

Amended 11/64.

1426

# MENTAL DEFECTIVES ORDINANCE 1940-1957.\*

11 17/68  
11 23/69

An Ordinance relating to the Care and Control of Mentally Defective Persons and to the Administration of their Estates.

## PART I.—PRELIMINARY.

Short title.  
Short title  
amended:  
N. 17, 1938,  
s. 4.

1. This Ordinance may be cited as the *Mental Defectives Ordinance* 1940-1957.\*

Repeal.

2. The Acts of the State of South Australia, in their application to the Northern Territory, and the Ordinances of the Northern Territory, which are specified in the First Schedule to this Ordinance, are repealed.

Parts.

3. This Ordinance is divided into Parts, as follows:—

Part I.—Preliminary.

Part II.—Detention of Mentally Defective Persons.

Part III.—Administration of Estates of Mentally Defective Persons.

Division 1.—Committees and Inquisitions.

Division 2.—Powers of Public Trustee as Committee or Administrator.

Division 3.—Committees, other than the Public Trustee.

Division 4.—Reciprocal Powers of the Public Trustee.

Division 5.—General.

Part IV.—Offences.

Part V.—Miscellaneous.

Definitions.

4.—(1.) In this Ordinance, unless the contrary intention appears—

“certificate” includes recommendation;

“Justice” means a Justice of the Peace having jurisdiction as such in the Northern Territory;

\* The *Mental Defectives Ordinance* 1940-1957 comprises the *Mental Defectives Ordinance* 1940 as amended. Particulars of the Principal Ordinance and of the amending Ordinances are set out in the following table:—

Ordinance.	Number and Year.	Date notified in <i>Commonwealth Gazette</i> .	Date of Commencement.
<i>Mental Defectives Ordinance</i> 1940	No. 1, 1940	18th January, 1940 ..	18th January, 1940
<i>Mental Defectives Ordinance</i> 1941	No. 1, 1941	30th January, 1941 ..	30th January, 1941
		Date of Assent by Administrator.	
<i>Mental Defectives Ordinance</i> 1955	No. 13, 1955	8th June, 1955 ..	8th June, 1955
<i>Mental Defectives Ordinance</i> 1957	No. 22, 1957	28th June, 1957 ..	28th June, 1957

- “medical practitioner” means a medical practitioner registered under the law of the Territory for the time being in force relating to registration of persons engaged in medical practice;
- “mentally defective person” means a person who, owing to his mental condition, is incapable of managing himself or his affairs and requires oversight, care or control for his own good or in the public interest, and the expressions “mental defect”, “mental defective”, and “mentally defective” have corresponding meanings;
- “patient” means a person lawfully received into or detained, or ordered to be received into or detained, in any institution established or maintained for the purpose of the oversight, care and control of mentally defective persons, notwithstanding that he may have escaped therefrom, or been permitted to be absent on trial leave or parole, or been boarded out;
- “Public Trustee” means the Public Trustee for the Northern Territory;
- “State institution” means any institution established or maintained under any law of a State relating to the oversight, care and control of mentally defective persons;
- “the Court” means the Supreme Court of the Territory, or the Judge thereof;
- “the Judge” means the Judge of the Supreme Court of the Territory;
- “this Ordinance” includes regulations and rules of Court made thereunder.

(2.) Any reference in this Ordinance to a Form shall be read as a reference to a Form in the Second Schedule to this Ordinance.

## PART II.—DETENTION OF MENTALLY DEFECTIVE PERSONS.

5.—(1.) The Minister may, from time to time, make arrangements with the Government of a State—

Arrangements  
with States.

(a) for the apprehension, care, treatment, maintenance and burial under the laws of that State relating to the oversight, care and control of mentally defective persons; and

(b) for the payment of the expenses therefor, of mentally defective persons transferred from the Northern Territory to that State in pursuance of this Ordinance.

(2.) Any arrangement with the Government of any State made prior to the commencement of this Ordinance, which makes provision for any or all of the matters specified in this section, shall be deemed to have been made in pursuance of this section.

Complaint  
before Justice.

6.—(1.) If a complaint, on oath, is laid before any Justice that any person is by the complainant believed to be a mentally defective person, and—

(a) is without sufficient means of support;

(b) is wandering at large; or

(c) has been found under circumstances that denote a purpose of committing an offence against the law,

the Justice may, by an order in accordance with Form 1, require a member of the Police Force to apprehend the person and take him before a Justice.

(2.) Any member of the Police Force who has reason to believe that any person found—

(a) wandering at large; or

(b) under circumstances denoting a purpose of committing an offence against the law,

is a mentally defective person, shall immediately apprehend and take the person, or cause him to be apprehended and taken, before a Justice.

Power to issue  
certificate for  
reception into  
State  
institution.

7.—(1.) The Justice before whom any person is brought under section six of this Ordinance shall call to his assistance two medical practitioners and shall, at any convenient place, examine the person and make such inquiry regarding him as the Justice deems necessary.

Inserted by  
No. 1, 1941,  
s. 2.

(1A.) If the Justice is of the opinion that it is advisable to remand the person for the purpose of enabling the medical practitioners to make the examination and inquiry referred to in sub-section (1.) of this section, the Justice may, by order signed by him, direct the person to be removed to, and received in, some convenient place to be mentioned in the order for that purpose for a period not exceeding fourteen days, and the person shall thereupon be removed to and received and detained therein accordingly.

Inserted by  
N. 1, 1941,  
s. 2.

(1B.) At or before the expiration of the period mentioned in the order referred to in sub-section (1A.) of this section, the person shall be brought before a Justice to be further dealt with in accordance with this section.

(2.) If the two medical practitioners sign certificates stating, with regard to any person examined by them in pursuance of sub-section (1.) of this section, the matters indicated in Form 2

and the Justice is satisfied, upon examination of the person and of the medical practitioners or upon other proof, that the person is mentally defective, and—

- (a) is without sufficient means of support;
- (b) was wandering at large; or
- (c) was found under circumstances denoting a purpose of committing an offence against the law,

and is a proper person to be taken charge of and detained under care and treatment, the Justice may—

- (a) issue a certificate in accordance with Form 3;
- (b) commit the mentally defective person by warrant in accordance with Form 4 to the nearest gaol or such other place as the Justice thinks fit; and
- (c) direct that he be there detained until the service upon the keeper or other person in charge of the gaol or place of an Order by the Administrator in pursuance of sub-section (3.) of this section.

(3.) Upon the issue of a certificate under sub-section (2.) of this section, the Administrator may, by Order in accordance with Form 5, direct that the mentally defective person be sent for care and treatment or maintenance to the proper authorities of any State with the Government of which an arrangement has been made under section five of this Ordinance.

8. Whenever a Justice believes a person to be, or any person is reported to him to be, a mentally defective person and in such circumstances as are mentioned in paragraph (a), (b), or (c) of sub-section (1.) of section six of this Ordinance, he may, at any convenient place, notwithstanding that the person has not been brought before him under section six of this Ordinance, proceed with regard to the person in accordance with section seven of this Ordinance, and the provisions of the last-mentioned section shall apply accordingly.

Power of Justice to proceed without complaint.

9.—(1.) Whenever a member of the Police Force has knowledge that any person whom he believes to be a mentally defective person, though not in any of the circumstances mentioned in paragraphs (a), (b), and (c) of sub-section (1.) of section six of this Ordinance—

- (a) is not under proper care and control; or
- (b) is cruelly treated or neglected by any person having or assuming the care or charge of him,

the member of the Police Force shall make complaint thereof, on oath, to a Justice.

(2.) The Justice, upon any such complaint or upon the complaint on oath of any person to the like effect shall either—

- (a) visit and examine the alleged mentally defective person and make inquiry into the case; or

Steps preliminary to bringing person before two Justices.

*Mental Defectives Ordinance 1940-1957.*

(b) by an order signed by him in accordance with Form 6, direct a medical practitioner to visit and examine the alleged mentally defective person and make such inquiry as he deems necessary, and to report in writing to the Justice his opinion thereon.

(3.) If it appears to the Justice, upon his visit, examination and inquiry, or upon the report of the medical practitioner, that the alleged mentally defective person is mentally defective and is in the circumstances mentioned in paragraphs (a) or (b) of sub-section (1.) of this section, he may, by order signed by him in accordance with Form 7, require any member of the Police Force to apprehend the alleged mentally defective person and take him before two Justices.

Power of Justices to issue certificate that person should be transferred to a State institution.

10.—(1.) The Justices before whom any person is brought under section nine of this Ordinance shall call to their assistance two medical practitioners and shall, at any convenient place, examine such person and make such inquiry as they deem necessary.

