

Version  
as at 29 October 2023



## Mental Health (Compulsory Assessment and Treatment) Act 1992

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#### Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

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

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**Transitional, savings, and related provisions**

**Schedule 1**

**Procedural provisions relating to Review Tribunals**

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**Schedule 4**

**Amendments to Criminal Justice Act 1985**

*[Repealed]*

**Schedule 5**

**Amendments to Armed Forces Discipline Act 1971**

**An Act to redefine the circumstances in which and the conditions under which persons may be subjected to compulsory psychiatric assessment and treatment, to define the rights of such persons and to provide better protection for those rights, and generally to reform and consolidate the law relating to the assessment and treatment of persons suffering from mental disorder**

**1 Short Title and commencement**

- (1) This Act may be cited as the Mental Health (Compulsory Assessment and Treatment) Act 1992.
- (2) This Act shall come into force on 1 November 1992.

**2 Interpretation**

- (1) In this Act, unless the context otherwise requires,—



**biometric information** has the same meaning as in section 2(1) of the Customs and Excise Act 1996

**clinician** means a person who holds a professional qualification relevant to the assessment, treatment, and care of patients with mental disorder

**court** means—

- (a) the District Court; or
- (b) as the case may be, the Court Martial of New Zealand established under section 8 of the Court Martial Act 2007 when acting under Part 10 of the Armed Forces Discipline Act 1971

**Deputy Director** means the person who for the time being holds the office of Deputy Director of Mental Health pursuant to section 91

**Director** means the person who for the time being holds the office of Director of Mental Health pursuant to section 91

**Director of Area Mental Health Services** means a person appointed as a Director of the Area Mental Health Services pursuant to section 92

**district inspector** means a person appointed pursuant to section 94 to be a district inspector; and includes a person appointed pursuant to that section to be a deputy district inspector

**duly authorised officer** means a person who, under section 93, is authorised by the Director of Area Mental Health Services to perform the functions and exercise the powers conferred on duly authorised officers by or under this Act

**first period** means the first period of assessment and treatment, which is a period—

- (a) that begins with the date on which the patient receives a notice under section 11(1); and
- (b) that ends when 5 clear days have passed after that date

**fit to be released from compulsory status**, in relation to a patient, means no longer mentally disordered and fit to be released from the requirement of assessment or treatment under this Act

**health practitioner** has the same meaning as in section 5 of the Health Practitioners Competence Assurance Act 2003

**hospital**—

- (a) means premises that—
  - (i) are used to provide hospital mental health care in accordance with section 9 of the Health and Disability Services (Safety) Act 2001; or
  - (ii) are not yet used, but are intended to be used, to provide hospital mental health care, and are occupied by a person certified under that Act to provide hospital mental health care;—

but where only parts of any premises are used (or intended to be used) to provide hospital mental health care, means only those parts; and

- (b) at a time before 1 October 2004, includes premises licensed or deemed to be licensed as a psychiatric hospital pursuant to Part 5 of the Hospitals Act 1957

**hospital mental health care** means hospital care (within the meaning of the Health and Disability Services (Safety) Act 2001) that is, or consists principally of, mental health services

**medical officer** means a medical practitioner, other than the person in charge of a hospital, employed in a service

**medical practitioner** means a health practitioner who is, or is deemed to be, registered with the Medical Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medicine

**mental disorder**, in relation to any person, means an abnormal state of mind (whether of a continuous or an intermittent nature), characterised by delusions, or by disorders of mood or perception or volition or cognition, of such a degree that it—

- (a) poses a serious danger to the health or safety of that person or of others; or
- (b) seriously diminishes the capacity of that person to take care of himself or herself;—

and **mentally disordered**, in relation to any such person, has a corresponding meaning

**mental health practitioner** means—

- (a) a medical practitioner; or
- (b) a nurse practitioner; or
- (c) a registered nurse practising in mental health

**Minister** means the Minister of Health

**nurse** means a health practitioner who is, or is deemed to be, registered with the Nursing Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of nursing whose scope of practice permits the performance of nursing functions

**nurse practitioner** means a health practitioner who—

- (a) is, or is deemed to be, registered with the Nursing Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of nursing and whose scope of practice permits the performance of nurse practitioner functions; and

(b) holds a current practising certificate

**official visitor** means a person appointed pursuant to section 94 to be an official visitor

**patient** means a person who is—

- (a) required to undergo assessment under section 11 or section 13; or
- (b) subject to a compulsory treatment order made under Part 2; or
- (c) a special patient

**person in charge**, in relation to a hospital or service, means the chief executive of the hospital or service

**principal caregiver**, in relation to any patient, means the friend of the patient or the member of the patient's family group or whanau who is most evidently and directly concerned with the oversight of the patient's care and welfare

**primary health care provider** means a health practitioner who manages and provides primary and ongoing health care to a patient

**prison** has the same meaning as in section 3(1) of the Corrections Act 2004; and in section 45 of this Act includes a hospital or a Police station while it is deemed by section 36 of the Corrections Act 2004 to be a prison

**proposed patient** has the meaning given to that term by section 2A

**psychiatric security institution** means a hospital, or part of a hospital, declared under section 100 to be a psychiatric security institution

**psychiatrist** means a medical practitioner whose scope of practice includes psychiatry

**psychologist** means a health practitioner who is, or is deemed to be, registered with the Psychologists Board continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of psychology

**registered nurse practising in mental health** means a health practitioner who—

- (a) is, or is deemed to be, registered with the Nursing Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of nursing and whose scope of practice includes the assessment of the presence of mental disorder as defined under this Act; and
- (b) holds a current practising certificate

**Registrar** means the Registrar of the District Court

**relative**, in relation to any person, includes—

- (a) a person who is married to, or in a civil union or a de facto relationship with, that person; or

- (b) a person who is married to, or in a civil union or a de facto relationship with, a person who is connected by blood relationship to that person

**responsible clinician**, in relation to a patient, means the clinician in charge of the treatment of that patient

**restricted patient** means a patient who is declared to be a restricted patient by the court under section 55

**second period** means the second period of assessment and treatment, which is a period—

- (a) that begins with the date on which the patient receives a notice under section 13(1); and
- (b) that ends when 14 clear days have passed after that date

**service** means a service for the treatment and rehabilitation of persons with mental disorders, being a service—

- (a) funded by the Crown under the New Zealand Health Plan within the meaning of section 4 of the Pae Ora (Healthy Futures) Act 2022; or
- (b) a service provided by, or managed by, an institution that was, immediately before the commencement of this Act, a licensed institution under section 9 of the Mental Health Act 1969

**special patient** means—

- (a) a person who is liable to be detained in a hospital under an order made under—
- (i) section 24(2)(a) or section 38(2)(c) or section 44(1) of the Criminal Procedure (Mentally Impaired Persons) Act 2003; or
- (ii) section 169 of the Criminal Procedure Act 2011; or
- (b) a person who is remanded to a hospital under section 23 or section 35 of the Criminal Procedure (Mentally Impaired Persons) Act 2003; or
- (c) a person who is liable to be detained in a hospital under section 34(1)(a)(i) of the Criminal Procedure (Mentally Impaired Persons) Act 2003, and who has not ceased, under section 48 of this Act, to be a special patient; or
- (d) a person who is liable to be detained in a hospital, either following an application under section 45(2) or arrangements made under section 46, and who has not ceased, under section 48, to be a special patient; or
- (da) a person who is liable to be detained in a hospital under section 191(2)(a) of the Armed Forces Discipline Act 1971; or
- (e) a person who, in accordance with section 136(5)(a) of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, must be held as a special patient

**victim** means (unless otherwise provided),—

- (a) in relation to a special patient, a person who has, under section 32B of the Victims' Rights Act 2002,—
  - (i) asked for notice, or for advice and copies; and
  - (ii) given their address:
- (b) an individual appointed under section 40 of that Act

**welfare guardian** has the same meaning as it has in section 2 of the Protection of Personal and Property Rights Act 1988.

(2) *[Repealed]*

Compare: 1969 No 16 s 2; 1972 No 22 s 2; 1982 No 84 s 2(1); 1985 No 22 s 2

Section 2(1) **biometric information**: inserted, on 22 August 2017, by section 43 of the Enhancing Identity Verification and Border Processes Legislation Act 2017 (2017 No 42).

Section 2(1) **Board**: repealed, on 1 July 1993, by section 32 of the Health Sector (Transfers) Act 1993 (1993 No 23).

Section 2(1) **court**: replaced, on 1 July 2009, by section 87 of the Court Martial Act 2007 (2007 No 101).

Section 2(1) **court** paragraph (a): replaced, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 2(1) **Director of Area Mental Health Services**: replaced, on 1 July 1993, by section 32 of the Health Sector (Transfers) Act 1993 (1993 No 23).

Section 2(1) **duly authorised officer**: replaced, on 1 July 1993, by section 32 of the Health Sector (Transfers) Act 1993 (1993 No 23).

Section 2(1) **first period**: inserted, on 1 April 2000, by section 2(1) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 2(1) **health practitioner**: inserted, on 31 January 2018, by section 4(1) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2016 (2016 No 79).

Section 2(1) **hospital**: replaced, on 1 October 2002, by section 58(1) of the Health and Disability Services (Safety) Act 2001 (2001 No 93).

Section 2(1) **hospital mental health care**: inserted, on 1 October 2002, by section 58(1) of the Health and Disability Services (Safety) Act 2001 (2001 No 93).

Section 2(1) **medical officer**: replaced, on 1 July 1993, by section 32 of the Health Sector (Transfers) Act 1993 (1993 No 23).

Section 2(1) **medical practitioner**: replaced, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

Section 2(1) **mental health practitioner**: inserted, on 30 October 2021, by section 13 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 2(1) **nurse**: inserted, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

Section 2(1) **nurse**: amended, on 31 January 2018, by section 4(2) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2016 (2016 No 79).

Section 2(1) **nurse practitioner**: inserted, on 31 January 2018, by section 4(1) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2016 (2016 No 79).

Section 2(1) **penal institution**: repealed, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 2(1) **person in charge**: inserted, on 1 April 2000, by section 2(2) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 2(1) **primary health care provider**: inserted, on 31 January 2018, by section 4(1) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2016 (2016 No 79).

Section 2(1) **prison**: inserted, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 2(1) **proposed patient**: inserted, on 1 April 2000, by section 2(3) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 2(1) **psychiatrist**: replaced, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

Section 2(1) **psychologist**: inserted, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

Section 2(1) **registered nurse practising in mental health**: inserted, on 30 October 2021, by section 13 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 2(1) **Registrar**: amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 2(1) **relative**: inserted, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 2(1) **second period**: inserted, on 1 April 2000, by section 2(4) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 2(1) **service**: replaced, on 1 July 1993, by section 32 of the Health Sector (Transfers) Act 1993 (1993 No 23).

Section 2(1) **service** paragraph (a): replaced, on 1 July 2022, by section 104 of the Pae Ora (Healthy Futures) Act 2022 (2022 No 30).

Section 2(1) **special patient**: replaced, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 2(1) **special patient** paragraph (a)(ii): replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 2(1) **special patient** paragraph (da): inserted, on 1 July 2009, by section 81 of the Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98).

Section 2(1) **victim**: inserted, on 13 December 2022, by section 11 of the Rights for Victims of Insane Offenders Act 2021 (2021 No 55).

Section 2(2): repealed, on 1 April 2000, by section 2(6) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

## 2AA Meaning of mental health practitioner during COVID-19 response

*[Repealed]*

Section 2AA: repealed, on 30 October 2021, by section 34 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

## 2A Meaning of proposed patient

A person—

- (a) starts being a proposed patient when an application is made under section 8A; and
- (b) stops being a proposed patient when a mental health practitioner records a finding—

- (i) under section 10(1)(b)(i), in which case the person does not become a patient; or
- (ii) under section 10(1)(b)(ii), in which case the person becomes a patient.

Section 2A: inserted, on 1 April 2000, by section 3 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 2A(b): amended, on 30 October 2021, by section 14 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

## **2B Modification to section 2A during COVID-19 response**

*[Repealed]*

Section 2B: repealed, on 30 October 2021, by section 34 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

## **2C Transitional, savings, and related provisions**

The transitional, savings, and related provisions set out in Schedule 1AA have effect according to their terms.

Section 2C: inserted, on 13 December 2022, by section 12 of the Rights for Victims of Insane Offenders Act 2021 (2021 No 55).

## **3 Act to bind Crown**

This Act shall bind the Crown.

## **4 General rules relating to liability to assessment or treatment**

The procedures prescribed by Parts 1 and 2 shall not be invoked in respect of any person by reason only of—

- (a) that person's political, religious, or cultural beliefs; or
- (b) that person's sexual preferences; or
- (c) that person's criminal or delinquent behaviour; or
- (d) substance abuse; or
- (e) intellectual disability.

Compare: Mental Health Act 1983 s 1(3) (UK)

Section 4(e): replaced, on 1 April 2000, by section 4 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

## **5 Powers to be exercised with proper respect for cultural identity and personal beliefs**

(1) This section applies to—

- (a) a court, tribunal, or person exercising a power under this Act in respect of a person; and
- (b) a court or tribunal conducting proceedings under this Act in respect of a person.

- (2) The power must be exercised, or the proceedings conducted,—
- (a) with proper recognition of the importance and significance to the person of the person’s ties with his or her family, whanau, hapu, iwi, and family group; and
  - (b) with proper recognition of the contribution those ties make to the person’s wellbeing; and
  - (c) with proper respect for the person’s cultural and ethnic identity, language, and religious or ethical beliefs.

Section 5: replaced, on 1 April 2000, by section 5 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

## 6 Interpreters to be provided

- (1) This section applies to—
- (a) a court, tribunal, or person exercising a power under this Act in respect of a person; and
  - (b) a court or tribunal conducting proceedings under this Act in respect of a person.
- (2) The court, tribunal, or person must ensure that the services of an interpreter are provided for the person, if—
- (a) 1 of the following applies:
    - (i) the first or preferred language of the person is a language other than English, including Maori and New Zealand Sign Language; or
    - (ii) the person is unable, because of physical disability, to understand English; and
  - (b) it is practicable to provide the services of an interpreter.
- (3) The court, tribunal, or person must ensure, as far as reasonably practicable, that the interpreter provided is competent.

Section 6: replaced, on 1 April 2000, by section 6 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

### 6A Use of audiovisual links

- (1) This section applies if—
- (a) a clinician, mental health practitioner, or psychiatrist (a **practitioner**) exercises a power under this Act that requires access to a person; or
  - (b) a Judge, any person directed by a Judge, or a member of a Review Tribunal is required to examine a person under this Act.
- (2) The practitioner may use an audiovisual link to access the person to exercise a power under this Act if the practitioner considers—
- (a) that it is not practicable for the person to be physically present; and



- (b) the use of an audiovisual link is appropriate in the circumstances.
- (2A) The practitioner must apply any relevant guidelines and standards of care and treatment issued by the Director-General of Health under section 130 when deciding whether—
  - (a) it is not practicable for the person to be physically present; and
  - (b) the use of an audiovisual link is appropriate in the circumstances.
- (2B) If an audiovisual link is used to access the person under subsection (2), the practitioner must—
  - (a) record in writing the reason that—
    - (i) it was not practicable for the person to be physically present; and
    - (ii) the use of an audiovisual link was appropriate in the circumstances; and
  - (b) provide the record to the relevant Director of Area Mental Health Services as soon as practicable after the use of the link.
- (3) If the Judge or member of the Review Tribunal considers that it is not practicable for the person to be physically present for an examination, the Judge, a person directed by a Judge, or a member of a Review Tribunal may use an audiovisual link to examine the person under this Act.
- (4) In this section, **audiovisual link**, in relation to the exercise of a power in respect of a person under this Act, means facilities that enable both audio and visual communication with the person.
- (5) To avoid doubt, an examination may not be carried out under this section by audio link.

Section 6A: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

Section 6A heading: amended, on 30 October 2021, by section 15(1) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 6A(1)(a): replaced, on 30 October 2021, by section 15(2) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 6A(2): replaced, on 30 October 2021, by section 15(3) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 6A(2A): inserted, on 30 October 2021, by section 15(3) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 6A(2B): inserted, on 30 October 2021, by section 15(3) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

## **7 Obligation to assign patient to responsible clinician**

For the purposes of this Act, the Director of Area Mental Health Services shall ensure that at all times there is assigned in respect of each patient a responsible clinician, who shall be—

- (a) a psychiatrist approved by the Director of Area Mental Health Services;  
or

- (b) some other registered health professional who, in the opinion of the Director of Area Mental Health Services, has undergone training in, and is competent in, the assessment, treatment, and care, of persons with mental disorder.

#### **7A Practitioner or responsible clinician to consult**

- (1) In this section, **practitioner** means—
  - (a) a mental health practitioner conducting an assessment examination of a proposed patient under section 9; and
  - (b) a responsible clinician providing an assessment of, or treatment to, a patient.
- (2) A practitioner must consult the family or whanau of the proposed patient or patient. This subsection is subject to subsection (3).
- (3) Subsection (2) does not apply if the practitioner has reasonable grounds for deciding that consultation—
  - (a) is not reasonably practicable; or
  - (b) is not in the best interests of the proposed patient or patient.
- (4) In deciding whether or not consultation with the family or whanau is in the best interests of a proposed patient or patient, the practitioner must consult the proposed patient or patient.
- (5) A practitioner must apply any relevant guidelines and standards of care and treatment issued by the Director-General of Health under section 130, when—
  - (a) deciding when and how to consult the family or whanau, or the proposed patient or patient; and
  - (b) deciding whether or not consultation with the family or whanau is reasonably practicable; and
  - (c) deciding whether or not consultation with the family or whanau is in the best interests of the proposed patient or patient.

Section 7A: inserted, on 1 April 2000, by section 7 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 7A heading: amended, on 31 January 2018, by section 6(1) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2016 (2016 No 79).

Section 7A(1)(a): amended, on 30 October 2021, by section 16 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

#### **7B Modification to section 7A during COVID-19 response**

*[Repealed]*

Section 7B: repealed, on 30 October 2021, by section 34 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

## Part 1

### Compulsory assessment and treatment

#### 8 Any person may fill out application form

- (1) Anyone who believes that a person may be suffering from a mental disorder may at any time fill out an application form asking the Director of Area Mental Health Services for an assessment of the person.
- (2) An application is made under section 8A when the Director of Area Mental Health Services receives a filled out application form that complies with section 8A.
- (3) In sections 8A and 8B,—
  - (a) the person who fills out the application form is called the **applicant**; and
  - (b) the person who is the subject of the application is called the **person**.

Section 8: replaced, on 1 April 2000, by section 8 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

#### 8A Application for assessment

An application is made under this section when the Director of Area Mental Health Services receives a filled out application form that complies with the following:

- (a) it is accompanied by a certificate issued under section 8B relating to the person that states a date of examination within the 3 days immediately before the date of the application; and
- (b) it states that the applicant is 18 years or over; and
- (c) it states that the applicant has personally seen the person within the 3 days immediately before the date of the application; and
- (d) it states the relationship or association of the applicant with the person; and
- (e) it states the grounds on which the applicant believes the person to be suffering from a mental disorder.

Section 8A: inserted, on 1 April 2000, by section 8 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

#### 8B Certificate to accompany application for assessment

- (1) This section applies when—
  - (a) a mental health practitioner is asked, by an applicant, to issue a certificate to accompany the application form; or
  - (b) a mental health practitioner is the applicant and wishes to issue a certificate to accompany his or her application form.
- (2) A mental health practitioner to whom subsection (1)(a) applies must not issue a certificate if he or she is related to the applicant or to the person.

- (3) A mental health practitioner to whom subsection (1)(b) applies must not issue a certificate if he or she is related to the person.
- (4) The mental health practitioner must—
  - (a) examine the person; and
  - (b) if he or she considers that there are reasonable grounds for believing that the person may be suffering from a mental disorder, issue the certificate.
- (5) The certificate must—
  - (a) state that the mental health practitioner has examined the person:
  - (b) state the date of the examination:
  - (c) state that the mental health practitioner considers that there are reasonable grounds for believing that the person may be suffering from a mental disorder:
  - (d) set out full particulars of the reasons for that opinion, explaining in what way the mental health practitioner believes that the person's condition may come within the statutory definition of mental disorder:
  - (e) state that the mental health practitioner is not related to the person or to the applicant (except when the mental health practitioner is the applicant).

(6) *[Repealed]*

Section 8B: inserted, on 1 April 2000, by section 8 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 8B heading: replaced, on 31 January 2018, by section 7(1) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2016 (2016 No 79).

Section 8B(1)(a): amended, on 30 October 2021, by section 17(1) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 8B(1)(b): amended, on 30 October 2021, by section 17(1) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 8B(2): amended, on 30 October 2021, by section 17(1) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 8B(3): amended, on 30 October 2021, by section 17(1) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 8B(4): amended, on 30 October 2021, by section 17(1) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 8B(5)(a): amended, on 30 October 2021, by section 17(1) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 8B(5)(c): amended, on 30 October 2021, by section 17(1) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 8B(5)(d): amended, on 30 October 2021, by section 17(1) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 8B(5)(e): amended, on 30 October 2021, by section 17(1) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 8B(6): repealed, on 30 October 2021, by section 17(2) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

### **8C Modification to section 8B during COVID-19 response**

*[Repealed]*

Section 8C: repealed, on 30 October 2021, by section 34 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

### **9 Assessment examination to be arranged and conducted**

- (1) When the Director of Area Mental Health Services or a duly authorised officer receives notice of an application made under section 8A from the mental health practitioner who issued the certificate accompanying that application, the Director of Area Mental Health Services or duly authorised officer must make the necessary arrangements for the proposed patient to immediately undergo an assessment examination.
- (1A) Notice of an application made under section 8A may be given by any means, including by telephone.
- (2) The arrangements required by subsection (1) shall include the following:
  - (a) nominating, in accordance with subsection (3), the person by whom the assessment examination is to be conducted:
  - (b) determining, in consultation with the person by whom the assessment examination is to be conducted, the time and place at which it is to be conducted:
  - (c) giving to the proposed patient a written notice—
    - (i) requiring the proposed patient to attend at the specified place and time for the purposes of the assessment examination; and
    - (ii) explaining the purpose of the assessment examination; and
    - (iii) stating the name of the person who is to conduct the assessment examination:
  - (d) ensuring that the purpose of the assessment examination and the requirements of the notice given under paragraph (c) are explained to the proposed patient in the presence of a member of the proposed patient's family, or a caregiver in relation to the proposed patient or other person concerned with the welfare of the proposed patient:
  - (e) ensuring, where necessary, that appropriate arrangements are made to convey the proposed patient at the required time to the place where the assessment examination is to be conducted, and, where it is necessary or desirable that the proposed patient be accompanied on the journey, ensuring that an appropriate person is available to do so.
- (2A) For the purposes of subsection (2)(d), a family member or caregiver of, or other person concerned with the welfare of, the proposed patient, may be present by audio or visual link if the Director of Area Mental Health Services or a duly authorised officer is satisfied that their physical presence is not reasonably practicable.

- (2B) In this section, **audio or visual link** means facilities that enable audio or visual communication between the family member or caregiver of, or the other person concerned with the welfare of, the proposed patient, and—
- (a) the person giving the explanation; and
  - (b) the proposed patient.
- (3) An assessment examination must be conducted by a health practitioner who is—
- (a) a psychiatrist approved by the Director of Area Mental Health Services for the purposes of the assessment examination, or of assessment examinations generally; or
  - (b) if no such psychiatrist is reasonably available, a medical practitioner or nurse practitioner (not being a medical practitioner or nurse practitioner who issued the certificate under section 8B(4)(b)) who, in the opinion of the Director of Mental Health, is suitably qualified to conduct the assessment examination or assessment examinations generally.
- (4) The Director of Mental Health may delegate his or her function under subsection (3)(b) to the Director of Area Mental Health Services.

Section 9(1): replaced, on 31 January 2018, by section 8(1) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2016 (2016 No 79).

Section 9(1): amended, on 30 October 2021, by section 18(1) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 9(1): amended, on 30 October 2021, by section 18(2) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 9(1A): inserted, on 31 January 2018, by section 8(1) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2016 (2016 No 79).

Section 9(2)(e): amended, on 1 April 2000, by section 9(1) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 9(2A): inserted, on 30 October 2021, by section 5 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 9(2B): inserted, on 30 October 2021, by section 5 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 9(3): replaced, on 31 January 2018, by section 8(2) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2016 (2016 No 79).

Section 9(4): replaced, on 31 January 2018, by section 8(2) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2016 (2016 No 79).

## 9A Modifications to section 9 during COVID-19 response

*[Repealed]*

Section 9A: repealed, on 30 October 2021, by section 34 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

**10 Certificate of preliminary assessment**

- (1) After completing the assessment examination, the mental health practitioner must record his or her findings in a certificate of preliminary assessment, stating—
  - (a) that he or she has carefully considered the statutory definition of mental disorder and the proposed patient's condition in relation to that definition; and
  - (b) that, in his or her opinion,—
    - (i) the proposed patient is not mentally disordered; or
    - (ii) there are reasonable grounds for believing that the proposed patient is mentally disordered and that it is desirable that the proposed patient be required to undergo further assessment and treatment.
- (2) The mental health practitioner must send to the Director of Area Mental Health Services—
  - (a) the certificate of preliminary assessment; and
  - (b) full particulars of the reasons for his or her opinion of the proposed patient's condition, and any relevant reports from other health professionals involved in the case; and
  - (c) a copy of any notice given to the patient under section 11(1); and
  - (d) the application for assessment made under section 8A, if it is in the possession of the mental health practitioner.
- (3) If the mental health practitioner is of the opinion that the proposed patient is not mentally disordered, that person is free from further assessment and treatment under this Part (without prejudice to the making of a further application under section 8A in respect of the person at some time in the future).
- (4) Where the mental health practitioner considers that there are reasonable grounds for believing that the proposed patient is mentally disordered and that it is desirable that the proposed patient be required to undergo further assessment and treatment, the mental health practitioner must—
  - (a) give or send a copy of the certificate of preliminary assessment to each of the following:
    - (i) the patient;
    - (ii) any welfare guardian of the patient;
    - (iii) the applicant for assessment;
    - (iv) the patient's principal caregiver;
    - (v) the primary health care provider who usually attends the patient; and

- (b) give or send, to each of the persons specified in paragraph (a), a statement of the legal consequences of the finding set out in the certificate of preliminary assessment, and of the recipient's right to apply to the court for a review of the patient's condition; and
- (c) otherwise deal with the case in accordance with section 11.

Section 10(1): amended, on 30 October 2021, by section 19 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 10(1): amended, on 31 January 2018, by section 9(1) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2016 (2016 No 79).

Section 10(1)(b): replaced, on 1 April 2000, by section 10(1) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 10(2): amended, on 30 October 2021, by section 19 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 10(2): amended, on 31 January 2018, by section 9(2) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2016 (2016 No 79).

Section 10(2)(c): amended, on 1 April 2000, by section 10(2) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 10(2)(d): amended, on 30 October 2021, by section 19 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 10(2)(d): amended, on 1 April 2000, by section 10(3) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 10(3): replaced, on 1 April 2000, by section 10(4) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 10(3): amended, on 30 October 2021, by section 19 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 10(4): amended, on 30 October 2021, by section 19 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 10(4): amended, on 31 January 2018, by section 9(4)(a) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2016 (2016 No 79).

Section 10(4): amended, on 31 January 2018, by section 9(4)(b) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2016 (2016 No 79).

Section 10(4)(a)(v): amended, on 31 January 2018, by section 9(5) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2016 (2016 No 79).

