

Chapter 226.  
***Public Health Act 1973.***

Certified on: / /20 .



INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 226.

***Public Health Act 1973.***

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

*Public Health Act 1973,*

Being an Act relating to public health and to mental disorders, and for related purposes.

**PART I. – PRELIMINARY.**

**1. INTERPRETATION.**

In this Act, unless the contrary intention appears–

“**child**” means a person under the age of 16 years;

“**drug**” includes–

- (a) any article used for or in the composition or preparation of medicine for internal or external consumption or use by man; and
- (b) a disinfectant, germicide, antiseptic, preservative, deodorant, anaesthetic, narcotic, soap, cosmetic, dusting powder, essence, unguent and any other toilet article; and
- (c) tobacco;

“**dwelling**” means any house, room, vessel or other structure used by a human being for sleeping in, or in which a human being dwells;

“**food**” includes–

- (a) any article that–
  - (i) is used for food or drink by man; or
  - (ii) enters into or is used in the composition or preparation of any such article; and
- (b) any infant food, flavoring matter, colouring matter, essence, condiment, spice or confectionery;

“**inspector**” means an Inspector of Health;

“**Inspector of Health**” means an Inspector of Health appointed under Section 8;

“**Local Medical Authority**” means a Local Medical Authority appointed under the *National Health Administration Act 1997*;

“**occupier**”, otherwise than in Parts III, IV, V, VI, VII and VIII, includes—

- (a) any person in occupation of premises, without regard to the title under which he occupies; and
- (b) where premises are subdivided and let to lodgers or various tenants—the person receiving the rent payable by the lodgers or tenants, whether on his own account or as agent for any person entitled to the rent;

“**owner**”, otherwise than in Parts III, IV, V, VI, VII and VIII, includes—

- (a) the person for the time being entitled to receive the rent of the premises in connection with which the expression is used—
  - (i) on his own account; or
  - (ii) as manager for, agent of, or trustee for any other person; and
- (b) the person who would be entitled to receive the rent if the premises were let at a rent; and
- (c) a lessee or licensee under a lease or licence granted or approved under—
  - (i) the *Land Act 1996*; or
  - (ii) the *Mining Act 1992*;

“**premises**”, otherwise than in Parts IV, V, VI, VII and VIII, includes—

- (a) messuages, buildings, lands and hereditaments of every tenure; and
- (b) any vehicle, conveyance or vessel;

“**the regulations**” means any regulations made under this Act;

“**this Act**” includes the regulations.

## 12. APPLICATION IN RELATION TO PUBLIC BUILDINGS.

(1) Premises owned or occupied by the State or by public bodies are subject to this Act in the same manner as if they were owned or occupied privately.

<sup>1</sup> Section 1 (definition of “Local Medical Authority”) repealed and replaced by *Public Health (Amendment) Act 1998* (No. 22 of 1998), s1.

(2) The officer having the use or control of any premises referred to in Subsection (1) is liable for any breach of this Act as if he were the actual owner or occupier of the premises.

(3) Where, by virtue of Subsection (2), an officer is charged with an offence against this Act, it is a defence if he proves that, within the resources made available to him and the authority vested in him, he took all reasonable steps to ensure compliance with this Act.

**PART II. – ADMINISTRATION.****3. THE MINISTER.**

In addition to any other powers conferred on him by this Act, the Minister has, throughout the country, the powers conferred by this Act on a Local Medical Authority or on an inspector.

**4 - 5<sup>2</sup>. [REPEALED.]****6. POWERS OF LOCAL MEDICAL AUTHORITIES.**

In addition to any powers conferred on him by this Act, a Local Medical Authority has all the powers conferred by this Act on an inspector.

**7. ASSISTANT LOCAL MEDICAL AUTHORITIES.**

(1)<sup>3</sup> <sup>4</sup>The Minister may, by written notice, appoint–

- (a) a medical practitioner; or
- (b) an officer of the Public Service; or
- (c) an officer of a Local-level Government or Local-level Government Special Purposes Authority,

to be an Assistant Local Medical Authority.

(2)<sup>5</sup> <sup>6</sup>An Assistant Local Medical Authority appointed under Subsection (1)–

- (a) is answerable to, and subject to the directions of, the Local Medical Authority; and
- (b) has such powers and functions as are delegated to him under this Act by the Local Medical Authority.

**8. INSPECTORS.**

The Minister may appoint a person to be an inspector for the purposes of this Act.

**9. DECLARATION OF RESIDENTIAL AREAS.**

The Minister may, by notice in the National Gazette, declare a part of a town to be a residential area for the purposes of this Act.

<sup>2</sup> Section 1 (definition of “Local Medical Authority”) repealed and replaced by *Public Health (Amendment) Act 1998* (No. 22 of 1998), s1.

<sup>3</sup> Section 7(1) amended by *Public Health (Amendment) Act 1998* (No. 22 of 1998), s4(a).

<sup>4</sup> Section 7(1) amended by *Public Health (Amendment) Act 1998* (No. 22 of 1998), s4(a).

<sup>5</sup> Section 7(2) inserted by *Public Health (Amendment) Act 1998* (No. 22 of 1998), s4(b).

<sup>6</sup> Section 7(2) inserted by *Public Health (Amendment) Act 1998* (No. 22 of 1998), s4(b).

**10. POWERS AND DUTIES OF INSPECTORS, ETC.**

In addition to any other powers or duties expressly conferred or imposed on him by this Act, an inspector, or a person authorized in writing by the Minister, may exercise such other powers and perform such other duties as are prescribed.

**11. POWER OF ENTRY, ETC.**

For the purpose of giving effect to this Act, a Local Medical Authority or an inspector—

- (a) may enter and examine any premises—
  - (i) at any time during which business is carried on, or is usually carried on, on the premises; and
  - (ii) at such other times as are prescribed; and
- (b) may inspect and seize any article on the premises.

**12. BRIBERY, OBSTRUCTION, ETC.**

(1) A person who—

- (a) gives, offers or procures to be given to an officer or person a bribe, recompense or reward to induce him in any way to neglect or not to perform his duty under this Act; or
- (b) makes a collusive agreement with an officer or person to neglect or not to perform his duty under this Act; or
- (c) by threats, demands or promises, attempts improperly to influence a person in the performance of his duty under this Act; or
- (d) assaults, intimidates or by force molests or obstructs a person in the performance of his duty under this Act,

is guilty of an offence.

Penalty: A fine not exceeding K200.00 or imprisonment for a term not exceeding six months, or both.

**PART III. – BLOOD TRANSFUSIONS.****13. BLOOD TRANSFUSIONS WITHOUT CONSENT.**

(1) A medical practitioner may perform the operation of transfusion of human blood on a minor without the consent of a parent or guardian or any other person where—

- (a) the parent, guardian or other person—
  - (i) when requested to give consent, fails or refuses to do so; or
  - (ii) cannot, after reasonable inquiry, be found, or it is impracticable in the circumstances to obtain the consent; and
- (b) the medical practitioner and, where practicable, at least one other medical practitioner thinks that the operation—
  - (i) is a reasonable and proper one to be performed for the condition from which the minor is suffering; and
  - (ii) is essential in order to save his life; and
- (c) the medical practitioner—
  - (i) has had previous experience in performing the operation of transfusion of human blood; and
  - (ii) before commencing the operation assures himself that the blood to be transfused is compatible with that of the minor.

(2) Where an operation of transfusion of human blood has been performed on a minor under and in accordance with Subsection (1), it shall be deemed to have been performed with all consents otherwise required by law.

(3) The powers conferred on a medical practitioner by Subsection (1) are in addition to and not in derogation of any other powers of a medical practitioner.

**PART IV. – INFECTIOUS DISEASES.**

***Division 1.***

***Preliminary.***

**14. INTERPRETATION OF PART IV.**

In this Part, unless the contrary intention appears–

“**building**” includes any building or structure, whether temporary or permanent;

“**infectious disease**” means–

- (a) any disease specified in Schedule 2; or
- (b) any disease declared under Section 15 to be an infectious disease.

**15. INFECTIOUS DISEASES.**

The Minister may, by notice in the National Gazette, declare a disease to be an infectious disease for the purposes of this Part.

***Division 2.***

***Reports of Infectious Disease, etc.***

**16. URGENT REPORTS OF CERTAIN DISEASES.**

Immediately on any case of anthrax, cholera, amoebic dysentery, plague, yellow fever or small-pox coming to the knowledge of the Local Medical Authority, he must–

- (a) report the case to the Departmental Head by radio or telephone, or by the quickest practicable method; and
- (b) forward a report in the prescribed form.

Penalty: A fine not exceeding K100.00 or imprisonment for a term not exceeding six months, or both.

**17. REPORTS BY MEDICAL PRACTITIONERS AND MEDICAL ASSISTANTS.**

Immediately any case of infectious disease comes to his knowledge, a medical practitioner or medical assistant must report the case, in the prescribed form, to the Local Medical Authority.

Penalty: A fine not exceeding K40.00.

**18. REPORTS BY OFFICERS IN CHARGE OF CERTAIN INSTITUTIONS.**

(1) In this section, “**institution**” means a hospital or institution, whether public or private.

(2) Immediately on any case of infectious disease or suspected infectious disease being discovered amongst the inmates of an educational establishment, mission station, mission school or other institution, or amongst the persons employed or residing at an institution or plantation, the person in charge must report the case, in the prescribed form, to the Local Medical Authority.

Penalty: A fine not exceeding K40.00.

#### **19. REPORTS BY EMPLOYERS.**

Immediately on any case of infectious disease or suspected infectious disease being discovered amongst his employees, an employer must report the case, in the prescribed form, to the Local Medical Authority.

Penalty: A fine not exceeding K40.00.

#### **20. REPORTS BY GOVERNMENT OFFICERS.**

(1) Subject to Subsection (2), immediately on any case of infectious disease coming to the notice of an officer, he must report the case to the Local Medical Authority.

Penalty: A fine not exceeding K40.00.

(2) Where the officer has reasonable cause to believe that the case—

(a) is being attended to by a medical practitioner or by a medical assistant;  
or

(b) has been duly reported to a Local Medical Authority,

he is not required to make a report under Subsection (1).

#### **21. ADVICE TO SCHOOLS.**

Where an infectious disease occurs in a house where a child attending at a school resides, the parent or guardian of the child must, within 24 hours, give to the head teacher of the school notice of the occurrence of the disease.

Penalty: A fine not exceeding K40.00.

#### **22. ADVICE TO HOUSEHOLDERS.**

A medical practitioner who is in attendance at a house where there is any person suffering from an infectious disease must furnish to the occupier of the house a certificate to the effect that there is a person suffering from an infectious disease in the house.

Penalty: A fine not exceeding K40.00.

***Division 3.***

***General Provisions for the Control of Infectious Diseases.***

***Subdivision A. – Powers of Local Medical Authorities, etc.***

**23. DISINFECTION OF BUILDINGS, ETC.**

If the Local Medical Authority is of the opinion that the cleansing and disinfection of a building or part of a building, or of any articles in a building likely to retain infection, would tend to prevent or check infectious disease, he may—

- (a) give written notice to the owner or occupier of the building, or the part of a building, requiring him to cleanse or disinfect the building or part, or any articles in the building, to the satisfaction of the Local Medical Authority, within a time specified in the notice; and
- (b) order, and supervise, the use of disinfectants; and
- (c) take such other sanitary precautions as he thinks necessary to cleanse and disinfect the building, or the part of a building, or any article in the building,

and for the purposes of Paragraph (b) or (c) may remove any article.

