



Australian Capital Territory

# **Insane Persons and Inebriates (Committal and Detention) Act 1936**

**A1936-39**

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## **About this republication**

### **The republished law**

This is a republication of the *Insane Persons and Inebriates (Committal and Detention) Act 1936* effective 19 December 1985 to 11 September 2001.

### **Kinds of republications**

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- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

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Australian Capital Territory

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## **INSANE PERSONS AND INEBRIATES (COMMITTAL AND DETENTION) ACT 1936**

This consolidation has been prepared by the ACT Parliamentary Counsel's Office

Reprinted as at 31 July 1991

### **TABLE OF PROVISIONS**

Section

1. Short title
2. Commencement
3. Interpretation
4. Approval of Agreement
5. Committal to State institution
6. Removal of person to State
7. Validation
8. Committal of inebriates

### **THE SCHEDULE AGREEMENT**

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An Act to approve an Agreement made between the Minister for Health of the State of New South Wales and the Minister of State for the Interior of the Commonwealth of Australia for the reception, detention and maintenance in institutions in the State of New South Wales of insane persons and inebriates committed to those institutions by a Court, Judge, Magistrate or Justice of the Peace of the Territory for the Seat of Government, and for other purposes

### **Short title**

1. This Act may be cited as the *Insane Persons and Inebriates (Committal and Detention) Act 1936*.<sup>1</sup>

### **Commencement**

2. This Act shall commence on a date to be fixed by the Minister by notice published in the *Gazette*.<sup>1</sup>

### **Interpretation**

3. In this Act, unless the contrary intention appears—

“State institution”, in respect of an insane person or patient or resident of the Territory, means a hospital for the insane or reception house or other place of the State appointed under the law of the State for the reception of the insane and in respect of an inebriate an institution established by the State for the reception, control and treatment of inebriates;

“the Agreement” means the Agreement made on the eighteenth day of March, One thousand nine hundred and thirty-six between the Honorable Herbert Paton Fitzsimons, Minister for Health of the State and the Honorable Thomas Paterson, Minister of State for the Interior of the Commonwealth of Australia (a copy of which Agreement is set forth in the Schedule to this Act);

“the Inebriates Act” means the *Inebriates Act*, 1900 of the State in its application to the Territory, as amended by the *Inebriates (Amendment) Act*, 1909 of the State and includes any law of or in force in the Territory amending or substituted for such Act and the Rules and Regulations made under such Act or law for the time being in force;

“the Lunacy Act” means the *Lunacy Act* of 1898 of the State in its application to the Territory and includes any law of or in force in the Territory amending or substituted for such Act, and the Rules and Regulations made under such Act or law for the time being in force;

“the State” means the State of New South Wales.

### **Approval of Agreement**

4. (1) The Agreement is ratified and approved and the doing or performance of all such acts, matters or things as are to or may be done or performed thereunder is authorized.

(2) Without prejudice to the generality of the provisions of the last preceding subsection, where any person is, in pursuance of this Act, committed to a State Institution, any action taken under the law of the State with respect to the property or estate in the Territory of that person and any application made, summons issued or order made, under the law of the State, by Justices of the Peace or a Stipendiary or Police Magistrate of the State, to or against any person in the Territory for the payment of any sum for or towards the maintenance, clothing, medicine, and care of the first-mentioned person, shall have the same force and effect, and any such summons may be served and any such order may be enforced in the Territory, as if lawfully made or issued by a competent authority or court of the Territory.

### **Committal to State institution**

5. (1) Where, in pursuance of the Lunacy Act or the Inebriates Act, a Court, Judge, Magistrate or Justice of the Peace of the Territory has power to commit a person to a hospital for the insane, reception house or other place of the State for the reception of the insane or to an institution established by the State for the reception, control or treatment of inebriates, the Court, Judge, Magistrate or Justice of the Peace, as the case may be, may, while the Agreement is in force, commit the person to a State institution.

(2) Where a person is committed to a State institution in pursuance of this section, he shall, for the purposes of the Lunacy Act or the Inebriates Act, be deemed to have been committed to an institution appointed or established under either of these Acts.

### **Removal of person to State**

6. Where a person is committed to a State institution the person may forthwith be removed to the State for the purpose of reception into and detention and maintenance in a State institution.

### **Validation**

7. Any act, matter or thing made, done or executed before the commencement of this Act by any Court, Judge, Magistrate or Justice of the Peace of the Territory or by Justices of the Peace or a Stipendiary or Police Magistrate of the State, or by any officer of the Territory or of the State or any person whomsoever, which would have been lawful if this Act and the Agreement had been in force at the time the act, matter or thing was made, done or executed, shall be deemed to have been made, done or executed in accordance with law.

