

No. 43 of 2015.

Mental Health Act 2015.

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ARRANGEMENT OF SECTIONS.

PART I. - PRELIMINARY.

1. Compliance with constitutional requirements.
2. Interpretation.
 - “Accounts Committee”
 - “Board”
 - “Chief Executive Officer”
 - “Consumer”
 - “Director”
 - “Directorate”
 - “family support group”
 - “forensic patient”
 - “informed consent”
 - “medical practitioner”
 - “member”
 - “mental disorder”
 - “mental health care centre or facility”
 - “next of kin”
 - “O.I.C”
 - “patient”
 - “patients’ rights”
 - “property”
 - “the Tribunal”.

PART II. - ADMINISTRATION.

Division 1. - Establishment of Mental Hospitals and Care Centres.

3. Establishment of mental hospitals and care centres.

Division 2. - Establishment of the Directorate for Social Change and Mental Health Services.

4. Establishment of the Directorate for Social Change and Mental Health Services.
5. Director.
6. Powers of the Director.
7. Functions of the Director.
8. Delegation of powers.
9. Chief Executive Officer.

10. Staff of the Directorate.
11. Terms and conditions of employees.
12. Consultants.

Division 3. - Board of the Directorate for Social Change and Mental Health Services.

13. Establishment of the Board of the Directorate for Social Change and Mental Health Services.
14. Objectives of the Board.
15. Composition of the Board.
16. Appointment of Chairperson and Deputy Chairperson.
17. Functions of the Board.
18. Board fees and allowances.
19. Meetings of the Board.
20. Leave of absence of members.
21. Termination of Board membership.

Division 4. - Finances of the Directorate.

22. Application of the ***Public Finances (Management) Act 1995*** as amended.
23. Funds of the Directorate.

Division 5. - Mental Health Tribunal.

24. Establishment of the Mental Health Tribunal.
25. Composition of the Tribunal.
26. Functions of the Tribunal.
27. Powers of the Tribunal.
28. Meetings of the Tribunal.
29. Furnishing of reports, etc.

PART III. - PATIENT, ADMISSION AND CARE.

Division 1. - Examination, Admission and Review.

30. Examination of patient.
31. Admission of patient.
32. Verification of identity.
33. Record of patient.
34. Steps to be taken on admission.
35. Review by psychiatrist.
36. Procedures following admission.
37. Admission of voluntary patient.
38. Admission of involuntary patient.
39. Validation by Magistrate.
40. Automatic review.

Division 2. - Treatment, Leave and Discharge.

41. Treatment of patient.
42. Consent of forensic patient security.
43. Plan of treatment.
44. Special treatment.
45. Transfer of patient.
46. Temporary leave.
47. Discharge of patient.

PART IV. - PROTECTION OF PATIENT AND THEIR PROPERTY.

- 48. Patient units.
- 49. Living conditions and treatment.
- 50. Rights and freedoms of patients.
- 51. Appointment of guardian.
- 52. Follow up of discharged patient.
- 53. Patients accounts.
- 54. Personal expenses.
- 55. Unspent balance.
- 56. Annual accounting.

PART V. - PATIENT FROM COURTS.

- 57. Conveyance and detention of persons unfit to stand trial.
- 58. Person of sound mind who becomes mentally impaired.
- 59. Periodic reports.
- 60. Remit to Court for trial.
- 61. Report to the Minister for Justice matters on acquitted patient.
- 62. Discharge of acquitted patient.

PART VI. - OFFENCES AND PENALTIES.

- 63. False declaration.
- 64. Neglect, abuse or cruelty.
- 65. Permitting escape of patient.
- 66. Improper detention.
- 67. Offence against patient.

PART VII. - MISCELLANEOUS.

- 68. Police assistance.
- 69. Directorate.
- 70. Appeal.
- 71. Regulations.
- 72. Transitional Provisions.
- 73. Trained staff.

SCHEDULE.



No. of 2015.

AN ACT

entitled

Mental Health Act 2015,

Being an Act to provide for the administration and necessary infrastructure for –

- (a) mental health care services; and
- (b) the conditions of admission of persons suffering from mental disorders; and
- (c) the treatment and the conditions of living of patients at mental health care centres; and
- (d) the protection of the rights of mental patients; and
- (e) the principles applicable to accused persons who plead mental disorder or are found to be unfit to plead to criminal charges,

and for related purposes.

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

PART I. - PRELIMINARY.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

(1) This Act to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C (*qualified rights*) of the *Constitution* namely -

- (a) the right to liberty of the person conferred by Section 42; and
- (b) the freedom of conscience, thought and religion conferred by Section 45; and
- (c) the right to privacy conferred by Section 49; and
- (d) the right to freedom of information conferred by Section 51,

of the *Constitution* is a law made for the purpose of giving effect to the public interest in public safety, public welfare and public health.

(2) For the purpose of Section 41 of the *Organic Law on Provincial and Local-level Governments*, it is hereby declared that this Act relates to a matter of national interest.

2. INTERPRETATION.

In this Act, unless the contrary intention appears -

“Accounts Committee” means a committee established at a mental health facility to protect and monitor patients’ finances or properties while under admission, treatment or care;

“Board” means the Board of the Directorate for Social Change and Mental Health Services established under Section 13;

“Chief Executive Officer” means the person in charge of a public psychiatric hospital appointed by the Board of the Directorate for Social Change and Mental Health Services;

“Consumer” means a person who is on treatment for major or minor mental illness;

“Director” means the person in charge of the Directorate for Social Change and Mental Health Services appointed by the Minister;

“Directorate” means the Directorate for Social Change and Mental Health Services;

“family support group” means a care giver or family member of those with minor or major mental illness who make up a support group;

