

REPUBLIC OF NAURU
MENTALLY DISORDERED PERSONS (AMENDMENT) BILL 2016

EXPLANATORY MEMORANDUM

The *Mentally Disordered Persons (Amendment) Bill* is a Bill for the *Mentally Disordered Persons (Amendment) Act 2016*.

EXPLANATION OF CLAUSES

Clause 1 provides that, once enacted, the short title of the Bill will be the *Mentally-disordered Persons (Amendment) Act 2016*.

Clause 2 sets out when the Bill's provisions will commence.

Clause 3 is the enabling provisions for the amendment of the *Mentally Disordered Persons Act 1963*.

Clause 4 amends the Definition Section to provide relevant definitions.

Clause 4 contains an updated definition of medical practitioner, recognizing that medical practitioners from a variety of countries are registered to practice in Nauru.

It provides a modern, clinical definition of mental disorder.

Designated Health Facility is also defined, allowing the Minister to designate particular facilities as a mental health facility under the Act.

Clause 5 amends the definition of mentally disordered person to include someone who poses a serious danger to the health or safety of that person or others. It also specifies that someone is not to be regarded as mentally disordered solely by reason of this or her political or religious opinions, cultural beliefs, sexual preference or orientation, political activity or by reason solely of substance taking.

Clause 6 allows the Minister to designate, by Order in the Government Gazette, a certain place as a designated mental health facility for the purposes of the Act.

Clause 7 provides for the appointment of authorized officers. It is envisaged that certain appropriate persons will undergo mental health and security training and be able to secure inpatient mental health facilities, assist police in transporting a person for an involuntary assessment, assist in the security around involuntary treatment and other such tasks. While details on their role and functions will be prescribed by Regulation, this clause ensures that authorized officers are lawful under this Act.

Clause 8 repeals the current Section 6 of the Act and replaces it with general provisions for care, treatment and support. It describes general best practice principles in this area, provides that the Act applies also to children with particular safeguards and clarifies that nothing in the Act affects voluntary assessments or treatment.

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.

Clause 10 defines the reasons a person may be detained for assessment in a mental health facility and ensures that a health practitioner or medical practitioner requesting the assessment must not be a relative of the person or have any other conflict of interest.

Clause 11 describes the powers of the Nauru Police Force to compel someone to attend a mental health facility for an assessment, giving them the authority to arrest the person without a warrant to take them to a mental health facility. It provides reasons for doing this, including where a person has self-harmed or attempted suicide or threatened harm to another person.

Clause 12 provides that health practitioners can request police assistance to transfer a person to a mental health facility and describes the powers that the police have when doing so, including entering a person's home or arresting a person.

Clause 13 is the clause which provides when a person needs to be brought before a Magistrate.

Clause 14 explains the criteria of a Court ordered inpatient treatment order.

Clause 15 explains the terms of an inpatient treatment order.

Clause 16 provides for the assistance of an interpreter, where possible, if the person does not adequately speak English or Nauruan.

Clause 17 sets out the information that must be given to the person who is subject to an inpatient treatment order.

Clause 18 provides for emergency medical treatment or surgery on a person who is being detained involuntarily. It allows a medical practitioner to authorize emergency, life saving surgery without consent, with the exception of sterilization or a procedure on an unborn child. For those operations, an Order of the District Court is required.

Clause 19 repeals the current Section 7 of the Act which was the section referring to bringing a person before a Magistrate. It is now updated and replaced in Clause 20.

Clause 20 inserts a new Section 7 which provides that it is an offence to remove an involuntary inpatient or assist them leave a mental health facility without a lawful reason. It provides a penalty for doing this.

Clause 21 repeals the current Section 8 of the Act which refers to the removal of a person to a country outside Nauru. This process is covered under the usual overseas medical referral process. References to overseas contract workers are outdated and unnecessary to retain.

Clause 22 inserts a new section on confidentiality and medical records, specifying that they are to be kept confidential and that the records are the property of the Secretary.

Clause 23 repeals the current Section 10 which refers to the return of discharged persons and is also outdated in its references to contract workers.

Clause 24 repeals the current section 11 which refers to funeral expenses of contract workers.

Clause 25 inserts the power to make Regulations under the Act.

Clause 26 repeals the Schedule and replaces it with a new Schedule containing the relevant forms for the process under Section 6A.