

# Mental Health Regulation 2013

[2013-481]



New South Wales

## Status Information

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### Authorisation

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# Mental Health Regulation 2013



New South Wales

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# Mental Health Regulation 2013



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Mental Health Regulation 2013*.

### 2 Commencement

This Regulation commences on 1 September 2013.

**Note—**

This Regulation replaces the *Mental Health Regulation 2007* which is repealed on 1 September 2013 under section 10 (2) of the *Subordinate Legislation Act 1989*.

### 3 Definitions

(1) In this Regulation:

**approved form** means a form approved by the Minister.

**Form** means a form set out in Schedule 1.

**the Act** means the *Mental Health Act 2007*.

**Note—**

The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

(2) Notes included in this Regulation do not form part of this Regulation.

## Part 2 Admission to, and care in, mental health facilities

### Division 1 Examination of persons

#### 3A Examination by audio visual link

For the purposes of sections 19A (3) and 27A (5) of the Act, if an audio visual link is being used at a mental health facility to enable a medical practitioner or accredited person to carry out an examination or observation under section 19 or 27A, the medical

superintendent of that facility must take reasonable steps to ensure that:

- (a) any interference with the dignity and privacy of the person being examined or observed is kept to the minimum necessary in the circumstances, and
- (b) the examination or observation is conducted when the person being examined or observed, and the medical practitioner or accredited person, are in a private area.

#### **4 Clinical report as to mental state of detained person**

For the purposes of:

- (a) section 27 (a) of the Act, the certificate of the authorised medical officer may be in the form set out in Form 1, and
- (b) section 27 (b) and (c) of the Act, the prescribed form of advice to the authorised medical officer is the form set out in Form 1, and
- (c) section 27A of the Act, the certificate of the medical practitioner or the accredited person may be in the form set out in Form 1.

### **Division 2 Mental health inquiries**

#### **5 Notice of appearance before Tribunal**

Notice under section 76 (3) of the Act is given in accordance with this Regulation if it is in the form set out in Form 2 and is served on the person or persons entitled to be given the notice.

#### **6 Appearance before Tribunal**

In addition to any other requirements of the Act, and this Regulation, the medical superintendent is to ensure that a person to be brought before the Tribunal has, so far as is reasonably practicable, been supplied with shaving equipment or make-up.

### **Division 3 Discharge of patients**

#### **7 Appeal against refusal to discharge**

- (1) An involuntary patient or person detained at a mental health facility may appeal under section 44 of the Act:
  - (a) by serving on the medical superintendent of the mental health facility a notice in the form set out in Form 3, or
  - (b) by declaring to the medical superintendent of the mental health facility a desire to appeal to the Tribunal.
- (2) A person, other than an involuntary patient or a person detained at a mental health facility, who has a right to appeal under section 44 of the Act, may appeal:

- (a) by lodging at the office of the Tribunal, or by serving on the Tribunal by post, a notice in the form set out in Form 4, or
  - (b) by serving such a notice on the medical superintendent of the mental health facility, or
  - (c) by declaring to the medical superintendent of the mental health facility, in the presence of the involuntary patient or person detained, that the patient or person wishes to appeal to the Tribunal.
- (3) If an appeal is made under subclause (2) (a), the Registrar of the Tribunal must notify the medical superintendent accordingly.
- (4) If an appeal is made under this clause, the Registrar of the Tribunal must call on the authorised medical officer to provide the report required by section 44 (3) of the Act.

### **Part 3 Community treatment orders**

#### **8 Persons who may apply for a community treatment order**

For the purposes of section 51 (2) (c) of the Act, the following persons may apply for a community treatment order for an affected person:

- (a) a director of community treatment of a mental health facility who is familiar with the clinical history of the affected person,
- (b) a designated carer, or the principal care provider, of the affected person.

#### **9 Orders that may be made on appeal under section 67**

On the hearing of an appeal under section 67 of the Act, the Tribunal may make an order revoking, varying or confirming the order the subject of the appeal.

### **Part 4 Treatments for mental illness**

#### **Division 1 Psychosurgery**

##### **10 Psychosurgery**

For the purposes of section 83 of the Act, **psychosurgery** does not include a neurological procedure carried out for the relief of symptoms of the following:

- (a) Parkinson's disease,
- (b) Gilles de la Tourette syndrome,
- (c) Chronic tic disorder,
- (d) Tremor,

(e) Dystonia.

## **Division 2 Electro convulsive therapy**

### **11 Procedure before consent to electro convulsive therapy**

For the purposes of section 91 (3) of the Act, the prescribed form is Part 1 of Form 5.

### **12 Consent to electro convulsive therapy**

- (1) For the purposes of section 93 (1) (a) of the Act, the prescribed form is Part 2 of Form 5.
- (2) For the purposes of section 96 (3) (a) of the Act, consent to the administration of electro convulsive therapy may be given in the form set out in Part 3 of Form 5.

### **13 Register of information relating to electro convulsive therapy**

The register to be kept under section 97 of the Act in relation to treatments by electro convulsive therapy is to be a book in which pages containing the information required or permitted to be set out by Form 6 are completed in relation to each patient or other person undergoing the treatment.