(2.) If the two medical practitioners sign certificates stating, with respect to any person examined by them in pursuance of sub-section (1.) of this section, the matters indicated in Form 2, and the Justices are satisfied upon examination of the person and the medical practitioners or upon other proof, that the person is mentally defective and—

(a) is not under proper care and control; or

(b) is cruelly treated or neglected by any person having or assuming the care or charge of him, and

is a proper person to be taken charge of and detained under care and treatment, the Justices may—

(a) issue a certificate in accordance with Form 3;

(b) by warrant in accordance with Form 4, commit the mentally defective person to the nearest gaol or such other place as the Justice or Justices think fit; and

(c) direct that he be there detained until the service upon the keeper or other person in charge of the gaol or place of an order by the Administrator in pursuance of sub-section (3.) of this section.

(3.) Upon the issue of a certificate under sub-section (2.) of this section, the Administrator may, by order in accordance with Form 5, direct that the mentally defective person be sent for care and treatment or maintenance to the proper authorities of any State with the Government of which an arrangement has been made under section five of this Ordinance.

11. Whenever any two Justices believe a person to be, or any person is reported to them to be, mentally defective and in such circumstances as are mentioned in paragraphs (a) or (b) of sub-section (1.) of section nine of this Ordinance, they may, at any convenient place, notwithstanding that the person has not been brought before them under that section, proceed with regard to the person in accordance with section ten of this Ordinance and the provisions of the last-mentioned section shall apply accordingly.

Power of Justices to proceed without complaint.

12. Where any person has been found to be a mental defective by inquisition, a request, in accordance with Form 8, signed by the committee appointed by the Court, shall, without any further order or any medical certificate, be sufficient authority for the issue by any Justice of a certificate in accordance with Form 3 and of a warrant in accordance with Form 4 and for the making of an order by the Administrator in accordance with Form 5:

Issue of certificate for reception into State institution on request of committee.

Provided that there shall be attached to the certificate—

- (a) an office copy of the order appointing the committee; and
- (b) a statement by the committee of the particulars indicated in Form 9, or such of the particulars as are known to the committee.

13.—(1.) The Justice or Justices issuing a certificate under this Part of this Ordinance to the effect that a mentally defective person is a proper person to be transferred to a State institution may, by writing signed by him or them in accordance with Form 10, suspend the taking of any action consequent upon the issue of the certificate for such period as he or they think fit, and, when making any such suspension and in the meantime, may from time to time give such directions or make such arrangements for the proper care and control of the person as he or they consider necessary.

Suspension of certificate.

(1A.) The Justice or Justices issuing such a certificate may at any time upon cause shown to his or their satisfaction, and by writing signed by him or them, as the case may be, revoke the certificate.

Inserted by No. 22, 1957, s. 2.

(2.) If a medical practitioner by whom any person is examined certifies in writing that he is not in a fit state to be removed, his conveyance to a gaol or other place in accordance with the form of warrant set out in Form 4 shall be delayed until the same or another medical practitioner certifies, in writing, that the person is fit to be removed.

(3.) Nothing contained in this Ordinance shall restrain or prevent any relative or friend of the person, in respect of whom a certificate under this Part of this Ordinance is issued, from retaining or taking the person under his own care, if he satisfies the Justice or Justices issuing the certificate that the person will be properly taken care of, and the Justice or Justices so direct.

Notice of proceedings in certain cases. Inserted by No. 22, 1957, s. 3.

**13A.**—(1.) In any proceeding under section six, eight, nine or eleven of this Ordinance the Justice or Justices shall inquire into the circumstances in which the person before him or them has been living and if the Justice is satisfied or the Justices are satisfied that the person ordinarily resides with a relative or friend whom it is reasonably practicable to notify of the intention of the Justice or Justices to proceed under this Ordinance the Justice or Justices shall adjourn the proceeding and direct that notice of the proceeding and the adjourned date of the proceeding be given to that relative or friend.

(2.) Upon the adjourned hearing of the proceeding the Justice or Justices may—

- (a) if the person so notified appears, hear that person upon the matter; or
- (b) if the person so notified does not appear, proceed with the matter.

Requirements of medical certificate.

**14.**—(1.) Any medical practitioner signing any certificate in respect of any mentally defective person shall specify therein the facts upon which he has formed his opinion, distinguishing facts observed by himself from facts communicated to him by others.

(2.) A certificate in accordance with Form 3 shall not be issued in respect of any person where the medical certificate relating to that person purports to be founded only upon facts communicated by others.

Who may not sign certificates, &c.

**15.** A medical practitioner who, or whose parent, child, brother, sister or other relative, or partner, or assistant, signs the request for the issue of a certificate that any person is a proper person to be transferred to a State institution shall not sign any certificate in connexion with the issue of the certificate in respect of that person.

Cost of inquiries before Justices.

**16.**—(1.) The Justice or Justices by or before whom any proceedings under this Part of this Ordinance are taken, may make such order as, subject to this Ordinance, he or they think proper for the remuneration and reimbursement of any medical practitioner, the payment of witness fees and expenses, and other reasonable expenses of or connected with any examination and inquiry, and the transfer of any person to any State institution.

(2.) Any amount ordered under this section shall be subject to the approval of the Administrator, who may disallow the amount altogether or increase or reduce it, and approve the amount as ordered or as increased or reduced by him. The decision of the Administrator shall be final and without appeal.

(3.) Any amount so approved may, if a certificate is issued that the person in respect of whom proceedings were taken is a proper person to be transferred to a State institution, be recovered out of the estate (if any) of the person in respect of whom the certificate has been issued.

**17.—(1.)** If any person, while imprisoned or detained in any prison, gaol or other place of confinement—

Power to remove mentally defective criminals to State asylums.

- (a) under the sentence or order of any court;
- (b) under commitment for trial on a charge of any offence;
- (c) for not finding bail for good behaviour or to keep the peace or to answer a criminal charge; or
- (d) under any other lawful authority,

appears to be mentally defective, the Administrator, upon receipt of two certificates stating, with respect to that person, the matters indicated in Form 11, signed by two medical practitioners, may, by an order in accordance with Form 5, direct that the mentally defective person be sent for care and treatment or maintenance to the proper authorities of any State with the Government of which an arrangement has been made under section five of this Ordinance:

Provided that, if the person is imprisoned or detained either until the Governor-General's pleasure be known or during the Governor-General's pleasure, an order shall not be made under this section until the Governor-General's consent thereto has been obtained.

(2.) When any such criminal mentally defective person is transferred to a State institution, the officer in charge of the prison, gaol or other place of confinement shall furnish the Administrator with a complete record of the patient's career (so far as known to the officer) and behaviour, together with a general report on such person.

(3.) The record and report referred to in the last preceding sub-section shall be forwarded by the Administrator with the order referred to in sub-section (1.) of this section to the proper authorities of the State to which the patient is transferred.

**18.** Any order made under this Part of this Ordinance for the transfer of any person to a State institution shall be sufficient authority for all members of the Police Force and other persons entrusted with the transfer of the person to hold him in custody and convey him accordingly.

Orders under this Part to be sufficient authority for conveyance.



Penalties for aiding or permitting escape.

19. Any person who rescues, or attempts to rescue, or abets the escape or attempted escape of any person ordered under this Part of this Ordinance to be transferred to any State institution during his conveyance thereto shall be guilty of an offence.

Penalty: Imprisonment for three years.

Return of person discharged from State institution to the Northern Territory.

20. Where any person has, in pursuance of an order made under this Part, been transferred from the Northern Territory to a State institution and has subsequently been discharged therefrom, the Administrator shall, if the discharged person makes application to the Administrator, within thirty days from the date of his discharge, to be returned to the Northern Territory, make arrangements for his return accordingly.

### PART III.—ADMINISTRATION OF ESTATES OF MENTALLY DEFECTIVE PERSONS.

#### *Division 1.—Committees and Inquisitions.*

Notice of order directing mentally defective person to be sent to a State to be sent to the Public Trustee.

21. Whenever an order is made by the Administrator in accordance with Form 5 directing that a mentally defective person be sent for care and treatment or maintenance to the proper authorities of any State with the Government of which an arrangement has been made under section five of this Ordinance, the Administrator shall forthwith send, or cause to be sent, notice in writing of the order to the Public Trustee.

Power of Public Trustee to manage the estates of patients.

22.—(1.) The Public Trustee shall have the custody and administration of the estate of every patient, other than a patient in respect of whose estate a committee or administrator has been appointed under this Ordinance, and shall have in respect of the estate the same powers, duties and functions as if he had been appointed the committee thereof under the provisions of this Ordinance.

(2.) The powers, duties and functions of the Public Trustee under this section in respect of the estate of any person shall cease—

- (a) when the person dies;
- (b) when a committee of the estate is appointed under the provisions of this Ordinance; or
- (c) when the person is discharged from any State institution and is able to manage his own affairs.

