



REPUBLIC OF NAURU

MENTALLY- DISORDERED PERSONS (AMENDMENT) No. 2 ACT 2017

No. 1 of 2017

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

Certified: 26th January 2017

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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) No. 2 Act 2017*.

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 4C

(1) Insert new 4C (3) as follows:

(3) The powers of an authorised officer include the authority to:

- (a) stop a person from harming himself or herself or others;
- (b) stop a person from damaging property;
- (c) seize any items according to section 4E;
- (d) restrain a person for the purpose of having treatment administered;
- (e) stop a person who is being involuntarily assessed or detained from leaving a designated mental health facility without authorisation;
- (f) return a person who is being involuntarily assessed or detained and who has left without proper authorisation to a designated mental health facility;
- (g) search persons according to section 4D.

(2) Section 4C (2) is amended by adding 'or a class of persons' after the word 'persons'.

5 Insert new section 4D

4D Search of persons

(1) This section applies in relation to the search of a person by an authorised officer under this Act.

- (2) Prior to the commencement of a search, the authorised officer must, if reasonably practicable:
 - (a) identify himself or herself to the person; and
 - (b) inform the person of the reason for the search; and
 - (c) request the person to consent to being searched.
- (3) The authorised officer must, if practicable be of the same gender as the person to be searched.
- (4) The authorised officer may do all or any of the following during the search:
 - (a) scan the person with an electronic or mechanical device, whether hand held or not;
 - (b) remove the person's headwear, footwear or outer clothing, but not the persons inner clothing or undergarments in order to facilitate a frisk search;
 - (c) frisk search the person by quickly and methodically running the hands over the outside of the person's clothing;
 - (d) search any article removed under subparagraph (b).
- (5) The authorised officer may also:
 - (a) search anything being carried by or under the immediate control of the person;
 - (b) order the person to remove anything that may injure the authorised officer while conducting the search.
- (6) The search must be conducted:
 - (a) as quickly as is reasonably practicable;
 - (b) in a way that is not any more intrusive than is reasonably necessary in the circumstances;
 - (c) in a manner that seeks to maintain the privacy and dignity of the person being searched;
 - (d) in way that the person being searched is given an explanation as to why articles of clothing worn must be removed during the search;

(e) to allow the person being searched to dress as soon as the search is completed.

6 Insert new section 4E

4E Seizure of items

During a search conducted under section 4D, any of the following items may be seized:

- (a) an intoxicant;
- (b) an item, including prescription drugs that may pose a serious risk to the health or safety of the person or another person;
- (c) an item that the authorised officer believes is likely to assist in determining any question in relation to the person that is likely to arise for determination under this Act.

7 Insert new section 4F

4F Record of search and seizure

(1) An authorised officer who conducts the search of a person under section 4D must:

(a) record the search including:

- (i) the date and time of the search;
- (ii) the name of the person being searched;
- (iii) the reasons for the search;
- (iv) any items seized;
- (v) the name, position and signature of the person who conducted the search,

(b) give the record of the search to the person in charge of the designated mental health facility where the search was conducted.

(2) Items seized and recorded under subsection (1) must, as soon as practicable, be returned to the person from whom it was seized as soon as practicable.

(3) Despite subsection (2), a health practitioner may decide to retain items seized if the item will assist in determining

any question in relation to the person that is likely to arise for determination under this Act.

8 Amendment of section 6A

- (1) Section 6A (2) is amended by omitting the words 'Request for Transfer and Initial Assessment' and substituting them with the words 'Request for Assessment and Transfer'.
- (2) Section 6A (3) is amended by omitting the words 'Request for Transfer and Assessment' and substituting them with the words 'Request for Assessment and Transfer'.
- (3) Section 6A (10) is amended by inserting the word 'in' after the words 'The further period of assessment referred to...'

9 Amendment of section 6B

Section 6B (1) (a) is amended by omitting the words 'section 7' and substituting it with the words 'section 6E'.

10 Insert new section 6E (A)

6E (A) Review of person by Magistrate

- (1) If the Magistrate is of the opinion that it would be unreasonable to bring a person before the Court under section 6E (5), the Magistrate may interview the person at an alternative location in order to explain to the person the nature of the examination and inquiry.
- (2) The interview may be conducted:
 - (a) at the person's place of residence, the hospital, a mental health facility or other place where the person is undergoing involuntary assessment; or
 - (b) where that is not practicable, at the nearest practicable place.
- (3) The Magistrate must do the following things before and during the interview, as appropriate and practicable:
 - (a) identify himself or herself to the person; and
 - (b) explain to the person the purpose of the visit; and
 - (c) discuss with the person the situation, the proposed course of assessment and treatment and the person's views on these matters.

- (4) The Magistrate may consult also with the responsible health practitioner and at least one other health professional involved in the case and may consult with other persons as the Magistrate thinks fit, concerning the person's condition.
- (5) The Magistrate must ensure that a note of the interview is placed on the record of any proceedings regarding the person.
- (6) The Magistrate may reverse the order if following the interview with the person, the Magistrate is of the opinion that the person may be released from medical detention.