## **10A Modification to section 10 during COVID-19 response**

*[Repealed]*

Section 10A: repealed, on 30 October 2021, by section 34 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

## **11 Further assessment and treatment for 5 days**

- (1) If the mental health practitioner records a finding under section 10(1)(b)(ii), the mental health practitioner must require the patient to undergo further assessment and treatment throughout the first period. The mental health practitioner must give the patient written notice of this requirement.
- (2) In the notice, the mental health practitioner must—



- (a) require the patient to attend at the patient's place of residence, or at some other place nominated in the notice, for the purposes of assessment and treatment throughout the first period; or
  - (b) if the mental health practitioner considers that the patient cannot be further assessed and treated adequately as an outpatient, direct that the patient be admitted to and detained in a specified hospital for the purposes of assessment and treatment throughout the first period.
- (3) If, at any time during the first period, the responsible clinician considers that a patient who is an outpatient cannot continue to be assessed and treated adequately as an outpatient, the clinician may give a written notice—
  - (a) directing the patient to present himself or herself at a specified hospital to be admitted and detained for the purposes of assessment and treatment during the remainder of the first period; and
  - (b) directing the person in charge of the hospital to admit and detain the patient for the purposes of assessment and treatment during the remainder of the first period.
- (4) If, at any time during the first period, the responsible clinician considers that a patient who is an inpatient can continue to be assessed and treated adequately as an outpatient, the clinician must give a written notice—
  - (a) directing the person in charge of the hospital to discharge the patient; and
  - (b) directing the patient to attend at the patient's place of residence, or at some other place nominated in the notice, for the purposes of assessment and treatment during the remainder of the first period.
- (5) If, at any time during the first period, the responsible clinician considers that a patient who is an inpatient is fit to be granted leave of absence from the hospital, the clinician may grant the patient leave on such terms and conditions as the clinician thinks fit. The clinician must ensure that the following records are made:
  - (a) if the leave is for a period of up to 8 hours on 1 day between 8 am and 10 pm, the grant of leave, and its terms and conditions, must be recorded in the patient's clinical records:
  - (b) if the leave is other than as described in paragraph (a), the grant of leave, and its terms and conditions, must be recorded—
    - (i) in the patient's clinical records; and
    - (ii) in a written notice given to the patient and to the person in charge of the hospital.
- (6) If, at any time during the first period, the responsible clinician considers that a patient is fit to be released from compulsory status, the clinician must give a written notice to the patient and, if necessary, to the person in charge of the hospital directing that the patient be released from that status immediately.

- (7) At any time during the first period, the patient, or a person specified in section 10(4)(a)(ii) to (v), may apply to the court to have the patient's condition reviewed under section 16 (without limiting anything in this section).

Section 11: replaced, on 1 April 2000, by section 11 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 11(1): amended, on 30 October 2021, by section 20 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 11(2): amended, on 30 October 2021, by section 20 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 11(2)(b): amended, on 30 October 2021, by section 20 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

## 11A Modification to section 11 during COVID-19 response

*[Repealed]*

Section 11A: repealed, on 30 October 2021, by section 34 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

## 12 Certificate of further assessment

- (1) Before the expiry of the first period of assessment and treatment, the responsible clinician shall record his or her findings in a certificate of further assessment, stating—
- (a) that he or she has carefully considered the statutory definition of mental disorder and the patient's condition in relation to that definition; and
  - (b) that, in his or her opinion,—
    - (i) the patient is not mentally disordered; or
    - (ii) there remain reasonable grounds for believing that the patient is mentally disordered and that it is desirable that the patient be required to undergo further assessment and treatment.
- (2) The responsible clinician shall send to the Director of Area Mental Health Services—
- (a) a copy of the certificate of further assessment; and
  - (b) full particulars of the reasons for his or her opinion of the patient's condition, and any relevant reports from other health professionals involved in the case; and
  - (c) a copy of any notice given to the patient under section 13(1).
- (3) If the responsible clinician is of the opinion that the patient is not mentally disordered, that clinician shall direct that the patient be released from compulsory status forthwith (but without prejudice to the making of a further application under section 8A in respect of the patient at some time in the future).
- (4) If the responsible clinician considers that there remain reasonable grounds for believing that the patient is mentally disordered and that it is desirable that the patient be required to undergo further assessment and treatment, that clinician

shall deal with the case in accordance with the succeeding provisions of this section and section 13.

- (5) If the responsible clinician's finding is of the kind described in subsection (1)(b)(ii), that clinician shall forthwith give or send a copy of the certificate of further assessment to each of the following:
  - (a) the patient:
  - (b) any welfare guardian of the patient:
  - (c) the applicant for assessment:
  - (d) the patient's principal caregiver:
  - (e) the primary health care provider who usually attended the patient immediately before the patient was required to undergo assessment and treatment under this Part:
  - (f) a district inspector:
  - (g) an official visitor.
- (6) To each of the persons specified in paragraphs (a) to (e) of subsection (5), the responsible clinician shall also give or send a statement of the legal consequences of the finding set out in the certificate of further assessment, and of the recipient's right to apply to the court for a review of the patient's condition.
- (7) Any person specified in paragraphs (a) to (e) of subsection (5) may, on receiving a copy of the certificate of further assessment, apply to the court to have the patient's condition reviewed under section 16.
- (8) The district inspector who receives a copy of the certificate of further assessment shall, subject to subsection (11), after talking to the patient and ascertaining the patient's wishes in the matter (where that can be done), consider whether or not an application should be made to have the patient's condition reviewed under section 16.
- (9) If the district inspector considers that such an application should be made, the district inspector shall take whatever reasonable steps he or she thinks necessary to encourage or assist the patient, or any person specified in paragraphs (b) to (e) of subsection (5), to make such an application.
- (10) If, in any case to which subsection (8) applies, the district inspector considers that an application should be made to have the patient's condition reviewed under section 16, but neither the patient nor any person specified in paragraphs (b) to (e) of subsection (5) intends to make such an application, the district inspector may report the matter to the court; and, in such a case, a Judge may, of his or her own motion, review the patient's condition under section 16 as if an appropriate application for such a review had been made to the court.
- (11) Instead of performing personally the functions specified in subsections (8) to (10), the district inspector may in any particular case arrange for an official visitor to perform them.

- (12) Notwithstanding any of the foregoing provisions of this section, at any time during the second period, the patient, or any person specified in paragraphs (b) to (e) of subsection (5), may apply to the court to have the patient's condition reviewed under section 16.

Section 12(3): amended, on 1 April 2000, by section 76 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 12(5)(e): amended, on 31 January 2018, by section 11 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2016 (2016 No 79).

Section 12(12): amended, on 1 April 2000, by section 12 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

### **13 Further assessment and treatment for 14 days**

- (1) If the responsible clinician records a finding under section 12(1)(b)(ii), the clinician must require the patient to undergo further assessment and treatment throughout the second period. The responsible clinician must give the patient written notice of this requirement.
- (2) In the notice, the responsible clinician must—
- (a) require the patient to attend at the patient's place of residence, or at some other place nominated in the notice, for the purposes of assessment and treatment throughout the second period; or
  - (b) if the responsible clinician considers that the patient cannot be further assessed and treated adequately as an outpatient, direct that the patient be admitted to and detained in a specified hospital for the purposes of assessment and treatment throughout the second period.
- (3) If, at any time during the second period, the responsible clinician considers that a patient who is an outpatient cannot continue to be assessed and treated adequately as an outpatient, the clinician may give a written notice—
- (a) directing the patient to present himself or herself at a specified hospital to be admitted and detained for the purposes of assessment and treatment during the remainder of the second period; and
  - (b) directing the person in charge of the hospital to admit and detain the patient for the purposes of assessment and treatment during the remainder of the second period.
- (4) If, at any time during the second period, the responsible clinician considers that a patient who is an inpatient can continue to be assessed and treated adequately as an outpatient, the clinician must give a written notice—
- (a) directing the person in charge of the hospital to discharge the patient; and
  - (b) directing the patient to attend at the patient's place of residence, or at some other place nominated in the notice, for the purposes of assessment and treatment during the remainder of the second period.

- (5) If, at any time during the second period, the responsible clinician considers that a patient who is an inpatient is fit to be granted leave of absence from the hospital, the clinician may grant the patient leave on such terms and conditions as the clinician thinks fit. The clinician must ensure that the following records are made:
- (a) if the leave is for a period of up to 8 hours on 1 day between 8 am and 10 pm, the grant of leave, and its terms and conditions, must be recorded in the patient's clinical records:
  - (b) if the leave is other than as described in paragraph (a), the grant of leave, and its terms and conditions, must be recorded—
    - (i) in the patient's clinical records; and
    - (ii) in a written notice given to the patient and to the person in charge of the hospital.
- (6) If, at any time during the second period, the responsible clinician considers that a patient is fit to be released from compulsory status, the clinician must give a written notice to the patient and, if necessary, to the person in charge of the hospital directing that the patient be released from that status immediately.

Section 13: replaced, on 1 April 2000, by section 13 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

#### **14 Certificate of final assessment**

- (1) Before the expiry of the second period of assessment and treatment, the responsible clinician shall record his or her findings in a certificate of final assessment, stating—
- (a) that in his or her opinion the patient is fit to be released from compulsory status; or
  - (b) that in his or her opinion the patient is not fit to be released from compulsory status.
- (2) The responsible clinician shall send to the Director of Area Mental Health Services—
- (a) a copy of the certificate of final assessment; and
  - (b) full particulars of the reasons for his or her opinion of the patient's condition, and any relevant reports from other health professionals involved in the case; and
  - (c) where appropriate, a notice to the effect that he or she is applying to the court for a compulsory treatment order in respect of the patient.
- (3) If the responsible clinician is of the opinion that the patient is fit to be released from compulsory status, that clinician shall direct that the patient be released from that status forthwith (but without prejudice to the making of a further application under section 8A in respect of the patient at some time in the future).

(4) If the responsible clinician is of the opinion that the patient is not fit to be released from compulsory status, the clinician must, before the expiry of the second period, apply to the court for the making of a compulsory treatment order under Part 2.

(5) *[Repealed]*

(6) *[Repealed]*

(7) *[Repealed]*

Section 14(3): amended, on 1 April 2000, by section 76 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 14(4): replaced, on 1 April 2000, by section 14(1) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 14(5): repealed, on 1 April 2000, by section 14(1) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 14(6): repealed, on 1 April 2000, by section 14(1) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 14(7): repealed, on 1 April 2000, by section 14(1) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

#### **14A Documents relating to application for compulsory treatment order**

(1) In this section, **the documents** means—

- (a) a copy of the certificate of final assessment relating to a patient who is the subject of an application under section 14(4); and
- (b) a statement of the legal consequences of the finding set out in the certificate of final assessment; and
- (c) a statement of the right of the person receiving the documents to appear before the court and be heard in respect of the application.

(2) A responsible clinician who applies to the court under section 14(4) must give a copy of the documents to each of the following persons:

- (a) any welfare guardian of the patient;
- (b) the applicant for assessment;
- (c) the patient's principal caregiver;
- (d) the primary health care provider who usually attended the patient immediately before the patient was required to undergo assessment and treatment under this Part;
- (e) the Director of Area Mental Health Services;
- (f) a district inspector;
- (g) an official visitor.

(3) A Director of Area Mental Health Services who receives the documents must ensure that the following material is given to the patient:

- (a) a copy of the documents; and

- (b) a notice requiring the patient to attend at a place specified in the notice for an examination under section 18; and
  - (c) a notice requiring the patient to attend at the court hearing of the application for the compulsory treatment order under section 19.
- (4) A district inspector who receives the documents must—
- (a) communicate with the patient and find out, if possible, whether or not the patient wants the district inspector to appear before the court to be heard on the application for a compulsory treatment order. The district inspector must communicate with the patient by talking to him or her, unless talking to him or her is impracticable; and
  - (b) decide, having regard to any view expressed by the patient, whether or not the district inspector should appear before the court to be heard on the application for a compulsory treatment order.
- (5) Instead of performing personally the functions specified in subsection (4), the district inspector may in any particular case arrange for an official visitor to perform them.

Section 14A: inserted, on 1 April 2000, by section 15(1) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 14A(2)(d): amended, on 31 January 2018, by section 12 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2016 (2016 No 79).

## **15 Status of patient pending determination of application**

- (1) Where the responsible clinician applies to the court for the making of a compulsory treatment order, the patient shall remain liable to assessment and treatment in accordance with the terms of the notice given under subsection (1) of section 13 and the succeeding provisions of that section until the expiry of a period of 14 days after the date on which the second period of assessment and treatment would otherwise have expired.
- (2) If, after examining the patient under section 18, the Judge is of the opinion that it is not practicable to determine the application within the period of 14 days referred to in subsection (1), the Judge may, by interim order, extend that period for a further period not exceeding 1 month.
- (3) If the application is not finally determined before the expiry of the period of 14 days referred to in subsection (1), or within the last extension of that period ordered under subsection (2), the application shall be dismissed, and the patient shall be released from compulsory status (but without prejudice to the making of a further application under section 8A in respect of the patient at some time in the future).

Section 15(3): amended, on 1 April 2000, by section 76 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

**16 Review of patient's condition by Judge**

- (1) When an application is made to the court under section 11(7) or section 12(7) or section 12(12) for a review of the patient's condition,—
  - (a) subsection (1B) applies if the application is the only application that has been made for a review of the patient's condition during the first and second periods:
  - (b) subsection (1C) applies if the application is the second or subsequent application that has been made for a review of the patient's condition during the first and second periods.
- (1A) When an application is made under section 29(4) for a review of the patient's condition, subsection (1B) applies.
- (1B) When this subsection applies,—
  - (a) the court must grant the application; and
  - (b) a Judge must examine the patient as soon as practicable; and
  - (c) subsections (2) to (7) apply.
- (1C) When this subsection applies, a Judge must decide whether or not to grant the application. In making this decision, the Judge must have regard to any evidence before the Judge that indicates that the patient's condition has not changed since the last review.
- (2) The examination shall be conducted—
  - (a) at the patient's place of residence, the hospital, or the other place where the patient is undergoing assessment and treatment; or
  - (b) where that is not practicable, at the nearest practicable place.
- (3) The Judge must do the following things before and during the examination, as appropriate and practicable:
  - (a) identify himself or herself to the patient; and
  - (b) explain to the patient the purpose of the visit; and
  - (c) discuss with the patient the patient's situation, the proposed course of assessment and treatment, and the patient's views on these matters.
- (4) As well as examining the patient, the Judge shall consult with the responsible clinician, and with at least 1 other health professional involved in the case, and may consult with such other persons as the Judge thinks fit, concerning the patient's condition.
- (5) If the Judge is satisfied that the patient is fit to be released from compulsory status, the Judge shall order that the patient be released from that status forthwith.
- (6) Every review under this section of a patient's condition shall, wherever practicable, having regard to the time in which that review is required to be conduc-



ted, and to the availability of Judges and other personnel and resources, be conducted by a Family Court Judge.

- (7) Where it is not practicable for a review under this section of a patient's condition to be conducted by a Family Court Judge, that review may be conducted by any District Court Judge.

Section 16(1): replaced, on 1 April 2000, by section 16(1) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 16(1A): inserted, on 1 April 2000, by section 16(1) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 16(1B): inserted, on 1 April 2000, by section 16(1) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 16(1C): inserted, on 1 April 2000, by section 16(1) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 16(3): replaced, on 1 April 2000, by section 16(2) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

## **Part 2**

### **Compulsory treatment orders**

#### **17 Applications to be heard and determined wherever practicable by Family Court Judge**

- (1) Every application under section 14(4) for a compulsory treatment order and every application under section 34(2) for an extension of the currency of a compulsory treatment order shall, wherever practicable, having regard to the time in which the application is required to be heard and determined, and to the availability of Judges and other personnel and resources, be heard and determined by a Family Court Judge.
- (2) Where it is not practicable for an application of the kind referred to in subsection (1) to be heard and determined by a Family Court Judge, that application may be heard and determined by any District Court Judge.

Section 17(1): amended, on 1 April 2000, by section 14(2)(a) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

#### **18 Judge to examine patient where compulsory treatment order sought**

- (1) Where an application is made under section 14(4) for a compulsory treatment order in respect of any patient, a District Court Judge shall examine the patient as soon as practicable and in no case later than 14 days after the application is filed in the court.
- (2) The examination shall be conducted—
- (a) at the patient's place of residence, the hospital, or the other place where the patient is undergoing assessment or treatment; or
  - (b) where that is not practicable, at the nearest practicable place.

- (3) The Judge must do the following things before and during the examination, as appropriate and practicable:
  - (a) identify himself or herself to the patient; and
  - (b) explain to the patient the purpose of the visit; and
  - (c) discuss with the patient the patient's situation, the proposed course of assessment and treatment, and the patient's views on these matters.
- (4) As well as examining the patient, the Judge shall consult with the responsible clinician, and with at least 1 other health professional involved in the case, and may consult with such other persons as the Judge thinks fit, concerning the patient's condition.
- (5) If the Judge is satisfied that the patient is fit to be released from compulsory status, the Judge shall order that the patient be released from that compulsory status forthwith.
- (6) The Judge who examines the patient under subsection (1) shall, wherever possible, conduct any hearing of the application under the succeeding provisions of this Part; and in no case shall any hearing of the application be held until the patient has been visited by a Judge in accordance with that subsection.

Section 18(1): amended, on 1 April 2000, by section 14(2)(b) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 18(3): replaced, on 1 April 2000, by section 17 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

## **19 Attendance of patient and other persons**

- (1) The patient shall be present throughout the hearing by the court of an application for a compulsory treatment order unless—
  - (a) the Judge who examines the patient in accordance with section 18(1) certifies that it would be in the best interests of the patient to excuse the patient from attending the hearing; or
  - (b) the patient is excused or excluded by the court under subsection (2) or subsection (3).
- (2) The court may excuse the patient if it is satisfied that the patient wholly lacks the capacity to understand the nature and purpose of the proceedings, or that attendance or continued attendance is likely to cause the patient serious mental, emotional, or physical harm.
- (3) The court may exclude the patient if it is satisfied that the patient is causing such a disturbance that it is not practicable to continue with the hearing in the presence of the patient.
- (4) The court may exercise, at any stage of the hearing,—
  - (a) the discretion conferred on it, by subsection (2), to excuse a patient; or
  - (b) the discretion conferred on it, by subsection (3), to exclude a patient.

- (5) The patient shall be present while the court makes any order upon the application unless—
  - (a) the patient has been excused or excluded under subsection (2) or subsection (3); or
  - (b) there are exceptional circumstances justifying the court making an order in the absence of the patient.
- (6) Any other person to whom a copy of the certificate of final assessment is sent under section 14A shall be entitled to be present throughout the hearing, except as the Judge may otherwise order.

Section 19(6): amended, on 1 April 2000, by section 15(2)(a) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

## **20 Right of patient and other persons to be heard and call evidence**

- (1) The patient shall be entitled to be heard by the court, whether in person or through a barrister or solicitor or through some other person nominated by the patient, and to call witnesses, and to cross-examine any witness called by any other party to the proceedings.
- (2) Without limiting anything in subsection (1), where the patient is present and appears capable of addressing the court, the court shall give the patient an opportunity to do so; and, in any such case, the court may, if it thinks it desirable to do so, require any parent or guardian of the patient, or any other person with whom the patient is living, or any barrister or solicitor representing any such parent, guardian, or other person, to withdraw from the court while the patient is addressing the court.
- (3) Any person referred to in section 19(6) shall be entitled to be heard by the court, whether in person or through a barrister or a solicitor, and to call witnesses, and to cross-examine any witness called by any other party to the proceedings.

## **21 Court may call for report on patient**

- (1) On an application for a compulsory treatment order, the court may, if it is satisfied that it is necessary for the proper disposition of the application, request any person whom it considers qualified to do so to prepare a report on any relevant aspect of the patient's condition.
- (2) In deciding whether or not to request a report under subsection (1), the court may ascertain and have regard to the wishes of the patient and any other party to the proceedings.
- (3) A copy of any report obtained under this section shall be given by the Registrar of the court to the barrister or solicitor for the patient and for each of the other parties to the proceedings or, if any party is not represented by a barrister or solicitor, to that party.

- (4) The court shall order that a copy of a report given to a barrister or solicitor under subsection (3) shall not be given or shown to the person for whom the barrister or solicitor is acting if the court has reason to believe that such disclosure of the contents of the report may pose a serious threat to the health or safety of the patient or of any other person.
- (5) Any party to the proceedings may tender evidence on any matter referred to in any such report.
- (6) The court may call the person making the report as a witness, either on its own initiative or on the application of any party to the proceedings.
- (7) A court that requests a person to prepare a report must make 1 of the orders described in subsection (8). A court considering whether or not to make an order under subsection (8)(a) must hear the party or parties affected.
- (8) The orders are—
  - (a) an order for the fees and expenses of the person to be paid by any party or parties to the proceedings, as the court orders:
  - (b) an order for the fees and expenses of the person to be met from any appropriation by Parliament for the purpose.

Section 21(5): replaced, on 1 April 2000, by section 18 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 21(6): replaced, on 1 April 2000, by section 18 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 21(7): replaced, on 1 April 2000, by section 18 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 21(8): inserted, on 1 April 2000, by section 18 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

## 22 Evidence

In any proceedings on an application for a compulsory treatment order, whether by way of hearing in the first instance or by way of appeal or otherwise, the court may receive any evidence that it thinks fit, whether it is otherwise admissible in a court of law or not.

## 23 Power of court to call witnesses

- (1) Without limiting anything in section 22, on any application for a compulsory treatment order, the court may, of its own motion, call as a witness any person whose evidence may in its opinion be of assistance to the court.
- (2) A witness called by the court under this section shall have the same privilege to refuse to answer any question as the witness would have if the witness had been called by a party to the proceedings.
- (3) A witness called by the court under this section may be examined and re-examined by the court, and may be cross-examined by or on behalf of any party to the proceedings.

- (4) Sections 159 and 161 to 165 of the Criminal Procedure Act 2011, so far as they are applicable and with the necessary modifications, shall apply with respect to every person called as a witness by the court under this section as if that person had been called by a party to the proceedings.
- (5) The expenses of any witness called by the court under this section must be met, in accordance with the prescribed scale of witnesses' expenses, in the first instance from any appropriation by Parliament for the purpose.

Section 23(4): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 23(5): replaced, on 1 April 2000, by section 19 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

## **24 Proceedings not open to public**

- (1) No person shall be present during the hearing of any proceedings on an application for a compulsory treatment order except the following:
  - (a) the Judge:
  - (b) officers of the court:
  - (c) parties to the proceedings and their barristers and solicitors, and any other person nominated by the patient:
  - (d) witnesses:
  - (e) any other person to whom the certificate of final assessment was sent under section 14A:
  - (f) any other person whom the Judge permits to be present.
- (2) Any witness shall leave the courtroom if asked to do so by the Judge.
- (3) Nothing in this section shall limit any other power of the court to hear proceedings in private or to exclude any person from the court.

Section 24(1)(e): amended, on 1 April 2000, by section 15(2)(b) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

## **25 Publication of reports of proceedings**

Sections 11B to 11D of the Family Court Act 1980 apply to the publication of a report of any proceedings under this Act—

- (a) in the Family Court:
- (b) in any other court, in which case references in those sections to the Family Court or court must be read as references to that other court.

Section 25: replaced, on 18 May 2009, by section 4 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2008 (2008 No 82).

Section 25: amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 25(a): replaced, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

**26 Court may dispense with hearing in certain circumstances**

Notwithstanding any of the preceding provisions of this Part, the court may determine an application for a compulsory treatment order without a formal hearing if it is satisfied that no person wishes to be heard in respect of the application.

**27 Court to consider patient's condition**

- (1) On an application for a compulsory treatment order, the court shall determine whether or not the patient is mentally disordered.
- (2) If the court considers that the patient is not mentally disordered, it shall order that the patient be released from compulsory status forthwith.
- (3) If the court considers that the patient is mentally disordered, it shall determine whether or not, having regard to all the circumstances of the case, it is necessary to make a compulsory treatment order.

**28 Compulsory treatment orders**

- (1) Every compulsory treatment order shall be either—
  - (a) a community treatment order; or
  - (b) an inpatient order,—and on making a compulsory treatment order the court shall specify the kind of order it is.
- (2) Subject to subsections (3) and (4), the court shall make a community treatment order unless the court considers that the patient cannot be treated adequately as an outpatient, in which case the court shall make an inpatient order.
- (3) The court shall not make an inpatient order if, at the time of making the order, the patient is undergoing assessment and treatment as an outpatient; but in such a case, the Judge may, instead of making a community treatment order, order that the patient be re-assessed in accordance with sections 13 and 14, and the provisions of those sections, sections 15 to 27, and this section shall apply with any necessary modifications.
- (4) Before the court makes a community treatment order, it must be satisfied of the following:
  - (a) the service provides care and treatment on an outpatient basis that is appropriate to the needs of the patient. (**The service** means the service that the applicant for the order asks the court to specify in the order); and
  - (b) the social circumstances of the patient are adequate for his or her care within the community.
- (5) When the court makes an order under this section, it shall give or send a copy of the order to the patient.

Section 28(3): amended, on 1 April 2000, by section 21(1)(a) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 28(3): amended, on 1 April 2000, by section 21(1)(b) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 28(4): replaced, on 1 April 2000, by section 21(2) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

## **29 Community treatment orders**

- (1) A community treatment order shall require the patient to attend at the patient's place of residence, or at some other place specified in the order, for treatment by employees of the specified service, and to accept that treatment.
- (2) Every employee of the service specified in the order who is duly authorised to treat the patient may, at all reasonable times, enter the patient's place of residence or other place so specified for the purpose of treating the patient.
- (3) If, at any time during the currency of the community treatment order, the responsible clinician considers that the patient cannot continue to be treated adequately as an outpatient, the responsible clinician may direct that the patient—
  - (a) be treated as an inpatient for a period of up to 14 days; or
  - (b) be re-assessed in accordance with sections 13 and 14.
- (4) The following provisions apply when a responsible clinician gives such a direction:
  - (a) when the direction is given under subsection (3)(a), the community treatment order does not cease to have effect:
  - (b) when the direction is given under subsection (3)(b),—
    - (i) the community treatment order ceases to have effect; and
    - (ii) sections 13 to 15 and 17 to 27 apply, with any necessary modifications, to the re-assessment:
  - (c) when the direction is given under subsection (3)(a) or (b), the patient, or a person specified in section 10(4)(a)(ii) to (v), may apply to the court to have the patient's condition reviewed under section 16.
- (5) The responsible clinician may not give a direction under subsection (3)(a) in respect of any patient more than twice in any 6-month period.
- (6) As soon as practicable after giving a direction under subsection (3), the responsible clinician must notify the following:
  - (a) any welfare guardian of the patient:
  - (b) the patient's principal caregiver:
  - (c) the primary health care provider who usually attended the patient immediately before the patient was required to undergo assessment and treatment under Part 1:
  - (d) a district inspector:

(e) an official visitor.

Section 29(1): amended, on 1 April 2000, by section 22(1) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 29(2): amended, on 1 April 2000, by section 22(2) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 29(3): replaced, on 1 April 2000, by section 22(3) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 29(4): inserted, on 1 April 2000, by section 22(3) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 29(5): inserted, on 1 April 2000, by section 22(3) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 29(6): inserted, on 1 April 2000, by section 22(3) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 29(6)(c): amended, on 31 January 2018, by section 13 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2016 (2016 No 79).

