

SOUTH AUSTRALIA

MENTAL HEALTH (SUPPLEMENTARY PROVISIONS) ACT 1935

This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at 1 January 1995.

It should be noted that the Act has not been revised (for obsolete references, etc.) by the Commissioner of Statute Revision since the reprint published on 1 March 1984.

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MENTAL HEALTH (SUPPLEMENTARY PROVISIONS) ACT 1935

being

Mental Defectives Act 1935 No. 2230 of 1935
[Assented to 5 December 1935]¹

as amended by

Statute Law Revision Act 1936 No. 2293 of 1936 [Assented to 8 October 1936]
Mental Defectives Act Amendment Act 1939 No. 4 of 1939 [Assented to 14 September 1939]
Mental Defectives Act Amendment Act (No. 2) 1939 No. 31 of 1939 [Assented to 14 December 1939]²
Mental Defectives Act Amendment Act 1941 No. 42 of 1941 [Assented to 20 November 1941]
Mental Defectives Act Amendment Act 1945 No. 14 of 1945 [Assented to 22 November 1945]
Mental Defectives Act Amendment Act 1950 No. 40 of 1950 [Assented to 30 November 1950]
Mental Defectives Act Amendment Act 1953 No. 53 of 1953 [Assented to 17 December 1953]
Mental Defectives Act Amendment Act 1958 No. 51 of 1958 [Assented to 27 November 1958]
Mental Health Act Amendment Act 1959 No. 35 of 1959 [Assented to 3 December 1959]
Mental Health Act Amendment Act 1960 No. 35 of 1960 [Assented to 3 November 1960]
Mental Health Act Amendment Act 1961 No. 32 of 1961 [Assented to 9 November 1961]
Mental Health Act Amendment Act 1962 No. 28 of 1962 [Assented to 25 October 1962]
Mental Health Act Amendment Act (No. 2) 1962 No. 29 of 1962 [Assented to 25 October 1962]
Statutes Amendment (Mental Health and Prisons) Act 1963 No. 50 of 1963 [Assented to 28 November 1963]
Mental Health Act Amendment Act 1964 No. 30 of 1964 [Assented to 22 October 1964]
Maintenance Act Amendment Act 1965 No. 54 of 1965 [Assented to 23 December 1965]³
Mental Health Act Amendment Act 1966 No. 67 of 1966 [Assented to 24 November 1966]
Mental Health Act Amendment Act 1967 No. 57 of 1967 [Assented to 9 November 1967]⁴
Mental Health Act Amendment Act (No. 2) 1967 No. 66 of 1967 [Assented to 16 November 1967]
Mental Health Act Amendment Act 1968 No. 17 of 1969 [Assented to 6 March 1969]
Mental Health Act Amendment Act 1969 No. 78 of 1969 [Assented to 11 December 1969]
Mental Health Act Amendment Act 1974 No. 54 of 1974 [Assented to 12 September 1974]
Mental Health Act 1977 No. 24 of 1977 [Assented to 12 May 1977]⁵ (as amended by Mental Health Act Amendment Act 1979 No. 21 of 1979 [Assented to 15 March 1979])
Statute Law Revision Act 1983 No. 38 of 1983 [Assented to 16 June 1983]
Criminal Law Consolidation (Felonies and Misdemeanours) Amendment Act 1994 No. 59 of 1994 [Assented to 27 October 1994]⁶

¹ Came into operation 2 January 1936: *Gaz.* 2 January 1936, p. 1.

² S. 14 came into operation 1 January 1942: *Gaz.* 17 July 1941, p. 83; s. 14(4); remainder of Act came into operation on assent.

³ Came into operation 27 January 1966: *Gaz.* 27 January 1966, p. 145.

⁴ Came into operation 1 July 1970: *Gaz.* 11 June 1970, p. 2062.

⁵ Came into operation 1 October 1979: *Gaz.* 13 September 1979, p. 644.

⁶ Came into operation 1 January 1995: *Gaz.* 8 December 1994, p. 1942.

NOTE:

- Asterisks indicate repeal or deletion of text.
- For the legislative history of the Act see Appendix. Entries appearing in the Appendix in bold type indicate the amendments incorporated since the last reprint.

