

Mental Health Bill

Government Bill

As reported from the Health Committee

Commentary

Recommendation

The Health Committee has examined the Mental Health Bill and recommends that it be passed. We recommend all amendments unanimously.

Introduction

This bill would repeal and replace the Mental Health (Compulsory Assessment and Treatment) Act 1992, which sets out when people may be subjected to compulsory psychiatric assessment and treatment and provides for their rights.

The bill's purpose, as set out in clause 3, is to provide for compulsory mental health assessment and care in a manner that:

- promotes a person's decision-making capacity, including while they are subject to compulsory care
- improves equity in mental health outcomes by striving to eliminate mental health care disparities, in particular for Māori
- protects rights
- protects safety and well-being.

Clause 6 proposes a set of principles for compulsory mental health care. The principles would apply to courts, tribunals, and people performing or exercising functions, powers, and duties under the legislation. They cover:

- Therapeutic purpose—compulsory care should only be used to protect, promote, and improve a person's mental health, and only if suitable care is available to do so.
- Least restrictive application—compulsory care should be applied in the least restrictive manner. This includes a preference for voluntary care, the use of

compulsory care for no longer than necessary, and ensuring that support is available to reduce the need for compulsion.

- Supportive and responsive application—compulsory care should be supportive and responsive. This means encouraging capacity and choice; reflecting the person’s needs; being guided by their will and preferences; and recognising their ties to family, whānau, hapū, iwi, and family group.

Clause 7 sets out the criteria that would have to be satisfied before a person could be subject to compulsory care. The person would have to have seriously impaired mental health that both:

- caused, or was likely to cause in the near future, serious adverse effects in the absence of care
- caused the person to lack capacity to make decisions about their own mental health care.

Part 2 of the bill provides for:

- the making of advance directives to set out a person’s care preferences in the event that they ever become subject to compulsory care
- participation in decision-making and hui whaiora (well-being meetings)
- support networks including a nominated person to represent the interests of a person if they become subject to compulsory care
- roles of independent support persons and advocates
- rights, and complaints.

Part 3 deals with compulsory care requirements and assessments and mental health care orders. Part 4 provides for forensic and restricted care (for people who pose an unacceptable risk of seriously endangering the physical or psychological safety of others).

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We wish to bring the House’s attention to some issues relating to clauses 202(1)(b) and 219, which we discuss in more detail later in this commentary.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

Purpose of the bill

Clause 3(c) states that the bill’s purpose includes protecting the rights of tāngata whaiora. We think the focus should be on ensuring that appropriate safeguards are in place for the use of compulsory care. To make this clearer, we recommend changing “protects” to “safeguards”.

We also think clause 3(d), which sets out whose safety and well-being the bill seeks to protect, should be amended. It should recognise tāngata whaiora as part of a collective that includes their whānau and their community. We recommend amending paragraph (d) by replacing “all other New Zealanders” with “their communities”.

Replacement of the word “patient”

Clause 4 contains various definitions that include the word “patient”. Some submitters felt that this word reflects a paternalistic approach to care and reinforces power imbalances between tāngata whaiora and mental health professionals. We considered various options for replacing the word “patient” and opted for “person under compulsory care”. For “inpatient” and “outpatient” we chose words emphasising the location of their care: in hospital and in the community, respectively. For “voluntary patient” we chose language to reflect that they are consumers of health services.

We recommend making the following changes in the bill:

- replace “patient” with “person under compulsory care”
- replace “forensic patient” with “person under forensic compulsory care”
- replace “Forensic Patient Review Tribunal” with “Forensic Mental Health Review Tribunal”
- replace “inpatient” with phrasing that reflects a person cared for in a hospital, such as “person subject to a hospital care order”
- replace “outpatient” with phrasing that reflects a person cared for in the community
- replace “restricted patient” with “person on a restricted order”
- replace “voluntary patient” with “voluntary mental health consumer”.

Primary support person

Clause 4 as introduced would define “principal caregiver” as a friend or family or whānau member who is most evidently and directly concerned with oversight of the person’s care and welfare. We consider that the phrase “principal caregiver” could be confusing and does not accurately reflect this person’s role. We recommend replacing it with “primary support person”.

Principles should refer to advance care directives

Clause 6(1)(c)(iii) provides for compulsory care to be delivered in a manner that is responsive to, and guided by, the person’s will and preferences. We want the bill to be very clear that this provision includes a person’s will and preferences as expressed in any advance mental health directive, including interventions they express as interventions of last resort. We recommend amending clause 6(1)(c)(iii) to make this explicit.

Principles should acknowledge the “dignity of risk”

We note that clause 3(a) sets out the bill’s purpose of promoting the decision-making capacity of tāngata whaiora. We consider that clause 6—which sets out the compulsory care principles—should also include a focus on this. We recommend inserting a new compulsory care principle, “Dignity of risk”, to recognise the right to take reasonable risks to achieve personal growth, self-esteem, and quality of life.

Clearer meaning of “serious adverse effects”

Clause 7 sets out the criteria that would have to be satisfied before a person could be subject to compulsory care. In clause 7(2), which defines “serious adverse effects”, paragraph (c) would require “serious deterioration in a person’s mental or physical health”. We do not think it is clear enough that the “person” in paragraph (c) is the person under assessment. We recommend changing “a person” to “the person” in clause 7(2)(c).

Sexual orientation and gender identity

Clause 8 defines “seriously impaired mental health”. Subclause (2) sets out certain factors that could not be the only reason a person was assessed as having seriously impaired mental health. The factors are largely carried over from the current Act.

The word “solely” means that, while items in the list in subclause (2) could not be the only reason, they could still form part of an assessment of seriously impaired mental health. However, we consider that two items in the list should never be part of an assessment that a person has seriously impaired mental health: sexual orientation and gender identity. We recommend amending subclause (2) to exclude these two items from any such assessment. The others could be factors in an assessment of seriously impaired mental health, just not the sole basis of the assessment.

We note that the bill as introduced uses the phrase “sexual preferences”, which is carried over from the current Act. We consider the phrase outdated and recommend replacing it with “sexual orientation”.

Advance mental health directives

Clauses 12 to 15 provide for “compulsory care directives”, which are advance directives that allow a person to set out their care preferences in case they ever became subject to compulsory care. We recommend changing the directives’ name to “advance mental health directives”. In our view this name would help to reduce confusion with other advance directives a person may have, and the stigma associated with compulsory care and barriers to promoting and encouraging the making of directives.

Clause 13(2) sets out the help that would be required from the mental health practitioner assisting a person to make an advance mental health directive. We recommend amending the subclause to be more specific. Our paragraph (a) would also require the practitioner to inform the maker of the purpose and effect of the directive, including its legal effect if the maker should ever be subject to compulsory care.

Under clause 14(1), directives must be witnessed by a person acceptable to the maker. We recommend inserting two further requirements: witnesses should be 18 years of age or older, and they should not themselves be subject to compulsory care.

Participation in decision making

Interpretation services

Clause 16 would require certain people to provide for and encourage patient participation in proceedings and processes under the bill. Under subclause (3)(b), interpretation services would have to be provided if it was practicable to provide them. We consider that this should be stronger. We recommend amending clause 16(3) so that interpretation services would have to be provided unless it is not practicable to provide them, and delaying proceedings to enable the services of an interpreter would have a serious detrimental effect on the person under compulsory care.

Hui whaiora (well-being meetings)

Clause 17(4) lists who could generally attend a hui whaiora (well-being meeting). However, it does not include people who the person under compulsory care might ask to attend beyond those listed. We recommend inserting paragraph (ca) into clause 17(4) to include them.

We also note that clause 17 does not require that the outcome of a hui whaiora be recorded. We recommend inserting subclause (6) to require the hui whaiora co-ordinator to do that.

Support network

Nominated person

Under clause 19, a person may appoint a nominated person to receive mental health information about them and to represent their views in decision making. The appointment must be witnessed in accordance with clause 20. In our view, witnesses should be 18 years of age or older, and they should not be subject to compulsory care. We recommend amending clause 20(1) to reflect this.

Independent support people and advocates

Clauses 23 and 24 provide for independent support people and advocates, respectively. Health New Zealand would have to ensure that these people are independent of decision makers under the bill.

We think this should be stronger and clearer. The bill should specify that independent support persons and advocates must “operate” independently from decision makers under the bill, Health New Zealand, and the Ministry of Health. We recommend amending clauses 23(2)(b) and 24(4)(a) to reflect this.

We also recommend making the role of advocate clearer in clause 24(2)(c) by specifying that an advocate represents the views, will, and preferences of a person under

compulsory care. This would make it clearer that advocates are working in a lay capacity and are different to legal representation a person may have.

Rights of people under compulsory care

We make several recommendations about the rights set out in Part 2, subpart 4.

Right to information about hui whaiora

Under clause 26, people entering compulsory care would have to be given a written statement of their rights. The rights include those set out in clause 26(3).

We recommend inserting an additional point in clause 26(3): the right to hui whaiora (well-being meetings) under clause 17. This is important because hui whaiora are not part of the current Act and they will be a new concept to many people.

Right to communications

Clause 35 provides for the right to send and receive communications. Subclause (2) lists the people with whom communications could not be withheld. We recommend updating the list to include the following:

- the Privacy Commissioner
- a Human Rights Commissioner
- the Health and Disability Commissioner
- the Approved Agency appointed under the Harmful Digital Communications Act 2015.

We are aware that the list might need to be updated in future, for example if a new agency was created that should be able to communicate with people under compulsory care without any barriers. If any future additions are needed, we consider it appropriate for them to be inserted by secondary legislation. This should only apply to adding new people to the list, not removing people from it. We recommend inserting paragraph (m) “any person prescribed in regulations” into subclause (2) to allow the list to be added to by secondary legislation.

Right to communication aid and mobility aid

Clauses 36 and 37 set out the rights, respectively, to communication aids and mobility aids. We heard comments from submitters about how very important these two rights are. We recommend that both clauses be strengthened to require that a district inspector or official visitor be notified if aids are removed or withheld. Clause 35 (about the right to communications) already contains such a provision.

We also recognise how critical it is for people to have access to communication and mobility aids. Unjustifiably removing aids can have serious consequences for tāngata whaiora. We recommend inserting new clauses 190A and 190B to create the offences of failing to take reasonable steps to ensure that a person under compulsory care has access to, respectively, their communication aid or their mobility aid.

Keeping newborns with their parents

Clause 6(1)(c)(iv) would require people performing a function or duty or exercising a power under the bill to recognise the importance and significance of a person's ties to their family, whānau, hapū, iwi, and family group and the contribution those ties make to well-being. However, the bill does not expressly refer to newborn babies being separated from their birth parent. We consider that the bill should explicitly provide that birth parents not be separated from their newborn babies unless specific circumstances apply.

To this end, we recommend adding clause 38A into the bill. Subclause (1) provides that a person under compulsory care in a hospital who is a birth parent is entitled to have their baby remain with them in hospital unless a legal guardian of the baby agrees to the separation, or the practitioner responsible for the person considers that the separation is in the best interests of the person or the baby. Subclause (2) sets out notification requirements when a birth parent is separated from their baby.

Complaints

Clauses 39 and 40 provide a complaints process for a breach of rights. Under clause 39, complaints would be investigated by a district inspector or an official visitor. Under subclause (5), if they were satisfied that a complaint had substance, they would have to report it to the Director of Area Mental Health Services to put things right. Under subclause (7), if they considered that their recommendations had not been satisfactorily addressed, they could report the matter to the Director of Mental Health. We recommend amending subclause (7) to make this reporting mandatory rather than optional.

Seclusion

Seclusion is the placing of a person alone in a room or area, at any time and for any duration, from which they cannot exit freely. Clause 49 seeks to provide for the reduction and elimination of seclusion.

Clause 49(1) would require every person performing a function under the bill to use their best endeavours to eliminate the use of seclusion. To elevate the importance of this duty, we think it should be placed on the person in charge of the service. They should also be required to demonstrate the steps that they have taken to reduce and eliminate seclusion by reporting each year to the Director-General of Health. We recommend amending subclause (1) and inserting subclause (1A) to reflect these changes.

Clause 49(2) should contain only the threshold for the use of seclusion, as set out in paragraph (b): people should not be placed in seclusion unless necessary to prevent an imminent risk to life when all other less restrictive strategies and approaches had been tried without positive effect. Clause 49(2)(a) of the bill as introduced—that seclusion should be used only for as long as necessary to ensure the safety of people accessing the service, staff, or others—would sit more appropriately in the list of requirements

for seclusion at clause 49(3)(b). We recommend moving it to be new subparagraph (iiia).

Seclusion threshold to apply despite emergency care provisions

The bill should also be clearer about how clause 49 would work with clause 47 (emergency care). The requirements in clause 49 should always apply instead of those in clause 47. That is, the threshold in clause 49, not clause 47, should apply to the use of seclusion which has a higher threshold than the one for emergency care. We recommend amending clause 49(2) to ensure that it would apply despite clause 47.

Recording seclusion

We recommend inserting more detail into clause 49(3)(b)(iv), which sets out what would have to be recorded after each episode of seclusion. Our amendment would require the grounds and the reasons for the seclusion to be recorded.

We also recommend inserting new subparagraph (v) to require the provision of each such record to the person's support network as soon as practicable and in line with their advance mental health directive.

These changes would align the reporting of seclusion more closely to the reporting of emergency care under clause 48.

5-yearly review should include seclusion

Under clause 212, the Director-General of Health would have to review the bill's policy and operation at 5-yearly intervals. We would like better visibility about progress towards the goal of reducing and eliminating seclusion. We therefore recommend inserting a new subclause in clause 212 so that the 5-yearly report would have to include a review of progress towards that goal.

Electroconvulsive therapy

The Ministry of Health informed us that electroconvulsive therapy (ECT) can be an effective treatment for depression, mania, catatonia, and other serious neuropsychiatric conditions. It said ECT is typically reserved for when previous modes of treatment have not been successful.

Under clause 50(1)(a) and (b), ECT could not be given to an adult unless one of the following conditions was met:

- the adult had capacity to consent, and did so in writing
- an advance mental health directive was in place approving the use of ECT
- the adult lacked capacity to consent and a second opinion from an appropriately qualified mental health practitioner appointed by the Mental Health Review Tribunal considered that the use of ECT was in the patient's interests.

We consider that several provisions should be added to ensure that ECT is only used in appropriate circumstances. Our recommendations are as follows:

- Advance mental health directives that object to the use of ECT should only be able to be overridden in an emergency. In such cases, the independent second opinion from a psychiatrist with expertise in ECT should also have to be sought. We recommend reflecting this by inserting paragraph (i) into clause 50(1)(b).
- The provision of ECT should take into account the person's care plan. We recommend inserting this requirement in subclause (1)(b)(ii).
- The requirements for children (under 18 years old) are set out in clause 50(1)(c) and (3) of the bill as introduced. As an extra protection, we think that two second opinions should have to be sought. One would be from a child and adolescent psychiatrist and one from an appropriately qualified psychiatrist with expertise in ECT. We recommend moving these provisions to new subclause (1A).
- Not all mental health practitioners should be able to provide second opinions about ECT, just psychiatrists. We recommend changing references to "mental health practitioner" to "psychiatrist" in clause 50(1)(b) and (1A).
- The second opinion psychiatrist should be required to have expertise in ECT. We recommend setting this out clearly throughout clause 50.
- Subclause (2) sets out the requirement to record the use of ECT. In our view, the record-keeping requirements for ECT should be the same as those for reporting the use of emergency care under clause 48. We recommend amending subclause (2) to align the ECT reporting requirements with those in clause 48.
- We think that one further safeguard should also be created to make clear that ECT must only be used in appropriate circumstances. We recommend inserting clause 190C to create an offence of failing to comply with clauses 50(1), 50(1A), or 50(2).

Restricted treatments

Clause 51 provides for restricted treatments, as defined in subclause (2). Under paragraph (a) they include treatments intended to destroy part of the brain or brain function. Under paragraph (b) they could be any other treatment specified in regulations.

The Regulations Review Committee wrote to us about paragraph (b). It said that the regulation-making power in paragraph (b) is so broad that its scope and intent are uncertain and it would give the decision-maker too much discretion. It pointed out that the provision would allow any treatment to be made a restricted treatment. It suggested that we consider amendments to provide the reasons why a treatment should be made a restricted treatment, and upon whose recommendation one should be made.

We understand that the regulation-making power in paragraph (b) is to allow for emerging or future treatments. We consider that paragraph (b) should state more clearly that it applies to emerging or higher-risk treatments. These practices may have

benefits for some people, but if they are listed as restricted treatments via regulations they would be subject to the additional safeguards in clause 51. We recommend amending clause 51(2)(b) to reflect this.

In our view, only a psychiatrist, and no other mental health practitioner, should be able to give a second opinion on a proposed restricted treatment. We therefore recommend changing wording in clause 51(1)(c)(ii) from “mental health practitioner” to “psychiatrist”.

Release from compulsory care

Under clause 53(1), a person would have to be immediately released from compulsory care if the responsible practitioner considered that they no longer met the criteria. If they did not consider so, but a district inspector, an official visitor, or a member of the person’s support network disagreed, the matter would be referred to the Mental Health Review Tribunal under clause 53(2).

We note that clause 81(4) already enables people’s support networks to seek review of these decisions at each 3-monthly status review. We think that also allowing the support network the review pathway in clause 53 could cause confusion. Also, if many reviews were sought under clause 53 instead of under clause 81, the right to have a matter considered in a reasonable time could be affected. We recommend removing the person’s support network from clause 53. The district inspector or the official visitor could still seek a review under clause 53, while the support network could do so under clause 81.

Use of the “reasonable grounds to believe” qualifier

Several clauses require a decision-maker to have reasonable grounds to believe that a person meets the compulsory care criteria. This qualifier is appropriate for an examination and first assessment, but we do not think it is appropriate after a person’s second assessment. We consider that decision-makers should determine whether the patient meets the compulsory care criteria at the following times:

- the end of the second assessment
- when an order is made by the court
- at status reviews
- at the end of an order before a new application is made
- for any subsequent court determinations.

At these points in the process, the threshold should be higher than “reasonable grounds to believe” and the decision-maker should be able to determine outright whether the patient meets the criteria. We therefore recommend removing the “reasonable grounds to believe” qualifier from clauses 53, 65, 67, 76, 80, 81, 85, 86, 88, 135, 137, 139, 142, and 143.

Initial compulsory assessment process

Clauses 54 to 68 cover the initial compulsory assessment and care processes, which include:

- an examination and application for first assessment
- a first assessment of up to 6 hours, completed by a mental health practitioner
- a second assessment of up to 19 days, with reviews on days 5, 12, and 19, where compulsory care can also occur.

Diagram about the compulsory care assessment process

We think it would be helpful to include a diagram in the bill showing the steps involved from the application for a first assessment to the issuing of a mental health care order. This would help everyone to better understand the statutory processes, including tāngata whaiora, whānau communities, and people working under the legislation. We recommend amending clause 54 and inserting Schedule 1A to provide for such a diagram.

Consideration of advance mental health directives in first assessment

Clause 58(2)(a)(i) would require the practitioner undertaking the first assessment to take steps to determine whether there is an advance mental health directive. However, clause 58(2)(b) does not explicitly require them to have regard to the directive. We recommend amending paragraph (b) to require this.

Length of second assessment

At some point before the end of the second assessment, the responsible practitioner would be able to apply to court for a mental health care order under clauses 67 and 69. Clause 68 sets out the legal status of the person being assessed while the application is pending.

We recommend amending clause 68(1) to clarify the length of the second assessment.

Jurisdiction of Family Court

Clause 70 provides for all applications under the bill to be heard and determined by the Family Court unless otherwise provided. Under subclause (3), if an examination is required, it must be done by a Family Court Judge. Subclause (4) would allow examinations by a District Court Judge if this was not practicable. We recommend an amendment to make clear that subclause (4) would apply despite subclause (3).

Warrants

Clause 189 sets out requirements for warrants to enter premises or to take a person to a specified place. It would apply to people under compulsory care and people proposed to be under compulsory care.

We heard submissions that clause 189(4) should be amended to also allow District Court Judges to issue warrants. This would mean that a Registrar could issue a

warrant only when no Family Court Judge or District Court Judge was available. We support this argument and we recommend amending subclause (4) accordingly.

Duration of a mental health care order

Clause 86(2) provides for the extension of mental health care orders “for a period of 12 months”. We recommend amending this to make clear that an extension could be for any period of “up to” 12 months.

Under clause 87, courts would have 2 months to determine an application for an extension of a mental health care order under clause 86. The time allowed for the court to make its decision should be no longer than necessary, because the person would remain under compulsory care pending the outcome of the application. However, we heard that extra time could benefit people wishing to seek a second opinion. In our view, allowing the court to extend the time by up to 1 more month for the benefit of the person subject to the application would be an appropriate reason for a delay. We recommend inserting subclause (1A) into clause 87 to provide that a Judge may extend the period in which they must determine an application if they receive a request to do so, and the purpose of the extension is to obtain a second opinion in relation to the status review.

Leave from hospital

Clause 89 sets out leave provisions for people subject to hospital care orders. Under subclauses 2 and 3, they could be granted leave of up to 3 months which could be extended once by up to 3 months.

We think any length of leave should be granted to an inpatient, as long as it is clinically appropriate. We also think that the responsible practitioner, when deciding to grant leave, should also consider whether the hospital care order was still appropriate. We recommend amending clause 89(2) and (3) to reflect this.

Absence without leave

If a person under compulsory care was absent without leave, clause 90(1) provides that they could be returned by any person. We think it appropriate to limit who could return a person to hospital, which could include using force, to people who could appropriately exercise such power. We recommend amending clause 90(1) so that a person who was absent without leave could only be returned by one of the following:

- a person authorised by a Director of Area Mental Health Services under clause 148
- a constable
- a member of the person’s rōpū whaiora (collaborative care team).

People subject to forensic compulsory care

Forensic compulsory care is for people transferred from the justice system to the health system. The bill would carry over existing processes that enable these people to receive mental health care in a secure environment.

Transfers from prison to hospital

Clause 105 sets out the process for the first assessment of a person detained in an institution such as a prison. In our view, clause 105 is not clear about when the custody of people already subject to the assessment process or under a mental health care order would transfer from the justice system to the health system. We recommend amending clause 105(5)(c)(ii) to clarify that custody would transfer once the person was admitted to, and detained at, the hospital. We also recommend amending clause 105(5)(e) to refer to clause 188. This would authorise the person in charge to admit and detain on the basis of certain documents.

Departing from hospital or from New Zealand

Under clause 130, people subject to forensic compulsory care could not depart from the hospital without a leave of absence. Nor could they depart New Zealand unless permitted in their leave of absence.

Clause 219 sets out requirements for people under compulsory care who leave New Zealand. We recommend inserting subclause (5) in clause 130 to ensure that it would be subject to clause 219.

We also recommend amendments to clause 219. As clause 219 would apply to all patients under compulsory care, we discuss our recommendations later in this commentary.

Review of decisions

Clause 142 sets out how to appeal a Mental Health Review Tribunal decision that a patient meets the compulsory care criteria. Clause 176 sets out how to appeal a decision of the Forensic Mental Health Review Tribunal. Appeals under both clauses would be made to the High Court. However, we think the Family Court is a more appropriate forum and has expertise in mental health matters. We recommend changing the High Court to the Family Court in clauses 142 and 176.

Certain powers of police and nurses

Clause 182 sets out the powers of a constable if a person was found in a public place acting in a manner that gave the constable reasonable grounds to believe the person met the compulsory care criteria. Although we heard concerns that the police may not be able to decide whether a person meets the compulsory care criteria, we do not consider it appropriate for police to apply different criteria than other professionals operating under the legislation. This is particularly important because police would have significant powers under clause 182. They could detain and take a person to a hospital.

We think, however, that the threshold in clause 182(1) should change. We recommend amending clause 182(1) so that the powers would apply if the person's actions gave the constable reasonable grounds to "suspect" that the person "may meet" the compulsory care criteria. We also recommend inserting subclause (1A) to make clear that the constable would not have to make a medical assessment or clinical judgement about a person. If the police needed help understanding whether a person met the compulsory care criteria, they could seek it from an authorised person under clause 178. We recommend setting this out in our new subclause.

We recommend a parallel change to clause 187, which would provide a similar power to nurses in hospitals.

Power of urgent sedation

Clause 184 provides for the situation when person may need to be sedated urgently. Subclause (3)(a) would require the circumstances of the sedation to be recorded. To ensure consistency between the bill's recording requirements for restrictive practices, we recommend amending paragraph (a) to require the information to be recorded in accordance with clause 206(2).

Offences

We have previously discussed the new offences set out in our proposed new clauses 190A, 190B, and 190C relating to communication and mobility aids, and the use of ECT.

We recommend modernising the language in clauses 191(2)(b) and 192(2)(b) from "conspire" to "intentionally assist".

Offences created by regulations

Clause 202(1)(b) would allow the making of secondary legislation to "regulate the conduct of secure mental health facilities".¹ As identified in our legislative scrutiny of the bill, we consider that the word "conduct" is too wide. The regulation-making power should only cover matters relating to the operation and management of mental health facilities, not the care a person would receive there. We recommend replacing the wording "conduct" in paragraph (b) with "operation and management".

The Regulations Review Committee wrote to us about the powers in clause 202(1)(d) and (e). These provisions would allow the making of regulations prescribing offences and fines for breaching regulations under the bill. Under paragraph (d), offences could be prescribed in respect of the contravention of or non-compliance with any regulation made under the bill, or any requirement or direction made or given under any regulation. Under clause 202(1)(e), fines could be up to \$500, and in the case of a continuing offence, \$50 for every day on which the offence continued.

¹ Clause 162 would empower the Minister to declare any hospital or part of a hospital a secure mental health facility.

The Regulations Review Committee said that these powers appear appropriate in respect of some of the matters for which regulations may be made under the bill, such as the requirements for reporting by Directors of Area Mental Health Services to the Director of Mental Health. However, it noted that regulations could also be made to prohibit or restrict the placement of patients in seclusion (clause 49(4)) and in relation to the collection of biometric information from forensic or restricted patients (clause 103(3)). The Regulations Review Committee said that contravention or non-compliance with such regulations could involve significant breaches of human rights. The committee was concerned that fine limits of \$500 could be inappropriate. It recommended that we consider whether offences and fines in relation to these types of matters are more appropriate for parliamentary enactment.

We agree that the bill's offences and penalties regime should be more structured and consistent. It should also align with the Legislation Design and Advisory Committee guidelines.

To address the issues raised by the committee, we considered that penalties in the bill as introduced:

- needed to be increased to ensure they are up to date and fit for purpose
- should be higher for others like organisations than they are for individuals
- should be clearer on whether the penalty is for intentional breaches or non-intentional breaches (negligent).

To achieve this, we make several recommendations, including:

- amendments to clause 202(1) to increase the fines for breaches of the regulations made under the legislation. New paragraphs (ca) to (cc) would provide specifically for offences and maximum fines relating to breaches of regulations prohibiting or restricting seclusion
- providing a framework for infringement offences, which has been inserted at clauses 197A to 197H. Specific infringement offences would need to be set out in regulations under new clause 202(1)(ea) and (eb). This would give the regulator, the Director of Mental Health, stronger and more appropriate levers to support compliance with the legislation
- the removal of clause 198 to align with the changes above and increases to fines for breaches of the primary legislation; the increased fines have been made in clauses 191 to 196.

Giving or sending documents

We think that clause 208, which covers the giving or sending of documents, should be clearer, and recommend removing subclause (5) to do this. Subclause (6) is sufficient. It is clearer and is consistent with other electronic transaction provisions.

Use of audiovisual links

Clause 215 provides for the use of audiovisual technology by people working under the legislation. We consider clause 215 too subjective in requiring Person A's opinion. We note that in-person attendance should be the default. We recommend removing the phrase "person A considers" from subclause (2) and inserting paragraph (aa) to ensure that the views of Person B have been considered.

Clauses 99 and 216 provide for the use of audiovisual links in courts and tribunals. We think that these provisions would be clearer if the two clauses were combined. We recommend removing clause 99 and amending clause 216 to provide generally for when audiovisual links could be used by a judge or member of a tribunal to examine a person under compulsory care. The person's views would have to be considered and it would have to be impracticable for the person to be physically present for the examination.

Transfers

Clause 217 provides for the transfer of people under compulsory care from one service to another. We wish to make clear in the bill that children and young people could ask for a support person to accompany them when transferring.

Under Right 8 of the Code of Health and Disability Services Consumers' Rights, every consumer has the right to have one or more support persons of their choice present, except where safety may be compromised or another consumer's rights may be unreasonably infringed. We feel this should be made explicit for young people in relation to transfers.

We therefore recommend adding subclause (6A) to clause 217, to provide that a person under 18 years old may request that a support person accompany them. Their request could not be unreasonably denied, as set out in Right 8 and confirmed in our paragraph (b) of new subclause (6A). Similarly, we recommend inserting subclause (4A) into clause 112 to provide the same rights to forensic patients under 18 years old.

We have two more minor recommendations to clause 217. Under subclause (5), transfers would have to occur within 14 days after the making of the direction to transfer. We recommend removing subclause (5) and incorporating it into subclause (2). We also recommend amending subclause (8) to include the person's care plan in the list of documents that would be transferred with them.

Removal from New Zealand

Clause 219 sets out requirements for people under compulsory care leaving New Zealand. If the Minister was satisfied that the person would benefit from removal, they could direct that the person be placed outside New Zealand. Clause 219 is based on section 128 of the current Act. We understand that section 128 can be used when a patient has family in their country of origin who can provide care for them, and that is the preference of the patient and their family.

As part of our legislative scrutiny of the bill, we have identified that the Minister's powers should align better with ministerial powers elsewhere in the bill. Clause 219 could also better reflect how the current provision works in practice. We recommend amending subclause (1) so that the Minister, before authorising the person's removal from New Zealand, must:

- consider advice from the Director of Mental Health
- be satisfied that it was appropriate for the person to be removed from New Zealand.

We recommend inserting subclause (1A) to specify that the Director's advice must be about:

- the will and preferences of the person
- the views of their support network
- the care that they would receive once removed from New Zealand
- any other matters that the Director considered relevant.

If the person was under forensic compulsory care, subclause (3) of the bill as introduced would also require the agreement of the Minister of Corrections. We recommend removing subclause (3).

Transitional provisions

Section 34D of the Mental Health (Compulsory Assessment and Treatment) Act 1992 facilitates patients consenting to an extension of their compulsory treatment order. Applications for extensions may be determined without a formal court hearing and without the patient being examined if they have consented to the extension on the advice of a solicitor.

We recommend inserting new clause 6 in Schedule 1 (Transitional, savings, and related provisions) to change the word "solicitor" to "lawyer" in section 34D. That would allow both barristers and solicitors to advise patients.

We also recommend amending clause 2 of the bill so that the amendment to section 34D would come into force on the day after Royal assent. The rest of the bill would commence on 1 July 2027.

Green Party and Te Pāti Māori differing view

The Green Party and Te Pāti Māori welcome the Government's commitment to reforming mental health legislation for the transformation we know is urgently needed. We acknowledge the work of the select committee in moving the legislation toward a more rights-based, health-centred approach that reflects the aspirations of He Ara Oranga. This bill represents an opportunity for us to embrace a vision of transformation and to align more closely with a health-based model of care.

However, while we support the overall direction of the proposed changes, we believe that further adjustments are needed to fully align the legislation with a rights-based approach. The Green Party and Te Pāti Māori are particularly concerned that vulner-

able groups, such as children, disabled people, and those who have faced systemic discrimination, may not receive the full protection and support they require under the current draft.

To fully deliver on the promise of reform, we believe further amendments are essential in key areas.

1 A sunset clause on seclusion

We agree with the direction of the committee in seeking to end the practice of seclusion. We support the intent to reduce and ultimately eliminate seclusion practices in mental health services. In our view, the most effective and accountable way to achieve this is through the inclusion of legislated sunset clauses that phase out seclusion entirely within a defined timeframe.

We also recognise that in the current system, seclusion is sometimes needed to protect staff and others from harm. We do not take that lightly. Workforce safety must be paramount. That is why any move to eliminate seclusion must be accompanied by real investment in the workforce—in staffing levels, in de-escalation training, in therapeutic models of care, and in environments designed to keep both staff and tāngata whaiora safe.

