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Mental Defectives Bill, 1934.

EXPLANATORY NOTE.

THIS Bill is based on the recommendations made by the English Commission on the care and control of feeble minded, and the subsequent Mental Deficiency Act passed in England as a result of the findings of the Commission. It has been deemed advisable to make certain modifications so as to meet the conditions obtaining in New South Wales. The essential principles enunciated by the Royal Commission have, however, been conserved.

The Bill has two main functions: first, the taking of a census of all feeble-minded children in the community; and secondly, the provision for all of those to whom proper care and treatment are not given.

Two main classes are provided for--

- (1) Those of school age, or likely to benefit by instruction in special schools to be established.
- (2) Those not likely to so benefit, and adolescents and adult persons.

The feeble-minded coming within class (1) will be under the supervision of the Department of Education, while those in class (2) will be under the supervision of the Inspector-General of Mental Hospitals.

A duty is cast on the Department of Education to ascertain what children under its direction are defective, and which of these are incapable of benefiting by training in special schools, and to notify the names of the latter to the Inspector-General of Mental Hospitals. The Department of Education is also to notify the name of any child leaving school or a special school, when it is thought that the child should in his own interest be sent to an institution.

The Bill also provides that any person having a mentally defective child under his control, e.g., a parent, guardian, person or body in charge of a private school, or a religious, charitable or benevolent institution should notify the Inspector-General of the fact, together with particulars of the provision that it is proposed to make for the education, care and control of the child. Inspections may thereupon be made, and if arrangements are not satisfactory the Minister may take steps to have the mentally defective person transferred to an institution.

Parents or friends may also on their own initiative, subject to certain safeguards for the mental defectives, place such mental defectives under control.

Where it comes to the knowledge of the police that a mentally defective person is not being given, or is unable to obtain proper care and treatment, the police may take the necessary steps to enable him to be placed in an institution established under the Bill.

The Bill also provides that persons in gaol or persons undergoing trial before the police court for any criminal offence who, on the evidence of two medical practitioners, are found to be mentally defective, may in certain cases be sent to an institution for mental defectives in lieu of undergoing imprisonment. The Bill also provides that, 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, but, in such case the police must notify the intention to the person charged.

The institutions contemplated under the Bill may either be under State control or conducted under license from the Government and subject to the supervision of the Inspector-General of Mental Hospitals.

The Bill further provides that a person supplying a mental defective with intoxicating liquor after having been warned by the person in charge of the defective will be guilty of an offence. Certain sexual relations with a mental defective are declared to be offences.

[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No. , 1934.

A BILL

To make better and further provision for the care of mentally defective persons ; to amend the Lunacy Act of 1898, and certain other Acts ; and for purposes connected therewith.

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 **5** the same, as follows :—

1. (1) This Act may be cited as the "Mental Defectives Act, 1934." Short title and commencement,

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

Definitions.

2. In this Act, unless the subject-matter or context otherwise requires,—

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

“Defective” or “mentally defective” persons include—

(a) idiots—that is to say, persons in whose case there exists mental defectiveness of such a degree that they are unable to guard themselves against common physical dangers; 10

(b) imbeciles—that is to say, persons in whose case there exists mental defectiveness which, though not amounting to idiocy, is 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; 15

(c) feeble-minded persons—that is to say, persons in whose case there exists mental defectiveness which, though not amounting to imbecility, is 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 appear to be permanently incapable by reason of such defectiveness of receiving proper benefit from the instruction in ordinary schools; 20 25 30

(d) moral defectives—that is to say, persons in whose case there exists mental defectiveness coupled with strong vicious or criminal propensities and who require care, supervision, and control for their own protection or for the protection of others. 35

“Inspector-General” means the Inspector-General of the insane for the time being holding office under the Lunacy Act of 1893, and includes the Deputy Inspector-General. 40