Public Trustee or other persons appointed committee of estate without inquisition.

23.—(1.) The Court may, on petition by the Public Trustee or any other person, appoint the Public Trustee or, subject to sections forty-two and forty-three of this Ordinance, any other person or persons as the committee of the estate of any patient.

(2.) Any committee appointed under this section shall have the same powers, duties and functions as if he had been appointed after inquisition by the Court in accordance with the provisions of this Ordinance.

(3.) Any committee appointed under this section shall continue in office until the person of whose estate he is committee dies or until the order appointing him as committee is rescinded by the Court, notwithstanding the fact that the person is no longer a patient.

(4.) The Court may at any time, on the petition of the person of whose estate a committee has been appointed under this section, or of the committee, or of any other person, rescind the order appointing the committee on proof that the person is of sufficient ability to manage his own affairs and that he is no longer a patient.

(5.) Subject to sections forty-two and forty-three of this Ordinance, the Court may, at any time, on the petition of the person of whose estate a committee has been appointed under this section, or of the committee, or of any other person, and on proof that there is good cause for so doing, make an order appointing any other person or persons as the committee of the estate in lieu of the committee so appointed.

24.—(1.) The Court may, on the petition of the Public Trustee, or of any other person, order an inquisition to be held by a Judge without a jury as to whether any person alleged to be a mentally defective person, either in or out of the Northern Territory, is a mentally defective person.

Inquisition as to state of mind of person alleged to be mentally defective.

(2.) If the person so alleged to be a mentally defective person is in the Northern Territory, he shall be given notice, as prescribed, of the presentation of the petition.

(3.) If the person as to whom the inquisition is held is in the Northern Territory the Judge holding the inquisition shall personally examine him touching his state of mind and his ability to manage his affairs, and for this purpose the Judge may make an order directing the person to attend before him at the time and place specified in the order for examination, or directing any person having the custody of the person to bring him before the Judge for examination at the time and place so specified.

25.—(1.) The inquisition shall be confined to the question whether or not the person as to whom the inquisition is held is a mentally defective person.

Scope of inquisition.

(2.) Evidence as to anything done or said by him or as to his demeanour or state of mind, at any time more than two years before the time of the presentation of the petition for the inquisition, shall not be receivable in proof of mental defect, unless the Judge holding the inquisition otherwise directs.

Certificate to Supreme Court when person found mentally defective on inquisition.

**26.** If the Judge holding the inquisition finds that the person as to whom it is held is a mentally defective person, the Judge shall certify his finding to the Court, and the person so found to be mentally defective shall be deemed to be a person found to be mentally defective on inquisition for the purposes of this Ordinance.

Supreme Court may appoint committee.

**27.** If any person is so found to be a mentally defective person, the Court may appoint the Public Trustee or, subject to sections forty-two and forty-three of this Ordinance, any other person or persons whom the Court thinks fit, to be the committee of the estate of the person.

Committee appointed without inquisition when estate not over £1,000.

**28.—**(1.) Where it is, by the report of the Public Trustee, or by affidavit or otherwise, established to the satisfaction of the Court—

- (a) that any person is a mentally defective person; and
- (b) that the value of the estate of the person does not exceed One thousand pounds or that the income of his estate does not exceed Fifty pounds per annum,

the Court may, without ordering any inquisition—

- (i) find that the person is a mentally defective person; and
- (ii) appoint the Public Trustee, or subject to sections forty-two and forty-three of this Ordinance, any other person or persons whom the Court thinks fit, to be the committee of the estate of the person.

(2.) The application for an order under this section may be made by the Public Trustee or any other person and, if the person concerning whose estate the order is sought is in the Northern Territory, he shall be given notice, as prescribed, of the application.

Power to appoint new committee.

**29.** Subject to sections forty-two and forty-three of this Ordinance, the Court may, at any time, and from time to time, appoint any person or persons to be the committee of the estate of any person in lieu of any committee already appointed, whether appointed before or after the commencement of this Ordinance.

Provision for commitment of estate only.

**30.—**(1.) Where, on any inquiry or examination under Part II., or any inquisition or application under this Part, it appears that a person alleged to be a mentally defective person is incapable of managing his affairs, but does not require oversight, care or control with respect to himself, it may be specially so found and certified.

(2.) Every such special finding and certificate shall be brought before the Court, which shall thereupon make all such

orders and direct all such acts to be done as are necessary or proper relative to the commitment, management and application of the estate of the person to whom the finding and certificate relate.

**31.**—(1.) When any person has been found to be a mentally defective person on inquisition under this Ordinance, or found lunatic on inquisition before the commencement of this Ordinance, the Court may, at any time, on the petition of that person or of the committee of his estate or of any other person, and on proof that the person so found mentally defective or lunatic is not at the time a patient within the meaning of this Ordinance, direct an inquisition to be held as to whether he is still incapable of managing his affairs.

Inquisition as to  
continuance of  
mental defect.

(2.) Any such inquisition shall be held in the same manner, with all necessary modifications, as an inquisition held under the provisions of this Part.

(3.) The Judge holding the inquisition shall certify his finding thereon to the Court and, if he certifies that the person is no longer incapable of managing his affairs, the Court may rescind the order appointing a committee of his estate and the former inquisition shall thereupon be deemed to be superseded.

(4.) When a committee of the estate of any person has been appointed under section twenty-eight of this Ordinance, the Court may, on the application of such person or of the committee or any other person, and on such proof as is mentioned in subsection (1.) of this section, and such further evidence as it deems sufficient, itself decide, without any inquisition, whether or not such person is still incapable of managing his affairs. If satisfied that he is no longer incapable of managing his affairs, the Court may rescind the order appointing a committee of his estate.

(5.) Except as provided in this section, no proceedings shall hereafter be taken by way of the traverse or *supersedeas* of any inquisition, or to rescind a finding of the Court, in proceedings under section twenty-eight of this Ordinance, that a person is a mentally defective person.

**32**—(1.) When it is proved to the satisfaction of the Court that—

Committee in  
case of person  
outside  
Territory.

- (a) any person is lawfully detained as a lunatic or as a mentally defective person in any place outside the Northern Territory; or
- (b) any person resident in any place outside the Northern Territory has been found lunatic or to be a mentally defective person in any inquisition or other inquiry held by or by the authority of any Court having jurisdiction to appoint, in the

place where that person so resides, a committee or other administrator of the estate of that person in the Northern Territory,

the Court may, on the petition of the Public Trustee or of any other person, appoint the Public Trustee or, subject to sections forty-two and forty-three of this Ordinance, any other person or persons to be the committee of the estate of the person so detained as a lunatic or mentally defective person or so found lunatic or mentally defective.

(2.) Any person so appointed shall have the same powers, duties, functions and liabilities as if he had been appointed after inquisition held in accordance with the provisions of this Ordinance.

(3.) Any order appointing a committee under this section may be rescinded in the same manner as is provided in this Ordinance with respect to an order appointing a committee of the estate of a mentally defective person so found by inquisition.

(4.) Subject to sections forty-two and forty-three of this Ordinance, the Court may at any time make an order appointing the Public Trustee or any other person or persons to be the committee of the estate of any person in lieu of any committee appointed under this section.

Power of Court to make order as to payment of costs of inquisition.

**33.** The Court may order the costs, charges and expenses of the presentation of any petition for an inquisition under this Ordinance, and of the execution of any such inquisition, and of any proceedings consequent on any such inquisition, and of any application for the appointment of a committee, or new committee, or of any other application under this Part of this Ordinance, to be paid either by the party presenting the petition or making the application, or by the party opposing the petition or application, or out of the estate of the person in respect of whom the inquisition is held or sought or the application is made, or partly in one way and partly in another, as the Court in each case thinks proper.

*Division 2.—Powers of Public Trustee as Committee or Administrator.*

Property not to vest in Public Trustee when acting as committee or administrator.

**34.** When the Public Trustee is appointed under this Ordinance as the committee of the estate of any person or becomes authorized by this Ordinance to administer the estate of any person, the estate shall not thereby become vested in the Public Trustee, but he shall be entitled to the possession and management of the estate in accordance with the provisions of this Ordinance.

Powers of Public Trustee exercisable without sanction of Court.