Seclusion is a harmful and traumatic practice. It isolates people from care and connection. This is especially damaging for tamariki, who require whānau support, emotional regulation, and consistent human presence for healthy development. While the bill aims to reduce the use of restrictive practices, it does not yet go far enough.

The inclusion of a sunset clause is in line with the views of trusted stakeholders, including the Mental Health and Wellbeing Commission, which recommended:

We recommend the Committee eliminates seclusion under the Bill via introduction of a ‘sunset clause’ that removes seclusion as a permitted practice within a specified period from the date of enactment.

The Mental Health Foundation echoed this call:

The Bill needs to include a sunset clause for solitary confinement (seclusion), prohibiting its use after a specified time, such as within five to 10 years of the law coming into force. A legal time limit will act as a lever to force the necessary system, service, workforce and practice change and investment in staff and facilities now, not later.

Health Action Trust further affirmed this perspective:

Solitary confinement is defined by the United Nations as a form of torture, but this Bill still allows for it to be used. We agree with lived experience leaders who have called for the Bill to set a clear target and timeline to end the use of solitary confinement... We need a new approach to service design, including development of a skilled and appropriate workforce and a focus on services that are delivered in the community.

Including a clear sunset clause sends a signal that seclusion has no place in a mental health system grounded in care, dignity, and Te Tiriti justice. It provides both a man-

date and a timeframe for transforming service design, ensuring workforce wellbeing, and developing community-based supports that uphold the mana of all—especially our most vulnerable.

2 Replace compulsory care with voluntary care orders

A rights-based approach requires individuals to be involved in decisions about their own care. Aotearoa has one of the highest rates of compulsory mental health treatment globally, with around 6,000 people currently under compulsory care. This model is outdated and fails to deliver better outcomes. This bill can be both transformative and aspirational. While the Green Party and Te Pāti Māori agree with the move to prioritise voluntary care over compulsory care orders, the current bill does not go far enough.

Voluntary care should be the default, not just an option. Voluntary care allows people to co-design their treatment, fosters trust, and supports long-term recovery, creating a more humane mental health system.

Proposed changes to Clause 6:

- Voluntary care should be the default, with compulsory care used only when absolutely necessary and for the shortest duration.
- Support measures should be in place to reduce the need for compulsion.

With adequate resourcing, we can fully transition to voluntary care. The Mental Health Foundation of New Zealand emphasises that reducing compulsion must not reduce care, and there must be sufficient voluntary support available for early intervention to prevent escalation.

The New Zealand Psychological Society Inc also highlights that, if compulsory care is to be permitted, it should not be restricted solely to a hospital setting. Alternative residential care options can meet cultural needs and offer therapeutic benefits and protections, ensuring that care is tailored to individuals' needs and is not confined to clinical environments. This is particularly important in ensuring that care aligns with cultural values and supports the well-being of all individuals, especially Māori.

Professionals including Associate Professor Sarah Gordon and colleagues proposed a Community Support Commitment (CSC) for individuals discharged from compulsory care. This would provide comprehensive voluntary support to those reintegrating into the community, eliminating compulsory treatment and reducing the use of compulsion in mental health services.

The proposed amendment aims to:

- Ensure adequate support for people with high mental health needs post-discharge.
- Eliminate compulsory community treatment and reduce compulsion in mental health services.
- Address the disproportionate impact on Māori who are more likely to face compulsory treatment under the current law.

3 Specific clauses for neurodivergent children

The current draft of the legislation does not sufficiently address the needs of neurodivergent children. To address this, we propose that the bill include specific protections for neurodivergent children, with care pathways that are non-coercive, whānau-centred, and evidence-based practices.

The Ombudsman's submission highlights the importance of upholding the principles of the Disability Convention, noting:

New Zealand is also required to uphold the General Principles of the Disability Convention, which include 'respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities'. In light of this, I suggest further consideration be given to embedding the rights of disabled children and young people who may be subject to compulsory care. This includes disabled children and young people's evolving decision-making capacity and identities, with their best interests being a primary consideration in line with Article 3(h) and 7(2) of the Disability Convention.

The bill should reflect this by ensuring that the decision-making capacities of neurodivergent children are recognised and supported, in line with Articles 3(h) and 7(2) of the Convention.

We also support the recommendation to expand the list of agencies in clauses 34 and 35 from whom communication cannot be withheld. This should include agencies such as the Privacy Commissioner, Human Rights Commissioner, and Health and Disability Commissioner to ensure that children's rights to communicate and file complaints are upheld effectively. We are pleased to see the committee has included this in their report.

Incorporating these changes will help ensure that neurodivergent children's rights are better protected within the mental health system.

Labour Party differing view

The bill as currently drafted provides a more nuanced approach to dealing with the circumstances under which people may be subjected to compulsory psychiatric treatment than the current Mental Health Act 1992. However in our view it is a wasted opportunity to improve equity, protect rights, modernise decision-making, create a participatory framework for tāngata whaiora and advance New Zealand's commitments under international human rights treaties.

We agree with evidence that the bill treats capacity as narrow, reductionist, and binary especially with intermittency retaining the same loose meaning as the 1992 Act, with no time parameters around the relationship of capacity and non-capacity or requirement for any diminishment of capacity to be imminent.

The bill is complicated with regards to how and by whom decisions about capacity are made. Many times clauses must be cross-read with multiple other clauses to determine whether a condition, power or exception applies, making the decision-tree

overly complex for those on the frontline. The flow diagram in Schedule 1 is useful and we would have liked to see more of these to clarify the different journeys from compulsory care to compulsion being lifted, with the decision gates and thresholds clearly shown, along with review and appeal gates and timelines.

Significantly, the bill omits any legislative requirement to plan or resource a more human-rights based approach leaving it vulnerable to tick-box measures rather than real implementation. We also agree with evidence that more explicit strengthening of safeguards would lift the bill closer to its stated purpose, and we would welcome any late amendments that would achieve that.

Vulnerable population groups

We are pleased that as a committee we have been able to strengthen protections for birthing parents and newborns, in response to powerful submissions regarding this particular cohort. However, we also believe that young people and disabled people would benefit from additional considerations to safeguard them from harm, and promote their best interests. This is particularly in light of the effective widening of the capacity test in the first assessment under the bill—which we agree is useful in a practical sense when it comes to quickly escalating situations—and which are mitigated by subsequent assessment and decision gates involving higher thresholds. However, the fact that people can now be sectioned more quickly in some circumstances makes it even more important to ensure that extra safeguards ensue and that more care is taken for those most at risk of being misdiagnosed as lacking capacity, and those most vulnerable to the consequences of compulsory care.

We would prefer to see a sunset provision on compulsorily accommodating young people in adult facilities supported by a legislated implementation plan requiring new-build hospitals to take account of this. We agree with evidence that, in the absence of facilities for young people, explicit best-endeavours rights for young people to have access to basic well-being factors such as sunlight, outdoor space, and whānau would better protect them.

In general, explicit legislated requirements for implementation plans and training requirements throughout the bill would allay our concerns that in a resource-constrained sector, some tāngata whaiora will continue to have experiences which exacerbate their fear and mistrust of the mental health system.

Te Tiriti o Waitangi

While the bill seeks to remove mental health care disparities for Māori, we believe that would be more achievable if tikanga and meeting places were explicitly referenced; if hapū and iwi were explicitly acknowledged as communities of interest in the tāngata whaiora journey to well-being, and if Te Tiriti o Waitangi was given effect to, rather than its principles.

Compulsory care

We are also concerned that New Zealand has significantly high rates of compulsory care orders despite no evidence that they are useful in returning people to full mental

health. This bill affords an opportunity to modernise a regime that we heard was out-of-date and likely to be considered defunct in the coming decade when it comes to international best practice.

Although the bill refers to advance directives, it provides no systematic or empowered way to deal with them and continues to enable formal decision-making processes which continually override the wishes of people under the bill. We would prefer a modernised regime favouring voluntary participatory community care contracts with a corresponding treatment entitlement, unless exceptional circumstances required otherwise.

While the bill purports to enable voluntary care options in clause 6, and limit compulsion in clause 7, we heard evidence that principles do little to reduce the use of compulsion, and the clause 7 “lift and shift” criteria from the current Act have not limited compulsion. We do not agree with officials’ suggestion that this would involve a major policy change as it changes only the presumption in favour of voluntary over compulsory participation—given the bill states as one of its core objectives a “shift from compulsory care towards an approach based on people’s rights and recovery”.

In our view, voluntary services would not become coercive should a person fear they would be returned to hospital if they didn’t engage, because non-engagement is not a criteria for compulsory treatment.

We heard overwhelming evidence that the current compulsory model contributes to disengagement and considerable distrust with services. The suggestion that a voluntary regime might cause a person not to engage with services is a circular argument because the point of consent is that tāngata whaiora get to make or withhold it. While the purpose of the bill is to set out the circumstances for when compulsory mental health care can be provided, community care contracts would not conflict with the aim of providing community support on a voluntary basis as people transition out of hospital care.

We do not accept the argument that removing people from receiving compulsory care in the community may have the unintended consequence of people remaining on inpatient orders for longer because all 6,000 people currently under community treatment orders currently meet the 1992 Act criteria of posing a “serious danger to the health or safety of that person or others” yet are considered to be adequately supported out of hospital.

While officials raised implications for key criteria such as effectiveness, practicality, and cost, we understand that implementation would involve the same staff practising within a voluntary framework with no additional resource required.

Given the significant human rights implications of this bill, and the likelihood that it won’t be reviewed fully for some decades, we would have welcomed additional impact reports rather than the rushed process and hard deadlines that officials were clearly having to work to.

Seclusion

We are disappointed that despite New Zealand's obligations to phase out seclusion, the bill only requires individual institutions to progress this and report annually on it, with a five-year legislative review. We would have preferred a commitment to ending seclusion within five years, along with a legislated requirement for a systems phase-out implementation plan. This would have led to appropriate resourcing, building design, and training to enable New Zealand to reach its internationally-stated goal of ending seclusion. We also would have preferred further reviews subsequent to the five-year review at two-year intervals.

ECT and restrictive practices

We heard evidence from our independent advisor about ECT and we agree with submitters that, in rare cases, ECT can be required to be used as a treatment of last resort on under-18-year-olds with specific and rare disorders such as catatonic depression. While we are comfortable with the additional safeguards regarding ECT and other restrictive practices, to safeguard against the possibility of abuses the likes of which surfaced during the Royal Commission of Inquiry into State and Faith-based Care, we would prefer to see additional safeguards for adults that take into account any advance care directives against the use of ECT.

Secondary legislation

The search and surveillance powers under section 204 will effectively be broadened inappropriately by guidelines made under regulatory powers in a manner inconsistent with 4.1 of the LDAC Legislation Guidelines 2021. We do not accept the view that mental health situations are exceptional compared with other situations involving search and surveillance and we would have preferred more time to seek clarity on this specific point from the Regulations Review Committee.

Conclusion

While we support the bill as a step towards a more rights-based and participatory approach to mental health compulsory care, we do not think it goes far enough. Short time frames meant officials could not deal with anything more than tweak the bill, even when there was compelling evidence by multiple submitters to make more substantive changes that would make it significantly more likely to achieve its purpose. We thank them for providing further advice at short notice as we sought more fulsome answers on some of these matters. We thank all those who made submissions, particularly those who shared their lived experience. It is our hope that further amendments can be made at the committee of the whole House to make the current compulsory care regime voluntary except in exceptional circumstances, as that would align the bill with its purpose of modernising mental health care in New Zealand while protecting rights, safety, and well-being.

Appendix

Committee process

The Mental Health Bill was referred to the committee on 23 October 2024. We invited the Minister for Mental Health to a hearing of evidence on 12 February 2025.

We called for submissions on the bill with a closing date of 20 December 2024. We received and considered submissions from 358 interested groups and individuals. We heard oral evidence from 89 submitters.

Advice on the bill was provided by the Ministry of Health and Dr Adam Sims. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting. The Regulations Review Committee reported to us on the powers contained in clauses 51(2)(b) and 202(1)(d).

Committee membership

Sam Uffindell (Chairperson)

Dr Hamish Campbell

Dr Carlos Cheung

Ingrid Leary

Cameron Luxton

Hūhana Lyndon

Jenny Marcroft

Debbie Ngarewa-Packer

Hon Dr Ayesha Verrall

Related resources

The documents we received as advice and evidence are available on the Parliament website.

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Matt Doocey

Mental Health Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Mental Health Act **2024**.

2 Commencement

- (1) This Act comes into force on **1 July 2027**. 5
- (2) However, **section 10**, in so far as it relates to **clauses 5 and 6** of **Schedule 1**, comes into force on the day after Royal assent.

Part 1

Preliminary provisions

Purpose 10

3 Purpose

The purpose of this Act is to provide for compulsory mental health assessment and care in a manner that—

- (a) promotes the decision-making capacity of tāngata whaiora, including while they are subject to compulsory care; and 15

- (b) improves equity in mental health outcomes among New Zealand's population groups by striving to eliminate mental health care disparities, in particular for Māori; and
- (c) ~~protects~~ safeguards the rights of tāngata whaiora; and
- (d) protects the safety and well-being of tāngata whaiora and ~~all other New Zealanders~~ their communities. 5

Interpretation

4 Interpretation

- (1) In this Act, unless the context otherwise requires,—
- advance mental health directive** means a document that is described in **section 12** and that has been made in accordance with **sections 13 to 15** 10
- advocate** means a person provided under **section 24** to perform functions in respect of a ~~patient or proposed patient~~ person under compulsory care or proposed person under compulsory care
- attorney** has the meaning given in section 2 of the Protection of Personal and Property Rights Act 1988 15
- audiovisual link**, in relation to the performance of a function or exercise of a power under this Act in respect of a person, means facilities that enable both audio and visual communication with the person
- authorised person** means a person who is authorised by a Director of Area Mental Health Services under **section 148** to perform the functions and exercise the powers conferred on authorised persons under this Act 20
- capacity to make decisions about mental health care** has the meaning given in **section 9**
- care** means any method of treatment, support, or intervention that aims to— 25
- (a) alleviate or prevent the worsening of any serious adverse effects relating to seriously impaired mental health; or
 - (b) restore a person's capacity to make decisions about mental health care
- care plan** means a care plan developed under **section 43**
- care plan review** means a review whose requirements are set out in **section 45(1)** 30
- clinical psychologist** means a health practitioner who—
- (a) is, or is treated as being, 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 and whose scope of practice permits the performance of clinical psychologist functions; and 35
 - (b) holds a current practising certificate

- community care order** means an order specified in **section 77(1)(a)**
- compulsory care** means the compulsory assessment and care of a person from the start of the second assessment period until the person is released under **section 53, 64, 66, or 76 or 66**
- compulsory care criteria** means the criteria set out in **section 7** 5
- ~~**compulsory care directive** means a document that is described in **section 12** and that has been made in accordance with **sections 13 to 15**~~
- court** means, unless otherwise provided,—
- (a) the court with jurisdiction to hear and determine applications set out in **section 70**; or 10
- (b) the Court Martial of New Zealand established under section 8 of the Court Martial Act 2007 when acting under Part 10 of the Armed Forces Discipline Act 1971
- Deputy Director** means the person who holds the office of Deputy Director of Mental Health under **section 144** 15
- Director** means the person who holds the office of Director of Mental Health under **section 144**
- Director-General** means the chief executive under the Public Service Act 2020 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 20
- Director of Area Mental Health Services** means a person appointed as a Director of Area Mental Health Services under **section 145**, and in a particular case means the person appointed for the relevant area
- district inspector** means a person appointed as a district inspector under **section 150**, and includes a person appointed as a deputy district inspector under that section 25
- ~~**forensic patient** means—~~
- (a) ~~a person who must be detained in a hospital under an order made under—~~ 30
- (i) ~~section 24(2)(a), 38(2)(c), or 44(1) of the Criminal Procedure (Mentally Impaired Persons) Act 2003; or~~
- (ii) ~~section 169 of the Criminal Procedure Act 2011; or~~
- (b) a person who is remanded to a hospital or secure facility under section 23(2)(b) or 35(2)(b) of the Criminal Procedure (Mentally Impaired Persons) Act 2003; or 35
- (c) ~~a person who must be detained in a hospital under section 34(1)(a)(i) of the Criminal Procedure (Mentally Impaired Persons) Act 2003, and who has not ceased, under **section 110** of this Act, to be a forensic patient; or~~ 40

- (d) a person who must be detained in a hospital, either following an application under **section 105(2) or (3)** or arrangements made under **section 106**, and who has not ceased, under **section 110**, to be a forensic patient; or
- (e) a person who must be detained in a hospital under section 191(2)(a) of the Armed Forces Discipline Act 1971; or 5
- (f) a person who, in accordance with section 136(5)(a) of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, must be held as a forensic patient

See also the definition of forensic patient in **section 113** in relation to provisions involving victims of forensic patients 10

Forensic Patient Review Tribunal ~~Forensic Mental Health Review Tribunal~~ means the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal established under **section 174**

Health and Disability Commissioner means the Health and Disability Commissioner appointed under section 8 of the Health and Disability Commissioner Act 1994 15

Health New Zealand means the health entity established under section 11 of the Pae Ora (Healthy Futures) Act 2022

health practitioner has the same meaning as in section 5 of the Health Practitioners Competence Assurance Act 2003 20

hospital—

- (a) means premises that—
- (i) are used to provide a hospital service in accordance with section 9 of the Health and Disability Services (Safety) Act 2001; or 25
- (ii) are not yet used, but are intended to be used, to provide a hospital service under this Act, and are occupied by a person certified under the Health and Disability Services (Safety) Act 2001 to provide the hospital service; but
- (b) if only parts of any premises are used (or intended to be used) to provide a hospital service, means only those parts 30

hospital care order means an order specified in **section 77(1)(b)**

hospital service means hospital care (within the meaning of the Health and Disability Services (Safety) Act 2001) that is, or consists principally of, a service under this Act 35

independent support person means a person requested to advise or support a person or ~~patient~~ a person under compulsory care under **section 23(1)**

infringement fee, in relation to an infringement offence, means the infringement fee for the offence specified in the regulations

- infringement offence** means an offence that is identified in the regulations as being an infringement offence
- ~~**inpatient** means a patient who is subject to compulsory care in a hospital~~
- lawyer** has the same meaning as in section 6 of the Lawyers and Conveyancers Act 2006 5
- lived experience** means a person's direct experience
- medical practitioner** means a health practitioner who—
- (a) 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; and 10
- (b) holds a current practising certificate
- mental health care order** means an order made under **section 77**
- mental health practitioner** means—
- (a) a medical practitioner; or 15
- (b) a nurse practitioner; or
- (c) a registered nurse practising in mental health; or
- (d) any other person or class of person appointed under **section 149**
- Mental Health Review Tribunal** means a Mental Health Review Tribunal appointed under **section 164** 20
- Ministry of Health** or **Ministry** means the department of the public service referred to by that name
- New Zealand Health Plan** means the plan required under section 50 of the Pae Ora (Health Futures) Act 2022
- nominated person**, in relation to a person, means the nominated person appointed under **section 19** 25
- nurse** means a health practitioner who—
- (a) is, or is treated as being, registered with the Nursing Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of nursing and whose scope of practice permits the performance of nursing functions; and 30
- (b) holds a current practising certificate
- nurse practitioner** means a health practitioner who—
- (a) is, or is treated as being, 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 35

nursing and whose scope of practice permits the performance of nurse practitioner functions; and

- (b) holds a current practising certificate

official visitor means a person appointed under **section 150** to be an official visitor

5

~~**outpatient** means a patient who is subject to compulsory care in the community~~

paramedic means a health practitioner who—

- (a) is, or is treated as being, registered with the Paramedic Council established by an Order in Council made under section 115 of the Health Practitioners Competence Assurance Act 2003 as a practitioner of paramedic services; and

10

- (b) holds a current practising certificate

~~**patient**—~~

- (a) ~~means a person who is—~~

15

~~(i) subject to compulsory care; or~~

~~(ii) a forensic patient; but~~

- ~~(b) does not include a voluntary patient or a proposed patient~~

person in charge, in relation to a hospital or service, means the chief executive of Health New Zealand

20

person on a restricted order means a person under compulsory care who is declared to be a person on a restricted order by the court under **section 133**

~~**person under compulsory care**—~~

- ~~(a) includes a person under forensic compulsory care; but~~

- ~~(b) does not include a voluntary mental health consumer or a proposed person under compulsory care~~

25

~~**person under forensic compulsory care** means—~~

- ~~(a) a person who must be detained in a hospital under an order made under—~~

~~(i) section 24(2)(a), 38(2)(c), or 44(1) of the Criminal Procedure (Mentally Impaired Persons) Act 2003; or~~

30

~~(ii) section 169 of the Criminal Procedure Act 2011; or~~

- ~~(b) a person who is remanded to a hospital or secure facility under section 23(2)(b) or 35(2)(b) of the Criminal Procedure (Mentally Impaired Persons) Act 2003; or~~

35

- ~~(c) a person who must be detained in a hospital under section 34(1)(a)(i) of the Criminal Procedure (Mentally Impaired Persons) Act 2003, and who~~

- has not ceased, under **section 110** of this Act, to be a person under forensic compulsory care; or
- (d) a person who must be detained in a hospital, either following an application under **section 105(2) or (3)** or an arrangement made under **section 106**, and who has not ceased, under **section 110**, to be a person under forensic compulsory care; or 5
- (e) a person who must be detained in a hospital under section 191(2)(a) of the Armed Forces Discipline Act 1971; or
- (f) a person who, in accordance with section 136(5)(a) of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, must be held as a person under forensic compulsory care 10
- See also the definition of person under forensic compulsory care in **section 113** in relation to provisions involving victims of persons under forensic compulsory care
- ~~principal caregiver, primary support person~~, in relation to any ~~patient person under compulsory care~~ (including a proposed ~~patient person under compulsory care~~), means the friend of ~~the patient~~ the person or the member of ~~the patient's~~ the person's family group or whānau who is most evidently and directly concerned with the oversight of ~~the patient's~~ the person's care and welfare 15
- ~~proposed patient~~ has the meaning given in **subsection (2)**
- ~~proposed person under compulsory care~~ has the meaning given in **subsection (2)** 20
- psychiatrist means a medical practitioner whose scope of practice includes psychiatry 25
- registered nurse practising in mental health** means a health practitioner who—
- (a) is, or is treated as being, 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 and care of persons who require compulsory care; and 30
- (b) holds a current practising certificate
- regulations** means regulations made under **section 202**
- responsible practitioner** means a mental health practitioner who— 35
- (a) meets the requirements in **section 41(2)**; and
- (b) is responsible for the care of a ~~patient person under compulsory care~~ in accordance with this Act
- ~~restricted patient~~ means a patient who is declared to be a restricted patient by the court under **section 133** 40

- rōpū whaiora (collaborative care team)** means the team provided for the care of a ~~patient person under compulsory care~~ under **section 42**
- second assessment period** means the period of second assessment specified in **section 62(2)**
- secure facility** has the same meaning as in section 9 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 5
- secure mental health facility** means a facility declared under **section 162** to be a secure mental health facility
- serious adverse effects** has the meaning given in **section 7**
- seriously impaired mental health** has the meaning given in **section 8** 10
- service** means a service for the care of persons with seriously impaired mental health, being a service funded by the Crown under the New Zealand Health Plan
- social worker** means a social worker registered under the Social Workers Registration Act 2003 who holds a current practising certificate issued under that Act 15
- status review** means a review whose requirements are set out in **section 45(2)**
- support network** has the meaning given in **section 18**
- tāngata whaiora** means people with lived experience of mental distress 20
- victim** means ~~(unless otherwise provided),—~~
- (a) in relation to a ~~forensic patient~~ person under forensic compulsory care, a person who has, under section 32B of the Victims' Rights Act 2002,— 25
- (i) asked for notice or for advice, and for copies of orders and conditions; and
- (ii) given their address:
- (b) an individual appointed as a representative under section 40 of that Act
- voluntary ~~patient~~ mental health consumer** means a person receiving ~~inpatient~~ hospital mental health services voluntarily
- welfare guardian** has the same meaning as in section 2 of the Protection of Personal and Property Rights Act 1988. 30
- (2) A person—
- (a) becomes a **proposed ~~patient~~ person under compulsory care** when they are informed of the arrangements for first assessment under **section 57**; and 35
- (b) ceases to be a ~~proposed patient~~ proposed person under compulsory care when a mental health practitioner—

- (i) records a finding under **section 59(1)(b)(i)**, in which case the person does not become a ~~patient~~ person under compulsory care and must be released under **section 61**; or
- (ii) gives notice under **section 60**, in which case the person becomes a ~~patient~~ person under compulsory care.

5

Te Tiriti o Waitangi

5 Te Tiriti o Waitangi (Treaty of Waitangi)

The following provisions of this Act provide for the Crown's intention to give effect to the principles of te Tiriti o Waitangi (the Treaty of Waitangi):

- (a) **section 3(b)**, which states that it is a purpose of this Act to provide for compulsory mental health assessment and care in a manner that improves equity in mental health outcomes among New Zealand's population groups by striving to eliminate mental health care disparities, in particular for Māori: 10
- (b) **section 6**, which establishes a compulsory care principle that supports whanaungatanga and recognises the importance of family and cultural ties: 15
- (c) **section 17**, which provides for hui whaiora (well-being meetings) that may be convened to assist, among other things, tāngata whaiora to make decisions about their care: 20
- (d) **section 27**, which provides that a ~~patient~~ person under compulsory care is entitled to proper respect for their cultural, ethnic, and individual identity and their religious or cultural beliefs:
- (e) **section 40**, which provides for the approval of advisers with expertise in matters involving tāngata whaiora Māori to advise on complaints and inquiries under this Act: 25
- (f) **section 42**, which requires provision of a rōpū whaiora (collaborative care team) for each ~~patient~~ person under compulsory care that includes the expertise necessary to meet the needs of ~~the patient~~ the person, including cultural expertise: 30
- (g) **section 43(4)(a) and (b)**, which requires a care plan for each ~~patient~~ person under compulsory care that includes a holistic assessment of ~~the person~~ the person, including cultural considerations in relation to the person, and non-pharmaceutical options for care:
- (h) **sections 164(4)(b) and 174(3)(b)**, which require the membership of a Mental Health Review Tribunal and the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal to ~~include~~ include knowledge of tikanga and mātauranga Māori. 35

Compulsory care matters

6 Compulsory care principles

(1) For the purpose of this Act, the **compulsory care principles** are as follows:

Therapeutic purpose

- (a) compulsory care should be used only— 5
- (i) to protect, promote, and improve a person’s mental health; and
 - (ii) if suitable care is available to protect, promote, and improve a person’s mental health:

Least restrictive application

- (b) compulsory care should be applied in the least restrictive manner, for example,— 10
- (i) voluntary care options should be actively offered and preferred unless they are unlikely to be sufficient to prevent the need for compulsory care; and
 - (ii) compulsory care should be applied for no longer than is necessary; and 15
 - (iii) support available to the person, including whānau and cultural support, should be used to reduce the need for compulsion and to support whanaungatanga: 20

Supportive and responsive application 20

- (c) compulsory care should—
- (i) seek at all times to encourage the person to develop and exercise capacity and choice; and
 - (ii) reflect the needs of the person, including their cultural needs, and be responsive to any trauma experienced by them; and 25
 - (iii) be delivered in a manner that is responsive to, and guided by, the person’s will and preferences (including any advance mental health directive made by the person); and
 - (iv) recognise the importance and significance of the person’s ties to their family, whānau, hapū, iwi, and family group, and the contribution those ties make to well-being; and 30

Dignity of risk

(d) compulsory care should recognise the person’s right to take reasonable risks to achieve personal growth, self-esteem, and quality of life.

(2) The following must be guided by the compulsory care principles, to the extent that is reasonably practicable and having regard to all the circumstances: 35

- (a) a court, tribunal, or person performing a function or duty or exercising a power under this Act in respect of a person:

- (b) a court or tribunal conducting proceedings under this Act in respect of a person.

7 Compulsory care criteria

- (1) The **compulsory care criteria** under this Act are met if—
- (a) the person has seriously impaired mental health; and 5
 - (b) the seriously impaired mental health causes, or is likely to cause in the near future, in the absence of care, serious adverse effects; and
 - (c) the seriously impaired mental health causes the person to lack capacity to make decisions about their mental health care.
- (2) **Serious adverse effects** means— 10
- (a) serious physical harm to self or others; or
 - (b) serious psychological harm to others; or
 - (c) serious deterioration in ~~a~~the person's mental or physical health.

8 Meaning of seriously impaired mental health

- (1) **Seriously impaired mental health** means a serious impairment of mental functioning (which may be continuous or intermittent) that is characterised by delusions or by disorders of mood, perception, volition, or cognition. 15
- (2) However, a person cannot be assessed to have seriously impaired mental health—
- (a) on the basis of— 20
 - (i) sexual orientation; or
 - (ii) gender identity; or
 - (b) solely on the basis of—
 - (i) political, religious, philosophical, or cultural beliefs, values, or opinions; or 25
 - (ii) lack of social engagement; or
 - (iii) criminal or antisocial behaviour; or
 - (iv) substance use; or
 - (v) intellectual disability; or
 - (vi) previous mental health care; or 30
 - (vii) refusal to access mental health care; or
 - (viii) neurological or other brain diseases resulting in impaired mental state; or
 - (ix) seriously impaired mental health arising from primary physical illness. 35

- (2) ~~However, a person cannot be assessed to have seriously impaired mental health solely on the basis of any of the following:~~
- ~~(a) political, religious, philosophical, or cultural beliefs, values, or opinions:~~
 - ~~(b) sexual preferences:~~
 - ~~(c) gender identity: 5~~
 - ~~(d) lack of social engagement:~~
 - ~~(e) criminal or antisocial behaviour:~~
 - ~~(f) substance use:~~
 - ~~(g) intellectual disability:~~
 - ~~(h) previous mental health care: 10~~
 - ~~(i) refusal to access mental health care:~~
 - ~~(j) neurological or other brain diseases resulting in impaired mental state:~~
 - ~~(k) seriously impaired mental health arising from primary physical illness.~~

9 Meaning of capacity to make decisions about mental health care

- (1) A person is presumed to have **capacity to make decisions about mental health care** unless they cannot, on a sustained basis,— 15
- (a) understand the mental health care options available to them; or
 - (b) understand the consequences of making a particular decision to accept or not accept mental health care options; or
 - (c) retain, use, and weigh relevant information to make decisions about mental health care options; or 20
 - (d) communicate decisions about mental health care in any way.
- (2) A person who determines whether a person lacks capacity to make decisions about mental health care—
- (a) must have regard to any relevant guidelines issued under **section 204**; and 25
 - (b) may disregard brief or intermittent indications of capacity, for example, the states described in **subsection (1)(a) to (d)**.
- (3) **Subsection (2)(a)** does not apply to a Mental Health Review Tribunal, the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal, a court, or a judicial officer. 30
- (4) However, a person cannot be considered to lack capacity to make decisions about mental health care solely on the basis—
- (a) that they have seriously impaired mental health; or
 - (b) that they are unable to understand matters of a technical or trivial nature; 35
- or

- (c) that they can retain information relevant to the decision for a limited time; or
- (d) that they need support to make or communicate decisions; or
- (e) that their decision making results in, or may result in, poor outcomes for the person; or
- (f) of their age.

5

Other preliminary matters

10 Transitional, savings, and related provisions

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

10

11 Act binds the Crown

This Act binds the Crown.

Part 2

Tāngata whaiora rights and support

Subpart 1—~~Compulsory care~~ Advance mental health directives

15

12 ~~Compulsory care~~ Advance mental health directives

- (1) ~~A compulsory care~~ An advance mental health directive may specify the matters listed in the first column of the table below, to which a person performing a function or duty or exercising a power under this Act must give effect in accordance with the second column.

