

Substance Addiction (Compulsory Assessment and Treatment) Bill

Government Bill

As reported from the Health Committee

Commentary

Recommendation

The Health Committee has examined the Substance Addiction (Compulsory Assessment and Treatment) Bill and recommends unanimously that it be passed with the amendments shown.

Introduction

The Substance Addiction (Compulsory Assessment and Treatment) Bill would replace the Alcoholism and Drug Addiction Act 1966. This Act is considered outdated and inconsistent with modern approaches to compulsory treatment based on human rights. The bill would provide for the compulsory assessment and treatment of individuals with severe substance addiction who lack the capacity to make decisions about their treatment.

Compulsory treatment would enable treatment providers to thoroughly assess an individual's addiction, protect them from harm, and provide them with treatment for that addiction. The overall goal for treatment providers would be to restore the individual's capacity to make decisions about further voluntary treatment.

This commentary covers the main amendments that we recommend to the bill. It does not cover minor, technical, or consequential amendments.

Approved providers

Clause 4 of the bill as introduced defines an approved provider as a provider who has been designated under clause 92. To be designated under clause 92(2), a person would need to:

- be certified under the Health and Disability Services (Safety) Act 2001 to provide mental health services
- have the capacity and resources to detain and treat patients in suitable facilities in accordance with the bill
- have systems in place for complying with the bill.

Clause 92(6) would require a designation to be made by notice in the *Gazette*.

We recommend amending clause 4 to include a person who is certified to provide mental health services under the Health and Disability Services (Safety) Act. This would mean that mental health service providers whose facilities have already been certified by the Ministry of Health as providing safe and reasonable levels of service for consumers would not require additional approval.

In New Zealand, three non-government organisations can currently provide addiction treatment services to patients committed under the Alcoholism and Drug Addiction Act. Although certified to provide residential disability care, including addiction treatment services, these three organisations would not be considered for designation as approved providers under clause 92(2)(a), because they are not certified to provide mental health services.

Therefore, we recommend amending the requirement in this clause from providing mental health services to providing residential disability care. We also recommend changing the reference in clause 92(5) from mental health services to residential disability care.

Removal of age limit

We recommend deleting the references to under-17-year-olds in clauses 24 and 33. This would make it consistent with the Children, Young Persons, and Their Families (Advocacy, Workforce, and Age Settings) Amendment Bill, which would amend the definition of a young person in the principal Act to include 17-year-olds.

Clarification of an appropriate facility

We recommend amending clause 25(1)(b) to clarify the type of facility where a patient should be detained until being admitted to a treatment centre. Our amendment defines this as “a facility that is used for the purpose of providing health care services (within the meaning of the Health and Disability Services (Safety) Act 2001)”.

We also recommend amending the title of clause 25 to “Approved specialist to notify Area Director and arrange patient’s detention”. This would better reflect the contents of clause 25 which requires the approved specialist to notify the Area Director and to arrange the patient’s detention.

Notifying the guardian of a patient’s child

We recommend amending clauses 26(2) and 30(3)(b) so that the Area Director would be required to ensure that any person who is the guardian of a child of a patient is

given a copy of the compulsory treatment certificate and notified of the name, location, and contact details of the treatment centre in which the patient is detained.

Right to obtain a second opinion from an approved specialist

Clause 56 would allow patients to consult with an approved specialist of their choice to obtain a second opinion about their condition. Clause 56(2) requires that the approved specialist, if they agree to the consultation, must be given access to the patient. We recommend amending this clause to also require the approved specialist to give their opinion about the patient's condition as soon as practicable.

In the bill as introduced, clause 95(1) would require the Director of Addiction Services to designate a sufficient number of health professionals as approved specialists. We note that, as with the Mental Health (Compulsory Assessment and Treatment) Act 1992, the bill as introduced does not define the number of approved specialists that would be sufficient. However, we consider it important that there is a sufficient number of approved specialists available to provide the support required in clause 56.

Right to legal advice

Clause 57 would entitle a patient to ask for advice from a lawyer about their status and rights as a patient or any other legal issue. Under clause 57(2), if a lawyer agrees to act for a patient, the lawyer must be given access when they request to see the patient. We recommend amending this clause to also require the legal advice to be given as soon as practicable.

District Inspector reports on visits

Clause 100 would require a District Inspector to give the Area Director a report on any visit within 14 days of the visit. We recommend amending clause 100 to allow the Area Director, if they consider it appropriate, to give the treatment centre manager a copy of the District Inspector's report. The Area Director could choose to do this if the treatment centre manager was responsible for addressing any issues in the report.

Regulations of powers and duties of District Inspectors

We recommend deleting clause 118(1)(b). This would authorise the Governor-General, by Order in Council, to make regulations to prescribe the powers and duties of District Inspectors and regulate the exercise of those powers and the performance of those duties.

We received advice from the Regulations Review Committee that the clause is worded very broadly and could be used to provide powers, such as search powers, by way of regulation. We are satisfied that this regulation-making power is not required in the bill.

Review of the Act

We recommend inserting new clause 119A. This would require a review of the operation and effectiveness of the bill within 6 months after the date of the third anniversary of the date on which this clause comes into force.

We believe that this review is sensible given that the Office of the Ombudsman expressed concern to the ministry that the bill breaches the United Nations Convention on the Rights of Persons with Disabilities.

Appendix

Committee process

The Substance Addiction (Compulsory Assessment and Treatment) Bill was referred to the committee on 15 March 2016. The closing date for submissions was 27 April 2016. We received and considered 39 submissions from interested groups and individuals. We heard oral evidence from 15 submitters at hearings in Wellington.

We received advice from the Ministry of Health. The Regulations Review Committee reported to the committee on the powers contained in clause 118.

Committee membership

Simon O'Connor (Chairperson)

Jacqui Dean

Kevin Hague

Hon Annette King

Barbara Kuriger

Dr Shane Reti

Scott Simpson

Barbara Stewart

Poto Williams

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Treatment) Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Peter Dunne

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Substance Addiction (Compulsory Assessment and Treatment) Act **2015**.

2 Commencement

- (1) Subject to **subsection (2)**, this Act comes into force on the day that is the first anniversary of the date on which it receives the Royal assent.
- (2) **Sections 4, 86 to 96, and 116 to 118** come into force on the day after the date on which this Act receives the Royal assent.

5

Part 1 Preliminary provisions

*Purpose***3 Purpose**

The purpose of this Act is to enable persons to receive compulsory treatment if they have a severe substance addiction and their capacity to make decisions about treatment for that addiction is severely impaired, so that the compulsory treatment may— 10

- (a) protect them from harm; and
- (b) facilitate a comprehensive assessment of their addiction; and 15
- (c) stabilise their health through the application of medical treatment (including medically managed withdrawal); and
- (d) protect and enhance their mana and dignity and restore their capacity to make informed decisions about further treatment and substance use; and
- (e) facilitate planning for their treatment and care to be continued on a voluntary basis; and 20
- (f) give them an opportunity to engage in voluntary treatment.

*Interpretation***4 Interpretation**

In this Act, unless the context otherwise requires,— 25

applicant means a person who makes, or wishes to make, an application under **section 14**

~~**approved provider** means a provider who is designated under **section 92**~~

approved provider means—

- (a) a person who is certified, under the Health and Disability Services (Safety) Act 2001, to provide mental health services; or 30
- (b) a person who is designated under **section 92**

approved specialist means a health professional who is designated under **section 95**

Area Director or **Director of Area Addiction Services** means a person appointed under **section 88**, and, in relation to a function, duty, or power, means the person appointed under that section who is responsible for the geographical area in which the function is to be performed, or the duty or power is to be exercised

5

authorised officer means a health professional designated under **section 91**

brain injury means an acquired, enduring neurocognitive impairment

chief executive means the chief executive of the department responsible for the administration of the Children, Young Persons, and Their Families Act 1989

child or young person means a person under 18 years of age

10

compulsory status has the meaning given by **section 11**

compulsory treatment certificate means a certificate dated and signed under **section 23**

compulsory treatment order means an order made under **section 32**

court means—

15

(a) the Family Court; or

(b) the District Court

criteria for compulsory treatment means the criteria set out in **section 7**

Director means the Director of Addiction Services appointed under **section 86(1)**

20

Director-General of Health means the chief executive under the State Sector Act 1988 of the Ministry of Health, and, in relation to any power or function delegated by that chief executive, includes any person to whom that chief executive has delegated that power or function

district inspector means a person appointed under **section 90** to be a district inspector

25

drug means—

(a) a controlled drug within the meaning of the Misuse of Drugs Act 1975; or

(b) a prescription medicine or restricted medicine within the meaning of the Medicines Act 1981

30

electronic communication means a communication transmitted to or by a patient by electronic means

health professional means a person who is 1 or more of the following:

(a) a medical practitioner:

35

(b) a health practitioner who is, or is deemed to be, registered with the Psychologists Board continued by section 114(1)(a) of the Health Practi-

- tioners Competence Assurance Act 2003 as a practitioner of the profession of psychology:
- (c) 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: 5
- (d) a practitioner who has expertise in treating persons suffering from severe substance addiction and who is registered on account of that expertise by a body corporate designated under **section 96(1)**:
- (e) a social worker who is registered with the Social Workers Registration Board or who is a member of a body corporate designated under **section 96(2)** 10
- mail** means any letter, package, parcel, or article sent or delivered to or by a patient
- manager**, in relation to a treatment centre, means the person who is in charge of the treatment centre, by whatever name called 15
- medical practitioner** has the same meaning as in section 5(1) of the Health Practitioners Competence Assurance Act 2003
- Minister** means the Minister of Health
- nominated person** means a person nominated by a patient under **section 49** 20
- party** has the meaning given by **section 69**
- patient** means a person who is subject to compulsory status
- principal caregiver**,—
- (a) in relation to a patient who is not a child or young person, means the friend of the patient or the member of the patient’s family group or whānau who is most evidently and directly concerned with the oversight of the patient’s care and welfare: 25
- (b) in relation to any patient who is a child or young person, means the person who has the primary responsibility for the day-to-day care of the child or young person 30
- relative**, in relation to any person, includes—
- (a) the spouse, civil union partner, or de facto partner of that person; or
- (b) a person who is connected by blood relationship to a person referred to in **paragraph (a)**
- responsible clinician**, in relation to a patient, means the approved specialist who is assigned to that patient under **section 28** 35
- severe substance addiction** has the meaning given by **section 8**
- substance** means—
- (a) any alcohol; or

- (b) any drug; or
- (c) any psychoactive substance (within the meaning of section 9 of the Psychoactive Substances Act 2013); or
- (d) any volatile substance; or
- (e) any substance declared by regulations made under this Act to be a substance for the purposes of this Act 5

treatment includes detoxification, care, counselling, rehabilitation, and interventions to alleviate or prevent the worsening of the symptoms or manifestations of severe substance addiction

treatment centre means a place, or part of a place, that is operated by an approved provider for the purposes of this Act, whether or not any other hospital care (within the meaning of the Health and Disability Services (Safety) Act 2001) is provided in that place 10

treatment plan means a plan prepared by a responsible clinician under **section 29(a)** and includes any adjustments or additions made by the responsible clinician under **section 42(3) or 48(1)** 15

volatile substance means any plastic solvent, adhesive cement, cleaning agent, glue, nail polish remover, lighter fluid, petrol or petroleum-based product, paint thinner, lacquer thinner, aerosol propellant, or anaesthetic gas

welfare guardian has the same meaning as in section 2 of the Protection of Personal and Property Rights Act 1988. 20

Preliminary matters

5 Act binds the Crown

This Act binds the Crown.

