

CHAPTER 80

LUNATICS DETENTION

ARRANGEMENT OF SECTIONS

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Acts Nos. 9 of 1948 and 17 of 1986

AN ACT TO PROVIDE FOR THE DETENTION AND CUSTODY OF LUNATICS

[10th September, 1948]

1. This Act may be cited as the Lunatics Detention Act. Short title.

2. In this Act, unless the context otherwise requires, the following words and expressions shall have the meanings respectively assigned to them hereby, that is to say— Interpretation.
 - “place of detention” shall mean any house or building with any out-houses, yards, grounds, or premises belonging thereto which His Majesty in Council may from time to time appoint;
 - “lunatic” shall include an idiot and any other person of unsound mind;
 - “duly qualified medical practitioner” shall mean any person registered as a qualified practitioner in accordance with section 3 of the Medical Registration Act; Cap. 75
 - “Medical Officer” shall mean any officer appointed under section 3 or section 5 of the Medical Services Act; Cap. 76
 - “Tongan medical practitioner” shall mean any person registered as an unqualified practitioner of medicine or surgery under section 6 of the Medical Registration Act. Cap. 75

No lunatic to be confined without two certificates and order.

3. (1) No person shall be received into a place of detention as a lunatic without two certificates signed by duly qualified medical practitioners or by a medical officer and a Tongan medical practitioner, and an order thereupon made and signed either by the Chief Justice or by the Chief Police Magistrate, which certificates and order may be in the Form A set forth in the Schedule hereto.

(2) Each such certificate shall state that the subscribing practitioner or medical officer did separately from any other practitioner personally examine the patient and after due enquiry into all the necessary facts relating to his case find him to be a lunatic.

(3) Two such certificates and one such order shall be sufficient authority to any person to convey the lunatic to a place of detention, and to the authorities of such place of detention to detain him therein as long as he continues to be a lunatic, or until his discharge be ordered under the provisions of this Act.

Certificate of emergency.

4. (1) Notwithstanding anything required under the provisions of this Act, any person may be received into, and detained in, a place of detention as a lunatic whose case is duly certified to be one of emergency by the Director of Health, or in his absence or incapacity, by a Tongan Medical Practitioner duly authorized by him to act on his behalf for the purposes of this Act, for any period not exceeding 7 days and without any such order as required by section 3(1) hereof.

(2) Such certificate of emergency shall contain a statement that it is expedient either for the welfare of the alleged lunatic or for the public safety that he should be forthwith placed under observation and treatment for a period not exceeding 7 days with the reasons for such statement, and may be in the Form B set forth in the Schedule hereto, and shall be sufficient authority to any person to convey the alleged lunatic to a place of detention and to the authorities thereof to detain him for the period stated therein:

Provided always that where owing to absence of transport facilities or for any other reasonable cause it shall be impossible for such lunatic detained in pursuance of the provisions of this section to be brought before the Director of Health for examination or before the Chief Justice or Chief Police Magistrate within 7 days of the issue of a certificate of emergency under this section, it shall be lawful for the medical officer issuing the certificate of emergency to apply to the nearest Magistrate for an extension thereof. Upon such application being made to a Magistrate and satisfactory evidence being brought before him that there is good cause for the extension of such certificate of emergency it shall be lawful for him to authorize by endorsement thereon an extension thereof for such time as may be necessary, taking into account transport facilities and any other relevant factors, for the person detained to be brought before the Director of Health and the Chief Justice or Chief Police Magistrate,

provided always that no such extension shall exceed 7 days at any one time and that no period of detention under a certificate of emergency issued in accordance with the provisions of this section shall exceed 28 days in the aggregate.

5. If it appears at any time that any person confined in a place of detention has sufficiently recovered his reason so as to be a proper person to be discharged, either the Chief Justice or the Chief Police Magistrate may, upon the receipt of two certificates in the Form C set forth in the Schedule hereto to that effect signed by two qualified medical practitioners or by a medical officer and a Tongan medical practitioner, order his discharge therefrom, and upon receipt of such order the authorities of such place of detention shall allow such person to depart out of their custody.

Lunatic becoming sane to be discharged.

6. Any officer or servant of a place of detention, or any police constable, may arrest any lunatic who is escaping or who has escaped from any place of detention, and may return such lunatic to the place of detention.

Escaped lunatic.

7. (1) In the case of illness of any lunatic confined in a place of detention, such lunatic may be removed to a Government hospital, and as soon as it shall appear to the Director of Health that it is no longer necessary for such lunatic to remain in the Government Hospital, he may be removed back to the place of detention, where he shall revert to his former custody.

Power to remove lunatic to a hospital.

(2) Any lunatic removed under this section to a Government hospital and escaping therefrom shall be liable to arrest in the same manner as if he had escaped from a place of detention.

8. Any officer or servant employed in a place of detention striking or ill-treating or wilfully neglecting any lunatic confined in such place of detention shall be guilty of an offence, and shall be liable, on conviction thereof before a court of summary jurisdiction, to a fine not exceeding \$20, or to imprisonment with or without hard labour, for a term not exceeding 3 months, or to both such fine and imprisonment.

Officers ill-treating lunatic.

9. Any person who rescues or attempts to rescue any lunatic whilst being conveyed to, or whilst confined in, any place of detention, or who aids any lunatic or suspected lunatic to escape from any place of detention or from lawful custody, shall be guilty of an offence, and on conviction thereof shall be liable to imprisonment with or without hard labour, for a term not exceeding 2 years.

Rescuing or aiding lunatic to escape.

Penalty for wilful mis-statement.

10. Any person who makes a wilful mis-statement of any material facts in any certificate, or in any statement or report of bodily or mental condition under this Act, shall be guilty of an offence, and on conviction thereof shall be liable to imprisonment with or without hard labour, for a term not exceeding 2 years.

SCHEDULE

FORM A
(Section 3)

CERTIFICATE OF LUNACY

I, the undersigned, being a duly qualified medical practitioner (medical officer, or Tongan medical practitioner) and being in actual practice as such within the Kingdom of Tonga, do hereby certify that on the..... day of 19.... at separately from any other medical practitioner, I personally examined

and that the said is a lunatic and a proper person to be taken charge of and detained under care and treatment, and I formed this opinion upon the following grounds, viz.:

- (1) Facts indicating lunacy observed by me (here state them).
(2) Other facts (if any) indicating lunacy communicated to me by others (here state them).

STATEMENT OF PARTICULARS

(If any of the particulars in this statement be not known, the fact to be so stated.)

Name of patient, country and nationality in full
Sex and age
Married, single or widowed
Condition of life and previous occupation (if any)
Religion
Previous place of abode
Whether first attack of lunacy
Age (if known) on first attack
Whether and where previously under care and treatment
Duration of existing attack
Supposed cause
Whether subject to epilepsy

Whether suicidal

Whether dangerous to others

(Signed)

Date

ORDER OF REMOVAL

I, Chief Justice of the Kingdom of Tonga (or Chief Police Magistrate) do hereby order the removal of to to be detained there until the further order of the Court.

(Signed).....

Date Chief Justice. (Chief Police Magistrate.)

FORM B (Section 4(2))

CERTIFICATE OF EMERGENCY

I, the undersigned, being the Director of Health of the Kingdom of Tonga (or the Tongan Medical Practitioner duly authorized by the Director of Health for the purposes of the Lunatics Detention Act) do certify that it is expedient for the public safety (welfare of)

that should be forthwith placed under observation and treatment for a period not exceeding days. My reasons for this conclusion are as follows:

(Here state them.)

Date (Signed)

ORDER OF EXTENSION

I, the undersigned, being the Magistrate for the District of, and being satisfied that there is good reason for the extension of the above Certificate of Emergency, do hereby order that the above mentioned be detained under observation and treatment for a further period of

days from to

Date (Signed)..... Magistrate.

FORM C (Section 5)

CERTIFICATE OF SANITY

I, the undersigned, being a duly qualified medical practitioner, and being in actual practice as such within the Kingdom of Tonga, hereby certify that I have this day, separately from any other medical practitioner, personally examined at present

confined in at and after due enquiry into all necessary facts relating to his case, I believe that he is now of sufficiently sound mind as to be a proper person to be discharged therefrom.

Date (Signed).....

ORDER OF DISCHARGE

I Chief Justice (Chief Police Magistrate) of the Kingdom of Tonga, do hereby order the discharge of from

Date (Signed).....

Chief Justice.
(Chief Police Magistrate.)