



Australian Capital Territory

Mental Health Act 1962

A1962-5

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About this republication

The republished law

This is a republication of the *Mental Health Act 1962* effective 6 February 1995 to 8 December 1998.

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Australian Capital Territory

MENTAL HEALTH ACT 1962

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

Reprinted as at 28 February 1995

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THE SCHEDULE SUPPLEMENTAL AGREEMENT

An Act to make provisions supplementary to the law in force in the Territory relating to the control and treatment of Persons suffering from Mental Disorders, and for other purposes

1. Short title

This Act may be cited as the *Mental Health Act 1962*.¹

2. Interpretation

In this Act, unless the contrary intention appears—

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“reciprocating State” means a part of Her Majesty’s dominions that is specified in the regulations to be a reciprocating State for the purposes of section seven of this Act;

“the Master” means the person who, in pursuance of the Supplemental Agreement, carries out the functions of the Master in Lunacy in the Territory;

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

“the Supplemental Agreement” means the Agreement a copy of which is set out in the Schedule to this Act.

3. Approval of Supplemental Agreement

The Supplemental Agreement is ratified and approved and the doing or performance of all acts, matters or things that are to be, or may be, done or performed under or in pursuance of the Supplemental Agreement is authorized.

4. Certificates of medical practitioners and conveyance to admission centre

(1) For the purposes of this section, a certificate is a certificate in accordance, or substantially in accordance, with the form set out in Part I, together with the form set out in Part II, of the Schedule to the Supplemental Agreement, or with forms substituted for those forms in pursuance of that Agreement.

(2) Where each of two medical practitioners has, independently of the other—

- (a) personally examined a person;
- (b) formed the opinion that the person is a mentally ill person and is a suitable case for admission to an admission centre in the State; and
- (c) formed the opinion that the assistance of a member of the Police Force of the Territory is desirable in conveying the person to the admission centre,

and each of those medical practitioners has issued a certificate in relation to the person, a member of the Police Force of the Territory to whom the two certificates are together delivered not more than seven days after the date of the earlier of the examinations referred to in the certificates shall, as soon as practicable, convey or assist in conveying the person to an admission centre in the State.

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(3) A medical practitioner who gives a certificate shall specify in the certificate the facts and other matters upon which he has formed the opinions expressed in the certificate.

(4) A medical practitioner shall not give a certificate in respect of a person where he is aware that another medical practitioner who employs him or is employed by him or who is his partner, assistant, parent, brother, sister, child or spouse has examined the person and has given a certificate in respect of the person.

Penalty: Two hundred dollars.

(5) A medical practitioner shall not give a certificate in respect of a person who is his parent, brother, sister, child or spouse.

Penalty: Two hundred dollars.

(6) A medical practitioner who signs a certificate without having personally examined the person to whom it relates, at the time specified in the certificate, for the purpose of ascertaining the condition of the person, or who wilfully makes a false statement in a certificate, is guilty of an offence and is punishable, upon conviction, by a fine not exceeding Two hundred dollars.

6. Declaration of reciprocating state

(1) Where the laws of a part of Her Majesty's dominions outside the Territory enable powers (being powers substantially similar to the powers conferred by the next succeeding section in the case of mental patients residing in that part) to be exercised in that part in the case of persons who are insane patients by virtue of the law in force in the Territory, the regulations may declare that part to be a reciprocating state for the purposes of the next succeeding section.

(2) A reference in the last preceding subsection to a part of Her Majesty's dominions outside the Territory includes a reference to a Territory which is under Her Majesty's protection and to a territory the subject of a trusteeship agreement approved by the General Assembly of the United Nations which is under the administration of a government of a part of Her Majesty's dominions.

