

18 Mental Health Act 1963

18.1 Introduction

The [Mental Health Act 1963](#) (MHA) was significantly amended in 2016.

18.2 Persons who are not to be regarded as mentally disordered

Section [4A](#) MHA

A person is not to be regarded as mentally disordered by reason only that he or she expresses or refuses or fails to express a particular political or religious opinion or belief, or a particular philosophy or cultural belief, or a particular sexual preference or sexual orientation.

Further a person is not to be considered mentally disordered if he or she engages in or refuses or fails to engage in a particular political activity.

If a 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, he or she is not to be regarded as mentally disordered for that reason alone. This does not exclude where a mental disorder is induced through the temporary or permanent effect of alcohol or any other drug, volatile substance or other substance.

18.3 Designated mental health facilities

Section [4B](#) MHA

The Minister for Health and Medical Services may declare certain places to be designated mental health facilities for the purpose of this Act, including a public hospital, a health centre or clinic, or any other place the Minister considers appropriate. The Minister makes this declaration by Order in the Government Gazette.

18.4 Authorised officers: appointment and powers

Section [4C](#) MHA

18.4.1 Appointment of authorised officers

The Secretary for Health and Medical Services may appoint persons or a class of persons as authorised officers in accordance with this Act where the Secretary is satisfied the person:

- is competent to exercise the powers conferred on an authorised officer under this Act, and
- is a fit and proper person to exercise those powers, having regard to character, honesty and integrity, and
- has undergone any training required by the Secretary, and
- has agreed in writing to the exercise of those powers.

18.4.2 Powers of authorised officers

The powers of an authorised officer include the authority to:

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

18.5 Involuntary assessments

Section [6A](#) MHA

Where a health practitioner reasonably believes that the person may be a mentally disordered person they may make a request for assessment and transfer (using [Form 1](#) of the Schedule).

The transfer must be carried out by the Nauru Police Force as soon as possible, with the assistance of an authorised officer where available. The person may be assessed at a hospital or a designated mental health facility and must be assessed within 24 hours of arrival.

An assessment under this section may only be carried out by an authorised medical practitioner and in accordance with any prescribed requirements. During the assessment process, treatment may be given if this is necessary, in the opinion of a medical practitioner, to reduce the person's risk to themselves or others.

Following an assessment, the medical practitioner must either compel the person to undergo further assessment or release the person.

The person should be compelled to undergo further assessment by completing [Form 2](#) of the Schedule "Request for Assessment by Second Medical Practitioner", if the medical practitioner is of the opinion that the person assessed:

- appears to have a mental disorder; and
- appears to require care, support treatment or protection:
 - for the protection, safety, health and welfare of that person, or
 - to protect another person or persons, or
 - as the person appears to pose a significant risk to the general community, and
- is unwilling or unable to consent to further treatment.

The person should be released if the medical practitioner is of the opinion that the person:

- does not appear to have a mental disorder, or
- does not appear to require care, support, treatment or protection in the interests of the person or to protect another person.

If a request is made for an assessment by a second medical practitioner, this must be conducted within 48 hours of the arrival of the person to the designated mental health facility.

Following an assessment, the second medical practitioner must either:

- compel the person to undergo a further period of assessment by completing Form 3 of the Schedule "Request for a Further Period of Assessment" if the second medical practitioner is of the opinion that the person assessed:
 - appears to have a mental disorder,
 - appears to require care, support treatment or protection:
 - for the protection, safety, health and welfare of that person, or
 - to protect another person or persons, or
 - as the person appears to pose a significant risk to the general community, and
 - the person is unable or unwilling to consent to further treatment; or
- release the person if the second medical practitioner is of the opinion that the person assessed:
 - does not appear to have a mental disorder, or
 - does not appear to require care, support, treatment or protection in the interests of the person or to protect another person, or
 - is able to be treated voluntarily.

The further period of assessment runs for a period of five days from the time of completion of the assessment by the second medical practitioner.

18.6 Detention for assessment

Section [6B](#) MHA

A person may be detained for assessment in a hospital or designated mental health facility only:

- for the purposes of an involuntary assessment in accordance with section [6A](#); or
- on the order of a magistrate in accordance with section [6E](#).

A health practitioner or medical practitioner requesting transfer or involuntary assessment (in accordance with section [6A](#)) must 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 judgement or give rise to a real or perceived conflict of interest.

18.7 Review of person by a Magistrate

Section [6E](#), [6E\(A\)](#) MHA

At the conclusion of the five day period from the time of completion of the assessment by the second medical practitioner (under section [6A\(10\)](#)), or earlier if necessary, the person must be released, or the Director of Medical Services must make an application for an inpatient treatment order and file it in the District Court. The Director must submit all relevant assessment documents made with regard to that person.

A person may only be detained for a maximum of 14 days from the date of filing of the application until the application is determined; so applications should be prioritised by the court in scheduling. If you are of the opinion that it would be unreasonable to bring a person before the court, you may interview the person at an alternative location in order to explain to the person the nature of the examination and inquiry. An alternative location may be the person's place of residence, the hospital, a mental health facility or other place where the person is undergoing involuntary assessment; or where that is not practicable, at the nearest practicable place.

18.7.1 The interview of the subject person

Before and during the interview you must do the following things as appropriate and practicable:

- identify yourself to the person, and
- explain to the person the purpose of the visit, and
- discuss with the person the situation, the proposed course of assessment and treatment and seek the person's views on these matters.