## **Part 5 Private mental health facilities**

### **14 Application fee for licence for private mental health facility**

For the purposes of section 115 (2) (b) of the Act, the prescribed fee is \$102.

### **15 Annual licence fee for private mental health facility**

For the purposes of section 118 (b) of the Act, the prescribed annual licence fee is \$102.

### **16 Fee for duplicate licence**

For the purposes of section 119 of the Act, the prescribed fee for a duplicate licence is \$51.

## **Part 6 Official visitors**

### **17 Additional qualified persons**

For the purposes of section 129 (2) of the Act, a person may be appointed as an official visitor if the person has any of the following qualifications:

- (a) the person is a registered nurse,
- (b) the person is a social worker eligible for membership of the Australian Association of Social Workers,



- (c) the person is an occupational therapist,
- (d) the person is a speech pathologist eligible for membership of Speech Pathology Australia.

### **18 Visits to mental health facilities**

- (1) Subject to subclause (2), for the purposes of section 131 (1) of the Act:
  - (a) 2 or more official visitors must visit each mental health facility that treats patients on an in-patient basis once a month,
  - (b) 2 or more official visitors must visit each mental health facility that only treats patients on an out-patient basis once every 6 months.
- (2) In the case of a mental health facility that also operates as an emergency department in a hospital:
  - (a) 2 or more official visitors must visit the mental health facility once a month if another mental health facility is located in the hospital and that facility treats patients on an in-patient basis, and
  - (b) in all other cases, 2 or more official visitors must visit the mental health facility once every 3 months.

## **Part 7 Mental Health Review Tribunal**

### **19 Constitution of Tribunal for certain proceedings**

- (1) The Tribunal must be constituted by 3 persons for the purposes of exercising the following functions:
  - (a) a review of a voluntary patient under section 9 of the Act,
  - (b) a review of an involuntary patient under section 37 of the Act,
  - (c) determining an appeal made in relation to an involuntary patient under section 44 of the Act,
  - (d) determining an application for a community treatment order or for the variation or revocation of a community treatment order (other than an application for variation or revocation that is not contested),
  - (e) a review under section 63 of the Act of a detained person,
  - (f) determining an appeal by an affected person under section 67 of the Act,
  - (g) conducting an ECT inquiry within the meaning of Division 3 of Part 2 of Chapter 4 of the Act,

- (h) determining an application for consent to the performance of a surgical operation on an involuntary patient under section 101 of the Act,
  - (i) determining an application for consent to the carrying out of special medical treatment on an involuntary patient under section 103 of the Act.
- (2) The Tribunal must be constituted by the President or a Deputy President for the purpose of exercising the function of determining whether to grant an approval to the making of an application for a change of name of a forensic patient as a supervising authority under Division 3 of Part 5 of the *Births, Deaths and Marriages Registration Act 1995*.
- (3) The Tribunal must be constituted by the President, a Deputy President or a member qualified to be appointed as a Deputy President for the purpose of exercising the function of determining an appeal made under section 44 of the Act in relation to a person detained at a mental health facility (other than an involuntary patient).
- (4) For the avoidance of doubt, nothing in this clause prevents a Tribunal properly constituted with less than 3 persons under section 150 (2A) of the Act for the purpose of conducting a mental health inquiry from exercising any functions of such a Tribunal under section 35 of the Act (including in connection with the making of a community treatment order).

## 20 Summons to attend as witness or to produce evidence

For the purposes of section 157 (1) of the Act, a summons issued by the Tribunal is to be in Form 7.

## Part 8 Interstate patients and mental health laws

### Division 1 Preliminary

#### 21 Definitions

- (1) In this Part:

**ACT** means the Australian Capital Territory.

**ACT approved mental health facility** means an approved mental health facility within the meaning of the *Mental Health Act 2015* of the ACT.

**administrator**, of a Queensland authorised mental health service, means the person appointed under section 332 of the *Mental Health Act 2016* of Queensland to be the administrator of the service.

**authorised psychiatrist** means a person appointed as such under section 150 of the *Mental Health Act 2014* of Victoria.

**civil interstate apprehension order** means a Civil Interstate Apprehension Order issued under the Victorian civil agreement, the ACT civil agreement, the South Australian civil agreement or the Queensland civil agreement.

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

**interstate agreement** means any of the following agreements with respect to the interstate application of mental health laws:

- (a) the agreement dated 19 February 2002 made between the Minister and the Minister for Health for Victoria (the **Victorian agreement**),
- (b) the agreement dated 23 April 2002 made between the Minister and the Minister for Health for Queensland (the **Queensland agreement**),
- (c) the agreement dated 9 September 2011 made between the Minister and the Minister for Health for Victoria (the **Victorian civil agreement**),
- (d) the agreement dated 18 November 2003 made between the Minister and the Minister for Health for the ACT (the **ACT civil agreement**),
- (e) the agreement dated 18 October 2004 made between the Minister and the Minister for Health for Queensland (the **Queensland civil agreement**),
- (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**).

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

**interstate mental health facility** means any of the following:

- (a) a Victorian mental health facility,
- (b) an ACT approved mental health facility,
- (c) a Queensland authorised mental health service,
- (d) a South Australian approved treatment centre.