An Act to make provision for criminal mental defectives.

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title and commencement

1. This Act may be cited as the *Mental Health (Supplementary Provisions) Act 1935* and shall come into operation on a day to be fixed by proclamation.

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Mental Health (Supplementary Provisions) Act 1935

**PART 3
CRIMINAL MENTAL DEFECTIVES**

DIVISION 1—PRELIMINARY

Interpretation

42. In this Part, unless the contrary intention appears—

"**approved hospital**" has the meaning assigned to that expression by the *Mental Health Act 1977*;

"**the Director**" means the person holding, or acting in, the office of Director of Mental Health Services under the *Mental Health Act 1977*;

"**hospital for criminal mental defectives**" means a place declared by proclamation to be a hospital for criminal mental defectives under this Act;

"**mentally defective person**" means—

(a) a person who is mentally ill, that is to say, a person who, owing to his mental condition, requires oversight, care or control for his own good or in the public interest and who, owing to disorder of the mind or mental infirmity arising from age or the decay of his faculties, is incapable of managing himself or his affairs; or

(b) an intellectually retarded person,

and the expressions "**mental defect**", "**mental defective**" and "**mentally defective**" shall be construed accordingly;

"**receiving house**" means any place that the Director declares, by instrument in writing, to be a receiving house for the purposes of this Part.

Hospitals for criminal mental defectives

43. (1) The Governor may from time to time, by proclamation, declare any hospital or any part thereof, or any part of any prison, or any other place which he deems suitable for the purpose, to be a hospital for criminal mental defectives.

(2) The Governor may, by proclamation, declare that any hospital for criminal mental defectives shall cease to be a hospital for criminal mental defectives.

Superintendent and deputy superintendent

44. (1) The Governor may for each hospital for criminal mental defectives appoint a superintendent and, if he deems it necessary, a deputy superintendent.

(2) No person shall be so appointed unless he is a medical practitioner.

Where hospital for criminal mental defectives is part of a prison

45. Where part of a prison has been declared to be a hospital for criminal mental defectives—

- (a) the person appointed under section 44 as the superintendent of the hospital shall be responsible for, and have control of and over, the medical care, treatment and welfare of the patients in the hospital; and
- (b) the superintendent of the prison shall, subject to directions of the Director of Correctional Services—
 - (i) be responsible for the custody and security of the patients in the hospital; and
 - (ii) have the control, management and administration of the hospital in respect of its internal routine and discipline.

DIVISION 2—MANNER IN WHICH CRIMINAL MENTAL DEFECTIVES ARE TO BE DEALT WITH

Power to remove mentally defective criminals to hospital for criminal mental defectives

46. If any person, while imprisoned or detained in any prison, gaol or other place of confinement (not being a training centre within the meaning of the *Children's Protection and Young Offenders Act 1979*)—

- (a) under the sentence or order of any superior or inferior court or other tribunal whatsoever; or
- (b) under commitment for trial on a charge of any offence; or
- (c) for not finding bail for good behaviour or to keep the peace or to answer a criminal charge; or
- (d) under any other lawful authority,

appears to be mentally defective, the Minister, upon receipt of a certificate stating with respect to that person the matters indicated in the form in schedule 19, signed by a medical practitioner, may direct, by order signed by him, that the said person be removed to the hospital for criminal mental defectives mentioned in the order, and he shall be removed accordingly: Provided that if the person is imprisoned or detained either until the Governor's pleasure be known or during the Governor's pleasure, no order shall be made under this section until the Governor's consent thereto has been obtained.

Power to remove certain criminal mental defectives to receiving house

47. (1) In any of the cases mentioned in section 46 where, if the person concerned appeared to be mentally defective, the Minister may direct the person to be removed to a hospital for criminal mental defectives, but a medical practitioner signs a certificate stating with respect to the said person the matters indicated in schedule 10, the Minister, upon the receipt of the certificate, signed as aforesaid, may direct, by order signed by him, that the said person be removed to the receiving house mentioned in the order, and he shall be removed accordingly: Provided that if the said person is imprisoned or detained either until the Governor's pleasure be known or during the Governor's pleasure, no order shall be made under this section until the Governor's consent thereto has been obtained.

