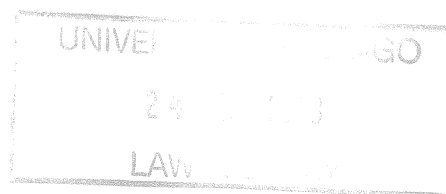


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No 160



# House of Representatives

## Supplementary Order Paper

Tuesday, 21 October 2003

### Intellectual Disability (Compulsory Care and Rehabilitation) Bill

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#### *Proposed amendments*

Hon Ruth Dyson, in Committee, to move the following amendments:

#### *Clause 1*

To omit the words “may be cited as” (line 2 on page 4), and substitute the word “is”.

#### *Clause 4*

To omit from *subclause (1)* the word “offences” (line 22 on page 90), and substitute the words “an offence”.

To omit from *subclause (5)(c)* the word “isolation” (line 7 on page 92), and substitute the word “seclusion”.

To omit from *subclause (5)(e)* the words “have been sentenced to imprisonment” (lines 12 and 13 on page 92), and substitute the words “are liable to detention under a sentence”.

To omit from *subclause (6)(c)(i)* the words “subject to prison sentences” (lines 26 and 27 on page 92), and substitute the words “who are liable to detention under a sentence”.

To omit from *subclause (6)(d)* the expression “Criminal Justice Act 1985” (line 31 on page 92), and substitute the expression “Criminal Procedure (Mentally Impaired Persons) Act 2003”.

#### *Clause 5*

To omit from the definition of **compulsory care order** the words “**section 115B(1)(b) or section 118(1)(b)(ii)** of the Criminal Justice Act 1985” (lines 5 and 6 on page 94), and substitute the words “**section 25(1)(b) or section 34(1)(b)(ii)** of the Criminal Procedure (Mentally Impaired Persons) Act 2003”.

To omit from the definition of **court order** the words “**section 115A(2)(b) or section 118(1)(a)(ii)** of the Criminal Justice Act 1985” (lines 14 and 15 on page 94), and substitute the words “**section 24(2)(b) or section 34(1)(a)(ii)** of the Criminal Procedure (Mentally Impaired Persons) Act 2003”.

To omit the definition of **District inspector** (lines 16 to 18 on page 94), and substitute the following definition:

**district inspector** means a person designated as district inspector or deputy district inspector under **section 144**

To omit the definition of **former special patient** (lines 20 to 26 on page 94) and substitute the following definition:

**former special patient** means a person who, because of a direction given under the Criminal Procedure (Mentally Impaired Persons) Act 2003 or because of an order made under section 84(6) of the Mental Health (Compulsory Assessment and Treatment) Act 1992, has ceased to be a special patient within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992 but who, at the relevant time, continues, under that direction or order, to be a patient under that Act

To omit the definition of **medical practitioner** (lines 1 and 2 on page 95), and substitute the following definition:

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

To omit the definition of **psychologist** (lines 13 and 14 on page 95), and substitute the following definition:

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

To omit the definition of **responsible district inspector** (lines 15 to 19 on page 95), and substitute the following definition:

**responsible district inspector**, in relation to a care recipient, means the district inspector designated in respect of the geographical area in which the care recipient is staying

To omit from the definition of **sentence** the words “or an order of detention” (lines 23 and 24 on page 95), and substitute the words “to, or an order of detention in, a prison”.

To add, after line 16 on page 96, as *subsection (2)*, the following subsection:

- (2) If this section comes into force before the commencement of section 114(1) of the Health Practitioners Competence Assurance Act 2003, then, until that commencement, **subsection (1)** must be read as if, for the definitions of **medical practitioner**

and **psychologist**, there were substituted the following definitions:

“**medical practitioner** means a medical practitioner registered under the Medical Practitioners Act 1995

“**psychologist** means a psychologist registered under the Psychologists Act 1981”.

*Clause 6*

To omit *subclause (2)(a)(i)* (lines 25 and 26 on page 96), and substitute the following subparagraph:

- “(i) **section 24(2)(b) or section 38(2)(c) or section 44(1) of the Criminal Procedure (Mentally Impaired Persons) Act 2003; or**”

To omit from *subclause (2)(b)* the words “**section 115 or section 118A of the Criminal Justice Act 1985**” (lines 30 and 31 on page 96), and substitute the words “**section 23 or section 35 of the Criminal Procedure (Mentally Impaired Persons) Act 2003**”.