7. Powers of Master as to property in the Territory of mental patients confined in a reciprocating state

(1) Where the officer charged by the laws of a reciprocating state with the care, recovery, collection, preservation and administration of the property and estates of mental patients in a hospital centre situated in the reciprocating state—

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- (a) certifies in writing under his hand and seal (if any) to the Master that a person—
 - (i) is a mental patient confined in a hospital centre situated in that reciprocating state; and
 - (ii) is possessed of or entitled to or appears to be entitled to or interested in real or personal property in the Territory; and
- (b) by instrument in writing under his hand and seal (if any) authorizes the Master to collect, recover, manage, sell or otherwise dispose of and administer that property or to make inquiry respecting that property,

the Master shall have and may exercise in respect of that property the same powers of collection, recovery, management, sale, disposition, administration and inquiry so he would have had and may have exercised in respect of that property if the mental patient had been an insane patient by virtue of the law in force in the Territory.

(2) Where the Master has, in the exercise of his powers under the last preceding subsection, received any moneys or properties, the Master may, after—

- (a) paying all costs, charges and expenses incurred by him in the exercise of those powers in connexion with those moneys or properties; and
- (b) satisfying or providing for the debts (if any) of the mental patient that are owed to persons resident in the Territory and the claims (if any) of persons resident in the Territory against the mental patient,

pay over or deliver and account for the balance (if any) of the moneys or properties to the officer of the reciprocating state who signed the authority in respect of the moneys or properties or his successor in office.

(3) Where the Master pays over or delivers moneys or properties in accordance with the last preceding subsection, he shall not be responsible as to the application of the moneys or properties or incur any liability in respect of that payment over or delivery.

8. Regulations

The Executive may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed or which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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THE SCHEDULE

Section 2

A SUPPLEMENTAL AGREEMENT made the eighteenth day of October One thousand nine hundred and sixty-one BETWEEN THE COMMONWEALTH OF AUSTRALIA (in this agreement called “the Commonwealth”) of the one part and THE STATE OF NEW SOUTH WALES (in this agreement called “the State”) of the other part.

WHEREAS by the agreement referred to in this agreement as the principal agreement provision was made for the reception, detention and maintenance in institutions in the State 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 acting or purporting to act under any law of or in force in the Territory, and for other purposes:

AND WHEREAS by the Insane Persons and Inebriates (Committal and Detention) Act 1936-1937 of the said Territory and the Lunacy and Inebriates (Commonwealth Agreement Ratification) Act, 1937 of the State the principal agreement was ratified, approved and validated and the doing or performance of all such acts, matters or things as are or may be done or performed under or in pursuance of the principal agreement was authorised:

AND WHEREAS it is necessary and desirable to make further provision for the admission and detention of residents of the Territory in institutions in the State and for other matters:

NOW IT IS HEREBY AGREED as follows—

1. This agreement shall have no force or effect and shall not be binding on either party until it is approved by the Parliament of the State and by a law of the Territory, so as to validate its execution and so as to authorise 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.

2. (1) In this agreement, unless the context otherwise requires—

“the Lunacy Act in its application to the Territory” means the Lunacy Act of 1898 of the State as in force in the Territory as amended from time to time by Act of the Territory;

“the Mental Health Act” means the Mental Health Act, 1958 of the State as amended from time to time;

“the principal agreement” means the agreement made the eighteenth day of March, 1936, between the Honourable Herbert Paton FitzSimons, then Minister for Health of the State, for and on behalf of the State, and the Honourable Thomas Paterson, then Minister of State for the Interior of the Commonwealth, for and on behalf of the Commonwealth, and set out in the Schedule to the said Insane Persons and Inebriates (Committal and Detention) Act 1936-1937 of the Territory and the said Lunacy and Inebriates (Commonwealth Agreement Ratification) Act, 1937 of the State;

and words importing the masculine gender include females, words in the singular include the plural, and words in the plural include the singular.

(2) In the principal agreement, notwithstanding anything contained therein, and in this agreement

“the Minister” means the Minister of State of the Commonwealth for the time being administering the Act of the Territory by which the principal agreement and this agreement are approved and includes a member of the Federal Executive Council for the time being acting for and on behalf of that Minister;

“the Minister for Health” means the Minister of State administering the Mental Health Act and includes a member of the Executive Council of the State for the time being acting for and on behalf of that Minister; and

“the Territory” means the Australian Capital Territory and includes the Territory accepted by the Commonwealth in pursuance of the Jervis Bay Acceptance Act 1915 of the Commonwealth and described in the agreement set out in the Schedule to that Act.