20

Content of ~~compulsory care~~ advance mental health directive

The methods of care to improve mental health that the maker of the directive (the **maker**) consents to receive

The methods of care to improve mental health that the maker does not consent to receive

The maker's preferences for how and where any method of care is to be provided

The maker's preferences regarding matters set out in **subpart 3 of Part 2**

Information relating to the maker's affairs

Obligation on person performing function or duty or exercising power

Consent must be taken as informed consent and the specified care may be provided

Care must not be provided unless **section 47** applies

Preferences must be given effect to, to the extent that is reasonable

Preferences must be given effect to, to the extent that is practicable

Reasonable efforts must be made to provide the information to the appropriate people

- (2) To avoid doubt, a ~~compulsory care~~ an advance mental health directive that makes no statement regarding a method of care is not evidence of the maker's consent to that method of care.

- 13 Making ~~compulsory care~~ advance mental health directives**
- (1) A person may make or revoke a ~~compulsory care~~ an advance mental health directive about themselves (the **maker**) if—
- (a) they consult a mental health practitioner; and
 - (b) the mental health practitioner considers that the maker—
 - (i) has the capacity to make decisions about mental health care; and
 - (ii) is able to give informed consent in accordance with **section 14(2)**.
- (2) If the maker meets the criteria in **subsection (1)(b)**, the mental health practitioner must— ~~give the maker reasonable assistance to make or revoke a compulsory care directive.~~
- (a) inform the maker of the purpose and effect of an advance mental health directive, including its legal effect in relation to compulsory care; and
 - (b) give the maker reasonable assistance to make or revoke an advance mental health directive.
- (3) ~~A compulsory care~~ An advance mental health directive or the revocation of a ~~compulsory care~~ an advance mental health directive must be—
- (a) witnessed in accordance with **section 14**; and
 - (b) recorded in a form approved by the Director.
- 14 Witnessing ~~compulsory care~~ advance mental health directive**
- (1) ~~A compulsory care~~ An advance mental health directive or the revocation of a ~~compulsory care~~ an advance mental health directive must be witnessed by a person ~~acceptable to the maker.~~ who is—
- (a) acceptable to the maker; and
 - (b) 18 years of age or older; and
 - (c) not subject to compulsory care.
- (2) The maker, the witness, and the supporting mental health practitioner must, if satisfied of the following, confirm in writing that the maker—
- (a) is making or revoking the directive of their own free will; and
 - (b) understands the nature and effect of the directive or revocation.
- 15 Replacing or revoking ~~compulsory care~~ advance mental health directive**
- (1) The maker may replace or revoke their advance mental health directive in accordance with **section 13**.
- (2) The mental health practitioner consulted under **section 13** in relation to a ~~compulsory care~~ an advance mental health directive that replaces or revokes another directive must, before the directive is replaced or revoked, take reasonable steps—

- (a) to obtain the existing ~~compulsory care~~ advance mental health directive; and
 - (b) to confirm the effect of the proposed replacement or revocation with the maker.
- (3) ~~A compulsory care~~ An advance mental health directive is revoked by a subsequent ~~compulsory care~~ advance mental health directive made by the maker. 5

Subpart 2—Participation in decision making

16 ~~Patient participation~~ Participation by person under compulsory care

- (1) This section applies to the following proceedings and processes under this Act:
- (a) proceedings in a court, a Mental Health Review Tribunal, or the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal: 10
 - (b) processes for assessing a person against the compulsory care criteria:
 - (c) processes for convening, and the proceedings of, a hui whaiora (well-being meeting):
 - (d) the preparation or review of a care plan: 15
 - (e) inquiries undertaken by a district inspector:
 - (f) making a complaint to a district inspector and investigating that complaint.
- (2) In proceedings or processes to which this section applies,—
- (a) ~~patients~~ persons under compulsory care must be encouraged and assisted, to the maximum degree appropriate to their capacity, to participate; and 20
 - (b) ~~patients~~ persons under compulsory care must be given reasonable assistance to understand the reasons for the proceedings or processes, the possible decisions, and how decisions may affect them; and 25
 - (c) ~~patients~~ persons under compulsory care must be given a reasonable opportunity and support to express their views and be understood, including communication support if required; and
 - (d) any views expressed by ~~patients~~ persons under compulsory care must be taken into account in any decision relating to them. 30
- (3) In proceedings or processes to which this section applies, the court, tribunal, or person responsible for the proceedings or process must ensure that the services of an interpreter are provided for a ~~patient~~ if person under compulsory care whose first or preferred language is a language other than English, or who is unable to understand English, unless— 35
- (a) ~~either of the following applies:~~
 - (i) ~~the first or preferred language of the person is a language other than English:~~

- (ii) ~~the person is unable to understand English; and~~
- (b) it is not practicable to provide the services of an interpreter; and
- (c) delaying proceedings to enable the services of an interpreter to be provided would have a serious detrimental effect on the person under compulsory care. 5
- (4) A person who makes a decision in relation to a proceeding or process to which this section applies must take reasonable steps to explain to the affected person the decision and the reasons for the decision in a manner that the affected person understands.
- (5) The following persons must either perform the duties imposed by **subsection (2)(a) to (d)** or be satisfied, before undertaking any proceeding or process involving ~~patients~~ persons under compulsory care, that those duties have been performed by another person: 10
- (a) for proceedings before a court, a Mental Health Review Tribunal, or the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal, the Judge or other person presiding, and the lawyer representing the person: 15
- (b) for processes for assessing a person against the compulsory care criteria, the mental health practitioner or responsible practitioner:
- (c) for processes for convening, and the proceedings of, a hui whaiora (well-being meeting), the responsible practitioner: 20
- (d) for preparation or review of a care plan, the responsible practitioner:
- (e) for the matters described in **subsection (1)(e) and (f)**, the district inspector.
- (6) In this section,— 25
- (a) **communication support** includes support from an independent support person; and
- (b) patient-person under compulsory care includes a proposed ~~patient~~ person under compulsory care, unless the context otherwise requires. 30

Compare: 1989 No 24 s 11

30

17 Hui whaiora (well-being meetings)

- (1) A hui whaiora (well-being meeting) may be convened for the following purposes:
- (a) to assist tāngata whaiora to make decisions about their care:
- (b) to consider matters relating to the care of tāngata whaiora: 35
- (c) to resolve issues, disputes, or complaints and to prevent the need for escalation to more formal processes:
- (d) to support restorative practice to uphold the mana of all parties following the use of coercive practices.

- (2) A responsible practitioner must require a hui whaiora (well-being meeting) to be convened if the practitioner is satisfied that—
- (a) ~~the patient person under compulsory care—~~
 - (i) does not have a ~~compulsory care~~ an advance mental health directive or nominated person; or 5
 - (ii) has requested a hui whaiora (well-being meeting); and
 - (b) a hui whaiora (well-being meeting) would assist with 1 or more of the purposes listed in **subsection (1)**; and
 - (c) it is reasonably practicable for all participants to take part in the hui whaiora (well-being meeting). 10
- (3) The responsible practitioner must convene a hui whaiora (well-being meeting) by notifying a suitable hui whaiora co-ordinator who arranges and facilitates the hui whaiora (well-being meeting).
- (4) The following persons may attend a hui whaiora (well-being meeting), unless the hui whaiora co-ordinator considers the person's attendance would not be in the best interests of the ~~patient person under compulsory care~~ or would limit the ability of the hui (well-being meeting) to achieve its purposes: 15
- (a) ~~the patient person under compulsory care:~~
 - (b) the rōpū whaiora (collaborative care team):
 - (c) ~~the patient's person under compulsory care's support network:~~ 20
 - (ca) any other person requested by the person under compulsory care:
 - (d) a district inspector:
 - (e) the person's advocate (if any).
- (5) The hui whaiora co-ordinator may regulate proceedings at a hui whaiora (well-being meeting), having regard to any guidance issued by the Director-General on hui whaiora (well-being meeting) procedure under **section 204**. 25
- (6) The hui whaiora co-ordinator must make a record of the outcome of the hui whaiora (well-being meeting).

Subpart 3—Support network

- 18 Support network** 30
- (1) A person's **support network** is 1 or more of the following:
- (a) any nominated person, if appointed:
 - (b) their welfare guardian, if the scope of their appointment includes matters related to mental health care:
 - (c) their attorney, if the scope of their appointment includes matters related to mental health care: 35
 - (d) their ~~principal caregiver~~ primary support person:

- (e) an independent support person, if the person has requested an independent support person or if no support network can be identified.
- (2) A person's support network includes whānau or family members for the purposes of **sections 17(4), 26(2)(a)(i), 45(1)(b) and (2)(b), 46, 57(1)(e), and 58(2)(a)(ii)**. 5
- (3) Nothing in this Act affects the rights and duties under other legislation of persons listed in **subsections (1) and (2)**.

Nominated person

19 Nominated person

- (1) A person may appoint 1 or more other persons to be a nominated person. 10
- (2) A nominated person—
- (a) receives information about the appointing person related to mental health; and
- (b) represents the appointing person's views in decision-making processes.
- (3) A nominated person appointment must be— 15
- (a) signed by the appointing person and the nominated person; and
- (b) recorded in a form approved by the Director; and
- (c) witnessed in accordance with **section 20**.

20 Witnessing nominated person appointment

- (1) A nominated person appointment must be witnessed by a person ~~acceptable to the appointing person~~, who is— 20
- (a) acceptable to the appointing person; and
- (b) 18 years of age or older; and
- (c) not subject to compulsory care.
- (2) The witness must, if satisfied of the following, confirm in writing that— 25
- (a) the appointing person is making the appointment of their own free will; and
- (b) the nominated person accepts the appointment of their own free will; and
- (c) the appointing person and the nominated person understand the nature and effect of the appointment. 30

21 Revocation of nominated person appointment by parties

- (1) A person who has appointed a nominated person may revoke the appointment if, at that time, they have the capacity to make decisions about mental health care.
- (2) A nominated person may resign their appointment for any reason. 35

- (3) A revocation or resignation of appointment must be by notice in writing—
- (a) to the other party; or
 - (b) if the appointing person is subject to compulsory care, to the responsible practitioner.
- (4) A responsible practitioner who receives a notice of revocation or resignation must inform the ~~patient~~ person under compulsory care or the nominated person, as the case may be. 5

22 Revocation of nominated person appointment by Mental Health Review Tribunal

A ~~patient's~~ person under compulsory care's responsible practitioner may apply to a Mental Health Review Tribunal to revoke the appointment of the ~~patient's~~ person's nominated person under **section 140** if— 10

- (a) the responsible practitioner considers that the appointment is not in the best interests of the ~~patient~~ person under compulsory care; or
- (b) the nominated person is unable or unwilling to participate in processes required by the Act; or 15
- (c) there are reasonable grounds to believe that the appointment was obtained by undue influence or fraud.

Independent support person

23 Independent support person 20

(1) A ~~patient~~ person under compulsory care is entitled to the services of request an independent support person who is acceptable to them to—

- (a) advise them on their rights; and
- (b) support them in understanding their rights, and the processes and proceedings provided for under this Act; and 25
- (c) help them to make decisions; and
- (d) help them to participate in processes and proceedings provided for under this Act, including the complaints processes under **section 39**; and
- (e) provide reasonable assistance to use other complaints processes.

(2) Health New Zealand must ensure that independent support persons ~~are~~— 30

- (a) are available to all ~~patients~~ persons under compulsory care; and
- (b) ~~independent of decision makers under this Act. operate independently from—~~
 - (i) decision makers under this Act; and
 - (ii) Health New Zealand; and 35
 - (iii) the Ministry of Health.

- (3) The manager of a unit providing compulsory care to ~~inpatients~~ persons subject to a hospital care order must take reasonable steps to ensure that independent support persons providing services under this section have access to—
- (a) ~~patients~~ persons under compulsory care and facilities; and
 - (b) information about a ~~patient~~ person under compulsory care, if that information is reasonably necessary for the independent support person to perform their role. 5
- (4) The Director-General may issue guidelines under **section 204(1)(a)** relating to independent support persons.

Advocate

10

24 Advocate

- (1) A ~~patient~~ person under compulsory care is entitled to ~~the services of~~ request an advocate who is acceptable to them to perform the functions listed in **subsection (2)**.
- (2) An advocate provided under this section may perform, in addition to the functions of an independent support person, the following functions in a lay capacity: 15
- (a) helping ~~patients~~ persons under compulsory care to exercise their rights;
 - (b) making complaints on behalf of ~~patients~~ persons under compulsory care;
 - (c) representing ~~patients~~ the views, will, and preferences of persons under compulsory care in processes and proceedings provided for under this Act: 20
 - (d) receiving and facilitating resolution of complaints in relation to a service, including representing a ~~patient~~ person under compulsory care in processes for resolving complaints under **section 39**: 25
 - (e) reporting to the Director on matters relating to the operation and effectiveness of processes and systems for care under this Act.
- (3) Health New Zealand must ensure that a reasonable number of advocates are available to ~~patients~~ persons under compulsory care.
- (4) Health New Zealand must ensure that— 30
- (a) ~~advocates are independent of decision makers under this Act; and operate independently from—~~
 - (i) decision makers under this Act; and
 - (ii) Health New Zealand; and
 - (iii) the Ministry of Health; and 35
 - (b) an independent support person does not act as an advocate in the same case, unless it is not reasonably practicable for those roles to be performed separately.

- (5) The manager of a unit providing compulsory care to ~~inpatients~~ persons subject to a hospital care order must take reasonable steps to ensure that advocates providing services under this section have access to—
- (a) ~~patients~~ persons under compulsory care and facilities; and
 - (b) information about a ~~patient~~ person under compulsory care, if that information is reasonably necessary for the advocate to perform their role. 5
- (6) The Director-General may issue guidelines under **section 204(1)(a)** relating to advocates.

Subpart 4—Rights of ~~patients~~ persons under compulsory care

Rights

10

25 **Rights of proposed persons under compulsory care and ~~voluntary patients~~ voluntary mental health consumers**

- (1) In this subpart, other than **section 26(2) and (3)(aaa)(a) to (e)**, patient person under compulsory care includes a ~~proposed patient~~ person under compulsory care. 15
- (2) In this ~~subpart~~ Part, other than ~~section 28~~ **sections 28 and 38A**, patient person under compulsory care includes a ~~voluntary patient~~ voluntary mental health consumer.
- (3) A ~~voluntary patient~~ voluntary mental health consumer has the right to stop receiving care and to leave the place at which they are receiving care at any time. 20

Compare: 1992 No 46 s 63A

26 **General rights to information**

- (1) ~~A person must, on becoming a patient, receive a written statement of their rights as a patient.~~ 25
- (1) A responsible practitioner must take all reasonable steps to ensure that a person, on becoming a person under compulsory care for whom the responsible practitioner is responsible, receives a written statement of their rights as a person under compulsory care.
- (2) A responsible practitioner must take all reasonable steps to ensure that each ~~of their patients~~ person under compulsory care for whom they are responsible— 30
- (a) is advised of their rights as a ~~patient~~ person under compulsory care—
 - (i) in the presence of a member of their support network, an independent support person, or an advocate; and
 - (ii) in a form, language, and manner that enables the ~~patient~~ person to understand their rights; and 35
 - (b) continues to understand their rights.

- (3) A responsible practitioner must take all reasonable steps to ensure that each patient-person under compulsory care for whom they are responsible is entitled to be kept informed of their legal status as a patient-person under compulsory care and the following rights:
- (aaa) their right to hui whaiora (well-being meetings) under **section 17**: 5
- (a) their right to have their condition reviewed by a Judge under **section 64** or a Mental Health Review Tribunal under **section 136** in the second assessment period:
- (b) their right to have their condition reviewed by a Mental Health Review Tribunal under **section 136** while subject to a mental health care order: 10
- (c) their right to request a Mental Health Review Tribunal or the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal to co-opt a suitable person under **section 166(2)**:
- (d) their right to appeal against Mental Health Review Tribunal decisions or ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal decisions to the court under **section 142 or 176**: 15
- (e) their right to seek judicial inquiry under **section 143** into their condition while subject to a mental health care order:
- (f) their right to seek independent advice from a mental health practitioner under **section 30**: 20
- (g) their right to seek independent legal advice under **section 31**:
- (h) their right to complain—
- (i) to a district inspector or official visitor under **section 39**; and
- (ii) using the internal complaints process of a mental health service; and 25
- (iii) to the Health and Disability Commissioner under Part 4 of the Health and Disability Commissioner Act 1994:
- (i) their rights under **section 16(2)**.
- (4) A patient-person under compulsory care must also be informed of—
- (a) all orders made by a court or a Mental Health Review Tribunal or the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal in respect of their case; and 30
- (b) the functions and duties of the following:
- (i) district inspectors:
- (ii) official visitors: 35
- (iii) independent support persons:
- (iv) advocates.

Compare: 1992 No 46 s 64

27 Right to respect for culture and identity

- (1) A ~~patient~~ person under compulsory care is entitled to proper respect for—
- (a) their cultural, ethnic, and individual identity; and
 - (b) their religious or cultural beliefs.
- (2) A court, tribunal, or person performing a function or duty or exercising a power under this Act in respect of a ~~patient~~ person under compulsory care must act in a manner consistent with **subsection (1)**. 5

Compare: 1992 No 46 s 65

28 Right to medical and other health care

- (1) A ~~patient~~ person under compulsory care is entitled to medical and other health care suitable for their mental and physical health needs. 10
- (2) A responsible practitioner must take reasonable steps to ensure that suitable medical and other health care is available to the ~~patient~~ person under compulsory care. 15

Compare: 1992 No 46 s 66

29 Right to be informed about medical and other health care

- (1) A ~~patient~~ person under compulsory care is entitled to receive an explanation, before care is commenced, of—
- (a) the care options available to ~~the patient~~ them, including the expected benefits and the likely effects of those care options; and 20
 - (b) the expected effects of any care offered to ~~the patient~~ them, including the expected benefits and risks and the likely side effects.
- (2) A responsible practitioner must take reasonable steps to ensure—
- (a) that the explanation is given in a form, language, and manner that enables the ~~patient~~ person under compulsory care to understand it; and 25
 - (b) that the ~~patient~~ person under compulsory care understands the proposed care.

Compare: 1992 No 46 s 67

30 Right to independent health advice

A ~~patient~~ person under compulsory care is entitled to seek a consultation with a mental health practitioner of their choice to get a second opinion, and, if the practitioner agrees to the consultation, they must be permitted access to ~~the patient~~ the person upon request. 30

Compare: 1992 No 46 s 69

31 Right to legal advice

- (1) A ~~patient-person under compulsory care~~ is entitled to request a lawyer to advise them, and, if the lawyer agrees to act for the ~~patient-person~~, they must be permitted access to the ~~patient-person~~ upon request.
- (2) To avoid doubt, in this section **lawyer** does not include a district inspector. 5
Compare: 1992 No 46 s 70

32 Right to company

- (1) A ~~patient-person under compulsory care~~ is entitled to the company of others, except as provided in **section 49**.
- (2) The person in charge of a hospital must ensure that a ~~patient-person under compulsory care~~ has access to the company of others. 10
Compare: 1992 No 46 s 71

33 Further rights in case of visual or audio recording

- (1) A ~~patient-person under compulsory care~~ is entitled to be informed if it is intended to make or use a visual or audio recording of any interview with, or any other part of the care of, the ~~patient-person~~. 15
- (2) A recording referred to in **subsection (1)** must not be made or used without the prior consent of the ~~patient-person under compulsory care~~ or, if the ~~patient~~ ~~the person~~ is not capable of giving consent, the prior consent of their nominated person or whānau. 20
Compare: 1992 No 46 s 68

34 Right to receive visitors and to communicate with others

- (1) A ~~patient-person under compulsory care~~ is entitled to receive visitors and to communicate with others (for example, by telephone or other communication device) at reasonable times and at reasonable intervals. 25
- (2) **Subsection (1)** does not apply if the responsible practitioner considers a visit or communication would be detrimental to the care of a ~~patient-person under compulsory care~~ or would otherwise have a detrimental effect on the ~~patient~~ ~~the person~~.
- (3) The Director of Area Mental Health Services must ensure that the ~~patient person under compulsory care~~ has access to the entitlements under this section. 30
- (4) Nothing in this section limits or affects anything in **section 30 or 31**.
Compare: 1992 No 46 s 72

35 Right to send and receive communications

- (1) A ~~patient-person under compulsory care~~ is entitled to send and receive letters, electronic communications, and postal articles (a **communication**) without interference, except that— 35

- (a) the responsible practitioner may, if the practitioner reasonably believes that sending or receiving the communication may have a detrimental effect on ~~the patient~~ the person, direct that a communication—
- (i) be opened or read; and
 - (ii) be withheld from ~~the patient~~ person; or
- (b) the responsible practitioner may withhold sending a communication if it is addressed to a person who has notified the mental health service that they do not want to receive communication from ~~the patient~~ person.
- (2) However, a communication may not be withheld from a ~~patient~~ person under compulsory care if it is addressed to, or sent by or on behalf of, any of the following:
- (a) a member of Parliament;
 - (b) a Judge or an officer of any court or other judicial body;
 - (c) the Inspector-General of Intelligence and Security;
 - (d) an Ombudsman;
 - ~~(da) the Privacy Commissioner;~~
 - ~~(db) a Human Rights Commissioner;~~
 - ~~(dc) the Health and Disability Commissioner;~~
 - ~~(dd) the Approved Agency appointed under the Harmful Digital Communications Act 2015;~~
 - (e) the Director-General or the Director;
 - (f) a district inspector or official visitor;
 - (g) the person in charge of the service in which the ~~patient~~ person under compulsory care is being treated;
 - (h) the ~~patient's~~ person under compulsory care's nominated person;
 - (i) an independent support person;
 - (j) an advocate;
 - (k) a lawyer;
 - (l) a mental health practitioner from whom the ~~patient~~ person under compulsory care is seeking advice;
 - ~~(m) any person prescribed in regulations.~~
- (3) If a communication sent by the ~~patient~~ person under compulsory care is withheld under this section, it must be given or sent to a district inspector or an official visitor as soon as practicable after it is withheld.
- (4) If a communication sent to the ~~patient~~ person under compulsory care is withheld under this section, it must be returned as soon as practicable after it is withheld to—
- (a) the sender; or

- (b) if the sender is unknown, to a district inspector or an official visitor.
- (5) A ~~patient person~~ under compulsory care must be informed when a communication is withheld, unless the responsible practitioner reasonably believes that informing ~~the patient~~ the person may have a detrimental effect on ~~the patient~~ them. 5
- (6) The person in charge of a hospital must ensure that ~~the patient~~ person under compulsory care has access to the entitlements under this section.
Compare: 1992 No 46 s 73
- 36 Right to communication aid**
- (1) A ~~patient person~~ under compulsory care is entitled to use a communication aid, unless withholding access to the aid is reasonably necessary to— 10
- (a) save the person's life; or
- (b) prevent serious damage to the health of the person; or
- (c) prevent the person from causing serious injury to themselves or others.
- (2) A responsible practitioner must ~~take reasonable steps to ensure that the patient has access to their communication aid.~~ 15
- (a) take reasonable steps to ensure that the person under compulsory care has access to their communication aid; and
- (b) notify the district inspector or an official visitor if access to a communication aid is withheld, as soon as practicable after it is withheld. 20
- 37 Right to mobility aid**
- (1) A ~~patient person~~ under compulsory care is entitled to use a mobility aid, unless withholding access to the aid is reasonably necessary to—
- (a) save the person's life; or
- (b) prevent serious damage to the health of the person; or 25
- (c) prevent the person from causing serious injury to themselves or others.
- (2) A responsible practitioner must ~~take reasonable steps to ensure that the patient has access to their mobility aid.~~
- (a) take reasonable steps to ensure that the person under compulsory care has access to their mobility aid; and 30
- (b) notify the district inspector or an official visitor if access to a mobility aid is withheld, as soon as practicable after it is withheld.
- 38 Rights of children and young persons**
- (1) A ~~patient person~~ under compulsory care who is under the age of 18 must wherever practicable be cared for by child and adolescent mental health services. 35
- (2) A ~~patient person~~ under compulsory care who is under the age of 18 must not be—

- (a) given electroconvulsive therapy, except as permitted under **section 50(1A)(1)(e)**; or
 - (b) placed in seclusion; or
 - (c) given a restricted treatment as defined in **section 51(2)(a)**.
- (3) Despite section 36 of the Care of Children Act 2004 or any other enactment or rule of law to the contrary, in respect of a ~~patient~~ person under compulsory care who is 16 years of age or older, the consent of a parent or guardian to any assessment or care is not sufficient consent for the purposes of this Act. 5
- (4) If a Mental Health Review Tribunal or the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal considers a matter concerning a ~~patient~~ person under compulsory care who is under the age of 18, the membership of the tribunal must include at least 1 person with appropriate expertise in child and adolescent development. 10

38A Rights of birth parent

- (1) A person under compulsory care who is in a hospital, or who is being transported to a hospital, who is a birth parent is entitled to have their baby remain with them in hospital unless— 15
- (a) a guardian of the baby agrees to the separation; or
 - (b) the responsible practitioner responsible for the person considers that the separation is in the best interests of the person or the baby. 20
- (2) A responsible practitioner must notify the district inspector or an official visitor if a birth parent is separated from their baby, as soon as practicable after the separation.
- (3) In this section,—
- (a) a person is a **birth parent** if they have given birth to a baby and the baby is less than 1 year of age: 25
 - (b) **guardian** has the meaning set out in section 15 of the Care of Children Act 2004.

Complaints

- 39 Complaint of breach of rights** 30
- (1) If a complaint is made by or on behalf of a ~~patient~~ person under compulsory care that a right under this Act has been breached, the matter must be referred to a district inspector or an official visitor for investigation.
- (2) A district inspector or an official visitor may investigate, on receipt of a complaint or on their own initiative,— 35
- (a) a breach of a ~~patient's~~ person under compulsory care's rights under this Part Act; or

- (b) a case where detention or compulsory care may not have been provided in accordance with this Act; or
- (c) a case where—
- (i) a ~~voluntary patient~~ voluntary mental health consumer may have been detained; or 5
 - (ii) a ~~voluntary patient~~ voluntary mental health consumer may have been given care without their consent.
- (3) A district inspector or official visitor investigating a complaint—
- (a) must discuss the matter with—
 - (i) the ~~patient~~ person under compulsory care; and 10
 - (ii) the complainant; and
 - (iii) the responsible practitioner; and
 - (iv) the rōpū whaiora (collaborative care team); and
 - (v) any other relevant person; and
 - (b) may rely on advice from advisers approved by the Director under **section 40** in matters involving tāngata whaiora Māori. 15
- (4) A district inspector or an official visitor must be guided by the principles in **section 171** and must comply with any requirements prescribed in regulations relating to timeliness and process when investigating a complaint.
- (5) If the district inspector or official visitor is satisfied following an investigation that a complaint has substance, they must report the matter to the Director of Area Mental Health Services, together with any recommendations they think fit, and the Director of Area Mental Health Services must take all reasonable steps to rectify the matter. 20
- (6) On concluding any investigation under this section, the district inspector or official visitor must inform the ~~patient~~ person under compulsory care or other complainant, and any other relevant person, of their findings. 25
- (7) If the district inspector or official visitor has reported a matter, including recommendations to the Director of Area Mental Health Services, and they consider that the recommendations have not been satisfactorily addressed, the district inspector or official visitor ~~may~~ must report the matter to the Director. 30
- (8) If the district inspector or official visitor has reported a matter to the Director and the Director considers that the recommendations have not been satisfactorily addressed, the Director may require a service to notify the public on a publicly accessible internet site— 35
- (a) how the recommendations will be addressed; and
 - (b) when they have been addressed.
- (9) If the ~~patient~~ person under compulsory care or other complainant is not satisfied with the outcome of the complaint, they may refer the case to a Mental

Health Review Tribunal or the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal for further investigation, in which case **subsections (3) to (5)** apply with any necessary modifications.

Compare: 1992 No 46 s 75

40 Approval of advisers 5

The Director may approve persons with expertise in matters involving tāngata whaiora Māori for the purposes of advising on complaints and inquiries under this Act.

Part 3
Compulsory care 10

Subpart 1—Compulsory care requirements

General care requirements

41 Duty to assign responsible practitioner

- (1) A Director of Area Mental Health Services must ensure that each ~~patient person under compulsory care~~ has a responsible practitioner. 15
- (2) The responsible practitioner must be a mental health practitioner who the Director of Area Mental Health Services considers has undergone training in, and is competent in, the assessment and care of persons who require compulsory care.

42 Rōpū whaiora (collaborative care team) required during compulsory care 20

- (1) The responsible practitioner must ensure that an appropriately qualified and experienced rōpū whaiora (collaborative care team) is provided to a ~~patient person under compulsory care~~. 25
- (2) In this section, **appropriately qualified and experienced** means having the qualifications and experience necessary to meet the care needs of the ~~patient person under compulsory care~~, including clinical and cultural expertise, and expertise in lived experience of mental distress.

43 Care planning

- (1) The responsible practitioner must ensure that a ~~patient person under compulsory care~~ has a recorded care plan. 30
- (2) The responsible practitioner must ensure that a ~~patient's~~ the person's care plan—
- (a) is kept under review; and
 - (b) is updated as circumstances require.