6 Transitional, savings, and related provisions 25

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

Criteria for compulsory treatment

7 Criteria for compulsory treatment

A person may be subject to compulsory treatment under this Act only if— 30

- (a) the person has a severe substance addiction; and
- (b) the person’s capacity to make informed decisions about treatment for that addiction is severely impaired; and
- (c) compulsory treatment of the person is necessary; and
- (d) appropriate treatment for the person is available. 35

8 Meaning of severe substance addiction

- (1) A severe substance addiction is a continuous or an intermittent condition of a person that—
- (a) manifests itself in the compulsive use of a substance and is characterised by at least 2 of the features listed in **subsection (2)**; and 5
 - (b) is of such severity that it poses a serious danger to the health or safety of the person and seriously diminishes the person's ability to care for himself or herself.
- (2) The features are—
- (a) neuro-adaptation to the substance: 10
 - (b) craving for the substance:
 - (c) unsuccessful efforts to control the use of the substance:
 - (d) use of the substance despite suffering harmful consequences.

9 Capacity to make informed decisions

For the purposes of **section 7(b)**, a person's capacity to make informed decisions about treatment for a severe substance addiction is severely impaired if the person is unable to— 15

- (a) understand the information relevant to the decisions; or
- (b) retain that information; or
- (c) use or weigh that information as part of the process of making the decisions; or 20
- (d) communicate the decisions.

10 Compulsory treatment to be option of last resort

For the purposes of **section 7(c)**, compulsory treatment is necessary only if voluntary treatment is unlikely to be effective in addressing the severe substance addiction. 25

*When compulsory status starts and ends***11 Compulsory status**

- (1) A person becomes subject to compulsory status immediately after an approved specialist dates and signs a compulsory treatment certificate in respect of that the person. 30
- (2) The compulsory status of a person ends on the close of the day on which any of the following first occurs:
- (a) the responsible clinician has, by the close of the seventh day after the date on which the patient's compulsory treatment certificate was dated and signed, failed to apply, under **section 29(c)**, for a review of the person's compulsory status: 35

- (b) the court does not make a compulsory treatment order within the period prescribed by **section 31**:
- (c) the person’s compulsory treatment order expires:
- (d) the person is released from compulsory status by an order of a Judge or a responsible clinician: 5
- (e) the person becomes subject to an order under section 24, 25(1)(a) or (b), or 34 of the Criminal Procedure (Mentally Impaired Persons) Act 2003:
- (f) the person becomes subject to an inpatient order under Part 2 of the Mental Health (Compulsory Assessment and Treatment) Act 1992 or becomes a special patient as defined in section 2(1) of that Act: 10
- (g) the person is sentenced by a court to be detained in a prison.

Principles applying to exercise of powers

12 Principles applying to exercise of powers over patients

Every person and every court that exercises, or proposes to exercise, a power conferred by or under this Act in respect of a patient must be guided by the following principles: 15

- (a) where compulsion is necessary, the level of coercion used on patients should always be the least restrictive possible to enable effective treatment; and
- (b) the views of the patient and the views of the patient’s principal caregiver, welfare guardian (if the court has appointed one), and nominated person (if the patient has nominated one) should be ascertained and taken into account before the power is exercised, unless it is not reasonably practicable or in the best interests of the patient to do so; and 20
- (c) interferences with the rights of patients should be kept to a minimum; and 25
- (d) the interests of patients should remain at the centre of any decision making; and
- (e) the power should be exercised with—
 - (i) proper recognition of the importance and significance to the patient of the patient’s ties with his or her family, whānau, hapū, iwi, and family group; and 30
 - (ii) proper recognition of the contribution those ties make to the patient’s well-being; and
 - (iii) proper respect for the patient’s cultural and ethnic identity, language, and religious or ethical beliefs. 35

Compare: 1992 No 46 s 5

13 Additional principles applying to exercise of powers over children or young persons

Every person and every court that exercises, or proposes to exercise, a power conferred by or under this Act in respect of a patient who is a child or young person must be guided by any of the following additional principles that are relevant to the exercise or proposed exercise of the power: 5

- (a) wherever possible, the family, whānau, hapū, iwi, and family group of the child or young person should participate in the making of decisions affecting the child or young person and, accordingly, regard should be had to the views of the family, whānau, hapū, iwi, and family group: 10
- (b) wherever possible, the ties of the child or young person with his or her family, whānau, hapū, iwi, and family group should be maintained and strengthened:
- (c) a decision affecting the child or young person may be taken only after consideration of the likely impact of the decision— 15
 - (i) on the welfare of the child or young person; and
 - (ii) on the stability of the family, whānau, and family group of the child or young person:
- (d) consideration should be given to the wishes of the child or young person, to the extent that those wishes can reasonably be ascertained, and those wishes should be given the weight that is appropriate in the circumstances, having regard to the age, maturity, and culture of the child or young person: 20
- (e) decisions affecting the child or young person should, whenever practicable, be made and implemented within a time frame that is appropriate to the sense of time of the child or young person. 25

Compare: 1989 No 24 s 5

Part 2**Assessment and treatment of persons suffering from severe substance addiction** 30

Subpart 1—Assessment

14 Application for assessment

- (1) An applicant who believes that a person has a severe substance addiction may apply to the Area Director to have the person assessed under this subpart.
- (2) The applicant must be at least 18 years of age. 35

Compare: 1992 No 46 s 8

15 Application requirements

- (1) An application is made when the Area Director receives an application that complies with this section.
- (2) An application must—
 - (a) state that the applicant is 18 years of age or over; and 5
 - (b) state that the applicant has personally seen the person whom the applicant seeks to have assessed within the 5 days immediately before the date the application is made; and
 - (c) state the grounds on which the applicant believes that the person whom the applicant seeks to have assessed has a severe substance addiction; and 10
 - (d) be dated and signed by the applicant; and
 - (e) be accompanied by—
 - (i) a medical certificate under **section 17**; or
 - (ii) a memorandum under **section 18**. 15

Compare: 1992 No 46 s 8A

16 Assistance in arranging medical examination for application

- (1) At any time before making an application, the applicant may request the assistance of an authorised officer in arranging for a medical practitioner to examine the person whom the applicant seeks to have assessed. 20
- (2) The authorised officer must investigate the matter to the extent necessary to satisfy himself or herself that there are reasonable grounds to believe that the person whom the applicant seeks to have assessed meets the criteria set out in **section 7(a) and (b)**.
- (3) If the authorised officer considers that there are reasonable grounds to believe that the person meets the criteria set out in **section 7(a) and (b)**, he or she must make, or assist in making, arrangements for the person to be examined by a medical practitioner. 25
- (4) If, in any case to which **subsection (3)** applies, the authorised officer considers that a medical examination is urgently required in the person's own interests, the authorised officer must,— 30
 - (a) if a medical practitioner is available to go to the person, take all reasonable steps to ensure that the medical practitioner is able to examine the person; and
 - (b) if no medical practitioner is available to go to the person, try to get the person to go voluntarily to a medical practitioner. 35

Compare: 1992 No 46 s 38

17 Medical certificate

- (1) A medical practitioner may—
- (a) examine a person whom an applicant seeks to have assessed to investigate whether there are reasonable grounds to believe that the person meets the criteria set out in **section 7(a) and (b)**; and 5
 - (b) request the assistance of an authorised officer for the purposes of that examination.
- (2) If, after examining a person, the medical practitioner considers that there are reasonable grounds to believe that the person meets the criteria set out in **section 7(a) and (b)**, the medical practitioner must issue a medical certificate under this section. 10
- (3) The medical certificate must—
- (a) state that the medical practitioner has examined the person; and
 - (b) state the date of that examination; and
 - (c) state that the medical practitioner considers that there are reasonable grounds to believe that the person meets the criteria set out in **section 7(a) and (b)**; and 15
 - (d) set out full particulars of the grounds; and
 - (e) be dated and signed by the medical practitioner.
- (4) The medical practitioner must not sign a certificate if he or she is a relative of the applicant or the person whom the applicant seeks to have assessed. 20
- (5) Every medical certificate must state—
- (a) that the medical practitioner is not a relative of the person examined; and
 - (b) if the medical practitioner is not the applicant, that the medical practitioner is not a relative of the applicant. 25
- (6) A medical practitioner may make an application to have a person assessed and also sign the medical certificate if the medical practitioner is not a relative of that person.

Compare: 1992 No 46 s 8B

18 Memorandum by authorised officer 30

- (1) If attempts made by the authorised officer to have a medical practitioner examine the person have been unsuccessful, the authorised officer must, in a memorandum,—
- (a) describe the attempts that have been made to have the person examined by a medical practitioner; and 35
 - (b) explain why the attempts have been unsuccessful; and

- (c) state that the authorised officer considers that there are reasonable grounds to believe that the person meets the criteria set out in **section 7(a) and (b)**; and
- (d) set out full particulars of the grounds.
- (2) The authorised officer must date and sign the memorandum. 5
- 19 Arrangements for specialist assessment**
- (1) On receipt of an application under **section 14** for the assessment of a person, the Area Director, or an authorised officer acting with the authority of that Area Director, must, as soon as practicable, make the necessary arrangements for the person to be assessed by an approved specialist. 10
- (2) The arrangements required by **subsection (1)** include the following:
- (a) nominating the approved specialist who is to assess the person, not being the medical practitioner who signed the medical certificate under **section 17**:
- (b) determining, in consultation with that approved specialist, where and when the assessment is to be made: 15
- (c) giving the person to be assessed a written notice that—
- (i) requires him or her to attend at the place and time specified in the notice for the purposes of the assessment; and
- (ii) explains the purpose of the assessment; and 20
- (iii) states the name of the approved specialist:
- (d) ensuring that the contents of the notice given under **paragraph (c)** are explained to the person to be assessed in the presence of a member of the person’s family, or a caregiver of the person or anyone else concerned with the welfare of the person: 25
- (e) ensuring, if necessary, that appropriate arrangements are made to assist the person to be at the place where the specialist assessment is to be conducted at the required time.
- Compare: 1992 No 46 s 9
- 20 Certain approved specialists to undertake assessment of child or young person, if practicable** 30
- Wherever practicable, a specialist assessment of a child or young person must be conducted by an approved specialist who practises in the field of child or adolescent psychiatry or child or adolescent psychology.
- Compare: 1992 No 46 s 86 35

21 Assistance in arranging specialist assessment

If a person who has been given a notice under **section 19(2)(c)** refuses to attend at the time and place specified in the notice, an authorised officer may take all reasonable steps to—

- (a) take the person to the approved specialist named in the notice, including calling for Police assistance under **section 105** if necessary; and 5
- (b) ensure that the approved specialist is able to assess the person, including calling for Police assistance under **section 105** if necessary.

22 Requirements for specialist assessment

- (1) An assessment under this section must be made personally by an approved specialist. 10
- (2) In undertaking an assessment of a person, the approved specialist must first assess whether the person has a severe substance addiction.
- (3) If the approved specialist considers that the person has a severe substance addiction, the approved specialist must assess whether the person's capacity to make informed decisions about treatment for that addiction is severely impaired. 15
- (4) The approved specialist may make the assessment described in **subsection (3)** only if the approved specialist has—
 - (a) disclosed all the information a reasonable person would require to make an informed decision about the treatment; and 20
 - (b) discussed the information with the person; and
 - (c) given the person a reasonable opportunity to ask questions about any aspect of the treatment; and
 - (d) given the person a reasonable opportunity to discuss the treatment with the person's principal caregiver and welfare guardian (if the court has appointed one); and 25
 - (e) informed the person that, if the approved specialist finds that the criteria for compulsory treatment are met, the person is entitled to seek independent advice from another approved specialist under **section 56**. 30
- (5) If the approved specialist considers that the person's capacity to make informed decisions about treatment for the person's addiction is severely impaired, the approved specialist must assess whether—
 - (a) compulsory treatment of the person is necessary to enable the treatment to be provided; and 35
 - (b) appropriate treatment for the person is available.

- 23 Compulsory treatment certificate**
- (1) If, after completing an assessment of a person under **section 22**, an approved specialist considers that the criteria for compulsory treatment are met, the approved specialist must sign a compulsory treatment certificate in respect of the person. 5
- (2) The approved specialist must date and sign the certificate.
- (3) The certificate takes effect as soon as it is dated and signed.
- Compare: 1992 No 46 s 10
- 24 Restriction on signing compulsory treatment certificate for child or young person under 17 years** 10
- An approved specialist may sign a compulsory treatment certificate in respect of a child or young person ~~who is under 17 years of age~~—
- (a) only after the specialist has confirmed, with the department responsible for the administration of the Children, Young Persons, and Their Families Act 1989, whether that department has any involvement with the child or young person (and the extent of any involvement); and 15
- (b) only if satisfied that appropriate treatment for the severe substance addiction of the child or young person cannot be given in accordance with an order or other determination under the Children, Young Persons, and Their Families Act 1989. 20
- 25 Approved specialist to notify Area Director and arrange patient's detention**
- (1) As soon as practicable after an approved specialist dates and signs a compulsory treatment certificate, the approved specialist must—
- (a) notify the Area Director of the identity of the patient to whom the certificate relates: 25
- (b) after consultation with the Area Director, arrange for the patient to be detained ~~in an appropriate facility~~ a facility that is used for the purpose of providing health care services (within the meaning of the Health and Disability Services (Safety) Act 2001) until the patient is admitted to a treatment centre under **subpart 2**. 30
- (2) **Subpart 5** applies to the patient and their detention under this section.
- 26 Information to be given to patient and others**
- (1) As soon as practicable after the Area Director is notified under **section 25** of the identity of a patient, the Area Director must arrange for each person specified in **subsection (2)** to be given— 35
- (a) a copy of the compulsory treatment certificate; and

- (b) a written statement of the patient's rights and other entitlements under this Act.
- (2) The persons referred to in **subsection (1)** are—
- (a) the patient:
 - (b) the applicant: 5
 - (c) the patient's principal caregiver:
 - (d) the patient's welfare guardian (if the court has appointed one):
 - (e) the patient's nominated person (if the patient has nominated one):
 - (f) the medical practitioner who usually attends the patient:
 - (g) the district inspector: 10
 - (h) any person who is a guardian of a child of the patient.
- (3) The written statement must be in a form approved by the Director-General of Health.
- (4) The Area Director must also arrange for an oral explanation of the patient's rights and other entitlements to be given to the patient. 15
- (5) The Area Director must, if the patient is unable to communicate adequately in English but is able to communicate adequately in another language, arrange for the oral explanation to be given in the other language.

Compare: Drug and Alcohol Treatment Act 2007 s 16 (NSW)

27 If compulsory treatment certificate not signed, advice must be given 20

If, after completing an assessment of a person under **section 22**, the approved specialist considers that the criteria for compulsory treatment are not met, the approved specialist must, if he or she considers it appropriate, give advice on alternative options available for treating the person—

- (a) to the person; and 25
- (b) to the person's principal caregiver.

Compare: Drug and Alcohol Treatment Act 2007 s 12 (NSW)

Subpart 2—Imposition and review of compulsory status

28 Responsible clinician to be assigned

- (1) As soon as practicable after the Area Director is notified under **section 25** of the identity of a patient, the Area Director must assign a responsible clinician to the patient. 30
- (2) Wherever practicable, the Area Director must not assign as a patient's responsible clinician the approved specialist who signed the compulsory treatment certificate in respect of the patient. 35

- 29 Initial steps to be taken by responsible clinician**
- As soon as practicable after a responsible clinician is assigned to a patient, and in any case not later than the close of the seventh day after the patient’s compulsory treatment certificate is dated and signed, the responsible clinician must— 5
- (a) prepare a treatment plan for the patient; and
 - (b) arrange for the admission of the patient to a treatment centre in accordance with **section 30**; and
 - (c) apply to the court for a review of the compulsory status of the patient in accordance with **subpart 6**. 10
- 30 Detention and treatment in treatment centre**
- (1) The responsible clinician must direct that the patient be detained and treated in a treatment centre.
 - (2) Before giving the direction, the responsible clinician must— 15
 - (a) obtain the agreement of the manager of the treatment centre concerned; and
 - (b) take into account the wishes and preferences of the patient and the views of the following persons:
 - (i) the patient’s principal caregiver;
 - (ii) the patient’s welfare guardian (if the court has appointed one): 20
 - (iii) the patient’s nominated person (if the patient has nominated one).
 - (3) Before or on the patient’s admission to a treatment centre, the Area Director must ensure that—
 - (a) a notice is given to the patient that specifies the treatment centre and requires the patient to attend at the place and time specified in the notice for the purpose of the patient’s admission to the treatment centre: 25
 - (b) all reasonable steps are taken to notify the persons specified in **subsection (2)(b)(i) to (iii) and any person who is a guardian of a child of the patient** of the name, location, and contact details of the treatment centre in which the patient is or is to be detained: 30
 - (c) the following documents accompany the patient to the treatment centre:
 - (i) a copy of the compulsory treatment certificate;
 - (ii) a copy of the treatment plan prepared for the patient;
 - (iii) if applicable, a copy of the application made under **section 29(c)** or the compulsory treatment order: 35
 - (iv) any other documents relevant to the admission and future treatment of the patient.

- (4) If a patient who has been given a notice under **subsection (3)(a)** refuses to attend at the treatment centre at the time specified in the notice, an authorised officer may take all reasonable steps to take the patient to the treatment centre named in the notice, including calling for Police assistance under **section 105** if necessary. 5
- 31 Patient must be released if review not determined within prescribed period**
- (1) An application for review under **section 29(c)** must be considered and determined within the prescribed period.
- (2) For the purposes of this section, the **prescribed period** is the period of 10 days after the date on which the application is filed in the court or the period of days specified by the Judge under **subsection (3)**. 10
- (3) If the patient is older than 18 years of age, the Judge may specify a period of up to 20 days after the date on which the application is filed if the Judge—
- (a) has interviewed the patient under **section 75**; and
- (b) is satisfied that it is not practicable to determine the application within a period of 10 days. 15
- (4) If the application is not finally determined before the expiry of the prescribed period, the application is dismissed and the patient must be released from compulsory status.
- (5) The dismissal of an application to review the compulsory status of a person under **subsection (4)** does not preclude any further application under **section 14** in respect of the person. 20
- Compare: 1992 No 46 s 15
- 32 Court may make compulsory treatment order**
- (1) On an application for review under **section 29(c)**, the court must determine whether, in relation to the patient, the criteria for compulsory treatment are met. 25
- (2) If the Judge is satisfied that the criteria for compulsory treatment are met, the Judge may, having regard to all the circumstances of the case, continue the compulsory status of the patient by making a compulsory treatment order. 30
- (3) The compulsory treatment order expires on the close of the 56th day after the date on which the patient's compulsory treatment certificate was signed, and may be extended, under **section 47**, for a further 56 days.
- (4) If the Judge is not satisfied that the criteria for compulsory treatment are met, the Judge must dismiss the application and order that the patient be immediately released from compulsory status. 35

- 33 Restriction on making compulsory treatment order in respect of child or young person ~~under 17 years~~**
- The court may make a compulsory treatment order for a child or young person ~~who is under 17 years of age~~ only if satisfied that appropriate treatment for the severe substance addiction of the child or young person cannot be given pursuant to an order or other determination under the Children, Young Persons, and Their Families Act 1989. 5
- 34 Right to apply to court for urgent review of patient’s status**
- (1) A patient or any person specified in **subsection (2)** may at any time apply to the court for an urgent review of the patient’s status on any of the following grounds: 10
- (a) the criteria for compulsory treatment are not, or are no longer, met;
 - (b) in the case of a patient who is not subject to a compulsory treatment order, the compulsory treatment certificate should not have been given.
- (2) The persons referred to in **subsection (1)** are— 15
- (a) the patient’s principal caregiver:
 - (b) the patient’s welfare guardian:
 - (c) the patient’s nominated person:
 - (d) a lawyer of the patient:
 - (e) the applicant who applied, under **section 14**, to have the patient assessed: 20
 - (f) the medical practitioner who usually attended the patient immediately before the patient was required to undergo compulsory treatment:
 - (g) the responsible district inspector.
- (3) If the patient or a person specified in **subsection (2)** has previously made an application under this section for an urgent review of the patient’s status, a Judge may, without a hearing, decline to hear the application if there is no material before the court to indicate that the condition of the patient has changed. 25
- (4) On a review under this section, the Judge must— 30
- (a) consider whether, in relation to the patient, the criteria for compulsory treatment are met; and
 - (b) if not satisfied that the criteria for compulsory treatment are met, order that the patient be released from compulsory status.

Subpart 3—Compulsory treatment of patients

- 35 Objective of compulsory treatment** 35
- The objective of compulsory treatment given to a patient is—

- (a) to facilitate the stabilisation of the patient through medical treatment, including medically managed withdrawal; and
- (b) if possible, to restore the patient's capacity to make informed decisions about the patient's treatment and to give the patient an opportunity to engage in voluntary treatment. 5
- 36 Requirement to accept treatment**
- (1) A patient must accept the treatment properly given to the patient under this Act.
- (2) A patient must comply with every lawful direction given by or on behalf of the responsible clinician or by or on behalf of the manager of the treatment centre in which the patient is detained. 10
- 37 Treatment given or authorised by responsible clinician**
- (1) The responsible clinician may, subject to this Act, give, or authorise the giving of, any treatment (including any medication) that the responsible clinician thinks fit for the treatment of the patient's severe substance addiction. 15
- (2) A responsible clinician who gives, or authorises the giving of, any medication to a patient under this Act must—
- (a) have due regard to the possible effects of the medication; and
- (b) give, or authorise the giving of, the minimum medication, consistent with proper care, to ensure that the patient is not prevented, by reason of that medication, from communicating adequately with any other person who may be engaged in any proceeding to represent the patient. 20
- (3) To avoid doubt, this section does not authorise a responsible clinician to prescribe any treatment (including any medication) that the responsible clinician is not otherwise authorised to prescribe. 25
- 38 Requirement to stay in treatment centre**
- (1) A patient must not leave the treatment centre in which he or she is detained except in accordance with this Act.
- (2) A patient who is released from compulsory status must not be further detained in a treatment centre. 30
- 39 Leave of absence on compassionate, medical, or other grounds**
- (1) The responsible clinician may permit the patient to be absent from a treatment centre for any period, and on the conditions, that the responsible clinician thinks fit.
- (2) Permission may be given on any grounds the responsible clinician thinks fit, including, for example, compassionate grounds or that the patient requires medical treatment. 35

- (3) The responsible clinician must not permit the absence unless the responsible clinician is satisfied that, as far as is practicable, adequate measures have been taken to prevent the patient from causing harm to himself or herself.

40 Return of patient

If a patient is absent without leave from the treatment centre in which he or she is required to be detained, or is absent from that treatment centre after a period of leave ends, an authorised officer may take all reasonable steps to take the patient back to the treatment centre, including calling for Police assistance under **section 105** if necessary. 5

41 Transfer to another treatment centre 10

- (1) The responsible clinician of a patient who is detained in a treatment centre may direct the transfer of the patient to another treatment centre if the clinician is satisfied that the transfer of the patient to the other treatment centre is necessary for, or likely to be beneficial to, the patient’s treatment.

- (2) Before directing the transfer of a patient to another treatment centre, the responsible clinician must— 15

- (a) obtain the agreement of the manager of the other treatment centre; and
- (b) take into account the wishes and preferences of the patient and the views of the following persons:

- (i) the patient’s principal caregiver: 20
- (ii) the patient’s welfare guardian (if the court has appointed one):
- (iii) the patient’s nominated person (if the patient has nominated one).

- (3) If the responsible clinician directs the transfer of a patient, the clinician must notify the Area Director responsible for the area in which the other treatment centre is located. 25

42 Condition of patient to be kept under review

- (1) The responsible clinician must ensure that clinical reviews of the patient’s condition are conducted at regular intervals.

- (2) For the purposes of a clinical review, the responsible clinician must—

- (a) examine the patient; and 30
- (b) consult 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) The responsible clinician must consider the patient’s treatment plan in light of the reviews and make any adjustments or additions to the treatment plan that the clinician thinks fit. 35

43 Release from compulsory status

- (1) The responsible clinician must promptly order, in writing, that the patient be released from compulsory status if the responsible clinician is satisfied that—
- (a) the criteria for compulsory treatment are no longer met; or
 - (b) no useful purpose would be served by the further compulsory treatment of the patient. 5
- (2) An order under **subsection (1)** takes effect as soon as a copy of the order is given to the patient.
- (3) If a responsible clinician makes an order under **subsection (1)** before the responsible clinician has taken the steps described in **section 29**, the responsible clinician is not required to take those steps. 10

44 Plan for future treatment and care

- (1) The responsible clinician must, if practicable, prepare a plan for the patient's release from compulsory status.
- (2) The plan must set out the responsible clinician's recommendation for future treatment, follow-up care, and any other action that the clinician considers appropriate. 15
- (3) In preparing the plan, the responsible clinician must take all reasonably practicable steps to ensure that the following are consulted:
- (a) the patient: 20
 - (b) the patient's principal caregiver:
 - (c) the patient's welfare guardian (if the court has appointed one):
 - (d) the patient's nominated person (if the patient has nominated one):
 - (e) any agency involved in providing relevant services to the patient.
- (4) The responsible clinician must take all reasonably practicable steps to provide the persons specified in **subsection (3)(a) to (d)** with appropriate information about future treatment and follow-up care. 25

Subpart 4—Extension of compulsory status in case of patients with brain injuries

45 Review where patient appears to suffer from brain injury 30

- (1) If, at any time in the period beginning 21 days before the date of the expiry of a patient's compulsory treatment order, the responsible clinician considers that there are reasonable grounds to believe that the patient appears to suffer from a brain injury, the responsible clinician must review the condition of the patient.
- (2) The responsible clinician must record in a report the findings made on the review. 35

- 46 Application for extension of compulsory treatment order**
- (1) If, after completing the review of the patient under **section 45**, the responsible clinician considers that the criteria for compulsory treatment continue to be met and that there are reasonable grounds to believe that the patient suffers from a brain injury, the responsible clinician may apply to the court to extend the compulsory treatment order. 5
- (2) An application to extend the compulsory treatment order must be made within 14 days before the date of the expiry of the compulsory treatment order that applies to the patient.
- (3) If the application is not determined before the expiry of the compulsory treatment order, that order is extended until the earlier of— 10
- (a) the close of the day on which the application is determined or withdrawn; and
- (b) the close of the 14th day after the date on which the compulsory treatment order would, but for this subsection, have expired. 15
- (4) If, at any time during the period that the order is treated as continuing in effect in accordance with **subsection (3)**, the responsible clinician considers that reasonable grounds to believe the patient suffers from a brain injury do not exist, the responsible clinician must promptly order, in writing, that the patient be released from compulsory status. 20
- (5) An order under **subsection (4)** takes effect as soon as a copy of the order is given to the patient.
- 47 Court may extend order**
- (1) The court may, by order, extend the compulsory treatment order if satisfied that,— 25
- (a) in relation to the patient, the criteria for compulsory treatment continue to be met; and
- (b) there are reasonable grounds to believe that the patient suffers from a brain injury.
- (2) If a compulsory treatment order is extended under **subsection (1)**, the order expires on the close of the 56th day after the date on which the order would, but for the extension, have expired. 30
- (3) The patient's compulsory status continues until the extended order expires (subject to **sections 34(4), 43, 48(2), and 75(6)**).
- 48 Steps to be taken after extension of order** 35
- (1) Before the close of the 28th day after the court orders the extension of a patient's compulsory treatment order, the responsible clinician must—
- (a) prepare an updated treatment plan for the patient; and

- (b) take steps to investigate whether an actual brain injury can be confirmed or excluded; and
 - (c) make arrangements for the future treatment and care of the patient in accordance with **section 44**.
- (2) If, at any time after the extension of the patient's compulsory treatment order, the responsible clinician considers that reasonable grounds to believe the patient suffers from a brain injury do not exist, the responsible clinician must promptly order, in writing, that the patient be released from compulsory status. 5
- (3) An order under **subsection (2)** takes effect as soon as a copy of the order is given to the patient. 10

Subpart 5—Rights of patients

Rights applicable to all patients

49 Right to nominate person to protect patient's interests

- (1) A patient may at any time nominate any person who is 18 years of age or older to protect his or her interests under this Act. 15
- (2) The patient may revoke or vary the nomination at any time.
- (3) The patient must make the nomination, variation, or revocation by notifying, in writing or orally, 1 of the following:
- (a) the Area Director or any delegate of the Area Director:
 - (b) the patient's responsible clinician: 20
 - (c) the manager of the treatment centre in which the patient is detained or any person employed in that centre.
- (4) A person who is, under **subsection (3)**, notified orally must promptly record the notification in writing.
- (5) If, under this section, a person described in **subsection (3)** is notified in writing or makes a written record of an oral notification, the person must ensure that the written notification or the written record is promptly given to the Area Director, the patient's responsible clinician, and the manager of the treatment centre in which the patient is detained. 25

Compare: Drug and Alcohol Treatment Act 2007 s 13 (NSW) 30

50 Patient to be informed of his or her rights

Every patient is entitled to be kept informed of his or her rights as a patient, and, in particular, of—

- (a) his or her legal status as a patient; and
- (b) his or her right to apply for a review of his or her compulsory status; and 35
- (c) the functions and duties of district inspectors.

51	Principal caregiver, welfare guardian, and nominated person to be informed of events affecting patient	
(1)	If any of the events described in subsection (2) occur in relation to a patient, the responsible clinician must take all reasonably practicable steps to notify the following of the event:	5
	(a) the patient’s principal caregiver:	
	(b) the patient’s welfare guardian (if the court has appointed one):	
	(c) the patient’s nominated person (if the patient has nominated one):	
	(d) any person who is a guardian of a child of the patient:	
	(e) any agency involved in providing relevant services to the patient.	10
(2)	The events are—	
	(a) the patient is absent from the treatment centre without leave or fails to return after a period of leave ends:	
	(b) the patient is transferred to another treatment centre:	
	(c) the patient is released from compulsory status:	15
	(d) an application is made under section 46(1) to extend the duration of the patient’s compulsory treatment order.	
(3)	The responsible clinician must give the notice as soon as practicable after becoming aware that the event has occurred.	
(4)	If the patient is transferred to another treatment centre, the responsible clinician must also state in the notice the name, address, and contact details of that other treatment centre.	20
	Compare: Drug and Alcohol Treatment Act 2007 s 19 (NSW)	
52	Right to be dealt with in accordance with objective of compulsory treatment and with principles	25
	Every patient is entitled to be dealt with in a manner that accords with the spirit and intent of sections 12 and 35 and, in the case of a patient who is a child or young person, with the spirit and intent of section 13 .	
	Compare: 1992 No 46 s 65	
53	Right to treatment	30
	Every patient is entitled to—	
	(a) medical treatment and other health care appropriate to his or her condition; and	
	(b) the general treatment and care that the patient would be entitled to receive if he or she were not subject to compulsory status.	35
	Compare: 1992 No 46 s 66	

54 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.

55 Rights in case of visual or audio recording

5

(1) Every patient is entitled to be informed if it is intended to make or use a visual or audio recording of the following matters:

- (a) an interview with the patient;
- (b) an aspect of the treatment or care of the patient.

(2) Nothing referred to in **subsection (1)** may be done without the prior consent of the patient or a guardian of the patient or, if the patient is dead, the patient's personal representative. 10

Compare: 1992 No 46 s 68

56 Right to independent advice from approved specialist

(1) Every patient is entitled to seek a consultation with an approved specialist of the patient's choice in order to obtain a second opinion about the patient's condition. 15

(2) ~~If the approved specialist agrees to the consultation, the approved specialist must be permitted access to the patient when he or she requests to see the patient.~~ 20

(2) If the approved specialist agrees to the consultation, the approved specialist—

- (a) must be permitted access to the patient when he or she requests to see the patient; and
- (b) must provide his or her opinion about the patient's condition as soon as practicable. 25

Compare: 1992 No 46 s 69

57 Right to legal advice

(1) Every patient is entitled to request a lawyer to advise the patient on his or her status and rights as a patient, or on any other legal issue.

(2) ~~If the lawyer agrees to act for the patient, the lawyer must be permitted access to the patient when he or she requests to see the patient.~~ 30

(2) If the lawyer agrees to act for the patient, the lawyer—

- (a) must be permitted access to the patient when he or she requests to see the patient; and
- (b) must provide his or her legal advice as soon as practicable. 35

Compare: 1992 No 46 s 70

58 Right to company

Every patient is entitled to the company of others.

Compare: 1992 No 46 s 71(1)

59 Right to receive visitors and make and receive telephone calls

- (1) Every patient is entitled, at reasonable times and at reasonable intervals, to receive visitors and make and receive telephone calls, except if, in the opinion of the responsible clinician, a visit or call would be detrimental to the interests of the patient or to his or her treatment. 5
- (2) Nothing in this section limits or affects anything in **section 56** or **57**.

60 Right to receive and send mail and electronic communications 10

- (1) Every patient is entitled to receive and to send, in a manner that safeguards the patient’s privacy,—
 - (a) mail; and
 - (b) electronic communications.
- (2) **Subsection (1)(b)** applies only if the patient has, or has access to, a computer or electronic device that enables electronic communications to be received and sent. 15
- (3) This section is subject to **section 61**.

