

No. 3 of 1963.

A N O R D I N A N C E

Relating to Persons Suffering from Mental Disorders.

I, the Administrator of the Island of Nauru, in pursuance of the powers conferred by Article 1 of the Agreement dated the second day of July, 1919, between the Government of the United Kingdom, the Government of the Commonwealth of Australia and the Government of New Zealand, hereby make the following Ordinance.

Dated this *twelfth* day of *October*, 1963.

Heysen
Administrator of the Island
of Nauru.

MENTALLY-DISORDERED PERSONS ORDINANCE 1963.

PART I. - PRELIMINARY.

Short title.

1. This Ordinance may be cited as the Mentally-disordered Persons Ordinance 1963.

Parts.

2. This Ordinance is divided into Parts, as follows:-

Part I. - Preliminary (Sections 1 - 5).

Part II. - ~~Care~~ of Mentally-disordered Persons
(Sections 6 - 11).

Part III. - Estates of Mentally-disordered Persons
(Sections 12 - 16).

Part IV. - Miscellaneous (Sections 17 - 20).

Definitions.

3. In this Ordinance, unless the contrary intention appears -

"Government Medical Officer" includes a Medical

Practitioner acting as Government Medical Officer

during the temporary absence of the Government Medical Officer;

"magistrate" means a magistrate of the Court;

"medical practitioner" means a person registered or licensed as a legally qualified medical practitioner under the law of a State or of a Territory of the Commonwealth or of the Dominion of New Zealand or of the United Kingdom;

"State" means a State of the Commonwealth;

"the Court" means the Central Court;

"the Rules of Court" means the Rules of Court applicable to the Court under the Judiciary Ordinance 1957.

Mentally-disordered persons.

4. For the purposes of this Ordinance, a person shall be deemed to be a mentally-disordered person if, owing to his mental condition, he -

(a) is incapable of managing himself or his affairs; and

(b) requires oversight, care or control for his own good or in the public interest.

Arrangements with States.

5. The Administrator may, from time to time, make arrangements with the Government of a State -

(a) for the care, treatment and maintenance, and, in the case of death, the burial or cremation, in that State, under the laws of that State relating to mentally defective persons, of persons in respect of whom certificates are issued under section seven of this Ordinance; and

(b) with respect to the payment of the expenses of that care, treatment, maintenance and burial by the Administration.

PART II. - CARE OF MENTALLY-DISORDERED PERSONS

Apprehension
of mentally-
disordered
persons.

6.-(1.) If the Administrator has reason to believe that a person who -

- (a) has been found wandering at large or in circumstances that, in the opinion of the Administrator, denote a purpose of committing an offence against the law;
- (b) is, in the opinion of the Administrator, without sufficient means of support;
- (c) is not, in the opinion of the Administrator, under proper care and control; or
- (d) is, in the opinion of the Administrator, cruelly treated or neglected by the person having or assuming the care or charge of him,

is a mentally-disordered person, the Administrator may require a member of the police force to apprehend and take the person before a magistrate.

(2.) If a member of the police force has reason to believe that a person who -

- (a) has been found wandering at large or in circumstances that, in the opinion of the member of the police force, denote a purpose of committing an offence against the law; or
- (b) is not, in the opinion of the member of the police force, under proper care and control,

is a mentally-disordered person, the member of the police force may apprehend and take the person before a magistrate.

(3.) If the Administrator has reason to believe that a person who is imprisoned or detained in a prison, gaol or other place of confinement is a mentally-disordered person, the Administrator may require the person in charge of the prison, gaol or other place of confinement to take that first-mentioned person before a magistrate.

power of
magistrate to
commit person
to custody.

7.-(1.) The magistrate before whom a person is brought under the last preceding section shall, with the assistance of two medical practitioners, one of whom shall be the Government Medical Officer, examine the person and make such inquiry regarding him as the magistrate deems necessary.

