

MENTAL HEALTH AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill makes amendments to the Mental Health Act 1911 in relation to the procedure on applications for reception orders, mentally defective persons under detention for offences, intellectually handicapped and other mentally retarded persons, and the administration of estates of mentally defective persons.

Applications for Reception Orders

Clause 2: This clause clarifies the procedure to be followed when a Magistrate adjourns an application for a reception order. Section 5 (9) of the principal Act (as substituted by section 48 of the Statutes Amendment Act 1945) provides that the Magistrate may from time to time adjourn any such application for such periods as he thinks fit, and make orders for the care and detention of the person concerned pending the determination of the application. That subsection, however, is subject to section 5 (8) of the Act, under which a reception order is not to be made after the expiry of seven days from the date of the earlier of the two medical certificates given to the Magistrate. This period frequently allows insufficient time for the proper observation and diagnosis of the patient's mental condition. Also, it is not entirely clear whether the Magistrate must have both medical certificates before he can exercise his power to adjourn the application. This clause substitutes a new section, authorising the Magistrate from time to time to adjourn the application in three cases, namely: (a) where two doctors have certified that the patient is mentally defective, or (b) where one doctor has so certified, and the other has given a certificate to the effect that the patient may be mentally defective and that his mental condition should be under observation for the purpose of ascertaining whether he is mentally defective, or (c) where both doctors have given certificates to the effect that the patient may be mentally defective and that his mental condition should be under observation for the purpose of ascertaining whether he is mentally defective. The period of any adjournment is not to exceed one month. When the adjourned application is finally dealt with, the Magistrate may not make a reception order unless he has before him two medical certificates certifying the person to be mentally defective and dated not earlier than seven days before the making of the order.

Clause 3 re-enacts, as a separate section, section 5 (10) of the principal Act, under which the result of any application for a reception order is to be reported to the Director of the Division of Mental Hygiene.

Clause 4: The effect of this clause is that the new procedure for adjournment (in *clause 2*) may be used by a Magistrate when he has before him the case of a person admitted under the alternative procedure allowed by section 8 of the Mental Health Amendment Act 1928.

Mentally Defective Persons Under Detention for Offences, etc.

Clause 5: Section 32 of the principal Act provides that if a person indicted for an offence is found by the jury to be insane so that he cannot plead, the Court (that is, the Supreme Court) must order that he be confined until the pleasure of the Minister of Justice is known. There is no provision for the case where a person is found by the Magistrate's Court, at the preliminary hearing, to be unfit to plead, or for the case of a summary charge. This clause substitutes a new section 32. The new *subsection (1)* provides that where a

person is charged with any offence punishable by imprisonment or death, whether summary or indictable, and the Magistrate's Court finds, on the evidence of two doctors, that he is insane so that he cannot be tried or committed for trial, the Court must order that he be confined until the pleasure of the Minister of Justice is known. *Subsection (2)* of the new section re-enacts, with drafting alterations, the provisions of the existing section relating to the Supreme Court. The new section applies to proceedings commenced before the passing of the Bill.

Clause 6: The new *subsection (2)* substituted by this clause merely re-enacts, with drafting alterations, section 33 (2) of the principal Act, for the purpose of correcting the wording by referring to a Magistrate's Court instead of to a Magistrate or Justices, and by referring to section 181 of the Justices of the Peace Act 1927 instead of to section 176 of the Justices of the Peace Act 1908. The effect of the subsection is that where a defendant pleads guilty at the preliminary hearing of a charge of an indictable offence, and the Magistrate's Court has reason to believe that he was insane at the time of the offence, the Court may refuse to accept the plea and may commit him to the Supreme Court for trial instead of for sentence. The new *subsection (3)* applies to the trial in a Magistrate's Court of a summary offence, or to the summary trial of an indictable offence. It gives the Magistrate's Court the same power as the Supreme Court has under section 33 (1) to direct that a plea of not guilty be recorded, instead of the plea of guilty, where the Court has reason to believe that the defendant was insane at the time of the offence.

Clause 7 is consequential on *clause 5*. It re-enacts section 35 of the principal Act, with the inclusion of references to a Magistrate's Court in relation to cases to which the new section 32 (1) applies. The section provides for a person found insane under section 32 (*clause 5*) to be brought before the Court when he has recovered his sanity.

Clause 8 substitutes a new section for section 37 of the principal Act, dealing with the detention in a mental hospital for observation of a person in custody awaiting trial or sentence for any criminal offence. The existing section provides that where it appears to the Minister of Justice to be necessary or expedient that the mental condition of such a person should be under observation in a mental hospital he may direct that the person be removed to a mental hospital for such period as the Minister thinks fit, pending his trial or sentence. The new section 37 substituted by this clause transfers that power from the Minister to the Court. It also alters the cases in which the power may be exercised, by substituting for the words "any criminal offence" the words "any offence punishable by imprisonment or death, whether the offence is punishable on summary conviction or on conviction on indictment" (new *subsection (1)*). *Subsection (3)* authorises the exercise of the power by the Magistrate's Court at any time before sentence, or before committal for trial or sentence; and by the Supreme Court at any time after committal for trial or sentence, and before sentence. The new section applies to proceedings commenced before the passing of the Bill.