### **Committal of inebriates**

8. (1) A person who is an inebriate within the meaning of the Inebriates Act shall not be committed to a State institution pursuant to section 5 on or after the date fixed by the Minister under subsection (2).

(2) The Minister may, by notice in the *Gazette*, fix a date for the purposes of subsection (1).

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### **THE SCHEDULE**

AGREEMENT made the eighteenth day of March in the year One thousand nine hundred and thirty-six BETWEEN THE HONORABLE HERBERT PATON FITZSIMONS the Minister for Health of the State of New South Wales for and on behalf of the said State who with his Successors in such office is hereinafter called the Minister for Health of the one part and THE HONORABLE THOMAS PATERSON the Minister of State for the Interior of the Commonwealth of Australia for and on behalf of the said Commonwealth who with his successors in such office is hereinafter called the Minister of the other part WHEREBY IT IS AGREED as follows:

1. In this agreement unless the contrary intention appears the singular shall include the plural and the plural the singular and the masculine the feminine and the following expression shall have the meanings respectively set opposite to them:

“Commonwealth” means the Commonwealth of Australia.

“Institution” shall in respect of an insane person or patient or resident referred to in Clause 4 mean a hospital for the insane or reception house or other place of the State appointed under the law of the State for the reception of the insane and in respect of an inebriate an institution established by the State for the reception control and treatment of inebriates.

“Inspector-General” means the Inspector-General of the Insane appointed under the Lunacy Act of 1898 of the State and includes a Deputy Inspector-General for the time being performing the duties of such Inspector-General.

“Master” means the Master in Lunacy of the State and includes the Deputy Master in Lunacy of the State and also includes the Chief Clerk in Lunacy of the State when performing the duties of the Master in Lunacy.

“Resident of the Territory” includes any person who is in the Territory whether a Resident or not.

“State” means the State of New South Wales.

“Territory” means the Territory for the Seat of Government of the Commonwealth.

2. (a) Subject to this agreement when a Court or Judge or Magistrate or Justice of the Peace acting or purporting to act under any law of or in force in the Territory orders or authorizes a person to be removed into or detained in any hospital for the insane in New South Wales within the meaning of the Lunacy Act of 1898 of the State and such person is by an officer or the Territory handed over in New South Wales to and received into the custody of an officer of Police of the State such person shall be apprehended and conveyed by the officer of the State to such hospital and he shall by the authorities of the State be received therein and detained therein or in any other hospital or reception house or other place under the said Act in all respects as if two Justices of the State had within the State after the proper certificates enquiries and proof duly made an order under subsection (1) of Section 6 of the Lunacy Act of

1898 of the State directing such person to be removed into such hospital and the order statement and certificates referred to therein had been produced and such person shall when so received and detained as aforesaid be deemed to be an insane patient within the meaning of the said Act of the State.

(b) When such person is handed over as aforesaid by the officer of the Territory to the officer of Police of the State such person shall be identified to the officers of the State to their satisfaction and there shall be delivered to such officers the order or authority of the Court Judge Magistrate or Justice of the Peace for the removal or detention of the said person and the medical certificates and evidence leading to such order or authority or office copies thereof.

(c) Where any person is by an officer of the Territory handed over in New South Wales to and received into custody by an officer of Police of the State in purported or intended execution of this agreement no action suit or proceeding shall lie against the State or any authority or officer of the State by reason of the apprehension of such person and his conveyance to and detention in a hospital for the insane of the State or other institution of the State.

3. Any resident of the Territory may be received and detained as an insane patient in a hospital for the insane of the State on the authority of a request statement of particulars and two medical certificates made under any law of or in force in the Territory corresponding to Section 9 of the Lunacy Act of 1898 of the State.

4. If a written application is made by a resident of the Territory to an authority or authorities of the State nominated by the Minister for Health that such resident be received into a hospital for the insane in New South Wales within the meaning of the Lunacy Act of 1898 of the State such resident shall be entitled to be received and to remain therein if and while the medical officer for such hospital considers that course advisable in the interest of such resident provided that he shall not be detained in any institution contrary to his wish in the absence of any order request or other authority under the Lunacy Act of 1898 or any present or future amendment thereof or under this agreement requiring or authorizing the same provided further that any such person may be discharged by the Medical Officer for any institution if he should think such course necessary in the interests of such person or of the institution.

