

REPUBLIC OF NAURU

MENTALLY DISORDERED PERSONS (AMENDMENT) NO. 2 BILL 2017

EXPLANATORY MEMORANDUM

The *Mentally-disordered Persons (Amendment) No. 2 Bill 2017* is a Bill for the *Mentally-disordered Persons (Amendment) No. 2 Act 2017*.

**EXPLANATION OF CLAUSES**

**Clause 1** provides that, once enacted, the short title of the Bill will be the *Mentally-disordered Persons (Amendment) No. 2 Act 2017*.

**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 section 4C by inserting a new subsection (3). The new section 4C (3) deals with the powers of an authorised officer which must be included to ensure that all authorised officers have a clear guideline as to the parameters of their powers under this Act. Authorised officers are appointed by the Secretary and they are to assist in the administration of this Act. Although specific authorised officers have not yet been gazette, they may include security officers, ambulance drivers and community liaison officers. This list could grow depending on the specific need.

The powers that have been included in the Bill are the powers to stop a person from harming himself or herself, others or even property. This is especially important in every case but especially so when it concerns a person that could potentially be suffering from a mental disorder and either has been diagnosed or is yet to be diagnosed. Authorised officers may also restrain a person for the purpose of the administering of treatment and they can stop a person from leaving or return someone to a designated mental health facility.

A designated mental health facility is defined as a place that has been declared by the Minister under section 4B of the Act.

**Clause 5** inserts a new section 4D which is linked closely with the amendment in Clause 4 above. Clause 5 deals with the search of persons that may be conducted by authorised officers. It is of paramount importance that certain procedures and guidelines be developed whenever the question of searching persons arises as there are many Constitutional and human rights issues that come into play.

An authorised officer must follow the process of identifying himself or herself to a person that they are about to search, inform the person of the reason for the search and then request the person's consent for the search to be conducted. At all practicable times, the authorised officer must be of the same gender as the person being searched.

During the search, the authorised officer may scan the person with an electronic or mechanical device, this may be a scanner or wand. The person may also be asked to remove any headwear, footwear or outer clothing. Outer clothing includes jackets, coats, scarves etc. but it does not include any under garments.

The authorised officer may, during the search, frisk the person quickly and methodically so to avoid any unnecessary contact with the person being searched. It is important that the search be conducted thoroughly but quickly enough so as not to cause the person being searched any undue discomfort. Authorised officers must not allow the search to be any more intrusive than is necessary under the circumstances that they are in while conducting the search or the initial reason for the search being done in the first place.

If a person is required to remove any item of clothing an explanation must be given to the person as to the reason for clothing to be removed and the person must be allowed to dress immediately as soon as the search is completed.

Searching a person coming into a designated mental health facility or at any other place where there is a person suffering from a mental disorder is necessary in order to protect that person and other people around them. The search is conducted taking into consideration the safety issues at existing time.

**Clause 6** creates a new section 4E which provides for the seizure of items found during the process of carrying out a search of persons in Clause 4D. As stated in Clause 4D, safety is a paramount consideration for carrying out a search and the seizure of items is closely linked also to the issue of safety.

Authorised officers may only seize particular types of items and they include intoxicants. Intoxicants in this case may be read widely enough to include anything that is likely to inebriate or poison a person. Some examples would be drugs (whether prescription or not), alcohol (whether commercially made and sold or homemade) and any type of substance that may be used like alcohol or drug. Any other type of substance may include cleaning agents or spirits or other poisons that a person may use to harm themselves.

Authorised officers may also seize prescription drugs as previously stated. Although they are prescribed for the person (or another) the likelihood of the person overdosing on the drugs is possible and so every precaution must be taken. An authorised officer is finally given discretion to seize any other item which he or she considers dangerous or is likely to

assist in determining any question related to the person that would arise for determination later under this Act. The questions would obviously relate to whether the person is likely to be suffering from a mental disorder and should be detained for assessment. The items seized may be used to assist the mental health professionals in proving such an assessment or need for assessment.

**Clause 7** inserts a new section 4F which is connected with the previous clause dealing with seizure of items.

Any search conducted and any items seized by an authorised officer must be recorded. The record must include the date and time of the search, the name of the persons being searched, the reasons for the search, any items seized and the name, position and signature of the person who conducted the search. This provides protection for the authorised officer and ensures that all searches are conducted for the right reasons rather than searches being conducted on the whim of an authorised officer. It provides that added protection also for the person being searched and ensures that their dignity is preserved during the process of the search and to have that search recorded.

An authorised officer who has conducted a search and made a record of that search must then pass that record on to the person in charge of the designated mental health facility.

Any items seized must be returned (as soon as practicable) to the person from whom it was seized but may be retained only if a medical practitioner decides that the item will assist in determining any question in relation to the person that is likely to arise for determination under this Act.

**Clause 8** amends section 6A by making some minor corrections to the title of the Forms included in the Schedule to the Act. This is to ensure that the description of the forms in the Act is consistent with the title and to avoid any confusion.

