

South Australia

## **Mental Health Variation Regulations 2008**

under the *Mental Health Act 1993*

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### **Part 1—Preliminary**

#### **1—Short title**

These regulations may be cited as the *Mental Health Variation Regulations 2008*.

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## 2—Commencement

These regulations will come into operation on 5 September 2008.

## 3—Variation provisions

In these regulations, a provision under a heading referring to the variation of specified regulations varies the regulations so specified.

## Part 2—Variation of *Mental Health Regulations 1995*

### 4—Insertion of headings

The following headings are inserted before the specified regulations:

- (a) before regulation 1 insert:

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- (b) before regulation 5 insert:

#### **Part 2—Forms**

- (c) before regulation 12 insert:

#### **Part 3—Fees**

### 5—Variation of regulation 11—Transport of patients

- (1) Regulation 11(1)—delete "member of the police force" and substitute:  
police officer
- (2) Regulation 11(3)—delete "the department of"

### 6—Variation of regulation 12—Medical practitioner's right to recover fees

- (1) Regulation 12—delete "member of the police force" and substitute:  
police officer
- (2) Regulation 12—delete "the department of"

### 7—Insertion of Parts 4 and 5

After regulation 13 insert:

## **Part 4—Arrangements between South Australia and Northern Territory**

### **Division 1—Preliminary**

#### **14—Interpretation**

In this Part—

*corresponding law* means the *Mental Health and Related Services Act* of the Northern Territory;

***interstate authorised officer*** means a person on whom power is conferred under the corresponding law to take a person who has a mental illness into his or her care and control;

***interstate detention and treatment order*** means an order made under the corresponding law for the purpose of bringing about the detention and treatment in an interstate treatment centre of a person who has a mental illness;

***interstate officer*** means a person on whom any power is conferred under the corresponding law;

***interstate patient at large*** means a person to whom an interstate detention and treatment order applies who is absent from an interstate treatment centre in which he or she was being detained, or is otherwise at large, without lawful authority under the corresponding law;

***interstate treatment centre*** means a hospital or other facility in which a person may be detained and treated under an interstate detention and treatment order;

***Ministerial agreement*** means the agreement entered into on 6 June 2008 between the Northern Territory Minister responsible for the administration of the *Mental Health and Related Services Act* of the Northern Territory and the South Australian Minister responsible for the administration of the *Mental Health Act 1993* of South Australia, providing for the administration of Part 18 of the Northern Territory Act and these regulations;

***patient at large***—a patient is at large if a South Australian detention and treatment order applies to the patient but—

- (a) the patient has not been taken into, or remained in, the care and control of treatment centre staff or an authorised officer or police officer after the making of the order and before admission to a treatment centre; or
- (b) the patient has left a treatment centre in which he or she was being detained, or the care and control of treatment centre staff, without leave of absence under section 17 of the Act; or
- (c) the patient has been granted leave of absence from a treatment centre under section 17 of the Act, but has not returned to the centre or been taken into the care and control of treatment centre staff or an authorised officer or police officer by the expiry of the leave or after cancellation of the leave;

***patient transport request*** means a document for the transport of a patient in a form that complies with the requirements of the Ministerial agreement;

***South Australian authorised officer*** means—

- (a) an ambulance officer; or

- (b) the director of an approved treatment centre or an employee in an approved treatment centre authorised by the director of the centre to take a person who is unlawfully at large from the centre into his or her care and control; or
- (c) a police officer;

***South Australian detention and treatment order*** means an order for detention under Part 3 Division 2 of the Act;

***South Australian officer*** means a person on whom any power is conferred under these regulations;

***South Australian treatment centre*** means an approved treatment centre.

### **15—Requests or approvals relating to actions involving Northern Territory**

- (1) If a provision of this Part provides that this subregulation applies to the taking of specified action, such action must not be taken unless the action—
  - (a) is contemplated by the Ministerial agreement; and
  - (b) has been requested or approved by an interstate officer under the corresponding law, or under the Ministerial agreement.
- (2) The Chief Advisor in Psychiatry may request or approve action by an interstate officer under the corresponding law that would affect South Australia if—
  - (a) the Ministerial agreement contemplates such action; and
  - (b) the corresponding law or the Ministerial agreement provides that the action must not be taken except at the request or with the approval of a South Australian officer.

### **16—Powers of South Australian officers under corresponding law or Ministerial agreement**

Subject to these regulations, a South Australian officer may exercise any power conferred on the officer under the corresponding law or under the Ministerial agreement.

### **Division 2—Transfer to or from South Australian treatment centres**

#### **17—Transfer from South Australian treatment centres**

- (1) The director of a South Australian treatment centre may give a direction for the transfer to an interstate treatment centre of a patient who is detained in or a patient at large from the South Australian treatment centre if the director is satisfied that the transfer is in the patient's best interests.

- (2) Regulation 15(1) applies to the giving of a direction under this regulation.
- (3) A direction under this regulation must be given by writing in the form approved by the Minister.
- (4) The director must—
  - (a) if there is a relative of the patient whose whereabouts is known to or readily ascertainable by the director, notify that relative of the transfer of the patient to the interstate treatment centre, unless he or she is of the opinion that it would not be in the best interests of the patient to do so; and
  - (b) if the patient is detained in the South Australian treatment centre under an order under section 13 of the Act—notify the Board of the transfer.

### **18—Transfer to South Australian treatment centres**

- (1) The director of a South Australian treatment centre may approve the transfer to the centre of a person to whom an interstate detention and treatment order applies (including an interstate patient at large) if the director of the South Australian treatment centre is satisfied that the transfer is in the person's best interests.
- (2) An approval under this regulation must be given by writing in the form approved by the Minister.
- (3) If an approval is given under this regulation for the transfer of a person to a South Australian treatment centre, the Act applies as if an order for detention of the person had been made under section 12(1) of the Act at the time of admission of the person to the South Australian treatment centre.

### **19—Patient transport requests**

- (1) If the director of a South Australian treatment centre has given a direction for the transfer of a person to an interstate treatment centre under this Division, the director may issue a patient transport request for the purpose of the person's transport to the interstate treatment centre.
- (2) If the director of a South Australian treatment centre has given an approval for the transfer of a person to the centre under this Division, the director may issue a patient transport request for the purpose of the person's transport to the centre.

### **20—Powers when patient transport request issued**

If a South Australian authorised officer or interstate authorised officer believes on reasonable grounds that a person is the person in respect of whom a patient transport request has been issued under this Division, the officer may transport, or take the person into his or her care and control and transport, the person to an interstate treatment centre or South Australian treatment centre, as the case requires, using such force as is reasonably necessary for the purpose.

### **Division 3—Transport to Northern Territory**

#### **21—Transport to Northern Territory when South Australian detention and treatment orders apply**

- (1) If a South Australian detention and treatment order has been made in respect of a person, the person making the order or a South Australian authorised officer may, instead of transporting the person to a South Australian treatment centre for admission to that centre—
  - (a) transport the person to an interstate treatment centre; or
  - (b) deliver the person into the care and control of an interstate authorised officer (whether in or outside South Australia) for the purpose of the person's transport to an interstate treatment centre.
- (2) Regulation 15(1) applies to the taking of action under subregulation (1).
- (3) A South Australian authorised officer or interstate authorised officer may transport, or take the person into his or her care and control and transport, the person to an interstate treatment centre, using such force as is reasonably necessary for the purpose.

#### **22—Transport to Northern Territory of persons with apparent mental illness**

- (1) This regulation applies if a South Australian authorised officer has taken into his or her care and control a person and the officer has reasonable cause to believe that the person has a mental illness and that the conduct of that person is or has recently been such as to cause danger to himself or herself or to others.
- (2) The South Australian authorised officer may, instead of transporting the person to a medical practitioner in South Australia for medical examination—
  - (a) transport the person to an interstate treatment centre or an interstate medical practitioner or interstate authorised health professional; or
  - (b) deliver the person into the care and control of an interstate authorised officer (whether in or outside South Australia) for the purpose of the person's transport to an interstate treatment centre or an interstate medical practitioner or interstate authorised health professional.
- (3) Regulation 15(1) applies to the taking of action under subregulation (2).
- (4) A South Australian authorised officer or interstate authorised officer may transport, or take the person into his or her care and control and transport, the person to an interstate treatment centre or an interstate medical practitioner or interstate authorised health professional, using such force as is reasonably necessary for the purpose.

(5) In this regulation—

*interstate authorised health professional* means a person, other than a medical practitioner, on whom power is conferred under the corresponding law to make an interstate detention and treatment order in respect of a person who has a mental illness.

### **23—Transport to Northern Territory when interstate detention and treatment orders apply**

- (1) If a South Australian authorised officer believes on reasonable grounds that a person in South Australia is an interstate patient at large, 1 or more of the following powers may be exercised in relation to the person:
  - (a) the person may be taken into the care and control of a South Australian authorised officer;
  - (b) the person may be transported to an interstate treatment centre by a South Australian authorised officer;
  - (c) the person may be delivered by a South Australian authorised officer into the care and control of an interstate authorised officer (whether in or outside South Australia) for the purpose of the person's transport to an interstate treatment centre;
  - (d) the person may be taken to a South Australian treatment centre by a South Australian authorised officer and detained there pending the person's transport to an interstate treatment centre;
  - (e) the person may be given treatment for his or her mental illness or any other illness in South Australia, without any requirement for the person's consent, as authorised by a medical practitioner who has examined the patient.
- (2) Regulation 15(1) applies to the taking of action under subregulation (1)(b) or (c).
- (3) Subregulation (1)(e) does not apply to prescribed psychiatric treatment, or to prescribed treatment within the meaning of the *Guardianship and Administration Act 1993*.
- (4) If an interstate authorised officer believes on reasonable grounds that a person in South Australia is an interstate patient at large, the officer may transport the person to an interstate treatment centre.
- (5) A South Australian authorised officer or interstate authorised officer may—
  - (a) transport, or take the person into his or her care and control and transport, the person to a South Australian treatment centre or interstate treatment centre; and
  - (b) if requested, render such assistance as may be necessary to enable or facilitate medical treatment of the person,

using such force as is reasonably necessary for the purpose.

- (6) This regulation does not prevent action being taken under Division 2 for the transport of the person to a South Australian treatment centre if the director of the South Australian treatment centre has given an approval under that Division for the transfer of the person to the South Australian treatment centre.

## **Division 4—Transport to South Australia**

### **24—Transport to South Australia when South Australian detention and treatment orders apply**

- (1) If a South Australian authorised officer believes on reasonable grounds that a person in the care and control of an interstate officer outside South Australia is a South Australian patient at large, the officer may transport the person to a South Australian treatment centre.
- (2) Regulation 15(1) applies to the taking of action under subregulation (1).
- (3) If an interstate authorised officer believes on reasonable grounds that a person in the care and control of an interstate officer outside South Australia is a South Australian patient at large, the officer may—
  - (a) transport the person to a South Australian treatment centre; or
  - (b) deliver the person into the care and control of a South Australian authorised officer for the purpose of the person's transport to a South Australian treatment centre.
- (4) A South Australian authorised officer or interstate authorised officer may transport, or take the person into his or her care and control and transport, the person to a South Australian treatment centre, using such force as is reasonably necessary for the purpose.
- (5) This regulation does not prevent action being taken under Division 2 for the transport of the person to an interstate treatment centre if the director of the South Australian treatment centre has given a direction under that Division for the transfer of the person to the interstate treatment centre.

### **25—Transport to South Australia of person with apparent mental illness**

- (1) This regulation applies if—
  - (a) a person has been taken into the care and control of an interstate officer under the corresponding law because of the person's apparent mental illness; and
  - (b) instead of action being taken for medical examination of the person under the corresponding law, the person is to be—



- (i) transported for medical examination to a medical practitioner in South Australia; or
  - (ii) delivered into the care and control of a South Australian authorised officer (whether in or outside South Australia) for the purpose of the person's transport to a medical practitioner in South Australia.
- (2) A South Australian authorised officer or interstate authorised officer may transport, or take the person into his or her care and control and transport, the person to a medical practitioner in South Australia, using such force as is reasonably necessary for the purpose.

## **Part 5—Miscellaneous**

### **26—Register of patients**

- (1) Pursuant to section 9(2)(e) of the Act, the records relating to a patient admitted into an approved treatment centre must set out—
  - (a) the date of the patient's admission; and
  - (b) if the patient was admitted under an order under section 12 of the Act or an interstate detention and treatment order—details of the order; and
  - (c) if the patient was transferred from another approved treatment centre or an interstate treatment centre—the name and address of that centre; and
  - (d) if the patient is discharged—the date of discharge; and
  - (e) if the patient is transferred to another approved treatment centre or an interstate treatment centre—the name and address of that centre and the date of transfer.
- (2) In this regulation—  
*interstate detention and treatment order* and *interstate treatment centre* have the same meanings as in Part 4.

### **27—Confidentiality**

- (1) If a person is transferred or delivered into the care and control of another under these regulations, personal information relating to the person may be divulged as necessary for the purposes of the transfer or delivery.
- (2) If the Minister has reasonable cause to believe that a person the subject of an order for detention under Part 3 Division 2 of the Act or an order for treatment under Part 4 of the Act has left the State and has, without reasonable excuse, refused or failed to comply with the order, the Minister may divulge personal information relating to the person to a person administering a law of another State or a Territory of the Commonwealth relating to mental health.

## **28—Use of patient records and orders**

The Board, a psychiatrist or any other person may, in taking action under the Act or these regulations in respect of a person transferred or delivered into care and control under these regulations, take into account records and orders made in respect of the person under a law of another State or a Territory of the Commonwealth relating to mental health.

### **Note—**

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

### **Made by the Governor**

with the advice and consent of the Executive Council  
on 4 September 2008

No 244 of 2008

HEACS/05/067