

MENTAL HEALTH ACT, 2023

No. 20



of 2023

ARRANGEMENT OF SECTIONS

SECTION

PART I — *Preliminary*

1. Short title and commencement
2. Interpretation

PART II — *Establishment of Mental Health Board*

3. Establishment of Board
4. Functions of Board
5. Membership of Board
6. Tenure of office
7. Disqualification, suspension and removal of member
8. Vacation of office
9. Filling of vacancies
10. Remuneration and allowances
11. Secretary of Board
12. Co-opted members
13. Committees of Board

PART III — *Meetings and Proceedings of Board*

14. Meetings of Board
15. Quorum and procedure at meetings
16. Disclosure of interest
17. Confidentiality

PART IV — *Mental Illness and Capacity to make Mental Health Care and Treatment Decisions*

18. Determination of mental illness
19. Capacity to make mental health care and treatment decisions

PART V — Advance Directive and Nominated Representatives

20. Advance directive
21. Advance directive not to apply to emergency treatment
22. Advance directive register
23. Reviewing, altering or cancelling of advance directive
24. Access to advance directive
25. Advance directive for minor
26. Liability of psychiatrist or mental health professional in relation to advance directive
27. Appointment of nominated representative
28. Nominated representative for minor
29. Duties of nominated representative

PART VI — Rights of Persons with Mental illness

30. Rights and duties with respect to persons with mental illness
31. Respect of human dignity and privacy
32. Respect of right to live in community
33. Non-discrimination
34. Protection from exploitation and abuse
35. Duty to inform of individual rights

PART VII — Care and Treatment of Persons with Mental illness

36. Admission of persons with mental illness
37. Voluntary admission
38. Discharge report
39. Facilitated admission
40. Treatment on facilitated admission
41. Admission of minors
42. Person with mental illness at place of residence
43. Person with mental illness in public place
44. Emergency treatment
45. Major medical or surgical procedures
46. Seclusion and restraint
47. Rights of nominated representatives, relatives and care-givers
48. Leave to persons admitted as facilitated admission
49. Absence without leave of persons admitted as facilitated admission
50. Persons with mental illness in custody

PART VIII — Establishment of Mental Health Tribunal

51. Establishment of Tribunal
52. Membership of Tribunal
53. Functions of Tribunal

- 54. Powers of Tribunal
- 55. Proceedings before Tribunal
- 56. Reasons for decisions
- 57. Appeals
- 58. Report of Tribunal
- 59. Secretary to Tribunal

PART IX — *Miscellaneous*

- 60. Offences and penalties
- 61. Regulations
- 62. Repeal of Cap. 63:02
- 63. Transitional and savings provisions

An Act to provide for mental health care, treatment and services for persons with mental illness and to protect, promote and fulfil the rights of such persons during delivery of mental health care, treatment and services; and for matters connected therewith or incidental thereto.

Date of Assent: 13.11.2023

Date of Commencement: ON NOTICE

ENACTED by the Parliament of Botswana.

PART I — Preliminary

1. This Act may be cited as the Mental Health Act, 2023, and shall come into operation on such a date as the Minister may, by Order published in the *Gazette*, appoint.

Short title and commencement

2. In this Act, unless the context otherwise requires —
- “advance directive” means an advance directive made under section 20;
 - “Board” means the Mental Health Board established under section 3;
 - “care-giver” means a person who resides with a 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;
 - “Director” means the Director of Social Protection from the Ministry responsible for local government;
 - “head of a mental health facility” means the accountable officer of a mental health facility;
 - “intellectual disability” means a condition of arrested or incomplete development of the mind;
 - “least restrictive alternative” means providing a person with treatment or a setting for treatment which —
 - (a) meets the person’s treatment needs; and
 - (b) imposes the least restriction on the person’s rights;

Interpretation

- “leave” means a specified period granted by the head of a mental health facility, authorising a person receiving treatment to leave a mental health facility;
- “member” means a member of the Board;
- “mental health care” or “mental health treatment” includes biological and psychological treatments, social care for mental illness and curative and rehabilitative services provided either in a health or mental health facility or in a community;
- “mental health facility” includes designated psychiatric facilities or general health facilities where mental health care and treatment is provided;
- Cap. 61:02
Cap. 61:03 “mental health professional” means a health professional registered under the Botswana Health Professions Act or the Nurses and Midwives Act and who has been trained to provide mental health care, treatment and rehabilitation services;
- “mental illness” means an illness as determined under section 18, but does not include intellectual disability in itself;
- “nominated representative” means a person appointed under sections 27 and 28;
- Cap. 21:03 “officer in charge” has the meaning assigned to it under the Prisons Act;
- “relative” any person related to the person with mental illness by blood, marriage or adoption; and
- “Tribunal” means the Mental Health Tribunal established under section 51.

