

CAYMAN ISLANDS



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**A BILL FOR A LAW TO ESTABLISH THE MENTAL HEALTH
COMMISSION; PROVIDE FOR ITS FUNCTIONS AND POWERS; AND
FOR INCIDENTAL AND CONNECTED PURPOSES**

THE MENTAL HEALTH COMMISSION BILL, 2013

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to establish the Mental Health Commission.

Clause 1 contains the short title and commencement.

Clause 2 contains the definitions.

Clause 3 establishes the Mental Health Commission.

Clause 4 specifies that members of the Commission shall be appointed by the Governor in Cabinet. It also deals with a number of other matters especially relating to proceedings of the Commission

Clause 5 provides for the basic aspects relating to procedures for meetings of the Commission and related matters.

Clause 6 provides for the appointment of a Secretary to the Commission.

Clause 7 specifies the functions of the Commission as they relate to the power to hear and determine appeals.

Clause 8 specifies the functions of the Commission to make recommendations to the Health Practice Commission, Councils under that Commission, and for other matters.

Clause 9 sets out the general functions of the Commission.

Clause 10 sets out mainly the powers of the Commission.

Clause 11 makes certain incidental provisions in relation to the power of the Commission to delegate the exercise of its powers, which power is conferred by clause 5(7).

Clause 12 provides for the duty of the Commission to advise the Health Practice Commission and the Councils established under the Health Practice Law.

Clause 13 empowers the Minister to give policy directions to the Commission.

Clause 14 contains the regulation-making power of the Governor in Cabinet.

THE MENTAL HEALTH COMMISSION BILL, 2013

ARRANGEMENT OF CLAUSES

1. Short title and commencement
2. Interpretation
3. Mental Health Commission established
4. Constitution, membership, etc., of Commission
5. Meetings of Commission
6. Secretary to the Commission
7. Functions of Commission: Quasi-judicial
8. Functions of Commission: Recommendations to Health Practice Commission and Councils
9. Functions of Commission: general
10. Incidental powers and cautions of Commission
11. Delegation of functions
12. Advice of Commission to Health Practice Commission and Councils
13. Minister may give policy directions to Commission
14. Regulations

CAYMAN ISLANDS

**A BILL FOR A LAW TO ESTABLISH THE MENTAL HEALTH
COMMISSION; PROVIDE FOR ITS FUNCTIONS AND POWERS; AND
FOR INCIDENTAL AND CONNECTED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

PART 1 - PRELIMINARY

1. (1) This Law may be cited as the Mental Health Commission Law, 2013. Short title and
commencement

(2) This Law shall come into force on such date as may be appointed by Order made by the Governor in Cabinet and different dates may be appointed for different provisions of this Law and in relation to different matters but any date appointed under this subsection shall not be sooner than the respective dates appointed for the coming into force of the Mental Health Law, 2013 and the Health Practice (Amendment) Law, 2013.

2. (1) In this Law - Interpretation

“Commission” means the Mental Health Commission established by section 3 of this Law;

“member” means a member of the Commission and includes the Chairman and Deputy Chairman;

“Minister” means the Minister responsible for health; and

“prescribed” means prescribed by regulations made under this Law.

PART 2 - MENTAL HEALTH COMMISSION

Mental Health
Commission established

3. There is hereby established the Mental Health Commission, which shall have the powers and duties conferred or imposed upon it by this Law.

Constitution,
membership, etc., of
Commission

4. (1) The Commission shall consist of the following nine members all of whom shall be appointed by the Governor in Cabinet -

(2005 Revision)

- (a) two attorneys-at-law;
- (b) two persons who are registered under Schedule 5, 6 or 7 of the Health Practice Law (2005 Revision) and, in addition, have training or experience in mental health;
- (c) one medical doctor registered under Schedule 4 of the Health Practice Law (2005 Revision) who, in addition, has a specialisation in psychiatry;
- (d) one medical doctor registered under Schedule 4 of the Health Practice Law (2005 Revision) who, in addition, has training in or experience in mental health; and
- (e) three members of the public, that is, persons who are not registered under the Health Practice Law (2005 Revision) and have never been members of any of the professions registered under that Law.

(2) One of the members shall be designated as Chairman and two as Deputy Chairmen, at least two of the three having been appointed under subsection (1)(a), (b) and (c).

(3) Appointments made under subsection (1) shall be published in the Gazette.

(4) Members shall hold office for a term not exceeding three years and be eligible for re-appointment.

(5) The members shall hold and vacate office in accordance with the terms of their appointment.

(6) The Commission may act despite a vacancy in its membership, including a vacancy in the office of Chairman or Deputy Chairman.

(7) The Governor in Cabinet may terminate a member's appointment if the member -

- (a) has been adjudged bankrupt;

- (b) is unable by reason of physical or mental illness to perform his functions;
- (c) has been absent from three consecutive meetings of the Commission without the consent of the Chairman of the Commission; or
- (d) for any other reason.