**interstate patient** means a Victorian patient, South Australian patient or a Queensland patient.

**interstate transfer request notice** means an Interstate Transfer Request Notice issued under the Victorian civil agreement, ACT civil agreement, South Australian civil agreement or Queensland civil agreement.

**NSW ambulance officer** means an ambulance officer or a person 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*.

**Queensland authorised mental health service** means a health service, or part of a health service, declared to be an authorised mental health service under section 329 or 331 of the *Mental Health Act 2016* of Queensland.

**Queensland patient** has the same meaning as it has in the Queensland agreement.

**relevant corresponding law** means any of the following Acts and any regulations made under those Acts:

- (a) in relation to the Victorian agreement, the Victorian civil agreement and a Victorian patient, the *Mental Health Act 2014* of Victoria, or
- (b) in relation to the Queensland agreement, the Queensland civil agreement and a Queensland patient, the *Mental Health Act 2016* of Queensland, or
- (c) in relation to the ACT civil agreement, the *Mental Health Act 2015* of the ACT, or
- (d) in relation to the South Australian civil agreement, the *Mental Health Act 2009* of South Australia.

**South Australian approved treatment centre** means an approved treatment centre within the meaning of the *Mental Health Act 2009* of South Australia.

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

**Victorian mental health facility** means a designated mental health service within the meaning of the *Mental Health Act 2014* of Victoria.

**Victorian patient** has the same meaning as it has in the Victorian agreement.

- (2) Words and expressions used in this Part have the same meanings as they have in Chapter 8 of the Act.

## 22 Recognition of existing previous interstate agreements

An agreement entered into under Chapter 10A of the *Mental Health Act 1990*, and in force immediately before the repeal of that Chapter, is, subject to this Part, taken to be an agreement entered into under Chapter 8 of the Act.

## 23 Corresponding laws

The following laws and any regulations made under those laws are corresponding laws for the purposes of Chapter 8 of the Act:

*Mental Health Act 2014* of Victoria

*Mental Health Act 2016* of Queensland

*Mental Health Act 2015* of the ACT

*Mental Health Act 2009* of South Australia

Chapter 4A of the *Public Health Act 2005* of Queensland

## **Division 2 Apprehension of persons absent from mental health facility or in breach of orders**

### **24 Recognition of interstate orders**

For the purposes of section 185 of the Act, it is a condition of recognition of an interstate apprehension order that it must comply with the interstate agreement under which it is issued and any applicable requirements of the relevant corresponding law.

### **25 Apprehension of patients and persons under interstate apprehension orders**

- (1) The following persons are authorised to apprehend an interstate patient or other person who is liable to be apprehended under an interstate apprehension order:
  - (a) a person who is authorised to apprehend the patient or other person under any order made under the relevant corresponding law,
  - (b) in the case of a forensic interstate apprehension order, a person who is authorised to retake a forensic patient under section 70 of the *Mental Health (Forensic Provisions) Act 1990*,
  - (c) in the case of a civil interstate apprehension order, a person who is authorised to apprehend a patient or other person under section 48 of the Act.

#### **Note—**

Under section 186 (1) of the Act, a police officer and any person authorised to do so under a provision of a corresponding law may also apprehend such a person.

- (2) The following actions may, in accordance with an interstate agreement, be taken in respect of an interstate patient or other person who is liable to be apprehended under an interstate apprehension order:
  - (a) the patient or person may be conveyed to and detained in any declared mental health facility,
  - (b) the patient or person may be conveyed to or transferred to:
    - (i) in the case of a Victorian patient or person subject to a civil interstate apprehension order under the Victorian civil agreement, a designated mental

- health service within the meaning of the *Mental Health Act 2014* of Victoria, or
- (ii) in the case of a Queensland patient, an authorised mental health service within the meaning of the *Mental Health Act 2016* of Queensland, or
  - (iii) in the case of a person subject to a civil interstate apprehension order under the ACT civil agreement, an ACT approved mental health facility, or
  - (iv) in the case of a person subject to a civil interstate apprehension order under the Queensland civil agreement, a Queensland authorised mental health service, 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.

### **Division 3 Transfer of patients and persons from this State**

#### **26 Admission of persons to interstate mental health facilities and facilities**

- (1) For the purposes of section 174 (2) (b) of the Act, the following persons are authorised to take a person to an interstate mental health facility:
  - (a) the medical superintendent of a mental health facility in this State or a person authorised by the medical superintendent,
  - (b) a NSW police officer,
  - (c) a NSW ambulance officer (except where the person is being taken to a Queensland authorised mental health service).
- (2) For the purposes of section 174 (3) (c) of the Act, the following are mental health facilities to which a person may be taken under section 174 of the Act:
  - (a) a Victorian mental health facility,
  - (b) an ACT approved mental health facility,
  - (c) a Queensland authorised mental health service,
  - (d) a South Australian approved treatment centre.

**Note—**

Under section 174 (2) of the Act, a person who is authorised under a corresponding law may also take a person to an interstate mental health facility.