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THE SCHEDULE—continued

(3) The principal agreement shall, notwithstanding anything contained therein, be construed as follows:

- (a) a reference to the Lunacy Act of 1898 of the State shall be read as a reference to the Mental Health Act;
- (b) a reference to a specific provision of the Lunacy Act of 1898 of the State shall be read as a reference to the corresponding provision for the time being in force, if any, of the Mental Health Act; and
- (c) a reference to an authority or institution of or in the State mentioned in the Lunacy Act of 1898 of the State shall be read as a reference to the corresponding authority or institution, whether of the same or some other name, mentioned in the Mental Health Act.

(4) A reference in the principal agreement or in this agreement to an act, matter or thing done or to be done or performed or to be performed by the Minister shall be read so as to include an act, matter or thing done or to be done or performed or to be performed by a delegate of, or a person authorised by, the Minister in that behalf under the laws for the time being in force in the Territory.

(5) Subject to the preceding subclauses of this clause, words and expressions used in this agreement which are the same as words and expressions to which a meaning is attributed in the principal agreement shall, unless the contrary intention appears, have the respective meanings attributed to them by the principal agreement.

3. The principal agreement is amended by omitting clause 3 thereof.

4. A resident of the Territory will be admitted to and detained in an admission centre in the State for observation and treatment upon the certificate of one registered medical practitioner of the Territory in or to the effect of the form set out in Part I of the schedule to this agreement or in such other form as may from time to time be agreed upon by the Minister and the Minister for Health.

5. (1) When two medical practitioners of the Territory have given certificates in or to the effect of the form set out in Part I of the schedule to this agreement, endorsed in or to the effect of the form set out in Part II of the schedule to this agreement, or in such other form or endorsed in such other manner as may from time to time be agreed upon by the Minister and the Minister for Health, and the person with respect to whom the certificates were given is taken by a member of the Police Force of the Territory to the admission centre named in the certificates and presented to a responsible person there, the person presented shall be admitted to the admission centre by the authorities of the State and detained in the admission centre or in some other admission centre in the State.

(2) When a person is presented to a responsible person at an admission centre in accordance with the last preceding subclause, the person presented shall be identified to the satisfaction of the responsible person and there shall be delivered to the responsible person the medical certificates relating to the person presented.

6. A person admitted to an admission centre in pursuance of clause 4 or clause 5 of this agreement shall be deemed to be subject to the provisions of the Mental Health Act and any act, matter or thing may be done or performed with respect to that person, in all respects as if the person had been admitted to and detained in the admission centre in pursuance of subsection (1) of section 12 of the Mental Health Act.

7. (1) A resident of the Territory who makes application or for whom application is made, in accordance with the provisions of Part VI of the Mental Health Act, for admission to and detention in an admission centre, mental hospital or authorised hospital as a voluntary patient may, subject to the provisions of that Part, be so admitted by the superintendent of the admission centre, mental hospital or authorised hospital.

(2) A person so admitted and detained shall be subject in all respects to the provisions of the Mental Health Act as a voluntary patient and any act, matter or thing may be done or performed in accordance with those provisions with respect to that person and, by the Master in the Protective Jurisdiction of the Supreme Court of the State, with respect to the estate of that person.

8. (1) Where—

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THE SCHEDULE—continued

- (a) the Governor-General of the Commonwealth, acting or purporting to act under any law of or in force in the Territory, orders or directs a person to be conveyed to and kept in a mental hospital in the State during the Governor-General's pleasure; or
- (b) the Minister, acting or purporting to act under any law of or in force in the Territory, orders or directs by order that a person be removed to and kept or detained in or recommitted to a mental hospital in the State,

and the person is by a member of the Police Force of the Territory handed over in the State to and received into the custody of an officer of the Police of the State, the person shall be apprehended and conveyed by the officer of the State to the hospital and shall by the authorities of the State be received therein and detained in the hospital or in any other mental hospital in the State.