**35.** The Public Trustee, on being appointed under this Ordinance as the committee of the estate of any person, or on being authorized by this Ordinance to administer the estate of

any person, may, without the leave of the Court, but subject to any order of the Court to the contrary, do any of the following things:—

- (a) Take possession of all the property of that person;
- (b) Sell any property of that person, other than freehold or leasehold property, either by public auction or private contract, and subject to such conditions as the Public Trustee thinks fit.
- (c) Lease or concur in leasing any property of that person for any term not exceeding two years (to take effect in possession within six months of the date of the lease), or from year to year, or for a weekly, monthly or other like tenancy, or at will;
- (d) Repair and insure against fire or accident, any property of that person;
- (e) Pay all rates, taxes, insurance premiums or other outgoings payable in respect of the property of that person, or under any policy of insurance of any kind;
- (f) Surrender any policy of life assurance of that person;
- (g) Grant powers of attorney to any person in or out of the Northern Territory to do any act or thing with respect to the property of the person of whose estate he is committee or administrator which the Public Trustee can do as committee of the estate, or as authorized to administer the estate;
- (h) Institute or defend, in his own name or in the name of the person of whose estate he is committee or administrator, any action, suit or other proceeding concerning the property of that person, and suffer judgment to go by default, or consent to any judgment, decree or order in the action, suit or proceeding, upon such terms as the Public Trustee thinks fit;
- (j) Compromise any claims or demands made against that person or his estate, upon such terms as the Public Trustee thinks fit, and upon such evidence as he deems sufficient, and submit any such claims or demands to arbitration, and do all acts and things necessary to render any such compromise or arbitration effectual;
- (k) Take proceedings to cause to be adjudicated a bankrupt or placed in liquidation any person or company indebted to the person of whose estate he is committee or administrator, and vote and act either personally or by proxy at all meetings of creditors, and in all other matters relating to the bankruptcy or liquidation;

- (l) Take criminal proceedings concerning the property of that person;
- (m) Demand, receive and recover all moneys payable or belonging to that person;
- (n) Apply moneys belonging to that person, whether arising from real or personal property and, whether income or capital, in or towards the payment of any debt, obligation or liability of that person, or incurred by the Public Trustee in the exercise, in respect of him or his estate, of the powers vested in the Public Trustee by this Ordinance;
- (o) Surrender, assign or otherwise dispose of, with or without consideration, any onerous property belonging to that person;
- (p) Surrender or concur in surrendering any lease, under which that person is the lessee or the successor in title of the lessee, and accept a new lease;
- (q) Accept a surrender of any lease under which that person is the lessor or the successor in title of the lessor;
- (r) Carry out and perform any contract entered into by that person before the Public Trustee was appointed as the committee of his estate or became authorized to administer it; and
- (s) Apply, in his discretion, and in such manner and to such extent as he thinks fit, any money belonging to that person, whether arising from real or personal property, and whether income or capital, for the maintenance of that person, or of the husband or wife of that person, or for the maintenance, education or advancement of the children or grandchildren of that person, or, in the event of the death of that person, for the payment of the expenses of his funeral.

Powers of  
Public Trustee  
exercisable  
with  
sanction of  
Court.

**36.** The Public Trustee, on being appointed under this Ordinance as the committee of the estate of any person, or on being authorized by this Ordinance to administer the estate of any person, may, with the sanction of an order of the Court, do any of the following things:—

- (a) Sell any freehold or leasehold property of that person by public auction or private contract in such manner and on such terms and conditions as the Public Trustee thinks fit;
- (b) Make exchange or partition of any property belonging to that person, and give or receive any money for equality of exchange or partition;

- (c) Grant or concur in granting leases of any property of that person for such terms and on such covenants and conditions as the Public Trustee thinks fit;
- (d) Execute any power of leasing vested in that person having a limited estate only in the property over which the power extends;
- (e) Expend money in the improvement of any property of that person, by way of building or otherwise;
- (f) Carry on any trade or business of that person;
- (g) Agree to any alteration of the condition of a partnership into which that person had entered, or join in dissolving the partnership and dispose of the property thereof, or the interest of that person therein and in the property thereof;
- (h) Exercise any power, or give any consent required for the exercise of any power, where the power is vested in that person for his own benefit or the power of consent is in the nature of a beneficial interest in that person; and
- (i) Expend any moneys belonging to that person in the maintenance, education or advancement of the husband or wife of that person, or of any relative of that person, or of any person wholly or partially dependent on that person, or continue such other acts of bounty or charity exercised or promised to be exercised by that person as the Court, having regard to the circumstances and the amount or value of the estate of that person, considers proper and reasonable.

**37.** The Public Trustee, on being appointed under this Ordinance as the committee of the estate of any person, or on being authorized by this Ordinance to administer the estate of any person may, with the sanction of an order of the Court, mortgage or charge (with or without a power of sale and on such terms as the Public Trustee thinks fit) any property of that person for the purpose of raising, securing or repaying, with or without interest, money which is to be or which has been applied to all or any of the following purposes:—

Power of  
Public Trustee  
to execute  
mortgages.

- (a) The payment of the debts or engagements of that person;
- (b) The discharge of any encumbrance on his property;
- (c) The payment of any debt or expenditure incurred for the maintenance of that person or for the maintenance and education of his family, or otherwise for his benefit;



- (d) The payment of or provision for the expenses of the future maintenance of that person or the future maintenance and education of his family;
- (e) The improvement or protection of the property of that person; and
- (f) The payment of any debts or liabilities incurred by the Public Trustee in the exercise of the powers conferred upon him by this Ordinance in respect of the custody and administration of the property of that person.

Exercise of powers without sanction of Court where estate does not exceed £500.

**38.**—(1.) If the Public Trustee files in the office of the Court a certificate signed by him that, after due inquiry, he believes that the value of the estate of any person of which he has been appointed the committee under this Ordinance or which he is authorized by this Ordinance to administer, does not exceed the sum of Five hundred pounds, after deducting all debts and liabilities payable out of the estate, the Public Trustee may exercise in respect of that estate, without the sanction of an order of the Court, but subject to any order of the Court to the contrary, any of the powers conferred upon him by sections thirty-six and thirty-seven of this Ordinance.

(2.) If, at any time after the filing of a certificate in pursuance of sub-section (1.) of this section, the Public Trustee has reason to believe that the value of the estate, after deducting all debts and liabilities payable out of the estate, exceeds the sum of Five hundred pounds, he shall not thereafter exercise any of such powers without the sanction of an order of the Court; but nothing in this sub-section shall so operate as to invalidate anything done by the Public Trustee in pursuance of sub-section (1.) of this section.

Effect of certificate by Public Trustee of his appointment as committee, &c.

**39.** A certificate signed by the Public Trustee certifying that he has been appointed under this Ordinance as the committee of the estate of any person, or that he is authorized under this Ordinance to administer the estate of any person, and stating the date at which he was so appointed or became so authorized, and that the appointment or authority is still in force, shall, until the contrary is proved, be accepted by all Courts, tribunals, officers and other persons as sufficient evidence of the facts so certified and stated.

Security and investment of moneys received by Public Trustee.

**40.** The provisions of section eighty-eight of the Administration and Probate Acts of the State of South Australia, in their application to the Territory, or of those Acts as subsequently amended by Ordinance, shall apply to all moneys coming to the hands of the Public Trustee under the provisions of this Ordinance.

41.—(1.) The Public Trustee may, in the execution of his powers and duties under this Ordinance, summon any person before him or before a person appointed by him in writing in that behalf. The Public Trustee or the person so appointed may administer oaths and take evidence as to any matters relating to the estate and affairs of any person of whose estate the Public Trustee is committee or whose estate he is administering, and require the production of any books and documents relating to those matters.

Public Trustee may obtain information on oath.

(2.) Any person on whom any such summons is served by delivering it to him or by leaving it at his usual place of business or abode, who, without such justification or excuse as the Court hearing the charge considers reasonable, fails to appear according to the exigency of the summons, or, being present, refuses to be sworn or to give evidence or to answer such questions as are put to him by the Public Trustee or the person so appointed, or to produce any books or documents required by the summons to be produced, shall be guilty of an offence.

Penalty: Fifty pounds.

*Division 3.—Committees, other than the Public Trustee.*

42.—(1.) A person, other than the Public Trustee, shall not be appointed under this Ordinance as the committee of the estate of any person unless it is proved to the satisfaction of the Court that there is some sufficient reason why that person should be so appointed in preference to the Public Trustee.

When person other than the Public Trustee may be appointed committee.

(2.) When any application is made to the Court to appoint a person other than the Public Trustee as the committee of an estate of any person, notice of the application shall be given to the Public Trustee by the person making the application.

43.—(1.) A person, other than the Public Trustee, shall not be appointed under this Ordinance as the committee of the estate of any person until he has given to the Public Trustee such security as the Court directs and approves for the due administration of the estate.

Duty to give security to Public Trustee.

(2.) The security may be a bond, with or without a surety or sureties, or such other security as the Court directs and approves.

(3.) The Court may, at any time, on the application of the Public Trustee, require the committee to give to the Public Trustee further or other security for the due administration of the estate.