Mental Health

- “forensic patient” means a patient who is suspected of having committed a criminal offence and is in the custody of the Police or is a detainee at a correctional institution and is unfit to stand trial by reason of mental disorder or has been found not guilty by reason of mental disorder;
- “informed consent” means consent obtained freely without threats, duress or inducements, after disclosure to the patient or his next of kin adequate and understandable information in a form of language, understood by the patient or his next of kin on -
- (a) the diagnostic assessment; and
 - (b) the purpose, method, likely duration and expected benefit of the proposed treatment; and
 - (c) alternative modes of treatment, including those less intrusive; and
 - (d) possible pain or discomfort, risks and side-effects of the proposed treatment;
- “medical practitioner” means a registered medical practitioner registered under the Medical Board of Papua New Guinea;
- “member” means a person appointed to the Mental Health Board or Tribunal;
- “mental disorder” means a significant occurrence of a mental or behavioral disorder exhibited by symptoms indicating a disturbance of mental functioning, including symptoms of a disturbance of thought, mood, volition, perception and cognition which are present to such a degree as to be considered pathological;
- “mental health care centre or facility” means a psychiatry outpatient or inpatient treatment centre, community centre, drug or alcohol counseling centre or rehabilitation centre specified by the Minister under Section 3;
- “next of kin” means spouse, child, father, mother, brother, sister, grandparent, grandchild, uncle, aunt, nephew, niece and includes any person with whom the person suffering from a mental disorder ordinarily resides or under whose responsibility, care or control that person lives or has been placed;
- “O.I.C” means Officer-In-Charge of out-patient treatment centres, community centres, drug or alcohol counseling centres or rehabilitation centres;
- “patient” means a person who is suffering from mental disorder and may also be referred to as a mentally impaired person, insane person or a person of unsound mind or a consumer;
- “patients’ rights” means the rights and freedoms specified in Form 6;
- “property” means acquired land, house and capital assets;
- “the Tribunal” means the Mental Health Tribunal established under Section 24.

PART II. - ADMINISTRATION.

Division 1. - Establishment of Mental Hospitals and Care Centres.

3. ESTABLISHMENT OF MENTAL HOSPITALS AND CARE CENTRES.

- (1) The Minister may, by notice in the National Gazette, establish -
- (a) public or private psychiatric hospitals; or
 - (b) mental health care centres,

at such place as he thinks fit, for the detention, treatment and rehabilitation of mentally disordered patients or consumers.

- (2) In respect to private mental health care centres, the Minister, on the advice of the Director, may make regulations in respect of the conduct of its administration.

Division 2. - Establishment of the Directorate for Social Change and Mental Health Services.

4. ESTABLISHMENT OF THE DIRECTORATE FOR SOCIAL CHANGE AND MENTAL HEALTH SERVICES.

- (1) There is established a Directorate for Social Change and Mental Health Services consisting of -

Mental Health

- (a) a Director appointed under Section 5; and
- (b) such other staff as are appointed under Section 10.

(2) The Directorate -

- (a) is a corporation with perpetual succession; and
- (b) shall have a seal; and
- (c) may acquire, hold, deal with and dispose of property; and
- (d) may sue and be sued in its corporate name.

5. DIRECTOR.

(1) There shall be a Director of the Directorate, who -

- (a) in the case of the first Director, shall be appointed by the Minister by notice in the National Gazette; and
- (b) in the case of subsequent Directors, shall be appointed in accordance with the provisions of the *Regulatory Statutory Authorities (Appointment to Certain Offices) Act 2004*; and
- (c) shall be a medical officer with a Masters of Medicine in Psychiatry or relevant mental health qualifications with a minimum of five years' experience in mental health; and
- (d) shall hold office for a period of four years; and
- (e) is eligible for reappointment.

(2) The Director is -

- (a) an *ex officio* member of the Board; and
- (b) the head of the Directorate for Social Change and Mental Health Services; and
- (c) accountable to the Minister for the efficient carrying out of the functions of the Directorate.

(3) Subject to the provisions of the *Salaries and Conditions Monitoring Committee Act 1988*, the Board shall determine the terms and conditions of employment of the Director.

6. POWERS OF THE DIRECTOR.

Subject to Section 21, the Director has powers to do all things necessary or convenient to be done for or in connection with the performance of his functions, and in particular, may -

- (a) enter into contracts, including contracts regarding the expenditure of aid monies; and
- (b) acquire, hold and dispose of real or personal property; and
- (c) occupy, use and control any land or building owned or held under lease by the Government of Papua New Guinea and made available for the purposes of the Directorate; and
- (d) accept gifts, bequests or devises, or any donor funding made to the Directorate (whether on trust or otherwise) and act as trustee of monies or other property vested in the Directorate on trust; and
- (e) subject to the approval of the Minister, borrow monies on terms and conditions approved by the Minister; and
- (f) establish or participate in the establishment of a body, whether incorporated or not, whether situated in Papua New Guinea or elsewhere for the purpose of exercising any of the Director's functions or powers; and
- (g) require furnishing of information by departments, other government agencies and other relevant bodies whom the Directorate believes hold information with respect to persons with mental disorders; and
- (h) shall conduct drug quality assurance and tenders and do procurements as in accordance with international and clinical standards; and
- (i) exercise other powers conferred on it by this Act or any other laws.

7. FUNCTIONS OF THE DIRECTOR.

- (1) The Director shall be responsible to the Minister for -
 - (a) the delivery of mental health care and social change services; and
 - (b) the advice and the development of policies, plans, programs, standards and strategic directions; and
 - (c) providing annual implementation, sector performance, financial and audit reports to the Minister, through the Board; and
 - (d) the continuous strengthening of social change programs and mental health care services; and
 - (e) the maintenance of multi and inter-sectoral linkages, coordination of social change and mental health services.

(2) At the request of the Minister, or the Chairperson, or on his own initiative, the Director shall conduct enquiries into the operations of mental health care centres and provisions of mental health services and programs, and make recommendations for the improvement of those centres and services.

(3) The Director shall carry out other functions that are delegated to him or are necessary or convenient for carrying out or that are ancillary to the functions set out in this section.

(4) The Director shall monitor the implementation of the Directorate's corporate plan, minimum service standards and programs.

8. DELEGATION OF POWERS.

The Director may, by written instrument, delegate all or any of his powers and functions, other than this power of delegation, to a body or a person carrying out functions under this Act.

9. CHIEF EXECUTIVE OFFICER.

(1) The Chief Executive Officer of a psychiatric hospital shall be appointed by the Board on the recommendation of the Director.

(2) Subject to the provisions of the *Salaries and Conditions Monitoring Committee Act 1988*, the Board shall determine the terms and conditions of employment of the Chief Executive Officer.

10. STAFF OF THE DIRECTORATE.

The Director may appoint such other persons as the Director considers necessary for the efficient management, performance and exercise of the powers and functions of the Directorate.

11. TERMS AND CONDITIONS OF EMPLOYEES.

(1) The Director, the Chief Executive Officer and every employee of the Directorate shall be employed under contracts of employment which -

- (a) in the case of the Director, shall be executed by the Minister and by the Director; and
- (b) in the case of the Chief Executive Officer and other employees, by the Director on behalf of the Directorate and the Chief Executive Officer and the employees concerned.

(2) The terms and conditions of employment of the other employees of the Directorate shall be in accordance with the *Public Services (Management) Act 2014* and the General Public Service Orders.

(3) Service of an officer of the Public Service as the Director, the Chief Executive Officer or as an employee of the Directorate shall, for all purposes, be counted as service in the Public Service.

12. CONSULTANTS.

The Director may, from time to time -

- (a) after consultation with the Board; and

Mental Health

- (b) within the limits of funds lawfully available for the purpose; and
 - (c) on such terms and conditions as are fixed by the Board,
- employ such consultants as, in the opinion of the Board, are necessary for the purposes of the Directorate in accordance to the *Public Finances (Management) Act 1995*.

Division 3. - Board of the Directorate for Social Change and Mental Health Services.

13. ESTABLISHMENT OF THE BOARD OF THE DIRECTORATE FOR SOCIAL CHANGE AND MENTAL HEALTH SERVICES.

The Board of the Directorate for Social Change and Mental Health Services is hereby established.

14. OBJECTIVES OF THE BOARD.

The objectives of the Board are -

- (a) to ensure government priorities and policies in the provision of services for mental health care are implemented; and
- (b) to ensure, as far as possible, that the operations of the Directorate are within the bounds of this Act, and all other applicable laws; and
- (c) to oversee policy and standards formulation and development; and
- (d) to oversee the welfare, safety and interest of psychiatric care and those subjected to it and refer appropriate cases to the Tribunal.

15. COMPOSITION OF THE BOARD.

The Board shall consist of -

- (a) the Director to represent the Directorate and its partners; and
- (b) a member to represent business and employers; and
- (c) a member to represent church organisations; and
- (d) a member to represent law and justice sector; and
- (e) a member to represent consumers; and
- (f) a member to represent the Health Department; and
- (g) a member to represent the psychiatric profession; and
- (h) a member to represent the community sector; and
- (i) a member representing the disciplined forces,

who shall be appointed by the Minister by notice in the National Gazette, for a term not exceeding three years and are eligible for reappointment.

16. APPOINTMENT OF CHAIRPERSON AND DEPUTY CHAIRPERSON.

The Chairperson and Deputy Chairperson shall be appointed by the Board by notice in the National Gazette on such terms and conditions as are determined under the *Boards (Fees and Allowances) Act* (Chapter 299).

17. FUNCTIONS OF THE BOARD.

- (1) The Board, through the Chairperson, shall be responsible to the Minister for -
 - (a) monitoring the operations of the Directorate and its mental hospitals and mental health care centres; and
 - (b) the compliance of standards of good practice and the efficiency of mental health services; and
 - (c) overseeing improvement and measures for the occupational health care of mental hospitals and mental health care centres, staff, patients and consumers; and
 - (d) overseeing measures on continuing education and training of the mental health care workforce; and

- (e) overseeing measures for transparency, accountability and sound financial management of mental health services; and
- (f) the endorsement of plans, policies, standards and periodic reports.

(2) The Board, through the Chairperson, shall request the Directorate to conduct appropriate investigations as and when the need arises.

18. BOARD FEES AND ALLOWANCES.

The members of the Board shall be paid such fees or allowances approved by the Minister under the *Boards (Fees and Allowances) Act* (Chapter 299).

19. MEETINGS OF THE BOARD.

(1) The Board shall meet at least four times a year and at other such times, upon written request by any three members and upon approval by the Chairperson.

(2) The Director and a government medical specialist in the field of psychiatry and four other members constitute a quorum.

(3) A member who has an interest in a matter that is before the Board for deliberation shall disclose the nature of his interest and shall be excused from attending that meeting.

(4) The procedures of the meetings of the Board are as determined by the Board.

(5) The decision of the Board shall be made by majority of members present and in the event of equality in voting, the Chairperson has a casting vote.

(6) All proceedings of a Board meeting shall be recorded.

20. LEAVE OF ABSENCE OF MEMBERS.

The Board may grant leave of absence to any member on such terms and conditions as the Board determines.

21. TERMINATION OF BOARD MEMBERSHIP.

(1) The Minister may, at any time, by written notice, terminate the appointment of a member on the grounds where the member -

- (a) has proven to be inefficient, permanently incapable of performing his duties or has misbehaved; or
- (b) is absent, without the written consent of the Board for three consecutive meetings of the Board; or
- (c) has failed to disclose, as soon as the relevant facts have come to his knowledge, any direct or indirect interest in a matter being considered or about to be considered by the Board; or
- (d) is convicted of an offence punishable under a law by a term of imprisonment or a fine.

(2) Within 14 days of the receipt of a notice under Subsection (1), the member shall reply in writing to the Minister, who shall consider the reply and where appropriate, terminate the appointment.

(3) Where the member referred to in Subsection (1) does not reply in accordance with Subsection (2), his appointment is terminated.

(4) A member may resign from office by written notice to the Minister.

Mental Health

Division 4. - Finances of the Directorate.

22. APPLICATION OF THE *PUBLIC FINANCES (MANAGEMENT) ACT 1995.*

Subject to such modifications as permitted by the *Public Finances (Management) Act 1995*, and contained in this Division, Part VIII of the *Public Finances (Management) Act 1995* applies to and in relation to the Directorate.

23. FUNDS OF THE DIRECTORATE.

- (1) The funds of the Directorate consist of -
 - (a) all monies appropriated for the purpose of carrying out or giving effect to this Act; and
 - (b) all monies received by the Directorate by way of grants and subscriptions; and
 - (c) all monies received by the Directorate for services provided by the Directorate; and
 - (d) all other monies received by the Directorate in accordance with the Act and in the exercise and performance of its powers, functions and duties.
- (2) The funds of the Directorate may be expended only -
 - (a) in payment or discharge of expenses, obligations and liabilities incurred or undertaken by the Directorate in the performance of its functions and the exercise of its powers; and
 - (b) in payment of remunerations and allowances payable under this Act.

Division 5. - Mental Health Tribunal.

24. ESTABLISHMENT OF THE MENTAL HEALTH TRIBUNAL.

There is established, for the purpose of this Act, a Mental Health Tribunal for all mental health services.

