



REPUBLIC OF NAURU

MENTALLY- DISORDERED PERSONS (AMENDMENT) ACT 2016

No. 25 of 2016

An Act to amend the *Mentally-disordered Persons Act 1963*

Certified: 12th May 2016

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Enacted by the Parliament of Nauru as follows:

1 Short title

This Act may be cited as the *Mentally-disordered Persons (Amendment) Act 2016*.

2 Commencement

This Act commences upon certification by the Speaker.

3 Amendment of Mentally-disordered Persons Act 1963

The *Mentally-disordered Persons Act 1963* is amended by the provisions of this Act.

4 Amendment of section 3

(1) Section 3 is amended as follows:

Omit

'medical practitioner' means a person registered or licensed as a medical practitioner under the law of a State or Territory of the Commonwealth of Australia, of New Zealand or of the United Kingdom;

Substitute

'medical practitioner' means a person registered or licenced as a medical practitioner under the laws of Nauru, Australia, New Zealand, the United Kingdom or of any other country approved by the Minister;'

(2) Insert in alphabetical order the following definitions:

'designated mental health facility' means a place that has been declared by the Minister as a mental health facility in accordance with section 4B;

'Director of Medical Services' has the meaning given in the *Health Practitioners Act 1999*;

'mental disorder' means a disturbance or defect, to a substantially disabling degree, of perceptual interpretation, comprehension, reasoning, learning, judgment or memory, motivation or emotion whether or not the disturbance or defect is or is caused by:

(a) mental illness;

(b) personality disorder; or

(c) dementia;

'Minister' means the Minister for Health and Medical Services;

"Secretary" means the Secretary for Health and Medical Services.

5 Amendment of section 4

(1) Insert new section 4 (c) as follows:

'(c) poses a serious danger to the health or safety of that person or others.'

(2) Insert new section 4A

4A Persons not to be regarded as mentally disordered

(1) For the purposes of this Act, a person is not be regarded as mentally disordered by reasons only that:

- (a) the person expresses or refuses or fails to express, or has expressed or has refused or failed to express a particular political opinion or belief;
- (b) the person expresses or refuses or fails to express, or has expressed or has refused or failed to express, a particular religious opinion or belief;
- (c) the persons expresses or refuses or fails to express, or has expressed or has refused or failed to express, a particular philosophy or cultural belief;
- (d) the person expresses or exhibits or refuses or fails to express, or has expressed or has refused or failed to express, a particular sexual preference or sexual orientation;
- (e) the person engages in or refuses or fails to engage in, or has engaged in or has refused or failed to engage in, a particular political activity; or
- (f) the person takes or has taken alcohol or any other drug, volatile substance or other substances capable of inducing intoxication or an altered state of mind.

(2) Subsection (1)(f) does not exclude the temporary or permanent effect of alcohol or any other drug, volatile substance or other substances inducing a mental disorder.

6 Insert new section 4B

4B Declaration of designated mental health facility

The Minister may by Order in the Government Gazette declare certain places as designated mental health facilities for the purpose of this Act, including:

- (a) a public hospital;
- (b) a health centre or clinic; or
- (c) any other place the Minister considers appropriate to be so designated having regard to the purposes of the Act.

7 Insert new section 4C

4C Appointment of authorised officers

- (1) The Secretary may appoint persons as authorised officers in accordance with this Act.
- (2) The Secretary may only appoint as an authorised officer a person whom the Secretary is satisfied:
 - (a) is competent to exercise the powers conferred on an authorised officer under this Act; and
 - (b) is a fit and proper person to exercise those powers, having regard to character, honesty and integrity; and
 - (c) has undergone any training required by the Secretary; and
 - (d) has agreed in writing to the exercise of those powers.

8 Repeal and replace section 6

Section 6 is hereby repealed and replaced with the following:

6 General provisions for care, treatment and support

- (1) In interpreting and implementing provisions of this Act, due regard should be had to the following principles:
 - (a) care, support and where required treatment and protection for persons with a mental disorder should be designed to bring about the best therapeutic outcomes for such persons, and, as far as possible, their recovery and participation in community life;

