
 - (iv) a person authorised by the authorised medical officer; or
 - (v) Any other person assisting a person listed in clauses (i) to (iv).
 - (b) A person authorised to apprehend such a person under the South

Australian Act, those persons being:

- (i) the Director of an ATC;
- (ii) and employee of an ATC authorised by the Director for the purpose;
- (iv) A South Australian police officer;
- (v) A South Australian Ambulance Officer (when summoned by a person exercising powers under the *Mental Health Act 1993*).

7.9 The parties agree that the powers set out in s23 of the South Australian Act may be exercised in respect of an interstate person absent without leave for the purposes of the taking of the patient to the declared mental health facility.

Facilities to which a Person Absent Without Leave can be returned

7.10 Subject to clause 7.12 below, an interstate person absent without leave who is apprehended under this Part may be taken to a declared mental health facility (subject to consultation with the medical superintendent) or an ATC (subject to consultation with the Director of the ATC).

7.11 Where the Civil Interstate Apprehension Order specifies that a person should be taken to a specific facility, every effort should be made to return the person to that facility unless this is not reasonably practicable.

Status of a Person who is Absent Without Leave after apprehension

7.12 The parties acknowledge and agree that:

- (a) an interstate person absent without leave who is taken to a facility in New South Wales shall upon admission and thereafter be dealt with as if that person had been taken to and detained in a hospital under Part 2 of Chapter 3 of the New South Wales Act;
- (b) an interstate person absent without leave taken to a facility in South Australia shall be admitted to and detained in the facility, being an ATC, under Division 2 of Part 3 of the South Australian Act.

PART 8: AMENDMENT OF AGREEMENT

- 8.1 Where a party considers that this Agreement should be amended, that party may request consultations with the other party to this end. A party so requested shall agree to consult and shall do so in the first instance through the Contact Officers of New South Wales and South Australia.
- 8.2 Amendments to this Agreement may only be made by the written agreement of the parties.
- 8.3 Any agreed amendments to the Agreement shall be contained in a document distributed to both parties and shall include a reference to the date on which the amendment shall come into force.

PART 9: CONFIDENTIALITY OF INFORMATION

- 9.1 The parties agree to treat all information acquired from the other party or otherwise acquired or created in the implementation of the New South Wales Act and the South Australian Act and the corresponding laws and this Agreement as confidential except to the extent that such information is in the public domain or as is otherwise permitted by law to be disclosed.
- 9.2 Any party who receives information from the other party or obtains or creates information in respect of a person from the other State agrees to treat that information in accordance with the legislative obligations, Cabinet instructions and any policy directions relating to privacy and the collection, keeping and disclosure of information that is in force in the receiving party's jurisdiction.
- 9.3 The parties further agree that each State will take all reasonable steps to ensure that information obtained from the other State or obtained or created in respect of a person from the other State shall be dealt with so as not to cause the other State to offend any of that State's own privacy or confidentiality obligations.

PART 10: DISPUTE RESOLUTION

- 10.1 Disputes arising under this Agreement will be resolved in the manner, if any, provided for by the Interstate Guidelines. If the dispute cannot be resolved under the Interstate Guidelines, it shall be referred to the contact officers for resolution.
- 10.2 Pursuant to 10.1, the contact officers shall attempt in good faith to resolve any dispute arising under this Agreement within seven (7) business days.
- 10.3 In the event that the contact officers cannot resolve the dispute, the dispute will be referred to the South Australian Minister and the New South Wales Minister for resolution.
- 10.4 The parties acknowledge that failure to resolve a dispute arising under this Agreement will jeopardize the continued existence of the Agreement and acknowledge that they will co-operate and act in good faith to bring about a satisfactory resolution of any such dispute.

PART 11 : TERMINATION OF AGREEMENT

- 11.1 The parties agree that either party may terminate the Agreement at any time by writing delivered to the other party provided that the first party has given the other party a minimum of three months written notice in advance of the first party's intention to terminate. The parties may agree to waive the requirement to give three (3) months notice of an intention to terminate the Agreement.
- 11.2 The parties further agree, that as soon as possible after the Agreement has been terminated under clause 11.1, both parties will take all such other action within their power as is necessary to effect the termination of this Agreement, including the revocation and/or revision of any Orders, Regulations or other statutory instruments made under the New South Wales Act or the South

Australian Act in support of this Agreement.

PART 12 : MISCELLANEOUS

Contact Officers and Service Of Documents

12.1 The contact officers for New South Wales and South Australia for the purposes of this Agreement are set out in Schedule 1.

12.2 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 Schedule 1.

Severance and Counterparts

12.3 Any provision in this Agreement will be read down to the extent necessary to prevent that provision being invalid, voidable or unenforceable in the circumstances.

12.4 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.

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SIGNED SEALED AND DELIVERED)

by **the MINISTER FOR HEALTH** for and on)

behalf of the State of New South Wales)

but not so as to incur personal liability)

in the presence of:

.....

John Della Bosca

.....

Signature

.....

Print Name

SIGNED SEALED AND DELIVERED)

by **the MINISTER FOR MENTAL HEALTH**)

AND SUBSTANCE ABUSE for and on)

behalf of the State of South Australia)

but not so as to incur personal liability)

in the presence of:

.....

Jane Lomax-Smith

.....

Signature

.....

Print Name

AGREEMENT DETAILS**Contact Officer**

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

For New South Wales the person holding the position of Director
(or his/her delegate)
Centre for Mental Health
NSW Department of Health
73 Miller Street North Sydney
Tel: (02) 9391 9299
Email: dmcgr@doh.health.nsw.gov.au
Fax: (02) 9391 9041

For South Australia the person holding the position of
Director Mental Health Operations
(or his/her delegate)
Mental Health Unit
Department of Health
Citicentre building
11 Hindmarsh Square
ADELAIDE SA 5000
Tel: (08) 8226 6286
Email: derek.wright@health.sa.gov.au
Fax: (08) 8226 6235