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(2) When any person is removed to a receiving house under this section, all the provisions of this Division shall apply to and in respect of that person as if he were removed to a hospital for criminal mental defectives.

(3) This section shall not apply in respect of any person under sentence or awaiting trial or sentence for any indictable offence.

Removal of criminal mental defectives from prison, etc., to hospital for criminal mental defectives

48. When any criminal mental defective is removed from any prison, gaol or other place of confinement to any hospital for criminal mental defectives, the officer in charge of the prison, gaol or other place of confinement shall furnish the superintendent of such hospital with a complete record of the patient's career (so far as known to the officer) and behaviour, together with a general report on the criminal mental defective.

Discharge of patients in hospitals for criminal mental defectives on expiration of their sentences

49. (1) Every person so removed, and every other person placed in a hospital for criminal mental defectives, shall, subject to section 51, and in the case of a person kept in custody during the Governor's pleasure, subject to any direction of the Governor, be detained in some hospital for criminal mental defectives until it is certified by the Director alone, or by the superintendent of the hospital where he is detained and some other medical practitioner, that he is not mentally defective.

(1a) If the Director is, or, as the case may be, the superintendent of the said hospital and the other medical practitioner are, satisfied that the said person is able to manage his own affairs, the Director or, as the case may be, the superintendent and other medical practitioner may, in the said certificate or at any time subsequent to the granting of the said certificate (whether the said certificate was granted before or after the passing of the *Mental Defectives Act Amendment Act 1939*), certify that the said person is able to manage his own affairs. If the Director so certifies at any time after the granting of the said certificate, he shall give to the superintendent of the hospital notice in writing that he has so certified.

(2) Upon a certificate being given as required by subsection (1), if the person does not remain subject to be continued in custody, the Minister shall direct that he be discharged, and he shall be discharged accordingly, but otherwise the Minister shall, by order signed by him, direct that the person be removed to the prison, gaol or other place of confinement mentioned in the order, and he shall be removed accordingly.

(3) Upon removal as provided by subsection (2), the said person shall undergo his sentence (if any), or shall otherwise be dealt with according to law, as if no order for his custody in, or removal to, a hospital for criminal mental defectives had been made. If he was detained under commitment for trial or under an order made under section 293 of the *Criminal Law Consolidation Act 1935* he may be arraigned and tried notwithstanding any detention or anything done under this Act or the said section or his previous arraignment for the same offence.

Period of confinement in hospital for criminal mental defectives to be deducted from sentence

50. The time during which any person removed after the twelfth day of August, 1914, to any hospital for criminal mental defectives is detained therein, or is absent on trial therefrom, shall be credited to him as service, to the extent of the said time, of his term of imprisonment, unless the Governor, on the advice of the Director or the superintendent of the hospital, orders that it be not so credited.

Transfer of criminal mental defectives

51. (1) Where any person has been removed to any hospital for criminal mental defectives, the Minister may, by order signed by him, direct that the person be transferred from the hospital either to an approved hospital or to some other hospital for criminal mental defectives, and may from time to time, by similar order, vary any such direction.

(2) No such person shall be transferred from any hospital for criminal mental defectives to an approved hospital unless the superintendent of the hospital for criminal mental defectives certifies that the person does not suffer from homicidal propensities or from mental defect of such a kind as to render his detention in a hospital for criminal mental defectives desirable.

Patient previously detained in hospital for criminal mental defectives

52. (1) Where any patient detained in an approved hospital has been at any time previously detained as a criminal mental defective, if the Director or the superintendent of the hospital in which the patient is detained certifies that he is dangerous or violent and recommends that he be transferred to a hospital for criminal mental defectives, the Minister may, by order signed by him, direct the transfer of the patient to the hospital for criminal mental defectives mentioned in the order.

(2) The Minister may, by order signed by him, at any time transfer the patient back to an approved hospital.

Orders under this Division to be sufficient authority for conveyance and detention

53. (1) Any order made under this Division for the removal or transfer of any person shall be sufficient authority for all police officers and other persons entrusted with the conveyance of the person to keep and convey him accordingly, and for the superintendent, keeper or other person in charge of the place to which the person is removed to keep and detain the person in the said place. The said person shall be deemed to be in legal custody whilst being conveyed or whilst kept and detained as aforesaid.