**24. DESTRUCTION OF BUILDINGS.**

Where a Local Medical Authority certifies in writing to a District Officer that the destruction of a building is necessary to prevent or check infectious disease and requests the destruction of the building, the District Officer may order the destruction of the building.

**25. DESTRUCTION OF INFECTED ARTICLES.**

The Local Medical Authority may direct the destruction of any bedding, clothing or other article that, in his opinion, has been exposed to infection from an infectious disease.

**26. REMOVAL AND CONFINEMENT OF INFECTED PERSONS.**

(1) Where a suitable hospital, quarantine station or place for the reception of the sick is provided within a province or within a reasonable distance from a province, and a person in the province who is suffering from an infectious disease is lodged—

- (a) in a room occupied by members of more than one family; or
- (b) on board a vessel; or
- (c) in a hotel, common lodging house or boarding house,

or where proper isolation is otherwise impracticable, a Local Medical Authority may—

- (d) on a certificate signed by a medical practitioner; and

- (e) with the consent of the officer-in-charge of the hospital, quarantine station or place,

compulsorily remove the person to the hospital, quarantine station or place.

(2) A person detained in a hospital, quarantine station or place for the reception of the sick under Subsection (1) must not be released except by written order of the Local Medical Authority.

Penalty: A fine not exceeding K40.00.

(3) The cost of the removal of a person under Subsection (1) shall be borne by the Local Medical Authority.

## **27. POWER OF ENTRY AND EXAMINATION.**

A Local Medical Authority may—

- (a) enter any building or premises in which an infectious disease exists or has existed; and
- (b) examine all persons who reside at or are discovered in the building or premises for the purpose of ascertaining if they are in an infectious condition.

### *Subdivision B. – General.*

## **28. RESTRICTIONS ON MOVEMENT, ETC., OF INFECTED PERSONS AND THINGS.**

(1) A person who—

- (a) when suffering from an infectious disease and knowing he is so suffering, intentionally—
  - (i) is in a street, shop, eating house, club, bar or place of common resort or in a public conveyance, without taking reasonable precautions against spreading the disease; or
  - (ii) enters any public conveyance without previously notifying the owner or the person in charge that he is suffering from the disease; or
- (b) being in charge of any person suffering from an infectious disease, whom he knows to be so suffering—
  - (i) causes or permits him to be in any street, shop, eating house, club, bar or place of common resort or in a public conveyance; or
  - (ii) permits him to enter any public conveyance without previously notifying the owner or the person in charge that the person is suffering from the disease; or

- (c) subject to Subsection (3)—gives, lends, sells, transmits or exposes, without previous disinfection, any bedding, clothing, rags or other things that have been exposed to infection from an infectious disease,

is guilty of an offence.

Penalty: A fine not exceeding K100.00 or imprisonment for a term not exceeding six months, or both.

(2) In addition to any penalty that may be imposed under Subsection (1), a person, who, while suffering from an infectious disease, enters a public conveyance in contravention of Subsection (1)(a) may be ordered by the court that convicts him to pay to the owner or driver of the conveyance the amount of any loss or expense incurred by him in respect of the disinfection of his conveyance.

(3) No offence against Subsection (1)(c) is committed by a person who, with proper precautions, takes or sends any bedding, clothing, rags or other things for the purpose of having them disinfected.

## **29. RECENTLY INFECTED PERSONS.**

A person who knowingly or negligently sends to, allows to attend at, or returns to a school, plantation, mission or other place at which people congregate any person who then is, or has been within the space of eight weeks, suffering from—

- (a) scarlet fever, diphtheria, measles or small-pox; or
- (b) any other disease declared by the Minister, by notice in the National Gazette, for the purposes of this section,

without furnishing the head teacher of the school or the officer-in-charge of the place with a written certificate from a medical practitioner to the effect that—

- (c) the person is free from infectious disease and infection; and
- (d) the clothes of the person are free from risk of conveying infection,

is guilty of an offence.

Penalty: A fine not exceeding K100.00.

## **30. DISINFECTION OF CONVEYANCES, ETC.**

(1) Immediately after a public conveyance has, to the knowledge of the owner or driver, conveyed any person suffering from an infectious disease, he must disinfect the conveyance, to the satisfaction of a Local Medical Authority.

Penalty: A fine not exceeding K40.00.

(2) The owner or driver of a conveyance is not required to convey a person suffering from an infectious disease until he has been paid a sum of money sufficient to cover any loss or expense incurred by him in conveying the person so suffering or in disinfecting his conveyance.

**31. VACATION OF INFECTED BUILDING.**

(1) Subject to Subsection (2), a person who—

- (a) ceases to occupy a building, or a part of a building, in which an infectious disease has existed within six weeks before his departure; and
- (b) does not have the building, or the part of the building, and all articles in it that are liable to retain infection, disinfected to the satisfaction of a medical practitioner, as testified by a certificate signed by the medical practitioner; and
- (c) does not give the owner of the building, or of the part of the building, notice that an infectious disease has existed in the building or in the part of the building,

is guilty of an offence.

Penalty: A fine not exceeding K40.00.

(2) It is a defence to a charge of an offence against Subsection (1) if it is proved, to the satisfaction of the court, that a medical practitioner was not available within a reasonable distance of the place in which the building was situated.

**32. LETTING OF INFECTED BUILDING.**

(1) A person who knowingly lets for hire any building, or a part of a building, in which a person affected with an infectious disease has resided, without causing the building, or the part of the building, as the case may be, and all articles in it liable to retain infection to be disinfected to the satisfaction of the Local Medical Authority, as testified by a certificate signed by him, is guilty of an offence.

Penalty: A fine not exceeding K100.00.

(2) A person who—

- (a) lets for hire, or shows for the purpose of letting for hire, a building, or a part of a building; and
- (b) does not inform the person who is hiring, or is negotiating for the hire of, the building, or the part of a building, of the fact of there being, or of there having been within the previous six weeks, a person suffering from an infectious disease in it,

is guilty of an offence.

Penalty: A fine not exceeding K100.00 or imprisonment for a term not exceeding six months, or both.

**33. DISPOSAL OF INFECTED MATTER.**

A person who knowingly casts into any ash-pit, ash-tub or other receptacle for the deposit of refuse any infected rubbish, without having previously disinfected it, is guilty of an offence.

Penalty: A fine not exceeding K40.00.

***Division 4.***  
***Infected Areas.***

**34. INTERPRETATION OF DIVISION 4.**

In this Division, “**infected area**” means a part of the country declared under Section 35 to be an infected area.

**35. DECLARATION OF INFECTED AREAS.**

(1) The Minister may, by notice in the National Gazette, declare that any part of the country in which he suspects that an infectious disease exists is an infected area, for a period fixed by the notice.

(2) The Minister may—

(a) in a notice under Subsection (1); or

(b) by a subsequent notice in the National Gazette,

declare that Sections 36 and 37 do not apply to a person or class of persons specified in the notice.

**36. ISOLATION OF INFECTED AREAS.**

Subject to Section 35(2), a person who enters into or departs from an infected area without the prior written permission of the Departmental Head or the Local Medical Authority is guilty of an offence.

Penalty: A fine not exceeding K100.00 or imprisonment for a term not exceeding six months, or both.

**37. UNLAWFUL DEPARTURE FROM INFECTED AREA.**

(1) Subject to Section 35(2), a person who unlawfully departs from an infected area may be—

(a) arrested by a member of the Police Force, or by a Local Medical Authority, medical practitioner or medical assistant; and

(b) taken back into the infected area or kept in custody until it is ascertained whether he has or has not contracted an infectious disease.

(2) Where a person who has been detained under Subsection (1) is found to have contracted an infectious disease, he may be further kept in custody until any danger of his communicating the disease to any other person ceases.

**Division 5.**  
**Typhoid Fever.**

**38. INTERPRETATION OF DIVISION 5.**

In this Division—

“**anti-typhoid inoculation**” means one injection intramuscularly of 0.5 cm<sup>3</sup> of a suspension of killed bacteria containing—

- (a) 1,000,000,000 *Bacilli typhosi*; and
- (b) 750,000,000 *Bacilli paratyphosi* A; and
- (c) 750,000,000 *Bacilli paratyphosi* B,

together with approved preservative, in each cubic centimetre, followed after an interval of not less than five days or more than 10 days by a second injection intramuscularly of 1.0 cm<sup>3</sup> of a similar suspension of killed bacteria;

“**employment agreement**” means an agreement under the *Employment Act 1978*;

“**resident**” means present in a typhoid area and having been there for a period of at least 14 days;

“**typhoid area**” means a part of the country declared under Section 39 to be a typhoid area for the purposes of this Division;

“**typhoid fever carrier**” means a person in any of whose discharges the bacillus associated with typhoid fever and known as the *Bacillus typhosus* is at any time discovered, and who does not show clinical evidence of typhoid fever.

**39. DECLARATION OF TYPHOID AREAS.**

If the Minister is satisfied that it is advisable to do so for the purpose of preventing the spread of typhoid fever, he may, by notice in the National Gazette, declare a part of the country specified in the notice to be a typhoid area for the purposes of this Division.

**40. MEDICAL EXAMINATION AND INOCULATION OF PERSONS IN TYPHOID AREAS.**

(1) Subject to Section 41, every person who is resident in a typhoid area must present himself to a medical practitioner or a medical assistant, for the purpose of anti-typhoid inoculation, not later than 14 days from—

- (a) the publication of the relevant notice under Section 39; or
- (b) his entry into the typhoid area; or

- (c) if he has been previously given an anti-typhoid inoculation—the expiration of 12 months from his last such inoculation,

whichever last happens.

Penalty: A fine not exceeding K40.00.

(2) Subject to Section 41, a person resident in a typhoid area must again present himself to a medical practitioner or a medical assistant for a further anti-typhoid inoculation not earlier than 11 months or later than 13 months after every anti-typhoid inoculation.

Penalty: A fine not exceeding K40.00.

(3) A person resident in a typhoid area who is a parent or guardian of a child who is required to present himself in accordance with Subsection (1) or (2) must ensure that the child presents himself accordingly.

Penalty: A fine not exceeding K10.00.

(4) The employer of a person under the *Employment Act 1978* must, within 14 days after the person's arrival in a typhoid area, cause him to present himself to a medical practitioner or a medical assistant for anti-typhoid inoculation.

Penalty: A fine not exceeding K40.00.

(5) Anti-typhoid inoculations by a medical practitioner or a medical assistant shall be performed free of charge.

#### **41. EXEMPTIONS FROM INOCULATION REQUIREMENTS.**

(1) If a Local Medical Authority is of opinion on medical grounds that an anti-typhoid inoculation is not advisable in the case of any person, he may, by a written certificate, exempt the person from Section 40(1) and (2) for such period as he thinks proper.

(2) The Local Medical Authority may, by written certificate, exempt any person from compliance with Section 40(1) or (2) until a date specified in the certificate, after the time allowed by that subsection.

