



ANNO TERTIO

GEORGII VI REGIS.

A.D. 1939.

No. 31 of 1939.

An Act to amend the Mental Defectives Act, 1935-1939.

[Assented to 14th December, 1939.]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows :

1. (1) This Act may be cited as the "Mental Defectives Act Amendment Act (No. 2), 1939". Short titles.

(2) The Mental Defectives Act, 1935-1939 (which is in the succeeding sections of this Act referred to as "the principal Act"), as amended by and together with this Act, may be cited as the "Mental Defectives Act, 1935-1939".

2. Section 5 of the principal Act is repealed and the following section is enacted in lieu thereof :— Amendment of principal Act, s. 5—

5. (1) The Governor may, from time to time, appoint a medical practitioner to be Director-General of Medical Services. Appointment of Director-General of Medical Services.

(2) Subject to section 6, the Inspector-General of Hospitals shall be deemed to have been appointed as Director-General of Medical Services from the time he was appointed as Inspector-General of Hospitals.

(3) Every reference in every other Act and in every regulation, proclamation or instrument, to the Inspector-General of Hospitals shall be deemed to be a reference to the Director-General of Medical Services.

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Consequential amendments of the principal Act.

3. (1) The definition of "Inspector-General" in subsection (1) of section 4 of the principal Act is repealed, and the following definition is inserted in the said subsection after the definition of "Court":—

"Director-General" means the Director-General of Medical Services :

(2) The passage "Inspector-General of Hospitals" wherever occurring in the principal Act (except in section 5) is struck out and in every case the passage "Director-General of Medical Services" is inserted in lieu thereof.

(3) The passage "Inspector-General" wherever occurring in the principal Act is struck out and in every case the passage "Director-General" is inserted in lieu thereof.

(4) The passage "Deputy Inspector-General of Hospitals" wherever occurring in the principal Act is struck out and in every case the passage "Deputy Director-General of Medical Services" is inserted in lieu thereof.

(5) The passage "Inspector-General's and Visitors' Book" wherever occurring in the principal Act is struck out and in every case the passage "Director-General's and Visitors' Book" is inserted in lieu thereof.

Amendment of principal Act, s. 8—
Control of institutions.

4. Section 8 of the principal Act is amended by striking out the passage "Prison Act, 1869" in the seventh line thereof and by inserting in lieu thereof the passage "Prisons Act, 1936".

Amendment of principal Act—

5. Division I. of Part II. of the principal Act is amended by inserting therein after section 11 the following section :—

Delegation of powers of Director-General

11a. The Director-General, with the approval of the Minister, may by notice in writing authorize any person, being the superintendent of an institution, to exercise such of the powers of the Director-General under this Act as are specified in the notice, and may, with the approval of the Minister, by notice in writing revoke any such authority. During the time any such authority is in force with respect to any person that person may exercise the powers of the Director-General specified in the authority.

Amendment of principal Act, s. 32—
Power to remand.

6. Section 32 of the principal Act is amended by adding at the end of subsection (1) thereof the following passage :—

The powers conferred by paragraph (b) of this subsection may be exercised with respect to any person whether or not a medical practitioner has signed a certificate stating, with respect to that person, the matters indicated in the second schedule.

7. Section 33 of the principal Act is amended—

Amendment of principal Act, s. 33—

(a) by inserting at the end of paragraph (b) of subsection (2) thereof the words “and the said person shall thereupon be conveyed to the said mental hospital and be received and detained therein accordingly: Provided that he shall not be so received unless the order, accompanied by the said certificate, is produced to and left with the superintendent of the mental hospital or an officer of the mental hospital prescribed in that behalf in respect of the mental hospital”:

Persons received into receiving house.

(b) by adding at the end thereof the following subsection:—

(5) The provisions of section 76 shall *mutatis mutandis* apply to any person received in an institution under an order made under section 32 or detained under any order made under subsection (2) of this section.

8. Section 37 of the principal Act is amended by striking out the words “and of the statement and the medical certificate” in the second and third lines of subsection (5) thereof.

Amendment of principal Act, s. 37—

Patient received into receiving house.

