

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

On the 29th October, 1976, the House of Assembly referred the Mental Health Bill, 1976, to a Select Committee, consisting of seven Members, for inquiry and report. As the Committee had not completed its inquiry on the day for report, two further orders of the House extended the time for reporting to Tuesday, 29th March, 1977.

Your Committee now has the honour to report:-

Evidence and Witnesses

1. Following its appointment the Committee inserted advertisements in "The Advertiser", "The News" and the "Public Service Review" inviting interested persons to submit evidence to it. In addition invitations were forwarded to a number of organisations which had shown interest in the proposed Bill - many of these organisations having participated in a seminar arranged by the Mental Health Review Committee to consider desirable changes in the present law relating to mental health.
2. Your Committee held 21 meetings, hearing evidence from 32 witnesses whose names are shown on Appendix A. A further 16 persons and organisations, whose names are shown on Appendix B, submitted written evidence. An opportunity was given to all persons who wished to give evidence before the Committee to do so.
3. An invitation for the Committee to inspect Glenside Hospital was extended by the Superintendent of that Hospital. During the inspection a full and frank discussion took place with senior staff. Your Committee was most grateful for this discussion, during which the deficiencies of the past, present practice and the hopes and plans for the future were covered.

General Conclusions.

4. From the evidence placed before it, your Committee is satisfied that there is general agreement with the concept of the Bill.
5. A number of witnesses expressed concern that the Bill needed strengthening to ensure that the rights and dignities of persons requiring mental health treatment are protected. Your Committee agrees entirely that there should be no difference with regard to the rights of mental health patients and other persons in the community but believes minor amendments will provide the protection needed.

6. It was put to the Committee that there is a need for the authorities such as the police, the Guardianship Board, and hospitals, to have clearcut rules for the handling of persons requiring treatment. Your Committee believes these to be essential and recommends that any such rules be clearly prescribed by regulation.

#### Transitional Provisions

7. The Public Trustee stated that the powers of an administrator will be contained in proposed amendments to the Administration and Probate Act. It is understood that these amendments will not be ready for some little time. Accordingly, the powers vested in an administrator under the present Mental Health Act will not be valid when this Bill becomes law. Your Committee recommends that action be taken to ensure that the relevant provisions in the Mental Health Act are not repealed until the amendments to the Administration and Probate Act are passed and suggests amendments to the Bill for this purpose.
8. Similarly evidence was presented to the Committee that the present provisions in the Mental Health Act relating to Criminal Mental Defectives are not dealt with by this Bill. These provisions are not in harmony with the philosophy of the Bill and it is recommended that appropriate amendments to include them in the Criminal Law Consolidation Act be made as soon as possible. In the meantime an interim measure to ensure their continuance is recommended.

#### Definitions

9. Several witnesses suggested improvements to a number of definitions contained in the Bill. The witnesses were particularly concerned that the definition in the Bill of an "approved hospital" unnecessarily restricts the Minister as far as the hospitals he may declare to be approved hospitals, and further that the definition of "superintendent" should be altered to allow the present practice to continue whereby superintendents delegate responsibilities. Your Committee agrees with the views expressed by witnesses on these matters and feel that the amendments proposed in the schedule will ensure more practical working arrangements.

#### Objectives of the Director and the Commission

10. While your Committee accepts that the objectives set out in Clause 9 are guidelines which the Director and the Commission should endeavour to achieve, evidence was presented to the Committee that these objectives should -
  - (a) ensure that patients receive the best possible treatment and care,
  - (b) provide for the integration and co-ordination of services and the encouragement of community involvement,
  - (c) assist and encourage the development of preventive services, and
  - (d) promote education and training of persons in this field.

11. The Committee believes there is considerable merit in all of these suggestions and recommends the broadening of the objectives accordingly.

#### Keeping of Records

12. Records relating to patients are required to be kept by approved hospitals. The Director may provide details of a patient's admission and discharge, if he is satisfied that the inquirer has proper interest in the matter, on payment of a prescribed fee. It was put to the Committee that the prescribed fee is an unnecessary imposition, particularly as the Director can already determine who may have the information. Your Committee agrees with this contention and recommends that there be no fee.
13. Your Committee noted that there is no provision for penalising employees or any other person who has access to hospital records for improperly divulging such information. The principle involved is an important one and your Committee recommends an amendment to provide for the appropriate penalty consistent with the South Australian Health Commission Act.

