

# REPRINT

## MENTAL TREATMENT ACT (CAP. 103)

**As in force at: 5 February 2024**

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For details see Endnotes

**AN ACT TO AMEND AND CONSOLIDATE THE LAW RELATING TO PERSONS OF UNSOUND MIND AND TO MAKE FURTHER AND BETTER PROVISION FOR THE CARE OF PERSONS SUFFERING FROM MENTAL DISORDER OR MENTAL DEFECT, FOR THE CUSTODY OF THEIR PERSONS AND THE MANAGEMENT OF THEIR ESTATES AND FOR THE MANAGEMENT AND CONTROL OF MENTAL HOSPITALS**

## MENTAL TREATMENT ACT (CAP. 103)

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# MENTAL TREATMENT ACT (Cap. 103)

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## PART I PRELIMINARY

### 1 Short title

This Act may be cited as the *Mental Treatment Act*

### 2 Interpretation

In this Act except where the context otherwise requires:

**“Magistrate”** means a Magistrate empowered under the *Magistrates’ Courts Act* to hold a Magistrate’s Court of the First Class;

**“mental hospital”** means any hospital or place declared by notice by the Minister in his discretion to be a mental hospital;

**“patient”** means every person received or detained as a patient in a mental hospital.

### 3 Management of mental hospitals

- (1) A mental hospital and the patients therein shall be under the care and superintendence of a medical officer (hereinafter called the physician in charge) to be appointed by the Permanent Secretary, Minister of Health and Medical Services:

Provided that in the event of a medical officer not being available the Permanent Secretary, Ministry of Health and Medical Services may appoint such person as he shall consider fit and proper to act temporarily as physician in charge.

- (2) The physician in charge shall be assisted by such officers and servants as the Permanent Secretary, Minister of Health and Medical Services may appoint for that purpose.

#### **4 Reception, detention and discharge subject to Act**

Subject to the *Criminal Procedure Code Act*, no person shall be received or detained as a patient in a mental hospital, except under and in accordance with this Act, and every person so received shall be kept therein until his decease or until his discharge under the provisions of this Act, and while detained in the mental hospital, shall be subject to the directions of the physician in charge and to the observance of any regulations which may be made under this Act.

### **PART II VISITORS AND VISITING COMMITTEES**

#### **5 Visitors and visiting committees**

- (1) The following persons shall be mental hospital visitors (hereinafter referred to as the visitors):
  - (a) the Chief Justice and other Judges of the High Court;
  - (b) the Under Secretary (Health), Ministry of Health and Medical Services;
  - (c) all Magistrates and justices of the peace appointed under the provisions of the *Magistrates' Courts Act*;
  - (d) such other persons or classes of persons as the Minister in his discretion may from time to time appoint.
- (2) The Minister in his discretion shall in respect of each mental hospital appoint three or more of the visitors to constitute a visiting committee and shall appoint one of the members of the visiting committee to be the chairman thereof.
- (3) The quorum of a visiting committee shall be three members, including the chairman, but subject thereto the powers and duties of a visiting committee shall not be affected by the absence or temporary incapacity of any member thereof. In the event of the absence or temporary incapacity of the chairman the senior public officer who is a member shall act as chairman at any meeting of the visiting committee or, if there is no member present who is a public officer, a temporary chairman shall be appointed for that meeting from among themselves by the members present.

## **6 Visitors may come at any time and shall sign visitors' book**

- (1) The visiting committee of a mental hospital or any visitor may visit the mental hospital upon any day, at such time and for such length of time as they or he may think fit, and the physician in charge shall on demand of the visiting committee or of any visitor show to them or him every or any person detained in the mental hospital as a patient, or any part of the mental hospital, or any house, outhouse, place or building connected therewith or in its curtilage:

Provided that no member of the visiting committee or other visitor, except in the presence and with the consent of the physician in charge, shall be allowed to enter the cell or room of any patient whom the physician in charge considers to be dangerous.

- (2) All members of the visiting committee and other visitors shall enter in a book to be kept for the purpose (to be styled the "Visitors' Book") any remarks which they may consider proper in regard to the condition and management of the hospital and the patients therein and shall sign such book upon each occasion upon which they visit the hospital.

## **7 Visits of visiting committee**

A visiting committee of a mental hospital shall once at least in every three months inspect every part of the mental hospital and see and examine every patient therein and the order and certificate of admission of every patient admitted since their last visitation and the books of the mental hospital.

## **8 Annual and special reports of visiting committees to Minister**

- (1) Every visiting committee of a mental hospital shall in the month of January in every year or as soon thereafter as may be, forward to the Minister a report in writing of the state and condition of the mental hospital and as to its sufficiency for the proper accommodation of the number of patients for whom it may be necessary to provide accommodation, and as to the management of the mental hospital and the conduct of the physician in charge and staff thereof and the care of patients therein, and in such report shall make such observations in relation to the state of mind or bodily health of any of the patients, or any matters connected with the mental hospital as

the visiting committee may think fit.

- (2) In addition to the annual report of a visiting committee required to be made under subsection (1), a visiting committee, or any member thereof, shall make such reports upon any matter connected with a mental hospital as the Minister may from time to time direct.
- (3) A visiting committee of a mental hospital or any visitor may at any time make a report to the Minister with regard to any matter relating to the mental hospital or the patients therein which the visiting committee or the visitor considers to be a proper subject for such report.