PART II — *Establishment of Mental Health Board*

Establishment
of Board

3. There is hereby established a Board, to be known as the Mental Health Board.

Functions of
Board

- 4.** The functions of the Board shall be —
- (a) to oversee the planning and management of mental health care, treatment and services;
 - (b) to promote standards of best practice and efficiency of mental health care, treatment and services;
 - (c) to set standards for accreditation of mental health facilities;
 - (d) to regulate mental health facilities;
 - (e) to set criteria and standards for specific mental health care, treatment, interventions and services, as necessary;
 - (f) to inspect with sufficient frequency, every mental health facility to ensure that the conditions, treatment and care of persons with mental illness comply with the provisions of this Act;
 - (g) to set standards for the use of seclusion or restraints in mental health facilities;
 - (h) to review the use of seclusion or restraints in mental health facilities;
 - (i) to advise and assist the Government on other matters related to mental health care, treatment and services; and
 - (j) to perform such other functions as may be assigned to it under this Act.

5. (1) The Board shall consist of the following members appointed by the Minister —

- (a) the Director;
- (b) the Director of Health Services;
- (c) a psychiatrist with at least five years' experience in mental health care;
- (d) a psychiatric nurse with at least five years' experience in mental health care;
- (e) a person who has received mental health care;
- (f) a family member or a care-giver of a person with mental illness;
- (g) a legal practitioner with at least five years' experience;
- (h) two representatives from civil society with an interest and knowledge in mental health issues; and
- (i) a psychologist with at least five years' experience in mental health care.

(2) The Minister shall appoint the Chairperson of the Board from amongst the members.

(3) The Minister shall, by Notice in the Gazette, publish the names of members, specifying the dates of their appointment and the period for which they are appointed to the Board.

6. A member shall hold office for a period not exceeding three years and shall be eligible for reappointment for a further period not exceeding three years.

7. (1) A person shall not be appointed to be a member or be qualified to continue to hold office where the person —

- (a) has, in terms of a law in force in any country —
 - (i) been adjudged or otherwise declared bankrupt and has not been discharged, or
 - (ii) made an assignment, arrangement or composition with, his or her creditors, which has not been rescinded or set aside;
- (b) has, within a period of 10 years immediately preceding the date of his or her appointment, been convicted —
 - (i) of a criminal offence within Botswana, or
 - (ii) outside Botswana, of an offence which if committed in Botswana, would have been a criminal offence,and sentenced by a court of competent jurisdiction to imprisonment for a term of six months or more without the option of a fine, whether that sentence has been suspended or not, and for which he or she has not received a free pardon;
- (c) has been convicted of an offence under this Act;
- (d) is registered under the Sexual Offenders Register established under the Sexual Offenders Registry Act;
- (e) is registered under section 55 of the Children's Act; or
- (f) is a member of the National Assembly, a Councillor in a local authority, member of the *Ntlo ya Dikgosi* or the holder of an office in a political party.

Membership of Board

Tenure of office

Disqualification, suspension and removal of member

Act No. 7 of 2021

Cap. 28:04

(2) The Minister may, in writing, suspend from office a member against whom criminal proceedings are instituted for an offence in respect of which a sentence of imprisonment may be imposed, and whilst that member is so suspended, the member shall not carry out any duties or be entitled to any remuneration or allowances as a member.

(3) The Minister shall remove a member from office, if the member —

- (a) is absent without reasonable cause from three consecutive meetings of the Board of which he or she has had notice;
- (b) has been found to be physically or mentally incapable of performing his or her duties efficiently, and a mental health professional has issued a certificate to that effect;
- (c) contravenes the provisions of this Act or otherwise misconducts himself or herself to the detriment of the objectives of the Board;
- (d) has failed to comply with the provisions of section 16 or 17; or
- (e) has been convicted of an offence under this Act, or under any other Act for which he or she is sentenced to imprisonment for a term of six months or more without an option of a fine.

(4) For purposes of subsection (3) (c), “misconduct” includes any act done without reasonable excuse by a member which —

- (a) amounts to a failure to perform in a proper manner any duty imposed on the member as such;
- (b) is prejudicial to the efficient carrying out of the functions of the Board; or
- (c) tends to bring the Board into disrepute.

Vacation of
office

8. A member shall vacate his or her office and his or her office shall become vacant —

- (a) if a member becomes disqualified, in terms of section 7, to hold office as a member or is removed in terms of section 7 (3);
- (b) where a period of 30 days has elapsed from the date the member is given notice, in writing by the Minister, to vacate office;
- (c) on the expiry of one months’ notice in writing, to the Minister of the member’s intention to resign from office;
- (d) after a period of 30 days from the date that a ruling against the member is made on all appeals made in respect of a conviction of an offence under this Act, or under any other Act for which he or she is sentenced to imprisonment for a term of six months or more without an option of a fine; or
- (e) upon his or her death.

