

[Prepared by the Parliamentary Counsel]

1976

A BILL FOR

An Act to make provision for the care and protection of persons who are mentally ill or mentally handicapped; to repeal the Mental Health Act, 1935-1974; and for other purposes.

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I

PRELIMINARY

1. This Act may be cited as the "Mental Health Act, 1976".

2. This Act shall come into operation on a day to be fixed by proclamation.

3. This Act is arranged as follows:-

PART I - PRELIMINARY

PART II - ADMINISTRATION

Division I - The Commission

Division II - Objectives of the Commission

Division III - Reception Centres

Division IV - Records to be kept and Information to be Supplied in Relation to Reception Centres

PART III - RECEPTION OF PATIENTS

Division I - Admission of Patients to Reception Centres

Division II - Apprehension of Persons who Appear to be Suffering from Mental Illness or who are Unlawfully at Large

PART IV - GUARDIANSHIP OF PERSONS SUFFERING FROM MENTAL ILLNESS OR MENTAL HANDICAP

Division I - The Guardianship Board

Division II - Reception of Persons into Guardianship of Board

Division III - Appointment of the Administrator of the Estate of a Person Suffering from a Mental Illness or Mental Handicap

Short title.

Commencement.

Arrangement of Act.

## PART V - THE MENTAL HEALTH REVIEW TRIBUNAL

Division I - Constitution and Powers of the Tribunal

Division II - Functions of the Tribunal

Division III - Appeals from Decisions of the Tribunal

Division IV - Representation of Patients in Appeals

PART VI - LICENSING OF PSYCHIATRIC REHABILITATION  
CENTRES

## PART VII - MISCELLANEOUS.

Repeal and  
transitional  
provision.

4. (1) The following Acts are repealed:-
- the Mental Defectives Act, 1935;
  - the Mental Defectives Act Amendment Act, 1939;
  - the Mental Defectives Act Amendment Act (No. 2), 1939;
  - the Mental Defectives Act Amendment Act, 1941;
  - the Mental Defectives Act Amendment Act, 1945;
  - the Mental Defectives Act Amendment Act, 1950;
  - the Mental Defectives Act Amendment Act, 1953;
  - the Mental Defectives Act Amendment Act, 1958;
  - the Mental Health Act Amendment Act, 1959;
  - the Mental Health Act Amendment Act, 1960;
  - the Mental Health Act Amendment Act, 1961;
  - the Mental Health Act Amendment Act, 1962;
  - the Mental Health Act Amendment Act (No. 2), 1962;
  - the Mental Health Act Amendment Act, 1964;
  - the Mental Health Act Amendment Act, 1965;
  - the Mental Health Act Amendment Act, 1966;
  - the Mental Health Act Amendment Act, 1967;
  - the Mental Health Act Amendment Act, 1968;
  - the Mental Health Act Amendment Act, 1969;
  - the Mental Health Act Amendment Act, 1974.
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(2) Any person lawfully detained as a mental defective under the provisions of the repealed Act, and in detention immediately before the commencement of this Act, shall be deemed to have been detained under the corresponding provisions of this Act and he shall continue in detention until discharged in pursuance of this Act.

(3) A licence granted under the repealed Act in respect of a private mental home, or a psychiatric rehabilitation hostel shall be deemed to be a licence in respect of a psychiatric rehabilitation centre under this Act and shall, subject to this Act, continue in force for the remainder of the term for which it was granted or last renewed.

Interpretation.

5. In this Act, unless the contrary intention appears -  
 "the Board" means the Guardianship Board constituted under Part IV of this Act;

"the Commission" means the South Australian Health Commission:

"maximum care psychiatric ward" means a reception centre or part thereof declared to be a maximum care psychiatric ward:

"mental handicap" means imperfect or retarded development, impairment or deterioration of mental faculties from whatever cause:

"mental illness" means any illness or disorder of the mind:

"the Minister" means the Minister of the Crown to whom the administration of this Act is for the time being committed by the Governor and includes any other Minister of the Crown who may, for the time being, be temporarily discharging the duties of that Minister:

"patient" means any person lawfully received into, or detained, in any reception centre notwithstanding that he may have escaped, or have been permitted to be absent on leave:

"psychiatric rehabilitation centre" means any hospital, hostel, clinic or other premises at which lodging and

psychiatric care and treatment is offered for fee or reward:

