

MENTAL HEALTH

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Mental Health Act 1963

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Mental Health Act 1963

TABLE OF AMENDMENTS

The Mental Health Act 1963 No 3 was made and commenced on 10 October 1963.

Amending Legislation	Certified	Date of Commencement
Executive Council Ordinance 1966 No 3		Sch 1: 14 February 1966
Ordinances Revision Ordinance 1967 No 25		Sch 2: 29 December 1967
Adaptation of Laws Order 1969 GN No 188/1969	13 October 1969	31 January 1968
Statute Law Revision Act 2011 No 8	15 April 2011	Sch 1[94]–[98]: 15 April 2011
*Mental Health (Amendment) Act 2016 No 25	12 May 2016	12 May 2016
*Mental Health (Amendment) Act 2017 No 1	26 January 2017	26 January 2017
Mental Health (Amendment) Act 2020 No 38	3 December 2020	3 December 2020
Revised Written Laws Act 2021 No 7	1 June 2021	1 June 2021

* The title of the Act changed from Mentally-disordered Persons Act 1963 to Mental Health Act 1963 by amendment Act No 38 of 2020

An Act to provide for mentally impaired persons and for related purposes.
[Long title am Act 38 of 2020 s 5, opn 3 Dec 2020]

An Act adopted by the Parliament of Nauru as follows:

PART 1 — PRELIMINARY

1 Short title and commencement

This Act may be cited as the *Mental Health Act 1963* and commenced on 10 October 1963.

[s 1 subst Act 38 of 2020 s 4, opn 3 Dec 2020]

2 Parts

[s 2 rep Act 8 of 2011 s 12 and Sch 1[94], opn 15 Apr 2011]

3 Definitions

In this Act:

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

[def insrt Act 25 of 2016 s 4, opn 12 Mar 2016]

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

[def insrt Act 25 of 2016 s 4, opn 12 Mar 2016]

‘health practitioner’ means a person registered or licenced as a health practitioner under the *Health Practitioners Act 1999*, Australia, New Zealand, the United Kingdom or of any other country approved by the Minister;

[def subst Act 25 of 2016 s 4, opn 12 Mar 2016]

‘mental impairment’ 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;

[def insrt Act 25 of 2016 s 4, opn 12 Mar 2016; am Act 38 of 2020 s 5, opn 3 Dec 2020]

‘Minister’ means the Minister for Health and Medical Services;

[def insrt Act 25 of 2016 s 4, opn 12 Mar 2016]

‘Resident Magistrate’ means the Resident Magistrate of the District Court;

‘Secretary’ means the Secretary for Health and Medical Services;

[def insrt Act 25 of 2016 s 4, opn 12 Mar 2016]

‘State’

[def rep Act 8 of 2011 s 12 and Sch 1[95], opn 15 Apr 2011]

‘the court’ means the District Court; and

[def am GN No 188/1969 O 3, opn 31 Jan 1968; Act 8 of 2011 s 12 and Sch 1[98], opn 15 Apr 2011]

‘the rules of court’ means the rules of court applicable to the court under the *District Court Act 2018*, *Supreme Court Act 2018* and *Nauru Court of Appeal Act 2018* or under any other written law.

[def am Act 8 of 2011 s 12 and Sch 1[198], opn 15 Apr 2011]

[s 3 am Act 8 of 2011 s 12 and Sch 1[96], opn 15 Apr 2011]

[Inserted by the *District Court Act 2018*, *Supreme Court Act 2018* and *Nauru Court of Appeal Act 2018*.]

4 **Mentally impaired person**

For the purposes of this Act, a person shall be deemed to be a mentally impaired person if, owing to his or her mental condition, he or she:

- (a) is incapable of managing himself or herself or his or her affairs;
- (b) requires oversight, care or control for his or her own good or in the public interest; and
- (c) poses a serious danger to the health or safety of that person or others.

[s 4 am Act 8 of 2011 s 12 and Sch 1[96], opn 15 Apr 2011; Act 25 of 2016 s 5, opn 12 Mar 2016; am Act 38 of 2020 s 5, opn 3 Dec 2020]

4A **Persons not to be regarded as mentally impaired**

(1) For the purposes of this Act, a person is not to be regarded as mentally impaired 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 person 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.