(2.) If the magistrate is of opinion that it is advisable to remand the person for the purpose of enabling the magistrate to make the examination and inquiry referred to in the last preceding sub-section, the magistrate may, by order signed by him, direct that, for that purpose, the person be removed to, and received in, a convenient place to be specified in the order and be detained there for a period to be so specified, being a period not exceeding fourteen days, and the person shall thereupon be removed to, and received and detained in, that place accordingly.

(3.) At or before the expiration of the period specified in an order made under the last preceding sub-section, the person to whom the order relates shall be brought before a magistrate so that the examination and inquiry under this section may be completed.

(4.) If each of the two medical practitioners assisting a magistrate in an inquiry under this section gives a certificate in accordance with Form 1 in the Schedule to this Ordinance with respect to the person the subject of the inquiry and the magistrate is satisfied, upon examination of the person and of the medical practitioners or upon other proof, that -

(a) the person is a mentally-disordered person;

(b) the person -

(i) has been found wandering at large or in circumstances that denote a purpose of committing an offence against the law;

- (ii) is without sufficient means of support;
- (iii) is not under proper care and control;
- (iv) is cruelly treated or neglected by the person having or assuming the care or charge of him; or
- (v) is undergoing imprisonment or detention in a prison, gaol or other place of confinement; and

(c) it is proper for the person to be taken charge of and detained under care or treatment, the magistrate shall issue a certificate in accordance with Form 2 in the Schedule to this Ordinance and (except in the case of a person undergoing imprisonment or detention) commit the person to the custody of the Administrator.

(5.) Where a person, after having been tried for an offence, is found not guilty of the offence on account of unsoundness of mind and is ordered by the court by which he was tried to be kept in custody until Her Majesty's pleasure is known, the Administrator may issue a certificate to the effect that that person is a mentally-disordered person and such a certificate has effect for the purposes of this Ordinance as if it were a certificate issued by a magistrate under the last preceding sub-section.

8.-(1.) Where a certificate has been issued in respect of a person under the last preceding section, the Administrator shall make suitable arrangements for the care, control and maintenance of the person and may -

- (a) arrange for the removal of the person to, and the care, treatment and maintenance of the person in, a State with the Government of which an arrangement has been made under section five of this Ordinance; or

Transfer of person to State authorities, etc.

(b) where the person -

(i) was brought to Nauru under a contract of employment with an employer; or

(ii) is not ordinarily resident in Nauru, arrange for the return of the person, and such of his dependants (if any) that wish to accompany him, to the place from which the person was brought to Nauru or to the place where he ordinarily resides.

(2.) The employer of a person who is returned to a place outside Nauru by virtue of paragraph (b) of the last preceding sub-section is liable to pay to the Administration the amount of any expense incurred by the Administrator -

(a) in maintaining the person while he is awaiting return to that place; and

(b) in providing the person and any of his dependants with a passage to that place, and the Administrator may recover that amount as a debt due to the Administration by action in a court of competent jurisdiction.

Release from custody.

9. Where a person has been committed to, and is in the custody of, the Administrator under this Ordinance, the Administrator may, if he is satisfied that it is unnecessary or undesirable for the person to continue to be held in custody, discharge that person from custody.

Return of discharged person to Nauru, etc.

10.-(1.) Where a person who has been removed to a State by virtue of paragraph (a) of sub-section (1.) of section eight of this Ordinance and placed in an institution for mental defectives in that State is subsequently discharged from the institution, the Administrator shall, on the application of the discharged person made within thirty days after discharge, make arrangements -

(a) for his return to Nauru: or

(b) where the discharged person -

(i) was brought to Nauru under a contract of employment with an employer; or

(ii) is not ordinarily resident in Nauru, arrange for the return of the person to the place from which the person was brought to Nauru or to the place where he ordinarily resides.