(4.) The Court may at any time give leave to the Public Trustee to enforce any such security, and the Public Trustee shall thereupon proceed by action or otherwise to enforce the

security accordingly. All moneys so received by the Public Trustee shall be deemed part of the estate of which the person is or was the committee, and all costs and expenses so incurred by the Public Trustee shall be paid out of the estate.

Powers of committee.

44.—(1.) When any person, other than the Public Trustee, has been appointed under this Ordinance as the committee of an estate, that person shall have in respect of the estate such of the powers conferred on the Public Trustee by sections thirty-five to thirty-eight (inclusive) of this Ordinance as the Court in the order appointing the committee or in any subsequent order directs.

(2.) On the application of the Public Trustee or any relative of the person of whose estate the committee is appointed, the order whereby he was so appointed, or any such subsequent order, may from time to time be varied or rescinded by the Court.

Statement as to estate.

45.—(1.) Any person, other than the Public Trustee, appointed under this Ordinance as the committee of the estate of any person, shall render to the Public Trustee, at such times and in such form as the Public Trustee directs, a statement showing the property comprised in the estate, and the manner in which the property has been administered and applied, and the condition of the property, and such other particulars relating to the estate as the Public Trustee directs.

(2.) Every such statement shall be verified by the statutory declaration of the committee, and, where the Public Trustee so directs, shall be supported by vouchers.

(3.) Any person who fails or refuses to render any such statement, verified as prescribed, in the manner and at the times directed by the Public Trustee shall be guilty of an offence.

Penalty: Fifty pounds.

(4.) The Public Trustee may cause any such statement or the accounts relating thereto to be examined and reported upon by any person appointed by him in that behalf.

#### *Division 4.—Reciprocal Powers of the Public Trustee.*

Application of this Division.

46.—(1.) The Governor-General, on being satisfied that the law in force in any part of His Majesty's Dominions is such as authorizes powers to be exercised in that part of His Majesty's Dominions in the case of patients residing in the Territory, substantially similar to the powers conferred by section forty-seven of this Ordinance in the case of such patients as are therein mentioned, may, by Proclamation, declare that that section shall,

subject to any exceptions and modifications stated in the Proclamation, apply with respect to that part of His Majesty's Dominions, and thereupon and while the Proclamation is in force that section shall apply accordingly.

(2.) The Governor-General, on being satisfied that adequate provision has been made by the law in force in any part of His Majesty's Dominions for the recognition therein of orders and declarations made by the Court in the exercise of its jurisdiction under this Ordinance, may, by Proclamation, declare that section forty-eight of this Ordinance shall, subject to any exceptions and modifications stated in the Proclamation, apply with respect to that part of His Majesty's Dominions, and thereupon, and while the Proclamation is in force, that section shall apply accordingly.

(3.) The Governor-General may, by Proclamation, revoke or alter any Proclamation made under this section.

(4.) A copy of the *Gazette* purporting to contain a copy of a Proclamation under this section shall be conclusive evidence of the validity, contents, making and publication of the Proclamation, and of the existence of all conditions precedent to the valid making thereof.

47.—(1.) If the officer charged by the law in any proclaimed part of His Majesty's Dominions with the care, custody, recovery, collection, preservation and administration of the property and estates of patients in any hospital, asylum or other place therein established or authorized by law for the reception and care of persons of unsound mind—

Provision for Public Trustee to administer estates of patients in other parts of His Majesty's Dominions.

(a) certifies in writing under his hand and seal to the Public Trustee that any person is a patient residing in that part of His Majesty's Dominions and that he is confined in any such hospital, asylum or other place, and that he is possessed of, entitled to or interested in, or appears to be entitled to or interested in, real or personal property in the Northern Territory; and

(b) by instrument in writing under his hand and seal authorizes the Public Trustee to collect, manage, sell or otherwise dispose of and administer such property, or to make inquiry respecting it,

the Public Trustee shall have, and may exercise over and in respect of such property, all the powers conferred upon him by Division 2 of Part III. of this Ordinance with respect to estates which he is by this Ordinance authorized to administer and all the provisions of this Ordinance shall apply in respect of such property to the like extent and in the same manner as if such patient were a patient transferred to a State institution under this Ordinance.

(2.) The Public Trustee may pay over or deliver to such officer the balance of the moneys or property belonging to the estate of the patient received by the Public Trustee, after—

- (a) payment of all costs, charges and expenses incurred in the matter, in and about the exercise of the powers conferred by this section; and
- (b) satisfying or providing for, wholly, or in so far as appears to be necessary for the due administration of the estate of the patient, the debts and claims against the estate of all persons residing in the Northern Territory of whose debts and claims he has had notice,

without seeing to the application thereof, and without incurring any liability in regard to the payment; and he shall duly account for any payments so made to the officer.

(3.) Upon the appointment under section thirty-two of this Ordinance, of a committee of the estate of any person, this section shall, subject to the order of the Court upon making the appointment or any subsequent order thereof, cease to operate with respect to the estate.

Provisions for enforcing orders in lunacy of courts of other parts of the Empire.

**48.—**(1.) When an order or declaration, made by a court of competent jurisdiction under the law in force in any proclaimed part of His Majesty's Dominions in the exercise of its jurisdiction in lunacy, or a copy thereof certified as correct under the hand of the Prothonotary, Registrar or other proper officer of such Court, is produced to the Master of the Supreme Court, and a copy of the order or declaration is deposited with the Master, the order or declaration or certified copy shall, subject to the payment of the prescribed fees (if any), be sealed with the seal of the Supreme Court.

(2.) The order or declaration shall thereupon have the like force and effect and have the same operation, and any master, public trustee, curator, guardian, committee or receiver acting thereunder shall perform the same duties and be subject to the same liabilities, in the Northern Territory, as if the order or declaration had been made by the Court:

Provided that a guardian, committee or receiver appointed by or under any such order shall not have or exercise any power or authority thereunder after the order, or the certified copy thereof, has been so sealed until his appointment has been confirmed by the Court, which confirmation may be granted upon such terms as the Court thinks fit, or may be refused.

(3.) This section shall apply to any order and declaration made before or after the commencement of this Ordinance.

*Division 5.—General.*

**49.** Without restricting any other powers and authorities conferred by this Ordinance, the Public Trustee or any other person appointed as the committee of the estate of any person, or the Public Trustee being authorized by this Ordinance to administer the estate of any person, may apply to the Judge for advice or direction, under the provisions of section ninety-nine of "The Administration and Probate Act", 1891, of the State of South Australia, in its application to the Northern Territory, or of that Act as subsequently amended by Ordinance, and the provisions of that section shall apply in every case where the Public Trustee or any other person has been so appointed, or the Public Trustee has been so authorized.

Power of Public Trustee or committee to apply to Court for directions.

**50.** When a power invested in any person in the character of trustee or guardian, or the consent of any person to the exercise of a power is necessary in the like character or as a check upon undue exercise of the power, and it appears to the Court to be expedient that the power should be exercised or the consent given, the committee (if any) of the estate of such person, or the Public Trustee being authorized by this Ordinance to administer the estate, may, in the name and on behalf of that person, and with the sanction of an order of the Court made upon the application of any person interested in the exercise of the power, exercise the power or give the consent in such manner as the order directs.

Exercise of powers vested in mentally defective person.

**51.** Where, under this Ordinance, the Public Trustee or any other person appointed as the committee of an estate, or the Public Trustee being authorized by this Ordinance to administer an estate, exercises, under order of the Court, in the name and on behalf of any person a power of appointing new trustees, the persons who, after and in consequence of the exercise of the power, are the trustees shall have all the same rights and powers as they would have had if they had been appointed by order of the Court under "The Trustee Act, 1893", of the State of South Australia, in its application to the Northern Territory or under that Act as subsequently amended by Ordinance, and the Court may, in such case, where it seems to be expedient, make any such order respecting the property subject to the trust as might have been made in similar circumstances under the provisions of that Act, in its like application, on the appointment thereunder of new trustees.

Effect of appointment of new trustees.

**52.—(1.)** The Public Trustee or other person appointed as the committee of the estate of any person, or the Public Trustee being authorized by this Ordinance to administer the estate of any person, may, in the name and on behalf of such person,

Power of committee or Public Trustee to execute assurances.

execute and do all such assurances and things as he deems necessary for effectuating any of the powers conferred upon him by this Ordinance or by any order of the Court.

(2.) Notwithstanding anything contained in any law of the Northern Territory relating to real property, all assurances and things so executed or done shall have the same force and effect as if executed or done by the person himself, if he were not a mentally defective person.

Committee and  
Public Trustee  
subject to  
orders of Court.

**53.** Notwithstanding anything contained in this Ordinance, the Public Trustee or other person appointed as the committee of the estate of any person, or the Public Trustee being authorized by this Ordinance to administer the estate of any person, shall, in the exercise of any power conferred by this Ordinance, be subject to any orders made in the matter by the Court.

Limitation of  
contractual  
powers of person  
of whose estate  
a committee or  
administrator  
appointed.

**54.—(1.)** A person of whose estate the Public Trustee or any other person has been appointed the committee, or whose estate the Public Trustee is by this Ordinance authorized to administer, shall not be capable, without the leave of the Court, of making any conveyance, transfer, lease, mortgage or other disposition of his property, or of any part thereof, or of entering into any contract, except for necessities. Any such conveyance, transfer, lease, mortgage or other disposition, and any such contract, other than for necessities, shall be voidable by such person or by the Public Trustee or other committee on his behalf.

(2.) The Court may, by order, give leave to any such person to make any conveyance, transfer, lease, mortgage or other disposition of his property, or of any part thereof, or to enter into any contract, if the Court is satisfied that the conveyance, transfer, lease, mortgage, disposition or contract is for the benefit of such person, and that he consents thereto with adequate understanding of the nature thereof.

(3.) Nothing in this section shall affect the law relating to the validity of wills or other testamentary dispositions.

(4.) Nothing in this section shall invalidate any conveyance, transfer, lease, mortgage, disposition or contract made or entered into by any such person if the other party thereto acted in good faith without knowledge that a committee had been so appointed or that the Public Trustee was so authorized to administer the estate.

Payment of  
maintenance,  
cost of  
administration,  
and  
commission.

**55.—(1.)** All expenses incurred by the Public Trustee or other person appointed as the committee of the estate of any person, or by the Public Trustee where he is authorized by this Ordinance to administer the estate of any person, in the maintenance of the person or the administration of his estate, shall be charged against and payable out of the estate.

(2.) In addition to the provisions of sub-section (1.) of this section—

(a) the provisions of section one hundred of the Administration and Probate Acts of the State of South Australia, in their application to the Territory, or under that Act as subsequently amended by Ordinance, shall apply in respect of all moneys coming under the control of the Public Trustee and forming part of any estate of which he is appointed committee, or which he is by this Ordinance authorized to administer; and

(b) the Court may allow to any other committee such commission or other remuneration out of the estate of which he is committee, and either periodically or otherwise, as the Court deems just and reasonable:

Provided that no such allowance shall be made to any such committee who has neglected or failed to perform any duty imposed by or under section forty-five of this Ordinance.

(3.) The expenses and commission or remuneration to be charged under this section shall be payable out of the estate, although the person dies, or the estate otherwise ceases to be under the administration of the Public Trustee or other committee, before the payment thereof.

**56.** Where any stock is standing in the name of, or is vested in, a committee (other than the Public Trustee) of the estate of a mentally defective person as committee, and

Power to transfer stock of mentally defective person in certain cases.

(a) the committee dies intestate or becomes a mentally defective person or resides out of the Northern Territory;

(b) it is uncertain whether the committee is living or dead; or

(c) the committee neglects or refuses to transfer the stock, or to receive and pay over the dividends thereof, as the Court directs,

the Court may order that the stock or any part thereof be transferred to or into the name of a new committee or the Public Trustee or into Court or otherwise, and to receive and pay over the dividends thereof in such manner as the Court directs.

**57** Where any stock is standing in the name of, or is vested in, a person residing out of the Northern Territory, the Court, upon proof to its satisfaction that that person has been declared mentally defective and that his personal estate has been vested in a person appointed for the management thereof, according to

Transfer of stock in name of mentally defective person residing out of the Territory.



the law of the place where he is residing, may order some person to make such transfer as the Court directs of the stock or any part thereof to or into the name of the person so appointed or otherwise, and to receive and pay over the dividends thereof in such manner as the Court directs.

Who shall be appointed to make transfer.

**58.** Where an order is made under either section fifty-six or section fifty-seven of this Ordinance for the transfer of stock, the person to be named in the order for making the transfer shall be some proper officer of the bank, company or society whose stock is to be transferred.

Ordinance not to subject person's property to certain debts.

**59.** Nothing contained in this Ordinance shall subject the property of any person, or any part thereof, to the debts or demands of his creditors, further or otherwise than as the same is subject thereto by due course of law apart from this Ordinance.

Meaning of "mentally defective person" in this Part.

**60.** For the purposes of this Part, a person shall be deemed to be mentally defective if he is a "mentally defective person" within the definition of that expression in section four of this Ordinance, or if, though he may be capable of earning a living under favorable circumstances, he is incapable from mental deficiency existing from birth or from an early age of competing on equal terms with his normal fellows or of managing himself and his affairs with ordinary prudence.

#### PART IV.—OFFENCES.

Occupier not to receive more than one mentally defective person at one time.

**61.—(1.)** Any householder, occupier or inmate of any house or place who, without the consent in writing of the Administrator, permits to reside in that house or place, or has under his care or charge therein, at the same time more than one person whom by the exercise of oversight, care or control he treats as mentally defective, shall be guilty of an offence.

Penalty: One hundred pounds or imprisonment for six months.

(2.) This section shall not apply to the residence in any house or place of mentally defective persons who are members of the same family, provided that no payment is made to any person in consideration of their residence or maintenance in such house or place.

(3.) In any prosecution under this section, if it is proved that any person resident in any house or place is mentally defective, the burden of proving that the defendant did not treat him as such shall lie upon the defendant.

**62.** Any medical practitioner who signs any certificate under or for the purposes of this Ordinance without having seen and personally examined the person to whom it relates, at the time and manner specified in the certificate, for the purpose of ascertaining the condition of the person to the best of his knowledge and power, shall be guilty of an offence.

Signing medical certificate without examination.

Penalty: Fifty pounds.

**63.** Any medical practitioner who wilfully certifies in writing that any person is mentally defective not believing him so to be, or wilfully makes any false or misleading statement in any certificate under or for the purposes of this Ordinance, shall be guilty of an offence.

False certificates by medical practitioners.

Penalty: One hundred pounds or imprisonment for one year.

**64.** Any person who, not being a medical practitioner within the meaning of this Ordinance, signs any certificate under or for the purposes of this Ordinance in which he describes himself as or pretends to be a medical practitioner or otherwise purports to act under this Ordinance in the capacity of a medical practitioner, shall be guilty of an offence.

Falsely pretending to be medical practitioner.

Penalty: One hundred pounds or imprisonment for one year.

**65.** Any person who, by the production of a false certificate or other fraudulent means, procures or attempts to procure any person who is not a mentally defective person to be certified as a proper person to be received into a State asylum, shall be guilty of an offence.

Fraudulently procuring confinement of sane person.

Penalty: One hundred pounds or imprisonment for one year.

**66.—(1.)** Any householder or other person having the oversight, care or control of a mentally defective person, or any officer of, or person employed in, any house or place in which a mentally defective person resides, who strikes, wounds or ill-treats, or wilfully neglects the mentally defective person shall be guilty of an offence.

Neglect or ill-treatment of mentally defective persons.

Penalty: One hundred pounds or imprisonment for one year.

**(2.)** Nothing in this section shall prejudice or affect the civil or criminal responsibility (if any) of the offender under any other law of the Northern Territory.

**67 —(1.)** Any person who has, or attempts to have, carnal knowledge of any female who is detained in any house or other place, under the provisions of this Ordinance, or is otherwise under oversight, care or control as a mentally defective person, shall be guilty of an offence.

Carnal knowledge of mentally defective female.

Penalty: Imprisonment for five years.

(2.) For the purposes of this section, any female shall be deemed to be detained in a house or other place, although absent on leave or otherwise therefrom or escaped therefrom, until she is duly discharged therefrom in due course of law, or ceases to be under oversight, care or control as a mentally defective person.

(3.) It shall be a good defence in any prosecution for an offence against this section if the defendant proves that at the time of the act committed he did not know and had no reasonable cause to believe or suspect that the female was so detained or was under oversight, care or control as a mentally defective person.

(4.) The consent of the female shall not be a defence in any prosecution under this section.

(5.) Nothing in this section shall prejudice or affect the civil or criminal responsibility (if any) of the offender under any other law of the Northern Territory.

Penalty for  
contravention  
of the  
Ordinance.

**68.** Any person who in any way, whether by act or omission, contravenes any provision of this Ordinance shall be guilty of an offence against this Ordinance, and, unless some other penalty is expressly provided by this Ordinance, be liable to a penalty not exceeding Twenty pounds.

#### PART V.—MISCELLANEOUS.

References to  
lunatics, &c.,  
to include  
persons  
mentally  
defective.

**69.**—(1.) Any reference in any law of the Northern Territory to a person who is idiot, lunatic, insane or of unsound mind, or the like, shall be deemed to include a reference to a mentally defective person within the meaning of this Ordinance.