- (b) care, support and treatment should be provided on a voluntary basis as far as possible, and otherwise in the least restrictive way and in the least restrictive environment that is consistent with their efficacy and public safety, and at places as near as practicable to where the patients, or their families or other carers or supporters, reside;
- (c) care, support and treatment should be governed by comprehensive treatment and care plans that are developed in a multi-disciplinary framework in consultation with the patients (including children) and their family or other carers or supporters; and
 - (i) take into account the different developmental stages of children and young persons and the needs of the aged; and
 - (ii) take into account the cultural background of the patient;
- (d) there should be regular medical examination of every patient's mental and physical health and regular medical review of any order applying to the patient;
- (e) where possible, children and young persons should be cared for and treated separately from other patients, in an environment that is safe and conducive, to enable the care and treatment to be tailored to their different developmental stages;
- (f) the rights, welfare and safety of the children and other dependants of patients should always be considered and protected as far as possible;
- (g) medication should be used only for therapeutic purposes or safety reasons and not as a punishment or for the convenience of others;
- (h) mechanical body restraints and seclusion should be used only as a last resort for safety reasons and not as a punishment or for the convenience of others and may only be used in accordance with requirements prescribed by Regulation;
- (i) patients, (if appropriate, together with their family or other carers) should be provided with comprehensive information about their illnesses, any orders that apply to them, their legal rights, the treatments and other services that are to be provided or offered to them and what alternatives are available;

- (j) information should be provided in a way that ensures as far as practicable that it can be understood by those to whom it is provided.
- (2) This Act applies to children in the same way as to persons of full age subject to the following:
 - (a) a right conferred on a person under this Act may, if the person is a child under 16 years of age, be exercised by a parent or guardian of the child on behalf of the child;
 - (b) where possible, and where resources allow, an assessment of a person who is under the age of 18 years shall be conducted by a medical practitioner with specialized training in child psychiatry.
- (3) Nothing in this Act affects the ability of a person to be assessed on a voluntary basis or to be admitted to a mental health facility as an inpatient on a voluntary basis.

9 Insert new section 6A

6A Involuntary Assessments

- (1) A person may, subject to available resources, be assessed on an involuntary basis in accordance with the procedures in this section.
- (2) A Request for Transfer and Initial Assessment in Form 1 of the Schedule may be made by a health practitioner registered under the *Health Practitioners Act 1999* where the health practitioner reasonably believes that the person may be a mentally disordered person.
- (3) A transfer in accordance with the Request for Transfer and Assessment must be carried out by the Nauru Police Force as soon as possible, with the assistance of an authorised officer where available.
- (4) The person may be assessed at a hospital or a designated mental health facility and must be assessed within 24 hours of arrival at the hospital or designated mental health facility.
- (5) An assessment under this section may only be carried out by an authorised medical practitioner and in accordance with any prescribed requirements.
- (6) During the assessment process under this section, treatment may be given if this is necessary, in the opinion of a medical practitioner, to reduce the person's risk to themselves or others.

- (7) Following an assessment under subsection (4), the medical practitioner must either:
- (a) compel the person to undergo further assessment completing Form 2 of the Schedule “Request for Assessment by Second Medical Practitioner” if the medical practitioner is of the opinion that the person assessed:
 - (i) appears to have a mental disorder; and
 - (ii) the person appears to require care, support treatment or protection:
 - (A) for the protection, safety, health and welfare of that person; or
 - (B) to protect another person or persons; or
 - (C) as the person appears to pose a significant risk to the general community; and
 - (iii) the person is unwilling or unable to consent to further treatment; or
 - (b) release the person if the medical practitioner is of the opinion that the person assessed:
 - (i) does not appear to have a mental disorder; or
 - (ii) does not appear to require care, support, treatment or protection in the interests of the person or to protect another person.
- (8) An assessment made in accordance with Form 2 “Request for Assessment by a Second Medical Practitioner” must be conducted within 48 hours of the arrival of the person to the designated mental health facility.
- (9) Following an assessment under subsection 8, the second medical practitioner must either:
- (a) compel the person to undergo a further period of assessment by completing Form 3 of the Schedule “Request for a Further Period of Assessment” if the second medical practitioner is of the opinion that the person assessed:
 - (i) appears to have a mental disorder;

- (ii) the person appears to require care, support treatment or protection:
 - (A) for the protection, safety, health and welfare of that person; or
 - (B) to protect another person or persons; or
 - (C) as the person appears to pose a significant risk to the general community; and
 - (iii) the person is unable or unwilling to consent to further treatment; or
- (b) release the person if the second medical practitioner is of the opinion that the person assessed:
- (i) does not appear to have a mental disorder; or
 - (ii) does not appear to require care, support, treatment or protection in the interests of the person or to protect another person; or
 - (iii) is able to be treated voluntarily.
- (10) The further period of assessment referred to subsection 9(a) runs for a period of five days from the time of completion of the assessment by the second medical practitioner.