Filling of
vacancies

9. (1) Where the office of a member becomes vacant before the expiry of the member’s term of office, the Minister shall appoint another person to be a member in place of a member who vacates office, until expiry of a period during which such member would have otherwise continued in office.

(2) Subsection (1) shall not apply where the remainder of the period for which the member whose office has been vacated would otherwise have held office is less than six months.

10. A member shall be paid in connection with his or her service on the Board, such remuneration and allowances as the Minister may from time to time determine.

Remuneration
and allowances

11. (1) The Minister shall, after consultation with the Board, appoint the Secretary to the Board on such terms and conditions as may be specified in the instrument of appointment.

Secretary of
Board

(2) The Secretary shall, in addition to any function that may be assigned to him or her by the Board, be responsible for —

- (a) taking minutes of the meetings of the Board;
- (b) keeping and maintaining records of all decisions of the Board; and
- (c) carrying out such other duties as the Board may require him or her to do.

(3) The Secretary shall attend all meetings of the Board but shall have no right to vote on any matter before the Board.

12. (1) The Board may co-opt any person to attend a meeting of the Board or otherwise assist the Board with its deliberations, and such person shall have no right to vote on any matter before the Board.

Co-opted
members

(2) The provisions of sections 16 and 17 shall, with the necessary modifications, apply to co-opted members.

13. (1) The Board may, for the purpose of performing its functions, establish such committees as it considers appropriate and may delegate to any such committee such functions as it considers necessary.

Committees of
Board

(2) The Board may appoint, to the committees established under subsection (1), such number of persons from among members and such number of persons with specialised skills, not being members, as it considers appropriate, to be members of such committees and such persons shall hold office for such period as the Board may determine.

(3) The Board shall appoint a Chairperson for any of its committees from amongst its members.

(4) Subject to the specific or general directions of the Board, a committee may regulate its own procedure and the Board may attach any conditions to the delegation of any of its powers to such committees.

(5) The Board may confirm, vary or revoke any decision taken in consequence of a delegation or assignment, but no variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

(6) Meetings of a committee shall be held at such times and places as the committee may determine, or as the Board may direct.

PART III — Meetings and Proceedings of Board

14. (1) Subject to the provisions of this Act, the Board may regulate its own proceedings.

Meetings of
Board

(2) The Board shall hold its first meeting on such date and at such place as the Minister may determine and thereafter the Board shall meet at least four times in a year.

(3) Upon giving notice, in writing, of not less than 14 days, a meeting of the Board may be called by the Chairperson, but if the urgency of any particular matter does not permit the giving of such notice, a special meeting may be called upon the giving of a shorter notice period.

(4) The notice referred to under subsection (3) shall state —

(a) the place and time for the meeting; and

(b) the agenda for the meeting.

(5) There shall preside at any meeting of the Board —

(a) the Chairperson; or

(b) in the absence of the Chairperson, such member as the members present may elect from amongst themselves for the purpose of that meeting.

Quorum and
procedure at
meetings

15. (1) The quorum at any meeting of the Board shall be a simple majority of the members.

(2) A decision of the Board on any question shall be by the majority of the members present and voting at the meeting and, in the event of an equality of votes, the member presiding shall have a casting vote in addition to that member's deliberative vote.

(3) A decision of the Board shall not be rendered invalid by reason of a vacancy on the Board or the fact that a person who was not entitled to sit as a member did so sit.

Disclosure
of interest

16. (1) Where a member, or any person attending a meeting of the Board, at which any matter in which the member or immediate family of the member is directly or indirectly interested in a private capacity is the subject of consideration, the member shall, as soon as practicable after the commencement of the meeting, disclose such interest and shall not, unless the Board otherwise directs, take part in any consideration or discussion of, or vote on any question touching upon, such matter.

(2) A disclosure of interest made in accordance with subsection (1) shall be recorded in the minutes of the meeting at which it is made.

(3) Where a member or any person attending the meeting of the Board fails to disclose his or her interest in accordance with subsection (1) and a decision by the Board is made benefiting such member, such decision shall be void.

(4) A member or any person attending the meeting of the Board who fails to comply with the provisions of subsection (1) commits an offence and is liable to a fine not exceeding P2 000 or to imprisonment for a term not exceeding six months, or to both.

Confidentiality

17. (1) A member or any person assisting the Board shall observe and preserve the confidentiality of all matters concerning the Board and such confidentiality shall subsist even after the termination of the term of office or the mandate of the member.

(2) A member, or any person to whom confidential information is revealed through working with the Board shall not disclose that information to any other person unless he or she is required to do so in terms of any written law or for purposes of any judicial proceedings.

(3) A member, or any other person who contravenes the provisions of this section commits an offence and is liable to a fine not exceeding P2 000 or imprisonment for a term not exceeding six months, or to both.