#### **42. INOCULATION CERTIFICATES.**

(1) A medical practitioner or medical assistant who has given an anti-typhoid inoculation must—

- (a) give to the person inoculated a certificate showing the date of the inoculation; or
- (b) in the case of a person employed under the *Employment Act 1978*—endorse on the employment agreement the date and fact of the anti-typhoid inoculation.

(2) On being given 48 hours' written notice to do so by a District Officer, an officer of the Department or a commissioned officer of the Police Force, a person

resident in a typhoid area who is the holder of a certificate given under Subsection (1) must produce the certificate to the person specified in the notice.

Penalty: A fine not exceeding K10.00.

#### **43. PRODUCTION OF EMPLOYMENT AGREEMENTS.**

On being given 48 hours' written notice to do so by a District Officer, an officer of the Department or a commissioned officer of the Police Force, a person resident in a typhoid area must produce to the person specified in the notice the employment agreements of any persons employed by him under the *Employment Act 1978*.

Penalty: A fine not exceeding K40.00.

#### **44. SUSPECTED TYPHOID FEVER CARRIERS.**

Where a medical practitioner gives a written certificate that, as a result of his observation, he has reason to suspect that a person is a typhoid fever carrier, a District Officer may, on the written application of the medical practitioner, order the person to place himself, at a time and date specified in the order, in a hospital so specified, for a period not exceeding one week, for the purpose of bacteriological investigation by a Local Medical Authority.

#### **45. BURDEN OF PROOF.**

The burden of proving compliance with any provision of this Division (other than Section 44) is on the person charged with a breach of the provision.

### ***Division 6.***

#### ***Special Provisions in Relation to Certain other Diseases.***

#### **46. COMPULSORY HOSPITALIZATION OF INFECTED PERSONS.**

Under the direction, and on the certificate, of the Local Medical Authority that—

- (a) a person is suffering from cholera, small-pox, plague, anthrax, yellow fever, amoebic or bacillary dysentery, typhoid fever, epidemic influenza or tuberculosis (including phthisis, bony tuberculosis and miliary tuberculosis); and
- (b) the person's removal is necessary in order to prevent the disease from spreading,

the person may be removed immediately to any place specified by the Minister, and kept there until he is released by an order of the Minister, the Departmental Head or the Local Medical Authority.

***Division 7.***

***General.***

**47. DISOBEDIENCE OF ORDERS.**

A person who disobeys a lawful order given under this Part by a Local Medical Authority, medical practitioner, medical assistant or District Officer is guilty of an offence.

Penalty: A fine not exceeding K40.00.

**PART V. – VENEREAL DISEASES.**

***Division 1.***

***Preliminary.***

**48. INTERPRETATION OF PART V.**

In this Part, unless the contrary intention appears–

“**the Commissioner**” means the Commissioner appointed under Section 49;

“**manager**”, in relation to a hospital, includes the board, committee or other body managing the hospital;

“**venereal disease**” means gonorrhoea, gleet, gonorrhoeal ophthalmia, syphilis, soft chancre, venereal warts or venereal granuloma.

***Division 2.***

***Administrative and Executive Provisions.***

**49. THE COMMISSIONER.**

The Minister shall appoint a medical practitioner to be the Commissioner for the purposes of this Part.

**50. GENERAL POWERS OF MINISTER.**

(1) The Minister shall–

(a) establish hospitals or places for the reception and treatment of persons suffering from venereal disease; and

(b) arrange for–

(i) the examination or treatment by medical practitioners of persons suffering from venereal disease; and

(ii) the remuneration of medical practitioners under any such arrangements; and

(c) arrange for chemical, bacteriological and other examinations and investigations, free of charge to the patient, for the purpose of ascertaining whether a person is–

(i) suffering from; or

(ii) cured of; or

(iii) free from; or

(iv) no longer liable to convey infection of,

venereal disease, and for the remuneration payable under any such arrangement; and

- (d) arrange for the supply of drugs, medicines and appliances for the treatment, alleviation and cure of venereal disease in the case of persons unable, through poverty or otherwise, to pay for them; and
- (e) provide for the preparation and distribution of information relating to venereal disease.

(2) The regulations may provide for the reception, examination and treatment, free of charge—

- (a) at hospitals or places referred to in Subsection (1)(a); and
- (b) by medical practitioners referred to in Subsection (1)(b),

of persons suffering from venereal disease.

(3) The Minister may arrange with the manager of any hospital receiving aid from the State to make effective provision, as prescribed, for the reception, accommodation, examination and treatment, free of charge, of such numbers of persons, or such classes of persons, suffering from venereal diseases as are prescribed.

## **51. PROSECUTIONS.**

(1) Subject to Subsection (2), a prosecution or proceedings for the recovery of penalties under this Part or any regulation made for the purposes of this Part shall not be instituted except by—

- (a) the Commissioner; or
- (b) a person authorized in writing by the Commissioner for the purpose, generally or in the particular case.

(2) Subsection (1) does not affect any right to institute proceedings independently of this section in respect of an offence other than an offence against this Part.

### ***Division 3.***

#### ***Reports, etc., of Venereal Disease.***

## **52. REPORTS BY MEDICAL PRACTITIONERS.**

(1) A medical practitioner who becomes aware that any person consulting him, or attended by him, is suffering from a venereal disease must give notice of the fact to the Commissioner.

(2) A notice under Subsection (1)—

- (a) shall be in the prescribed form; and
- (b) shall be given within the prescribed period; and
- (c) shall not disclose the name or address of the patient.

(3) Where—

- (a) a person suffering from a venereal disease who has been attended or treated by a medical practitioner for the disease fails to consult or attend the medical practitioner during any period prescribed for the purposes of Section 56(2) or within 10 days after the end of that period; and
- (b) the medical practitioner has not, before the end of the period of 10 days referred to in Paragraph (a), received from another medical practitioner a notice that the person has placed himself under treatment by another medical practitioner,

the first-mentioned medical practitioner must send to the Commissioner in a sealed envelope, marked "Confidential", a notice in the prescribed form of the facts.

Penalty: For a first offence—a fine not exceeding K40.00.

For a subsequent offence—a fine of not less than K40.00 and not exceeding K200.00.

### **53. WARNING TO PATIENTS.**

(1) A medical practitioner who attends, treats or advises a person (other than a child) for or in respect of a venereal disease from which the person is suffering, must—

- (a) by written notice in the prescribed form delivered to the person—
  - (i) direct his attention to the infectious nature of the disease, and to the legal consequences of infecting others; and
  - (ii) warn him against contracting a marriage until he is certified as cured under this Act; and
- (b) give him such printed information as is prescribed regarding the disease and the duties of persons suffering from the disease.

(2) A medical practitioner who attends, treats or gives advice with respect to a child suffering from venereal disease must give to the parent or guardian or other person in charge of the child such directions and printed information as are prescribed.

Penalty: A fine not exceeding K10.00.

### **54. ADVICE TO PROSPECTIVE SPOUSES OF INFECTED PERSONS.**

Where a medical practitioner has reason to believe that a person suffering from venereal disease intends to contract a marriage, he may, after giving an intimation of his intention to the person suffering from the disease, inform—

- (a) any person whom he believes on reasonable grounds to be the other party to the proposed marriage; and
- (b) any parent or guardian of that party; and
- (c) the Commissioner,

that the person suffering from the disease is so suffering.

***Division 4.***

***Treatment, etc.***

**55. PERSONS WHO MAY TREAT VENEREAL DISEASES.**

(1) Subject to Subsection (2), a person other than—

(a) a medical practitioner; or

(b) a person acting under the direct instructions of a medical practitioner,

who attends on, prescribes for or supplies a drug or medicine to a person suffering from a venereal disease, for the purpose of curing, alleviating or treating the disease, is guilty of an offence.

Penalty: A fine not exceeding K100.00 or imprisonment for a term not exceeding six months.

(2) It is not an offence against Subsection (1) for a pharmacist—

(a) to dispense to the patient of a medical practitioner a prescription by the medical practitioner if the prescription is dated, and bears the address and usual signature (including the surname) of the medical practitioner; or

(b) to sell or supply, in the ordinary course of business, a drug or medicine (except such drugs or medicines as are prescribed) if the drug or medicine is not prescribed by the pharmacist for any person suffering from venereal disease for the purpose of curing, alleviating or treating the disease.

**56. REQUIREMENT OF TREATMENT.**

(1) A person who becomes aware that he is suffering from a venereal disease must, within three days—

(a) consult and furnish his correct name, occupation and address to, and place himself under treatment by, a medical practitioner; or

(b) attend at a hospital or other place declared by the Minister, by notice in the National Gazette, for the purposes of this subsection, and place himself under treatment at that hospital or place.

Penalty: A fine not exceeding K200.00 or imprisonment for a term not exceeding three months.

(2) A person suffering from a venereal disease who has consulted and placed himself under treatment by a medical practitioner, or who has attended and placed himself under treatment at a hospital or other place declared under Subsection (1)(b), must, until he has received a certificate that he is cured of or is free from venereal disease—

- (a) visit or cause himself to be attended by a medical practitioner; or
- (b) attend at a hospital or other such place,

for the purpose of treatment and advice at least once in every prescribed period, and follow the advice given by the medical practitioner or by a medical practitioner at the hospital or place.

Penalty: A fine not exceeding K40.00.

(3) A medical practitioner who, otherwise than in accordance with this Act, communicates to any person or in any other way makes known any name or address furnished to him under Subsection (1) is guilty of an offence, and shall be deemed to be guilty of professional misconduct.

Penalty: A fine not exceeding K200.00.

(4) The fact that a person who has been suffering from a venereal disease has ceased to be liable to convey infection, but has not been cured, does not exonerate—

- (a) the person from complying with the provisions of this Act with respect to treatment; or
- (b) a medical practitioner from complying with the requirements of this Act with respect to notices.

#### **57. CHANGE OF ADDRESS.**

If a person suffering from a venereal disease who has consulted and placed himself under treatment by a medical practitioner changes his address, he must, within seven days, notify the practitioner of the change and of his new address.

Penalty: A fine not exceeding K10.00.

#### **58. CHANGE OF MEDICAL PRACTITIONER.**

(1) Where—

- (a) a person suffering from a venereal disease who has consulted and placed himself under treatment by a medical practitioner desires to discontinue the treatment and to place himself under treatment by some other medical practitioner; or
- (b) the medical practitioner treating a person suffering from a venereal disease—
  - (i) dies; or
  - (ii) for any reason is unable or unwilling to treat him further,

the person must, unless he places himself under treatment at some hospital or other prescribed place—

- (c) immediately consult and place himself under the treatment of another medical practitioner; and

(d) advise him of the name and last-known address of the medical practitioner by whom he was previously treated.

(2) If the original medical practitioner is resident in the country, the medical practitioner to whom the patient transfers must, immediately he is advised in accordance with Subsection (1)(d), send a notice in the prescribed form to the original medical practitioner.

Penalty: A fine not exceeding K10.00.