- (3) The responsible practitioner must engage with the ~~patient's~~ person's rōpū whaiora (collaborative care team) to—
- (a) develop the ~~patient's~~ person's care plan; and
 - (b) review and update the care plan.
- (4) The care plan must include— 5
- (a) a holistic assessment of the person, including—
 - (i) their mental health, physical health, and social needs; and
 - (ii) their socio-economic circumstances; and
 - (iii) cultural considerations in relation to the person; and
 - (iv) their strengths and protective factors in their environment; and 10
 - (b) the care, including non-pharmaceutical options, that will be provided to meet the person's assessed needs, including any need for compulsory care; and
 - (c) planning for a transition from—
 - (i) ~~inpatient hospital~~ care (if the person is ~~an inpatient~~ a person subject to a hospital care order) to community care; and 15
 - (ii) compulsory care to voluntary engagement with mental health services.
- (5) The care plan must—
- (a) give effect to the will of the ~~patient~~ person under compulsory care, including the content of any ~~compulsory care~~ advance mental health directive that they have made; and 20
 - (b) take into account the care preferences of the ~~patient~~ person under compulsory care.
- 44 Provision of care** 25
- (1) The responsible practitioner may only direct the provision of care to a ~~patient~~ person under compulsory care in accordance with ~~the patient's~~ their care plan.
 - (2) The responsible practitioner must, in addition to satisfying **subsection (1)**, and to the maximum extent that the ~~patient's~~ person under compulsory care's capacity allows, seek ~~the consent of the patient~~ the person's consent before providing care. 30
- 45 Care plan and status reviews**
- (1) When required by this Act to conduct a care plan review, the responsible practitioner must—
 - (a) assess the ~~patient's~~ person under compulsory care's progress under the care plan; and 35

- (b) have regard to the views of the ~~patient person under compulsory care~~ and ~~the patient's~~ their support network on ~~the patient's~~ the person's mental condition and personal circumstances.
- (2) When required by this Act to conduct a status review, the responsible practitioner must— 5
- (a) assess the ~~patient person under compulsory care~~ against the compulsory care criteria; and
- (b) have regard to the views of the ~~patient person under compulsory care~~ and ~~the patient's~~ their support network on ~~the patient's~~ the person's mental condition and personal circumstances. 10
- 46 Patient support Support network access and support**
- (1) A ~~patient's~~ person under compulsory care's support network must be given reasonable opportunity to—
- (a) visit and communicate with the ~~patient person under compulsory care~~; and 15
- (b) express their views on ~~the patient's~~ the person's condition and care; and
- (c) contribute to care planning in respect of the ~~patient person~~, provided for under **section 43**.
- (2) The responsible practitioner may decline a member of the ~~patient's~~ person under compulsory care's support network the opportunity under **subsection (1)(c)** if the practitioner is satisfied on reasonable grounds that— 20
- (a) it reflects the ~~patient's~~ person's will and preferences; or
- (b) it is necessary to avoid a detrimental effect on the ~~patient person~~.
- 47 Emergency care**
- (1) Despite **section 44**, the responsible practitioner or a person authorised by the responsible practitioner may provide care in any case if it is reasonably necessary to— 25
- (a) save a ~~patient's~~ life the life of a person under compulsory care; or
- (b) prevent serious damage to the health of a ~~patient person under compulsory care~~; or 30
- (c) prevent ~~the patient~~ a person under compulsory care from causing serious injury to themselves or others.
- (2) If it is not practicable to obtain authorisation from the responsible practitioner, a nurse or other health professional who has immediate responsibility for a ~~patient person under compulsory care~~ may provide care under this section, but must immediately bring the case to the attention of the responsible practitioner. 35

Compare: 1992 No 46 s 62

48 Duty to report emergency care

- (1) If action is taken under **section 47**, the responsible practitioner must report it to the Director of Area Mental Health Services as soon as practicable after the action is taken.
- (2) The report must include— 5
- (a) the action taken that was inconsistent with the ~~compulsory care~~ advance mental health directive or the refusal of consent by the ~~patient's person~~ under compulsory care's attorney; and
 - (b) the statement in the ~~compulsory care~~ advance mental health directive that was overridden (if any); and 10
 - (c) the grounds on which the responsible practitioner relied; and
 - (d) the reasons for taking the action.
- (3) The report must also be provided to the ~~patient's person~~ under compulsory care's support network, to the extent that ~~this doing so~~ is consistent with the ~~compulsory care~~ advance mental health directive. 15

49 Reduction and elimination of seclusion

- (1) Every person ~~performing a function under this Act in charge of a service~~ must use their best endeavours to eliminate the placement of ~~patients~~ persons under compulsory care in seclusion.
- (1A) A person in charge of a service must report annually to the Director-General on the steps taken to eliminate the placement of persons under compulsory care in seclusion. 20
- (2) ~~A~~ Despite **section 47**, a person must not be placed in seclusion unless—
- (a) ~~it is used only for as long as necessary to ensure the safety of people accessing the service, staff, or others; and~~ 25
 - (b) it is necessary to prevent an imminent risk to life when all other ~~least~~ less restrictive strategies and approaches have been tried without positive effect; and
 - (c) it is used in accordance with **subsection (3)**.
- (3) A ~~patient~~ person under compulsory care may only be placed in seclusion in accordance with— 30
- (a) any relevant guidelines and standards for compulsory care issued by the Director-General under **section 204**; and
 - (b) the following provisions:
 - (i) a ~~patient~~ person under compulsory care must be placed in seclusion in a room or other area that is designated for the purpose by, or with the approval of, a Director of Area Mental Health Services: 35

- (ii) except as provided in **subparagraph (iii)**, seclusion may be used only with the authority of the responsible practitioner:
- (iii) if it is not practicable to obtain authorisation from the responsible practitioner, a nurse or other health professional who has immediate responsibility for a ~~patient~~ person under compulsory care may place the ~~patient~~ person in seclusion, but must immediately bring the case to the attention of the responsible practitioner: 5
- (iiia) seclusion may be used only for as long as necessary to ensure the safety of people accessing the service, staff, or others:
- (iv) the duration, the grounds, and the reasons for ~~and circumstances~~ of each episode of seclusion must be recorded in accordance with **section 206(2)**;¹⁰
- (v) the record of each episode of seclusion must be provided to the person under compulsory care's support network as soon as practicable after the episode, to the extent that doing so is consistent with any advance mental health directive made by the person. 15
- (4) Despite **subsections (1) to (3)**, regulations may prohibit, or restrict the use of, the placement of ~~patients~~ persons under compulsory care in seclusion.
- (5) *See **section 38(2)(b)***, which prohibits the placement of a ~~patient~~ person under compulsory care who is under the age of 18 in seclusion. 20
- Compare: 1992 No 46 s 71

50 Electroconvulsive therapy

- (1) The responsible practitioner must not give electroconvulsive therapy to a ~~patient~~ person under compulsory care (other than a person who is under the age of 18) unless— 25
- (a) the therapy is in accordance with the person's care plan and the patient person consents to the therapy by informed consent given—
- (i) in writing; or
- (ii) in a ~~compulsory care~~ advance mental health directive; or
- (b) if the ~~patient~~ person does not have capacity to make decisions about mental health care, ~~— an appropriately qualified mental health practitioner who is independent of the rōpū whaiora (collaborative care team) and is appointed by a Mental Health Review Tribunal for the purposes of this section considers that electroconvulsive therapy is in the interests of the patient;~~ or 30
- (i) a psychiatrist with expertise in electroconvulsive therapy who works independently of the rōpū whaiora (collaborative care team) and is appointed by a Mental Health Review Tribunal for the purposes of this section considers that electroconvulsive therapy is reasonably necessary to— 35 40

- (A) save the person's life; or
- (B) prevent serious damage to the health of the person; or
- (C) prevent the person from causing serious injury to themselves or others; and
- (ii) they take into account the person's care plan (including any advanced mental health directive the person has made) to the greatest extent possible in providing the therapy. 5
- (e) ~~for a patient under the age of 18, an appropriately qualified mental health practitioner who is independent of the rōpū whaiora (collaborative care team), has expertise in child and adolescent mental health, and is appointed by a Mental Health Review Tribunal for the purposes of this section considers that electroconvulsive therapy is reasonably necessary to—~~ 10
- (i) ~~save the patient's life; or~~
- (ii) ~~prevent serious damage to the health of the patient; or~~ 15
- (iii) ~~prevent the patient from causing serious injury to themselves or others.~~
- (1A) The responsible practitioner may only give electroconvulsive therapy to a person under compulsory care who is under the age of 18 if—
- (a) a psychiatrist with expertise in electroconvulsive therapy and a child and adolescent psychiatrist who both work independently of the rōpū whaiora (collaborative care team) and are appointed by a Mental Health Review Tribunal for the purposes of this section consider that electroconvulsive therapy is reasonably necessary to— 20
- (i) save the person's life; or 25
- (ii) prevent serious damage to the health of the person; or
- (iii) prevent the person from causing serious injury to themselves or others; and
- (b) they take into account the person's care plan (including any advanced mental health directive the person has made) to the greatest extent possible in providing the therapy. 30
- (2) The responsible practitioner must record the use of electroconvulsive therapy in accordance with **section 48**, which applies with any necessary modifications as if the use of electroconvulsive therapy were action taken under **section 47-section 206(2)**. 35
- (3) See **section 38(2)(a)**, which prohibits the provision of electroconvulsive therapy to a patient-person under compulsory care who is under the age of 18, except where permitted under **subsection (1A)-(1)(c)**.

Compare: 1992 No 46 s 60

51 Restricted treatments

- (1) Despite **section 47**, a patient-person under compulsory care must not be given a restricted treatment unless—
- (a) the patient-person consents to the treatment in writing or in a ~~compulsory care~~ advance mental health directive; and 5
 - (b) a Mental Health Review Tribunal has considered the case and is satisfied that the patient-person gave that consent freely and, in giving that consent, understood the nature, purpose, and likely effect of the treatment; and
 - (c) the treatment is considered to be in the interests of the patient-person by— 10
 - (i) the responsible practitioner; and
 - (ii) a ~~mental health practitioner~~ psychiatrist who has been appointed for the purposes of this section by the Mental Health Review Tribunal and who has consulted ~~with~~ at least 2 health professionals (neither of whom is a medical practitioner) currently concerned in the patient's-person's care. 15
- (2) In this section, **restricted treatment** means—
- (a) any treatment intended to destroy any part of the brain or brain function; or 20
 - (b) any other emerging or higher-risk treatment specified in regulations (which may also include conditions on the provision of the treatment, including whether the treatment may be provided to a person under the age of 18).
- (3) *See* **section 38(2)(c)**, which prohibits the provision of a restricted treatment as defined in **subsection (2)(a)** to a patient-person under compulsory care who is under the age of 18. 25

Compare: 1992 No 46 s 61

Right to appeal or review

52 Right to appeal or review 30

- (1) The following general appeals and reviews are available in relation to a patient person under compulsory care:
- (a) a ~~member of the patient's support network~~ may refer the patient's case to a Mental Health Review Tribunal for consideration (*see* **section 53(2)**);
 - (b) a patient-person under compulsory care or a member of the patient's their support network may apply to the Family Court to have the patient's-person's condition reviewed (*see* **section 64**): 35
 - (c) a Mental Health Review Tribunal or the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal may, of its own motion,

review the condition of any ~~patient who is subject to compulsory care~~
~~person under compulsory care~~ (*see* **section 136(3)**):

- (d) a Judge of the High Court may, on the Judge's initiative or on the application of any person,—
- (i) make an order that directs a district inspector or any 1 or more persons whom the Judge selects—
- (A) to visit and examine any person who the Judge has reason to believe is being detained in a hospital as a ~~patient~~ person under compulsory care; and
- (B) to inquire into and report on any matters relating to that person; or
- (ii) make an order directing the responsible practitioner to bring any person who is being detained as a ~~patient~~ person under compulsory care in the hospital before the Judge in open court or in chambers, for examination at a time to be specified in the order.

(*See* **section 143**.)

- (2) The following appeals to a Mental Health Review Tribunal are available in relation to a status review of a ~~patient~~ person under compulsory care:
- (a) any person to whom a copy of a record of status review is sent under **section 81** may apply to the Mental Health Review Tribunal to appeal against the outcome of a status review (*see* **section 136**):
- (b) a ~~patient~~ person under compulsory care or other complainant under **section 39** who is not satisfied with the outcome of a complaint to a district inspector or official visitor may apply to the Mental Health Review Tribunal for further investigation (*see* **section 39(9)**):
- (c) if it appears that for any reason a status review of a ~~patient who is subject to compulsory care~~ person under compulsory care has not taken place, the Mental Health Review Tribunal may review the ~~patient's~~ person's condition, either of its own motion or on application by any person to whom a copy of a record of status review would have been required to have been sent if the review had been held (*see* **section 136(4)**).
- (3) If a responsible practitioner makes a direction in relation to a community care order, the ~~patient~~ person under compulsory care or a member of the ~~patient's~~ their support network may apply to the court to have the ~~patient's~~ person's condition reviewed under **section 64** (*see* **section 82(2)(c)**).
- (4) Any person to whom a copy of a record of tribunal review is sent under **section 137(2)(d) to (f)** may apply to the court to appeal against the finding of the Mental Health Review Tribunal (*see* **section 142**).
- (5) The following appeals and reviews are available in relation to a ~~forensic patient~~ person under forensic compulsory care or a ~~restricted patient~~ person on a restricted order:

- (a) any person to whom a copy of a record of status review is sent under **section 107** may apply to the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal to appeal against the outcome of a status review of a ~~forensic patient person under forensic compulsory care~~ (see **section 138**): 5
- (b) any person to whom a copy of a record of status review is sent under **section 135** may apply to the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal to appeal against the outcome of a status review of a ~~restricted patient person on a restricted order~~ (see **section 139**): 10
- (c) if it appears that for any reason a status review of a ~~forensic patient person under forensic compulsory care~~ or a ~~restricted patient person on a restricted order~~ has not taken place, the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal may review the ~~patient's~~ person's condition, either of its own motion or on application by any person to whom a copy of a record of status review would have been required to have been sent if the review had been held (see **sections 138(6) and 139(3)**): 15
- (d) a ~~forensic patient person under forensic compulsory care~~ or the ~~patient's~~ person's nominated person may appeal to the court against a decision by the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal (see **section 176**). 20
- (6) This section is intended as a guide only.

Release from compulsory care

- 53 Release from compulsory care** 25
- (1) If, at any time, the responsible practitioner considers that a ~~patient person under compulsory care~~ does not meet the compulsory care criteria, that practitioner must direct that the ~~patient person~~ be immediately released.
- (2) If the responsible practitioner considers that ~~there are reasonable grounds to believe that the patient~~ the person under compulsory care meets the compulsory care criteria but a district inspector, ~~or an official visitor, or a member of the patient's support network~~ disagrees, the district inspector or official visitor must, ~~or the member of the patient's support network may,~~ refer the case to a Mental Health Review Tribunal for consideration under **section 136**. 30
- (3) If ~~the release of a patient person from compulsory care is directed to be released from compulsory care~~ under this section, the following applies: 35
- (a) if the ~~patient person~~ is undergoing second assessment, the second assessment period expires on the date specified in the direction:

- (b) if a mental health care order is in force in respect of the ~~patient person~~, the mental health care order expires on the date specified in the direction.
- (4) To avoid doubt, this section does not apply to a ~~forensic patient person under forensic compulsory care~~. 5
- Compare: 1992 No 46 s 35

Subpart 2—Compulsory care assessment

54 Overview

- (1) Compulsory care assessment consists of—
- (a) application for first assessment: 10
- (b) first assessment:
- (c) second assessment:
- (d) the decision whether to apply for a mental health care order.
- (2) See **Schedule 1A** for a diagram summarising the process steps from application for first assessment to the issue of a mental health care order. 15

Examination and application for first assessment

55 Assistance arranging examination for application

- (1) This section applies if a person believes that another person may meet the compulsory care criteria.
- (2) The person may request an authorised person to assist in arranging for an examination for an application for first assessment. 20
- (3) The authorised person must investigate the matter to the extent necessary to satisfy themselves whether there are reasonable grounds to believe that the person meets the compulsory care criteria.
- (4) If the authorised person considers that there are reasonable grounds to believe that the person meets the compulsory care criteria, they must immediately arrange or assist in arranging the examination required under **section 56(1)(a)**. 25

56 Examination and application

- (1) A mental health practitioner or a clinical psychologist may apply to the Director of Area Mental Health Services for first assessment of a person if they—
- (a) have examined the person within the previous 72 hours; and
- (b) consider that there are reasonable grounds to believe that the person meets the compulsory care criteria. 35
- (2) An application under **subsection (1)** may be made in the prescribed form.

- (3) ~~When the Director of Area Mental Health Services receives an application under **subsection (1)**, they must—~~
- (a) ~~record, or arrange for the recording of, the reasonable grounds provided under **subsection (1)(b)**; and~~
 - (b) ~~immediately arrange for first assessment of the person.~~ 5
- (2) ~~An application under **subsection (1)**—~~
- (a) ~~may be made in the prescribed form; and~~
 - (b) ~~must include the reasonable grounds relied on under **subsection (1)(b)**.~~
- (3) When the Director of Area Mental Health Services receives an application under **subsection (1)**, they must immediately arrange for first assessment of the person. 10

First assessment

57 Arrangements for first assessment

- (1) A Director of Area Mental Health Services ~~or an authorised person~~ must—
- (a) determine the mental health practitioner who will conduct the first assessment (who must not be the practitioner who conducted the examination under **section 56**); and 15
 - (b) determine, in consultation with the assessor, the time and place at which the first assessment is to be conducted; and
 - (c) take reasonable steps to determine whether the proposed patient person under compulsory care has a welfare guardian, an attorney, or a nominated person; and 20
 - (d) give the proposed patient person under compulsory care a written notice—
 - (i) requiring the proposed patient person to attend at the specified place and time for the purposes of the first assessment; and 25
 - (ii) explaining the purpose of the first assessment; and
 - (iii) stating the name of the person who is to conduct the assessment examination; and
 - (e) explain to the proposed patient person under compulsory care, in the presence of a member of the ~~proposed patient's person's~~ support network,— 30
 - (i) the nature of the first assessment and the possible consequences; and
 - (ii) the time and place of the first assessment, including details of who will conduct the assessment; and 35
 - (f) make appropriate arrangements for the ~~proposed patient's person's~~ transport to, and from, the place of assessment.

- (2) If no member of the proposed ~~patient's person under compulsory care's~~ support network is available, the Director of Area Mental Health Services or the authorised person must ensure that an independent support person is present for the purpose of **subsection (1)(e)**.

58 First assessment 5

- (1) The mental health practitioner conducting the first assessment must assess the proposed ~~patient~~ person under compulsory care to determine whether there are reasonable grounds to believe that they meet the compulsory care criteria.
- (2) For the purpose of **subsection (1)**, the mental health practitioner must—
- (a) take reasonable steps to— 10
- (i) determine whether the proposed ~~patient~~ person under compulsory care has a ~~compulsory care~~ an advance mental health directive, nominated person, welfare guardian, or attorney; and
- (ii) ascertain the views of the proposed ~~patient~~ person under compulsory care and the proposed ~~patient's~~ their support network on the ~~patient's person's~~ patient's person's mental condition and personal circumstances; 15
and
- (b) have regard to— ~~the views of the proposed patient and the proposed patient's support network on the patient's mental condition and personal circumstances.~~ 20
- (i) any advance mental health directive that the proposed person under compulsory care has made; and
- (ii) the views of the proposed person under compulsory care and their support network on the person's mental condition and personal circumstances. 25
- (3) In assessing the steps that are reasonable under **subsection (2)(a)**, the mental health practitioner must balance the accurate assessment of the proposed ~~patient's person under compulsory care's~~ mental condition, personal circumstances, and preferences relating to mental health care (for example, a ~~compulsory care~~ an advance mental health directive) with— 30
- (a) the ~~proposed patient's person's~~ person's will and preferences in relation to their support network; and
- (b) the need to avoid unduly prolonging the assessment.

59 Record of first assessment

- (1) After completing the first assessment, the mental health practitioner must record— 35
- (a) that they have carefully assessed the proposed ~~patient~~ person under compulsory care against the compulsory care criteria; and
- (b) that they consider that—

- (i) the proposed ~~patient~~ person under compulsory care does not meet the compulsory care criteria; or
- (ii) there are reasonable grounds to believe that the proposed ~~patient~~ person under compulsory care meets the compulsory care criteria; and 5
- (c) for an assessment described in **paragraph (b)(ii)**, the reasonable grounds.
- (2) The mental health practitioner must provide the record to the following persons:
- (a) the proposed ~~patient~~ person under compulsory care: 10
- (b) the mental health practitioner who conducted the examination under **section 56**:
- (c) the primary health care provider who usually attends the proposed ~~patient~~ person under compulsory care:
- (d) the Director of Area Mental Health Services: 15
- (e) the proposed ~~patient's~~ person under compulsory care's support network:
- (f) a district inspector:
- (g) an official visitor:
- (h) the proposed ~~patient's~~ person under compulsory care's advocate (if any).
- 60 Compulsory care criteria met** 20
- If the mental health practitioner records that there are reasonable grounds to believe that the proposed ~~patient~~ person under compulsory care meets the compulsory care criteria, the mental health practitioner must require the proposed ~~patient~~ person under compulsory care, by notice in writing, to—
- (a) receive second assessment as a ~~patient~~ person under compulsory care at their residence, or another suitable place; or 25
- (b) if the mental health practitioner considers that the ~~patient~~ person under compulsory care cannot be assessed and given care adequately ~~as an outpatient in the community~~, direct that the ~~patient~~ be detained in a hospital for second assessment. 30
- 61 Compulsory care criteria not met**
- If the mental health practitioner records that they do not consider that the proposed ~~patient~~ person under compulsory care meets the compulsory care criteria, ~~that the~~ person is not required to receive compulsory care and must be immediately released. 35

*Second assessment***62 Second assessment**

- (1) This section applies to a person who is ~~now a patient~~ person under compulsory care following notification under **section 60**.
- (2) A responsible practitioner may require a ~~patient~~ person under compulsory care 5
to undergo second assessment, comprising assessment and care in accordance with a care plan, for a maximum period of 19 days starting on the day on which they are notified.
- (3) The responsible practitioner must undertake a care plan review and a status review of the ~~patient~~ person under compulsory care no later than day 5, no later 10
than day 12, and no later than day 19 of the second assessment period.
- (4) The care plan review and status review must be conducted in accordance with **section 45**.
- (5) The responsible practitioner must provide the records of each care plan review and status review to the following persons: 15
- (a) the ~~patient~~ person under compulsory care;
 - (b) the primary health care provider who usually attended the ~~patient~~ person under compulsory care immediately before the ~~patient~~ person was required to undergo second assessment;
 - (c) the Director of Area Mental Health Services: 20
 - (d) the ~~patient's~~ person under compulsory care's support network;
 - (e) a district inspector;
 - (f) an official visitor;
 - (g) the ~~proposed patient's~~ person under compulsory care's advocate (if any).

63 Location of compulsory care 25

- (1) If, at any time during the second assessment period, the responsible practitioner considers that a ~~patient~~ person under compulsory care in a hospital who is an inpatient can continue to be assessed and given care adequately ~~as an outpatient in the community~~, the practitioner may give a written notice—
- (a) directing the person in charge of the hospital to discharge the ~~patient~~ person; and 30
 - (b) directing the ~~patient~~ person to attend at the ~~patient's~~ their place of residence, or at some other place nominated in the notice, for second assessment during the remainder of the maximum period.
- (2) If, at any time during the second assessment period, the responsible practitioner 35
considers that a ~~patient who is an outpatient~~ person under compulsory care cannot continue to be assessed and given care adequately in the community, the practitioner may give a written notice—

- (a) directing the ~~patient person~~ to present themselves at a specified hospital to be admitted and detained for the purposes of second assessment during the remainder of the maximum period; and
- (b) directing the person in charge of the hospital to admit and detain the ~~patient person~~ for the purposes of second assessment during the remainder of the maximum period. 5
- 64 Examination of ~~patient person under compulsory care~~ undergoing second assessment by Judge**
- (1) At any time during the second assessment period, the ~~patient person under compulsory care~~, a member of the ~~patient's~~ their support network, a district inspector, or an official visitor may apply to the court to have a Judge examine the ~~patient person~~. 10
- (2) When an application is made under **subsection (1)**,—
- (a) if the application is the only application that has been made during the second assessment period,— 15
- (i) the court must grant the application; and
- (ii) a Judge must examine the ~~patient person under compulsory care~~ as soon as practicable; and
- (b) if the application is the second or subsequent application that has been made during the second assessment period, a Judge must decide whether 20
- or not to grant the application, having regard to any evidence before the Judge that indicates that the ~~patient's person under compulsory care's~~ condition has not changed since the last review.
- (3) An examination under this section must be conducted at the place where the ~~patient person under compulsory care~~ is undergoing assessment or another appropriate place. 25
- (4) The Judge must do the following things before and during the examination, as appropriate and practicable:
- (a) identify themselves to the ~~patient person under compulsory care~~; and
- (b) explain to the ~~patient person under compulsory care~~ the purpose of the examination; and 30
- (c) discuss with the ~~patient~~ ~~the patient's~~ person under compulsory care the person's situation, the proposed care plan, and ~~the patient's~~ the person's views on those matters.
- (5) As well as examining the ~~patient person under compulsory care~~, the Judge— 35
- (a) must consult, regarding the ~~patient's person's~~ condition,—
- (i) the responsible practitioner; and
- (ii) at least 1 other health professional involved in the case; and

- (b) must make reasonable efforts to consult the ~~patient's~~ person's nominated person (if any), ~~principal caregiver~~ primary support person, and family group or whānau.
- (6) If the Judge is satisfied that the ~~patient~~ person under compulsory care does not meet the compulsory care criteria, the Judge must order that the ~~patient~~ person be released from compulsory care immediately. 5

Compare: 1992 No 46 s 16

Decision whether to apply for mental health care order

65 Record of second assessment

- (1) Before the expiry of the second assessment period, the responsible practitioner must record— 10
- (a) that they consider that—
- (i) the ~~patient~~ person under compulsory care does not meet the compulsory care criteria; or
- (ii) ~~there are reasonable grounds to believe that the patient~~ the person under compulsory care meets the compulsory care criteria; and 15
- (b) for an assessment described in **paragraph (a)(ii)**, the ~~reasonable grounds~~ reasons for that assessment.
- (2) The responsible practitioner must provide the record to the following persons: 20
- (a) the ~~patient~~ person under compulsory care;
- (b) the primary health care provider who usually attended the ~~patient~~ person under compulsory care immediately before the ~~patient~~ person was required to undergo second assessment;
- (c) the Director of Area Mental Health Services;
- (d) the ~~patient's~~ person under compulsory care's support network: 25
- (e) a district inspector;
- (f) an official visitor;
- (g) the ~~patient's~~ person under compulsory care's advocate (if any).
- (3) The district inspector who receives a copy of the record of second assessment described in **subsection (1)(a)(ii)** must— 30
- (a) communicate with the ~~patient~~ person under compulsory care and find out, if possible, whether ~~the patient~~ the person wants the district inspector to appear before the court to be heard on the application for a mental health care order; and
- (b) decide, having regard to any view expressed by the ~~patient~~ person under compulsory care, whether the district inspector should appear before the court to be heard on the application for a mental health care order. 35

- 66 Compulsory care criteria not met following second assessment**
 If the responsible practitioner records that they consider that the patient person under compulsory care does not meet the compulsory care criteria, ~~that the~~ person is not required to receive compulsory care and must be released immediately from compulsory care. 5
- 67 Compulsory care criteria met following second assessment**
 If the responsible practitioner records ~~that there are reasonable grounds to believe~~ that the patient person under compulsory care meets the compulsory care criteria, the responsible practitioner must, before the expiry of the second assessment period, apply to the court for the making of a mental health care order under **subpart 3**. 10
- 68 Status of patient person under compulsory care pending determination of application**
- (1) If the responsible practitioner applies to the court for a mental health care order, the patient is person under compulsory care remains subject to second assessment in accordance with the terms of the notice given under **section 60** until the expiry of 14 days after the second assessment period ends. 15
- (2) If, after examining the patient person under compulsory care under **section 73**, the Judge considers that it is not practicable to determine the application within the 14-day period, the Judge may, by interim order, extend that period for a further period not exceeding 1 month. 20
- (3) If the application is not finally determined before the expiry of the period under **subsection (1)** or, if that period is extended under **subsection (2)**, the expiry of the further period under **subsection (2)**,—
- (a) the application must be dismissed; and 25
- (b) the patient person under compulsory care must be released from compulsory care.

Compare: 1992 No 46 s 15

Subpart 3—Mental health care orders

Mental health care order applications 30

- 69 Mental health care order applications**
- An application under **section 67**, an application under **section 85(2)**, and an application under **section 86(2)** (a **mental health care order application**) must be accompanied by—
- (a) the person under compulsory care's care plan ~~developed under **section 43**~~, including any assessments relating to a the person's cultural considerations; and 35

- (b) the record of the most recent care plan review and status review ~~of the patient~~ under **section 62(4) or 80** of the person under compulsory care; and
- (c) ~~the patient's compulsory care person~~ under compulsory care's advance mental health directive (if any). 5

Compare: 1992 No 46 s 14A

70 Jurisdiction of Family Court

- (1) Every application under this Act must be heard and determined by the Family Court unless otherwise provided.
- (2) If an application under this Act 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— 10
- (a) by hearing the application, if that is necessary; and
- (b) by determining the application. 15
- (3) An examination required under this Act to be conducted by a Judge must be conducted by a Family Court Judge.
- (4) ~~If Despite **subsection (3)**, if~~ it is not practicable for an examination of a ~~patient~~ person under compulsory care to be conducted by a Family Court Judge, that examination may be conducted by any District Court Judge. 20

Compare: 2017 No 4 s 70

71 Notice of mental health care order application

The responsible practitioner must provide copies of a mental health care order application, together with the documents described in **section 69**, to the following persons: 25

- (a) ~~the patient~~ person under compulsory care;
- (b) ~~the patient's~~ person under compulsory care's support network;
- (c) the Director of Area Mental Health Services;
- (d) a district inspector;
- (e) an official visitor: 30
- (f) ~~the patient's~~ person under compulsory care's advocate (if any).

72 Notice of requirement to attend examination and hearing

The responsible practitioner must ensure that the ~~patient~~ person under compulsory care is served with the following as soon as practicable after a mental health care order application is filed: 35

- (a) a notice requiring the ~~patient~~ person under compulsory care to attend at a place specified in the notice for an examination under **section 73**; and

- (b) a notice requiring the ~~patient person under compulsory care~~ to attend at the court hearing of the mental health care order application under **section 92**.

Compare: 1992 No 46 s 14A

- 73 Judge to examine ~~patient person under compulsory care~~** 5
- (1) If a mental health care order application is made, a Judge must examine the ~~patient person under compulsory care~~ as soon as practicable and no later than 14 days after the application is filed in the court.
- (2) The examination must be conducted at the place where the ~~patient person under compulsory care~~ is undergoing assessment or care or another appropriate place. 10
- (3) The Judge must do the following things before and during the examination, as appropriate and practicable:
- (a) identify themselves to the ~~patient person under compulsory care~~; and
- (b) explain to the ~~patient person under compulsory care~~ the purpose of the examination; and 15
- (c) discuss with the ~~patient person under compulsory care~~ the ~~patient's person's~~ situation, the proposed care plan, and the ~~patient's person's~~ views on those matters.
- (4) As well as examining the ~~patient person under compulsory care~~, the Judge—
- (a) must consult, regarding the ~~patient's person's~~ condition,— 20
- (i) the responsible practitioner; and
- (ii) at least 1 other health professional involved in the case; and
- (b) must make reasonable efforts to consult the ~~patient's person's~~ nominated person (if any), ~~principal caregiver primary support person~~, and ~~family group or whānau~~. 25
- (5) If the Judge is satisfied that the ~~patient person under compulsory care~~ does not meet the compulsory care criteria, the Judge must order that the ~~patient person~~ be released from compulsory care immediately.

Compare: 1992 No 46 s 18

- 74 Hearing of mental health care order application** 30
- (1) A hearing of a mental health care order application must be held in accordance with **subpart 4**.
- (2) The Judge who examines the ~~patient person under compulsory care~~ under **section 73** must, wherever possible, conduct the hearing.
- (3) The hearing must not be held until the ~~patient person under compulsory care~~ has been examined under **section 73**. 35

75 Court may dispense with hearing in certain circumstances

The court may determine an application for a mental health care order without a formal hearing if it is satisfied that no person wishes to be heard in respect of the application.

Compare: 1992 No 46 s 26

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*Mental health care orders***76 Court to determine if compulsory care criteria met**

(1) On a mental health care order application, the court must determine whether ~~there are reasonable grounds to believe that the patient~~ the person under compulsory care meets the compulsory care criteria.

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(2) If the court considers that ~~the patient~~ person under compulsory care does not meet the criteria, it must order that ~~the patient~~ person be immediately released from compulsory care.

(3) If the court considers that ~~the patient~~ person under compulsory care does meet the criteria, it must determine, having regard to all the circumstances of the case, if it is reasonably necessary to make a mental health care order.

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Compare: 1992 No 46 s 27

77 Mental health care orders

(1) A mental health care order may be, as specified by the court in the order,—

(a) a community care order; or

20

(b) ~~an inpatient~~ a hospital care order.

(2) The court must make a community care order unless the court considers that the circumstances of the case require ~~the patient~~ person under compulsory care to be treated as ~~an inpatient~~ a person subject to a hospital care order.

(3) However, before the court makes a community care order, it must be satisfied that ~~the patient~~ person under compulsory care—

25

(a) will receive care that is appropriate to their needs; and

(b) can be adequately cared for in the community.

(4) If ~~the patient~~ person under compulsory care has a welfare guardian, the court may suspend or modify the appointment of the welfare guardian for the period of compulsory care if it considers it reasonable to do so in the circumstances of the case.

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(5) When the court makes an order under this section, it must provide a copy of the order to ~~the patient~~ person under compulsory care.

Compare: 1992 No 46 s 28

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78 Community care orders

- (1) A community care order must require the ~~patient person under compulsory care~~ to attend at the ~~patient's~~ their place of residence, or at some other place specified in the order, for care by employees of the service, and to receive that care. 5
- (2) An employee of the service specified in the order who is authorised to provide care to the ~~patient person under compulsory care~~ may enter the ~~patient's~~ the person's place of residence or other specified place when reasonably necessary to provide care to the ~~patient person~~. 10

Compare: 1992 No 46 s 29

10

79 ~~Inpatient care orders~~ Hospital care orders

~~An inpatient care order~~ A hospital care order must require,—

- (a) for the purposes of care,—
- (i) the continued detention of the ~~patient person under compulsory care~~ in the hospital specified in the order; or 15
- (ii) if the ~~patient person under compulsory care~~ is being detained at some other hospital, the admission of the ~~patient person~~ and their detention in the hospital specified in the order; and
- (b) the ~~patient person under compulsory care~~ to receive ~~that care~~ care at the hospital specified in the order. 20

Compare: 1992 No 46 s 30

*Care plan and status reviews***80 Care plan and status reviews of persons subject to mental health care orders**

- (1) This section applies in respect of every ~~patient person under compulsory care~~, other than a ~~restricted patient person on a restricted order~~, who is subject to— 25
- (a) a mental health care order; or
- (b) an order under section 34(1)(a)(i) of the Criminal Procedure (Mentally Impaired Persons) Act 2003.
- (2) The responsible practitioner must conduct a care plan review of the condition of the ~~patient person under compulsory care~~ at monthly intervals starting no later than 1 month after the date of the applicable order. 30
- (3) The responsible practitioner must conduct a status review of the condition of the ~~patient person under compulsory care~~ at 3-monthly intervals starting no later than 3 months after the date of the applicable order. 35
- (4) Despite **subsection (3)**, the responsible practitioner must conduct a status review of the condition of the ~~patient person under compulsory care~~ when the

responsible practitioner has reason to believe that the condition of the ~~patient~~ person has changed.