#### **27 Transfer of patients from this State to interstate mental health facilities**

- (1) For the purposes of section 176 (3) of the Act, the following persons are authorised to

take a patient from a mental health facility in this State to an interstate mental health facility:

- (a) the medical superintendent of a mental health facility in this State or a person authorised by the medical superintendent,
- (b) a NSW police officer,
- (c) a NSW ambulance officer (except where the person is being taken to a Queensland authorised mental health service).

(2) 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 Victorian mental health facility must:

- (a) before transferring the person:
  - (i) provide the Victorian mental health facility 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 mental health facility, and
- (b) forward to the authorised psychiatrist of the Victorian mental health facility 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.

(3) 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 an ACT approved mental health facility must:

- (a) before transferring the person:
  - (i) provide the person in charge of the ACT approved mental health 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 mental health 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 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 Queensland authorised mental health service must:

(a) before transferring the person:

- (i) provide the administrator of the Queensland authorised mental health service with a completed interstate transfer request notice in the form specified in the Queensland civil agreement, and
- (ii) ensure that the transfer has been approved in writing by the administrator (or his or her delegate), and

(b) forward to the administrator of the Queensland authorised mental health service 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.

(5) 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.

(6) For the purposes of section 176 (4) (e) of the Act, the following are mental health facilities to which a person may be taken under section 176 of the Act:

- (a) a Victorian mental health facility,
- (b) an ACT approved mental health facility,
- (c) a Queensland authorised mental health service,
- (d) a South Australian approved treatment centre.

**Note—**

Under section 176 (3) of the Act, a person who is authorised under a corresponding law may also take a person



to an interstate mental health facility.

## **Division 4 Transfer of persons to this State**

### **28 Admission of interstate persons to mental health facilities in this State**

- (1) For the purposes of section 177 (2) (b) of the Act, the following persons are authorised to take a person to a mental health facility in this State from Victoria, the ACT, South Australia or Queensland:
  - (a) the medical superintendent of a mental health facility 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 177 of the Act, a person may be taken to any declared mental health facility.

**Note—**

Under section 177 (2) of the Act, a person who is authorised under a corresponding law may also take a person to a mental health facility in this State.

### **29 Transfer of interstate persons to mental health facilities in this State**

- (1) For the purposes of section 179 (2) of the Act, the following persons are authorised to take a patient from an interstate mental health facility to a declared mental health facility in this State:
  - (a) the medical superintendent of a mental health facility in this State or a person authorised by the medical superintendent,
  - (b) a NSW police officer,
  - (c) a NSW ambulance officer (except where the person is being taken from a Queensland authorised mental health service).
- (2) For the purposes of section 179 (4) (a) of the Act, a person who is subject to an Inpatient Temporary Treatment Order or an Inpatient Treatment Order under the *Mental Health Act 2014* of Victoria must not be transferred from a Victorian mental health facility to a declared mental health facility in this State unless:
  - (a) before transferring the person:
    - (i) the authorised psychiatrist of the Victorian mental health facility 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 Victorian 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 authorised psychiatrist of the Victorian mental health facility provides a copy of the interstate transfer order made under section 322 or 323 of the *Mental Health Act 2014* 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.
- (3) For the purposes of section 179 (4) (a) of the Act, a person subject to a mental health order under the *Mental Health Act 2015* of the ACT must not be transferred from an ACT approved mental health facility to a declared mental health facility 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 mental health facility 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 mental health facility 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.
- (4) For the purposes of section 179 (4) (a) of the Act, a person subject to an inpatient category treatment authority under the *Mental Health Act 2016* of Queensland must not be transferred from a Queensland authorised mental health service to a declared mental health facility in this State unless:
- (a) before transferring the person:
    - (i) the administrator of the Queensland authorised mental health service (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 Queensland 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 administrator of the Queensland authorised mental health service (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.

- (5) For the purposes of section 179 (4) (a) of the Act, a person who is a detained person under the *Mental Health Act 2009* 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.

**Note—**

Under section 179 (2) of the Act, a person who is authorised under a corresponding law may also take a patient to a declared mental health facility in this State from an interstate mental health facility.

## **Division 5 Community treatment orders**

### **30 Victorian community treatment orders relating to New South Wales residents**

- (1) A Community Temporary Treatment Order or Community Treatment Order made under section 45 or 55 of the *Mental Health Act 2014* of Victoria is declared to be an interstate community treatment order for the purposes of Chapter 8 of the Act.
- (2) For the purposes of section 182 of the Act, a designated mental health service within the meaning of the *Mental Health Act 2014* of Victoria is a mental health facility of another State.

### **31 ACT treatment orders relating to New South Wales residents**

- (1) A psychiatric treatment order made under section 58 of the *Mental Health Act 2015* of the ACT is declared to be an interstate community treatment order for the purposes of Chapter 8 of the Act.
- (2) For the purposes of section 182 of the Act, an ACT approved mental health facility is a mental health facility of another State.

### **32 Queensland treatment authorities relating to New South Wales residents**

- (1) A community category treatment authority made under Part 4 of Chapter 2 of the *Mental Health Act 2016* of Queensland is declared to be an interstate community treatment order for the purposes of Chapter 8 of the Act.
- (2) For the purposes of section 182 of the Act, a Queensland authorised mental health service is a mental health facility of another State.