(2.) Any reference in this Ordinance to a mentally defective person shall be deemed to include a reference to a person who is idiot, lunatic, insane or of unsound mind, or the like, within the meaning of any other law of the Northern Territory.

Payment of  
cost of  
maintenance  
and of funeral  
expenses of  
patients.

Substituted by  
N . 13, 1955,  
s. 2.

**70.**—(1.) Where a patient in a State institution is—

- (a) a mentally defective person transferred to the institution under this Ordinance; or
- (b) a person normally resident in the Northern Territory and confined in the institution under the law of the State,

the cost of the maintenance of the patient in the institution shall be paid by the Administrator out of moneys appropriated by the Parliament and available for the purpose.

(2.) Where a patient referred to in the last preceding subsection dies and any funeral expenses are incurred by the Crown in respect of the deceased patient, the amount of those expenses

is a charge against and payable out of the deceased patient's estate and, if the assets of the estate are insufficient to enable payment in full of that amount to be made out of the estate, the amount of the deficiency is a debt due to the Crown for which the following persons are jointly and severally liable:—

- (a) the husband (if any) of the deceased patient;
- (b) any children of the deceased patient who have attained the age of twenty-one years; and
- (c) where the deceased patient is under the age of twenty-one years, the father, or, if the father is dead, the mother (if alive), of the deceased patient.

(3.) A debt due to the Crown under the last preceding subsection may be recovered by action at the suit of the Administrator in any court of competent jurisdiction and is payable to the Administrator or any person authorized by him to receive the moneys.

(4.) Where two or more persons are jointly and severally liable under this section for payment of a debt due to the Crown, they are entitled as against each other to such indemnity or contribution as is directed by the Court.

(5.) Nothing in this section shall be deemed to take away or restrict the liability of any person for the maintenance of any other person under any other law of the Northern Territory, or the power of any court to make an order under such a law in respect of the maintenance of any person, or affect the liability of any person under any agreement as to the charges for accommodation of a special payment patient.

**71.—(1.)** The Judge of the Northern Territory may make **Rules of Court** prescribing all matters which are necessary or convenient to be prescribed for carrying out this Ordinance so far as they relate to the judicial power and duties of the Court, and in particular—

- (a) for regulating the practice and procedure of the Court in matters under Part III. of this Ordinance, and for carrying into effect the several objects of this Ordinance so far as they relate to the judicial powers or duties of the Court under any part of this Ordinance;
- (b) for the protection, care and management of the persons and estates of mentally defective persons and for carrying out the functions, powers and duties of the Public Trustee and committees in connexion with the management of the estates of such persons; and

(c) prescribing forms and scales of fees, costs and expenses to be used and paid in connexion with the matters dealt with in rules made under this section.

(2.) All Rules of Court made in pursuance of this section shall be published or notified in the *Gazette*, and copies thereof shall be forwarded to the Minister after the making thereof.

(3.) The Minister may, by notification in the *Gazette*, disallow any Rule of Court, and thereupon the Rule so disallowed shall cease to have effect.

No liability in respect of act done in good faith in pursuance of this Ordinance.

72.—(1.) A person who does any act in pursuance or purported pursuance of any provision of this Ordinance, or omits to exercise any power conferred by this Ordinance, shall not be under any civil or criminal liability in respect thereof, whether on the ground of want of jurisdiction or of mistake of law or of fact, or on any other ground if he has acted, or omitted to act, in good faith and with reasonable care.

(2.) In any proceedings taken against any such person for any such act or omission, the burden of proving that he acted, or omitted to act, without good faith or without reasonable care, shall lie upon the plaintiff.

(3.) No such proceedings shall be commenced except within the period of six months next after the act or omission complained of, or, in the case of a continuance of injury or damage, during the continuance or within six months after the ceasing thereof:

Provided that, in calculating the period of six months no account shall be taken of any time or times during which the person injured was in confinement, lawfully or unlawfully, as a mentally defective person, or was ignorant of the facts which constitute the cause of action, or during which the defendant was out of the Northern Territory.

(4.) Any proceedings taken against any such person for any such act or omission may, upon summary application to the Court, in which or before whom they are taken, be stayed if the Court is satisfied that there is no reasonable ground for alleging want of good faith or reasonable care, or that the proceedings are frivolous or vexatious or have not been commenced within the period limited by sub-section (3.) of this section.

(5.) Nothing in this section shall deprive any person of any defence which he would have independently of this section.

72A.—(1.) The Administrator may, in relation to a matter or class of matters, by writing under his hand, delegate to an officer all or any of his powers or functions under this Ordinance (except this power of delegation) so that the delegated powers

Delegation of powers by Administrator.  
Inserted by No. 13, 1955, s. 3.

or functions may be exercised or performed by the delegate with respect to the matter, or to matters included in the class of matters, specified in the instrument of delegation during any absence of the Administrator from the town of Darwin.

(2.) A delegation under this section is revocable at will and does not prevent the exercise of a power or the performance of a function by the Administrator.

73 Strict compliance with the forms in the Second Schedule to this Ordinance shall not be required and substantial compliance therewith shall suffice for the purposes of this Ordinance. Compliance with forms.

74. The Administrator may make regulations, not inconsistent with this Ordinance, prescribing all matters (except those mentioned in section seventy-one of this Ordinance) which by this Ordinance are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Ordinance. Regulations.

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## THE SCHEDULES.

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### THE FIRST SCHEDULE.

Section 2.

- "Lunatics Act, 1864" of the State of South Australia (No. 21 of 1864).
- "The Lunatics Act, 1865-6" of the State of South Australia (No. 19 of 1865-6).
- An Act further to amend "The Lunatics Act, 1864" of the State of South Australia (Act No. 1 of 1868).
- Lunacy Ordinance 1920 of the Northern Territory (No. 7 of 1920).
- Lunacy Ordinance 1926 of the Northern Territory (No. 4 of 1926).
- Lunacy Ordinance (No. 2) 1926 of the Northern Territory (No. 17 of 1926).

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### THE SECOND SCHEDULE.

Section 6.

#### Mental Defectives Ordinance 1940.

FORM 1.

ORDER OF JUSTICE FOR THE APPREHENSION OF A PERSON BELIEVED TO BE MENTALLY DEFECTIVE AND WITHOUT SUFFICIENT MEANS OF SUPPORT, OR, ETC., ETC.

To \_\_\_\_\_, a member of the Police Force of the Northern Territory and to all other members of the said Force.

Whereas it has been made to appear to me, the undersigned [*full name*], a Justice of the Peace for the Northern Territory, by complaint on oath that of [*residence and occupation, if any*], a person believed to be mentally defective, is without sufficient means of support (*or is wandering at large*), (*or has been discovered under circumstances that denote a purpose of committing an offence against the law*):

Now I hereby require you to apprehend the said \_\_\_\_\_ and take him before any Justice of the Peace to be dealt with under the *Mental Defectives Ordinance 1940*.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_ at \_\_\_\_\_, in the Northern Territory. \_\_\_\_\_, J.P.

**Mental Defectives Ordinance 1940-1957.**THE SECOND SCHEDULE—*continued.*

Sections 7, 10.

FORM 2.

*Mental Defectives Ordinance 1940.*

## FORM OF MEDICAL CERTIFICATE FOR RECEPTION INTO A STATE INSTITUTION.

I, the undersigned [*full name*], of \_\_\_\_\_, in the Northern Territory, a duly qualified and registered medical practitioner of the said Territory, hereby certify that I, on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at [*here insert particulars of house and street, or other like particulars, and name of town or other locality*] in the said Territory, separately from any other medical practitioner, personally examined, \_\_\_\_\_, of [*residence and occupation, if any*], is mentally defective within the meaning of the *Mental Defectives Ordinance 1940* and is a proper person to be taken charge of and detained under care and treatment, and that I have formed this opinion on the following grounds, viz.:—

1. Facts observed by myself [*here state the facts*].
2. Other facts [*if any*] communicated to me by others [*here state the information and by whom communicated*].

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Signature  
Qualifications  
Place of abode

Sections 7, 10,  
12, 14.

FORM 3.

*Mental Defectives Ordinance 1940.*

## CERTIFICATE OF NECESSITY FOR MENTALLY DEFECTIVE PERSON TO BE RECEIVED INTO STATE INSTITUTION.

I, C.D. [*in the case of a single Justice, or in the case of two Justices, We, C.D. and E.F.*] the undersigned, a Justice (*or Justices*) of the Peace having jurisdiction as such in the Northern Territory, hereby certify that A.B. is a proper person to be transferred to a State institution.

Subjoined is a statement respecting the said A.B.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.  
(Signed) \_\_\_\_\_ C.D. or E.F.