### **30 Inpatient orders**

- (1) Every inpatient order shall require the continued detention of the patient in the hospital specified in the order, or (where the patient is being detained at some other hospital) the admission of the patient and his or her detention in the hospital so specified, for the purposes of treatment, and shall require the patient to accept that treatment.
- (2) If, at any time during the currency of the inpatient order, the responsible clinician considers that the patient can continue to be treated adequately as an out-patient, that clinician shall, by notice in writing,—
  - (a) direct that the patient be discharged from the hospital; and
  - (b) direct the patient to attend at the patient's place of residence, or at some other place nominated in the notice, for the purposes of treatment;—and, in such a case, the inpatient order shall thereafter be deemed to be and to have effect as a community treatment order as if the terms of the notice were the terms of the order.

### **31 Leave for inpatients**

- (1) This section shall apply to every patient, other than a special patient, who is in a hospital in accordance with an inpatient order.
- (2) The responsible clinician may from time to time grant to any patient to whom this section applies leave of absence from the hospital for such period not exceeding 3 months, and on such terms and conditions, as that clinician thinks fit.
- (3) The responsible clinician may from time to time extend any such period of leave for a further period not exceeding 3 months at any one time; but no patient shall be on leave under this section for a continuous period of more than 6 months.



- (4) The responsible clinician may, at any time during the period of leave granted under this section to any patient, cancel the leave by notice in writing to the person who has undertaken to take care of the patient during the period of leave, or, if there is no such person, by notice in writing to the patient.
- (5) Where leave is cancelled, the patient may be taken to the hospital, or to any other hospital, by any duly authorised officer acting under the authority of the Director of Area Mental Health Services, or by any person to whom the charge of the patient has been entrusted during the period of leave.

### **32 Absence without leave**

- (1) Any patient to whom section 31 applies who becomes absent without leave from the hospital in which he or she is detained may, on the day on which such absence commences, or at any time within 3 months immediately following that day, be retaken by any person.
- (2) Any such patient who is so retaken may be taken back to the hospital in which the patient was detained immediately before such absence, or may be taken to any other hospital.
- (3) Any such patient who is not retaken within the period of 3 months specified in subsection (1) shall be deemed to have been released from compulsory status on the expiration of that period.
- (4) Notwithstanding anything in the preceding provisions of this section, any patient who is absent without leave from a hospital may at any time while the patient is so absent be released from compulsory status in accordance with this Act.
- (5) Within 24 hours after the commencement of every such absence, and after such return or release, an entry shall be made in the appropriate register.
- (6) Every patient who leaves his or her escort while being removed from any hospital in which the patient has been detained to any other hospital to which the patient is being lawfully transferred shall be deemed to be absent without leave, within the meaning of this section, from the first-mentioned hospital, and on being retaken in accordance with this Act may be conveyed to the hospital to which the patient was being removed, notwithstanding that the time limited by section 127 for complying with an order of transfer may have elapsed.

Section 32(2): amended, on 1 April 2000, by section 23 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

### **33 Compulsory treatment order to expire after 6 months**

Subject to sections 34 and 34A, every compulsory treatment order shall continue in force for a period of 6 months commencing with the day on which it is made, and shall then expire.

Section 33: amended, on 29 October 2023, by section 6 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

**34 Court may extend order**

- (1) Within 14 days before the date on which a compulsory treatment order is to expire under section 33, the responsible clinician must cause the case to be reviewed under section 76.
- (2) If, following that review, the responsible clinician is satisfied that the patient is not fit to be released from compulsory status, that clinician may apply to the court for an extension of the currency of the order for a further period of 6 months commencing with the day after the date on which the order would otherwise have expired.
- (3) The court must treat the application as if it were an application made under section 14(4). Sections 15 and 17 to 33 apply with any necessary modifications, subject to sections 34C and 34D.

- (4) *[Repealed]*

Section 34(1): replaced, on 29 October 2023, by section 7(1) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 34(3): replaced, on 1 April 2000, by section 24 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 34(3): amended, on 29 October 2023, by section 7(2) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 34(4): repealed, on 29 October 2023, by section 7(3) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

**34A Court may further extend order for 12-month period**

- (1) If a compulsory treatment order has been extended by application under section 34(2) or under subsection (2), the responsible clinician must, within 14 days immediately preceding the date on which the extended compulsory treatment order expires, cause the case to be reviewed under section 76.
- (2) If, following that review, the responsible clinician is satisfied that the patient is not fit to be released from compulsory status, that clinician may apply to the court for an extension of the currency of the order for a period of 12 months commencing with the day after the date on which the order would otherwise have expired.

Section 34A: inserted, on 29 October 2023, by section 8 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

**34B Determination of application under section 34A**

- (1) The court must treat an application under section 34A as if it were an application made under section 14(4).
- (2) Sections 15 and 17 to 33 apply with any necessary modifications, subject to subsection (3) and sections 34C and 34D.
- (3) Unless the court determines an application in accordance with section 26 or 34D, a District Court Judge must, within 2 months after the date on which the application under section 34A is filed in the court,—

- (a) examine the patient; and
  - (b) hear and determine the application.
- (4) If, at the time immediately before the expiry of the relevant extended compulsory treatment order, the court has not determined an application under section 34A, the order does not expire and continues in force until the court determines the application.

Section 34B: inserted, on 29 October 2023, by section 8 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

### **34C Examination and hearing of application for extension of community treatment order by audiovisual link**

- (1) This section applies to an application under section 34 or 34A for the extension of a community treatment order.
- (2) A District Court Judge may use an audiovisual link to examine a patient for the purposes of the application if the patient consents to the use of the audiovisual link.
- (3) A District Court Judge may determine that all or any participants may appear at a hearing by audiovisual link if the patient consents to the use of the audiovisual link.
- (4) The District Court Judge must take into account the following criteria when making a determination under subsection (3):
  - (a) the potential impact of the use of the technology on the effective maintenance of the rights of the person under section 20, including the right to assess the credibility of witnesses and the reliability of evidence presented to the court:
  - (b) any other relevant matters.
- (5) In this section,—

**audiovisual link** means facilities that enable both audio and visual communication,—

- (a) in relation to an examination of a patient, with the patient:
- (b) in relation to a hearing, between all participants

**participant** means any of the following persons in a hearing:

- (a) a party:
- (b) the patient:
- (c) counsel:
- (d) a witness:
- (e) the presiding District Court Judge.

Section 34C: inserted, on 29 October 2023, by section 8 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

**34D Court may dispense with examination and hearing**

- (1) The court may determine an application under section 34 or 34A without examination of the patient and without a formal hearing if the court is satisfied that—
  - (a) the patient has given consent in accordance with subsection (2) for the application to be so determined; and
  - (b) no person wishes to be heard in respect of the application; and
  - (c) it is appropriate to do so in the circumstances.
- (2) The consent of the patient must be—
  - (a) given on the advice of a solicitor; and
  - (b) provided in writing to the court and the Director of Area Mental Health Services.
- (3) In this section, **solicitor** has the meaning given to it by section 6 of the Lawyers and Conveyancers Act 2006.

Section 34D: inserted, on 29 October 2023, by section 8 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

**35 Release from compulsory status**

- (1) If, at any time during the currency of a compulsory treatment order, the responsible clinician considers that the patient is fit to be released from compulsory status, that clinician shall direct that the patient be released from that status forthwith.
- (2) If the responsible clinician considers that the patient is not fit to be released from compulsory status but a district inspector or an official visitor, or a friend or relative, is of the contrary opinion, the inspector or official visitor shall, or the friend or relative may, refer the case to the Review Tribunal for consideration under section 79.
- (3) Where a patient is directed to be released from compulsory status under this section, the compulsory treatment order shall be deemed to expire on the date specified in that behalf in the direction.

**36 Compulsory treatment order to cease to have effect in certain cases**

- (1) Notwithstanding any of the preceding provisions of this Part, if, at any time while a compulsory treatment order is in force in respect of any person, that person becomes subject to an order made by a court under section 38(2)(c) or section 44(1) of the Criminal Procedure (Mentally Impaired Persons) Act 2003, the compulsory treatment order shall be suspended during the currency of that other order.
- (2) Notwithstanding any of the preceding provisions of this Part, a compulsory treatment order in respect of any person shall cease to have effect if that person—

- (a) becomes subject to an order under section 24 or section 34 of the Criminal Procedure (Mentally Impaired Persons) Act 2003; or
- (b) is sentenced by a court to be detained in a prison.

Section 36(1): amended, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 36(2)(a): replaced, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 36(2)(b): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

### **Part 3**

#### **Advice and assistance**

Part 3 heading: replaced, on 1 April 2000, by section 26 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

#### **37 Advice and assistance of general nature**

So far as practicable, duly authorised officers shall act as a ready point of contact for anyone in the community who has any worry or concern about any aspect of this Act, or about services available for those who are or may be suffering from mental disorder; and, at the request of anyone, they shall provide all such assistance, advice, and reassurance as may be appropriate in the circumstances.

#### **38 Assistance when person may need assessment**

- (1) Anyone who believes that a person may be suffering from a mental disorder may at any time request the assistance of a duly authorised officer.
- (2) The duly authorised officer who receives the request must—
  - (a) investigate the matter to the extent necessary to satisfy himself or herself—
    - (i) that the concern expressed by the maker of the request is genuine; and
    - (ii) that there are reasonable grounds for believing that the person to whom the request relates may be suffering from a mental disorder; and
  - (b) decide, on reasonable grounds, whether or not the person needs to have an examination urgently in the person's own interests or the interests of any other person.
- (3) If the duly authorised officer decides that the person needs to have an examination, but not urgently, he or she must—
  - (a) arrange, or assist in arranging, for a mental health practitioner to examine the person with a view to issuing a certificate under section 8B(4)(b); and

- (b) once such a certificate is issued, assist someone else to apply under section 8A for assessment of the person, or apply himself or herself if nobody else is willing to apply; and
  - (c) arrange for an assessment examination to be conducted under section 9.
- (4) If the duly authorised officer decides that the person needs to have an examination urgently, he or she must—
- (a) try to get a mental health practitioner to come to the person to examine him or her with a view to issuing a certificate under section 8B(4)(b); and
  - (b) if a mental health practitioner is available to come to the person, take all reasonable steps to ensure that the mental health practitioner is able to examine the person, including calling for Police assistance under section 41; and
  - (c) if no mental health practitioner is available to come to the person, try to get the person to go willingly to a mental health practitioner; and
  - (d) if the person refuses to go willingly to a mental health practitioner, take all reasonable steps to—
    - (i) take the person to a mental health practitioner, including calling for Police assistance under section 41; and
    - (ii) ensure that the mental health practitioner is able to examine the person, including calling for Police assistance under section 41; and
  - (e) once a certificate is issued under section 8B(4)(b), assist someone else to apply under section 8A for assessment of the person, or apply himself or herself if nobody else is willing to apply; and
  - (f) arrange for an assessment examination to be conducted under section 9.
- (5) A duly authorised officer who receives a request need not comply with subsections (3)(a) or (4)(a) to (d) if that officer has available to him or her a certificate issued under section 8B(4)(b) by a mental health practitioner who examined the person who is the subject of the request within the 72 hours before the receipt of the request.
- (6) A mental health practitioner doing an examination under subsections (3)(a) or (4)(b) or (d) need not issue another certificate if that mental health practitioner has available to him or her a certificate issued under section 8B(4)(b) by a mental health practitioner who examined the person who is the subject of the request within the 72 hours before the receipt of the request.

Section 38: replaced, on 1 April 2000, by section 27 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 38(2)(b): amended, on 30 October 2021, by section 21(1) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 38(3): amended, on 30 October 2021, by section 21(1) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 38(3)(a): amended, on 30 October 2021, by section 21(2) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 38(4): amended, on 30 October 2021, by section 21(1) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 38(4)(a): amended, on 30 October 2021, by section 21(2) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 38(4)(b): amended, on 30 October 2021, by section 21(2) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 38(4)(c): amended, on 30 October 2021, by section 21(2) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 38(4)(d): amended, on 30 October 2021, by section 21(2) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 38(4)(d)(i): amended, on 30 October 2021, by section 21(2) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 38(4)(d)(ii): amended, on 30 October 2021, by section 21(2) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 38(5): amended, on 30 October 2021, by section 21(2) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 38(6): amended, on 30 October 2021, by section 21(2) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

### **38A Modifications to section 38 during COVID-19 response**

*[Repealed]*

Section 38A: repealed, on 30 October 2021, by section 34 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

### **39 Assistance in respect of outpatients and inpatients on leave**

- (1) This section applies to—
  - (a) every patient who is subject to assessment otherwise than in a hospital; and
  - (b) every patient who is subject to a community treatment order; and
  - (c) every patient who is subject to an inpatient order but is on leave from the hospital in accordance with section 31.
- (2) Anyone may at any time request the advice or assistance of a duly authorised officer in relation to any aspect of the care, treatment, or conduct of a patient to whom this section applies.
- (3) On any such request, a duly authorised officer shall take the following steps:
  - (a) investigate the matter to the extent necessary to satisfy himself or herself that the concern expressed by the person making the request is valid, and that there are reasonable grounds for believing that further consideration of the case may be desirable:

- (b) inform the responsible clinician or any other appropriate person of the grounds of concern that have arisen in the case:
- (c) give such other advice or assistance in the matter as may be appropriate.

Section 39(2): replaced, on 1 April 2000, by section 28 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

#### **40 Assistance in taking or returning proposed patient or patient to place of assessment or treatment**

- (1) This section applies to—
  - (a) every proposed patient or patient who—
    - (i) is required to attend at any place for—
      - (A) an assessment examination under section 9; or
      - (B) an assessment to which a notice given under section 11 or section 13 relates; or
      - (C) an examination to which a notice given under section 14A(3)(b) relates; or
      - (D) a hearing to which a notice given under section 14A(3)(c) relates; or
      - (E) a review to which a notice given under section 76(1A) relates; and
    - (ii) is refusing to attend at that place; and
  - (b) every patient who—
    - (i) is subject to a community treatment order; and
    - (ii) is refusing to attend at a place for treatment in accordance with the order; and
  - (c) every patient who—
    - (i) is subject to an inpatient order; and
    - (ii) is absent from the hospital—
      - (A) without leave; or
      - (B) when the patient's leave of absence from the hospital has expired or has been cancelled.
- (2) On becoming aware of a proposed patient or patient to whom this section applies, a duly authorised officer may take all reasonable steps to—
  - (a) take a proposed patient or patient referred to in subsection (1)(a) or (b) to the place at which he or she is required to attend:
  - (b) take a patient referred to in subsection (1)(c) back to the hospital.

Section 40: replaced, on 1 April 2000, by section 29 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).



#### **41 Police assistance**

- (1) A duly authorised officer who is intending or attempting to do any thing specified in section 38(4)(b) or (d) or section 40(2) may call to his or her assistance a constable.
- (2) A constable called to the assistance of a duly authorised officer for the purposes described in section 38(4)(b) or (d) or section 40(2)—
  - (a) may enter the premises where the person or proposed patient or patient is; and
  - (b) must, if that constable is not in uniform, produce to a person in actual occupation of the premises his or her badge or other evidence that he or she is a constable.
- (3) A constable who enters premises under subsection (2) may, for the purposes of section 38(4)(b), detain the person where he or she is for the shorter of—
  - (a) 6 hours; and
  - (b) the time it takes to conduct the examination.
- (4) A constable who enters premises under subsection (2) may, for the purposes of section 38(4)(d),—
  - (a) take the person to the place at which he or she is to have an examination; and
  - (b) detain the person at the place for the shorter of—
    - (i) 6 hours; and
    - (ii) the time it takes to conduct the examination.
- (5) A constable who enters premises under subsection (2) may, for the purposes of section 40(2)(a),—
  - (a) take the proposed patient or patient to the place at which he or she is required to attend; and
  - (b) detain the proposed patient or patient at the place for the shorter of—
    - (i) 6 hours; and
    - (ii) the time it takes to conduct whichever of the following the proposed patient or patient was refusing to attend for:
      - (A) an assessment examination under section 9; or
      - (B) an assessment to which a notice given under section 11 or section 13 relates; or
      - (C) an examination to which a notice given under section 14A(3)(b) relates; or
      - (D) a review to which a notice given under section 76(1A) relates; or
      - (E) treatment in accordance with a community treatment order.

- (6) A constable who enters premises under subsection (2) may, for the purposes of section 40(2)(b), take the patient back to the hospital.
- (7) The constable must not exercise the power in subsection (2) without a warrant, if it would be reasonably practicable to obtain a warrant.

Section 41: replaced, on 1 April 2000, by section 30 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 41(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 41(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 41(2)(b): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 41(3): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 41(3)(b): amended, on 30 October 2021, by section 22(1) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 41(4): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 41(4)(a): amended, on 30 October 2021, by section 22(2) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 41(4)(b)(ii): amended, on 30 October 2021, by section 22(1) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 41(5): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 41(6): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 41(7): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

#### **41A Modification to section 41 during COVID-19 response**

*[Repealed]*

Section 41A: repealed, on 30 October 2021, by section 34 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

## **Part 4**

### **Special patients and restricted patients**

#### *Notice of admission, discharge, and transfer of special patients and restricted patients*

#### **42 Notice of admission**

- (1) The Director of Area Mental Health Services must ensure that the person in charge of a hospital to which a special patient or a restricted patient is admitted sends the information described in subsection (2) to the Director.
- (2) The information is—

- (a) notice of the admission:
  - (b) a copy of the order on which the patient was admitted:
  - (c) a copy of every assessment certificate and other document that accompanied the order:
  - (d) a statement of both the mental condition and the physical condition of the patient at the time of the patient's admission.
- (3) The person in charge of the hospital must send the information within 14 days after the patient is admitted.

Section 42: replaced, on 1 April 2000, by section 31 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 42(2)(c): amended, on 30 October 2021, by section 23 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

#### **42A Modification to section 42 during COVID-19 response**

*[Repealed]*

Section 42A: repealed, on 30 October 2021, by section 34 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

#### **43 Notice of events concerning patient**

- (1) The Director of Area Mental Health Services must ensure that the person in charge of a hospital sends a notice to the Director of any of the events described in subsection (2) that concerns a special or restricted patient admitted to the hospital.
- (2) The events are—
- (a) discharge from the hospital:
  - (b) transfer from the hospital:
  - (c) absence on leave from the hospital:
  - (d) cancellation of leave from the hospital:
  - (e) return from leave:
  - (f) escape from the hospital:
  - (g) retaking after an escape.
- (3) The person in charge of the hospital must send the information within 14 days after the event occurs.

Section 43: replaced, on 1 April 2000, by section 31 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

#### *Collection of biometric information*

Heading: inserted, on 22 August 2017, by section 44 of the Enhancing Identity Verification and Border Processes Legislation Act 2017 (2017 No 42).

#### **43A Collection of biometric information**

- (1) This section provides for the collection of biometric information to—

- (a) strengthen the management of special patients and restricted patients in hospitals; and
  - (b) ensure the safety and security of special patients and restricted patients; and
  - (c) better manage the risk of special patients and restricted patients breaching section 52A.
- (2) A person who is a special patient or a restricted patient must allow the collection of biometric information if directed by—
- (a) the Director of Mental Health; or
  - (b) the Director of Area Mental Health Services; or
  - (c) the person in charge of the hospital in which the patient is detained.
- (3) This section is subject to any regulations made under section 135(1)(f).

Section 43A: inserted, on 22 August 2017, by section 44 of the Enhancing Identity Verification and Border Processes Legislation Act 2017 (2017 No 42).

### *Special patients*

#### 44 Treatment of special patients generally

Subject to the provisions of any other enactment, every special patient shall be given such care, treatment, training, and occupation as the patient would be given if he or she were subject to a compulsory treatment order.

Compare: 1969 No 16 s 49(1)

#### 45 Application for assessment may be made in respect of persons detained in prisons

- (1) In this section, unless the context otherwise requires,—

**institution** means—

- (a) a prison; and
- (b) a treatment centre under the Substance Addiction (Compulsory Assessment and Treatment) Act 2017; and
- (c) a residence established under section 114 of the Public Safety (Public Protection Orders) Act 2014

**superintendent**,—

- (a) in relation to a prison, means the manager of that prison; and
- (b) in relation to a treatment centre under the Substance Addiction (Compulsory Assessment and Treatment) Act 2017, means the manager of that treatment centre; and
- (c) in relation to a residence established under section 114 of the Public Safety (Public Protection Orders) Act 2014, means the residence manager within the meaning of that Act.

- (2) The superintendent of an institution, or any other officer of the institution authorised by the superintendent, may make an application under section 8A in respect of a person detained in the institution if the superintendent has reasonable grounds to believe that the person may be mentally disordered.
- (3) An application under subsection (2) is dealt with under Parts 1 and 2, subject to the following provisions:
  - (a) if the detained person is already subject to the process described in sections 9 to 16, he or she remains subject to that process:
  - (b) if the detained person is already subject to a compulsory treatment order, and section 36 does not apply to the order, he or she remains subject to the order:
  - (c) if neither paragraph (a) nor paragraph (b) applies to the detained person, Parts 1 and 2 apply to the application but must be read subject to any necessary modifications and to the modifications in subsection (4).
- (4) The modifications referred to in subsection (3)(c) are as follows:
  - (a) the assessment examination shall take place either—
    - (i) in the institution within 48 hours after the receipt of the application; or
    - (ii) if that is not practicable, in a hospital within 72 hours after the receipt of the application:
  - (b) where the assessment examination is to be conducted in a hospital, the detained person may be removed by or under the direction of the superintendent or manager of the institution to the hospital for the purposes of the assessment examination, and may in like manner be taken back to the institution:
  - (c) where the detained person is removed under paragraph (b) from a prison,—
    - (i) that person shall not be detained in the hospital overnight, except in accordance with a notice of a kind referred to in paragraph (d); and
    - (ii) unless and until such a notice is given, that person shall be deemed to continue to be in the legal custody of the person in whose custody he or she was under the Corrections Act 2004 notwithstanding that the person is absent from the institution:
  - (d) where the certificate of preliminary assessment contains a finding of the kind described in section 10(1)(b)(ii), the mental health practitioner giving the certificate shall give a notice in accordance with section 11(1), directing that the person be admitted to and detained in a specified hospital for the purposes of assessment and treatment throughout the first period of assessment and treatment; and, where the assessment interview was conducted in the institution, that notice shall be sufficient authority

for the removal of the detained person from the institution to the hospital:

- (e) on the giving of the notice referred to in paragraph (d) in respect of any person who was detained in a prison, that person is deemed to have ceased to be in legal custody under the Corrections Act 2004:
  - (f) if the certificate of further assessment contains a finding of the kind described in section 12(1)(b)(ii), the responsible clinician giving the certificate shall give a notice in accordance with section 13(1), directing that the person be admitted to and detained in a specified hospital for the purposes of assessment and treatment during the second period of assessment and treatment:
  - (g) the court shall not make a community treatment order in respect of the person.
- (5) Neither the making of an application under subsection (2) nor the making of a compulsory treatment order, in relation to a person detained in a prison, prevents the bringing of the person before a court for hearing or trial, or operates to delay the hearing or trial.

Compare: 1969 No 16 s 42(1)(a), (2), (3), (8); 1972 No 22 s 6; 1985 No 122 s 4

Section 45 heading: amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 45(1) **institution** paragraph (a): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 45(1) **institution** paragraph (b): replaced, on 21 February 2018, by section 122(1) of the Substance Addiction (Compulsory Assessment and Treatment) Act 2017 (2017 No 4).

Section 45(1) **institution** paragraph (c): inserted, on 12 December 2014, by section 144 of the Public Safety (Public Protection Orders) Act 2014 (2014 No 68).

Section 45(1) **superintendent** paragraph (a): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 45(1) **superintendent** paragraph (b): replaced, on 21 February 2018, by section 122(1) of the Substance Addiction (Compulsory Assessment and Treatment) Act 2017 (2017 No 4).

Section 45(1) **superintendent** paragraph (c): inserted, on 12 December 2014, by section 144 of the Public Safety (Public Protection Orders) Act 2014 (2014 No 68).

Section 45(2): replaced, on 1 April 2000, by section 32(1) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 45(3): replaced, on 1 April 2000, by section 32(1) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 45(4): amended, on 1 April 2000, by section 32(2) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 45(4)(b): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 45(4)(c): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 45(4)(c)(ii): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 45(4)(d): amended, on 30 October 2021, by section 24 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 45(4)(e): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 45(5): replaced, on 1 April 2000, by section 32(3) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 45(5): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

#### **45A Modification to section 45 during COVID-19 response**

*[Repealed]*

Section 45A: repealed, on 30 October 2021, by section 34 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

#### **46 Detained persons in need of care and treatment**

If it appears to the chief executive of the Department of Corrections that any person who is detained in a prison or in a residence established under section 114 of the Public Safety (Public Protection Orders) Act 2014, whether or not that person is mentally disordered, would benefit from psychiatric care and treatment available in a hospital but not available in the institution in which the person is detained, the chief executive of the Department of Corrections may, with the consent of that person, make arrangements with the Director for the person to be admitted to and detained in that hospital, and, subject to section 50A, the person shall be so detained accordingly.

Compare: 1969 No 16 s 43; 1985 No 122 s 5

Section 46: amended, on 13 December 2022, by section 19 of the Rights for Victims of Insane Offenders Act 2021 (2021 No 55).

Section 46: amended, on 12 December 2014, by section 144 of the Public Safety (Public Protection Orders) Act 2014 (2014 No 68).

Section 46: amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 46: amended, on 1 October 1995, by section 10(3) of the Department of Justice (Restructuring) Act 1995 (1995 No 39).

#### **47 Removal of certain special patients to prisons**

- (1) If, in the opinion of the Director of Area Mental Health Services, a special patient detained following an application made under section 45(2) or subject to an order made under section 34(1)(a)(i) of the Criminal Procedure (Mentally Impaired Persons) Act 2003 is fit to be released, that officer may, with the consent of the Director, direct that the special patient be taken to a prison or, as the case requires, a residence established under section 114 of the Public Safety (Public Protection Orders) Act 2014 to serve the remainder of the patient's sentence or the order applicable to the patient, or otherwise be dealt with according to law.
- (2) The Director may at any time direct that any patient who is detained in a hospital pursuant to section 46 be removed to a prison or, as the case requires, a residence established under section 114 of the Public Safety (Public Protection

- Orders) Act 2014 to undergo the remainder of his or her sentence or otherwise to be dealt with according to law.
- (3) Where a direction is given under subsection (1) or subsection (2), the Director shall notify the chief executive of the Department of Corrections who shall arrange for the patient to be removed to the prison or, as the case requires, the residence established under section 114 of the Public Safety (Public Protection Orders) Act 2014 within 7 days after the date of the direction unless an application is sooner made under section 8A for assessment of the patient.
- (4) If a patient who is detained under section 46 wishes to be removed to a prison or, as the case requires, a residence established under section 114 of the Public Safety (Public Protection Orders) Act 2014 to undergo the remainder of his or her sentence or otherwise to be dealt with according to law, the Director of Area Mental Health Services shall make the necessary arrangements as soon as practicable, unless an application is sooner made under section 8A for assessment of the patient.
- (5) Any direction given under this section in respect of any patient shall be sufficient authority for the removal of the patient to the institution specified in the direction and for the reception of the patient there; and on such removal, the patient shall be deemed to have been released from assessment and treatment as a patient under this Act.

Compare: 1969 No 16 s 44(1)–(3); 1979 No 100 s 2

Section 47 heading: amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 47 heading: amended, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 47(1): replaced, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 47(1): amended, on 12 December 2014, by section 144 of the Public Safety (Public Protection Orders) Act 2014 (2014 No 68).