To omit from *subclause (2)(c)* the words “**section 118(1)(a)(ii) of the Criminal Justice Act 1985**” (lines 33 and 34 on page 96), and substitute the words “**section 34(1)(a)(ii) of the Criminal Procedure (Mentally Impaired Persons) Act 2003**”.

To omit from *subclause (3)(b)* the words “**section 115B(1)(b) or section 118(1)(b)(ii) of the Criminal Justice Act 1985**” (lines 16 and 17 on page 97), and substitute the words “**section 25(1)(b) or section 34(1)(b)(ii) of the Criminal Procedure (Mentally Impaired Persons) Act 2003**”.

*Clause 7*

To omit from *subclause (1)* the word “**intellectually**” (line 32 on page 97), and substitute the word “**intellectual**”.

To omit from *subclause (1)(a)* the words “as measured by standard psychometric tests generally used by clinicians” (lines 35 and 36 on page 97).

To insert in *subclause (1)(b)*, after the word “deficits” (line 1 on page 98), the words “in adaptive functioning”.

To omit *subclause (2)* (lines 6 to 14 on page 98), and substitute the following clauses:

- (2) Wherever practicable, a person’s general intelligence must be assessed by applying standard psychometric tests generally used by clinicians.
- (2A) For the purposes of **subsection (1)(a)**, an assessment of a person’s general intelligence is indicative of significantly sub-average general intelligence if it results in an intelligence quotient that is expressed—
- (a) as 70 or less; and
- (b) with a confidence level of not less than 95%.

*Clause 15*

To omit the words “care recipients” (line 24 on page 102), and substitute the word “persons”.

To omit from *paragraph (a)* the words “**section 115(4) or section 118A(4)** of the Criminal Justice Act 1985” (lines 27 and 28 on page 102), and substitute the words “**section 23(5) or section 35(4)** of the Criminal Procedure (Mentally Impaired Persons) Act **2003**”.

To omit from *paragraph (b)* the expression “Criminal Justice Act 1985” (line 30 on page 102), and substitute the expression “Criminal Procedure (Mentally Impaired Persons) Act **2003**”.

*Clause 17*

To omit from *subclause 1(a)* the expression “Criminal Justice Act 1985” (lines 17 and 18 on page 103), and substitute in each case the expression “Criminal Procedure (Mentally Impaired Persons) Act **2003**”.

To omit from *subclause 1(b)* the expression “Criminal Justice Act 1985” (line 23 on page 103), and substitute the expression “Criminal Procedure (Mentally Impaired Persons) Act **2003**”.

To omit from *subclause 1(c)* the words “an inmate” (line 24 on page 103), and substitute the words “a person”.

To omit *subclause (2)* (lines 29 and 30 on page 103).

*Clause 18(3)*

To omit the expression “Criminal Justice Act 1985” (line 9 on page 104), and substitute the expression “Criminal Procedure (Mentally Impaired Persons) Act **2003**”.

*Clause 20(2)*

To omit the expression “Criminal Justice Act 1985” (line 25 on page 104), and substitute the expression “Criminal Procedure (Mentally Impaired Persons) Act **2003**”.

*Clause 28*

To omit from *paragraph (a)* the word “of” (line 22 on page 107), and substitute the word “affecting”.

*Clause 29*

To omit from *subclause (1)* the words “the superintendent has” (lines 9 and 10 on page 108), and substitute the words “there are”.

To omit from *subclause (2)* the words “the Director has” (line 15 on page 108), and substitute the words “there are”.

*Clause 35(3)*

To insert, after the words “the notice relates” (line 22 on page 110), the words “is in the legal custody of the care manager designated for the inmate under **section 32(a)** and”.

*Clause 37(1)*

To omit the expression “**32(2)(a)**” (line 6 on page 11), and substitute the expression “**32(b)**”.

To insert, before the words “care recipient’s” (line 11 on page 111), the word “proposed”.

*Clause 38(1)*

To omit the words “whether the proposed care recipient has been assessed as a person who has an intellectual disability” (lines 26 to 28 on page 111), and substitute the words “their assessment of the matters stated in **section 37(1)**”.

*Clause 40(2)(c)*

To omit the word “the assessment of the inmate under **subpart 1 or Part 3**” (lines 23 and 24 on page 113), and substitute the words “his or her assessment under **subpart 1 and Part 3**”.