"protected person" means a person received into the guardianship of the Board in pursuance of this Act, or a person in respect of whose estate an administrator is appointed in pursuance of this Act;

"reception centre" means any hospital, clinic or other premises, or any part thereof, declared by proclamation to be a reception centre for the care and treatment of persons suffering from mental illness or mental handicap:

"registered psychiatrist" means a legally qualified medical practitioner who is registered under the Medical Practitioners' Act, 1919-1974, as a specialist in psychiatry:

"relative" of a person means spouse, father, mother, uncle, aunt, grandfather, grandmother, child or grandchild:

"the repealed Act" means the Mental Health Act, 1939-1974, repealed by this Act:

"superintendent" in relation to a reception centre means the person for the time being in charge of the reception centre, or a person duly authorized to admit patients into the reception centre:

"the Tribunal" means the Mental Health Review Tribunal established under this Act.

## PART II

### ADMINISTRATION

#### Division I - The Commission

6. (1) Subject to subsection (2) of this section, the Commission shall have the general administration of this Act.

(2) In the administration of this Act, the Commission shall be subject to direction by the Minister.

Administration  
of this Act by  
the Commission.

reports by the  
Commission.

7. (1) The Commission shall, in each year, on or before the thirtieth day of October, submit to the Minister a report upon the administration of this Act during the twelve months ending on the preceding thirtieth day of June.

(2) The Minister shall, as soon as practicable after his receipt of such report, cause copies of the report to be laid before each House of Parliament.

#### Division II - Objectives of the Commission

Objectives.

8. In exercising its responsibilities for the care and treatment of those who suffer from mental illness or mental handicap the Commission should seek to attain the following objectives:-

- (a) to afford patients the best possible treatment and care;
- (b) to minimise restrictions upon the liberty of patients and interference with their rights, dignity and self respect, so far as is consistent with the proper protection and care of the patients themselves and with the protection of the public;
- (c) to ameliorate adverse effects of mental illness and mental handicap upon family life;
- (d) to rationalize and co-ordinate services for the mentally ill or mentally handicapped;
- (e) to assist and encourage voluntary agencies that provide services for the mentally ill or the mentally handicapped;
- (f) to promote research into problems of mental illness and mental handicap;
- (g) to promote informed public opinion on matters of mental health and mental handicap by the dissemination of knowledge.

## Division III - Reception Centres

Proclamation  
of reception  
centres.

9. (1) The Governor may, by proclamation, declare any premises, or any part of premises, to be a reception centre for the purposes of this Act.

(2) The Governor may, by subsequent proclamation, vary or revoke any proclamation previously made under this section.

Maximum care  
psychiatric  
ward.

10. (1) The Governor may, by proclamation, declare any reception centre, or part thereof, to be a maximum care psychiatric ward.

(2) The Governor may, by subsequent proclamation, vary or revoke a proclamation previously made under this section.

Division IV - Records to be kept and Information to be  
Supplied in Relation to Reception Centres

Register of  
patients.

11. (1) The superintendent of every reception centre shall keep or cause to be kept records relating to every patient admitted into the reception centre.

(2) The records shall be kept in the prescribed form and shall set out -

- (a) the name and address of each patient;
- (b) the nature of the mental illness or handicap from which he suffers;
- (c) the nature of any bodily illness or handicap from which he suffers;
- (d) the nature of the treatment administered to the patient;
- (e) if the patient dies, the date and cause of death; and
- (f) such other information as may be prescribed.

Particulars  
relating to  
admission  
of patients  
to reception  
centres.

12. (1) Where in the opinion of the Commission a person seeking information under this section has a proper interest in the matter it shall, upon payment of the prescribed fee, inform the inquirer -

- (a) whether or not a particular person is or has been detained in a reception centre under this Act; and

(b) if so, the date of his admission and (where applicable) the date of his discharge or death.

(2) The Commission shall upon the discharge from a reception centre of a person who considers that he has been improperly detained, furnish him, at his request, free of charge, a copy of any orders or certificates upon which he was detained.

### PART III - RECEPTION OF PATIENTS

#### Division I - Admission of Patients to Reception Centres

13. (1) A person may be admitted as a patient in a reception centre -

(a) in pursuance of his own request;

or

(b) in pursuance of an order under this section.