**Clause 9** also makes a minor amendment to section 6B by omitting the reference to section 7 and substituting that reference with section 6E. Section 6E is the more relevant section relating to the order of a Magistrate under this Act.

**Clause 10** creates a new section 6E (A). Section 6E (A) creates powers for the Magistrate to review a person if the Magistrate is of the opinion that it would be unreasonable to bring a person before the Court under section 6E (5). Section 6E (5) is part of a larger provision dealing with the powers of a Magistrate to make an inpatient treatment order. Under that section a person who has been detained for assessment but his or her medical practitioners are of the opinion that the person must be detained further, then they must bring the person before a Magistrate and the Magistrate may then make an inpatient treatment order.

On or prior to the expiration of that order, the person must be brought before a Magistrate for an examination and inquiry into the detainment to be held. This is where the new section 6E (A) comes into play. Due to the fact that this Act deals with persons who suffer from a mental disorder it may not be appropriate to subject them to scrutiny in a court room and so this new section was created to allow a Magistrate to interview the person at an alternative location so to explain the nature of the examination and inquiry.

The alternative location may be at the person's place of residence, the hospital, a mental health facility or any other place where the person is undergoing involuntary assessment.

Prior to beginning the interview, there are certain procedures that the Magistrate must carry out. The Magistrate must identify himself or herself to the person, explain the purpose of the visit and then discuss the situation with the person including the proposed course of assessment and treatment and take into consideration the person's views on the matter. It is important that the person is comfortable and that the Magistrate is able to conduct the interview within a reasonable time and gather all the relevant information within that time.

The Magistrate, in gathering information, may also consult with the responsible health practitioner and at least one other health professional involved in the case and also any other person that the Magistrate considers necessary.

A note of the interview must be placed on the official record of any other proceedings involving the person. If following the interview the Magistrate is of the opinion that person should be released then the Magistrate may reverse the order and release the person from medical detention.

**Clause 11** deals with the appeal process and creates a new section 6E (B). An appeal under this Act may be made against a decision to detain and assess under section 6A or against an inpatient treatment order made under section 6E.

The Court has powers to appoint a barrister or solicitor or pleader to assist a person who is appealing under this section.

Due to the short period (24 hours for initial assessment and 48 hours for a second assessment) provided in section 6A for a person to be detained for a mental health assessment, the appeal must be filed as soon as practicable.

On appeal the Supreme Court may revoke an order or affirm an order depending on whether a person can demonstrate to the Court that they do not require detainment or an inpatient treatment order.

As per the usual Court procedure, notice must be served and it must be served on the health practitioner concerned, the District Court registry if appealing to the Supreme Court, the Director of Medical Services and any other person identified by the Supreme Court.

**Clause 12** creates a new section 6E (C) which provides for the rights of persons under this Act. Due to the sensitive nature of matters under this Act, the rights of persons become an even more important issue. Although entrenched in the Constitution, the following are rights specific to persons subject to this Act:

- Persons must be dealt with in a manner that respects their cultural identity;
- Persons 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;
- Persons 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;
- They are entitled to seek independent psychiatric advice from a medical professional of their choice in order to get a second opinion;
- Persons are entitled to seek independent legal advice on his or her status as a patient or potential patient;
- They are entitled to the confidentiality afforded to all persons undergoing any type of medical treatment, whether for mental illness or not; and
- Persons are entitled to have access to his or her personal records concerning his or her treatment.

**Clause 13** makes a minor amendment to section 6F by correcting the mention of two health practitioners. According to the process, only one assessment by one health practitioner is required before an inpatient treatment order can be applied for.

This is part of the criteria for the making of an inpatient treatment order. The criteria are now:

- 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.

All of the above must be satisfied before a Magistrate can make an order for inpatient medical treatment.

**Clause 14** creates a provision under section 6G for the discharge of a person who is currently detained under an order for inpatient medical treatment. Under this new subsection, a health practitioner may make a decision to revoke an order if the health practitioner is satisfied that the person no longer requires the inpatient treatment order. Once an order is revoked and the person is discharged, the health practitioner must send the discharge papers to the District Court Registry.

**Clause 15** amends section 6I by making several amendments to cross references and also the terms used. There is the removal of the reference to section 6I and substituting it with the more relevant section 6E which covers the application for an inpatient treatment order. Also amended is the need for a reference to 24 hours when 72 hours is more than sufficient to cover the period.

The word 'review' is also removed and substituted with the word 'appeal' so as to be consistent with the new clause on appeal.

**Clause 16** amends section 6J (3). This section deals with emergency medical treatment or surgery for involuntary patients. The first amendment omits the reference to an authorised officer.

The second part of this amendment omits subsection (2) and substitutes with a new subsection that allows a health practitioner to continue with administering treatment or conducting a surgical procedure if they had made an attempt to contact the next of kin of the person but that person was unavailable.

**Clause 17** inserts a new Form (4) into the Schedule. This form is for an inpatient treatment order that is made by a Magistrate. The form includes the criteria and also includes the option for a health practitioner to revoke the order if he is of the medical opinion that the person no longer needs it.