Clause 9 substitutes a new section for section 38 of the principal Act, dealing with the transfer from a penal institution or other place of confinement to a mental hospital of a person who is confined under a sentence, conviction, warrant, or order. The existing section provides that where the Minister of Justice has reasonable ground to believe that such a person is mentally defective, he may direct a Magistrate to hold an inquiry into that person's state of mind. The Magistrate then proceeds in the same way as if an application for a reception order had been made to him under section 4 of the principal Act. If after his inquiry the Magistrate certifies to the Minister that in his opinion the person is mentally defective and should be removed to a mental hospital, the Minister of Justice may direct the removal. The Minister of Health, acting on two medical certificates, may later direct the return of the person from the mental hospital to the place where he was originally confined, to undergo the remainder of the term of imprisonment; but if he is still

in the mental hospital when that term expires he is detained as if a reception order had been made at that time, and becomes a patient within the meaning of the principal Act. The *new section*, instead of providing for the initiation of the proceedings by the Minister of Justice and a subsequent order for removal by him, provides that an application may be made to a Magistrate for a reception order, under section four of the principal Act, by the Superintendent or other person in charge of any penal institution, reformatory home, or inebriates home in respect of any person who is in his custody under any sentence, conviction, or order of committal or detention. The ordinary procedure laid down by the principal Act will then apply, and the Magistrate may make a reception order in the usual way. *Subsection (5)* of the new section makes it clear that while the person is in the mental hospital the term of his sentence continues to run. The remaining subsections re-enact, with minor alterations and some rearrangement, the existing provisions for the return of the person, on his recovery, to serve the remainder of his sentence or to be otherwise dealt with according to law, or for his continued detention as a patient, after the expiry of his sentence, until he can be discharged in the ordinary way. *Subsection (9)* is new. It applies only to a person convicted and awaiting sentence. On his recovery, the Court will have a discretion to order his discharge without his being brought before the Court for sentence.

Clause 10 makes it clear that a person confined in a mental hospital under Part IV of the principal Act cannot be discharged from the mental hospital except in accordance with that Part.

Intellectually Handicapped Persons, etc.

Clause 11: At present, under section 3 of the Mental Health Amendment Act 1954, licensed homes (known as "short-stay" homes) maintained by incorporated societies may receive and care for intellectually handicapped persons for periods not exceeding two months at any one time. *Subclause (1)* of this clause extends the definition of the term "society" to include a Board incorporated under the Religious, Charitable, and Educational Trusts Act 1908 as well as a society incorporated under the Incorporated Societies Act 1908. *Subclause (2)* extends the section by allowing any intellectually handicapped child under eighteen to be received in a licensed home (maintained by any such society or Board) for longer periods, to be approved by the Director of the Division of Mental Hygiene, if satisfactory facilities for appropriate training are not available in the locality where the child usually lives but are available either in the licensed home or in the locality in which the home is situated.

Clause 12: This clause applies to intellectually handicapped persons who have reached the school-leaving age of fifteen, and also to mentally retarded persons who have reached that age and who come within the definition set out in *subsection (1) (b)* of the new *section 3A* inserted by the clause. The new section authorises the licensing of homes established by approved societies for the care and training of such persons.

Administration of Estates

Clause 13 authorises the Public Trustee, as committee or administrator of the estate of a mentally defective person, without the leave of the Supreme Court, to expend money in the improvement of any property of that person, by way of building or otherwise. The amount so expended without the leave of the Court must not exceed £500 for any one purpose. Compare section 101 (e) of the principal Act, and section 15 (1) (b) of the Trustee Act 1956.

Clause 14: Section 103 of the principal Act provides that the Public Trustee, as committee or administrator of the estate of a mentally defective person, may exercise the powers specified in sections 101 and 102 of that Act if the value of the estate is less than £2,000. This clause extends the class of cases where the Public Trustee may exercise the powers without the consent of the Court by increasing the figure to £5,000.

Clause 15 inserts seven new sections in the principal Act after section 119.

The new section 119A provides that where capital money is raised by any sale, mortgage, charge, or other disposition of property pursuant to powers conferred by or under the principal Act or conferred under any inherent jurisdiction of the Court in respect of the estates of mentally defective persons, the original owner of the property and his administrators, beneficiaries, and assigns shall have the same interest in any unexpended balance of the money as they would have had in the property, and that unexpended balance shall be deemed to be of the same nature as the property. The provision is to apply whether the money was raised before or after the commencement of the new section, but not where the person died before the commencement of the section, unless the Court has in the lifetime of the person made an order which would have been authorised by the new *section 119c*. The section is based on section 123 of the Lunacy Act 1890 of the United Kingdom and section 210 of the Lunacy Act 1928 of Victoria.

The new section 119B provides that the Court shall have power to order that the whole or any part of the money of a mentally defective person expended or to be expended for the improvement of any of his property or for repaying money secured by a mortgage thereon shall be a charge upon the property.

The new section 119c provides that the Court shall have power to make such orders as it thinks fit for preserving the nature, quality, tenure, and devolution of the property of a mentally defective person. For this purpose money may be ordered to be carried to a separate account. Compare section 2 (8) of the Lunacy Act 1922 of the United Kingdom and section 123 (3) of the Lunacy Act 1890 of the United Kingdom.

