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**FOURTEENTH REPORT**

of the

**LAW REFORM COMMITTEE**

of

**SOUTH AUSTRALIA**

to

**THE ATTORNEY-GENERAL**

—

**SUGGESTED AMENDMENTS TO THE LAW  
REGARDING ATTEMPTED SUICIDE**

1970

The Law Reform Committee of South Australia was established by Proclamation which appeared in the *South Australian Government Gazette* of 19th September, 1968. The Members are:

THE HONOURABLE MR. JUSTICE ZELLING, C.B.E., *Chairman.*

S. J. JACOBS, Q.C.

K. P. LYNCH.

J. F. KEELER.

The Secretary of the Committee is Mr. H. G. Edwards, c/o Adelaide Magistrates' Court, Adelaide, South Australia.

**FOURTEENTH REPORT OF THE LAW REFORM COMMITTEE  
OF SOUTH AUSTRALIA ON SUGGESTED AMENDMENTS  
TO THE LAW REGARDING ATTEMPTED SUICIDE**

To:

The Honourable L. J. King, Q.C., M.P.,  
Attorney-General for South Australia.

Sir,

Your Committee has now considered the memorandum on attempted suicide submitted by the South Australian Association for Mental Health Inc. and the recommendation adopted by the National Health and Medical Research Council on this topic at its 67th Session. For convenience these are set out in the schedule to this report.

We have informally consulted the Director-General of Medical Services and the Director of Mental Health Services. We had considered the desirability of amending the Health Act, 1935-1967 to give the Director-General of Medical Services powers over persons who attempt suicide similar to those he has over persons, suffering from tuberculosis but both the Director-General of Medical Services and the Director of Mental Health Services are confident that their powers under the existing legislation are quite satisfactory to treat persons who attempt suicide. Copies of their letters on this topic to the then Solicitor-General are attached. Accordingly we do not suggest that any amendments be made to the Mental Health Act, 1935-1967 or the Health Act, 1935-1967 to make specific reference to treating attempted suicides. However, later correspondence with Dr. Dibden, the Director of Mental Health Services (which is also attached), shows that it may be necessary to take coercive powers to ensure that the person concerned does undertake necessary treatment and counselling. Indeed, as the letter shows, Dr. Dibden would extend the legislation to include a "preventive" stage also and we think this has merit but as it is outside our terms of reference we merely draw your attention to it.

Generally, the Committee agrees that persons who attempt suicide should not be subject to a criminal charge but we feel that there might be unnecessary complications in amending existing legislation to provide that suicide itself is not to be a criminal offence. It would, for example, have repercussions in the law of life insurance. It will certainly be necessary to ensure that a person who conspires or encourages another to commit suicide remains subject to the provisions of the Criminal Law Consolidation Act.

Difficulty arises out of "suicide pacts" where two or more people agree to suicide together. We consider that the 1967 Victorian legislation on this topic should be followed. There a jury considering a charge of murder against a person can bring in a verdict of manslaughter if they believe, on the balance of probabilities, that the defendant was a party to a genuine suicide pact. The Judge then is able to impose an appropriate sentence based on the facts surrounding the suicide. It has been brought to the Committee's notice that in many suicide pacts one part takes a much more active role in promoting the pact than the other and the Court should be free to impose an appropriate sentence where the facts warrant it.

Section 270 of the Criminal Law Consolidation Act—"An attempt to commit a felony"—is normally used by the Police when a charge of attempted suicide is to be laid but "suicide" itself is not mentioned in that Act. We recommend that this Act be amended by inserting a new section after the present section 18 and a suggested draft is also annexed hereto for your consideration. In stating a penalty in clause 3 we have merely followed the terms of the Victorian legislation. However we have considerable doubt on these penalties as we feel that they may well be too high and the matter is raised as a question of policy for decision by the Government.

We have the honour to be

HOWARD ZELLING  
S. J. JACOBS  
K. P. LYNCH  
JOHN KEELER

The Law Reform Committee of South Australia.

*Suggested Amendment to Criminal Law Consolidation Act, 1935-1966,  
Attempts to Commit Suicide and Suicide Pacts*

18A. (1) Notwithstanding any other provision of this Act or of the Common Law it shall not be an offence to attempt to commit suicide.