(8) Where any member ceases to be a member before the normal expiration of his office, the Governor in Cabinet may appoint another person to hold that office until the time the member's office would have expired.

(9) Members who are not public servants may, in the discretion of the Governor in Cabinet, be paid such allowances in respect of attendance at the meetings of the Commission as he may determine and for the purpose of this subsection the attendance of any member at a meeting of the Commission shall be certified by the Chairman of that meeting.

(9) A written notice or other document required to be served on the Commission may be served by leaving the notice or document at the office of the Commission or by sending it through the post in a prepaid letter addressed to the Commission at its office.

5. (1) The Commission shall meet as often as it thinks necessary for the performance of its functions and shall, without limiting the generality of this provision, meet at least four times in a year.

Meetings of Commission

(2) Three members present including the Chairman, or one of the Deputy Chairmen, at any meeting of the Commission shall constitute a quorum.

(3) At a meeting of the Commission -

- (a) in the absence of the Chairman, the Chairman shall designate one of the two Deputy Chairmen to preside;
- (b) in the absence of the Chairman and the two Deputy Chairmen, the Chairman shall designate another member to preside;

and where the Chairman is unable to designate someone to act -

- (c) and both Deputy Chairmen are able to attend, the members present at the meeting shall designate one of the two Deputy Chairmen to preside;
- (d) and at least one of the Deputy Chairmen is able to attend, that Deputy Chairman shall preside; and
- (e) and both Deputy Chairmen are not able to attend, the members present shall designate one of their number to preside.

(4) A question or matter to be determined by the Commission at any meeting shall be decided by a majority of the votes of the members present and voting.

(5) Where there is a tie, the Chairman shall exercise a casting vote.

(6) Except to the extent already regulated by this section, the Commission shall regulate its own procedure.

(7) The Commission may -

- (a) act through a committee; and
- (b) delegate any of its functions or powers to such committee and to any of their own number and to the public officers of the Commission,

except that where the Commission sets up a committee which consists of members other than members of the Commission or the public officers of the Commission, it may only act or delegate its functions or powers to such committee with the prior approval of the Governor in Cabinet.

(8) Where a member has a direct pecuniary interest in a matter being considered by the Commission and is present at a meeting of the Commission at which the matter is the subject of consideration, he shall, as soon as practicable after its commencement, disclose that fact and shall not take part in the consideration or discussion of the matter or vote on any question with respect to it, and shall be excluded from the meeting for the duration of the consideration, discussion and voting procedure.

(9) A member who fails to comply with subsection (8) commits an offence and is liable -

- (a) on summary conviction to a fine of twenty thousand dollars and to imprisonment for two years; or
- (b) on conviction on indictment to a fine of fifty thousand dollars and to imprisonment for five years,

unless he proves that, at the time when matter was the subject of consideration at that meeting, he did not know or could not be reasonably have been expected to know that he had a direct pecuniary interest.

(10) A disclosure made under subsection (8) shall be recorded in the minutes of the meeting.

(11) Failure to make a disclosure under this section does not invalidate the act or proceeding concerned.

(12) The deliberations of the Commission shall be confidential but the Commission shall cause any decision which affects the members of the public to be published in the Gazette, on a website or in a newspaper published in the Islands.

(13) Neither the Commission nor any member of a committee or employee of the Commission shall be liable in damages for anything done or omitted in the discharge of their respective functions under this Law unless it is shown that the act or omission was in bad faith.

6. (1) The Chief Officer in the Ministry responsible for health shall, on such terms and conditions as he thinks fit, appoint a part-time Secretary to the Commission, and, without limiting the generality of this power, in determining the terms of conditions may specify which provisions of the Public Service Management Law and Personnel Regulations shall apply or not apply to the Secretary.

Secretary to the
Commission

(2) The Secretary shall record and keep, or cause to be kept, all minutes of the meetings, proceedings and decisions of the Commission but shall have no right to vote.

7. The functions of the Commission shall be to -

Functions of
Commission: Quasi-
judicial

- (a) hear and determine appeals made under sections 6(3), 8(4) and 9(5) of the Mental Health Law, 2013;
- (b) conduct reviews under section 6(4) of the Mental Health Law, 2013;
- (c) hear and determine appeals made under section 9(4) of the Mental Health Law, 2013 with regard to treatment orders and exercise the powers referred to in section 9(3) of that Law in relation thereto; and
- (d) hear and determine appeals made under section 12(7) of the Mental Health Law, 2013.

8. The functions of the Commission are to -

Functions of
Commission:
Recommendations to
Health Practice
Commission and
Councils, etc.

