

# Mental Defectives (Convicted Persons) Act 1939 No 19

[1939-19]



New South Wales

## Status Information

### Currency of version

Historical version for 1 January 1985 to 31 August 1987 (accessed 6 October 2024 at 17:47)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Proposed repeal**

The Act is to be repealed on the commencement of Sch 1 to the [Miscellaneous Acts \(Mental Health\) Repeal and Amendment Act 1983 No 181](#).

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Mental Defectives (Convicted Persons) Act 1939 No 19



New South Wales

An Act to make provision for the special care and treatment of mentally defective prisoners; to amend the *Prisons Act 1899* and certain other Acts; and for purposes connected therewith.

## 1 Name of Act and commencement

- (1) This Act may be cited as the *Mental Defectives (Convicted Persons) Act 1939*.
- (2) This Act shall commence on a day to be appointed by the Governor and notified by proclamation published in the Gazette.

## 2 Interpretation

In this Act, unless the subject-matter or context otherwise requires:

**Convicted prisoner** means any prisoner undergoing imprisonment for any offence included in the Schedule to this Act.

**Inspector-General** means the Inspector-General of Mental Hospitals and includes the Deputy Inspector-General.

**Institution** means a place appointed as an institution pursuant to this Act.

**Mental defectiveness** means a condition of arrested or incomplete development or of degeneration of mind from whatsoever cause arising.

**Mentally defective person** includes a convicted prisoner not being an insane person within the meaning of the *Lunacy Act of 1898*, in whom there exists mental defectiveness so pronounced that he requires supervision and control for his own protection, or for the protection of others.

**Patient** means a person detained in an institution in accordance with the provisions of this Act.

**Prescribed** means prescribed by this Act or by any regulations made thereunder.

**Prison** means a prison within the meaning of the *Prisons Act 1899*.

### **3 Mentally defective persons to be reported etc**

- (1) Where it appears to any court before which a person is convicted and sentenced in respect of any offence included in the Schedule to this Act that such person is a mentally defective person, the judge or magistrate of such court shall forthwith report the case to the Minister accordingly.
- (2) It shall be the duty of the governor or officer-in-charge of any prison to inform the visiting surgeon if it appears to him that any convicted prisoner is apparently a mentally defective person. The visiting surgeon shall thereupon examine such person, and, if upon such examination the visiting surgeon is of opinion that the prisoner is a mentally defective person he shall so inform the Comptroller-General of Prisons in writing setting out the grounds of such opinion.

Upon receipt of any such intimation or upon his own initiative the Comptroller-General shall report the case to the Minister, in writing, setting out the reasons for this belief.

- (3) The Minister, upon the receipt of any such report, shall thereupon request the Inspector-General to cause any such prisoner to be examined by two legally qualified medical practitioners who shall separately, and apart from each other, examine and report to the Inspector-General in accordance with the form prescribed as to the mental condition of the person so examined.
- (4) The Inspector-General shall thereupon transmit such reports to the Minister, who may direct that such prisoner be brought before a magistrate for inquiry into his condition.

### **4 Magistrate to conduct inquiry**

- (1) The magistrate before whom such prisoner is brought in accordance with the Minister's directions may examine him at any convenient place and shall call to his assistance the medical practitioners who have reported upon the prisoner in accordance with section three of this Act.

For the purposes of this section the magistrate shall have power to summon and examine witnesses on oath and to exercise in this behalf all the authority conferred by the *Justices Act 1902* upon a magistrate exercising summary jurisdiction.

- (2) At every such inquiry the prisoner shall have the right of being heard and of calling evidence on his own behalf and the right of examining and cross-examining witnesses personally or by his counsel or attorney, and unless arrangements in this regard are made by the prisoner or his relatives or friends, legal assistance for such prisoner shall be provided at the expense of the Crown.
- (3) If upon such examination such magistrate is satisfied that such prisoner is a mentally defective person within the meaning of this Act, he may order that the prisoner be detained in an institution during the Governor's pleasure.

The period of such detention shall run concurrently with but may exceed any term of imprisonment, penal servitude, or detention to which the prisoner has been sentenced.

- (4) Any order under this section that a prisoner be detained in an institution shall be sufficient authority to the Comptroller-General of Prisons to remove the prisoner to such institution, there to be detained in pursuance of such order, subject to the provisions of this Act.
- (5) Any prisoner against whom an order has been made under this section may in the manner prescribed by the *Justices Act 1902* appeal therefrom to a court of quarter sessions, but the notice of appeal shall not suspend the operation of the order of the magistrate.

The court of quarter sessions hearing the appeal may, by its order, confirm, set aside, or vary the order appealed from, and may exercise all the powers conferred upon a court of quarter sessions in the hearing of an appeal against the adjudication of a justice under the provisions of Division 4 of Part 5 of the *Justices Act 1902*.

- (6) A prisoner may appeal to a judge of the Supreme Court against an order made by a court of quarter sessions pursuant to subsection five of this section.

Such appeal shall be in the nature of a rehearing and shall be made in accordance with rules of court.