- (5) The responsible practitioner must ensure that a notice is given to the ~~patient~~ person under compulsory care before each review that requires them to be examined at a place specified in the notice. 5
- (6) A care plan review must be conducted in accordance with **section 45(1)**.
- (7) A status review must be conducted in accordance with **section 45(2)**.
- (8) At the conclusion of a status review, the responsible practitioner must record—
- (a) that in their opinion the ~~patient~~ person under compulsory care does not meet the compulsory care criteria; or 10
- (b) that in their opinion ~~there are reasonable grounds to believe that the patient~~ the person under compulsory care meets the compulsory care criteria.
- (9) The responsible practitioner must send to the Director of Area Mental Health Services— 15
- (a) the record of status review; and
- (b) the reasons for their opinion of the ~~patient's~~ person under compulsory care's condition, and any relevant reports from other health professionals involved in the case.
- Compare: 1992 No 46 s 76 20

81 Outcome of status review

- (1) If the responsible practitioner considers that the ~~patient~~ person under compulsory care does not meet the compulsory care criteria, the ~~patient~~ person must be immediately released from compulsory care and the mental health care order is revoked. 25
- (2) However,—
- (a) if the responsible practitioner considers that a ~~forensic patient~~ person under forensic compulsory care does not meet the compulsory care criteria and **paragraph (b)** does not apply, the ~~patient~~ person must be dealt with in accordance with **section 108(2)**, and **section 108(4) and (6)** applies: 30
- (b) if a ~~patient or forensic patient~~ person under compulsory care or a person under forensic compulsory care is subject to a mental health care order that was made following an application under section 136(2) of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, 35 they must be dealt with in accordance with **section 109**.
- (3) If the responsible practitioner considers that ~~there are reasonable grounds to believe that the patient~~ the person under compulsory care meets the compulsory care criteria, the practitioner must send a copy of the record of status review to each of the following persons: 40

- (a) ~~the patient person under compulsory care:~~
- (b) ~~the patient's person under compulsory care's~~ support network:
- (c) the primary health care provider who usually attended the ~~patient per-~~
~~son under compulsory care~~ immediately before the ~~patient person~~ was
required to undergo second assessment under **subpart 2:** 5
- (d) a district inspector:
- (e) an official visitor.
- (4) The responsible practitioner must send a statement to the persons listed in
subsection (3)(a) to (c) setting out—
- (a) the legal consequences of the finding set out in the record of status 10
review; and
- (b) the recipient's right to apply to a Mental Health Review Tribunal for a
review of the ~~patient's person under compulsory care's~~ condition.
- (5) The district inspector who receives a copy of the record of status review
must— 15
- (a) ask the ~~patient person under compulsory care~~ whether they want an
application to be made to a Mental Health Review Tribunal for a review
of ~~the patient's their~~ condition; and
- (b) decide, having regard to any view expressed by the ~~patient person under~~
~~compulsory care~~, whether an application should be made to a Mental 20
Health Review Tribunal for a review of the ~~patient's person's~~ condition.
- (6) If the district inspector considers that an application for review should be
made, the district inspector must take whatever reasonable steps they think
necessary to encourage or assist the ~~patient person under compulsory care~~, or
any person specified in **subsection (3)(b) and (c)**, to make an application. 25
- (7) If, in any case to which **subsection (5)** applies, the district inspector con-
siders that an application should be made to have the ~~patient's person under~~
~~compulsory care's~~ condition reviewed by a Mental Health Review Tribunal
but neither the ~~patient person~~ nor any person specified in **subsection (3)(b)**
and (c) intends to make such an application, the district inspector may report 30
the matter to a Mental Health Review Tribunal and the Mental Health Review
Tribunal may, of its own motion, review the ~~patient's person's~~ condition under
section 136.
- (8) The district inspector may arrange for an official visitor to perform the func-
tions specified in **subsections (5) to (7).** 35

Changes to mental health care orders

82 Changes to community care orders

- (1) If, at any time while a community care order is in force, the responsible
practitioner considers that the ~~patient person under compulsory care~~ cannot

- continue to be given care adequately ~~as an outpatient~~ in the community, the responsible practitioner may direct that the ~~patient person~~—
- (a) be given care ~~as an inpatient~~ a person subject to a hospital care order for a period of up to 14 days; or
 - (b) be further assessed in accordance with **section 62**. 5
- (2) The following provisions apply when a responsible practitioner gives a direction:
- (a) if the direction is given under **subsection (1)(a)**,—
 - (i) the community care order does not cease to have effect, but is treated as ~~an inpatient care order~~ a hospital care order for the period specified in the direction; and 10
 - (ii) the responsible practitioner must make appropriate arrangements to transport the ~~patient person~~ under compulsory care to and from the hospital:
 - (b) if the direction is given under **subsection (1)(b)**,— 15
 - (i) the community care order ceases to have effect; and
 - (ii) **sections 62 to 75** apply, with any necessary modifications:
 - (c) if the direction is given under **subsection (1)(a) or (b)**, a person specified in **section 71** may apply to the court to have the ~~patient's~~ person under compulsory care's condition reviewed under **section 64**. 20
- (3) The responsible practitioner may not give a direction under **subsection (1)(a)** in respect of a ~~patient person~~ under compulsory care more than twice in any 6-month period.
- (4) As soon as practicable after giving a direction under **subsection (1)**, the responsible practitioner must give written notification, including the reasons 25 for giving the direction, to the following:
- (a) the ~~patient~~ person under compulsory care;
 - (b) the ~~patient's~~ person under compulsory care's support network;
 - (c) the ~~patient's~~ person under compulsory care's usual primary care provider (if any): 30
 - (d) a district inspector;
 - (e) an official visitor;
 - (f) the Director of Area Mental Health Services.
- Compare: 1992 No 46 s 29
- 83 Changes to ~~inpatient care orders~~ hospital care orders** 35
- (1) If, at any time while the ~~inpatient care order~~ hospital care order is in force, the responsible practitioner considers that the ~~patient person~~ under compulsory

care can continue to be given care adequately ~~as an outpatient in the community~~, that practitioner must, by notice in writing,—

- (a) direct that the patient person be discharged from the hospital; and
- (b) direct the patient person to attend at ~~the patient's~~ their place of residence, or at some other place nominated in the notice, for the purposes of care. 5

- (2) ~~An inpatient care order~~ A hospital care order in respect of a patient person under compulsory care who receives a notice of direction under **subsection (1)** must be treated as a community care order, as if the terms of the notice were the terms of the order. 10

Compare: 1992 No 46 s 30

Expiry and extension of mental health care orders

84 Mental health care order to expire after 6 months

Subject to **sections 85 and 86**, every mental health care order continues in force for a period of 6 months commencing on the day on which it is made, and then expires. 15

Compare: 1992 No 46 s 33

85 First extension

- (1) Within 14 days before the date on which a mental health care order is to expire under **section 84**, the responsible practitioner must arrange for a care plan review and a status review of the patient person under compulsory care under **section 80**. 20

- (2) If, following the status review, the responsible practitioner is satisfied that ~~there are reasonable grounds to believe that the patient~~ the person under compulsory care meets the compulsory care criteria, the practitioner may apply to the court to extend the order for a further period of 6 months, commencing on the day after the date on which the order would otherwise have expired. 25

Compare: 1992 No 46 s 34

86 Second and subsequent extensions

- (1) If a mental health care order has been extended by application under **section 85(2)** or under **subsection (2)**, the responsible practitioner must, within 14 days immediately before the date on which the extended mental health care order expires, arrange for a care plan review and a status review of the patient person under compulsory care under **section 80**. 30

- (2) If, following the status review, the responsible practitioner is satisfied that ~~there are reasonable grounds to believe that the patient~~ the person under compulsory care meets the compulsory care criteria, they may apply to the court to extend the order for a period of up to 12 months commencing on the day after the date on which the order would otherwise have expired. 35

Compare: 1992 No 46 s 34A

87 Determination of applications under sections 85 and 86

- (1) Unless the court determines an application in accordance with **section 75 or 100**, a Judge must, within 2 months after the date on which the application under **section 85 or 86** is filed in the court,—
- (a) examine the ~~patient~~ person under compulsory care; and 5
 - (b) hear and determine the application.
- (1A) However, a Judge may extend the period in which they must comply with **subsection (1)** by up to 1 month if—
- (a) the Judge receives an application requesting the extension; and
 - (b) the purpose of the requested extension is to obtain a second opinion in relation to the status review referred to in **section 85 or 86**. 10
- (2) If, at the time immediately before the expiry of the relevant extended mental health care order, the court has not determined an application under **section 85 or 86**, the order does not expire and continues in force until the court determines the application. 15

Compare: 1992 No 46 s 34B

88 Mental health care order ceases to have effect or is changed in certain cases

- (1) If, at any time while a mental health care order is in force in respect of any person, that person becomes subject to an order made by a court under section 38(2)(c) or 44(1) of the Criminal Procedure (Mentally Impaired Persons) Act 2003, the mental health care order is suspended while that other order is in force. 20
- (2) A mental health care order in respect of any person ceases to have effect if that person— 25
- (a) becomes subject to an order under section 24 or 34 of that Act; or
 - (b) is sentenced to imprisonment.
- (3) If, at any time while a community care order made under **section 77** is in force in respect of any person, that person is remanded into the custody of the chief executive of the Department of Corrections, the following applies to the community care order: 30
- (a) the order is suspended for the period that the person is remanded, up to a maximum of 3 months;
 - (b) if the person is remanded for a period exceeding 3 months, the order ceases to have effect. 35
- (4) If a community care order is suspended, it remains in force for the purposes of **section 82** for the period of the suspension, up to a maximum of 3 months.
- (5) At any time while a community care order is suspended, the superintendent of the institution in which the person is remanded may, if the superintendent ~~has~~

- ~~reasonable grounds to believe~~ considers that the person meets the compulsory care criteria, apply to the responsible practitioner to consider whether the person should receive care as ~~an inpatient~~ a person subject to a hospital care order in accordance with **section 82**.
- (6) The superintendent must include in an application under **subsection (5)** a ~~description of the reasonable grounds for the belief~~ their reasons for considering that the person meets the compulsory care criteria. 5
- (7) If the superintendent applies to the responsible practitioner under **subsection (5)** and the responsible practitioner, after considering the superintendent's description, has informed the superintendent that they agree that ~~there are~~ reasonable grounds to believe that the person meets the compulsory care criteria, the superintendent may direct that the person— 10
- (a) be removed to a hospital for the purposes of an assessment by the responsible practitioner as to whether the ~~patient~~ person under compulsory care should receive care as ~~an inpatient~~ subject to a hospital care order; and 15
- (b) following removal to a hospital, be taken back to the institution.
- (8) A person who is removed to a hospital under **subsection (7)**—
- (a) must not be detained in the hospital overnight, except in accordance with a direction given under **section 82(1)**; and 20
- (b) must be treated as continuing to be under the legal custody of the chief executive of the Department of Corrections, despite the person being absent from the institution.
- (9) If the responsible practitioner gives a direction under **section 82(1)**,—
- (a) that direction is sufficient authority— 25
- (i) to detain the person in a hospital; or
- (ii) to remove the person from the institution to a hospital; and
- (b) the person is treated as having ceased to be remanded into the custody of the chief executive of the Department of Corrections; and
- (c) the responsible practitioner must conduct a care plan review. 30
- Compare: 1992 No 46 s 36

Leave and absence without leave

89 Leave for ~~inpatients~~ person subject to a hospital care order

- (1) This section applies to a ~~patient~~ person under compulsory care, other than a ~~forensic patient~~ person under forensic compulsory care, who is in a hospital in accordance with ~~an inpatient care order~~ a hospital care order. 35
- (2) The responsible practitioner may grant the ~~patient~~ person under compulsory care leave of absence from the hospital for a ~~period not exceeding 3 months~~ for

- a period specified by the responsible practitioner on any terms and conditions that the responsible practitioner thinks fit: if the responsible practitioner—
- (a) is satisfied that the leave of absence is appropriate, taking into account the person's clinical circumstances and their care plan; and
 - (b) has considered whether a hospital care order remains appropriate for the person. 5
- (3) The responsible practitioner may extend the period of leave ~~once for a further period not exceeding 3 months.~~
- (4) The responsible practitioner may cancel the leave at any time during the period of leave by notice in writing to— 10
- (a) the person who has undertaken to take care of the ~~patient~~ person under compulsory care during the period of leave; or
 - (b) the ~~patient~~ person under compulsory care.
- (5) If leave is cancelled, the ~~patient~~ person under compulsory care may be taken to a hospital by— 15
- (a) an authorised person; or
 - (b) any person to whom the charge of the ~~patient~~ person under compulsory care has been entrusted during the period of leave.

Compare: 1992 No 46 s 31

- 90 Absence without leave** 20
- (1) A ~~patient~~ person under compulsory care to whom **section 89** applies who is absent without leave from the hospital in which they are detained may be returned to hospital by ~~any person~~ any of the following persons during the period of 3 months starting on the day on which the absence commences: 25
- (a) an authorised person: 25
 - (b) a constable:
 - (c) a member of the person's rōpū whaiora (collaborative care team).
- (2) A ~~patient~~ person under compulsory care may be taken back to the hospital in which ~~the patient was~~ they were detained immediately before the absence or, if that is not reasonably practicable, to the emergency department of any other hospital. 30
- (3) However, a ~~patient~~ person under compulsory care who is absent without leave from a hospital may be released from compulsory care in accordance with this Act at any time while ~~the patient is~~ they are absent.
- (4) The Director of Area Mental Health Services must ensure that a record is made within 24 hours after the commencement of an absence, and after the return or release, of a ~~patient~~ person under compulsory care. 35
- (5) A ~~patient~~ person under compulsory care who leaves their escort while being lawfully transferred to any other hospital—

- (a) must be treated as being absent without leave under **subsection (1)**; and
- (b) if they are returned in accordance with this Act, may be taken to the hospital to which they were being transferred, despite the time limit under **section 217(2)(5)** having elapsed.

5

Compare: 1992 No 46 s 32

Subpart 4—Procedure

91 Application of this subpart

This subpart applies to mental health care order applications.

92 Attendance of ~~patient person under compulsory care~~ and other persons 10

- (1) The ~~patient person under compulsory care~~ must be present throughout the hearing by the court of an application for a mental health care order unless—
 - (a) the Judge who examines the ~~patient person~~ in accordance with **section 73(1)** certifies that attendance would have a detrimental effect on ~~the patient's~~ their health; or 15
 - (b) the ~~patient person under compulsory care~~ is excluded by the court under **subsection (2)**.
- (2) The court may exclude the ~~patient person under compulsory care~~ from any stage of the hearing if it is satisfied that—
 - (a) attendance would have a detrimental effect on ~~the patient's~~ their health; or 20
 - or
 - (b) the ~~patient person~~ lacks the capacity to understand the nature and purpose of the proceedings; or
 - (c) the ~~patient person~~ is causing such a disturbance that it is not practicable to continue with the hearing in the presence of the ~~patient person~~. 25
- (3) The ~~patient person under compulsory care~~ must be present while the court makes any order on the application unless—
 - (a) ~~the patient has~~ they have been excluded under **subsection (2)**; or
 - (b) there are exceptional circumstances that justify the court making an order in the absence of the ~~patient person~~. 30
- (4) A person notified under **section 71** is entitled to be present throughout the hearing, unless the Judge orders otherwise.

Compare: 1992 No 46 s 19

93 Court may call for report on ~~patient person under compulsory care~~

- (1) The court may, if it is satisfied that it is necessary to properly dispose of an application for a mental health care order, request any person whom it considers qualified to do so to prepare a report on any relevant aspect of the 35

patient's person under compulsory care's clinical, personal, family, whānau, community, or cultural background.

- (2) In deciding whether to request a report under **subsection (1)**, the court may ascertain and have regard to the wishes of the patient person under compulsory care and any other party to the proceedings. 5
- (3) A copy of the report must be given by the Registrar of the court to—
- (a) the lawyer for the patient person under compulsory care and to each of the other parties to the proceedings; and
 - (b) if any party is not represented by a lawyer, to that party.
- (4) The court must order that a copy of a report given to a lawyer 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 the patient person under compulsory care or of any other person. 10
- (5) Any party to the proceedings may tender evidence on any matter referred to in the report. 15
- (6) The court may call the person making the report as a witness—
- (a) of its own motion; or
 - (b) on the application of any party to the proceedings.
- (7) A court that requests a person to prepare a report must make either of the orders described in **subsection (9)**. 20
- (8) A court considering whether to make an order under **subsection (9)(a)** must hear the party or parties affected.
- (9) The orders are—
- (a) an order for the fees and expenses of the person to be paid by any party or parties to the proceedings, as the court orders: 25
 - (b) an order for the fees and expenses of the person to be met from any appropriation by Parliament for the purpose.

Compare: 1992 No 46 s 21

94 Evidence 30

The court may receive any evidence that it thinks fit in proceedings on an application for a mental health care order,—

- (a) whether by way of hearing in the first instance, by way of appeal, or otherwise; and
- (b) whether or not it is otherwise admissible in a court of law. 35

Compare: 1992 No 46 s 22

95 Right of notified persons to be heard and call evidence

A person notified under **section 71** is entitled to—

- (a) be heard by the court in person or through a lawyer or through some other person that they nominate; and
- (b) call witnesses; and
- (c) cross-examine a witness called by another party to the proceedings.

Compare: 1992 No 46 s 20

5

96 Power of court to call witnesses

- (1) Without limiting anything in **section 95**, the court may, of its own motion on any application for a mental health care order, call any person as a witness whose evidence it considers may 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 the witness had been called by a party to the proceedings. 10
- (3) A witness called by the court under this section may be examined and re-examined by the court, and may be cross-examined by or on behalf of any party to the proceedings. 15
- (4) Sections 159 and 161 to 165 of the Criminal Procedure Act 2011, to the extent that they are applicable and with the necessary modifications, apply with respect to every person called as a witness by the court under this section as if that person had been called by a party to the proceedings.
- (5) The expenses of any witness called by the court under this section must be met, in accordance with the prescribed scale of witnesses' expenses, in the first instance from any appropriation by Parliament for the purpose. 20

Compare: 1992 No 46 s 23

97 Proceedings not open to public

- (1) Only the following persons may be present during the hearing of any proceedings on an application for a mental health care order: 25
 - (a) the Judge:
 - (b) officers of the court:
 - (c) parties to the proceedings and their lawyers, and any other person nominated by the ~~patient~~ person under compulsory care: 30
 - (d) witnesses:
 - (e) a person notified under **section 71**.
- (2) A witness must leave the courtroom if asked to do so by the Judge.
- (3) This section does not limit the power of the court to hear proceedings in private or to exclude any person from the court. 35

Compare: 1992 No 46 s 24

98 Publication of reports of proceedings

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

- (a) in the Family Court:
- (b) in any other court, in which case references in those sections to the Family Court or court must be read as references to that other court. 5

Compare: 1992 No 46 s 25

99 Examination and hearing of application for extension of community care order by audiovisual link

(1) This section applies to an application under ~~section 85 or 86~~ for the extension of a community care order. 10

(2) A 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 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. 15

(4) The 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 95~~, including the right to assess the credibility of witnesses and the reliability of evidence presented to the court: 20
- (b) any other relevant matters.

(5) In this section,—

audiovisual link means facilities that enable both audio and visual communication,— 25

(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: 30

(c) counsel:

(d) a witness:

(e) the presiding Judge.

Compare: 1992 No 46 s 34C

100 Court may dispense with examination and hearing

- (1) The court may determine an application under **section 85 or 86** without examination of the ~~patient person under compulsory care~~ and without a formal hearing if the court is satisfied that—
- (a) the ~~patient person~~ has given consent in accordance with **subsection (2)** for the application to be determined in that way; and 5
 - (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 person under compulsory care~~ must be—
- (a) given on the advice of a lawyer; and 10
 - (b) provided in writing to the court and the Director of Area Mental Health Services.
- (3) In this section, **lawyer** has the meaning given to it by section 6 of the Lawyers and Conveyancers Act 2006.
- Compare: 1992 No 46 s 34D 15

Part 4**~~Forensic patients~~ Persons under forensic compulsory care and restricted patients persons on restricted orders**

Subpart 1—Notice of admission, discharge, and transfer of ~~forensic patients persons under forensic compulsory care and restricted patients~~ persons on restricted orders 20

101 Notice of admission

- (1) The person in charge of a hospital to which a ~~forensic patient person under forensic compulsory care~~ or a ~~restricted patient person on a restricted order~~ is admitted must send the information described in **subsection (2)** to the Director. 25
- (2) The information is—
- (a) notice of the admission:
 - (b) a copy of the order on which the ~~patient person~~ was admitted:
 - (c) a copy of every record of assessment and other document that accompanied the order: 30
 - (d) a statement of both the mental condition and the physical condition of the ~~patient person~~ at the time of the ~~patient's person's~~ admission.
- (3) The person in charge of the hospital must send the information within 14 days after the ~~patient person~~ is admitted. 35
- Compare: 1992 No 46 s 42

102 Notice of events concerning patient person

- (1) The person in charge of a hospital must send a notice to the Director of any of the events described in **subsection (2)** that concerns a ~~forensic person under forensic compulsory care or restricted patient~~ person on a restricted order admitted to the hospital. 5
- (2) The events are—
- (a) discharge from the hospital:
 - (b) transfer from the hospital:
 - (c) absence on leave from the hospital:
 - (d) cancellation of leave from the hospital: 10
 - (e) return from leave:
 - (f) escape from the hospital:
 - (g) return after an escape.
- (3) The person in charge of the hospital must send the information within 14 days after the event occurs. 15
- Compare: 1992 No 46 s 43

*Collection of biometric information***103 Collection of biometric information**

- (1) This section provides for the collection of biometric information to—
- (a) strengthen the management of ~~forensic patients~~ persons under forensic compulsory care and ~~restricted patients~~ persons on a restricted order in hospitals; and 20
 - (b) ensure the safety and security of ~~forensic patients~~ persons under forensic compulsory care and ~~restricted patients~~ persons on a restricted order; and
 - (c) better manage the risk of ~~forensic patients~~ persons under forensic compulsory care and ~~restricted patients~~ persons on a restricted order breaching **section 130**. 25
- (2) A ~~person who is a forensic patient~~ person under forensic compulsory care or a ~~restricted patient~~ person on a restricted order must allow the collection of biometric information if directed by— 30
- (a) the Director; or
 - (b) the Director of Area Mental Health Services; or
 - (c) the person in charge of the hospital in which the ~~patient~~ person is detained.
- (3) Biometric information must be collected in accordance with requirements prescribed in regulations. 35

- (4) In this section, **biometric information**, in relation to a person, means information that comprises—
- (a) 1 or more of the following kinds of information:
 - (i) a photograph of all or any part of the person’s head and shoulders:
 - (ii) impressions of the person’s fingerprints: 5
 - (iii) a scan of the person’s irises; and
 - (b) an electronic record of the information that is capable of being used for biometric matching.

Compare: 1992 No 46 s 43A

Subpart 2—~~Forensic patients~~ Persons under forensic compulsory care 10

104 ~~Care of forensic patients~~ Persons under forensic compulsory care generally

Subject to the provisions of any other enactment, a ~~forensic patient~~ person under forensic compulsory care must be given the care that the ~~patient~~ person would be given if they were subject to a mental health care order.

Compare: 1992 No 46 s 44

15

105 **Application for assessment may be made in respect of persons detained in prisons**

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

institution means—

- (a) a prison; and 20
- (b) a treatment centre under the Substance Addiction (Compulsory Assessment and Treatment) Act 2017; and
- (c) a residence established under section 114 of the Public Safety (Public Protection Orders) Act 2014

superintendent,—

25

- (a) in relation to a prison, means the manager of that prison; and
- (b) in relation to a treatment centre under the Substance Addiction (Compulsory Assessment and Treatment) Act 2017, means the manager of that treatment centre; and
- (c) in relation to a residence established under section 114 of the Public Safety (Public Protection Orders) Act 2014, means the residence manager within the meaning of that Act. 30

- (2) The superintendent of an institution may request assistance under **section 55** in arranging for an application for an examination for first assessment if they believe that a person detained in the institution may meet the compulsory care criteria. 35

- (3) A clinical psychologist employed or otherwise engaged by the Department of Corrections may make an application in accordance with **section 56** in respect of a person detained in an institution.
- (4) An application under **subsection (2) or (3)** is dealt with under **Part 3** subject to the following provisions: 5
- (a) if the detained person is already subject to the process described in **section 56**, they remain subject to that process, subject to the modifications in **subsection-(4) (5)**:
- (b) if the detained person is already subject to a mental health care order and **section 88** does not apply to the order, they remain subject to the order: 10
- (c) if neither **paragraph (a) nor paragraph (b)** applies to the detained person, **Part 3** applies to the application but must be read subject to any necessary modifications and to the modifications in **subsection-(4) (5)**.
- (5) The modifications are as follows:
- (a) the first assessment must take place— 15
- (i) in the institution within 48 hours after the receipt of the application; or
- (ii) if that is not practicable, in a hospital within 72 hours after the receipt of the application:
- (b) if the first assessment is to be conducted in a hospital, the detained person may, by or under the direction of the superintendent or manager of the institution,— 20
- (i) be removed to the hospital for the purposes of the assessment examination; and
- (ii) be taken back to the institution: 25
- (c) if the detained person is removed under **paragraph (b)** from a prison,—
- (i) that person must not be detained in the hospital overnight, except in accordance with a notice referred to in **paragraph (d)** (the **notice**); and
- (ii) that person must be treated as continuing to be in the legal custody of the person whose custody they were in under the Corrections Act 2004 until the notice is given, despite the person being absent from the institution—the person is admitted to and detained at the hospital in accordance with the notice: 30
- (d) if the record of first assessment contains the finding described in **section 59(1)(b)(ii)**, the mental health practitioner making the record must give a notice in accordance with **section 60**— 35
- (i) directing that the person be admitted to and detained in a specified hospital for the purposes of second assessment; and

- (ii) which, if the assessment interview was conducted in the institution, is sufficient authority for the removal of the detained person from the institution to the hospital:
- (e) ~~on the giving of the notice in respect of any person who was detained in a prison, that person is treated as having ceased to be in legal custody under the Corrections Act 2004:~~ 5
- (e) legal custody of the person ceases under the Corrections Act 2004 and begins under **section 188** when the person is admitted to and detained at the hospital in accordance with a notice given under **section 60**:
- (f) if the record of second assessment contains the finding described in **section 65(1)(a)(ii)**, the responsible practitioner must give a copy of the record to the ~~patient person~~ and the ~~patient person~~ remains subject to second assessment in accordance with the terms of the notice given under **section 60** while an application is made to the court for the making of a mental health care order (*see **section 68***): 10 15
- (g) the court must not make a community care order in respect of the person.
- (6) In relation to a person detained in a prison, neither the making of an application under **subsection (2)** nor the making of a mental health care order—
- (a) prevents the bringing of the person before a court for hearing or trial; or
- (b) operates to delay the hearing or trial. 20
- Compare: 1992 No 46 s 45

106 Detained persons in need of care

- (1) This section applies to a person who is detained in a prison or in a residence established under section 114 of the Public Safety (Public Protection Orders) Act 2014, whether or not that person meets the compulsory care criteria, if— 25
- (a) the chief executive of the Department of Corrections considers that the person would benefit from mental health care available in a hospital but not available in the institution in which the person is detained; and
- (b) the person consents to detention in the hospital.
- (2) The chief executive of the Department of Corrections may arrange with the Director for the person to be admitted to and detained, subject to **section 114**, in a hospital. 30
- (3) Legal custody of the person ceases under the Corrections Act 2004 and begins under **section 188** when the person is admitted to and detained at the hospital. 35
- Compare: 1992 No 46 s 46

107 Care plan and status reviews of certain ~~forensic patients~~ persons under forensic compulsory care

- (1) This section applies in respect of every ~~forensic patient~~ person under forensic compulsory care who is detained in a hospital under an order of a court made

- under section 24(2)(a) of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (the **CPMIP Act**).
- (2) The responsible practitioner must conduct a care plan review of the ~~patient person~~ person at monthly intervals starting no later than 1 month after the date of the order. 5
- (3) The responsible practitioner must conduct a status review of the condition of the ~~patient person~~ person at 3-monthly intervals starting no later than 3 months after the date of the applicable order.
- (4) Despite **subsection (3)**, the responsible practitioner must conduct a status review of the condition of the ~~patient person~~ person when the responsible practitioner has reason to believe that the condition of the ~~patient person~~ person has changed. 10
- (5) A care plan review must be conducted in accordance with **section 45(1)**.
- (6) A status review must be conducted in accordance with **section 45(2)**.
- (7) **Sections 80(9) and 81(4) to (8)** apply in respect of every review under this section as if it were a review under those sections. 15
- (8) In the case of a ~~forensic patient person~~ person under forensic compulsory care who was ordered to be detained following a finding of unfitness to stand trial, the following provisions apply to any review of that ~~patient's person's~~ person's condition under this section:
- (a) at the conclusion of the review, the responsible practitioner must record their findings in a record of status review stating that they consider that— 20
- (i) the ~~patient person~~ person is no longer unfit to stand trial; or
- (ii) the ~~patient person~~ person is still unfit to stand trial but it is no longer necessary that the ~~patient person~~ person should be subject to the order of detention as a ~~forensic patient person~~ person under forensic compulsory care; or 25
- (iii) the ~~patient person~~ person is still unfit to stand trial and should continue to be subject to the order of detention as a ~~forensic patient person~~ person under forensic compulsory care: 30
- (b) the responsible practitioner must send a copy of the record of status review to the following persons:
- (i) the Director:
- (ii) the ~~patient person~~ person under forensic compulsory care:
- (iii) the ~~patient's person~~ person under forensic compulsory care's support network: 35
- (iv) a district inspector:
- (v) an official visitor:

- (c) the responsible practitioner must also send a copy of the record of status review to the Attorney-General for the purposes of section 31 of the CPMIP Act if the responsible practitioner considers that—
- (i) the ~~patient~~ person is no longer unfit to stand trial; or
 - (ii) the ~~patient~~ person is still unfit to stand trial but it is no longer necessary to safeguard the interests specified in section 31(3A) of that Act: 5
- (d) despite section 31 of the CPMIP Act, on receiving a copy of the record of status review, the Attorney-General may apply to the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal for a review of the ~~patient's~~ person's condition instead of exercising the powers and performing the duties under that section. 10
- (9) In the case of a ~~forensic patient~~ person under forensic compulsory care who was ordered to be detained following acquittal on account of insanity, the following provisions apply to any review of that ~~patient's~~ person's condition under this section: 15
- (a) at the conclusion of the review, the responsible practitioner must record their findings in a record of status review, stating whether they consider the ~~patient's~~ person's condition still requires that, to safeguard the interests specified in section 33(4) of the CPMIP Act, the ~~patient~~ person should be subject to the order of detention as a ~~forensic patient~~ person under forensic compulsory care: 20
 - (b) the responsible practitioner must send a copy of the record of status review to—
 - (i) the Director; and 25
 - (ii) each of the persons specified in **section 81(3)(a) to (c)**:
 - (c) the responsible practitioner must also send a copy of the record of status review to the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal for the purposes of section 33 of the CPMIP Act if the responsible practitioner considers that the ~~patient's~~ person's condition no longer requires that, to safeguard the interests specified in section 33(4) of that Act, the ~~patient~~ person should be subject to the order of detention as a ~~forensic patient~~ person under forensic compulsory care. 30

Compare: 1992 No 46 s 77

- 108** **Removal of certain ~~forensic patients~~ persons under forensic compulsory care to prisons** 35
- (1) **Subsection (2)** applies to a ~~forensic patient~~ person under forensic compulsory care detained following an application made under **section 105(2) or (3)** or subject to an order made under section 34(1)(a)(i) of the Criminal Procedure (Mentally Impaired Persons) Act 2003. 40

- (2) The Director of Area Mental Health Services may direct that the ~~forensic patient~~ person under forensic compulsory care be taken to a prison or a residence established under section 114 of the Public Safety (Public Protection Orders) Act 2014 (a **public safety prison or residence**) to serve the remainder of the ~~patient's person's~~ sentence or the order applicable to the patient person, or otherwise be dealt with according to law if— 5
- (a) they are satisfied that the ~~patient person~~ no longer meets the compulsory care criteria; and
- (b) the Director consents to the direction.
- (3) The Director may at any time direct that any ~~patient person~~ who is detained in a hospital under **section 106** be removed to a public safety prison or, as the case requires, a public safety residence to undergo the remainder of their sentence or otherwise to be dealt with according to law. 10
- (4) If a direction is given under **subsection (2) or (3)**, the Director must notify the chief executive of the Department of Corrections, who must arrange for the ~~patient person~~ to be removed to the public safety prison or residence within 7 days after the date of the direction unless within the 7 days an application is made under **section 56** for assessment of the patient person. 15
- (5) If a ~~patient person~~ who is detained under **section 106** wishes to be removed to a public safety prison or residence to undergo the remainder of their sentence or otherwise to be dealt with according to law, the Director of Area Mental Health Services must arrange that as soon as practicable, unless before the removal an application is made under **section 56** for assessment of the ~~patient person~~ person. 20
- (6) A direction given under this section is sufficient authority for— 25
- (a) the removal of the ~~patient person~~ to the institution specified in the direction; and
- (b) the ~~patient person~~ to be received and detained there.
- (7) On removal to the institution, the ~~patient person~~ must be treated as having been released from compulsory care as a patient under this Act. 30

Compare: 1992 No 46 s 47

109 Removal of certain intellectually disabled ~~patients~~ persons to facilities

- (1) This section applies to— 35
- (a) a ~~patient person under compulsory care~~ or a ~~forensic patient person~~ under forensic compulsory care—
- (i) who is subject to a mental health care order that was made following an application under section 136(2) of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 (the **IDCCR Act**); and

- (ii) who the Director of Area Mental Health Services considers no longer meets the compulsory care criteria; and
- (b) ~~a forensic patient person under forensic compulsory care~~ (not being a ~~patient person~~ to whom **paragraph (a)** applies)—
- (i) who the Director of Area Mental Health Services considers no longer meets the compulsory care criteria; and 5
- (ii) who has been assessed by a specialist assessor within the meaning of the IDCCR Act as having an intellectual disability within the meaning of that Act.
- (2) The Director of Area Mental Health Services may, with the consent of the Director, direct that ~~a patient~~ the person be taken to an appropriate facility under the IDCCR Act. 10
- (3) If a direction is given, the Director must notify the responsible co-ordinator under the IDCCR Act, who must arrange for ~~the patient person~~ to be removed to the facility specified in the direction within 7 days after the date of the direction unless an application is sooner made under **section 56** for assessment of ~~the patient person~~. 15
- (4) A direction given under this section is sufficient authority for the removal of ~~the patient person~~ to the facility specified in the direction and for ~~the patient person~~ to be received and detained there. 20
- (5) On the removal of ~~the patient person~~ under **subsection (4)** to a facility under the IDCCR Act,—
- (a) ~~the patient person~~ must be treated as having been released from compulsory care ~~as a patient~~ under this Act; and
- (b) if ~~the patient person~~ is a ~~forensic patient person under forensic compulsory care~~, they must be held as a special care recipient under the IDCCR Act until the status of the person is changed in accordance with that Act or the Criminal Procedure (Mentally Impaired Persons) Act 2003 (the **CPMIP Act**); and 25
- (c) if ~~the patient person~~ is a ~~forensic patient person under forensic compulsory care~~ who is, or is treated as being, subject to an order under section 24(2)(a) of the CPMIP Act, the order is treated as having been made under section 24(2)(b) of that Act; and 30
- (d) if ~~the patient person~~ is subject to a mental health care order under this Act, that order becomes a mental health care order (within the meaning of the IDCCR Act) that is treated as having been made on the date of the removal for a term of 6 months; and 35
- (e) if ~~the patient person~~ is a ~~forensic patient person under forensic compulsory care~~ who is, or is treated as being, subject to an order under section

34(1)(a)(i) of the CPMIP Act, the order is treated as having been made under section 34(1)(a)(ii) of that Act.

Compare: 1992 No 46 s 47A

110 Relationship between detention in hospital and sentence

- (1) For the purposes of this section,— 5
- (a) **leave** means leave under **section 114**:
- (b) **person** means a person who—
- (i) is detained in a hospital under **section 105 or 106** of this Act or under section 34(1)(a)(i) of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (the **CPMIP Act**); or 10
- (ii) having been so detained, is on leave:
- (c) **sentence** means a sentence, an order of committal, or an order of detention:
- (d) liability to detention under a sentence ceases on the earliest of the following dates: 15
- (i) the date specified in an order of the New Zealand Parole Board that the person be released on parole or compassionate leave:
- (ii) the release date (if any) of the person's sentence, as defined under Part 1 of the Parole Act 2002:
- (iii) the sentence expiry date, as defined in section 4(1) of the Parole Act 2002: 20
- (iv) in the case of a person subject to a public protection order under the Public Safety (Public Protection Orders) Act 2014, the date on which that order is cancelled.
- (2) The term of a sentence applicable to a person immediately before their admission to hospital— 25
- (a) continues to run while the person is in a hospital or is on leave; and
- (b) ceases to run if, before the person's liability to detention under the sentence ceases,—
- (i) they escape from a hospital; or 30
- (ii) they fail to return on the expiry or cancellation of leave; and
- (c) does not begin to run again until the person is returned to hospital.
- (3) The person must cease to be detained as a ~~forensic patient~~ person under forensic compulsory care at the time they cease to be required to be detained under any sentence and,— 35
- (a) if at that time they are a person who is subject to the process described in **section 54** as the result of an application under **section 105(2) or (3)**, they remain subject to the process:

- (b) if at that time they are a person who is subject to a mental health care order as the result of an application under **section 105(2) or (3)**, they remain subject to the mental health care order:
- (c) if at that time they are subject to an order under section 34(1)(a)(i) of the CPMIP Act, they must be treated as being subject to a mental health care order: 5
- (d) if at that time they are a person in the hospital under **section 106**, they become a ~~voluntary patient~~ voluntary mental health consumer.

Compare: 1992 No 46 s 48

111 ~~Transfer of forensic patients~~ persons under forensic compulsory care 10

- (1) The Director may direct that any ~~forensic patient~~ person under forensic compulsory care be transferred from any hospital in which the ~~patient~~ person is detained to any other hospital specified in the direction, and may vary the direction.
- (2) The Director of Area Mental Health Services must comply with any direction given under **subsection (1)** at the time or within the period stated in the direction or, if no such time or period is so stated, as soon as practicable. 15
- (3) On the transfer of the ~~patient~~ person, the following documents must be delivered to the Director of Area Mental Health Services responsible for the hospital to which the ~~patient~~ person is transferred (if they are not already in that Director's possession): 20
 - (a) the court order and the application and records on which the order was made, or any other instrument of authority under which the ~~forensic patient~~ person was admitted or detained; and
 - (b) the clinical records relating to the ~~patient~~ person. 25
- (4) The court order or other instrument of authority remains in force in the same manner as if the ~~patient~~ person had been ordered to be received in the hospital to which they are to be transferred.

Compare: 1992 No 46 s 49

112 ~~Transport of forensic patients~~ persons under forensic compulsory care 30

- (1) A ~~forensic patient~~ custodian ~~person who has custody of a person under forensic compulsory care~~ may agree in writing that a government agency transport ~~forensic patients~~ persons under forensic compulsory care for the purposes of this Part and for either of the following purposes: 35
 - (a) to bring the ~~patient~~ person under forensic compulsory care before a court for a hearing or trial:
 - (b) to bring the ~~patient~~ person under forensic compulsory care 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.
- (3) A transport management plan may authorise—
- (a) the restraint of a transported ~~forensic patient~~ person under forensic compulsory care that is the least restrictive option for both the safety of the ~~patient person~~ and the public; and 5
 - (b) any other use of force in respect of the ~~patient person~~ that is in accordance with **section 200(1)**.
- (4) If the transport management plan authorises the restraint of a transported ~~forensic patient~~ person under forensic compulsory care or other use of force in respect of the ~~patient person~~,— 10
- (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 15
 - (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 20
 - (b) a person employed or engaged by the government agency may restrain a ~~forensic patient person under forensic compulsory care~~ and use force in respect of the ~~patient person~~ in accordance with the approved transport management plan.
- (4A) If the person under compulsory care to be transported under this section is under the age of 18 years,— 25
- (a) that person or a member of their support network may request the Director of Area Mental Health Services to permit a support person to accompany the person for the duration of the journey; and
 - (b) the request may not be unreasonably denied. 30
- (5) In this section,—
- ~~**forensic patient custodian**~~ means a person who has custody of a forensic patient under this Act
- 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 35
- transport** includes escorting a ~~forensic patient~~ person under forensic compulsory care to and from a vehicle, and **transported** has a corresponding meaning.
- Compare: 1992 No 46 s 53A

*Leave of absence for forensic patients persons under forensic compulsory care***113 ~~Forensic patient~~ Person under forensic compulsory care defined**

In this section and in **sections 114 to 120**, ~~forensic patient person under forensic compulsory care~~ means a person who is detained in a hospital under—

- (a) section 24(2)(a) of the Criminal Procedure (Mentally Impaired Persons) Act 2003 as a person acquitted on account of insanity; or
- (b) section 34(1)(a)(i) of that Act; or
- (c) an order made under **section 105**; or
- (d) **section 106**.

Compare: 1992 No 46 s 50

114 ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal may grant leave to forensic patients persons under forensic compulsory care

- (1) The ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal may grant a ~~forensic patient person under forensic compulsory care~~ a period of leave of absence from the hospital if—
 - (a) 2 mental health practitioners certify that the ~~forensic patient person~~ is fit to be allowed to be absent from the hospital; and
 - (b) the Director supports the proposed leave of absence, taking into account any submission from a victim made in accordance with **section 116 or 117**.
- (2) The ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal may grant the leave of absence subject to any conditions the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal considers appropriate, including a condition that the person must return to the hospital on the date or within the period that the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal specifies.
- (3) The ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal may not exercise the power to grant leave under this section in respect of any person who—
 - (a) was, immediately before that person's admission to the hospital, detained in a prison—
 - (i) while awaiting, or during the course of, a trial or hearing before a court; or
 - (ii) while awaiting sentence by a court; or
 - (iii) pending the determination of an appeal to a court against conviction; or

- (b) is subject to a sentence of imprisonment for life or to a sentence of preventive detention.

Compare: 1992 No 46 s 50A

115 When victims must be notified of impending decision under section 114

- (1) This section applies if the Director is required to decide whether to support the proposed leave of absence of a ~~forensic patient~~ person under forensic compulsory care under **section 114(1)**. 5
- (2) The Director must take all reasonable steps to—
- (a) give notice to a victim that the Director is required to decide whether to support the proposed leave of absence of the ~~forensic patient~~ person under forensic compulsory care under **section 114(1)**; and 10
- (b) explain to the victim—
- (i) the process under **section 114** for granting a ~~forensic patient~~ person under forensic compulsory care leave of absence; and
- (ii) how the victim may participate in that process. 15

Compare: 1992 No 46 s 50B

116 Right of victims to make submissions on proposed leave of absence

- (1) This section applies to a person notified under **section 115**.
- (2) The person may write to the Director to make submissions on whether leave of absence should be granted under **section 114(1)**. 20
- (3) The person's submissions may address—
- (a) any concerns that the person has, on reasonable grounds, about any risk that the ~~forensic patient~~ person under forensic compulsory care presents to—
- (i) the person's physical safety or security; or 25
- (ii) the physical safety or security of 1 or more members of the person's immediate family; and
- (b) any other information that the person considers relevant to the decision of whether to grant leave of absence.
- (4) The person must send the submissions to the Director by the date specified by the Director. 30
- (5) The Director must have regard to any written submissions made by a victim under this section or **section 117**.
- (6) In this section, **immediate family** has the same meaning as in section 4 of the Victims' Rights Act 2002. 35

Compare: 1992 No 46 s 50C

117 Submissions from certain victims

- (1) This section applies to a person who—
 - (a) is not a victim as defined in **section 4(1)**; but
 - (b) is a victim as defined in section 4 of the Victims' Rights Act 2002.
- (2) The person may make written submissions to the Director about the decision of whether to grant leave of absence under **section 114(1)**. 5
- (3) If the person seeks information from the Director for the purpose of making submissions under **subsection (2)**, the Director may—
 - (a) advise the person of the date on which the Director intends to decide whether to support the proposed leave of absence of the ~~forensic patient~~ person under forensic compulsory care; and 10
 - (b) give the person any other information that is reasonably necessary to enable the person to make submissions.
- (4) **Section 116** applies with any necessary modifications.
- (5) Neither the Director nor any other person has any liability for an act done in the performance, or intended performance, of the Director's functions under this section or **section 118(1)(b)**, unless the act was done in bad faith. 15

Compare: 1992 No 46 s 50D

118 Victims must be notified of decisions made under section 114

- (1) The Director must advise the following persons of the matters specified in **subsection (2)**: 20
 - (a) a person notified under **section 115**:
 - (b) a person who makes a submission under **section 117(2)**.
- (2) The specified matters are—
 - (a) whether the Director supports the proposed leave of absence of the ~~forensic patient~~ person under forensic compulsory care under **section 114(1)**: 25
 - (b) if the Director supports the proposed leave of absence, whether the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal has granted the ~~forensic patient~~ person under forensic compulsory care leave of absence under **section 114(1)**: 30
 - (c) if the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal has granted the ~~forensic patient~~ person under forensic compulsory care leave of absence, any conditions applying to the ~~forensic patient~~ person under **section 114(2)**. 35
- (3) The Director may withhold advice of a particular condition if, in the Director's opinion, disclosing the condition would unduly interfere with the privacy of

any other person (other than the ~~forensic patient~~ person under forensic compulsory care).

Compare: 1992 No 46 s 50E

119 Information about victims not to be disclosed

- (1) This section applies to **sections 114 to 118**. 5
- (2) No person may, directly or indirectly, disclose to the ~~forensic patient~~ person under forensic compulsory care the current address or contact details of any victim of the ~~forensic patient~~ person under forensic compulsory care.

Compare: 1992 No 46 s 50F

120 ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal may cancel leave of ~~forensic patients~~ persons under forensic compulsory care 10

- (1) The ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal may, during a period of leave of absence granted under **section 114(1)** to a ~~forensic patient~~ person under forensic compulsory care, cancel that leave of absence. 15
- (2) If the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal cancels a leave of absence, the Director must direct, in writing, that the ~~forensic patient~~ person under forensic compulsory care be admitted or re-admitted to a specified hospital. 20
- (3) The ~~forensic patient~~ person under forensic compulsory care may be taken to the specified hospital by any of the following:
 - (a) the Director:
 - (b) the Director of Area Mental Health Services:
 - (c) an authorised person: 25
 - (d) a constable:
 - (e) a person to whom the charge of the ~~forensic patient~~ person under forensic compulsory care has been entrusted during the period of leave.
- (4) If the specified hospital is not the one from which the ~~forensic patient~~ person under forensic compulsory care was on leave of absence, the ~~forensic patient~~ person under forensic compulsory care must be received and detained there as if the ~~forensic patient~~ person had been transferred to that hospital under **section 111**. 30

Compare: 1992 No 46 s 50G

121 Power to direct temporary return to hospital of ~~forensic patients~~ persons under forensic compulsory care 35

- (1) If a ~~forensic patient~~ person under forensic compulsory care is on leave of absence from a hospital under **section 114**, the Director of Area Mental Health Services may, if they are satisfied that it is necessary in the interests of

- the safety of that ~~patient~~ person or the public, direct in writing that that ~~patient~~ person be admitted or re-admitted to a specified hospital.
- (2) If a direction is given, the Director of Area Mental Health Services must—
- (a) record in writing the reasons for the direction; and
 - (b) ensure that a copy of the direction and a copy of the reasons for the direction are given to the ~~patient~~ person under forensic compulsory care as soon as practicable. 5
- (3) If a direction is given, the ~~forensic patient~~ person under forensic compulsory care may, despite the leave granted under **section 114(1)**, be taken to the specified hospital by any of the following: 10
- (a) the Director:
 - (b) the Director of Area Mental Health Services:
 - (c) an authorised person:
 - (d) any constable:
 - (e) any person to whom the charge of the ~~patient~~ person has been entrusted during the period of leave. 15
- (4) If the specified hospital is not the one from which the ~~forensic patient~~ person under forensic compulsory care was on leave, the ~~patient~~ person must, subject to **subsections (5) to (7)**, be received and detained there as if they had been transferred to that hospital under **section 111**. 20
- (5) If a ~~forensic patient~~ person under forensic compulsory care is admitted or re-admitted to a hospital under a direction, that ~~patient~~ person must not be detained in that hospital for more than 72 hours, unless their leave is cancelled under **section 120(1)** before the end of that 72-hour period.
- (6) If the leave of a ~~forensic patient~~ person under forensic compulsory care who is admitted or re-admitted to a hospital under a direction is not cancelled before the expiration of their period of detention under that direction, that ~~patient~~ person must be released on leave subject to the conditions imposed by the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal under **section 114(2)** at the end of that period of detention. 25 30
- (7) If the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal decides, within 72 hours after the time at which a ~~forensic patient~~ person under forensic compulsory care is admitted or re-admitted to a hospital under a direction, that that ~~patient's~~ person's leave is not to be cancelled under **section 120(1)**, that ~~patient~~ person must immediately be released on leave subject to the conditions imposed by the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal under **section 114(2)**. 35

Compare: 1992 No 46 s 51

122 Director may grant short-term leave to ~~forensic patients~~ persons under forensic compulsory care

- (1) The Director may grant a ~~forensic patient~~ person under forensic compulsory care leave of absence from the hospital for a period of up to 7 days, excluding the days of the ~~patient's~~ person's departure and return. 5
- (2) The Director may grant the leave of absence subject to any conditions the Director considers appropriate.
- (3) The Director's power to grant leave under this section—
- (a) must not be exercised in respect of any ~~forensic patient~~ person under forensic compulsory care described in **section 114(3)(a)**; and 10
- (b) applies despite any other provision of this Act.

Compare: 1992 No 46 s 52

123 When victims must be notified of impending decision under section 122

- (1) This section applies if—
- (a) the Director intends to decide whether to grant a ~~forensic patient~~ person under forensic compulsory care leave of absence under **section 122(1)**; and 15
- and
- (b) that leave of absence would permit the ~~patient~~ person to exercise greater autonomy outside the hospital than any other leave of absence previously granted to the ~~patient~~ person. 20
- (2) The Director must take all reasonable steps to—
- (a) give notice to a victim that the Director intends to decide whether to grant leave of absence to the ~~forensic patient~~ person under forensic compulsory care under **section 122(1)**; and
- (b) explain to the victim— 25
- (i) the process under **section 122** for granting a ~~forensic patient~~ person under forensic compulsory care leave of absence; and
- (ii) how the victim may participate in that process.

Compare: 1992 No 46 s 52B

124 Right of victims to make submissions on proposed leave of absence 30

- (1) This section applies to a person notified under **section 123**.
- (2) The person may write to the Director to make submissions on whether leave of absence should be granted under **section 122(1)**.
- (3) The person's submissions may address—
- (a) any concerns that the person has, on reasonable grounds, about any risk that the ~~forensic patient~~ person under forensic compulsory care presents to— 35
- (i) the person's physical safety or security; or

- (ii) the physical safety or security of 1 or more members of the person's immediate family; and
 - (b) any other information that the person considers relevant to the decision of whether to grant leave of absence under **section 122(1)**.
 - (4) The person must send the submissions to the Director by the date specified by the Director. 5
 - (5) The Director must have regard to any written submissions made by a victim under this section or **section 125**.
 - (6) In this section, **immediate family** has the same meaning as in section 4 of the Victims' Rights Act 2002. 10
- Compare: 1992 No 46 s 52C

125 Submissions from certain victims

- (1) This section applies to a person who—
 - (a) is not a victim as defined in **section 4(1)**; but
 - (b) is a victim as defined in section 4 of the Victims' Rights Act 2002. 15
- (2) The person may write to the Director to make submissions on whether leave of absence should be granted under **section 122(1)**.
- (3) If the person seeks information from the Director for the purpose of making submissions under **subsection (2)**, the Director may—
 - (a) advise the person of the date on which the Director intends to decide whether to grant the leave of absence to the ~~forensic patient~~ person under forensic compulsory care; and 20
 - (b) give the person any other information that is reasonably necessary to enable the person to make submissions.
- (4) **Section 124** applies with any necessary modifications. 25
- (5) Neither the Director nor any other person has any liability for an act done in the performance, or intended performance, of the Director's functions under this section or **section 126(1)(b)**, unless the act was done in bad faith.

Compare: 1992 No 46 s 52D

126 Victims must be notified of decisions made under section 122 30

- (1) The Director must advise the following persons of the matters specified in **subsection (2)**:
 - (a) a person notified under **section 123**;
 - (b) a person who makes a submission under **section 125(2)**.
- (2) The specified matters are— 35
 - (a) whether the Director has granted a ~~forensic patient~~ person under forensic compulsory care leave of absence under **section 122(1)**;

- (b) if the Director has granted the ~~forensic patient~~ person under forensic compulsory care leave of absence, any conditions applying to the ~~forensic patient~~ person under **section 122(2)**.
- (3) The Director may withhold advice of a particular condition if, in the Director's opinion, disclosing the condition would unduly interfere with the privacy of any other person (other than the ~~forensic patient~~ person under forensic compulsory care). 5
Compare: 1992 No 46 s 52E
- 127 Information about victims not to be disclosed**
- (1) This section applies to **sections 122 to 126**. 10
- (2) No person may, directly or indirectly, disclose to the ~~forensic patient~~ person under forensic compulsory care the current address or contact details of any victim of the ~~forensic patient~~ person under forensic compulsory care.
Compare: 1992 No 46 s 52F
- 128 Director may cancel short-term leave of ~~forensic patients~~ persons under forensic compulsory care** 15
- (1) The Director may, during a period of leave of absence granted under **section 122(1)** to a ~~forensic patient~~ person under forensic compulsory care, cancel that leave of absence.
- (2) If the Director cancels a leave of absence, **section 120(2) to (4)** applies with any necessary modifications. 20
Compare: 1992 No 46 s 52G
- 129 Director may authorise Director of Area Mental Health Services to exercise certain powers**
- (1) A Director of Area Mental Health Services may exercise the powers and duties conferred on the Director by **sections 115, 117, 118, and 122 to 128** in respect of a ~~forensic patient~~ person under forensic compulsory care— 25
- (a) with the authority of the Director; and
- (b) subject to any conditions imposed by the Director.
- (2) If the ~~forensic patient~~ is a forensic patient under person under forensic compulsory care meets the definition under **section 113(c) or (d)**, the Director of Area Mental Health Services may exercise a power under **subsection (1)** only after consulting the manager of the appropriate prison. 30
Compare: 1992 No 46 s 52H
- 130 ~~Forensic patients~~ Persons under forensic compulsory care not to leave hospital or depart from New Zealand without permission** 35
- (1) A ~~forensic patient~~ person under forensic compulsory care may not leave the hospital in which the ~~forensic patient~~ person is detained unless—

- (a) ~~granted leave of absence by the Forensic Patient Review Tribunal Forensic Mental Health Review Tribunal~~ under **section 114**; or
- (b) granted leave of absence by the Director under **section 122**.
- (2) A ~~forensic patient person~~ under forensic compulsory care may not depart from New Zealand unless— 5
- (a) ~~the forensic patient person~~ has been granted leave of absence under **section 114 or 122**; and
- (b) ~~the forensic patient person~~ is permitted by the ~~Forensic Patient Review Tribunal Forensic Mental Health Review Tribunal~~, on terms and conditions specified by the ~~Forensic Patient Review Tribunal Forensic Mental Health Review Tribunal~~, to be absent from New Zealand during that leave; and 10
- (c) ~~the forensic patient's person's~~ departure from New Zealand is in accordance with the terms and conditions of the ~~Forensic Patient Review Tribunal's Forensic Mental Health Review Tribunal's~~ permission given under **paragraph (b)**. 15
- (3) A ~~forensic patient person~~ under forensic compulsory care who contravenes **subsection (2)** must be treated as having escaped.
- (4) In **subsection (2)**, **depart** includes—
- (a) attempt to depart: 20
- (b) prepare to depart.
- (5) This section applies subject to **section 219**.
Compare: 1992 No 46 s 52A

131 **Escape and absence without leave**

- A ~~forensic patient person~~ under forensic compulsory care who escapes, or who breaches any condition of leave, or who fails to return on the expiry or cancellation of any period of leave may be returned to the hospital from which the ~~patient person~~ escaped or was on leave, or to any other hospital specified by the Director, by any of the following: 25
- (a) the Director: 30
- (b) the Director of Area Mental Health Services:
- (c) an authorised person:
- (d) a constable:
- (e) any person to whom the charge of the ~~patient person~~ had been entrusted during the period of leave. 35

Compare: 1992 No 46 s 53

Subpart 3—~~Restricted patients~~ Persons on restricted order

132 ~~Patients~~ Persons presenting special difficulties may be drawn to Director's attention

- (1) A Judge may, on making ~~an inpatient care order~~ a hospital care order under **section 77**, direct that a case be referred to the Director for consideration if the Judge considers— 5
- (a) that the ~~patient~~ person under compulsory care presents special difficulties; and
- (b) that, for that reason, it may be appropriate that an order be made under **section 133**. 10
- (2) The Director of Area Mental Health Services may refer a case to the Director for consideration if the Director of Area Mental Health Services considers—
- (a) that any ~~patient~~ person who is subject to ~~an inpatient care order~~ a hospital care order presents special difficulties; and
- (b) that, for that reason, it may be appropriate that an order be made under **section 133**. 15
- (3) The Director may apply to the court for an order under **section 133** if the Director, from the Director's own information and inquiries, or on reference of the case under **subsection (1) or (2)**, considers—
- (a) that any ~~patient~~ person who is subject to ~~an inpatient care order~~ a hospital care order presents special difficulties; and 20
- (b) that, for that reason, it would be appropriate that an order be made under **section 133**.
- (4) In this section and in **section 133**, **presents special difficulties** means the ~~patient~~ person poses an unacceptable risk of seriously endangering the physical or psychological safety of another person. 25

Compare: 1992 No 46 s 54

133 ~~Court may make order declaring patient person to be restricted patient on restricted order~~

- (1) Every application under **section 132** must be made to, and heard and determined by, the court. 30
- (2) **Sections 92 to 98**, to the extent that they are applicable and with any necessary modifications, apply in respect of applications under **section 132**.
- (3) The court may make an order declaring the ~~patient~~ person under compulsory care to be a ~~restricted patient person on a restricted order~~ if it is satisfied— 35
- (a) that the ~~patient~~ person presents special difficulties; and
- (b) that, for that reason, it is appropriate that the order be made.

Compare: 1992 No 46 s 55

134 Effect of application and order in respect of leave

While an application under **section 132** is awaiting determination, and while a ~~patient person~~ is a restricted patient person on a restricted order,—

- (a) **sections 113 to 131** apply in respect of the ~~patient person~~ as if they were a forensic patient person under forensic compulsory care; and
- (b) nothing in **sections 89 and 90** applies in respect of that ~~patient person~~.