(2) Where a person is handed over to an officer of the Police of the State in accordance with the last preceding subclause, the person shall be identified to the satisfaction of the officer and there shall be delivered to the officer the warrant or order of the Governor-General or Minister, as the case may be, and the Court order, or medical certificates and statement of particulars, leading to the warrant or order, together with a statement signed by the Minister showing the provision of the Law of the Territory under the authority of which the warrant or order of the Governor-General or Minister or Court order was made, and showing further shortly the requirements of such provision.

(3) In any case where medical certificates and a statement of particulars are required they shall be in the form of that in Schedule Two of the Lunacy Act of 1898 in its application to the Territory or in such other form as may be agreed upon by the Minister and the Minister for Health.

(4) The names of the hospitals in the State which may be referred to in any such warrant or order shall be communicated to the Minister by the Minister for health.

9. A person confined or detained in a mental hospital in pursuance of clause 8 of this agreement shall be deemed to be subject to the provisions of the Mental Health Act and any act, matter or thing may be done or performed with respect to that person in all respects as if the person had been so confined or detained pursuant to the order of the Governor of the State or the Minister for Health, as the case may be, but that person shall be dealt with in accordance with such orders as the Governor-General or the Minister may make from time to time in pursuance of any law of or in force in the Territory, and, except in pursuance of any such order or in accordance with this agreement, shall not be liberated or discharged.

10. (1) Where the Governor-General of the Commonwealth, acting or purporting to act under any law of or in force in the Territory, permits a person confined in a mental hospital under the last preceding clause to be liberated therefrom, the warrant of the Governor-General shall be sent by the Minister to the Minister for Health who shall arrange for the liberation of the person upon such terms and conditions, if any, as are prescribed in the said warrant.

(2) If any condition upon which a person is liberated under the last preceding clause is broken, the State will, at the request and the expense of the Commonwealth, take such action to retake that person as it would have taken if the person had been liberated with the permission of the Governor and a condition on which he had been liberated had been broken.

11. When the Minister, acting or purporting to act under a law of or in force in the Territory, orders or directs a person detained in pursuance of clause 8 of this agreement to be returned to the Territory or any gaol or other place of detention in the Territory, a copy of the order shall be sent by the Minister to the Minister for Health who shall arrange for the delivery of the person to a member of the Police Force of the Territory.

12. If at any time a person escapes from the custody of a member of the Police Force or other officer of the Territory by whom the person is being conveyed within the State for the purposes of the principal agreement or of this agreement, the State will, at the expense of the Commonwealth, take all reasonable action for the retaking of the person and for his return to custody or his delivery to the institution to which he was being conveyed.

13. Subject to this agreement and the principal agreement, the provisions of clauses 5, 6, 11, 12, 13 and 14, and of subclauses (b) and (c) of clause 16, of the principal agreement shall apply to and with

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THE SCHEDULE—continued

respect to every person, and to and with respect to the property of every person handed over to, and received into custody by, an officer of the Police of the State and to every person and to the property of every person admitted to an admission centre, mental hospital or authorised hospital in the State in pursuance of this agreement.

14. Until such time as is otherwise provided by or in accordance with the laws in force in the Territory the Master in the Protective Jurisdiction of the Supreme Court, Deputy Master and Chief Clerk in the Protective Jurisdiction of the Supreme Court respectively of the State shall carry out the functions of the offices of Master in Lunacy, Deputy Master in Lunacy and Chief Clerk, respectively, under the Lunacy Act in its application to the Territory.

15. Except in so far as it is varied by this agreement, the principal agreement is confirmed, and clauses 17 and 18 and subclause (a) of clause 16 of the principal agreement shall apply with respect to this agreement as if this agreement were incorporated in and formed part of the principal agreement.

