

MENTAL HEALTH AND MENTAL DISORDERS

Mental Health Act 18 of 1973, as amended in South Africa prior to Namibian independence



Summary: This Act ([RSA GG 3837](#)) provides for the detention and treatment of the mentally ill. It was brought into force brought into force in South Africa and South West Africa on 27 March 1975 by RSA Proc. R.76/1975 ([RSA GG 4627](#)).

Repeals: The Act repeals the *Mental Disorders Act 38 of 1916* ([SA GG 741](#)), with the exception of sections 27 to 29bis inclusive. It also repeals the *South-West Africa Mental Disorders Act 22 of 1926* ([SA GG 1555](#)), which made the *Mental Disorders Act 38 of 1916* and any amendment of the Act and any regulations made thereunder applicable to SWA - except that the repeal did not apply insofar as that Act applied sections 27 to 29bis of the *Mental Disorders Act 38 of 1916* to SWA.²⁸⁰ (These remaining provisions of the *Mental Disorders Act 38 of 1916* were repealed by the Criminal Procedure Act 51 of 1977 ([RSA GG 5532](#)).)

Applicability to SWA: Section 1 defines “Republic” to include “the territory of South West Africa”. Section 78 states “This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel.”

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Health) Transfer Proclamation (AG 14/1977), dated **1 December 1977**.²⁸¹ None of the amendments to the Act in South Africa after that date were made expressly applicable to SWA.

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *Mental Health Amendment Act 48 of 1976* ([RSA GG 5074](#))
- *Health Laws Amendment Act 36 of 1977* ([RSA GG 5481](#)).

One definition in the Act is amended by the Native Laws Amendment Proclamation, AG 3 of 1979 ([OG 3898](#)), deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979).

²⁸⁰ In 1924, section 1(1) of the SWA Mental Disorders Proc. 33 of 1924 ([OG 150](#)) made portions of the *Mental Disorders Act 38 of 1916* applicable to SWA:

The provisions of sections two and three and of Chapters one, five, seven, nine, ten and eleven of the Mental Disorders Act 1916 of the Union Parliament (Act No. 38 of 1916) and any amendment thereof and regulation for the time being in force thereunder shall so far as circumstances permit and subject to the modifications and amendments set forth in sub-section (2) hereof be of force and effect within the Territory of South West Africa and for the purposes of the application of the provisions thereof the said Territory shall be deemed to form part of the Union of South Africa and the High Court of South West Africa shall be deemed to be a Provincial Division of the Supreme Court of South Africa.

Section 1(2) of Proc. 33/1924 then set out some amendments and modifications of *Act 38 of 1916* as it applied to SWA, none of which were relevant to the issue of regulations.

Section 1 of the *South-West Africa Mental Disorders Act 22 of 1926* ([SA GG 1555](#)), which was brought into force by SA Proclamation 182 of 28 June 1926, subsequently made the entire Act applicable to SWA:

The Mental Disorders Act, 1916, and any amendment thereof and any regulations made thereunder, shall apply to the mandated territory of South-West Africa (hereinafter referred to as the territory), and for the purposes of the said Act the mandated territory shall be regarded as a province of the Union, the High Court of the territory shall have the jurisdiction of a Provincial Division of the Supreme Court of South Africa, and the Attorney-General of the territory and the Master of the said High Court shall have the same power, authority and duties as the Attorney-General of any such province and the Master of any such Provincial Division respectively.

The SA Mental Disorders (Eastern Caprivi Zipfel) Proclamation 213 of 1940, which is reprinted in [OG 871](#), authorises the Magistrate of the Eastern Caprivi Zipfel to order the arrest and detention of certain persons who are apparently mentally disordered or defective, followed by their removal to South Africa to be dealt with under the Mental Disorders Act 38 of 1916.

²⁸¹ RSA GN R.925/1977 ([RSA GG 5565](#)) assigned the administration of the Act to the Minister of Health with effect from 1 June 1977.

Savings: Section 79(2) states:

Any regulation, application, report, enquiry, finding, request, return, direction, examination or appointment made, held or given or any medical certificate or other certificate, reception order or other order, summons, warrant or authority issued, made or given, or any condition imposed or any board established or any other act done under any provision of any law repealed by this Act and which was of force immediately prior to the commencement of this Act, shall be deemed to have been made, held, issued, given, imposed, established or done, as the case may be, under the corresponding provision of this Act.

Regulations: Regulations are authorised by section 77 of this Act.

General Regulations made in terms of this Act are contained in RSA GN R.565/1975 ([RSA GG 4627](#)), as amended by RSA GN R.52/1976 ([RSA GG 4951](#)), RSA GN R.1000/1976 ([RSA GG 5153](#)) and RSA GN R.599/1977 ([RSA GG 5510](#)), dated 15 April 1977.²⁸² Note that these regulations contain race-based fees payable in respect of the maintenance and treatment of patients who are voluntarily admitted to a State institution.

The following regulations were made in terms of section 86(1) of the *Mental Disorders Act 38 of 1916*:

SA GN 1173/1916 ([SA GG 764](#)), as amended by SA GN 1143/1926 ([SA GG 1566](#)), SA GN 1546/1944 ([SA GG 3394](#)), SA GN 1547/1944 ([SA GG 3394](#)), and SA 446/1958 ([SA GG 6038](#)). These regulations survive pursuant to the savings clause quoted above, but they appear to be superseded by the General Regulations issued under the current Act and so are not included in the database.

No regulations have been promulgated since independence.

Notices: SA Proc. 225/1960 ([SA GG 6483](#)), issued in terms of the *Mental Disorders Act 38 of 1916*, provides that curators appointed under the Laws of the Netherlands relating to mentally disordered or defective persons shall be recognised by the Master and subject to the same duties as curators appointed under Chapter IX of that Act.

AG GN 33/1978 ([OG 3795](#)) designates certain members of the prison service to sign orders, warrants and documents in terms of sections 28 and 30-41.²⁸³

Appointments: A Psychiatry Board in respect of Windhoek Central Hospital is announced in GN 198/2001 ([GG 2624](#)). A Mental Health Hospital Board for Windhoek Central Hospital is announced in GN 14/2015 ([GG 5668](#)) and in GN 281/2018 ([GG 6753](#)).

Cases:

S v Narib/S v Nyambali 2010 (1) NR 273 (HC) (relation of sections 28-29 to section 77(6) of *Criminal Procedure Act 51 of 1977*)

Gawanas v Government of the Republic of Namibia 2012 (2) NR 401 (SC) (procedure for discharge of President's patient under section 29).

²⁸² In South Africa these regulations were further amended after the date of transfer and prior to Namibian independence by RSA GN R.2315/1978 ([RSA GG 6224](#)), RSA GN R.2295/1979 ([RSA GG 6706](#)), RSA GN R.1889/1981 ([RSA GG 7795](#)), RSA GN R.2629/1982 ([RSA GG 8474](#)), RSA GN R.943/1983 ([RSA GG 8694](#)) and RSA GN R.858/1985 ([RSA GG 9700](#)). However, none of these amendments refer explicitly to SWA and thus were not applicable to SWA. The 1975 regulations do not repeal any previous regulations.

²⁸³ This notice repeals RSA GN 1601/1975 (RSA GG 4823).

See also *Criminal Procedure Act 51 of 1977*, Chapter 13 (mental illness and criminal responsibility) **(CRIMINAL LAW AND PROCEDURE)**.

See also Ordinance for Prevention and Combating of Alcoholism and Anti-Social Conduct 11 of 1965 **(HEALTH)**.