25. COMPOSITION OF THE TRIBUNAL.

- (1) The Tribunal consists of -
 - (a) a Chairperson who shall be a Magistrate or Judge; and
 - (b) two psychiatrists; and
 - (c) a member with special knowledge in clinical psychology or occupational therapy; and
 - (d) a member with experience in the field of social work or nursing; and
 - (e) a lawyer with not less than five years of experience as a litigant; and
 - (f) a Member of the disciplinary force; and
 - (g) a community representative,

who shall be appointed by the Minister by notice in the National Gazette for a term not exceeding three years and are eligible for reappointment.

- (2) The members of a Tribunal shall be paid such fees or allowances as the Minister may determine under the *Boards (Fees and Allowances) Act* (Chapter 299).

26. FUNCTIONS OF THE TRIBUNAL.

The Tribunal shall -

- (a) review matters relating to admission, treatment, leave, discharge and continued treatment of patients and consumers; and
- (b) investigate complaints and grievances of patients or consumers, their next of kin, visitors and staff; and
- (c) bring to the notice of the Board any breach or suspected breach of discipline, professional misconduct and violation of patients' rights; and
- (d) refer to the Police any suspected criminal offence under this Act; and
- (e) report to the Board any problems or reports furnished by the Chief Executive Officer or Officer-In-Charge relating to the living conditions and the standard of care at a centre; and

- (f) have such other functions and powers as are specified in this Act.

27. POWERS OF THE TRIBUNAL.

- (1) Where it receives a written complaint that a person is admitted or kept at a mental health centre against his will, the Tribunal shall enquire into the complaint without delay.
- (2) The inquiry may be concerning -
- (a) the manner which the person was detained; and
 - (b) the length of time the person was detained; and
 - (c) the person responsible for the action; and
 - (d) such other matters as the Tribunal deems necessary.
- (3) On inquiry, if the complaint is genuine, the Tribunal shall -
- (a) release the person immediately; and
 - (b) refer the offender to the Police without delay for prosecution.
- (4) A prosecution under Subsection (3)(b) shall be made with the consent of the Public Prosecutor.
- (5) A complaint under Subsection (1) may be made by -
- (a) next of kin of the person detained in the mental care centre; or
 - (b) any officer employed at the mental care centre.

28. MEETINGS OF THE TRIBUNAL.

- (1) The Tribunal shall meet, not less than four times a year, at such places as are determined by the Tribunal.
- (2) Four members, one of whom shall be a psychiatrist or a medical practitioner, constitute a quorum.
- (3) The decisions of the Tribunal shall be by majority of votes, and in the event of an equality of votes, the Chairperson has a casting vote.
- (4) No member of a Tribunal shall vote where he has interest in any matter in a tribunal meeting.
- (5) All proceedings of the Tribunal meeting shall be recorded.

29. FURNISHING OF REPORTS, ETC.

The Tribunal shall furnish to the Minister, through the Board, periodic reports of all its decisions and findings and such other information as the Minister may require.

PART III. - PATIENT, ADMISSION AND CARE.

Division I. - Examination, Admission and Review.

30. EXAMINATION OF PATIENT.

- (1) A registered medical officer or a psychiatrist shall examine a person where -
- (a) he appears to be suffering from a mental disorder; or
 - (b) his case necessitates an examination; or
 - (c) he or his next of kin consents to an examination; or
 - (d) in the case of a person partially affected, he voluntarily submits himself to be treated; or
 - (e) he is being referred by the Police, the Courts or other relevant agencies.

Mental Health

(2) Where the medical officer or the psychiatrist is informed or has sufficient reason to believe that a person has been brought to a mental health care centre coercively or against his will, the medical officer or the psychiatrist shall not admit or treat the person, unless the medical officer or the psychiatrist has reasonable ground to believe that the person poses a threat to himself or other persons or property as a result of a mental disorder.

31. ADMISSION OF PATIENT.

(1) No person shall be admitted to a mental health care centre unless he suffers from a mental disorder requiring admission and he or his next of kin consents to the admission.

(2) Admission may be made upon a request by a patient's next of kin or by a medical practitioner with supporting information under the regulation.

(3) Admission can be ordered by a psychiatrist and a registered medical officer who independently agree that conditions warrant admission.

(4) Admission can be ordered in special circumstances where there is no psychiatrist available and a registered psychiatric nurse and a registered medical officer independently agree that conditions warrant admission.

32. VERIFICATION OF IDENTITY.

(1) No person shall be examined, admitted or treated in a mental health care centre unless his identity is satisfactorily established and the identity of his next of kin is also satisfactorily established.

(2) Notwithstanding Subsection (1), a person may be examined, admitted or treated without his identity being immediately established, where his mental condition necessitates urgent care or treatment.

(3) Where it is not possible to establish the identity of a person specified in Subsection (1), the Chief Executive Officer shall give an identifying reference to the person before he is examined.

(4) Where the identity of the person is later established, the Chief Executive Officer shall amend his record within 14 days and substitute the identifying reference by the identity of the person.

33. RECORD OF PATIENT.

(1) Every mental health care centre shall keep a complete record of each patient or forensic patient.

(2) Every medical practitioner, psychiatrist or nurse attending to a patient or forensic patient shall enter into the patient's record all matters that concern the patient, including those information that are necessary to enable the Board and the Tribunal to have adequate information about the patient's mental condition, any treatment administered, any refusal of examination and treatment or admission.

(3) All patients' or consumers' records shall be kept confidential.

34. STEPS TO BE TAKEN ON ADMISSION.

(1) Where a patient is admitted to a centre, the medical practitioner, psychiatrist or registered psychiatric nurse admitting him shall -

- (a) perform a full general medical examination and a full psychiatric assessment of the patient; and
- (b) whenever practicable, inform the patient or his next of kin of the reasons for his admission; and

Mental Health

- (c) enter the specific reasons for admission in the patient's medical record; and
- (d) file an Admission Report in Form 3 in the patient's record.

(2) Subsection (1)(d) does not apply to a person ordered by a Court to be confined under Section 28 or 592 of the *Criminal Code Act* (Chapter 262), except for record purposes only.

(3) Where a patient is admitted to a centre involuntarily, the general medical practitioner and the psychiatrist shall fill in the involuntary admission in Form 1.

(4) In this Section "involuntary patient" means a patient who, in the opinion of the Medical Officer or Psychiatrist examining him at a Mental Health Care Centre requires treatment in a Centre, is incapable of giving consent and making independent decisions due to the mental disorder.

