



SAMOA

MENTAL HEALTH ACT 2007

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MENTAL HEALTH ACT 2007

2007

No. 5

AN ACT to provide for the care, support, treatment and protection of persons with a mental disorder and for related purposes.

[Assent and commencement date: 2 February 2007]

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

**PART 1
PRELIMINARY**

1. Short title and commencement – (1) This Act may be cited as the Mental Health Act 2007.

(2) This Act commences on the date of assent by the Head of State.

(3) Notice of commencement of this Act shall be published in Samoan and English in the *Savali* and one other newspaper circulating in Samoa.

2. Interpretation – In this Act, unless the context otherwise requires:

“Administrator” means a person appointed under an Administration Order pursuant to section 24;

“Administration Order” means an Order made by the Court under section 24;

“Chief Executive Officer” means the Chief Executive Officer of the Ministry;

“Chief Mental Health Officer” means a health care professional appointed by the Minister in writing with a specialist mental health qualification or, experience to supervise and manage mental health services in the Ministry and who acts under the direction and control of the Chief Executive Officer and includes any person who may be Acting Chief Mental Health Officer as may be nominated in writing by the Chief Executive Officer;

“community treatment order” means an order referred to in section 11;

“Court” means the District Court, constituted by:

- (a) a Judge of the District Court; and
- (b) a mental health care professional sitting as Advisor to the Court, –

and, a mental health care professional sitting as Advisor to the Court—

- (i) is appointed by the Head of State, acting on the advice of the Minister; and
- (ii) holds office for a period not exceeding 3 years, but may be reappointed; and
- (iii) may be dismissed at will by the Head of State, acting on the advice of the Minister; and
- (iv) includes any person who is an acting position during periods of absence or incapacity of the person appointed under this Act to be the mental health care professional sitting as Advisor to the Court;

“duly directed” means that the health care professional or mental health care professional employed by the Ministry has been directed in accordance with Ministry policy and practice to provide either specific or general care to any

person subject to an order issued under the provisions of this Act;

“health care professional” means:

- (a) any medical practitioner registered under the Medical Practitioners Act 2007; or
- (b) any nurse registered under the Nursing and Midwifery Act 2007; or
- (c) any psychologist or social worker registered under the Healthcare Professions Registration and Standards Act 2007, –

and where a medical practitioner, nurse, psychologist or social worker acts as a health care professional under this Act, such medical practitioner, nurse, psychologist or social worker, in exercising any function or power under this Act, shall do so under the direction and control of the Chief Mental Health Officer;

“Inpatient Treatment Order” means an order referred to in section 14;

“Mental disorder” includes a mental illness and means a medical condition that is characterized by a significant disturbance of thought, mood, perception or memory, save that a person is not to be considered mentally ill by reason only of one or more of the following:

- (a) that the person expresses or refuses or fails to express a particular political opinion or belief;
- (b) that the person expresses or refuses or fails to express a particular religious opinion or belief;
- (c) that the person expresses or refuses or fails to express a particular philosophy;
- (d) that the person expresses or refuses or fails to express a particular sexual preference or sexual orientation;
- (e) that the person engages in or refuses or fails to engage in a particular political activity;
- (f) that the person engages in or refuses or fails to engage in a particular religious activity;
- (g) that the person engages in sexual promiscuity;
- (h) that the person engages in immoral conduct;
- (i) that the person engages in illegal conduct;
- (j) that the person is intellectually disabled;
- (k) that the person takes drugs or alcohol;

- (l) that the person has an antisocial personality;
 - (m) that the person has a particular economic or social status or is a member of a particular cultural or racial group, –
and for paragraph (k) does not prevent the serious temporary or permanent physiological, biochemical or psychological effects of drugs or alcohol taking from being regarded as an indication that a person has a mental disorder;
- “mental health care professional” means any health care professional nominated by the Minister in writing to be a mental health care professional and includes the Chief Mental Health Officer; and any person nominated to be a mental health care professional under this Act shall, when exercising any function or power under this Act, do so under the direction and control of the Chief Mental Health Officer;
- “mental Incapacity” in relation to a person, means intellectual impairment, mental disorder, medical disorder, brain injury, physical disability or dementia such that, by reason of the impairment, illness, disorder, injury, disability or dementia, the person is unable to make or communicate reasonable judgments in respect of all or any of the matters relating to the person or the person’s circumstances or estate;
- “Minister” means the Minister responsible for this Act;
- “Ministry” means the Ministry responsible for this Act from time to time;
- “Registrar” means the Registrar of the District Court;
- “Samoa” means the Independent State of Samoa;
- “treatment centre” means a premise, place or service designated by the Minister by Notice to provide secure care, support, treatment or protection for a person subject to an Inpatient Treatment Order.

3. Objectives – The Minister, Chief Executive Officer, Ministry, the Court and any health care professional shall, in performing or exercising any function, power, duty or responsibility under this Act and subject to available resources shall have regard to the following objectives and principles:

- (a) to ensure that persons with a mental disorder receive the best possible care, support and, where required, treatment and protection;
- (b) to support families and communities where they are providing care and support for a person with a mental disorder;
- (c) to minimise the restrictions upon the liberty of persons with a mental disorder and interference in their rights, dignity and self-respect, so far as is consistent with their proper care, support, treatment and protection and the protection of other persons;
- (d) to work towards ameliorating the adverse effects of mental disorder upon persons with a mental disorder, their families and communities;
- (e) to rationalise and co-ordinate services for persons with a mental disorder, their families and communities;
- (f) to assist and encourage non-government agencies and organizations to provide care, support and other services for persons with a mental disorder, their families and communities;
- (g) to assist and encourage the development of services designed to reduce the incidence and adverse impact of mental disorder in the community;
- (h) to promote informed public opinion, discussion and understanding of mental disorder;
- (i) to eliminate discrimination against, and abuse, mistreatment and neglect of persons with a mental disorder;
- (j) to promote a high standard of training of those responsible for the care, support, treatment and protection of persons with a mental disorder;
- (k) to promote research into the problems of mental disorder.

4. Application – This Act binds the Government.

PART 2
VOLUNTARY CARE, SUPPORT AND TREATMENT
WITHIN FAMILY AND COMMUNITY

5. Voluntary care, support and treatment – (1) In providing care, support and, where required, treatment and protection for persons with a mental disorder, the Minister, Chief Executive Officer, the Ministry, the Court, health care professionals and all other persons providing care, support, treatment or protection shall, where possible, give preference to the provision of the care, support, treatment or protection:

- (a) on a voluntary basis; and
- (b) within the family and community in which the person lives.

(2) In this Act “voluntary basis” means that the person with a mental disorder is provided with care, support, treatment and protection only:

- (a) where the person is given information and explanations about the care, support, treatment or protection in a language, style and manner which the person is most likely to understand; and
- (b) where options and choices of care, support, treatment or protection are available, information about the options and choices and the right to choose which options and choices are given to the person; and
- (c) where the person is competent to freely and voluntarily agree to or refuse care, support, treatment, or protection and the person’s agreement or refusal is respected and given effect to without unreasonable pressure or influence.

6. Preference for care, support and treatment within family and community – Unless:

- (a) the person with a mental disorder cannot be cared for or supported or treated or protected within the family or community in which the person lives; or
- (b) the protection of other persons requires otherwise,–

all persons providing the care, support, treatment or protection of the person shall do so within that family or community.

PART 3
INVOLUNTARY INITIAL ASSESSMENT

7. Criteria for Involuntary Initial Assessment – For the purposes of this Part, the criteria for involuntary initial assessment are that:

- (a) the person appears to have a mental disorder; and
- (b) the person appears unwilling or unable to be assessed on a voluntary basis; and
- (c) the person appears to require care, support, treatment or protection—
 - (i) in the interests of the person; or
 - (ii) to protect another person or persons.

8. Involuntary Initial Assessment – (1) Where a concerned person believes in good faith that a person meets the criteria under section 7, the concerned person may:

- (a) arrange for the person to be assessed by a health care professional on a voluntary basis in accordance with the provisions of section 9 in the person's place of residence or other place the person is willing to attend; or
- (b) if the person is—
 - (i) unable or unwilling to be assessed on a voluntary basis under paragraph (a); or
 - (ii) a health care professional is un-available or unable to assess the person at the person's place of residence or other place the person is willing to attend, arrange for the person to be assessed without the person's consent at the person's place of residence or at a health care facility service or some other suitable place.

(2) Despite any other law and subject to subsection (3), for the purposes of an assessment under subsection (1) a health care professional or member of the Police Service may:

- (a) apprehend and transport the person to the proposed place of assessment; or
- (b) request a member or members of the Police Service to provide reasonable assistance with the

apprehension, transportation, restraint and assessment of the person; or

(c) under direction from a health care professional, restrain the person.

(3) Any apprehension, transportation or restraint under subsection (2) shall be carried out humanely and with the minimum of force required in the circumstances.

(4) An assessment under this Part may include:

(a) detention of the person being assessed for up to a maximum period of 72 hours commencing from the time that the person first presents to the health care professional for assessment, or such other maximum period of time as may be prescribed in regulations from time to time; and

(b) such health care treatment (including but not limited to treatment for a physical or mental condition or disorder) that the health care professional undertaking the assessment believes the person urgently requires to preserve the person's life, health or safety or to protect another person or persons.

9. Action following assessment – Following an assessment under this Part, a health care professional shall:

(a) if the person being assessed fails to meet the criteria under section 10, release the person and arrange for the person to be transported to the person's place of residence or other place reasonably nominated by the person;

(b) if the person being assessed meets the criteria under section 10, make a Community Treatment Order for the person under Part4;

(c) if the person being assessed meets the criteria under section 13, make an Inpatient Treatment Order in accordance with the provisions of Part5;

(d) if a person is released under subsection (1) and the health care professional forms the opinion that the person requires care, support, treatment or protection in the interests of the person or for the protection of another person or persons, the health care professional shall arrange for the care,

support treatment or protection of the person on a voluntary basis.

PART 4 COMMUNITY TREATMENT ORDER

10. Criteria for a Community Treatment Order – The criteria for a Community Treatment Order are that:

- (a) the person has a mental disorder; and
- (b) the person is unwilling or unable to receive care, support, treatment or protection for the mental disorder on a voluntary basis; and
- (c) as a result of the mental disorder the person requires care, support, treatment or protection—
 - (i) in the interests of the person; or
 - (ii) to protect another person or persons; and
- (d) the care, support, treatment or protection required for the person under paragraph (c)—
 - (i) is available; and
 - (ii) cannot be provided in a less restrictive manner than under a Community Treatment Order.

11. Community Treatment Order – (1) A Community Treatment Order is an order made by a health care professional requiring the person subject to the order to:

- (a) receive the care, support, treatment or protection which any duly directed health care professional may require from time to time; and
- (b) reside at a specified place; and
- (c) refrain from using or consuming alcohol, specified drugs or other substances; and
- (d) attend at a nominated medical, health care or rehabilitation service, therapist, place of therapy, educational institution, vocational course or activity or other service, body or person; and
- (e) comply with any other terms and conditions as a duly directed health care professional may require from time to time.

(2) A Community Treatment Order may be issued for a period not exceeding 12 months and, prior to the expiry of the

order and following a further assessment of the person, may be renewed for a further period or periods not exceeding 12 months.

(3) A Community Treatment Order shall be in a form approved by the Chief Executive Officer by Notice.

(4) Subject to subsection (2) and following an assessment of the person subject to the Order, a duly directed mental health care professional may vary the duration, terms and conditions of a Community Treatment Order.

(5) A Community Treatment Order shall be revoked by any duly directed mental health care professional where:

- (a) the person subject to the order has been examined by such mental health care professional; and
- (b) the mental health care professional believes that the person no longer meets the criteria under section 10.

(6) Subject to subsection (8) and despite anything in this section, any Community Treatment Order made by a health care professional must be approved by a mental health care professional within 24 hours of the Community Treatment Order being made.

(7) Where a Community Treatment Order is not approved by a mental health care professional within 24 hours of it being made, such Community Treatment Order shall be deemed to have lapsed after 24 hours have lapsed from the time that the order was made.

(8) Despite anything in this section, the Chief Mental Health Officer may revoke or vary any Community Treatment Order where the Chief Mental Health Officer considers it appropriate to do so in the circumstances.

12. Compliance with a Community Treatment Order –

(1) A person subject to a Community Treatment Order:

- (a) shall make every possible attempt to comply with the order; and
- (b) may be given care, support, treatment or protection notwithstanding the absence or refusal of consent by the person.

(2) Where a person subject to a Community Treatment Order is unable or unwilling to comply with the order, a health care professional may require the person subject to the order to attend a nominated health care professional or place for further assessment.

(3) In acting under subsection (2), the health care professional may request a police officer or other person to apprehend and transport the person to the nominated health care professional and place.

PART 5 INPATIENT TREATMENT ORDER

13. Criteria for an Inpatient Treatment Order – The criteria for an Inpatient Treatment Order are that:

- (a) the person has a mental disorder; and
- (b) the person is unwilling or unable to receive care, support, treatment or protection for the mental disorder on a voluntary basis; and
- (c) as a result of the mental disorder the person requires care, support, treatment or protection—
 - (i) in the interests of the person; or
 - (ii) to protect another person or persons; and
- (d) the care, support, treatment or protection required under paragraph (c)—
 - (i) is available; and
 - (ii) cannot be provided in a less restrictive manner (including but not limited to a Community Treatment Order) than under an Inpatient Treatment Order.

14. Inpatient Treatment Order – (1) An Inpatient Treatment Order is an order made by a health care professional requiring the person subject to the order to:

- (a) receive the care, support, treatment or protection which any duly directed health care professional may require from time to time;
- (b) subject to this Part, be detained and to remain an inpatient at a Treatment Centre nominated in the order or such other Treatment Centre nominated by a duly directed health care professional;
- (c) attend at a nominated medical, health care or rehabilitation service, therapist, place of therapy, educational institution, vocational course or activity or other service, body or person; and

(d) comply with such other terms and conditions as the duly directed health care professional may require from time to time.

(2) An Inpatient Treatment Order may be issued for a period not exceeding 6 weeks and, prior to the expiry of the order and, following a further examination of the person by a mental health care professional, may be renewed for a further period or periods not exceeding 6 weeks.

(3) An Inpatient Treatment Order is to be in a form approved by the Chief Executive Officer by Notice.

(4) Subject to subsection (2) and following an assessment of the person subject to the order, a mental health care professional may vary the duration, terms and conditions of the Inpatient Treatment Order.

(5) An Inpatient Treatment Order shall be revoked by any duly directed mental health care professional where:

- (a) the person subject to the order has been examined by such mental health care professional; and
- (b) the mental health care professional believes that the person no longer meets the criteria under section 13.

(6) A health care professional who makes an Inpatient Treatment Order shall file a copy of the order with the Registrar within 2 working days of the order being made.

(7) Subject to subsection (9) and despite anything in this section, any Inpatient Treatment Order made by a health care profession must be approved by a mental health care professional within 24 hours of the Inpatient Treatment Order being made.

(8) Where an Inpatient Treatment Order is not approved by a mental health care professional within 24 hours of it being made, such Inpatient Treatment Order is taken to have lapsed after 24 hours have lapsed from the time that the order was made.

(9) Despite anything in this section, the Chief Mental Health Officer or such other person as may be nominated in writing by the Chief Mental Health Officer from time to time, may revoke or vary any Inpatient Treatment Order where the Chief Mental Health Officer considers it appropriate to do so in the circumstances.

15. Compliance with an Inpatient Treatment Order – A person subject to an Inpatient Treatment Order:

- (a) shall make every possible attempt to comply with the order; and
- (b) may be given care, support, treatment or protection notwithstanding the absence or refusal of consent by the person.

16. Leave of absence – (1) A duly directed mental health care professional may authorise the person to leave a Treatment Centre for such purposes for a period not exceeding 5 calendar days.

(2) Leave of absence may be granted subject to such terms and conditions as the mental health care professional thinks fit.

(3) The mental health care professional who granted leave of absence or other duly directed mental health care professional has an absolute discretion to cancel any leave of absence granted under this section.

(4) Despite anything in this section, the Chief Mental Health Officer may revoke or vary any conditions of leave of absence granted under this section where the Chief Mental Health Officer considers it appropriate to do so in the circumstances.

17. Return of person subject to an Inpatient Treatment Order – Despite any other law, where a person subject to an Inpatient Treatment Order:

- (a) is absent from the Treatment Centre without the consent of a duly directed health care professional; or
- (b) fails to return to the Treatment Centre—
 - (i) within the period of any leave of absence granted under section 16; or
 - (ii) immediately upon any cancellation of leave of absence granted under section 16,—

a health care professional or any member of the Police Service, at the request of the health care professional, may apprehend and return the person to the Treatment Centre, using only such force as is reasonably and humanely necessary.

18 Offences concerning removal of a person from a Treatment Centre – A person who, without lawful excuse:

- (a) removes or attempts to remove a person subject to an Inpatient Treatment Order from a Treatment Centre; or

- (b) assists or attempts to assist a person subject to an Inpatient Treatment Order to leave a Treatment Centre; or
- (c) harbours or attempts to harbour a person subject to an Inpatient Treatment Order where such person is absent from the Treatment Centre without the permission of a health care professional; or
- (d) hinders or attempts to hinder a health care professional or member of the Police Service in exercising any power or authority under section 17,—

commits an offence and is liable to a fine not exceeding 10 penalty units or to imprisonment not exceeding 3 months or both.

**PART 6
PERSON'S RIGHTS AND REVIEWS**

19. Person to be given statement and explanation of rights, the order, and requirements of, and reasons for, the order – Where a person is made subject to a Community Treatment Order or Inpatient Treatment Order, the health care professional who made the order shall give or cause to be given to the person:

- (a) a copy of the order; and
- (b) a written statement of the person's rights in Samoan and English in a form which may be prescribed in regulations; and
- (c) a copy of the relevant application for review as may be prescribed in regulations; and
- (d) subject to available resources, an explanation in a language, style and manner which the person is most likely to understand of—
 - (i) the order; and
 - ii) the reasons why the order has been made;
 - (iii) what the order requires of the person; and
 - (iv) the person's rights under this Part.

20. Review of Community Treatment Order – (1) A person subject to a Community Treatment Order, or any other person who satisfies the Court that he or she has a proper interest

in the matter, may, with the leave of the Court, apply during the currency of the order to the Court to review the order.

(2) An application for a review under subsection (1) shall be:

- (a) in a form prescribed by regulations;
- (b) processed by a health care professional or mental health care professional who becomes aware of a request for a review by the person subject to the order or by any other person with a *bona fide* interest in the person's welfare;
- (c) filed with the Registrar.

(3) In granting leave to hear a review under this section, the Court shall have regard to all circumstances of the applicant's case, including but not limited to:

- (a) the number of applications that the person has made for a review during the currency of the Community Treatment Order; and
- (b) the number of hearings already held for the person subject to the Community Treatment Order.

(4) Upon hearing a review, the Court shall revoke the order unless the Court is satisfied that:

- (a) the person subject to the order continues to meet the criteria under section 10; and
- (b) the order continues to be required in all of the circumstances.

(5) A person, being a healthcare professional or a mental healthcare profession, who is aware of a request for a review by the person subject to the order and who without lawful or reasonable excuse, fails to process an application for review as required under subsection (2)(b) commits an offence.

(6) Despite anything in this section, a person applying for a review under this section may have only one complete hearing of the matter unless the Court decides that there are exceptional circumstances in which a further hearing of an application for review under this section should be re-considered by it.

(7) In this section, "processed" means all necessary assistance required by a person subject to a Community Treatment Order to complete an application for review required under this section, and includes assistance with the filing of the application with the Court and, subject to available resources, transportation to and from the Court facilities during the time of the hearing of the review.

21. Review of Inpatient Treatment Order – (1) A person subject to an Inpatient Treatment Order, or any other person who satisfies the Court that he or she has a proper interest in the matter, may, with the leave of the Court, apply during the currency of the order to the Court to review the order.

(2) An application for a review under subsection (1) shall be:

- (a) in a form as may be prescribed;
- (b) processed by a health care professional or mental health care professional who becomes aware of a request for a review by the person subject to the order or by any other person with a bona fide interest in the persons welfare; and
- (c) filed with the Registrar.

(3) In granting leave to hear a review under this section, the Court shall have regard to all circumstances of the applicant's case, including but not limited to:

- (a) the number of applications that the person has made for a review during the currency of the Community Treatment Order; and
- (b) the number of hearings already held for the person subject to the Inpatient Treatment Order.

(4) Following receipt by the Registrar of an application under subsection (1) within 14 days of the making of an Inpatient Treatment Order and provided that leave is granted, the Court shall review the order.

(5) Upon hearing a review, the Court shall revoke the order unless the Court is satisfied that:

- (a) the person subject to the order continues to meet the criteria under section 13; and
- (b) the order continues to be required in all of the circumstances.

(6) A person, being a health care professional or mental health care professional, who is aware of a request for a review by the person subject to such order and who, without lawful or reasonable excuse, fails to process an application for review as required under subsection (2)(b) commits an offence.

(7) Despite anything in this section, any person applying for a review under this section may have only one complete hearing of the matter unless the Court decides that there are exceptional

circumstances in which a further hearing of an application for review under this section should be reconsidered by it.

(8) In this section, “processed” means all necessary assistance required by a person subject to an Inpatient Treatment Order to complete an application for review required under this section and includes assistance with the filing of the application with the Court and, subject to available resources, transportation to and from the Court facilities during the time of the hearing of the review.

22. Powers and procedures of the Court – (1) In conducting a review under this Part, the Court:

- (a) has all of the powers which the Court has concerning the conduct of any civil proceedings; and
- (b) shall act according to equity and good conscience without regard to technicalities or legal forms; and
- (c) is bound by the rules of natural justice; and
- (d) shall conduct proceedings in the least formal manner possible in the circumstances; and
- (e) is not bound by rules or practice as to evidence but may inform itself in relation to any matter in such manner as the Court thinks fit; and
- (f) may sit in any suitable place or venue.

(2) Evidence before the Court in any review conducted under this Part cannot be used in any civil or criminal proceedings other than proceedings for an offence against this Act or for contempt of court or perjury.

PART 7

ADMINISTRATION OF PROPERTY, ETC

23. Criteria for an Administration Order – The criteria for an Administration Order are that:

- (a) the person has a mental disorder or mental incapacity; and
- (b) as a result of the mental disorder or mental incapacity the person is unable to make reasonable judgments in respect to all or any part of the person’s estate by reason of the disorder or incapacity; and

- (c) the person is in need of an administrator to administer the whole or part of the person's estate.

24. Administration Order – (1) If on the application to the Court by a health care professional, or any other person who satisfies the Court that he or she has a proper interest in the matter, it appears to the Court that the person subject to the application meets the criteria under section 23, the Court may make an Administration Order for the person under this Part.

(2) An Administration Order:

- (a) is an order made by the Court to appoint the Public Trustee or other suitable person as Administrator to administer either the whole or part of the person's estate;
- (b) may be made for a period not exceeding 1 year unless the court is of the opinion that this time period should be extended;
- (c) may be made subject to terms and conditions as the Court thinks fit; and
- (d) shall include any reporting and accountability requirements for the appointed Administrator as the Court may determine.

25. Powers and duties of Administrator – Subject to the Administration Order, an Administrator shall:

- (a) act in the best interests of the person subject to the order;
- (b) take into account as far as is possible the wishes of the person subject to the order, where such wish was made known by the person before the person suffered the mental disorder;
- (c) take possession and care of, recover, collect, preserve and administer the property and estate of the person subject to the order and generally manage the affairs of the person (including but not limited to financial and legal affairs) and exercise all rights (statutory or otherwise) which the person might exercise if the person had legal capacity;
- (d) in the name and on behalf of the person generally do all acts and exercise all powers with respect to the estate of the person as effectually and in the same

- manner as the person could have done if the person were not under a legal disability; and
- (e) have any additional powers and duties over the person's estate as the Court may give the Administrator.
- (2) This Act does not confer on an Administrator:
- (a) the power to execute a will in the name of the person subject to an Administration Order;
 - (b) the power to legally bind a person to an agreement relating to the marriage or divorce of the person subject to an Administration Order without a specific Court order to do so;
 - (c) the power to provide consent to the adoption of the person subject to an Administration Order by another person without a specific Court order to do so; or
 - (d) the power to provide consent to the adoption of any children of the person subject to an Administration Order by another person without a specific Court order to do so.

26. Restrictions on powers of person subject to an Administration Order – (1) Where the Court has made an Administration Order the person whilst subject to the order or until the Court revokes that order is, to the extent that the person's estate is under the control of the Administrator, deemed incapable of dealing with, transferring, alienating or charging their money or property or any part thereof or becoming liable under any contract without an order of the Court or the written consent of the Administrator.

(2) A dealing, transfer, alienation or charge by any person in respect of any part of the estate which is under the control of the Administrator is void, and the money or property the subject of the dealing, transfer, alienation or charge is recoverable by the Administrator in any court of competent jurisdiction.

(3) For the purpose of this section, the acceptance of payment of the whole or any part of a debt or an agreement to forego the recovery of a debt is taken to be a dealing with property.

27. Remuneration for Administrator – Despite any other law, an Administrator shall not receive any fee, remuneration or

other reward from the estate of a person subject to an Administration Order or from any other person for acting as Administrator unless the Court otherwise specifies in the Administration Order.

28. Review of Administration Order – (1) The Court shall conduct a review of an Administration Order prior to the expiry of the order and may conduct a review at any time on the Court’s own initiative or on the application of the person subject to the order or any other person who satisfies the Court that they have a proper interest in the matter.

- (2)** Upon completing a review under this section the Court:
- (a) shall revoke the Administration Order unless the Court is satisfied that—
 - (i) the person subject to the order continues to meet the criteria under section 23; and
 - (ii) the order continues to be required in all of the circumstances; and
 - (b) if the order is not revoked under paragraph (a), the Court may amend, vary, continue or replace the order subject to any conditions or requirements the Court thinks fit:
PROVIDED THAT any further Administration Order made by the Court—
 - (i) shall be made for a further period not exceeding 3 years; and
 - (ii) is subject to review under this section.

29. Administrator may apply to the Court for directions and other powers – (1) An Administrator may apply to the Court for:

- (a) directions as to any matter concerning the estate of the person subject to the Administration Order or concerning any other matter touching upon the Administration Order; or
 - (b) such additional or other powers as the Administrator may require.
- (2)** Upon hearing an application under subsection (1), the Court may give any directions or make any orders as the Court deems fit.

(3) An Administrator, subject to any direction or order made by the Court under this section, shall comply accordingly.

30. Conduct of Court under this Part – In conducting any hearing or review under this Part, the Court shall be subject to section 22.

PART 8 MISCELLANEOUS

31. Court fees – Despite any other law, the Court shall not require or impose any fee or other charge concerning the filing of any application made to the Court or for any hearing conducted by the Court under this Act.

32. Keeping and production of records – A health care professional undertaking any function or exercising any power under this Act shall keep such records as the Chief Executive Officer may require by Notice and shall provide the records for inspection and copying as the Chief Executive Officer may require.

33. Requests made to Police – Where any provision in this Act provides for a request to be made to the Police, such request shall be acted upon by the Police in accordance with the tenor of the request made:

PROVIDED THAT a person making the request has the power under this Act to make such request.

34. Cost for review under Act – For the avoidance of doubt, all reasonable costs incurred in the processing of any review of any order made by any healthcare professional or mental health care professional under this Act shall be borne by the Ministry.

35. Cancellation of review under Act – (1) Subject to subsection (2), where a person subject to a Community Treatment Order or Inpatient Treatment Order has applied to the Court for a review of such order, the person may, for any reason and at any time before the hearing of the review by the Court, by notice in writing, request that the hearing of the review be

cancelled by delivering such written notice to the Court before the hearing, of the matter.

(2) Unless the Court determines otherwise, any written notice issued under subsection (1) is taken to be sufficient notice for the cancellation of any application of review under this Act.

