

# MEMORANDUM OF AGREEMENT

DATED this        NINETEENTH day of        FEBRUARY        2002

**BETWEEN :**

**The MINISTER FOR HEALTH FOR THE STATE OF NEW SOUTH WALES** of  
Level 33, 1 Farrer Place, Sydney 2000        (“the NSW Minister”)

**AND**

**The MINISTER FOR HEALTH FOR THE STATE OF VICTORIA** of Level 22,  
555 Collins Street, Melbourne 3000        (“the Victorian Minister”)

## **PART 1 : RECITALS**

### **WHEREAS**

- A. Part 5A of the Victorian *Mental Health Act* 1986 and Chapter 10A of the NSW *Mental Health Act* 1990 provide for the interstate application of mental health provisions.
- B. The Victorian Minister may, in accordance with section 93C of the Victorian Act, enter into an agreement with a Minister responsible for administering a corresponding law about any matter in connection with the administration of Part 5A of the Victorian Act or a corresponding law.
- C. The NSW Minister may, in accordance with section 286C of the NSW 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 matter contained in or ancillary to Chapter 10A of the NSW Act.
- D. The Victorian Minister and the NSW Minister now make this Agreement in accordance with their respective powers under section 93C of the Victorian Act and section 286C of

the NSW Act to provide for the administration of Part 5A of the Victorian Act and Part 4 of Chapter 10A of the NSW Act and the corresponding laws declared under each of those Acts.

- E.** By this Agreement, the Victorian Minister and the NSW Minister provide for the administration of Part 5A of the Victorian Act and Part 4 of Chapter 10A of the NSW Act and provide for or with respect to the apprehension of persons in NSW and Victoria only in relation to Victorian patients, defined as “Victorian patient” in clause 1 below, who are absent without leave and are in NSW and NSW forensic patients who escape into Victoria (defined as “NSW patient” in clause 1 below).

***IT IS AGREED :***

**PART 1: DEFINITIONS AND INTERPRETATION**

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

**“Agreement”** means this Agreement including the Schedules and any Annexures;

**“approved mental health service”** means a premises or service proclaimed to be an approved mental health service by Governor in Council under section 94 of the Victorian Act;

**“Chief Psychiatrist”** means the Victorian Chief Psychiatrist appointed in accordance with section 105 of the Victorian Act, and includes his or her delegate as appointed from time to time;

**“Contact Officer”** means the person or persons so described in Schedule 1 of this Agreement;

**“corresponding laws”** means:

- (a) with respect to Victoria, the NSW Act when declared as such under and in accordance with s. 93B of the Victorian Act; and

- (b) with respect to NSW, the Victorian Act when declared as such by the NSW Regulations;

**“Director of Mental Health”** means an authorised officer appointed under section 235 of the NSW Act;

**“gazetted mental health service”** means premises in relation to which the Director General of the NSW Department of Health has made an order under section 208 of the NSW Act;

**“Interstate Apprehension Order”** means the document that sets out the information specified in Part 4 of this Agreement and is set out in Schedule 2 to this Agreement and as amended from time to time in accordance with clause 4.3;

**“Interstate Guidelines”** means any guidelines developed in accordance with Part 7;

**“NSW Act”** means the NSW *Mental Health Act* 1990, including any regulations and orders made under that Act (but for the purposes of this Agreement a reference to the NSW Act does not, unless expressly provided, include a reference to the Victorian Act on the basis that the Victorian Act has been declared a corresponding law under that Act);

**“NSW patient”** means a forensic patient as defined in Schedule 1 to the NSW Act, and who is liable to apprehension or retaking under section 93 or 111 of the NSW Act;

**“NSW Regulations”** means Regulations made pursuant to Part 10A of the NSW Act;

**“patient”** means a Victorian patient or a NSW patient;

**“Victorian Act”** means the Victorian *Mental Health Act* 1986, including any regulations and orders made under that Act (but for the purposes of this Agreement a reference to the Victorian Act does not, unless expressly provided, include a reference to the NSW Act on the basis that the NSW Act has been declared a corresponding law under that Act);

**“Victorian patient”** means

- (a) a security patient who may be apprehended in accordance with section 53 of the Victorian Act; or
- (b) a forensic patient who may be apprehended in accordance with section 53AD of the Victorian Act; or
- (c) an involuntary patient admitted to an approved mental health service under section 16(3)(a) of the Victorian Act or Part 5 of the *Sentencing Act* 1991 (Vic.), and who may be apprehended in accordance with section 43 of the Victorian Act.