Compare: 1992 No 46 ss 73, 74

Limits on right to receive and send mail and electronic communications 20

61 Checking and withholding mail and electronic communications

- (1) If there are reasonable grounds to consider that any mail or electronic communications could be detrimental to the interests and treatment of a patient or of other persons in the treatment centre, the responsible clinician may direct that the mail or electronic communications be checked. 25
- (2) For the purpose of checking electronic communications, the responsible clinician may also direct that any computer or device in the patient’s possession be taken from the patient.
- (3) **Subsection (1)** does not apply to mail or electronic communications with the patient’s lawyer. 30
- (4) If mail or electronic communications are checked under **subsection (1)** and the responsible clinician considers that mail or electronic communications could be detrimental to the interests and treatment of the patient or of other persons in the treatment centre, the responsible clinician may direct that—
 - (a) the patient not receive or send mail or electronic communications: 35
 - (b) the patient not receive or send mail or electronic communications of a particular class:

- (c) the patient receive or send mail or electronic communications subject to conditions or under supervision.
- (5) For the purposes of a direction under **subsection (4)** that relates to electronic communications, the responsible clinician may direct that any computer or device in the patient's possession be taken from the patient or that the patient's access to the computer or device be restricted. 5
- (6) A computer or device taken from a patient under **subsection (5)** must be returned to the patient when he or she is released from compulsory status.
- (7) This section is subject to **sections 62 and 63**.
Compare: 1992 No 46 ss 123(1), (2), 124(1)–(3) 10
- 62 Approval required to check and withhold mail and electronic communications**
- (1) Any direction given under **section 61** requires the prior approval of the Area Director.
- (2) Before approving a direction under **section 61(5)** that a computer or device be taken from a patient, the Area Director must be satisfied that the patient has adequate means of receiving electronic communications from and of sending electronic communications to the patient's lawyer and to the persons described in **section 63(2)**. 15
- 63 Mail and electronic communications not to be withheld if sent by or to certain people** 20
- (1) A direction under **section 61(4)** must not prevent a patient from receiving mail or electronic communications from or sending mail or electronic communications to any of the persons described in **subsection (2)**.
- (2) The persons referred to in **subsection (1)** are— 25
- (a) a member of Parliament:
- (b) a Judge or an officer of a court, or a member or an officer of another judicial body:
- (c) an Ombudsman:
- (d) the Privacy Commissioner: 30
- (e) the Health and Disability Commissioner:
- (f) a Human Rights Commissioner:
- (g) in the case of a patient who is a child or young person, the Children's Commissioner:
- (h) the Director-General of Health: 35
- (i) the Director:
- (j) a district inspector:
- (k) a lawyer:

- (l) an approved specialist from whom the patient has sought a second opinion about the patient’s condition.

Compare: 1992 No 46 s 123(3)

64 Procedure where mail and electronic communications withheld

- (1) If any mail or electronic communications are not received by, or sent by or on behalf of, a patient in accordance with a direction under **section 61(4)**, the patient must be informed of that fact, unless the responsible clinician is satisfied that to do so would be detrimental to the interests of the patient. 5
- (2) If an item of mail is not received by a patient in accordance with a direction under **section 61(4)**, the item must be dealt with as follows: 10
 - (a) if the address of the sender is known to the responsible clinician, it must be returned to the sender:
 - (b) if the address of the sender is not known to the responsible clinician, it must be—
 - (i) sent to the district inspector; or 15
 - (ii) produced to the district inspector when he or she next visits the treatment centre after the receipt of the item.
- (3) If an electronic communication is not received by a patient in accordance with a direction under **section 61(4)**, the sender of the communication must, wherever practicable, be informed of that fact unless the responsible clinician is satisfied that to do so would be detrimental to the interests of the patient or to the interests of the sender. 20

Additional rights of children or young persons

65 Child or young person entitled to have adult present

- Every child or young person who is examined by a medical practitioner under **section 17**, or is assessed by an approved specialist under **section 20**, or is interviewed by a Judge under **section 75**, is entitled to have present during that examination or interview 1 adult who consents to be present and who is nominated for that purpose by— 25
- (a) that child or young person; or 30
 - (b) if it is impracticable for the child or young person to make such a nomination, the Area Director or an authorised officer.

66 Parents and others to be informed of decisions

- (1) A person who takes any action, or makes any decision, under this Act that significantly affects any patient who is a child or young person, must ensure that, where practicable, the following persons are informed, as soon as practicable, of that action or decision and of the reasons for it: 35

- (a) every person who is a parent or guardian of, and any other person who has the day-to-day care of, the child or young person:
- (b) the child or young person.
- (2) It is not necessary to inform a child or young person of any action or decision if— 5
- (a) the child or young person is incapable of understanding it; or
- (b) it is plainly not in the child's or young person's interests to be so informed.
- (3) The information required by **subsection (1)** to be given to any person must be given— 10
- (a) orally and, where practicable, in writing; and
- (b) where practicable, in a manner and in language that the person understands.
- (4) If, at the time the child or young person became subject to compulsory status, the child or young person was in the custody or under the guardianship or in the care of the chief executive or any other person under the Children, Young Persons, and Their Families Act 1989, the information described in **subsection (1)** must also be given, in writing, to the chief executive or to that other person. 15

Complaints 20

67 Complaint of breach of rights

- (1) If 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 must be referred to a district inspector for investigation.
- (2) If, after talking with the patient, any person who made the complaint on behalf of the patient, and everyone else involved in the case, and generally investigating the matter, the district inspector is satisfied that the complaint has substance, the district inspector must report the matter to the Area Director, together with any recommendations that the district inspector thinks fit, and the Area Director must take all steps that are necessary to rectify the matter. 25 30
- (3) On concluding any investigation under this section, the district inspector must also inform the patient or other complainant of his or her findings.

Subpart 6—Procedure

68 Application of this subpart

This subpart applies to applications to the court under any of **sections 29(c), 34(1), and 46(1)**. 35

69 Meaning of party

In this subpart, **party**, —

(a) in relation to an application under **section 29(c) or 46(1)**, means—

(i) the patient:

(ii) the responsible clinician: 5

(b) in relation to an application under **section 34(1)**, means—

(i) the applicant:

(ii) if the patient is not the applicant, the patient:

(iii) the responsible clinician.

70 Jurisdiction of Family Court 10

(1) Every application to which this subpart applies must be heard and determined by the Family Court.

(2) If an application to which this subpart applies needs to be determined within a particular period and it is not practicable to have the application determined in that period by a Family Court Judge, any District Court Judge may exercise the jurisdiction of the Family Court— 15

(a) by hearing the application, if that is necessary; and

(b) by determining the application.

Compare: 1992 No 46 s 17

71 Persons entitled to appear and be heard 20

(1) The following persons may appear and be heard at every hearing of an application:

(a) the parties:

(b) the patient’s principal caregiver:

(c) the patient’s welfare guardian: 25

(d) the patient’s nominated person:

(e) if the patient is a child or young person, each parent or guardian of the child or young person:

(f) any lawyer of the patient:

(g) the person who applied, under **section 14**, to have the patient assessed: 30

(h) the medical practitioner who usually attended the patient immediately before the patient was required to undergo compulsory treatment:

(i) the Area Director:

(j) the responsible district inspector:

(k) any other person the court considers should be entitled to appear and be heard because of that person’s interest in the welfare of the patient. 35

- (2) **Subsection (1)** is subject to **section 77(3)**.
- 72 Service where application made by responsible clinician**
- (1) A responsible clinician who applies for a review of a patient's compulsory status under **section 29(c)** must, as soon as practicable,—
- (a) serve the application and the documents specified in **subsection (2)** on the patient and the district inspector; and 5
- (b) take reasonable steps to provide the application and the documents specified in **subsection (2)** to every other person entitled to appear and be heard on the application.
- (2) The documents referred to in **subsection (1)** are— 10
- (a) the patient's compulsory treatment certificate:
- (b) a copy of the treatment plan prepared for the patient:
- (c) a statement of the nature of compulsory status:
- (d) a statement of the right of the person receiving the documents to appear before the court and be heard on the application. 15
- (3) A responsible clinician who applies for an extension of a patient's compulsory treatment order under **section 46(1)** must, as soon as practicable,—
- (a) serve the application and the documents specified in **subsection (4)** on the patient and the district inspector; and
- (b) take reasonable steps to provide the application and the documents specified in **subsection (4)** to every other person entitled to appear and be heard on the application. 20
- (4) The documents referred to in **subsection (3)** are—
- (a) the patient's extended compulsory treatment certificate:
- (b) a copy of the report on the patient prepared under **section 45(2)**: 25
- (c) a statement explaining the effect of **section 47**:
- (d) a statement of the right of the person receiving the documents to appear before the court and be heard on the application.
- 73 Service where application made by, or on behalf of, patient**
- (1) A person who makes an application under **section 34(1)** must, as soon as practicable,— 30
- (a) serve the application on the responsible clinician and the district inspector; and
- (b) take reasonable steps to provide the application to every other person entitled to appear and be heard on the application. 35
- (2) The Area Director must do the things required by **subsection (1)** instead of the applicant if—

- (a) the application is made by a patient; or
- (b) the applicant so requests.

74 Responsibility of district inspector on application

- (1) On being served with an application, the district inspector must—
 - (a) communicate with the patient and find out, if possible, whether the patient wants the district inspector to appear before the court to be heard on the application; and 5
 - (b) decide, having regard to any views expressed by the patient, whether the district inspector should appear before the court to be heard on the application. 10
- (2) For the purposes of **subsection (1)(a)**, the district inspector must, so far as practicable, communicate with the patient orally.

75 Judge to interview patient before application for review heard

- (1) Before an application under **section 29(c) or 34(1)** is heard, a Judge must interview the patient as soon as practicable and not later than 7 days after the application is filed in the court. 15
- (2) The patient may be interviewed at—
 - (a) the treatment centre where the patient is; or
 - (b) if that is not practicable, the nearest practicable place.
- (3) The interview may be conducted by means of a video link. 20
- (4) The Judge must do the following things before and during the interview, as appropriate and practicable:
 - (a) identify himself or herself to the patient; and
 - (b) explain to the patient the purpose of the interview; and
 - (c) discuss with the patient the patient’s situation, the proposed course of treatment, and the patient’s views on these matters. 25
- (5) As well as interviewing the patient, the Judge must consult with the responsible clinician, and any other persons the Judge thinks fit, concerning the patient’s condition.
- (6) If the Judge is satisfied that the criteria for compulsory status are not met, the Judge must— 30
 - (a) order that the patient be immediately released from that compulsory status; and
 - (b) grant or dismiss the application accordingly.
- (7) If the patient is not immediately released under **subsection (6)**, the Judge who interviews the patient must, wherever possible, hear the application. 35

76 Attendance of patient at hearing

- (1) The patient must be present throughout the hearing of an application unless—
- (a) the patient is excused or excluded by the court under **subsection (2) or (3)**; or
 - (b) in the case of an application under **section 29(c) or 34(1)**, the Judge who interviews the patient in accordance with **section 75** certifies that it would be in the best interests of the patient to excuse the patient from attending the hearing. 5
- (2) The court may excuse the patient from attending the hearing of an application 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. 10
- (3) The court may exclude the patient from attending the hearing of an application if it is satisfied that the patient is causing a disturbance that makes it impracticable to continue with the hearing in his or her presence. 15
- (4) A discretion conferred by this section may be exercised at any stage of the hearing.

77 Representation of persons entitled to be heard, and special rights of patient

- (1) Every person who is entitled to appear and be heard at a hearing of an application may be represented by a lawyer, and may call witnesses, and may cross-examine every witness called by another party. 20
- (2) If the patient is present and appears capable of addressing the court, the court must give the patient an opportunity to do so.
- (3) While the patient is addressing the court under **subsection (2)**, the court may, if it thinks it desirable to do so, require any of the following persons to withdraw from the court: 25
- (a) a parent of the patient:
 - (b) a guardian of the patient:
 - (c) the patient's principal caregiver: 30
 - (d) the patient's welfare guardian:
 - (e) the patient's nominated person:
 - (f) the person who applied, under **section 14**, to have the patient assessed:
 - (g) a person with whom the patient was living before the patient became subject to compulsory status: 35
 - (h) the manager, or an employee or agent, of a treatment centre in which the patient is, or has been, detained:

- (i) a lawyer representing a person referred to in any of **paragraphs (a) to (h)**.