11 Insert new section 6E (B)

6E (B) Appeal

- (1) A person may appeal against a decision to detain and assess him or her by:
 - (a) providing notice in writing to the District Court, if appealing against a request for assessment and transfer or request for assessment by health practitioner under section 6A; or
 - (b) petition to the Supreme Court, if appealing against an inpatient treatment order made under section 6E.
- (2) Despite an appeal under this Act being brought by a patient, the District Court or Supreme Court may appoint a barrister or solicitor or pleader to assist or to represent the person.
- (3) An appeal against an order made under section 6A or section 6E may be made any time during the duration of the detention or the duration of an inpatient treatment order.
- (4) On appeal under subsection (1) (b), the Supreme Court may:
 - (a) revoke the order if the person can sufficiently demonstrate to the Court that he or she is not suffering from a mental disorder that requires an inpatient treatment order; or
 - (b) affirm the order if the person cannot sufficiently demonstrate to the Court that he or she does not require an inpatient treatment order for a mental disorder.

- (5) Notice of proceedings under this section must be served by the person bringing the proceedings on:
- (a) the health practitioner concerned;
 - (b) the District Court Registry, if appeal is being made to the Supreme Court;
 - (c) the Director of Medical Services; and
 - (d) any other person identified by the Supreme Court.

12 Insert new section 6E (C)

6E (C) Rights of persons

A person who is admitted to a mental health facility under this Act:

- (a) must be dealt with in a manner that respects their cultural identity;
- (b) must receive an explanation of the expected effects of any treatment offered, including the expected benefits and likely side effects, before the treatment is commenced;
- (c) must be informed and must give their prior informed consent where there is intention to make or use a recording whether audio or visual and if they are unable to give consent then the next of kin present may give consent;
- (d) is entitled to seek independent psychiatric advice from a medical professional of their choice in order to get a second opinion;
- (e) is entitled to seek independent legal advice on his or her status as a patient or potential patient;
- (f) is entitled to the confidentiality afforded to all persons undergoing any type of medical treatment, whether for mental illness or not; and
- (g) is entitled to have access to his or her personal records concerning his or her treatment.

13 Amendment of section 6F

Section 6F (e) is amended by omitting the current subsection and substituting it with the following:

'(e) the person has been assessed by a health practitioner who has certified that the person requires the inpatient treatment.'

14 Amendment of section 6G

Section 6G is amended by inserting a new subsection (3) as follows:

(3) Unless otherwise specified in the order, where a health practitioner responsible for the care and treatment of a patient is of the opinion that the patient no longer requires an inpatient treatment order, the health practitioner may:

- (a) revoke the relevant order by using Part B of Form 4;
- (b) discharge the patient; and
- (c) within 7 days of that decision, forward a copy of the discharge papers to the District Court registry.

15 Amendment of section 6I

(1) Section 6I (1) is amended by:

- (a) omitting the reference to section 6I and substituting it with the words 'section 6E'; and
- (b) omitting the words '24 to 72 hours' and substituting with the words '72 hours'.

(2) Section 6I (1) (b) is amended by omitting the word 'review' and substituting with the word 'appeal'.

16 Amendment of section 6J (3)

(1) Section 6J (3) is amended by omitting the words 'or authorised officer'.

(2) Section 6J (2) is omitted and substituted with the following:

'(2) Before giving an authority for the administering of medical treatment or for an operation under subsection (1), the health practitioner must take all reasonable steps to obtain the informed consent of the next of kin of the patient to the treatment or the operation and may proceed as if the patient had consented only if the primary carer is not readily available.'

17 Insert new Form 4 in Schedule

Form 4 is inserted as follows:

FORM 4

INPATIENT TREATMENT ORDER

PART A (to be used by Court)

Designated mental health facility where person is to be an involuntary patient: _____

Reasons for making the inpatient treatment order:

All requirements must be met (Tick boxes to confirm)

- the person has a mental disorder:
- as a result of the mental disorder the person requires care, support, treatment or protection for their own interest and for the protection, safety and welfare of other persons;
- the care, support, treatment or protection cannot be provided in a less restrictive manner than by inpatient treatment;
- such treatment is available in Nauru;
- the person has been assessed by a health practitioner who has certified that the person requires the inpatient treatment.

Additional comments (optional):

Name of Magistrate making the order: _____

Signature of Magistrate making the order: _____

Date and time order made: Date: ___ / ___ / ___ Time:

Date and time order will expire: Date: ___ / ___ / ___ Time:

PART B (to be used by Health Practitioner)

REVOCATION OF INPATIENT TREATMENT ORDER

Reasons for revoking the order:

- I am satisfied that the patient no longer requires an inpatient treatment order.

Additional comments (necessary for Court purposes):

Name of health practitioner:

Qualifications:

Signature:

Date and time revocation made: Date: / / Time: