

## New Zealand.



### ANALYSIS.

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1928, No. 23.

AN ACT to amend the Mental Defectives Act, 1911.

[9th October, 1928.]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the Mental Defectives Amendment Act, 1928, and shall be read together with and deemed part of the Mental Defectives Act, 1911 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the first day of January, nineteen hundred and twenty-nine.

2. (1) There is hereby established a Department of State to be called the Mental Hospitals Department.

Title.

Short Title and commencement.

Department of Mental Hospitals.

- (2) The said Department shall consist of—
- (a) The Minister of the Crown for the time being charged with the administration of the principal Act :
  - (b) A chief administrative officer, to be called the Director-General of Mental Hospitals, who shall be a registered medical practitioner, with special qualifications and experience in psychiatry :
  - (c) A Deputy Director-General of Mental Hospitals, who shall be a registered medical practitioner, with special qualifications and experience in psychiatry :
  - (d) Such Superintendents of institutions as may be required :
  - (e) Such number of medical practitioners, nurses, and other professional officers as may be required :
  - (f) Such other officers and servants as may from time to time be found necessary for effectually carrying out the work of the Department.

Inspector-General under principal Act to be the Director-General of Mental Hospitals.

3. (1) The office of Inspector-General of Mental Defectives under the principal Act is hereby abolished, and the officer holding office at the commencement of this Act with the title of the Inspector-General of Mental Defectives shall be deemed to have been appointed and shall continue to hold office as the Director-General of Mental Hospitals (hereinafter referred to as the Director-General).

(2) All references in the principal Act or elsewhere to the Inspector-General of Mental Defectives shall after the commencement of this Act be read as references to the Director-General.

Deputy Inspector-General under principal Act to be the Deputy Director-General of Mental Hospitals.

4. (1) The office of Deputy Inspector-General of Mental Defectives under the principal Act is hereby abolished, and the officer (if any) holding office at the commencement of this Act with the title of the Deputy Inspector-General of Mental Defectives shall be deemed to have been appointed and shall continue to hold office as the Deputy Director-General of Mental Hospitals (hereinafter referred to as the Deputy Director-General).

(2) All references in the principal Act or elsewhere to the Deputy Inspector-General of Mental Defectives shall after the commencement of this Act be read as references to the Deputy Director-General.

Powers and duties of Deputy Director-General.

5. (1) The Deputy Director-General shall, under the control of the Director-General, perform such general official duties as he is called upon to perform by the Director-General.

(2) On the occurrence from any cause of a vacancy in the office of the Director-General (whether by reason of death, resignation, or otherwise), and in case of the absence from duty of the Director-General (from whatever cause arising), and so long as such vacancy or absence continues, the Deputy Director-General shall have and may exercise all the powers, duties, and functions of the Director-General.

(3) The fact of the Deputy Director-General exercising any power, duty, or function as aforesaid shall be conclusive evidence of his authority so to do, and no person shall be concerned to inquire whether the occasion has arisen requiring or authorizing him so to do.

(4) Subsection two of section forty-two of the principal Act is hereby consequentially amended as follows:—

- (a) By omitting the words "Deputy Inspector-General" before the words "Assistant Inspectors"; and

(b) By omitting all words after the words "or by the Inspector-General."

6. All Superintendents, medical practitioners, nurses, attendants, and other persons in office under the principal Act at the commencement of this Act shall continue to hold such offices respectively as officers of the Department established as hereinbefore provided.

Saving of existing offices.

7. The definition of the term "mentally defective person" in section two of the principal Act is hereby amended by adding thereto the following :—

Extension of definition of term "mentally defective person."

"Class VII—Persons socially defective—that is, persons who suffer from mental deficiency associated with anti-social conduct, and who by reason of such mental deficiency and conduct require supervision for their own protection or in the public interest."

8. (1) Where it is expedient either for the welfare of a person alleged to be mentally defective or in the public interest that such person should be placed under care and treatment in an institution under the principal Act before a reception-order can be obtained under section five of that Act, any person competent to apply for a reception-order may sign a request, addressed to the Superintendent of the institution named in the request, that the person so alleged to be mentally defective be received into that institution.