35. REVIEW BY PSYCHIATRIST.

(1) Where a medical practitioner attends to a patient, a psychiatrist shall re-examine the patient and review the admission and treatment of the patient within 24 hours of admission.

(2) Where the psychiatrist is of the opinion that the admission is warranted, he shall confirm the admission.

(3) Where the psychiatrist finds that the admission is not warranted or that the admission is no longer necessary, he shall discharge the patient.

(4) Subsection (3) shall not apply to a patient ordered by a Court to be confined under Section 28 or 592 of the *Criminal Code Act* (Chapter 262).

36. PROCEDURES FOLLOWING ADMISSION.

(1) Upon admission of a patient, the Chief Executive Officer or the O.I.C. shall forward to the Magistrate of the province where the patient ordinarily resides, a copy of the admission report with a request for validation of the admission in Form 4, in respect of -

- (a) a forensic patient, within 48 hours of his admission; and
- (b) a patient other than a voluntary patient, within 24 hours of his admission.

(2) Subsection (1) does not apply to -

- (a) a person ordered by a Court to be confined under Section 28 or 592 of the *Criminal Code Act* (Chapter 262); or
- (b) a person discharged under Section 35(3).

(3) The Chief Executive Officer or the O.I.C. shall, in respect of every patient, enter the name, date of birth and such other particulars as the Chief Executive Officer or the O.I.C. deems appropriate in a register kept for that purpose.

(4) In this section "voluntary patient" means a patient who, in the opinion of the medical officer or psychiatrist examining him at a mental health care centre, requires treatment at a centre, and is capable of giving consent and has in fact given his consent for admission and treatment.

37. ADMISSION OF VOLUNTARY PATIENT.

(1) A person who wishes to submit voluntarily to a treatment but whose mental condition is not such to justify the issue of a certificate of unsoundness of mind may be received into a psychiatric hospital for care and placed on treatment in accordance with Section 44.

(2) Form 2 must be signed by the patient, a relative or a guardian and witnessed by a psychiatrist and a psychiatric nurse.

(3) A person shall not be detained for more than 14 days and shall be recommended for involuntary admission by the psychiatrist when the condition worsens.

38. ADMISSION OF INVOLUNTARY PATIENT.

(1) Where a person is admitted to a psychiatric hospital for mental care and treatment but he is not able to make decisions on his own because of the state of mind he is in, two qualified medical practitioners, who are on duty at that time, of whom one must be a psychiatrist and the other a general practitioner, shall fill and sign two separate forms of involuntary admission in Form 1 for that person.

(2) Where there is no psychiatrist, two general medical practitioners or a general medical practitioner and a psychiatric nurse shall fill and sign two separate forms of involuntary admission in Form 1 for that person.

(3) A person to whom this section applies shall be hospitalised until such time that the psychiatrist recommends for his discharge.

39. VALIDATION BY MAGISTRATE.

(1) Where a Magistrate is satisfied that a request for validation of admission under Section 36(1) is in order, the provincial Magistrate shall issue an order for validation of the admission in Form 5.

(2) A copy of the Order issued under Subsection (1) shall be forwarded to the Chief Executive Officer.

(3) Where the Magistrate is not satisfied that the procedures under this Act have been followed or where he is of the opinion that the detention of a patient is contrary to Sections 33 and 34, he may make such inquiry as he thinks fit and for this purpose require the production of further evidence as he considers necessary.

(4) After making an inquiry under Subsection (3), the Magistrate may validate or refuse to validate the admission.

(5) Where validation is refused by a provincial Magistrate, the patient shall be discharged.

(6) The Clerk of the Court in which the Magistrate sits to consider a request for validation of admission under Section 36 shall keep the original of the proceedings in a separate file for the Court's records.

40. AUTOMATIC REVIEW.

(1) The Tribunal shall review the case of every patient -

- (a) at its first meeting after the admission; or
- (b) every fortnight after the admission for three months; or
- (c) every four months after the admission for three years.

(2) On a review, the Tribunal shall determine whether -

- (a) the continued stay of the patient is necessary; and
- (b) the treatment and living conditions of the patient is satisfactory.

Mental Health

(3) Where the Tribunal establishes its finding under Subsection (2), it shall advise the Chief Executive Officer about its findings.

(4) Upon receipt of the Tribunal's findings, the Chief Executive Officer shall communicate the result of the review to the patient or his next of kin.

Division 2 . - Treatment, Leave and Discharge.

41. TREATMENT OF PATIENT.

(1) No person shall be administered treatment at a centre unless -

- (a) he suffers from a mental disorder; or
- (b) he or his next of kin consent to the treatment; or
- (c) in the case of a patient partially affected mentally, he voluntarily consents to the treatment.

(2) Where a person is unable to give his consent, or his next of kin cannot be traced or refuses to give consent, the treating psychiatrist shall submit the plan of treatment specified in Section 43 to the Tribunal for approval before any treatment is administered.

42. CONSENT OF FORENSIC PATIENT SECURITY.

(1) A forensic patient may be administered treatment with his consent or the consent of his next of kin.

(2) Where the forensic patient is unable to give his consent, and his next of kin cannot be traced or refuses to give consent, a treatment plan shall be submitted to the Tribunal for approval before any treatment is given.

43. PLAN OF TREATMENT.

(1) The Chief Executive Officer or the O.I.C. shall assign responsibility for a patient or a forensic patient to a psychiatrist.

(2) The psychiatrist shall draw up an individual treatment plan in respect of every patient or forensic patient as soon as practicable after his admission.

(3) The patient or forensic patient or his next of kin may participate in the formulation of the treatment plan.

(4) The plan shall include -

- (a) the nature, side effects and expected duration of the treatment proposed and any alternative treatment; and
- (b) the nature and duration of any other non-psychiatric treatment that may be required.

(5) Where a treating psychiatrist considers that it is necessary to administer treatment to a person under Section 41(2) or a forensic patient under Section 42(2) in order to prevent immediate or imminent harm to the person or patient or any other person, as the case may be, the psychiatrist may administer such treatment prior to the submission of a treatment plan under this section.

44. SPECIAL TREATMENT.

(1) No treatment by way of psychosurgery or electro-convulsive therapy or any non-psychiatric treatment shall be administered to any person without -

- (a) the informed consent of the person and the consent of his next of kin; and
- (b) the advice of the treating psychiatrist.