*Clause 49*

To add (after line 24 on page 117) the following subclause:

- (3) A care manager of a care recipient must also keep the care recipient’s guardian, or, if the care recipient does not have a guardian, the care recipient’s principal care giver informed of the matters stated in **subsection (2)**.

*Clause 57(4)*

To omit the words “it is considered” (line 32 on page 119), and substitute the words “the care manager considers”.

*Clause 60*

To omit this clause (lines 28 to 35 on page 121 and lines 1 to 30 on page 122), and substitute the following clause:

**60 Seclusion**

- (1) For the purposes of this section, **seclusion**, in relation to a care recipient, means placing the care recipient without others in a room or other area that—
  - (a) provides a safe environment for the care recipient throughout the care recipient’s stay in the room or area; but
  - (b) does not allow the care recipient to leave without help.
- (2) A care manager may place a care recipient in seclusion if it is necessary to prevent the care recipient from doing 1 or both of the following:
  - (a) endangering the health or safety of the care recipient or of others;
  - (b) seriously compromising the care and well-being of other persons.
- (3) A person who places a care recipient in seclusion—
  - (a) must ensure that the care recipient is not placed in seclusion for longer than is necessary to achieve the purpose of placing the care recipient in seclusion; and
  - (b) must comply with guidelines issued under **section 147** that are relevant to placing the care recipient in seclusion.
- (4) The following provisions must be followed when a care recipient is placed in seclusion:
  - (a) a care recipient may be placed in seclusion only in a room or other area that is specifically designed for the purpose of seclusion in accordance with guidelines issued under **section 147**:

- (b) in cases other than an emergency, seclusion may be used only with the authority of the care recipient's care manager:
- (c) in an emergency, a care recipient may be placed in seclusion by a person who, under a delegation given by the care recipient's care manager, has immediate responsibility for the care recipient, but that person must immediately bring the case to the attention of the care manager:
- (d) the duration and circumstances of each episode of seclusion must be recorded in a register kept in accordance with guidelines issued under **section 147**.

*Clause 68*

To omit this clause (lines 12 to 20 on page 127), and substitute the following clause:

**68 When liability to detention under sentence ceases**

For the purposes of this Act, a person's liability to detention under a sentence ceases on the earliest of the following dates:

- (a) the date specified in an order of the New Zealand Parole Board that the person be released on parole or compassionate leave:
- (b) the release date (if any) of the person's sentence, as defined under Part 1 of the Parole Act 2002:
- (c) the date on which the sentence is determined.

Compare: 1992 No 46 s 48(1)(d)

*Clause 69*

To omit from *subclause (1)(b)* the words "**section 118(1)(a)(ii)** of the Criminal Justice Act 1985" (lines 28 and 29 on page 127), and substitute the words "**section 34(1)(a)(ii)** of the Criminal Procedure (Mentally Impaired Persons) Act 2003".

To omit from *subclause (3)(b)* the words "**section 118(1)(a)(ii)** of the Criminal Justice Act 1985" (line 12 on page 128), and substitute the words "**section 34(1)(a)(ii)** of the Criminal Procedure (Mentally Impaired Persons) Act 2003".

*Clause 79*

To omit from *subclause (3)(b) and (c)* the words "the Criminal Justice Act 1985" in both places where they occur (lines 29, 30, 33, and 34 on page 132), and substitute in each case the words "the Criminal Procedure (Mentally Impaired Persons) Act 2003".

*Clause 81*

To omit *paragraph (b)* (line 19 on page 133).

*Clause 84(1)*

To omit the words "**section 118(1)(a)(ii)** of the Criminal Justice Act 1985 (line 18 on page 134)", and substitute the words "**section 34(1)(a)(ii)** of the Criminal Procedure (Mentally Impaired Persons) Act 2003".

*Clause 89(1)*

To omit the words “the Criminal Justice Act 1985” (lines 24 and 25 on page 136), and substitute the words “the Criminal Procedure (Mentally Impaired Persons) Act 2003”.

*Clause 90(1)*

To omit the words “**section 116A** of the Criminal Justice Act 1985” (line 16 on page 137), and substitute the words “**section 31** of the Criminal Procedure (Mentally Impaired Persons) Act 2003”.

*Clause 91(1)*

To omit the words “**section 116A** of the Criminal Justice Act 1985” (lines 26 and 27 on page 137), and substitute the words “**section 31** of the Criminal Procedure (Mentally Impaired Persons) Act 2003”.

