

**MENTAL HEALTH CARE BILL, 2019***(Bill No. 6 of 2019)***OBJECTS AND REASONS**

This Bill seeks to enact a new Mental Health Care Act in order to comply with the UN Convention on Rights of Persons with Disabilities. The Bill seeks to provide mental health care and services for persons with mental illness and to protect, promote and fulfill the rights of such persons during delivery of mental health care and for matters connected therewith or incidental thereto.

The Bill is divided into ten parts.

Part I provides for preliminary matters such as short title, commencement date and interpretation.

Part II provides for determination of mental illness and capacity of persons with mental illness to make mental health care and treatment decisions.

Part III provides for advance directive and nominated representatives and the duties of nominated representatives.

Part IV provides for rights of persons with mental illness which includes the respect of the dignity and privacy of persons with mental illness, the right to information and the prohibition against discrimination, exploitation and abuse of such persons.

Part V provides for the care and treatment of persons with mental illness. This includes facilitated admissions and voluntary admissions. It also makes provisions for the treatment of persons with mental illness found wandering the streets, emergency treatments and for instances that necessitates seclusions and restraints. This part also provides for absence without leave of persons admitted as facilitated admission and for the treatment of prisoners with mental illness.

Part VI provides for the establishment of a Mental Health Care Board, the functions of the Board, membership of the Board, procedures and duration of term of appointed members.

Part VII provides for the establishment of the mental health care tribunal, its composition, terms and conditions of members, the powers, appeals procedures and proceedings before the tribunal and other administrative matters.

Part VIII Provides for offences and penalties.

Part IX provides for miscellaneous matters such as regulation making powers, savings and transitional and repeals of the Mental Health Act 2006.

Dated this 4th day of March, 2019.

**FRANK D.R. ALLY**  
**ATTORNEY-GENERAL**

## **MENTAL HEALTH CARE BILL, 2019**

*(Bill 6 of 2019)*

### **ARRANGEMENT OF SECTIONS**

#### **SECTIONS**

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**MENTAL HEALTH CARE BILL, 2019**

*(Bill No. 5 of 2019)*



**A BILL**

**OF**

**AN ACT to provide mental health care and services for persons with mental illness and to protect, promote and fulfill the rights of such persons during delivery of mental health care and services and for matters connected therewith or incidental thereto.**

**ENACTED** by the President and the National Assembly.

**PART I - PRELIMINARY**

**1.** This Act may be cited as the Mental Health Care Act, 2019 and shall come into operation on such date as the Minister may, by notice in the Gazette, appoint.

Short title and commencement



## Interpretation

2. In this Act, unless the context otherwise requires,
- “advance directive” means an advance directive made by a person under section 5;
- “Board” means the Mental Health Care Board established under section 35;
- “care-giver” means a person who resides with the person with mental illness and is responsible for providing care to that person and includes a relative or any other person who performs this function;
- “Consultant-in-charge” means a specialist psychiatrist or physician appointed to be in charge of one or more mental health facilities;
- “Director” means the person for the time being acting in the capacity or performing the functions of the head of the division or section responsible for children affairs in the ministry or department responsible for children affairs;
- “mental health care or mental health treatment” includes; biological, psychological treatments, social care for mental illness, curative and rehabilitative services provided either in a health or mental health facility or in the community;
- “mental health facility” means a mental health hospital or a part of a hospital or a psycho-geriatric home for mentally ill elderly persons or a clinic or health centre or other place for in-patient or out-patient treatment of individuals with mental illness;
- “Mental Health Professional” means any health professional trained in mental health care or mental health treatment and who are registered with the respective regulatory authority or council;

“mental illness” means a substantial disorder of thinking, mood, perception, orientation or memory that impairs judgment, behaviour, capacity to recognise reality or ability to meet the ordinary demands of life including mental conditions associated with alcohol and drugs but does not include intellectual disability in itself;

“Minister” means the Minister responsible for Health and the term “Ministry” shall be construed accordingly;

“nominated representative” means a person nominated or appointed under section 12 or 13; and

“prescribed” means prescribed by regulation made under the Act;

“Tribunal” means the Mental Health Care Tribunal established under section 42;

**PART II - MENTAL ILLNESS AND CAPACITY TO  
MAKE MENTAL HEALTH CARE AND  
TREATMENT DECISIONS**

3.(1) Mental illness shall be diagnosed in accordance with such nationally or internationally accepted medical standards including the latest edition of the International Classification of Diseases of the World Health Organisation or as may be prescribed.

