



ANNO TRICESIMO QUINTO

ELIZABETHAE II REGINAE

A.D. 1986

No. 114 of 1986

An Act to amend the Mental Health Act, 1977.

[Assented to 18 December 1986]

The Parliament of South Australia enacts as follows:

Short title.

1. (1) This Act may be cited as the "Mental Health Act Amendment Act, 1986".

(2) The Mental Health Act, 1977, is in this Act referred to as "the principal Act".

Commencement.

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

(2) The Governor may, in a proclamation fixing a day for this Act to come into operation, suspend the operation of specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.

Amendment of
s. 5—
Interpretation.

3. Section 5 of the principal Act is amended—

(a) by inserting after the definition of "approved hospital" the following definition:

"Assistant Chairman" includes a deputy of the Assistant Chairman;

and

(b) by inserting after the definition of "the Board" the following definition:

"Chairman" includes a deputy of the Chairman.

Amendment of
s. 20—
Establishment of
Board.

4. Section 20 of the principal Act is amended by striking out subsection (2) and substituting the following subsection:

(2) The Board shall consist of 10 members, appointed by the Governor, of whom—

(a) two (the Chairman and the Assistant Chairman) must be selected from the following categories:

- (i) the holders of judicial office under the Local and District Criminal Courts Act, 1926;
- (ii) magistrates;
- and
- (iii) legal practitioners of at least 7 years standing;
- (b) two ("the psychiatrist members") must be psychiatrists;
- (c) two ("the psychologist members") must be registered psychologists who have had experience in the care of the mentally handicapped;
- and
- (d) four ("the ordinary members") must be persons who have, in the opinion of the Governor, other appropriate qualifications for membership of the Board.

5. Section 21 of the principal Act is amended—

- (a) by striking out subsection (2) and substituting the following subsection:

(2) The Governor may appoint a suitable person to be a deputy of a member of the Board.;

- (b) by striking out from subsection (3) "chairman" and substituting "Chairman or the Assistant Chairman";

and

- (c) by inserting after subsection (3) the following subsection:

(3a) Where a member is, for any reason, absent or unable to act in the capacity of a member of the Board, the deputy of that member may act as a member of the Board.

6. Sections 24 and 25 of the principal Act are repealed and the following sections are substituted:

24. (1) If the Chairman thinks it necessary or desirable for the purpose of expediting the determination of proceedings before the Board or the disposal of any other business of the Board, the Board may sit in separate divisions.

- (2) A division of the Board is constituted by—

- (a) the Chairman or the Assistant Chairman;
- (b) one psychiatrist member;
- (c) one psychologist member;

and

- (d) two ordinary members.

- (3) Where the Board sits as a full board, the following provisions apply:

- (a) the Chairman or, if the Chairman is absent, the Assistant Chairman shall preside and, in the absence of both the Chairman and the Assistant Chairman, a member chosen

Amendment of s. 21—
Terms and conditions upon which members hold office.

Repeal of ss. 24 and 25 and substitution of new sections.

Proceedings of the Board.

from amongst their own number by the members present shall preside;

and

(b) six members constitute a quorum and the Board must not deal with any matter unless a quorum is present.

(4) Where the Board sits in separate divisions, the following provisions apply:

(a) the Chairman shall, if present, preside at any meeting of the division of which the Chairman is a member and, in the absence of the Chairman, a member chosen from amongst their own number by the members present shall preside at the meeting of the division;

(b) the Assistant Chairman shall, if present, preside at a meeting of the division of which the Assistant Chairman is a member and, in the absence of the Assistant Chairman, a member chosen from amongst their own number by the members present shall preside at the meeting of the division;

(c) three members constitute a quorum for a division and a division must not deal with any matter unless a quorum is present;

and

(d) the two divisions of the Board may sit concurrently for the purpose of dealing with separate matters.

(5) A question arising for decision at a meeting shall be decided by a majority of the votes cast by the members present.

(6) Each member present at a meeting is entitled to one vote and the person presiding at the meeting is, in the event of an equality of votes, entitled to a casting, as well as a deliberative, vote.

(7) Subject to this Act, the Board, or a division of the Board, may conduct its proceedings as it thinks fit.

Power of Board to delegate.

25. (1) Subject to this Act, the Board may, with the approval of the Minister, delegate to the Chairman any of its powers or functions under this Act.

(2) A delegation under this section may be subject to such conditions or limitations as the Board thinks fit, is revocable at will and does not prevent the exercise or performance by the Board of the power or function delegated.

Procedural powers of the Board.

25a. (1) In the exercise of its powers and functions under this Act, the Board may—

(a) by summons signed on behalf of the Board by a member of the Board, require the attendance before the Board of any person;

(b) by summons signed on behalf of the Board by a member of the Board, require the production of any books, papers or documents;

- (c) inspect any books, papers or documents produced before it, 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 the person will truly answer all relevant questions put to the person by the Board, or by any other person appearing before the Board;

or

- (e) require any person appearing before the Board to answer any relevant question put to the person by the Board, or by any other person appearing before the Board.

(2) Subject to subsection (3), if a person—

- (a) who has been served with a summons under this section fails without reasonable excuse to comply with the summons;

or

- (b) refuses to be sworn or to affirm, or to answer any relevant question, when required to do so by the Board,

the person is guilty of an offence.

