

MENTAL HEALTH AND MENTAL DISORDERS

Mental Health Act 18 of 1973, as amended in South Africa prior to Namibian independence

Summary: This Act ([RSA GG 3837](#)) provides for the detention and treatment of the mentally ill. It repeals the *Mental Disorders Act 38 of 1916*, with the exception of sections 27 to 29bis inclusive. (The remaining provisions of the *Mental Disorders Act 38 of 1916* were repealed by the Criminal Procedure Act 51 of 1977 ([RSA GG 5532](#)).

Applicability to SWA: Section 1 defines “Republic” to include “the territory of South West Africa”. Section 78 states “This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel.”

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Health) Transfer Proclamation (AG 14/1977), dated 1 December 1977. None of the amendments to the Act in South Africa after that date were made expressly applicable to SWA.

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *Mental Health Amendment Act 48 of 1976* ([RSA GG 5074](#))
- *Health Laws Amendment Act 36 of 1977* ([RSA GG 5481](#)).

One definition in the Act is amended by the Native Laws Amendment Proclamation, AG 3 of 1979 ([OG 3898](#)), deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979).

Savings: Section 79(2) states: “Any regulation, application, report, enquiry, finding, request, return, direction, examination or appointment made, held or given or any medical certificate or other certificate, reception order or other order, summons, warrant or authority issued, made or given, or any condition imposed or any board established or any other act done under any provision of any law repealed by this Act and which was of force immediately prior to the commencement of this Act, shall be deemed to have been made, held, issued, given, imposed, established or done, as the case may be, under the corresponding provision of this Act.”

Regulations: Regulations are authorised by section 77 of this Act. Pre-independence regulations under this Act or surviving from the repealed Act have not been researched. No regulations have been promulgated since independence.

Appointments: A Psychiatry Board in respect of Windhoek Central Hospital is announced in GN 198/2001 ([GG 2624](#)). A Mental Health Hospital Board for Windhoek Central Hospital is announced in GN 14/2015 ([GG 5668](#)) and in GN 281/2018 ([GG 6753](#)).

Cases:

S v Narib/S v Nyambali 2010 (1) NR 273 (HC) (relation of sections 28-29 to section 77(6) of *Criminal Procedure Act 51 of 1977*)

Gawanas v Government of the Republic of Namibia 2012 (2) NR 401 (SC) (procedure for discharge of President’s patient under section 29).

See also *Criminal Procedure Act 51 of 1977*, Chapter 13 (mental illness and criminal responsibility) (**CRIMINAL LAW AND PROCEDURE**).

See also Ordinance for Prevention and Combating of Alcoholism and Anti-Social Conduct 11 of 1965 (**HEALTH**).