“Institution

- 5 "Institution for defectives" means an institution appointed under this Act for defectives.
- "Intoxicants" includes any intoxicating liquor, and any sedative, narcotic, or stimulant drug or preparation.
- 10 "Licensed house" means a house licensed under this Act for the private custody of defectives.
- "Medical practitioner" means a legally qualified medical practitioner within the meaning of any law relating to the qualification of medical practitioners.
- 15 "Mental defectiveness" means a condition of arrested or incomplete development of mind, whether innate or induced after birth by disease, injury, or other cause.
- 20 "Mental hospital" includes a hospital for the insane and hospital for the criminal insane appointed or declared as such under the Lunacy Act of 1898, and a licensed house under that Act, and a reception house, hospital, or infirmary ward appointed or declared for the reception and temporary treatment of the insane under that Act.
- 25 "Parent or guardian" includes any person who undertakes or performs towards the defective the duty of a parent or guardian.
- 30 "Prescribed" means prescribed by this Act or any regulation made thereunder.
- "Superintendent" includes the deputy-superintendent of any institution for defectives, or licensed house.

3. (1) Every person being the parent or guardian of a mentally defective child or the teacher in charge of a school, whether public or private, or the person in charge of any religious, charitable, or benevolent institution, and under whose care any defective comes, shall notify such fact in the prescribed manner to the Inspector-General.

Notification by parents and others.

(2) Such person shall in the notification specify the provision proposed to be made for such defective's education, keeping, care, and control.

(3)

(3) This section shall not apply to a teacher in charge of a school which is under the control of the Minister for Public Instruction.

(4) Any person who neglects or fails to comply with the provisions of this section shall be guilty of an offence against this Act. 5

Inquiry to be made by Minister for Public Instruction.

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

(a) to ascertain what children attending schools under his control are defectives; 10

(b) to ascertain which of such children is incapable by reason of mental defectiveness of receiving benefit from instruction in the special schools or classes for which provision is made in this Act; and 15

(c) to notify the Inspector-General in the case of any defective child over the age of seven—

(i) who has been ascertained to be so incapable 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 said Minister certifies that in his opinion there are special circumstances which render it desirable that he should be detained in an institution for defectives; or 20 25

(ii) who has attained the age for leaving school and is about to leave, be withdrawn or discharged from a special school or class, and in whose case the said Minister is of opinion that it would be for his benefit that he be detained in an institution for defectives. 30

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 shall be determined by the said Minister. 35

Examination and order for detention.

5. (1) The Inspector-General—

(a) may personally visit and examine the person regarding whom notice has been received; or 40

(b)

5 (b) 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 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.

10 (2) If it appears to the Inspector-General from his own examination or such report that such person is a defective and that it is desirable that such person should be taken charge of and detained in an institution for defectives, he shall make recommendation to the Minister to this effect in the form prescribed.

15 (3) The Minister may make an order for such person to be received into and detained in an institution for defectives.

(4) Any order so made shall have the like effect as if it had been made by two justices under section twelve of this Act.

20 **6.** (1) 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 defective is allowed to reside or be educated and trained. Inspection of private institutions.

25 (2) If it appears to the Inspector-General from his own examination or the written report of such officer or medical practitioner that the defective is not receiving proper and effective instruction and protection, and that it is desirable in his own interests that such
30 person should be taken charge of and detained in an institution for defectives, he shall make a recommendation to the Minister to that effect in the form prescribed.

35 (3) The Minister may make an order for such person to be received into and detained in such institution.

(4) Any order so made shall have the like effect as if it had been made by two justices under section twelve of this Act.

Transfer from institution for defectives to mental hospital and vice versa.

7. (1) 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, he shall so report to the Minister in the form prescribed. 5

(2) The Minister may 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. 10

(3) Any such order shall have the same effect as if made by two justices under section six of the Lunacy Act of 1898, or under section twelve of this Act. 15

Transfer from prison or reformatory to institution for defectives.