(2.) The employer of a person who is returned to a place outside Nauru by virtue of paragraph (b) of the last preceding sub-section is liable to pay to the Administration the amount of any expense incurred by the Administrator in providing that person with a passage to that place to the extent that that expense exceeds the expense which would have been incurred by the Administrator in returning the person to Nauru, and the Administrator may recover that amount as a debt due to the Administration by action in a court of competent jurisdiction.

Funeral expenses.

11. Where a person who was brought to Nauru under a contract of employment with an employer -

(a) is removed to a State by virtue of paragraph (a) of sub-section (1.) of section eight of this Ordinance; and

(b) dies in that State and is buried or cremated by order of the Government of that State, at the expense of the Administration, in accordance with an arrangement made under section five of this Ordinance,

the employer is liable to pay to the Administration the amount of the cost of the burial or cremation, as the case may be, and the Administrator may recover that amount as a debt due to the Administration by action in a court of competent jurisdiction.

PART III. - ESTATES OF MENTALLY DISORDERED PERSONS.

Appointment
of committees.

12.-(1.) The Court may, by order, appoint a person approved by the Administrator to be the committee of the estate of a person in respect of whom a certificate has been issued under section seven of this Ordinance.

(2.) A committee appointed under this section continues 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.

(3.) The Court may, at any time, rescind an order appointing a committee on being satisfied that the person of whose estate the committee was appointed is able to manage his own affairs.

(4.) The Court may, at any time, on being satisfied that there is good cause for so doing, rescind an order appointing a committee of an estate and, by order, appoint another person approved by the Administrator to be the committee of that estate.

Powers of
committee.

13.-(1.) When a person is appointed as the committee of the estate of a person under the last preceding section, the estate does not, by virtue of that appointment, become vested in the committee, but the committee becomes entitled to take possession of, and manage, the estate.

(2.) Without limiting the generality of the powers conferred by the last preceding sub-section, the committee of the estate of a person may -

(a) sell, or otherwise deal with, any property included in the estate;

(b) pay the debts of the person out of moneys included in the estate;

(c) pay the cost of repairing or insuring any property included in the estate out of moneys included in the estate;

- (d) demand, receive and recover moneys payable or belonging to the person;
- (e) carry on any trade or business of the person;
- (f) apply, in such manner and to such extent as he thinks fit, moneys included in the estate for -
 - (i) the maintenance of the person or his dependants; or
 - (ii) the education or advancement of the children or grandchildren of the person; or
- (g) do any other thing that the Court, on an application by the committee, is satisfied should be done to protect the interest of the person in his property.

(3.) A committee is, in the exercise of his powers under this section, subject to the Rules of Court and to any order made by the Court.

(4.) A committee of an estate may, without prejudice to the powers conferred on him by this section, apply to the Court for advice or direction as to matters connected with the estate.

Payment of cost
of management
and commission.

14.-(1.) Where a person is appointed as the committee of the estate of a person, all expenses incurred by the committee in connexion with the estate shall be charged against, and be payable out of, the estate.

(2.) The Court may, on the application of the committee of the estate of a person, allow to the committee out of the estate such commission or other remuneration as the Court deems just and reasonable, and the amount so allowed shall be charged against, and be payable out of, the estate.

(3.) The expenses, commission or remuneration to be charged against the estate of a person 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 committee, before the payment of the expenses, commission or remuneration, as the case may be.

Statement as to estate.

15.-(1.) The Administrator may, by writing under his hand, direct the committee of an estate to furnish to the Administrator, at such times as are specified in the direction, a statement with respect to such matters relating to the estate as are specified in the direction.

(2.) A person shall comply with a direction of the Administrator given under the last preceding sub-section.

(3.) A person shall not wilfully make a false or misleading statement in a statement furnished in compliance with the last preceding sub-section.

Penalty : Fifty pounds.

Limitation of contractual powers of persons of whose estate a committee appointed.