9. Section 76 of the principal Act is amended by adding at the end thereof the following subsection:—

Amendment of principal Act, s. 76—

(4) The superintendent of any institution may of his own authority permit any patient to be absent from the institution upon parole for any period, not exceeding twenty-four hours at any one time, as the superintendent thinks fit.

Parole.

10. Section 107 of the principal Act is repealed and the following section is enacted in lieu thereof:—

Amendment of principal Act, s. 107—

107. (1) If—

(a) any person has been found to be mentally defective by inquisition under this Act or has been found lunatic on inquisition before the twelfth day of August, nineteen hundred and fourteen; or

Inquisition as to continuance of mental defect.

(b) any person has been found to be mentally defective and a committee of his estate has been appointed as provided by section 104,

the court may at any time, on the petition of the said person, or of the committee of his estate, or of any other person, and on proof that the person so found mentally

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defective or lunatic is not at the time a patient within the meaning of this Act, and on being satisfied by inquisition duly held and taken that the person is no longer mentally defective and incapable of managing his affairs, rescind the order appointing the committee of his estate: Provided that the court may, if it considers the value of the estate of the person or the circumstances of the case warrant so doing, and upon such further evidence as it deems sufficient, rescind the order appointing the committee without having directed an inquisition.

(2) Upon the making of any such order, the former inquisition and all proceedings thereon, or the finding of the court in proceedings under section 104 that the person is mentally defective and incapable of managing his affairs, as the case may be, shall thereupon be superseded.

(3) When an inquisition is directed as to whether the person is still mentally defective and incapable of managing his affairs, the inquisition shall be held in the same manner, with all necessary modifications, as an inquisition under the provisions hereinbefore contained.

The Judge or special magistrate holding the inquisition shall certify his finding thereon to the court.

(4) Save as in this section provided, no proceedings shall be taken by way of the traverse or *supersedeas* of any inquisition or to rescind a finding of the court, in proceedings under section 104, that a person is mentally defective and incapable of managing his affairs.

Amendment of
principal Act,
s. 111—
Powers of
Public Trustee.

11. Section 111 of the principal Act is amended—

(a) by striking out the word “two” in the second line of paragraph III. thereof, and by inserting in lieu thereof the word “three”; and

(b) by inserting after the word “against” in the first line of paragraph IX. thereof the words “or by or on behalf of”.

Amendment of
principal Act,
s. 114—
Powers of
Public Trustee.

12. Section 114 of the principal Act is amended by striking out the words “five hundred” occurring in the sixth and the fifteenth lines thereof and by inserting in lieu thereof in each case the words “one thousand”.

Amendment of
principal Act,
s. 127—
Trustees.

13. Section 127 of the principal Act is amended by striking out the passage “The Trustee Act, 1893” in the ninth line thereof and by inserting in lieu thereof the passage “the Trustee Act, 1936”.

14. (1) The principal Act is amended by inserting therein after Part VII. thereof the following Part :—

Amendment of principal Act—

PART VIIA.

LICENSING OF PRIVATE MENTAL HOMES.

153a. (1) Any person (other than a person licensed under this Part or a committee or person appointed by the Court or a person otherwise authorized by this Act) who receives to board or lodge in any house or place or has under his care or charge therein any person, who, by the exercise of oversight, care, or control, he treats (whether by medical treatment or in any other manner whatsoever) as mentally defective, shall be guilty of a misdemeanour.

Prohibition of treatment.

(2) For the purpose of this section a patient absent from an institution under the provisions of section 76 or lawfully boarded out under the provisions of Division V. of Part IV. shall not be deemed to be a mentally defective person so long as the conditions (if any) on which he was permitted to be absent or the regulations as to boarding out (according to the nature of the case) are complied with.

(3) This section shall not apply to the residence in any house or place of a mentally defective person who is a member of the family of the occupier thereof, nor to the residence in any place of a mentally defective person pursuant to the direction of a justice or justices made under section 34, if in either case no payment is made in respect of the residence or maintenance of the mentally defective person.

(4) In any proceedings under this section, if it is proved that any person resident in any house or place is mentally defective, the burden of proving that the defendant did not treat him as such shall lie upon the defendant.