PART IV – Mental Illness and Capacity to make Mental Health Care and Treatment Decisions

18. (1) The mental illness of a person shall be diagnosed and determined by a mental health professional, who shall be a psychiatrist, medical practitioner, clinical psychologist or psychiatric nurse.

Determination
of mental illness

(2) Mental illness shall be diagnosed and determined under subsection (1) in accordance with the latest edition of the International Statistical Classification of Diseases of the World Health Organization or as may be prescribed.

(3) Notwithstanding the generality of subsection (2), the mental illness of a person shall not be diagnosed or determined solely on the basis of –

- (a) age, gender, place of origin, political, economic, social status, other reason not directly relevant to mental health status of the person;
- (b) non-conformity with moral, social, cultural, work or political values or religious beliefs prevailing in a person's community; or
- (c) a person's past treatment or hospitalisation in a mental health facility.

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

19. (1) Any person who is not a minor, including a person with mental illness, shall be deemed to have capacity to make decisions regarding his or her mental health care and treatment decisions unless he or she is unable to –

Capacity to
make mental
health care
and treatment
decisions

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

(2) The information referred to in subsection (1) shall be given to a person in terms of communication modes under the Disability Act or using simple language, which such person understands or using sign language or visual aids or any other means to enable him or her to understand the information.

Act No. of
2023

(3) Where a person makes a decision regarding his or her mental health care and 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 a mental health care and treatment decision as long as the person has the capacity to make such decisions under subsection (1).

PART V — *Advance Directives and Nominated Representatives*

Advance
directive

20. (1) Any person, except a minor, may make an advance directive in a manner as may be prescribed, specifying any or all of the following —

- (a) the way in which the person wishes to be cared for and treated, or not to be cared for and treated, for a future mental illness; or
- (b) the individual or individuals, in the order of precedence, he or she wants to appoint as his or her nominated representatives under section 27.

(2) A person nominated under subsection (1) (b) shall give his or her written consent to act as a nominated 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 —

- (a) be invoked only when such person ceases to have capacity to make mental health care and treatment decisions; and
- (b) remain effective until such person regains capacity to make mental health care and treatment decisions.

(5) Any decision made by a person while he or she has the capacity to make a mental health care and treatment decision shall take precedence over any previous advance directive by such person.

(6) An advance directive made contrary to any written law shall be void.

(7) A person making an advanced directive under subsection (1) 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 reviewed, altered or cancelled at any time in accordance with the provisions of section 23.

Advanced
directive not
to apply to
emergency
treatment

21. An advance directive under section 20 shall not apply to any emergency treatment provided under section 44.

Advance
directive
register

22. (1) Any advance directive made under section 20 shall be recorded in a register, which shall be kept and maintained by the Board.

(2) The Board shall make available online or by such other means any advance directive made, to a concerned mental health professional upon request, in writing, by such mental health professional.

Reviewing,
altering or
cancelling
of advance
directive

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

(2) The Tribunal shall, upon receipt of an application under subsection (1) and after giving an opportunity of hearing to all concerned parties, including the person whose advance directive is in question, either uphold, review, 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 or her own free will and free from force, undue influence or coercion;
- (b) whether the person intended to apply the advanced directive to the present circumstances, which may be different from those anticipated;
- (c) whether the person was sufficiently well informed to make the advance directive;
- (d) whether the person had capacity to make decisions relating to his or her mental health care and treatment when such advance directive was made; and
- (e) whether the content of the advance directive is contrary to any law.

24. Notwithstanding the provisions of section 22, the person making an advance directive and his or her nominated representative shall ensure that the head of a mental health facility, psychiatrist or mental health professional, as the case may be, has access to the advance directive when required.

Access to
advance
directive

25. (1) The parent, legal guardian or the person having custody of a minor with a mental illness may make an advance directive, in writing, in respect of the minor.

Advance
directive for
minor

(2) Subject to subsection (1), all the provisions relating to advance directive shall, with necessary modifications apply to such minor until such time he or she attains the age of majority.

26. A psychiatrist or a mental health professional shall not be held liable for any consequences with respect to following a valid advance directive.

Liability of
psychiatrist or
mental health
professional
in relation to
advance directive

27. (1) Notwithstanding the provisions of section 20 (1) (b), any person, except a minor, may appoint a nominated representative.

Appointment
of nominated
representative

(2) The nomination referred to 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 a nominated representative shall —

- (a) not be a minor;
- (b) give his or her consent, in writing, to a mental health professional to discharge his or her duties and perform the functions assigned to him or her under this Act; and
- (c) discharge the 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, in order of precedence, shall be deemed to be the nominated representative of the person with mental illness —

- (a) a relative;
- (b) a care-giver; or

(c) a suitable person appointed as such by the Tribunal, and if no person is available to be appointed as nominated representative under paragraph (c), the Tribunal shall appoint the Director as the nominated representative of the person with mental illness.