5. Subject to this agreement all the provisions of the Lunacy Act of 1898 of the State (including any amendments heretofore and hereafter made) and the rules and regulations thereunder for the time being in force shall apply to and with respect to every person handed over in New South Wales by an officer of the Territory to and received into custody by an officer of Police of the State as provided in Clause 2 and to every resident of the Territory received in a hospital for the insane of the State as provided in Clause 3 and to every resident of the Territory received into a hospital for the insane as provided in Clause 4 and to and with respect to the property and estate of every such person or resident (whether in New South Wales or in the Territory) including the applying for and enforcing payment by relatives whether resident in the Territory or in the State of sums for or towards maintenance clothing medicine and care of every such person or resident.

6. In case any such person or resident shall die in an institution of the State the State shall do all such things for his burial as would be done if he had been a resident of the State in like case.

7. Justices of the Peace or a Stipendiary or Police Magistrate for New South Wales may make the application referred to in subsection (1) of Section 142 of the Lunacy Act of 1898 of the State to, and a summons issued in the State under subsection (2) of that Section or under Section 145 of that Act may be served on, the relatives of any patient within the meaning of the said Section 142 who are within the Territory as if they were within the State and all orders may be made and proceedings had thereon as if such relatives had been within the State.

8. (a) Subject to this agreement when an order has been made in pursuance or intended execution of the *Inebriates Act* 1900 and the *Inebriates (Amendment) Act* 1909 of the State as continued in force in the Territory or of any other law of or in force in the Territory amending the same or in substitution therefor that a person shall be placed in an institution in New South Wales established or deemed to be established by the Government of the State under Section 9 of the *Inebriates Act* 1912 and such person is by an

officer of the Territory handed over in New South Wales to and received into the custody of an officer of Police of the State such person shall be apprehended and conveyed by the officer of the State to such institution and he shall by the authorities of the State be received therein and detained therein or in any other State institution under the *Inebriates Act* 1912 of the State in all respects as if such person had been in New South Wales and an order had been duly made under subsection (1) of Section 3 of the *Inebriates Act* 1912 by a Judge of the Supreme Court of New South Wales on the proper application proof certificate and procedure that such person be placed in a State institution established under Section 9 of such Act for the same period as may be mentioned in the order first referred to in this subclause.

(b) When such person is handed over as aforesaid by the officer of the Territory to the officer of Police of the State such person shall be identified to the officers of the State to their satisfaction and there shall be delivered to such officers the order first mentioned in subclause (a) of this Clause or an office copy thereof.

(c) Where any person is by an officer of the Territory handed over in New South Wales to and received into custody by an officer of Police of the State in purported or intended execution of this agreement no action suit or proceeding shall lie against the State or any authority or officer of the State by reason of the apprehension of such person and his conveyance to and detention in any State Institution established or deemed to be established under the *Inebriates Act* 1912 of the State.

9. (a) Subject to this agreement all the provisions of the *Inebriates Act* 1912 of the State (including any amendments heretofore or hereafter made) and the rules and regulations thereunder for the time being in force and including the enactments of the Lunacy Act of 1898 as applied by Section 9 of the *Inebriates Act* 1912 shall apply to and with respect to every person handed over in New South Wales by an officer of the Territory to and received in custody by an officer of Police of the State as provided in Clause 8 and to and with respect to the property and estate of every such person (whether in New South Wales or in the Territory) including the applying for and enforcing payment by relatives whether resident in the Territory or in the State of sums for or towards maintenance clothing medicine and care of every such person and including the extending for further periods of any period mentioned in any order.

(b) For the purposes of this clause an order as first described in subclause (a) of Clause 8 shall be deemed to be an order made under paragraph (f) of subsection (1) of Section 3 of the *Inebriates Act* 1912 of the State and the person the subject thereof shall be deemed to be an inebriate the subject of an order under such Act and any Judge of the Supreme Court or Judge of any District Court the Master in Lunacy or any Stipendiary or Police Magistrate may exercise the powers of Sections 18 and 20 of the said Act in respect of such person as if he had made an order under the said Act in or with respect to such person.

10. Justices of the Peace or a Stipendiary or Police Magistrate for New South Wales may make the application referred to in subsection (1) of Section 142 of the Lunacy Act of 1898 as applied by Section 9 of the *Inebriates Act* 1912 of the State to, and a summons issued in the State under subsection (2) of the said Section 142 or under Section 145 of the Lunacy Act of 1898 as applied as aforesaid may be served on, the relatives of any person in any institution established or deemed to be established under the said Section 9 who are within the Territory as if they were within the State and all orders may be made and proceedings had thereon as if such relatives had been within the State.