(2) Every such order shall be in duplicate, and one part shall be delivered to the superintendent, keeper or other person in charge of the place from which the person is to be removed and the other to the superintendent, keeper or other person in charge of the place to which he is to be removed.

Power of Governor to grant leave of absence on conditions

54. (1) The Governor may, by warrant under his hand, permit any person confined in any hospital for criminal mental defectives to be absent therefrom upon trial leave for such period and upon such conditions as he thinks fit.

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Penalties for rescuing or aiding or permitting escape

56. (1) Any person who—

- (a) rescues, or attempts to rescue, or abets the escape or attempted escape of, any person ordered under this Division to be conveyed to any hospital for criminal mental defectives or approved hospital during his conveyance thereto or therefrom, or during his confinement therein; or
- (b) being the superintendent or other officer or servant of, or other employee in, any hospital for criminal mental defectives or approved hospital wherein any person is confined under this Division, through wilful neglect or connivance, permits any such person to escape, or secretes or abets or connives at any such escape,

shall be guilty of an offence and shall be liable to imprisonment for any term not exceeding three years.

(2) Any superintendent, officer or servant of a hospital for criminal mental defectives or approved hospital, or other employee therein, who carelessly allows any person confined as aforesaid in the hospital to escape shall be guilty of an offence.

PART 3A
ESCAPE OF CERTAIN PERSONS

Escape, etc., of certain persons from institutions

56A. (1) Any person who is ordered or directed to be detained, or kept in custody, in an institution—

- (a) pursuant to any direction or order under section 77A of the Criminal Law Consolidation Act 1935; or
(b) pursuant to an order under section 292 or 293 of the Criminal Law Consolidation Act 1935; or
(c) pursuant to any order or direction under Division 2 of Part 3 of this Act,

and who escapes from that institution, may be apprehended, without any warrant or authority other than this section, at any time by the person in charge of that institution, any officer or servant of that institution or any police officer and conveyed to, received and detained in that institution.

(2) Where a special magistrate, on the application by or on behalf of the Crown Solicitor or a police officer of or above the rank of inspector, is satisfied that a person referred to in subsection (1) has escaped from an institution, he may issue a warrant directing that the person named therein be apprehended and conveyed to the institution from which he escaped.

(3) A person apprehended at any time under a warrant issued in accordance with subsection (2) shall be conveyed to and detained in the institution from which he escaped.

(4) For the purposes of this section—

- (a) "an institution" means an institution as defined in section 77A of the Criminal Law Consolidation Act 1935 and includes any place in which for the time being a person is kept in strict custody or safe custody pursuant to an order under section 292 or 293 of that Act; and
(b) a person shall be deemed to have escaped from an institution if, being lawfully permitted to be absent from that institution, he does not return to the institution within the period of his permitted absence or, if the absence is subject to a condition or conditions, he does not comply with that condition or any one or more of those conditions.

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Mental Health (Supplementary Provisions) Act 1935

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SCHEDULES

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SCHEDULE 10

Mental Health (Supplementary Provisions) Act 1935

*Form of Medical Certificate for Reception into a Receiving House
or Receiving Ward*

I, the undersigned [full name] of _____ in the State of South Australia, a duly qualified and registered medical practitioner of the said State, hereby certify that I, on the _____ day of _____, 19____, at [name of street, number of house or other like particulars and name of town or other locality] in the said State, personally examined _____ of [residence and occupation, if any] and that the said _____ is apparently mentally defective within the meaning of the *Mental Health (Supplementary Provisions) Act 1935* but as the symptoms of mental defect are not sufficiently marked to enable me to certify that the said _____ is mentally defective as aforesaid the said _____ is in my opinion a proper person to be received into a receiving house or receiving ward. And I further certify that I have formed my opinions on the following grounds, viz.:

1. Facts observed by myself [*here state the facts*].
2. Other facts [*if any*] communicated to me by others [*here state the information and by whom communicated*].

Dated this _____ day of _____, 19____.