Compare: 1992 No 46 s 56

135 Care plan and status reviews of ~~restricted patients persons~~ on restricted order

- (1) The responsible practitioner must conduct a care plan review of the condition of every ~~restricted patient person on a restricted order~~ at monthly intervals starting no later than 1 month after the date of the applicable order. 10
- (2) The responsible practitioner must conduct a status review of the condition of every ~~restricted patient person on a restricted order~~ at 3-monthly intervals starting no later than 3 months after the date of the applicable order. 15
- (3) Despite **subsection (2)**, the responsible practitioner must conduct a status review of the condition of a ~~restricted patient person on a restricted order~~ when the responsible practitioner has reason to believe that the condition of the patient person has changed.
- (4) A care plan review must be conducted in accordance with **section 45(1).** 20
- (5) A status review must be conducted in accordance with **section 45(2).**
- (6) **Sections 80(9) and 81(4) to (8)** apply in respect of every review under this section as if it were a review under those sections.
- (7) At the conclusion of the review, the responsible practitioner must record their findings in a record of status review, stating they consider that— 25
 - (a) the ~~patient person on a restricted order~~ does not meet the compulsory care criteria; or
 - (b) ~~there are reasonable grounds to believe that the patient~~ the person meets the compulsory care criteria but it is no longer necessary that the patient person should be declared to be a restricted patient person on a restricted order; or 30
 - (c) ~~there are reasonable grounds to believe that the patient~~ the person meets the compulsory care criteria and should continue to be declared to be a restricted patient person on a restricted order.
- (8) The responsible practitioner must send a copy of the record of status review to the following persons: 35
 - (a) the Director;
 - (b) the ~~patient person on a restricted order~~;
 - (c) the ~~patient's person on a restricted order's~~ support network;

- (d) a district inspector:
- (e) an official visitor.
- (9) In any case where the responsible practitioner considers that the ~~patient person~~ person on a restricted order does not meet the compulsory care criteria, the Director must— 5
- (a) direct that the ~~patient person~~ be immediately released from compulsory care; or
- (b) apply to the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal for a review of the ~~patient's person's~~ condition.
- (10) In any case where the responsible practitioner considers that ~~there are reasonable grounds to believe that the patient~~ the person on a restricted order meets the compulsory care criteria but it is no longer necessary that the ~~patient person~~ should be declared to be a ~~restricted patient person on a restricted order~~, the following provisions apply: 10
- (a) the responsible practitioner must send a copy of the record of status review to the Director: 15
- (b) the Director must—
- (i) revoke the declaration that the ~~patient person~~ is a ~~restricted patient person on a restricted order~~; or
- (ii) apply to the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal for a review of the ~~patient's person's~~ condition. 20

Compare: 1992 No 46 s 78

Part 5

Reviews, appeals, and judicial inquiries 25

136 Tribunal reviews of persons subject to compulsory care

- (1) A person referred to in **section 53(2)** and any person to whom a copy of a record of status review is sent under **section 81(3)** may apply to a Mental Health Review Tribunal to review the outcome of a status review.
- (2) To avoid doubt, **subsection (1)** applies despite the making of an application to a court in respect of a mental health care order. 30
- (3) Without limiting anything in **subsection (1)**, a Mental Health Review Tribunal may at any time, of its own motion, review the condition of any ~~patient who is subject to person under~~ person under compulsory care.
- (4) If it appears that for any reason a status review of a ~~patient who is subject to person under~~ person under compulsory care has not taken place, a Mental Health Review Tribunal may review the ~~patient's person's~~ condition, either of its own motion

- or on application by any person to whom a copy of a record of status review would have been required to be sent if the review had been held.
- (5) On receiving an application, the convener of the Mental Health Review Tribunal must,—
- (a) for a review under **subsection (3) or (4)**, arrange for the Mental Health Review Tribunal to review the ~~patient's~~ person's condition; and 5
- (b) arrange for the review to start as soon as practicable, but not later than 21 days, after the receipt of the application.
- (6) The Mental Health Review Tribunal may—
- (a) extend the period specified in **subsection (5)(b)** by a further period not exceeding 7 days: 10
- (b) refuse to consider an application if—
- (i) it has considered an application for review of the ~~patient's~~ person's condition within the preceding 3 months and has no reason to believe that there has been any change in the ~~patient's~~ person's condition in the intervening period; or 15
- (ii) it is satisfied that an application made by a relative or friend of the ~~patient~~ person is not made in the interests of the ~~patient~~ person: 15
- (c) if it considers it necessary to properly dispose of an application, request a report from a suitably qualified person on any relevant aspect of the clinical, personal, family, whānau, community, or cultural background of the ~~patient~~ person under compulsory care: 20
- (d) adjourn a hearing that is in progress.
- (7) At the conclusion of a review, the Mental Health Review Tribunal must set out its findings in a record of tribunal review, stating whether, in its opinion, the ~~patient~~ person meets the compulsory care criteria. 25

Compare: 1992 No 46 s 79

137 Outcome of review

- (1) If a Mental Health Review Tribunal considers that the ~~patient~~ person under compulsory care does not meet the compulsory care criteria, the ~~patient~~ person must be immediately released. 30
- (2) If a Mental Health Review Tribunal considers that ~~there are reasonable grounds to believe that the patient~~ the person under compulsory care meets the compulsory care criteria, the convener must send a copy of the record of tribunal review to the following persons: 35
- (a) the Director:
- (b) the Director of Area Mental Health Services:
- (c) the responsible practitioner:
- (d) the ~~patient~~ person under compulsory care:

- (e) ~~the patient's person under compulsory care's~~ support network:
- (f) the primary health care provider who usually attended the ~~patient person~~ person under compulsory care immediately before the ~~patient person~~ was required to undergo second assessment under **subpart 2 of Part 3**:
- (g) a district inspector: 5
- (h) an official visitor.
- (3) The convener must also send to the persons specified in **subsection (2)(d) to (f)** a statement of the legal consequences of the decision and of the recipient's right to appeal to the court against the decision.
- (4) The district inspector who receives a copy of the record of tribunal review must, after talking to the ~~patient person under compulsory care~~ and ascertaining the ~~patient's~~ their wishes in the matter, consider whether an appeal should be made to the court against the Mental Health Review Tribunal's decision. 10
- (5) If the district inspector considers that such an appeal should be made, the district inspector must take whatever steps they think necessary to encourage or assist the ~~patient person under compulsory care~~, or any person specified in **subsection (2)(e) or (f)**, to make an appeal. 15
- (6) If, in any case to which **subsection (4)** applies, the district inspector considers that an appeal against the Mental Health Review Tribunal's decision should be made, but neither the ~~patient person under compulsory care~~ nor any person specified in **subsection (2)(e) or (f)** intends to make such an appeal,— 20
- (a) the district inspector may report the matter to the court; and
- (b) a Judge may, of their own motion, review the ~~patient's condition of the person under compulsory care~~ as if an appropriate appeal had been made to the court. 25
- (7) The district inspector may arrange for an official visitor to perform the functions specified in **subsections (4) to (6)**.
- 138 ~~Forensic Patient Review Tribunal Forensic Mental Health Review Tribunal reviews~~** 30
- (1) Any person to whom a copy of a record of status review is sent under **section 107** may apply to the ~~Forensic Patient Review Tribunal Forensic Mental Health Review Tribunal~~ for a review of the ~~forensic patient's condition condition of the person under forensic compulsory care~~.
- (2) Without limiting anything in **subsection (1)**, the ~~Forensic Patient Review Tribunal Forensic Mental Health Review Tribunal~~ must review the ~~forensic patient's person under forensic compulsory care's~~ condition on the application of the Attorney-General under **section 107(8)(d)**. 35
- (3) The convener of the ~~Forensic Patient Review Tribunal Forensic Mental Health Review Tribunal~~ must notify the Director of an application under **subsection** 40

- (1)** for a review of the ~~forensic patient's condition~~ condition of the person under forensic compulsory care.
- (4) On receiving notice, the Director must take all reasonable steps to—
- (a) give notice to each victim of the ~~forensic patient~~ person under forensic compulsory care that the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal has received an application under **subsection (1)** for a review of the ~~forensic patient's~~ person under forensic compulsory care's condition; and
- (b) give the victim an explanation of—
- (i) the process under this section for reviewing a ~~forensic patient's~~ person under forensic compulsory care's condition; and
- (ii) how the victim may participate in that process.
- (5) Any person notified under **subsection (4)** may write to the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal, by the date specified by the tribunal, making submissions on the tribunal's review of the ~~forensic patient's~~ person under forensic compulsory care's condition.
- (6) If it appears that for any reason a status review of a ~~forensic patient~~ person under forensic compulsory care has not taken place, the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal may review the ~~forensic patient's~~ person's condition, either of its own motion or on application by any person to whom a copy of a record of status review would have been required to be sent if the review had been held.
- (7) **Section 136(3) to (6)** applies in respect of every review under this section as if it were a review under that section.
- (8) In the case of a ~~forensic patient~~ person under forensic compulsory care who was ordered to be detained following a finding of unfitness to stand trial, the following provisions apply to any review of that ~~patient's~~ person's condition under this section:
- (a) the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal must record its findings in a record of tribunal review, stating whether, in its opinion,—
- (i) the ~~forensic patient~~ person is no longer unfit to stand trial; or
- (ii) the ~~forensic patient~~ person is still unfit to stand trial but it is no longer necessary to safeguard the interests specified in section 31(3A) of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (the **CPMIP Act**); or
- (iii) the ~~forensic patient~~ person is still unfit to stand trial and should continue to be subject to the order of detention as a ~~forensic patient~~ person under forensic compulsory care:

- (b) the convener of the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal must send a copy of the record of tribunal review to each of the persons specified in **section 137(2)**:
- (c) the convener of the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal must also send a copy of the record of tribunal review to the Attorney-General for the purposes of section 31 of the CPMIP Act if the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal considers that— 5
- (i) the ~~forensic patient person~~ is no longer unfit to stand trial; or
- (ii) the ~~forensic patient person~~ is still unfit to stand trial but it is no longer necessary that the ~~patient person~~ should be subject to the order of detention as a ~~forensic patient person~~ under forensic compulsory care. 10
- (9) In the case of a ~~forensic patient person under forensic compulsory care~~ who was ordered to be detained following acquittal on account of insanity, the following provisions apply to any review of that ~~patient's person's~~ condition under this section: 15
- (a) the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal must, under **section 33(3A)** of the CPMIP Act, record its findings in a record of tribunal review and make a direction: 20
- (b) the convener of the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal must send a copy of the record of tribunal review and the direction to each of the persons specified in **section 137(2)**. 25

Compare: 1992 No 46 s 80

25

139 ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal reviews of ~~restricted patients persons~~ on a restricted order

- (1) Any person to whom a copy of a record of status review is sent under **section 135** may apply to the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal for a review of the ~~restricted patient's person on a restricted order's~~ condition. 30
- (2) Without limiting anything in **subsection (1)**, the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal must review the ~~restricted patient's person on a restricted order's~~ condition on the application of the Director under **section 135(9)(b) or (10)(b)(ii)**. 35
- (3) If it appears that for any reason a status review of a ~~restricted patient person on a restricted order~~ has not taken place, the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal may review the ~~restricted patient's person's~~ condition, either of its own motion or on application by any person to whom a copy of a record of status review would have been required to be sent if the review had been held. 40

- (4) **Section 136(3) to (6)** applies in respect of every review under this section as if it were a review under that section.
- (5) At the conclusion of the review, the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal must record its findings in a record of tribunal review, stating whether it considers that— 5
- (a) ~~the restricted patient person on a restricted order~~ does not meet the compulsory care criteria; or
 - (b) ~~there are reasonable grounds to believe that the restricted patient the person on a restricted order~~ meets the compulsory care criteria but it is no longer necessary that the ~~patient person~~ person should be declared to be a ~~restricted patient person on a restricted order~~; or 10
 - (c) ~~there are reasonable grounds to believe that the restricted patient the person on a restricted order~~ meets the compulsory care criteria and must continue to be declared to be a ~~restricted patient person on a restricted order~~. 15
- (6) The convener of the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal must send a copy of the record of tribunal review to each of the persons specified in **section 137(2)**.
- (7) In any case where the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal considers that the ~~patient person on a restricted order~~ does not meet the compulsory care criteria, the Director must direct that the ~~patient person~~ be released from compulsory status accordingly. 20
- (8) In any case where the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal considers that ~~there are reasonable grounds to believe that the restricted patient the person on a restricted order~~ meets the compulsory care criteria but it is no longer necessary that the ~~patient person~~ should be declared to be a ~~restricted patient person on a restricted order~~, the ~~Forensic Review Tribunal~~ Forensic Mental Health Review Tribunal may revoke the declaration that the ~~patient person~~ is a ~~restricted patient person on a restricted order~~. 25 30

Compare: 1992 No 46 s 81

140 Application to revoke appointment of nominated person

A Mental Health Review Tribunal may revoke the appointment of a ~~patient's person under compulsory care's~~ nominated person if it receives an application from the ~~patient's person under compulsory care's~~ responsible practitioner under **section 22**, and it considers that— 35

- (a) the appointment is not in the best interests of the ~~patient person under compulsory care~~; or
- (b) the nominated person is unable or unwilling to participate in processes required by the Act; or 40

- (c) there are reasonable grounds to believe that the appointment was obtained by undue influence or fraud.

141 Procedural provisions

A Mental Health Review Tribunal and the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal may regulate their procedures as they see fit, subject to this Act and any regulations made under it. 5

Compare: 1994 No 143 s 214(5)

142 Appeal against Mental Health Review Tribunal's decision in certain cases

- (1) If, on a review under **section 136**, a Mental Health Review Tribunal considers that the ~~patient~~ person under compulsory care meets the compulsory care criteria, any person specified in **section 137(2)(d) to (f)** may, within 1 month after the date of the Mental Health Review Tribunal's decision, appeal to the High Family Court against that decision. 10

- (2) On appeal,—

- (a) the High Family Court must review the ~~patient's~~ person under compulsory care's condition to determine whether ~~there are reasonable grounds to believe that the patient meets they meet~~ the compulsory care criteria; and 15

- (b) **section 64** applies with any necessary modifications. 20

Compare: 1992 No 46 s 83

143 Judicial inquiry

- (1) A Judge of the High Court may, on the Judge's own initiative or on the application of any person, make an order that directs a district inspector or any 1 or more persons whom the Judge selects—

- (a) to visit and examine any person who the Judge has reason to believe is being detained in a hospital as a ~~patient~~ person under compulsory care; and 25

- (b) to inquire into and report on any matters relating to that person.

- (2) Despite **subsection (1)**, a Judge of the High Court may, on the Judge's initiative or on the application of any person, make an order directing the responsible practitioner to bring any person who is being detained as a ~~patient~~ person under compulsory care in the hospital before the Judge, in open court or in chambers, for examination at a time to be specified in the order. 30

- (3) Unless the person is a ~~forensic patient~~ person under forensic compulsory care or is lawfully detained for some other reason, the Judge must order that the person be discharged from the hospital immediately if the Judge is satisfied on the evidence provided under this section— 35

- (a) that the person is detained unlawfully in the hospital as a ~~patient~~ person under compulsory care; or

- (b) that the person is fit to be discharged from the hospital.
- (4) Without limiting **subsection (5)**, the Judge has the same powers as the Attorney-General under section 31 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 if—
- (a) the person has been found to be unfit to stand trial and is detained as a ~~forensic patient~~ person under forensic compulsory care under section 24 of that Act; and 5
- (b) the Judge is satisfied that the person is capable of being tried on the charge against them.
- (5) If the person has been found unfit to stand trial and is detained as a ~~forensic patient~~ person under forensic compulsory care under section 24 of that Act, the Judge may order that the charge be dismissed if the Judge considers— 10
- (a) it is proper in the circumstances of the case; and
- (b) it is in the interests of justice to do so.
- (6) An order under **subsection (5)** may— 15
- (a) require that the person be released from compulsory care if the Judge is satisfied that the person does not meet the compulsory care criteria; or
- (b) require that the person continue in compulsory care as an ~~inpatient~~ a person subject to a hospital care order if the Judge is satisfied that ~~there are reasonable grounds to believe that~~ the person meets the compulsory care criteria. 20
- (7) For the purposes of any examination under this section, the Judge may—
- (a) summon any medical or other witnesses to testify on oath in respect of any matter involved in the examination, and to produce any relevant documents; and 25
- (b) call for any report on the person's condition by a Mental Health Review Tribunal or the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal.
- (8) The Judge may report their opinion to the Minister, with any comments and recommendations that the Judge thinks fit. 30
- (9) Nothing in this section prevents the exercise of any other remedy or proceeding available to any person who is or is alleged to be unlawfully detained, confined, or imprisoned.

Compare: 1992 No 46 s 84

Part 6 Administration and public assistance

Officials

144 Director and Deputy Director of Mental Health

- (1) The Director-General must appoint, under the Public Service Act 2020, the following officers in the Ministry: 5
- (a) a Director of Mental Health, who is responsible for the general administration of this Act under the direction of the Minister and the Director-General of Health:
 - (b) a Deputy Director of Mental Health, who must perform the functions and duties under this Act that the Director may require. 10
- (2) The Deputy Director may exercise and perform all the powers, duties, and functions of the Director if the office of Director becomes vacant, or if the Director is absent from duty, so long as the vacancy or absence continues.
- (3) The fact that the Deputy Director exercises or performs any of the Director's powers, duties, and functions is conclusive evidence of the Deputy Director's authority to do so. 15
- (4) The Director may delegate to any person employed in the Ministry any of the powers, duties, and functions conferred or imposed on the Director by this Act, other than this power to delegate, to be exercised by that person when no person is holding or acting in the office of Director or Deputy Director. 20
- (5) A delegation under **subsection (4)** must be in writing and has effect according to its tenor.
- (6) The Director may amend or revoke the delegation at any time, and the delegation does not prevent the exercise or performance of any power, duty, or function by the Director. 25
- (7) Without limiting any of the preceding provisions of this section, the Director-General may exercise and perform all or any of the powers, duties, and functions conferred or imposed on the Director by this Act. 30
- Compare: 1992 No 46 s 91

145 Directors of Area Mental Health Services

- (1) The Director-General must—
- (a) appoint as many Directors of Area Mental Health Services as the Director-General considers necessary; and
 - (b) determine the terms and conditions on which each Director of Area Mental Health Services is appointed, including every area for which each Director of Area Mental Health Services is responsible; and 35

- (c) publish a notice in the *Gazette* notifying each appointment and any area for which the appointee is responsible.
- (2) A person appointed under this section may at any time be suspended or removed from office by the Director-General for any of the following proved to the satisfaction of the Director-General: 5
- (a) failure to perform adequately the duties of the office; or
- (b) neglect of duty; or
- (c) misconduct; or
- (d) inability to perform the duties of the office.
- (3) A Director of Area Mental Health Services must report to the Director as required by the Director or as prescribed by regulations. 10
- Compare: 1992 No 46 s 92

146 Delegation by Directors of Area Mental Health Services

- (1) A Director of Area Mental Health Services may delegate any of their powers, duties, and functions, except this power of delegation, to a person who— 15
- (a) is suitably qualified to exercise or perform it; and
- (b) is approved for the purpose by the Director or Deputy Director.
- (2) A Director of Area Mental Health Services who makes a delegation, or their delegate, must tell the Director or Deputy Director—
- (a) who the delegate is; and 20
- (b) when the delegation is revoked.
- Compare: 1992 No 46 s 92A

147 Provisions applying to delegations under section 146

- (1) This section applies to a delegation made under **section 146**.
- (2) The maker of a delegation must make it in writing and sign it. 25
- (3) The maker of a delegation is not prevented from exercising or performing, or affected in their exercise or performance of, any of the delegated powers, duties, or functions.
- (4) The delegate may exercise or perform the powers, duties, and functions—
- (a) only when the maker of the delegation is absent from duty because they are ill or because they are on approved leave; but 30
- (b) otherwise in the same manner and with the same effect as if they had been conferred on the delegate directly by this Act.
- (5) A 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. 35
- (6) A delegation continues in force according to its tenor until it is revoked.

- (7) If the maker ceases to hold office, the delegation continues to have effect as if made by the successor in office of the maker.
- (8) The maker, or a successor, may revoke the delegation at any time by written notice to the delegate.

Compare: 1992 No 46 s 92B

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148 Authorised persons

- (1) A Director of Area Mental Health Services must—
- (a) authorise sufficient persons to perform at all times the functions and exercise the powers conferred on authorised persons by this Act within the area of that Director; and 10
- (b) maintain and publish appropriate contact details for when information or assistance is required under this Act.
- (2) A person must not be authorised under this section unless the Director of Area Mental Health Services is satisfied that the person has undergone appropriate training and has appropriate competence in working with ~~tāngata-whaiora~~ people who require compulsory care, and— 15
- (a) is a health practitioner; or
- (b) is a social worker; or
- (c) has the appropriate skills and expertise to perform the functions and exercise the powers of an authorised person. 20
- (3) A person authorised under this section must—
- (a) be issued with a document that identifies the holder and states that the holder is an authorised person for the purposes of this Act; and
- (b) produce the document when performing the functions and exercising the powers under this Act. 25
- (4) A person authorised under this section must carry out their duties under the general direction of the Director of Area Mental Health Services.
- (5) The Director of Area Mental Health Services may revoke an authorisation at any time.

Compare: 1992 No 46 s 93

30

149 Mental health practitioner

- (1) The Director may, by notice in the *Gazette*, appoint a person or class of person to be a mental health practitioner if the Director is satisfied that the person or class of person has undergone training in, and is competent in, the assessment and care of persons requiring compulsory care. 35
- (2) An appointment may specify the functions and powers that the mental health practitioner is authorised to perform and exercise.

150 District inspectors and official visitors

- (1) The Minister must appoint as many of the following as the Minister thinks fit in respect of the locations that the Minister specifies in the instrument of appointment:
- (a) district inspectors or deputy district inspectors: 5
 - (b) official visitors.
- (2) A person appointed under this section—
- (a) must not be an officer, a member, or an employee of any service; and
 - (b) must meet the criteria prescribed in regulations.
- (3) A person appointed as a district inspector or deputy district inspector must be a lawyer. 10
- (4) The Minister may, with the agreement of the Minister of Finance,—
- (a) fix the remuneration of district inspectors, deputy district inspectors, and official visitors either generally or in any particular case; and
 - (b) vary the amount or nature of remuneration. 15
- (5) A person appointed as a district inspector or an official visitor holds office for a specified term of up to 3 years.
- (6) A person appointed as a deputy district inspector holds office for a specified term of up to 3 years.
- (7) A person appointed under this section— 20
- (a) is eligible for reappointment:
 - (b) may at any time be suspended or removed from office by the Minister for any of the following proved to the satisfaction of the Minister:
 - (i) failure to perform adequately the duties of the office:
 - (ii) neglect of duty: 25
 - (iii) misconduct:
 - (iv) inability to perform the duties of the office.
- (8) The Director may authorise a district inspector to exercise and perform the powers, duties, and functions of that office in a location not specified in their appointment if they are required to take over the investigation of a complaint in that location. 30

Compare: 1992 No 46 s 94

151 Powers, duties, and functions of district inspectors and official visitors

- (1) Every district inspector and official visitor has—
- (a) the powers, duties, and functions conferred or imposed on holders of those offices by this Act and regulations made under this Act; and 35

- (b) any other powers, duties, and functions that may be conferred or imposed on them by the Director in writing in, and for the purpose of dealing with, situations of urgency.
- (2) A deputy district inspector—
- (a) has— 5
- (i) the powers, duties, and functions conferred or imposed on a district inspector by this Act; and
- (ii) any other powers, duties, and functions that may be conferred or imposed on a district inspector by the Director in writing in, and for the purpose of dealing with, situations of urgency; but 10
- (b) may exercise or perform any such power, duty, or function only at the direction of—
- (i) the district inspector to whom they are the deputy; or
- (ii) the Director.
- (3) Without limiting the generality of **subsections (1) and (2)**, every district inspector, every deputy district inspector, and every official visitor must— 15
- (a) ensure that mental health services uphold the rights of ~~patients~~ persons ~~subject to this Act~~ and ensure that ~~patients~~ they are cared for in accordance with the requirements of the Act; and
- (b) monitor mental health services providing care to ~~tāngata whaiora~~ persons subject to this Act to ensure that care is provided in accordance with this Act; and 20
- (c) impartially investigate complaints and conduct inquiries.

Compare: 1992 No 46 s 94A

152 Inquiries by district inspector 25

- (1) A district inspector on any visit to any service may, and must if the Director requires, inquire into—
- (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 service; and 30
- (b) any other matters that the district inspector or the Director thinks fit to be inquired into respecting any ~~patients~~ persons under compulsory care, or the management of the service.
- (2) 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 35 as an inquiry has under the Inquiries Act 2013, other than the powers under section 28 of that Act (which relates to costs).

- (3) The district inspector must send a full report of every inquiry as soon as practicable to the Director.

Compare: 1992 No 46 s 95

153 Visits by district inspectors and official visitors

- (1) A district inspector and an official visitor must visit each of the hospitals and services in the locality to which the district inspector or official visitor is appointed as follows: 5
- (a) for a service in or through which any patient person is being assessed or given compulsory care as an inpatient subject to a hospital care order, at least once a month: 10
- (b) for a service in or through which any patient person is being assessed or given compulsory care as an outpatient subject to a community care order, at least 4 times a year at regular intervals and when the Director directs.
- (2) A district inspector or an official visitor may, without previous notice, visit any service as often as the district inspector or the official visitor thinks fit. 15
- (3) All visits made under the authority of this section may be made on any days and at any hours of the day or night, and for any length of time, that the district inspector or the official visitor thinks fit.
- (4) The Director may permit or require a district inspector or an official visitor to be accompanied on a visit by— 20
- (a) a mental health practitioner named by the Director; or
- (b) an adviser approved under **section 40**.
- (5) A district inspector and a official visitor may obtain advice from a mental health practitioner appointed for the purpose by the Director or an adviser approved under **section 40**, and that mental health practitioner or adviser has all the powers of visitation and inspection conferred on district inspectors and official visitors by this Act. 25

Compare: 1992 No 46 s 96

154 Extent of inspection 30

- (1) Every district inspector and official visitor must have access, when visiting a service, to every part of the service and to every person in it, whether detained or not.
- (2) The responsible practitioners must provide a district inspector or an official visitor who visits a service with the records relating to the service or any of the patients persons subject to this Act that the district inspector or the official visitor requires to be produced. 35

Compare: 1992 No 46 s 97

155 Reports on visits

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

Compare: 1992 No 46 s 98

5

156 District inspectors to report monthly

A district inspector must, once a month,—

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

10

Compare: 1992 No 46 s 98A

157 Powers of inspection of Director

The Director has all the powers of the Director-General of Health under Part 3 of the Health and Disability Services (Safety) Act 2001, other than the powers in sections 48 to 50 of that Act, in relation to any hospital or part of a hospital in which compulsory care is given.

15

Compare: 1992 No 46 s 99

158 Power to search ~~patients~~ persons under compulsory care and property

- (1) A Director of Area Mental Health Services, or an authorised person, who believes on reasonable grounds that it is necessary for the health and safety of employees of a service or ~~patients~~ persons under compulsory care at that service, or both, may exercise the powers in **subsection (2)** in accordance with any guidelines issued under **section 204**. 20
- (2) The powers are to—
 - (a) enter a place where ~~patients~~ persons under compulsory care are detained: 25
 - (b) search any ~~patient~~ person under compulsory care detained at that place:
 - (c) seize any item in the possession of a ~~patient~~ person under compulsory care that may reasonably be believed to be a risk to the health and safety of employees of the service or ~~patients~~ persons under compulsory care, or both. 30

159 No proceedings against district inspectors or official visitors unless bad faith shown

- (1) No civil proceedings may be brought against any district inspector or official visitor for any thing they may do, report, or say in the course of the exercise or performance or intended exercise or performance of their powers, duties, or functions under this Act, unless it is shown that they acted in bad faith. 35

- (2) Nothing in this section affects the right of any person or organisation to apply, in accordance with law, for judicial review of a district inspector's or official visitor's powers, duties, or functions under this Act.

Compare: 1992 No 46 s 99A

160 Delegation by persons in charge of hospitals 5

- (1) A person in charge of a hospital may delegate any of their powers, duties, and functions, except this power of delegation, to a person who is suitably qualified to exercise or perform it.
- (2) The maker of a delegation must make it in writing and sign it.
- (3) The maker of a delegation is not prevented from exercising or performing, or affected in their exercise or performance of, any of the delegated powers, duties, or functions. 10
- (4) The delegate may exercise and perform the powers, duties, and functions in the same manner and with the same effect as if they had been conferred on the delegate directly by this Act. 15
- (5) Every person purporting to act under a delegation is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation.
- (6) A delegation continues in force according to its tenor until it is revoked.
- (7) If the maker ceases to hold office, the delegation continues to have effect as if made by the successor in office of the maker. 20
- (8) The maker, or a successor, may revoke the delegation at any time by written notice to the delegate.

Compare: 1992 No 46 s 99B

161 Crimes of Torture Act 1989 not limited 25

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

Compare: 1992 No 46 s 99C

Secure mental health facilities

162 Secure mental health facilities 30

- (1) The Minister may, by notice, declare any hospital, or any part of a hospital, to be a secure mental health facility.
- (2) No mental health care order or other order made by a court under this or any other Act may commit any person to a secure mental health facility.
- (3) A patient-person under compulsory care may only be transferred to or from a secure mental health facility at the direction or with the authority of the Director. 35

Compare: 1992 No 46 s 100

Mental Health Review Tribunals

163 Review Tribunal continued

The Review Tribunal appointed under section 101 of the Mental Health (Compulsory Assessment and Treatment) Act 1992 that is in existence immediately before the commencement of this Act is continued as a Mental Health Review Tribunal. 5

164 Appointment of Mental Health Review Tribunals

- (1) The Minister may appoint as many Mental Health Review Tribunals as the Minister determines necessary for the purposes of this Act.
- (2) The appointment of a Mental Health Review Tribunal must specify the area covered by that tribunal. 10
- (3) A Mental Health Review Tribunal comprises up to 4 persons appointed by the Minister, and must include—
 - (a) a lawyer:
 - (b) a suitably qualified mental health practitioner. 15
- (4) When appointing members, the Minister must be satisfied that the membership of the tribunal has—
 - (a) lived experience of being subject to compulsory mental health care:
 - (b) knowledge of tikanga and mātauranga Māori:
 - (c) if considering a matter concerning a ~~patient~~ person under compulsory care who is under the age of 18, expertise in child and adolescent development. 20
- (5) A person must not act as a member of a Mental Health Review Tribunal in any case where, given the identity of the ~~patient~~ person under compulsory care, a conflict of interest may arise. 25
- (6) Subject to **section 167(3)**, a Mental Health Review Tribunal is not affected by any vacancy in its membership.

Compare: 1992 No 46 s 101

165 Functions and powers of Mental Health Review Tribunals

- (1) The principal function of a Mental Health Review Tribunal is to consider the condition of a ~~patient~~ person under compulsory care who has applied for a review, or in respect of whom an application for a review has been made, under **section 136 or 138**. 30
- (2) A Mental Health Review Tribunal may at any time, and must whenever required by the Director to do so, report to the Director on any matter relating to the exercise or performance of its powers and functions under this Act. 35

- (3) A Mental Health Review Tribunal has the functions and powers conferred on it by this Act or any other enactment.

Compare: 1992 No 46 s 102

166 Co-opting suitable persons

- (1) A Mental Health Review Tribunal may, for the purposes of any particular case, co-opt— 5
- (a) a person whose specialised knowledge or expertise would be of assistance to the Mental Health Review Tribunal in dealing with the case; or
 - (b) a person whose of the same ethnic identity is the same as the patient's person under compulsory care, if no member of the Mental Health Review Tribunal has that ethnic identity; or 10
 - (c) a person of the same gender as the patient person under compulsory care, if no member of the Mental Health Review Tribunal is of that gender; or
 - (d) a person with a disability, if no member of the Mental Health Review Tribunal has a disability. 15
- (2) However, if in any case no member of the Mental Health Review Tribunal has the same ethnic identity as the patient person under compulsory care, is of the same gender as the patient person under compulsory care, or has a disability, the Mental Health Review Tribunal must co-opt a suitable person under **subsection (1)(b), (c), or (d)** if the patient person under compulsory care or the applicant requests it to do so. 20
- (3) A person who is co-opted under this section must be treated as a member of the tribunal in respect of the case for which they are co-opted. 25

Compare: 1992 No 46 s 103

167 Meetings and powers

- (1) A Mental Health Review Tribunal must meet at the times and places that the Mental Health Review Tribunal or the convener appoints.
- (2) Meetings may be held by audiovisual link.
- (3) No business may be transacted at any meeting of a Mental Health Review Tribunal unless each member, or their deputy, is present. 30
- (4) A Mental Health Review Tribunal has the same powers and authority to summon witnesses and receive evidence as an inquiry has under the Inquiries Act 2013, other than the powers under section 28 of that Act (which relates to costs). 35

Compare: 1992 No 46 s 104

*Further provisions relating to Mental Health Review Tribunals***168 Deputies of members**

- (1) The Minister may appoint persons to be deputies of members of each Mental Health Review Tribunal.
- (2) The deputy of each member who is a lawyer must be a lawyer, and the deputy of each member who is a mental health practitioner must be a mental health practitioner. 5
- (3) A deputy may act for the member for whom they are appointed during any period when that member is incapacitated by illness, or prevented by any other sufficient cause from performing the duties of office. 10
- (4) No deputy may act for more than 1 member at the same time.
- (5) A deputy is a member of a Mental Health Review Tribunal.

Compare: 1992 No 46 s 105

169 Terms of office

- (1) Every member of a Mental Health Review Tribunal, and every deputy of a member, holds office for a term not exceeding 3 years and may be reappointed. 15
- (2) Any member of a Mental Health Review Tribunal, and any deputy of a member, may at any time resign by notice in writing addressed to the Minister.
- (3) Any member of a Mental Health Review Tribunal, and any deputy of a member, may at any time be removed from office by the Minister for neglect of duty, misconduct, bankruptcy, or inability to perform the functions of the office proved to the satisfaction of the Minister. 20
- (4) However, every member of a Mental Health Review Tribunal, and every deputy of a member, must, unless the member sooner dies, resigns, or is removed from office, continue in office until a successor is appointed despite the expiry of their term of office. 25

Compare: 1992 No 46 s 106

170 Convener

- (1) The members of a Mental Health Review Tribunal must elect one of the members to be the convener of the Mental Health Review Tribunal. 30
- (2) The convener presides at every meeting of the Mental Health Review Tribunal at which they are present.
- (3) If the convener is not present at any meeting, the members present must elect one of the members to preside at that meeting as convener.
- (4) The convener may vote on any matter and must cast a deciding vote if the Mental Health Review Tribunal cannot make a decision. 35

Compare: 1992 No 46 s 107

171 Review principles

A Mental Health Review Tribunal must be guided by the following principles when reviewing applications and complaints:

- (a) fairness:
- (b) accessibility of processes, having particular regard to tikanga Māori: 5
- (c) timeliness and efficiency:
- (d) resolution of complaints at an appropriate level:
- (e) the need to—
 - (i) uphold the mana of parties involved and promote restorative practices: 10
 - (ii) ensure that all tāngata whaiora, including those with physical, sensory, intellectual, and other disabilities, can access and participate in the process.