## STATEMENT.

(If any particulars in this statement be not known, the fact to be so stated.)

Name of patient, and Christian name at length—

Sex and age—

Married, single or widowed—

Condition of life, and previous occupation (if any)—

Religion, so far as known—

Previous place of abode—

Whether first attack—

Age (if known) on first attack—

When and where previously under care and treatment—

Duration of existing attack—

Supposed cause—

Whether subject to epilepsy—

Whether suicidal—

Whether dangerous to others—

Name and Christian name and place of abode of the nearest known relative of the patient, and degree of relationship (if known)—

I  
We certify that to the best of my  
our knowledge the above particulars are correctly stated.

(Signed)

C.D. or E.F.

*Mental Defectives Ordinance 1940-1957.*

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THE SECOND SCHEDULE—*continued.*

FORM 4. Section 7, 10, 12, 13.

*Mental Defectives Ordinance 1940.*

WARRANT OF COMMITMENT.

To G.H. of and all members of the Police Force of the Northern Territory and to the Keeper of the Gaol at

Whereas A.B. of was this day certified before me [or us] a Justice [or Justices] of the Peace having jurisdiction as such in the Northern Territory, to be a proper person to be transferred to a State institution:

Now therefore I [or we] do hereby direct you, the said G.H. to take the said A.B. and safely convey him to the at and there deliver him to the Keeper or other person in charge thereof, together with this precept; and I [or we] do hereby command you the said Keeper or other person in charge of the at to receive the said A.B. into your custody in the said there to imprison and keep him until the service upon you of an Order by the Administrator directing that the said A.B. be sent for care and maintenance to a State institution: And for so doing this shall be your sufficient warrant.

Given under my hand [or our hands] this day of One thousand nine hundred and at in the Northern Territory

Justice [or Justices] of the Peace.

FORM 5. Sections 7, 10, 12, 17.

*Mental Defectives Ordinance 1940.*

ORDER OF REMOVAL TO STATE INSTITUTION OF MENTALLY DEFECTIVE PERSON.

Whereas of is the person referred to in the Certificate hereunto annexed whereby the said is certified to be a proper person to be transferred to a State institution:

Now therefore I the Administrator of the Northern Territory do hereby direct you to convey the said to [here insert name of place in State agreed upon] and there to set him at large and thereupon to identify him to an officer of police of the said State in order that the said

may be apprehended in due course, pursuant to the laws of the said State relating to the oversight, care and control of mental defectives, and dealt with thereunder.

Given under my hand this day of , One thousand nine hundred and

Administrator.

FORM 6. Section 9.

*Mental Defectives Ordinance 1940.*

ORDER OF JUSTICE FOR THE EXAMINATION OF A PERSON BELIEVED TO BE MENTALLY DEFECTIVE AND NOT UNDER PROPER CARE AND CONTROL, OR, ETC.

Whereas it has been made to appear to me the undersigned [full name] a Justice of the Peace for the Northern Territory upon complaint on oath that of [residence and occupation, if any] a person believed to be mentally defective is not under proper care and control [or is cruelly treated or neglected by a person having or assuming the care or charge of him or her]:

Now I hereby direct and authorize you , a duly qualified medical practitioner to visit and examine the said and make inquiry and report to me in writing your opinion thereon.

Given under my hand this day of , 19 , at , in the said Territory.

, J.P.



## Mental Defectives Ordinance 1940-1957.

THE SECOND SCHEDULE—*continued.*

Section 9.

FORM 7.

*Mental Defectives Ordinance 1940.*

ORDER OF JUSTICE FOR THE APPREHENSION OF A PERSON BELIEVED TO BE MENTALLY DEFECTIVE AND NOT UNDER PROPER CARE AND CONTROL, OR, ETC.

To \_\_\_\_\_ a member of the Police Force of the Northern Territory and to all other members of the said Force.

Whereas it has been made to appear to me the undersigned [*full name*] a Justice of the Peace for the Northern Territory upon complaint on oath that \_\_\_\_\_ of [*residence and occupation, if any*], a person believed to be mentally defective is not under proper care and control [*or is cruelly treated or neglected by a person having or assuming the care or charge of him or her*]:

And whereas it appears to me upon a personal visit to and examination of the said \_\_\_\_\_ and inquiry by me into the matter so appearing upon such information [*or upon the report of a duly qualified medical practitioner directed and authorized by me by an order under my hand to visit and examine the said \_\_\_\_\_, and to inquire into the matter so appearing upon such information and to report to me in writing his opinion thereupon*] that the said \_\_\_\_\_ is a mentally defective person, and is not under proper care and control [*or is cruelly treated or neglected by the person having or assuming the care or charge of him or her*]:

Now I require you \_\_\_\_\_ to apprehend the said \_\_\_\_\_ and take him before any two Justices of the Peace to be dealt with under the *Mental Defectives Ordinance 1940.*

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, at \_\_\_\_\_, in the said Territory. \_\_\_\_\_, J.P.

Section 12.

FORM 8.

*Mental Defectives Ordinance 1940.*

REQUEST BY COMMITTEE FOR THE ISSUE OF A CERTIFICATE IN ACCORDANCE WITH FORM 3.

I, the undersigned [*full name*] of [*address and occupation*] being the committee appointed by the Supreme Court of the Northern Territory of [*full name*], a person found by inquisition to be a mental defective within the meaning of the *Mental Defectives Ordinance 1940*, hereby request you to issue a certificate that the said \_\_\_\_\_ is a proper person to be transferred to a State institution.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_  
(*Signature.*)

To \_\_\_\_\_  
Justice of the Peace.

Section 12.

FORM 9.

*Mental Defectives Ordinance 1940.*

## STATEMENT OF PARTICULARS.

(If any particulars are not known, it is to be so stated.)

Name of patient, and Christian name at length—  
Sex and age—  
Married, single, or widowed—  
Number of children—  
Age of youngest child—  
Previous occupation (if any)—  
Habits of life—  
Native place—  
Religion, as far as known—  
Previous place of abode—  
Whether first attack—  
Age on first attack—

*Mental Defectives Ordinance 1940-1957.*

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THE SECOND SCHEDULE—*continued.*

When and where previously under care and treatment—

Duration of existing attack—

Supposed cause—

Whether subject to epilepsy—

Whether suicidal—

Whether dangerous to others—

Whether destructive—

Name and Christian name and place of abode of the nearest known relative of the patient, and degree of relationship—

Names of mentally defective relatives (if any)—

I [or we] certify that to the best of my [or our] knowledge the above particulars are correctly stated.

(Signatures.)

FORM 10. Section 13.

*Mental Defectives Ordinance 1940.*

ORDER SUSPENDING THE EXECUTION OF A RECEPTION ORDER.

Whereas I [or we] [*name or names*] the undersigned Justice [or Justices] of the Peace for the Northern Territory have issued a certificate under my hand [or our hands] under the *Mental Defectives Ordinance 1940* that of [*residence and occupation, if any*], is a proper person to be transferred to a State institution:

And whereas I [or we] deem it expedient that any action following the issue of the said certificate should be suspended: And whereas arrangements have been made at \_\_\_\_\_ for the proper care and control of the said \_\_\_\_\_ :

Now I [or we] hereby direct that action following the issue of the said certificate shall be suspended for a period not exceeding \_\_\_\_\_ days from the making hereof. And I [or we] do hereby authorize and direct you [*full name*] of [*address and occupation*] to remove the said \_\_\_\_\_ forthwith to the said place, there to be kept under proper care and control until a warrant of committal in accordance with Form 4 in the Second Schedule to the said *Mental Defectives Ordinance 1940* is issued for his detention [*here insert any further directions or arrangements for the care and control of the mentally defective person*].

Given under my hand [or our hands] this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_, in the said Territory.  
\_\_\_\_\_, J.P.  
\_\_\_\_\_, J.P.]

FORM 11. Section 17.

*Mental Defectives Ordinance 1940.*

FORM OF MEDICAL CERTIFICATE FOR RECEPTION INTO A STATE INSTITUTION.

I, the undersigned [*full name*], of \_\_\_\_\_, in the Northern Territory, a duly qualified and registered medical practitioner of the said Territory, hereby certify that I, on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at [*name and situation of prison, gaol or other place of confinement*] personally examined \_\_\_\_\_, a person imprisoned or detained in the said prison [*or as the case may be*] and that the said \_\_\_\_\_ is mentally defective within the meaning of the *Mental Defectives Ordinance 1940* and is a proper person to be transferred to a State institution, and that I have formed this opinion on the following grounds, viz.:—

- 1. Facts observed by myself [*here state the facts*].
- 2. Other facts [*if any*] communicated to me by others [*here state the information and by whom communicated*].

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Signature.  
Qualifications.  
Place of abode.