## **59. CERTIFICATES OF CURE, ETC.**

(1) On being satisfied that a person who has been suffering from a venereal disease—

(a) is cured of or free from the disease; or

(b) has ceased to be liable to convey infection,

a medical practitioner must, subject to this Act, give to him, at his request, a certificate in the prescribed form that he—

(c) is cured of or is free from venereal disease; or

(d) is no longer liable to convey infection,

as the case may be.

(2) A medical practitioner who gives to a person a certificate referred to in Subsection (1), knowing the certificate to be false in a material particular, or otherwise than under the conditions and in the circumstances prescribed, is guilty of an offence.

Penalty: A fine not exceeding K100.00.

### ***Division 5.***

#### ***Special Provisions in Relation to Children.***

## **60. DUTY OF PARENTS AND GUARDIANS, ETC.**

(1) A parent, guardian or other person in charge of a child suffering from a venereal disease who fails to have the child treated for the disease in accordance with this Part is guilty of an offence.

(2) Where a child is or becomes liable under this Act to do or submit to any act, matter or thing, any parent, guardian or other person in charge of the child who, knowing that the child is so liable, fails to exercise his authority to compel or induce the child to do so or submit to the act, matter or thing, is guilty of an offence.

(3) A parent, guardian or other person in charge of a child who knows that the child has failed to comply with any provision of this Part and who fails to report the fact, and such particulars as are prescribed, to the Commissioner is guilty of an offence.

Penalty: A fine not exceeding K20.00.

**61. DIRECTIONS BY MEDICAL PRACTITIONERS TO PARENTS, GUARDIANS, ETC.**

A medical practitioner who attends, treats, or gives advice with respect to a child suffering from a venereal disease must give to the parent, guardian or other person in charge of the child such directions and printed information as are prescribed.

Penalty: A fine not exceeding K10.00.

**62. ORDER FOR EXAMINATION OF CHILD.**

(1) If a Judge or a Principal Magistrate has reason to believe that a child is suffering from a venereal disease, he may at any time order an examination to be made of the child by a medical practitioner.

(2) Where a medical practitioner reports that a child is suffering from a venereal disease, the Judge or Magistrate shall notify the Commissioner in writing immediately, and the Commissioner may deal with the child as provided in this Part.

***Division 6.***

***Protection of Medical Practitioners.***

**63. PRIVILEGED REPORTS, ETC.**

(1) A certificate, notice or other communication, oral or written, given in good faith and without negligence by a medical practitioner for the purpose of this Part, that any person is suffering from venereal disease shall not be made the ground of any legal proceedings, civil or criminal, against the medical practitioner.

(2) In particular, any communication made in good faith in the exercise or supposed exercise of the powers conferred by Section 54 is absolutely privileged.

***Division 7.***

***Offences Generally.***

**64. MARRIAGE BY INFECTED PERSON.**

A person who, while suffering from a venereal disease in an infectious stage, marries, knowing that he is so suffering, is guilty of an indictable offence.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding five years, or both.

**65. RESTRICTIONS ON EMPLOYMENT OF INFECTED PERSONS.**

(1) A person who, knowing himself to be suffering from a venereal disease in an infectious stage, works in or about a factory, shop, hotel, restaurant, house or other place in any capacity requiring him to handle food intended for human consumption is guilty of an offence.

Penalty: A fine not exceeding K200.00 or imprisonment for a term not exceeding one year.

(2) A person who knowingly employs or continues to employ a person suffering from a venereal disease in an infectious stage at any work, or in any capacity, requiring him to handle food intended for human consumption is guilty of an offence.

Penalty: A fine of not less than K40.00 and not exceeding K200.00.

**66. INFECTING OTHER PERSONS.**

A person who knowingly—

- (a) infects any other person with a venereal disease; or
- (b) does any act, or permits any act to be done, that is likely to lead to the infection of any other person with such a disease,

is guilty of an offence.

Penalty: A fine not exceeding K200.00 or imprisonment for a term not exceeding 12 months, or both.

**67. PERMITTING INFECTED PROSTITUTE TO OCCUPY HOUSE, ETC.**

(1) The owner or occupier of a house, room or place who knowingly permits a female suffering from a venereal disease to occupy or resort to the house, room or place for the purpose of prostitution is guilty of an offence.

Penalty: A fine not exceeding K200.00 or imprisonment for a term not exceeding 12 months.

(2) A conviction of an offence against Subsection (1) does not exempt the offender from any penal or other consequences to which he may be liable for keeping or being concerned in keeping a bawdy-house or disorderly house, or for any resultant nuisance.

**68. USE OF CERTIFICATE OF CURE, ETC., FOR PURPOSES OF PROSTITUTION.**

A person who, for the purposes of, in relation to or in connection with, prostitution uses a certificate given by a medical practitioner under Section 59 is guilty of an offence.

Penalty: A fine not exceeding K40.00.

***Division 8.***

***Miscellaneous.***

**69. PRIVACY OF PROCEEDINGS.**

(1) A matter to be heard by a magistrate under this Part shall be heard and decided in chambers and in private, and a person other than—

- (a) the magistrate; and
- (b) the party concerned; and
- (c) the Commissioner; and
- (d) such officers, witnesses, or persons as the magistrate—
  - (i) requires; or
  - (ii) at the request of the party concerned, permits, to be present,

shall not have access to, or be permitted to be present in, any room where the matter is being heard.

(2) Any person who acts or assists in the administration of this Part, and any person present in any room where any matter under this Part is being heard, who—

- (a) fails to preserve and aid in preserving secrecy with regard to all matters and things that come to his knowledge while he is so acting, assisting or present; or
- (b) communicates any such matter or thing to any other person, except—
  - (i) in the performance of his duties under this Part; or
  - (ii) in answer to some question that he is legally bound to answer,

is guilty of an offence.

(3) A person who, except on the written authority of the Commissioner, publishes in a newspaper the report of any proceedings or matter heard in private under this Part is guilty of an offence.

Penalty: A fine not exceeding K100.00.

## **70. SEIZURE OF CERTAIN ARTICLES.**

(1) Subject to this Act, a Judge or a Principal Magistrate may, by special warrant, authorize a member of the Police Force—

- (a) to enter any house, office, shop, room or other place, not being the house, office, shop, room or surgery of a medical practitioner or a pharmacist; and
- (b) to search for, seize and bring before him all articles, medicines, instruments or appliances found in it that are capable of being used for the alleviation or cure of any venereal disease.

(2) A special warrant under Subsection (1) shall not be granted except on complaint on oath by the Commissioner that he has reason to believe, and does believe, that the articles, medicines, instruments or appliances are kept, held or exhibited in the house, office, shop, room or place for the purpose of sale or unlawful use.

(3) If necessary, the member of the Police Force to whom a special warrant under Subsection (1) is granted may obtain assistance and use force by breaking open doors or otherwise in order to effect entrance.

(4) Where any articles, medicines, instruments or appliances are seized and brought before a Judge or Magistrate under a special warrant under Subsection (1), he shall issue a summons calling on the occupier of the house, office, shop, room or other place entered by virtue of the warrant to appear within seven days before him to show cause why the articles, medicines, instruments and appliances so seized should not be destroyed or forfeited.

(5) If the occupier or some other person claiming to be the owner of the articles, medicines, instruments or appliances seized under this section—

- (a) does not appear within the time limited by a summons under Subsection (4); or
- (b) appears and it is found that the articles, medicines, instruments or appliances seized, or any of them—
  - (i) are of the character stated in the relevant special warrant under Subsection (1); and
  - (ii) are kept, held or exhibited for the purpose of sale or unlawful use,

the Judge or Magistrate issuing the summons shall order them, or any of them, to be destroyed or forfeited.

(6) If the Judge or Magistrate is satisfied that articles, medicines, instruments and appliances seized under this section—

- (a) are not of the character stated in the warrant; or
- (b) are not kept, held or exhibited for the purpose of sale or unlawful use,

he shall direct them to be returned to the occupier of the house, office, shop, room or other place in which they were seized, or to the person appearing to be the owner.

**PART VI. – HANSEN’S DISEASE.****71. INTERPRETATION OF PART VI.**

In this Part, unless the contrary intention appears–

“**Hansenide Centre**” means a place appointed to be a Hansenide Centre under Section 72;

“**medical officer**” means a medical practitioner appointed under Section 73 to be a medical officer for the purposes of this Part.

**72. HANSENIDE CENTRES.**

The Minister may, by notice in the National Gazette, appoint a place to be a Hansenide Centre.

**73. APPOINTMENT OF MEDICAL OFFICERS.**

The Minister may, by notice in the National Gazette, appoint a medical practitioner to be a medical officer for the purposes of this Part.

**74. MEDICAL EXAMINATIONS.**

(1) A medical officer may examine any person for the purpose of ascertaining whether he is affected with Hansen’s Disease.

(2) A medical officer may, after examination, declare that a person is in his opinion affected with Hansen’s Disease.

(3) A person who, when called on by a medical officer, refuses to allow himself to be examined for the purpose of ascertaining whether he is affected with Hansen’s Disease is guilty of an offence.

Penalty: A fine not exceeding K200.00 or imprisonment for a term not exceeding 12 months, or both.

**75. COMPULSORY HOSPITALIZATION OF INFECTED PERSONS.**

(1) A medical officer appointed in writing by the Minister for the purpose may authorize a person declared under Section 74(2) to be affected by Hansen’s Disease to be confined in a Hansenide Centre.

(2) An instrument signed by a medical officer appointed under Subsection (1) authorizing the confinement of a person declared under Section 74(2) to be affected by Hansen’s Disease in a Hansenide Centre is, subject to Subsection (3), a sufficient warrant to the person in charge of the Centre for detaining the person in that Centre.

(3) Unless within six months of the signing of a document specified in Subsection (1) the Departmental Head confirms an instrument referred to in Subsection (2) to the person in charge of the Hansenide Centre in which the person the subject of the instrument is confined, the instrument–

- (a) shall be deemed to have been revoked; and
- (b) is no longer a warrant for the detention in a Hansenide Centre of the person concerned.

(4) A person declared under Section 74(2) to be affected with Hansen's Disease who leaves a Hansenide Centre without the permission of a medical officer, or of the person in charge of the Centre, is guilty of an offence.

Penalty: A fine not exceeding K200.00 or imprisonment for a term not exceeding 12 months, or both.

(5) A person who is authorized under Subsection (2) to be confined in a Hansenide Centre may appeal to the Minister, whose decision is final.

#### **76. REPORTS OF INFECTED PERSONS.**

A person who—

- (a) knows or has reason to believe or suspect that he or another person, not already declared under Section 74(2) to be affected with Hansen's Disease, is infected with that disease; and
- (b) fails to report the facts immediately to a medical officer or Provincial Commissioner,

is guilty of an offence.

Penalty: A fine not exceeding K200.00 or imprisonment for a term not exceeding 12 months, or both.

#### **77. CONCEALMENT, ETC., OF INFECTED PERSONS.**

A person who—

- (a) knowingly detains, harbours, conceals or secretes a person affected with Hansen's Disease; or
- (b) supports a person affected with Hansen's Disease who is living in concealment.

is guilty of an offence.

Penalty: A fine not exceeding K200.00 or imprisonment for a term not exceeding 12 months, or both.

