

REPORT OF THE SELECT COMMITTEE ON THE MENTAL HEALTH BILL, 1976

SCHEDULE

Clause 3, page 2 -

Line 17 - Leave out "PATIENTS IN APPEALS" and insert "APPELLANTS".

Clause 4, page 2 -

Line 21 - Leave out subclause (1) and insert subclause as follows:-  
(1) The Mental Health Act, 1939-1974, is amended as shown  
in the schedule to this Act.

Line 23 - Leave out "repealed" and insert "former".

Lines 27 to 30 - Leave out subclause (3) and insert subclause as follows:

(3) Where immediately before the commencement of this Act, the Public Trustee, or some other person, was the committee of the estate, or otherwise authorized to administer the estate, of any person pursuant to the provisions of the former Act, the Public Trustee or other person shall be deemed to have been appointed administrator of the estate under this Act.

Line 31 - Leave out "repealed" and insert "former".

Clause 5, page 2 -

Line 39 - Leave out "for the care and treatment of persons who are mentally ill".

Page 3 -

After line 2 insert definition as follows:

"the former Act" means the Mental Health Act, 1939-1974:.

Lines 23 and 24 - Leave out definition of "the repealed Act".

Line 30 - After "hospital" insert "or a person duly authorized to admit patients into the hospital".

Clause 6, page 3 -

Line 38 - Leave out "repealed" and insert "former".

Clause 9, page 4 -

Line 15 - Leave out "afford patients" and insert "ensure that patients receive".

After line 25 insert paragraph as follows:

(e1) to assist and encourage the development of services designed to reduce the incidence of mental illness in the community; .

After line 27 insert paragraph as follows:

(f1) to promote a high standard of training for those responsible for the care of the mentally ill and the mentally handicapped;

Line 29 - After "knowledge" insert "and generally to promote public understanding of, and (wherever practicable) involvement in, measures for the prevention, treatment and cure of mental illness and the care and protection of the mentally handicapped".

Clause 12, page 5 -

Lines 7 and 8 - Leave out ", upon payment of the prescribed fee,".

Clause 14, page 6 -

Lines 12 to 15 - Leave out subclause (4) and insert subclause as follows:

{4} When the psychiatrist has completed his examination -

(a) he shall, if not satisfied that the continued detention of the patient is justified, discharge the order;

or

(b) he may, if satisfied that the continued detention of the patient is justified, confirm the order.

After line 36 insert subclause as follows:

(9a) Where an order for further detention of a patient is made under subsection (5) or subsection (8) of this section, a report shall be made setting out the grounds upon which the order is made.

After line 47 insert subclause as follows:

(12) A copy of the instrument by which a patient is permitted to be absent from an approved hospital under subsection (10) of this section shall be given to the patient to whom the instrument relates.

Clause 15, page 7 -

Line 7 - After "shall" insert "(unless the order for detention is discharged)".

Clause 16, page 7 -

Line 11 - Leave out "as soon as practicable" and insert "upon admission to the hospital, or as soon as practicable thereafter,".

After line 21 insert subclause as follows:

(4) Where a patient is illiterate, or too disturbed to read and comprehend the statement referred to in this section, the superintendent shall take such steps (if any) as may be practicable in the circumstances to convey the information contained in the statement to the patient.

Clause 18, page 7 -

Line 31 - After "mental illness" insert "or mental handicap".

After line 41 insert subclause as follows:

(3) Where a member of the police force apprehends a person and brings him for examination by a medical practitioner in pursuance of this section -

(a) he shall render such assistance to the medical practitioner as may be necessary for the purposes of the examination;

and

(b) where the medical practitioner makes an order for the admission and detention of the patient in an approved hospital, he shall, if the medical practitioner so requests, convey, or arrange for the conveyance of, the patient to an approved hospital in accordance with the order.

Clause 19, page 8 -

Lines 7 to 9 - Leave out all words in these lines after "by" in line 7 and insert -

(A) the person who is to administer the treatment;

and

(B) two psychiatrists (at least one of whom is a senior psychiatrist),

who have each made an independent examination of the patient;

Line 38 - After "illness" insert "by the elimination or stimulation of apparently normal brain tissues".

Clause 20, page 9 -

Line 14 - After "medical practitioner" insert "who has had experience in psychiatry".

Lines 16 to 18 - Leave out paragraph (c) and insert paragraphs as follows:

(c) one shall be a registered psychologist who has had experience in the care of the mentally handicapped;  
and

(d) one shall be a person who has, in the opinion of the Governor, other appropriate qualifications for membership of the Board.

Clause 25, page 10 -

Insert following subclause before the present subclause (1):

Attendance before the Board. (1) Before the Board makes an order, direction or requirement in relation to any person, it shall, wherever practicable, afford that person an opportunity to appear before, and make representations to, the Board.

Clause 26, page 11 -

Line 4 - Leave out "is" where it occurs for the second time.