The new section 119D provides for the termination of the notional preservation of the character of assets as aforesaid either twelve months after the mentally defective person recovers, or upon his making a fresh testamentary disposition, or a payment or transfer, of the money or property concerned.

The new section 119E contains provisions similar to those in force in the United Kingdom and Victoria enabling the Supreme Court to settle property of a mentally defective person.

The new section 119F makes it clear that the principal Act does not restrict the general jurisdiction of the Court in relation to the property of mentally defective persons.

The new section 119G authorises the Court, whenever it considers it expedient to do so for any of the purposes of the principal Act or in connection with the exercise of its inherent jurisdiction in connection with the estates of mentally defective persons, to compel information to be furnished respecting, and production of, testamentary dispositions, and the lodgment thereof in Court.

Miscellaneous Provisions

Clause 16 re-enacts, with modifications, section 135 of the principal Act. Under the present section, the Board or Trustees of a hospital or separate institution in respect of which subsidies are paid out of the Consolidated Fund under the Hospitals Act 1926 must, when required by notice in writing from the Minister, make such provision as the Minister thinks necessary for the temporary reception and care of persons in respect of whom applications for reception orders are made, pending their medical examination and their removal pursuant to reception orders. The new section substituted by this clause is limited to Hospital Boards, and simply requires them to make such provision as the Minister thinks necessary for the above-mentioned purposes.

Clause 17 repeals a group of sections in the Mental Health Amendment Act 1928, under which a special Board was constituted to have supervision over certain classes of mentally defective persons.

Clause 18: The amendments made by this clause are consequential on the provisions of the Bill and on the passing of the Penal Institutions Act 1954.

Hon. Mr Hanan

MENTAL HEALTH AMENDMENT

ANALYSIS

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A BILL INTITULED

An Act to amend the Mental Health Act 1911

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

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1. **Short Title**—This Act may be cited as the Mental Health Amendment Act 1957, and shall be read together with and deemed part of the Mental Health Act 1911 (hereinafter referred to as the principal Act).

Applications for Reception Orders

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2. **Adjournment of application for reception order**—The principal Act is hereby amended by inserting, after section five, the following section:

“5A. (1) The provisions of this section shall apply in any case where—

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“(a) Each of the medical practitioners referred to in section five of this Act has given a certificate, in accordance with that section, to the effect that the person to whom the application for a reception order relates is a mentally defective person and requires detention as such; or

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“(b) One of those medical practitioners has given such a certificate, and the other has given a certificate to the effect that the person may be mentally defective and that his mental condition should be under observation for the purpose of ascertaining whether he is mentally defective; or

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“(c) Each of those medical practitioners has given a certificate to the effect that the person may be mentally defective and that his mental condition should be under observation for the purpose of ascertaining whether he is mentally defective.

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“(2) In any case to which this section applies, but not in any other case, the Magistrate, in his discretion, may adjourn the determination of the application from time to time and for such periods, not exceeding one month at any one time, as he thinks fit, and may from time to time make such order as he thinks fit for the care, control, and detention of the person to whom the application relates, pending the determination of the application.

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“(3) Subject to the provisions of subsection four of this section, on the expiry of the period of any such adjournment,

or at any time before the expiry of that period, the matter may be completed and the application determined by the same or any other Magistrate.

5 “(4) On the final determination of any application that has been adjourned under this section, no reception order shall be made on that application unless—

10 “(a) The Magistrate has before him certificates given by two medical practitioners, in accordance with section five of this Act, to the effect that the person to whom the application relates is a mentally defective person and requires detention as such; and

15 “(b) Neither of those certificates bears a date earlier than seven days before the date of the making of the reception order.

“(5) For the purposes of subsection four of this section, the following provisions shall apply:

20 “(a) Where any of the certificates referred to in subsection one of this section is to such effect and bears such date as to comply with the said subsection four, the Magistrate may if he thinks fit accept that certificate:

“(b) The Magistrate may require any new medical certificate complying with the said subsection four:

25 “(c) Any such new certificate may be given either by a medical practitioner who gave any certificate under subsection one of this section or by any other medical practitioner who is competent to give certificates for the purposes of section five of this Act.”

30 **3. Result of application for reception order to be reported to Director**—The principal Act is hereby further amended by inserting, after section five A (as inserted by section two of this Act), the following section:

35 “5B. The Magistrate who determines any application for a reception order shall forthwith report the result of the application to the Director.”

4. Adjournment where alternative procedure for admission followed—Section eight of the Mental Health Amendment Act 1928 is hereby amended as follows:

40 (a) By adding to subsection four the words “The provisions of the said section five and of sections five A and five B of the principal Act, so far as they are applicable, shall apply accordingly.”:

- (b) By adding to subsection five the words “If in any such case the Magistrate adjourns the determination of the application pursuant to section five A of the principal Act the provisions of that section shall apply as if the said medical certificates had originally been given pursuant to subsection one of that section.” 5

Mentally Defective Persons Under Detention for Offences, etc.

5. Person found unfit to be tried on charge of an offence—

(1) The principal Act is hereby further amended by repealing section thirty-two, and substituting the following section: 10

“32. (1) If on the hearing before a Magistrate’s Court of any information in respect of any offence punishable by imprisonment or on conviction on indictment, the Court is satisfied, on the evidence of two medical practitioners, that the defendant is insane so that he cannot be tried or committed for trial, the Court shall direct a finding to that effect to be recorded and shall order that he be kept in strict custody in such institution within the meaning of this Act, or such penal institution, as it thinks fit, until the pleasure of the Minister of Justice is known. 15 20

“(2) If any person indicted for any offence is found by a jury, after arraignment, to be insane so that he cannot be tried, whether or not he has pleaded to the indictment, the Court before whom he is brought to be arraigned shall direct that finding to be recorded and shall order that he be kept in strict custody in such institution within the meaning of this Act, or such penal institution, as it thinks fit, until the pleasure of the Minister of Justice is known.” 25 30

(2) Section thirty-two of the principal Act, as substituted by subsection one of this section, shall apply to any proceedings commenced before or after the passing of this Act.

6. Substitution of plea of not guilty for plea of guilty—

Section thirty-three of the principal Act is hereby amended by repealing subsection two, and substituting the following subsections: 35

“(2) If at the close of the preliminary hearing before a Magistrate’s Court of any information in respect of an indictable offence the defendant pleads guilty to the offence under the provisions of section one hundred and eighty-one of the 40

Justices of the Peace Act 1927, and the Court has reason to believe that the defendant was insane at the time of the committing of the alleged offence, the Court may refuse to accept the plea of guilty, and may commit the defendant for trial as if no such plea had been made.

“(3) If on the hearing before a Magistrate’s Court of any information in respect of any offence, being an offence punishable on summary conviction or an indictable offence in respect of which that Court has summary jurisdiction, the defendant pleads guilty to the offence, and the Court has reason to believe that he was insane at the time of the committing of the alleged offence, the Court may, if it thinks fit, direct that a plea of not guilty shall be recorded instead of a plea of guilty, and thereupon the hearing shall proceed in like manner as if he had pleaded not guilty.”

7. Person recovering sanity—The principal Act is hereby further amended by repealing section thirty-five, and substituting the following section:

“35. If it is made to appear to the Minister of Justice by the certificate of two medical practitioners or of the Medical Superintendent of a public institution under this Act that any person found to be insane by a Magistrate’s Court or by a jury, under section thirty-two of this Act, and detained under that section or by order of that Minister under section thirty-four of this Act, has become capable of being tried or committed for trial on the charge or indictment against him, the Minister of Justice may direct, by warrant under his hand, that the person be brought before a Magistrate’s Court for the hearing or the completion of the hearing of the information laid against him, or, as the case may require, that he be brought up at the next sitting of the Supreme Court in which the indictment was found, to be arraigned upon the indictment.”

8. Detention of person awaiting trial or sentence—(1) The principal Act is hereby further amended by repealing section thirty-seven, and substituting the following section:

“37. (1) Notwithstanding anything in any enactment, where any person charged with any offence punishable by imprisonment or death, whether the offence is punishable on summary conviction or on conviction on indictment, is in custody awaiting his trial or sentence, the Court, if satisfied that it is necessary or expedient that his mental condition

should be under observation in an institution within the meaning of this Act, may order that he be removed to any such institution and be detained there under observation for such period or periods as the Court may order from time to time, pending his trial or sentence.

“(2) Where an order is made under this section, the Court may at any time order that the person be removed from the institution and returned to custody for the purposes of his trial or sentence, notwithstanding that the period for which he has been ordered to be detained in the institution has not expired.

“(3) The powers conferred on the Court by this section may be exercised—

“(a) By a Magistrate’s Court presided over by a Magistrate or two Justices, at any time before the person has been sentenced by that Court or committed for trial or sentence:

“(b) By the Supreme Court at any time after the person has been committed for trial or sentence and before he has been sentenced.

“(4) While any person is detained in an institution pursuant to an order of the Court under this section he shall be deemed to remain in the legal custody of the Superintendent of the penal institution, or of the member of the Police Force in charge of the police station, in which he was confined before his removal to the institution in which he is detained pursuant to the order; and nothing in Part VIII of this Act shall apply.”

(2) Section thirty-seven of the principal Act, as substituted by subsection one of this section, shall apply to proceedings commenced before or after the passing of this Act.

9. Application for reception order in certain cases—The principal Act is hereby further amended by repealing section thirty-eight, and substituting the following section:

“38. (1) This section applies to any person—

“(a) Detained in any penal institution, reformatory home, or inebriates home under any sentence, conviction, or order of committal or detention; or

“(b) Detained in an institution within the meaning of this Act, after conviction and pending sentence, pursuant to section thirty-seven of this Act—

but does not apply to any person kept in custody or detained pursuant to section thirty-one or section thirty-two or section thirty-four of this Act, or to any person detained in an institution within the meaning of this Act, pending his trial, pursuant to section thirty-seven of this Act.

“(2) Where the Superintendent or other officer in charge of any penal institution, reformatory home, or inebriates home has reasonable ground to believe that any person detained therein, being a person to whom this section applies, is a mentally defective person, that Superintendent or officer, or any other officer of that institution or home authorised by him, either generally or specially, for the purposes of this section, may make application for a reception order in respect of that person pursuant to section four of this Act.