Compare: 1992 No 46 s 20

78 Court may call for report on patient

- (1) The court may, if it is satisfied that it is necessary for the proper determination of an application, request any person it considers qualified to do so to prepare a report on any relevant aspect of the patient’s condition. 5
- (2) However, a report under **subsection (1)** may address the question of whether, in relation to the patient, the criteria for compulsory treatment is met or continues to be met only if the report is prepared by an approved specialist. 10
- (3) Without limiting the generality of **subsection (1)**, in the case of a child or young person, the court may direct the chief executive to locate the information, if any, that the department responsible for the administration of the Children, Young Persons, and Their Families Act 1989 holds about the background, circumstances, and needs of the child or young person and to provide that information to the court. 15
- (4) In deciding whether to request a report under **subsection (1)**, the court may ascertain and have regard to the wishes of the patient and any other party.
- (5) The Registrar must give a copy of a report obtained under this section to the lawyers for the parties or, if a party is not represented by a lawyer, to that party. 20
- (6) The court must order that a copy of a report given to a lawyer under **subsection (5)** must not be given or shown to the person for whom the lawyer is acting if the court has reason to believe that disclosure of the contents of the report may pose a serious threat to the health or safety of any other person.
- (7) If the court requests a person to prepare a report, the court must make an order for the fees and expenses of the person— 25
- (a) to be paid by 1 or more specified parties; or
- (b) to be met from any appropriation by Parliament for the purpose.
- (8) Before making an order under **subsection (7)(a)**, the court must hear the party or parties affected. 30

Compare: 1992 No 46 s 21(1)–(4), (8)

79 Evidence on report

- (1) If a report has been prepared under **section 78**, every party may give evidence on a matter referred to in the report.
- (2) The court may call the person making the report as a witness, either on its own initiative or on the application of a party. 35

Compare: 1992 No 46 s 21(5), (6)

- 80 Court not bound by rules of evidence**
- In an application to which this subpart applies, or in any appeal or review arising out of the application, the court may receive any evidence that it thinks fit, whether it is admissible in a court of law or not.
- Compare: 1992 No 46 s 22 5
- 81 Appointment of lawyer to represent child or young person**
- If an application to which this subpart applies relates to a child or young person who is not represented by a lawyer, the court or the Registrar of the court must, as soon as practicable after the application has been filed, appoint a lawyer to represent the child or young person. 10
- 82 Power of court to call witnesses**
- (1) The court may, on its own initiative, 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 has the same privilege to refuse to answer any question as the witness would have if called by a party. 15
- (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.
- (4) Sections 159 and 161 to 165 of the Criminal Procedure Act 2011, so far as they are applicable and with all necessary modifications, apply with respect to a person called as a witness by the court under this section as if that person had been called by a party. 20
- (5) The expenses of a witness called by the court under this section must be met in the first instance, in accordance with the prescribed scale of witnesses' expenses, out of public money appropriated by Parliament for the purpose.
- Compare: 1992 No 46 s 23 25
- 83 Court may dispense with hearing in certain circumstances**
- Despite any other provision of this subpart, the court may determine an application to which this subpart applies without a formal hearing if it is satisfied that no person wishes to be heard in respect of the application.
- 84 Interpreters to be provided** 30
- (1) The court must ensure that the services of an interpreter are provided for a patient if—
- (a) one of the following applies:
- (i) the first or preferred language of the patient is a language other than English, including Māori and New Zealand Sign Language; 35
or
- (ii) the patient is unable, because of disability, to understand spoken language; and

- (b) it is practicable to provide the services of an interpreter.
- (2) The court must ensure, as far as is reasonably practicable, that the interpreter provided is competent.

Compare: 1992 No 46 s 6

85 Appeals from decisions of Family Courts 5

- (1) If, in an application to which this subpart applies, the Family Court has made or has refused to make an order, or has otherwise determined or has dismissed the application, a party may appeal to the High Court.
- (2) The High Court Rules and sections 74 to 76 of the District Courts Act 1947, with all necessary modifications, apply to an appeal under **subsection (1)** as if it were an appeal under section 72 of that Act. 10
- (3) Despite **subsection (2)**, on the appellant’s application without notice, the Family Court may order that the appellant must not be required under section 74(1) of the District Courts Act 1947 to give the Registrar of the High Court security for costs. 15

Subpart 7—Administration and public assistance

Office holders

86 Director of Addiction Services

- (1) The Director-General of Health must appoint, under the State Sector Act 1988, a Director of Addiction Services. 20
- (2) The Director is responsible for the general administration of this Act under the direction of the Minister and the Director-General of Health.
- (3) For the purposes of performing his or her functions, the Director—
 - (a) may, at any time and without previous notice, visit any treatment centre; and 25
 - (b) must be given access to every part of the treatment centre and to every patient in it.
- (4) **Section 99(2) and (3)** applies in relation to a Director’s visit to a treatment centre under **subsection (3)** as if the Director were a district inspector.

87 Director may delegate functions, duties, and powers 30

- (1) The Director may delegate any of his or her functions, duties, and powers, except this power of delegation, to a person who is suitably qualified to exercise or perform them.
- (2) The delegate may exercise or perform the functions, duties, and powers in the same manner and with the same effect as if they had been conferred on the delegate directly by this Act. 35
- (3) **Section 120** applies to a delegation made under this section.

88 Directors of Area Addiction Services in specified areas

- (1) The Director must—
- (a) appoint as many persons to be Directors of Area Addiction Services (**Area Directors**) in specified areas as the Director considers necessary; and 5
 - (b) determine the terms and conditions on which each Area Director is appointed, including every area for which each Area Director is responsible; and
 - (c) publish a notice in the *Gazette* notifying each appointment and any area for which the appointee is responsible. 10
- (2) A person appointed under this section may at any time be suspended or removed from office by the Director for any of the following proved to the satisfaction of the Director:
- (a) failure to perform adequately the duties of the office:
 - (b) neglect of duty: 15
 - (c) misconduct:
 - (d) inability to perform the duties of the office.
- (3) For the purposes of performing his or her functions, an Area Director—
- (a) may, at any time and without previous notice, visit any treatment centre located in the area for which that Area Director is responsible; and 20
 - (b) must be given access to every part of the treatment centre and to every patient in it.
- (4) **Section 99(2) and (3)** applies in relation to an Area Director's visit to a treatment centre under **subsection (3)** as if the Area Director were a district inspector. 25
- (5) Every Area Director must, every 3 months,—
- (a) prepare a written report on the exercise and performance of his or her functions, duties, and powers under this Act for the previous 3 months; and
 - (b) give the report to the Director. 30

89 Area Director may delegate functions, duties, and powers

- (1) An Area Director may delegate any of his or her functions, duties, and powers, except this power of delegation, to a person who—
- (a) is suitably qualified to exercise or perform them; and
 - (b) is approved for the purpose by the Director. 35
- (2) The delegate may exercise or perform the functions, duties, and powers—
- (a) only when the Area Director 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.
- (3) An Area Director who makes a delegation, or his or her delegate, must tell the Director—
- (a) when the Area Director 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 5
- (b) who the delegate is; and
- (c) when the delegation is revoked.
- (4) **Section 120** applies to a delegation made under this section.
- 90 District inspectors** 10
- (1) For the purposes of this Act, the Minister must appoint as many lawyers as the Minister thinks fit to be district inspectors in respect of the locations that the Minister specifies in the instrument of appointment.
- (2) No lawyer appointed under this section may be an officer, a member, or an employee of a treatment centre within any of the locations to which the person is appointed. 15
- (3) The Minister may, with the concurrence of the Minister of Finance,—
- (a) fix the remuneration of district inspectors, either generally or in any particular case; and
- (b) vary the amount or nature of such remuneration. 20
- (4) A person appointed under this section as a district inspector holds office for a term of 3 years.
- (5) A person appointed under this section—
- (a) is eligible for reappointment:
- (b) may at any time be suspended or removed from office by the Minister for any of the following grounds proved to the satisfaction of the Minister: 25
- (i) failure to perform adequately the duties of the office:
- (ii) neglect of duty:
- (iii) misconduct: 30
- (iv) inability to perform the duties of the office.
- (6) Despite **subsection (4)**, the Minister may appoint a district inspector for a term that is shorter than 3 years to fill a short-term vacancy in the office of district inspector in any location.
- 91 Authorised officers** 35
- (1) For the purposes of this Act, every Area Director must designate sufficient health professionals as authorised officers within the area of that Area Director.

- (2) The Area Director may designate a health professional under this section only if satisfied that the health professional has undergone appropriate training and has appropriate competence in dealing with persons who have severe substance addictions.
- (3) Every authorised officer must be issued with a document that identifies the holder and states that the holder is an authorised officer under this Act. 5
- (4) An authorised officer must carry out his or her duties under the general direction of the Area Director.

Approved providers

- 92 Designation of approved providers** 10
- (1) The Director may designate a person as an approved provider.
- (2) Before the Director designates a person under this section, the Director must be satisfied that the person—
- (a) is certified, under the Health and Disability Services (Safety) Act 2001, to provide ~~mental health services~~ residential disability care; and 15
- (b) has the capacity and resources to detain and treat patients in accordance with this Act in places that are suitable for that detention and treatment; and
- (c) has systems in place for ensuring compliance with the requirements of this Act. 20
- (3) A designation under this section may be subject to any conditions that the Director considers necessary or desirable for the purposes of this Act.
- (4) A designation of a person under this section may be suspended or revoked for any of the following grounds proved to the satisfaction of the Director:
- (a) 1 or more requirements of this Act have been seriously breached in a treatment centre operated by the person: 25
- (b) 1 or more conditions of the designation have been seriously breached.
- (5) A designation under this section ceases to have effect if the person designated ceases to be certified, under the Health and Disability Services (Safety) Act 2001, to provide ~~mental health services~~ residential disability care. 30
- (6) A designation under this section, or a revocation of such a designation, must be made by notice in the *Gazette* and takes effect on the date stated in the notice.

93 Reporting duties of approved providers

- (1) The Director or the Area Director may, by written notice, require any approved provider to inform the Director or the Area Director, within the time specified in the notice, about any matter in relation to any functions under this Act that have been, or are required to be, performed in a treatment centre operated by the approved provider. 35

- (2) Without limiting the generality of **subsection (1)**, the information required under that subsection may relate to identified patients or to a class or classes of patients.
- (3) An approved provider must provide the information within the time specified in the notice and, if there is no prescribed form for the information, in any form specified by the Director for the purpose. 5

Clinicians

94 Responsible clinicians

- (1) The Area Director must ensure that a responsible clinician is assigned to every patient at all times. 10
- (2) A responsible clinician—
 - (a) may, at any time and without previous notice, visit a patient to whom the clinician has been assigned in the treatment centre where the patient is; and
 - (b) must be given access to the patient; and 15
 - (c) must be given access to the patient’s records and any other information concerning the patient that is held by the treatment centre.

Compare: 1992 No 46 s 7

95 Designation of approved specialists

- (1) The Director must designate a sufficient number of health professionals as approved specialists. 20
- (2) Before the Director designates a health professional, the Director must be satisfied that the health professional has significant experience in the treatment of severe substance addictions and is suitably qualified to conduct specialist assessments and reviews under this Act. 25
- (3) The Director must maintain a list of approved specialists, and must ensure that the list is available for public inspection.
- (4) The designation of a person as an approved specialist may be suspended or revoked on any of the following grounds proved to the satisfaction of the Director: 30
 - (a) failure to perform adequately the duties imposed on the person in his or her capacity as an approved specialist or a responsible clinician:
 - (b) neglect of the duty imposed on the person in his or her capacity as an approved specialist or a responsible clinician:
 - (c) misconduct: 35
 - (d) inability to perform the duties imposed on the person in his or her capacity as an approved specialist or a responsible clinician.

