

[CONFIDENTIAL]
(Rough Draft for Consideration Only.)

No. , 1940.

A BILL

To ratify an agreement made between the Honourable Herbert Paton FitzSimons, the Minister for Health of the State of New South Wales, for and on behalf of the said State, of the one part, and the Right Honourable William Morris Hughes, the Minister for External Affairs and Minister in Charge of Territories of the Commonwealth of Australia, for and on behalf of the said Commonwealth, of the other part; to provide for the carrying into effect of the said agreement; to validate certain matters; to amend the Lunacy Act of 1898, and certain other Acts; and for purposes connected therewith.

Lunacy (Norfolk Island) Agreement Ratification.

BE it enacted by the King's Most Excellent Majesty,
by and with the advice and consent of the Legis-
lative Council and Legislative Assembly of New South
Wales in Parliament assembled, and by the authority of
5 the same, as follows:—

1. (1) This Act may be cited as the "Lunacy (Norfolk
Island) Agreement Ratification Act, 1940."

Short title
and com-
mencement.

(2) This Act shall commence upon a day to be
appointed by the Governor and notified by proclamation
10 published in the Gazette.

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

Ratification
of agree-
ment.

(2) Without prejudice to the generality of subsec-
20 tion one of this section all acts, matters and things for or
with respect to which provision is made in the agreement
or which, by the agreement, are agreed, directed, author-
ised or permitted to be done or performed by or on
behalf of the State, or the Minister for Health, or the
25 Inspector-General of the Insane 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.

Giving
effect to
agreement.

30 3. Any act, matter or thing done or performed by the
Governor, the Minister for Health, the Inspector-General
of the Insane 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 the court of Norfolk
35 Island or any authority or officer of Norfolk Island
which would have been lawful if this Act had been in force
at the time such act, matter or thing was done or
performed, is hereby validated.

Validation
of certain
matters.

Lunacy (Norfolk Island) Agreement Ratification.

SCHEDULE.

Sec. 2.

AGREEMENT made the fourteenth day of September in the year One thousand nine hundred and thirty-eight BETWEEN THE HONOURABLE HERBERT PATON FITZSIMONS the Minister for Health of the State of New South Wales for and on behalf of the said State who with his successors in such office is hereinafter called the Minister for Health of the one part and THE RIGHT HONOURABLE WILLIAM MORRIS HUGHES the Minister for External Affairs and Minister in Charge of Territories of the Commonwealth of Australia for and on behalf of the said Commonwealth who with his successors in such office is hereinafter called "The Minister" of the other part WHEREBY IT IS AGREED as follows:

1. In this Agreement unless the contrary intention appears the singular shall include the plural and the plural the singular and the masculine the feminine and the following expressions shall have the meanings respectively set opposite to them:

"Commonwealth" means the Commonwealth of Australia;

"State" means the State of New South Wales;

"Institution" means a hospital for the insane or reception house or other place of the State appointed under the law of the State for the reception of the insane;

"Inspector-General" means the Inspector-General of the Insane appointed under the Lunacy Act of 1898 of the State and includes a Deputy Inspector-General for the time being performing the duties of such Inspector-General;

"Master" means the Master in Lunacy of the State and includes the Deputy Master in Lunacy of the State and also includes the Chief Clerk in Lunacy of the State when performing the duties of the Master in Lunacy;

"Resident of Norfolk Island" includes any person who is in Norfolk Island whether a resident or not;

"The Court" means the Court of Norfolk Island sitting in its full jurisdiction;

"Superintendent" includes the deputy superintendent.

2. (a) Subject to this Agreement whenever the Court acting or purporting to act under any law of or in force in Norfolk Island by order in writing declares a person to be a proper person to be taken charge of and detained under care and treatment and by the same or another order in writing orders or authorises such person to be removed into or detained in any hospital for the insane in New South Wales within the meaning of the Lunacy Act of 1898 of the State and such person is by an officer of Norfolk Island handed over in New South Wales to and received into the custody of any officer of police of the State such person shall be apprehended and conveyed by the officer of the State to such hospital and he shall by the authorities of the State be received therein and detained therein or in any other hospital or reception house or other place under the said Act in all respects as if two justices of the State had within the State after

Lunacy (Norfolk Island) Agreement Ratification.

after the proper certificates inquiries and proof duly made an order under subsection one of section six of the Lunacy Act of 1898 of the State directing such person to be removed into such hospital and the order statement and certificates referred to therein had been
5 produced and such person shall when so received and detained as aforesaid be deemed to be an insane patient within the meaning of the said Act of the State.

(b) When such person is handed over as aforesaid by the officer of Norfolk Island to the officer of police of the State such person shall
10 be identified to the officer of the State to his satisfaction and there shall be delivered to such officer the order or orders of the court declaring the said person to be a proper person to be taken charge of and detained under care and treatment and ordering or authorising
15 such person to be removed into or detained in a hospital for the insane in New South Wales and the medical certificate or certificates and evidence leading to such order or orders or office copies thereof.

