

**MENTAL HEALTH (COMMONWEALTH AGREEMENT RATIFICATION) AMENDMENT ACT.**

**Act No. 14, 1962.**

An Act to ratify an agreement made between the Commonwealth of Australia of the one part and the State of New South Wales of the other part, which agreement is supplemental to and amends the agreement ratified by the Lunacy and Inebriates (Commonwealth Agreement Ratification) Act, 1937; to amend the said Act and the Mental Health Act, 1958, as amended by subsequent Acts; to validate certain matters; and for purposes connected therewith. [Assented to, 21st May, 1962.]

Elizabeth II,  
No. 14, 1962

**B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the "Mental Health (Commonwealth Agreement Ratification) Amendment Act, 1962".

Short title,  
citation  
and com-  
mencement.

(2) The Lunacy and Inebriates (Commonwealth Agreement Ratification) Act, 1937, as amended by this Act, may be cited as the Mental Health (Commonwealth Agreement Ratification) Act, 1937-1962.

(3)

**Mental Health (Commonwealth Agreement Ratification)  
Amendment Act.**

**No. 14, 1962** (3) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

**Amendment of Act No. 37, 1937.** 2. The Lunacy and Inebriates (Commonwealth Agreement Ratification) Act, 1937, is amended—

**Sec. 2.**  
(Ratification of agreement.)

- (a) (i) by omitting from subsection one of section two the word "Schedule" and by inserting in lieu thereof the words "First Schedule";
- (ii) by omitting from subsection two of the same section the words "for Public Health or the Inspector-General of the Insane" and by inserting in lieu thereof the words "or the Director-General of State Psychiatric Services";

**Subst. sec. 3, new secs. 3A, 3B.**

- (b) by omitting section three and by inserting in lieu thereof the following sections :—

**Ratification of supplemental agreement.**

3. (1) The agreement, a copy of which is set out in the Second Schedule to this Act (in this Act hereinafter referred to as "the supplemental agreement"), is hereby approved, ratified and validated and the doing or performance of all such acts, matters or things as are to be or may be done or performed under or in pursuance of the supplemental agreement is hereby authorised and the supplemental agreement may be carried into effect notwithstanding the provisions of any other Act.

**Giving effect to supplemental agreement.**

(2) Without prejudice to the generality of subsection one of this section all acts, matters and things for or with respect to which provision is made in the supplemental agreement or which, by the supplemental agreement, are agreed, directed, authorised or permitted to be done or performed by or on behalf of the State or the Minister or the Director-General of State Psychiatric Services or by or on behalf of any authority or any other officer of the State (including any officer of police, justice of the peace, magistrate, judge or court) are hereby sanctioned, authorised and confirmed.

**Mental Health (Commonwealth Agreement Ratification)  
Amendment Act.**

119

3A. Any act, matter or thing done or performed by the Governor, the Minister, the Director-General of State Psychiatric Services or any authority or any other officer of the State (including any officer of police, justice of the peace, magistrate, judge or court) or by any authority or other officer of the Australian Capital Territory (including any officer of police, justice of the peace, magistrate, judge or court) which would have been lawful if the Mental Health (Commonwealth Agreement Ratification) Amendment Act, 1962, had been in force at the time such act, matter or thing was done or performed, is hereby validated.

No. 14, 1962

Validation  
of certain  
matters.

3B. A notification published in the Commonwealth of Australia Gazette and the New South Wales Government Gazette to the effect that the form of certificate or manner of endorsement set out in the notification has been agreed upon pursuant to clause four, five or eight of the supplemental agreement shall be conclusive evidence of the matters stated and set out therein.

Evidence.

- (c) (i) by inserting before the word "SCHEDULE" in the heading to the Schedule the word "FIRST";
- (ii) by inserting next after the same Schedule the following new Schedule :—

Schedule.

**SECOND SCHEDULE.**

Secs. 3, 3A,  
3B.

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 these 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

**Mental Health (Commonwealth Agreement Ratification)  
Amendment Act.**

**No. 14, 1962** AND WHEREAS by the Insane Persons and Inebriates (Committal and Detention) Ordinance 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 Ordinance 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) Ordinance 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 Ordinances of the Territory by which the principal agreement and this agreement

**Mental Health (Commonwealth Agreement Ratification)  
Amendment Act.**

121

agreement are approved and includes a member of the Federal Executive Council for the time being acting for and on behalf of that Minister; No. 14, 1962  
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“the Minister for Health” means the Minister of the 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.

(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 sub-clauses 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

**Mental Health (Commonwealth Agreement Ratification)  
Amendment Act.**

**No. 14, 1962** 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 sub-clause, 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—

- (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)

**Mental Health (Commonwealth Agreement Ratification)  
Amendment Act.**

123

(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 re-committed to a mental hospital in the State, No. 14, 1962

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 sub-clause, 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

**Mental Health (Commonwealth Agreement Ratification)  
Amendment Act.**

No. 14, 1962 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 sub-clauses (b) and (c) of clause 16, of the principal agreement shall apply to and with 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 sub-clause (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.



**Mental Health (Commonwealth Agreement Ratification)  
Amendment Act.**

125

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. No. 14, 1962

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.

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

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)

**Mental Health (Commonwealth Agreement Ratification) Amendment Act.**

No. 14, 1962

†(b) the person examined has not suffered any recent injury ; *or*

†Strike out words inapplicable.

†(b) the person examined has suffered a recent injury of which particulars are as follows:—

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

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

**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..... The facts and other (Name of institution). matters upon which I have formed this opinion are as follows:—

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

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—  
DAVID I. SMITH,  
Private Secretary,  
Canberra, A.C.T. } GORDON FREETH.

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—  
K. H. GAIN,  
156 Raglan Street,  
Mosman. } W. SHEAHAN.