



Mental Health Amendment (Victorian Patients) Regulation 2003

under the

Mental Health Act 1990

His Excellency the Lieutenant-Governor, with the advice of the Executive Council, has made the following Regulation under the *Mental Health Act 1990*.

CRAIG KNOWLES, M.P.,
Minister for Health

Explanatory note

The object of this Regulation is to enable, in relation to Victoria:

- (a) the cross border admission and transfer of involuntary mental health patients, and
- (b) the apprehension of absconding interstate involuntary mental health patients (other than forensic patients), and
- (c) the recognition of interstate community treatment orders.

The Regulation complements an agreement between the Ministers for Health for New South Wales and Victoria.

This Regulation is made under the *Mental Health Act 1990*, including sections 286B, 286F, 286H, 286I, 286K, 286N and 302 (the general regulation-making power).

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Clause 1 Mental Health Amendment (Victorian Patients) Regulation 2003

Mental Health Amendment (Victorian Patients) Regulation 2003

under the

Mental Health Act 1990

1 Name of Regulation

This Regulation is the *Mental Health Amendment (Victorian Patients) Regulation 2003*.

2 Amendment of Mental Health Regulation 2000

The *Mental Health Regulation 2000* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Clause 2)

[1] Clause 38A Definitions

Insert in alphabetical order in clause 38A (1):

authorised psychiatrist means a person appointed as such under section 96 of the *Mental Health Act 1986* of Victoria.

civil interstate apprehension order means a Civil Interstate Apprehension Order issued under the Victorian civil agreement.

forensic interstate apprehension order means an interstate apprehension order issued under the Victorian agreement or the Queensland agreement.

interstate transfer request notice means an Interstate Transfer Request Notice issued under the Victorian civil agreement.

NSW ambulance officer means a person appointed and employed to carry out duties relating to the provision of ambulance services, or appointed to be an honorary ambulance officer, by the Ambulance Service of New South Wales.

NSW police officer means a police officer within the meaning of the *Police Act 1990*.

Victorian hospital means an approved mental health service within the meaning of the *Mental Health Act 1986* of Victoria.

[2] Clause 38A (1), definition of “interstate agreement”

Insert after paragraph (b):

- (c) the agreement dated 19 August 2002 made between the Minister and the Minister for Health for Victoria (the *Victorian civil agreement*).

[3] Clause 38A (1), definition of “interstate apprehension order”

Omit the definition. Insert instead:

interstate apprehension order means a civil interstate apprehension order or a forensic interstate apprehension order.

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Schedule 1 Amendments

[4] Clause 38A (1), definition of “relevant corresponding law”

Insert “, the Victorian civil agreement” after “Victorian agreement” in paragraph (a).

[5] Clause 38D Apprehension of patients and persons under interstate apprehension orders

Insert “or other person” after “interstate patient” wherever occurring.

[6] Clause 38D (1) (a)

Insert “or other person” after “the patient”.

[7] Clause 38D (1) (b)

Insert “in the case of a forensic interstate apprehension order,” before “a person”.

[8] Clause 38D (1) (c)

Insert after clause 38D (1) (b):

- (c) in the case of a civil interstate apprehension order, a person who is authorised to apprehend a patient or other person under section 76 or 139 of the Act.

[9] Clause 38D (2) (a) and (b)

Insert “or person” after “the patient” wherever occurring.

[10] Clause 38D (2) (b) (i)

Insert “or person subject to a civil interstate apprehension order” after “Victorian patient”.

[11] Part 7A, Divisions 3–5

Insert after Division 2:

Division 3 Transfer of patients and persons from this State

38E Admission of persons to hospitals in Victoria

- (1) For the purposes of section 286F (2) (b) of the Act, the following persons are authorised to take a person to a Victorian hospital:

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- (a) the medical superintendent of a hospital in this State or a person authorised by the medical superintendent,
 - (b) a NSW police officer,
 - (c) a NSW ambulance officer.
- (2) For the purposes of section 286F of the Act, a Victorian hospital is a hospital to which a person may be taken.