(2) Where a legally qualified medical practitioner is satisfied -

(a) that a person is suffering from a mental illness that requires treatment;

and

(b) that that person should be admitted as a patient into a reception centre in the interests of his own health and safety or for the protection of other persons,

the medical practitioner may make an order for the admission of that person into a reception centre.

(3) Where an order has been made under subsection (2) of this section and a person is admitted and detained in a reception centre in pursuance of that order, that person shall be examined by a registered psychiatrist -

(a) where it is possible for the examination to take place within twenty-four hours of his admission - within that period;

or

(b) where it is not practicable for an examination to take place within twenty-four hours of his

reception  
of patients.

admission - as soon as practicable after his admission.

(4) When the registered psychiatrist has completed his examination, he may -

(a) discharge the order by which the patient was detained;

or

(b) make an order for detention of the patient for a period not exceeding twenty-four days.

(5) Where an order has been made under paragraph (b) of subsection (4) of this section, the patient shall be examined by two registered psychiatrists before the expiration of the period for which the order is effective and if they concur in the opinion that further detention of the patient is necessary either in the interests of the patient or for the protection of any other person, they may make an order for the further detention of the patient.

(6) An order under subsection (5) of this section shall be effective -

(a) until discharged by the Superintendent of the reception centre in which the patient is for the time being detained;

or

(b) until discharged by the Tribunal.

14. (1) The superintendent of a reception centre is, subject to subsection (2) of this section, authorized and required to comply with an order under this Part.

(2) Where an order is made for the detention of a patient in a reception centre and the superintendent is of the opinion that proper facilities do not exist at his reception centre for the care of the patient, he may decline to admit the patient to the reception centre but, in that case, he shall forthwith inform the Commission of his decision.

Duty of  
superintendent  
of reception  
centre.



(3) Where the superintendent of a reception centre declines to admit a patient under subsection (2) of this section, the Commission shall make arrangements for the admission of the patient into another reception centre.

15. (1) Where a patient is detained in a reception centre, the superintendent shall ensure that he is given as soon as practicable a printed statement in the prescribed form -

(a) informing him of his legal rights;

and

(b) containing such other information as may be prescribed.

(2) Where there is a relative of the patient whose whereabouts is known to, or readily ascertainable by, the superintendent he shall cause a copy of the statement referred to in subsection (1) of this section to be sent, or given, to the relative.

(3) Wherever possible the statement should be in the language with which the patient is most familiar.

16. (1) Where the conduct of a patient is a danger to himself, or to others, and the patient cannot be properly restrained in the reception centre in which he is presently detained, the patient may be transferred, on the authorization of two registered psychiatrists, or, in the absence of two registered psychiatrists, on the authorization of one registered psychiatrist and the superintendent of the hospital to a maximum care ward.

(2) Where a patient is detained in a reception centre and the Commission or the superintendent of the reception centre is of the opinion that another reception centre is better equipped for the care and treatment of that patient, the patient shall, if the Commission or the superintendent so directs, be transferred to that other reception center.

Patients to  
be given  
statement of  
their rights,  
etc.

Transfer of  
patients.

trial leave.

17. (1) Where a person has been detained in a reception centre, the superintendent of the reception centre may, by instrument in writing, permit that person to be absent from the centre for a period not exceeding six months.

(2) A permission granted under this section shall be subject to such conditions as the superintendent thinks fit and specifies in the instrument by which he grants his permission.

Division II - Apprehension of Persons who Appear to be Suffering from Mental Illness or who are Unlawfully at Large

Powers of apprehension of members of police force.

18. (1) Where a member of the police force has reasonable cause to believe -

(a) that a person is suffering from a mental illness;

and

(b) that the conduct of that person is, or has in the recent past, been, such as to cause danger to himself or to others,

the member of the police force shall apprehend that person and bring him as soon as possible for examination by a medical practitioner.

(2) Where it appears to a member of the police force that the behaviour of a person apparently suffering from a mental illness is such as to endanger life or property he may, for the purpose of apprehending that person, break into and enter premises, and use such force as may be reasonably necessary for the purpose of apprehending that person.

Apprehension of persons who have escaped from reception centres.

19. (1) Any person who has been lawfully detained in a reception centre and who escapes from the reception centre may be apprehended without warrant at any time by any officer or servant employed at that reception centre, or any police officer, and returned to that reception centre.