**PART VII. – MALARIA.****78. CONTROL OF MOSQUITOES.**

(1) A medical officer, Health Inspector or Malaria Control Assistant of the Public Service, or an officer authorized by the Departmental Head for the purpose, may, at all reasonable times and with such assistants as he thinks necessary, enter any building or place and take such steps and do such things (including the spraying with insecticide or fumigation of the building or place, or anything in or on the building or place) as he thinks necessary for the eradication of mosquitoes and the prevention of their breeding.

(2) An entry under Subsection (1) shall be made only after at least 24 hours' written notice, specifying the intended date and time of entry, to a person over or apparently over the age of 21 years residing in the building or place, or if there be no such person, or no such person can be found, then to the person having charge of or control over the building or place.

**79. OBSTRUCTION, ETC.**

A person who in any way, directly or indirectly, hinders or obstructs an officer in the exercise of his powers or the performance of his duties under Section 78 is guilty of an offence.

Penalty: A fine not exceeding K200.00.

**80. COMPENSATION.**

(1) An officer acting under this Part is not personally liable for damage occasioned by carrying out this Part, unless the damage was occasioned maliciously or without reasonable cause.

(2) Where a building or place, or a thing in or on a building or place, is damaged as a result of the exercise of any powers under this Part, compensation is payable by the State.

(3) In case of dispute, the amount of compensation payable under Subsection (2) shall be settled by arbitration.

**PART VIII. – MENTAL DISORDERS AND TREATMENT.**

***Division 1.***

***Preliminary.***

**81. INTERPRETATION OF PART VIII.**

In this Part, unless the contrary intention appears–

“**admission centre**” means an admission centre established under Section 82(c);

“**admission order**” means an order for admission in to a mental hospital made under Section 109 or 110;

“**committee**”, in relation to a person of unsound mind, means a committee appointed under Section 94;

“**the Court**” means the National Court;

“**inquiry**” means an inquiry directed by the Court under Section 86;

“**Magistrate**” means a Magistrate of a District Court;

“**Medical Superintendent**”, in relation to a mental hospital, means the Medical Superintendent, a Deputy Medical Superintendent or an Assistant Medical Superintendent of the hospital;

“**mental colony**” means a mental colony established under Section 82(b);

“**mental hospital**” means a mental hospital established under Section 82(a);

“**person of unsound mind**” means a person who is found under this Part to be of unsound mind and incapable of managing himself or his affairs;

“**Visitor**” means a Visitor appointed under Section 84.

***Division 2.***

***Administration, etc.***

**82. ESTABLISHMENT OF MENTAL HOSPITALS, ETC.**

The Minister may, by notice in the National Gazette, establish–

(a) mental hospitals; and

(b) mental colonies; and

(c) admission centres,

at such places as he thinks proper, for the admission and detention and treatment of persons of unsound mind.

**83. MANAGEMENT OF MENTAL HOSPITALS AND MENTAL COLONIES.**

The management of each mental hospital and mental colony and the care and custody of its patients shall be regulated as prescribed.

**84. VISITORS.**

(1) The Minister shall, by notice in the National Gazette, appoint for each mental hospital and each mental colony not less than 12 Visitors, six of whom shall be medical officers.

(2) The powers and functions of a Visitor under this Part shall not be exercised or performed in relation to a patient—

- (a) who, immediately before his admission into a mental hospital or mental colony, was under treatment by the Visitor for mental disorder; or
- (b) in respect of whose admission into a mental hospital or mental colony the Visitor has given a certificate, order or request under this Act; or
- (c) who is a relative, partner or assistant of the Visitor; or
- (d) to whom the Visitor stands in a fiduciary relationship.

**85. INSPECTIONS BY VISITORS.**

Two Visitors, one of whom shall be a medical officer, shall, either together or separately, as often as they think fit, and at least once in every three months—

- (a) inspect every part of the mental hospital of which they are Visitors; and
- (b) see and examine, as far as circumstances permit—
  - (i) each patient in the hospital; and
  - (ii) the order or certificate for the admission of each patient admitted since the last inspection of the Visitors; and
- (c) enter in a book to be kept for the purpose any remarks that they think proper in regard to the patients.

***Division 3.******Inquiries into Cases of Mental Disorder.*****86. ORDER FOR INQUIRY BY COURT.**

(1) On application in accordance with Subsection (3), the Court may make an order directing an inquiry, whether a person who is alleged to be of unsound mind is or is not of unsound mind and incapable of managing himself or his affairs.

(2) An order under Subsection (1) may contain directions for inquiries concerning—

- (a) the nature of the property belonging to the person alleged to be of unsound mind; and
- (b) the persons who are his relatives or next of kin; and
- (c) the time during which he has been of unsound mind; and
- (d) such other matters as to the Court seem proper.

- (3) An application for an order under Subsection (1) may be made by—
- (a) a person related by blood or marriage to the person alleged to be of unsound mind; or
  - (b) an officer authorized for the purpose by the Minister.

**87. NOTICE OF INQUIRY.**

(1) Such reasonable notice as is directed by the Court of the time and place appointed for an inquiry under this Division shall be given to the person alleged to be of unsound mind.

(2) If it appears that the person alleged to be of unsound mind is in such a state that personal service on him would be ineffectual, the Court may direct such substituted service of the notice as it thinks proper.

(3) If it thinks fit, the Court may direct notice of the inquiry to be served on any person related by blood or marriage to the person alleged to be of unsound mind.

**88. EXAMINATION OF PERSON ALLEGEDLY OF UNSOUND MIND.**

At any time after the application for the inquiry the Court may—

- (a) require the person alleged to be of unsound mind to attend at such convenient time and place within the country as the Court appoints, for the purpose of being personally examined by the Court or by any person from whom the Court desires to have a report of his mental capacity and condition; and
- (b) make an order authorizing a person named in the order to have access to the person alleged to be of unsound mind for the purpose of a personal examination.

**89. QUESTIONS TO BE DECIDED BY COURT.**

On the hearing of the inquiry, the Court shall decide, after receiving such reports and hearing such evidence and arguments as it thinks fit—

- (a) whether the person who is alleged to be of unsound mind is or is not of unsound mind and incapable of managing himself or his affairs; and
- (b) any other questions as to which an inquiry has been directed.

**90. ORDER AS TO COSTS.**

(1) Subject to Subsection (2), the Court may make such order as seems to it just respecting the costs of the inquiry, and may include in the order an order for such remuneration to physicians and surgeons as the Court thinks reasonable.

(2) An order for the payment of costs shall not be made against the State or against an officer authorized under Section 86(3)(b).

**91. ATTENDANCE OF RELATIVES, ETC., AT PROCEEDINGS ON INQUIRIES.**

(1) The Court—

- (a) once in the matter of each inquiry, shall; and
- (b) may afterwards from time to time,

determine whether any and, if any, how many and which of the relatives or next of kin of the person the subject of the inquiry shall attend before the Public Curator at the cost of the estate of the person in any proceedings connected with the management of the estate.

(2) If a relative or next of kin of the person the subject of the inquiry is an infant, the Court may appoint a fit person to be his guardian for the purpose of the proceedings.

**92. PETITIONS AS TO MATTERS RELATED TO INQUIRIES.**

On application made to it by petition concerning a matter connected with the inquiry, the Court may, subject to this Part, make such order respecting—

- (a) the application; and
- (b) the costs of the application and of the consequent proceedings,

as seems to it just.

***Division 4.******Property Generally and Committees.******Subdivision A. – General.*****93. ORDERS FOR RAISING MONEY OUT OF ESTATES.**

If it appears to it just or for the benefit of a person of unsound mind, the Court may order that any of his property, whether in possession, reversion, remainder, contingency or expectancy, be sold, mortgaged or otherwise disposed of as seems to the Court most expedient for the purpose of raising money to be applied for the purpose of—

- (a) the payment of his debts, including any debt incurred for his maintenance or otherwise for his benefit; or
- (b) the discharge of any encumbrance on his estate; or
- (c) the payment of, or provision for the expenses of, his future maintenance and the maintenance of his family, including, if he is removed to his country of origin or elsewhere, the expenses of his removal, and all incidental expenses; and
- (d) the payment of—
  - (i) the costs of any proceedings under this Part; and

- (ii) any costs incurred by order or under the authority of the Court.

**94. APPOINTMENT OF COMMITTEES.**

(1) If the Court finds that a person who is alleged to be of unsound mind is of unsound mind and incapable of managing himself or his affairs, it may, if it thinks fit—

- (a) appoint a committee of his person and estate; and
- (b) make such order (if any) as to—
  - (i) the remuneration of the committee out of the person's estate; and
  - (ii) the giving of security by the committee,

as to the Court seems proper.

(2) If the Court finds that a person who is alleged to be of unsound mind is incapable of managing his affairs but is not dangerous to himself or to others, it may appoint a committee of his estate, without appointing a committee of his person.

**95. POWERS OF COMMITTEES AS TO MANAGEMENT OF ESTATES.**

(1) Subject to Subsection (2), on the appointment of a committee of the estate of a person of unsound mind the Court may direct by the order of appointment, or by a subsequent order, that the person to whom the charge of the estate is committed have such powers for the management of the estate as to the Court seem necessary and proper, having regard to the nature of the property of which the estate consists.

- (2) The powers conferred under Subsection (1) do not extend to—
  - (a) the sale or mortgaging of the estate, or of any part of the estate; or
  - (b) the leasing of real property, except for a term not exceeding three years.

**96. GENERAL DUTY OF COMMITTEES TO EXECUTE INSTRUMENTS AND EXERCISE POWERS OF PERSONS OF UNSOUND MIND.**

The committee of the estate of a person of unsound mind shall, in his name and on his behalf—

- (a) execute all such conveyances and other instruments, relative to any sale, mortgage or other disposition of his estate, as the Court orders; and
- (b) under the order of the Court, exercise all powers vested in the person, whether vested in him for his own benefit or in the character of trustee or guardian.

**97. PERFORMANCE OF CONTRACTS BY COMMITTEES.**

Where—

- (a) a person who has contracted to sell or otherwise dispose of his estate, or any part of it, afterwards becomes a person of unsound mind; and
- (b) the contract is one that the Court thinks ought to be performed,

the Court may direct the committee of his estate to execute such conveyances and do such acts in fulfilment of the contract as the Court thinks proper.

#### **98. PARTNERSHIPS.**

(1) If a member of a partnership is found to be of unsound mind, the Court may, on the application of—

- (a) the other partners; or
- (b) a person who appears to the Court to be entitled to require the partnership to be dissolved,

dissolve the partnership.

(2) On the dissolution of a partnership under Subsection (1) or on a dissolution by decree of court or otherwise by due course of law, the committee of the estate, in the name of and on behalf of the person of unsound mind—

- (a) may join with the other partners in disposing of the partnership property on such terms as the Court thinks proper; and
- (b) shall do all such acts for carrying into effect the dissolution of the partnership as the Court thinks proper.

#### **99. DISPOSAL OF BUSINESS PREMISES.**

(1) Where—

- (a) a person of unsound mind has been engaged in business; and
- (b) it appears to be for the benefit of his estate that the business premises should be disposed of,

the Court may order the committee of the estate to sell and dispose of the premises.

(2) The proceeds of a sale under Subsection (1) shall be applied in such manner as the Court directs.