[subs (1) am Act 38 of 2020 s 5, opn 3 Dec 2020]

(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 impairment.

[subs (2) am Act 38 of 2020 s 5, opn 3 Dec 2020]

[s 4A insrt Act 25 of 2016 s 5, opn 12 Mar 2016; am Act 38 of 2020 s 5, opn 3 Dec 2020]

4B **Declaration of designated mental health facility**

The Minister may by Order in the 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 this Act.

[s 4B insrt Act 25 of 2016 s 6, opn 12 Mar 2016]

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;
 - (b) is a fit and proper person to exercise those powers, having regard to character, honesty and integrity;
 - (c) has undergone any training required by the Secretary; and
 - (d) has agreed in writing to the exercise of those powers.
- (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; or
 - (g) search persons according to Section 4D.

[subs (3) insrt Act 1 of 2017 s 4, opn 26 Jan 2017]

[s 4C insrt Act 25 of 2016 s 7, opn 12 Mar 2016]

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 shall, if reasonably practicable:
- (a) identify himself or herself to the person;
 - (b) inform the person of the reason for the search; and
 - (c) request the person to consent to being searched.
- (3) The authorised officer shall, 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; or
 - (d) search any article removed under paragraph (b).
- (5) The authorised officer may also:

- (a) search anything being carried by or under the immediate control of the person; or
 - (b) order the person to remove anything that may injure the authorised officer while conducting the search.
- (6) The search shall 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 a way that the person being searched is given an explanation as to why articles of clothing worn shall be removed during the search; and
 - (e) to allow the person being searched to dress as soon as the search is completed.

[s 4D insrt Act 1 of 2017 s 5, opn 26 Jan 2017]

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; or
- (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.

[s 4E insrt Act 1 of 2017 s 6, opn 26 Jan 2017]

4F Record of search and seizure

- (1) An authorised officer who conducts the search of a person under Section 4D shall:
- (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; and
 - (v) the name, position and signature of the person who conducted the search; and
 - (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) shall, as soon as practicable, be returned to the person from whom it was seized as soon as practicable.
- (3) Notwithstanding 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.

[s 4F insrt Act 1 of 2017 s 7, opn 26 Jan 2017]

5 Arrangements with other jurisdictions

The Minister may, from time to time, make arrangements with the Government of a place, being a foreign country or of a State or Province of a foreign country:

- (a) for the care, treatment and maintenance, and, in the case of death, the burial or cremation, in that place, under the laws of that place relating to mentally impaired persons, of persons in respect of whom certificates are issued under this Act or any other written law; and
- (b) with respect to the payment of the expenses of that care, treatment, maintenance and burial by the Republic.

[s 5 am No 3 of 1966 Sch 1, opn 14 Feb 1966; Act 8 of 2011 s 12 and Sch 1[96]–[98], opn 15 Apr 2011]

PART 2 — CARE OF MENTALLY IMPAIRED PERSONS

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 impairment 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, take into account:
 - (i) the different developmental stages of children and young persons and the needs of the aged; and
 - (ii) 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 Regulations;
 - (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; and
 - (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.
- [subs (1) am Act 38 of 2020 s 5, opn 3 Dec 2020]
- (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; and
 - (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 health practitioner with specialised 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.

[s 6 subst Act 25 of 2016 s 8, opn 12 Mar 2016]

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 authorised 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.
- (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.
- (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]

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]

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 impaired; 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.

[subs (1) am Act 38 of 2020 s 5, opn 3 Dec 2020]

- (2) Where it is not reasonably practicable to arrange for examination by a health 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;
 - (b) it is probable that the person will attempt to kill or harm himself or herself or any other person;
 - (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) Where requested under subsection (2) or (3), a person refuses to accompany a police officer to the premises of a health 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.

[s 6C insrt Act 25 of 2016 s 11, opn 12 Mar 2016]

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.
- (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 to take a person to a designated mental health facility.
- (3) An arrest under subsection (2) shall 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.