Section 47(2): amended, on 12 December 2014, by section 144 of the Public Safety (Public Protection Orders) Act 2014 (2014 No 68).

Section 47(2): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 47(3): amended, on 12 December 2014, by section 144 of the Public Safety (Public Protection Orders) Act 2014 (2014 No 68).

Section 47(3): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 47(3): amended, on 1 April 2000, by section 76 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 47(3): amended, on 1 October 1995, by section 10(3) of the Department of Justice (Restructuring) Act 1995 (1995 No 39).

Section 47(4): amended, on 12 December 2014, by section 144 of the Public Safety (Public Protection Orders) Act 2014 (2014 No 68).

Section 47(4): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 47(4): amended, on 1 April 2000, by section 76 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).



**47A Removal of certain intellectually disabled patients to facilities**

- (1) This section applies to—
  - (a) a patient or a special patient—
    - (i) who is subject to a compulsory treatment order that was made following an application under section 136(2) of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003; and
    - (ii) who, in the opinion of the Director of Area Mental Health Services, is fit to be released from compulsory status under this Act; and
  - (b) a special patient (not being a patient to whom paragraph (a) applies)—
    - (i) who, in the opinion of the Director of Area Mental Health Services, is fit to be released from compulsory status under this Act; and
    - (ii) who has been assessed by a specialist assessor within the meaning of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 as having an intellectual disability within the meaning of that Act.
- (2) The Director of Area Mental Health Services may, with the consent of the Director, direct that a patient to whom this section applies be taken to an appropriate facility under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003.
- (3) When a direction is given under subsection (2), the Director must notify the responsible co-ordinator under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, who must arrange for the patient to be removed to a facility within 7 days after the date of the direction unless an application is sooner made under section 8A for assessment of the patient.
- (4) Any direction given under this section in respect of a patient is sufficient authority for the removal of the patient to the facility specified in the direction and for the reception of the patient there.
- (5) On the removal of the patient under subsection (4) to a facility under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003,—
  - (a) the patient must be regarded as having been released from assessment and treatment as a patient under this Act; and
  - (b) if the patient is a special patient, he or she must be held as a special care recipient under that Act until the status of the person is changed in accordance with that Act or the Criminal Procedure (Mentally Impaired Persons) Act 2003; and
  - (c) if the patient is a special patient who is, or is deemed to be, subject to an order under section 24(2)(a) of the Criminal Procedure (Mentally

Impaired Persons) Act 2003, the order is deemed to have been made under section 24(2)(b) of that Act; and

- (d) if the patient is subject to a compulsory treatment order, that order becomes a compulsory care order (within the meaning of that Act) that is deemed to have been made on the date of the removal for a term of 6 months; and
- (e) if the patient is a special patient who is, or is deemed to be, subject to an order under section 34(1)(a)(i) of the Criminal Procedure (Mentally Impaired Persons) Act 2003, the order is deemed to have been made under section 34(1)(a)(ii) of that Act.

Section 47A: inserted, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

#### **48 Relationship between detention in hospital and sentence**

- (1) For the purposes of this section,—
  - (a) a reference to a person means a person who—
    - (i) is detained in a hospital, either following an application under section 45(2) or under section 46 of this Act or under section 34(1)(a)(i) of the Criminal Procedure (Mentally Impaired Persons) Act 2003; or
    - (ii) having been so detained, is on leave:
  - (b) a reference to leave means leave under section 50A or section 52:
  - (c) a reference to a sentence means a sentence, an order of committal, or an order of detention:
  - (d) liability to detention under a sentence ceases on the earliest of the following dates:
    - (i) the date specified in an order of the New Zealand Parole Board that the person be released on parole or compassionate leave:
    - (ii) the release date (if any) of the person's sentence, as defined under Part 1 of the Parole Act 2002:
    - (iii) the date on which the sentence is determined:
    - (iv) in the case of a person subject to a public protection order under the Public Safety (Public Protection Orders) Act 2014, the date on which that order is cancelled.
- (2) The term of a sentence applicable to a person immediately before his or her admission to hospital—
  - (a) continues to run while the person is in a hospital or is on leave; and
  - (b) ceases to run if, before the person's liability to detention under the sentence ceases,—
    - (i) he or she escapes from a hospital; or

- (ii) he or she fails to return on the expiry or cancellation of leave; and
  - (c) does not begin to run again until the person is retaken.
- (3) The person ceases to be detained as a special patient at the time he or she ceases to be liable to be detained under any sentence and,—
- (a) if at that time he or she is a person who is subject to the process described in sections 9 to 16 as the result of an application under section 45(2), he or she remains subject to the process:
  - (b) if at that time he or she is a person who is subject to a compulsory treatment order as the result of an application under section 45(2), he or she remains subject to the compulsory treatment order:
  - (ba) if at that time he or she is subject to an order under section 34(1)(a)(i) of the Criminal Procedure (Mentally Impaired Persons) Act 2003, he or she is deemed to be subject to a compulsory treatment order:
  - (c) if at that time he or she is a person in the hospital under section 46, he or she becomes a voluntary patient.

Section 48: replaced, on 1 April 2000, by section 33 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 48(1)(a)(i): replaced, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 48(1)(b): amended, on 13 December 2022, by section 19 of the Rights for Victims of Insane Offenders Act 2021 (2021 No 55).

Section 48(1)(d): replaced, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 48(1)(d)(iv): inserted, on 12 December 2014, by section 144 of the Public Safety (Public Protection Orders) Act 2014 (2014 No 68).

Section 48(3)(ba): inserted, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

#### **49 Transfer of special patients**

- (1) The Director may from time to time direct that any special patient be transferred from any hospital in which the patient is detained to any other hospital specified in the direction, and may from time to time vary any such direction.
- (2) The Director of Area Mental Health Services shall comply with any direction given under subsection (1) at the time or within the period stated in the direction or, if no such time or period is so stated, as soon as practicable.
- (3) On the transfer of the patient, the court order and the application and certificates on which the order was made, or any other instrument of authority under which the special patient was admitted or detained, shall be delivered to the Director of Area Mental Health Services responsible for the hospital to which the patient is transferred (if they are not already in that Director's possession), together with the clinical records relating to the patient.

- (4) The court order or other instrument of authority shall remain in force in the same manner as if the patient had been ordered to be received in the hospital to which he or she is to be transferred.

Compare: 1969 No 16 s 46; 1972 No 22 s 8

## 50 Special patient defined

In this section and in sections 50A to 50G, **special patient** means a person who is detained in a hospital under—

- (a) section 24(2)(a) of the Criminal Procedure (Mentally Impaired Persons) Act 2003 as a person acquitted on account of insanity; or
- (b) section 34(1)(a)(i) of the Criminal Procedure (Mentally Impaired Persons) Act 2003; or
- (c) an order made under section 45; or
- (d) section 46.

Section 50: replaced, on 13 December 2022, by section 13 of the Rights for Victims of Insane Offenders Act 2021 (2021 No 55).

## 50A Minister may grant leave to special patients

- (1) The Minister may grant a special patient leave of absence from the hospital if—
- (a) 2 medical practitioners certify that the special patient is fit to be allowed to be absent from the hospital; and
  - (b) the Director supports the proposed leave of absence, taking into account any submission from a victim made in accordance with section 50C or 50D.
- (2) The Minister may grant the leave of absence subject to any conditions the Minister considers appropriate, including (at the Minister's discretion) a condition that the person must return to the hospital on the date or within the period that the Minister specifies.
- (3) The Minister may not exercise the power to grant leave under this section in respect of any person who—
- (a) was, immediately before that person's admission to the hospital, detained in a prison—
    - (i) while awaiting, or during the course of, a trial or hearing before a court; or
    - (ii) while awaiting sentence by a court; or
    - (iii) pending the determination of an appeal to a court against conviction; or
  - (b) is subject to a sentence of imprisonment for life or to a sentence of preventive detention.

Section 50A: inserted, on 13 December 2022, by section 13 of the Rights for Victims of Insane Offenders Act 2021 (2021 No 55).

**50B When victims must be notified of impending decision under section 50A**

- (1) This section applies if the Director is required to decide whether to support the proposed leave of absence of a special patient under section 50A(1).
- (2) The Director must take all reasonable steps to—
  - (a) give notice to a victim that the Director is required to decide whether to support the proposed leave of absence of the special patient under section 50A(1); and
  - (b) explain to the victim—
    - (i) the process under section 50A for granting a special patient leave of absence; and
    - (ii) how the victim may participate in that process.

Section 50B: inserted, on 13 December 2022, by section 13 of the Rights for Victims of Insane Offenders Act 2021 (2021 No 55).

**50C Right of victims to make submissions on proposed leave of absence**

- (1) This section applies to a person notified under section 50B.
- (2) The person may write to the Director, making submissions on the decision of whether to grant leave of absence under section 50A(1).
- (3) The person's submissions may address—
  - (a) any concerns that the person has, on reasonable grounds, about any risk that the special patient presents to—
    - (i) the person's physical safety or security; or
    - (ii) the physical safety or security of 1 or more members of the person's immediate family; and
  - (b) any other information that the person considers relevant to the decision of whether to grant leave of absence under section 50A(1).
- (4) The person must send the submissions to the Director by the date specified by the Director.
- (5) The Director must have regard to any written submissions made by a victim under this section or section 50D.
- (6) In this section, **immediate family** has the same meaning as in section 4 of the Victims' Rights Act 2002.

Section 50C: inserted, on 13 December 2022, by section 13 of the Rights for Victims of Insane Offenders Act 2021 (2021 No 55).

**50D Submissions from certain victims**

- (1) This section applies to a person who—
  - (a) is not a victim as defined in section 2(1); but

- (b) is a victim as defined in section 4 of the Victims' Rights Act 2002.
- (2) The person may make written submissions to the Director about the decision of whether to grant leave of absence under section 50A(1).
- (3) If the person seeks information from the Director for the purpose of making submissions under subsection (2), the Director may—
  - (a) advise the person of the date on which the Director intends to decide whether to support the proposed leave of absence of the special patient; and
  - (b) give the person any other information that is reasonably necessary to enable the person to make submissions.
- (4) Section 50C applies with any necessary modifications.
- (5) Neither the Director nor any other person has any liability for an act done in pursuance, or intended pursuance, of the Director's functions under this section or section 50E(1)(b), unless the act was done in bad faith.

Section 50D: inserted, on 13 December 2022, by section 13 of the Rights for Victims of Insane Offenders Act 2021 (2021 No 55).

#### **50E Victims must be notified of decisions made under section 50A**

- (1) The Director must advise the following persons of the matters specified in subsection (2):
  - (a) a person notified under section 50B;
  - (b) a person who makes a submission under section 50D(2).
- (2) The specified matters are—
  - (a) whether the Director supports the proposed leave of absence of the special patient under section 50A(1);
  - (b) if the Director supports the proposed leave of absence, whether the Minister has granted the special patient leave of absence under section 50A(1);
  - (c) if the Minister has granted the special patient leave of absence, any conditions applying to the special patient under section 50A(2).
- (3) The Director may withhold advice of a particular condition if, in the Director's opinion, disclosing the condition would unduly interfere with the privacy of any other person (other than the special patient).

Section 50E: inserted, on 13 December 2022, by section 13 of the Rights for Victims of Insane Offenders Act 2021 (2021 No 55).

#### **50F Information about victims not to be disclosed**

- (1) This section applies to sections 50A to 50E.
- (2) No person may, directly or indirectly, disclose to the special patient the current address or contact details of any victim of the special patient.

Section 50F: inserted, on 13 December 2022, by section 13 of the Rights for Victims of Insane Offenders Act 2021 (2021 No 55).

**50G Minister may cancel leave of special patients**

- (1) The Minister may, during a period of leave of absence granted under section 50A(1) to a special patient, cancel that leave of absence.
- (2) If the Minister cancels a leave of absence, the Director must direct, in writing, that the special patient be admitted or re-admitted to a specified hospital.
- (3) The special patient may be taken to the specified hospital by any of the following:
  - (a) the Director:
  - (b) the Director of Area Mental Health Services:
  - (c) a duly authorised officer:
  - (d) a constable:
  - (e) a person to whom the charge of the special patient has been entrusted during the period of leave.
- (4) If the specified hospital is not the one from which the special patient was on leave of absence, the special patient must be received and detained there as if the special patient had been transferred to that hospital under section 49.

Section 50G: inserted, on 13 December 2022, by section 13 of the Rights for Victims of Insane Offenders Act 2021 (2021 No 55).

**51 Power to direct temporary return to hospital of special patients**

- (1) Where any patient is, under section 50A, on leave of absence from a hospital, the Director of Area Mental Health Services may, if he or she is satisfied that it is necessary, in the interests of the safety of that patient or the public, direct in writing that that patient be admitted or re-admitted to a specified hospital.
- (2) Where a direction is given under subsection (1), the Director of Area Mental Health Services shall—
  - (a) record in writing the reasons for the direction; and
  - (b) ensure that both a copy of the direction and a copy of the reasons for the direction are given to the patient as soon as practicable.
- (3) Where a direction is given under subsection (1), the patient may, notwithstanding the leave granted under section 50A(1), be taken to the specified hospital by the Director, or by the Director of Area Mental Health Services, or by a duly authorised officer, or by any constable, or by any person to whom the charge of the patient has been entrusted during the period of leave.
- (4) If the specified hospital is not the one from which the patient was on leave, the patient shall, subject to subsections (5) to (7), be received and detained there as if he or she had been transferred to that hospital pursuant to section 49.

- (5) Where a patient is admitted or re-admitted to a hospital pursuant to a direction under subsection (1), that patient shall not, unless his or her leave is cancelled under section 50G(1), be detained in that hospital for more than 72 hours.
- (6) If the leave of a patient who is admitted or re-admitted to a hospital pursuant to a direction under subsection (1) is not cancelled before the expiration of his or her period of detention pursuant to that direction, that patient shall, at the end of his or her period of detention pursuant to that direction, be again released on leave subject to the conditions imposed by the Minister under section 50A(2).
- (7) Where the Minister decides, within 72 hours after the time at which a patient is admitted or re-admitted to a hospital pursuant to a direction under subsection (1), that that patient's leave is not to be cancelled under section 50G(1), that patient shall forthwith be again released on leave subject to the conditions imposed by the Minister under section 50A(2).

Section 51(1): amended, on 13 December 2022, by section 19 of the Rights for Victims of Insane Offenders Act 2021 (2021 No 55).

Section 51(3): amended, on 13 December 2022, by section 19 of the Rights for Victims of Insane Offenders Act 2021 (2021 No 55).

Section 51(3): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 51(5): amended, on 13 December 2022, by section 19 of the Rights for Victims of Insane Offenders Act 2021 (2021 No 55).

Section 51(6): amended, on 13 December 2022, by section 19 of the Rights for Victims of Insane Offenders Act 2021 (2021 No 55).

Section 51(7): amended, on 13 December 2022, by section 19 of the Rights for Victims of Insane Offenders Act 2021 (2021 No 55).

## **52 Director may grant short-term leave to special patients**

- (1) The Director may grant a special patient leave of absence from the hospital for a period of up to 7 days, excluding the days of the patient's departure and return.
- (2) The Director may grant the leave of absence subject to any conditions the Director considers appropriate.
- (3) The Director's power to grant leave under this section—
  - (a) must not be exercised in respect of any special patient described in section 50A(3)(a); and
  - (b) applies despite any other provision of this Act.

Section 52: replaced, on 13 December 2022, by section 14 of the Rights for Victims of Insane Offenders Act 2021 (2021 No 55).

## **52A Special patients not to leave hospital or depart from New Zealand without permission**

- (1) A special patient may not leave the hospital in which the special patient is detained unless—



- (a) granted leave of absence by the Minister under section 50A; or
  - (b) granted leave of absence by the Director under section 52.
- (2) A special patient may not depart from New Zealand unless—
- (a) the special patient has been granted leave of absence under section 50A or 52; and
  - (b) the special patient is permitted by the Minister, on terms and conditions specified by the Minister, to be absent from New Zealand during that leave; and
  - (c) the special patient's departure from New Zealand is in accordance with the terms and conditions of the Minister's permission given under paragraph (b).
- (3) A special patient who contravenes subsection (2) must be treated as having escaped.
- (4) In subsection (2), **depart** includes—
- (a) attempt to depart:
  - (b) prepare to depart.

Section 52A: inserted, on 22 August 2017, by section 45 of the Enhancing Identity Verification and Border Processes Legislation Act 2017 (2017 No 42).

Section 52A(1)(a): amended, on 13 December 2022, by section 19 of the Rights for Victims of Insane Offenders Act 2021 (2021 No 55).

Section 52A(2)(a): amended, on 13 December 2022, by section 19 of the Rights for Victims of Insane Offenders Act 2021 (2021 No 55).

## **52B When victims must be notified of impending decision under section 52**

- (1) This section applies if—
- (a) the Director intends to decide whether to grant a special patient leave of absence under section 52(1); and
  - (b) that leave of absence would permit the patient to exercise greater autonomy outside the hospital than has any other leave of absence previously granted to the patient.
- (2) The Director must take all reasonable steps to—
- (a) give notice to a victim that the Director intends to decide whether to grant leave of absence to the special patient under section 52(1); and
  - (b) explain to the victim—
    - (i) the process under section 52 for granting a special patient leave of absence; and
    - (ii) how the victim may participate in that process.

Section 52B: inserted, on 13 December 2022, by section 15 of the Rights for Victims of Insane Offenders Act 2021 (2021 No 55).

**52C Right of victims to make submissions on proposed leave of absence**

- (1) This section applies to a person notified under section 52B.
- (2) The person may write to the Director, making submissions on the decision of whether to grant leave of absence under section 52(1).
- (3) The person's submissions may address—
  - (a) any concerns that the person has, on reasonable grounds, about any risk that the special patient presents to—
    - (i) the person's physical safety or security; or
    - (ii) the physical safety or security of 1 or more members of the person's immediate family; and
  - (b) any other information that the person considers relevant to the decision of whether to grant leave of absence under section 52(1).
- (4) The person must send the submissions to the Director by the date specified by the Director.
- (5) The Director must have regard to any written submissions made by a victim under this section or section 52D.
- (6) In this section, **immediate family** has the same meaning as in section 4 of the Victims' Rights Act 2002.

Section 52C: inserted, on 13 December 2022, by section 15 of the Rights for Victims of Insane Offenders Act 2021 (2021 No 55).

**52D Submissions from certain victims**

- (1) This section applies to a person who—
  - (a) is not a victim as defined in section 2(1); but
  - (b) is a victim as defined in section 4 of the Victims' Rights Act 2002.
- (2) The person may make written submissions to the Director about the decision of whether to grant leave of absence under section 52(1).
- (3) If the person seeks information from the Director for the purpose of making submissions under subsection (2), the Director may—
  - (a) advise the person of the date on which the Director intends to decide whether to grant the leave of absence to the special patient; and
  - (b) give the person any other information that is reasonably necessary to enable the person to make submissions.
- (4) Section 52C applies with any necessary modifications.
- (5) Neither the Director nor any other person has any liability for an act done in pursuance, or intended pursuance, of the Director's functions under this section or section 52E(1)(b), unless the act was done in bad faith.

Section 52D: inserted, on 13 December 2022, by section 15 of the Rights for Victims of Insane Offenders Act 2021 (2021 No 55).

**52E Victims must be notified of decisions made under section 52**

- (1) The Director must advise the following persons of the matters specified in subsection (2):
  - (a) a person notified under section 52B:
  - (b) a person who makes a submission under section 52D(2).
- (2) The specified matters are—
  - (a) whether the Director has granted a special patient leave of absence under section 52(1):
  - (b) if the Director has granted the special patient leave of absence, any conditions applying to the special patient under section 52(2).
- (3) The Director may withhold advice of a particular condition if, in the Director's opinion, disclosing the condition would unduly interfere with the privacy of any other person (other than the special patient).

Section 52E: inserted, on 13 December 2022, by section 15 of the Rights for Victims of Insane Offenders Act 2021 (2021 No 55).

**52F Information about victims not to be disclosed**

- (1) This section applies to sections 52 and 52B to 52E.
- (2) No person may, directly or indirectly, disclose to the special patient the current address or contact details of any victim of the special patient.

Section 52F: inserted, on 13 December 2022, by section 15 of the Rights for Victims of Insane Offenders Act 2021 (2021 No 55).

**52G Director may cancel short-term leave of special patients**

- (1) The Director may, during a period of leave of absence granted under section 52(1) to a special patient, cancel that leave of absence.
- (2) If the Director cancels a leave of absence, section 50G(2) to (4) applies with any necessary modifications.

Section 52G: inserted, on 13 December 2022, by section 15 of the Rights for Victims of Insane Offenders Act 2021 (2021 No 55).

**52H Director may authorise Director of Area Mental Health Services to exercise certain powers**

- (1) The Director of Area Mental Health Services may exercise the powers and duties conferred on the Director by sections 50B, 50D, 50E, 52, and 52B to 52G in respect of a special patient—
  - (a) with the authority of the Director; and
  - (b) subject to any conditions imposed by the Director.
- (2) If the special patient is a special patient under section 50(c) or (d), the Director of Area Mental Health Services may exercise a power under subsection (1) only after consulting the manager of the appropriate prison.

Section 52H: inserted, on 13 December 2022, by section 15 of the Rights for Victims of Insane Offenders Act 2021 (2021 No 55).

### **53 Escape and absence without leave**

Any special patient who escapes, or who breaches any condition of leave, or who fails to return on the expiry or cancellation of any period of leave may be retaken at any time by the Director, or by the Director of Area Mental Health Services, or by a duly authorised officer, or by any constable, or by any person to whom the charge of the patient had been entrusted during the period of leave, and taken to the hospital from which the patient escaped or was on leave or to any other hospital specified by the Director.

Section 53: amended, on 22 August 2017, by section 46 of the Enhancing Identity Verification and Border Processes Legislation Act 2017 (2017 No 42).

Section 53: amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 53: amended, on 1 April 2000, by section 34 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

### **53A Transport of special patients**

- (1) A special patient custodian may agree in writing that a government agency transport special patients for the purposes of this Part and for either of the following purposes:
  - (a) to bring the patient before a court for a hearing or trial;
  - (b) to bring the patient before the New Zealand Parole Board for a hearing under the Parole Act 2002.
- (2) The agreement must include a transport management plan that has been approved in writing by the Director of Mental Health.
- (3) A transport management plan may authorise—
  - (a) the restraint of a transported special patient that is the least restrictive option for both the safety of the patient and the public; and
  - (b) any other use of force in respect of the patient that is reasonably necessary in the circumstances.
- (4) If the transport management plan authorises the restraint of a transported special patient or other use of force in respect of the patient,—
  - (a) the plan must—
    - (i) set out the grounds that satisfy the requirements in subsection (3)(a) and (b); and
    - (ii) state the type of restraint and any other use of force that is authorised; and
    - (iii) state any additional type of restraint or use of force that is authorised in the event of escalation of risk to any person during trans-

port and that satisfies the requirements in subsection (3)(a) and (b); and

- (b) a person employed or engaged by the government agency may restrain a special patient and use force in respect of the patient in accordance with the approved transport management plan.
- (5) The Director-General of Health must issue guidelines under section 130(a) for the purposes of this section within 12 months of the date on which this section comes into force.
- (6) In this section,—

**government agency** means a Crown agent or department as those terms are defined by section 5 of the Public Service Act 2020 or the New Zealand Police

**special patient custodian** means a person who has custody of a special patient under this Act

**transport** includes escorting a special patient to and from a vehicle, and **transported** has a corresponding meaning.

Section 53A: inserted, on 30 October 2021, by section 9 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

### *Restricted patients*

#### **54 Patients presenting special difficulties may be drawn to Director's attention**

- (1) If, on making any inpatient order under Part 2, a Judge considers—
  - (a) that the patient presents special difficulties because of the danger he or she poses to others; and
  - (b) that, for that reason, it may be appropriate that an order be made under section 55 declaring the patient to be a restricted patient,—the Judge may direct that the case be referred to the Director for consideration.
- (2) If the Director of Area Mental Health Services considers—
  - (a) that any patient who is subject to an inpatient order presents special difficulties because of the danger he or she poses to others; and
  - (b) that, for that reason, it may be appropriate that an order be made under section 55 declaring the patient to be a restricted patient,—the Director of Area Mental Health Services may refer the case to the Director for consideration.
- (3) If the Director, whether from his or her own information and inquiries, or on reference of the case to him or her under subsection (1) or subsection (2), considers—
  - (a) that any patient who is subject to an inpatient order presents special difficulties because of the danger he or she poses to others; and

- (b) that, for that reason, it would be appropriate that an order be made under section 55 declaring the patient to be a restricted patient,—  
the Director may apply to the court for an order under section 55 declaring the patient to be a restricted patient.

### **55 Court may make order declaring patient to be restricted patient**

- (1) Every application under section 54 shall be made to, and heard and determined by, the court.
- (2) Sections 19 to 25, so far as they are applicable and with any necessary modifications, shall apply in respect of applications under section 54.
- (3) On any such application, the court may make an order declaring the patient to be a restricted patient if it is satisfied—
  - (a) that the patient presents special difficulties because of the danger he or she poses to others; and
  - (b) that, for that reason, it is appropriate that the order be made.

### **56 Effect of application and order in respect of leave**

While an application under section 54 is awaiting determination, and while a patient is a restricted patient, sections 50 to 53 shall apply in respect of the patient as if he or she were a special patient, and nothing in sections 31 and 32 shall apply in respect of that patient.

## **Part 5 Compulsory treatment**

### **57 No compulsory treatment except as provided in this Part or in section 110A**

A proposed patient or patient may refuse consent to any form of treatment for mental disorder, except as provided in this Part or in section 110A.

Section 57: replaced, on 1 April 2000, by section 35 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

### **58 Treatment while undergoing assessment**

Every patient who is undergoing assessment pursuant to section 11 or section 13 shall be required to accept such treatment for mental disorder as the responsible clinician shall direct.

Section 58: amended, on 1 April 2000, by section 36 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

### **59 Treatment while subject to compulsory treatment order**

- (1) Every patient who is subject to a compulsory treatment order shall, during the first month of the currency of the order, be required to accept such treatment for mental disorder as the responsible clinician shall direct.

- (2) Except during the period of 1 month referred to in subsection (1), no patient shall be required to accept any treatment unless—
- (a) the patient, having had the treatment explained to him or her in accordance with section 67, consents in writing to the treatment; or
  - (b) the treatment is considered to be in the interests of the patient by a psychiatrist (not being the responsible clinician) who has been appointed for the purposes of this section by the Review Tribunal.
- (3) Where, during the period of 1 month referred to in subsection (1), the responsible clinician is satisfied—
- (a) that the patient will need further treatment of a particular kind beyond the expiry of that period; and
  - (b) that the patient is unlikely to consent to that treatment,—
- the responsible clinician may, notwithstanding that the period has not expired, refer the case to the psychiatrist referred to in subsection (2)(b) for consideration, so as to ensure that the opinion of that psychiatrist is available on the expiry of that period.
- (4) The responsible clinician shall, wherever practicable, seek to obtain the consent of the patient to any treatment even though that treatment may be authorised by or under this Act without the patient’s consent.

**60 Special provision relating to electro-convulsive treatment**

Notwithstanding anything in section 58 or section 59, no patient shall be required to accept electro-convulsive treatment for mental disorder unless—

- (a) the patient, having had the treatment explained to him or her in accordance with section 67, consents in writing to the treatment; or
- (b) the treatment is considered to be in the interests of the patient by a psychiatrist (not being the responsible clinician) who has been appointed for the purposes of this section by the Review Tribunal.