## **PART III VOLUNTARY PATIENTS**

### **9 Power to receive voluntary patients**

- (1) Any person who has attained the apparent age of eighteen years, who is desirous of voluntarily submitting himself to treatment for mental disorder or mental defect and who makes to the physician in charge application in that behalf, accompanied by a medical recommendation, may be received into a mental hospital as a voluntary patient.
- (2) Any person who has not attained the apparent age of eighteen years and whose parent or guardian is desirous of submitting him to treatment for mental disorder or mental defect may, if the parent or guardian makes to the physician in charge a written application in that behalf, accompanied by a medical recommendation, be received into a mental hospital as a voluntary patient.
- (3) A medical recommendation may only be made by a medical officer or medical practitioner and shall cease to have effect, for the purposes of this section, upon the expiration of fourteen days from the date on which it was made.
- (4) Any person received as a voluntary patient under this section may leave the mental hospital upon giving to the physician in charge seventy-two hours' notice in writing of his intention so to do, or, if he is a person who has not attained the apparent age of eighteen years, upon such notice being given by his parent or guardian.

- (5) For the purposes of this Part, “*guardian*”, in relation to a person who has not attained the apparent age of eighteen years, includes any person having the charge of such person.

**10 Voluntary patient not to be detained for more than thirty days after becoming incapable of expression**

If any person, received into a mental hospital as a voluntary patient under section 9 becomes at any time incapable of expressing himself as willing or unwilling to continue to receive treatment, he shall not be retained as a voluntary patient for a longer period than thirty days thereafter and shall be discharged on or before the expiration of that period unless, in the meantime, he has again become capable of so expressing himself, or an application in respect of him has been made under section 11, or a reception order has been made under Part V or Part VIII.

**PART IV TEMPORARY TREATMENT**

**11 Temporary treatment without certificate**

- (1) Subject to the provisions of this section, a person who is suffering from mental disorder or mental defect and is likely to benefit by temporary treatment in a mental hospital but is for the time being incapable of expressing himself as willing or unwilling to receive such treatment may, on a written application duly made in accordance with this section, be received into a mental hospital as a temporary patient for the purpose of treatment.
- (2) An application under this section shall be made in duplicate, in the prescribed form, if any, to the physician in charge of such mental hospital, and shall be made:
  - (a) by the husband or wife, or by a relative, of the person to whom it relates;
  - (b) if no application is made as provided in paragraph (a), by the Attorney-General; or
  - (c) if no application is made as provided in paragraph (a) or paragraph (b), by any other person who shall state in his application the reason why it is not made as provided in

paragraph (a) or paragraph (b) of this subsection, the connection of the applicant with the person to whom such application relates and the circumstances in which he makes the application.

- (3) The application shall contain or be accompanied by a recommendation in duplicate, in the prescribed form, if any, signed by a medical officer or medical practitioner.
- (4) The medical officer or medical practitioner by whom a recommendation is made under this section shall, before signing such recommendation, examine the person to whom such recommendation relates and specify in such recommendation the date or dates on which he examined such person and the grounds on which he bases such recommendation.
- (5) A recommendation shall cease to have effect on the expiration of thirty days from the last date on which the person to whom the recommendation relates was examined by the medical practitioner.
- (6) A person received as a temporary patient into a mental hospital may in respect of such reception be detained therein for a period not exceeding thirty days.
- (7) If a person who has been received as a temporary patient becomes capable of expressing himself as willing or unwilling to continue to receive treatment, he shall not be detained for more than seventy-two hours thereafter unless, in the meantime, he has again become incapable of so expressing himself, or an application has been duly made by him under section 9, or an order has been made for his reception under Part V or Part VIII.

## **12 Powers of discharge of physician in charge**

Where any person has been received into a mental hospital under Part III or this Part, the physician in charge may at any time order that any such person shall be discharged or otherwise dealt with under this Act.

## **PART V            RECEPTION ORDERS**

### **13            Application for reception order to be by petition**

- (1) An application for a reception order shall be made by petition, accompanied by an affidavit of particulars in support thereof, to a Magistrate within the local limits of whose jurisdiction the person alleged to be of unsound mind normally resides or happens to be, shall be in the prescribed form, if any, and shall be supported by a certificate from a medical officer or a medical practitioner.
- (2) No such medical certificate shall be signed by any husband, wife, relative or partner of the person alleged to be of unsound mind.
- (3) The petition shall state whether any previous application has been presented for a judicial inquiry into the mental capacity of the person alleged to be of unsound mind in any court, and, if such application has been made, a certified copy of the order made thereon shall be attached to the petition:

Provided that the Magistrate may in his discretion direct that a certified copy of the order need not be attached.

### **14            Presentation of petition**

- (1) A petition shall be presented by:
  - (a) the husband or wife or any other relative of the person alleged to be of unsound mind;
  - (b) where no petition is presented as provided in paragraph (a), by the Attorney-General; or
  - (c) where no petition is presented as provided in paragraph (a) or paragraph (b), by any other person, who shall state in his petition the reasons why it is not presented in accordance with the provisions of paragraph (a) or paragraph (b) of this subsection, the connection of the petitioner with the person alleged to be of unsound mind and the circumstances in which he presents the petition.
- (2) No person shall present a petition unless he has attained the age of

twenty-one years and has, within fourteen days before the presentation of the petition, personally seen the person alleged to be of unsound mind.

- (3) A petition shall be signed by the petitioner, and be supported by affidavit setting out the grounds of such petition and any other relevant particulars, and whether the particulars contained therein and in such affidavit are true or whether the person swearing such affidavit believes such particulars to be true to the best of his knowledge and belief.