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

6E Person to be brought before Resident 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 shall be made and filed in the District Court by the Director of Medical Services, or the person shall 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 shall submit all relevant assessment documents made with regard to that person.
- (4) Where the Resident Magistrate is of the opinion that it is advisable to remand the person further and make an inpatient treatment order then the Resident 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 shall be brought before a Resident 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.

[s 6E insrt Act 25 of 2016 s 13, opn 12 Mar 2016]

6E (A) Review of person by Resident Magistrate

- (1) Where the Resident Magistrate is of the opinion that it would be unreasonable to bring a person before the court under Section 6E(5), the Resident 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 Resident Magistrate shall do the following things before and during the interview, as appropriate and practicable:
 - (a) identify himself or herself to the person;
 - (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 Resident 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 Resident Magistrate thinks fit, concerning the person's condition.
- (5) The Resident Magistrate shall ensure that a note of the interview is placed on the record of any proceedings regarding the person.
- (6) The Resident Magistrate may reverse the order if following the interview with the person, the Resident Magistrate is of the opinion that the person may be released from medical detention.

[s 6E (A) insrt Act 1 of 2017 s 10, opn 26 Jan 2017]

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) Notwithstanding an appeal under this Act being brought by a patient, the District Court or Supreme Court may appoint a legal practitioner 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 detainment 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 impairment 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 impairment.

[subs (4) am Act 38 of 2020 s 5, opn 3 Dec 2020]

- (5) Notice of proceedings under this Section shall 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.

[s 6E (B) insrt Act 1 of 2017 s 11, opn 26 Jan 2017]

6E (C) Rights of persons

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

- (a) shall be dealt with in a manner that respects his or her cultural identity;
- (b) shall 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) shall be informed and shall give his or her 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 his or her 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.

[s 6E (C) insrt Act 1 of 2017 s 12, opn 26 Jan 2017]

6F Making of inpatient treatment orders

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

- (a) the person has a mental impairment;
- (b) as a result of the mental impairment, 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 the Republic; and
- (e) the person has been assessed by a health practitioner who has certified that the person requires the inpatient treatment.

[s 6F insrt Act 25 of 2016 s 14, opn 12 Mar 2016; am Act 1 of 2017 s 13, opn 26 Jan 2017; am Act 38 of 2020 s 5, opn 3 Dec 2020]

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 health practitioner;
 - (c) to receive the care, support, treatment or protection that a health practitioner determines from time to time;
 - (d) after release from the hospital or designated mental health facility, to attend to:
 - (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 health practitioner.
- (2) The terms and conditions imposed under subsection (1), shall only be such as are in the opinion of the health practitioner in the best interests of the mental health of the person who is subject to the order.
- (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.

[subs (3) insrt Act 1 of 2017 s 14, opn 26 Jan 2017]

[s 6G insrt Act 25 of 2016 s 15, opn 12 Mar 2016]

6H Assistance of interpreters

- (1) Subject to subsection (2), health care professionals or a health practitioner, as the case may be, shall 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 shall be interpreted to the person or his or her primary carer, as soon as reasonably practicable.

[s 6H insrt Act 25 of 2016 s 16, opn 12 Mar 2016]

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

- (1) Where a person is made subject to an inpatient treatment order, the health practitioner who applied to the Resident Magistrate under Section 6E, shall within 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 appeal; and
 - (c) an explanation in a language, style and manner that the person is readily able to understand:
 - (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 legal practitioner.

[subs (1) am Act 1 of 2017 s 15, opn 26 Jan 2017]

- (2) Where the health 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), shall also be given to the person's primary carer and the person's legal practitioner.

[s 6I insrt Act 25 of 2016 s 17, opn 12 Mar 2016]

6J Emergency medical treatment or surgery for involuntary patients

- (1) Subject to subsection (2), a health practitioner may in writing, authorise the administering of health treatment or the performance of a surgical operation, except sterilisation or a surgical operation upon an unborn child, on an involuntary patient, if the health 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 health practitioner shall 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.

[subs (2) subst Act 1 of 2017 s 16, opn 26 Jan 2017]

- (3) The health practitioner at the hospital or designated mental health facility in which the involuntary patient is detained shall, 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.

[subs (3) am Act 1 of 2017 s 16, opn 26 Jan 2017]

- (4) An 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), an application shall be made to the District Court for its direction and the court may make such order relating to the matter as it thinks proper.

[s 6J insrt Act 25 of 2016 s 18, opn 12 Mar 2016]

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

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

Maximum penalty: \$2,000 or imprisonment for 1 year.

[s 7 insrt Act 25 of 2016 s 20, opn 12 Mar 2016]

8 Confidentiality and records

- (1) Subject to subsection (3), information about a person obtained in the course of providing care, treatment and support to a person under this Act, shall 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 and shall be made available to the Secretary 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 any written law.

[s 8 insrt Act 25 of 2016 s 22, opn 12 Mar 2016]

9 Release from custody

Where a person has been committed to and is in the custody of the Minister, the Minister may, if he or she is satisfied that it is unnecessary or undesirable for the person to continue to be held in custody, discharge that person from custody.

[s 9 am Act 8 of 2011 s 12 and Sch 1[96], [97], opn 15 Apr 2011]

10 Return of discharged person to the Republic, etc

[s 10 rep Act 25 of 2016 s 23, opn 12 Mar 2016]

11 Funeral expenses

[s 11 rep Act 25 of 2016 s 24, opn 12 Mar 2016]

PART 3 — ESTATES OF MENTALLY IMPAIRED PERSONS

[Pt 3 am Act 38 of 2020 s 5, opn 3 Dec 2020]

12 Appointment of committees

- (1) The court may, by order, appoint a person approved by the Minister to be the committee of the estate of a person in respect of whom a certificate has been issued under this Act.

[subs (1) am Act 8 of 2011 s 12 and Sch 1[96], [97], opn 15 Apr 2011]

- (2) A committee appointed under this Section, continues in office until the person of whose estate he or she is a committee of, dies or until the order appointing him or her as a committee is rescinded by the court.
- (3) The court may, at any time, rescind an order appointing a committee on being satisfied that the person of whose estate the committee was appointed is able to manage his or her own affairs.
- (4) The court may, at any time, on being satisfied that there is good cause for so doing, rescind an order appointing a committee of an estate and, by order, appoint another person approved by the Minister to be the committee of that estate.

[subs (4) am Act 8 of 2011 s 12 and Sch 1[97], opn 15 Apr 2011]

13 Powers of committee

- (1) When a person is appointed as the committee of the estate of a person under Section 12, the estate does not, by virtue of that appointment, become vested in the committee, but the committee becomes entitled to take possession of, and manage, the estate.
- (2) Without limiting the generality of the powers conferred by subsection (1), the committee of the estate of a person may:
 - (a) sell, or otherwise deal with, any property included in the estate;
 - (b) pay the debts of the person out of monies included in the estate;
 - (c) pay the cost of repairing or insuring any property included in the estate out of monies included in the estate;
 - (d) demand, receive and recover monies payable or belonging to the person;
 - (e) carry on any trade or business of the person;
 - (f) apply, in such manner and to such extent, as he or she thinks fit, monies included in the estate for:
 - (i) the maintenance of the person or his or her dependants; and
 - (ii) the education or advancement of the children or grandchildren of the person; or
 - (g) do any other thing that the court, on an application by the committee, is satisfied should be done to protect the interest of the person in his or her property.
- (3) A committee is, in the exercise of his or her powers under this Section, subject to the rules of court and to any order made by the court.
- (4) A committee of an estate may, without prejudice to the powers conferred on him or her by this Section, apply to the court for advice or direction as to matters connected with the estate.

14 Payment of cost of management and commission

- (1) Where a person is appointed as the committee of the estate of a person, all expenses incurred by the committee in connection with the estate, shall be charged against, and be payable out of, the estate.
- (2) The court may, on the application of the committee of the estate of a person, allow to the committee, out of the estate, such commission or other remuneration as the court deems just and reasonable, and the amount so allowed, shall be charged against, and be payable out of, the estate.
- (3) The expenses, commission or remuneration to be charged against the estate of a person under this Section, shall be payable out of the estate although the person dies, or the estate otherwise ceases to be under the administration of the committee, before the payment of the expenses, commission or remuneration, as the case may be.

15 Statement as to estate

- (1) The Minister may, in writing, direct the committee of an estate to furnish to the Minister, at such times as are specified in the direction, a statement with respect to such matters relating to the estate as are specified in the direction.
[subs (1) am Act 8 of 2011 s 12 and Sch 1[97], opn 15 Apr 2011]
- (2) A person shall comply with a direction of the Minister given under subsection (1).
[subs (2) am Act 8 of 2011 s 12 and Sch 1[97], opn 15 Apr 2011]
- (3) A person shall not wilfully make a false or misleading statement in a statement furnished in compliance with subsection (2).

Penalty: \$100

[s 15 am No 25 of 1967 s 4 and Sch 2, opn 29 Dec 1967]

16 Limitation of contractual powers of persons of whose estate a committee appointed

- (1) A person in respect of whose estate a committee has been appointed is not capable, without the leave of the court, of making any conveyance, transfer, lease, mortgage or other disposition of his or her property, or of any part of his or her property, or of entering into any contract, other than a contract for necessities.
- (2) A conveyance, transfer, lease, mortgage or other disposition or a contract, other than a contract for necessities, made or entered into, without the leave of the court, by a person referred to in subsection (1), is voidable by the person or by his or her committee, on his or her behalf.
- (3) The court may, by order, give leave to a person referred to in subsection (1) to make a conveyance, transfer, lease, mortgage or other disposition of his or her property, or of any part of his or her property, or to enter into any contract, if the court is satisfied that the conveyance, transfer, lease, mortgage, disposition or contract is for the benefit of the person, and that he or she consents to it with adequate understanding of the nature of his or her action.
- (4) Nothing in this Section, affects any written law relating to the validity of wills or other testamentary dispositions.
- (5) Nothing in this Section, invalidates a conveyance, transfer, lease, mortgage, disposition or contract made or entered into by a person referred to in

subsection (1), if the other party acted in good faith without knowledge that a committee of the estate of the person had been appointed.

PART 4 — MISCELLANEOUS

17 False certificates by health practitioners

A health practitioner shall not:

- (a) wilfully certify in writing that a person is a mentally impaired person not believing him or her so to be; or
- (b) wilfully make a false or misleading statement in a certificate under or for the purposes of this Act.

Penalty: \$200 or imprisonment for 1 year.

[s 17 am No 25 of 1967 s 4 and Sch 2, opn 29 Dec 1967; Act 8 of 2011 s 12 and Sch 1[96], opn 15 Apr 2011; am Act 38 of 2020 s 5, opn 3 Dec 2020]

18 Falsely pretending to be a health practitioner

A person who is not a health practitioner, shall not:

- (a) sign a certificate under or for the purposes of this Act in which the person describes himself or herself as, or pretends to be, a health practitioner; or
- (b) otherwise purport to act under this Act in the capacity of a health practitioner.

Penalty: \$200 or imprisonment for 1 year.

[s 18 am No 25 of 1967 s 4 and Sch 2, opn 29 Dec 1967; Act 8 of 2011 s 12 and Sch 1[96], [98], opn 15 Apr 2011]

19 Fraudulently obtaining commitment of a sane person

A person shall not, by the production of a false certificate or other fraudulent means, obtain or attempt to obtain the commitment to the custody of the Minister, of a person who is not a mentally impaired person.

Penalty: \$200 or imprisonment for 1 year.

[s 19 am No 25 of 1967 s 4 and Sch 2, opn 29 Dec 1967; Act 8 of 2011 s 12 and Sch 1[96], [97], opn 15 Apr 2011; am Act 38 of 2020 s 5, opn 3 Dec 2020]

20 No liability in respect of act done in good faith in pursuance of this Act

- (1) A person who does any act in pursuance, or purported pursuance, of any provision of this Act, or omits to exercise any power conferred by this Act, is not under any civil or criminal liability in respect of that act or omission, whether on the ground of want of jurisdiction or of mistake of law or of fact or on any other ground, unless it is proved that he or she has acted, or omitted to act, without good faith or without reasonable care.

[subs (1) am Act 8 of 2011 s 12 and Sch 1[96], [98], opn 15 Apr 2011]

- (2) Proceedings taken against a person for an act or omission referred to in subsection (1), may, upon application to the court in which they are taken, be dismissed if the court is satisfied that:
 - (a) there is no reasonable ground for alleging want of good faith or reasonable care;
 - (b) the proceedings are frivolous or vexatious; or
 - (c) the proceedings have not been commenced within a reasonable time.

- (3) Nothing in this Section, deprives a person of any defence which he or she would have independently of this Section.

[s 20 am Act 8 of 2011 s 12 and Sch 1[98], opn 15 Apr 2011]

21 Regulations

- (1) The Minister may make regulations to give effect to the provisions of this Act.
- (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 purposes 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 impairment;
 - (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; and
 - (h) any matter that is required or empowered by this Act to be prescribed.

[subs (2) am Act 38 of 2020 s 5, opn 3 Dec 2020]

- (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.

[s 21 insrt Act 25 of 2016 s 25, opn 12 Mar 2016]

SCHEDULE

FORM 1



REPUBLIC OF NAURU
MENTAL HEALTH ACT 1963

[Section 6A(2)]

REQUEST FOR ASSESSMENT AND TRANSFER

I, _____ of _____, a health practitioner in accordance with the *Mental Health Act 1963*:

am of the opinion that _____ of _____ is a mentally impaired 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 by other persons (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**

Signature: **Time:**

FORM 2



REPUBLIC OF NAURU
MENTAL HEALTH ACT 1963

[Section 6A(7)(a)]

REQUEST FOR ASSESSMENT BY SECOND HEALTH PRACTITIONER

I, _____ of _____, a health practitioner under the *Mental Health Act 1963* hereby certify that:

- (a) On / / , at _____, I personally examined _____ of _____;
- (b) I am of the opinion that the said _____ is a mentally impaired 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

Signature:

Time:

FORM 3



REPUBLIC OF NAURU
MENTAL HEALTH ACT 1963

[Section 6A(9)(a)]

REQUEST FOR A FURTHER PERIOD OF ASSESSMENT AND DETENTION

I, _____ of _____, a health practitioner under the Mental Health Act 1963 hereby certify that:

- (a) On / / , at _____, I personally examined _____ of _____;
(b) I have considered previous assessments and examinations conducted on / / by _____ and
(c) I am of the opinion that the said _____ is a mentally impaired 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: / / Time:

Name

Position

Signature:

Registration under Health Practitioners Act:

Approved:

Director of Medical Services

Signature:

Time:

1 Insert name of health practitioner

FORM 4



REPUBLIC OF NAURU
MENTAL HEALTH ACT 1963

[Section 6G(3)(a)]

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 shall be met (Tick boxes to confirm)

- the person has a mental impairment:
- as a result of the mental impairment 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:

Declaration of Designated Mental Health Facilities Order 2017

TABLE OF PROVISIONS

Clause

1	Citation
2	Commencement
3	Designation of mental health facilities

Declaration of Designated Mental Health Facilities Order 2017

TABLE OF AMENDMENTS

The Declaration of Designated Mental Health Facilities Order 2017 SL 9 was notified and commenced on 19 May 2017 (GN No 348/2017; Gaz 79/2017).

Amending Legislation	Notified	Date of Commencement
Revised Written Laws Act 2021 No 7	1 June 2021	1 June 2021

In the exercise of powers conferred upon me pursuant to Section 4B of the *Mental Health Act 1963* (“the Act”), and with the approval of the Cabinet, as Minister responsible for Health, I hereby make the following Order:

[Long title am Act 38 of 2020 s 5, opn 3 Dec 2020]

1 Citation

This Order may be cited as the *Designated Mental Health Facilities Order 2017*.

2 Commencement

This Order shall commence on the day it is notified in the Gazette.

3 Designation of mental health facilities

The following places are designated as mental health facilities for the purposes of the Act:

- (a) The Republic of Nauru Hospital; and
- (b) The following places at RPC1:
 - (i) the IHMS Clinic;
 - (ii) the Managed Accommodation Area; and
 - (iii) the Supported Accommodation Area.

Dated this 18th day of May, 2017.

HON. CHARMAINE ERAIDINOMO SCOTTY, M.P.
MINISTER FOR HEALTH AND MEDICAL SERVICES

