

[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 (1) The following Acts are repealed:-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.
-

(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

reception  
of patients.

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

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.

(2) Where a special magistrate, on the application of the Crown Solicitor, or a police officer of or above the rank or inspector, is satisfied that a person has escaped from a reception centre, he may issue a warrant in the prescribed form directing that the person named therein be apprehended and conveyed to the reception centre from which he escaped.

(3) A person apprehended at any time under a warrant issued under subsection (2) of this section shall be conveyed to and detained in the reception centre from which he escaped.

(4) For the purposes of this section a person shall be deemed to have escaped from a reception centre if, being lawfully permitted to be absent from that reception centre, he does not return to the reception centre 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 IV

GUARDIANSHIP OF PERSONS SUFFERING FROM MENTAL ILLNESS  
OR MENTAL HANDICAP

## Division I - The Guardianship Board

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 -

(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;

and

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

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.

(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 member, shall be deemed  
to be a member of the Board, and shall have all the powers,  
duties, authorities 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 at least seven years' standing.

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

(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 -

(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 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.

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.

validity  
of acts of  
the Board.

23. (1) An act or proceeding of the Board shall not be invalid by reason only of a vacancy in its membership.

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

proceedings of  
the Board.

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

(2) 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.

(3) Each member of the Board shall be entitled to one vote upon any matter arising for the determination of the Board.

(4) 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.

(5) 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.

#### Division II - Reception of Persons into Guardianship of Board

exception' -  
of persons  
into the  
guardianship  
of the Board.

25. (1) Where the Board is satisfied, upon an application made under this section, that a person -

(a) is suffering from mental illness or mental handicap;  
and

(b) is by reason of that mental illness or mental handicap, incapable of managing his own affairs,  
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 a member of the police force;
  - or
  - (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.

(3) Where the Board receives a person into its guardianship in pursuance of this section, it becomes the guardian at law and in equity of that person.

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

Appointment  
of manager.

26. (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 suffering from a mental illness or mental handicap 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.

Powers of an  
administrator  
under this  
part.

27. (1) An administrator appointed under this Part shall, subject to this Act and the conditions of his appointment, have full power -

(a) to transact any business on behalf of the person in relation to whom he has been appointed administrator;

and

(b) to institute or defend any legal proceedings on behalf of that person.

(2) The administrator shall not sell any property of the protected person where the value of that property is more than twenty thousand dollars.

(3) The administrator shall not expend more than two thousand dollars upon improvements to property included in the estate of the protected person without the approval of the Supreme Court.

(4) The administrator shall not sell any business that was formerly carried on by the protected person without the approval of the Supreme Court.

28. (1) The Public Trustee shall have power, in the execution of his powers and duties under this Act, to summon persons to appear before him or before some person appointed by him to take evidence under this section.

(2) The Public Trustee, or the person so appointed, shall have power to administer oaths and take evidence as to any matters relating to the estate and affairs of any person whose estate the Public Trustee is administering in pursuance of this Act, and to require production of books, papers and documents relating to that estate.

(3) Any person upon whom any such summons is served who, without due cause, fails to appear in accordance with the summons, or having appeared refuses to be sworn or to give evidence, or to answer such questions as are put to him by the Public Trustee or the person appointed, or to produce any books or documents that he is required by the summons to produce, shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars.

Public Trustee  
may obtain  
information  
on oath.



Unclaimed  
personal  
effects and  
moneys.

29.(1) All personal effects in the possession of the Public Trustee belonging to a patient and not claimed within two years of the date of death or discharge of that patient may be sold by the direction of the Public Trustee, and the proceeds of the sale shall be retained by the Public Trustee.

(2) All moneys in the hands of the Public Trustee on account of a patient at the end of six years from the date of death or discharge of that patient and unclaimed as at that date shall be paid to the Treasurer in aid of the General Revenue of the State.

(3) The Treasurer may pay any such moneys to the Public Trustee upon the Public Trustee certifying that the identity and whereabouts of the person or persons entitled to those moneys has been ascertained.

Duty to give  
security to  
Public Trustee.

30. (1) Where a person, other than the Public Trustee, is appointed as the administrator of the estate of a protected person, he shall give to the Public Trustee such security as the Board directs for the due administration of the estate.

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

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

(4) Where the Public Trustee satisfies the Board that an administrator has failed to comply with the conditions of his administration the Board may give leave to the Public Trustee to enforce the security and the Public Trustee shall thereupon proceed by action or otherwise to enforce the security.

(5) All moneys realized from enforcement of the security shall form part of the estate of the protected person.

## PART V

## THE MENTAL HEALTH REVIEW TRIBUNAL

## Division I - Constitution and Powers of the Tribunal

Establishment  
of the  
Tribunal.

