

DIVISION II—RECEPTION OF PERSONS INTO GUARDIANSHIP OF BOARD

PART IV
DIVISION II

26. (1) Where the Board is satisfied, upon an application made under this section, that—

Reception of persons into the guardianship of the Board.

(a) a person is suffering from mental illness and, by reason of that illness—

(i) is incapable of looking after his own health and safety;

or

(ii) is incapable of managing his own affairs.

or

(b) a person is suffering from mental handicap and, by reason of that handicap—

(i) is incapable of managing his own affairs;

or

(ii) requires oversight, care or control in the interests of his own health and safety or for the protection of others,

the Board may, by order, receive that person into its guardianship.

(2) An application may be made under this section—

(a) by the person suffering from the mental illness or the mental handicap;

(b) by a relative of that person;

(c) by the Public Trustee;

(d) by a member of the police force;

or

(e) by any person who satisfies the Board that he has a proper interest in the care and protection of the person in respect of whom the application is made.

27. (1) Where the Board has received a person into its guardianship, it may exercise any of the following powers:—

Power of Board to exercise powers for the custody and welfare of protected persons.

(a) it may, by order, place the protected person in the care and custody of a relative of the protected person or some other person who, in the opinion of the Board, will take proper care of the protected person;

(b) it may, by order, require that the protected person be received into a specified hospital, hostel, home or other institution for treatment or care and place the protected person in the custody of the person for the time being in charge of that hospital, hostel, home or other institution;

(c) it may give directions as to the upbringing, education and training of the protected person;

(d) it may require that the protected person receive medical or psychiatric treatment;

or

(e) any other power exercisable at law or in equity by a guardian.

(2) The Board may—

(a) by further order, vary or revoke any of its orders;

or

(b) vary or revoke any of its previous directions.

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(3) The Board shall, at reasonable intervals, review the circumstances of a protected person.

(4) The Board shall in any matter involving the exercise of a power conferred by this Act in relation to a protected person—

(a) give due consideration to the expressed wishes (if any) of the protected person;

and

(b) treat the welfare of the protected person as the paramount consideration.

DIVISION III **DIVISION III—APPOINTMENT OF THE ADMINISTRATOR OF THE ESTATE OF A PERSON SUFFERING FROM A MENTAL ILLNESS OR MENTAL HANDICAP**

Appointment of administrator.

28. (1) Where in the opinion of the Board a person who is suffering from a mental illness or mental handicap is incapable of administering his affairs, the Board may (whether or not that person has been received into the guardianship of the Board) appoint an administrator of his estate.

(2) An appointment under subsection (1) of this section may be made subject to such conditions as the Board thinks fit.

(3) The Public Trustee shall be appointed the administrator of the estate of a person under this section unless the Board considers that there are special reasons why some other person should be appointed administrator of the estate.

(4) Where some person other than the Public Trustee is appointed administrator of the estate, the Board shall include amongst the terms of the appointment a condition that the administrator shall annually file returns with the Public Trustee setting out such information in relation to his administration as the Public Trustee may require of him.

PART V

PART V

THE MENTAL HEALTH REVIEW TRIBUNAL

DIVISION I—CONSTITUTION AND POWERS OF THE TRIBUNAL

DIVISION I

Establishment of the Tribunal.

29. (1) There shall be a tribunal entitled the “Mental Health Review Tribunal”.

(2) The Tribunal shall consist of three members appointed by the Governor, of whom—

(a) one, who shall be chairman of the Tribunal, shall be—

(i) a person holding judicial office under the Local and District Criminal Courts Act, 1926-1975;

(ii) a special magistrate;

or

(iii) a legal practitioner of not less than seven years standing;

(b) one shall be a legally qualified medical practitioner;

and

(c) one shall be a person who is in the opinion of the Governor otherwise suitably qualified for membership of the Tribunal.

PART V
DIVISION 1

Terms and conditions upon which members hold office.

30. (1) A member of the Tribunal shall be appointed for such term of office, not exceeding three years, as the Governor may determine and specifies in the instrument of his appointment, and, upon the expiration of his term of office, shall be eligible for re-appointment.

(2) The Governor may, subject to subsection (3) of this section, appoint a suitable person to be a deputy of a member of the Tribunal, and such a person, while acting in the absence of that member, shall be deemed to be a member of the Tribunal, and shall have all the powers, authorities, duties and obligations of the member of whom he has been appointed a deputy.

(3) A deputy of the chairman must be—

(a) a person holding judicial office under the Local and District Criminal Courts Act, 1926-1975;

(b) a special magistrate;

or

(c) a legal practitioner of not less than seven years standing.

(4) The Governor may remove a member of the Tribunal from office for—

(a) mental or physical incapacity;

(b) neglect of duty;

or

(c) dishonourable conduct.

(5) The office of a member of the Tribunal shall become vacant if—

(a) he dies;

(b) his term of office expires;

(c) he resigns by written notice addressed to the Minister;

or

(d) he is removed from office by the Governor pursuant to subsection (4) of this section.

(6) Upon the office of a member of the Tribunal becoming vacant, a person shall be appointed, in accordance with this Act, to the vacant office, but where the office of a member of the Tribunal becomes vacant before the expiration of the term for which he was appointed, a person appointed in his place shall be appointed only for the balance of the term of his predecessor.

31. The members of the Tribunal shall be entitled to receive such allowances and expenses as may be determined by the Governor.

Allowances and expenses.

32. An act or proceeding of the Tribunal shall not be invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

Validity of acts of the Tribunal.

33. (1) The chairman shall preside at the hearing of any proceedings by the Tribunal.

Proceedings and decisions of the Tribunal.

(2) Subject to subsection (3) of this section, a decision concurred in by any two members of the Tribunal shall be a decision of the Tribunal.

(3) The chairman shall determine any question relating to the admissibility of evidence, and any other question of law or procedure.

34. (1) In the exercise of its powers and functions under this Act, the Tribunal may—

- (a) by summons signed on behalf of the Tribunal by a member of the Tribunal, or by the secretary to the Tribunal, require the attendance before the Tribunal of any person;
- (b) by summons signed on behalf of the Tribunal by a member of the Tribunal, or by the secretary to the Tribunal, require the production of any books, papers or documents;
- (c) inspect any books, papers or documents produced before it and retain them for such reasonable period as it thinks fit, and make copies of them or any of their contents;
- (d) require any person to make an oath or affirmation that he will truly answer all questions put to him by the Tribunal, or by any person appearing before the Tribunal, relating to any matter being inquired into by the Tribunal;

or

- (e) require any person appearing before the Tribunal to answer any relevant questions put to him by any member of the Tribunal, or by any other person appearing before the Tribunal.

(2) Subject to subsection (3) of this section, if any person—

- (a) who has been served with a summons to attend before the Tribunal fails without reasonable excuse to attend in obedience to the summons;
- (b) who has been served with a summons to produce any books, papers or documents, fails without reasonable excuse to comply with the summons;
- (c) misbehaves himself before the Tribunal, wilfully insults the Tribunal or any member thereof, or interrupts the proceedings of the Tribunal;

or

- (d) refuses to be sworn or to affirm, or to answer any relevant question, when required to do so by the Tribunal,

he shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars.

(3) A person shall not be obliged to answer a question put to him under this section if the answer to that question would tend to incriminate him, or to produce any books, papers or documents if their contents would tend to incriminate him.

(4) In any proceedings, the Tribunal shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms and it shall not be bound by the rules of evidence, but it may inform itself on any matter in such manner as it thinks fit.

DIVISION II—FUNCTIONS OF THE TRIBUNAL

35. (1) Subject to this section, where, by order under this Act—

(a) a patient is detained in an approved hospital;

or

(b) a protected person is placed in the custody of another person,

the Tribunal shall, before the expiration of the first two months of that detention or custody and thereafter at periodic intervals of not more than six months, review the circumstances of that detention or custody.

(2) Where, upon a review in respect of the custody of a mentally handicapped person, the Tribunal is of the opinion that the mental handicap of that person is not likely to be ameliorated, the Tribunal may extend the period within which subsequent reviews must be made to a period not exceeding twelve months.

(3) Unless the Tribunal is satisfied in proceedings under this section that there is good cause for the continuing detention of the patient or custody of the protected person, it shall direct that the order for detention or custody be discharged.

(4) The Tribunal is not obliged to make a review in respect of a person under this section if it has heard an appeal under this Act in respect of the same person within the last preceding period of twenty-eight days.

36. (1) An appeal may be made to the Tribunal against the detention of a patient in an approved hospital by any of the following persons:—

(a) the patient himself;

(b) a relative of the patient;

(c) the Director;

or

(d) any other person who satisfies the Tribunal that he has a proper interest in the care and protection of the patient.

(2) Unless the Tribunal is satisfied in proceedings under this section that there is good cause for the continuing detention of the patient, it shall direct that the order under which he is detained be discharged.

(3) An appeal may not be instituted under this section in respect of a patient—

(a) before the expiration of three days from the day on which he was admitted to the approved hospital;

(b) if a previous appeal in respect of the same patient has been determined in the last preceding period of twenty-eight days;

or

(c) if a review of his detention has been made by the Tribunal in the last preceding period of twenty-eight days.

(4) The Tribunal shall proceed to hear and determine an appeal as soon as reasonably practicable after the institution thereof.

Review of
detention
orders and
custody orders.

Appeals in
respect of
patients
detained in
approved
hospitals.

PART V
 DIVISION II
 Appeals from
 orders of the
 Board.

37. (1) Where the Board has made an order—

- (a) by which a person is received into the guardianship of the Board;
 - (b) by which an administrator is appointed in respect of the estate of a protected person;
- or
- (c) by which a protected person is placed in the custody of another person,

any of the following persons may appeal to the Tribunal against the order:—

- (d) the protected person;
 - (e) a relative of that person;
 - (f) the Director;
- or
- (g) any other person who satisfies the Tribunal that he has a proper interest in the care and protection of the person in respect of whom the order was made.

(2) Upon the hearing of an appeal under this section, the Tribunal may affirm, vary or revoke the order of the Board.

(3) An appeal against an order of the Board by which a protected person is placed in the custody of another person may not be instituted under this section—

- (a) if a previous appeal in respect of the same person has been determined in the last preceding period of twenty-eight days;
- or
- (b) if a review of his custody has been made by the Tribunal in the last preceding period of twenty-eight days.

DIVISION III

DIVISION III—APPEALS FROM DECISIONS OF THE TRIBUNAL

Appeal from
 decisions of
 the Tribunal.

38. (1) Any person aggrieved by a decision or order of the Tribunal shall, subject to this section, be entitled to appeal to the Supreme Court against the decision or order of the Tribunal.

(2) The appeal must be instituted within one month of the making of the decision or order appealed against, but the Supreme Court may, if it is satisfied that it is just and equitable in the circumstances to do so, dispense with the requirement that the appeal should be so instituted.

(3) The Supreme Court may, on the hearing of the appeal, exercise one or more of the following powers, according to the nature of the case:—

(a) affirm, vary or quash the decision or order appealed against, or substitute, and make in addition, any decision or order that should have been made in the first instance;

(b) remit the subject matter of the appeal to the Tribunal for further hearing or consideration, or for re-hearing;

or

(c) make any further or other order as to costs, or any other matter, that the case requires.

(4) Where the appellant in proceedings under this section is the person in respect of whom the appeal is brought, no order for costs shall be made against him.

DIVISION IV—REPRESENTATION OF APPELLANTS

DIVISION IV

39. (1) In every appeal to the Tribunal or the Supreme Court, the person in respect of whom the appeal is brought shall, subject to subsection (2) of this section, be represented by counsel.

Representation upon appeals.

(2) Where the Tribunal or the Court is satisfied that a person does not desire to be represented by counsel upon an appeal and that he has sufficient command of his mental faculties to make a rational judgment in the matter, it may dispense with the requirement that he be represented by counsel at the hearing of the appeal.

(3) Unless the person in respect of whom the appeal is brought decides to engage counsel at his own expense, the counsel by whom he is to be represented shall be chosen—

(a) by that person himself;

or

(b) in default of his making a choice, by the Law Society of South Australia,

from a panel of legal practitioners who have indicated their willingness to represent persons in proceedings under this Act, compiled by the Law Society of South Australia.

(4) A legal practitioner, who is chosen from the panel referred to in subsection (3) of this section, shall be entitled to receive fees for his services from the Commission, in accordance with a prescribed scale, and shall not be entitled to demand or receive from any other person any further fee.

PART VI

PART VI

LICENSING OF PSYCHIATRIC REHABILITATION CENTRES

40. (1) No person shall provide, for fee or reward, accommodation for a person who is subject to an order for detention under this Act unless he is licensed under this Part to use the premises in which the accommodation is provided as a psychiatric rehabilitation centre.

Prohibition against operation of psychiatric rehabilitation centre without licence.

Penalty: One thousand dollars.

(2) In proceedings for an offence against this section it shall be a defence for the defendant to prove that he did not know and could not by the exercise of reasonable diligence have ascertained that the person for whom he provided accommodation for fee or reward was subject to an order for detention under this Act.

(3) This section does not apply to accommodation provided in an approved hospital or in any other hospital incorporated under the South Australian Health Commission Act, 1976.

Psychiatric
rehabilitation
centres.

41. (1) Subject to this section, the Minister may, on the application of a person seeking a licence under this Part, grant him a licence to use premises specified in the licence as a psychiatric rehabilitation centre.

(2) A licence under subsection (1) of this section shall be granted for a term not exceeding twelve months.

(3) A licence granted under subsection (1) of this section shall be subject to all or any of the following conditions specified in the licence:—

(a) that a number of persons stipulated in the licence shall be employed in the operation of the psychiatric rehabilitation centre;

(b) that those persons will have qualifications specified in the licence;

(c) that those persons will competently discharge the functions assigned to them by and specified in the licence;

(d) that persons of the class or classes specified in the licence will not be permitted to reside in the psychiatric rehabilitation centre;

(e) that the number of persons receiving care in the psychiatric rehabilitation centre will not exceed the number specified in the licence;

(f) that the accommodation and facilities provided for persons receiving care in the psychiatric rehabilitation centre will at all times conform to standards specified in the licence;

(g) that the standard of diet provided for persons receiving care in the centre will conform to a standard specified in the licence;

(h) that the psychiatric rehabilitation centre will at all times be open to inspection by any person authorized by the Director to inspect the centre;

(i) that the holder of the licence will comply with any directions of the Director in relation to the operation of the centre and the care or treatment of the persons resident therein;

and

(j) such other conditions as the Minister may think fit to include in the licence.

(4) The Treasurer may, on the recommendation of the Director, and on the application of the holder of a licence under this section, guarantee the repayment of any advance or loan made or proposed to be made to the holder of the licence where the advance or loan is made for the purpose of carrying out such works or the purchase of such property as may be approved by the Minister.

42. (1) Where the holder of a licence under this Part contravenes, or fails to comply with, a condition of the licence, the Minister may, by instrument in writing served personally or by post upon him, give notice of his intention to revoke the licence.

Revocation of licence.

(2) The holder of the licence may appeal against the proposed revocation of the licence to the Tribunal.

(3) Where—

(a) a month has expired since service of the notice under subsection (1) of this section and no appeal has been instituted against the proposed revocation of the licence;

or

(b) an appeal against the proposed revocation of the licence has been dismissed,

the Minister may revoke the licence.

PART VII

PART VII

MISCELLANEOUS

43. (1) Where a member of the police force or an officer or employee of an approved hospital has reasonable cause to believe that a person who has been detained in that approved hospital is unlawfully at large, he may apprehend that person at any time without warrant and return him to that approved hospital.

Apprehension of persons unlawfully at large.

(2) Where a member of the police force has reasonable cause to believe that a protected person who has been placed in the custody of another person is unlawfully at large, he may apprehend the protected person at any time without warrant and return him to the custody of that other person.

(3) Where a special magistrate, on the application of the Crown Solicitor, or a police officer of or above the rank of inspector, is satisfied that a person who has been detained in an approved hospital or placed in the custody of another person is unlawfully at large, he may issue a warrant in the prescribed form directing that the person named therein be apprehended and conveyed to the place from which he escaped.

(4) A person apprehended at any time under a warrant issued under subsection (3) of this section must be conveyed to the place specified in the warrant.

(5) For the purposes of this section, a person shall be deemed to be unlawfully at large if, being lawfully permitted to be absent from an approved hospital, he does not return to the hospital within the period of his permitted absence, or if the absence is subject to a condition or conditions, he does not comply with that condition or any one or more of those conditions.

PART VII

Neglect or ill-treatment of a person suffering from mental illness or mental handicap.