*Clause 92(1)*

To omit the words “the Criminal Justice Act 1985” (lines 7 and 8 on page 138), and substitute the words “the Criminal Procedure (Mentally Impaired Persons) Act 2003”.

*Clause 93(1)*

To omit the words “**section 117** of the Criminal Justice Act 1985” (line 27 on page 138), and substitute the words “**section 33** of the Criminal Procedure (Mentally Impaired Persons) Act 2003”.

*Clause 94*

To omit from *subclause (1)* the words “**section 116A or section 117** of the Criminal Justice Act 1985” (lines 5 and 6 on page 139), and substitute the words “**section 31 or section 33** of the Criminal Procedure (Mentally Impaired Persons) Act 2003”.

To omit from *subclause (3)* the words “the Criminal Justice Act 1985” (line 18 on page 139), and substitute the words “the Criminal Procedure (Mentally Impaired Persons) Act 2003 or this Act”.

*Clause 95*

To omit from *subclause (1)* the words “A district inspector must, at least 4 times a year” (line 30 on page 139), and substitute the words “In each year, a district inspector must,”.

To insert, after *subclause (1)* (after line 34 on page 139), the following subclause:

- (1A) Each facility must be visited, under **subsection (1)**, at least twice a year or on a greater number of occasions that the Director-General of Health directs for a particular facility or class of facility.

To omit *subclause (4)* (lines 5 to 7 on page 140), and substitute the following subclause:

- (4) A suitably qualified health or disability professional may accompany the district inspector on a particular visit to a facility.

*Clause 96(2)(b)*

To omit the words “or **section 58**” (line 24 on page 140).

*Clause 98*

To add (after line 20 on page 141) the following subclause:

- (4) The district inspector must send a copy of any report prepared under **subsection (3)(b)** to the Director-General of Health.

*Clause 101*

To omit from *subclause (2)* the words “who is responsible for a locality within the co-ordinator’s area” (line 16 on page 142).

To add to *subclause (5)*, after the word “co-ordinator” (line 29 on page 142), the words “and to the Director-General of Health”.

*Clause 105(1)*

To omit the words “the Criminal Justice Act 1985” (lines 7 and 8 on page 144), and substitute the words “the Criminal Procedure (Mentally Impaired Persons) Act **2003**”.

*Heading above clause 110*

To omit the words “or disobey court orders” (lines 1 and 2 on page 146).

*Clause 115(1)(b)*

To omit the words “the Criminal Justice Act 1985” (line 11 on page 148), and substitute the words “the Criminal Procedure (Mentally Impaired Persons) Act **2003**”.

*Clause 116*

To omit from *subsection (1)* the words “this Act” (line 32 on page 148), and substitute the words “any of **sections 45 and 84 to 87**”.

To omit from *subsection (2)* the words “this Act” (line 1 on page 149), and substitute the words “any section referred to in **subsection (1)**”.

*Clause 130(2)*

To insert, after the word “liable” (line 21 on page 155), the words “on summary conviction”.

*Clause 133(2)*

To omit this subclause (lines 28 to 30 on page 156), and substitute the following subclauses:

- (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.
- (2A) 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.

*Clause 136*

To omit *subclause (5)* (lines 10 to 27 on page 158), and substitute the following subclause:



- (5) When a special care recipient becomes subject to compulsory status under the Mental Health (Compulsory Assessment and Treatment) Act 1992,—
- (a) the special care recipient must be held as a special patient under that Act until the status of the person is changed in accordance with that Act or the Criminal Procedure (Mentally Impaired Persons) Act 2003; and
  - (b) any order under the Criminal Procedure (Mentally Impaired Persons) Act 2003 requiring the detention of the special care recipient in a secure facility is deemed to require his or her detention in a hospital under the Mental Health (Compulsory Assessment and Treatment) Act 1992; and
  - (c) any direction given during that period under **section 31 or section 33** of the Criminal Procedure (Mentally Impaired Persons) Act 2003 that the special care recipient be held as a patient must be treated, on the return of that person to a facility, as a direction that the person be held as a care recipient no longer subject to the criminal justice system.