(c) Where any person is by an officer of Norfolk Island handed over in New South Wales to and received into custody by an officer of police of the State in purported or intended execution of this
20 Agreement no action suit or proceedings shall lie against the State or any authority or officer of the State by reason of the apprehension of such person and his conveyance to and detention in a hospital for the insane of the State or other institution of the State.

3. Any resident of Norfolk Island may be received and detained
25 as an insane patient in a hospital for the insane of the State on the authority of a request statement of particulars and two medical certificates made under any law of or in force in Norfolk Island corresponding to section nine of the Lunacy Act of 1898 of the State.

4. The Superintendent of any hospital for the insane in New
30 South Wales within the meaning of the Lunacy Act of 1898 of the State may receive into such hospital as a voluntary patient any person (being a resident of Norfolk Island) who is desirous of submitting himself to treatment PROVIDED that no person shall be so received unless with the assent in writing of the Inspector-General
35 who shall only give such assent upon the written application of the person desiring to become a voluntary patient PROVIDED FURTHER THAT any such person may be discharged by the medical officer for any institution if he should think such course necessary in the interests of such person or of the institution.

5. Subject to this Agreement all the provisions of the Lunacy
40 Act of 1898 of the State (including any amendments heretofore and hereafter made) and the rules and regulations thereunder for the time being in force shall apply in the State to and with respect to every person handed over in New South Wales by an officer of Norfolk
45 Island to and received into custody by an officer of police of the State as provided in Clause 2 and to every resident of Norfolk Island received into a hospital for the insane of the State as provided in Clause 3 and to every resident of Norfolk Island received into a
hospital

Lunacy (Norfolk Island) Agreement Ratification.

hospital for the insane as provided in Clause 4 and to and with respect to the property and estate (if any) in the State of every such person or resident including the applying for and enforcing payment by relatives resident in the State of sums for or towards maintenance
5 clothing medicine and care of every such person or resident.

6. In case any such person or resident shall die in an institution of the State the State shall do all such things for his burial as would be done if he had been a resident of the State in like case.

7. (a) In respect of each and every person who is handed over
10 by an officer of Norfolk Island to and received into custody by an officer of police of the State under Clause 2 of this Agreement and of each and every resident of Norfolk Island who is received in a hospital for the insane of the State under Clause 3 of this Agreement or in
15 a hospital for the insane under Clause 4 thereof (all such persons and residents being hereinafter referred to as "persons in respect of whom the Commonwealth may be liable") the Commonwealth shall pay to the State the amounts that are equal to the excess (if any) of the cost to the State of—

- 20 (i) obtaining any order certificates or authority in respect of such person or resident and conveying such person or resident to an institution and from one institution or place to another and returning him to Norfolk Island under this Agreement on his discharge or otherwise;
- 25 (ii) maintaining such person or resident in an institution or otherwise; and
- (iii) consulting with specialists in mental or other diseases concerning such person or resident and treating him; and
- (iv) burying such person or resident if he shall die in an institution or while otherwise in the custody of the State in terms
30 of this Agreement;

over any moneys in respect of the committal or other authority conveyance maintenance treatment and burial of such person or resident as aforesaid received by the State therefor from such person or resident or from his estate or from a relative or friend.

35 (b) For the purpose of this clause the cost to the State of maintaining a person or resident in an institution for any period shall be ascertained by means of the following formula:—

$$\frac{A}{7} \times B = C$$

In the above formula—

- 40 A.—Represents the number of days in the period during which the person was maintained;
- B.—Represents the amount determined by the Master or the Inspector-General (as the case may be) as being the average cost per head per week of maintaining persons in that
45 institution during the period; and
- C.—Represents the cost of maintaining the person or resident in the institution for the period.

(c)

Lunacy (Norfolk Island) Agreement Ratification.

(c) A certificate under the hand of the Master or the Inspector-General stating the amount which was the average cost per head per week of maintaining persons in an institution during a period shall as between the parties hereto be conclusive evidence of the
5 matters stated.

8. (a) In the month of July in each year during the continuance of this Agreement the Inspector-General shall furnish to the Minister particulars of—

- 10 (i) the names of all persons in respect of whom the Commonwealth may be liable who in the period of twelve calendar months (or in the case of the first period in the period commencing on the commencement of this Agreement and) ending on the thirtieth day of June then last past were
15 apprehended received detained cared for maintained or otherwise dealt with by the State or its officers or authorities under or in pursuance of this Agreement; and
- (ii) the institutions in which such persons respectively were maintained and the period of maintenance in each institution; and
- 20 (iii) the cost to the State in such period of twelve calendar months (or in the case of the first period the shorter period aforesaid) of the matters or things set forth in paragraph (i) to (iv) inclusive of subclause (a) of Clause 7 of this Agreement; and
- 25 (iv) the moneys received during such period of twelve calendar months (or in the case of the first period the shorter period aforesaid) by the State from any of the persons in respect of whom the Commonwealth may be liable or from their estates or relatives or friends in respect of the committal
30 conveyance maintenance treatment or burial of any of such persons;

together with certificates under the hand of the Master or the Inspector-General pursuant to Clause 7 of this Agreement in respect of each institution in which any of the persons in respect of whom
35 the Commonwealth may be liable were maintained for any time during the said period of twelve calendar months or shorter period as aforesaid.