**1.2** 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 Annexures are references to clauses of and Schedules to and Annexures 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.

**PART 2: COMMENCEMENT OF AGREEMENT**

**2.1** The parties acknowledge that this Agreement cannot be given full effect unless and until:

- (a) The NSW Regulations, including provisions declaring the Victorian Act to be a corresponding law for the purposes of the NSW Act and such other regulations as may be required in accordance with section 286Q of the NSW Act, are made and commenced; and
- (b) Victoria promulgates an Order in Council in accordance with section 93B of the Victorian Act declaring the NSW Act to be a corresponding law for the purposes of Part 5A of the Victorian Act.

- 2.2 The parties agree that this Agreement shall commence on the day that the last of each of the things listed in this clause are done.

### **PART 3: AGREEMENT**

- 3.1 The purpose of this Agreement is to provide for matters in connection with the administration and implementation of Part 5A of the Victorian Act and Part 4 of Chapter 10A of the NSW Act but only insofar that these apply to and provide for the apprehension and return of NSW patients in Victoria and Victorian patients in NSW and ancillary matters.
- 3.2 The application and effect of the NSW Act and the Victorian Act as corresponding laws of the participating States respectively is subject to the express limitations, conditions and variations imposed by the terms of this Agreement.
- 3.3 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 NSW Act or the Victorian Act or a corresponding law declared under either Act, unless expressly provided.
- 3.4 The parties agree that they will co-operate in a spirit of goodwill to achieve the purposes of this Agreement.
- 3.5 Nothing in this Agreement prevents the issuing of a warrant under the terms of the NSW Act or the Victorian Act or any other legislation and reliance on the *Service and Execution of Process Act 1992 (Cth)* to apprehend a patient.

### **PART 4: INTERSTATE APPREHENSION ORDERS**

- 4.1 The 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 approved mental health service or the gazetted mental health service to which the patient is to be returned.
- 4.2 The Interstate Guidelines may specify further information to be included in the Interstate Apprehension Order.
- 4.3 The parties agree that the form of Interstate Apprehension Order may be amended by the written agreement of the Director General of the NSW Department of Health and the Secretary to the Department of Human Services (Victoria).
- 4.4 Prior to a party issuing an Interstate Apprehension Order, that party agrees to consult with the other party concerning the patient and the contents of the Interstate Apprehension Order which that party proposes to deliver in accordance with this Part.

## **PART 5: APPREHENSION AND RETURN OF VICTORIAN PATIENTS**

- 5.1 This Part applies only to Victorian patients who are in NSW.
- 5.2 The Victorian Minister undertakes to provide to the NSW Minister an appropriate Interstate Apprehension Order when the Victorian Minister becomes aware or has reasonable grounds to suspect that a Victorian patient is in NSW.
- 5.3 The Victorian Minister undertakes to ensure that the Victorian Minister and relevant Victorian authorities will do all things that are required and within power to facilitate the apprehension and return of the Victorian patient named in the Interstate Apprehension Order.
- 5.4 The parties agree that the persons who may apprehend a Victorian patient in NSW are as follows:
- (a) A person authorised to apprehend a Victorian Patient under the Victorian Act, those persons being:
    - (i) a prescribed person for the purposes of section 9 of the Victorian Act including a member of the Victorian police force and an ambulance officer;

- (ii) an authorized psychiatrist for the purposes of the Victorian Act or any person authorized by the authorized psychiatrist;
- (iii) an officer or employee of the Department of Human Service authorized by the Chief Psychiatrist;
- (b) A NSW Police Officer as provided for under section 286P(1)(a) of the NSW Act;
- (c) A person authorised to retake a NSW forensic patient under section 111(1) of the NSW Act, those persons being:
  - (i) the medical superintendent of a NSW gazetted unit or any other suitably qualified person employed in the gazetted unit and authorised to do so by the medical superintendent;
  - (ii) a person authorised by the Director General or the medical superintendent; or
  - (iii) a person assisting a person listed in (i) or (ii);
- (d) A person authorised under the NSW Regulations for the purposes of section 286P(1)(b) of the NSW Act.