**61 Special provision relating to brain surgery**

Notwithstanding anything in section 58 or section 59, no patient shall, for mental disorder, be subjected to any surgery or other treatment intended to destroy any part of the brain or brain function unless—

- (a) the patient consents in writing to that surgery or other treatment; and
- (b) the Review Tribunal has considered the case and is satisfied that the patient gave that consent freely, and in giving that consent, understood the nature, purpose, and likely effect of that surgery or other treatment; and
- (c) that surgery or other treatment is considered to be in the interests of the patient by—
  - (i) the responsible clinician; and

- (ii) a psychiatrist who has been appointed for the purposes of this section by the Review Tribunal and who has consulted with at least 2 health professionals (neither of whom is a medical practitioner) currently concerned in the patient's care.

## 62 Urgent treatment

Nothing in section 59(2) shall apply to any treatment that is immediately necessary—

- (a) to save the patient's life; or
- (b) to prevent serious damage to the health of the patient; or
- (c) to prevent the patient from causing serious injury to himself or herself or others.

## 63 Withdrawal of consent

Any consent given by the patient for the purposes of section 59 or section 60 or section 61 may be withdrawn at any time by the patient; and thereafter any further treatment given to the patient shall be deemed (unless the patient gives fresh consent) to be given without the patient's consent.

# Part 6 Rights of patients

## 63A Rights of proposed patients

In sections 64(1), 64(2)(a), 65 to 72, and 75, **patient** includes a proposed patient.

Section 63A: inserted, on 1 April 2000, by section 37 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

## 64 General rights to information

- (1) Every person, upon becoming a patient, shall receive a written statement of his or her rights as a patient.
- (2) Every patient is entitled to be kept informed of his or her rights as a patient, and, in particular,—
  - (a) of his or her legal status as a patient; and
  - (b) of his or her right, at any time during the first period of assessment and treatment or the second period of assessment and treatment, to have his or her condition reviewed by a Judge under section 16; and
  - (c) of his or her right, while detained in a hospital, to have his or her condition reviewed from time to time by the Review Tribunal in accordance with section 79 or section 80; and



- (d) of his or her right to appeal under section 83 where the Review Tribunal decides under section 79 that he or she is not fit to be released from compulsory status; and
- (e) of his or her right to seek a judicial inquiry under section 84; and
- (f) of all orders made by a court or the Review Tribunal in respect of his or her case; and
- (g) of the functions and duties of district inspectors and official visitors appointed under section 94.

**65 Respect for cultural identity, etc**

Every patient is entitled to be dealt with in a manner that accords with the spirit and intent of section 5.

**66 Right to treatment**

Every patient is entitled to medical treatment and other health care appropriate to his or her condition.

**67 Right to be informed about treatment**

Every patient is entitled to receive an explanation of the expected effects of any treatment offered to the patient, including the expected benefits and the likely side effects, before the treatment is commenced.

**68 Further rights in case of visual or audio recording**

- (1) Every patient is entitled to be informed where it is intended to make or use a videotape or other visual or audio recording of any interview with, or any other part of the treatment of, the patient.
- (2) Nothing referred to in subsection (1) shall be done without the prior consent of the patient or (where the patient is not capable of giving consent) the prior consent of the patient's personal representative.
- (3) For the purposes of subsection (2) **personal representative** in respect of any patient means,—
  - (a) where the patient is dead, the personal representative of that patient; or
  - (b) where the patient is under the age of 16 years, the patient's parent or guardian; or
  - (c) subject to paragraphs (a) and (b), where the patient is unable to give consent, means a person appearing to the person in charge of the hospital or service to be lawfully acting on behalf of or in the interests of the patient.

Section 68(2): amended, on 1 July 1993, by section 32 of the Health Sector (Transfers) Act 1993 (1993 No 23).

Section 68(3): inserted, on 1 July 1993, by section 32 of the Health Sector (Transfers) Act 1993 (1993 No 23).

Section 68(3)(c): amended, on 1 April 2000, by section 38 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

### **69 Right to independent psychiatric advice**

Every patient is entitled to seek a consultation with a psychiatrist of his or her own choice in order to get a second opinion, and, if the psychiatrist agrees to the consultation, he or she shall be permitted access to the patient upon request.

Section 69: amended, on 1 April 2000, by section 39 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

### **70 Right to legal advice**

Every patient is entitled to request a lawyer to advise the patient on his or her status and rights as a patient, or any other matters on which persons customarily seek legal advice, and, if the lawyer agrees to act for the patient, he or she shall be permitted access to the patient upon request.

### **71 Right to company, and seclusion**

- (1) Every patient is entitled to the company of others, except as provided in subsection (2).
- (2) A patient may be placed in seclusion in accordance with the following provisions:
  - (a) seclusion shall be used only where, and for as long as, it is necessary for the care or treatment of the patient, or the protection of other patients:
  - (b) a patient shall be placed in seclusion only in a room or other area that is designated for the purposes by or with the approval of the Director of Area Mental Health Services:
  - (c) except as provided in paragraph (d), seclusion shall be used only with the authority of the responsible clinician:
  - (d) in an emergency, a nurse or other health professional having immediate responsibility for a patient may place the patient in seclusion, but shall forthwith bring the case to the attention of the responsible clinician:
  - (e) the duration and circumstances of each episode of seclusion shall be recorded in the register kept in accordance with section 129(1)(b).

### **72 Right to receive visitors and make telephone calls**

- (1) Every patient is entitled, at reasonable times and at reasonable intervals, to receive visitors and to make telephone calls, except where, in the opinion of the responsible clinician, such a visit or call would be detrimental to the interests of the patient and to his or her treatment.
- (2) Nothing in this section shall limit or affect anything in section 69 or section 70.

**73 Right to receive letters and postal articles**

Subject to section 123, every patient is entitled to receive unopened any letter or other postal article addressed to the patient.

**74 Right to send letters and postal articles**

Subject to section 124, every patient is entitled to the prompt dispatch unopened of any letter or other postal article put out by the patient for posting.

**75 Complaint of breach of rights**

- (1) Where a complaint is made by or on behalf of a patient that any right conferred on the patient by this Part has been denied or breached in some way, the matter shall be referred to a district inspector or an official visitor for investigation.
- (2) If, after talking with the patient, the complainant (where that is not the patient), and everyone else involved in the case, and generally investigating the matter, the district inspector or official visitor is satisfied that the complaint has substance, the district inspector or official visitor shall report the matter to the Director of Area Mental Health Services, together with such recommendations as the district inspector or official visitor thinks fit, and the Director of Area Mental Health Services shall take all such steps as may be necessary to rectify the matter.
- (3) On concluding any investigation under this section, the district inspector or official visitor shall also inform the patient or other complainant of his or her findings.
- (4) If the patient or other complainant is not satisfied with the outcome of the complaint to the district inspector or the official visitor, he or she may refer the case to the Review Tribunal for further investigation; and, in any such case, the provisions of subsection (2), with any necessary modifications, shall apply.

**Part 7**

**Reviews and judicial inquiries**

**76 Clinical reviews of persons subject to compulsory treatment orders**

- (1) The responsible clinician shall conduct a formal review of the condition of every patient, other than a restricted patient, who is subject to a compulsory treatment order or subject to an order under section 34(1)(a)(i) of the Criminal Procedure (Mentally Impaired Persons) Act 2003—
  - (a) not later than 3 months after the date of the order; and
  - (b) thereafter at intervals of not longer than 6 months.
- (1A) The responsible clinician must ensure that, before each review, a notice is given to the patient requiring him or her to attend at a place specified in the notice for the examination under subsection (2).
- (2) For the purposes of any such review, the responsible clinician shall—

- (a) examine the patient; and
  - (b) consult with other health professionals involved in the treatment and care of the patient, and take their views into account when assessing the results of his or her review of the patient's condition.
- (3) At the conclusion of any such review, the responsible clinician shall record his or her findings in a certificate of clinical review in the prescribed form, stating—
  - (a) that in his or her opinion the patient is fit to be released from compulsory status; or
  - (b) that in his or her opinion the patient is not fit to be released from that status.
- (4) The responsible clinician shall send to the Director of Area Mental Health Services—
  - (a) the certificate of clinical review; and
  - (b) full particulars of the reasons for his or her opinion of the patient's condition, and any relevant reports from other health professionals involved in the case.
- (5) If the responsible clinician is of the opinion that the patient is fit to be released from compulsory status, the patient shall be released from that status accordingly, and the compulsory treatment order shall be deemed to have been revoked.
- (6) Despite anything in subsection (5), if the responsible clinician is of the opinion that a special patient detained in a hospital following an application made under section 45(2), or subject to an order made under section 34(1)(a)(i) of the Criminal Procedure (Mentally Impaired Persons) Act 2003, is fit to be released from compulsory status, the patient must be dealt with in accordance with section 47(1), and section 47(3) and (5) applies.
- (6A) Despite anything in subsection (5), if a patient or special patient is subject to a compulsory treatment order that was made following an application under section 136(2) of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, he or she must be dealt with in accordance with section 47A.
- (7) If the responsible clinician is of the opinion that the patient is not fit to be released from compulsory status, that officer shall send a copy of the certificate of clinical review to—
  - (a) *[Repealed]*
  - (b) each of the following persons:
    - (i) the patient;
    - (ii) any welfare guardian of the patient;
    - (iii) the patient's principal caregiver;

- (iv) the primary health care provider who usually attended the patient immediately before the patient was required to undergo assessment and treatment under Part 1:
  - (v) a district inspector:
  - (vi) an official visitor.
- (8) To each of the persons specified in subparagraphs (i) to (iv) of subsection (7)(b) the responsible clinician shall also send a statement of the legal consequences of the finding set out in the certificate of clinical review, and of the recipient's right to apply to the Review Tribunal for a review of the patient's condition.
- (9) The district inspector who receives a copy of the certificate of clinical review must—
- (a) communicate with the patient and find out, if possible, whether or not the patient wants an application to be made to the Review Tribunal for a review of the patient's condition. The district inspector must communicate with the patient by talking to him or her, unless talking to him or her is impracticable; and
  - (b) decide, having regard to any view expressed by the patient, whether or not an application should be made to the Review Tribunal for a review of the patient's condition.
- (10) If the district inspector considers that such an application should be made, the district inspector shall take whatever reasonable steps he or she thinks necessary to encourage or assist the patient, or any person specified in subparagraphs (ii) to (iv) of subsection (7)(b), to make such an application.
- (11) If, in any case to which subsection (9) applies, the district inspector considers that an application should be made to have the patient's condition reviewed by the Review Tribunal, but neither the patient nor any person specified in subparagraphs (ii) to (iv) of subsection (7)(b) intends to make such an application, the district inspector may report the matter to the Review Tribunal; and, in such a case, the Review Tribunal may, of its own motion, review the patient's condition under section 79 or section 80 as if an appropriate application for such a review had been made to the Review Tribunal.
- (12) Instead of performing personally the functions specified in subsections (9) to (11), the district inspector may in any particular case arrange for an official visitor to perform them.

Section 76(1): amended, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 76(1A): inserted, on 1 April 2000, by section 40(1) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 76(6): replaced, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 76(6A): inserted, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 76(7)(a): repealed, on 1 April 2000, by section 40(2) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 76(7)(b)(iv): amended, on 31 January 2018, by section 14 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2016 (2016 No 79).

Section 76(9): replaced, on 1 April 2000, by section 40(3) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

## 77 Clinical reviews of certain special patients

- (1) The responsible clinician shall conduct a formal review of the condition of every special patient who is detained in a hospital pursuant to an order of a court made under section 24(2)(a) of the Criminal Procedure (Mentally Impaired Persons) Act 2003—
  - (a) not later than 3 months after the date of the order; and
  - (b) thereafter at intervals of not longer than 6 months.
- (2) The provisions of subsections (2), (4), and (8) to (12) of section 76 shall apply in respect of every review under this section as if it were a review under that section.
- (3) In the case of a special patient who was ordered to be detained following a finding of unfitness to stand trial, the following provisions shall apply to any review of that patient's condition under this section:
  - (a) at the conclusion of the review, the responsible clinician shall record his or her findings in a certificate of clinical review in the prescribed form, stating—
    - (i) that in his or her opinion the patient is no longer unfit to stand trial; or
    - (ii) that in his or her opinion the patient is still unfit to stand trial but it is no longer necessary that the patient should be subject to the order of detention as a special patient; or
    - (iii) that in his or her opinion the patient is still unfit to stand trial and should continue to be subject to the order of detention as a special patient:
  - (b) in every case, the responsible clinician shall send a copy of the certificate of clinical review to—
    - (i) *[Repealed]*
    - (ii) the Director; and
    - (iii) each of the persons specified in section 76(7)(b):
  - (c) in any case where the responsible clinician is of the opinion that the patient is no longer unfit to stand trial, or that the patient is still unfit to stand trial but it is no longer necessary that the patient should be subject to the order of detention as a special patient, that clinician shall also send

- a copy of the certificate of clinical review to the Attorney-General for the purposes of section 31 of the Criminal Procedure (Mentally Impaired Persons) Act 2003:
- (d) despite section 31 of the Criminal Procedure (Mentally Impaired Persons) Act 2003, on receiving a copy of the certificate of clinical review under paragraph (c), the Attorney-General may, instead of exercising and performing the powers and duties under that section, apply to the Review Tribunal for a review of the patient's condition.
- (4) In the case of a special patient who was ordered to be detained following acquittal on account of insanity, the following provisions shall apply to any review of that patient's condition under this section:
- (a) at the conclusion of the review, the responsible clinician shall record his or her findings in a certificate of clinical review, stating whether or not, in his or her opinion, the patient's condition still requires, either in the patient's own interest or for the safety of the public, that he or she should be subject to the order of detention as a special patient:
  - (b) in every case, the responsible clinician shall send a copy of the certificate of clinical review to—
    - (i) *[Repealed]*
    - (ii) the Director; and
    - (iii) each of the persons specified in section 76(7)(b):
  - (c) in any case where the responsible clinician is of the opinion that the patient's condition no longer requires, either in the patient's own interest or for the safety of the public, that he or she should be subject to the order of detention as a special patient, that clinician shall also send a copy of the certificate of clinical review to the Minister of Health for the purposes of section 33 of the Criminal Procedure (Mentally Impaired Persons) Act 2003:
  - (d) despite section 33 of the Criminal Procedure (Mentally Impaired Persons) Act 2003, on receiving a copy of the certificate of clinical review under paragraph (c), the Minister of Health may, instead of exercising and performing the powers and duties under that section, apply to the Review Tribunal for a review of the patient's condition.

Section 77(1): amended, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 77(3): amended, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 77(3)(a)(i): amended, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 77(3)(a)(ii): amended, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 77(3)(a)(iii): amended, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 77(3)(b)(i): repealed, on 1 April 2000, by section 41(b) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 77(3)(c): amended, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 77(3)(d): replaced, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 77(4)(b)(i): repealed, on 1 April 2000, by section 41(c) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 77(4)(c): amended, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 77(4)(d): replaced, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

## **78 Clinical reviews of restricted patients**

- (1) The responsible clinician shall conduct a formal review of the condition of every restricted patient—
  - (a) not later than 3 months after the date of the order declaring the patient to be a restricted patient; and
  - (b) thereafter at intervals of not longer than 6 months.
- (2) The provisions of subsections (2), (4), and (8) to (12) of section 76 shall apply in respect of every review under this section as if it were a review under that section.
- (3) At the conclusion of the review, the responsible clinician shall record his or her findings in a certificate of clinical review, stating—
  - (a) that in his or her opinion the patient is fit to be released from compulsory status; or
  - (b) that in his or her opinion the patient is not fit to be released from compulsory status but it is no longer necessary that the patient should be declared to be a restricted patient; or
  - (c) that in his or her opinion the patient is not fit to be released from compulsory status and should continue to be declared to be a restricted patient.
- (4) The responsible clinician shall send a copy of the certificate of clinical review to—
  - (a) *[Repealed]*
  - (b) the Director; and
  - (c) each of the persons specified in section 76(7)(b).
- (5) In any case where the responsible clinician is of the opinion that the patient is fit to be released from compulsory status, the Director shall either—
  - (a) direct that the patient be released from that status forthwith; or
  - (b) apply to the Review Tribunal for a review of the patient's condition.



- (6) In any case where the responsible clinician is of the opinion that the patient is not fit to be released from compulsory status but it is no longer necessary that the patient should be declared to be a restricted patient, the following provisions shall apply:
- (a) the responsible clinician shall send a copy of the certificate of clinical review to the Minister of Health:
  - (b) the Minister of Health shall, after consultation with the Attorney-General, either—
    - (i) revoke the declaration that the patient shall be a restricted patient; or
    - (ii) apply to the Review Tribunal for a review of the patient's condition.

Section 78(4)(a): repealed, on 1 April 2000, by section 42 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

#### **79 Tribunal reviews of persons subject to compulsory treatment orders**

- (1) Any person to whom a copy of a certificate of clinical review is sent under section 76 may apply to the Review Tribunal for a review of the patient's condition.
- (2) Without limiting anything in subsection (1),—
  - (a) the Review Tribunal may at any time, of its own motion, review the condition of any patient who is subject to a compulsory treatment order.
  - (b) *[Repealed]*
- (3) Where it appears that for any reason a formal review of a patient who is subject to a compulsory treatment order has not taken place as required by section 76, the Review Tribunal may review the patient's condition, either of its own motion or on application by any person to whom a copy of a certificate of clinical review would have been required to have been sent if the review had been held.
- (4) Every application to the Tribunal under this section shall be addressed to the convener of the Review Tribunal.
- (5) On receiving an application, the convener must—
  - (a) arrange for the Review Tribunal to review the patient's condition; and
  - (b) arrange for the review to start as soon as practicable after the receipt of the application and not later than 21 days after the receipt of the application.
- (6) The Review Tribunal may—
  - (a) extend the period specified in subsection (5)(b) by a further period not exceeding 7 days:
  - (b) refuse to consider an application, if—

- (i) it has considered an application for review of the patient's condition within the preceding 3 months, and has no reason to believe that there has been any change in the patient's condition in the intervening period; or
  - (ii) it is satisfied that an application made by a relative or friend of the patient is made otherwise than in the interests of the patient:
- (c) adjourn a hearing that is in progress.
- (7) At the conclusion of any such review, the Review Tribunal shall set out its findings in a certificate of Tribunal review in the prescribed form, stating whether or not, in its opinion, the patient is fit to be released from compulsory status.
- (8) If the Review Tribunal considers that the patient is fit to be released from compulsory status, the patient shall be released from that status accordingly.
- (9) Notwithstanding anything in subsection (8), if the patient is a special patient (other than a special patient to whom paragraph (e) of the definition of special patient in section 2(1) applies) he or she shall be dealt with in accordance with subsection (1) of section 47, and subsections (3) and (5) of that section shall apply.
- (9A) Despite anything in subsection (8), if a patient or special patient is subject to a compulsory treatment order that was made following an application under section 136(2) of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, he or she must be dealt with in accordance with section 47A.
- (10) If the Review Tribunal considers that the patient is not fit to be released from compulsory status, the convener shall send a copy of the certificate of Tribunal review to each of the following:
  - (a) the Director:
  - (b) the Director of Area Mental Health Services:
  - (c) the responsible clinician:
  - (d) the patient:
  - (e) any welfare guardian of the patient:
  - (f) the patient's principal caregiver:
  - (g) the primary health care provider who usually attended the patient immediately before the patient was required to undergo assessment and treatment under Part 1:
  - (h) a district inspector:
  - (i) an official visitor.
- (11) To each of the persons specified in paragraphs (d) to (g) of subsection (10), the convener shall also send a statement of the legal consequences of the decision, and of the recipient's right to appeal to the court against the decision.

- (12) Subject to subsection (15), the district inspector who receives a copy of the certificate of Tribunal review shall, after talking to the patient and ascertaining the patient's wishes in the matter, consider whether or not an appeal should be made to the court against the Review Tribunal's decision.
- (13) If the district inspector considers that such an appeal should be made, the district inspector shall take whatever steps he or she thinks necessary to encourage or assist the patient, or any person specified in paragraphs (e) to (g) of subsection (10), to make such an appeal.
- (14) If, in any case to which subsection (12) applies, the district inspector considers that an appeal against the Review Tribunal's decision should be made, but neither the patient nor any person specified in paragraphs (e) to (g) of subsection (10) intends to make such an appeal, the district inspector may report the matter to the court; and, in such a case, a Judge may, of his or her own motion, review the patient's condition as if an appropriate appeal had been made to the court.
- (15) Instead of performing personally the functions specified in subsections (12) to (14), the district inspector may in any particular case arrange for an official visitor to perform them.

Section 79(2)(b): repealed, on 1 April 2000, by section 43(a) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 79(5): replaced, on 1 April 2000, by section 43(b) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 79(6): replaced, on 1 April 2000, by section 43(b) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 79(9): amended, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 79(9A): inserted, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 79(10)(g): amended, on 31 January 2018, by section 15 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2016 (2016 No 79).

## **80 Tribunal reviews of certain special patients**

- (1) Any person to whom a copy of a certificate of clinical review is sent under section 77 may apply to the Review Tribunal for a review of the patient's condition.
- (2) Without limiting anything in subsection (1), the Review Tribunal shall review the patient's condition on the application of the Attorney-General pursuant to subsection (3)(d) of section 77 or of the Minister of Health pursuant to subsection (4)(d) of that section.
- (2A) The convener of the Review Tribunal must notify the Director of an application under subsection (1) for a review of the special patient's condition.
- (2B) On receiving notice, the Director must take all reasonable steps to—

- (a) give notice to each victim of the special patient that the Review Tribunal has received an application under subsection (1) for a review of the special patient's condition; and
  - (b) provide the victim with an explanation of—
    - (i) the process under this section for reviewing a special patient's condition; and
    - (ii) how the victim may participate in that process.
- (3) The provisions of subsections (2) to (6) of section 79 shall apply in respect of every review under this section as if it were a review under that section.
- (4) In the case of a special patient who was ordered to be detained following a finding of unfitness to stand trial, the following provisions shall apply to any review of that patient's condition under this section:
  - (a) the Review Tribunal shall record its findings in a certificate of Tribunal review in the prescribed form, stating whether, in its opinion,—
    - (i) the patient is no longer unfit to stand trial; or
    - (ii) the patient is still unfit to stand trial but it is no longer necessary that the patient should be subject to the order of detention as a special patient; or
    - (iii) the patient is still unfit to stand trial and should continue to be subject to the order of detention as a special patient:
  - (b) in every case, the convener of the Review Tribunal shall send a copy of the certificate of Tribunal review to each of the persons specified in section 79(10):
  - (c) in any case where the Review Tribunal considers that the patient is no longer unfit to stand trial, or that the patient is still unfit to stand trial but it is no longer necessary that the patient should be subject to the order of detention as a special patient, the convener of the Review Tribunal shall also send a copy of the certificate of Tribunal review to the Attorney-General for the purposes of section 31 of the Criminal Procedure (Mentally Impaired Persons) Act 2003.
- (5) In the case of a special patient who was ordered to be detained following acquittal on account of insanity, the following provisions shall apply to any review of that patient's condition under this section:
  - (a) the Review Tribunal shall record its findings in a certificate of Tribunal review in the prescribed form, stating whether or not, in its opinion, the patient's condition still requires, either in the patient's own interest or for the safety of the public, that he or she should be subject to the order of detention as a special patient:

- (b) in every case, the convener of the Review Tribunal shall send a copy of the certificate of Tribunal review to each of the persons specified in section 79(10):
- (c) in any case where the Review Tribunal considers that the patient's condition no longer requires, either in the patient's own interest or for the safety of the public, that he or she should be subject to the order of detention as a special patient, the convener of the Review Tribunal shall also send a copy of the certificate of Tribunal review to the Minister of Health for the purposes of section 33 of the Criminal Procedure (Mentally Impaired Persons) Act 2003.

Section 80(2A): inserted, on 13 December 2022, by section 16 of the Rights for Victims of Insane Offenders Act 2021 (2021 No 55).

Section 80(2B): inserted, on 13 December 2022, by section 16 of the Rights for Victims of Insane Offenders Act 2021 (2021 No 55).

Section 80(4): amended, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 80(4)(a)(i): amended, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 80(4)(a)(ii): amended, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 80(4)(a)(iii): amended, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 80(4)(c): amended, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 80(5)(c): amended, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

## **81 Tribunal reviews of restricted patients**

- (1) Any person to whom a copy of a certificate of clinical review is sent under section 78 may apply to the Review Tribunal for a review of the patient's condition.
- (2) Without limiting anything in subsection (1), the Review Tribunal shall review the patient's condition on the application of the Director pursuant to subsection (5)(b) of section 78 or of the Minister of Health pursuant to subsection (6)(b)(ii) of that section.
- (3) The provisions of subsections (2) to (6) of section 79 shall apply in respect of every review under this section as if it were a review under that section.
- (4) At the conclusion of the review, the Review Tribunal shall record its findings in a certificate of Tribunal review, stating whether, in its opinion,—
  - (a) the patient is fit to be released from compulsory status; or
  - (b) the patient is not fit to be released from compulsory status but it is no longer necessary that the patient should be declared to be a restricted patient; or

- (c) the patient is not fit to be released from compulsory status and should continue to be declared to be a restricted patient.
- (5) The convener of the Review Tribunal shall send a copy of the certificate of Tribunal review to each of the persons specified in section 79(10).
- (6) In any case where the Review Tribunal is of the opinion that the patient is fit to be released from compulsory status, the Director shall direct that the patient be released from compulsory status accordingly.
- (7) In any case where the Review Tribunal is of the opinion that the patient is not fit to be released from compulsory status but it is no longer necessary that the patient should be declared to be a restricted patient, the following provisions shall apply:
  - (a) the convener of the Review Tribunal shall send a copy of the certificate of Tribunal review to the Minister of Health:
  - (b) the Minister of Health shall, after consultation with the Attorney-General, either—
    - (i) revoke the declaration that the patient shall be a restricted patient; or
    - (ii) decline to revoke that declaration.

## **82 Procedural provisions**

The provisions set out in Schedule 1 shall apply in respect of a review of a patient's condition by a Review Tribunal under this Part.

## **83 Appeal against Review Tribunal's decision in certain cases**

- (1) Where, on a review under section 79, the Review Tribunal considers that the patient is not fit to be released from compulsory status, any person specified in paragraphs (d) to (g) of subsection (10) of that section may, within 1 month after the date of the Review Tribunal's decision, appeal to the court against that decision.
- (2) On any such appeal, the court shall review the patient's condition to determine whether or not the patient is fit to be released from compulsory status; and the provisions of section 16 shall apply, with any necessary modifications, to every such appeal.

## **84 Judicial inquiry**

- (1) A Judge of the High Court may whenever the Judge thinks fit, whether of the Judge's own motion or on the application of any person, make an order directing a district inspector or any 1 or more persons whom the Judge may select in that behalf to visit and examine any person who the Judge has reason to believe is being detained in a hospital as a patient and to inquire into and report on such matters relating to that person as the Judge thinks fit.