Alternative procedure for admission of patients to mental hospitals.

(2) Such request shall be in the prescribed form and shall contain statements to the same effect as the statements required to be made in applications made to a Magistrate pursuant to section four of the principal Act.

(3) On receipt of such request and of certificates in the prescribed form signed by two medical practitioners competent to give certificates for the purposes of section five of the principal Act, and containing the particulars required in the case of a certificate given for the purposes of that section, the Superintendent may receive the person to whom such request and certificates relate, and may detain him in the institution in accordance with the provisions of this section :

Provided that no person shall be received into an institution pursuant to this section after the expiration of seven days from the date of the request or of any medical certificate given in support thereof, whichever date is the earlier.

(4) Within twenty-four hours after the reception of the said person the Superintendent shall forward to a Magistrate a copy (certified by the Superintendent to be a correct copy) of the request and certificates aforesaid, together with a certificate signed by himself to the effect that in his opinion the person concerned is or is not, as the case may be, a mentally defective person requiring detention in an institution, and the Magistrate shall as soon as practicable after the receipt thereof make inquiry and proceed as directed by section five of the principal Act as if the request were an application made under section four of that Act.

(5) In any such inquiry the Magistrate may if he thinks fit accept the medical certificates given in support of the request as if the medical practitioners signing the same had been duly called to his assistance pursuant to section five of the principal Act, notwithstanding that such certificates or any such certificate may be dated more than seven

days before the making of the reception-order by the Magistrate, and every such certificate so accepted shall for the purposes of the principal Act be deemed to have been given under section five thereof.

(6) If on such inquiry the Magistrate refuses to make a reception-order he shall forthwith give notice of his refusal to the Superintendent, and after the receipt of such notice it shall not be lawful for the Superintendent to detain under the authority of this section the person to whom such notice relates.

Repeal.

(7) This section is in substitution for section nine of the principal Act, and that section is hereby accordingly repealed.

Section 13 of principal Act (relating to method of payment of fees for medical certificates) amended.

9. Section thirteen of the principal Act is hereby amended as follows:—

(a) By omitting from subsection one the words “under subsection six of section five or subsection five of section nine of,” and substituting the words “for the purpose of.”

(b) By inserting, after the words “the Clerk of any Magistrate’s Court” in subsection two, the words “or other authorized person.”

(c) By inserting, after the words “the said Clerk” in subsection three, the words “or other authorized person.”

Amending procedure for transfer to mental hospital of mentally defective prisoners or other persons undergoing detention.

10. (1) Section thirty-eight of the principal Act is hereby amended by adding to subsection three the following proviso:—

“Provided that one of the medical practitioners called to the assistance of the Magistrate in any case to which this section refers may be a medical officer belonging to the staff of a public institution established under this Act, or otherwise belonging to the staff of the Mental Hospitals Department, and in such case the restrictions imposed by paragraph (b) or paragraph (e) of section twelve hereof shall have no application.”

(2) The said section thirty-eight is hereby further amended by adding to subsection four the following words:—

“Pending the receipt of a warrant under the hand of the Minister of Justice as aforesaid, a telegraphic communication purporting to be sent by or on behalf of the said Minister or a responsible officer under his control to the effect that such warrant has been signed by the said Minister shall be sufficient authority to the person in charge of the prison, reformatory institution, or other place in which the person to whom the warrant relates is confined to deliver the last-mentioned person to the Superintendent of the institution named in the warrant, and for the Superintendent to receive and detain such person in accordance with this Act.”

*Constitution and Powers of Special Board to have Supervision over certain Classes of Mentally Defective Persons.*

Constitution of special Board to have supervision over certain classes of mentally defective persons.

11. (1) For the purposes of the principal Act and this Act there is hereby established a special Board (hereinafter referred to as the Board) which shall in accordance with the terms of this Act be concerned with promoting the welfare of such mentally defective persons as are not classified either as “persons of unsound mind” or “persons mentally infirm,” in accordance with the definition of the term “mentally defective person” in section two of the principal Act as amended by section seven of this Act.

(2) The Board shall consist of—

(a) The Director-General of Mental Hospitals, who shall be the Chairman of the Board :

(b) The Director-General of Health :

(c) The Director of Education :

(d) The Controller-General of Prisons :

(e) A medical officer on the staff of the Mental Hospitals Department, to be appointed on the ground that he is possessed of special psychiatric training and experience :

(f) Two other members, at least one of whom shall be a woman.

(3) The members of the Board other than members who are such by virtue of their office shall be appointed by the Governor-General for a period of three years, save that any such member may be re-appointed or may be at any time removed from office by the Governor-General for disability, insolvency, neglect of duty, or misconduct, or may at any time resign his office by writing addressed to the Minister.

(4) If any member of the Board dies, retires, or otherwise vacates his office the vacancy so created shall within two months after the occurrence thereof be filled in the manner in which the appointment to the vacant office was originally made. Every person so appointed shall hold office for the residue of the term for which his predecessor was appointed.

(5) In the absence from any meeting of the Board of any member who is an officer of the Public Service, any officer of his Department appointed for the purpose by the member may attend such meeting in his stead, and while so attending shall be deemed to be a member of the Board. The fact that any officer so attends and acts shall be conclusive proof of his authority so to do.

(6) The powers of the Board shall not be affected by any vacancy in the membership thereof.

12. (1) Meetings of the Board shall be held at such times and places as the Board or the Chairman of the Board may from time to time appoint. Meetings of Board.

(2) At all meetings of the Board three members shall form a quorum, and no business shall be transacted at any meeting unless a quorum is present.

(3) At any meeting of the Board the Chairman shall have a deliberative vote, and in the case of an equality of votes shall also have a casting-vote. Except as otherwise expressly provided in this Act, every question shall be determined by a majority of the votes of the members present at a meeting of the Board.

13. (1) The members of the Board not being officers in the service of the Government shall be paid such allowances as may be lawfully appointed and all travelling-expenses reasonably incurred by them in respect of their attendance at meetings of the Board and in transacting the business thereof. Payment of allowances and travelling-expenses to members of the Board.

(2) All such amounts shall be paid out of moneys to be appropriated by Parliament for the purpose.

14. The functions of the Board shall be—

(a) To cause to be compiled a register containing the names of all mentally defective persons resident in New Zealand who, not being persons of unsound mind or persons mentally infirm, Functions of the Board.

may in the opinion of the Board be classified under the principal Act as "idiots," or "imbeciles," or "feeble-minded," or "epileptics," or "socially defective":

- (b) To secure that proper provision is made for the supervision of persons whose names are for the time being on the register, and, where any such persons are detained in institutions under the principal Act, to assist in such manner as to the Board seems fit in the conduct of such institutions in the best interests of the inmates:
- (c) To hold inquiry from time to time with reference to the mental state and circumstances of all persons whose names are duly submitted to it for purposes of such inquiry, and to determine in respect of each such person whether or not his name should be placed on the register:
- (d) To hold such other inquiries, and to give all such other decisions, awards, determinations, recommendations, and consents, and do all such other acts and things, as are by this Act provided for or as may be otherwise lawfully required of it, or as may in its opinion be necessary for the effective administration of the principal Act and this Act:
- (e) To make provision for the establishment and conduct of such psychological clinics as may be necessary for the purposes of this Act, each such clinic being under the immediate direction of a qualified psychiatrist.

Returns to be furnished by Director of Education.

15. (1) The Director of Education shall from time to time as required furnish to the Chairman of the Board a return showing—

- (a) The names of and other prescribed particulars with respect to all children in attendance at any public school or registered private school who he has reason to believe suffer from retarded mental development, or from mental deficiency, mental disorder, or epilepsy:
- (b) The names of and other prescribed particulars with respect to children maintained in any special school or other institution under Part IX of the Education Act, 1914:
- (c) The names of and other prescribed particulars with respect to all other children of school age who he has reason to believe are not attending school because of epilepsy or other mental defect.

Returns from Controller-General of Prisons.

(2) The Controller-General of Prisons shall from time to time as required furnish to the Chairman of the Board information concerning all persons for the time being detained in any prison or other institution under the control or supervision of the Controller-General who he has reason to believe are mentally defective.

(3) If any Magistrate or Justice is of opinion that any person brought before him charged with an offence is a mentally defective person he shall forthwith advise the Chairman of the Board of such opinion, and of the name and circumstances of the person concerned.

Chairman to refer reported cases to clinic for investigation.

16. (1) On receipt of any returns or advice under the last preceding section, the Chairman shall require an investigation of each case to be made by a psychological clinic established under section fourteen hereof, and such investigation shall as soon as practicable thereafter be made accordingly.

(2) The Chairman may also require investigation by a psychological clinic to be made in the case of any other person in respect of whom representations from any reputable source have been received by the Chairman to the effect that such person is mentally defective.

(3) If in the opinion of the psychiatrist in charge of a clinic any person whose case is investigated under the foregoing provisions of this section is mentally defective and is properly classifiable under the principal Act as "idiot," or "imbecile," or "feeble-minded," or "epileptic," or "socially defective," he shall forthwith report his opinion to the Chairman.

(4) The Chairman shall submit to the Board—

(a) Particulars concerning every person reported, after investigation by a psychological clinic as aforesaid, to be mentally defective and classifiable as mentioned in the last preceding subsection:

(b) Particulars of any person who is or at any time has been an inmate of an institution under the principal Act, and whose name should in the opinion of the Chairman be entered on the register required to be kept under this Act.

17. (1) The Board shall take into consideration all cases submitted to it by the Chairman, and shall hold such inquiry as it considers necessary with reference to the mental condition of the persons concerned.

Board to determine questions as to registration after considering report of clinic.

(2) For the purposes of any such inquiry the Board shall have all the powers of a Commission appointed under the Commissions of Inquiry Act, 1908.

(3) The Board shall not direct that the name of any person be entered on the register unless it is of opinion after such inquiry as aforesaid that such person is a mentally defective person properly classifiable under the principal Act as "idiot," or "imbecile," or "feeble-minded," or "epileptic," or "socially defective":

Provided that the decision of a majority of the members of the Board that the name of any person be entered on the register shall not be given effect to unless such decision is concurred in by the three members of the Board who are registered medical practitioners.

18. (1) If the Board after inquiry as aforesaid determines that the name of any person should be entered on the register it shall, before directing that such entry be made, give to such person or to one of his parents or to his guardian, or, if there is no parent or guardian, to any other person appearing to have the control or care of him, not less than fourteen days' notice in writing of its decision, together with information as to the right of appeal from such decision hereinafter provided for.

Notice of decision of Board to be given, and provision for appeals.

(2) Any person to whom the decision of the Board relates, or any other person entitled to receive a notice under the last preceding subsection, may within fourteen days after the decision of the Board has been communicated to him object to the registration of the said person by notice in writing given to the Board; and in any case where objection is so made registration shall not be effected unless and until the decision of the Board is confirmed by a Judge of the Supreme Court in Chambers.

19. Any person registered under this Act, or the parent or guardian of any such person, or any relative of such person, may at any time apply to a Judge of the Supreme Court in Chambers for an order directing

Application for removal of name from register.

the Board to remove the name of such person from the register on the ground that his mental state no longer warrants the retention of his name on the register, and the Judge may in any such case make such order as he thinks fit, having regard to the circumstances of the case and the public interest.

Removal of name  
from register.

20. (1) The Board may at any time of its own motion or by direction of the Minister make inquiry as to whether or not the name of any registered person should be removed from the register, and may after such inquiry cause such name to be so removed if in its opinion it thinks fit so to do.

(2) For the purposes of any inquiry under this section the Board shall have the same powers as it has in the case of an inquiry under section seventeen hereof.

(3) The Board shall also cause to be removed from the register the name of any registered person who dies or who ceases to have his permanent home in New Zealand.

No entry in or  
alteration of register  
except pursuant to  
resolution of Board.