153b. (1) The Minister may, upon the recommendation of the Director-General, issue to any fit and proper person a licence under this Part.

Grant of licence.
Cf. U.K. 53
Vict. c. 5, s.
210.

(2) Every licence—

- (a) shall be for a period of twelve months :
- (b) shall be issued to the person licensed thereunder in respect of the premises specified in the licence :
- (c) shall be issued in accordance with any prescribed conditions and with any other conditions thought fit by the Minister :
- (d) may from time to time be renewed by the Minister on the recommendation of the Director-General :

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(e) may be revoked by the Minister on the recommendation of the Director-General.

Reception of persons into licensed premises.

Cf. U.K. 53
Vict. c. 5,
s. 229.

Cf. U.K. 20 &
21, Geo. 5
c. 23, s. 1.

153c. (1) Any person who is desirous of voluntarily submitting himself to treatment for mental illness, and who makes a written application for the purpose to the person in charge of any premises licensed under this Part, may be received in the premises for treatment.

(2) Any person under the age of sixteen years whose parent or guardian is desirous of submitting him to treatment for mental illness may if the parent or guardian makes to the person in charge of any premises licensed under this Part a written application for the purpose accompanied by a medical recommendation, be received in the premises for treatment.

(3) The medical recommendation referred to in subsection (2) shall—

(a) be signed by a medical practitioner who is the usual medical practitioner of the person to whom the application relates ; and

(b) state the qualifications of the medical practitioner, the date or dates on which he examined the said person, and that the said person is likely to be benefited by being received for treatment.

(4) No medical practitioner who is the licensee or who is employed by the licensee of any licensed premises or who is a partner of such licensee or employee, shall sign any medical recommendation for treatment of any person in those premises.

(5) A medical recommendation shall cease to have effect for the purposes of this section on the expiration of fourteen days from the last date on which the person to whom the recommendation relates was examined by the medical practitioner for the purpose of making the recommendation.

(6) Any person received for treatment under this section may leave the licensed premises upon giving to the person in charge seventy-two hours' notice in writing of the intention to do so or if he is a person under the age of sixteen years upon such notice being given by his parent or guardian.

(7) For the purposes of this section, "guardian" in relation to a person under the age of sixteen years means any person who pursuant to any order of any court or pursuant to any Act or law is the guardian of the person under the age of sixteen years.

153d. The Governor may make regulations as to all ^{Regulations.} or any of the following matters :—

- I. The conditions upon which licences may be issued under this Part :
- II. Prescribing requirements as to the construction, furnishing and equipment of premises licensed under this Part :
- III. The qualifications of persons licensed under this Part and of persons employed in premises licensed under this Part :
- IV. Requiring the residence or attendance of medical practitioners in or at premises licensed under this Part :
- V. The functions, powers, and duties of persons licensed under this Part and of persons employed in premises licensed under this Part :
- VI. The government and management of premises licensed under this Part :
- VII. The inspection of premises licensed under this Part :
- VIII. The reception and treatment of persons boarded or lodged in premises licensed under this Part :
- IX. The keeping, inspection, and supply to the Director-General of records and forms in respect of persons boarded or lodged in premises licensed under this Part :
- X. The transfer, renewal and revocation of licences under this Part :
- XI. Prescribing fees to be paid for the issue, renewal, or transfer of licences under this Part :
- XII. Generally for the conduct of premises licensed under this Part and for the well being and treatment of persons boarded or lodged therein :
- XIII. Penalties for breaches of regulations, not exceeding in any case fifty pounds.

(2) Section 155 of the principal Act is repealed.

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(3) Section 3 of the principal Act is amended by inserting after the line commencing "Part VII." the following line:—

Part VIIa.—Licensing of Private Mental Hospitals.

(4) The amendments made by this section shall come into operation on a day to be fixed by proclamation.

Amendment of
principal Act,
s. 166—

15. Section 166 of the principal Act is amended by adding at the end of subsection (2) thereof the following paragraph:—

Maintenance
of patients.

The Director-General may from time to time vary any weekly sum fixed as aforesaid and may declare that the weekly sum so varied shall be payable from any time (whether before or after the time the variation was made) fixed by the Director-General.