(5) A person who has appointed any person as his or her nominated representative under this section may alter or cancel such appointment at any time in the same manner provided under subsection (2).

(6) The Tribunal may, if it is of the opinion that it is in the best interests of a person with mental illness to do so —

- (a) alter or cancel an appointment made by it under this section; and
- (b) appoint a different representative under this section.

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

(8) A person with mental illness shall have the capacity to make mental health care and treatment decisions but may require varying levels of support from his or her nominated representatives to make such decisions.

Nominated
representative
for minor

28. (1) Notwithstanding the provisions of section 27, in the case of a minor with mental illness, the parent, or the legal guardian or the person having custody of the minor shall be their nominated representative unless the Tribunal orders otherwise under subsection (2).

(2) Where, on an application made to the Tribunal by a psychiatrist, mental health professional or any other person acting in the best interests of a minor with mental illness, and on evidence presented to it, the Tribunal is of the opinion that the parent, legal guardian or the person having custody of the minor —

- (a) is not acting in the best interest of the minor; or
- (b) 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:

Provided that where no individual is available for appointment as a nominated representative, the Tribunal shall appoint the Director as the nominated representative of the minor.

Duties of
nominated
representative

29. A nominated representative shall, in the performance of his or her duties under this Act —

- (a) consider the past and current wishes, the life history, values, cultural background and the will and preferences 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 mental health care and treatment decisions;
- (d) have the right to seek information on diagnosis and treatment to provide adequate support to the person with mental illness;
- (e) apply to a mental health facility for facilitated admission;

- (f) apply to the Tribunal on behalf of the person with mental illness for discharge;
- (g) be involved in the discharge planning of the person with mental illness; and
- (h) apply to the Tribunal against any violation of rights of the person with mental illness.

PART VI — *Rights of Persons with Mental illness*

30. (1) The rights and duties of any person, body or mental health facility set out in this Part are in addition to any rights and duties that they may have in terms of any law.

Rights and duties with respect to persons with mental illness

(2) Any person performing the duties set out in this Part shall have regard for the wishes, the will and preferences of the person with mental illness.

(3) The rights set out in this Part shall supplement the rights set out in Chapter II of the Constitution.

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

Respect of human dignity and privacy

(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.

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

Respect of right to live in community

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

33. (1) A person with mental illness shall not be subject to discrimination on the basis of his or her mental illness.

Non-discrimination

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

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

Protection from exploitation and abuse

- (a) the person with mental illness is protected from exploitation, abuse or any degrading treatment;
- (b) the person with mental illness is not subjected to forced labour; and
- (c) care, treatment and rehabilitation services are not unnecessarily applied upon or used as punishment on the person with mental illness.

35. (1) Subject to the provisions of subsection (2), every health care provider shall, before initiating or administering any care, treatment or rehabilitation services on a person with mental illness, inform the person of his or her rights in an appropriate manner as outlined in section 19 (2).

Duty to inform of individual rights

(2) Where a person with mental illness has been admitted under the circumstances referred to in section 39 or 44, a health care provider shall give the —

- (a) nominated representative information about the admission of the person with mental illness immediately or as soon as is practicable; and
- (b) person with mental illness information under paragraph (a) when he or she has recovered his or her mental capacity.

PART VII — *Care and Treatment of Persons with Mental Illness*

Admission of
persons with
mental illness

36. (1) A person with mental illness shall be treated, as far as possible, at or near his or her own home in the community, without requiring care and treatment in a mental health facility.

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

Provided that, where a person lacks capacity to make decisions about his or her mental health care and treatment at a mental health facility, such person may be cared for and treated on the basis of a facilitated admission under section 39.

Voluntary
admission

37. (1) An admission in a mental health facility shall, as far as possible, be a voluntary admission, except where conditions for facilitated admission under section 39 exist.

(2) A person who is not a minor, who considers himself or herself to have a mental illness and desires to be admitted in any mental health facility for care and treatment, may make an application in writing to the head of a mental health facility for admission.

(3) Where an application is received under subsection (2), a psychiatrist or mental health professional shall examine the person under subsection (2) and make a report to the head of a mental health facility on whether a person should be admitted or not.

(4) The head of a mental health facility shall admit a person under subsection (2) to a 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 in a mental health facility; and
- (c) the person has —
 - (i) understood the nature and purpose of admission to and treatment in a mental health facility,
 - (ii) made the application for admission out of his or her own free will, without any duress or undue influence, and
 - (iii) 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 under subsection (2) is unable to understand —
- (a) the purpose, nature or likely effects of the proposed treatment in the mental health facility; and
 - (b) the probable result of not accepting the proposed treatment in the mental health facility or requires a high level of support in making decisions,

he or she shall be deemed unable to understand the purpose of the admission and he or she 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 a mental health facility at any time:

Provided that if the head of a mental health facility or the nominated representative of the person admitted is of the opinion that the person meets the criteria for a facilitated admission under section 39, the head of a mental health facility or the admitted person's nominated representative may take steps to prevent self-discharge for a period not exceeding 48 hours to allow for examination as required under section 39.