### **33 Limitations on treatment under interstate community treatment orders**

For the purposes of section 184 of the Act, a person must not administer electro convulsive therapy for the purposes of implementing an interstate community treatment order.

## **Part 9 Patients funds and accounts**

### **34 Trust funds**

- (1) The responsible person for a mental health facility must establish and maintain, in an authorised deposit-taking institution approved by the Treasurer:
  - (a) a Patients Trust Fund, and
  - (b) a Patients Amenities Account.
- (2) The Director-General must establish and maintain, in an authorised deposit-taking institution approved by the Treasurer, an Interest Account.
- (3) For the purposes of this Part, the **responsible person** is:
  - (a) in relation to a declared mental health facility, the Director-General, and
  - (b) in relation to a private mental health facility, the medical superintendent of the facility.

### **35 Patients Trust Fund**

- (1) Money received by the responsible person from a patient for custody on behalf of the patient or from some other person for the benefit, use or enjoyment of a specified patient, is to be paid into the relevant Patients Trust Fund.
- (2) The responsible person is to keep a separate current account in the relevant Patients Trust Fund in respect of each patient.
- (3) Money standing to the credit of a patient's account may be withdrawn by the patient for any purpose that, in the opinion of the responsible person, is for the benefit, use or enjoyment of the patient.

### **36 Withdrawals from patients' accounts**

- (1) If, in the opinion of the responsible person, a patient is incapable of withdrawing and safeguarding money from the patient's account, the responsible person may authorise the withdrawal of such sum from the patient's account as the responsible person considers necessary for the purchase of goods and services for the benefit, use or enjoyment of the patient.
- (2) Before authorising withdrawals from the patient's account, the responsible person must, if reasonably practicable, consult with a designated carer, or the principal care provider, of the patient on the general sum and frequency of withdrawals.
- (3) A certificate, signed by 2 persons employed on the staff of a mental health facility, to the effect that the goods or services represented by the sum withdrawn under this section have been received by the patient for the benefit, use or enjoyment of the patient is evidence that the patient has received those goods or services and that they are for the benefit, use or enjoyment of the patient.

### **37 Discharge or death of a patient**

After the discharge or death of a patient the management of whose estate has been committed to the NSW Trustee and Guardian, the responsible person must pay to the NSW Trustee and Guardian any money standing to the credit of the patient in the patient's account.

### **38 Patients' accounts to form one fund**

- (1) Subject to the Act and this Regulation, money standing to the credit of patients' accounts in respect of public hospitals within the meaning of the [Health Services Act 1997](#) are to constitute one fund.
- (2) The fund may be invested by the Director-General in accordance with and subject to the [Trustee Act 1925](#) or in any other form of investment approved by the Treasurer.

### **39 Payments to and from Interest Account**

- (1) There is to be paid into the Interest Account:
  - (a) income from the investment of the fund constituted under clause 38, and
  - (b) any capital gain made on the realisation of the investment.
- (2) There is to be paid out of the Interest Account:
  - (a) any loss incurred on the realisation of the investment of the fund constituted under section 38, and
  - (b) at such time or times as the Director-General may determine, such management fees of the Director-General as the Director-General may determine.

#### **40 Distribution of Interest Account**

The Director-General must, at least once a year, after making the payments referred to in clause 39 (2), distribute the funds of the Interest Account by crediting those funds to each patient's current account proportionately according to:

- (a) the amount standing to the credit of the patient's account during the period for which that amount was invested, and
- (b) the period for which that amount was so invested, being the period commencing on the date of investment or the date of the last preceding distribution, whichever is the later, and ending on the date of distribution.

#### **41 Patients Amenities Account**

- (1) There is to be paid into the Patients Amenities Account for a mental health facility such amounts as are received by the responsible person for the purpose of providing goods, services or amenities for the benefit, use or enjoyment of the patients of the mental health facility generally.
- (2) There may be paid out of the Patients Amenities Account, for the purpose referred to in subclause (1), such amounts as may be determined by the responsible person.

### **Part 10 Miscellaneous**

#### **42 Term of nominations of designated carers**

For the purposes of section 72 (5) of the Act, the period for which a nomination of a designated carer remains in force is 12 months.

#### **43 Information as to follow-up care after discharge**

Without limiting section 79 of the Act, the appropriate information as to the availability of follow-up care includes:

- (a) a description of patient support groups and community care groups operating in the vicinity of the mental health facility, including a description of the services provided by the groups, and the method of contacting each group, and
- (b) a description of any out-patient or other services available at the mental health facility that are available to the patient, and
- (c) a description of the purpose and method of obtaining community treatment orders, and
- (d) a description of such other similar follow-up services as may be available in the vicinity of the mental health facility.

#### **44 Annual report by Director-General**

The matters relating to mental health services that are to be included in the report under section 108 of the Act are as follows:

- (a) achievements during the reporting period in mental health service performance,
- (b) data relating to the utilisation of mental health resources,
- (c) any other matters determined by the Director-General as appropriate for inclusion.

#### **45 Oath of office—assessors**

For the purposes of section 165 of the Act, the prescribed form of oath to be taken by a person nominated for appointment as an assessor is the form set out in Form 8.