## **15 Procedure upon petition**

- (1) Upon receipt of a petition presented under section 14, the Magistrate shall consider the allegations in such petition and in any affidavit in support of such petition, and the evidence of unsound mind contained in the medical certificate.
- (2) If such Magistrate considers that there are grounds for proceeding further, he shall personally examine the person alleged to be of unsound mind unless, for reasons to be recorded in writing, he thinks it unnecessary or inexpedient so to do.
- (3) If the Magistrate is satisfied that the person is of unsound mind and that a reception order may properly be made forthwith, he may adjudge him to be of unsound mind and may make a reception order in the prescribed form for the admission of such person into a mental hospital.
- (4) If the Magistrate is not so satisfied, he shall fix a date, notice whereof shall be given to the petitioner and to any other person to whom in the opinion of such Magistrate notice should be given, for the consideration of the petition and he may make such further or other inquiries, of or concerning the person alleged to be of unsound mind, as he may think fit.

## **16 Detention of person pending inquiry**

Upon receipt of a petition, the Magistrate may make such order as he may think fit for the suitable custody of the person alleged to be of unsound mind, pending the conclusion of any necessary inquiry.

## **17 Consideration of petition**

- (1) A petition shall be considered in private in the presence of the petitioner, the person alleged to be of unsound mind (unless the Magistrate in his discretion otherwise directs), any person appointed by the person alleged to be of unsound mind to represent him and such other persons as the Magistrate may think fit.
- (2) If no such person is appointed to represent the person alleged to be of unsound mind, the Magistrate may appoint a person for such purpose.

## **18 Order**

- (1) After consideration of the petition, the Magistrate may either adjudge such person to be of unsound mind and make a reception order in the prescribed form for the admission of such person into a mental hospital, or may dismiss the petition, or may adjourn the same for further evidence or inquiry, and may make such order as to the payment of the costs of the inquiry by the person upon whose application it was made, or out of the estate of the person alleged to be of unsound mind, or otherwise, as he may think fit.
- (2) If the petition is dismissed the Magistrate shall record in writing his reasons for dismissing such petition, and shall deliver or cause to be delivered to the petitioner and to the person alleged to have been of unsound mind or the person (if any) representing him, a copy of such order.

## **19 Power to take person of unsound mind into custody**

- (1) Any police officer may take or cause to be taken into his custody any person whom he has reason to believe to be suffering from mental disorder or mental defect and who is found wandering at large, and shall take into custody any person whom he has reason to believe to be dangerous to himself or to others, or who, by reason of such mental disorder or mental defect, acts, or is likely to act, in a manner offensive to public decency.
- (2) Any person so taken into custody shall be taken before the nearest Magistrate as soon as practicable.

- (3) Any police officer who has reason to believe that any person is suffering from mental disorder or mental defect and is not under proper care and control, or is being cruelly treated or neglected by any relative or other person having the charge of him, shall forthwith report the fact to the nearest Magistrate, who may either visit such person at the place where he may happen to be or may order such person to be brought before him.

**20 Duty of custodian of person of unsound mind**

Where any person having in his care and custody a person apparently of unsound mind is, for any reason, no longer able properly to control such person or to prevent such person from doing injury to himself or others or from acting in a manner offensive to public decency, such first-mentioned person shall make application to a Magistrate under section 13 or report the circumstances of the case to a police officer in order that proceedings under this Act may be taken in regard to such person.

**21 Power of Magistrate to visit person suspected to be of unsound mind or order his attendance**

If a Magistrate is satisfied by information on oath or affirmation that any person suspected of being of unsound mind is at large or is dangerous to himself or others or is acting or is likely to act in a manner offensive to public decency, or is not under proper care and control or is cruelly treated or neglected by any relative or other person having the care or charge of him, such Magistrate may either visit such person suspected of being of unsound mind at the place where he may happen to be, or, by order under his hand, require a person specified in such order to bring such person before him.

**22 Reception order in case of wandering or dangerous person**

Where a Magistrate visits a person suspected of being of unsound mind or such a person is brought before him under section 19 or section 21, such Magistrate shall examine such person, and, if he thinks that there are grounds for proceeding further, shall cause such person to be examined by a medical officer or medical practitioner, and may make such other inquiries as he may think fit; and, if satisfied by examination and inquiries and by the certificate of such medical officer or medical practitioner that such person is a person

of unsound mind and a proper person to be placed under care and treatment, he may adjudge such person to be of unsound mind and may make a reception order, in the prescribed form, for the admission of such person into a mental hospital:

Provided that, instead of making a reception order, the Magistrate may, if he thinks fit, make such person over to the care of any relative or friend upon such relative or friend entering into a bond, with or without sureties, for such sum of money as the Magistrate may think fit, that such person shall be properly taken care of and prevented from doing injury to himself or others or from becoming a public nuisance.

**23 Detention of person alleged to be of unsound mind pending medical report**

Where a Magistrate visits a person suspected of being of unsound mind, or such a person is brought before him under section 19 or section 21, he may, by order in writing, authorise the detention of such person in a mental hospital, or in any place which he deems suitable for the purpose, for such period not exceeding seven days as may, in his opinion, be necessary to enable a medical officer or medical practitioner to determine whether or not such person is a person in respect of whom a medical certificate that he is of unsound mind may properly be given:

Provided that no person shall be detained in any police station or prison if any other suitable accommodation is available.

**24 Medical certificates**

- (1) Every medical certificate given under this Part shall be in duplicate, in the prescribed form, if any, and shall be signed by a medical officer or medical practitioner.
- (2) Every such medical certificate shall state the facts upon which it is founded, and shall distinguish facts observed by the medical officer or medical practitioner giving such certificate from facts communicated to him by others, and no reception order shall be made upon any such certificate founded only upon facts communicated by others.

- (3) Every medical certificate purporting to be given under and in accordance with this Part shall, for the purposes of this Act, be received in evidence without further proof and be *prima facie* evidence of the facts and the opinion appearing therein.

**25 Detention of person found to be of unsound mind**

Where a reception order has been made under this Part, the Magistrate may, for reasons to be recorded in writing, direct that the person concerned, pending his removal to a mental hospital, be detained in suitable custody in such place and for such time as the Magistrate may think fit:

Provided that no person shall be detained in any police station or prison if any other suitable accommodation is available.

**26 Power to summon custodian of person suffering from mental disorder**

- (1) In any case arising under section 19(2), the Magistrate may summon before him any person who has, or ought to have, the charge of the person who is suspected of suffering from mental disorder or mental defect; and, if such person is legally bound to maintain the person who is suspected of suffering from mental disorder or mental defect, the Magistrate may make an order requiring such person to cause the person who is suspected of suffering from mental disorder or mental defect to be properly cared for and treated.
- (2) Any person who fails to comply with an order made under subsection (1) shall be guilty of an offence and liable to a fine of two hundred penalty units or to imprisonment for six months or to both such fine and such imprisonment.

**27 Time and manner of medical examination of person**

No reception order shall be made unless it appears from the medical certificate upon which such order is to be founded that the medical officer or medical practitioner who signed the certificate personally examined the person to whom the certificate relates not more than fourteen days before the date of the order.

**28 Authority for reception**

A reception order, accompanied by a copy of the medical certificate upon which it is founded, shall be sufficient authority for any person authorised in the order to take the person of unsound mind named in such order and convey him, within thirty days from the date of such order, to a mental hospital or to any other place of custody which is mentioned in the order, and for the person of unsound mind to be received within such time and detained therein; and any such order may be acted upon without further evidence of the signature or of the jurisdiction of the Magistrate making the order.

**29 Reception order may apply outside jurisdiction**

A magistrate may make a reception order for the detention, care and treatment of a person adjudged to be of unsound mind in a mental hospital which is situated in a place outside the ordinary limits of such Magistrate's jurisdiction; and a reception order shall authorise the detention, care and treatment of the patient at such mental hospital within Solomon Islands at which it appears to the Magistrate that sufficient accommodation is available and suitable treatment can be given, regard being had to the circumstances of the case.

**PART VI TEMPORARY DETENTION**

**30 Physician in charge may on emergency detain supposed persons of unsound mind**

Notwithstanding anything to the contrary in this Act contained, it shall be lawful for the physician in charge of a mental hospital if upon any emergency he shall deem it necessary to do so to detain in the mental hospital any person whom he shall have reason to believe is a person of unsound mind without any warrant or order until such time as he can obtain a reception order under Part V. Any detention under this section shall be forthwith reported by the physician in charge to a Magistrate and shall not exceed a period of twenty-eight days.

## **PART VII DISCHARGE, REMOVAL AND TRANSFER OF PATIENTS**

### **31 Physician in charge may discharge patient if fit**

If it shall appear to the physician in charge of a mental hospital that any person detained in the mental hospital under Part V or Part VIII, is fit to be discharged therefrom, he may, with the consent of a Magistrate, order such patient to be discharged and he shall be discharged accordingly.

### **32 Visitors may recommend discharge of patient**

If, after two distinct and separate visits not less than seven clear days apart, made by any two members of a visiting committee of a mental hospital to any patient detained therein, it shall appear to them that such patient is detained without sufficient cause, they may make a recommendation to the physician in charge for the discharge of such patient and the physician in charge shall refer the matter to a Magistrate.

### **33 Order for delivery of person of unsound mind into care of relative**

- (1) If any relative or friend of a person detained in a mental hospital under a reception order made under Part V or Part VIII desires that such person shall be delivered over to his care and custody, he may for that purpose make an application to the physician in charge, and the physician in charge, with the consent of a Magistrate, may order that the person be delivered into the care of such relative or friend upon such terms and conditions as he may in his discretion direct.
- (2) Where any person into whose care a person detained in a mental hospital under a reception order made under Part V or Part VIII has been delivered is unable or unwilling to continue to take care of such person, he shall report the matter in writing to the physician in charge of such mental hospital, who, with the consent of a Magistrate, may revoke the order and readmit the person in respect of whom such order was made into the mental hospital under the original reception order as if the order had not been made.
- (3) Where a physician in charge makes an order under subsection (1),

he shall give notice thereof to the police officer in charge of the province in which the person in respect of whom the order is made will reside, and shall also notify such officer upon revocation of the order.