8. (1) 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 who 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 a defective, the Minister may order that such person be transferred therefrom and sent to an institution for defectives. 20 25

(2) Any order so made shall have the like effect as if it had been made by two justices under section twelve of this Act.

Reception of defective into institution upon request of parent or guardian.

9. (1) Any person who is mentally defective may be taken by his parent or guardian to an institution for defectives. 30

(2) Such person may be received and detained in such institution as a 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. 35

(3) The request shall be accompanied by such statement of particulars as is prescribed and by two medical certificates, each of which certificates shall be according to the form and contain the particulars prescribed. 40

(4) Each of the medical certificates shall be signed by a medical practitioner who has personally and apart from the medical practitioner signing the other certificate examined the person to whom such certificate relates not more than twenty-eight clear days previously to the reception of such person into such institution.

(5) The request for reception may be signed before or after the date of such medical certificates or either of them.

10 **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— Power of single justice to deal with defective.

- 15 (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
 - 20 (e) has been discovered under circumstances that denote a purpose of committing some offence against the law,
- such justice—

- (i) may by order under his hand either require a constable to apprehend such person and bring him before two justices; or
- 25 (ii) may by like order 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
- 30 (iii) may himself visit and examine such person and make inquiry into the case.

(2) If it appears to such justice that such person is a 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.

Constable
may
apprehend
defective in
certain cases.

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 without any order of a justice, apprehend him and take him before two justices.

Power of
justices to
order
reception
of defective.

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 examined such person, separately and apart from each other signed certificates with respect to such person according to the form prescribed.

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.

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
5 such person as they consider necessary.

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
10 medical practitioner certify in writing that such person is fit to be removed.

(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
15 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
20 the alleged defective, or by any of his relatives or friends, be conducted in private.

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

Power of court to commit to an institution for defectives.

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

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

(4)

(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. 5

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.

Discharge
by Minister.

14. The Minister on being satisfied upon medical 10 or other evidence that it is no longer necessary in the interests of any 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 defective 15 be discharged, subject to such conditions as he may think fit.

It shall 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 20 default of such compliance such person shall be guilty of an offence against this Act.

Where a defective has been discharged under this section and breaks any of the conditions of the order for his discharge or if it appears to the Minister that in 25 the interests of the defective or of the public that the defective should be detained in an institution for a further period the Minister may by order under his hand in the prescribed form direct that the defective shall be detained in an institution and thereupon and 30 without further warrant any member of the police force may arrest the defective and convey him to the institution specified in the order to be there received and detained until further order of the Minister.

Appointment
of institu-
tions.

15. The Governor may, by notification published in 35 the Gazette, appoint any place to be an institution for defectives, and in and by such notification may assign any name to such institution, and in like manner may revoke any such appointment or alter any such name.

Superin-
tendent and
officers.

16. The Governor may appoint to every such institu- 40 tion a superintendent and such other officers as he may deem necessary. Such

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 ^{Licensed houses.} for a license.

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.

10 A license so granted shall continue in force for the period for which it is granted, or until revoked or resigned.

The house in respect of which such a license is in force shall be known as a licensed house.

15 (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 **20** therein shall apply to licensed houses and the patients therein.

(3) Any license may be revoked in the prescribed manner upon breach of any condition of the license or for any cause prescribed in the regulations.

25 (4) 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 ^{Special schools.} **30** classes which will be under the control of the Minister for Public Instruction and be of the following or any other description as may be thought necessary :—

35 (a) Day schools or classes in large centres to train children who are reasonably suspected of being 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)

- (c) Residential schools for children certified under the separate certificates 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. 5

Supplying
intoxicants to
a defective.

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, knowingly supplies intoxicants to or to the use of such defective, 10 he shall be guilty of an offence under this Act.

A person shall not be found guilty of the said offence unless the person giving the warning at the time produces the authority under which he acts.

Ill-treatment
or neglect of
defective.