#### **46 Bodies who may be requested to provide Tribunal with information**

For the purposes of section 162A of the Act, the following may be requested by the Tribunal to provide it with information:

- (a) the Director-General of the Department of Family and Community Services,
- (b) the Chief Executive of Justice Health and Forensic Mental Health Network,
- (c) the Chief Executive of the The Sydney Children's Hospitals Network (Randwick and Westmead) (incorporating the Royal Alexandra Hospital for Children).

#### **47 Involuntary referrals to be reported to Tribunal**

- (1) The medical superintendent of a mental health facility must report to the Tribunal particulars of:
  - (a) each person (other than a forensic patient, correctional patient or a voluntary patient) admitted to the mental health facility as a patient, and
  - (b) each person who is detained as a patient after being a voluntary patient.
- (2) The report must contain the information set out in Form 9.
- (3) The report must be made as soon as practicable after the occurrence of the first of any of the following events in relation to a patient or detained person:
  - (a) any refusal to admit any person taken or detained in a mental health facility against his or her will,
  - (b) the admission (whether as a voluntary or an involuntary patient) of a person taken to or detained in a mental health facility against his or her will,
  - (c) the reclassification by the mental health facility of a voluntary patient as an involuntary patient.

- (4) Despite subclause (3), the medical superintendent is not required to submit more than one report each week.
- (5) To avoid doubt, a report is not required under this clause during any period in which no person was admitted or detained.

#### **48 Order or direction of Tribunal**

- (1) An order or direction of the Tribunal pursuant to a mental health inquiry is:
  - (a) to be recorded in writing, and
  - (b) to include the reasons for the order or direction, and
  - (c) to be in a form approved by the President.
- (2) Nothing in this clause prevents the Tribunal from giving an order or direction orally.
- (3) An order or direction given orally by the Tribunal is to be recorded in accordance with this clause.

#### **49 Transport of persons to and from mental health facilities and other facilities**

For the purposes of section 81 (1) (d) of the Act, a person who provides a transport service approved by the Director-General for the purposes of that section is prescribed.

#### **50 Saving**

Any act, matter or thing that, immediately before the repeal of the *Mental Health Regulation 2007*, had effect under that Regulation continues to have effect under this Regulation.

## **Schedule 1 Forms**

### **Form 1**

(Clause 4)

(*Mental Health Act 2007*, section 27 or 27A)

#### **Clinical report as to mental state of a detained person**

This report is made as:

(tick whichever is appropriate)

- a certificate of the opinion of an authorised medical officer after examination of a person under section 27 (1) (a) of the Act (initial examination),
- advice by a medical practitioner to an authorised medical officer under section 27 (1) (b) or (c) of the Act (further examination).

OR, if it is not reasonably practicable for an authorised medical officer of a mental health facility or other medical practitioner to personally examine a person or observe the person's condition for the purpose of determining (under section 27 of the Act) whether the person is a mentally ill person or a mentally disordered person:



This report is made as:

(tick whichever is appropriate)

- a certificate of the opinion of a medical practitioner after examination of a person using an audio visual link in accordance with section 27A (1) (a) of the Act,
- a certificate of the opinion of an accredited person authorised by the medical superintendent of [*name of mental health facility*] to personally examine a person in accordance with section 27A (1) (b) of the Act.

**Note 1—**

For examinations under section 27A of the Act, an accredited person and a medical practitioner who is not a psychiatrist must, if it is reasonably practicable to do so, seek the advice of a psychiatrist before making a determination as to whether the person is a mentally ill person or a mentally disordered person (see section 27A (4) of the Act).

**Note 2—**

A medical practitioner must not carry out an examination or observation using an audio visual link unless the medical practitioner is satisfied that the examination or observation can be carried out in those circumstances with sufficient skill and care so as to form the required opinion about the person (see section 27A (3) of the Act).

I, the undersigned, a registered medical practitioner/an accredited person, on [*date*] examined by audio visual link/personally examined [*patient's name*] a person detained at [*name of mental health facility*].

In my opinion, [*patient's name*]:

(tick the one box that is appropriate)

- is not a mentally ill or mentally disordered person,
- is a mentally ill person,
- is a mentally disordered person.

The basis for my opinion is as follows:

**(Reported behaviour of the patient)**

[*list behaviour(s)*]

(This report may be continued on a separate page, if necessary)

**(Observations by me of the patient)**

[*list observations*]

**(Conclusion)**

[*insert conclusion*]

Name of registered medical practitioner/accredited person:

Qualifications as a psychiatrist (if applicable):

[*Signature*]

[*Date*]

**Note—**

This report is for the use of a legal tribunal and therefore should not be written in technical medical language.

**Form 2**

(*Mental Health Act 2007*, section 76 (3))

**Mental health inquiry—*Mental Health Act 2007***

Mental health facility .....

Address .....

**Notice of proceedings before Mental Health Review Tribunal**

Dear .....

I wish to advise you that [*patient's name*] is at present a patient at this mental health facility under the provisions of the *Mental Health Act 2007*.

On [*date*] at approximately [*time*] the Mental Health Review Tribunal will hold an inquiry at [*location*] to consider whether or not further detention for the purpose of treatment is warranted.