38. The head 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.

Discharge
report

39. (1) A person who lacks capacity to make mental health care and treatment decisions may be admitted to a mental health facility as a facilitated admission.

Facilitated
admission

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

(3) The head of a mental health facility shall admit a person with mental illness upon application where —

- (a) the person has been independently examined on the day of admission by two health professionals, one of which is a psychiatrist and another, a 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 threatened or attempted to cause bodily harm to himself or herself,
 - (ii) has indicated that he or she will cause bodily harm to himself or herself,
 - (iii) has behaved or is behaving violently towards another person or has caused or is causing another person to fear bodily harm from him or her, or
 - (iv) has shown or is showing inability to care for himself or herself to a degree that places the individual at the risk of harm to himself or herself;

Treatment on
facilitated
admission

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

(c) the person is not eligible to receive care and treatment as a voluntarily admitted person under section 37.

(4) The psychiatrist or the mental health professional under subsection (3) (a), as the case may be, shall not be related by blood as a first degree relative or married to or in a common law relationship with the person who is being assessed for facilitated admission.

(5) A facilitated admission of a person to a mental health facility shall be limited to a period of 30 days.

40. (1) A person admitted under section 39 shall receive treatment as prescribed by the psychiatrist or mental health professional with the consent of the psychiatrist or mental health professional or, where the psychiatrist or mental health professional lacks capacity to give consent, with the consent of the nominated representative or an advance directive, if any.

(2) Where, on the expiry of the 30 days referred to under section 39 (5) or earlier, the head of a mental health facility is of the opinion that the person admitted under section 39 no longer meets the criteria for admission under that section, the head of a mental health facility may discharge the person or may extend the admission as a voluntary one under section 37.

(3) If, on the expiry of 30 days referred to under section 39 (5), the head of a mental health facility is of the opinion that the conditions for facilitated admission under section 39 (3) still exist, he or she shall apply to the Tribunal for an order for the continuance of the person in a mental health facility as a facilitated admission under section 39.

(4) Where an application under subsection (3) is made, the Tribunal shall —

(a) hold a hearing;

(b) ensure that the person with mental illness or his or her nominated representative attend a hearing;

(c) hear evidence from his or her psychiatrist or the mental health professional, as the case may be; and

(d) make an order either to discharge the person or extend the facilitated admission.

(5) An order of the Tribunal for the extension of a facilitated admission shall —

(a) in the first instance, be limited to a maximum period of 60 days; and

(b) for any subsequent extension, on application, be limited to a maximum period of 120 days at a time.

(6) The head of a mental health facility shall discharge the person under an extended facilitated admission if he or she is of the opinion that during the extended period, the person with mental illness no longer meets the conditions for facilitated admission under section 39 (3).

(7) The head of a mental health facility shall inform the Tribunal, in writing, of his or her decision under subsection (6).

41. (1) The admission of a minor with mental illness to a mental health facility shall be made on application, in writing, to the head of a mental health facility, by the parent, legal guardian or person having custody of the minor.

Admission
of minors

(2) The procedure for facilitated admission under section 39 shall, with necessary modifications, apply to admission of a minor.

(3) A minor admitted to a mental health facility shall be accommodated separately from adults.

(4) Any of the following persons shall stay with a minor with mental illness for the period of treatment in a mental health facility —

- (a) the minor's parent;
- (b) the minor's legal guardian;
- (c) the person having custody of the minor; or
- (d) the person appointed, in writing, by the parent, legal guardian or the person having custody of the minor.

(5) A minor shall be treated in a mental health facility only with the consent of the parent, the legal guardian or the person having custody of the minor.

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

Person with
mental illness
at place of
residence

(2) Where a request is received under subsection (1), a psychiatrist or mental health professional from the health facility shall visit the person alleged to have a mental illness and make an assessment of the person.

(3) If on assessment, the psychiatrist or mental health professional 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 psychiatrist or 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 psychiatrist or mental health professional in moving the person to the nearest mental health facility for further assessment.