44. (1) Any person having the oversight, care or control of a person who is suffering from a mental illness or mental handicap who ill-treats or wilfully neglects that person, shall be guilty of an indictable offence.

(2) Subsection (1) of this section does not affect or prejudice the operation of any other Act or law in relation to an offender under that subsection.

Offences in relation to certificates and orders, etc.

45. (1) Any medical practitioner who signs any certificate, order or authorization for the purposes of this Act without having seen and personally examined the person to whom the certificate, order or authorization relates shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars.

(2) Any medical practitioner who wilfully certifies that any person is suffering from a mental illness or mental handicap not believing him to be suffering from a mental illness or mental handicap or who wilfully makes any other false or misleading statement in any certificate given under or for the purposes of this Act shall be guilty of an indictable offence.

(3) Any person who, not being a medical practitioner, signs any certificate or order for the purposes of this Act in which he describes himself as, or pretends to be, a medical practitioner or psychiatrist, or otherwise purports to act under this Act in the capacity of a medical practitioner or psychiatrist shall be guilty of an indictable offence.

(4) Any person who, by the production of a false certificate or other fraudulent means, procures or attempts to procure any person who is not suffering from a mental illness or mental handicap to be received into or detained in an approved hospital, or received into the guardianship of the Board, shall be guilty of an indictable offence.

Medical practitioners not to proceed under this Act in respect of their relatives.

46. (1) Where a person suffers from mental illness or mental handicap, a medical practitioner who is a relative of that person shall not sign any certificate, order or authorization under this Act in respect of that person.

(2) A certificate, order or authorization signed in contravention of this section is invalid.

Removing person detained in approved hospital or placed in custody.

47. Any person who, without lawful excuse, removes a patient who has been detained in an approved hospital from that hospital, or removes a protected person who has been placed in the custody of another person from that custody, or aids any such patient or protected person to leave that hospital or custody, shall be guilty of an indictable offence.

Duty to maintain confidentiality.

48. (1) Any person, acting in the administration of this Act, who divulges any personal information, relating to a patient, obtained in the course of his employment, otherwise than as he may be authorized or required to divulge that information by law, or by his employer, shall be guilty of an indictable offence.

(2) This section does not prevent a person from divulging statistical or other information that could not reasonably be expected to lead to the identification of patients to whom it relates.

Penalty for misdemeanour.

49. Any person who is guilty of an indictable offence under this Act shall, on conviction, be liable to a penalty not exceeding two thousand dollars or to imprisonment for a term not exceeding one year.

50. (1) No liability shall attach to any person in respect of any act done, or omission made, by him in good faith, without negligence, and in the exercise or purported exercise of his powers or functions, or in the discharge or purported discharge of his duties, under this Act. Limitation of liability.

(2) No liability shall attach to a member of the Board for any act or omission by the Board in good faith and in the exercise or purported exercise of its powers or functions, or in the discharge or purported discharge of its duties, under this Act.

(3) No liability shall attach to a member of the Tribunal for any act or omission by the Tribunal in good faith and in the exercise or purported exercise of its powers or functions, or in the discharge or purported discharge of its duties, under this Act.

51. Proceedings in respect of an offence under this Act (not being an indictable offence) shall be disposed of summarily. Proceedings.

52. (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act. Regulations.

(2) Without limiting the generality of subsection (1) of this section, those regulations may—

- (a) define the functions, powers and duties of the Director;
 - (b) define the functions, powers and duties under this Act of superintendents of approved hospitals and other officers and servants employed in approved hospitals;
 - (c) provide for the management and control of approved hospitals;
 - (d) provide for the classification of patients;
 - (e) provide for the care and treatment of patients of the various classes;
 - (f) prescribe and provide for the payment and recovery of fees in respect of accommodation, treatment, or other services provided at approved hospitals;
 - (g) provide for the transport of patients or protected persons from one place to another and any matter incidental thereto;
 - (h) provide for the recovery of medical practitioners' fees on the medical examination of persons apprehended by members of the police force;
 - (i) prescribe any matter relating to procedure to be adopted under this Act;
 - (j) prescribe any form to be used for the purposes of this Act;
- and
- (k) prescribe a penalty not exceeding two hundred dollars for breach of any regulation.