36. Offences – (1) A person who wilfully makes any false or misleading statement in any matter under or concerning this Act commits an offence punishable by a fine not exceeding 10 penalty units or imprisonment not exceeding 3 months or both.

(2) A person:

- (a) responsible for or having the oversight of or caring for or having control of any person with a mental disorder or mental incapacity; or
- (b) employed or working in any Treatment Centre,—
who assaults or mistreats or neglects any person with a mental disorder or mental incapacity commits an offence punishable by a fine not exceeding 100 penalty units or imprisonment not exceeding 2 years or both.

(3) A person who breaches any provision of this Act or regulations commits an offence and is liable, if no penalty is expressly provided, to a fine not exceeding 10 penalty units.

37. Regulations – (1) The Head of State, acting on the advice of Cabinet, may make regulations for such matters as are contemplated by necessary, or convenient or for giving full effect to the provisions of this Act and for the due administration thereof.

(2) Without limiting the power conferred under subsection (1), regulations may be made concerning:

- (a) the exercise of any power or duty under this Act;
- (b) the establishment, management and operation of treatment centres; and
- (c) the provision of care, support, treatment or protection of persons with a mental disorder or mental incapacity.

38. Repeal – The Mental Health Ordinance 1961 is repealed.

39. Savings and Transitional provisions – (1) All references in law or any document or act of authority to the

Mental Health Ordinance 1961 shall be read as referring to this Act unless the context requires otherwise.

(2) Insofar as they are not inconsistent with the provisions of this Act, any regulation, order, document and act of authority under or concerning the Mental Health Ordinance 1961, so far as they are subsisting or in force at the time of the commencement of this Act, shall continue and have effect under the corresponding provisions of the Act until such time as they are altered, amended or cancelled, as the case may require, under the provisions of this Act and, where there is any question or concern as to what is a corresponding provision of this Act, the Minister may by notice determine what is to be a corresponding provision.

(3) Despite the provisions of this Act, all applications, prosecutions and other matters arising out of or under the provisions of the Mental Health Ordinance 1961 which are not determined or otherwise dealt with under such provisions at the date of the commencement of this Act shall be determined or otherwise dealt with under the corresponding provisions of this Act with such modifications, adaptations and alterations as the Minister may determine by notice in writing from time to time.

(4) An office, official position or advisory body created or established under the Mental Health Ordinance 1961 and in existence at the date of commencement and in existence under the corresponding provisions of this Act until such time as they are altered, amended, cancelled or terminated under the provisions of this Act.

(5) Despite the other provisions of this Act, where this Act does not provide or provides insufficient or inadequate provision for the transition from the Mental Health Ordinance 1961 to this Act, the Minister, by notice in writing may make such provisions as the Minister deems necessary in order for all matters under or concerning the Mental Health Ordinance 1961 and this Act to be properly and effectively determined or otherwise dealt with under the provisions of this Act.

REVISION NOTES 2008 – 2020/3 March 2021

This is the official version of this Act as at 3 March 2021.

This Act has been revised by the Legislative Drafting Division from 2008 to 2020/3 March 2021 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa.
- (b) Insertion of the commencement date
- (c) Other minor editing has been done in accordance with the lawful powers of the Attorney General, where appropriate:
 - (i) “Every” changed to “a/an”
 - (ii) Present tense drafting style
 - “shall be deemed” changed to “is/are taken”
 - “shall have” changed to “has”
 - “from time to time” removed
 - (iii) Offence provisions: “shall be guilty” changed to “commits”
 - (iv) Removal/replacement of obsolete and archaic terms with plain language
 - “notwithstanding” changed to “despite”
 - “in accordance with the provisions of” changed to “under”
 - “in the event that” changed to “if”
 - (v) Removal of superfluous terms: “the provisions of”
 - (vi) Adopting practice of placing “and” or “or” at the end of each paragraph where appropriate
 - (vii) Parts numbered in roman numerals changed to decimal
 - (viii) “etc.” deleted and replaced with complete sentences.

There were no amendments made to this Act since the publication of the *Consolidated and Revised Statutes of Samoa 2007*.

*This Act is administered by
the Ministry of Health.*