10 Insert new section 6B

6B Detention

- (1) A person may be detained for assessment in a hospital or designated mental health facility only:
 - (a) for the purposes of an involuntary assessment in accordance with section 6A; or
 - (b) on the order of a magistrate in accordance with section 7.
- (2) A health practitioner or medical practitioner requesting transfer or involuntary assessment in accordance with section 6A must not be the primary carer or near relative of the person or have any other interest in relation to the person that might affect the practitioner's professional judgement or give rise to a real or perceived conflict of interest.

Insert new section 6C**6C Powers of Nauru Police Force**

- (1) A police officer may request a person to accompany the officer to a hospital or designated mental health facility if the officer:
 - (a) in any place, finds a person who appears to the officer to be mentally disordered; and
 - (b) reasonably believes it would be beneficial to the welfare or safety of the person or the public to be dealt with in accordance with this Act.
- (2) If it is not reasonably practicable to arrange for examination by a medical practitioner except at a designated mental health facility, the officer may request the person to accompany the officer to the nearest facility for that purpose.
- (3) The officer should take action as in subsection (2), if the police officer reasonably believes that:
 - (a) the person has recently attempted to kill or harm himself or herself; or
 - (b) it is probable that the person will attempt to kill or harm himself or herself or any other person; or
 - (c) the person poses a significant risk to the general community; or
 - (d) it is probable that the person will suffer physical or other harm if not taken to a designated mental health facility.
- (4) If, when requested under subsection (2) or (3), a person refuses to accompany a police officer to the premises of a medical practitioner, or to a designated mental health facility, as the case may be, the police officer may:
 - (a) arrest the person without a warrant; and
 - (b) take the person for examination to a hospital or to a designated mental health facility in accordance with this section.
- (5) A police officer acting pursuant to subsection (4) may request the assistance of an authorised officer or any other person if the police officer is of the opinion that

there are concerns relating to the safety of the person being arrested or to other persons.

12 Insert new section 6D

6D Assistance by police officers

- (1) A health practitioner may request the assistance of a police officer to assist the implementation of the transfer and assessment procedure under subsection 6, or to find and return a person who has is being involuntarily assessed and detained and is absent from the mental health facility without approved leave and police officer must, if practicable:
 - (a) take or assist in taking the person who is the subject of the request to a designated mental health facility, and if necessary arrest the person for that purpose; or
 - (b) require or make arrangements for some other police officer to do so.
- (2) A police officer acting in relation to a person pursuant to subsection (1) may:
 - (a) enter premises to arrest the person;
 - (b) arrest the person without a warrant; and
 - (c) exercise powers conferred by section 6C as being authorised under that section to take a person to a designated mental health facility.
- (3) An arrest under subsection (2) must be carried out humanely and:
 - (a) as speedily as practicable;
 - (b) with the minimum of force required in the circumstances; and
 - (c) in the least restrictive environment practicable in the circumstances.

13 Insert new section 6E

6E Person to be brought before Magistrate

- (1) At the conclusion of the 5 day period under section 6A (10), or earlier if necessary, an application for an inpatient treatment order must be made and filed in the District

Court by the Director of Medical Services, or the person must be released.

- (2) A person may be detained for a maximum of 14 days from the date of filing of the application until the application is determined.
- (3) The Director must submit all relevant assessment documents made with regard to that person.
- (4) If the Magistrate is of the opinion that it is advisable to remand the person further and make an inpatient treatment order then the Magistrate may issue an order for a period not exceeding 3 months.
- (5) At or before the expiration of the period specified in an order made in subsection (4), the person to whom the order relates must be brought before a Magistrate so that the examination and inquiry may be completed.
- (6) Unless otherwise determined by the Court, inpatient treatment will continue during any period of appeal against the order.

14 Insert new section 6F

6F Making of inpatient treatment orders

The criteria for an inpatient treatment order for a person are that:

- (a) the person has a mental disorder;
- (b) as a result of the mental disorder the person requires care, support, treatment or protection:
 - (i) in the interests of the person; or
 - (ii) to protect the safety, health and welfare of another person or persons;
- (c) the care, support, treatment, or protection cannot be provided in a less restrictive manner than by inpatient treatment;
- (d) such treatment is available in Nauru; and
- (e) the person has been assessed by two medical practitioners who have certified that the person requires the inpatient treatment.