**34           Absence of patient for trial period**

- (1) The physician in charge of a mental hospital may, with the consent of a Magistrate, grant to any patient detained in the hospital under a reception order made under Part V or Part VIII, leave to be absent from such hospital subject to such conditions (if any) as the physician in charge considers necessary in the interests of the patient or for the protection of other persons.
- (2) Leave of absence may be granted to a patient under this section on specified occasions or for any specified period not exceeding one year; and where leave is so granted for a specified period, that period may be extended under subsection (1) by further leave granted in the absence of the patient.
- (3) Where it appears to the physician in charge that it is necessary so to do in the interests of the patient or for the protection of other persons, he may, upon granting leave of absence under this section, direct that the patient remain in custody during his absence; and where leave of absence is so granted the patient may be kept in the custody of any officer on the staff of the hospital, or of any other person authorised in writing by the physician in charge.
- (4) In any case where a patient is absent from a hospital in pursuance of leave of absence granted under this section, and it appears to the physician in charge that it is necessary so to do in the interests of the patient's health or safety or for the protection of other persons, the physician in charge may, with the consent of a Magistrate, by notice in writing given to the patient or to the person for the time being in charge of the patient, revoke the leave of absence and recall the patient to the hospital:

Provided that where the urgency of the circumstances requires him to act before such consent can be secured, the physician in charge may revoke the leave of absence without such consent as aforesaid, but as soon as practicable he shall inform a Magistrate of his action and the reasons therefor.

- (5) Where a physician in charge grants to any patient leave of absence under this section, he shall give notice thereof to the police officer in charge of the province in which the patient will be during his leave of absence, and shall also notify such officer upon any revocation of the leave of absence.

### **35 Removal of patient to hospital**

- (1) Any patient requiring special medical or surgical care may upon the order of the physician in charge be sent under proper control to a public hospital to be specified in such order.
- (2) The medical officer in charge of a public hospital, to which a patient has been removed under the last preceding subsection, shall notify the physician in charge when in his opinion the patient is sufficiently recovered to justify his discharge from hospital, and the physician in charge shall forthwith cause the patient to be brought back to the mental hospital.

### **36 Removal of persons from Solomon Islands**

- (1) Where any person in Solomon Islands is suffering from mental disorder or mental defect, the Under Secretary (Health), Ministry of Health and Medical Services, upon application by a relative or friend of such person or of his own motion, may inquire into the circumstances of the case and report thereon to the Minister.
- (2) The Minister, if satisfied by such report that the person to whom the report relates is suffering from mental disorder or mental defect, and that his removal is likely to be for his benefit, and that proper arrangements have been made for such removal and for his subsequent care and treatment, may in his discretion, by a removal warrant under his hand and seal, direct that such person be delivered to a person, named in such warrant, for the purpose of being removed to such country as may be specified in such warrant; and every such warrant shall be obeyed by the person or authority in whose charge the patient may be:

Provided that no such warrant for the removal of any such person shall be made unless prior consent to receive such person has been obtained from the proper authorities of the country to which it is proposed to remove such person.

**37 Power to detain patient pending and during removal**

When a removal warrant has been made for the removal of a person from Solomon Islands to any territory, such person shall be detained in such custody as shall be specified in the warrant until a fit opportunity for his removal occurs, and shall then be conveyed to such place, and in such manner, as may be specified in such warrant.

**38 Cost of removal and maintenance**

The cost of the removal under this Part of any person, of his maintenance after removal, of his return and of his being sent, in the event of discharge after recovery, to any place shall be paid in such manner as may be arranged between the Government and the proper authorities in the country to which he is removed:

Provided that nothing in this Part contained shall affect any power to recover any of the expenses hereinbefore mentioned from the property of the person removed or from any person legally liable to maintain him, or otherwise.

**39 Discharge, death or escape of patients to be notified**

When any patient shall be discharged from a mental hospital, or when any patient shall die therein or escape therefrom, it shall be the duty of the physician in charge at the first opportunity after such discharge, death or escape, to send to the Chairman of the visiting committee notice in writing thereof and to report to the police any such death or escape.

**40 Report and inquiry in case of death**

On the death of any person confined in a mental hospital the physician in charge shall at once report such death to the nearest Magistrate, who shall thereupon proceed to hold an inquiry into the cause of the death of the deceased in accordance with the provisions of the *Death and Fire Inquiries Act*.

## **PART VIII            JUDICIAL POWER OVER PERSONS AND ESTATES OF PERSONS OF UNSOUND MIND OR IN A MENTAL HOSPITAL**

### **41            Orders for custody, management and guardianship**

- (1) The High Court may make orders:
  - (a) for the custody of any person found by inquiry by the Court to be of unsound mind, and for this purpose, and without prejudice to the inherent powers of the Court, may exercise all or any of the powers conferred upon a Magistrate's Court by Part V;
  - (b) for the management of the estate of any such person; and
  - (c) for the guardianship of such person by any near relative or by any other suitable person,

and may also make orders under paragraphs (b) and (c) in the case of any person in respect of whom a reception order has been made under Part V or in respect of any person who is suffering from mental disorder or mental defect.

- (2) Where there is no known relative or other suitable person, the Court may order that the Public Trustee be appointed manager of the estate and guardian of any such person.
- (3) Where upon inquiry it is found that the person to whom the inquiry relates is of unsound mind so as to be incapable of managing his affairs, but that he is capable of managing himself and is not dangerous to himself or to others or likely to act in a manner offensive to public decency, the Court may make such orders as it may think fit for the management of the estate of such person, including proper provision for his maintenance and for the maintenance of such members of his family as are dependent upon him for maintenance, but need not, in such case, make any order as to the custody of the person of unsound mind.

### **42            Power of manager in respect of estate**

- (1) Where a manager is appointed under this Part, the High Court may direct by the order of appointment, or by any subsequent order, that

such manager shall have such general or special powers for the management of the estate as to the Court may seem necessary and proper, regard being had to the nature of the property, whether movable or immovable, of which the estate may consist:

Provided that a manager so appointed shall not, without the special permission of the High Court:

- (a) mortgage, charge or transfer by sale, gift, surrender, exchange or otherwise any immovable property of which the estate may consist;
  - (b) lease any such property for a term exceeding five years;
  - (c) invest in any securities; or
  - (d) invest any funds belonging to the estate of which he is manager in any company or undertaking in which he himself has an interest, nor on the purchase of immovable property.
- (2) If the person appointed to be manager of an estate or guardian of a person under this Part is unwilling to act gratuitously, the High Court may fix such allowance or allowances to be paid out of the estate of the person in respect of whom the manager or guardian has been appointed as, in the circumstances of the case, the Court may think fit.
- (3) For the purposes of this Act and the *Penal Code*, a manager shall be deemed to be a trustee, but shall have none of the powers of a trustee under any other law for the time being in force.

**43 Power to make order concerning any matter connected with the person**

- (1) The High Court may, upon application made to it by petition concerning any matter whatsoever connected with a person of unsound mind, or with a person who is suffering from mental disorder or mental defect, or with his estate, make such order, subject to the provisions of this Part, regarding such application as, in the circumstances of the case, the Court may think fit.
- (2) The Attorney-General, the Public Trustee or a manager may take out,

as of course, an originating summons returnable before a judge sitting in chambers for the determination of any question arising out of the management of any estate in respect of which an order has been made under this Part.

**44 Power to apply property for maintenance of person of unsound mind without appointing manager**

- (1) If it appears to the High Court that, having regard to the circumstances of a person of unsound mind or of a person who is suffering from mental disorder or mental defect and of his family and any other relevant circumstances, it is expedient that his property should be made available for his or their maintenance in a direct and inexpensive manner, it may, instead of appointing a manager or notwithstanding such appointment, order that the property, if money, or, if of any other description, the proceeds thereof when realised, be paid to such person as the Court may appoint, to be applied to such maintenance.
- (2) If it appears to the High Court that the unsoundness of mind, or the mental disorder or mental defect, of any person is in its nature temporary, and that it is expedient to make temporary provision for his maintenance or for the maintenance of such members of his family as are dependent upon him for their maintenance, the Court may, in the manner provided in subsection (1) direct that his property or a sufficient part of it be applied for such purpose.
- (3) The receipt of any person so appointed shall be a valid discharge to any person who pays any money or delivers any property of the person of unsound mind or of the person suffering from mental disorder or mental defect to the person so appointed.

**45 Power of Court over property of person where no manager appointed**

Where no manager is appointed, the High Court may, if it appears to be just or for the benefit of the person of unsound mind or of the person suffering from mental disorder or mental defect, order that any property of such person, whether movable or immovable and whether in possession, reversion, remainder or contingency, be sold, charged, mortgaged, dealt with or otherwise disposed of as may seem expedient for the purpose of raising or securing or repaying

with or without interest money to be applied, or which has been applied, to all or any of the following purposes:

- (a) the payment of the debts or engagements of such person;
- (b) the discharge of any encumbrance on his property;
- (c) the payment of any debt or expenditure incurred for the maintenance of such person or otherwise for his benefit;
- (d) the payment of or provision for the expenses of his future maintenance and the maintenance of such members of his family as are dependent upon him for maintenance, including the expenses of his removal from Solomon Islands if he is so removed, and all expenses incidental thereto;
- (e) the payment of the costs of any inquiry under this Act and of any costs incurred by order or under the authority of the Court.

**46 Power to order transfer of property of person residing out of Solomon Islands**

Where any movable or immovable property is standing in the name of or vested in any person residing out of the Solomon Islands, the High Court may, upon being satisfied that such person has been declared to be of unsound mind and that a manager has been appointed for his estate according to the law of the place where he is residing, order some fit person to pay, deliver or transfer such property, or any part thereof, to the name of the person so appointed as the Court may think fit.

**47 Execution of conveyances and powers by manager under order of Court**

A manager, or such other person as the High Court may appoint for the purpose, shall, in the name and on behalf of the person of unsound mind or of the person suffering from mental disorder or mental defect, execute all such conveyances and instruments relative to any sale, mortgage or other disposition of such person's estate as the High Court may order, and any conveyance or other instrument executed by such manager, or any other such person, with the sanction of the Court, shall be as valid and effectual in all

respects as if it had been executed by the person of unsound mind while he was of sound mind, or, in the case of a person suffering from mental disorder or mental defect, while he was not so suffering.

#### **48           Manager to furnish inventory and annual accounts**

- (1) Every person appointed by the High Court to be manager of the estate of a person under this Part shall, within six months after the date of his appointment, deliver to the Court and to the Public Trustee (to whom he shall pay such fee as may be prescribed) an inventory of the property belonging to the person of whose estate he has been appointed manager and of all such sums of money, goods and effects as he receives on account of the estate, together with a statement of all debts due by or to such person, and every such manager shall furnish to the Court and to the Public Trustee (to whom he shall pay such fee as may be prescribed) annually, within three months of the close of the year, an account of the property in his charge, showing the sums received and disbursed on account of the estate during such year and the balance then remaining in his hands; such inventory, statement and account shall be in such form as may be required by the Court or the Public Trustee.
- (2) Any person may, on payment of such fee as may be prescribed, inspect and obtain a copy of any inventory, statement or account delivered to the Court and to the Public Trustee under subsection (1).
- (3) Where any person, by petition to the High Court, impugns the accuracy of any such inventory or statement, or of any annual account, the Court may summon the manager and inquire summarily into the matter, and make such order thereon as it thinks proper, or the Court in its discretion may refer any such petition to a Magistrate having jurisdiction in the place wherein the property belonging to the estate concerned is situate, for inquiry and report, and upon receipt of such report the Court may make such order as it thinks fit.

#### **49           Removal of managers and guardians**

- (1) The High Court may, for any cause which seems to it sufficient, remove any manager appointed by it under this Part, and may appoint any other fit person in his place; and may make such order as it considers necessary to ensure that the person so removed makes over the property in his hands, and of which he was manager,

to his successor, and accounts to such successor for all money received or disbursed by him in connection with such property.

- (2) The High Court may also, for any such cause, remove any guardian of a person so appointed by it and appoint any other fit person in his place.

## **50 Termination of appointment of manager**

- (1) On the termination of the appointment of any manager for any reason whatsoever, such manager shall deliver an account, in the prescribed form, if any, of the property of which he was manager, to the Court which made his appointment.
- (2) No such account shall be accepted as correct until it is approved by the Public Trustee, who shall be entitled to charge such fee as may be prescribed.
- (3) Any manager who, within a time fixed by the Court, neglects or refuses to deliver such account, or to deliver to a person named by the Court any property belonging to the estate of which he was manager, shall be guilty of an offence and liable to a fine of four hundred penalty units or to imprisonment for one year or to both such fine and such imprisonment.

## **51 Order on recovery of person previously of unsound mind**

Where any person has been found under any of the provisions of this Act to be of unsound mind, and it is subsequently shown to the High Court that there is reason to believe that such unsoundness of mind has ceased, the Court may, after receiving evidence by affidavit or otherwise, make such order as in the circumstances it deems just and expedient.

## **52 Court procedure**

Where a person alleged to be of unsound mind or to be suffering from mental disorder or mental defect is before a court, the court shall, wherever possible, sit in camera.

**53 Chief Justice may delegate power to Magistrates**

The Chief Justice may, by order, confer upon any Magistrate, either generally or in respect of a particular person or class of persons, all or any of the powers conferred upon or vested in the High Court under this Act.

**PART IX MAINTENANCE**

**54 Application of property in possession of person of unsound mind found wandering**

Notwithstanding anything to the contrary in this Act contained, any money in the possession of a person of unsound mind found wandering at large may, on application in that behalf being made to a Magistrate, be applied by such Magistrate towards the payment of the cost of maintenance of such person or of any other expenses incurred on his behalf, and any movable property found on such person may, at the expiration of a period of six months from the date on which he was found wandering at large, be sold by order of such Magistrate, and the proceeds thereof similarly applied.

**55 Order for the payment of cost of maintenance out of estate of person of unsound mind**

- (1) If a person detained in a mental hospital under a reception order made under Part V or Part VIII has an estate which may be applied towards his maintenance, or if any person legally bound to maintain such person has the means to maintain him, the Court which, or the Magistrate who, made the reception order may, after summary inquiry, make an order against such estate or such person, as the case may be, for payment of the costs of maintenance of such person so detained, together with the costs of such inquiry.
- (2) If a person received in a mental hospital under Part III or Part IV has an estate which may be applied towards his maintenance, or if any person legally bound to maintain such person has the means to maintain him, a Magistrate may, on application by the physician in charge of the mental hospital, or by the Under Secretary (Health) Ministry of Health and Medical Services or by any person authorised by him in that behalf, after summary inquiry, make an order as provided in subsection (1).

- (3) Such orders shall be enforced in the same manner, and shall be of the same force and effect and subject to the same right of appeal, as a decree made in a suit in respect of the property or person therein mentioned.

**56 Saving of liability of relatives to maintain person of unsound mind**

The liability of any relative or person to maintain any person who is of unsound mind or who is suffering from mental disorder or mental defect shall not be affected by any of the provisions of this Act.

**PART X GENERAL**

**57 Physician in charge shall not refuse qualified patient without approval of the chairman**

Nothing in this Act shall be held to give any person a legal right to admission to, or maintenance in, a mental hospital but it shall not be lawful for the physician in charge without the approval of the chairman of the visiting committee to refuse to receive any patient duly qualified to be admitted and for whom there may be room in the mental hospital.

**58 Protection of persons acting under Act**

- (1) A person who does any act in pursuance or intended pursuance of any of the provisions of this Act shall not be under any civil or criminal liability in respect thereof, whether on the ground of want of jurisdiction or of mistake of law or of fact or on any other ground, whether of a like nature to the foregoing or not, if the court is satisfied that he has acted in good faith and with reasonable care.
- (2) Any proceedings taken against any such person for any such act may, upon application to the court in which they are taken, be stayed, if the court is satisfied that there is no reasonable ground for alleging want of good faith or reasonable care, or that the proceedings are frivolous or vexatious, and such court may award to the defendant such costs or compensation, or both, as it considers reasonable.
- (3) No such proceedings shall be commenced after the expiry of twelve months from the act complained of or, in the case of a continuance

of injury or damage, after the expiry of twelve months from the discovery of such act.

- (4) Nothing in this section contained shall be construed as depriving any person of any defence which he would have independently of this section.
- (5) No criminal proceedings shall be commenced under this Part without the prior consent in writing of the Director of Public Prosecutions.

**59 Escaped patient may be apprehended**

If any patient confined or detained in a mental hospital shall escape therefrom, any person within seven days of such escape or a police officer or the physician in charge or any person authorised by the physician in charge at any time may apprehend such patient and return him to the mental hospital.

**60 Judge may order patient to be brought before him for examination**

If it shall be made to appear to a Judge upon information upon oath or otherwise that any person of sound mind other than a criminal under sentence or a person legally detained during the pleasure of the Crown is confined in a mental hospital against his will he may order the physician in charge to bring such confined person before him for examination at a time to be specified in such order, and if upon the examination on oath of such confined person and of any medical or other witness or witnesses who may be called by the physician in charge or by the Judge to testify as to the state of mind of such person, it shall appear to the Judge's satisfaction that such confined person is of sound mind and detained against his will he may order such person to be discharged from the mental hospital and the physician in charge shall discharge such person accordingly.

**61 Patients' letters**

Every letter which may be written by any patient in a mental hospital to the visiting committee of that hospital or to any member thereof or to any other visitor shall be forwarded unopened to the addressee.

## **62 Offences against patients**

- (1) Any physician in charge of or any officer, nurse, attendant, servant or other person employed in a mental hospital who:
  - (a) strikes, wounds, ill-treats, or wilfully neglects any patient therein shall be guilty of an offence and liable to a fine of two hundred penalty units or to imprisonment for six months or to both such fine and such imprisonment;
  - (b) indecently assaults any patient therein shall be guilty of an offence and liable to a fine of four hundred penalty units or to imprisonment for one year or to both such fine and imprisonment;
  - (c) has unlawful sexual intercourse or attempts to have unlawful sexual intercourse with any female patient therein shall be guilty of an offence and liable to a fine of one thousand penalty units or to imprisonment for three years or to both such fine and such imprisonment.
- (2) Consent shall not be a defence in any proceedings for an offence under paragraph (b) or paragraph (c) of subsection (1) unless the person accused proves that he did not know and had no reason to suspect that the person in respect of whom the offence was committed was a patient in the mental hospital.
- (3) When a person is charged with an offence under section 141 (1) or section 161 of the *Penal Code* and the court is of the opinion that he is not guilty of that offence but that he is guilty of an offence under subsection (1)(b) he may be convicted of that offence although he was not charged with it.
- (4) Where a person is charged with an offence under section 136 or section 143 of the *Penal Code* and the court is of the opinion that he is not guilty of that offence but that he is guilty of an offence under subsection (1)(c) he may be convicted of that offence although he was not charged with it.

## **63 Penalty for aiding or conniving at escape of patient**

- (1) If the physician in charge of or any officer, nurse, attendant or servant

in the mental hospital shall, through wilful neglect or connivance permit any patient to escape from the mental hospital or shall secrete, or abet or connive at the escape of, such patient, he shall be guilty of an offence and liable to a fine of two hundred penalty units.

- (2) Every person other than a person mentioned in subsection (1) who aids or abets the escape of a patient from a mental hospital shall be guilty of an offence and shall be liable to a fine of one hundred penalty units.

**64 Trespass in mental hospital**

Every person found within the limits of a mental hospital without the written permission of the physician in charge or other proper officer or without lawful authority shall be guilty of an offence and shall be liable to a fine of ten penalty units.

**65 Rules of court**

The Chief Justice may make rules of court to provide for any matters relating to the procedure of the High Court or of a Magistrate's Court or of a Magistrate under this Act.

**66 Regulations**

The Minister may make regulations for the better carrying out of the provisions and purposes of this Act and without prejudice to the generality of the foregoing such regulations may:

- (a) prescribe anything which under this Act is required or authorised to be prescribed;
- (b) regulate generally the administration, control and management of mental hospitals;
- (c) provide for the powers and duties of physicians in charge of and other persons employed in mental hospitals;
- (d) prescribe forms required for carrying out the provisions of this Act and any regulations made under this section;
- (e) require books and records to be kept in mental hospitals;

- (f) prescribe the conditions and circumstances under which mechanical means of restraint or seclusion may be applied to patients;
- (g) prescribe fees to be paid under this Act or regulations made thereunder;
- (h) provide for the detention, regulation and if need be the detention of any correspondence passing to and from patients; and
- (i) prescribe the amounts which may be charged for the maintenance of patients.

## ENDNOTES

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### KEY

amd = amended	Pt = Part
Ch = Chapter	rem = remainder
Div = Division	renum = renumbered
exp = expires/expired	rep = repealed
GN = Gazette Notice	Sch = Schedule
hdg = heading	Sdiv = Subdivision
ins = inserted	SIG = Solomon Islands Gazette
lt = long title	st = short title
LN = Legal Notice	sub = substituted
nc = not commenced	

### NOTE

This Reprint comprises the Act and amendments as in force on 1 March 1996 and published as Chapter 103 of the Revised Edition of the Laws of Solomon Islands, together with amendments made to the Act since that date.

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### LIST OF LEGISLATION

#### ***Mental Treatment Act (Cap. 103)***

*Constituent legislation:* 13 of 1970 (Commenced 11 December 1970)  
LN 46A of 1978  
LN 88 of 1978

#### ***Penalties Miscellaneous Amendments Act 2009 (No. 14 of 2009)***

Assent date 29 July 2009  
Gazetted 1 October 2009  
Commenced 1 October 2009

#### ***Legislation Amendment, Repeal and Validation Act 2023 (No. 17 of 2023)***

Assent date 29 December 2023  
Gazetted 29 December 2023  
Commenced 5 February 2024

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### LIST OF AMENDMENTS

s 26	amd by Act No. 14 of 2009
s 45	amd by Act No. 17 of 2023
s 50	amd by Act No. 14 of 2009
s 62	amd by Act No. 14 of 2009
s 63	amd by Act No. 14 of 2009

s 64

amd by Act No. 14 of 2009