#### **100. DISPOSAL OF LEASES.**

Where—

- (a) a person of unsound mind is entitled to a lease or sub-lease; and
- (b) it appears to be for the benefit of his estate that it should be disposed of,

the committee of the estate may, with the consent of the Court, surrender, assign or otherwise dispose of the lease or sub-lease to such person, for such consideration and on such terms as the Court thinks proper.

**101. DISPOSAL OF STOCK, GOVERNMENT SECURITIES, ETC.**

Where—

- (a) any stock or Government or Municipal security; or
- (b) a share or debenture in a public company (which is transferable within the country or the dividends of which are payable in the country),

stand in the name of or are vested in—

- (c) a person of unsound mind who is beneficially entitled to it or them; or
- (d) a committee of the estate of a person of unsound mind or a trustee for such a person,

and—

- (e) the committee or trustee—
  - (i) dies intestate; or
  - (ii) himself becomes a person of unsound mind; or
  - (iii) is out of the jurisdiction of the Court; or
- (f) it is uncertain whether the committee or trustee is living or dead; or
- (g) the committee or trustee neglects or refuses—
  - (i) to transfer the stock, security, share or debenture; or
  - (ii) to receive the dividends, and pay them, to a new committee or trustee, or as he directs, within 14 days after being required by him to do so,

the Court may order a proper person—

- (h) to transfer the stock, or as the case may be; and
- (i) to receive and pay over the dividends in such manner as the Court directs,

and the transfer or payment is valid and effectual for all purposes.

***Subdivision B. – Special Provisions for Maintenance without Committee.***

**102. ORDER FOR MAINTENANCE WITHOUT APPOINTMENT OF COMMITTEE.**

(1) If it appears to the Court, having regard to the situation and condition in life of a person of unsound mind and of his family, and the other circumstances of the case, to be expedient that his property should be made available for his or their maintenance in a direct and inexpensive manner, the Court may, instead of appointing a committee of the estate, order that—

- (a) the property, if it is money; or

- (b) if it is of any other description, the produce from the property when realized,

be paid to such person as the Court thinks fit, to be applied for that purpose.

(2) Payments made under Subsection (1) are a good discharge to the person making the payment.

(3) If it appears to the Court that—

- (a) the unsoundness of mind of a person of unsound mind is in its nature temporary; and
- (b) it is expedient to make temporary provision for his maintenance or the maintenance of his family,

it may, in the same manner as under Subsection (1), direct that his property, or a sufficient part of it, be applied for that purpose.

***Subdivision C. – Miscellaneous.***

**103. INQUIRIES BY PUBLIC CURATOR AS TO MANAGEMENT OF ESTATES.**

(1) The Public Curator may receive a proposal and conduct an inquiry respecting the management of the estate of a person of unsound mind, if the proposal relates to a matter that the committee of the estate has not been empowered to dispose of by an order under Section 95.

(2) The Public Curator may also receive and inquire into a proposal relating to—

- (a) the sale or mortgaging of the estate or of any part of the estate; or
- (b) the leasing of any real property for a term exceeding three years.

(3) The Public Curator shall report to the Court on a proposal referred to in Subsection (1) or (2) and, subject to this Part, the Court shall make such order on the resort and respecting the costs as seems to it just.

**104. PROPERTY OF PERSON OF UNSOUND MIND RESIDING OUT OF PAPUA NEW GUINEA.**

(1) Where—

- (a) property situated in the country stands in the name of, or is vested in, a person residing out of the country; and
- (b) the Court is satisfied that the person has been declared of unsound mind and that his personal estate has been vested in a committee, curator or manager according to the laws of the place where he is residing,

the Court may order a proper person—

(c) to make such transfer of the property, or of any part of the property, to the committee, curator or manager, or otherwise; and

(d) to receive and pay over any proceeds or profits in such way,

as the Court thinks proper.

(2) An act done under an order under Subsection (1) is valid and effectual for all purposes.

## **105. CUSTOMARY LAND.**

This Division does not apply to customary land.

### ***Division 5.***

#### ***Admission, Detention, etc.***

##### ***Subdivision A. – Reception.***

## **106. EFFECT OF DIVISION 5.**

This Division does not affect the powers of the Court over a person found to be of unsound mind under Divisions 3 and 4.

## **107. RECEPTION OF PATIENTS.**

Except as otherwise provided by law, a person shall not be received into a mental hospital except—

(a) on the order of the Court under Section 108; or

(b) on an order under Section 109 or 110; or

(c) on his own application under Section 111,

and a person received in accordance with Section 109 or 110 shall not be detained for a longer period than is prescribed in Section 114(1) except on a written order of a Magistrate.

## **108. RECEPTION ON ORDER OF COURT.**

Where, on an inquiry under this Part, a person has been found by the Court to be of unsound mind and incapable of managing himself or his affairs, the Court—

(a) shall—

(i) make an order for him to be received into a mental hospital; and

(ii) send him in suitable custody, together with the order for his reception, to the mental hospital named in the order; or

(b) if a friend or relative of the person undertakes in writing, to the satisfaction of the Court, that he will be properly taken care of and will be prevented from doing injury to himself or others—may make him over to the care of the friend or relative.

**109. RECEPTION ON REQUEST AND MEDICAL ORDERS.**

(1) Subject to Subsections (2) and (3), a person may be received into a mental hospital on a request in Form 1 under the hand of some person accompanied by—

- (a) the statement of particulars contained in that form; and
- (b) two orders in Form 2 made by two medical practitioners, of whom one is a Medical Officer.

(2) A medical practitioner who is a relative, partner or assistant of, or stands in a fiduciary relationship to, the patient or the person presenting the request is not qualified to make an order under Subsection (1).

(3) A person who—

- (a) has not attained the age of 21 years; or
- (b) has not, within seven days before the date of signing, personally seen the person to whom the request or statement relates,

is not qualified to make a request under Subsection (1).

(4) An order under Subsection (1) ceases to have effect for the purposes of this section on the expiration of 14 days from the last date on which the person to whom the order refers was examined by a medical practitioner for the purpose of making the order.

**110. RECEPTION ON MEDICAL ORDER AFTER APPREHENSION IN CERTAIN CASES.**

(1) A commissioned officer of the Police Force shall arrest any person—

- (a) found wandering at large whom he reasonably suspects of being of unsound mind; or
- (b) whom he suspects of being dangerous by reason of unsoundness of mind,

and bring him without delay before two medical practitioners, one of whom is a Medical Officer.

(2) The medical practitioners shall separately examine a person brought before them under Subsection (1) and, if satisfied that the person is of unsound mind, shall each make an order in Form 2.

(3) When orders are made under Subsection (2) by both of the medical practitioners examining a person, the commissioned officer of the Police Force shall send him, in suitable custody, to the mental hospital specified in the orders, and in any other case the person shall be discharged.

**111. RECEPTION OF VOLUNTARY PATIENTS.**

(1) On making a written application to the Medical Superintendent, a person who wishes to submit voluntarily to treatment but whose mental condition is not

such as to justify the issue of a certificate of unsoundness of mind may be received into a mental hospital for care and treatment.

(2) Except under an order of a Magistrate, a person received into a mental hospital under Subsection (1) who is capable of expressing himself as willing or unwilling to continue to receive treatment shall not be detained for more than seven days after he has given written notice to the Medical Superintendent of his intention or desire to leave hospital.

### **112. PERSONS OF UNSOUND MIND WHO ARE BEING CRUELLY TREATED.**

(1) If it appears to a Magistrate, on the report of a commissioned officer of the Police Force or on the information of any person, that a person supposed to be of unsound mind is not under proper care and control or is cruelly treated or neglected by a relative or other person having charge of him, the Magistrate may—

- (a) send for the person supposed to be of unsound mind; and
- (b) summon the relative or other person to appear before him.

(2) Where a relative or other person summoned under Subsection (1) is legally bound to maintain the person supposed to be of unsound mind, the Magistrate may make an order for the last-mentioned person to be properly cared for and treated.

(3) If the relative or other person willfully neglects to comply with an order under Subsection (2), he is guilty of an offence, and the Magistrate may sentence him to imprisonment for any period not exceeding one month.

(4) Where there is no person legally bound to maintain the person supposed to be of unsound mind, or if the Magistrate thinks fit to do so, the Magistrate may send the person before two medical practitioners, one of whom is a Medical Officer, who shall then proceed in the manner prescribed by Section 110.

(5) A commissioned officer of the Police Force shall report to a Magistrate any case of neglect or cruel treatment referred to in Subsection (1) that comes to his notice.

(6) A medical practitioner referred to in Subsection (4), or a commissioned officer of the Police Force not below the rank of Inspector, may, at such times as the Magistrate fixes, visit a person supposed to be of unsound mind in the care of a friend or relative for the purpose of ascertaining his condition.

(7) If in a case to which Subsection (6) applies the friend or relative fails or refuses to produce the person concerned for inspection by the Visitor, he is guilty of an offence.

Penalty: A fine not exceeding K100.00.

### **113. AMENDMENT OF ORDERS, ETC.**

(1) Where, after the reception of a person under this Part into a mental hospital, it appears that an order or a medical certificate on which he was received is

defective or incorrect, the order or certificate may be amended, with the sanction of the Medical Superintendent, by the person who made or gave it.

(2) An amendment made under Subsection (1) shall be deemed to have been effective as from the date of the reception.

#### **114. EFFECT OF MEDICAL ORDERS, ETC.**

(1) Two duly made orders in Form 2 are sufficient authority for the detention of the patient to whom they refer—

- (a) for a period not exceeding six months; or
- (b) until the next inspection by the Visitors of the mental hospital after the expiry of that period if the Medical Superintendent thinks that the further detention is necessary.

(2) Unless the order is made under Section 108, a person received into a mental hospital under an order made under this Part that is accompanied by the requisite medical certificate—

- (a) may be detained in the hospital until he is removed or discharged under this Act; and
- (b) if he absconds from the hospital—may, within 28 days of absconding, be retaken by—
  - (i) the Medical Superintendent; or
  - (ii) an officer or servant of the hospital; or
  - (iii) any other person authorized by the Medical Superintendent; or
  - (iv) a commissioned officer of the Police Force,

and conveyed to and received and detained in the hospital.

#### ***Subdivision B. – Removal, etc.***

#### **115. REMOVAL TO ANOTHER HOSPITAL.**

(1) Subject to Subsection (3), the Minister may, by order in the prescribed form, order the removal from one mental hospital to another of a person detained in a mental hospital under this Part.

(2) An order under Subsection (1) is sufficient authority—

- (a) for the removal of the person; and
- (b) for his reception into and detention in the hospital to which he is ordered to be removed.

(3) A person admitted into a mental hospital in consequence of a request under Section 109 shall not be removed from a mental hospital under Subsection (2) until notice of the intended removal has been given to the person who made the request.

**116. REMOVAL FROM PAPUA NEW GUINEA.**

(1) Where—

- (a) a person is detained under this Part as a person of unsound mind; and
- (b) it seems expedient that he should be removed to some other country; and
- (c) the Head of State, acting on advice given after consideration of a report from the Departmental Head, is satisfied that—
  - (i) his removal is likely to be for his benefit; and
  - (ii) proper arrangements have been made for the removal and for his subsequent care and treatment,

the Head of State, acting on advice, may, by warrant, direct that he be delivered to the person named in the warrant for the purpose of removal to that other country.