The judge hearing such appeal may by his order confirm, set aside, or vary the order appealed from.

- (7) At an inquiry before a magistrate or at the hearing of any appeal, the magistrate, court or judge may order that any persons not directly interested in the case shall be excluded from the court-room or place of hearing, unless the prisoner elects that the inquiry or hearing shall be open to the public.

No person shall publish a report or account of any such proceedings, when such proceedings shall have been heard in private.

Any person contravening the provisions of this section shall be liable on summary conviction before a magistrate to a penalty not exceeding one hundred dollars.

## **5 Discharge from institution**

- (a) Where it appears from medical or other evidence that it is no longer necessary in the interests of the patient or of the general public that he should be further detained in an institution, or
- (b) where application is made by any relative or friend of a patient that he be delivered over to the custody and care of such relative or friend, and satisfactory evidence is furnished that such relative or friend is a suitable person to undertake the custody and

care of the patient and is financially in a position to provide for his welfare,  
the Minister may recommend to the Governor that such patient be discharged from such institution subject to such conditions as the Minister may think fit to impose.

## **6 Return to institution**

- (1) If it be made to appear to any magistrate on the information on oath of a member of the police force of or above the rank of sergeant who has reasonable cause to suspect that a person discharged under the provisions of section five of this Act has committed a breach of any of the conditions of his discharge, or that in the interests of the person so discharged, or of the public, it is desirable that any such person should be returned to an institution, such magistrate may issue his warrant for the apprehension of such person, and may therein and thereby direct that such person be apprehended and brought before a magistrate, who shall under such circumstances have all the powers conferred by section four of this Act.
- (2) Any member of the police force may apprehend any person for whose apprehension any such warrant has been issued and deliver him according to the tenor thereof.
- (3) The superintendent or other officer-in-charge of any institution shall forthwith report to the Minister when any such person has been returned to an institution.
- (4) Where any person is brought before a magistrate in pursuance of this section such person shall have the same rights as a prisoner brought before a magistrate in pursuance of section four of this Act, including the same rights of appeal.

## **7 Institution to be appointed**

The Governor may, by notification in the Gazette, appoint any place to be an institution, and in and by such notification may assign any name to such institution, which shall be under the administrative control of the Comptroller-General of Prisons.

## **8 Access by Inspector-General**

The Inspector-General and his duly authorised officers shall at all hours have access to such institution.

## **9 Insane prisoner**

If any person while an inmate of an institution appears to be insane, the Comptroller-General of Prisons shall direct that such person be placed under observation either in such institution or in the reception-house, under the [Lunacy Act of 1898](#).

The Minister may, upon receipt of certificates of two medical practitioners in the form of Schedule Two of the [Lunacy Act of 1898](#), accompanied by a statement of particulars in the form of Schedule Sixteen of that Act, direct by order under his hand in accordance with Schedule Seventeen of that Act, that such person be removed to and kept in a mental

hospital, and the provisions of the said *Lunacy Act of 1898* as amended by subsequent Acts shall thereafter be applied to such person.

## 10 Visitors

There shall be appointed in respect of every institution established under this Act:

- (a) a magistrate to act as visiting justice to such institution who shall visit such institution at least once in every month or oftener, as required.

The duties of such magistrate shall be as defined by regulations made under this Act,

- (b) a legally qualified medical practitioner to act as visiting medical officer who, in addition to such other duties as may be prescribed, shall furnish to the Minister a quarterly report regarding the health and mental condition of every patient in such institution,

- (c) a visiting committee consisting of three persons, one of whom shall be a retired magistrate or a barrister-at-law or a solicitor, who shall act as chairman of such committee, and the other two members of which shall be legally qualified medical practitioners with special qualifications for dealing with the mentally deficient.

Such committee shall visit the institution at least once in every month with or without previous notice, and at such hours or for such time as they think fit, and also at such other times as the Minister may direct.

The powers and duties of the committee shall be as defined by regulations made under this Act.

## 11 Regulations

- (1) The Governor may make regulations:

- (a) for the regulation, control, management and inspection of institutions and providing for the care, control and suitable employment of persons detained in such institutions and prescribing the duties of the various officers and committees appointed to control or visit such institution,
- (b) for the control, good order, discipline, and health of mentally defective persons,
- (c) for the appointment, promotion, dismissal and discipline of officers under this Act,
- (d) for carrying out and giving effect to the provisions of this Act.

- (2) All regulations so made shall:

- (a) be published in the Gazette,
- (b) take effect from the date of publication or from a later date to be specified in such regulations, and

- (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and, if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given within fifteen sitting days after any regulation has been laid before such House, disallowing such regulation or part thereof, such regulation or part shall thereupon cease to have effect.

**Editorial note—**

See [Interpretation Act 1897](#), section 41.

## Schedule

(Section 2)

- (a) Offences in respect of which a penalty of death or penal servitude or imprisonment with or without hard labour for a term of two years or upwards may be imposed.
- (b) Wilful and obscene exposure of person.