#### Admission and Detention of Patients in Approved Hospitals

14. A number of witnesses expressed concern at the procedure for admission and, more particularly, continued detention in an approved hospital. Your Committee believes that these witnesses have misunderstood the provisions of Clause 14. It is quite clear the initial order is for a maximum of three days and that a psychiatrist must examine the patient "as soon as practicable after his admission". Should the psychiatrist confirm the order the initial period of three days still applies unless a further order for detention is made which may apply for a maximum of a further twenty-one days. The Committee was assured that within this twenty-four day period the majority of patients will have responded to treatment and be able to return to the community.
15. As a result of discussion with Dr. Dibden, the Committee feels that any misunderstanding on admission and detention of patients can be obviated by an amendment to Clause 14 (2) to ensure that in any event at the end of the three day period the patient must be released from the hospital unless a "21 day" order is made.
16. Where an order is made detaining a patient for a maximum of twenty-one days (Clause 14(5)) or for a further period (Clause 14 (8)), your Committee believes a report, substantiating the order, should be written by the psychiatrists making the order and kept with the records required under Clause 11.
17. Clause 14(10) provides that a longer term patient may be granted up to six months absence (on trial leave). To prevent inconvenience to the patient it is recommended that he be given a copy of the written permission made out by the superintendent when granting this leave.

18. Evidence was given that the numbers of patients admitted to approved hospitals could become unmanageable (e.g. in the case of senile dementia). Your Committee recommends an amendment providing that the superintendent, if of the opinion that proper facilities do not exist at his hospital, should only be required to make arrangements for admission into another hospital where that patient requires treatment in an approved hospital.
19. Clause 16 requires that a patient be given a printed statement informing him of his legal rights "as soon as practicable" after admission. Your Committee can see no reason why this should not be done "on admission" and recommends accordingly. Further your Committee believes such a statement should be multilingual, describing the facilities and provisions of the hospital and providing a clear statement of the patient's legal rights. In the case of patients who may be unable to read the use of interpreters or tape-recorded statements should apply.

#### Apprehension of Persons who Appear to be Suffering from Mental Illness

20. The Police Department and other witnesses indicated that there may be difficulties for the "lay" person to differentiate between mental illness and mental handicap. By adding the words "or mental handicap" to Clause 18(1)(a) it will enable the police to conduct a person to a medical practitioner for the making of an appropriate assessment.
21. It is not clear whether, having conveyed a person to a medical practitioner, the police have power to assist any further. An amendment to Clause 18 to provide for the rendering of such further assistance as may be required, would ensure that assistance may be given, up to the point of admission to an approved hospital.

#### Treatment of Patients in an Approved Hospital

22. The Committee heard considerable evidence regarding the treatment of patients detained in approved hospitals but believes that Clause 19 with some minor amendments, together with the professional integrity of persons who carry out the treatment, provides adequate safeguards for patients who may need psychiatric treatment.
23. In particular the Committee concluded that:
  - (a) there is no evidence of current abuse, which the Committee accepts, of the recognised forms of psychiatric treatment in South Australia,
  - (b) current practice associated with psycho-surgery and the use of electro convulsive therapy is generally in line with that proposed in the Bill,
  - (c) the procedure for psycho-surgery in the Bill provides for consultation between the neurosurgeon who will conduct the operation, two psychiatrists and the person concerned or his guardian or a relative. The minor amendment proposed in Clause 19(1)(a) seeks to reinforce this concept.

(d) the controls required in the Bill for the application of category B treatment appear to be appropriate, but that careful research into the treatments to be regulated under that category is needed so that all treatments which inflict undue stress on the patient are included.

24. It was submitted to the Committee that brain surgery for organic disease could be encompassed by the Bill. This is not the intention and it is therefore recommended that the definition of "psychosurgery" be amended by adding the words - "by the elimination or stimulation of apparently normal brain tissue".

#### The Guardianship Board

25. A number of witnesses suggested that the size of the Guardianship Board should be increased to provide wider expertise, particularly in the field of mental handicap or retardation (e.g. by including a psychologist). Alternatively, it was put to the Committee that there should be two Boards, one for mental illness and the other for mental handicap, but the Committee does not so recommend.

26. Your Committee's view is that the size of the Board is sufficient but that its composition should be amended by providing that the medical practitioner should have psychiatric experience and, of the remaining members, one should be a psychologist with experience in the field of mental handicap.

#### Reception of Persons into Guardianship Board

27. As the Bill stands it does not provide that the Board must hear the person (if he is capable) about whom it is contemplating an order. Clearly a fundamental right of appearance in these circumstances should apply. It is recommended that the Bill be amended to this effect.

28. The Public Trustee proposed that he should have the right to bring matters before the Board pursuant to Clause 26 (2). Your Committee agrees.

29. It was suggested to the Committee that the power of the Board, given in Clause 27(1)(d), to "direct" that the protected person receive medical or psychiatric treatment was too strong and that "require" would be more suitable. Your Committee agrees and in addition recommends that the Board consider the expressed wishes (if any) of the person concerned.

