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[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No. , 1919.

A BILL

To make better and further provision for the care of mentally defective persons ; to amend the Lunacy Act of 1898 ; and for purposes consequent thereon or incidental thereto.

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

1. This Act may be cited as the "Mental Defectives Act, 1919." Short title.

2. In this Act the following terms shall, if not inconsistent with the subject-matter and context, have the respective meanings hereby assigned to them, that is to say :—

“ Child ” means boy or girl under the age of *sixteen* years.

“ Defective ” or “ mentally defective ” persons shall include—

(a) idiots—that is to say, persons so deeply defective in mind from birth or from an early age as to be unable to guard themselves against common physical dangers ;

(b) imbeciles—that is to say, persons in whose case there exists from birth or from an early age mental defectiveness not amounting to idiocy, yet so pronounced that they are incapable of managing themselves or their affairs, or in the case of children, of being taught to do so ;

(c) feeble-minded persons—that is to say, persons in whose case there exists from birth or from an early age mental defectiveness not amounting to imbecility, yet so pronounced that they require care, supervision, and control for their own protection, or for the protection of others, or in the case of children, that they by reason of such defectiveness, appear to be permanently incapable of receiving proper benefit from the instruction in ordinary schools ;

(d) moral imbeciles—that is to say, persons who from an early age display some permanent mental defect coupled with strong vicious or criminal propensities on whom punishment has had little or no deterrent effect ;

“ Inspector-General ”—The Inspector-General appointed under the Lunacy Act, 1898, and shall include the Deputy Inspector-General.

“ Institution for defectives ” means an institution for mental defectives appointed under this Act.

“ Intoxicants ”

- “Intoxicants” — The expression “intoxicants” includes any intoxicating liquor, and any sedative, narcotic, or stimulant drug or preparation.
- “Licensed house” means a house licensed under this Act for the private custody of mental defectives.
- “Medical practitioner” means a legally qualified medical practitioner within the meaning of any law relating to the qualification of medical practitioners.
- “Mental hospital” includes a hospital for the insane and hospital for the criminal insane appointed or declared as such under the Licensed House Lunacy Act, 1898, and a reception house, hospital, or infirmary ward appointed or declared for the reception and temporary treatment of the insane under the said Act.
- “Minister” means the Minister of Education for New South Wales or other Minister for the time being administering this Act.
- “Parent or guardian”—The expression “parent or guardian” in respect of a defective shall include any person who undertakes or performs towards the defective the duty of a parent or guardian.
- “Prescribed” means prescribed by this Act or any regulation made thereunder.
- “Relative”—The expression “relative” means the husband or wife or a lineal ancestor or lineal descendant, or, in the case of collaterals, a lineal descendant of an ancestor not more remote than great-grandfather or great-grandmother.
- “Superintendent” shall include the deputy-superintendent of any institution for defectives, or licensed house.
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PART I.

PROCEDURE BY WHICH MENTALLY DEFECTIVE PERSONS
MAY BE PLACED UNDER CONTROL.

(a) *By the Minister.*

3. Every parent or guardian of a mentally defective child and all teachers in charge of schools whether public or private, but not under the control of the Minister, and all persons or bodies in charge of religious, charitable, and benevolent institutions, under whose care any mental defective comes shall notify such fact to the Inspector-General and also the provision it is proposed to make for such mental defective's education, keeping, care, and control, and any person neglecting or failing to comply with this provision shall be guilty of a misdemeanour.

4. The Minister shall take such steps as may be prescribed—

- (a) to ascertain what children attending schools under his control are defective;
- (b) to ascertain which of such children are incapable by reason of mental defect of receiving benefit or further benefit from instruction in the special schools or classes for which provision is hereinafter made; and
- (c) to notify the Inspector-General in the case of all defective children over the age of seven—
 - (i) who have been ascertained to be so incapable as mentioned in the preceding subsection or who cannot be instructed in such special schools or classes without detriment to the interests of the other children, or in respect of whom the Minister certifies that in his opinion there are special circumstances which render it desirable that they should be detained in an institution for defectives; or
 - (ii) who have attained the age for leaving school and are about to leave, be withdrawn or discharged from a special school or class, and in whose case the Minister is of opinion that it would be for their benefit that they be detained in such an institution. **5.**

5. In all cases where notice as provided for by the last two preceding sections is received by the Inspector-General he may visit and examine the person regarding whom notice has been received, or he may, by writing under his hand, depute an officer under his control or a medical practitioner to visit and examine such person and to make inquiry and report in writing to him as to the mental condition of such person and suitability of any arrangements made or proposed to be made for his education, control, care, and keeping, and if it appears to the Inspector-General from his own examination or such report that such person is mentally defective and that it is desirable in his own interests that such person should be taken charge of and detained in an institution for defectives he shall make a report and recommendation to the Minister to this effect in the form prescribed, whereupon the Minister may make an order for such person to be received into and detained in such institution, and any order so made shall have the like effect as if it had been made by two justices as hereinafter provided for.

6. The Inspector-General or an officer under his control or a medical practitioner so deputed by him may make inspection from time to time of any private institution or house in which any mentally defective person is allowed to reside or be educated and trained, in order to ascertain if such mental defective is receiving proper and effective instruction and protection, and if it appears to the Inspector-General from his own examination or the written report of such officer or medical practitioner that the mental defective is not receiving such instruction and protection, and that it is desirable in his own interests that such person should be taken charge of and detained in an institution for defectives, he shall make a report and recommendation to the Minister to that effect in the form prescribed, whereupon the Minister may make an order for such person to be received into and detained in such institution, and any order so made shall have the like effect as if it had been made by two justices as hereinafter provided for.

7.

7. Where in the opinion of the Inspector-General the mental condition of any person detained in an institution for defectives is such that he ought to be transferred to a mental hospital, or the mental condition of any person detained in a mental hospital is such that he ought to be transferred to an institution for defectives, the Minister may, on the recommendation of the Inspector-General to be made in the form prescribed, direct, by order in writing in the form prescribed, that such person be transferred to a mental hospital or institution for defectives, as the case may require, and such order shall have respectively the same effect as if made by two justices under section six of the Lunacy Act, 1898, or under section twelve of this Act.

8. Where the Minister is satisfied from the certificates of two medical practitioners after separate examination apart from each other that any person who is undergoing imprisonment (except imprisonment under civil process) or penal servitude, or is undergoing detention in a place of detention by order of a court, or in a reformatory or industrial school or in an inebriate institution, is defective, the Minister may order that he be transferred therefrom and sent to an institution for defectives, and any order so made shall have the like effect as if it had been made by two justices under section twelve of this Act.

(b) By parent or guardian.

9. Any person who is mentally defective may be taken by his parent or guardian to an institution for defectives and may be received and detained therein as a mental defective on the authority of a request under the hand of his parent, guardian, or person in whose care he may be, according to the form and duly authenticated as prescribed, together with such statement of particulars as is prescribed and two medical certificates, each of which certificates shall be according to the form and contain the particulars prescribed, and be signed by a medical practitioner who has personally and apart from the medical practitioner signing the other certificate examined the person to whom

whom such certificate relates not more than twenty-eight clear days previously to the reception of such person into such institution, and such request as aforesaid may be signed before or after the date of such medical certificates or either of them.

(c) *By order of justices or a court.*

10. (1) If an information, on oath, is laid before any justice that any person is by the informant believed to be mentally defective, and—

- (a) is without sufficient means of support; or
- (b) is neglected, abandoned, or cruelly treated; or
- (c) is wandering at large; or
- (d) is not under proper care and control; or
- (e) has been discovered under circumstances that denote a purpose of committing some offence against the law,

such justice may by order under his hand either require a constable to apprehend such person and bring him before two justices, or direct and authorise some medical practitioner to visit and examine such person and make inquiry and to report on the case to such justice his opinion thereon, or himself visit and examine such person and make inquiry into the case, and if it appears to such justice that such person is defective and is without sufficient means of support, or is neglected, abandoned, or cruelly treated, or is wandering at large, or is not under proper care and control, or has been discovered under circumstances that denote a purpose of committing some offence against the law, the justice may by order under his hand require any constable to bring such person before two or more justices.

11. Every constable who has reason to believe that any person is mentally defective, and—

- (a) without sufficient means of support; or
- (b) neglected, abandoned, or cruelly treated; or
- (c) wandering at large; or
- (d) not under proper care and control; or
- (e) discovered under circumstances that denote a purpose of committing some offence against the law,

may

may without any such order as mentioned in the last preceding section, apprehend him and take him before two justices.

12. (1) The justices before whom any such person as aforesaid is brought may examine the person believed to be mentally defective, and any witness in the matter at any convenient place, and shall call to their assistance any two medical practitioners who have previously examined such person, and separately and apart from each other signed certificates with respect to such person according to the form prescribed, and if upon examination of such person and such medical practitioners, and upon other proof (if any), such justices be satisfied that such person is mentally defective, and—

- (a) is without sufficient means of support ; or
- (b) is neglected, abandoned, or cruelly treated ; or
- (c) was wandering at large ; or
- (d) was not under proper care and control ; or
- (e) was discovered under circumstances that denote a purpose of committing some offence against the law,

and is a proper person to be taken charge of and detained under care and treatment, the said justices may by an order under their hands, according to the form prescribed, to be accompanied by such statement of particulars as prescribed, direct such person to be removed into some institution for defectives, to be named in such order, and such person shall be forthwith conveyed to, and upon production of such order, statement, and medical certificates, shall be received into and detained in such institution accordingly.

(2) The justices may suspend the execution of any such order for any period not exceeding fourteen days, and in the meantime give such directions or make such arrangements for the proper care and control of such person as they consider necessary :

Provided that if the medical practitioners, or one of them, by whom such person is examined, certifies in writing that he is not in a fit state to be removed, the removal of such person shall be suspended until the same or some other medical practitioner certify in writing that such person is fit to be removed. (3)

(3) If the justices before whom such person is brought are satisfied that such person will be properly taken care of by any relative or friend they may permit such relative or friend to retain or take such person under his own care, anything in this Act to the contrary notwithstanding.

(4) Proceedings before the justices may in any case if the justices think fit, and shall if so desired by the alleged defective, or by any of his relatives or friends, be conducted in private.

13. (1) On the conviction by a court of competent jurisdiction of any person of any criminal offence punishable with penal servitude or with imprisonment, or on a child brought before a court being found liable to be sent to an industrial school the court, if satisfied on the evidence of two legally qualified medical practitioners that such person or child is defective, may in lieu of passing sentence or making an order for committal to an industrial school, itself make an order for his admission into an institution for defectives.

(2) The court may act either on the evidence given during the trial or other proceedings, or may call further medical or other evidence.

(3) Where it appears to any court of summary jurisdiction by which a person charged with an offence is remanded or committed for trial that such person is a defective, the court may order that pending the further hearing of the trial he shall be detained in an institution for defectives, or be placed under the guardianship of any person on that person entering in a recognisance for his appearance.

(4) Where it appears to the police that any person charged with an offence is a defective, it shall be the duty of the police to bring before the court such evidence as to his mental condition as may be available :

Provided that where it is intended to bring such evidence before the court, the police shall give notice of the intention to the person charged and to his parent or guardian, if known.

14.

14. The Minister on being satisfied upon medical or other evidence that it is no longer necessary in the interests of any mental defective, or of the public, that he should be further detained in any institution for defectives or licensed house may by order under his hand in the prescribed form direct that such mental defective be discharged therefrom, subject to such conditions as he may think fit, and it shall thereupon be the duty of the superintendent or other person having control of such institution or licensed house to comply with such direction forthwith, and in default of such compliance such person shall be guilty of an offence under this Act.

In case of doubt as to whether a child is or is not capable of receiving such benefit as aforesaid, or whether the retention of a child in a special school or class would be detrimental to the interests of the other children, the matter will be determined by the Minister.

PART II.

INSTITUTIONS, LICENSED HOUSES, SPECIAL SCHOOLS
AND CLASSES FOR DEFECTIVES.

15. The Governor may, by notification published in the Gazette, appoint any place to be an institution for mental defectives within the meaning of this Act, and in and by such notification may assign any name to such institution, and such appointment may be revoked in like manner.

16. The Governor may appoint to every such institution a superintendent and such other officers as he may deem necessary. Such officers shall be appointed in the same manner as officers in a mental hospital.

17. (1) A person desirous of receiving defectives at his house for private custody may apply to the Minister for a license, and the Minister may, on the recommendation of the Inspector-General, if satisfied of the fitness of the premises and of the applicant, grant a license to the applicant subject to such conditions as he may impose in each individual case, and a license so granted shall continue in force for the period for which it is granted,

granted, or until revoked or resigned, and the house in respect of which such a license is in force shall be known as a licensed house.

(2) Any defective who may be ordered to be sent to, or made to be placed in, an institution for defectives, may be ordered to be sent to, or may be placed in, a licensed house, and all the provisions of this Act relating to such institutions and the patients therein shall apply to licensed houses and the patients therein.

(3) Upon the termination of any license by revocation or otherwise the Minister may make such order as to the disposal of any defectives therein as he may think fit.

18. The Governor may establish special schools and classes which will be under the control of the Minister and be of the following or any other description as may be thought necessary :—

- (a) Day schools or classes in large centres to train children who are reasonably suspected of being mental defectives.
- (b) Residential schools for such children for districts where the numbers concerned are not sufficiently large to warrant a day school being established.
- (c) Residential schools for children certified under the separate certificate of two medical practitioners after examination apart from each other to be defective but likely to benefit by the training received in such an institution.

PART III.

OFFENCES.

19. If any person, having been warned by a person under whose charge a defective has been placed while absent on leave from an institution not to supply intoxicants to or for the use of such defective does supply intoxicants to or to the use of such defective, he shall be guilty of an offence under this Act : Provided

Provided that a person shall not be guilty of the offence of supplying intoxicants in contravention of this section if the person giving the warning refuses, when required so to do, to produce the authority under which he acts.

20. If any officer, nurse, attendant, servant, or other person employed in an institution for defectives, or any person having charge of a defective whether by reason of any contract, or of any tie of relationship or marriage, or otherwise ill-treats or wilfully neglects the defective, he shall be guilty of a misdemeanour.

21. (1) Any person—

- (a) who not being her husband carnally knows, or attempts to have carnal knowledge of any female who is under care or treatment in an institution for defectives or whilst out on leave therefrom; or
 - (b) who procures or attempts to procure, any female who is defective to have carnal connexion with any person; or
 - (c) who causes or encourages the prostitution of any female who is defective; or
 - (d) who, being the owner or occupier of any premises, or having or acting or assisting in the management or control thereof, induces or knowingly suffers any female who is defective to resort to or be in or upon such premises for the purpose of being carnally known by any man other than her husband, whether such carnal knowledge is intended to be with any particular man or generally; or
 - (e) who, with intent that any female who is defective should be carnally known by any man other than her husband, whether such carnal knowledge is intended to be with any particular man or generally, takes or causes to be taken such female out of the possession and against the will of her parent or any other person having the lawful care or charge of her,
- shall be guilty of a misdemeanour, and shall be liable upon conviction on indictment to be imprisoned, with
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or without hard labour, for any term not exceeding *two* years, unless he proves that he did not know and had no reason to suspect that the female was defective.

(2) In any such case the consent of such female who is defective, to such an act of carnal knowledge or in any proceedings for an indecent assault upon any defective shall not be a defence.

(3) If on the trial of an indictment for rape the jury are satisfied that the accused is guilty of an offence under paragraph (a) subsection one of this section, but are not satisfied that he is guilty of rape, the jury may acquit him of rape and find him guilty of such offence as aforesaid, and in that event he shall be liable to be punished as if he had been convicted on an indictment for such offence as aforesaid.

22. Any person who in any book, statement, or return knowingly makes any false entry as to any matter as to which he is by this Act or any regulations made thereunder required to make an entry shall be guilty of a misdemeanour.

23. (1) An offence under this Act declared to be a misdemeanour shall, unless some other punishment is herein provided, be punishable by fine or by imprisonment for a term not exceeding *two* years, with or without hard labour, but may, except where otherwise expressly provided, instead of being prosecuted on indictment, be prosecuted summarily, and if so prosecuted shall be punishable only with imprisonment for a term not exceeding *three* months, with or without hard labour, or with a fine not exceeding *fifty* pounds, or both.

(2) Any other offence under this Act shall be punishable summarily with imprisonment for a term not exceeding *three* months with or without hard labour, or with a fine not exceeding *fifty* pounds, or both.

PART IV.

MISCELLANEOUS.

24. The superintendent of an institution and every officer of such institution authorised in writing by the superintendent for the purpose of conveying a person to or from the institution, or of apprehending him and bringing him back to the institution in case of his escape and refusal to return, shall, for that purpose and while engaged in that duty, have all the powers, protections, and privileges of a constable.

25. The sections of the Lunacy Act, 1898, mentioned in the Schedule hereto, and any amendments of such sections as may be made from time to time by subsequent enactment, shall, *mutatis mutandis*, apply to institutions for defectives established under this Act, the officers of such institutions, and the defectives confined therein.

26. The Governor may make regulations with respect to—

- (a) the appointment and conditions of employment of attendants, nurses, and male and female servants, or other persons employed in institutions for defectives ;
- (b) the forms of medical certificates, orders, request, and other documents required for the purposes of this Act ;
- (c) the issue, renewal, and revocation of licenses ;
- (d) all matters in regard to the conduct of such institutions for defectives ;
- (e) the establishment and government of special schools and classes under this Act ;
- (f) the segregation and separate treatment of epileptics who are mental defectives ; and
- (g) requirements generally for carrying out the provisions of this Act.

The regulations may impose a penalty not exceeding pounds for any breach thereof.

SCHEDULE.

Lunacy Act, 1898.

PART I.—Sections 3, 7, 8, and 10 to 24.

PART II.—Sections 27 to 30.

PART III.—Sections 40 and 51.

PART IV.—Sections 52 to 58.

PART V.—Sections 59 to 76.

PART VI.—Sections 77 to 79, 81 to 83, 85, and 88 to 100.

PART VIII.—Sections 115 to 167.

PART X.—Sections 169 to 172 and 174 to 180.