15 Insert new section 6G

6G Terms of an inpatient treatment order

- (1) An inpatient treatment order may require the person subject to the order:
 - (a) to be detained and remain an inpatient at a hospital or designated mental health facility;
 - (b) to be absent only if leave is approved from the inpatient unit by order of the treating medical practitioner;
 - (c) to receive the care, support, treatment or protection that a medical practitioner determines from time to time;
 - (d) after release from the hospital or designated mental health facility, to attend at:
 - (i) a specified medical, health care or rehabilitation service;
 - (ii) a specified therapist or place of therapy; or
 - (iii) some other specified activity, service, person or body; and
 - (e) to comply with all other terms and conditions imposed in writing by a medical practitioner.
- (2) The terms and conditions imposed under subsection (1) must only be such as are in the opinion of the medical practitioner in the best interests of the mental health of the person who is subject to the order.

16 Insert new section 6H

6H Assistance of interpreters

- (1) Subject to subsection (2), health care professionals or a medical practitioner, as the case may be, must take all reasonable steps to have an appropriate interpreter present at the medical examination or assessment of persons under this Act if the person is unable to communicate adequately in the English or Nauruan language but is able to communicate in another language or if the person requests an interpreter.
- (2) If it is not reasonably practicable to arrange for an interpreter to be present within 24 hours:

- (a) the medical examination or assessment may proceed; but
- (b) the consequences and results of the examination must be interpreted to the person or his or her primary carer as soon as reasonably practicable.

17 Insert new section 6I

6I Right to be given order, statement and explanation of rights

(1) If a person is made subject to an inpatient treatment order, the medical practitioner who applied to the Magistrate under section 6I must within 24 to 72 hours of making the order or application give to the person:

- (a) a copy of the order;
- (b) a copy of any application for review;
- (c) an explanation in a language, style and manner that the person is readily able to understand of:
 - (i) the order;
 - (ii) the reasons why the order has been made;
 - (iii) what the order requires of the person;
 - (iv) the person's rights under this Act; and
 - (v) the person's right to consult a lawyer.

(2) If the medical practitioner considers it to be in the best interest of the person, or if the person so requests, the documents referred to in subsection (1) must also be given to the person's primary carer and the person's lawyer.

18 Insert new section 6J

6J Emergency medical treatment or surgery for involuntary patients

(1) Subject to subsection (2), a medical practitioner may in writing authorise the administering of medical treatment or the performance of a surgical operation, except sterilisation or a surgical operation upon an unborn child, on an involuntary patient if the medical practitioner is of the opinion that:

- (a) the patient is incapable of giving informed consent; or is capable of giving consent but refuses to give that consent or neither gives nor refuses to give that consent; and
 - (b) it is necessary, as a matter of urgency, to administer such medical treatment or perform a surgical operation on the patient in order:
 - (i) to save the patient's life;
 - (ii) to prevent serious, potentially irreversible damage to the patient's health; or
 - (iii) to prevent the patient from suffering or continuing to suffer significant pain or distress.
- (2) Before giving an authority for the administering of medical treatment or for an operation under subsection (1), the medical practitioner must take all reasonable steps to obtain informed consent of the primary carer of the patient to the treatment or the operation, and may proceed as if the patient had consented only if the primary carer:
- (a) is not readily available; or
 - (b) does not give consent to the treatment or operation.
- (3) The medical practitioner or authorised officer at the hospital or designated mental health facility in which the involuntary patient is detained must, as soon as practicable after the administration of treatment or performance of a surgical operation performed under this section, notify the Director of Medical Services and the Minister.
- (4) Informed consent given to an emergency medical treatment or surgical operation by a primary carer of a patient who does not have the capacity to consent has the same effect as if it were given by the patient and the patient had the capacity to consent.
- (5) Where sterilisation or a surgical operation upon an unborn child is indicated as a medical emergency under section 6J 1(b), and application must be made to the District Court for its direction and the Court may make such order relating to the matter as it thinks proper.

19 Repeal of section 7

Section 7 is hereby repealed.