**5.5** Subject to clauses 5.6 and 5.7 the parties agree that on being apprehended, a Victorian patient shall be taken to the approved mental health service named in the Interstate Apprehension Order and that service will immediately accept and receive the patient.

**5.6** Where the Victorian patient is apprehended by a person listed in subclause (b), (c) or (d) of clause 5.4 above, the NSW Minister (or the Director of Mental Health) shall notify the Chief Psychiatrist that the Victorian patient has been apprehended and consult with the Chief Psychiatrist concerning the arrangements for the patient's return to Victoria.

**5.7** The parties agree that

- (a) section 286P of the NSW Act allows the person apprehending a Victorian patient in NSW to take the Victorian patient to a gazetted mental health service in NSW prior to the return of the patient to the approved mental health service in accordance with Clause 5.5 of this Agreement;
- (b) where a Victorian patient is taken to a gazetted mental health service in accordance with subclause (a) that service will only hold the person temporarily,

subject to return to the approved mental health service.

In this clause “*temporarily*” means up to 7 days, or such longer period as may be approved by the Director of Mental Health.

**5.8** The Victorian Minister (or the Chief Psychiatrist) shall, for the purposes of requesting the apprehension of a Victorian Patient, provide to the NSW Department of Health with the following:

- (a) a copy of the relevant Interstate Apprehension Order;
- (b) any information which may assist in the apprehension of the patient;
- (c) a summary of the clinical and treatment history of the Victorian patient.

**5.9** Where the Victorian patient is temporarily detained at a gazetted mental health service under clause 5.7, the NSW Minister (or the Director of Mental Health) shall, for the purposes of giving effect to this Agreement:

- (a) consult with the Chief Psychiatrist concerning arrangements for the return of the Victorian patient to the relevant approved mental health service, including timing and transport arrangements; and
- (b) as close as possible to the time at which the Victorian patient is returned to the relevant approved mental health service, provide the Chief Psychiatrist with a statement of the clinical condition of the Victorian patient as at the date of the patient’s return, details of any treatment provided to the Victorian patient since the apprehension of that patient and any recommendations for future treatment or management of that patient.

## **PART 6: APPREHENSION AND RETURN OF NSW PATIENTS**

**6.1** This Part only applies to NSW patients who are in Victoria.

- 6.2** The NSW Minister undertakes to provide to the Victorian Minister an appropriate Interstate Apprehension Order when the NSW Minister becomes aware or has reasonable grounds to suspect that a NSW patient is in Victoria.
- 6.3** The NSW Minister undertakes to ensure that the NSW Minister and relevant NSW authorities will do all things that are required and within power to facilitate the apprehension and return of the NSW patient named in the Interstate Apprehension Order.
- 6.4** The parties agree that the persons who may apprehend a NSW patient in Victoria are as follows:
- (a) a NSW Police Officer, as provided under section 93(2) or section 111(1)(b) of the NSW Act;
  - (b) a person authorised to apprehend a Victorian patient under the Victorian Act, those persons being:
    - (i) a prescribed person for the purposes of section 9 of the Victorian Act including a member of the Victorian police force and an ambulance officer;
    - (ii) an authorized psychiatrist for the purposes of the Victorian Act or any person authorized by the authorized psychiatrist;
    - (iii) an officer or employee of the Department of Human Service authorized by the Chief Psychiatrist.
- 6.5** Subject to clause 6.6, the parties agree that on being apprehended, the NSW patient apprehended shall be taken to the gazetted mental health service named in the Interstate Apprehension Order and that service will immediately accept and receive the patient.
- 6.6** Where the NSW patient is apprehended by a person listed in subclause (b) of clause 6.4 above, the Victorian Minister (or the Chief Psychiatrist) shall notify the Director of Mental Health that the NSW patient has been apprehended and consult with the Director of Mental Health concerning the arrangements for the patient's return to NSW.