Mental Health

(2) Where a person is under the age of 18, the informed consent of his next of kin shall be sufficient for the treatment specified in Subsection (1).

(3) Where the person is unable to give informed consent, and his next of kin cannot be traced or refuses to give informed consent, the treatment plan shall be submitted to the Tribunal for approval before any treatment is administered.

(4) Every treatment administered under this section and the details of any informed consent shall be explicitly recorded in the record of the person receiving the treatment.

45. TRANSFER OF PATIENT.

(1) A patient may be transferred for treatment to another mental health care centre or a general health care facility where -

- (a) he requests a transfer and the available resources allow for the transfer; or
- (b) the psychiatrist deems it necessary.

(2) This section does not apply to a patient ordered by a Court to be confined under Section 28 or 592 of the *Criminal Code Act* (Chapter 262).

(3) A transfer under this section may be made in accordance with the forms prescribed under the Regulation accompanied with treatment records or information by the referring medical practitioner..

46. TEMPORARY LEAVE.

(1) The psychiatrist may grant leave to a patient for a period of not more than two months where the psychiatrist is satisfied that -

- (a) the patient does not cause any harm to himself and to others; and
- (b) adequate family or community support is available for the patient.

(2) If a patient fails to return to the centre where he was admitted after the expiry of his leave or after the revocation of his leave by the Tribunal, the Commissioner of Police shall, on being informed in writing by the treating psychiatrist that the apprehension and conveyance of the patient to the centre is necessary for the purpose of his care, treatment or the protection of the community, apprehend and convey the patient to the centre.

47. DISCHARGE OF PATIENT.

(1) Subject to Sections 41 and 43, the treating psychiatrist shall discharge a patient admitted to a mental health care centre as soon as practicable where -

- (a) the treating psychiatrist is satisfied that the condition of the patient is such that his continued stay for treatment in the centre is no longer necessary; or
- (b) the Tribunal, has under Section 39(5), refused to validate the admission of the patient; or
- (c) the Chief Executive Officer is, in the presence of a decision on an appeal under Section 52, discharging the patient.

(2) No patient suspected of having committed a criminal offence or a patient in custody of the Police or a correctional institution shall be discharged without giving the Police or the correctional institution a 48 hour notice.

PART IV. - PROTECTION OF PATIENT AND THEIR PROPERTY.

48. PATIENT UNITS.

(1) There shall be a separate unit for each of the following categories of patients:

- (a) forensic patients; and
- (b) patients suffering from a severe mental disorder; and

- (c) elderly patients of age 50 years and above; and
- (d) patients under the age of 18; and
- (e) patients suffering from acute mental disorders in provincial general hospitals; and
- (f) patients suffering from substance and alcohol abuse and use disorders.

(2) There shall be, for all categories of patients, a separate unit each for male and female patients.

49. LIVING CONDITIONS AND TREATMENT.

The Chief Executive Officer of a centre shall ensure that every patient -

- (a) is provided health care and is kept in living conditions conducive to human dignity and proper treatment; and
- (b) is protected from danger to himself and others.

50. RIGHTS AND FREEDOMS OF PATIENTS.

A medical practitioner or a psychiatrist shall inform every patient or his next of kin of the patient's rights and freedoms as specified in Form 6, in a language he understands.

51. APPOINTMENT OF GUARDIAN.

Where on a review under Section 40, the Tribunal is of the opinion that a patient is likely to stay at a centre for a period exceeding six months and that the patient has significant assets which need protection, the Tribunal shall forward a report to that effect to the Board.

52. FOLLOW UP OF DISCHARGED PATIENT.

(1) Nursing and paramedical staff trained in handling patients suffering from a mental disorder shall be made available to -

- (a) keep in touch with and monitor the health and welfare of any patient discharged from a centre; and
- (b) review and maintain the health of any person believed to be suffering from a mental disorder.

(2) A nurse or a paramedical staff specified in Subsection (1) may refer a patient to a centre where he thinks such a course is necessary.

53. PATIENTS ACCOUNTS.

(1) For purposes of maintaining and administering an individual account for each patient, there shall be a Committee to be known as the Accounts Committee which shall consist of such members and shall conduct its business in such manner, as prescribed by the Tribunal.

(2) The account shall include -

- (a) any monies belonging or any monetary benefit accruing to the patient, including any funds made available for the patient by his next of kin or any other person; and
- (b) any benefits accruing under any form of superannuation fund or insurance; and
- (c) any allowances paid to the patient in consideration for work performed during his stay at the centre.

(3) All monies, benefits and allowances referred to in Subsection (2) may be invested in such manner as the Accounts Committee determine, with the approval of the Tribunal.

(4) There shall be credited to the individual account of each patient such portion of the income derived from any investment made under Subsection (3), as corresponds to the amount of the patient's monies invested.

54. PERSONAL EXPENSES.

(1) Where the guardian, or in the absence of a guardian, the next of kin of a patient requires a certain sum of monies from the account of the patient to meet reasonable expenses for the patient, his family or dependent, the guardian or the next of kin may apply to the Chief Executive Officer stating the reasons for the application.

(2) The Chief Executive Officer shall refer the application made under Subsection (1) to the Accounts Committee and the Accounts Committee may, after considering it, authorise the payment of the sum requested or such other sum as is considered reasonable in the circumstances to the guardian or the next of kin.

(3) Notwithstanding Subsection (2), the Chief Executive Officer may, upon being satisfied that an application is made under Subsection (1) to meet an emergency, authorise the payment of the sum requested or such other sum reasonable in the circumstances and submit his authorisation to the Accounts Committee for covering approval.

(4) Subsections (1), (2) and (3) shall apply notwithstanding any provision to the contrary in any other laws.

55. UNSPENT BALANCE.

The Accounts Committee shall transfer any unspent balance standing to the account of a patient -

- (a) to the patient himself on his discharge from the Centre; or
- (b) to the estate and succession of the patient if he dies during his stay at the Centre.

56. ANNUAL ACCOUNTING.

(1) On or before 31 January each year, the Accounts Committee shall send to the Tribunal, through the Directorate, an annual report of individual patient's accounts.

- (2) The report shall specify in respect of each account -
- (a) the opening balance; and
 - (b) the operations on the account; and
 - (c) the closing balance.

(3) The Tribunal shall examine the report and may call for further information from the Accounts Committee.