11. (a) In respect of each and every person who is handed over by an officer of the Territory to and received into custody by an officer of Police of the State under Clause 2 or under Clause 8 of this Agreement and of each and every resident of the Territory who is received in a hospital for the insane of the State under Clause 3 of this Agreement or in a hospital for the insane under Clause 4 thereof (all such persons and residents being hereinafter referred to as "persons in respect of whom the Commonwealth may be liable") the Commonwealth shall pay to the State the amounts that are equal to the excess (if any) of the cost to the State of—

- (i) obtaining any order certificates or authority in respect of such person or resident and conveying such person or resident to an institution and from one institution or place to another and returning him to the Territory under this agreement on his discharge or otherwise:



- (ii) maintaining such person or resident in an institution or otherwise; and
- (iii) consulting with specialists in mental or other diseases or with specialists in the treatment of inebriates concerning such person or resident and treating him; and
- (iv) burying such person or resident if he shall die in an institution or while otherwise in the custody of the State in terms of this agreement:

over any moneys in respect of the committal or other authority conveyance maintenance treatment and burial of such person or resident as aforesaid received by the State therefor from such person or resident or from his estate or from a relative or friend

(b) For the purpose of this clause the cost to the State of maintaining a person or resident in an institution for any period shall be ascertained by means of the following formula:

$$\frac{A}{7} \times B = C$$

In the above formula—

- A** represents the number of days in the period during which the person was maintained
- B** represents the amount determined by the Master or the Inspector-General (as the case may be) as being the average cost per head per week of maintaining persons in that institution during the period, and
- C** represents the cost of maintaining the person or resident in the institution for the period

(c) A certificate under the hand of the Master or the Inspector-General stating the amount which was the average cost per head per week of maintaining persons in an institution during a period shall as between the parties hereto be conclusive evidence of the matters stated.

12. (a) In the month of July in each year during the continuance of this agreement the Inspector-General shall furnish to the Minister particulars of—

- (i) the names of all persons in respect of whom the Commonwealth may be liable who in the period of twelve calendar months (or in the case of the first period in the period commencing on the commencement of this agreement and) ending on the thirtieth day of June then last past were apprehended received detained cared for maintained or otherwise dealt with by the State or its officers or authorities under or in pursuance of this agreement: and
- (ii) the Institutions in which such persons respectively were maintained and the period of maintenance in each institution: and
- (iii) the cost to the State in such period of twelve calendar months (or in the case of the first period the shorter period aforesaid) of the matters or things set forth in paragraph (i) to (iv) inclusive of subclause (a) of Clause 11 of this Agreement: and
- (iv) the moneys received during such period of twelve calendar months (or in the case of the first period the shorter period aforesaid) by the State from any of the persons in respect of whom the Commonwealth may be liable or from their estates or relatives or friends in respect of the committal conveyance maintenance treatment or burial of any of such persons:

together with Certificates under the hand of the Master or the Inspector-General pursuant to Clause 11 of this agreement in respect of each institution in which any of the persons in respect of whom the Commonwealth may be liable were maintained for any time during the said period of twelve calendar months or shorter period as aforesaid.

(b) In the calendar month after the termination of this Agreement the Inspector-General shall furnish to the Minister the particulars mentioned or referred to in paragraphs (i) to (iv) inclusive of subclause (a) of this clause (together with certificates under the hand of the Master or the Inspector-General as mentioned in that subclause) in regard to all persons in respect of whom the Commonwealth may be liable but in reference to the period commencing on the 1st day of July last past and ending on the termination of this agreement instead of a period of twelve calendar months ending on the 30th day of June mentioned in that subclause.

(c) Without impairing the operation of subclause (c) of Clause 11 any particulars furnished in regard to the matters referred to in paragraphs (i) to (iv) inclusive of subclause (a) of this Clause shall as between the parties hereto be prima facie evidence of the matters stated.

13. (a) Any moneys payable by the Commonwealth to the State pursuant to Clause 11 of this Agreement shall be paid to the Master at Sydney.

(b) Within a period of one calendar month after the particulars referred to in subclause (a) of Clause 12 of this agreement have been furnished to the Minister in respect of any and every period ending on the 30th day of June in each year as mentioned in such subclause and after the particulars referred to in subclause (b) of the said Clause 12 have been furnished to the Minister in respect of the period ending on the termination of this agreement the Commonwealth will pay to the State as herein provided the moneys payable under Clause 11 in regard to all persons in respect of whom the Commonwealth may be liable for or in relation to the period ending on the 30th day of June or termination of this agreement as the case may be to which the particulars relate.