- (2) A Judge of the High Court may whenever the Judge thinks fit, whether of the Judge's own motion or on the application of any person, and whether any order under subsection (1) has been made or not, make an order directing the responsible clinician to bring any person who is being detained as a patient in the hospital before the Judge in open court or in chambers, for examination at a time to be specified in the order.
- (3) If, on the examination of the person so ordered to be brought before the Judge, and on the evidence of any medical or other witnesses, the Judge is satisfied—
  - (a) that the person is detained illegally in the hospital as a patient; or
  - (b) that the person is fit to be discharged from the hospital,—the Judge shall, unless the person is a special patient or is legally detained for some other cause, order that the person be discharged from the hospital forthwith.
- (4) If the person has been found to be unfit to stand trial and is detained as a special patient under section 24 of the Criminal Procedure (Mentally Impaired Persons) Act 2003, and it appears to the satisfaction of the Judge that the person is capable of being tried on the charge against him or her, the Judge has (without prejudice to subsection (5)) the same powers as the Attorney-General has under section 31 of that Act to direct that the person be brought before a court under that section.
- (5) If the person has been found unfit to stand trial and is detained as a special patient by virtue of section 24 of the Criminal Procedure (Mentally Impaired Persons) Act 2003, the Judge may, if in the circumstances of the case the Judge considers it proper to do so and if the interests of justice so permit (whether or not the person is capable of being tried), direct that the charge be dismissed.
- (6) On giving any direction under subsection (5), the Judge may order that the person be released from compulsory status; but if it appears to the Judge that the person is not fit to be released from that status, the Judge shall order that the person be further detained in a hospital under this Act, and the last-mentioned order shall have effect as an inpatient order made under Part 2.
- (7) For the purposes of any examination under this section, the Judge shall have power—
  - (a) to summon any medical or other witnesses to testify on oath in respect of any matter involved in the examination, and to produce any relevant documents; and
  - (b) to call for any report on the person's condition by the Review Tribunal.
- (8) The Judge may in any case, if the Judge thinks fit, report his or her opinion to the Minister, with such comments and recommendations as the Judge thinks fit.
- (9) Nothing in this section shall prevent the exercise of any other remedy or proceeding available by or on behalf of any person who is or is alleged to be unlawfully detained, confined, or imprisoned.

Section 84(4): replaced, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 84(4): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 84(5): replaced, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 84(5): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

## Part 8

### Special provisions relating to children and young persons

#### 85 Application

In respect of any patient or proposed patient who is under the age of 17 years, the other provisions of this Act shall be read subject to the provisions of this Part.

#### 86 Assessment examination

Wherever practicable, an assessment examination of a proposed patient who is under the age of 17 years shall be conducted by a psychiatrist practising in the field of child psychiatry.

Section 86: amended, on 1 April 2000, by section 45 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

#### 87 Age of consent

Notwithstanding anything in section 36 of the Care of Children Act 2004 or any other enactment or rule of law to the contrary, in respect of a patient who has attained the age of 16 years, the consent of a parent or guardian to any assessment or treatment for mental disorder shall not be sufficient consent for the purposes of this Act.

Section 87: amended, on 1 July 2005, by section 151 of the Care of Children Act 2004 (2004 No 90).

#### 88 Brain surgery

Notwithstanding anything in Part 5 or section 87, brain surgery shall not be performed for mental disorder on any person who is under the age of 17 years.

#### 89 Membership of Review Tribunal

Wherever practicable, for the purposes of a review by a Review Tribunal of the condition of a patient who is under the age of 17 years, 1 member of the Tribunal shall be a psychiatrist practising in the field of child psychiatry.

#### 90 Review of patient about to attain age of 17 years

- (1) This section applies to every patient who is subject to a compulsory treatment order and who will attain the age of 17 years before the expiry of the compulsory treatment order.



- (2) Not earlier than 2 months and not later than 1 month before the date on which the patient will attain the age of 17 years, the responsible clinician shall review the patient's condition.
- (3) The provisions of subsections (3) to (9) of section 76, and the succeeding provisions of Part 7, so far as they are applicable and with any necessary modifications, shall apply in respect of every review under this section.

## **Part 9 Administration**

### *Officials*

#### **91 Director and Deputy Director of Mental Health**

- (1) There shall from time to time be appointed under the Public Service Act 2020 the following officers in the Ministry of Health:
  - (a) a Director of Mental Health, who shall be responsible for the general administration of this Act under the direction of the Minister and the Director-General of Health:
  - (b) a Deputy Director of Mental Health, who shall, under the control of the Director, perform such general official duties as the Director may from time to time require.
- (2) On the occurrence from any cause of a vacancy in the office of Director, whether by reason of death, resignation, or otherwise, and in case of the absence from duty of the Director from whatever cause arising, and so long as the vacancy or absence continues, the Deputy Director shall have and may exercise and perform all the powers, duties, and functions of the Director.
- (3) The fact that the Deputy Director exercises or performs any of the Director's powers, duties, and functions shall be conclusive evidence of the Deputy Director's authority to do so, and no person shall be concerned to inquire whether the occasion has arisen requiring or authorising the Deputy Director to do so.
- (4) The Director may from time to time delegate to any person employed in the Ministry of Health all or any of the powers, duties, and functions conferred or imposed on the Director by this Act (other than the function in section 9(3)(b)), to be exercised by that person whenever, or on any specified occasion when, there is not present in Wellington a person holding or acting in the office of Director or of Deputy Director.
- (5) Every delegation under subsection (4) shall have effect according to its tenor.
- (6) The Director may at any time amend or revoke any such delegation, and no such delegation shall prevent the exercise or performance of any power, duty, or function by the Director.

- (7) Without limiting any of the preceding provisions of this section, the Director-General of Health may exercise and perform all or any of the powers, duties, and functions conferred or imposed on the Director by this Act.

Compare: 1969 No 16 s 3; 1987 No 10 s 6

Section 91(1): amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

Section 91(1): amended, on 1 July 1993, pursuant to section 38(3)(a) of the Health Amendment Act 1993 (1993 No 24).

Section 91(4): amended, on 31 January 2018, by section 16 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2016 (2016 No 79).

Section 91(4): amended, on 1 July 1993, pursuant to section 38(3)(a) of the Health Amendment Act 1993 (1993 No 24).

## 92 Directors of Area Mental Health Services

- (1) The Director-General of Health must—
- (a) appoint as many Directors of Area Mental Health Services as the Director-General considers necessary; and
  - (b) determine the terms and condition on which each Director of Area Mental Health Services is appointed, including every area for which each Director of Area Mental Health Services is responsible; and
  - (c) publish a notice in the *Gazette* notifying each appointment and any area for which the appointee is responsible.
- (2) The Director-General of Health may—
- (a) appoint Directors of Area Mental Health Services from time to time; and
  - (b) appoint a Director of Area Mental Health Services to replace a previously appointed Director of Area Mental Health Services from time to time.
- (3) A person appointed under this section may at any time be suspended or removed from office by the Director-General of Health for any of the following proved to the satisfaction of the Director-General:
- (a) failure to perform adequately the duties of the office; or
  - (b) neglect of duty; or
  - (c) misconduct; or
  - (d) inability to perform the duties of the office.
- (4) Every Director of Area Mental Health Services must, every 3 months,—
- (a) prepare a written report for the previous 3 months on—
    - (i) the exercise or performance of their powers, duties, and functions under this Act; and
    - (ii) the number of consents provided under section 34D(2)(b); and
  - (b) give the report to the Director.

Section 92: replaced, on 1 April 2000, by section 46 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 92(4)(a): replaced, on 29 October 2023, by section 10 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

## **92A Delegation by Directors of Area Mental Health Services**

- (1) A Director of Area Mental Health Services may delegate any of his or her powers, duties, and functions, except this power of delegation, to a person who—
  - (a) is suitably qualified to exercise it; and
  - (b) is approved for the purpose by the Director or Deputy Director.
- (2) A Director of Area Mental Health Services who makes such a delegation, or his or her delegate, must tell the Director or Deputy Director—
  - (a) when the Director of Area Mental Health Services is intending to be, or is, absent from duty because he or she is ill or because he or she is on approved leave; and
  - (b) who the delegate is; and
  - (c) when the delegation is revoked.

Section 92A: inserted, on 1 April 2000, by section 46 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

## **92B Provisions applying to delegations under section 92A**

- (1) This section applies to a delegation made under section 92A.
- (2) The maker of a delegation must make it in writing and sign it.
- (3) The maker of a delegation is not prevented from exercising, or affected in his or her exercise of, any of the delegated powers, duties, or functions.
- (4) The delegate may exercise the powers, duties, and functions—
  - (a) only when the maker of the delegation is absent from duty because he or she is ill or because he or she is on approved leave; but
  - (b) otherwise in the same manner and with the same effect as if they had been conferred on the delegate directly by this Act.
- (5) Every person purporting to act under a delegation is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation.
- (6) A delegation continues in force according to its tenor until it is revoked.
- (7) If the maker ceases to hold office, the delegation continues to have effect as if made by the successor in office of the maker.
- (8) The maker, or a successor, may revoke the delegation at any time by written notice to the delegate.

Section 92B: inserted, on 1 April 2000, by section 46 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

**93 Duly authorised officers**

- (1) For the purposes of this Act, every Director of Area Mental Health Services shall—
  - (a) designate and authorise sufficient health professionals to perform at all times the functions and exercise the powers conferred on duly authorised officers by this Act within the area of that director; and
  - (b) maintain an appropriate directory listing of a telephone number to ring when information or assistance is required under this Act.
- (2) No person shall be so designated and authorised under this section unless the Director of Area Mental Health Services is satisfied that the person has undergone appropriate training and has appropriate competence in dealing with persons who are mentally disordered.
- (3) Every person so designated and authorised under this section shall be issued with a document that identifies the holder and states that the holder is a duly authorised officer for the purposes of this Act.
- (4) Persons so designated and authorised under this section shall carry out their duties under the general direction of the Director of Area Mental Health Services.

Section 93: replaced, on 1 July 1993, by section 32 of the Health Sector (Transfers) Act 1993 (1993 No 23).

**94 District inspectors and official visitors**

- (1) For the purposes of this Act, the Minister shall appoint such number of persons as the Minister thinks fit to be—
  - (a) district inspectors or deputy district inspectors; or
  - (b) official visitors—in respect of such locations as the Minister may specify in the instrument of appointment.
- (2) No such person shall be an officer, a member, or an employee of any hospital or service within the locality to which the person is appointed.
- (3) The Minister shall appoint as district inspectors or as deputy district inspectors only persons who are barristers or solicitors.
- (4) The Minister may from time to time, with the concurrence of the Minister of Finance, fix the remuneration of district inspectors, deputy district inspectors, and official visitors, either generally or in any particular case, and may, with the like concurrence, vary the amount or nature of such remuneration.
- (5) A person appointed under this section as a district inspector or an official visitor holds office for a term of 3 years.
- (6) A person appointed under this section as a deputy district inspector holds office for a specified term of up to 3 years.

- (7) A person appointed under this section—
- (a) is eligible for reappointment from time to time;
  - (b) may be replaced from time to time;
  - (c) may at any time be suspended or removed from office by the Minister for any of the following proved to the satisfaction of the Minister:
    - (i) failure to perform adequately the duties of the office; or
    - (ii) neglect of duty; or
    - (iii) misconduct; or
    - (iv) inability to perform the duties of the office.

Compare: 1969 No 16 s 5; 1982 No 84 s 2(2)

Section 94(1): replaced, on 1 July 1993, by section 32 of the Health Sector (Transfers) Act 1993 (1993 No 23).

Section 94(2): replaced, on 1 July 1993, by section 32 of the Health Sector (Transfers) Act 1993 (1993 No 23).

Section 94(5): replaced, on 1 April 2000, by section 47 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 94(6): replaced, on 1 April 2000, by section 47 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 94(7): inserted, on 1 April 2000, by section 47 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

#### **94A Powers of district inspectors and official visitors**

- (1) Every district inspector and official visitor has—
- (a) the powers, duties, and functions conferred or imposed on holders of those offices by this Act; and
  - (b) such other powers, duties, and functions as may be conferred or imposed on them by the Director in writing in, and for the purpose of dealing with, situations of urgency.
- (2) A deputy district inspector—
- (a) has—
    - (i) the powers, duties, and functions conferred or imposed on a district inspector by this Act; and
    - (ii) such other powers, duties, and functions as may be conferred or imposed on a district inspector by the Director in writing in, and for the purpose of dealing with, situations of urgency; but
  - (b) may exercise any such power, duty, or function only at the direction of—
    - (i) the district inspector to whom he or she is the deputy; or
    - (ii) the Director.

Section 94A: inserted, on 1 April 2000, by section 48 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

**95 Inquiries by district inspector**

- (1) Every district inspector on any visit to any hospital or service may, and shall if so required by the Director, inquire as to—
  - (a) any breach of this Act or of any regulations made under this Act, or any breach of duty on the part of any officer or other person employed in the hospital or service; and
  - (b) such other matters as the district inspector or the Director thinks fit to be inquired into respecting any patients, or the management of the hospital or service.
- (2) For the purpose of conducting any inquiry under this Act, a district inspector shall have the same powers and authority to summon witnesses and receive evidence as are conferred upon Commissions of Inquiry by the Commissions of Inquiry Act 1908; and the provisions of that Act, except sections 11 and 12 (which relate to costs), shall apply accordingly.
- (3) A full report of every such inquiry shall be sent as soon as practicable by the district inspector to the Director.

Compare: 1969 No 16 s 58

Section 95(1): amended, on 1 April 2000, by section 49 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 95(1)(a): amended, on 1 April 2000, by section 49 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 95(1)(b): amended, on 1 April 2000, by section 49 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

**96 Visitations by district inspectors and official visitors**

- (1) Every district inspector and every official visitor must visit each of the hospitals and services in the locality to which the district inspector or official visitor is appointed at the following times:
  - (a) a hospital or service in or through which any patient is being assessed or treated as an inpatient must be visited at least once a month:
  - (b) a hospital or service in or through which any patient is being assessed or treated as an outpatient must be visited at least 4 times a year at regular intervals and when the Director directs.
- (2) Any district inspector or official visitor may, without previous notice, visit any hospital or service as often as the district inspector or the official visitor thinks fit.
- (3) All visits made under the authority of this section may be made on such days and at such hours of the day or night, and for such length of time, as the district inspector or the official visitor thinks fit.
- (4) On any such visit, the district inspector or the official visitor may, if the Director so permits or requires, be accompanied by a mental health practitioner named by the Director.

- (5) Any district inspector, and any official visitor, may, in respect of any specific matter, obtain advice from a mental health practitioner appointed for the purpose by the Director, and that mental health practitioner shall, for that purpose, have all the powers of visitation and inspection conferred on district inspectors and official visitors by this Act.

Compare: 1969 No 16 s 56

Section 96(1): replaced, on 1 April 2000, by section 50(1) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 96(2): amended, on 1 April 2000, by section 50(2) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 96(4): amended, on 30 October 2021, by section 25 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 96(5): amended, on 30 October 2021, by section 25 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

#### **96A Modification to section 96 during COVID-19 response**

*[Repealed]*

Section 96A: repealed, on 30 October 2021, by section 34 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

#### **97 Extent of inspection**

- (1) Every district inspector, and every official visitor, shall, when visiting any hospital or service for the purposes of this Act, have access to every part of the hospital or service and to every person in it, whether detained or not.
- (2) On every visit by a district inspector or an official visitor to any hospital or service for the purposes of this Act, there shall be laid before the district inspector or the official visitor by the responsible clinicians—
- (a) such of the registers and records required to be kept by or under this Act, and such orders and other documents relating to any of the patients, as the district inspector or the official visitor requires to be so produced; and
- (b) all letters and other postal packets withheld by the responsible clinician pursuant to section 123 or section 124.
- (3) The district inspector or the official visitor may sign any such registers, records, and books under the last entry.

Compare: 1969 No 16 s 57

Section 97(1): amended, on 1 April 2000, by section 51(1) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 97(2): amended, on 1 April 2000, by section 51(2) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

**97A Visitations by remote technology permitted while epidemic notice in force for COVID-19**

*[Repealed]*

Section 97A: repealed, on 20 October 2022, by section 97A(4).

**98 Reports on visits**

A district inspector or an official visitor who visits any hospital or service must give a report on the visit to the Director of Area Mental Health Services within 14 days after the visit.

Section 98: replaced, on 1 April 2000, by section 52 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

**98A District inspectors to report monthly**

Every district inspector must, once a month,—

- (a) prepare a written report on the exercise of his or her powers, duties, and functions under this Act during the preceding month; and
- (b) give the report to the Director.

Section 98A: inserted, on 1 April 2000, by section 52 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

**99 Powers of inspection of Director**

In relation to any hospital, or any ward, unit, or other part of a hospital, in which psychiatric treatment is given, the Director shall have all the powers of the Director-General of Health under section 148 of the Hospitals Act 1957, and the provisions of that section shall extend and apply accordingly.

Section 99: replaced, on 1 July 1993, by section 32 of the Health Sector (Transfers) Act 1993 (1993 No 23).

**99A No proceedings against district inspectors or official visitors unless bad faith shown**

- (1) No civil proceedings may be brought against any district inspector or official visitor for any thing he or she may do or report or say in the course of the exercise or intended exercise of his or her powers, duties, or functions under this Act, unless it is shown that he or she acted in bad faith.
- (2) Nothing in this section affects the right of any person or organisation to apply, in accordance with law, for judicial review of a district inspector's or official visitor's powers, duties, or functions under this Act.

Section 99A: inserted, on 1 April 2000, by section 53 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

**99B Delegation by persons in charge of hospitals**

- (1) A person in charge of a hospital may delegate any of his or her powers, duties, and functions, except this power of delegation, to a person who is suitably qualified to exercise it.



- (2) The maker of a delegation must make it in writing and sign it.
- (3) The maker of a delegation is not prevented from exercising, or affected in his or her exercise of, any of the delegated powers, duties, or functions.
- (4) The delegate may exercise the powers, duties, and functions in the same manner and with the same effect as if they had been conferred on the delegate directly by this Act.
- (5) Every person purporting to act under a delegation is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation.
- (6) A delegation continues in force according to its tenor until it is revoked.
- (7) If the maker ceases to hold office, the delegation continues to have effect as if made by the successor in office of the maker.
- (8) The maker, or a successor, may revoke the delegation at any time by written notice to the delegate.

Section 99B: inserted, on 1 April 2000, by section 54 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

#### **99C Crimes of Torture Act 1989 not limited**

Nothing in this Act limits the operation of Part 2 of the Crimes of Torture Act 1989.

Section 99C: inserted, on 5 December 2006, by section 12 of the Crimes of Torture Amendment Act 2006 (2006 No 68).

### *Psychiatric security institutions*

#### **100 Psychiatric security institutions**

- (1) The Minister may from time to time, by notice, declare any hospital, or any part of a hospital, to be a psychiatric security institution, and may in like manner revoke or amend any such notice.
- (2) Notwithstanding anything in this Act, no compulsory treatment order or any other order made by any court under this or any other Act shall purport to commit any person to a psychiatric security institution.
- (3) No patient shall be transferred to or from any psychiatric security institution otherwise than at the direction or with the authority of the Director.
- (4) A notice under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
- (4) *[Repealed]*

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#### **Legislation Act 2019 requirements for secondary legislation made under this section**

**Publication** The maker must publish it in the *Gazette*

LA19 ss 73, 74(1)(a),  
Sch 1 cl 14

**Presentation** It is not required to be presented to the House of Representatives because a transitional exemption applies under Schedule 1 of the Legislation Act 2019 LA19 s 114, Sch 1 cl 32(1)(a)

**Disallowance** It may be disallowed by the House of Representatives LA19 ss 115, 116

*This note is not part of the Act.*

Section 100(1): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 100(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 100(4): repealed, on 22 August 2017, by section 47 of the Enhancing Identity Verification and Border Processes Legislation Act 2017 (2017 No 42).

### *Review Tribunals*

#### **101 Review Tribunals**

- (1) For the purposes of this Act, there shall be such number of Review Tribunals as the Minister may from time to time determine, each of which shall be appointed in respect of 1 or more locations which the Minister may specify.
- (2) Every Review Tribunal shall comprise 3 persons appointed by the Minister, of whom 1 shall be a barrister or solicitor, and 1 shall be a psychiatrist.
- (3) No person shall act as a member of a Review Tribunal in any case where, given the identity of the patient, a conflict of interest may arise.
- (4) Subject to section 104(2), a Review Tribunal shall not be affected by any vacancy in its membership.

Section 101(1): amended, on 1 July 1993, by section 32 of the Health Sector (Transfers) Act 1993 (1993 No 23).

#### **102 Functions and powers of Review Tribunals**

- (1) The principal function of a Review Tribunal shall be to consider the condition of a patient who has applied for a review, or in respect of whom an application for a review has been made, under section 79 or section 80.
- (2) A Review Tribunal may at any time, and shall whenever required by the Director to do so, report to the Director on any matter relating to the exercise or performance of its powers and functions under this Act.
- (3) A Review Tribunal shall have all such other functions as are conferred on it by this Act or any other enactment.

Section 102(1): amended, on 1 April 2000, by section 55 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

#### **103 Co-opting suitable persons**

- (1) A Review Tribunal may, for the purposes of any particular case, co-opt—
  - (a) any person whose specialised knowledge or expertise would be of assistance to the Review Tribunal in dealing with the case; or

- (b) any person whose ethnic identity is the same as the patient's, where no member of the Review Tribunal has that ethnic identity; or
  - (c) any person of the same gender as the patient, where no member of the Review Tribunal is of that gender.
- (2) Notwithstanding anything in subsection (1), where in any case no member of the Review Tribunal has the same ethnic identity as the patient, or is of the same gender as the patient, the Review Tribunal shall co-opt a suitable person pursuant to paragraph (b) or paragraph (c) of that subsection if the patient or the applicant requests it to do so.
- (3) A person who is co-opted under this section shall be deemed for all purposes to be a member of the Tribunal in respect of the case for which he or she is co-opted.

#### **104 Meetings and powers**

- (1) Meetings of a Review Tribunal shall be held at such times and places as the Review Tribunal or the convener appoints.
- (2) No business may be transacted at any meeting of a Review Tribunal unless each member, or his or her deputy, is present.
- (3) Every Review Tribunal shall have the same powers and authority to summon witnesses and receive evidence as are conferred upon Commissions of Inquiry by the Commissions of Inquiry Act 1908; and the provisions of that Act, except sections 11 and 12 (which relate to costs), shall apply accordingly.

#### *Further provisions relating to Review Tribunals*

#### **105 Deputies of members**

- (1) The Minister shall from time to time appoint persons to be deputies of members of each Review Tribunal.
- (2) The deputy of each member who is a barrister or solicitor shall also be a barrister or solicitor, and the deputy of each member who is a psychiatrist shall also be a psychiatrist.
- (3) Every deputy may act for the member for whom he or she is appointed during any period when that member is incapacitated by illness, absence from New Zealand, or other sufficient cause from performing the duties of office, or during the absence of that member from any place at which a meeting of the Review Tribunal is to be held.
- (4) No deputy may act for more than 1 member at the same time.
- (5) Every deputy shall, while acting as such, be deemed to be a member of the Review Tribunal.
- (6) No acts done by a deputy as such, and no acts done by the Review Tribunal while any deputy is acting as such, shall in any proceedings be questioned on the ground that the occasion for the deputy to act had not arisen or had ceased.

**106 Terms of office**

- (1) Every member of a Review Tribunal, and every deputy of any such member, shall hold office for such term, not exceeding 3 years, as may be specified in the instrument of appointment, but may from time to time be reappointed.
- (2) Any member of a Review Tribunal, and any deputy of any such member, may at any time resign by notice in writing addressed to the Minister.
- (3) Any member of a Review Tribunal, and any deputy of any such member, may at any time be removed from office by the Minister for neglect of duty, misconduct, bankruptcy, or inability to perform the functions of the office proved to the satisfaction of the Minister.
- (4) Notwithstanding subsection (3), every member of a Review Tribunal, and every deputy of any such member, shall, unless the member sooner dies, or resigns, or is removed from office under any of the preceding provisions of this section, continue in office until his or her successor is appointed notwithstanding the expiry of his or her term of office.

Section 106(3): amended, on 1 January 2002, by section 70(1) of the Human Rights Amendment Act 2001 (2001 No 96).

**107 Convener**

- (1) The members of a Review Tribunal shall from time to time elect one of their number to be the convener of the Review Tribunal.
- (2) The convener shall preside at every meeting of the Review Tribunal at which he or she is present.
- (3) If the convener is not present at any meeting, the members present shall elect one of their number to preside at that meeting.

Section 107(3): amended, on 1 April 2000, by section 56 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

**108 Fees and travelling allowances**

- (1) Every Review Tribunal is hereby declared to be a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951.
- (2) The members of Review Tribunals are paid remuneration by way of fees, salary, or allowances, and travelling allowances and expenses, under the Fees and Travelling Allowances Act 1951, and that Act applies accordingly.
- (3) The remuneration referred to in subsection (2) is met from any appropriation by Parliament for the purpose.

Section 108(2): replaced, on 1 April 2000, by section 57 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 108(3): inserted, on 1 April 2000, by section 57 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

**108A No proceedings against members of Review Tribunals unless bad faith shown**

- (1) No civil proceedings may be brought against any member of a Review Tribunal for any thing he or she may do or report or say in the course of the exercise or intended exercise of his or her powers, duties, or functions under this Act, unless it is shown that he or she acted in bad faith.
- (2) Nothing in this section affects the right of any person or organisation to apply, in accordance with law, for judicial review of a member of a Review Tribunal's powers, duties, or functions under this Act.

Section 108A: inserted, on 1 April 2000, by section 58 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

**Part 10  
Enforcement and offences**

**109 Police powers in relation to person appearing to be mentally disordered in public place**

- (1) If any person is found wandering at large in any public place and acting in a manner that gives rise to a reasonable belief that he or she may be mentally disordered, any constable may, if he or she thinks that it would be desirable in the interests of the person or of the public to do so,—
  - (a) take that person to a Police station, hospital, or surgery, or to some other appropriate place; and
  - (b) arrange for a mental health practitioner to examine the person at that place as soon as practicable.
- (2) If the mental health practitioner, having examined the person, does not consider that there are reasonable grounds for believing that the person may be mentally disordered, the person shall be released forthwith.
- (3) Subsection (3A) applies if the mental health practitioner, having examined the person, considers that—
  - (a) there are reasonable grounds for believing that the person may be suffering from a mental disorder; and
  - (b) it is desirable for the person to have an assessment examination urgently in the person's own interests or the interests of any other person.
- (3A) The mental health practitioner must, as soon as possible,—
  - (a) issue a certificate under section 8B(4)(b); and
  - (b) make an application under section 8A.
- (4) Subject to subsection (5), in any case to which subsection (3) applies any constable may—

- (a) continue to detain the proposed patient at that place until the assessment examination has been conducted; or
  - (b) take the proposed patient to some other place nominated by the mental health practitioner for the purpose of an assessment examination, and detain the proposed patient at that other place until the assessment examination has been conducted.
- (5) Detention under this section may last for no longer than the following times:
- (a) for the purposes of subsections (1) to (3A), 6 hours or the time it takes to carry out the actions described in those subsections, whichever is shorter:
  - (b) for the purposes of subsection (4), 6 hours or the time it takes to conduct the assessment examination, whichever is shorter.