PART V. - PATIENT FROM COURTS.

57. CONVEYANCE AND DETENTION OF PERSONS UNFIT TO STAND TRIAL.

(1) Where a Court finds that a person charged with an offence is unfit to stand trial as a result of unsoundness of mind and makes an order under Section 590 of the *Criminal Code Act* (Chapter 262) for the confinement of the person in a centre, the order shall be sufficient authority for the Police to convey the person to the centre specified in the order.

(2) Where a Court acquits a person under Section 592 of the *Criminal Code Act* (Chapter 262) and makes an order for the confinement of the person in a centre, the order shall be sufficient authority for the Police to convey the person to the centre specified in the order.

(3) On receipt of an order under Subsection (1), the Chief Executive Officer shall immediately inform the Tribunal of the confinement and shall detain the person referred to in the order as a forensic patient.

58. PERSON OF SOUND MIND WHO BECOMES MENTALLY IMPAIRED.

Where a person, prior to his admission to a psychiatric hospital, is of sound mind, who -

- (a) has engaged in a business; or
- (b) was in a partnership with another person of sound mind; or
- (c) has a contract to dispose of his estate,

but is mentally impaired and is admitted to a psychiatric hospital, the Court may, if it is of the opinion that it is just, make the following orders:

- (i) in the case of Paragraph (a), order that the Accounts Committee, through the Directorate, manage or dispose of the business; and
- (ii) in the case of Paragraph (b), dissolve the partnership and the share of proceeds referred to the Accounts Committee, through the Directorate, for the benefit of the mentally impaired person; and
- (iii) in the case of Paragraph (c), order that the Accounts Committee, through the Directorate, effect the instrument on behalf of the mentally impaired patient in fulfillment of the contract.

59. PERIODIC REPORTS.

The Tribunal shall forward a report to the Court assessing the accused's ability to stand trial every four months for a period of four years.

60. REMIT TO COURT FOR TRIAL.

(1) Where, during the detention of a person under Section 57, the Tribunal is satisfied that the person can be properly tried, the Tribunal shall remit the person to the Court for trial.

(2) Upon arrival and on appearance before the Court, the order made under Section 57 shall cease to have effect.

61. REPORT TO THE MINISTER FOR JUSTICE MATTERS ON ACQUITTED PATIENT.

(1) Where a person is confined pursuant to an order under Section 28 of the *Criminal Code Act* (Chapter 262), the Chief Executive Officer shall immediately inform the Tribunal of the confinement and the person shall be detained as a forensic patient.

(2) The Tribunal shall notify the Minister responsible for justice matters in a report on the mental health of the person as early as possible but not later than 12 months of the confinement and thereafter at intervals of 12 months after that.

62. DISCHARGE OF ACQUITTED PATIENT.

A person who is confined pursuant to an order under Section 28 of the *Criminal Code Act* (Chapter 262) shall be discharged on the written order of the Minister responsible for justice matters following a report from the Tribunal that the person has fully recovered from his mental disorder and no longer poses any danger to himself and to other persons.

PART VI. - OFFENCES AND PENALTIES.

63. FALSE DECLARATION.

A person who knowingly makes a false declaration as to the state of mind of another person with intention to cause the admission of that person in a centre or the removal of a person from a centre commits an offence and, upon conviction, is liable to a fine not exceeding K10,000.00 or imprisonment for a term not exceeding five years or both.

64. NEGLECT, ABUSE OR CRUELTY.

A medical practitioner, psychiatrist, officer or any other employee of a centre who commits any act of abuse or cruelty towards any patient or forensic patient commits an offence and upon conviction, is liable to a fine not exceeding K10,000.00 or imprisonment for a term not exceeding five years or both.

65. PERMITTING ESCAPE OF PATIENT.

A person who allows, induces, facilitates or convinces a patient or forensic patient to escape from a centre commits an offence and upon conviction is liable to a fine not exceeding K10,000.00 or imprisonment for a term not exceeding five years or both.

66. IMPROPER DETENTION.

(1) A person who receives or detains a person of sound mind -
(a) in a psychiatric hospital; or
(b) in any other place, not being a psychiatric hospital or designated observation ward, for a gain is guilty of an offence.

Penalty: A fine not exceeding K10,000.00 or imprisonment for a term not exceeding five years or both.

(2) Prosecution under this section shall not be made without the consent of the Public Prosecutor.

67. OFFENCE AGAINST PATIENT.

(1) An attendant, nurse, servant or any other person in a mental health centre or facility who -
(a) ill-treats or willfully neglects a mentally impaired person; or
(b) has or attempts to have sexual intercourse with a mentally impaired person, who is under the care or treatment in a psychiatric hospital is guilty of an offence.

Penalty: A fine not exceeding K10,000.00 or imprisonment for a term not exceeding five years or both.

(2) Consent is not a defence to a charge under Subsection (1).

PART VII. - MISCELLANEOUS.

68. POLICE ASSISTANCE.

(1) The Police shall intervene to assist in the conveyance of a person to a centre where -
(a) the next of kin of the person has reasonable grounds to believe that the person is suffering from a mental disorder and is resisting conveyance to a centre; or
(b) a request for the conveyance is made by a centre that the person has escaped from the centre.

(2) The Police may take a person specified in Subsection (1) into their custody and convey him to a centre.

(3) For the purpose of Subsection (1), the Police may apprehend and convey to a centre any person reasonably suspected of suffering from a mental disorder where such apprehension and conveyance is necessary for the purpose of his care, treatment or the protection of the community.

69. DIRECTORATE.

The Directorate shall -

- (a) govern, coordinate, collaborate and implement all activities and supervise all mental health staff; and
- (b) the activities of all the centres and extra-mutual services provided under this Act.

70. APPEAL.

- (1) A patient or his next of kin who is dissatisfied with the admission, refusal to admit, treatment, discharge or living conditions of a person at a centre, may lodge a complaint with the Chief Executive Officer.
- (2) Where the Chief Executive Officer fails to intervene or where the patient or his next of kin is dissatisfied with the intervention by the Chief Executive Officer following a complaint under Subsection (1), the patient or his next of kin may appeal to the Tribunal.
- (3) An appeal to the Tribunal shall be heard at its first sitting following the filing of the appeal.
- (4) Where the patient or his next of kin is dissatisfied with the decision of the Tribunal -
 - (a) he may appeal to the Magistrate for the province where the centre is situated within 21 days from the decision of the tribunal; and
 - (b) the Magistrate shall hear the appeal made under Paragraph (a) in accordance with the procedures provide under the *District Courts Act* (Chapter 40).
- (5) The patient or his next of kin may appeal the decision of the Magistrate to the National Court.
- (6) An appeal to the National Court shall comply with the process under the *District Courts Act* (Chapter 40).