You are invited to attend this inquiry. With the permission of the patient and the Tribunal, any person at all may represent the patient. However, the patient will be legally represented unless the patient decides that he or she does not want to be. Should it be necessary, a competent interpreter will be available to assist.

If the Tribunal considers further detention is warranted the Tribunal will also consider whether or not the patient is able to manage his or her affairs. If the Tribunal considers that the patient is able to do so, then the patient will continue to do so. If the Tribunal is not satisfied that the patient can manage his or her affairs, then an order will be made that the NSW Trustee and Guardian manage the patient's affairs.

If the patient does not agree that his or her affairs should be managed by the NSW Trustee and Guardian, the patient may appeal to the Supreme Court or the Civil and Administrative Tribunal.

If you have any questions, please feel free to discuss them with the patient's doctor or social worker. Contact may be made by telephoning [*telephone number*].

Yours faithfully,

[*Authorised medical officer*]

[*Date*]

**Form 3**

(Clause 7 (1) (a))

(*Mental Health Act 2007*, section 44 (2))

**Appeal by patient against refusal to discharge**

The Registrar  
Mental Health Review Tribunal

My name is [*name*].

I am an involuntary patient/a person detained at [*name of mental health facility*].

I have applied to an authorised medical officer for discharge under section 42 (1) of the *Mental Health Act 2007*.

I want to appeal to the Mental Health Review Tribunal against the authorised medical officer's:

- refusal to discharge me
- failure to make a determination on my application for discharge within 3 working days after I made the application.

(Tick one box only)

[*Signature*]

[Date]

## Form 4

(Clause 7 (2) (a))

(*Mental Health Act 2007*, section 44 (2))

### Appeal by a person other than the patient against refusal to discharge a patient

This appeal relates to [*patient's name*] who is an involuntary patient/a person detained at [*name of mental health facility*].

An application was made to an authorised medical officer for discharge of the patient under the *Mental Health Act 2007*.

My name is [*name of appellant*].

I am:

- the applicant for discharge of the patient
- a person appointed by the patient.

(Tick one box only)

I want to appeal to the Mental Health Review Tribunal against the authorised medical officer's:

- refusal to discharge the patient
- failure to make a determination within 3 working days after the application for discharge of the patient.

(Tick one box only)

[Signature]

[Date]

## Form 5

(Clauses 11 and 12)

(*Mental Health Act 2007*, sections 91, 93 and 96)

### Information and consent—electro convulsive therapy

#### Part 1 Information to consider before signing

The treatment is recommended where the alternative forms of treatment have either not had the desired result or would work too slowly to be effective in a particular case.

#### The treatment will take the following form:

- (a) You will be given a brief general anaesthetic. This involves giving a drug to relax the muscles. The anaesthetist will normally give the anaesthetic by means of intravenous injection.
- (b) While you are anaesthetised, another medical practitioner will use medical apparatus designed to pass a modified electrical current for a few seconds through your brain, with the intention of affecting those parts concerned with emotion and thought.
- (c) While the current is passing, the anaesthetic will prevent you from feeling anything and will also prevent your body from moving more than slightly.
- (d) Treatment may be given 2 or 3 times a week.

- (e) A course of treatment will generally involve up to 12 treatments but, on some occasions, more treatments will be required. Any queries you have in relation to the number of treatments you may need can be raised with your doctor.

**Possible benefits of treatment**

Benefits depend on the symptoms of the conditions for which treatment is given. Relief may be obtained from symptoms of depression, agitation and insomnia.

**Possible alternative treatments**

Other treatments may also be suitable for your condition. Any queries you have in relation to these can be discussed with your doctor.

A written explanation of the alternative treatments available in relation to your condition is attached.

**Possible complications of treatment**

Some patients notice a difficulty with their memory of recent events which almost invariably clears up within a month of receiving the last treatment. Some patients experience a headache or a brief period of confusion, or both, on awakening after the anaesthetic. Otherwise, because the treatment and anaesthetic are very brief and present no significant stress to the body, serious complications are uncommon. All general anaesthetics carry some risk.

**Consent to treatment**

This treatment cannot be carried out without your consent (see Part 2 below), unless you are an involuntary patient at the mental health facility.

Before giving this consent you may ask your doctor any questions relating to the techniques or procedures to be followed. You may also withdraw your consent and discontinue this treatment AT ANY TIME.

**Persons under 16 and involuntary patients**

If you are an involuntary patient who does not consent to the treatment, or if you are a person under the age of 16 years, the treatment can only be carried out after a full hearing before the Mental Health Review Tribunal.

**Legal and medical advice**

You also have the right to get legal advice and medical advice before you give your consent.

**Disclosure of financial relationship**

**Item A**

To be completed by the person proposing the administration of the treatment.

- (a) I declare that there is no financial relationship between me and the mental health facility or institution in which it is proposed to administer the treatment.

(OR)

- (b) I declare that the following is a full disclosure of the financial relationship between me and the mental health facility or institution in which it is proposed to administer the treatment:

.....  
.....

[Signature]

[Date]

**Item B**

To be completed by the medical practitioner who proposes to administer the treatment (unless that medical practitioner is also the person who completed Item A, in which case this Item need not be completed).

