



Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021

Public Act 2021 No 41
Date of assent 29 October 2021
Commencement see section 2

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021.

2 Commencement

- (1) Sections 4, 6, 7, 8, 10, and 12 come into force on the earlier of—
 - (a) a date appointed by the Governor-General by Order in Council; and
 - (b) the expiry of the 24-month period that starts on the date of Royal assent.
- (2) The rest of this Act comes into force on the day after the date on which this Act receives the Royal assent.
- (3) An Order in Council made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

3 Principal Act

This Act amends the Mental Health (Compulsory Assessment and Treatment) Act 1992 (the **principal Act**).

**Part 1
Main amendments**

4 New section 2C inserted (Transitional, savings, and related provisions)

After section 2B, insert:

2C Transitional, savings, and related provisions

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

5 Section 9 amended (Assessment examination to be arranged and conducted)

After section 9(2), insert:

- (2A) For the purposes of subsection (2)(d), a family member or caregiver of, or other person concerned with the welfare of, the proposed patient, may be present by audio or visual link if the Director of Area Mental Health Services

or a duly authorised officer is satisfied that their physical presence is not reasonably practicable.

- (2B) In this section, **audio or visual link** means facilities that enable audio or visual communication between the family member or caregiver of, or the other person concerned with the welfare of, the proposed patient, and—
- (a) the person giving the explanation; and
 - (b) the proposed patient.

6 Section 33 amended (Compulsory treatment order to expire after 6 months)

In section 33, replace “section 34” with “sections 34 and 34A”.

7 Section 34 amended (Court may extend order)

- (1) Replace section 34(1) with:
 - (1) Within 14 days before the date on which a compulsory treatment order is to expire under section 33, the responsible clinician must cause the case to be reviewed under section 76.
- (2) In section 34(3), after “modifications”, insert “, subject to sections 34C and 34D”.
- (3) Repeal section 34(4).

8 New sections 34A to 34D inserted

After section 34, insert:

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

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

34B Determination of application under section 34A

- (1) The court must treat an application under section 34A as if it were an application made under section 14(4).
- (2) Sections 15 and 17 to 33 apply with any necessary modifications, subject to subsection (3) and sections 34C and 34D.

- (3) Unless the court determines an application in accordance with section 26 or 34D, a District Court Judge must, within 2 months after the date on which the application under section 34A is filed in the court,—
 - (a) examine the patient; and
 - (b) hear and determine the application.
- (4) If, at the time immediately before the expiry of the relevant extended compulsory treatment order, the court has not determined an application under section 34A, the order does not expire and continues in force until the court determines the application.

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

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

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

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

participant means any of the following persons in a hearing:

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

34D Court may dispense with examination and hearing

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

9 New section 53A inserted (Transport of special patients)

After section 53, insert:

53A Transport of special patients

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

- (iii) state any additional type of restraint or use of force that is authorised in the event of escalation of risk to any person during transport and that satisfies the requirements in subsection (3)(a) and (b); and
 - (b) a person employed or engaged by the government agency may restrain a special patient and use force in respect of the patient in accordance with the approved transport management plan.
- (5) The Director-General of Health must issue guidelines under section 130(a) for the purposes of this section within 12 months of the date on which this section comes into force.
- (6) In this section,—
- government agency** means a Crown agent or department as those terms are defined by section 5 of the Public Service Act 2020 or the New Zealand Police
- special patient custodian** means a person who has custody of a special patient under this Act
- transport** includes escorting a special patient to and from a vehicle, and **transported** has a corresponding meaning.

10 Section 92 amended (Directors of Area Mental Health Services)

Replace section 92(4)(a) with:

- (a) prepare a written report for the previous 3 months on—
 - (i) the exercise or performance of their powers, duties, and functions under this Act; and
 - (ii) the number of consents provided under section 34D(2)(b); and

11 Section 122B amended (Use of force)

After section 122B(2), insert:

- (2A) A person permitted to restrain a transported special patient or use any other force under section 53A may use such force as is reasonably necessary in the circumstances.

12 New Schedule 1AA inserted

Insert the Schedule 1AA set out in the Schedule of this Act as the first schedule to appear after the last section of the principal Act.

Part 2 Amendments relating to COVID-19

13 Section 2 amended (Interpretation)

In section 2(1), insert in their appropriate alphabetical order:

mental health practitioner means—

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

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

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

14 Section 2A amended (Meaning of proposed patient)

In section 2A(b), replace “health practitioner” with “mental health practitioner”.

15 Section 6A amended (Use of audiovisual links permitted during COVID-19 response)

- (1) In the heading to section 6A, delete “**permitted during COVID-19 response**”.
- (2) Replace section 6A(1)(a) with:
 - (a) a clinician, mental health practitioner, or psychiatrist (a **practitioner**) exercises a power under this Act that requires access to a person; or
- (3) Replace section 6A(2) with:
 - (2) The practitioner may use an audiovisual link to access the person to exercise a power under this Act if the practitioner considers—
 - (a) that it is not practicable for the person to be physically present; and
 - (b) the use of an audiovisual link is appropriate in the circumstances.
 - (2A) The practitioner must apply any relevant guidelines and standards of care and treatment issued by the Director-General of Health under section 130 when deciding whether—
 - (a) it is not practicable for the person to be physically present; and
 - (b) the use of an audiovisual link is appropriate in the circumstances.
 - (2B) If an audiovisual link is used to access the person under subsection (2), the practitioner must—
 - (a) record in writing the reason that—
 - (i) it was not practicable for the person to be physically present; and
 - (ii) the use of an audiovisual link was appropriate in the circumstances; and

- (b) provide the record to the relevant Director of Area Mental Health Services as soon as practicable after the use of the link.