10 “(3) Where any person is detained in an institution within the meaning of this Act, after conviction and pending sentence, pursuant to section thirty-seven of this Act, and the Medical Superintendent or any medical officer of that institution notifies the Superintendent of the penal institution or
15 member of the Police Force in whose legal custody that person is deemed to be under subsection four of the said section thirty-seven that there is reasonable ground to believe that the person is a mentally defective person, an application for a reception order in respect of that person may be made pursuant
20 to section four of this Act by the Superintendent or other officer in charge of the penal institution or by any officer of the penal institution authorised by him as aforesaid, or, as the case may require, by a member of the Police Force, in all respects as if that person were then detained in the penal
25 institution or police station.

“(4) Subject to the provisions of this Part of this Act, all the provisions of this Act, so far as they are applicable, including the provisions of section five A of this Act, shall apply with respect to any application under this section and
30 any reception order made on any such application; and, subject as aforesaid, the provisions of this Act relating to patients, except those provisions that are expressed to be inapplicable to persons detained or in confinement under this Part of this Act, shall apply to the person to whom the
35 reception order relates:

“Provided that for the purposes of any application for a reception order under this section one of the medical practitioners called to the assistance of the Magistrate under section five or section five A of this Act may be the Medical
40 Superintendent or a medical officer of a public institution under this Act or a medical practitioner who is an officer of the Division of Mental Hygiene of the Department of Health, and in any such case nothing in paragraph (b) or paragraph (e) of section twelve of this Act shall apply.

“(5) While any person is detained as a mentally defective person pursuant to a reception order made for the purposes of this section, the term of any sentence or order of committal or detention applicable to him before the reception order was made shall continue to run. If at any time before the expiry of that term he escapes from detention or custody that term shall cease to run and shall not begin to run again until he is retaken. 5

“(6) The Minister of Health may from time to time, by writing under his hand, direct the transfer of any person so detained as a mentally defective person to any other institution within the meaning of this Act. 10

“(7) The Minister of Health may at any time appoint two medical practitioners to examine any person so detained as a mentally defective person and to report to him on the mental condition of that person. If those medical practitioners certify in writing that it is no longer necessary to detain that person as a mentally defective person under this Act, the Minister of Health may direct, by writing under his hand, that the person be removed to any penal institution, reformatory home, or inebriates home, as the case may require, to undergo the remainder of his sentence or otherwise to be dealt with according to law as if no reception order had been made. Subject to the provisions of subsections eight and nine of this section, any such direction shall be sufficient authority for the removal of that person to that penal institution or home and for his reception and detention there; and on such removal he shall be deemed to have been discharged as a patient under this Act. 15 20 25

“(8) Where a direction is given under subsection seven of this section in respect of any person who has been convicted and is awaiting sentence by any Court, he shall, as soon as practicable, be brought before the Court to be sentenced or otherwise dealt with according to law, unless the Court makes an order for his discharge under subsection nine of this section. 30 35

“(9) Where a direction is given under subsection seven of this section in respect of any person who has been convicted and is awaiting sentence by any Court, the Court in its discretion may order, of its own motion or on the application of that or any other person, that the person to whom the direction relates be discharged without being brought before the 40

Court. Any such order may be so made whether that person has been removed to the penal institution or home as aforesaid or is still a patient under this Act. On the making of the order he shall be deemed to have been discharged, as from
5 the date of the order, in respect of that conviction, and shall forthwith be discharged from custody or, as the case may require, from detention as a patient under this Act.

“(10) If at any time while any person (not being a person who has been convicted and is awaiting sentence by any
10 Court) is so detained as a mentally defective person the term of every sentence or order of committal or detention applicable to him expires, he shall thereupon be deemed for all purposes to be a patient detained under a reception order made at the time of the expiry of that term, or, as the case may re-
15 quire, of the last of those terms to expire, and shall be deemed to be no longer detained under this Part of this Act.”

10. Certain provisions not to apply—The principal Act is hereby further amended by inserting in Part IV, after section thirty-eight (as substituted by section nine of this Act), the
20 following section:

“38A. Nothing in section fifteen or section eighty-five of this Act shall apply to any person who is detained under this Part of this Act.”

Intellectually Handicapped Persons, etc.

25 11. Reception of intellectually handicapped children in licensed homes for purposes of training—(1) Section three of the Mental Health Amendment Act 1954 is hereby amended by omitting from the definition of the term “society”, in sub-
30 section one, the words “society incorporated under the Incorporated Societies Act 1908”, and substituting the words “society or Board incorporated under the Incorporated Societies Act 1908 or the Religious, Charitable, and Educational Trusts Act 1908”.

(2) The said section three is hereby further amended by
35 adding to subsection two the following proviso:

“Provided that any intellectually handicapped person under the age of eighteen years may from time to time, until he attains that age, be received pursuant to this section in any such licensed home for such period or periods as may be
40 approved from time to time by the Director, if that person is

received in the home for the purpose of enabling him to undergo such training as is appropriate to his condition and if, in the opinion of the Director, satisfactory facilities for such training—

- “(a) Are not readily available in the locality in which that person’s usual place of residence is situated; and 5
- “(b) Are readily available either in the licensed home or in the locality in which it is situated.”