Compare: 1969 No 16 s 35; 1972 No 22 s 4

Section 109 heading: replaced, on 1 April 2000, by section 59 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 109(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 109(1)(b): amended, on 30 October 2021, by section 26 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 109(2): amended, on 30 October 2021, by section 26 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 109(3): replaced, on 1 April 2000, by section 59(1) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 109(3): amended, on 30 October 2021, by section 26 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 109(3A): inserted, on 1 April 2000, by section 59(1) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 109(3A): amended, on 30 October 2021, by section 26 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 109(4): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 109(4)(a): amended, on 1 April 2000, by section 59(2) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 109(4)(b): amended, on 30 October 2021, by section 26 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 109(4)(b): amended, on 1 April 2000, by section 59(2) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 109(5): replaced, on 1 April 2000, by section 59(3) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

### **109A Modification to section 109 during COVID-19 response**

*[Repealed]*

Section 109A: repealed, on 30 October 2021, by section 34 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

## **110 Powers of mental health practitioner when urgent examination required**

- (1) Subsection (2) applies to a mental health practitioner who—
  - (a) conducts an examination of a person who is acting in a manner that could give rise to a reasonable belief that he or she may be mentally disordered; and
  - (b) concludes that—
    - (i) there are reasonable grounds for believing that the person may be mentally disordered; and
    - (ii) it is desirable for the person to have an assessment examination urgently in the person’s own interests or the interests of any other person.
- (2) The mental health practitioner must, as soon as possible,—
  - (a) issue a certificate under section 8B(4)(b); and
  - (b) make an application under section 8A.
- (3) A mental health practitioner acting under this section must make every reasonable effort to get the advice and assistance of a duly authorised officer.
- (4) A mental health practitioner who needs assistance to conduct an examination under subsection (1)(a) may call for Police assistance under section 110C.

Section 110: replaced, on 1 April 2000, by section 60 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 110 heading: amended, on 30 October 2021, by section 27(1) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 110(1): amended, on 30 October 2021, by section 27(2) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 110(1)(a): amended, on 30 October 2021, by section 27(3) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 110(2): amended, on 30 October 2021, by section 27(2) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 110(3): amended, on 30 October 2021, by section 27(2) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 110(4): amended, on 30 October 2021, by section 27(2) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 110(4): amended, on 30 October 2021, by section 27(3) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

### **110AA Modifications to section 110 during COVID-19 response**

*[Repealed]*

Section 110AA: repealed, on 30 October 2021, by section 34 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

### **110A Power of medical practitioner who issues certificate to sedate when sedation urgently required**

- (1) This section applies to a medical practitioner who—

- (a) issues, under section 110(2)(a), a certificate under section 8B(4)(b); and
  - (b) has reasonable grounds for believing that the person presents a significant danger to himself or herself or any other person; and
  - (c) has reasonable grounds for believing that it is in the interests of the person to receive a sedative drug urgently.
- (2) The medical practitioner may immediately administer an appropriate sedative drug to the person, by injection if necessary, in accordance with any relevant guidelines and standards of care and treatment issued by the Director-General of Health under section 130.
- (3) A medical practitioner who administers a sedative drug under subsection (2) must, as soon as practicable,—
- (a) record the circumstances in which the drug was administered; and
  - (b) give a copy of the record to the Director of Area Mental Health Services.
- (4) A medical practitioner acting under this section must make every reasonable effort to get the advice and assistance of a duly authorised officer.
- (5) A medical practitioner who needs assistance to administer a sedative drug under subsection (2) may call for Police assistance under section 110C.

Section 110A: inserted, on 1 April 2000, by section 60 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

#### **110B Powers of mental health practitioner when urgent assessment required**

- (1) Subsection (2) applies to the mental health practitioner nominated to conduct the assessment examination of a proposed patient who is the subject of an application made under section 110(2)(b).
- (2) The mental health practitioner must conduct the assessment examination as soon as possible.
- (3) A mental health practitioner acting under this section must make every reasonable effort to get the advice and assistance of a duly authorised officer.
- (4) A mental health practitioner who needs assistance to conduct an assessment examination under subsection (2) may call for Police assistance under section 110C.

Section 110B: inserted, on 1 April 2000, by section 60 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 110B heading: amended, on 30 October 2021, by section 28(1) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 110B(1): amended, on 30 October 2021, by section 28(2) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 110B(2): amended, on 30 October 2021, by section 28(2) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 110B(3): amended, on 30 October 2021, by section 28(2) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).



Section 110B(4): amended, on 30 October 2021, by section 28(2) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

### **110BA Modifications to section 110B during COVID-19 response**

*[Repealed]*

Section 110BA: repealed, on 30 October 2021, by section 34 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

### **110C Powers of Police when urgent assistance required**

- (1) A constable called to the assistance of a mental health practitioner under section 110(4), section 110A(5), or section 110B(4)—
  - (a) may enter the premises where the person or proposed patient is; and
  - (b) must, if that constable is not in uniform, produce to a person in actual occupation of the premises his or her badge or other evidence that he or she is a constable.
- (2) A constable who enters premises under subsection (1) may, at the request of the mental health practitioner,—
  - (a) detain the person or proposed patient where he or she is; or
  - (b) take the person or proposed patient to a place nominated by the mental health practitioner and detain the person or proposed patient at the place.
- (3) Detention under subsection (2) may last for no longer than the following times:
  - (a) for the purposes of section 110(1)(a), 6 hours or the time it takes to conduct the examination, whichever is shorter;
  - (b) for the purposes of section 110A(2), 6 hours or the time it takes to administer the sedative drug, whichever is shorter;
  - (c) for the purposes of section 110B(2), 6 hours or the time it takes to conduct the assessment examination, whichever is shorter.

Section 110C: inserted, on 1 April 2000, by section 60 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 110C(1): amended, on 30 October 2021, by section 29(1) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 110C(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 110C(1)(b): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 110C(2): amended, on 30 October 2021, by section 29(1) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 110C(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 110C(2)(b): amended, on 30 October 2021, by section 29(1) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 110C(3)(a): amended, on 30 October 2021, by section 29(2) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

### **110D Modifications to section 110C during COVID-19 response**

*[Repealed]*

Section 110D: repealed, on 30 October 2021, by section 34 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

### **111 Powers of nurse where urgent assessment required**

(1) If—

- (a) any person who has been admitted to hospital (not being a patient who is already subject to assessment or treatment under this Act) is acting in a manner that gives rise to a reasonable belief that he or she may be mentally disordered, or such a person is brought to a hospital; and
- (b) a nurse having immediate responsibility in the matter considers that—
  - (i) there are reasonable grounds for believing that the person may be mentally disordered; and
  - (ii) it may be desirable for the person to have an assessment examination urgently in the person's own interests or the interests of any other person,—

the nurse shall arrange as soon as practicable for a mental health practitioner to examine the patient with a view to the issue of a certificate by that mental health practitioner under section 8B(4)(b).

(2) Subject to subsection (3), in any case to which subsection (1) applies, the nurse may—

- (a) detain the person where he or she is until a mental health practitioner has examined the patient; or
- (b) take the person to some other place to enable a mental health practitioner to examine the patient, and detain the person at that other place until a mental health practitioner has examined the patient.

(3) No person shall be detained under this section for more than 6 hours from the time when the nurse first calls for a mental health practitioner to examine the person.

Section 111(1): amended, on 1 April 2000, by section 61(b) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 111(1): amended, on 30 October 2021, by section 30 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 111(1)(b): amended, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

Section 111(1)(b)(ii): amended, on 1 April 2000, by section 61(a) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 111(2)(a): amended, on 30 October 2021, by section 30 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 111(2)(b): amended, on 30 October 2021, by section 30 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 111(3): amended, on 30 October 2021, by section 30 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

### **111A Modification to section 111 during COVID-19 response**

*[Repealed]*

Section 111A: repealed, on 30 October 2021, by section 34 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

### **112 Judge may authorise apprehension of patients and proposed patients**

*[Repealed]*

Section 112: repealed, on 1 April 2000, by section 62 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

### **113 Authority of person in charge of hospital or service to admit and detain**

- (1) Every notice under section 9 requiring a proposed patient to attend at a hospital or service for an assessment examination is sufficient authority for the person in charge of the hospital or service to take all reasonable steps to detain the proposed patient in the hospital or service for the shorter of—
  - (a) 6 hours; and
  - (b) the time it takes to conduct the assessment examination.
- (2) Every notice under section 11 or section 13 requiring a patient to attend at a hospital for the purpose of assessment and treatment as an inpatient is sufficient authority for the person in charge of the hospital—
  - (a) to admit the patient to the hospital; and
  - (b) to take all reasonable steps to detain the patient in the hospital during the period of assessment and treatment to which the notice applies.
- (3) Every inpatient order made in respect of a patient is sufficient authority for the person in charge of the hospital specified in the order—
  - (a) to admit the patient to the hospital; and
  - (b) to take all reasonable steps to detain the patient in the hospital during the period for which the order is in force.

Section 113: replaced, on 1 April 2000, by section 63 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

### **113A Judge or Registrar may issue warrants**

- (1) This subsection and subsections (2) to (4) apply to—
  - (a) every proposed patient or patient who—
    - (i) is required to attend at any place for—
      - (A) an assessment examination under section 9; or
      - (B) an assessment to which a notice given under section 11 or section 13 relates; or

- (C) an examination to which a notice given under section 14A(3)(b) relates; or
  - (D) a hearing to which a notice given under section 14A(3)(c) relates; or
  - (E) a review to which a notice given under section 76(1A) relates; and
- (ii) is refusing to attend at that place; and
- (b) every patient who—
    - (i) is subject to a community treatment order; and
    - (ii) is refusing to attend at a place for treatment in accordance with the order; and
  - (c) every patient who—
    - (i) is subject to an inpatient order; and
    - (ii) is absent from the hospital—
      - (A) without leave; or
      - (B) when the patient’s leave of absence from the hospital has expired or has been cancelled.
- (2) In subsections (3) and (4), **warrant** means a warrant in the prescribed form to take such a proposed patient or patient to a place specified in the warrant.
- (3) The Director of Area Mental Health Services may apply for a warrant.
- (4) A District Court Judge or, if no Judge is available, a Registrar may issue a warrant authorising any constable to take a proposed patient or patient to the place specified in the warrant, if the Judge or Registrar is satisfied that—
- (a) the proposed patient or patient is refusing to attend at the place at which he or she is required to attend; or
  - (b) the patient is absent from the hospital—
    - (i) without leave; or
    - (ii) when the patient’s leave of absence from the hospital has expired or has been cancelled.
- (5) In subsections (6) and (7), **warrant** means a warrant in the prescribed form to enter premises under section 41(2).
- (6) A constable may apply for a warrant.
- (7) A District Court Judge or, if no Judge is available, a Registrar may issue a warrant authorising any constable to enter premises under section 41(2), if the Judge or Registrar is satisfied that the issue of a warrant is necessary.

Section 113A: inserted, on 1 April 2000, by section 64 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 113A(4): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 113A(6): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 113A(7): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

#### **114 Neglect or ill-treatment of proposed patients and patients**

- (1) This section applies to—
  - (a) the person in charge of a hospital or service at which a proposed patient attends for an assessment examination; and
  - (b) the person in charge of a hospital in which a patient is an inpatient; and
  - (c) a person employed in any such hospital or service and engaged—
    - (i) in the conduct of an assessment examination of a proposed patient; or
    - (ii) in the assessment or treatment of a patient; and
  - (d) the person in charge of a home, house, or other place where a proposed patient or patient resides.
- (2) Every such person who intentionally ill-treats or intentionally neglects any such proposed patient or patient commits an offence and is liable on conviction to imprisonment for a term not exceeding 2 years.

Section 114: replaced, on 1 April 2000, by section 65 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 114(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

#### **115 Assisting patient on community treatment order not to attend for treatment**

- (1) Subsection (2) applies to a person who is employed in or about a place at which a patient who is subject to a community treatment order is required to attend for treatment.
- (2) Every such person commits an offence and is liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$1,000, if he or she—
  - (a) intentionally permits any such patient not to attend, or to attempt not to attend, at the place; or
  - (b) connives at any such absence or attempted absence.
- (3) Every person commits an offence and is liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$1,000, if he or she—
  - (a) intentionally instigates or assists any patient who is subject to a community treatment order not to attend, or to attempt not to attend, at any place at which the patient is required to attend for treatment; or

- (b) intentionally assists any patient who is so absent to avoid, or to attempt to avoid, being taken to the place.

Section 115: replaced, on 1 April 2000, by section 65 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 115(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 115(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### **115A Assisting patient on inpatient order to be absent without leave**

- (1) Subsection (2) applies to a person who is employed in or about a hospital in which a patient who is subject to an inpatient order is detained.
- (2) Every such person commits an offence and is liable to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$1,000, if he or she—
- (a) intentionally permits such a patient to become, or to attempt to become, absent without leave from the hospital; or
- (b) connives at any such absence or attempted absence.
- (3) Every person commits an offence and is liable to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$1,000, if he or she—
- (a) intentionally instigates or assists any patient who is subject to an inpatient order to become, or to attempt to become, absent without leave from the hospital specified in the order or to which the patient has been transferred under section 127; or
- (b) intentionally assists any patient who is so absent to avoid, or to attempt to avoid, being retaken.

Section 115A: inserted, on 1 April 2000, by section 65 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

### **116 Unlawful publication of reports of proceedings before Review Tribunal**

A person who contravenes clause 8(1) of Schedule 1 commits an offence against this Act and is liable on conviction to a fine not exceeding \$10,000.

Section 116: replaced, on 1 April 2000, by section 66 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 116: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### **117 Obstruction of inspection**

Every person commits an offence and is liable on conviction to a fine not exceeding \$2,000 who, being the Director of Area Mental Health Services in respect of any hospital or service that is being visited by a district inspector or an official visitor, or a responsible clinician, or an employee in any such hospital or service,—

- (a) conceals or attempts to conceal from the district inspector or official visitor, or refuses or wilfully neglects to show to the district inspector or official visitor, any part of the hospital or service or any person detained or being treated in it; or
- (b) in any other manner wilfully obstructs or attempts to obstruct the district inspector or official visitor in the conduct of his or her official duties.

Compare: 1969 No 16 s 57(2)

Section 117: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### **118 False or misleading certificates**

Every person commits an offence and is liable on conviction to a fine not exceeding \$5,000 who—

- (a) includes or causes to be included in any certificate under this Act any particular that he or she knows to be false or misleading in any material respect; or
- (b) negligently includes or negligently causes to be included in any such certificate any particular that is false or misleading in any material respect.

Section 118: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### **119 Further offences involving false or misleading documents, etc**

Every person commits an offence and is liable on conviction to a fine not exceeding \$2,000 who—

- (a) intentionally omits, or intentionally causes any other person to omit, to state in any notice, statement, or entry under this Act any particular prescribed or required by or under this Act to be included in the notice, statement, or entry; or
- (b) includes or causes to be included in any such notice, statement, or entry any particular that he or she knows to be false in any material respect; or
- (c) negligently includes or negligently causes to be included in any such notice, statement, or entry any particular that is false or misleading in any material respect.

Section 119: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### **120 Who may commence proceedings**

Proceedings for an offence against this Act must be commenced by—

- (a) the Director or some other person authorised in writing by the Director in a particular case; or
- (b) any constable.

Section 120: replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### **121 General penalty**

Every person who commits an offence against this Act, or against any regulations made under this Act, for which no penalty is provided elsewhere than in this section is liable on conviction to a fine not exceeding \$500.

Section 121: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### **122 Matters of justification or excuse**

- (1) Every person in charge of a hospital, responsible clinician, duly authorised officer, constable, or other person who relies on any notice purportedly given under section 9 or section 11 or section 13, or on any order purporting to be a compulsory treatment order, shall be protected from criminal responsibility if he or she acts in good faith under the belief that the notice was properly given by a person having authority to give it or the order was properly made by a court having jurisdiction to make it.
- (2) Every person in charge of a hospital, responsible clinician, duly authorised officer, constable, or other person acting in reliance on any notice purportedly given under section 9 or section 11 or section 13, or any order purporting to be a compulsory treatment order, that is bad in law on account of some defect in substance or in form, apparent on the face of it, shall be protected from criminal responsibility to the same extent and subject to the same provisions as if the notice or order were good in law, if, in good faith and without culpable ignorance or negligence, he or she believed that the notice or order was good in law; and ignorance of the law shall in this case be an excuse.
- (3) For the purposes of subsection (2), it is a question of law whether the facts of which there is evidence do or do not constitute culpable ignorance or negligence in a person's so believing the notice or order to be good in law.

(4) *[Repealed]*

Compare: 1961 No 43 ss 28, 29

Section 122(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 122(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 122(4): repealed, on 1 April 2000, by section 67 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

### **122A Certain sections of Crimes Act 1961 apply to powers to take and retake**

Sections 32(1), 38(4)(d), 40(2), 41(4), 41(5), 41(6), 50(4), 51(3), 53, 109(1), 109(4), 110C(2), 111(2), and 113A contain a power to take or retake a person, a proposed patient, or a patient. In respect of each of these powers, sections 30, 31, and 34 of the Crimes Act 1961 apply—



- (a) as if the power were a power of arrest; and
- (b) with any necessary modifications.

Section 122A: inserted, on 1 April 2000, by section 68 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

### **122B Use of force**

- (1) A person exercising a power specified in subsection (2) may, if he or she is exercising the power in an emergency, use such force as is reasonably necessary in the circumstances.
- (2) The powers are—
  - (a) a power to take or retake a person, proposed patient, or patient in any of sections 32(1), 38(4)(d), 40(2), 41(4), 41(5), 41(6), 50(4), 51(3), 53, 109(1), 109(4), 110C(2), 111(2), or 113A:
  - (b) a power to detain a person, proposed patient, or patient in any of sections 41(3), 41(4), 41(5), 109(4), 110C(2), 111(2), or 113:
  - (c) a power to enter premises in either of sections 41(2) or 110C(1).
- (2A) A person permitted to restrain a transported special patient or use any other force under section 53A may use such force as is reasonably necessary in the circumstances.
- (3) A person treating a patient to whom section 58 or section 59 applies may use such force as is reasonably necessary in the circumstances.
- (4) If force has been used under this section,—
  - (a) the circumstances in which the force was used must be recorded as soon as practicable; and
  - (b) a copy of the record must be given to the Director of Area Mental Health Services as soon as practicable.

Section 122B: inserted, on 1 April 2000, by section 68 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 122B(2A): inserted, on 30 October 2021, by section 11 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 122B(3): amended, on 22 October 2003, by section 3 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2003 (2003 No 85).

## **Part 11 Miscellaneous provisions**

### **123 Vetting of incoming mail**

- (1) The responsible clinician may, with the approval of the Director of Area Mental Health Services, direct that any letter or other postal article addressed to a patient be opened and checked if there are reasonable grounds for believing that the receipt of the letter or other postal article by the patient could be detrimental to the interests of the patient and to his or her treatment.

- (2) Where, on checking any letter or other postal article under subsection (1), it is considered that the receipt of the letter or other postal article by the patient could be detrimental to the interests of the patient and to his or her treatment, the responsible clinician may, with the approval of the Director of Area Mental Health Services, direct that it be withheld from the patient.
- (3) Notwithstanding anything in subsection (2), no letter or other postal article addressed to a patient may be withheld from the patient if it is sent by or on behalf of any of the following persons:
  - (a) a member of Parliament:
  - (b) a Judge or officer of any court, or a member or officer of any other judicial body:
  - (ba) the Inspector-General of Intelligence and Security:
  - (c) an Ombudsman:
  - (d) the Director-General of Health or the Director:
  - (e) a district inspector or an official visitor:
  - (f) the person in charge of the hospital:
  - (g) a barrister or solicitor:
  - (h) any psychiatrist from whom the patient has sought a second opinion about the patient's condition.

Compare: 1969 No 16 s 62

Section 123(3)(ba): inserted, on 28 September 2017, by section 335 of the Intelligence and Security Act 2017 (2017 No 10).

#### **124 Vetting of outgoing mail**

- (1) The responsible clinician may direct that any letter or other postal article put out by a patient for posting be opened and checked if there are reasonable grounds for believing that the dispatch of the letter or other postal article could be detrimental to the interests of the patient and to his or her treatment.
- (2) Where, on checking any letter or other postal article under subsection (1), it is considered that the dispatch of the letter or other postal article could be detrimental to the interests of the patient and to his or her treatment, the responsible clinician may direct that it be withheld from posting.
- (3) The responsible clinician shall withhold from posting any letter or other postal article put out by a patient for posting if it is addressed to a person who has notified the hospital that he or she does not wish to receive communications from that patient.
- (4) Notwithstanding anything in subsection (2), no letter or other postal article put out by a patient for posting shall be withheld from posting if it is addressed to any of the persons described in section 123(3).

Compare: 1969 No 16 s 63

### **125 Procedure where letter withheld**

- (1) Where the responsible clinician withholds any letter or other postal article pursuant to section 123, it shall be dealt with as follows:
  - (a) if the address of the sender is known to the responsible clinician, it shall be returned to the sender:
  - (b) if the address of the sender is not known to the responsible clinician, it shall either be—
    - (i) posted to a district inspector or an official visitor; or
    - (ii) produced to the district inspector or the official visitor who next visits the hospital after the receipt of the letter or article.
- (2) Where the responsible clinician withholds any letter or other postal article pursuant to section 124, it shall either be—
  - (a) posted to a district inspector or an official visitor; or
  - (b) produced to the district inspector or the official visitor who next visits the hospital after the letter or other postal article has been put out for posting.
- (3) Where any letter or other postal article is withheld pursuant to section 123 or section 124, the patient shall be informed of the fact, unless the responsible clinician is satisfied that to do so would be detrimental to the interests of the patient and to his or her treatment.

Compare: 1969 No 16 s 64

### **126 Patient's pocket money**

*[Repealed]*

Section 126: repealed, on 1 April 2000, by section 69 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

### **127 Transfer of patients**

- (1) The Director may from time to time direct that any patient other than a special patient be transferred from any hospital or service in which the patient is detained to any other hospital or service specified in the direction, and may from time to time vary any such direction.
- (2) The Director of Area Mental Health Services shall comply with any direction given under subsection (1) at the time or within the period stated in the direction or, if no such time or period is so stated, as soon as practicable.
- (3) Notwithstanding anything in the preceding provisions of this section, the person in charge of any hospital or service (not being a security institution) may arrange with the person in charge of any other hospital or service (not being a security institution) for the transfer of any patient other than a special patient or a restricted patient to that other hospital or service, and may carry out such transfer in accordance with such arrangement.

- (4) A direction given under subsection (1) or an arrangement made under subsection (3) shall be sufficient authority for the transfer of the patient and for his or her reception into the hospital or service to which it is directed or arranged that the patient be transferred.
- (5) Subject to subsection (6), every direction for the transfer of a patient under this section shall be complied with as soon as practicable after the date of the direction, and in all cases within 14 days after that date.
- (6) If the patient is not in a fit state to be removed within that period, the person in charge of the hospital or service in which the patient is detained shall send to the Director a certificate to that effect, but shall in that case transfer the patient within 14 days after the patient has become fit to be removed.
- (7) The transfer of a patient under this section shall not be deemed to be completed until the patient is actually received into the hospital or service to which the patient is transferred, and the responsibility for the patient's care and control shall be determined accordingly.
- (8) On the transfer of a patient from one hospital or service to another in accordance with any provision of this Act, a copy (certified to be a true copy by or on behalf of the person in charge of the hospital or service from which the patient is transferred) of the compulsory treatment order, and of the assessment certificates and of the copy of the application that accompanied the order, or of any other instrument of authority under which the patient was admitted or detained, shall be delivered to the person in charge of the hospital or service to which the patient is transferred, together with such copy of the clinical records of the patient as may be appropriate or an adequate summary of the clinical condition of the patient immediately before the patient's transfer.
- (9) The compulsory treatment order or other instrument of authority shall remain in force in the same manner as if the patient had been ordered to be received in the hospital or service to which the patient is so transferred.

Compare: 1969 No 16 ss 69–71; 1972 No 22 s 8

Section 127(4): amended, on 1 April 2000, by section 70(1)(a) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 127(4): amended, on 1 April 2000, by section 70(1)(b) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 127(5): amended, on 1 April 2000, by section 70(2) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 127(8): amended, on 30 October 2021, by section 31 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

## **127A Modification to section 127 during COVID-19 response**

*[Repealed]*

Section 127A: repealed, on 30 October 2021, by section 34 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

## **128 Removal from New Zealand**

- (1) If it appears to the Minister that it would be for the benefit of any patient who is subject to a compulsory treatment order that he or she be removed to any place outside New Zealand, whether by reason of the fact that the patient has a relative or friend in that place who is willing to undertake the care and charge of the patient or for any other reason, the Minister may by warrant authorise and direct the removal of the patient accordingly, and make such order as the Minister thinks fit concerning the patient's custody pending his or her removal.
- (2) In any such case, the Minister may—
  - (a) as a condition of issuing the warrant, direct that sufficient security be given, in such manner as the Minister thinks fit, for the safe custody and maintenance of the patient after his or her removal from New Zealand:
  - (b) give such directions as the Minister thinks fit for the payment by or on behalf of the patient or out of the patient's estate of the whole or any part of the expenses of and incidental to his or her removal from New Zealand to that other place, including the fares and expenses of any escort or other person accompanying the patient or supervising his or her removal:
  - (c) direct any person who is for the time being, by virtue of a property order made under Part 3 of the Protection of Personal and Property Rights Act 1988, the manager of any property belonging to the patient to pay or transfer any such property to such person or persons in the country to which the patient is being removed, or in such other manner, as the Minister shall decide.
- (3) The powers conferred on the Minister by the foregoing provisions of this section may, with the concurrence of the Minister of the Crown who is responsible for the Department of Corrections in each case, be exercised in respect of any special patient.
- (4) Every person removed from a hospital under the authority of this section shall be deemed to have been released from compulsory status.

Compare: 1969 No 16 s 72

Section 128(3): amended, on 1 October 1995, by section 10(3) of the Department of Justice (Restructuring) Act 1995 (1995 No 39).

## **129 Registers and records**

- (1) The Director of Area Mental Health Services must ensure that in every hospital or service the person in charge keeps, in respect of patients subject to this Act, the following:
  - (a) a register of admissions and discharges of such patients (including transfers and deaths):
  - (b) a register of restraint and seclusion:

- (c) such other registers and records as may be prescribed or, to the extent that such other registers or records are not prescribed, as may be required by the Director.
- (2) Every register and record shall be kept in such form, whether in bound books or otherwise, as may be prescribed or, if no such form is prescribed, as the Director-General may require.
- (3) The responsible clinician shall enter or cause to be entered in the registers and records such particulars, at such times, and in such manner, as may be prescribed or, to the extent that such particulars, times, and manner are not prescribed, as may be required by the Director.
- (4) The registers and books kept under the Mental Health Act 1969 for the purposes of the matters referred to in subsection (1), and continuing in use at the commencement of this Act, shall be deemed to be the registers and records prescribed or required by or under that subsection, notwithstanding any change in nomenclature or arrangement, and shall continue to be kept in accordance with any regulations in force at the commencement of this Act until other provision is made in that behalf.

Compare: 1969 No 16 s 51

Section 129(1): amended, on 1 April 2000, by section 71 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

### 130 Director-General may promulgate standards

- (1) The Director-General of Health may from time to time issue—
- guidelines for the purposes of this Act; and
  - standards of care and treatment of patients.
- (2) The following are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements):
- guidelines under this section:
  - standards under this section.

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#### Legislation Act 2019 requirements for secondary legislation made under this section

<b>Publication</b>	It is not required to be published	LA19 s 73(2)
<b>Presentation</b>	It is not required to be presented to the House of Representatives because a transitional exemption applies under Schedule 1 of the Legislation Act 2019	LA19 s 114, Sch 1 cl 32(1)(a)
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

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Section 130(2): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

### 131 Notices to Director-General

The responsible clinician shall send to the Director-General of Health, or to such other person as the Director-General of Health may specify, all such infor-

mation as the Director-General of Health may require for the purposes of this Act.