- 6.7** The parties acknowledge and agree that the powers set out in sections 9(5), (6) and (7) of the Victorian Act may be exercised in respect of a NSW patient for the purposes of the taking of the patient to the gazetted mental health service.
- 6.8** The NSW Minister (or the Director of Mental Health), shall for the purposes of requesting the apprehension of a NSW patient provide to the Victorian Department of Human Services the following:
- (a) a copy of the relevant Interstate Apprehension Order;
  - (b) any information which may assist in the apprehension of the patient; and
  - (c) a summary of the clinical and treatment history of the NSW patient.

#### **PART 7: INTERSTATE GUIDELINES**

- 7.1** The parties agree that during the course of this Agreement they will give consideration to whether written Interstate Guidelines to assist NSW and Victoria in the better administration of this Agreement are necessary or useful.
- 7.2** If the parties agree to develop Interstate Guidelines, they further agree that they will act co-operatively and in good faith to agree on their content.
- 7.3** The parties further agree that any Interstate Guidelines shall be reviewed and amended from time to time by negotiation and agreement between the Contact Officers.
- 7.4** Amendment to the Interstate Guidelines may only be by written agreement of the Director-General of NSW Department of Health and the Secretary to the Department of Human Services (Victoria).

#### **PART 8: CONFIDENTIALITY OF INFORMATION**

- 8.1** The parties agree to treat all information acquired from the other party or otherwise acquired or created in the implementation of the Victorian Act, the NSW 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.

- 8.2** 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 legislation relating to privacy and the collection, keeping and disclosure of information that is in force in the receiving party's State.
- 8.3** 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 9: AMENDMENT OR VARIATION OF AGREEMENT**

- 9.1** The parties agree that they will review this Agreement at such intervals as are agreed between the parties.
- 9.2** 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 NSW and Victoria.
- 9.3** Amendments to this Agreement may only be made by the written agreement of the parties.
- 9.4** 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 10: TERMINATION OF AGREEMENT**

- 10.1** 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 28 days written notice in advance of the first party's intention to terminate. The parties may agree to waive the requirement to give 28 days notice of an intention to terminate the Agreement.

**PART 11: CONTACT OFFICERS AND SERVICE OF DOCUMENTS**

**11.1** The Contact Officer for NSW and Victoria for the purposes of this Agreement is set out in Schedule 1.

**11.2** All documents or notices which 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.

**PART 12: SEVERANCE**

**12.1** 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.

**PART 13: COUNTERPARTS**

**13.1** 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.

**SIGNED SEALED AND DELIVERED** )  
 by **the MINISTER FOR HEALTH** for and on )  
 behalf of the State of NSW ) .....  
 but not so as to incur personal liability ) **Craig Knowles**  
 in the presence of: ) **Minister for Health**  
 ) **for the State of NSW**

.....  
 Signature

.....  
 Print Name

**SIGNED SEALED AND DELIVERED** )  
 by **the MINISTER FOR HEALTH** for )  
 and on behalf of the State of Victoria but ) .....  
 not so as to incur personal liability ) **John Thwaites**  
 in the presence of: ) **Minister for Health**  
 ) **for the State of Victoria**

.....  
 Signature

.....  
 Print Name

**SCHEDULE 1**  
**AGREEMENT DETAILS**

**Contact Officer**

The Contact Officer for any issue arising out of the administration or application of the Agreement or the Corresponding Law is:

**For NSW:** the person holding the position of Director, Centre for Mental Health, NSW Department of Health (or his/her delegate)

**Address:** 73 Miller Street, North Sydney

**Tel:** 02 9391 9299

**Email:** braph@doh.health.nsw.gov.au

**Fax:** (02) 9391 9041

**For Victoria:** the person holding the position of Director  
Mental Health

Department of Human Services

**Address:** 555 Collins Street, Melbourne

**Tel:** 03 9616 8123

**Email:** angela.jurjevic@dhs.vic.gov.au

**Fax:** 03 9616 8726