71. REGULATIONS.

- (1) The Minister may make such regulations as he thinks fit for the purposes of this Act.
- (2) Without limiting the generality of Subsection (1), the Minister may make regulations for the licensing of private mental health care centres and imposition of fees in respect of those centres.
- (3) Regulations made under Subsections (1) and (2), may provide that a person who contravenes them commits an offence and on conviction, is liable to a fine not exceeding K10, 000.00 or imprisonment for a term not exceeding six years or both.

72. TRANSITIONAL PROVISIONS.

- (1) The provisions of this Act and any regulations made under this Act shall apply to any person received or admitted into a mental hospital or otherwise dealt with under Part VIII of the *Public Health Act 1973* prior to its repeal, whether pursuant to a Court Order or otherwise, as if such a person were admitted or dealt with in a centre under this Act and such admission has been validated or sanctioned by a Court Order, as the case may be, under this Act.
- (2) Any money credited to the special account kept by the Chief Executive Officer or his appointee in the name of a patient under the *Public Health Act 1973* prior to its repeal shall be deemed to have been credited to the individual account of the patient under Section 53 of this Act.
- (3) Notwithstanding Subsections (1) and (2), any act or thing done, or document executed, before the repeal of the *Public Health Act 1973*, shall be deemed to have been done or executed under this Act and shall not be invalidated by reason of the repeal.

73. TRAINED STAFF.

- (1) Nursing and paramedical staff trained in handling patients suffering from a mental disorder shall be available at every mental health care centre or facility.

Mental Health

(2) Psychiatrists, nursing staff and paramedical staff trained in handling patients suffering from a mental disorder shall be employed and supervised by the Directorate.

(3). The Directorate shall ensure that the mental health trained staff are not abused or mistreated.

SCHEDULE.

Act., Sec., 38.

FORM 1.

INVOLUNTARY ADMISSION FORM.

Admission order of Medical Officer or Legally Qualified Medical Practitioner.

TO THE CHIEF EXECUTIVE OFFICER,

..... Mental Hospital

I, the under signed* hereby certify that on the

..... day of, 20.....

at I personally examined

(separately from any other practitioner) +.....

.....

and that the said is of unsound mind and a proper person to be taken charge of and detained under care and treatment and that I have formed this opinion on the following grounds, namely:-

STATEMENT

1. Facts indicating unsoundness of mind observed by me: - #

2. Other facts, if any, indicating unsoundness of mind communicated to me by other: - \$

And I hereby order that the said be received in the

..... Mental Hospital for care and treatment.

Dated at, this..... day of, 20

.....
Medical Officer/Legally qualified Medical Practitioner.

* Here enter name and official designation if any.

+ Here enter name and designation of person examined.

Here state the facts. - -

\$ Here state the information and from whom.

VOLUNTARY ADMISSION FORM.

To: Date:

CHIEF EXECUTIVE OFFICER:

..... Hospital.

I, of

hereby request you receive me as a voluntary patient in the Hospital.

.....

Signature of Applicant.

Signature of Witness.

The applicant made this
application by placing thereon, his mark in my presence on the
day of 20.....

Before doing so, I interpreted (caused to be interpreted through Interpreter.....)
the contents thereof to in the
language, and was satisfied that he fully understood the application.

.....
(Witness)

To: Date:

CHIEF EXECUTIVE OFFICER

..... Hospital

I, of

.....

hereby request you to receive me as a voluntary patient in the
Hospital.

.....
Signature of Applicant.

.....
Signature of Witness.

ADMISSION REPORT.

Mental Health Care Centre:

Name of Patient:

Address of Patient:

Age: Date of birth: Sex:

Occupation:

Civil status:

Name of next of kin:

Address of next of kin:

Telephone number of next of kin:

Relationship to patient:

Grounds for request of admission:

Reasons for admission:

Full name of Doctor admitting the patient:

.....

Signature of Doctor:

Date:20..... Time:

RREQUEST FOR VALIDATION OF ADMISSION.

Mental Health Care Centre:

Name of Patient:

The Patient has been admitted for treatment in the above mentioned Mental Health Care Centre on
.....

I certify that the admission has been made in accordance with the *Mental Health Act 2015* for the reasons specified in the annexed Admission Report.

I undertake to take the Patient to the Commission for his case to be periodically reviewed in accordance with the *Mental Health Act 2015* and I apply for the validation of his admission.

.....
Name of Chief Executive Officer.

.....
Signature of Chief Executive Officer.

ORDER FOR VALIDATION OF ADMISSION.

I,, District Magistrate, have taken cognisance of the request for validation of the admission of: -

Mr/Mrs/Ms.....

of.....

And the Admission Report in the Form specified in the First Schedule to the *Mental Health Act 2015* in support of the request.

I validate/refuse to validate the admission.

Signature of Magistrate:

Date:

RIGHTS OF IN-PATIENTS.

- The Patient shall receive treatment in accordance with his health condition and medical needs.
- The Patient shall be treated with humanity and respect for the inherent dignity of the human person.
- The Patient may receive visitors at Visiting Hours.
- The Patient may communicate with other persons in and outside the Centre.
- The Patient shall not be subject to restrictions other than those necessitated by his health condition and those for the proper management of the Centre.
- Where a Patient is dissatisfied, the Patient or the next of kin, as the case may be, may file a Complaint with the Chief Executive Officer, Mental Health Board or the Mental Health Tribunal.
- The Patient may appeal against any decision of the Chief Executive Officer to the Tribunal and then to a Magistrate and the National Supreme Court.
- The Patient may refuse to participate in any Research Project.
- The Patient may receive a sum of money from an account kept on his behalf to meet reasonable expenses for himself, his family and dependents.

I hereby certify that the above is a fair print of the *Mental Health Act 2015* which has been made by the National Parliament.

Acting Clerk of the National Parliament.

I hereby certify that the *Mental Health Act 2015* was made by the National Parliament on 29 July 2015 by an absolute majority as required by the *Constitution*.

Acting Speaker of the National Parliament.

09 FEB 2016