Line 5 - Leave out "incapable of managing his own affairs" and insert:

- (i) incapable of looking after his own health and safety; or (ii) incapable of managing his own affairs.

After line 17 insert paragraph as follows:

(b1) by the Public Trustee; .

Clause 27, page 11 -

Line 29 - Leave out "direct" and insert "require".

Line 36 - Leave out "direct" and insert "require".

Clause 27, page 12 -

Lines 4 and 5 - Leave out all words in these lines after "protected person" in line 4 and insert:

- (a) give due consideration to the expressed wishes (if any) of the protected person; and (b) treat the welfare of the protected person as the paramount consideration.

Clause 36, page 15 -

After line 40 insert subclause as follows:

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

Page 17 -

Line 14 - Leave out "PATIENTS IN APPEALS" and insert "APPELLANTS"

New Clause:

Page 20 - After line 35 insert new clause as follows:

Duty to maintain confidentiality.

47a. (1) Any person, acting in the administration of this Act, who divulges any personal information, relating to a patient, obtained in the course of his employment, otherwise than as he may be authorized or required to divulge that information by law, or by his employer, shall be guilty of an indictable offence.

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

The Schedule, page 22

Leave out the Schedule and insert new schedule as follows:

THE SCHEDULE  
AMENDMENT OF MENTAL HEALTH ACT, 1939-1974

- The Mental Health Act, 1939-1974, is amended -
- (a) by striking out Parts I, II, IV, VI, VII, VIIIA, VIII and IX thereof;
  - (b) by striking out the heading to Part III thereof and inserting in lieu thereof the following heading:-

PART III

CRIMINAL MENTAL DEFECTIVES ;

- (c) by striking out Division I of Part III and inserting in lieu thereof the following Division:-

Division I - Preliminary

Interpretation. 42. In this Part, unless the contrary intention appears -

"the Director" means the person holding, or acting in, the office of Director of Mental Health Services under the Mental Health Act, 1976-1977:

"hospital for criminal mental defectives" means a place declared by proclamation to be a hospital for criminal mental defectives under this Act:

"mentally defective person" means -

- (a) a person who is mentally ill, that is to say, a person who, owing to his mental condition, requires oversight, care or control for his own good or in the public interest and who, owing to disorder of the mind or mental infirmity arising from age or the decay of his faculties, is incapable of managing himself or his affairs; or

- (b) an intellectually retarded person; and the expressions "mental defect", "mental defective" and "mentally defective" shall be construed accordingly:

"receiving house" means any place that the Director declares, by instrument in writing, to be a receiving house for the purposes of this Part.

Hospitals for criminal mental defectives.

43. (1) The Governor may, from time to time, by proclamation, declare any hospital or any part thereof, or any part of any prison, or any other place which he deems suitable for the purpose, to be a hospital for criminal mental defectives.

(2) The Governor may, by proclamation, declare that any hospital for criminal mental defectives shall cease to be a hospital for criminal mental defectives.

Superintendent and officers.

44.(1) The Governor may for each hospital for criminal mental defectives appoint a superintendent and, if he deems it necessary, a deputy superintendent.

(2) No person shall be so appointed unless he is a medical practitioner.

Where institution is part of a prison.

45.(1) Except as provided by regulations made pursuant to this Act, where an institution is a part of a prison that has been declared to be a hospital for criminal mental defectives under section 43 of this Act -

(a) the superintendent of the institution appointed under section 44 of this Act shall -

(i) be responsible for, and have control of and over, the medical care, treatment and welfare of all patients of that institution;

and

(ii) perform such duties of a superintendent imposed by this Act as relate or are incidental to such care, treatment and welfare;

and

(b) the officer in charge of the prison shall -

(i) subject to the directions of the Comptroller of Prisons, have the control, management and administration of the institution in all matters connected with its internal routine and discipline;

(ii) be responsible for the custody and security of the patients therein;

and

(iii) be responsible for the carrying out of the other duties by this Act imposed upon the superintendent of the institution and for the due observance of the provisions of this Act in reference to all matters occurring within the institution other than those referred to in paragraph (a) of this subsection.

(2) Regulations made under this Act may, in relation to any institution that is a part of a prison declared to be a hospital for criminal mental defectives under section 43 of this Act -

(a) impose or confer on or assign to the officer in charge of the prison any of the duties, responsibilities, powers or functions of the superintendent of an institution under this Act;

(b) declare that any provision of this Act shall not apply.

(3) Any regulation so made shall have effect notwithstanding anything contained in this Act or in the Prisons Act, 1936-1976.

(d) by striking out the heading immediately preceding section 46 of the principal Act and inserting in lieu thereof the following heading:-

Division II - Manner in which criminal mental defectives are to be dealt with.