(a) I declare that there is no financial relationship between me and the mental health facility or institution in which it is proposed to administer the treatment.

(OR)

(b) I declare that the following is a full disclosure of the financial relationship between me and the mental health facility or institution in which it is proposed to administer the treatment:

.....  
.....

[Signature]

[Date]

**Part 2 Consent to electro convulsive therapy**

I, [name in full] consent to being treated with electro convulsive therapy.

I ACKNOWLEDGE that I have read/have had read to me Part 1 of this Form, and that I understand the information it contains.

I UNDERSTAND that I am free at any time to change my mind and withdraw from the course of treatment if I so desire.

[Signature]

[Date]

**Part 3 Consent to electro convulsive therapy (involuntary patients)**

I, [name in full] consent to being treated with electro convulsive therapy.

I ACKNOWLEDGE that I have read/have had read to me Part 1 of this Form, and that I understand the information it contains.

I UNDERSTAND that I am free at any time to change my mind and withdraw from the course of treatment if I so desire.

I UNDERSTAND that my consent will be reviewed by the Mental Health Review Tribunal.

[Signature]

[Date]

**Certification by witness**

I certify that all matters dealt with in this Form have been orally explained to the person in respect of whom treatment is proposed and have been so explained in a language with which that person is familiar.

[Signature]

[Date]

**Form 6**

(Clause 13)

(Mental Health Act 2007, section 97)

**Register of electro convulsive therapy**

**1 Information that must be set out in register**

The register of electro convulsive therapy must set out the following information relating to each administration of treatment:

- (a) the date of the treatment,
- (b) the classification of the patient,
- (c) the section of the *Mental Health Act 2007* under which consent was given,
- (d) details of the patient, namely the patient's name, age, sex and medical record number,
- (e) the ward in which the treatment was administered,
- (f) details of the anaesthetic used,
- (g) the name of the anaesthetist,
- (h) a psychiatric and medical diagnosis,
- (i) the duration of the treatment,
- (j) the voltage used,
- (k) the name of the medical officer in charge of administering the treatment,
- (l) the name of any assistant to the medical officer,
- (m) the name of any registered nurse,
- (n) the placement of electrodes.

**2 Further remarks or observations may be included in register**

The register of electro convulsive therapy may include further remarks or observations in relation to any treatment registered on it.

**Form 7**

(Clause 20)

(*Mental Health Act 2007*, section 157 (1))

**Summons**

**Mental Health Review Tribunal**

To: .....

The Mental Health Review Tribunal will be hearing matters in relation to [*name of patient*].

The hearing will take place at [*time*] on [*date*] at [*address*].

You are required:

- to attend the hearing as a witness
  
- to attend the hearing and produce the following documents:  
.....  
.....

(Tick one box only)

You are entitled to receive reasonable costs, including any loss of earnings incurred through compliance with this summons.

Should you fail or refuse to comply with this summons, properly served, you may be guilty of an offence under the *Mental Health Act 2007*.

If you are required to attend the hearing only to produce documents, it is sufficient compliance with this summons

if those documents are delivered to..... at [address] on or before [date].

[Signature]

[President/Deputy President  
Mental Health Review Tribunal]

**Form 8**

(Clause 45)

(*Mental Health Act 2007*, section 165 (2))

**Oath of assessor**

I, [name], do swear that I will well and truly advise and assist, without fear or favour, affection or ill will, the Supreme Court of New South Wales as an assessor in any matter coming before that Court pursuant to the provisions of the *Mental Health Act 2007*.

**Form 9**

(Clause 47)

(*Mental Health Act 2007*, section 196 (2) (I))

**Particulars of involuntary referrals**

**1 Information about the mental health facility preparing the report**

The report must include:

- (a) the name of the mental health facility,
- (b) the name and contact number of the person by whom the report was prepared.

**2 Information about each patient**

The report must include the following information about each patient:

- (a) the patient's medical record number (or MRN),
- (b) the patient's date of birth,
- (b1) the patient's sex,
- (c) the patient's country of birth,
- (d) whether an interpreter was required for the patient and, if so, in what language,
- (e) the date the person was taken to the mental health facility or the date the patient was reclassified to involuntary,
- (f) the method of referral of the person, that is:
  - (i) by doctor's certificate under section 19 of the Act,
  - (ii) by the police under section 22 of the Act,
  - (iii) by an ambulance officer under section 20 of the Act,
  - (iv) because of a breach of a community treatment order, under section 58 of the Act,
  - (v) by the principal care provider or a designated carer, relative or friend under section 26 of the Act,
  - (vi) in accordance with an order under section 33 of the *Mental Health (Forensic Provisions) Act 1990*, under section 24 of the *Mental Health Act 2007*,

- (vii) following an order under section 23 of the Act for medical examination or observation and an authorised doctor's certificate under section 19 of the Act,
- (viii) by being reclassified from a voluntary patient to an involuntary patient,
- (g) whether the person was admitted after examination,
- (h) whether on admission the patient was classified as:
  - (i) voluntary,
  - (ii) involuntary, mentally ill,
  - (iii) involuntary, mentally disordered.