(2) A warrant under Subsection (1)—

- (a) shall be addressed to the Medical Superintendent of the mental hospital in which the person to whom it relates is at the time detained; and
- (b) shall direct him to deliver up the person to the person specified in the warrant, at such place and in such manner as is specified in the warrant, for the purpose of the removal.

(3) A warrant under Subsection (1) is sufficient authority for the master of a vessel or captain of an aircraft to receive and detain the person to whom it relates on board the vessel or aircraft for the purpose of conveying him to his destination.

**117. RETURN TO PAPUA NEW GUINEA.**

(1) Where a person detained under this Part who was born in the country and was removed from the country under this Part ceases, to the satisfaction of the Minister, to be a person of unsound mind, he is entitled, on application being made in the prescribed manner and time, to be returned to the country at the expense of the State.

(2) A person detained under this Part who was not born in the country and was removed from the country under this Part, and who returns to the country without the consent of the Minister, shall be deemed to be a prohibited immigrant within the meaning of any law relating to immigration.

(3) An entry permit, or a declaration as to status, under the *Migration Act 1978* is not a consent for the purposes of Subsection (2), and its issue is not evidence of such a consent.

***Subdivision C. – Discharge, etc.*****118. ANNULMENT OF FINDING OF UNSOUNDNESS OF MIND.**

(1) Where a person has been found of unsound mind and it is shown to the Court that there is reason to believe that the unsoundness of mind has ceased, the Court may make an order for an inquiry whether he is or is not still of unsound mind and incapable of managing himself or his affairs.

(2) An inquiry under Subsection (1) shall be conducted in the same manner and subject to the same rules as are prescribed for an inquiry directed under Section 86.

(3) If on an inquiry under Subsection (1) it is found that the unsoundness of mind has ceased, the Court shall order all proceedings in the matter to cease or to be set aside on such terms and conditions as seem to it proper.

(4) Where, after an inquiry into the unsoundness of mind of a person detained in a mental hospital, the Court has made an order under Subsection (3) that the proceedings cease or be set aside, the person in charge of the mental hospital shall, on the production of a certified copy of the order, immediately discharge him from the mental hospital.

**119. DISCHARGE OF VOLUNTARY PATIENTS.**

If a person received as a voluntary patient under Section 111 becomes incapable of expressing himself as willing or unwilling to continue to receive treatment, he shall not be retained afterwards as a voluntary patient for a longer period than 28 days, and if he has not been previously discharged, he shall be discharged on the expiration of 28 days from the date on which he became incapable of so expressing himself, unless in the meantime—

- (a) he has again become capable of so expressing himself; or
- (b) steps have been taken to deal with him under Section 109 as a person of unsound mind.

**120. DISCHARGE BY ORDER OF VISITORS.**

Subject to any other law, two of the Visitors, of whom one is a Medical Officer, appointed for a mental hospital may, by writing under their hands, order the discharge of a person detained under this Part in the hospital.

**121. DISCHARGE ON APPLICATION OF PERSON REQUESTING ADMISSION UNDER SECTION 109.**

(1) Subject to Subsection (2), a person detained under this Part in a mental hospital under an order made under Section 109 on the request of any person shall be discharged by the Medical Superintendent on the written application of the person on whose request the reception order was made.

(2) A person shall not be discharged under Subsection (1) if the Medical Superintendent certifies in writing that he is dangerous or unfit to be at large.

### **122. DISCHARGE ON UNDERTAKING FOR PROPER CARE.**

Where a relative or friend of a person detained in a mental hospital under Section 109 or 110 wishes the person to be delivered over to his care and custody, he may make application to a Magistrate, and the Magistrate—

- (a) if, after consulting the Medical Superintendent and the Visitors appointed for the mental hospital, or one of the Visitors who is a Medical Officer, he thinks fit; and
- (b) on the written undertaking of the relative or friend, to the satisfaction of the Magistrate that the patient—
  - (i) will be properly taken care of; and
  - (ii) will be prevented from doing injury to himself or others,

may make an order in the prescribed form for the discharge of the patient.

### **123. DISCHARGE OR LEAVE BY MEDICAL SUPERINTENDENT.**

(1) The Medical Superintendent of a mental hospital may, by writing under his hand—

- (a) discharge a person detained under this Part in the hospital; or
- (b) grant to a person detained under this Part in the hospital leave of absence for such period and on such conditions as the Medical Superintendent thinks proper.

(2) A person to whom leave of absence has been granted under Subsection (1)(b) who, without reasonable excuse—

- (a) fails to return to the hospital at the expiration of the period of leave; or
- (b) contravenes or fails to comply with a condition on which the leave was granted,

may be arrested by a commissioned officer of the Police Force and returned to the hospital.

### ***Subdivision D. – Miscellaneous.***

### **124. DEALING WITH RECEPTION ORDERS.**

(1) In this section, “**the appropriate authority**” means—

- (a) in the case of an order made under Section 108—the Registrar of the National Court; and
- (b) in the case of an order made under Section 109 or 110—the Medical Officer or medical practitioner who made the order.

(2) Where an order is made under Section 108, 109 or 110, the appropriate authority shall send a certified copy of the order without delay to the person in charge of the mental hospital into which any person is ordered to be received.

***Division 6.***

***Electro-convulsive Treatment.***

**125. ADMINISTRATION OF ELECTRO-CONVULSIVE TREATMENT.**

Notwithstanding any other law, a medical assistant or nurse who holds a certificate in the prescribed form, signed by the Minister, that he is proficient in the administration of electro-convulsive treatment may administer the treatment to a person of unsound mind if, in his opinion—

(a) delay might prejudice the course of the illness; or

(b) it is necessary because of transport difficulties or other urgent reason,

and it is not practicable for the treatment to be given by a medical practitioner.

***Division 7.***

***Offences.***

**126. IMPROPER DETENTION.**

(1) Subject to Section 130, a person who—

(a) otherwise than in accordance with this Part, receives or detains in a mental hospital a person who is or is alleged to be of unsound mind; or

(b) for gain, detains two or more persons of unsound mind in any place, not being a mental hospital or designated observation ward,

is guilty of an offence.

Penalty: A fine not exceeding K800.00 or imprisonment for a term not exceeding two years, or both.

(2) A prosecution under this section shall not be commenced without the consent of the Public Prosecutor.

**127. OFFENCES AGAINST PATIENTS.**

(1) An attendant, nurse, servant or other person employed in a mental hospital who ill-treats or willfully neglects a person detained under this Part in the hospital is guilty of an offence.

Penalty: A fine not exceeding K200.00 or imprisonment for a term not exceeding two years, or both.

(2) A person who has or attempts to have sexual intercourse with a female person of unsound mind under care or treatment in a mental hospital, while she is in the hospital or on leave from the hospital, is guilty of an offence.

Penalty: A fine not exceeding K400.00 or imprisonment for a term not exceeding two years, or both.

(3) Consent is not a defence to a charge of an offence against Subsection (2) if the accused knew or had reason to suspect that the person in respect of whom the offence was committed was a person of unsound mind—

- (a) under care or treatment in a mental hospital; or
- (b) on leave from a mental hospital.

(4) If on the trial of a person for rape or attempted rape the Court—

- (a) is satisfied that the accused is guilty of an offence against Subsection (2); and
- (b) is not satisfied that he is guilty of rape or attempted rape,

it may acquit him of rape or attempted rape, and find him guilty of an offence against that subsection.

### ***Division 8.***

#### ***Miscellaneous.***

#### **128. CONSTRUCTION OF LAWS, ETC., REFERRING TO LUNACY, ETC.**

In any law or instrument, a reference to a lunatic or to lunacy, or to a lunatic asylum or mental hospital, or to a similar expression, shall be read as a reference to a person of unsound mind or to a mental disorder, or to a mental hospital, as the case requires, within the meaning of this Part.

#### **129. EVIDENTIARY EFFECT OF MEDICAL ORDERS, ETC.**

An order or certificate of a medical practitioner given under this Part is evidence, for the purposes of this Part, of—

- (a) the facts appearing in the order or certificate; and
- (b) the opinion stated to have been formed by the person certifying on the facts,

as if the matters appearing in the order or certificate had been verified on oath.

#### **130. PROTECTION OF PERSONS ACTING UNDER PART VIII.**

(1) A person who has—

- (a) made a request for the reception of a person into a mental hospital; or
- (b) signed or carried out, or performed an act with a view to signing or carrying out—
  - (i) an order purporting to be a reception order; or
  - (ii) a report, application, recommendation or certificate under this Part; or

(c) done any other thing under this Part,

is not liable to any civil or criminal proceedings on the ground of want of jurisdiction or any other ground unless he has acted in bad faith or without reasonable care.

(2) Civil or criminal proceedings shall not be brought against a person in a court in respect of a matter referred to in Subsection (1) without the leave of the court, and leave shall not be given unless the court is satisfied that there is a substantial ground for the contention that the person against whom it is sought to bring the proceedings has acted in bad faith or without reasonable care.

(3) Notice of an application under Subsection (2) shall be given to the person against whom it is sought to bring the proceedings, and he is entitled to be heard against the application.

**PART IX. – PROCEDURAL AND EVIDENTIARY PROVISIONS RELATING TO CERTAIN REGULATIONS.**

**131. APPLICATION OF PART IX.**

Except where the contrary intention appears in this Act or in the regulations, the provisions of this Part do not apply to or in relation to Parts IV, V, VI, VII or VIII, or to regulations made for the purposes of any of those Parts.

**132. SERVICE OF NOTICES, ETC.**

(1) A notice, order or other document required or authorized under this Act to be given or served to or on a person may be served—

- (a) by delivering it to the person; or
- (b) by leaving it at his usual or last-known place of abode; or
- (c) by forwarding it by post addressed to him at his usual or last-known place of abode.

(2) If it is addressed to the owner or occupier of premises, a notice, order or document referred to in Subsection (1) may be served—

- (a) by delivering it, or a true copy of it, to some adult person on the premises; or
- (b) if there is no such person on the premises who can be served—by fixing it, or a true copy of it, on some conspicuous part of the premises.

(3) Where a notice is required to be given to a person whose name and address are unknown, the notice may be served by publishing it three times, with intervals of not less than one week between any two publications, in the National Gazette and in a newspaper circulating in the country.

(4) If the name of the owner or occupier is not known, a notice required by this Act to be given to the owner or occupier of any premises may be addressed to him by the description of the “owner” or “occupier” of the premises (naming them) in respect of which the notice is given, without further name or description.

(5) Where there is more than one owner or occupier, it is sufficient if—

- (a) the notice or order is served on any one of them; and
- (b) the name of any one of them is specified with the addition of the words “and others”.

(6) Failure to effect service on—

- (a) the owner—does not affect the validity of service on the occupier; and
- (b) the occupier—does not affect the validity of service on the owner.

**133. PROOF OF NOTICES, ETC.**

(1) Where in any proceedings under this Act a notice, order or other document has to be proved—

- (a) the defendant shall be deemed to have received notice to produce it; and
- (b) until the contrary is shown—it and its due service may be proved by or on behalf of the complainant by the production of what purports to be a copy, bearing what purports to be a certificate under the hand of the person authorized to issue the original that—
  - (i) the copy is a true copy of the original; and
  - (ii) the original was served on the date specified in the certificate.