Signature

Qualifications

Place of abode

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Mental Health (Supplementary Provisions) Act 1935

SCHEDULE 19

Mental Health (Supplementary Provisions) Act 1935

*Form of Medical Certificate for Reception into a Hospital for Criminal
Mental Defectives*

I, the undersigned [full name] of _____ in the State of South Australia, a duly qualified and registered medical practitioner of the said State, hereby certify that I, on the _____ day of _____, 19____, at [name and situation of prison, gaol or other place of confinement] personally examined _____, a person imprisoned or detained in the said prison [or as the case may be] and that the said _____ is mentally defective within the meaning of the *Mental Health (Supplementary Provisions) Act 1935* and a proper person to be detained under care and treatment in a hospital for criminal mental defectives, and that I have formed this opinion on the following grounds, viz.:

- 1. Facts observed by myself [here state the facts].
- 2. Other facts [if any] communicated to me by others [here state the information and by whom communicated].

Dated this _____ day of _____, 19____.

Signature

Qualifications

Place of abode

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APPENDIX

LEGISLATIVE HISTORY

· Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 7 of The Public General Acts of South Australia 1837-1975 at page 167.

· Legislative history since 3 February 1976 (**entries in bold type indicate amendments incorporated since the last reprint**) is as follows:

Long title:	substituted by 24, 1977, s. 4(1) (Sched. para. (a))
Section 1:	amended by 24, 1977, s. 4(1) (Sched. para. (ab))
Section 2:	repealed by 24, 1977, s. 4(1) (Sched. para. (ac))
Section 2A:	repealed by 24, 1977, s. 4(1) (Sched. para. (ac))
Section 3:	repealed by 24, 1977, s. 4(1) (Sched. para. (ac))
Section 4:	repealed by 24, 1977, s. 4(1) (Sched. para. (ac))
	Part 2 comprising ss. 5 - 23 and headings repealed by 24, 1977, s. 4(1) (Sched. para. (ad))
	Part 3 heading: substituted by 24, 1977, s. 4(1) (Sched. para. (b))
	Division 1 of Part 3 comprising ss. 24 - 45 and heading repealed and ss. 42 - 45 and heading inserted in its place by 24, 1977, s. 4(1) (Sched. para. (c))
Section 42:	definition of "approved hospital" inserted by 38, 1983, s. 2(1) (Sched.)
Section 45:	substituted by 38, 1983, s. 2(1) (Sched.)
Heading preceding section 46:	substituted by 24, 1977, s. 4(1) (Sched. para. (d))
Section 46:	amended by 38, 1983, s. 2(1) (Sched.)
Sections 51 and 52:	amended by 38, 1983, s. 2(1) (Sched.)
Section 54A:	repealed by 38, 1983, s. 2(1) (Sched.)
Section 56:	amended by 38, 1983, s. 2(1) (Sched.)
Section 56(1) and (2):	amended by 59, 1994, Sched. 2
Section 56A(2):	amended by 38, 1983, s. 2(1) (Sched.)
	Part 4 comprising ss. 57 - 96 and headings repealed by 24, 1977, s. 4(1) (Sched. para. (ad))
	Part 5 comprising ss. 97 - 136 and headings repealed by 24, 1977, s. 4(1) (Sched. para. (ad))
	Part 6 comprising s. 137 and heading repealed by 24, 1977, s. 4(1) (Sched. para. (ad))
	Part 7 comprising ss. 146 - 153 and heading repealed by 24, 1977, s. 4(1) (Sched. para. (ad))
	Part 7A comprising ss. 153A - 153D and heading repealed by 24, 1977, s. 4(1) (Sched. para. (ad))
	Part 8 comprising ss. 154 - 163 and heading repealed by 24, 1977, s. 4(1) (Sched. para. (ad))
	Part 9 comprising ss. 164 - 173 and heading repealed by 24, 1977, s. 4(1) (Sched. para. (ad))
Schedules 1 - 9:	repealed by 24, 1977, s. 4(1) (Sched. para. (hh))
Schedules 11 - 18:	repealed by 24, 1977, s. 4(1) (Sched. para. (hh))
Schedule 19:	amended by 38, 1983, s. 2(1) (Sched.)
Schedules 20 - 28:	repealed by 24, 1977, s. 4(1) (Sched. para. (hh))