16. A notification published in the Commonwealth Gazette and the New South Wales Government Gazette and purporting to have been signed by the Minister and the Minister for Health to the effect that the form of certificate or manner of endorsement set out in the notification has been agreed upon pursuant to this agreement shall be conclusive evidence of the matters stated and set out.

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THE SCHEDULE—continued

SCHEDULE

PART I

I,.....
(Name in full)

of....., Medical Practitioner,
(Address)

do hereby certify that on the.....day of.....
19....., at.....
(Address of place where examination took place)

I personally examined.....
(Name of person in full)

of.....
(Address of person examined)

independently of any other medical practitioner and I am of the opinion that the said person is a mentally ill person and is a suitable case for admission to the Admission Centre at.....
.....
(Name of institution)

for observation and treatment.

In my opinion the person examined is*—

- (a) suicidal;
- (b) dangerous to others;
- (c) unable to care for himself;
- (d) not under proper care and control.

The facts and other matters upon which I have formed these opinions are as follows:

The following treatment and medication (if any) have been administered in respect of the mental illness of the person examined:

So far as I am aware—

- (a) the bodily health and condition of the person examined is.....; and
- †(b) the person examined has not suffered any recent injury; *or*
- †(b) the person examined has suffered a recent injury of which particulars are as follows:

‡Signed this.....day of....., 19.....
Signature.....

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THE SCHEDULE—continued

PART II

I am of the opinion that the assistance of a member of the Police Force is desirable in conveying the person examined to the Admission Centre at.....

(Name of institution)

The facts and other matters upon which I have formed this opinion are as follows:

Signed this.....day of, 19.....

Signature.....

* Strike out and initial any of the conditions that are not applicable.

† Strike out words inapplicable.

‡ Omit when the form in Part II of the Schedule is used.

IN WITNESS WHEREOF this agreement has been executed the day and year first above written.

SIGNED for and on behalf of THE COMMONWEALTH OF AUSTRALIA by The Honourable GORDON FREETH, Minister of State for the Interior of the Commonwealth, in the presence of—

} GORDON FREETH

DAVID I. SMITH
Private Secretary,
Canberra. A.C.T.

SIGNED for and on behalf of THE STATE OF NEW SOUTH WALES by The Honourable WILLIAM FRANCIS SHEAHAN, Minister for Health of the State, in the presence of—

} W. SHEAHAN

K. H. GAIN
156 Raglan St.,
Mosman.

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NOTE

1. The *Mental Health Act 1962* as shown in this reprint comprises Act No. 5, 1962 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 1

Table of Ordinances

Ordinance	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Mental Health Ordinance 1962</i>	5, 1962	18 Apr 1962	18 Apr 1962	
<i>Ordinances Revision (Decimal Currency) Ordinance 1966</i>	19, 1966	23 Dec 1966	23 Dec 1966	—
<i>Ordinances Revision Ordinance 1978</i>	46, 1978	28 Dec 1978	28 Dec 1978	—
<i>Magistrates Court Ordinance 1985</i>	67, 1985	19 Dec 1985	1 Feb 1986 (see <i>Gazette</i> 1986, No. G3, p. 265)	—
<i>Self-Government (Consequential Amendments) Ordinance 1989</i>	38, 1989	10 May 1989	Ss. 1 and 2: 10 May 1989 Remainder: 11 May 1989 (see s. 2 (2) and <i>Gazette</i> 1989, No. S164)	—

Self-Government day 11 May 1989

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NOTE—continued

Table 2

Table of Acts

Act	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Mental Health (Consequential Provisions) Act 1994</i>	45, 1994	7 Sept 1994	Ss. 1 and 2: 7 Sept 1994 Remainder: 6 Feb 1995 (see s. 2 (2) and <i>Gazette</i> 1995, No. S33, p.2)	—

Table of Amendments

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

Provision	How affected
S. 2	am. No. 67, 1985
S. 4	am. No. 19, 1966
S. 5	am. No. 38, 1989 rep. Act No. 45, 1994
S. 8	am. No. 38, 1989
The Schedule.....	am. No. 46, 1978