(2) The validity of any notice, order or other document, or of its service, is not affected by an error, misdescription or irregularity that—

- (a) in the opinion of the court dealing with the matter, is not likely to mislead; or
- (b) in fact does not mislead.

**134. PROOF OF APPOINTMENTS.**

In a prosecution or other proceedings under this Act, proof is not required of the particular or general appointment of any person under this Act.

**135. EFFECT OF SERVICE OF NOTICES, ETC.**

If a notice or order—

- (a) is required under this Act to be served on an owner or occupier; and
- (b) has been duly served on an owner or occupier,

it is binding on—

- (c) any person claiming by, from or under the owner or occupier so served; and
- (d) any subsequent owner or occupier,

as if it had been duly served on him.

**136. REFERENCES TO “OWNER” OR “OCCUPIER”.**

Where in any proceedings under this Act it is necessary to refer to the owner or occupier of any premises, it is sufficient to designate him as the “owner” or “occupier” of those premises, without name or further description.

**137. DEATH OF PARTY TO PROCEEDINGS.**

Proceedings under this Act against several persons included in an information, complaint or summons do not abate by reason of the death of any of them, but may be carried on as if the deceased person had not been originally included.

**138. PROCEEDINGS IN CASE OF NUISANCE.**

(1) Where a nuisance appears to be wholly or partially caused by the act or default of two or more persons—

- (a) proceedings may be instituted against any one of them; or
- (b) all or any of them may be included in the one proceedings.

(2) Any of the persons referred to in Subsection (1)—

- (a) may be ordered to abate the nuisance so far as it appears to the court dealing with the matter to be caused by his or their act or default; or
- (b) may be prohibited from continuing any act or default that, in the opinion of the court, contributes to the nuisance; or
- (c) may be fined or otherwise punished notwithstanding that the act or default of any one of them would not separately have caused a nuisance.

(3) The costs and expenses may be distributed in such manner as appears to the court fair and reasonable.

**139. PROOF OF OWNERSHIP.**

(1) Evidence by a certificate signed by—

- (a) the Registrar of Titles that any person's name appears in the Register of State Leases kept under the *Land Registration Act 1981*, as the registered owner, proprietor or lessee; or
- (b) the warden of any gold-field or mineral field that any person's name appears in the records of his office as the lessee or licensee,

as the case may be, of any premises, is, unless the contrary is proved, evidence that that person is, for the purposes of any proceedings under this Act, the owner of the premises.

(2) If the person appearing to be the owner of any premises is absent from the country or cannot, after reasonable inquiries, be found, an occupier, agent or person advertising or notifying himself as being authorized to deal with the premises in any way shall, for the purposes of any proceedings under this Act, be deemed to be the owner.

(3) In a case to which Subsection (1) or (2) applies, the occupier, agent or person referred to in that subsection may recover from the owner—

- (a) any penalty in respect of any conviction under this Act; or
- (b) any expenses to which he has been put under this Act; or

- (c) any sums of money or costs that he has expended in and on the premises under this Act,

whether under legal process or not.

(4) This section does not prejudice, exclude or take away any other method of proof.

#### **140. PROHIBITED ADVERTISEMENTS.**

(1) In this section, “**statement**” includes any document, book or paper containing a statement.

(2) For the purposes of this section, a person who—

- (a) affixes or inscribes a statement on any thing so as to be visible to persons being in or passing along a street, road, highway, pathway, public place or public conveyance; or
- (b) delivers, offers or exhibits a statement to any person in or passing along a street, road, highway, pathway, public place or public conveyance; or
- (c) throws a statement into or on a street, road, highway, pathway, public place or public conveyance, or into the area, yard, garden or enclosure of a house; or
- (d) exhibits a statement to public view in a house, shop or place; or
- (e) prints or publishes a statement in a newspaper; or
- (f) sells, offers or shows, or sends by post, a statement to a person,

shall be deemed to have published the statement.

(3) Subject to Subsection (4), a person who publishes a statement, whether by way of advertisement or otherwise, to promote the sale of an article as a medicine, instrument or appliance for the alleviation or cure of—

- (a) a venereal disease; or
- (b) a disease affecting the generative organs or functions; or
- (c) sexual impotence; or
- (d) a complaint or infirmity arising from or relating to sexual intercourse; or
- (e) female or menstrual irregularities,

is guilty of an offence.

Penalty: A fine not exceeding K100.00.

(4) This section does not apply to—

- (a) any book, document or paper published in good faith for the advancement of medical or surgical science; or

- (b) any advertisement, notice or recommendation published by the authority of the Commissioner appointed under Section 49; or
- (c) any publication sent only to medical practitioners or to pharmacists for the purposes of their businesses.

**PART X. – REGULATIONS.****141. REGULATIONS.**

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular prescribing matters providing for and in relation to–

- (a) the prevention of disease; and
- (b) the maintenance of health; and
- (c) sanitation in respect of places, premises and receptacles; and
- (d) defining nuisances for the purposes of this Act, and providing for their prevention and abatement; and
- (e) the care and treatment of sick persons; and
- (f) the promotion of public health by the establishment of special clinics for the treatment and prevention of disease; and
- (g) the medical and dental inspection of school children, and measures to be instituted for the remedy and prevention of diseases and dental defects in children; and
- (h) subject to the *Building Act 1971*–
  - (i) the declaration of buildings as dangerous or unfit for human habitation, occupation or use; and
  - (ii) the prohibition of the habitation, occupation or use of any such building after the making of any such declaration; and
  - (iii) the measures to be taken by the persons who own, inhabit, occupy or use any such building after the making of any such declaration, and providing, in default, power for the prescribed authority to do the work and recover the cost from the owner or occupier of any such building; and
- (i) the licensing, control and inspection of–
  - (i) the preparation, sale, distribution and possession of food and drugs; and
  - (ii) the keeping of animals used for food or for the production of food products, and the food products of those animals; and
  - (iii) dairies and milk supply; and
  - (iv) eating houses and food shops; and
  - (v) food manufactories; and
  - (vi) boarding houses; and

- (vii) subject to the *Medical Registration Act 1980*—hospitals; and
- (viii) barbers' shops and hairdressing establishments; and
- (ix) laundries, cleaning establishments and dye works; and
- (x) the housing of birds and animals and the conditions under which they may be kept; and
- (j) defining offensive trades and regulating the conditions under which they may be carried on; and
- (k) the prevention of the pollution of natural water courses and the maintenance of the purity of water supply; and
- (l) the disposal of garbage, refuse and night-soil; and
- (m) measures for the control or destruction of vermin; and
- (n) measures for the prevention or destruction of mosquitoes; and
- (o) subject to the *Cemeteries Act 1955*—the establishment, control and inspection of cemeteries, burial grounds, crematories, mortuaries and morgues; and
- (p) the care, treatment and detention of persons of unsound mind, including—
  - (i) the conditions and circumstances under which mechanical means of restraints or seclusion may be applied to patients; and
  - (ii) the books and records to be kept in mental hospitals; and
  - (iii) the duties of Visitors appointed for mental hospitals under this Act; and
- (q) the charges to be made for services supplied or rendered under the regulations; and
- (r) the purposes for which and the conditions on which licences, certificates and other documents may be issued, and the fees payable; and
- (s) the imposition of penalties—
  - (i) of fines not exceeding K50.00 for offences against the regulations made for the purposes of Part V; and
  - (ii) of fines not exceeding K200.00 for offences against the regulations made under Paragraph (p) or for the purposes of Part VIII; and
  - (iii) of fines not exceeding K100.00 or imprisonment for terms not exceeding three months for offences against any other provision of the regulations.

**SCHEDULE 1**

**PAPUA NEW GUINEA.**

**Public Health Act 1973.**

**Form 1 – Request for the Admission of a Private Patient..**

To the Medical Superintendent,  
... Mental Hospital.

I, ..., of ..., request you to receive ... as a patient into your hospital. A statement concerning him is attached.

Dated ... 20 ...

(Signature.)

**Details of Person Making Request.**

Name:

Age: ... Occupation (if any):

Place of abode:

Degree of relationship (if any) or other circumstances of connection with the patient:

Date on which patient was last seen:

**Statement.**

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

Name of patient in full:

Sex: ... Age: ... Married, single or widowed:

Condition in life and previous occupation (if any):

Religion, as far as known:

Previous place of abode:

Whether first attack:

Age, if known, on first attack:

When and where previously under care and treatment:

Duration of existing attack:

Supposed cause:

Whether subject to epilepsy:

Whether suicidal:

Whether dangerous to others:

Whether found to be of unsound mind by the National Court:

Date of decision of National Court (if any):

Whether any member of patient's family has been or is affected with mental disorder:

Unsoundness of mind:

Dated ... 20 ...

(Signature of person making statement.)

**Details of Person Making Statement.**

Where the person signing the statement is not the person who signs the request for admission, the following particulars concerning the person signing the statement are to be added, namely:—

Name:

Age: . . . Occupation (if any):

Place of abode:

Degree of relationship (if any) or other circumstances of connection with the patient:

Date on which patient was last seen:

**PAPUA NEW GUINEA.**

**Public Health Act 1973.**

**Form 2 – Medical Order Admitting Patient to Mental Hospital..**

To the Medical Superintendent,

. . . Mental Hospital.

I, (*name and official designation, if any*), certify that on . . . 20 . . . , at . . . , I personally examined, separately from any other practitioner, (*name and residence of person examined*) and that he/she is of unsound mind and a proper person to be taken charge of and detained under care and treatment, and that I have formed this opinion on the following grounds, namely:—

**Statement.**

1. Facts indicating unsoundness of mind observed by myself: (*state the facts*)
2. Other facts (if any) indicating unsoundness of mind communicated to me by others: (*state the information and from whom*)

And I order that . . . be received in the . . . Mental Hospital for care and treatment.

Dated . . . 20 . . .

Medical Officer/Medical Practitioner:

**SCHEDULE 2 – INFECTIOUS DISEASES.**

Sec. 14.

Anthrax.

Beriberi.

Chickenpox, including “tropical varicella”.

Cholera (Asiatic).

Dengue fever.

Diphtheria (membranous croup).

Dysentery (amoebic and bacillary).

Epidemic cerebro-spinal meningitis.

Epidemic influenza.

Epidemic ulcerated sore mouth or throat (“New Guinea Mouth Disease”).

German measles.

Glanders.

Hansen’s Disease.

Measles.

Mumps.

Morbilloid (“Fourth Disease”).

Ophthalmia neonatorum (suppurative conjunctivitis in the new born).

Paragonimiasis.

Paratyphoid fever.

Plague.

Pneumonia (epidemic).

Poliomyelitis, acute anterior (infantile paralysis).

Puerperal septicaemia.

Rabies.

Scarlet fever.

Small-pox.

Tetanus.

Trachoma.

Tuberculosis (Phthisis, including also bony tuberculosis, miliary tuberculosis).

Typhoid fever.

Typhus fever.

Whooping cough.

Office of Legislative Counsel, PNG