

[As laid on the table and read a first time, 14th October, 1976]

[Prepared by the Parliamentary Counsel]

**1976**

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A BILL FOR

**No. 54**

An Act to make provision for the treatment and protection of persons who are mentally ill; to make provision for the care, treatment and protection of persons who are 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

PART I

PRELIMINARY

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

Short title.

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

Commence-  
ment.

3. This Act is arranged as follows:—

Arrangement  
of Act.

PART I—PRELIMINARY

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DIVISION III—APPROVED HOSPITALS

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DIVISION I—ADMISSION OF VOLUNTARY PATIENTS INTO APPROVED  
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## PART I

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Repeal and  
transitional  
provision.

4. (1) The Acts mentioned in the schedule to this Act are repealed.

(2) Any person lawfully detained as a mental defective under the provisions of the repealed Act, and in detention immediately before the commencement of this Act, shall be deemed to have been detained under the corresponding provisions of this Act and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 25 pursuance of this Act.

(3) Where, immediately before the commencement of this Act, the Public Trustee has the custody and administration of the estate of a patient under the provisions of the repealed Act, the Public Trustee shall be deemed to have been appointed the administrator of that estate under this Act. 30

(4) A licence granted under the repealed Act in respect of a psychiatric rehabilitation hostel shall be deemed to be a licence in respect of a psychiatric rehabilitation centre under this Act and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— 35

“approved hospital” means any hospital, clinic or other premises declared by the Minister under Part II of this Act to be an approved hospital for the care and treatment of persons who are mentally ill:

“the Board” means the Guardianship Board constituted under Part IV of this Act: 40

“the Commission” means the South Australian Health Commission:

- “the Director” means the person for the time being holding, or acting in, the office of Director of Mental Health Services under this Act:
- “mental handicap” means imperfect or retarded development, impairment or deterioration of mental faculties from whatever cause:
- 5 “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:
- 10 “patient” means any person suffering from mental illness lawfully admitted to, or detained, in any approved hospital, notwithstanding that he may be unlawfully at large, or have been permitted to be absent on leave:
- “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:
- 15 “psychiatrist” means a legally qualified medical practitioner who is registered under the Medical Practitioners’ Act, 1919-1974, as a specialist in psychiatry:
- 20 “relative” of a person means spouse, father, mother, brother, sister, uncle, aunt, niece, nephew, grandfather, grandmother, child or grandchild:
- “the repealed Act” means the Mental Health Act, 1939-1974, repealed by this Act:
- 25 “senior psychiatrist” means a legally qualified medical practitioner who has, since the date on which he became qualified for registration as a specialist in psychiatry, had at least five years experience as a practising psychiatrist:
- 30 “superintendent” in relation to an approved hospital means the person for the time being in charge of the hospital:
- “the Tribunal” means the Mental Health Review Tribunal established under this Act.

## PART II

## PART II

### ADMINISTRATION

#### 35 DIVISION I—THE DIRECTOR

#### DIVISION I

6. (1) There shall be a Director of Mental Health Services.

(2) The person holding office as the Director of Mental Health Services under the repealed Act immediately before the commencement of this Act shall, upon the commencement of this Act, become the Director of Mental Health Services under this Act.

The office of  
Director of  
Mental Health  
Services.

**PART II**  
**DIVISION I**  
 Administration  
 of this Act by  
 the Director.

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

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

Reports by  
 the Director.

8. (1) The Director shall, before the thirty-first day of December in each year, submit to the Commission and 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 the report, cause copies of the report to be laid before each House of Parliament.

**DIVISION II**  
 Objectives.

**DIVISION II—OBJECTIVES OF THE DIRECTOR AND THE COMMISSION**

9. In exercising their responsibilities for the care, treatment and protection of those who suffer from mental illness or mental handicap, the Director and the Commission should seek to attain the following objectives:—

- (a) to afford patients the best possible treatment and care; 15
- (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; 20
- (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; 25
- (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**  
 Declaration of  
 approved  
 hospitals.