16 Section 7A amended (Practitioner or responsible clinician to consult)

In section 7A(1)(a), replace “health practitioner” with “mental health practitioner”.

17 Section 8B amended (Certificate to accompany application for assessment)

- (1) In section 8B(1) to (5), replace “health practitioner” with “mental health practitioner” in each place.
- (2) Repeal section 8B(6).

18 Section 9 amended (Assessment examination to be arranged and conducted)

- (1) In section 9(1), replace “health practitioner” with “mental health practitioner”.
- (2) In section 9(1), replace “the Director of Area Mental Health Services must make” with “the Director of Area Mental Health Services or duly authorised officer must make”.

19 Section 10 amended (Certificate of preliminary assessment)

In section 10(1) to (4), replace “health practitioner” with “mental health practitioner” in each place.

20 Section 11 amended (Further assessment and treatment for 5 days)

In section 11(1) and (2), replace “health practitioner” with “mental health practitioner” in each place.

21 Section 38 amended (Assistance when person may need assessment)

- (1) In section 38(2)(b), (3), and (4), replace “a medical examination” with “an examination”.
- (2) In section 38(3) to (6), replace “medical practitioner” with “mental health practitioner” in each place.

22 Section 41 amended (Police assistance)

- (1) In section 41(3)(b) and (4)(b)(ii), replace “medical examination” with “examination”.
- (2) In section 41(4)(a), replace “a medical examination” with “an examination”.

23 Section 42 amended (Notice of admission)

In section 42(2)(c), replace “medical certificate” with “assessment certificate”.

24 Section 45 amended (Application for assessment may be made in respect of persons detained in prisons)

In section 45(4)(d), replace “medical practitioner” with “mental health practitioner”.

25 Section 96 amended (Visitations by district inspectors and official visitors)

In section 96(4) and (5), replace “health practitioner” with “mental health practitioner” in each place.

26 Section 109 amended (Police powers in relation to person appearing to be mentally disordered in public place)

In section 109(1)(b), (2), (3), (3A), and (4)(b), replace “medical practitioner” with “mental health practitioner”.

27 Section 110 amended (Powers of medical practitioner when urgent examination required)

- (1) In the heading to section 110, replace “**medical practitioner**” with “**mental health practitioner**”.
- (2) In section 110(1) to (4), replace “medical practitioner” with “mental health practitioner”.
- (3) In section 110(1)(a) and (4), replace “a medical examination” with “an examination”.

28 Section 110B amended (Powers of medical practitioner when urgent assessment required)

- (1) In the heading to section 110B, replace “**medical practitioner**” with “**mental health practitioner**”.
- (2) In section 110B(1) to (4), replace “medical practitioner” with “mental health practitioner”.

29 Section 110C amended (Powers of Police when urgent assistance required)

- (1) In section 110C(1) and (2), replace “medical practitioner” with “mental health practitioner” in each place.
- (2) In section 110C(3)(a), replace “medical examination” with “examination”.

30 Section 111 amended (Powers of nurse where urgent assessment required)

In section 111(1) to (3), replace “medical practitioner” with “mental health practitioner” in each place.

31 Section 127 amended (Transfer of patients)

In section 127(8), replace “medical certificates” with “assessment certificates”.

32 Section 134 amended (Fees of medical practitioners)

- (1) In the heading to section 134, replace “**medical practitioners**” with “**mental health practitioners**”.
- (2) In section 134(1), (2), and (5), replace “medical practitioner” with “mental health practitioner”.

33 Schedule 1 amended

- (1) In Schedule 1, heading to clause 3A, delete “**during COVID-19 response**”.
- (2) In Schedule 1, replace clause 8(2)(b)(i) with:
 - (i) members of the legal profession or health professions:

34 Temporary COVID-19 response provisions repealed

Repeal sections 2AA, 2B, 7B, 8C, 9A, 10A, 11A, 38A, 41A, 42A, 45A, 96A, 109A, 110AA, 110BA, 110D, 111A, 127A, 134A, and 137A and clause 8A of Schedule 1.

Schedule

New Schedule 1AA inserted

s 12

Schedule 1AA

Transitional, savings, and related provisions

s 2C

Part 1

Provisions relating to Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021

1 Interpretation

In this Part, unless the context otherwise requires,—

commencement date means the day on which this Part comes into force

extension date, in relation to a compulsory treatment order, means the day and month on which the order was extended indefinitely under section 34(4)

transition period means the 12-month period starting on the 14th day after the commencement date.

2 First 12-month review under section 34A

- (1) This clause applies to a compulsory treatment order that, before the commencement date, was extended indefinitely under section 34(4).
- (2) The order expires on the extension date that falls within the transition period (the **expiry date**).
- (3) The first review of the order under section 34A(1) must be undertaken within the 14-day period immediately preceding the expiry date.

Legislative history

17 March 2021	Introduction (Bill 14–1)
6 April 2021	First reading and referral to Health Committee
14 September 2021	Reported from Health Committee (Bill 14–2)
19 October 2021	Second reading
26 October 2021	Committee of the whole House (Bill 14–3)
27 October 2021	Third reading
29 October 2021	Royal assent

This Act is administered by the Ministry of Health.