(b) In the calendar month after the termination of this Agreement the Inspector-General shall furnish to the Minister the particulars mentioned or referred to in paragraphs (i) to (iv) inclusive
40 of subclause (a) of this clause (together with certificates under the hand of the Master or the Inspector-General as mentioned in that subclause) in regard to all persons in respect of whom the Commonwealth may be liable but in reference to the period commencing on
45 the first day of July last past and ending on the termination of this Agreement instead of a period of twelve calendar months ending on the thirtieth day of June mentioned in that subclause.

(c)

Lunacy (Norfolk Island) Agreement Ratification.

(c) Without impairing the operation of subclause (c) of Clause 7 any particulars furnished in regard to the matters referred to in paragraphs (i) to (iv) inclusive of subclause (a) of this clause shall as between the parties hereto be prima facie evidence of the matters stated.

9. (a) Any moneys payable by the Commonwealth to the State pursuant to Clause 7 of this Agreement shall be paid to the Master at Sydney.

(b) Within a period of one calendar month after the particulars referred to in subclause (a) of Clause 8 of this Agreement have been furnished to the Minister in respect of any and every period ending on the thirtieth day of June in each year as mentioned in such subclause and after the particulars referred to in subclause (b) of the said Clause 8 have been furnished to the Minister in respect of the period ending on the termination of this Agreement the Commonwealth will pay to the State as herein provided the moneys payable under Clause 7 in regard to all persons in respect of whom the Commonwealth may be liable for or in relation to the period ending on the thirtieth day of June or termination of this Agreement as the case may be to which the particulars relate.

10. Any of the persons in respect of whom the Commonwealth may be liable who on being discharged from an institution of the State under the Lunacy Act of 1898 or this Agreement desire to be returned to Norfolk Island shall be conveyed to Norfolk Island by the State.

11. Upon service upon the officer in charge of an institution of the State of an order under the hand of the Minister directing the removal from such institution to an institution in Norfolk Island of a person detained in such institution under Clause 2 such officer in charge shall forthwith deliver such person into the custody of the person named in the order as authorised to receive such custody and he shall immediately convey to Norfolk Island the person so delivered to him.

12. (a) Either of them the Minister for Health or the Minister may terminate this Agreement at any time by giving at any time to the other of them six calendar months' previous notice in writing of such termination.

(b) Upon any such termination the Minister may make an order directing the removal from the institutions of the State to a hospital for the insane or other place in Norfolk Island of persons at such termination detained in such institutions of the State under Clauses 2, 3 and 4 of this Agreement and may cause such order to be served upon the respective officers in charge of the institutions of the State in which such persons are respectively detained and such officers in charge shall forthwith deliver such persons respectively into the custody of the persons respectively named in the orders as authorised to receive such custody and they shall immediately convey to Norfolk Island the persons so delivered to them.

(c)

Lunacy (Norfolk Island) Agreement Ratification.

(c) Notwithstanding any such termination of this Agreement the provisions of this Agreement (including Clause 7) shall continue to apply to and with respect to the persons at the said termination detained in the institutions of the State under Clauses 2, 3 and 4 of this Agreement until delivered in pursuance of subclause (b) of this clause by the officers in charge of such institutions to the persons authorised to receive such first mentioned persons into custody by the orders of the Minister served upon such officers in charge in accordance with the said subclause (b).

10 13. Unless the context otherwise requires any notice demand request or communication that may or is to be given or made by the Commonwealth or the Minister to the State or to any authority of the State or to the Inspector-General in pursuance of or under this Agreement shall be deemed to have been duly given or made if 15 signed by or on behalf of the Minister and delivered to the Inspector-General or sent in a prepaid letter addressed to the Inspector-General at his usual official address.

20 14. Unless the context otherwise requires any notice demand request communication certificate statement or particulars that may or are to be given or made or furnished by the State or the Inspector-General or any authority of the State to the Commonwealth or to the Minister in pursuance of or under this Agreement shall be deemed to have been duly given made or furnished if signed by or on behalf of the Minister for Health or the Inspector-General or the Master or 25 other authority and delivered or left at the office of the Secretary, Prime Minister's Department of the Commonwealth, or sent in a prepaid letter addressed to the Secretary, Prime Minister's Department, Canberra, A.C.T.

30 15. THIS Agreement is subject to ratification by the Parliament of the State and by a law of Norfolk Island 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 and shall not be of any force or effect until so ratified.

35 IN WITNESS whereof the parties hereto have hereunto set their hands the day and year first hereinbefore written.

SIGNED BY THE MINISTER FOR HEALTH
of the State of New South Wales
for and on behalf of the State in
40 the presence of:
C. J. WATT.

H. P. FITZSIMONS.

SIGNED BY THE MINISTER FOR EXTERNAL
AFFAIRS AND MINISTER IN CHARGE
OF TERRITORIES of the Common-
45 wealth of Australia for and on
behalf of the said Commonwealth
in the presence of:
J. R. HALLIGAN.

W. M. HUGHES.