**DIVISION III—APPROVED HOSPITALS**

30

10. (1) The Minister may, upon the recommendation of the Commission, declare by notice in the *Gazette* any hospital, clinic or other premises to be an approved hospital for the care and treatment of persons who are mentally ill.

(2) The Minister may, by subsequent notice, vary or revoke any notice previously given under this section. 35

**DIVISION IV** **DIVISION IV—RECORDS TO BE KEPT AND INFORMATION TO BE SUPPLIED IN RELATION TO APPROVED HOSPITALS**

Register of  
 patients.

11. (1) The superintendent of every approved hospital shall keep or cause to be kept records relating to every patient admitted into the hospital. 40

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

- (a) the name and address of each such patient;
- (b) the nature of any mental or bodily illness or handicap from which he suffers;

- (c) full particulars of the treatment administered to the patient and of the authorization for that treatment;
- (d) if the patient dies, the date and cause of death;
- and
- 5 (e) such other information as may be prescribed.

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

Particulars relating to admission of patients to approved hospitals.

- 10 (a) whether or not a particular person is or has been admitted to or detained in an approved hospital under this Act;
- and
- (b) if so, the date of his admission and (where applicable) the date of his discharge or death.

(2) The superintendent of an approved hospital shall upon the discharge 15 of a patient from the hospital, furnish the patient, at his request, free of charge, a copy of any orders, certificates or authorizations upon which he was admitted, detained or treated.

### PART III

### PART III

#### ADMISSION OF PERSONS SUFFERING FROM MENTAL ILLNESS

##### 20 DIVISION I—ADMISSION OF VOLUNTARY PATIENTS INTO APPROVED HOSPITALS

##### DIVISION I

13. (1) A person may be admitted as a patient in an approved hospital in pursuance of his own request.

Admission of voluntary patients.

(2) A person who is admitted as a patient in an approved hospital under this section may leave that hospital at any time.

##### 25 DIVISION II—ADMISSION AND DETENTION OF PATIENTS IN APPROVED HOSPITALS

##### DIVISION II

14. (1) Where, upon examination of a person, a legally qualified medical practitioner is satisfied—

Admission of patients pursuant to order by medical practitioner.

- (a) that that person is suffering from a mental illness that requires immediate treatment;
- 30 (b) that such treatment can be obtained by admission to and detention in an approved hospital;
- and
- (c) that that person should be admitted as a patient in an approved hospital in the interests of his own health and safety or for the protection of other persons,
- 35

the medical practitioner may make an order for the immediate admission and detention of that person in an approved hospital.

(2) An order made under subsection (1) of this section shall, unless discharged, be effective for a period of three days.

(3) Where an order has been made under subsection (1) of this section and a person is admitted and detained in an approved hospital in pursuance of that order, that person shall be examined by a psychiatrist—

5

(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 admission—as soon as practicable after 10 his admission.

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

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

or

(b) confirm the order.

15

(5) Where an order for detention has been confirmed under subsection (4) of this section, a psychiatrist may at any time during the period for which that order is effective, upon examination of the patient, make an order for the further detention of the patient for a period not exceeding twenty-one days commencing on the expiration of the order by which the patient was detained. 20

(6) No psychiatrist who has made an order for the admission and detention of a patient under subsection (1) of this section may make an order for the further detention of that patient under subsection (5) of this section.

(7) The superintendent of an approved hospital in which a patient is detained pursuant to an order made under subsection (5) of this section may 25 discharge that order at any time during the period for which it is effective.

(8) Where a patient is detained in pursuance of an order under subsection (5) of this section and two psychiatrists who have each made a separate examination of the patient are of the opinion that further detention is necessary for the protection of others they may make an order for the further detention 30 of the patient.

(9) An order under subsection (8) of this section shall be effective—

(a) until discharged by the superintendent of the approved hospital in which the patient is for the time being detained;

or

(b) until discharged by the Tribunal.

35

(10) Where a person has been detained in an approved hospital pursuant to an order under subsection (8) of this section, the superintendent of the hospital may, by instrument in writing, permit that person to be absent from the hospital for a period not exceeding six months.