20 Insert new Section 7

7 Removing persons detained for assessment or under an inpatient treatment order from a mental health facility

A person must not, without lawful excuse, remove an involuntary inpatient from a treatment centre, or aid such a patient to leave the centre.

Maximum penalty: \$2000 or imprisonment for 1 year.

21 Repeal of section 8

Section 8 is hereby repealed.

22 Insert new Section 8

8 Confidentiality and records

(1) Subject only to subsection (3), information about a person obtained in the course of providing care, treatment and support to a person under this Act must be kept confidential and only used for the purpose of assessing, monitoring or improving the mental health of the person.

(2) All such information and records are the property of the Secretary of the Department of Health and must be made available to the Secretary of the Department or the Director of Medical Services immediately upon request.

(3) Disclosure may be made with the authority of the Director of Medical Services in order to avoid serious physical or mental harm to the person or other persons or in accordance with law.

23 Repeal of section 10

Section 10 is hereby repealed.

24 Repeal of section 11

Section 11 is hereby repealed.

25 Insert new section 21

21 Regulations

(1) The Minister may make Regulations to give effect to the provisions of this Act and subject to the express requirements of the Act, consistent with its principles and objectives.

- (2) Without limiting subsection (1), Regulations made under this Act may make provision or additional provision, for or with respect to:
- (a) fees and charges for the purpose of this Act;
 - (b) the carrying out of assessments for purposes of this Act;
 - (c) the assessment, treatment, accommodation and rights of children;
 - (d) the way in which provisions of this Act apply to persons in custody or correctional facilities who may have a mental disorder;
 - (e) the management and control of mental health facilities generally;
 - (f) the qualifications, powers and appointment of authorised officers;
 - (g) the use of mechanical body restraints and seclusion;
 - (h) any matter that is required or empowered by this Act to be prescribed.
- (3) Regulations made under subsection (1) may:
- (a) apply generally or be limited in their application by reference to specified exceptions or factors;
 - (b) apply differently according to different factors of a specified kind;
 - (c) authorise any matter or thing to be from time to time determined, applied or regulated by a specified person or body; or
 - (d) do any combination of those things.

26 Repeal and replacement of Schedule

The Schedule, including all Forms are repealed and replaced as follows:

FORM 1

Subsection 6A (2)

REQUEST FOR ASSESSMENT AND TRANSFER

I, _____ of _____, a health practitioner in accordance with the Mentally-disordered Persons Act 1963:

am of the opinion that _____ of _____ is a mentally-disordered person and that it is proper for him/her to be taken charge of and detained under care or treatment; and

I have formed that opinion on the following grounds:

(i) Facts observed by myself (state facts below):

(ii) Facts communicated to be by other person (state facts and addresses and names of informants below):

I request the person named above to be transferred to _____, a designated mental health facility, to be detained and assessed.

Date: / / **Time:**

Name

Position

Signature:

Registration Number under Health Practitioners Act:

Approved:

Director of Medical Services

Date:

Time:

FORM 2

Subsection 6A(7)(a)

REQUEST FOR ASSESSMENT BY SECOND MEDICAL PRACTITIONER

I, _____ of _____, a medical practitioner under the Mentally-disordered Persons Act 1963 hereby certify that:

(a) On / / , at _____, I personally examined _____ of _____;

(b) I am of the opinion that the said _____ is a mentally-disordered person and that it is proper for him/her to be kept in detention under care and treatment; and

(c) I have formed that opinion on the following grounds:

Facts observed by myself (state facts below):

Date: / / **Time:**

Name

Position

Signature:

Registration Number under Health Practitioners Act:

Approved:

Director of Medical Services

Date:

Time:

FORM 3

Subsection 6A(9)(a)

REQUEST FOR A FURTHER PERIOD OF ASSESSMENT AND DETENTION

I, _____ of _____, a medical practitioner under the Mentally-disordered Persons Act 1963 hereby certify that:

(a) On / / , at _____, I personally examined of _____;

(b) I have considered previous assessments and examinations conducted on / / by _____¹ and _____

(c) I am of the opinion that the said _____ is a mentally-disordered person and that it is proper for him/her to be kept in detention for a period of up to 5 days for further assessment.

(d) I have formed that opinion on the following grounds:

Facts observed by myself (state facts below):

Date: / /

Name

Position

Signature:

Registration under Health Practitioners Act:

Approved:

Director of Medical Services

Date:

Time:

¹ Insert name of medical practitioner