31. (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 registered psychiatrist;  
and

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

Terms and  
conditions  
upon which  
other members  
hold office.

32. (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.

allowances  
and expenses.

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

validity of  
acts of the  
Tribunal.

34. (1) An act or proceeding of the Tribunal shall not be invalid by reason only of a vacancy in its membership.

(2) No liability shall attach to a member of the Tribunal for any act or omission by him, or by the Tribunal,

in good faith and in the exercise or purported exercise of his or its powers or functions, or in the discharge or purported discharge, of his or its duties under this Act.

Proceedings  
and decisions  
of the  
Tribunal.

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

Powers of  
the Tribunal.

36. (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

Review of  
detention  
orders.

37. (1) Where a patient is detained in a reception centre, the Tribunal shall before the expiration of the first six months of his detention and thereafter at periodic intervals of not more than six months review the circumstances of his detention.

(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.

Appeals by  
patients and  
relatives of  
patients.

38. (1) Where a patient believes that he is being detained in a reception centre without due cause, he may appeal to the Tribunal against his detention.

(2) Where a relative of a patient believes that the patient is being detained in a reception centre without due cause, he may appeal to the Tribunal against the detention.

(3) 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.

(4) An appeal may not be instituted under this section in respect of a patient if a previous appeal in respect of the same patient has been instituted in the last preceding period of six months.

Appeals from  
orders of  
the Board.

39. (1) Where the Board has made an order -

(a) by which a person is received into the guardianship of the Board;

or

(b) by which an administrator is appointed in respect of the estate of a person,

the person in respect of whom the order was made, or a relative of that person, may appeal to the Tribunal against the order.

(2) If, in proceedings under this section, the Tribunal is satisfied that the person in respect of whom the appeal is brought does not suffer from a mental illness or incapacity by which he is rendered incapable of administering his own affairs, it shall revoke the order of the Board.

Division III - Appeals from Decisions of the Tribunal

40. (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.

Appeal from  
decisions of  
the Tribunal.

## Division IV - Representation of Patients in Appeals

Representation  
of patients  
upon appeals.

41. (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.

(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 - LICENSING OF PSYCHIATRIC REHABILITATION CENTRES

Prohibition  
against operation  
of psychiatric  
rehabilitation  
centre without  
licence..

42. (1) No person shall operate a psychiatric rehabilitation centre unless the centre is licensed under this Act.

Penalty: One thousand dollars.

(2) This section does not apply in respect of an incorporated hospital or health centre.



psychiatric  
rehabilitation  
centres.

43. (1) Subject to this section, the Minister may, on the application of a person who operates or proposes to operate a psychiatric rehabilitation centre, licence the premises to which the application relates as a psychiatric rehabilitation centre.

(2) A licence under subsection (1) of this section -

(a) shall specify the premises to which the licence applies;

and

(b) shall be for a period 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 Commission to inspect the centre;
- (i) that the holder of the licence will comply with any directions of the Commission in relation to the operation of the centre and the care 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 Commission, 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.

44. (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.

(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 by the Tribunal, the Minister may revoke the licence.

evocation  
f licence.

## PART VII

## MISCELLANEOUS

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

45. 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 a misdemeanour.

offences in  
relation to  
certificates  
and orders.

46. (1) Any medical practitioner who signs any certificate or order for the purposes of this Act without having seen and personally examined the person to whom the certificate or order 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 a misdemeanour.

(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 registered psychiatrist, or otherwise purports to act under this Act in the capacity of a medical practitioner or registered psychiatrist shall be guilty of a misdemeanour.

(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 a reception centre shall be guilty of a misdemeanour.

escape of  
person  
detained in  
reception  
centre.

47. Any person who removes a patient who has been detained in a reception centre, or aids any such person to escape from a reception centre, shall be guilty of a misdemeanour.

penalty for  
misdemeanour.

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

mitigation of  
liability.

49. A person who does any act in pursuance or purported pursuance of the provisions of this Act, or omits to exercise any power conferred by this Act, shall not be under any civil or criminal liability in respect of that act or omission if he has acted, or omitted to act, in good faith, and with reasonable care.

proceedings.

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

regulations.

51. (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.

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

- (a) define the functions, powers and duties of the Commission;
- (b) define the functions, powers and duties of superintendents of reception centres and other officers and servants employed in reception centres;
- (c) provide for the management and control of reception centres;
- (d) provide for the classification of patients;
- (e) provide for the care and treatment of patients of the various classes;

- (f) empower the superintendent of a reception centre to decline to forward a letter written by a patient;
- (g) prescribe any matter relating to procedure to be adopted under this Act;
- (h) prescribe any form to be used for the purposes of this Act;  
and
- (i) prescribe a penalty not exceeding two hundred dollars for breach of any regulation.