16.-(1.) Subject to this section, a person in respect of whose estate a committee has been appointed is not capable, without the leave of the Court, of making any conveyance, transfer, lease, mortgage or other disposition of his property, or of any part of his property, or of entering into any contract, other than a contract for necessities.

(2.) Subject to this section, a conveyance, transfer, lease, mortgage or other disposition or a contract, other than a contract for necessities, made or entered into, without the leave of the Court, by a person referred to in the last preceding sub-section is voidable by the person or by his committee on his behalf.

(3.) The Court may, by order, give leave to a person referred to in sub-section (1.) of this section to make a conveyance, transfer, lease, mortgage or other disposition of his property, or of any part of his property, 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 the person, and that he consents to it with adequate understanding of the nature of his action.

(4.) Nothing in this section affects the law relating to the validity of wills or other testamentary dispositions.

(5.) Nothing in this section invalidates a conveyance, transfer, lease, mortgage, disposition or contract made or entered into by a person referred to in sub-section (1.) of this section if the other party thereto acted in good faith without knowledge that a committee of the estate of the person had been appointed.

PART IV. - MISCELLANEOUS.

False
certificates
by medical
practitioners.

17. A medical practitioner shall not -

- (a) wilfully certify in writing that a person is a mentally-disordered person not believing him so to be; or
- (b) wilfully make a false or misleading statement in a certificate under or for the purposes of this Ordinance.

Penalty : One hundred pounds or imprisonment for one year.

Falsely
pretending
to be a
medical
practitioner.

18. A person who is not a medical practitioner shall not -

- (a) sign a certificate under or for the purposes of this Ordinance in which he describes himself, as, or pretends to be, a medical practitioner; or
- (b) otherwise purport to act under this Ordinance in the capacity of a medical practitioner.

Penalty : One hundred pounds or imprisonment for one year.

Fraudulently
obtaining
commitment
of a sane
person.

19. A person shall not, by the production of a false certificate or other fraudulent means, obtain or attempt to obtain the commitment to the custody of the

Administrator under this Ordinance of a person who is not a mentally-disordered person.

Penalty : One hundred pounds or imprisonment for one year.

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

20.-(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, is not under any civil or criminal liability in respect of that act or omission, whether on the ground of want of jurisdiction or of mistake of law or of fact or on any other ground, unless it is proved that he has acted, or omitted to act, without good faith or without reasonable care.

(2.) Proceedings taken against a person for an act or omission referred to in the last preceding sub-section may, upon application to the court in which they are taken, be dismissed if the court is satisfied that -

- (a) there is no reasonable ground for alleging want of good faith or reasonable care;
- (b) the proceedings are frivolous or vexatious; or
- (c) the proceedings have not been commenced within a reasonable time.

(3.) Nothing in this section deprives any person of any defence which he would have independently of this section.

THE SCHEDULE.

Section 7.

Form 1.

Mentally-disordered Persons Ordinance 1963.

MEDICAL CERTIFICATE.

I, _____ of _____, a duly qualified medical practitioner, hereby certify that -

(a) on the _____ day of _____, 19____, at _____, I, separately from any other medical practitioner, personally examined _____ of _____

(b) I am of the opinion that the said _____ is a mentally-disordered person and that it is proper for him to be taken charge of and detained under care or treatment; and

(c) I have formed that opinion on the following grounds :-

Facts observed by myself.

(Here state the facts)

Facts (if any) communicated to me by other persons.

(Here state the facts and the names and addresses of the informants.)

Dated this _____ day of _____, 19____.

Signature:

Qualifications:

Address:

Mentally-disordered Persons Ordinance 1963.

MAGISTRATE'S CERTIFICATE.

I, _____ of _____,
a Magistrate of the Central Court of the Island of Nauru, hereby
certify that, in pursuance of section seven of the abovementioned
Ordinance, I have this day committed

_____ of _____,
a mentally-disordered person, to the custody of the Administrator
of the Island of Nauru.

Dated this _____ day of _____, 19 ____.

Signature of Magistrate.