### **132 Notice of death**

- (1) If the responsible clinician learns of the death of a patient (whether within or outside the hospital), that officer shall—
  - (a) forthwith notify a constable; and
  - (b) within 14 days after the death, notify the Director of the death, the apparent cause of death, and the name of any member of the staff of a service who was present at the death.
- (2) A relative or friend named in the appropriate register, or the person who made the last payment on account of the patient, shall be informed of the death as soon as practicable after it occurs.

Compare: 1969 No 16 s 54

Section 132(1)(a): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 132(1)(b): amended, on 1 April 2000, by section 72 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

### **133 Giving or sending documents**

- (1) This section applies to any document that this Act requires to be given or sent.
- (2) Any such document must be dealt with by the method in subsection (3) that, in the opinion of the person giving or sending the document, is most likely to ensure that the document reaches the person for whom it is intended.
- (3) The methods by which a document may be dealt with are—
  - (a) personally delivering it to the person; or
  - (b) posting it to a usual address of the person; or
  - (c) sending it to the person by fax or some other electronic means; or
  - (d) providing it to the person in a manner approved by the person.
- (4) A document posted under subsection (3)(b) is deemed to have been delivered to the person at the time it would have been delivered in the ordinary course of post. For the purposes of proving delivery,—
  - (a) it is sufficient to prove that the document was properly addressed; and
  - (b) the document is presumed, in the absence of proof to the contrary, to have been posted on the day on which it was dated.
- (5) The receipt of an electronic message from the person posting the document stating that the message was dispatched at the same time as or after the posting of the document confers on the person to whom the message is addressed, on the date he or she receives it and within the next 7 days, the same authority as the receipt of the document.

- (6) A document sent under subsection (3)(c) is deemed, in the absence of proof to the contrary, to have been delivered on the day after the day on which it was sent, and it is sufficient proof of sending that a correct machine-generated acknowledgement of receipt exists.

Section 133: replaced, on 1 April 2000, by section 73 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

### 133A Forms

- (1) The Director-General of Health or the Director may specify a form to be used for any information required by or under this Act to be given or sent to the Director-General of Health or the Director, if there is no prescribed form. The Director-General of Health or the Director may specify that information relating to different patients or matters is to be included in the same form.
- (2) If the Director-General of Health or the Director specifies a form, it must be used.
- (3) The Director-General of Health or the Director may from time to time give notice to the Director of Area Mental Health Services or the responsible clinician dispensing with any specified provision of this Act that requires the person in charge of a hospital to send the Director-General of Health or the Director notices relating to the hospital or any specified class of patients in the hospital.
- (4) The Director-General of Health or the Director—
- (a) may give an absolute dispensation or a dispensation to such extent as the Director-General of Health or the Director thinks fit; and
  - (b) may at any time revoke or vary the dispensation by giving notice.

Section 133A: inserted, on 1 April 2000, by section 73 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

### 134 Fees of mental health practitioners

- (1) A mental health practitioner who issues a certificate, notice, or statement in writing for the purposes of, and in accordance with, this Act must be paid the prescribed fee.
- (2) If no fee is prescribed, such a mental health practitioner must be paid the fee that the Minister, with the concurrence of the Minister of Finance, directs from time to time.
- (3) In any particular case to which subsection (2) applies, the Minister may withhold the whole or any part of the fee.
- (4) Fees payable under subsection (2) are met from any appropriation by Parliament for the purpose.
- (5) No fees are payable under this section to a mental health practitioner employed by a service or by the Ministry of Health, for anything done in the course of that employment.



Section 134: replaced, on 1 April 2000, by section 74 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Section 134 heading: amended, on 30 October 2021, by section 32(1) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 134(1): amended, on 30 October 2021, by section 32(2) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 134(2): amended, on 30 October 2021, by section 32(2) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Section 134(5): amended, on 30 October 2021, by section 32(2) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

### **134A Modification to section 134 during COVID-19 response**

*[Repealed]*

Section 134A: repealed, on 30 October 2021, by section 34 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

## **135 Regulations**

- (1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:
  - (a) prescribing forms, registers, records, particulars, and notices for the purposes of this Act and the method of keeping such registers and records:
  - (b) prescribing the powers and duties of district inspectors and official visitors, and regulating the exercise of such powers and the performance of such duties:
  - (c) regulating the employment of patients and prescribing the terms and conditions of any such employment, the remuneration to be paid to or in respect of patients in consideration of any work performed by them, the method of such payment, and the persons to whom such remuneration is to be paid:
  - (d) regulating the carrying on of agricultural, industrial, or commercial pursuits or workshops in or in connection with hospitals:
  - (e) regulating the conduct of psychiatric security institutions:
  - (f) restricting or otherwise regulating the collection under section 43A of biometric information from special patients and restricted patients:
  - (g) prescribing fees for any of the purposes of this Act:
  - (h) prescribing offences in respect of the contravention of or non-compliance with any regulation made under this Act or any requirement or direction made or given pursuant to any such regulation:
  - (i) prescribing fines not exceeding in respect of any such offence \$500 and, in the case of a continuing offence, \$50 for every day on which the offence has continued:
  - (j) providing for such matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.

- (2) Any regulations made under this section may apply generally, or may apply or be applied from time to time by the Minister, by notice, in respect of any particular hospital or other place or any particular class of patient; and any such notice may be revoked or varied at any time in like manner.
- (3) The operation of any regulations made under this section may, if so provided in the regulations, be wholly suspended until they are applied by the Minister by notice pursuant to subsection (2).
- (4) The following are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements):
  - (a) regulations under this section:
  - (b) a notice under subsection (2).

Compare: 1969 No 16 ss 126, 127

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**Legislation Act 2019 requirements for secondary legislation made under subsection (1)**

<b>Publication</b>	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
<b>Presentation</b>	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

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**Legislation Act 2019 requirements for secondary legislation made under subsection (2)**

<b>Publication</b>	The maker must publish it in the <i>Gazette</i>	LA19 ss 73, 74(1)(a), Sch 1 cl 14
<b>Presentation</b>	It is not required to be presented to the House of Representatives because a transitional exemption applies under Schedule 1 of the Legislation Act 2019	LA19 s 114, Sch 1 cl 32(1)(a)
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

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Section 135(1)(f): replaced, on 22 August 2017, by section 48 of the Enhancing Identity Verification and Border Processes Legislation Act 2017 (2017 No 42).

Section 135(2): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 135(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

### **136 Application of other Acts**

Except as expressly provided in this Act, nothing in this Act shall limit or affect in any way the provisions of any other Act.

Compare: 1969 No 16 s 128

### **137 Repeals and consequential amendments**

- (1) The enactments specified in Schedule 2 are hereby repealed.
- (2) The enactments specified in Schedule 3 are hereby amended in the manner indicated in that schedule.

### **137A Temporary COVID-19 response provisions repealed**

*[Repealed]*

Section 137A: repealed, on 30 October 2021, by section 34 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

### **138 Savings**

*[Repealed]*

Section 138: repealed, on 1 October 2004, by section 59(2) of the Health and Disability Services (Safety) Act 2001 (2001 No 93).

### **139 Criminal Justice Act 1985 amended**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) The provisions of the Criminal Justice Act 1985 specified in Schedule 4 are hereby amended in the manner indicated in that schedule.

### **140 Armed Forces Discipline Act 1971 amended**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) The provisions of the Armed Forces Discipline Act 1971 specified in Schedule 5 are hereby amended in the manner indicated in that schedule.

## **Part 12 Transitional provisions**

### **141 Persons detained under section 19 of Mental Health Act 1969**

- (1) Where, immediately before the commencement of this Act, any person was detained in a hospital under section 19 of the Mental Health Act 1969, the fol-

lowing provisions shall, subject to subsection (2) of this section, apply in respect of that person:

- (a) if that person was received into the hospital within the period of 5 days immediately preceding the date of the commencement of this Act,—
    - (i) that person shall be deemed for the purposes of this Act to be a patient who is subject to assessment and treatment in that hospital pursuant to a notice given under section 11; and
    - (ii) unless the patient is sooner discharged from compulsory status, the certificate of further assessment shall be given no later than 5 days after the date on which the patient was received into the hospital:
  - (b) if the person was received into the hospital more than 5 days before the date of the commencement of this Act,—
    - (i) that person shall be deemed for the purposes of this Act to be a patient who is subject to assessment and treatment in that hospital pursuant to a notice given under section 13; and
    - (ii) unless the patient is sooner released from compulsory status, an application for a compulsory treatment order shall be made in respect of the patient no longer than 21 days after the date on which the patient was received into the hospital.
- (2) This section does not apply where, before the commencement of this Act, notification of the person's reception into the hospital was given to the Registrar of a District Court in accordance with section 20 of the Mental Health Act 1969.

#### **142 Proceedings for reception order commenced but not completed**

Where, before the commencement of this Act,—

- (a) notification of the reception of a patient into a hospital was sent to the Registrar of a District Court under section 20 of the Mental Health Act 1969; or
- (b) an application was made under section 21 of that Act for a reception order in respect of any person,—

but no reception order has been made, the notification or application shall be deemed for the purposes of this Act to be an application to the court for a compulsory treatment order, and shall be determined under Part 2 accordingly.

#### **143 Reception orders**

Every reception order made under section 24 of the Mental Health Act 1969 and in force immediately before the commencement of this Act shall be deemed for the purposes of this Act,—

- (a) to be a community treatment order, in any case where, on making the order, the Judge gave a direction under section 38 of the Mental Health

Act 1969 that the person be received and detained in the house of a householder instead of in a hospital; or

(b) to be an inpatient order, in any other case.

**144 Committed patients on leave**

- (1) This section applies to every person who, immediately before the commencement of this Act, was a committed patient and was on leave from a hospital under section 66 of the Mental Health Act 1969.
- (2) Every patient to whom this section applies who, at the commencement of this Act, has been on leave for less than 3 months shall be deemed to be on leave granted under section 31.
- (3) Every patient to whom this section applies who, at the commencement of this Act, has been on leave for 3 months or more shall, notwithstanding section 143(b), be deemed to be subject to a community treatment order.

**145 Special patients**

- (1) Every person who, immediately before the commencement of this Act, was detained in a hospital under a reception order made pursuant to section 42 of the Mental Health Act 1969 shall be deemed for the purposes of this Act to be detained in that hospital pursuant to section 45.
- (2) Every person who, immediately before the commencement of this Act, was detained in a hospital pursuant to section 43 of the Mental Health Act 1969 shall be deemed for the purposes of this Act to be detained in that hospital pursuant to section 46.

**146 Persons detained as committed patients pursuant to Criminal Justice Act 1985**

Every person who, immediately before the commencement of this Act, was detained in a hospital as a committed patient pursuant to an order made under subsection (2) or subsection (6) of section 115 or section 118(1) of the Criminal Justice Act 1985, or pursuant to a direction given under subsection (4) or subsection (5) or subsection (6)(b) of section 116 or section 117(2) of that Act, shall be deemed for the purposes of this Act to be detained as a patient, and that order or direction shall be deemed for those purposes to be a compulsory treatment order.

## **Schedule 1AA**

### **Transitional, savings, and related provisions**

s 2C

Schedule 1AA: inserted, on 13 December 2022, by section 18 of the Rights for Victims of Insane Offenders Act 2021 (2021 No 55).

### **Part 1**

#### **Provisions relating to Rights for Victims of Insane Offenders Act 2021**

Schedule 1AA Part 1: inserted, on 13 December 2022, by section 18 of the Rights for Victims of Insane Offenders Act 2021 (2021 No 55).

#### **1 Transitional provision**

- (1) This clause applies to any matter initiated under section 50, 52, 80, or Schedule 1 before the commencement of this clause.
- (2) If this clause applies, the provisions of the relevant section or Schedule 1, as they read immediately before the commencement of this clause, continue to apply to the matter as if they had not been amended or replaced by the Rights for Victims of Insane Offenders Act 2021.
- (3) In this clause, **matter** includes any—
  - (a) action undertaken:
  - (b) decision taken:
  - (c) notice given:
  - (d) proceeding commenced:
  - (e) application made:
  - (f) agreement entered into:
  - (g) requirement imposed.

Schedule 1AA clause 1: inserted, on 13 December 2022, by section 18 of the Rights for Victims of Insane Offenders Act 2021 (2021 No 55).

#### **2 Transitional provision if leave decision and resulting leave of absence fall either side of commencement date**

- (1) This clause applies if—
  - (a) a leave decision has been made; and
  - (b) as a consequence of the leave decision, a special patient is due to take, or is taking, leave of absence when this clause commences.
- (2) The Director may, to the extent that the Director considers appropriate in the circumstances, advise a victim of the leave decision as specified in sections 50E(2) and 52E(2).

- (3) In this clause, **leave decision** means a decision made before the commencement of this clause by—
- (a) the Minister to—
    - (i) grant a special patient leave of absence under section 50(1); or
    - (ii) cancel a special patient’s leave of absence under section 50(3); or
  - (b) the Director to—
    - (i) grant a special patient leave of absence under section 52(1); or
    - (ii) cancel a special patient’s leave of absence under section 52(3).

Schedule 1AA clause 2: inserted, on 13 December 2022, by section 18 of the Rights for Victims of Insane Offenders Act 2021 (2021 No 55).

## **Part 2**

### **Provisions relating to Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021**

Schedule 1AA Part 2: inserted, on 29 October 2023, by section 12 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

#### **3 Interpretation**

In this Part, unless the context otherwise requires,—

**commencement date** means the day on which this Part comes into force

**extension date**, in relation to a compulsory treatment order, means the day and month on which the order was extended indefinitely under section 34(4)

**transition period** means the 12-month period starting on the 14th day after the commencement date.

Schedule 1AA clause 3: inserted, on 29 October 2023, by section 12 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

#### **4 First 12-month review under section 34A**

- (1) This clause applies to a compulsory treatment order that, before the commencement date, was extended indefinitely under section 34(4).
- (2) The order expires on the extension date that falls within the transition period (the **expiry date**).
- (3) The first review of the order under section 34A(1) must be undertaken within the 14-day period immediately preceding the expiry date.

Schedule 1AA clause 4: inserted, on 29 October 2023, by section 12 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

## Schedule 1

### Procedural provisions relating to Review Tribunals

s 82

#### 1 Examination of patient

Where a Review Tribunal is to review the condition of any patient under any of the provisions of Part 7, the convener, or some other member of the Tribunal nominated for the purpose by the convener, shall, as soon as practicable, examine the patient at the hospital, or the other place where the patient is undergoing treatment, or at such other suitable place as the convener or other member may determine, and may consult with such other persons as the convener or the member thinks fit concerning the condition of the patient.

#### 2 Attendance of patient and other persons

- (1) The patient shall be present throughout the hearing by a Review Tribunal of an application for a review of the patient's condition unless—
  - (a) the convener or other member who examines the patient in accordance with clause 1 certifies that it would be in the best interests of the patient to excuse the patient from attending the hearing; or
  - (b) the patient is excused or excluded by the Tribunal under subclause (2) or subclause (3).
- (2) The Tribunal may excuse the patient if it is satisfied that the patient wholly lacks the capacity to understand the nature and purpose of the proceedings, or that attendance or continued attendance is likely to cause the patient serious mental, emotional, or physical harm.
- (3) The Tribunal may exclude the patient if it is satisfied that the patient is causing such a disturbance that it is not practicable to continue with the hearing in the presence of the patient.
- (4) The Tribunal may exercise, at any stage of the hearing,—
  - (a) the discretion conferred on it, by subclause (2), to excuse a patient; or
  - (b) the discretion conferred on it, by subclause (3), to exclude a patient.
- (5) The patient shall be present while the Tribunal makes any order upon the application unless—
  - (a) the patient has been excused or excluded under subclause (2) or subclause (3); or
  - (b) there are exceptional circumstances justifying the Tribunal making an order in the absence of the patient.
- (6) Any other person to whom a copy of the certificate of clinical review is sent under section 76(7)(b) or section 77(3)(b) shall be entitled to be present throughout the hearing, except as the convener may otherwise order.



### 3 Right of patient and other persons to be heard and call evidence

- (1) The patient, and any person referred to in clause 2(6), shall be entitled to be heard by the Tribunal, whether in person or through a barrister or solicitor, and to call witnesses, and to cross-examine any witness called by any other party to the proceedings.
- (2) Without limiting anything in subclause (1), where the patient is present and appears capable of addressing the Tribunal, the Tribunal shall give the patient an opportunity to do so; and, in any such case, the Tribunal may, if it thinks it desirable to do so, require any parent or guardian of the patient, or any other person with whom the patient is living, or any barrister or solicitor representing any such parent, guardian, or other person, to withdraw from the Tribunal while the patient is addressing the Tribunal.

#### 3AAA Right of victim to make a submission

Any person notified under section 80(2B) may write to the Review Tribunal, by the date specified by the Tribunal, making submissions on the Tribunal's review of the special patient's condition.

Schedule 1 clause 3AAA: inserted, on 13 December 2022, by section 17 of the Rights for Victims of Insane Offenders Act 2021 (2021 No 55).

#### 3A Attendance by remote technology

- (1) A Review Tribunal may determine that a participant be permitted to appear at a hearing by remote technology if the Tribunal considers that it is not practicable for the participant to be physically present.
- (2) The Tribunal must take into account the following criteria when making a determination:
  - (a) the available remote technology must allow, wherever reasonably practicable, the person to be both heard and seen:
  - (b) the potential impact of the use of the technology on the effective maintenance of the rights of the person under clause 3, including the right to assess the credibility of witnesses and the reliability of evidence presented to the Tribunal:
  - (c) any other relevant matters.
- (3) In this clause,—
  - (a) **participant**, in relation to a hearing, means a person who is, in that hearing, any of the following:
    - (i) a party:
    - (ii) the patient:
    - (iii) a person referred to in clause 2(6):
    - (iv) counsel:
    - (v) a witness:

- (vi) a member of the Review Tribunal; and
- (b) **remote technology**, in relation to a participant's appearance at a hearing, means technology that enables communication between participants, when some or all of them are not physically present at the place of the hearing.

Schedule 1 clause 3A: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

Schedule 1 clause 3A heading: amended, on 30 October 2021, by section 33(1) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

#### 4 Tribunal may call for report on patient

- (1) A Review Tribunal may, if it is satisfied that it is necessary for the proper review of a patient's condition, request any person whom it considers qualified to do so to prepare a medical, psychiatric, psychological, or other report on the patient.
- (2) In deciding whether or not to request a report under subclause (1), the Tribunal may ascertain and have regard to the wishes of the patient and any other party to the proceedings.
- (3) A copy of any report obtained under this section shall be given by the convener of the Tribunal to the barrister or solicitor for the patient and for each of the other parties to the proceedings or, if any party is not represented by a barrister or solicitor, to that party.
- (4) The Tribunal shall order that a copy of a report given to a barrister or solicitor under subclause (3) shall not be given or shown to the person for whom the barrister or solicitor is acting if the Tribunal has reason to believe that such disclosure of the contents of the report may pose a serious threat to the health or safety of the patient or of any other person.
- (5) Any party to the proceedings may tender evidence on any matter referred to in any such report.
- (6) The Tribunal may call the person making the report as a witness, either on its own initiative or on the application of any party to the proceedings.
- (7) A Tribunal that requests a person to prepare a report must make 1 of the orders described in subclause (8). A Tribunal considering whether or not to make an order under subclause (8)(a) must hear the party or parties affected.
- (8) The orders are—
- (a) an order for the fees and expenses of the person to be paid by any party or parties to the proceedings, as the Tribunal orders;
- (b) an order for the fees and expenses of the person to be met from any appropriation by Parliament for the purpose.

Schedule 1 clause 4(5): replaced, on 1 April 2000, by section 75(1) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Schedule 1 clause 4(6): replaced, on 1 April 2000, by section 75(1) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Schedule 1 clause 4(7): replaced, on 1 April 2000, by section 75(1) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Schedule 1 clause 4(8): inserted, on 1 April 2000, by section 75(1) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

## **5 Evidence**

For the purposes of any review of a patient's condition, a Review Tribunal may receive any evidence that it thinks fit, whether it is admissible in a court of law or not.

## **6 Power of Tribunal to call witnesses**

- (1) Without limiting anything in clause 5, for the purposes of a review of a patient's condition, a Review Tribunal may, of its own motion, call as a witness any person whose evidence may, in its opinion, be of assistance to the Tribunal.
- (2) A witness called by the Tribunal under this clause shall have the same privilege to refuse to answer any question as the witness would have if the witness had been called by a party to the proceedings.
- (3) A witness called by the Tribunal under this clause may be examined and re-examined by the Tribunal, and may be cross-examined by or on behalf of any party to the proceedings.
- (4) Sections 159 and 161 to 165 of the Criminal Procedure Act 2011, so far as they are applicable and with the necessary modifications, shall apply with respect to every person called as a witness by the Tribunal under this clause as if that person had been called by a party to the proceedings.
- (5) The expenses of any witness called by the Tribunal under this clause must be met, in accordance with the prescribed scale of witnesses' expenses, in the first instance from any appropriation by Parliament for the purpose.

Schedule 1 clause 6(4): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Schedule 1 clause 6(5): replaced, on 1 April 2000, by section 75(2) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

## **7 Proceedings not open to public**

- (1) No person shall be present during any proceedings before a Review Tribunal except the following:
  - (a) members and staff of the Tribunal:
  - (b) parties to the proceedings and their barristers and solicitors:
  - (c) witnesses:
  - (d) any person referred to in clause 2(6):

- (e) any other person whom the convener permits to be present.
- (2) Any witness shall withdraw from the Tribunal if asked to do so by the convener.

## **8 Restriction of publication of reports of proceedings**

- (1) No person shall publish any report of proceedings before a Review Tribunal except with the leave of the Tribunal.
- (2) Nothing in subclause (1) shall apply to the publication of any report in any publication that—
  - (a) is of a bona fide professional or technical nature; and
  - (b) is intended for circulation among—
    - (i) members of the legal profession or health professions:
    - (ii) psychologists:
    - (iii) social workers:
    - (iv) employees of a service or the Ministry of Health.

Schedule 1 clause 8(2)(b): replaced, on 1 April 2000, by section 75(3) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140).

Schedule 1 clause 8(2)(b)(i): replaced, on 30 October 2021, by section 33(2) of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

Schedule 1 clause 8(2)(b)(iv): amended, on 1 January 2001, by section 111(1) of the New Zealand Public Health and Disability Act 2000 (2000 No 91).

## **8A Clause 8 modified during COVID-19 response**

*[Repealed]*

Schedule 1 clause 8A: repealed, on 30 October 2021, by section 34 of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41).

## **9 Tribunal may dispense with hearing in certain circumstances**

Notwithstanding any of the preceding provisions of this schedule, a Review Tribunal may review a patient's condition without a formal hearing if it is satisfied that no person wishes to be heard in respect of the review.

**Schedule 2  
Enactments repealed**

s 137(1)

**Mental Health Act 1969 (1969 No 16) (RS Vol 19, p 823)**

**Mental Health Amendment Act 1972 (1972 No 22) (RS Vol 19, p 929)**

**Mental Health Amendment Act 1976 (1976 No 101) (RS Vol 19, p 931)**

**Mental Health Amendment Act 1977 (1977 No 117) (RS Vol 19, p 932)**

**Mental Health Amendment Act 1979 (1979 No 100) (RS Vol 19, p 932)**

**Mental Health Amendment Act 1982 (1982 No 84) (RS Vol 19, p 932)**

**Mental Health Amendment Act 1985 (1985 No 122) (RS Vol 19, p 933)**

**Schedule 3**  
**Enactments amended**

s 137(2)

**Area Health Boards Act 1983 (1983 No 134)***Amendment(s) incorporated in the Act(s).***Coroners Act 1988 (1988 No 111)***Amendment(s) incorporated in the Act(s).***Disabled Persons Community Welfare Act 1975 (1975 No 122) (RS Vol 26, p 143)***Amendment(s) incorporated in the Act(s).***Health Amendment Act 1987 (1987 No 10) (RS Vol 19, p 618)***Amendment(s) incorporated in the Act(s).***Schedule 4**  
**Amendments to Criminal Justice Act 1985***[Repealed]*

s 139(2)

Schedule 4: repealed, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

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**Schedule 5**  
**Amendments to Armed Forces Discipline Act 1971**

s 140(2)

**Section 187**

*Amendment(s) incorporated in the Act(s).*

**Section 191 (as substituted by section 38 of the Armed Forces Discipline Amendment Act 1985)**

*Amendment(s) incorporated in the Act(s).*

**Section 192 (as substituted by section 38 of the Armed Forces Discipline Amendment Act 1985)**

*Amendment(s) incorporated in the Act(s).*

**Section 193 (as substituted by section 38 of the Armed Forces Discipline Amendment Act 1985)**

*Amendment(s) incorporated in the Act(s).*

**Section 194 (as substituted by section 38 of the Armed Forces Discipline Amendment Act 1985)**

*Amendment(s) incorporated in the Act(s).*

**Section 196**

*Amendment(s) incorporated in the Act(s).*

## Notes

### 1 *General*

This is a consolidation of the Mental Health (Compulsory Assessment and Treatment) Act 1992 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

### 2 *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

### 3 *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

### 4 *Amendments incorporated in this consolidation*

Pae Ora (Healthy Futures) Act 2022 (2022 No 30): section 104  
Rights for Victims of Insane Offenders Act 2021 (2021 No 55): Part 2  
Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 (2021 No 41)  
Secondary Legislation Act 2021 (2021 No 7): section 3  
Public Service Act 2020 (2020 No 40): section 135  
COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13): section 3  
Enhancing Identity Verification and Border Processes Legislation Act 2017 (2017 No 42): Part 2 subpart 8  
Intelligence and Security Act 2017 (2017 No 10): section 335  
Substance Addiction (Compulsory Assessment and Treatment) Act 2017 (2017 No 4): section 122(1)  
Mental Health (Compulsory Assessment and Treatment) Amendment Act 2016 (2016 No 79)  
District Court Act 2016 (2016 No 49): section 261  
Public Safety (Public Protection Orders) Act 2014 (2014 No 68): section 144  
Criminal Procedure Act 2011 (2011 No 81): section 413  
Mental Health (Compulsory Assessment and Treatment) Amendment Act 2008 (2008 No 82)  
Policing Act 2008 (2008 No 72): section 116(a)(ii)  
Court Martial Act 2007 (2007 No 101): section 87  
Armed Forces Discipline Amendment Act (No 2) 2007 (2007 No 98): section 81  
Crimes of Torture Amendment Act 2006 (2006 No 68): section 12  
Relationships (Statutory References) Act 2005 (2005 No 3): section 7



Care of Children Act 2004 (2004 No 90): section 151  
Corrections Act 2004 (2004 No 50): section 206  
Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115): section 51  
Mental Health (Compulsory Assessment and Treatment) Amendment Act 2003 (2003 No 85)  
Health Practitioners Competence Assurance Act 2003 (2003 No 48): section 175(1)  
Human Rights Amendment Act 2001 (2001 No 96): section 70(1)  
Health and Disability Services (Safety) Act 2001 (2001 No 93): sections 58(1), 59(2)  
New Zealand Public Health and Disability Act 2000 (2000 No 91): section 111(1)  
Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 No 140)  
Department of Justice (Restructuring) Act 1995 (1995 No 39): section 10(3)  
Health Amendment Act 1993 (1993 No 24): section 38(3)(a)  
Health Sector (Transfers) Act 1993 (1993 No 23): section 32  
Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46): section 97A(4)