Penalty: \$500.

(3) A person is not obliged to answer a question put to the person under this section if the answer to that question would tend to incriminate the person, or to produce books, papers or documents if their contents would tend to incriminate the person.

25b. (1) Before the Board makes an order, direction or requirement under this Part in relation to a protected person or any person who is the subject of proceedings before the Board, it must, wherever practicable, afford that person an opportunity to appear before, and make representations to, the Board.

Attendance before Board.

(2) Before the Board makes an order—

- (a) receiving a person into its guardianship, placing a protected person in the care and custody of another person or appointing an administrator of a person's estate;

or

- (b) varying or revoking any such order,

it must afford any person who the Board is satisfied has a proper interest in the matter an opportunity to appear before, and make representations to, the Board.

(3) Where the Board makes an order, direction or requirement under this Part, the Board must give notice of the order, direction or requirement to each person who appeared before, and made representations to, the Board in relation to the matter.

25c. The Board, in making an order, direction or requirement under this Part in relation to a protected person or any person who is the subject of proceedings before the Board—

Matters to which the Board must have regard.

(a) must give due consideration to the expressed wishes (if any) of that person;

(b) must give due consideration to the object of minimizing interference with the rights and independence of the person so far as is consistent with the proper protection and care of the person;

and

(c) must treat the welfare of the person as the paramount consideration.

Amendment of
s. 27—
Powers of Board
in relation to
person under its
guardianship.

7. Section 27 of the principal Act is amended—

(a) by inserting in subsection (3) “under its guardianship” after “protected person”;

and

(b) by striking out subsection (4).

Amendment of
s. 28—
Appointment of
administrator.

8. Section 28 of the principal Act is amended by inserting after subsection (4) the following subsections:

(5) The Board must, at intervals of not more than 2 years, review an appointment under this section.

(6) The Board may, by notice in writing given personally or by post to an administrator appointed under this section, revoke the appointment, revoke or vary any condition of the appointment, or impose further conditions on the appointment.

(7) An administrator appointed under this section is a trustee of the estate to which the appointment relates.

Insertion of new
ss. 28aa and
28aab.

9. The following sections are inserted in Division III of Part IV of the principal Act after section 28:

Registration of
appointment of
administrator.

28aa. (1) An order appointing an administrator under this Part may be registered under the provisions of the Registration of Deeds Act, 1935, as an instrument affecting the title to land in which the protected person has a legal or equitable estate or interest.

(2) An order appointing an administrator under this Part is deemed to be an instrument purporting to affect land under the provisions of The Real Property Act, 1886, and, upon application to the Registrar-General in a manner and form approved by the Registrar-General, a memorandum of the order may be entered in the register book with respect to any estate or interest in land of which the protected person is the registered proprietor under the provisions of that Act.

Restriction of
testamentary
capacity of
protected person

28aab. (1) The Board may direct that any testamentary provision by a protected person be made only after compliance with such precautions as the Board thinks fit to direct.

(2) Where, after the Board has given a direction under subsection (1), a protected person makes a testamentary provision otherwise than in accordance with that direction, the testamentary provision is ineffectual.

(3) Except as provided by subsection (2), nothing in this section affects the law relating to testamentary dispositions.

10. The following section is inserted in Division I of Part V of the principal Act after section 34: Insertion of new s. 34a.

34a. (1) Before the Tribunal makes an order under this Part in relation to a patient or a protected person, it must, wherever practicable, afford the patient or protected person an opportunity to appear before, and make representations to, the Tribunal. Attendance before the Tribunal.

(2) Before the Tribunal makes an order or decision—

(a) discharging or revoking an order for the detention of a patient or the custody of a protected person;

(b) revoking an order by which a person was received into the guardianship of the Board;

or

(c) revoking an order by which an administrator was appointed in respect of a person's estate,

the Tribunal shall afford any person who the Tribunal is satisfied has a proper interest in the matter an opportunity to appear before, and make representations to, the Tribunal.

(3) Where the Tribunal makes an order under this Part, the Tribunal must give notice of the order to each person who appeared before, and made representations to, the Tribunal in relation to the matter.

11. Section 42 of the principal Act is amended—

(a) by inserting after subsection (1) the following subsection: Amendment of s. 42—
Revocation or suspension of licence.

(1a) If the Minister is of the opinion that the continued operation of the psychiatric rehabilitation centre to which a notice under subsection (1) relates would put at risk the safety, health or welfare of a person receiving care in the centre, the Minister may, in that notice or by subsequent notice in writing given personally or by post to the holder of the licence, suspend the licence.;

(b) by inserting in paragraph (b) of subsection (3) "or withdrawn" after "dismissed";

and

(c) by inserting after subsection (3) the following subsections:

(4) If a licence has been suspended under this section and an appeal against the proposed revocation of the licence is subsequently upheld by the Tribunal, the suspension is deemed to have been revoked on the day on which the Tribunal made its determination.

(5) Where the licence of a psychiatric rehabilitation centre has been suspended or revoked under this section, the Minister may take such steps as the Minister thinks fit to secure the proper care of the persons receiving care in the centre.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor