



MDPA Case No. 1 of 2024

IN THE DISTRICT COURT OF NAURU

AT YAREN

IN THE MATTER of the Mental Health Act 1963 (MHA)

AND

IN THE MATTER of an application by the Director of Medical Services for an order for detention against AC pursuant to Section 6A of the MHA

BETWEEN: **THE DIRECTOR OF MEDICAL SERVICES**

AND: **AC**

Before: Acting Resident Magistrate Vinay Sharma

Date of Hearing: 4 & 5 January 2024

Date of Ruling: 8 January 2024

Appearance:

Applicant: R Tagivakatini

Respondent: No appearance

RULING

INTRODUCTION

1. This ruling will be anonymised for the purposes of publication to protect the privacy of the respondent. The respondent will be referred to as AC for this purpose.
2. On 4 January 2024 a Form 1 request was filed in the District Court seeking an order for transfer and assessment of AC pursuant to Section 6A of the MHA.
3. The current practice of this court in relation to an application under Section 6A of the MHA needs to be revisited. Therefore, I intend to properly consider Section 6A of the MHA and make a determination of its application in the current circumstances.
4. During the hearing, I informed the applicant that the District Court does not have jurisdiction to make an order for transfer and assessment pursuant to Section 6A of the MHA because the power to detain under that provision is vested in a registered health practitioner exercising his or her powers pursuant to Section 6A under the authority and directions of the Director of Medical Services.
5. The matter was adjourned to 5 January 2024 for further hearing.
6. On 5 January 2024 Mr Tagivakatini submitted that indeed the District Court did not have jurisdiction under Section 6A of the MHA. Further, that the power to detain under Section 6A of the MHA was vested in the registered health practitioner under the authority and directions of the Director of Medical Services.
7. I will now consider Section 6A of the MHA and its application.

INVOLUNTARY ASSESSMENTS - SECTION 6A OF THE MHA

8. The provisions of Section 6A of the MHA can be divided into 3 parts. I will discuss the relevant parts for ease of reference.

Form 1 – Request for Assessment and Transfer

9. Section 6A(1)(2)(3)(4)(5) & (6) of the MHA makes provisions for an initial Request for Assessment and Transfer via the prescribed Form 1 as follows:

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 Assessment and Transfer 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 impaired person.

[subs (2) am Act 1 of 2017 s 8, opn 26 Jan 2017; am Act 38 of 2020 s 5, opn 3 Dec 2020]

(3) A transfer in accordance with the Request for Assessment and Transfer shall be carried out by the Nauru Police Force as soon as possible, with the assistance of an authorised officer where available.

[subs (3) am Act 1 of 2017 s 8, opn 26 Jan 2017]

*(4) The person may be assessed at a hospital or a designated mental health facility and shall 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 authorized health 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 health practitioner, to reduce the person's risk to themselves or others... (emphasis added)

10. A Form 1 request is made by a health practitioner registered under the Health Practitioners Act 1999 ("health practitioner"). The prescribed Form 1 as contained in the Schedule of the MHA clearly indicates that the request under Form 1 must be approved by the Director Medical Services.
11. A person can be detained for a period of 24 hours for an assessment under Form 1.

Form 2 – Request for Assessment by Second Health Practitioner

12. Section 6A(7) & (8) of the MHA provides for a further assessment to be conducted by a second health practitioner as follows:

6A Involuntary Assessments

...

(7) Following an assessment under subsection (4), the health practitioner shall either:

(a) compel the person to undergo further assessment completing Form 2 of the Schedule "Request for Assessment by Second Health Practitioner" if the health practitioner is of the opinion that the person assessed:

(i) appears to have a mental impairment; and

(ii) the person appears to require care, support treatment or protection:

(A) for the protection, safety, health and welfare of that person;

(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 health practitioner is of the opinion that the person assessed:

(i) does not appear to have a mental impairment; or

(ii) does not appear to require care, support, treatment or protection in the interests of the person or to protect another person.

[subs (7) am Act 38 of 2020 s 5, opn 3 Dec 2020]

*(8) An assessment made in accordance with Form 2 “Request for Assessment by a Second Health Practitioner”, shall be conducted within **48 hours** of the arrival of the person to the designated mental health facility.*

13. Under Section 6A(7) of the MHA a health practitioner who conducted the initial assessment under Form 1 must either:
- i) Compel the person assessed under Form 1 to undergo a further assessment under Form 2; or
 - ii) Release the person.

I do not need to go through the assessment criteria.

14. A Form 2 request is made by the health practitioner who conducted the assessment under Form 1. The prescribed Form 2 as contained in the Schedule of the MHA clearly indicates that the request under Form 2 must be approved by the Director Medical Services.
15. A person can be detained for a period of 48 hours for an assessment under Form 2.

Form 3 – Request for a further Period of Assessment

16. Section 6A(7) & (8) of the MHA provides for a final further period of assessment to be conducted by the second health practitioner as follows:

6A Involuntary Assessments

...

(9) Following an assessment under subsection (8), the second health practitioner shall either:

(a) compel the person to undergo a further period of assessment and detention, by completing Form 3 of the Schedule “Request for a Further Period of Assessment” if the second health practitioner is of the opinion that the person assessed:

(i) appears to have a mental impairment;

(ii) the person appears to require care, support treatment or protection:

(A) for the protection, safety, health and welfare of that person;

(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 health practitioner is of the opinion that the person assessed:

(i) does not appear to have a mental impairment;

(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.

[subs (9) am Act 38 of 2020 s 5, opn 3 Dec 2020]

(10) The further period of assessment referred to in subsection (9)(a), runs for a period of 5 days from the time of completion of the assessment by the second health practitioner.

[subs (10) am Act 1 of 2017 s 8, opn 26 Jan 2017]

[s 6A insrt Act 25 of 2016 s 9, opn 12 Mar 2016]

17. Once again, under Section 6A(9) of the MHA the second health practitioner who conducts the further assessment under Form 2 must either:
- i) Compel the person assessed under Form 2 to undergo a final period of further assessment under Form 3; or
 - ii) Release the person.

Once again, I do not need to go through the assessment criteria.

18. A Form 3 request is made by the second health practitioner who conducted the assessment under Form 2. The prescribed Form 3 as contained in the Schedule of the MHA clearly indicates that the request under Form 3 must be approved by the Director Medical Services.

19. A person can be detained for a period of 5 days for a final period of assessment under Form 3.

Assessments under Section 6A

20. The wording of Section 6A of the MHA indicates that once an initial assessment is undertaken under Section 6A, and the person being assessed has a mental impairment and needs protection under the MHA, then a further assessment needs to be undertaken by a second health practitioner. Further, if the second health practitioner upon completing an assessment under Form 2 is of the view that the person being assessed has a mental impairment and needs protection under the MHA, then a final period of further assessment must be undertaken by the second health practitioner.
21. In light of the above, a person who is suspected to be mentally impaired and in need of protection under the MHA may be detained by the health practitioners for a total period of **8 days**. This will allow them to undertake assessments to determine if that person has a mental impairment and needs protection under the MHA, and what treatment he or she may require.
22. Once an assessment is commenced under Form 1, then the other two assessments must follow if the health practitioners are of the view that the person being assessed is suffering from a mental impairment and needs protection under the MHA. The exhaustion of Forms 1, 2 & 3 is mandatory because the word “shall” is used when giving the power to the health practitioners to either release or compel the person being detained so that he or she may undergo further assessments.

WHO HAS THE POWER TO DETAIN UNDER SECTION 6A OF THE MHA?

23. Section 6B of the MHA provides as follows:

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 Resident Magistrate in accordance with Section 6E.

[subs (1) am Act 2 of 2017 s 9, opn 26 Jan 2017]

(2) A health practitioner requesting transfer or involuntary assessment in accordance with Section 6A shall 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 judgment or give rise to a real or perceived conflict of interest.

[s 6B insrt Act 25 of 2016 s 10, opn 12 Mar 2016]

24. Section 6B(1) of the MHA distinguishes the power of the court to make an order for inpatient treatment and the power of the health practitioners to detain a person for assessment under Section 6A. This reading of Section 6B(1) is supported by Section 6B(2) which imposes a duty of impartiality on the health practitioners so that their assessment is not tainted as a result of bias or conflict of interest.

25. Further, Section 6D(1) of the MHA provides as follows:

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 Section 6A, or to find and return a person who has been or is being involuntarily assessed and detained and is absent from the mental health facility without approved leave, and the police officer shall, 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.

26. Section 6D(1) requires the Nauru Police Force to assist the health practitioners for the implementation and assessments under Section 6A. Once a request is made for assistance, then Nauru Police Force would be obliged to assist the health practitioners as required under the MHA.

27. The legislative intent of Section 6A is to grant the health practitioners the power to detain a person suspected of suffering from a mental impairment and is in need of protection under the MHA so that they may be assessed under the said section. This is evident when Section 6A, 6B and 6D(1) of the MHA are read together.

28. D C Pearce and R S Geddes in their book on Statutory Interpretation in Australia provide the following:

*Legislation is, at its heart, an instrument of communication. For this reason, many of the so-called rules or principles of interpretation are no more than common-sense and grammatical aids that are applicable to any document by which one person endeavours to convey a message to another. Any inquiry into the meaning of an Act should therefore start with the question: 'What message is the legislature trying to convey in this communication?'*¹

29. With this regard Lord Bingham in the House of Lords case in ***R (Quintavalle) v Secretary of State for Health***² made the following observations on the principle of statutory interpretation at [8] of his judgment:

The court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose. So the controversial provisions should be read in the

¹ D C Pearce and R S Geddes, *Statutory Interpretation in Australia* (LexisNexis Butterworths, 8th ed, 2014) 146 [4.1]

² [2003] UKHL 13, [2003] 2 AC 687, at [8]

context of the statute as a whole, and the statute as a whole should be read in the historical context of the situation which led to its enactment.

30. Further, Lady Arden and Lord Burrows in their concurring judgment in the Supreme Court of the United Kingdom in ***Kostal UK Ltd v Dunkley***³ made the following observations with regard to the recent development in statutory interpretation in the United Kingdom:

*The modern approach to statutory interpretation requires the courts to ascertain the meaning of the words in a statute in the light of their context and purpose... In carrying out their interpretative role, the courts can look not only at the statute but also, for example, at the explanatory notes to the statute, at relevant consultation papers, and, within the parameters set by *Pepper v Hart* ..., at ministerial statements reported in *Hansard*.*

31. In addition, Section 49 of the Interpretation Act 2011 provides as follows:

49 Interpretation to achieve purpose of law

(1) In interpreting a written law, the interpretation that would best achieve the purpose of the written law shall be preferred to any other interpretation.

(2) This Section applies whether or not the purpose of the written law is expressly stated in the written law

32. Section 49 of the Interpretation Act 2011 is in line with recent developments in the common law principles of statutory interpretation, which now focuses on ascertaining “the meaning of the words in a statute in the light of their context and purpose”.
33. I will also refer to the Ministerial Speech and the Explanatory Memorandum in relation to the amendments made by the ***Mentally Disordered Persons (Amendment) Act*** 2016 to determine the purpose and application of Section 6A of the MHA.
34. The Honorable Valdon Dowiyogo MP in his second reading speech on 12 May 2016 said the following:

Changes to the Act will mean that if a health practitioner or police officer have concerns for the mental health of a person in the community and consider that the person may be a risk of harm to himself or others, then the person can be transported to the hospital or medical facility for a mental health assessment.

A medical practitioner must assess the person within 24 hours and if the doctor considers that further assessment is warranted, a second doctor must make an assessment within the next 24 hours. That doctor can apply to the Director of Medical Services to have the detention for the purposes of assessment extended for a maximum of 5 days.

Naturally any detention of liberty needs safeguards. Under the Act, the provisions requiring a person to be brought before a Magistrate remain, but are updated. Effectively a person will be able to be held for assessment for a

³ [2021] UKSC 39, [2021] 3 WLR 697, at [109]

maximum of seven days, with the concurrence of two separate medical practitioners who have examined him or her. After that time, the person can only be detained by Order of a Magistrate who will make an inpatient treatment order on advice of the treating doctors and the Director of Medical Services.

35. The Explanatory Memorandum in relation to the amendments made by the ***Mentally Disordered Persons (Amendment) Act*** 2016 also provides the following:

Clause 9 inserts a new section 6A on the issue of involuntary assessments. It provides a detailed procedure whereby:

-a health practitioner can request a transfer and assessment of a person in the community where there are concerns for the person's mental health;

-the person is then to be taken to the designated facility for an assessment;

-a medical practitioner must examine the person within 24 hours and then either order a second examination or release the person;

-if a second examination is ordered, a second medical practitioner must complete the examination within 24 hours and then either request a further period of assessment of up to 5 days, or release the person;

-the Director of Medical Services must approve each step in this request process;

-at the expiration of 5 days, if the Director of Medical Services considers that a further period of treatment and assessment is required, he must make an application to the District Court for an inpatient order which can be made for up to three months.

CONCLUSION

36. In light of the above, I make the following findings:
- i) That a health practitioner has the power to detain, subject to the approval and directions of the Director of Medical Services, a person who is suspected to have a mental impairment and is in need of protection under the MHA so that an assessment can be carried out under Section 6A(2) of the MHA (Form 1).
 - ii) Once a Form 1 assessment is completed, and the assessing health practitioner is of the view that the person being assessed suffers from a mental impairment and is in need of protection under the MHA, then a further assessment by a second health practitioner must be carried out, subject to the approval and directions of the Director of Medical Services
 - iii) Once a Form 2 assessment is completed, and the second health practitioner is also of the view that the person being assessed suffers from a mental impairment and is in need of protection under the MHA, then a further final period of assessment must be carried out by the second registered health practitioner in

accordance with Form 3, subject to the approval and directions of the Director of Medical Services.

- iv) The duration of detention is as follows:
 - a) Form 1 – 24 hours;
 - b) Form 2 – 48 hours; and
 - c) Form 3 – 5 days.
- 37. Pursuant to Section 6E of the MHA, an application for an order for inpatient treatment to the District Court may be made upon completion of the assessments under Forms 1, 2 and 3.
- 38. There is no prescribed form for an application pursuant to Section 6E of the MHA. Therefore, an application under Section 6E may be made by filing in the District Court registry an Originating Summons together with an Affidavit in Support.
- 39. I also find that the Form 1 filed on 4 January 2024 is premature and should be struck out accordingly. Further, I also find that the District Court does not have jurisdiction to make an order under Section 6A of the MHA.

ORDERS

- 40. The following are the orders of this court:
 - i) That this ruling is to be anonymised before its publication, and the respondent is to be referred to as AC for this purpose.
 - ii) That the Form 1 filed in this court is struck out for want of jurisdiction.

Dated this 8th day of January 2024.

Vinay Sharma
Acting Resident Magistrate