Determination  
of mental  
illness

(2) Mental illness of a person shall not be diagnosed or determined on the basis of —

- (a) political, economical, social status or membership of a cultural, racial or religious group, or for any other reason not directly relevant to mental health status of the person; or

- (b) nonconformity with moral, social, cultural, work or political values or religious beliefs prevailing in a person's community.

(3) Past treatment or hospitalisation in a mental health facility though relevant, shall not by itself justify any present or future diagnosis or determination of the person's mental illness.

(4) Mental illness of a person shall be determined by a mental health professional and mental illness of a person shall only be diagnosed by a qualified medical practitioner with expertise in mental health.

(5) The diagnosis or determination of a mental illness under this Act shall not be taken to mean that the person is of unsound mind unless he or she has been declared to be of unsound mind as such by a competent Court.

4.(1) Every person, including a person with mental illness, is deemed to have capacity to make decisions regarding his or her mental health care or treatment unless the person is unable to—

- (a) understand the information that is relevant to take a decision on the treatment, admission or personal assistance; or
- (b) appreciate any reasonably foreseeable consequence of a decision or lack of decision on the treatment or admission or personal assistance; or
- (c) communicate the decision under subsection (a) by means of speech, gesture or any other means.

(2) The information referred to under subsection (1) shall be given to a person using simple language, which such person understands or in sign language or visual aids or any

Capacity to  
make mental  
health care  
or treatment  
decision

other means to enable him or her to understand the information.

(3) Where a person makes a decision regarding his or her mental health care or treatment which is perceived by others as inappropriate or wrong, that by itself, shall not mean that the person does not have the capacity to make mental health care or treatment decision, so long as the person has the capacity to make mental health care or treatment decision under subsection (1).

### PART III - ADVANCE DIRECTIVE AND NOMINATED REPRESENTATIVE

5.(1) Every person, who is not a minor, shall have a right to make an advance directive in such manner as may be prescribed, specifying any or all of the following—

Advance  
directive

- (a) the way in which the person wishes to be cared for or treated for a future mental illness;
- (b) the way the person wishes not to be cared for or treated for a future mental illness;
- (c) the individual or individuals, in the order of precedence, he or she wants to appoint as his or her nominated representative as provided under section 12.

(2) The person nominated under subsection (1) (c) shall be an adult and shall consent to act as representative.

(3) An advance directive under subsection (1) may be made by a person irrespective of his or her past mental illness or treatment for the same.

(4) An advance directive made under subsection (1) shall be invoked only when such person ceases to have capacity to make mental health care or treatment decisions and shall remain effective until such person regains capacity to make



mental health care or treatment decisions.

(5) Any decisions made by a person while he or she has the capacity to make mental health care decisions shall override any previously written advance directive by such person.

(6) Any advance directive made contrary to any written law shall be *ab initio* void.

(7) A person making an advance directive shall be presumed to have the capacity to do so until it is proved otherwise.

(8) An advance directive made under subsection (1) may be revoked, amended or cancelled at any time subject to section 8 or in such manner as may be prescribed, by the person who made it.

6. Any advance directives given under section 5 shall be registered and maintained by the Board and shall be made available online and or by such other means to concerned mental health professionals as required.

7. An advance directive under section 5 shall not apply to the emergency treatment given under section 29.

8.(1) Where a mental health professional or a relative or a care-giver of a person desires not to follow an advance directive while treating a person with mental illness, such mental health professional or the relative or the care-giver of the person shall make an application to the Tribunal to review, alter, modify or cancel the advance directive.

(2) Upon receipt of the application under sub-section (1), the Tribunal shall, after giving an opportunity of hearing to all concerned parties, including the person whose advance directive is in question, either uphold, modify, alter or cancel the advance directive after taking into consideration the

following —

- (a) whether the advance directive was made by the person out of his own free will and free from force, undue influence or coercion;
- (b) whether the person intended the advance directive to apply to the present circumstances, which may be different from those anticipated;
- (c) whether the person was sufficiently well informed to make the decision;
- (d) whether the person had capacity to make decisions relating to his mental health care or treatment when such advanced directive was made; and
- (e) whether the content of the advance directive is contrary to any written law or any provision of the Constitution.