#### Functions of the Tribunal

30. While Clause 36 provides for frequency of instituting appeals there is no provision for early hearing of such appeals. Your Committee recommends that they should be dealt with as soon as practicable.

Miscellaneous

31. Concern was expressed that if a person is unlawfully at large from an approved hospital (after a period of approved absence), it may not be possible for him to be discharged after an appropriate period. The Committee observes that a superintendent has the right to discharge an order at any time (Clause 14) and that the Board may similarly determine an appeal (Clause 36) and does not recommend any addition to the Bill.
32. Questions were raised about the present concepts of treatment and care of persons with psychopathic or sociopathic problems. In particular your Committee considered the problem of dealing with persons afflicted with these conditions in the law courts. These points are considered to be valid and urgent but outside the scope of the Bill. Your Committee therefore recommends that the Government initiate a further inquiry into this question as to the method by which such persons can be best assisted during and after proceedings in the courts of criminal law.

Conclusions and Recommendations

33. Your Committee believes that with the proposed amendments the Bill will enable a high standard of care, treatment and protection for persons suffering from mental illness or handicap, and accordingly recommends that it be passed with the amendments in the schedule attached hereto.

R.G. PAYNE  
CHAIRMAN

Parliament House,  
ADELAIDE. 5000.

5th April, 1977

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

APPENDIX A

Schedule of Witnesses who appeared before the Committee

	Pages
Mr. J.E. Annison	( 234 - 259 270 - 285
Mr. L. Bennetts, Mentally Retarded Children's Society of South Australia	218 - 233
Chief Supt. L.D. Brown, Police Department	1 - 17
Dr. R. Brummitt, Royal Australian College of General Practitioners	35 - 43
Mr. E.G. Croft, Public Trustee	89 - 98
Dr. A.S. Czechowicz, S.A. Mental Health Association	18 - 34
Dr. N. Denton, Royal Australian College of General Practitioners	35 - 43
Mrs. A. Devlin, Citizens Commission on Human Rights	44 - 69
Dr. W.A. Dibden, Director of Mental Health Services	( 176 - 206 293 - 309
Mr. K.P. Duggan, Crown Prosecutor	286 - 292
Dr. R.S. Gillen, Australian and New Zealand College of Psychiatrists	70 - 88
Mrs. M. Gowan, S.A. Mental Health Association	18 - 34
Mr. G.A. Hackett-Jones, Deputy Parliamentary Counsel	260 - 269
Mr. O.D. Hassam	270 - 285
Mr. J.H. Hayes, South Australian Consultative Council on Mental Retardation	158 - 166
Dr. L.C. Hoff, Glenside Hospital	( 128 - 141 214 - 217
Chief Supt. T.R. Howie, Police Department	1 - 17
Mr. D. Isenhardt, Citizens Commission on Human Rights	44 - 69
Mr. D.G. Jacquier, St. John Council for South Australia	167 - 175
Mr. P.J. Lafsky, St. John Council for South Australia	167 - 175
Dr. K. Lashchuk, Australian and New Zealand College of Psychiatrists	70 - 88
Mr. P. McElwaine, South Australian Consultative Council on Mental Retardation	158 - 166
Mr. J.S. McLachlan, Mentally Retarded Children's Society of South Australia	218 - 233
Mr. R.F. Maddison, GROW Groups	99 - 108
Dr. B. Shea, Director-General of Medical Services	119 - 127
Mr. D.A. Simpson, Neurosurgical Society of Australasia	109 - 118
Mr. B. Smith, S.A. Mental Health Association	18 - 34
Fr. P. Travers, South Australian Council of Social Service	142 - 157
Miss M. Wagstaff, South Australian Council of Social Service	142 - 157
Mr. C.B. Warwick, GROW Groups	99 - 108
Mr. C.H. Watt, South Australian Consultative Council on Mental Retardation	158 - 166
Mr. B. Wilson, Association of Totally Dependant Persons of South Australia	207 - 213

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

APPENDIX B

Schedule of Written Submissions

Ms. J.M. Abbott  
Mr. J.E. Annison (2)  
Association for Totally Dependant Persons of South Australia  
Australian Psychological Society  
Citizens Commission on Human Rights  
Mr. E.G. Croft, Public Trustee  
Crown Solicitor's Opinion  
Mr. T.A.R. Dinning  
Mr. W.G. King (3)  
Law Society of South Australia  
Mentally Retarded Children's Society of South Australia  
Royal Australian Nursing Federation  
St. John Council for South Australia  
South Australian Council for Civil Liberties  
Dr. N.A.R. Wright  
Mr. Justice Zelling