(2) Where upon the trial of a person for the murder or attempted murder of another person the jury is satisfied that the accused caused or attempted to cause or was a party to causing or attempting to cause the death of that other person by a wilful act or omission, but are satisfied on the balance of probabilities that the act was done or the omission made in pursuance of a suicide pact then the jury shall, notwithstanding that the circumstances would but for the provisions of this section support a verdict of murder or attempted murder, return a verdict of manslaughter or attempted manslaughter, as the case may be, in lieu thereof.

(3) Any person who—

- (a) conspires, confederates and agrees with any other person to procure the suicide of that other person and that other person commits or attempts to commit suicide in consequence thereof, or
- (b) solicits, encourages, persuades or endeavours to persuade or proposes to any person to commit suicide, or
- (c) aids or abets any other person in the commission of suicide or in an attempt to commit suicide—

shall be guilty of a misdemeanour and liable to be imprisoned for a term of not more than 14 years; but if the jury is satisfied on the balance of probabilities that the acts constituting the offence were done pursuant to a suicide pact the jury shall return a verdict of guilty of the misdemeanour of being a party to a suicide pact and the convicted person shall be liable to be imprisoned for a term of not more than five years.

(4) For the purposes of this section “suicide pact” means an agreement between two or more persons having for its object the death of all of them whether or not each is to take his own life; but nothing done by a person who enters into a suicide pact shall be treated as done by him in pursuance of the pact unless it is done while he has the settled intention of dying in pursuance of the pact.

(5) Every person is justified in using such force as may reasonably be necessary to prevent the commission of suicide or of any act which he believes on reasonable grounds would, if committed or completed, amount to suicide.

26/10/66

**THE SOUTH AUSTRALIAN ASSOCIATION FOR MENTAL  
HEALTH INC.**

**Attempted Suicide:—**

The relevant present Statute is the Criminal Law Consolidation Act, 1935-1962, section 270, which states that it is a misdemeanour punishable by imprisonment for two years. In practice, a person charged with this offence is usually released on a bond. Often no charge is made if it is known that the person is to receive treatment.

The present law is unsatisfactory in a number of ways. There is inconsistency between the letter of the law and the action taken against those charged; there would appear to be little practical need for a law which officially is not enforced. The effect in the public's mind is to increase the stigma associated with mental illness. In any event, the effectiveness and value of psychiatric treatment in this condition is limited when the patient accepts this to avoid being charged.

The law in the United Kingdom was recently revised to make Attempted Suicide no longer a crime and it was recently reported (*The Australian* 13/8/66) that it ceased to be a crime in Queensland in 1899, in Western Australia in 1902 and in Tasmania in 1924. There is no evidence that changing the law increases the incidence of Suicide or Attempted Suicide.

The aiding and abetting of Suicide by another person can be regarded as a separate issue which it may still be considered desirable to retain as a criminal offence.

Minister for Health,  
Parliament House,  
Canberra, A.C.T. 2600.  
20th November, 1968.

Dear Mr. DeGaris,

At the recent Sixty-Seventh Session of the National Health and Medical Research Council, the following recommendation was adopted:

"Council considered there was a need to ensure proper care of persons who have attempted suicide, and in this connection recommended that suicide should no longer be legally considered a criminal act. It was requested that this recommendation be brought to the attention of the Commonwealth and State Ministers for Health with a recommendation that they bring it to the attention of their respective Attorneys-General with a view to consideration at their next respective annual conferences."

I would be pleased if you would consider bringing this recommendation to the attention of your Attorney-General in accordance with the wishes of the Council.

Yours sincerely,

(Sgd.) A. J. FORBES, Minister for Health

Hon. R. C. DeGaris, M.L.C.,  
Chief Secretary,  
Minister of Health and Minister of Mines,  
Box 403B, G.P.O.,  
Adelaide, S.A. 5001.

**SOUTH AUSTRALIA**  
**MENTAL HEALTH SERVICES**

Director of Mental Health  
Services  
274 East Terrace,  
Adelaide, S.A. 5000.  
26th June, 1969.

The Solicitor General,  
Crown Law Department,  
24 Flinders Street,  
Adelaide, S.A.

Dear Sir,

In reply to your letter of 10th June, 1969, I wish to make the statement that attempted suicide is a symptom of mental illness or emotional disorder and therefore should not be considered a punishable offence under law. The need to make this statement is reinforced by the fact that it is only certain examples of attempted suicide that are so punishable. Some vehicular accidents, for example, are without doubt suicidal compromises but such cases would very rarely be charged with attempted suicide.