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

Person with
mental illness
in public
place

44. (1) Notwithstanding any other provisions of this Act, any emergency treatment for a mental illness shall be provided by any mental health professional to a person with mental illness within or outside a mental health facility and with or without the consent of the person with mental illness if the treatment is necessary to prevent —

Emergency
treatment

- (a) death or irreversible harm to the health of the person with mental illness; or
 - (b) the person with mental illness from inflicting serious harm to himself, herself or to others.
 - (2) Any emergency treatment under subsection (1) shall —
 - (a) include transportation of the person with mental illness to the nearest mental health facility for further assessment; and
 - (b) be limited to a period of 72 hours.
- Major medical or surgical procedures**
- 45.** (1) A person with mental illness shall not undergo any major medical or surgical procedure without his or her informed consent or the informed consent of his or her nominated representatives, if the person is incapable of giving the consent.
- (2) In cases where the inability to consent under subsection (1) is likely to be lengthy, the head of a mental health facility shall refer the matter to the Tribunal for approval.
- (3) A major medical or surgical procedure under this section shall not be carried out —
- (a) as an emergency treatment under section 44; and
 - (b) unless the treatment is necessary to prevent death or irreversible harm to the health of the person with mental illness.
- Seclusion and restraint**
- 46.** (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 with mental illness or to others.
- (2) The physical restraint or seclusion referred to under subsection (1) shall —
- (a) be authorised by a psychiatrist or a mental health professional;
 - (b) be carried out in a mental health facility by a trained personnel under the supervision of a psychiatrist or a mental health professional;
 - (c) not be used as means of punishment or for the convenience of staff;
 - (d) be restricted to a maximum period of one hour;
 - (e) be continuously monitored by an officer in the mental health facility where it is carried out; and
 - (f) be recorded in a database, including the reasons and duration of the restraint, and be made available to the Board on a regular basis.
- (3) A person subjected to physical restraint or seclusion referred to under subsection (1) shall be directly observed by a mental health professional for the whole period in which the person is physically restrained or secluded.
- (4) The nominated representatives, relatives or care-giver of a person physically restrained under this section shall be informed immediately or as soon as practicable, when the person is physically restrained or secluded.
- Rights of nominated representatives, relatives and care-givers**
- 47.** (1) Nominated representatives, relatives or care-givers of a person with mental illness —

- (a) may visit the person with mental illness in the mental health facility;
- (b) may provide feedback to the mental health facility, including complaints about any deficiency in services;
- (c) shall receive support from mental health services and social support services to enable them to effectively perform their care-giving role; and
- (d) shall be involved in setting treatment goals and planning for the treatment and care after the discharge of a person with mental illness from a mental health facility.

(2) The involvement of nominated representatives, relatives or care-givers under subsection (1) (d) in relation to —

- (a) a voluntarily admitted person, shall be done with the consent of the person with mental illness; and
- (b) a person under facilitated admission, shall be done with the consent of the nominated representative under section 39 (2), in the case of relatives or care-givers.

48. (1) The head of a mental health facility may grant leave to a person admitted under a facilitated admission in a mental health facility for a period not exceeding 14 days at a time.

Leave to persons admitted as facilitated admission

(2) The head of a mental health facility may at any time revoke the leave granted under subsection (1), if he or she is satisfied that it is necessary for improvement of, or to prevent deterioration of, the mental health of the person.

(3) Where a person with mental illness who has been granted leave under subsection (1) refuses to return to the mental health facility on revocation of the leave or on the expiry of the leave, the head of a mental health facility may follow the procedures specified in section 49 for his or her return to the mental health facility.

49. (1) Where a person with mental illness admitted as a facilitated admission is missing from the mental health facility without being granted leave, the head of a mental health facility shall inform —

Absence without leave of persons admitted as facilitated admission

- (a) the police service; and
- (b) the person who had made an application for admission of that person.

(2) The police service shall convey the person with mental illness under subsection (1) back to the mental health facility to which he or she had been admitted.

50. (1) Where an officer in charge of a prison is of the opinion that a person in custody is suffering from mental illness, the officer shall make an application, in writing, to the head of a mental health facility for the transfer of the person to a mental health facility for assessment by a psychiatrist or mental health professional.

Persons with mental illness in custody

(2) On the directions of the head of the mental health facility, the psychiatrist or mental health professional shall assess the person under subsection (1) and may recommend —

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

(3) Where the person in custody under subsection (1) is admitted to a mental health facility under subsection (2), the time spent by the person at a mental health facility shall be treated as time spent in prison.

(4) Where a person in custody under subsection (1) is discharged after treatment in a mental health facility, he or she shall be sent back to prison for continuation of his or her sentence or be discharged by the Prison Service if the person's sentence has been served.

PART VIII — *Establishment of Mental Health Tribunal*

Establishment
of Tribunal

51. There is hereby established a Tribunal, to be known as the Mental Health Tribunal.

Membership of
Tribunal

52. (1) The Tribunal established shall consist of the following persons who shall be appointed by the Minister —

- (a) a Chairperson, who shall be a Judge of a court of record, a retired Judge of a court of record or a person who qualifies to be appointed as a Judge of a court of record;
- (b) a psychiatrist or a mental health professional with at least 10 years' experience in mental health;
- (c) a representative from the Attorney General's Chambers;
- (d) a representative from the Ministry responsible for health;
- (e) two civil society representatives with an interest and special expertise in mental health or human rights; and
- (f) a representative from the Law Society.

(2) The Minister shall, by Notice in the Gazette, publish the names of members of the Tribunal, specifying the dates of their appointment and the period for which they are appointed to the Tribunal.

(3) A member of the Tribunal shall hold office for a maximum period of three years and may be eligible for re-appointment for a further term, not exceeding three years.

(4) The provisions of sections 7, 8, 9, 16, and 17 shall, with the necessary modifications, apply to a member of the Tribunal.

(5) A member of the Tribunal shall be paid in connection with his or her service on the Tribunal, such remuneration and allowances as the Minister shall from time to time determine.

Functions of
Tribunal

53. The Tribunal shall hear and determine —

- (a) appeals by persons with mental illness in relation to facilitated admissions under section 39; and
- (b) complaints against violation of rights of persons with mental illness in mental health facilities.

Powers of
Tribunal

54. 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 necessary for the conduct of the proceedings before the Tribunal.

55. (1) The Tribunal shall sit as and when there is a matter to be adjudicated upon and the rules relating to admissibility of evidence shall apply to proceedings before the Tribunal.

Proceedings
before
Tribunal

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

(3) A decision of the Tribunal on any question shall be by the majority of the members present and voting at the meeting and, in the event of an equality of votes, the Chairperson shall have a casting vote.

(4) A person appearing before the Tribunal may —

(a) appear in person;

(b) be represented by his or her nominated representative or a legal practitioner of his or her choice; or

(c) produce such evidence as he or she considers necessary for the purposes of the proceedings.

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

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

(b) observe the rules of natural justice.

(6) Notwithstanding the provisions of this Part, the Tribunal shall have power to conduct the proceedings in whatever manner it considers most appropriate.

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

Reasons for
decisions

57. A person who is aggrieved by a decision of the Tribunal may, within 30 days of such decision being communicated to him or her, appeal to the High Court.

Appeals

58. (1) The Tribunal —

(a) shall make an annual report on the discharge of its functions to the Minister; and

(b) may at any time report to the Minister, any matter relating to the functions of the Tribunal.

Report of
Tribunal

(2) The Minister shall lay before the National Assembly a copy of each annual report made by the Tribunal.

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

Secretary to
Tribunal

(a) convening the sittings of the Tribunal after consultation with the Chairperson and members of the Tribunal;

(b) the issuing of summons and notices on behalf of the Tribunal;

(c) the implementation of decisions made by the Tribunal;

(d) taking appropriate steps to enable the Tribunal to enforce its orders; and

(e) ensuring that orders or directions given by the Tribunal are complied with.

PART IX — *Miscellaneous*

Offences and penalties

60. (1) Any person who commits any act of abuse or willful neglect of any person with mental illness commits an offence and is liable to a penalty set out in the Disability Act.

(2) The terms “abuse” and “neglect” shall have the same meanings assigned to them in the Disability Act.

(3) A person who obstructs, hinders or impedes any person under this Act in the course of the performance of their duties or attempts to prevent the execution of their duties under this Act commits an offence and is liable to a fine not exceeding P100 000, or to imprisonment for a term not exceeding three years, or to both.

Regulations

61. The Minister may make regulations prescribing anything under this Act which is to be prescribed for the better carrying out of the objects and purposes of this Act, or to give force and effect to its provisions.

Repeal of Cap. 63:02

62. The Mental Disorders Act (hereinafter referred to as “the repealed Act”) is hereby repealed.

Transitional and savings provisions

63. Notwithstanding the repeal effected under section 62 —

- (a) any act or decision taken under the repealed Act prior to the coming into operation of this Act shall continue to have effect until it is amended, annulled or withdrawn in accordance with the provisions of this Act;
- (b) any legal proceedings which, before coming into operation of this Act, were pending shall be continued or enforced by or against a person in the same manner as they would have been continued or enforced before the coming into operation of this Act;
- (c) any inquiry or proceedings instituted or pending in respect of any person prior to the coming into operation of this Act, shall be dealt with, inquired into and determined in accordance with the procedures in place before the coming into operation of this Act;
- (d) any application made under the repealed Act shall, in so far as it is not inconsistent with this Act, be concluded under this Act as if it was made under this Act;
- (e) a member of the Board appointed under the repealed Act shall continue to be a member of the Board for such period as was specified in the instrument of appointment; and
- (f) any subsidiary legislation made under the repealed Act, and in force immediately prior to the coming into operation of this Act shall, in so far as such subsidiary legislation may not be inconsistent with the provisions of this Act, continue in force as if made under this Act.

PASSED by the National Assembly this 10th day of August, 2023.

BARBARA N. DITHAPO,
Clerk of the National Assembly.