



New South Wales

Mental Health Amendment (Interstate Patients) Regulation 2009

under the

Mental Health Act 2007

His Excellency the Lieutenant-Governor, with the advice of the Executive Council, has made the following Regulation under the *Mental Health Act 2007*.

BARBARA PERRY MP
for Minister for Health

Explanatory note

The object of this Regulation is to amend the *Mental Health Regulation 2007* to give effect to the agreement between South Australia and New South Wales that allows the transfer and detention of civil interstate mental health patients, as follows:

- (a) to enable New South Wales officers to apprehend in New South Wales South Australian mental health patients who are absent without leave from a South Australian approved treatment centre,
- (b) to enable New South Wales officers to take persons to a South Australian approved treatment centre and to take persons from South Australia to a mental health facility in this State,
- (c) to provide procedures for the transfer of mental health patients detained in New South Wales to South Australian approved treatment centres,
- (d) to provide procedures for the transfer of mental health patients detained in South Australian approved treatment centres to New South Wales mental health facilities.

This Regulation is made under the *Mental Health Act 2007*, including sections 174 (2) and (3), 176 (3) and (4), 177, 179 (2) and (4) (a), 187 and 196 (the general regulation-making power).

2009 No 98

Clause 1 Mental Health Amendment (Interstate Patients) Regulation 2009

Mental Health Amendment (Interstate Patients) Regulation 2009

under the

Mental Health Act 2007

1 Name of Regulation

This Regulation is the *Mental Health Amendment (Interstate Patients) Regulation 2009*.

2 Commencement

This Regulation takes effect on the day on which it is published on the NSW legislation website.

Schedule 1 Amendment of Mental Health Regulation 2007

[1] Clause 23 Definitions

Insert “, the South Australian civil agreement” after “ACT civil agreement” in the definition of *civil interstate apprehension order* in clause 23 (1).

[2] Clause 23 (1), definition of “interstate agreement”

Insert after paragraph (e):

- (f) the agreement dated 18 March 2009 made between the Minister and the Minister for Mental Health and Substance Abuse for South Australia (the *South Australian civil agreement*).

[3] Clause 23 (1), definition of “interstate mental health facility”

Insert after paragraph (c):

- (d) a South Australian approved treatment centre.

[4] Clause 23 (1), definition of “interstate patient”

Insert “, South Australian patient” after “Victorian patient”.

[5] Clause 23 (1), definition of “interstate transfer request notice”

Insert “, South Australian civil agreement” after “ACT civil agreement”.

[6] Clause 23 (1), definition of “relevant corresponding law”

Insert “Acts and any regulations made under those Acts” after “the following”.

[7] Clause 23 (1), definition of “relevant corresponding law”

Insert at the end of paragraph (c):

, or

- (d) in relation to the South Australian civil agreement, the *Mental Health Act 1993* of South Australia.

[8] Clause 23 (1)

Insert in appropriate alphabetical order:

South Australian approved treatment centre means an approved treatment centre within the meaning of the *Mental Health Act 1993* of South Australia.

2009 No 98

Mental Health Amendment (Interstate Patients) Regulation 2009

Schedule 1 Amendment of Mental Health Regulation 2007

South Australian patient means an interstate person with respect to South Australia, within the meaning of the South Australian civil agreement.

[9] Clause 25 Corresponding laws

Insert “and any regulations made under those laws” after “following laws”.

[10] Clause 25

Insert at the end of the clause:

Mental Health Act 1993 of South Australia

[11] Clause 27 Apprehension of patients and persons under interstate apprehension orders

Insert at the end of clause 27 (2) (b) (iv):

, or

- (v) in the case of a person subject to a civil interstate apprehension order under the South Australian civil agreement, a South Australian approved treatment centre.

[12] Clause 28 Admission of persons to interstate mental health facilities and facilities

Insert after clause 28 (2) (c):

- (d) a South Australian approved treatment centre.

[13] Clause 29 Transfer of patients from this State to interstate mental health facilities

Insert after clause 29 (4):

- (4A) For the purposes of section 176 (4) (a) and (b) of the Act, the medical superintendent of a mental health facility in this State that is transferring a person, involuntarily detained as an involuntary patient, to a South Australian approved treatment centre must:

- (a) before transferring the person:
 - (i) provide the South Australian approved treatment centre with an interstate transfer request notice in the form specified in the South Australian civil agreement, and
 - (ii) ensure that the transfer has been approved in writing by the director of the South Australian approved treatment centre, and

-
- (b) forward to the director of the South Australian approved treatment centre an order in writing in the approved form authorising the transfer and any other information (including medical records) that the superintendent considers to be reasonably necessary for the continued treatment and care of the person.

[14] Clause 29 (5) (d)

Insert after clause 29 (5) (c):

- (d) a South Australian approved treatment centre.

[15] Clause 30 Admission of interstate persons to mental health facilities in this State

Insert “, South Australia” after “the ACT” in clause 30 (1).

[16] Clause 31 Transfer of interstate persons to mental health facilities in this State

Insert after clause 31 (4):

- (5) For the purposes of section 179 (4) (a) of the Act, a person who is a detained person under the *Mental Health Act 1993* of South Australia must not be transferred from a South Australian approved treatment centre to a declared mental health facility in this State unless:
 - (a) before transferring the person:
 - (i) the director of the South Australian approved treatment centre (or his or her delegate) provides the medical superintendent of the mental health facility in this State with a completed interstate transfer request notice in the form specified in the South Australian civil agreement, and
 - (ii) the transfer is approved in writing by the medical superintendent of the mental health facility in this State, and
 - (b) the director of the South Australian approved treatment centre (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.