

[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. Commencement.
- 3. This Act is arranged as follows:— Arrangement of Act.
  - PART I—PRELIMINARY
  - PART II—ADMINISTRATION
    - 10 DIVISION I—THE DIRECTOR
    - DIVISION II—OBJECTIVES OF THE DIRECTOR AND THE COMMISSION
    - DIVISION III—APPROVED HOSPITALS
    - DIVISION IV—RECORDS TO BE KEPT AND INFORMATION TO BE SUPPLIED IN RELATION TO APPROVED HOSPITALS
  - 15 PART III—ADMISSION OF PERSONS SUFFERING FROM MENTAL ILLNESS
    - DIVISION I—ADMISSION OF VOLUNTARY PATIENTS INTO APPROVED HOSPITALS

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 (1) The Acts mentioned in the schedule to this Act are repealed.

(2) Any person lawfully detained as a mental defective under the provisions of the repealed Act, and in detention immediately before the commencement of this Act, shall be deemed to have been detained under the corresponding provisions of this Act and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this Act, the Public Trustee has the custody and administration of the estate of a patient under the provisions of the repealed Act, the Public Trustee shall be deemed to have been appointed the administrator of that estate under this Act. 30

(4) A licence granted under the repealed Act in respect of a psychiatric rehabilitation hostel shall be deemed to be a licence in respect of a psychiatric rehabilitation centre under this Act and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:
- “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:
- “superintendent” in relation to an approved hospital means the person for the time being in charge of the hospital:
- 30 “the Tribunal” means the Mental Health Review Tribunal established under this Act.

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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**

Register of  
 patients.

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

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

(b) may be revoked by the superintendent at any time by instrument in writing. 45

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

DIVISION IV—TREATMENT OF PATIENTS IN APPROVED HOSPITALS

Restriction on  
psychiatric  
treatment.

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 1

- 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—

Establishment  
of Board.

- (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  
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 5 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 10 and expenses as may be determined by the Governor.

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 15 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 30 may, by summons signed on behalf of the Board by a member of the Board, require the attendance before the Board of any person.

(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.