Note. Under section 286F (2) of the Act, a person who is authorised under a corresponding law (that is, the *Mental Health Act 1986* of Victoria) may also take a person to a hospital in Victoria.

38F Transfer of patients from this State to Victoria

- (1) For the purposes of section 286H (3) of the Act, the following persons are authorised to take a patient from a hospital in this State to a Victorian hospital:
- (a) the medical superintendent of a hospital in this State or a person authorised by the medical superintendent,
 - (b) a NSW police officer,
 - (c) a NSW ambulance officer.
- (2) For the purposes of section 286H (4) (a) and (b) of the Act, the medical superintendent of a hospital in this State that is transferring a person, involuntarily detained as a temporary patient or a continuing treatment patient, to a Victorian hospital must:
- (a) before transferring the person:
 - (i) provide the Victorian hospital with a completed interstate transfer request notice in the form specified in the Victorian civil agreement, and
 - (ii) ensure that the transfer has been approved in writing by the authorised psychiatrist (or that person's delegate) of the Victorian hospital, and
 - (b) forward to the authorised psychiatrist of the Victorian hospital an order in writing in an approved form authorising the transfer and any other information (including medical records) that the superintendent considers to be reasonably necessary for the continued care and treatment of the person.

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Schedule 1 Amendments

- (3) For the purposes of section 286H of the Act, a Victorian hospital is a hospital to which a patient may be taken.

Note. Under section 286H (3) of the Act, a person who is authorised under a corresponding law (that is, the *Mental Health Act 1986* of Victoria) may also take a patient to a hospital in Victoria.

Division 4 Transfer of persons to this State

38G Admission of Victorians to hospitals in this State

- (1) For the purposes of section 286I (2) (b) of the Act, the following persons are authorised to take a person to a hospital in this State from Victoria:

- (a) the medical superintendent of a hospital in this State or a person authorised by the medical superintendent,
- (b) a NSW police officer,
- (c) a NSW ambulance officer.

- (2) For the purposes of section 286I of the Act, premises the subject of an order in force under section 208 of the Act by which the premises are declared to be a hospital, is a hospital to which a person may be taken.

Note. Under section 286I (2) of the Act, a person who is authorised under a corresponding law (that is, the *Mental Health Act 1986* of Victoria) may also take a person to a hospital in this State from Victoria.

38H Transfer of Victorians to hospitals in this State

- (1) For the purposes of section 286K (2) of the Act, the following persons are authorised to take a patient from a Victorian hospital to a hospital in this State:

- (a) the medical superintendent of a hospital in this State or a person authorised by the medical superintendent,
- (b) a NSW police officer,
- (c) a NSW ambulance officer.

- (2) For the purposes of section 286K (4) (a) of the Act, a person detained as an involuntary patient under the *Mental Health Act 1986* of Victoria must not be transferred from a Victorian hospital to a hospital in this State unless:

- (a) before transferring the person:
 - (i) the authorised psychiatrist of the Victorian hospital provides the medical superintendent of

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- the hospital in this State with a completed interstate transfer request notice in the form specified in the Victorian civil agreement, and
- (ii) the transfer is approved in writing by the medical superintendent of the hospital in this State, and
- (b) the authorised psychiatrist of the Victorian hospital provides a copy of the transfer order made under section 93G of the *Mental Health Act 1986* of Victoria and any other information (including medical records) that the psychiatrist considers to be reasonably necessary for the continued care and treatment of the person.

Note. Under section 286K (2) of the Act, a person who is authorised under a corresponding law (that is, the *Mental Health Act 1986* of Victoria) may also take a patient to a hospital in this State from a Victorian hospital.

Division 5 Community treatment orders

38I Victorian community treatment orders relating to New South Wales residents

- (1) A community treatment order made under section 14 of the *Mental Health Act 1986* of Victoria is declared to be an interstate community treatment order for the purposes of Chapter 10A of the Act.
- (2) For the purposes of section 286N of the Act, an approved mental health service within the meaning of the *Mental Health Act 1986* of Victoria is an interstate health care agency.
- (3) For the purposes of section 286N (2) (b) of the Act, a person must not administer electro convulsive therapy for the purposes of implementing an interstate community treatment order.