Amendment of
principal Act—

16. The principal Act is amended by inserting therein after section 169 the following sections:—

Particulars as
to confine-
ment.
Cf. U.K. 53
Vict. c. 5, s. 51.

169a. (1) If any person applies to the Director-General in order to be informed whether any particular person—

- (a) is confined in any institution or in any premises licensed under Part VIIa. ;
- (b) has been removed or discharged from any such institution or premises ; or
- (c) has died whilst confined in any such institution or premises,

and the Director-General is satisfied that the person seeking the information has a proper reason for seeking the information, the Director-General may cause search to be made of the records of the Director-General whether during the preceding twelve months the person inquired after is or has been confined as aforesaid, or is or has been removed or discharged as aforesaid, or has died as aforesaid.

(2) If it appears that such person is or has been so confined, the Director-General shall, on payment of such reasonable fee as the Director-General requires, deliver to the applicant a statement in writing specifying the situation of the institution or premises in which the said person appears to be or to have been confined, the date of his admission, and (in the case of his removal or discharge or death) the date of his removal or discharge or death.

169b. The Director-General shall, upon the discharge from any institution of a person who considers himself to have been unjustly confined as a mental defective, furnish to him upon his request, free of expense, a copy of the order or request and certificate or certificates upon which he was received into the institution.

Copies of documents.
Cf. U.K. 53
Vict. c. 5, s. 81.

17. The third schedule to the principal Act is amended by inserting after the word "Australia" in the second line of the form contained therein the passage "[before whom a complaint was laid pursuant to section 24 of the Mental Defectives Act, 1935.]".

Amendment of principal Act, third schedule.

18. The seventh schedule to the principal Act is amended by inserting after the word "has" in the fourth line of the form contained therein the passage "pursuant to complaint laid pursuant to section 27 of the Mental Defectives Act, 1935".

Amendment of principal Act, seventh schedule.

19. The eighth schedule to the principal Act is amended by inserting after the word "inquisition" the passage "(or by the Supreme Court of South Australia)".

Amendment of principal Act, eighth schedule.

20. The eleventh schedule of the principal Act is amended—

Amendment of principal Act, eleventh schedule.

(a) by inserting after the words "tenth schedule" in the tenth line of form No. 1 therein the passage "[or the second schedule]";

(b) by inserting after the words "tenth schedule" in the tenth line of the form No. 2 therein the passage "[or the second schedule]".

21. The fifteenth schedule to the principal Act is amended by striking out the words "one calendar month" therein and by inserting in lieu thereof the words "two calendar months".

Amendment of principal Act, fifteenth schedule.

22. The twentieth schedule to the principal Act is amended so as to read as set out in the schedule to this Act.

Amendment of principal Act, twentieth schedule.

In the name and on behalf of His Majesty, I hereby assent to this Bill.

C. M. BARCLAY-HARVEY, Governor.

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| Date of last previous reception (if any). | |
| No. in order of reception. | |
| Date of reception. | |
| Christian names and surnames at length. | |
| Male. | Sex. |
| Female. | |
| Age. | |
| Married. | Condition as to Marriage. |
| Single. | |
| Widowed or Divorced. | |
| Condition of life and previous occupation. | |
| Previous place of abode. | |
| Native place. | |
| By whose authority sent. | |
| Dates of medical certificates, and by whom signed. | |
| Bodily condition. | |
| Name of bodily disorder (if any). | |
| Form of mental disorder. | |
| Supposed cause of mental defect. | |
| Epileptics. | |
| Religion. | |
| Years. | Duration of existing Attacks. |
| Months. | |
| Days. | |
| Number of previous attacks. | |
| Age on first attacks. | |
| Date commenced. | Trial Leave. |
| Date returned. | |
| Date. | Discharged. |
| Recovered. | |
| Relieved. | |
| Not improved. | Transferred or Removed. |
| Date (outwards). | |
| Relieved. | |
| Not improved. | |
| Date (inwards). | |
| Died. Date. | |
| Observations. | |

THE TWENTIETH SCHEDULE.
MENTAL DEFECTIVES ACT, 1935—REGISTER OF PATIENTS.