40

(11) A permission granted under subsection (10) of this section—

(a) shall be subject to such conditions as the superintendent thinks fit and specifies in the instrument by which he grants his permission;

and

45

(b) may be revoked by the superintendent at any time by instrument in writing.

PART III  
DIVISION II

Duty of  
superintendent  
of an approved  
hospital.

15. (1) The superintendent of an approved hospital 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 admission and detention of a patient in an approved hospital and the superintendent is of the opinion that proper facilities do not exist at his hospital for the care or treatment of the patient, he may decline to admit the patient to the hospital but, in that case, he shall forthwith make arrangements for the admission of the patient into another approved hospital.

10 16. (1) Where a patient is detained in an approved hospital, the superintendent shall ensure that he is given as soon as practicable a printed statement in the prescribed form—

Patients to be  
given state-  
ment of their  
rights, etc.

(a) informing him of his legal rights;  
and

15 (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.

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

17. Where a patient is detained in an approved hospital and the superintendent of the hospital is satisfied, upon the certificate of a psychiatrist, that another approved hospital is better equipped for the care and treatment of that patient, the superintendent may authorize the transfer of the patient to that other hospital.

Transfer of  
patients.

DIVISION III—APPREHENSION OF PERSONS WHO APPEAR TO BE SUFFERING FROM MENTAL ILLNESS

DIVISION III

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

Powers of  
apprehension  
of members of  
police force.

(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,

35 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 a member of the police force has reasonable cause to believe 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.

PART III  
DIVISION IV

Restriction on  
psychiatric  
treatment.

DIVISION IV—TREATMENT OF PATIENTS IN APPROVED HOSPITALS

19. (1) Subject to this section, a person shall not administer psychiatric treatment to which this section applies to a patient detained in an approved hospital—

(a) unless— 5

(i) in the case of category A treatment—the treatment has been authorized by two psychiatrists (at least one of whom is a senior psychiatrist) who have each made an independent examination of the patient;

or 10

(ii) in the case of category B treatment—the treatment has been authorized by a psychiatrist;

and

(b) unless the consent in writing—

(i) where the patient has sufficient command of his mental 15  
faculties to make a rational judgment on the matter—  
of the patient;

or

(ii) in any other case—of a guardian or relative of the patient,  
has been obtained. 20

(2) The consent of a patient or a guardian or relative to category B treatment is not necessary where—

(a) the nature of the mental illness from which the patient is suffering is such that the treatment is urgently needed for the protection of the patient or some other person; 25

and

(b) in the circumstances it is not practicable to obtain that consent.

(3) In this section—

“category A treatment” means psychosurgery or any other treatment declared by regulation to be category A treatment: 30

“category B treatment” means electro convulsive therapy or any other treatment declared by regulation to be category B treatment:

“psychiatric treatment to which this section applies” means category A treatment and category B treatment:

“psychosurgery” means leucotomy, amygdaloidotomy, hypothal- 35  
amotomy, temporal lobectomy, cingulectomy, electrode implan-  
tation in the brain, or any other brain surgery for the relief of  
mental illness.



## PART IV

PART IVGUARDIANSHIP OF PERSONS SUFFERING FROM MENTAL  
ILLNESS OR MENTAL HANDICAP

## DIVISION 1—THE GUARDIANSHIP BOARD

DIVISION 1Establishment  
of Board.

5 20. (1) There shall be a board entitled the "Guardianship Board".

(2) The Board shall consist of five members, appointed by the Governor,  
of whom—

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

10 (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 at least seven years' standing;

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

15 and

(c) the remaining members are persons who have, in the opinion of the  
Governor, appropriate qualifications for membership of the  
Board.

20 21. (1) A member of the Board 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.

Terms and  
conditions  
upon which  
members hold  
office.

(2) The Governor may appoint a suitable person to be a deputy of a  
member of the Board and such a person, while acting in the absence of that  
25 member, shall be deemed to be a member of the Board 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—

30 (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 at least seven years standing.

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

35 (a) mental or physical incapacity;

(b) neglect of duty;

or

(c) dishonourable conduct.

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

40 (a) he dies;

(b) his term of office expires;

PART IV  
DIVISION I

(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 Board 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 Board 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. 5

Allowances  
and expenses.

22. The members of the Board shall be entitled to receive such allowances and expenses as may be determined by the Governor. 10

Validity of acts  
of the Board.

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

Proceedings  
of the Board.

24. (1) Three members of the Board shall constitute a quorum of the Board, and no business shall be transacted at a meeting of the Board unless a quorum is present.

(2) The chairman shall preside at any meeting of the Board at which he is present.

(3) In the absence of the chairman from a meeting of the Board, the members present shall elect one of their number to preside at that meeting. 20

(4) Subject to this section, each member of the Board shall be entitled to one vote upon any matter arising for the determination of the Board.

(5) A decision supported by a majority of the votes cast by the members present at a meeting of the Board shall be a decision of the Board.

(6) The person presiding at a meeting of the Board shall, in the event of an equality of the votes on any matter arising for the decision of the Board, have a second or casting vote.

(7) Subject to this Act, the business of the Board shall be conducted in such manner as the Board determines.

Power of the  
Board to  
require  
attendance.

25. (1) In the exercise of its powers and functions under this Act the Board may, by summons signed on behalf of the Board by a member of the Board, require the attendance before the Board of any person. 30

(2) A person who fails without reasonable excuse to attend before the Board in obedience to a summons served upon him under this section shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars.

## 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.

- 5 (a) a person is suffering from mental illness and is, by reason of that illness, 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;
    - 10 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—

- 15 (a) by the person suffering from the mental illness or the mental handicap;
- (b) by a relative of that person;
- (c) by a member of the police force;
- or
- 20 (d) 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.

- 25 (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;
- 30 (b) it may, by order, direct 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;
- 35 (c) it may give directions as to the upbringing, education and training of the protected person;
- (d) it may direct that the protected person receive medical or psychiatric treatment;
- or
- (e) any other power exercisable at law or in equity by a guardian.
- 40 (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.

PART IV  
DIVISION II

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

5

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. 10

(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. 15

(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. 20

PART V

PART V

THE MENTAL HEALTH REVIEW TRIBUNAL

DIVISION I

DIVISION I—CONSTITUTION AND POWERS OF THE TRIBUNAL

25

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— 30

(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; 35

(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.

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.

5 (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.

10 (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

15 (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;

20 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;

25 (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  
30 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 allow-  
35 ances 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.

40 (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; 5
- (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 10 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; 15

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— 20

- (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 25 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, 30

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. 35

(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. 40

## DIVISION II—FUNCTIONS OF THE TRIBUNAL

PART V  
DIVISION IIReview of  
detention  
orders and  
custody orders.

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

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

or

5 (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.

10 (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.

15 (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.

20 (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:—

Appeals in  
respect of  
patients  
detained in  
approved  
hospitals.

(a) the patient himself;

(b) a relative of the patient;

25 (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.

30 (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—

35 (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 deter-  
mined 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.

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,

5

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

(d) the protected person;

(e) a relative of that person;

10

(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.

15

(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—

20

(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.

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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.

30



(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 PATIENTS IN APPEALS

#### 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. 5

(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 10 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:— 15

- (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; 20
- (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; 25
- (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; 30
- (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 35 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 40 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.

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

(3) Where—

10 (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

15 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  
20 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  
25 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  
30 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.

35 (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.

5

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.

10

(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.

15

(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.

20

(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.

25

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.

30

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.

35

Penalty for misdemeanour.

48. 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.

Limitation of liability.

49. (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.

40

(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.

5 (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.

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

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

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

- 15 (a) define the functions, powers and duties of the Director;
- (b) define the functions, powers and duties under this Act of super-  
intendents of approved hospitals and other officers and servants  
employed in approved hospitals;
- (c) provide for the management and control of approved hospitals;
- 20 (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;
- 25 (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;
- 30 (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.