- (a) submit an annual report to the Minister responsible for health on the needs and performance of the Islands' mental health system, including complaints, which report shall be tabled in the Legislative Assembly;

- (b) review and advise on scopes of practice and codes of ethics for practitioners, which codes shall be prepared by the relevant registering council;
- (c) provide policy advice to the relevant registering Council, including the minimum requirements, for registration in order to be licensed in a category referred to in the Schedule;
- (d) advise the Health Practice Commission regarding mental health facilities; and
- (e) advise the Health Practice Commission regarding medical research and clinical trials in mental health.

Functions of
Commission: general

9. The functions of the Commission are to -

- (a) advise and guide other government agencies to such extent as they may require;
- (b) obtain and compile statistics on mental illness;
- (c) oversee and deliver mental health training and sensitization sessions for prison officers, constables and any other persons who may, in the performance of their functions, be expected to deal with mental health patients;
- (d) approve a list of overseas mental health facilities for the purpose of referral of patients;
- (e) advise the Governor in Cabinet with regard to the exercise of the powers conferred on him under section 20(a) of the Mental Health Law, 2013 to declare “places of safety”;
- (f) make recommendations to the Minister regarding mental health research;
- (g) research and establish protocols and guidelines for mental health advocacy and approve persons to act as advocates;
- (h) establish and maintain a programme which provides information to the general public concerning mental illness and co-occurring disorders and related conditions
- (i) consider ways to involve the general public in the decisions concerning the policy on mental illness and co-occurring disorders and related conditions;
- (j) review and evaluate the community’s mental health needs, services and special problems with a view to making recommendations on policy and research to the Minister responsible for mental health; and
- (k) advise on the establishment of programmes for the provision of on-going care for persons living in the Cayman Islands for the treatment of persons with mental illness or co-occurring disorders and persons with related conditions; and

- (l) review the progress of patients transferred overseas under section 14 of the Mental Health Law, 2013 and recommend to the Governor when it is appropriate to return such patients to the Islands;
 - (m) review and offer advice to the Elections Office regarding the eligibility of mental health patients;
 - (n) review every six months the progress of remand prisoners deemed unfit to plead and submit it to the Chief Officer, Judicial Administration;
 - (o) give policy advice to the Minister responsible for health on any aspect of the local mental health system; and
 - (p) perform such other functions as the as the Governor in Cabinet may determine.
10. (1) In carrying out its functions under this Law, the Commission may -
- (a) collaborate with such persons as it considers necessary or expedient in the collection, compilation and publication of statistics relating to the provision of mental health services in the Islands;
 - (b) with the approval of the Governor, enter into arrangements with any department of the Government for the use of the personnel, facilities and services of that department to any extent not incompatible with that department's operation.
- (2) No publication of statistics under subsection (1)(a) shall contain any particulars so arranged as to enable any person to identify any particulars relating to any individual person.
11. A delegation by the Commission under section 5 (7) -
- (a) does not preclude the Commission from exercising or performing at any time any of the functions or duties so delegated;
 - (b) may be conditional, qualified or limited in such manner as the Commission may think fit; and
 - (c) may be amended at any time by the Commission.
12. In any matter relating to the professions specified in Schedules 1, 2 and 3, the Commission may, on its own initiative or upon request by the Health Practice Commission or the relevant Council, give general or specific advice to the Health Practice Commission or Council concerned to such extent as may be specified in the Health Practice Law (2005 Revision), this Law or any other Law.

Incidental powers and cautions of Commission

Delegation of functions

Advice of Commission to Health Practice Commission and Councils

Schedules 1, 2 and 3 (2005 Revision).

Minister may give policy directions to Commission

13. The Minister may, after consultation with the Commission, give it such policy or general directions as to the exercise by the Commission of its functions as appear to be necessary or expedient in the public interest.

Regulations

14. The Governor in Cabinet may make regulations prescribing all matters that are required or permitted by this Law to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Law and, in particular -

- (a) requiring particulars and information to be supplied at prescribed times by persons in prescribed areas for prescribed periods; and
- (b) prescribing information which is to be supplied to the Commission and the form in which it shall be submitted; and
- (c) outlining the matters that the Commission shall take into account in performing its functions under this Law.

SCHEDULE 1

Medical doctors (where dealing with mental health) (Section 12)

SCHEDULE 2

(Section 12)

PROFESSIONS OF NURSING

Registered mental health nurses
Clinical nurse specialists (where dealing with mental health)
Nurse practitioners (where dealing with mental health)
Registered nurses (where dealing with mental health)
Advanced practice nurses (where dealing with mental health)
Registered general nurse (where dealing with mental health)
Registered nurse (where dealing with mental health)

SCHEDULE 3

Mental health counsellors (Section 12)
Clinical psychologists (where dealing with mental health)
Psychotherapists (where dealing with mental health)
Substance abuse counsellors (where dealing with mental health)

Psychologists, Doctoral and Master's Level (where dealing with mental health)
Counsellors (where dealing with mental health)
Therapists (where dealing with mental health)
Social workers (where dealing with mental health)

Passed by the Legislative Assembly the day of , 2013.

Speaker.

Clerk of the Legislative Assembly.