The person who attempts suicide requires treatment. Such psychiatric treatment is becoming readily available from consultant psychiatrists attached to General Hospitals (Royal Adelaide Hospital and The Queen Elizabeth Hospital), and employed by the Mental Health Services. The Mental Health Act contains provisions for both informal and certified admissions to our psychiatric hospitals.

Though I am firmly of the opinion that attempted suicide should no longer be considered a crime, I am aware the law will need to consider prescriptions against persons who encourage, in any way, another to attempt suicide.

Yours faithfully,  
(Sgd.) W. ANDREW DIBDEN,  
Director of Mental Health Services

Box 114, Rundle Street P.O.,  
Adelaide, S.A. 5000.

Hospitals Department,  
158 Rundle Street,  
Adelaide.  
4th July, 1969,

The Solicitor General,  
Flinders Street,  
Adelaide, S.A. 5000.

Dear Mr. Wells,

Further to your letter of 10th June, 1969, I am pleased to re-affirm my opinion expressed to Mr. Lynch that the powers under the existing Mental Health Act for the management and treatment of persons who attempt to commit suicide are satisfactory for psychiatric purposes. The present powers under the Mental Health Act make it readily possible for any medical practitioner to complete a single certificate for the admission of a patient who has attempted suicide to any receiving house such as Enfield Hospital, Cleland and Paterson Houses (Glenside Hospital) and Ward IV (Hillcrest Hospital).

As you are aware this medical certificate merely indicates that the patient is apparently suffering from a mental disorder and does not commit the medical practitioner signing the certificate to any rigid statement that the patient is mentally defective. Similarly, the Mental Health Act also includes provision for police officers or other persons to lodge complaints before a Justice of the Peace, two Justices or a Magistrate, when it is considered that a person's behaviour might prove either harmful to himself or to others.

Accordingly, it seems to me that the provisions of the Mental Health Act can fully cover the admission to an appropriate hospital of a person who has attempted suicide and is reluctant to accept treatment voluntarily



in the same way as the Act covers other patients suffering from mental illness or emotional disorder who reject the concept of informal admission to either a psychiatric or general hospital. In fact it has been my experience that very few people who attempt suicide require "certification" to a psychiatric hospital, the vast majority being quite willing, on medical advice—or even non-medical at times—to accept treatment voluntarily. Most frequently this treatment is in a general hospital rather than a psychiatric hospital.

I trust that the above information will prove helpful to the Law Reform Committee but should you have any further specific enquiries I shall be pleased to answer these at your request.

Yours sincerely,  
(Sgd.) B. J. SHEA,  
Director General of Medical Services

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**SOUTH AUSTRALIA  
MENTAL HEALTH SERVICES**

Telephone: 23 2434  
23 2258  
23 2022

Office of:  
Director of Mental  
Health Services,  
274 East Terrace,  
Adelaide.  
23rd July, 1970.

Mr. K. P. Lynch,  
Roder, Dunstan, Lee & Taylor,  
13 Grenfell Street,  
Adelaide, S.A. 5000.

Dear Mr. Lynch,

In reply to your letter of 7th July on behalf of the Law Reform Committee, I would agree that some legislative provision is necessary to enable a medical practitioner or the police to require persons who have attempted suicide to enter into a Bond to obtain treatment or counselling, if that person refuses to undertake treatment which could be of benefit to him.

However, I suggest that such provision would be better placed in a Mental Health Act. I am at present reviewing the Mental Health Act, 1935-1969, and would welcome the opportunity of discussing my views with the Law Reform Committee.

I believe that the provision you suggest in regard to suicide could be linked with the legal machinery for the compulsory treatment of that small but difficult group of persons, who, by their conduct create anxiety in the family and social disturbance, but who cannot be brought under control by the present Act which, quite correctly, prohibits a doctor from completing a certificate only on the facts provided by other persons. The type of mentally ill or emotionally disturbed person I have in mind is the one who can conceal the nature of the illness very effectively at the time of the examination by a doctor, yet the history the doctor obtains from other people, from relatives, friends and employer, contains information which suggests strongly to the doctor that the person is in fact mentally or emotionally ill. He can, however, take no steps to bring this person before a tribunal or court which then has the power to order that he attend for treatment at either an in-patient or out-patient clinic.

In other words, such people may not be mentally defective in the normal sense, as you have pointed out in regard to some persons who attempt suicide, but could be assisted by treatment if they were not permitted to refuse to undertake it.

Yours faithfully,  
(Sgd.) W. ANDREW DIBDEN,  
(DR. W. A. DIBDEN)  
Director of Mental Health Services