21. No entry shall be made in the register hereinbefore referred to, either by way of the insertion of a name or of any particulars therein, or the removal of a name, or the alteration of any particulars therein, except pursuant to the order or direction of a Judge of the Supreme Court as hereinbefore provided, or pursuant to a resolution of the Board.

Offences with respect  
to registered persons.

22. (1) For the purposes of section one hundred and twenty-seven of the principal Act every woman or girl whose name is registered in accordance with the provisions of this Act and who is not detained in an institution under the principal Act shall be deemed to be a person under oversight, care, or control as mentally defective, and every person who has or attempts to have carnal knowledge of any such person shall be guilty of an indictable offence accordingly.

(2) The parents, guardian, and other person or persons having the care, custody, or control of any person of either sex who is registered under this Act shall take all reasonable precautions to ensure that such person shall not have carnal knowledge of any other person, and if such event happens through the wilful or negligent act or default of any such parent, guardian, or other person as aforesaid, every such parent, guardian, or other person as aforesaid shall be guilty of an indictable offence.

(3) The provisions of section one hundred and twenty-eight of the principal Act shall apply with respect to indictable offences under this section.

Offence to supply  
intoxicating liquor  
to mentally  
defective persons.

23. (1) Every person commits an offence and is liable on summary conviction to a fine of fifty pounds who, except for medicinal purposes on the written authority of a registered medical practitioner, supplies any intoxicating liquor to be consumed by any mentally defective person, whether or not such person is detained in an institution under the principal Act, or is otherwise under oversight, care, or control as mentally defective, or is registered under this Act.

(2) It shall be a good defence in any prosecution for an offence against this section if the defendant proves that he did not know and had no reasonable cause to believe or suspect that the person for whose consumption any intoxicating liquor was supplied contrary to this section was mentally defective.



24. (1) Any place declared by the Governor-General in Council pursuant to section forty-four of the principal Act to be a public institution within the meaning of that Act may, by the same or a subsequent Order in Council, be declared to be available exclusively for the reception and treatment of such mentally defective persons as are not of unsound mind or mentally infirm; or any defined portion of an institution as aforesaid may be declared to be reserved and available exclusively for the reception and treatment of such persons.

Special institutions may be provided exclusively for registered persons.

(2) Any person whose name is for the time being on the register hereinbefore provided for may be received and detained in any institution or defined part of any institution referred to in the last preceding subsection, in accordance with the provisions of Part III of the principal Act, in the same manner in all respects as if he were a minor, notwithstanding that he may have attained the age of twenty-one years or more.

(3) No person whose name is on the register in accordance with this Act shall, unless he becomes of unsound mind or mentally infirm, be detained under the principal Act otherwise than in an institution of a kind referred to in subsection one hereof, or in portion of such an institution defined and reserved as hereinbefore provided.

(4) Nothing in section twenty-six of the principal Act shall apply with respect to a minor detained in an institution pursuant to this section.

25. In addition to the matters specified in section seventy-eight of the principal Act, the Director-General, in the annual report which he is required to make to the Minister pursuant to that section, shall give particulars as to the number of persons of each sex and class registered by the Board pursuant to the foregoing provisions of this Act, with such other particulars as the Minister may require with respect to the work of the said Board during the year to which the report relates.

Annual report furnished under the principal Act to include particulars as to persons registered in accordance with this Act.

#### *Recognition of Societies.*

26. (1) The Minister may from time to time on the recommendation of the Board recognize any society (in this Act referred to as a social-service organization) whose object, or one of whose principal objects, is the amelioration of conditions affecting mentally defective persons, including the supervision, care, or visitation of persons registered under this Act.

Recognized societies.

(2) There may from time to time be paid to any such social-service organization out of moneys appropriated by Parliament for the purpose such sums as the Minister on the recommendation of the Board may from time to time approve towards the expenses incurred by the society in accordance with its rules.

(3) In approving any such contribution as aforesaid the Minister may impose such conditions as he thinks fit with respect to the expenditure thereof and the accounting for the same.

(4) The recognition of any social-service organization in accordance with this section may be at any time in like manner withdrawn.