12. Licensed homes for training of intellectually handicapped and mentally retarded persons over fifteen years of age— (1) The Mental Health Amendment Act 1954 is hereby amended by inserting, after section three, the following section: 10

“3A. (1) This section shall apply to—

“(a) Any intellectually handicapped person, within the meaning of section three of this Act, who is of or over the age of fifteen years: 15

“(b) Any person of or over the age of fifteen years who, by reason of a condition of arrested or incomplete development of mind existing at any time before he attains or attained the age of eighteen years, whether arising from inherent causes or induced by disease or injury, may be capable of earning a living under favourable circumstances, but is not capable of competing on equal terms with his normal fellows or of managing himself and his affairs with ordinary prudence. 20 25

“(2) Notwithstanding anything in the principal Act, but subject to the provisions of any regulations made for the purposes of this section, any society, within the meaning of section three of this Act, for the time being approved by the Minister for the purposes of this section and having as one of its objects the establishment and maintenance of a home or homes for the reception, care, and training of persons to whom this section applies may, if it thinks fit, on application made in the prescribed manner by any parent or guardian of any person to whom this section applies, or by anyone for the time being having the lawful custody or control of any such person, receive any such person, for the purposes of his care and training, in any home licensed pursuant to this section, and assume control of him upon and subject to such terms and conditions as to the cost of his maintenance and otherwise as may be agreed upon by the parties. 30 35 40

“(3) For the purposes of this section, the provisions of subsections three to five of section three of this Act (which relate to agreements for admission and regulations for the licensing and control of homes) shall apply, so far as they are applicable
5 and with the necessary modifications, as if references therein to intellectually handicapped persons were references to persons to whom this section applies.”

(2) Where before the passing of this Act any home for the reception, care, and training of persons to whom section
10 three A of the Mental Health Amendment Act 1954 (as inserted by subsection one of this section) applies has been established by any society to whom that section applies, and the facilities in the home have been approved by the Director, all such persons received and kept therein, whether before or
15 after the passing of this Act, shall be deemed to have been lawfully received and kept. The provisions of the said section three A shall apply to every such home, and a licence shall be granted in respect thereof on compliance with any regulations made for the purposes of that section.

20 *Administration of Estates*

13. Power to improve or develop property—Section one hundred of the principal Act is hereby amended by inserting, after paragraph (d), the following paragraph:

25 “(dd) Expend money in the improvement or development of any property of that person, by way of building or otherwise:

“Provided that, in exercise of the power conferred by this paragraph, not more than five hundred pounds may be so expended for any one purpose:”.

30 **14. Powers of Public Trustee**—(1) Section one hundred and three of the principal Act, as amended by paragraph (b) of section five of the Mental Health Amendment Act 1921–22, is hereby further amended by omitting from subsection one and also from subsection two the words “two thousand
35 pounds”, and substituting in each case the words “five thousand pounds”.

(2) Paragraph (b) of section five of the Mental Health Amendment Act 1921–22 is hereby consequentially repealed.

40 **15. New sections inserted**—The principal Act is hereby further amended by inserting, after section one hundred and nineteen, the following heading and sections:

“Dispositions of Property

“119A. **Notional preservation of character of assets converted**—(1) Where any capital money is raised by any sale, mortgage, charge, or other disposition of any property in pursuance of any powers conferred by or under this Act or conferred under any inherent jurisdiction of the Court in respect of the estates of mentally defective persons, the mentally defective person whose property is so sold or mortgaged or charged or disposed of, and his executors, administrators, next of kin, devisees, legatees, and assigns, shall have the same interest in the money so raised, so far as it has not been applied or spent or disposed of in accordance with any powers so conferred, as he or they would have had in the property the subject of the sale or mortgage or charge or disposition if no sale or mortgage or charge or disposition had been made or given, and the surplus money shall be deemed to be of the same nature as the property sold or mortgaged or charged or disposed of.

“(2) This section shall apply in all cases, whether the money was raised before or after the commencement of this section, but shall not apply where the mentally defective person has died before the commencement of this section, unless the Court has in the lifetime of that person made an order which would have been authorised by section one hundred and nineteen c of this Act if it had then been in force:

“Provided that no distribution that has been made before the commencement of this section of money affected by any such order shall be disturbed by reason of this section or of section one hundred and nineteen b or section one hundred and nineteen c of this Act.

“(3) This section shall not apply to income arising from any such money during the lifetime of the mentally defective person.

Cf. Lunacy Act 1890, s. 123 (U.K.); Lunacy Act 1928, s. 210 (Victoria)

“119B. **Notional preservation of character of money expended for certain purposes**—(1) The Court shall have power, and shall be deemed always to have had power, to order that the whole or any part of any money expended or to be expended for the improvement, security, or advantage of any property of a mentally defective person, or for repaying money secured by a mortgage or other charge thereon, shall be a charge upon the property, but so that no right of sale during the lifetime of the mentally defective person shall be conferred by the charge.

“(2) The charge may include interest on the money if the Court thinks fit, and the Court may give directions regarding payment of interest.

5 “(3) The charge may take effect in favour of a person as trustee for the mentally defective person as part of his personal estate or of a specified part thereof.

10 “(4) At any time before the death of the mentally defective person, and whether or not he is still a mentally defective person, the Court may vary or discharge the charge and give any consequential directions.

15 “(5) Nothing in this section shall apply to any mortgage or charge in favour of any other person who advances the money, or restrict the operation of sections thirty-seven and thirty-eight of the Public Trust Office Act 1908, or affect any charge created by subsection two of the said section thirty-seven.