20. If any officer, or other person employed in an 15 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. 20

Offences.

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 25 leave therefrom; or
- (b) who procures or attempts to procure, any female who is a defective to have carnal connexion with any person; or
- (c) who causes or encourages the prostitution 30 of any female who is a 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 a defective 35 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) 40

(e) who, with intent that any female who is a 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 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 a defective.

(2) The consent of such female who is a defective, to an act of carnal knowledge or to any act amounting to an indecent assault, shall not be a defence in any proceedings in respect of any such act if the accused knew or had reason to suspect the person in respect of whom the act was committed was a defective.

(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) of 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. False entries.

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 Offences and penalties.

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.

Powers of
superin-
tendent and
officers of
institution.

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, immunities, and privileges of a constable.

Application
of certain
sections of
Lunacy Act,
1898, Act
No. 45, 1898.

25. The enactments of the Lunacy Act of 1898, mentioned in the Schedule to this Act, 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 appointed and licensed houses licensed under this Act, the officers of such institutions and licensed houses, and the defectives confined therein.

In so applying such enactments—

“Hospital” or “hospital for the insane” shall be read as and mean an institution appointed under this Act;

“Insane patient” or “patient” shall be read as and mean a defective in any such institution;

“This Act” shall be taken to refer to the Mental Defectives Act, 1934.

Regulations.

26. (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or authorised to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and without limiting the generality of the foregoing power in particular 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)

- (b) the forms of notifications, medical certificates, orders, requests, and other documents required for the purposes of this Act ;
- 5 (c) the issue, renewal, revocation, and resignation of licenses ;
- (d) the management, control, and supervision of institutions and licensed houses and all other matters relating thereto ; and the reception, care, control, maintenance, treatment, classification, assistance, protection, and supervision
- 10 of defectives ; and the inspection of institutions and licensed houses and the visitation of defectives therein ; and the transfer of defectives from one institution or licensed
- 15 house to another institution or licensed house, and their discharge either finally or on leave ;
- (e) the recovery from persons legally responsible therefor of the costs of maintenance, clothing, medical attendance, and examinations under
- 20 this Act ;
- (f) the establishment and government of special schools and classes under this Act ;
- (g) the establishment of a psychiatric clinic and the duties, functions and control thereof ;
- 25 (h) the segregation and separate treatment of epileptics who are defectives ; and
- (i) requirements generally for carrying out the provisions of this Act.
- (2) The regulations may impose a penalty not
- 30 exceeding *fifty* pounds for any breach thereof.
- (3) The regulations shall—
- (i) be published in the Gazette ;
- (ii) take effect from the date of publication, or from a later date to be specified in the
- 35 regulations ; and
- (iii) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the com-
- 40 mencement of the next session.

If

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If either House of Parliament passes a resolution at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

Amendment of Act No. 14, 1908, s. 6 (5).

27. (1) The Private Hospitals Act, 1908, as amended by subsequent Acts, is amended by inserting in subsection five of section six after the word "Acts" the words "and licensed houses under the Mental Defectives Act, 1934."

(2) The Private Hospitals Act, 1908, as amended by subsequent Acts and this Act, may be cited as the Private Hospitals Act, 1908-1934.

Sec. 25

SCHEDULE

15

Enactments of the Lunacy Act of 1898, applied to Institutions and Licensed Houses.

Part I.—Sections 7, 8, 10 to 15 inclusive, 17 and 18.

Part II.—Sections 27 to 30 inclusive.

Part III.—Sections 40 and 51.

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Part IV.—Sections 52 to 58 inclusive.

Part V.—Sections 59 to 76 inclusive.

Part VI.—Sections 78, 79, 81 to 85 inclusive, and 88 to 100 inclusive.

Part VIII.—Sections 115 to 167 inclusive.

Part X.—Sections 169 to 172 inclusive and sections 174 to 180 inclusive.

