



New South Wales

Mental Health Amendment (Transfer of ACT Civil Patients) Regulation 2004

under the

Mental Health Act 1990

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

MORRIS IEMMA, M.P.,

Minister for Health

Explanatory note

The object of this Regulation is to enable the implementation of an agreement between the Minister for Health for this State and the Minister for Health of the Australian Capital Territory (the *ACT*) in relation to the transfer of mentally ill involuntary patients between hospitals in this State and health facilities in the *ACT*.

For that purpose the Regulation provides for the following:

- (a) the recognition of the *Mental Health (Treatment and Care) Act 1994* of the *ACT* (the *ACT law*) as a law in relation to which such agreements and related arrangements may be made,
- (b) the apprehension of *ACT* patients who are in this State and who are liable to be apprehended under the *ACT law*,
- (c) the persons from this State who may take a person to an *ACT* health facility to be dealt with under the *ACT law*,
- (d) the procedures for transferring a New South Wales patient to an *ACT* health facility,
- (e) the persons from this State who may take an *ACT* patient to a hospital in this State from the *ACT*,
- (f) the procedures for transferring an *ACT* patient to a hospital in this State,
- (g) the recognition of *ACT* involuntary psychiatric treatment orders as interstate community treatment orders that may be enforced in this State,
- (h) other consequential amendments.

2004 No 96

Mental Health Amendment (Transfer of ACT Civil Patients) Regulation 2004

Explanatory note

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

2004 No 96

Mental Health Amendment (Transfer of ACT Civil Patients) Regulation 2004 Clause 1

Mental Health Amendment (Transfer of ACT Civil Patients) Regulation 2004

under the

Mental Health Act 1990

1 Name of Regulation

This Regulation is the *Mental Health Amendment (Transfer of ACT Civil Patients) Regulation 2004*.

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):

ACT means the Australian Capital Territory.

ACT approved facility means an approved health facility or approved mental health facility within the meaning of the *Mental Health (Treatment and Care) Act 1994* of the ACT.

interstate hospital means any of the following:

- (a) a Victorian hospital,
- (b) an ACT approved facility.

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

Insert “or the ACT civil agreement” after “Victorian civil agreement”.

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

Insert after paragraph (c):

- (d) the agreement dated 18 November 2003 made between the Minister and the Minister for Health for the ACT (the *ACT civil agreement*),

[4] Clause 38A (1), definition of “interstate transfer request notice”

Insert “or ACT civil agreement” after “Victorian civil agreement”.

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

Insert at the end of paragraph (b):

, or

- (c) in relation to the ACT civil agreement, the *Mental Health (Treatment and Care) Act 1994* of the ACT.

2004 No 96

Mental Health Amendment (Transfer of ACT Civil Patients) Regulation 2004

Amendments

Schedule 1

[6] Clause 38B Corresponding laws

Insert at the end of the clause:

Mental Health (Treatment and Care) Act 1994 of the ACT

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

Insert “under the Victorian civil agreement” after “order” in clause 38D (2) (b) (i).

[8] Clause 38D (2) (b) (iii)

Insert at the end of paragraph (b) (ii):

, or

(iii) in the case of a person subject to a civil interstate apprehension order under the ACT civil agreement, an ACT approved facility.

[9] Clause 38E Admission of persons to interstate hospitals and facilities

Omit “a Victorian hospital” from clause 38E (1).

Insert instead “an interstate hospital”.

[10] Clause 38E (2)

Omit the subclause. Insert instead:

(2) For the purposes of section 286F (3) (c) of the Act, the following are hospitals to which a person may be taken under section 286F of the Act:

- (a) a Victorian hospital,
- (b) an ACT approved facility.

[11] Clause 38E, note

Omit the note. Insert instead:

Note. Under section 286F (2) of the Act, a person who is authorised under a corresponding law may also take a person to an interstate hospital.

2004 No 96

Mental Health Amendment (Transfer of ACT Civil Patients) Regulation 2004

Schedule 1 Amendments

[12] Clause 38F Transfer of patients from this State to interstate hospitals

Omit “a Victorian hospital” from clause 38F (1).

Insert instead “an interstate hospital”.

[13] Clause 38F (3) and (4)

Omit clause 38F (3). Insert instead:

- (3) 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 an ACT approved facility must:
 - (a) before transferring the person:
 - (i) provide the person in charge of the ACT approved facility with a completed interstate transfer request notice in the form specified in the ACT civil agreement, and
 - (ii) ensure that the transfer has been approved in writing by the ACT Chief Psychiatrist (or his or her delegate), and
 - (b) forward to the person in charge of the ACT approved facility an interstate transfer order and any other information (including medical records) that the superintendent considers to be reasonably necessary for the continued care and treatment of the person.
- (4) For the purposes of section 286H (4) (e) of the Act, the following are hospitals to which a person may be taken under section 286H of the Act:
 - (a) a Victorian hospital,
 - (b) an ACT approved facility.

[14] Clause 38F, note

Omit the note. Insert instead:

Note. Under section 286H (3) of the Act, a person who is authorised under a corresponding law may also take a person to an interstate hospital.

2004 No 96

Mental Health Amendment (Transfer of ACT Civil Patients) Regulation 2004

Amendments

Schedule 1

[15] Clause 38G Admission of interstate persons to hospitals in this State

Insert “or the ACT” after “Victoria” in clause 38G (1).

[16] Clause 38G, note

Omit the note. Insert instead:

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

[17] Clause 38H Transfer of interstate patients to hospitals in this State

Omit “a Victorian hospital” from clause 38H (1).

Insert instead “an interstate hospital”.

[18] Clause 38H (3)

Insert after clause 38H (2):

- (3) For the purposes of section 286K (4) (a) of the Act, a person detained as an involuntary patient under the *Mental Health (Treatment and Care) Act 1994* of the ACT must not be transferred from an ACT approved facility to a hospital in this State unless:
 - (a) before transferring the person:
 - (i) the ACT Chief Psychiatrist (or his or her delegate) provides the medical superintendent of the hospital in this State with a completed interstate transfer request notice in the form specified in the ACT civil agreement, and
 - (ii) the transfer is approved in writing by the medical superintendent of the hospital in this State, and
 - (b) the ACT Chief Psychiatrist (or his or her delegate) provides a copy of the transfer order relating to the person and any other information (including medical records) that he or she considers to be reasonably necessary for the continued care and treatment of the person.

2004 No 96

Mental Health Amendment (Transfer of ACT Civil Patients) Regulation 2004

Schedule 1 Amendments

[19] Clause 38H, note

Omit the note. Insert instead:

Note. Under section 286K (2) of the Act, a person who is authorised under a corresponding law may also take a patient to a hospital in this State from an interstate hospital.

[20] Clause 38I Victorian community treatment orders relating to New South Wales residents

Omit clause 38I (3).

[21] Clauses 38J and 38K

Insert after clause 38I:

38J ACT treatment orders relating to New South Wales residents

- (1) An involuntary psychiatric treatment order made under section 26 (1) of the *Mental Health (Treatment and Care) Act 1994* of the ACT 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 ACT approved facility is an interstate health care agency.

38K Limitations on treatment under interstate community treatment orders

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.

BY AUTHORITY