Cf. Lunacy Act 1890, s. 118 (U.K.)

20 “119c. **Court may make orders for preserving nature and devolution of property**—(1) The Court shall have power, and shall be deemed always to have had power, in the administration of the property of a mentally defective person to make such orders as it thinks fit for the purpose of preserving the nature, quality, tenure, and devolution of the property or any part thereof.

25 “(2) Without affecting the generality of the power conferred on the Court by subsection one of this section, it is hereby declared that the Court may direct that any money shall be carried to a separate account, and may declare the notional character which the money in that account bears, and may
30 order such assurances and things to be executed and done as it thinks expedient.

35 “(3) At any time before the death of the mentally defective person, and whether or not he is still a mentally defective person, the Court may vary or discharge any order made under this section, and give any consequential directions.

Cf. Lunacy Act 1922, s. 2 (8) (U.K.) ; Lunacy Act 1890 s. 123 (3) (U.K.)

40 “119d. **Termination of notional preservation of character of assets**—(1) Section one hundred and nineteen A of this Act shall cease to apply to any capital money of a mentally defective person to which it has become applicable, and any charge on property created under an order of the Court made under section one hundred and nineteen B of this Act shall be extinguished, and any order of the Court made under section one

hundred and nineteen c of this Act shall cease to have effect, if, at any time after the said section one hundred and nineteen A became applicable to the capital money, or the charge came into existence, or the order was made, as the case may be (in this section referred to as a subsequent time), the person has been entitled for any continuous period of twelve months to manage the capital money, or the property charged, or the money or other property affected by the order, as the case may be. 5

“(2) If the person has not been so entitled, section one hundred and nineteen A of this Act shall continue to apply to any of his capital money to which it has become applicable, and any such charge or order shall continue to exist and have effect, except in so far as the person has, at any subsequent time, while having the necessary capacity to do so,— 10 15

“(a) Made a valid testamentary disposition of, or paid or transferred to any other person beneficially, the capital money or the property charged or the money or other property affected by the order, as the case may be; or 20

“(b) In the case of property charged as aforesaid, released the charge.

“(3) This section shall not limit or affect any power of the Court under section one hundred and nineteen B or section one hundred and nineteen c of this Act to vary or discharge any such charge or order. 25

“(4) Subsection two of this section shall have effect whether or not the person continues to be a mentally defective person or to be entitled to manage all or any of his money and other property. 30

“(5) For the purposes of this section a person shall be deemed not to be entitled to manage any of his money or other property at any time while the Public Trustee or any other person is—

“(a) The administrator or committee under this Act of the estate of that person; or 35

“(b) The manager under the Aged and Infirm Persons Protection Act 1912 of the money or property.

“(6) In this section the term ‘testamentary disposition’ means a testamentary disposition within the meaning of subsection six of section one hundred and nineteen E of this Act. 40

“119E. Power for Court to settle the beneficial interests of a mentally defective person—(1) The Court may direct a settlement to be made of the property of a mentally defective

person or of any part thereof or of any interest therein on such trusts and subject to such powers and provisions as the Court may deem expedient, and in particular may give such directions—

5 “(a) Where the property has been acquired under a settlement, will, or intestacy, or represents property so acquired; or

10 “(b) Where, by reason of any change in the law or of any change in circumstances since the execution by the mentally defective person of a testamentary disposition, or of any absence of information at the time of that execution, or on account of the former management of the property or the expenditure of money in improving or maintaining the same, or for
15 any other special reason, the Court is satisfied that the devolution or distribution of the property of the mentally defective person either under any testamentary disposition or on intestacy would be such as might cause injustice or hardship to any
20 person.

“ (2) The Court may direct the administrator or committee of the estate of the mentally defective person, or any trustee for him, to execute any transfer or other instrument, and to do any other act or thing, which may be required for
25 giving effect to the settlement, in the name and on behalf of the mentally defective person; and, for that purpose, may make a vesting order or appoint a person to convey; and any settlement approved by the Court shall be as effectual and binding on all persons interested as if it had been made
30 by the mentally defective person while of full capacity.

“ (3) This section applies whether or not the mentally defective person has executed a testamentary disposition and notwithstanding that it is not known whether he has executed such a disposition or not, but does not apply when the mentally defective person is an unmarried infant.
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“ (4) An application to the Court for an order under this section may be made by any of the following persons:

40 “(a) Any person who has or would have had any interest in the property of the mentally defective person or any expectation of succession to any such property, whether that interest or expectation arises or could have arisen under a testamentary disposition which is known to exist or in the event of the intestacy of the mentally defective person:

45 “(b) The administrator or committee of the estate of the mentally defective person:

“(c) Any other person who adduces proof of circumstances which in the opinion of the Court make it proper that he should make the application.