14. Any of the persons in respect of whom the Commonwealth may be liable who on being discharged from an institution of the State under the Lunacy Act of 1898 or the *Inebriates Act 1912* or this Agreement desire to be returned to the Territory shall be conveyed to the Territory by the State.

15. Upon service upon the officer in charge of an institution of the State of an order under the hand of the Minister directing the removal from such institution to an institution in the Territory of a person detained in such institution under Clause 2 or Clause 8 of this Agreement such officer in charge shall forthwith deliver such person into the custody of the person named in the order as authorized to receive such custody and he shall immediately convey to the Territory the person so delivered to him.

16. (a) Either of them the Minister for Health or the Minister may terminate this Agreement at any time by giving at any time to the other of them six calendar months' previous notice in writing of such termination.

(b) Upon any such termination the Minister may make an order directing the removal from the institutions of the State to a hospital for the insane or other place in the Territory of persons at such termination detained in such institutions of the State under Clauses 2, 3, 4 and 8 of this Agreement and may cause such order to be served upon the respective officers in charge of the institutions of the State in which such persons are respectively detained and such officers in charge shall forthwith deliver such persons respectively into the custody of the persons respectively named in the orders as authorized to receive such custody and they shall immediately convey to the Territory the persons so delivered to them.

(c) Notwithstanding any such termination of this Agreement the provisions of this Agreement (including Clause 11) shall continue to apply to and with respect to the persons at the said termination detained in the institutions of the State under Clauses 2, 3, 4 and 8 of this Agreement until delivered in pursuance of subclause (b) of this Clause by the officers in charge of such institutions to the persons authorized to receive such first mentioned persons into custody by the orders of the Minister served upon such officers in charge in accordance with the said subclause (b).

17. Unless the context otherwise requires any notice demand request or communication that may or is to be given or made by the Commonwealth or the Minister to the State or to any authority of the State or to the Inspector-General in pursuance of or under this Agreement shall be deemed to have been duly

given or made if signed by or on behalf of the Minister and delivered to the Inspector-General or sent in a prepaid letter addressed to the Inspector-General at his usual official address.

18. Unless the context otherwise requires any notice demand request communication certificate statement or particulars that may or are to be given or made or furnished by the State or the Inspector-General or any authority of the State to the Commonwealth or to the Minister in pursuance of or under this Agreement shall be deemed to have been duly given made or furnished if signed by or on behalf of the Minister for Health or the Inspector-General or the Master or other authority and delivered or left at the office of the Secretary, Department of the Interior of the Commonwealth or sent in a prepaid letter addressed to the Secretary, Department of the Interior, Canberra.

19. This Agreement is subject to ratification by the Parliament of the said State and by a law of the Territory so as to validate its execution and so as to authorize the doing or performance of all such acts matters or things as are to be done or performed under or in pursuance of this Agreement and shall not be of any force or effect until so ratified.

IN WITNESS whereof the parties hereto have hereunto set their hands the day and year first hereinbefore written.

SIGNED BY THE MINISTER FOR HEALTH of the State  
of New South Wales for and on behalf of the State in  
the presence of

} H. P. FITZSIMONS.

C. B. STINSON, J. P.

SIGNED BY THE MINISTER OF STATE FOR THE  
INTERIOR of the Commonwealth of Australia for and  
on behalf of the said Commonwealth in the presence of

} T. PATERSON.

R. ROWE.

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# NOTE

1. The *Insane Persons and Inebriates (Committal and Detention) Act 1936* as shown in this reprint comprises Act No. 39, 1936 amended as indicated in the Tables below.

Citation of Laws—The *Self-Government (Citation of Laws) Act 1989* (No. 21, 1989) altered the citation of most Ordinances so that after Self-Government day they are to be cited as Acts. That Act also affects references in ACT laws to Commonwealth Acts.

**Table of Ordinances**

Ordinance	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Insane Persons and Inebriates (Committal and Detention) Agreement Ordinance 1936</i>	39, 1936	17 Sept 1936	23 June 1949 (see <i>Gazette</i> 1949, p. 1768)	
<i>Insane Persons and Inebriates (Committal and Detention) Ordinance 1937</i>	23, 1937	16 Dec 1937	16 Dec 1937	—
<i>Insane Persons and Inebriates (Committal and Detention) (Amendment) Ordinance 1985</i>	68, 1985	19 Dec 1985	19 Dec 1985	—

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision	How affected
S. 1 .....	am. No. 23, 1937
S. 7 .....	ad. No. 23, 1937
S. 8 .....	ad. No. 68, 1985