- (5) A designation ceases to have effect if the person designated ceases to be a health professional.

96 Designation of bodies for purposes of definition of health professional

- (1) The Minister may, by notice signed by the Minister, designate a body corporate for the purposes of **paragraph (d)** of the definition of health professional in **section 4** if the Minister is satisfied that the body— 5
- (a) sets appropriate standards for classes of practitioners who treat, or assist in the treatment of, persons who suffer from severe substance addiction; and
- (b) has reliable systems for identifying practitioners who meet the standards. 10
- (2) The Minister may, by notice signed by the Minister, designate a body corporate for the purposes of **paragraph (e)** of the definition of health professional in **section 4** if the Minister is satisfied that the body—
- (a) sets appropriate standards for social workers; and
- (b) has reliable systems for identifying social workers who meet the stand- 15
ards.
- (3) A notice under this section is a legislative instrument and a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Assistance to members of public 20

97 Advice and assistance of general nature

So far as practicable, the Area Director or an authorised officer acting with the authority of the Area Director must 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 a severe substance addiction and, at the request of anyone, they must provide the assist- 25
ance, advice, and reassurance that are appropriate in the circumstances.

Subpart 8—Inspections

98 District inspectors to visit treatment centres

- (1) Every district inspector must, during a patient's detention in a treatment centre that is in the locality to which the district inspector is appointed,— 30
- (a) visit the treatment centre at least once:
- (b) visit the treatment centre as soon as practicable after receiving notice of the patient's detention.
- (2) A district inspector may, without previous notice, visit any treatment centre in the locality to which the district inspector is appointed as often as the district inspector thinks fit. 35

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- (3) All visits made under the authority of this section may be made on any day and at any time of the day or night, and for the length of time, that the district inspector thinks fit.
- (4) On any such visit, the district inspector may, if the Director so permits or requires, be accompanied by a health professional named by the Director. 5
- (5) Any district inspector may, in respect of any specific matter, obtain advice from a health professional appointed for the purpose by the Director, and that health professional has, for that purpose, all the powers of visiting and inspecting.
Compare: 1992 No 46 s 96
- 99 Inspectors' access to persons and documents** 10
- (1) A district inspector who visits a treatment centre for the purposes of this Act must be given access to every part of the treatment centre and to every person in it, whether or not that person is a patient under this Act.
- (2) If the district inspector requests access to any of the following items, the manager must present the item to the district inspector: 15
- (a) every record relating to a patient, including the patient's compulsory treatment certificate, compulsory treatment order, and treatment plan:
 - (b) any item of mail or electronic communication that, under a direction given under **section 61(4)** has not been received or sent by the patient:
 - (c) any computer or device taken from the patient under a direction given under **section 61(5)**. 20
- (3) **Subsection (2)(b)** only applies to an item of electronic communication that is in the possession or under the control of the manager.
Compare: 1992 No 46 s 97
- 100 Reports on visits** 25
- (1) A district inspector who visits any treatment centre must give a report on the visit to the Area Director within 14 days after the visit.
- (2) If the Area Director considers it appropriate, he or she may give a copy of the report to the manager of the treatment centre.
- 101 Inquiries by district inspector** 30
- (1) Every district inspector on any visit to any treatment centre may, and must 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 treatment centre; and 35
 - (b) any other matters that the district inspector or the Director thinks fit to be inquired into in respect of any patients or the management of the treatment centre.

- (2) Anyone may at any time raise a concern with a district inspector in relation to any aspect of the care, treatment, or conduct of a patient.
- (3) The district inspector must inquire as to whether the concern is valid, and if that is the case and there are reasonable grounds to believe that further consideration of the case may be desirable, he or she must take the following steps: 5
- (a) inform the responsible clinician or any other appropriate person of the grounds of concern that have arisen in the case:
- (b) give any other advice or assistance in the matter that may be appropriate.
- (4) For the purpose of conducting any inquiry under this Act, a district inspector has the same powers and authority to summon witnesses and receive evidence as are conferred on an inquiry by the Inquiries Act 2013, and the provisions of that Act, except section 28 (which relates to costs), apply accordingly. 10
- (5) The district inspector must promptly send a full report of every inquiry to the Director.
- Compare: 1992 No 46 s 95, 2014 No 68 s 83 15

102 District inspectors to report monthly

Every district inspector must, once a month,—

- (a) prepare a written report on the exercise and performance of his or her functions, duties, and powers under this Act during the preceding month; and 20
- (b) send the report to the Director.

103 No proceedings against district inspectors unless bad faith shown

- (1) No civil proceedings may be brought against any district inspector for any thing he or she may do in the course of the exercise or performance, or intended exercise or performance, of his or her functions, duties, or powers under this Act, unless it is shown that he or she acted in bad faith. 25
- (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 functions, duties, and powers under this Act.
- Compare: 1992 No 46 s 99A 30

104 Crimes of Torture Act 1989 not limited

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

Compare: 1989 No 106 s 37

Subpart 9—Enforcement

105 Police assistance

- (1) This section applies to a constable who responds to a request for Police assistance by an authorised officer who is intending or attempting to do any thing specified in any of **sections 21, 30(4), and 40**. 5
- (2) The constable—
 - (a) may enter the premises where the person or patient is; and
 - (b) must—
 - (i) identify himself or herself either by name or by unique identifier; and 10
 - (ii) if not in Police uniform, produce evidence of his or her identity.
- (3) A constable who enters premises under **subsection (2)** may, for the purposes of a specialist assessment under **section 22**,—
 - (a) take the person to the place at which he or she is required to attend; and
 - (b) detain the person at that place for the shorter of— 15
 - (i) 6 hours; and
 - (ii) the time it takes to conduct the specialist assessment.
- (4) A constable who enters premises under **subsection (2)** may, for the purposes of **section 30(4) or 40**, take the patient back to the treatment centre.
- (5) The constable must not exercise the power in **subsection (2)** without a warrant, if it would be reasonably practicable to obtain a warrant under **section 107**. 20

Compare: 1992 No 46 s 41

106 Apprehension of patients not permitted to be absent from treatment centre

- (1) **Subsection (2)** applies to a patient who— 25
 - (a) fails to attend at the place specified in a notice given under **section 30(3)(a)** for the purpose of admission to a treatment centre; or
 - (b) fails to return to a treatment centre on or before the expiry of a permitted period of absence granted under **section 39** or fails to comply with a condition of the permission; or 30
 - (c) absents himself or herself from the treatment centre otherwise than in accordance with this Act.
- (2) A person described in **subsection (3)** may—
 - (a) apprehend the patient; and
 - (b) take the patient to a treatment centre. 35
- (3) The persons referred to in **subsection (2)** are—

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(a) the patient's responsible clinician:	
(b) an approved specialist:	
(c) any suitably qualified person authorised by the Director or the manager of the treatment centre:	
(d) a constable:	5
(e) a person assisting a person mentioned in paragraph (a), (b), (c), or (d) .	
(4) A constable must not exercise the power in subsection (2) without a warrant, if it would be reasonably practicable to obtain a warrant under section 107 .	
107 Judge or Registrar may issue warrant	10
(1) Subsection (2) applies to—	
(a) a person who fails to attend at a place for a specialist assessment in accordance with a notice given under section 19(2)(c) :	
(b) a patient described in section 106(1) .	
(2) On an application by an Area Director, a District Court Judge or (if no Judge is available) a Registrar may issue a warrant authorising any constable to take a person described in subsection (1) to a place specified in the warrant, if the Judge or Registrar is satisfied that—	15
(a) the person is refusing to attend at the place at which he or she is required to attend; or	20
(b) the person is absent from the treatment centre without leave.	
(3) On an application by a constable, a District Court Judge or (if no Judge is available) a Registrar may issue a warrant authorising any constable to enter premises for the purposes of section 105(2) or 106(2) , if the Judge or Registrar is satisfied that the issue of a warrant is necessary.	25
108 Certain sections of Crimes Act 1961 apply to powers to take and retake	
Sections 30, 31, and 34 of the Crimes Act 1961 apply, with any necessary modifications, to sections 21(a), 30(4), 40, 105(3) and (4), and 106(2) as if the power contained in each of those sections to take or retake a person were a power of arrest.	30
Compare: 1992 No 46 s 122A	
109 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.	35
(2) The powers are—	
(a) a power to take or retake a person under any of sections 21(a), 30(4), 40, 105(3) and (4), and 106(2) :	

- (b) a power to detain a person under **section 105(3) or (4)**;
- (c) a power to enter premises under **section 105(2)**.
- (3) The following persons may use such force as is reasonably necessary in the circumstances:
 - (a) where a patient is obliged to accept treatment in accordance with **section 36(1)**, the person treating the patient: 5
 - (b) where a patient is obliged to comply with a direction in accordance with **section 36(2)**, a person who has given a lawful direction to a patient.
- (4) If a person (not being a constable) uses force under this section,—
 - (a) the circumstances in which the force was used must be recorded as soon as practicable; and 10
 - (b) a copy of the record must be given to the Area Director as soon as practicable.

Compare: 1992 No 46 s 122B

Offences 15

110 Neglect or ill-treatment of patients

- (1) This section applies to—
 - (a) the manager of a treatment centre;
 - (b) a person employed or engaged by the manager or the service that operates the treatment centre: 20
 - (c) any other person performing any function or exercising any power in relation to a patient under this Act.
- (2) A person to whom this section applies commits an offence if the person intentionally ill-treats or intentionally neglects a patient.
- (3) A person who commits an offence against this section is liable on conviction to a term of imprisonment not exceeding 2 years. 25

111 Assisting patient to be absent from treatment centre without leave

- (1) This section applies to—
 - (a) the manager of a treatment centre;
 - (b) a person employed or engaged by the manager or the service that operates the treatment centre. 30
- (2) A person to whom this section applies commits an offence if the person—
 - (a) intentionally permits or assists a patient who is detained in a treatment centre to become, or to attempt to become, absent without leave from the treatment centre; or 35
 - (b) facilitates a patient's absence or attempted absence without leave from a treatment centre; or

- (c) intentionally assists any patient who is absent without leave from a treatment centre to avoid, or to attempt to avoid, being apprehended or being taken to a treatment centre.
- (3) A person who commits an offence against this section is liable on conviction to a term of imprisonment not exceeding 3 months or to a fine not exceeding \$1,000. 5
- 112 Obstruction of inspection**
- (1) This section applies to—
- (a) the manager of a treatment centre that is being visited by a district inspector, the Director, or an Area Director; and 10
- (b) a person employed or engaged by the manager or the service that operates a treatment centre that is being visited by a district inspector, the Director, or an Area Director.
- (2) A person to whom this section applies commits an offence if the person—
- (a) conceals or attempts to conceal from the district inspector, Director, or Area Director, or refuses or wilfully neglects to show to the district inspector, Director, or Area Director, any part of the treatment centre or any person detained or being treated in it; or 15
- (b) in any other manner wilfully obstructs or attempts to obstruct the district inspector, Director, or Area Director in the conduct of his or her official duties. 20
- (3) A person who commits an offence against this section is liable on conviction to a fine not exceeding \$2,000.
- 113 False or misleading certificates**
- (1) A person commits an offence if the person— 25
- (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. 30
- (2) A person who commits an offence against this section is liable on conviction to a fine not exceeding \$5,000.
- 114 Further offences involving false or misleading documents, etc**
- (1) A person commits an offence if the person—
- (a) intentionally omits, or intentionally causes any other person to omit, to state in any notice, statement, or certificate under this Act any particular prescribed or required by or under this Act to be included in the notice, statement, or certificate; or 35

- (b) includes or causes to be included in any such notice, statement, or certificate 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 certificate any particular that is false or misleading in any material respect. 5
- (2) A person who commits an offence against this section is liable on conviction to a fine not exceeding \$2,000.