You may consult with the responsible health practitioner and at least one other health professional involved in the case and may consult with other persons as you think fit, concerning the person's condition.

You must ensure that a note of the interview is placed on the record of any proceedings regarding the person.

You may reverse the order if, following the interview with the person, you are of the opinion that the person may be released from medical detention.

If you are of the opinion that it is advisable to remand the person further and make an inpatient treatment order, then you may issue an order for a period not exceeding three months. At or before the expiration of the period specified in the order, the person to whom the order relates must be brought before a Magistrate so that the examination and inquiry may be completed.

Inpatient treatment will continue during any period of appeal against the order unless otherwise determined by the court.

18.8 Appeal against decision under ss 6A or 6E

Section [6E\(B\)](#) MHA

When a decision has been made to detain and assess a person, that person may appeal that decision by:

- 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
- petition to the Supreme Court, if appealing against an inpatient treatment order made under section [6E](#).

The District Court or Supreme Court may appoint a barrister or solicitor or pleader to assist or to represent the person despite an appeal under this Act.

The appeal may be made any time during the duration of the detainment or the duration of an inpatient treatment order.

On appeal the Supreme Court may:

- 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
- 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.

Notice of proceedings must be served by the person bringing the proceedings on:

- the health practitioner concerned,
- the District Court Registry, if appeal is being made to the Supreme Court,
- the Director of Medical Services, and
- any other person identified by the Supreme Court.

18.9 Rights of persons admitted to mental health facility

Section [6E\(C\)](#) MHA

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

- must be dealt with in a manner that respects their cultural identity,
- 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,
- 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,
- is entitled to seek independent psychiatric advice from a medical professional of their choice in order to get a second opinion,

- is entitled to seek independent legal advice on his or her status as a patient or potential patient,
- is entitled to the confidentiality afforded to all persons undergoing any type of medical treatment, whether for mental illness or not, and
- is entitled to have access to his or her personal records concerning his or her treatment.

18.10 Making of inpatient treatment orders

Section [6F](#) MHA

In considering whether to make an inpatient treatment order you should consider the following criteria:

- the person has a mental disorder,
- as a result of the mental disorder the person requires care, support, treatment or protection:
 - in the interests of the person, or
 - to protect the safety, health and welfare of another person or 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, and
- the person has been assessed by a medical practitioner who has certified that the person requires the inpatient treatment.

18.11 Terms of an inpatient treatment order

Section [6G](#) MHA

The terms and conditions attached to an inpatient treatment order must only be such as are, in the opinion of the medical practitioner, in the best interests of the mental health of the person who is subject to the order.

An inpatient treatment order may require the person subject to the order:

- to be detained and remain an inpatient at a hospital or designated mental health facility,
- to be absent only if leave is approved from the inpatient unit by order of the treating medical practitioner,
- to receive the care, support, treatment or protection that a medical practitioner determines from time to time,
- after release from the hospital or designated mental health facility, to attend at:
 - a specified medical, health care or rehabilitation service,
 - a specified therapist or place of therapy, or
 - some other specified activity, service, person or body, and

- to comply with all other terms and conditions imposed in writing by a medical practitioner.

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:

- revoke the relevant order by using Part B of [Form 4](#),
- discharge the patient, and
- within seven days of that decision, forward a copy of the discharge papers to the District Court registry.

18.11.1 Removal of involuntary inpatients from treatment centre

If a person, without lawful excuse, removes an involuntary inpatient from a treatment centre, or helps them to leave, they will be subject to a maximum penalty of \$2000 or imprisonment for one year.

18.12 Right to be given order, statement and explanation of rights

Section [6I](#) MHA

Where a person is made subject to an inpatient treatment order, the health practitioner who applied to the Resident Magistrate under section [6E](#) must within 72 hours of making the order or application give the person:

- a copy of the order,
- a copy of any application for review,
- an explanation in a language, style and manner that the person is readily able to understand of:
 - the order;
 - the reasons the order has been made;
 - what the order requires of the person;
 - the person's rights under this Act; and
 - the person's right to consult a lawyer.

The documents must also be given to the person's primary carer and the person's lawyer if the health practitioner considers it to be in the best interest of the person, or if the person so requests.

18.13 Assistance of interpreters

Section [6H](#) MHA

Where the person to be examined or assessed is unable to communicate adequately in the English or Nauruan language and can communicate in another language, or if the person requests an interpreter, the health care professionals or medical practitioner must take all reasonable steps to have an appropriate interpreter present.

If it is not reasonably practicable to arrange for an interpreter to be present within 24 hours the medical examination or assessment may proceed; but the consequences and results of the examination must be interpreted to the person or his or her primary carer as soon as reasonably practicable.

18.14 Emergency medical treatment or surgery for involuntary patients

Section [6J](#) MHA

A medical practitioner may in writing authorise the administering of medical treatment or the performance of a surgical operation (except sterilisation or a surgical operation upon an unborn child) on an involuntary patient if the medical practitioner is of the opinion that:

- 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
- it is necessary, as a matter of urgency, to administer such medical treatment or perform a surgical operation on the patient in order:
 - to save the patient's life;
 - to prevent serious, potentially irreversible damage to the patient's health; or
 - to prevent the patient from suffering or continuing to suffer significant pain or distress.

The medical practitioner must have taken all reasonable steps to obtain informed consent of the primary carer 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, or
- does not give consent to the treatment or operation.

Where sterilisation or a surgical operation upon an unborn child is indicated as a medical emergency an application must be made to the District Court for its direction, and the court may make such order relating to the matter as it thinks proper.