(e) by striking out the heading to Part V thereof and inserting in lieu thereof the following heading:-

PART V

ADMINISTRATION OF THE ESTATES OF THE MENTALLY ILL AND MENTALLY HANDICAPPED

(f) by striking out Division I of Part V and inserting in lieu thereof the following Division:-

Division I - Preliminary

Interpretation. 109. In this Part, unless the contrary intention appears -

"the Act" means the Mental Health Act, 1976-1977:

"the Court" means the Supreme Court of South Australia. ;

- (g) by striking out from the heading to Division II of Part V the passage "COMMITTEE OR";
- (h) by striking out from section 110 the passage "appointed under this Act as the committee of the estate of any person or becomes authorized by this Act to administer the estate of any person" and inserting in lieu thereof the passage ", by virtue of the Act, the estate of any person";
- (i) by striking out from section 111 the passage "appointed under this Act as the committee of the estate of any person, or being authorized by this Act to administer the estate of any person," and inserting in lieu thereof the passage "by virtue of the Act the administrator of the estate of any person";
- (j) by striking out from section 112 the passage "appointed under this Act as the committee of the estate of any person, or being authorized by this Act to administer the estate of any person" and inserting in lieu thereof the passage "by virtue of the Act the administrator of the estate of any person";
- (k) by striking out from section 113 the passage "appointed under this Act as the committee of the estate of any person, or being authorized by this Act to administer the estate of any person" and inserting in lieu thereof the passage "by virtue of the Act the administrator of the estate of any person";
- (l) by striking out from section 115 the passage "has been appointed under this Act as the committee of the estate of any person, or that he is authorized under this Act to administer the estate of any person, and stating the date at which he was so appointed or become so authorized and that the appointment or authority is still in force" and inserting in lieu thereof the passage "is the administrator of the estate of any person, and has held that position since a date specified in the certificate";
- (m) by striking out from subsection (1) of section 117 the passage "committee or whose estate he is administering" and inserting in lieu thereof the passage "the administrator";
- (n) by striking out sections 118 and 119;
- (o) by striking out from subsection (1) of section 120 the passage "this Act as the committee of an estate" and inserting in lieu thereof the passage "the Act as administrator of an estate";
- (p) by striking out from subsection (2) of section 120 the passage "the committee" and inserting in lieu thereof the passage "the administrator";
- (q) by striking out from subsection (1) of section 121 the passage "the committee" and inserting in lieu thereof the passage "the administrator";
- (r) by striking out from subsection (3) of section 123 the passage "under section 108 of a committee" and inserting in lieu thereof the passage "under the Act of an administrator";
- (s) by striking out from section 125 the passage "the committee of the estate of any person, or the Public Trustee being authorized by this Act to administer" and inserting in lieu thereof the passage "the administrator of";

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- (t) by striking out from section 125a the passage "a committee is appointed under this Act" and inserting in lieu thereof the passage "an administrator is appointed under the Act";
  - (u) by striking out from subsection (1) of section 125b the passage "patient and any person of whose estate a committee is appointed under this Act" and inserting in lieu thereof the passage "person of whose estate an administrator is appointed under the Act";
  - (v) by striking out from section 126 the passage "the committee (if any) of the estate of the said person, or the Public Trustee being authorized by this Act to administer the estate" and inserting in lieu thereof the passage "the administrator of the estate of that person";
  - (w) by striking out from section 127 the passage "the committee of an estate, or the Public Trustee being authorized by this Act to administer an estate" and inserting in lieu thereof the passage "the administrator of an estate";
  - (x) by striking out from subsection (1) of section 128 the passage "the committee of the estate of any person, or the Public Trustee being authorized by this Act to administer the estate of any person" and inserting in lieu thereof the passage "the administrator of the estate of any person";
  - (y) by striking out from section 129 the passage "the committee of the estate of any person, or the Public Trustee being authorized by this Act to administer the estate of any person" and inserting in lieu thereof the passage "the administrator of the estate of any person";
  - (z) by striking out from subsection (1) of section 130 the passage "the committee, or whose estate the Public Trustee is by this Act authorized to administer" and inserting in lieu thereof the passage "the administrator";
  - (aa) by striking out from subsection (1) of section 130 the passage "or other committee" and inserting in lieu thereof the passage "or other administrator";
  - (bb) by striking out from subsection (4) of section 130 the passage "a committee had been so appointed or that the Public Trustee was so authorized to administer the estate" and inserting in lieu thereof the passage "an administrator had been so appointed";
  - (cc) by striking out from subsection (1) of section 131 the passage "the committee of the estate of any person, or by the Public Trustee in a case where he is authorized by this Act to administer the estate of any person" and inserting in lieu thereof the word "administrator";
  - (dd) by striking out from subsections (2) and (3) of section 131 the word "committee" wherever it occurs and inserting in lieu thereof, in each case, the word "administrator";
  - (ee) by striking out from section 132 the word "a" where it occurs for the first time and inserting in lieu thereof the word "an";
  - (ff) by striking out from section 132 the word "committee" wherever it occurs and inserting in lieu thereof, in each case, the word "administrator";
  - (gg) by striking out section 136;
  - (hh) by striking out all the schedules except the tenth schedule and the nineteenth schedule.