Matters of justification or excuse

- 115 Matters of justification or excuse** 10
- (1) A person who relies on a notice, a certificate, or an order described in **subsection (4)** is protected from criminal responsibility if he or she acts in good faith under the belief that,—
- (a) in the case of a notice or certificate, the notice or certificate was properly given by a person having authority to give it: 15
 - (b) in the case of an order, the order was properly made by a court having jurisdiction to make it.
- (2) The protection given by **subsection (1)** applies even if the notice, certificate, or order is defective as long as the person who relied on the notice, certificate, or order believed, in good faith and without culpable ignorance or negligence, that the notice, certificate, or order was good in law; and in this case ignorance of the law is an excuse. 20
- (3) For the purposes of **subsection (2)**, it is a question of law whether in the circumstances a person's belief is based on culpable ignorance or negligence.
- (4) The documents referred to in **subsections (1) and (2)** are— 25
- (a) a notice purportedly given under **section 19(2)(c)** or **30(3)(a)**;
 - (b) a compulsory treatment certificate purportedly given under **section 23**;
 - (c) an order purporting to be a compulsory treatment order.

Compare: 2003 No 116 s 115

Part 3 30

Subordinate instruments and miscellaneous provisions

Guidelines, standards, rules, and regulations

- 116 Director-General may issue guidelines and standards**
- (1) The Director-General of Health may issue—
- (a) guidelines for the purposes of this Act; and 35
 - (b) standards of care and treatment of patients.

- (2) The Director-General of Health must ensure that guidelines are issued, under **subsection (1)**, relating to the prescribing of medication for patients.
- (3) Guidelines or standards issued under **subsection (1)** are not disallowable instruments for the purposes of the Legislation Act 2012 and do not have to be presented to the House of Representatives under section 41 of that Act. 5

117 Rules

Rules may be made under section 16A of the Family Courts Act 1980 regulating the practice and procedure of Family Courts in proceedings under this Act.

118 Regulations

- (1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes: 10
- (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 regulating the exercise of such powers and the performance of such duties:~~ 15
 - (c) declaring any substance to be a substance for the purposes of this Act:
 - (d) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.
- (2) Any regulations made under this section may apply generally, or may apply in respect of any particular treatment centre or other place or any particular class of patient. 20

Miscellaneous provisions

119 Matters to be disclosed in annual report

In every annual report of the Ministry of Health, the Ministry must, in respect of the period to which the report relates, show— 25

- (a) the number of persons who were detained under this Act:
- (b) the length of their detention, by classifying the number of persons detained according to the number (including zero) of weeks of detention:
- (c) the number of compulsory treatment orders that were made:
- (d) the number of compulsory treatment orders that were extended: 30
- (e) the number of discharged patients who chose voluntary residential treatment and out-patient services.

119A Ministry must review Act

- (1) The Ministry of Health must, within the period of 6 months beginning on the review date,— 35

- (a) conduct a review of the operation and effectiveness of this Act since its commencement; and
- (b) prepare a report on the review for the Minister.
- (2) The Minister must present a copy of the report to the House of Representatives as soon as practicable after receiving the report. 5
- (3) In this section, **review date** means the date that is the third anniversary of the date on which this section comes into force.

120 Provisions applying to delegations under section 87 or 89

- (1) This section applies to a delegation made under **section 87 or 89**.
- (2) The maker of a delegation must make it in writing and sign it. 10
- (3) The maker of a delegation is not prevented from exercising or performing, or affected in his or her exercise or performance of, any of the delegated functions, duties, or powers.
- (4) 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. 15
- (5) A delegation continues in force until it is revoked.
- (6) If the maker of a delegation ceases to hold office, the delegation continues to have effect as if made by the successor in office of the maker.
- (7) The maker of a delegation, or a successor, may revoke the delegation at any time by written notice to the delegate. 20

121 Consequential amendments and repeal and revocations

- (1) The Acts specified in **Part 1 of Schedule 2** are repealed or consequentially amended as indicated in that schedule.
- (2) The legislative instruments specified in **Part 2 of Schedule 2** are revoked. 25
- (3) The legislative instruments specified in **Part 3 of Schedule 2** are consequentially amended as indicated in that schedule.

Schedule 1

Transitional, savings, and related provisions

s 6

Part 1

Provisions relating to Act as enacted

5

1 Persons detained under Alcoholism and Drug Addiction Act 1966

- (1) Every person detained under the Alcoholism and Drug Addiction Act 1966 immediately before the commencement of this Act is to be treated as a patient in respect of whom—
- (a) a compulsory treatment certificate has been dated and signed in accordance with **section 23**; and 10
- (b) the notice described in **section 30(3)(a)** has been given.
- (2) The Area Director must assign a responsible clinician to a person described in **subclause (1)** as soon as practicable after the commencement of this Act, and in any case not later than the close of the second day after the commencement of this Act, and otherwise in accordance with **section 28**. 15
- (3) The responsible clinician must do the things specified in **section 29** in relation to a patient assigned to the clinician under **subclause (2)** as soon as practicable, and in any case not later than the close of the fifth day after the commencement of this Act. 20

2 Pending applications under Alcoholism and Drug Addiction Act 1966 withdrawn

Every application made under the Alcoholism and Drug Addiction Act 1966 that, on the commencement of this Act, has not been determined or discontinued must be treated as withdrawn. 25

Schedule 2
Consequential amendments, repeal, and revocations

s 121

Part 1
Consequential amendments to Acts and repeal of Act 5

Alcoholism and Drug Addiction Act 1966 (1966 No 97)

Repeal.

Child Support Act 1991 (1991 No 142)

In section 89B, definition of **hospital patient**, replace paragraph (b) with:

- (b) a patient required to be detained in a treatment centre under within the meaning of the Substance Addiction (Compulsory Assessment and Treatment) Act **2015** 10

Coroners Act 2006 (2006 No 38)

In section 13(1)(e), replace “an institution pursuant to an order under section 9 of the Alcoholism and Drug Addiction Act 1966” with “a treatment centre under the Substance Addiction (Compulsory Assessment and Treatment) Act **2015**”. 15

In section 9, definition of **death in official custody or care**, replace paragraph (a) with:

- (a) a patient within the meaning of the Substance Addiction (Compulsory Assessment and Treatment) Act 2015 (whether or not the death occurred in a treatment centre): 20

Crimes of Torture Act 1989 (1989 No 106)

In section 16, definition of **place of detention**, after paragraph (d), insert:

- (da) a treatment centre within the meaning of as defined in section 4 of the Substance Addiction (Compulsory Assessment and Treatment) Act 2015: 25

Health and Disability Commissioner Act 1994 (1994 No 88)

In section 2(1), definition of **health care institution**, replace paragraph (c) with:

- (c) a treatment centre within the meaning of the Substance Addiction (Compulsory Assessment and Treatment) Act **2015** 30

In section 3, definition of **health care provider**, replace paragraph (g) with:

- (g) a manager of a treatment centre within the meaning of the Substance Addiction (Compulsory Assessment and Treatment) Act **2015:**

Legal Services Act 2011 (2011 No 4)

In Schedule 2, repeal the item relating to the Alcoholism and Drug Addiction Act 1966.

In Schedule 2, insert in its appropriate alphabetical order:

Substance Addiction (Compulsory Assessment and Treatment) Act **2015** 5

Medicines Act 1981 (1981 No 118)

Replace section 49A(3)(e) with:

- (e) managers of treatment centres within the meaning of the Substance Addiction (Compulsory Assessment and Treatment) Act **2015**:

Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46) 10

In section 45(1), definition of **institution**, replace paragraph (b) with:

- (b) a treatment centre ~~within the meaning of~~ under the Substance Addiction (Compulsory Assessment and Treatment) Act **2015**; and

In section 45(1), definition of **superintendent**, replace paragraph (b) with:

- (b) in relation to a treatment centre under the Substance Addiction (Compulsory Assessment and Treatment) Act **2015**, means the manager of that treatment centre; and 15

Misuse of Drugs Act 1975 (1975 No 116)

Replace section 20(3)(d) with:

- (d) managers of treatment centres within the meaning of the Substance Addiction (Compulsory Assessment and Treatment) Act **2015**: 20

Replace section 24(9)(a) with:

- (a) the treatment of a patient, within the meaning of the Substance Addiction (Compulsory Assessment and Treatment) Act **2015**, while the patient is in a treatment centre, within the meaning of that Act: 25

Social Security Act 1964 (1964 No 136)

Replace section 75A with:

75A Beneficiaries in treatment centres under Substance Addiction (Compulsory Assessment and Treatment) Act 2015

Despite anything to the contrary in this Act, where a beneficiary, or any other person in respect of whom a benefit is payable, is a resident in a treatment centre under the Substance Addiction (Compulsory Assessment and Treatment) Act **2015** (not being a psychiatric security institution within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992) or of any institution that is fulfilling a similar purpose to a treatment centre under that Act, the rate of any benefit payable in respect of the period of detention in that treatment centre or institution must be determined by the chief executive after 30 35

Social Security Act 1964 (1964 No 136)—*continued*

taking into account all of the beneficiary's financial circumstances and commitments.

Summary Offences Act 1981 (1981 No 113)

Repeal section 49(2).

Part 2

5

Revocation of legislative instruments

Alcoholism and Drug Addiction Act Commencement Order 1968 (SR 1968/210)

Alcoholism and Drug Addiction (Forms) Regulations 1968 (SR 1968/211)

Alcoholism and Drug Addiction Institution Order 1975 (SR 1975/33)

Alcoholism and Drug Addiction Institution (The Bridge, Auckland) Order 2010 (SR 2010/19) 10

Alcoholism and Drug Addiction Institutions Order 1969 (SR 1969/1)

Alcoholism and Drug Addiction Institutions Order 1972 (SR 1972/107)

Alcoholism and Drug Addiction Institutions Order 1978 (SR 1978/106)

Alcoholism and Drug Addiction Institutions Order (No 2) 1982 (SR 1982/242) 15

Alcoholism and Drug Addiction Institutions Order 1986 (SR 1986/122)

Alcoholism and Drug Addiction Institutions Order 1988 (SR 1988/301)

Alcoholism and Drug Addiction Institutions Order 1992 (SR 1992/345)

Alcoholism and Drug Addiction Institutions Order 1996 (SR 1996/291)

Alcoholism and Drug Addiction (Medical Fees) Regulations 1992 (SR 1992/303) 20

Part 3

Consequential amendments to legislative instruments

Health (Retention of Health Information) Regulations 1996 (SR 1996/343)

In regulation 4, definition of **provider**, replace paragraph (g) with:

(g) a manager of a treatment centre within the meaning of the Substance Addiction (Compulsory Assessment and Treatment) Act **2015**: 25

Social Security (Monetary Benefits) Regulations 2007 (SR 2007/229)

In regulation 5(3)(a), replace “institutions certified under the Alcoholism and Drug Addiction Act 1966” with “treatment centres under the Substance Addiction (Compulsory Assessment and Treatment) Act **2015**”.

Legislative history

8 December 2015
15 March 2016

Introduction (Bill 116–1)
First reading and referral to Health Committee