9. The person making the advance directive and his or her nominated representative shall have a duty to ensure that the consultant-in-charge or a medical officer, or a mental health professional, as the case may be, has access to the advance directive when required.

10. The parent or legal guardian shall have the right to make an advance directive in writing in respect of a minor and all the provisions relating to advance directive, *mutatis mutandis*, shall apply to such minor until such time he or she attains the age of majority.

11. A medical practitioner or a mental health professional shall not be held liable for any unforeseen consequences —

- a on following a valid advance directive; or

Maintenance of  
online register

Advance directive  
not to apply to  
emergency  
treatment

Reviewing  
altering,  
modifying or  
cancelling the  
advance directive

Access to  
the advance  
directive

Advance  
directive for  
minor

Liability of  
mental health  
professional in  
relation to  
advance directive

b not following a valid advance directive.

Appointment  
of nominated  
representative

12.(1) Notwithstanding section 5(1) (c) every person who is not a minor, shall have a right to appoint a nominated representative.

(2) The nomination under subsection (1) shall be made in writing with the person's signature or thumb impression or mark and be witnessed by two persons.

(3) The person appointed as the nominated representative shall not be a minor and shall be competent to discharge the duties or perform the functions assigned to him or her under this Act, and give his or her consent in writing to the mental health professional to discharge his or her duties and perform the functions assigned to him or her under this Act.

(4) Where no nominated representative is appointed by a person under subsection (1), the following persons for the purposes of this Act in the order of precedence shall be deemed to be the nominated representative of a person with mental illness —

- (a) a relative;
- (b) a care-giver;
- (c) a suitable person appointed as such by the concerned Tribunal; or
- (d) if no such person is available to be appointed as a nominated representative, the Tribunal shall appoint the Director of Social Services as the nominated representative of the person with mental illness.

(5) A person who has appointed any person as his or his nominated representative under this section may revoke or alter such appointment at any time in the same manner

provided under with section 12(2).

(6) The Tribunal may, if it is of the opinion that it is in the interest of the person with mental illness to do so, revoke an appointment made by it under this section, and appoint a different representative under this section.

(7) The appointment of a nominated representative, or the non appointment of a nominated representative, shall not be construed as the lack of capacity of the person to take decisions about his or her mental health care or treatment.

(8) All persons with mental illness shall have capacity to make mental health care or treatment decisions but may require varying levels of support from their nominated representative to make decisions.

13.(1) Notwithstanding section 12, in case of minors, the parent or person having custody of a minor shall be their nominated representative unless the Tribunal orders otherwise under subsection (2).

Nominated  
representative  
for minor

(2) Where on an application made to the Tribunal under the Children Act (Cap 28), by a mental health professional or any other person acting in the best interest of the minor, and on evidence presented before it and the Tribunal is of the opinion that —

- (a) the parent or guardian or the person having custody of the minor is not acting in the best interests of the minor; or
- (b) the parent or guardian or the person having custody of the minor is otherwise not fit to act as the nominated representative,

the Tribunal may appoint, any suitable individual who is willing to act, as the nominated representative of the minor with mental illness:

Provided that in case no individual is available for



appointment as a nominated representative, the Tribunal shall appoint the Director as the nominated representative of the minor with mental illness.

14. A nominated representative shall while fulfilling his or her duties under this Act—

- (a) consider the current and past wishes, the life history, values, cultural background and the best interests of the person with mental illness;
- (b) give particular credence to the views of the person with mental illness;
- (c) provide support to the person with mental illness in making treatment decisions;
- (d) have the right to seek information on diagnosis and treatment to provide adequate support to the person with mental illness;
- (e) be involved in discharge planning;
- (f) apply to the mental health facility for facilitated admission;
- (g) apply to the Tribunal on behalf of the person with mental illness for discharge;
- (h) apply to the Tribunal against violation of rights of the person with mental illness.

#### PART IV - RIGHTS OF PERSONS WITH MENTAL ILLNESS

15.(1) The rights and duties of persons, bodies or institutions set out in this Part are in addition to any rights and duties that they may have in terms of any other written law.

(2) Whosoever is performing the duties set out in this

Duty of  
nominated  
representative

Rights and  
duties with  
respect to  
persons with  
mental illness

Part shall have regard for the will and preference of the person with mental illness.

16.(1) The dignity and privacy of every person with mental illness shall be respected.

(2) The care, treatment and rehabilitation services administered to a person with mental illness shall be based on the principle of the least restrictive alternative.

17.(1) A person with mental illness has a right to live in, be part of, and not be segregated from the community.

(2) Every person with mental illness shall be provided with care, treatment and rehabilitation services and community based programs that improve the mental capacity of that person to develop to full potential and to facilitate his or her integration into community life.

18.(1) A person with mental illness shall not be subject to discrimination on the grounds of his or her mental health status.

(2) Every person with mental illness shall receive care, treatment and rehabilitation services according to standards equivalent to those applicable to any other health care user.

19. Every person, body, organisation or health facility providing care, treatment and rehabilitation services to a person with mental illness shall take steps to ensure that—

- (a) the person is protected from exploitation, abuse or any degrading treatment;
- (b) the person is not subjected to forced labour; and
- (c) care, treatment and rehabilitation services are not used as punishment or for the convenience of other people.

20.(1) Subject to subsection (2), every health care

Respect  
human dignity  
and privacy

Respect  
of right to  
live in  
community

Discrimination

Exploitation  
and abuse

Duty to  
inform of  
individual  
rights

provider shall, before initiating or administering any care, treatment or rehabilitation services, inform the person with mental illness in an appropriate manner of his or her rights.

(2) Where a person has been admitted under circumstances referred to in section 24 or 29, the nominated representative shall be given the information immediately and the person shall be given the information when the person has recovered mental capacity.

#### PART V - CARE AND TREATMENT OF PERSONS WITH MENTAL ILLNESS

21.(1) A person with mental illness may be treated, as far as possible, at their home or near to their home without requiring care and treatment in a mental health facility.

(2) Where a person with mental illness requires treatment in a mental health facility, it shall be provided on a basis of voluntary admission:

Provided that in the circumstances stated in subsection (3) such person may be cared for and treated on facilitated admission.

(3) Where a person lacks capacity to make decisions for the person's mental health care, he or she may be provided care and treatment at a mental health facility.

22.(1) All admissions in the mental health facility shall, as far as possible, be voluntary admissions except where conditions for a facilitated admission exist.

(2) Any person, who is not a minor and who considers himself or herself to have mental illness and desires to be admitted in any mental health facility for care and treatment may make a request to the consultant-in-charge for admission.

(3) Where an application is received under subsection

Admission  
of persons  
with mental  
illness

Voluntary  
admission

(2), the medical officer or a psychiatrist shall examine the person and make a report to the consultant-in-charge.

(4) The consultant-in-charge shall admit the person to the mental health facility if he or she is satisfied that—

- (a) the person has a mental illness of a severity requiring admission to a mental health facility;
- (b) the person is likely to benefit from admission and treatment to the mental health facility; and
- (c) the person has understood the nature and purpose of admission to and treatment in the mental health facility and has made the request for admission of his or her own free will, without any duress or undue influence and has the capacity to make mental health care and treatment decisions without support or requires minimal support from others in making such decisions.

(5) If a person is unable to understand the purpose, nature or likely effects of the proposed treatment and of the probable result of not accepting the treatment or requires a very high level of support in making decisions, he or she shall be deemed unable to understand the purpose of the admission and therefore shall not be admitted under this section.

(6) A person who is voluntarily admitted under this section shall not be treated without his or her informed consent.

(7) A person voluntarily admitted under this section has a right to discharge himself or herself from the mental health facility:

Provided that if the consultant-in-charge of the mental health facility or his or her designated representative is of the opinion that the person meets the criteria for a facilitated



admission under section 24, the Consultant in charge may prevent self-discharge for a period not exceeding 24 hours to allow for examination as required under section 24.

Discharge reports

23. The consultant-in-charge of a mental health facility shall, in a prescribed form, issue a discharge report to the person with mental illness who was admitted for the purpose of receiving care, treatment and rehabilitation services.

Facilitated admission

24.(1) In cases where a person with mental illness lacks capacity to make mental health care decisions, that person may be admitted to a mental health facility as a facilitated admission.

(2) An application for a facilitated admission shall be made by a nominated representative.

(3) The Consultant-in-charge of the mental health facility shall admit the person with mental illness upon application under subsection (2) if —

- (a) the person has been independently examined on the day of admission or in the preceding seven days, by two professionals, of which one is a psychiatrist or medical practitioner with mental health expertise and the other being any mental health professional, and both independently conclude, based on the examination and, if appropriate, on the information provided by others, that the person has a mental illness of such severity that the person —
- (i) has recently threatened or attempted or is attempting to cause bodily harm to himself or herself;
  - (ii) has recently behaved or is behaving violently toward another person or has caused or is causing another person to fear bodily harm from him or her; or

(iii) has recently shown or is showing an inability to care for himself or herself to a degree that places the individual at risk of harm to himself or herself;

(b) the psychiatrist or the mental health professional or medical practitioner, as the case may be, certify, after taking into account the advance directive, if any, that admission to the mental health facility is the least restrictive care option possible; and

(c) the person is not eligible to receive care and treatment as a voluntarily admitted person under section 22.

(4) The psychiatrist or the mental health professional or medical practitioner as the case may be, shall not be related by blood (first degree relative) or marriage to or in a common law relationship with, the person who is being assessed for facilitated admission.

25.(1) A facilitated admission of a person to a mental health facility under section 24 is limited to a period of 14 days.

(2) Any person admitted under section 24 shall receive treatment as prescribed by the mental health professional with the consent of the nominated representative or on advance directive, if any.

(3) Where the Consultant-in-charge is of the opinion, on the expiry of the 14 days referred to in subsection (1) or earlier, that the person admitted under section 24 no longer meets the criteria for admission under that section, he or she may discharge the person or may continue the admission under section 22.

(4) If, on the expiry of 14 days specified in subsection (1), the Consultant-in-charge is of the opinion that the criteria for facilitated admission continues, the Consultant-in-charge

Treatment on facilitated admission and further steps



shall apply to the Tribunal for orders for the continuance of the person in the mental health facility under section 24.

(5) Where an application under subsection (4) is made, the Tribunal shall—

- (a) hold a hearing;
- (b) ensure that the person himself or herself and his or her representative attend the hearing;
- (c) hear evidence from the mental health professionals; and
- (d) make an order either to discharge the person or extend the facilitated admission.

(6) The order of the Tribunal for extension of the facilitated admission shall be for a period of 90 days for the first time and any subsequent extension, on application may be up to 120 days at a time.

(7) The Consultant-in-charge shall discharge the person, if he or she is of the opinion that during the extended period, the person with mental illness no longer meets the criteria for facilitated admission and inform the Tribunal of the same.

26.(1) Admission of a minor with mental illness shall be made on application of the parent or guardian or the person having custody of the minor.

Admission of  
minor

(2) The procedure for facilitated admission under section 24 shall *mutatis mutandis* apply to admission of minors.

(3) Minors admitted to the mental health facility shall be accommodated separately from adults.

(4) The parent or guardian or the person having custody of the minor or a person appointed by the parent or legal guardian shall stay with the minor in the mental health facility for the period of their treatment in the mental

health facility.

(5) Minors shall be treated only with the consent of the parent or guardian or the person having custody of the minor.

27.(1) Where a person at home is suffering from mental illness of such a degree that in the opinion of the nominated representative warrants care and treatment and that person is not willing to go to a mental health facility for that purpose, the nominated representative may make a request to the nearest health facility for an assessment at home.

Person with  
mental illness  
at home

(2) Where a request is received under subsection (1), a health professional from the health facility shall visit the person with mental illness and make an assessment.

(3) If the mental health professional on assessment is of the opinion that the person is suffering from mental illness and is neglecting himself or herself to an extent which puts their own lives or the safety of others at risk, the mental health professional may request a police officer for assistance in moving the person to the nearest mental health facility.

(4) A police officer to whom a request is made under subsection (3), shall give all the necessary assistance to the health professional for moving the person to the nearest mental health facility.

28. A police officer shall, on being informed by a member of the public or on seeing a person suspected of having mental illness wandering in a public place, convey such person to the nearest mental health facility for assessment.

Person with  
mental illness  
wandering  
on streets

29.(1) Notwithstanding other provisions of this Act, any treatment for mental illness may be provided by any registered medical practitioner to a person with mental illness either at a mental health facility or in the community with or without the consent of the person with mental illness if it is immediately necessary to prevent—

Emergency  
treatment

- (a) death or irreversible harm to the health of the person; or
- (b) the person from inflicting serious harm to self or others.

(2) Emergency treatment under subsection (1) includes transportation of the person with mental illness to the nearest mental health facility for assessment.

(3) Any emergency treatment under this section shall be limited to 24 hours.

30.(1) A person with mental illness shall not be subjected to seclusion or physical restraint unless it is the only means available to prevent immediate or imminent harm to the person concerned or to others.

Seclusion  
and restraints

(2) Physical restraint—

- (a) shall be done in an accredited mental health facility;
- (b) shall be authorised by a psychiatrist or medical practitioner with expertise in mental health;
- (c) shall not be used as a means of punishment or for the convenience of the staff; and
- (d) reasons and duration of each shall be recorded in a data base and made available to the Board on a regular basis;

(3) Physical restraint on each instance shall be restricted to a maximum period of three hours.

(4) The family members, care giver or nominated representatives shall immediately be informed, when the person with mental illness is physically restrained.

31.(1) Nominated representatives, relatives and care-

givers of a person with mental illness shall have the right—

- (a) to visit the person with mental illness in the mental health facility;
- (b) to provide feedback to the mental health facility including complaints about any deficiency in services;
- (c) to support from mental health services to enable them to effectively perform their care-giving role; and
- (d) to social assistance on an equal basis as provided by care-givers of persons with physical illness.

Rights of  
relatives and  
care givers

(2) Nominated representatives, relatives and care-givers as the case may be, shall be involved in setting treatment goals, planning for treatment, discharge, care and treatment after discharge from the mental health facility.

(3) The involvement of nominated representatives, relatives and care-givers under subsection (2) in the case of voluntarily admitted person, shall be done with the consent of the person with mental illness and in the case of persons under facilitated admission with the consent of the person making application under section 24 (2).

32.(1) The Consultant-in-charge of the mental health facility may grant leave to a person admitted as a facilitated admission in a mental health facility for a period not exceeding seven days at a time.

(2) The Consultant-in-charge of the mental health facility may, at any time revoke the leave if he or she is satisfied that it is necessary for the improvement of, or to prevent deterioration of the mental health of the person.

Leaves to  
persons  
admitted as  
facilitated  
admission

(3) Where a person with mental illness who has been granted leave under subsection (1) refuses on revocation of the leave or on the expiry of the leave to come back to the mental



health facility, the Consultant-in-charge may follow the procedures specified in section 33 for his or her return to the mental health facility.

33.(1) Where a person with mental illness admitted as a facilitated admission is missing from the mental health facility without being granted leave, the Consultant-in-charge of the mental health facility shall inform the police and the person who had made the application for admission of that person.

(2) The police shall have the responsibility to convey the person back to the mental health facility.

34.(1) Where an officer in charge of a prison is of the opinion that a prisoner is suffering from mental illness, the officer shall make an application to the Consultant-in-charge of a mental health facility for transfer of the prisoner to the mental health facility for assessment by a psychiatrist.

(2) On the directions of the Consultant-in-charge of the mental health facility, the psychiatrist shall assess the person and may recommend—

- (a) outpatient treatment and send the prisoner back to prison; or
- (b) admission to the mental health facility either as a voluntary admission or a facilitated admission, as the case may be.

(3) Where a prisoner is admitted to the mental health facility under subsection (2), the time spent by the prisoner at the mental health facility shall be treated as time spent in prison.

(4) When a prisoner is discharged after treatment in the mental health facility, he or she shall be sent back to prison for continuation of their sentence or discharge by the prison service if the sentence has been served.

#### PART VI - MENTAL HEALTH CARE BOARD

35. There is established a Board to be known as the Mental Health Care Board.

36. The functions of the Board are—

- (a) to oversee the planning and management of mental health care and treatment in the Seychelles;
- (b) to promote standards of best practice and efficiency of mental health care services;
- (c) to set standards for accreditation of mental health care facilities;
- (d) to set criteria and standards for specific mental health care services, interventions, and treatments as necessary;
- (e) to inspect with sufficient frequency every mental health care facility to ensure that the conditions, treatment and care of patients comply with the provisions of this Act;
- (f) to review the use of restraints in mental health care facilities; and
- (g) to advise and assist the Government on other matters related to mental health care and treatment in the Seychelles.

37.(1) The Board shall consist of the following members—

- (a) the Principal Secretary, Ministry responsible for Health (ex-officio);
- (b) the Chief Medical Officer, Ministry responsible for Health (ex-officio);
- (c) the Consultant-in-charge of Mental Health Services, Ministry responsible for Health (ex-officio);

Establishment  
of the Mental  
Health Care  
Board

Functions of  
the Board

Membership  
of the Mental  
Health Care  
Board

Absence  
without leave  
of persons  
admitted as  
facilitated  
admission

Prisoners  
with mental  
illness



- (d) the Director of Social Services, Ministry responsible for Social Affairs (ex-officio);
- (e) the Chairperson, National Council for the Disabled (ex-officio);
- (f) the Chief Nursing Officer (ex-officio);
- (g) the Chief Allied Health Officer (ex-officio);
- (h) a user of mental health services;
- (i) a family member or care-giver of a person with mental illness; and
- (j) two representatives from civil society with an interest and knowledge of mental health issues.

(2) The Minister shall appoint the members of the Board on such terms and conditions and such allowances and remuneration as may be prescribed.

(3) The Minister shall appoint one of the members of the Board Chairperson of the Board.

(4) The appointment of the Chairperson and members of the Board shall be published by notice in the Gazette.

(5) The members of the Board who are not ex-officio members shall hold office for three years and are eligible for reappointment for a maximum of two consecutive terms.

(6) A member, except an ex-officio member, may resign from office by letter addressed to the Minister for Health.

(7) Where a person is appointed to replace another person under subsection (6) on the person so appointed shall serve as a member for the remaining period of office of the person replaced.

38.(1) There shall be a Secretary appointed by the Board.

(2) The Secretary shall be responsible for the

convening of all meetings of the Board, maintaining records of the Board, implementing the decisions of the Board, and do all such things as the Board or the Chairperson may lawfully require the Secretary to do.

39.(1) The Board shall meet at least six times a year but otherwise—

- (a) as the Chairperson may direct; or
- (b) as may be requested in writing to the Chairperson by not less than six members of the Board.

(2) The time and place of a meeting of the Board shall be determined by the Chairperson.

(3) Seven members of the Board shall constitute a quorum for a meeting.

(4) A meeting of the Board shall be presided over by the Chairperson but in the absence of the Chairperson the members present at the meeting shall elect a member to preside over the meeting and that member shall have all the powers of the Chairperson at the meeting.

(5) All matters for determination by the Board at a meeting shall be decided by a simple majority of votes of the members present and voting thereon.

(6) Each member has one vote and in the event of an equality of votes the member presiding at the meeting shall have a casting vote.

(7) A member who has a direct interest in a matter that falls to be decided at a meeting of the Board shall notify the Chairperson or, if the member is the Chairperson, the Secretary, of the interest and shall not be present or vote at the meeting where the matter is considered or decided unless the Board authorises otherwise.

(8) The Board shall, through the Chairperson, submit

Secretary to  
the Mental  
Health Care  
Board

Meeting of  
the Board

an annual report of its activities to the Minister.

40. Where a matter requires a decision of the Board and it is not convenient or possible for the Board to meet to determine the matter, the Secretary shall, on the instructions of the Chairperson, circulate papers regarding the matter to all members for consideration and decision or approval and if the members unanimously approve a decision or resolution by signing it, the decision or resolution shall have the same effect as a decision or resolution passed at a meeting of the Board.

41. Notwithstanding section 37(5) where at the end of the period specified in that section, all the members of the Board vacate office and the new members of the Board have not been appointed, the persons vacating as members shall continue until the appointment of the new members of the Board or for a further period of three months, whichever occurs first.

#### PART VII - MENTAL HEALTH CARE TRIBUNAL

42. There is hereby established a Tribunal to be known the Mental Health Care Tribunal.

43.(1) The Chairperson of the Tribunal shall be a Magistrate nominated by the Chief Justice.

(2) The Minister shall appoint four other members who shall serve on the Tribunal, which shall consist of the following—

- (a) a consultant psychiatrist or a medical practitioner with training and experience in mental health of at least ten years;
- (b) a representative from the Attorney General's Chambers;
- (c) a representative from the Ministry of Health;
- (d) a civil society representative with an interest

Decision by  
circulation  
of paper

Members to  
continue till  
new members  
appointed

Establishment  
of the Mental  
Health Care  
Tribunal

Membership  
of the  
Tribunal

or special expertise in mental health care and treatment.

(3) The name of the Chairperson and members shall be published in the *Gazette*.

(4) A member shall hold office for a term of three years and may be reappointed for one further term.

(5) A member of the Tribunal shall not take part in any hearing in relation to a matter in which the member has a direct interest.

(6) A member of the Tribunal or any other person acting under the direction of the Tribunal shall not be under any civil or criminal liability in respect of anything done or purported to be done in good faith in pursuance of this Act.

44. Members shall be appointed on such terms and conditions and such allowances and remuneration as may be prescribed by regulations.

45.(1) The Tribunal shall have exclusive jurisdiction to hear and determine mental health matters.

(2) Without prejudice to the generality of the foregoing, the Tribunal shall hear and determine—

- (a) appeals by persons with mental illness against facilitated admission;
- (b) appeals on renewal or extension of facilitated admission;
- (c) complaints regarding violation of rights of persons with mental illness in mental health care facilities.

46. Any person aggrieved by a decision of the Tribunal

Terms and  
conditions of  
members

Jurisdiction

may appeal to the Supreme Court subject to the same conditions as appeals from a decision of the Magistrates' Court.

47. The Tribunal shall have powers to—

- (a) summon any person to appear before it;
- (b) examine on oath, affirmation or otherwise a witness or any person appearing before it; and
- (c) require any person to produce any document which the Tribunal considers relevant.

Appeals

Powers of  
the Tribunal

48.(1) The Tribunal shall sit as and when there is a matter for the Tribunal to adjudicate upon and laws relating to evidence shall be applicable to witnesses or persons appearing before the Tribunal.

(2) Three members of the Tribunal, of whom one shall be the Chairperson, shall constitute the quorum.

(3) Each member of the Tribunal shall have an equal vote and decisions shall be reached by a majority vote and in the event of equality of votes the Chairperson shall have a casting vote.

Proceedings  
before the  
Tribunal

(4) A decision of the Tribunal shall have the same force and shall be executed in the same manner as a judgment or order of the Supreme Court under the Seychelles Code of Civil Procedure Act.

(5) A party before the Tribunal may be represented by an attorney-at-law or by a representative of the party or any other person as the case may be.

(6) The Tribunal shall, before making a decision—

- (a) afford the parties the opportunity to be heard; and

- (b) observe the rules of natural justice.

(7) Notwithstanding the foregoing, the Tribunal shall have power to conduct proceedings in whatever manner it considers most appropriate.

49. At the conclusion of the proceedings, the Tribunal shall prepare and deliver its decision together with the reasons for such decision.

50. The Minister shall appoint a Secretary to the Tribunal who shall be responsible for—

- (a) ensuring the overall smooth running of the Tribunal;
- (b) convening the sittings of the Tribunal after consultation with the Chairperson and members;
- (c) the issuing of summonses and notices on behalf of the Tribunal;
- (d) the implementation of decisions made by the Tribunal;
- (e) taking appropriate steps to enable the Tribunal to enforce its orders; and
- (f) ensuring that orders or directions given by the Tribunal are complied with.

Reasons for  
decisionsSecretary to  
the Tribunal

#### PART VIII - OFFENCES AND PENALTIES

51.(1) Any person who willfully falsifies an advance directive or falsifies an appointment of an appointed representative shall be guilty of an offence and liable on



conviction to imprisonment for a term of 5 years or a fine not exceeding SCR50,000 or with both such imprisonment and fine.

Offences and penalties

(2) Any person who commits any act of cruelty to, or abuse or willful neglect of, any patient with mental illness shall be guilty of an offence and liable on conviction to imprisonment for a term of 15 years or a fine not exceeding SCR50,000 or with both such imprisonment and fine.

#### PART IX - MISCELLANEOUS

52.(1) The Minister may make regulations for carrying out the purposes of this Act.

(2) Without prejudice to the generality of the provision of subsection (1), regulations may provide for—

Regulations

- (a) standards for determination of illness;
- (b) manner of making an advance directive;
- (c) manner of revoking, amending, or cancelling an advance directive; and
- (d) form of discharge report under section 23.

(3) Regulations made under this section may create offences and provide that contravention of or failure to comply with any such regulations shall be an offence and such offences shall be punishable with imprisonment or fine or with both such imprisonment and fine.

53. All acts done under the Mental Health Act (Cap 127), decisions taken prior to the date of commencement of this Act, shall continue to have effect until it is amended, annulled or withdrawn in accordance with the provisions of this Act.

54. The Mental Health Act (Cap 127), is hereby repealed.

Savings and transitional

Repeal