*Clause 139*

To omit this clause (lines 10 to 21 on page 159), and substitute the following clause:

- 139 Certain orders under Criminal Procedure (Mentally Impaired Persons) Act 2003 prevail over orders under this Act**
- (1) If a person becomes subject to an order under **section 38(2)(c) or section 44(1)** of the Criminal Procedure (Mentally Impaired Persons) Act 2003, any order under this Act in respect of that person is suspended during the currency of that order under the Criminal Procedure (Mentally Impaired Persons) Act 2003.
  - (2) A compulsory care order of a care recipient ceases to have effect if, after the order is made, the care recipient—
    - (a) becomes subject to an order made under **section 24(2) or section 34(1)** of the Criminal Procedure (Mentally Impaired Persons) Act 2003; or
    - (b) is sentenced by a court to be detained in a prison.

*New heading above clause 140*

To insert above *clause 140* (above line 24 on page 159) the following heading:

*Co-ordinators, care managers, and district inspectors*

*Clause 144*

To omit this clause (lines 20 to 25 on page 161), and substitute the following clause:

**144 Designation of district inspectors**

- (1) The Director-General of Health may, from time to time, by written notice, designate, on any terms and conditions specified in the notice, a person as a district inspector or deputy district inspector for the purposes of this Act in respect of a geographical area specified in the notice.
- (2) The Director-General of Health must ensure that the number of district inspectors appointed under **subsection (1)** is at all times sufficient for the operation of this Act.
- (3) The Director-General of Health may designate under **subsection (1)** only persons who are district inspectors or deputy district inspectors appointed under the Mental Health (Compulsory Assessment and Treatment) Act 1992.
- (4) A designation under **subsection (1)** expires when the designated person ceases to be a district inspector or deputy district inspector under the Mental Health (Compulsory Assessment and Treatment) Act 1992.
- (5) A person designated as a deputy district inspector—
  - (a) has the powers, duties, and functions conferred or imposed on a district inspector by this Act; but
  - (b) may exercise any such power, duty, or function only at the direction of—
    - (i) the district inspector to whom he or she is the deputy; or
    - (ii) the Director-General of Health.
- (6) The Minister may, with the concurrence of the Minister of Finance, fix the remuneration of district inspectors or deputy district inspectors designated under this section, either generally or in any particular case, and may, also with the concurrence of the Minister of Finance, vary the amount or nature of that remuneration.

*New clause 146A*

To insert, after *clause 146* (after line 14 on page 162), the following clause:

**146A Director-General of Health may call for reports**

- (1) The Director-General of Health may, by written notice, require any co-ordinator, care manager, or district inspector to report to him or her on any matter of the kind described in **subsection (2)** that is specified in the notice.
- (2) The matter must—
  - (a) relate to the powers, duties, or functions that are exercised or performed under this Act by the person who is required to report; and
  - (b) be required by the Director-General of Health in connection with his or her powers, functions, or duties under this Act.

- (3) Any report required under this section must be supplied within a time, or at intervals, specified in the notice.

*Clause 147(2)(a)*

To omit the word “isolation” (line 23 on page 162), and substitute the word “seclusion”.

*Clause 148*

To omit this clause (lines 30 to 33 on page 162 and lines 1 to 10 on page 163), and substitute the following clause:

**148 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.

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### Explanatory note

This Supplementary Order Paper amends the Intellectual Disability (Compulsory Care and Rehabilitation) Bill to—

- change the definition of **intellectual disability** by limiting the requirement to apply psychometric tests to cases where this is practicable, and by reformulating (without substantive change) the nature of the intelligence quotient that is indicative of significantly sub-average general intelligence (that is an intelligence quotient that is expressed as 70 or less, and with a confidence level of not less than 75%);
- replace the requirement that each facility must be visited at least 4 times a year by a district inspector with a provision requiring the district inspector to visit each facility at least twice a year or, if the Director-General of Health so directs, more frequently;
- require district inspectors to be designated separately from district inspectors under the Mental Health (Compulsory Assessment and Treatment) Act 1992 (under the Bill in its current form all district inspectors under the 1992 Act are automatically district inspectors under the Bill);
- empower the Director-General of Health to call for reports from office holders under the Bill;
- make a number of technical and drafting changes, in particular to align the Bill with its companion measure the Criminal Justice Amendment Bill (No 7) (which is to be renamed the Criminal Procedure (Mentally Impaired Persons) Bill) as well as with other measures that have been enacted since 30 April 2001, the date on which the Health Committee presented its report on the Bill.