“(5) Subject to making due provision for the maintenance of the mentally defective person in accordance with his means and way of life, whether out of the capital or income of the property settled or other property or partly in one way and partly in another, and to providing, by means of a power of appointment or revocation, or otherwise, for the possibility of the mentally defective person recovering full capacity, the Court may, in making any order under this section, have regard to—

“(a) The manner in which the property has been settled or dealt with on former occasions:

“(b) In the case of any land or business, the welfare of the persons employed in connection therewith, and the expediency of settling other assets to devolve therewith:

“(c) The provisions of any testamentary disposition of the mentally defective person:

“(d) The expediency of providing for—

“(i) Payments or annuities for the wife, husband, or children of the mentally defective person or for other persons dependent upon the mentally defective person and other annual or capital charges and power to create the same:

“(ii) The continuation or provision of any superannuation or pension, and the application of any part of the income for charitable purposes:

“(iii) Discretionary trusts, trusts for effecting or maintaining policies of insurance, powers of appointment, sinking funds for making good any losses (instead of or in addition to insurance), or any other purpose:

“(iv) The extension of any statutory powers of investment, management, or otherwise:

“(v) The manner in which any costs are to be raised and paid, whether out of the settled property or otherwise:

“(vi) Any other matter or thing which, having regard to the nature of the settlement, or the property to be settled, and the management, development, and enjoyment thereof, and to the persons who are to take, either successively or otherwise, the Court may consider material.

“(6) In this section ‘testamentary disposition’ means an instrument executed by the mentally defective person, which, if unrevoked, might on his death be proved as a will or codicil; and the Court may act on such evidence as to the existence
5 or absence of a testamentary disposition as it considers sufficient, whether or not it would be otherwise admissible in a Court of law.

“(7) At any time before the death of the mentally defective person, and whether or not he is still a mentally defective
10 person, the Court may, in respect of any property remaining subject to the trusts of a settlement made under this section, on being satisfied that any material fact was not disclosed to the Court when the settlement was made, or on account of any substantial change in circumstances, by order vary the
15 settlement in such manner as it thinks fit, and give any consequential directions.

“(8) Rules of Court may be made in the manner prescribed by the Judicature Act 1908 for all or any of the following purposes:

- 20 “(a) Giving effect to the provisions of this section:
“(b) Compelling information to be furnished respecting, and production of, testamentary dispositions, and the lodgment thereof in Court:
“(c) Prescribing what notices, if any, of the proceedings are
25 to be served, and providing for dispensing with such notices:
“(d) Making representation orders.

Cf. Law of Property Act 1925, s. 171 (U.K.); Property Law Act 1928, s. 171 (Victoria)

30 “119F. **Savings**—Nothing in this Act shall limit the general jurisdiction of the Court in relation to the property of mentally defective persons, whether under section seventeen of the Judicature Act 1908 or otherwise.

35 “119G. **Court may order production of testamentary dispositions**—Without restricting the operation of any rule of Court that may be made as aforesaid, it is hereby declared that the Court may, whenever it considers it expedient to do so for any of the purposes of this Act or in connection with the exercise of its inherent jurisdiction in connection with the
40 estates of mentally defective persons, compel information to

be furnished respecting, and production of, testamentary dispositions within the meaning of section one hundred and nineteen E of this Act, whether by lodgment thereof in Court or otherwise."

Miscellaneous Provisions

5

16. Temporary care in hospital pending reception order—
The principal Act is hereby further amended by repealing section one hundred and thirty-five, and substituting the following section:

"135. Every Hospital Board shall from time to time make such provision as the Minister thinks necessary for the temporary reception and care of persons in respect of whom applications for reception orders are made under this Act, pending the medical examination of those persons, the hearing of those applications, and the removal of those persons to the institution in which by any reception order they are ordered to be received."

17. Repeal of provisions relating to special Board. Saving—
(1) The Mental Health Amendment Act 1928 is hereby amended as follows:

(a) By repealing sections eleven to twenty-two and sections twenty-four to twenty-six:

(b) By omitting from subsection one of section twenty-three the words "or is registered under this Act".

(2) Every person who, at the passing of this Act, is legally detained in any public institution or portion thereof by virtue of the fact that his name is on the register referred to in the said section twenty-four may continue to be detained in that institution 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:

Provided that—

(a) Nothing in section twenty-six of the principal Act shall apply to that person:

(b) The Superintendent of the institution may at any time, if in his opinion the detention of that person in some other public institution is desirable for that person's own good or in the public interest, make application for a reception order in respect of that person pursuant to section four of the principal Act, and the provisions of that Act shall apply accordingly.

18. Consequential amendments and repeals—(1) The principal Act is hereby amended as follows:

(a) By repealing subsections nine and ten of section five:

(b) By omitting from subsection two of section thirty-one the words "institution, prison, or place of confinement", and substituting the words "institution within the meaning of this Act or penal institution":

(c) By omitting from section thirty-four the words "institution, prison, or place of confinement", in both places where those words occur, and substituting in each case the words "institution within the meaning of this Act or penal institution":

(d) By omitting from subsection two of section thirty-six the words "institution, prison, or place of confinement", and substituting the words "institution within the meaning of this Act or penal institution":

(e) By repealing the proviso to subsection ten of section eighty-five:

(f) By omitting from subsection one of section eighty-eight, as amended by section three of the Mental Health Amendment Act 1921-22, the words "or administrator", and also the words "or under Part III of the Prisons Act 1908":

(g) By repealing paragraph (c) of subsection two of section eighty-eight.

(2) The following enactments are hereby repealed, namely:

(a) Section ten of the Mental Health Amendment Act 1928:

(b) Section forty-eight of the Statutes Amendment Act 1945:

(c) So much of the First Schedule to the Mental Health Amendment Act 1950 as relates to sections thirty-five and thirty-eight of the principal Act.