172 Fees and travelling allowances

- (1) A Mental Health Review Tribunal is a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951. 15
- (2) The members of Mental Health Review Tribunals are paid remuneration by way of fees, salary, or allowances, and travelling allowances and expenses, under that Act.
- (3) The remuneration referred to in **subsection (2)** is met from any appropriation by Parliament for the purpose. 20

Compare: 1992 No 46 s 108

173 No proceedings against members of Mental Health Review Tribunals unless bad faith shown

- (1) No civil proceedings may be brought against any member of a Mental Health Review Tribunal for anything they may do, report, or say in the course of the exercise or performance or intended exercise or performance of their powers, duties, or functions under this Act, unless it is shown that they 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 Mental Health Review Tribunal member's exercise or performance of powers, duties, or functions under this Act. 30

Compare: 1992 No 46 s 108A

~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal

- 174 ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal**
- (1) ~~The Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal is established. 5
- (2) ~~The Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal comprises up to 4 persons appointed by the Minister, and must include—
- (a) a lawyer; and
- (b) a suitably qualified mental health practitioner with expertise in forensic mental health care. 10
- (3) When appointing members, the Minister must be satisfied that the membership of the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal has—
- (a) lived experience of being subject to compulsory mental health care; and
- (b) knowledge of tikanga and mātaurangi Māori. 15
- (4) A person must not act as a member of the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal in any case where, given the identity of the ~~patient~~ person under forensic compulsory care or person on a restricted order, a conflict of interest may arise.
- 175 ~~Functions of Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal** 20
- The principal functions of the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal are to—
- (a) determine applications for leave of absence for ~~forensic patients~~ persons under forensic compulsory care and ~~restricted patients~~ persons on a restricted order under **section 114**; and 25
- (b) review the condition of ~~forensic patients~~ persons under forensic compulsory care under **section 138**; and
- (c) review the condition of ~~restricted patients~~ persons on a restricted order under **section 139**; and 30
- (d) determine applications for change of status under section 33 of the Criminal Procedure (Mentally Impaired Persons) Act 2003.
- 176 ~~Appeal against decisions of Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal**
- The ~~following~~ Director, the ~~forensic or restricted patient~~ in respect of whom an application is made to the Forensic Patient Review Tribunal, or the patient's nominated person, may, within 1 month after the date of a decision by the 35

~~Forensic Mental Health Review Tribunal that tribunal~~, appeal to the ~~High Family Court~~ against that decision~~;~~:

- (a) the Director;
- (b) the person under forensic compulsory care or the person on a restricted order in respect of whom an application is made to the Forensic Mental Health Review Tribunal;
- (c) the person's nominated person.

177 Further provisions relating to ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal

Sections 141 and 166 to 173 apply in respect of the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal with any necessary modifications.

Public assistance

178 Advice and assistance of general nature

An authorised person must provide the following services to the public:

- (a) act as a ready point of contact for anyone in the community requiring assistance in relation to tāngata whaiora;
- (b) provide, on request, the assistance, advice, and reassurance that are appropriate in the circumstances.

Compare: 1992 No 46 s 37

179 Assistance in respect of ~~outpatients and inpatients~~ persons on leave

- (1) This section applies in relation to—
 - (a) ~~every patient~~ a person who is subject to assessment otherwise than in a hospital; and
 - (b) ~~every patient~~ a person who is subject to a community care order; and
 - (c) ~~every patient~~ a person who is subject to ~~an inpatient care order~~ a hospital care order but is on leave from the hospital in accordance with **section 89**.
- (2) Anyone may request the advice or assistance of an authorised person in relation to any aspect of the care or conduct of ~~a patient~~ the person.
- (3) An authorised person who receives a request must take the following steps:
 - (a) investigate the matter to the extent necessary to satisfy themselves that the concern expressed by the person making the request has or does not have substance, and that there are or are not reasonable grounds for believing that further consideration of the case may be desirable;
 - (b) inform the responsible practitioner or any other appropriate person of the substance of the concern that has arisen in the case:

(c) give any other advice or assistance in the matter as may be appropriate.

Compare: 1992 No 46 s 39

180 Assistance in taking or returning ~~patient person under compulsory care~~ or proposed ~~patient person under compulsory care~~ to place of compulsory care 5

(1) This section applies to—

(a) a person for whom an examination has been arranged under **section 55** and who is refusing to attend that examination; and

(b) a ~~patient person under compulsory care~~ or a proposed ~~patient person under compulsory care~~ who— 10

(i) is required to attend at any place for—

(A) first assessment by notice under **section 57**; or

(B) second assessment by notice under **section 60**; or

(C) an examination by notice under **section 72**; or

(D) a hearing by notice under **section 72**; or 15

(E) a review by notice under **section 80(5)**; and

(ii) is refusing to attend at that place; and

(c) a ~~patient person under compulsory care~~ who—

(i) is subject to a community care order; and

(ii) is refusing to attend at a place for care in accordance with the order; and 20

(d) a ~~patient person under compulsory care~~ who—

(i) is subject to ~~an inpatient care order~~ a hospital care order or is a forensic patient person under forensic compulsory care; and

(ii) is absent from the hospital— 25

(A) without leave; or

(B) when the ~~patient's~~ person's leave of absence from the hospital has expired or has been cancelled.

(2) On becoming aware of a person, ~~patient~~, or ~~proposed patient~~ to whom this section applies, an authorised person must take all reasonable steps to meet them in person and to— 30

(a) take the person, ~~patient~~, or ~~proposed patient~~ referred to in **subsection (1)(a) to (c)** to the place at which they are required to attend:

(b) take the ~~patient~~ person referred to in **subsection (1)(d)** back to the hospital. 35

Compare: 1992 No 46 s 40

181 Police assistance

- (1) An authorised person who has attempted to take all reasonable steps under **section 180(2)** may call a constable to assist them as specified in this section.
- (2) A constable—
- (a) may enter the premises where the person, ~~patient, or proposed patient~~ referred to in **section 180(1)** is, or is believed to be; and 5
 - (b) must, if that constable is not in uniform, produce to any person occupying the premises their badge or other evidence that they are a constable.
- (3) A constable who enters premises under **subsection (2)** may, in the circumstances described in **section 180(1)(a) to (c)**,— 10
- (a) take the person, ~~patient, or proposed patient~~ referred to in **section 180(1)** to the place at which they are required to attend; and
 - (b) detain the person, ~~patient, or proposed patient~~ referred to in **section 180(1)** at the place for the shorter-shortest of—
 - (i) 6 hours; and 15
 - (ii) the time it takes to conduct whichever of the following the person, ~~patient, or proposed patient~~ was refusing to attend for:
 - (A) an examination arranged under **section 55**:
 - (B) first assessment under **section 58**:
 - (C) second assessment under **section 62**: 20
 - (D) an examination under **section 73**:
 - (E) a review to which a notice given under **section 80(5)** relates:
 - (F) care in accordance with a community care order; and
 - (iii) the time until the constable is satisfied on reasonable grounds that 25
 ~~the person, patient, or proposed patient~~ may undergo the relevant procedure described in **section 180(1)** without further police detention.
- (4) An authorised person must accompany a constable who enters premises under **subsection (2)**, unless it is not reasonably practicable to do so, in which case 30 the constable may enter the premises as directed by the authorised person by telephone or by other means of audio communication.
- (5) A constable who enters premises under **subsection (2)** may, in the circumstance described in **section 180(1)(d)**, take the ~~patient~~ person back to hospital. 35
- (6) The constable must not exercise—
- (a) the powers under this section unless requested to so by the authorised person; and

- (b) the power in **subsection (2)** without a warrant issued under **section 189**, if it would be reasonably practicable to obtain a warrant.

Compare: 1992 No 46 s 41

Part 7 Powers and offences

5

Powers

182 Police powers in relation to person appearing to meet compulsory care criteria in public place

- (1) This section applies if a person is found in a public place acting in a manner that gives a constable reasonable grounds to ~~believe~~suspect that the person ~~meets~~may meet the compulsory care criteria. 10
- (1A) In forming their suspicion that a person may meet the compulsory care criteria, the constable—
- (a) is not required to make a medical assessment or clinical judgment; but
- (b) may seek the advice of an authorised person (see **section 178**). 15
- (2) The constable may, if they consider it desirable in the interests of the person or of the public,—
- (a) detain and take the person to a hospital or any other place specified by a Director of Area Mental Health Services; and
- (b) arrange for a mental health practitioner to examine the person at that place as soon as practicable. 20
- (3) If the mental health practitioner examines the person and does not consider that the person meets the compulsory care criteria, the person must be released immediately.
- (4) **Subsection (5)** applies if the mental health practitioner examines the person and considers that— 25
- (a) there are reasonable grounds to believe that the person meets the compulsory care criteria; and
- (b) it is desirable in the person's own interests or the interests of any other person for the person to urgently undergo first assessment. 30
- (5) The mental health practitioner must, as soon as possible, make an application under **section 56(1)**.
- (6) A constable may detain the person for the purposes of **subsections (2) to (5)** for 6 hours or the time it takes to carry out the actions described in those subsections, whichever is shorter. 35

Compare: 1992 No 46 s 109

183 Powers of mental health practitioner when urgent examination required

- (1) **Subsection (2)** applies to a mental health practitioner who—
- (a) conducts an examination of a person who is acting in a manner that gives reasonable grounds to believe that they meet the compulsory care criteria; and 5
 - (b) concludes that—
 - (i) there are reasonable grounds to believe that the person meets the compulsory care criteria; and
 - (ii) it is desirable for the person to urgently undergo first assessment.
- (2) The mental health practitioner must, as soon as possible, make an application under **section 56(1)**. 10
- (3) A mental health practitioner acting under this section must, before calling for Police assistance under **subsection (4)**, make every reasonable effort to—
- (a) meet in person with the person; and
 - (b) get the advice and assistance of an authorised person under **section 180(2)**. 15
- (4) A mental health practitioner who has complied with **subsection (3)** and needs assistance to conduct an examination may call for Police assistance to be provided under **section 186**. 20
- Compare: 1992 No 46 s 110

184 Power to sedate person when sedation urgently required

- (1) This section applies to a mental health practitioner who—
- (a) makes an application required by **section 183(2)**; and
 - (b) believes on reasonable grounds that it is necessary to sedate a person to prevent serious harm to that person or any other person. 25
- (2) The mental health practitioner or a paramedic acting on the request of the mental health practitioner may immediately administer an appropriate sedative drug to the person, by injection if necessary, in accordance with any relevant guidelines and standards for compulsory care issued by the Director-General under **section 204**. 30
- (3) The mental health practitioner who administers or requests the administration of a sedative drug under **subsection (2)** must, as soon as practicable,—
- (a) record the circumstances in which the drug was administered, including the reasons for administering it, in accordance with **section 206(2)**; and 35
 - (b) give a copy of the record to the Director of Area Mental Health Services.
- (4) A mental health practitioner acting under this section must, before calling for Police assistance under **subsection (5)**, make every reasonable effort to—

- (a) meet in person with the person; and
 - (b) get the advice and assistance of an authorised person under **section 180(2)**.
- (5) A mental health practitioner who has complied with **subsection (4)** and needs assistance to administer a sedative drug may call for Police assistance to be provided under **section 186**. 5

Compare: 1992 No 46 s 110A

185 Powers of mental health practitioner when urgent assessment required

- (1) This section applies to the mental health practitioner who conducts the first assessment of a proposed ~~patient~~ person under compulsory care following an application required by **section 183(2)**. 10
- (2) The mental health practitioner must conduct the first assessment under **section 58** as soon as possible.
- (3) A mental health practitioner acting under this section must, before calling for Police assistance under **subsection (4)**, make every reasonable effort to— 15
- (a) meet in person with the proposed ~~patient~~ person under compulsory care; and
 - (b) get the advice and assistance of an authorised person under **section 180(2)**.
- (4) A mental health practitioner who has complied with **subsection (3)** and needs assistance to conduct the first assessment may call for Police assistance to be provided under **section 186**. 20

Compare: 1992 No 46 s 110B

186 Powers of Police when urgent assistance required

- (1) A constable called to the assistance of a mental health practitioner— 25
- (a) may enter the premises where the person or proposed ~~patient~~ person under compulsory care is; and
 - (b) must, if that constable is not in uniform, produce to any person occupying the premises their badge or other evidence that they are a constable.
- (2) A constable who enters premises under **subsection (1)** may, at the request of the mental health practitioner,— 30
- (a) detain the person or proposed ~~patient~~ person under compulsory care at the premises; or
 - (b) take the person or proposed ~~patient~~ person under compulsory care to a place nominated by the mental health practitioner and detain the person or proposed ~~patient~~ person under compulsory care at that place. 35
- (3) The mental health practitioner must be present during the entire detention of the person or proposed ~~patient~~ person under compulsory care, unless it is not reasonably practicable to do so, in which case the constable may exercise

the powers under **subsection (2)** as directed by the authorised person by telephone or by other means of audio communication.

- (4) Detention under **subsection (2)** may last for no longer than 6 hours, or the time until the constable is satisfied on reasonable grounds that the person may undergo 1 of the following procedures without further police detention, or the following time, whichever is shortest: 5
- (a) for the purposes of **section 183(1)(a)**, the time it takes to conduct the examination: 5
 - (b) for the purposes of **section 184(2)**, the time it takes to administer the sedative drug: 10
 - (c) for the purposes of **section 185(2)**, the time it takes to conduct the examination. 10

Compare: 1992 No 46 s 110C

187 Powers of nurse if urgent assessment required

- (1) This section applies if— 15
- (a) a person ~~who~~ has been brought to or admitted to hospital (not being a ~~patient person under compulsory care~~ or a proposed ~~patient person under compulsory care~~) ~~is acting in a manner that gives reasonable grounds to believe that they meet the compulsory care criteria;~~ and
 - (b) the nurse who has ~~immediate~~ responsibility for the person considers that— 20
 - (i) there are reasonable grounds to ~~believe~~ suspect that the person ~~meets~~ may meet the compulsory care criteria; and
 - (ii) it is desirable for the person to urgently undergo an assessment examination in the person's own interests or the interests of any other person. 25
- (1A) In forming their belief that a person may meet the compulsory care criteria, the nurse may seek the advice of an authorised person (see **section 178**).
- (2) The nurse must arrange as soon as practicable for a mental health practitioner to examine the person for the purposes of **section 56**. 30
- (3) The nurse may—
- (a) detain the person where they are until a mental health practitioner has examined the person; or
 - (b) take the person to some other place to enable a mental health practitioner to examine the person, and detain the person at that other place until a mental health practitioner has examined the person. 35

- (4) However, a person must not be detained under this section for more than 6 hours from the time when the nurse first calls for a mental health practitioner to examine the person.

Compare: 1992 No 46 s 111

188 Authority of person in charge of service to admit and detain 5

- (1) A notice given under **section 57(1)(d)** requiring a proposed ~~patient person under compulsory care~~ to attend at a hospital or service for first assessment is sufficient authority for the person in charge of the hospital or service to take all reasonable steps to detain the proposed ~~patient person under compulsory care~~ in the hospital or service for the shorter of— 10

- (a) 6 hours; and
(b) the time it takes to conduct the first assessment.

- (2) A notice given under **section 60** requiring a ~~patient person under compulsory care to attend~~ ~~be detained~~ at a hospital for the purpose of second assessment ~~as an inpatient~~ is sufficient authority for the person in charge of the hospital— 15

- (a) to admit the ~~patient person under compulsory care~~ to the hospital; and
(b) to take all reasonable steps to detain the ~~patient person under compulsory care~~ in the hospital during the period of second assessment to which the notice applies.

- (3) ~~An inpatient care order~~ A hospital care order made in respect of a ~~patient person~~ is sufficient authority for the person in charge of the hospital specified in the order— 20

- (a) to admit the ~~patient person~~ to the hospital; and
(b) to take all reasonable steps to detain the ~~patient person~~ in the hospital during the period for which the order is in force. 25

Compare: 1992 No 46 s 113

189 Judge or Registrar may issue warrants

- (1) This section applies in respect of—
(a) every ~~patient person under compulsory care~~ or proposed ~~patient person under compulsory care~~ who— 30

- (i) is required to attend at any place for—
(A) first assessment by notice under **section 57**; or
(B) second assessment by notice under **section 60**; or
(C) an examination by notice under **section 72**; or
(D) a hearing by notice under **section 72**; or 35
(E) a review to which a notice under **section 80(5)** relates; and

- (ii) refuses to attend at that place; and

- (b) every ~~patient~~ person under compulsory care who—
- (i) is subject to a community care order; and
 - (ii) is refusing to attend at a place for care in accordance with the order; and
- (c) every ~~patient~~ person under compulsory care who— 5
- (i) is subject to ~~an inpatient care order~~ a hospital care order; and
 - (ii) is absent from the hospital—
 - (A) without leave; or
 - (B) when the ~~patient's~~ person's leave of absence from the hospital has expired or has been cancelled. 10
- (2) In this section, **warrant** means a warrant in the prescribed form—
- (a) to take a ~~patient~~ person under compulsory care or proposed ~~patient~~ person under compulsory care to a place specified in the warrant; or
 - (b) to enter premises under **section 181(2)**.
- (3) A Director of Area Mental Health Services may apply for a warrant. 15
- (4) A Family Court Judge, a District Court Judge, or, if no Judge is available, a Registrar may issue a warrant authorising any constable—
- (a) to take a ~~patient~~ person under compulsory care or proposed ~~patient~~ person under compulsory care to the place specified in the warrant, if the Judge or Registrar is satisfied that— 20
 - (i) the ~~patient~~ person under compulsory care or proposed ~~patient~~ person under compulsory care is refusing to attend at the place at which they are required to attend; or
 - (ii) the ~~patient~~ person under compulsory care is absent from a hospital— 25
 - (A) without leave; or
 - (B) when the ~~patient's~~ person's leave of absence from the hospital has expired or has been cancelled; or
 - (b) to enter premises under **section 181(2)**, if the Judge or Registrar is satisfied that the issue of a warrant is necessary. 30

Compare: 1992 No 46 s 113A

Offences

190 Neglect or ill-treatment of patients, proposed patients, and voluntary patients

- (1) This section applies to— 35
- (a) the person in charge of a service at which a proposed ~~patient~~ person under compulsory care attends for first assessment; and

- (b) the person in charge of a hospital in which ~~a patient is an inpatient~~ a person is subject to a hospital care order or is a voluntary patient voluntary mental health consumer; and
- (c) a person employed in any such service and engaged—
- (i) in the conduct of first assessment of a proposed ~~patient~~ person under compulsory care; or
- (ii) in the care or assessment of a ~~patient~~ person under compulsory care or ~~voluntary patient~~ voluntary mental health consumer; and
- (d) the person in charge of a home, house, or other place where a ~~patient~~ person under compulsory care, proposed ~~patient~~ person under compulsory care, or ~~voluntary patient~~ voluntary mental health consumer resides.
- (2) A person who intentionally ill-treats or intentionally neglects a ~~patient~~ person under compulsory care, proposed ~~patient~~ person under compulsory care, or ~~voluntary patient~~ voluntary mental health consumer commits an offence and is liable on conviction to imprisonment for a term not exceeding 5 years.
- Compare: 1992 No 46 s 114

190A Failure to ensure access to communication aid

A responsible practitioner commits an offence and is liable on conviction to a fine not exceeding \$15,000 if they fail to take reasonable steps to ensure that a person under compulsory care has access to their communication aid.

190B Failure to ensure access to mobility aid

A responsible practitioner commits an offence and is liable on conviction to a fine not exceeding \$15,000 if they fail to take reasonable steps to ensure that a person under compulsory care has access to their mobility aid.

190C Failure to comply with electroconvulsive therapy requirements

- (1) A responsible practitioner commits an offence and is liable on conviction to a fine not exceeding \$30,000 if they knowingly provide electroconvulsive therapy other than in accordance with the requirements of **section 50(1) or (1A)**.
- (2) A responsible practitioner commits an offence and is liable on conviction to a fine not exceeding \$5,000 if they fail to record the use of electroconvulsive therapy in accordance with **section 50(2)**.

191 Assisting ~~patient on person under~~ community care order not to attend for care

- (1) **Subsection (2)** applies to a person who is employed in or about a place at which a ~~patient~~ person under compulsory care who is subject to a community care order is required to attend for care.

- (2) ~~A~~The person commits an offence and is liable on conviction to imprisonment for a term not exceeding 3 months, or to a fine not exceeding \$1,000, ~~\$10,000~~ if they—
- (a) intentionally permit a ~~patient~~ person under compulsory care not to attend, or to attempt not to attend, at the place; or 5
- (b) ~~conspire to allow~~ intentionally assist in allowing an unauthorised absence or attempted unauthorised absence.
- (3) A person commits an offence and is liable on conviction to imprisonment for a term not exceeding 3 months, or to a fine not exceeding \$1,000, ~~\$10,000~~ if they— 10
- (a) intentionally instigate or assist a ~~patient~~ person under compulsory care who is subject to a community care order not to attend, or to attempt not to attend, at any place at which the ~~patient~~ person under compulsory care is required to attend for care; or
- (b) intentionally assist a ~~patient~~ person under compulsory care who is so absent to avoid, or to attempt to avoid, being taken to the place. 15

Compare: 1992 No 46 s 115

192 Assisting ~~patient on inpatient care order~~ person under hospital care order to be absent without leave

- (1) **Subsection (2)** applies to a person who is employed in or about a hospital in which a ~~patient~~ person under compulsory care who is subject to an ~~inpatient care order~~ hospital care order is detained. 20
- (2) ~~A~~The person commits an offence and is liable to imprisonment for a term not exceeding 3 months, or to a fine not exceeding \$1,000, ~~\$10,000~~ if they—
- (a) intentionally permit a ~~patient~~ person under compulsory care to become, or to attempt to become, absent without leave from the hospital; or 25
- (b) ~~conspire to allow~~ intentionally assist in allowing an absence or attempted absence.
- (3) A person commits an offence and is liable to imprisonment for a term not exceeding 3 months, or to a fine not exceeding \$1,000, ~~\$10,000~~ if they— 30
- (a) intentionally instigate or assist a ~~patient~~ person under compulsory care who is subject to an ~~inpatient care order~~ hospital care order to become, or to attempt to become, absent without leave from the hospital specified in the order or to which the ~~patient~~ person has been transferred under **section 217**; or 35
- (b) intentionally assist a ~~patient~~ person under compulsory care who is absent without leave to avoid, or to attempt to avoid, being returned to hospital.

Compare: 1992 No 46 s 115A

193 Unlawful publication of reports of proceedings before tribunal

- (1) A person who publishes a report of proceedings before a Mental Health Review Tribunal or the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal without the leave of that tribunal commits an offence against this Act and is liable on conviction to a fine not exceeding, — ~~\$10,000.~~ 5
- (a) for an individual, \$10,000; and
- (b) for any other person, \$30,000.
- (2) In proceedings against a person for an offence against this section, it is not necessary to prove that the person intended to commit the offence or had any other state of mind in relation to any element of the offence. 10
- Compare: 1992 No 46 s 116

194 Obstruction of inspection

- The Director of Area Mental Health Services of any service, a responsible practitioner, or an employee in that service commits an offence, and is liable on conviction to a fine not exceeding ~~\$2,000~~ \$30,000, if a district inspector or an official visitor is visiting the service and the Director of Area Mental Health Services, responsible practitioner, or employee— 15
- (a) conceals or attempts to conceal from the district inspector or official visitor, or refuses or wilfully neglects to show to the district inspector or official visitor, any part of the service or any person detained or being given care in it; or 20
- (b) in any other manner wilfully obstructs or attempts to obstruct the district inspector or official visitor in the conduct of their official duties.
- Compare: 1992 No 46 s 117

195 False or misleading records 25

- (1) A person commits an offence ~~and is liable on conviction to a fine not exceeding \$5,000 against this section~~ if they—
- (a) include or cause to be included in any record under this Act any information that they know to be false or misleading in any material respect; or 30
- (b) negligently include or negligently cause to be included in any such record any information that is false or misleading in any material respect.
- (2) A person who commits an offence against **subsection (1)(a)** is liable on conviction to a fine not exceeding, — 35
- (a) for an individual, \$30,000; and
- (b) for any other person, \$50,000.
- (3) A person who commits an offence against this **subsection (1)(b)** is liable on conviction to a fine not exceeding, —

- (a) for an individual, \$5,000; and
- (b) for any other person, \$15,000.

Compare: 1992 No 46 s 118

196 Further offences involving false or misleading documents

- (1) A person commits an offence ~~and is liable on conviction to a fine not exceeding \$2,000 against this section~~ if they— 5
- (a) intentionally omit, or intentionally cause any other person to omit, in any notice, statement, or entry under this Act any information prescribed or required by or under this Act to be included in the notice, statement, or entry; or 10
 - (b) include or cause to be included in any such notice, statement, or entry any information that they know to be false in any material respect; or
 - (c) negligently include or negligently cause to be included in any such notice, statement, or entry any information that is false or misleading in any material respect. 15
- (2) A person who commits an offence against **subsection (1)(a) or (b)** is liable on conviction to a fine not exceeding,—
- (a) for an individual, \$30,000; and
 - (b) for any other person, \$50,000.
- (3) A person who commits an offence against **subsection (1)(c)** is liable on conviction to a fine not exceeding,— 20
- (a) for an individual, \$5,000; and
 - (b) for any other person, \$15,000.

Compare: 1992 No 46 s 119

197 Who may commence proceedings 25

Proceedings for an offence against this Act must be commenced by—

- (a) the Director or another person authorised in writing by the Director in a particular case; or
- (b) any constable.

Compare: 1992 No 46 s 120 30

Infringement offences

197A Infringement offences

- (1) A person who is alleged to have committed an infringement offence may—
- (a) be proceeded against by the filing of a charging document under section 14 of the Criminal Procedure Act 2011; or 35
 - (b) be issued with an infringement notice under **section 197C.**

- (2) Proceedings commenced in the way described in **subsection (1)(a)** do not require the leave of a District Court Judge or Registrar under section 21(1)(a) of the Summary Proceedings Act 1957.
- (3) See section 21 of the Summary Proceedings Act 1957 for the procedure that applies if an infringement notice is issued. 5

197B Who may issue infringement notices

The Director may, in writing, authorise any person to issue infringement notices under this Act.

197C When infringement notice may be issued

The Director or a person authorised by the Director may issue an infringement notice to a person if the Director or person authorised by the Director believes on reasonable grounds that the person is committing, or has committed, an infringement offence. 10

197D Revocation of infringement notice before payment made

- (1) The Director or a person authorised by the Director may revoke an infringement notice before— 15
- (a) the infringement fee is paid; or
- (b) an order for payment of a fine is made or deemed to be made by a court under section 21 of the Summary Proceedings Act 1957.
- (2) The Director or a person authorised by the Director must take reasonable steps to ensure that the person to whom the notice was issued is made aware of the revocation of the notice. 20
- (3) The revocation of an infringement notice before the infringement fee is paid is not a bar to any further action as described in **section 197A(1)(a) or (b)** against the person to whom the notice was issued in respect of the same matter. 25

197E What infringement notice must contain

An infringement notice must be in the form prescribed in the regulations and must contain the following particulars:

- (a) details of the alleged infringement offence that fairly inform a person of the time, place, and nature of the alleged offence: 30
- (b) the amount of the infringement fee:
- (c) the address of the Director:
- (d) how the infringement fee may be paid:
- (e) the time within which the infringement fee must be paid:
- (f) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957: 35

- (g) a statement that the person served with the notice has a right to request a hearing:
- (h) a statement of what will happen if the person served with the notice neither pays the infringement fee nor requests a hearing:
- (i) any other matters prescribed in the regulations. 5

197F How infringement notice may be served

- (1) An infringement notice may be served on the person who the Director or a person authorised by the Director believes is committing or has committed the infringement offence by—
 - (a) delivering it to the person or, if the person refuses to accept it, bringing it to the person's notice; or 10
 - (b) leaving it for the person at the person's last known place of residence with another person who appears to be of or over the age of 14 years; or
 - (c) leaving it for the person at the person's place of business or work with another person; or 15
 - (d) sending it to the person by prepaid post addressed to the person's last known place of residence or place of business or work; or
 - (e) sending it to an electronic address of the person in any case where the person does not have a known place of residence or business in New Zealand. 20
- (2) Unless the contrary is shown,—
 - (a) an infringement notice (or a copy of it) sent by prepaid post to a person under **subsection (1)** is to be treated as having been served on that person on the fifth working day after the date on which it was posted; and 25
 - (b) an infringement notice sent to a valid electronic address is to be treated as having been served at the time the electronic communication first entered an information system that is outside the control of the Director.

197G Payment of infringement fees

All infringement fees paid for infringement offences must be paid into a Crown Bank Account. 30

197H Reminder notices

A reminder notice must be in the form prescribed in the regulations and must include the same particulars, or substantially the same particulars, as the infringement notice. 35

198 General penalty

A person who commits an offence against this Act, or against any regulations made under this Act, for which no penalty is provided elsewhere than in this section is liable on conviction to a fine not exceeding \$500.

Compare: 1992 No 46 s 121

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199 Certain sections of Crimes Act 1961 apply to powers to take and return

Sections 90(1), 120(3), 121(3), 131, 180(2), 181(3) and (5), 182(2) and (6), 186(2), 187(3), and 189 contain a power to take or return a person, a patient person under compulsory care, or a proposed patient person under compulsory care. In respect of each of those powers, sections 30, 31, and 34 of the Crimes Act 1961 apply—

10

- (a) as if the power were a power of arrest; and
- (b) with any necessary modifications.

Compare: 1992 No 46 s 122A

200 Use of force

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(1) A person exercising a power specified in **subsection (2)** may not use force unless—

- (a) they are exercising the power in an emergency; and
- (b) there is no reasonable alternative to the use of force; and
- (c) they use the minimum force that is reasonably necessary in the circumstances.

20

(2) The powers are—

- (a) a power to take or return a person, patient person under compulsory care, or proposed patient person under compulsory care under in any of **sections 90(1), 108, 109, 120(3), 121(3), 131, 180(2), 181(3) and (5), 182(2) and (6), 186(2), 187(3), and 189**:
- (b) a power to give emergency care under **section 47**;
- (c) a power to restrain a patient person under compulsory care under **section 112(4)**;
- (d) a power to detain a person, patient person under compulsory care, or proposed patient person under compulsory care under in any of **sections 181(3) and (5), 182(2) to (5), 186(2), 187(3), and 188**;
- (e) a power to enter premises in under either of **sections 181(2) and 186(1)**.

25

30

(3) If force has been used under this section,—

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- (a) the circumstances in which the force was used must be recorded as soon as practicable; and

- (b) a copy of the record must be given to the Director of Area Mental Health Services as soon as practicable; and
 - (c) the Director of Area Mental Health Services must report the use of force and record the circumstances in accordance with **section 206(2)**.
- (4) Every person performing a function under this Act must use their best endeavours to minimise the use of force. 5
- Compare: 1992 No 46 s 122B

201 Protection from criminal liability

- (1) A person is not subject to criminal liability if they—
- (a) believe on reasonable grounds that a notice has been properly given under **section 57 or 60** or a mental health care order has been properly made; and 10
 - (b) act relying on that belief; and
 - (c) act in good faith.
- (2) A person is not subject to criminal liability if— 15
- (a) they use force while exercising a power or performing a function in accordance with **section 200**; and
 - (b) it was reasonably necessary to use such force in the circumstances; and
 - (c) the use of force was undertaken in accordance with any guidelines issued by the Director-General under **section 204**. 20
- Compare: 1992 No 46 s 122

Part 8

Secondary legislation and miscellaneous provisions

Secondary legislation

- 202 Regulations** 25
- (1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:
- (a) providing for anything this Act says may or must be provided for by regulations:
 - (b) regulating the ~~conduct~~ operation and management of secure mental health facilities: 30
 - (c) prescribing fees for any of the purposes of this Act:
 - (ca) prescribing offences for intentionally or otherwise contravening regulations prohibiting or restricting seclusion:

- (cb) prescribing fines in respect of any offence prescribed under **paragraph (ca)** for intentionally contravening or failing to comply with regulations prohibiting or restricting seclusion not exceeding,—
- (i) for an individual, \$30,000; and
- (ii) for any other person, \$50,000: 5
- (cc) prescribing fines in respect of any offence prescribed under **paragraph (ca)** for otherwise contravening or failing to comply with regulations prohibiting or restricting seclusion not exceeding,—
- (i) for an individual, \$10,000; and
- (ii) for any other person, \$25,000: 10
- (d) ~~prescribing offences in respect of the contravention of or non-compliance with any~~ for intentionally or otherwise contravening or failing to comply with any other regulation made under this Act or any requirement or direction made or given under any regulation:
- (da) prescribing fines in respect of any offence prescribed under **paragraph (d)** for intentionally contravening or failing to comply with regulations not exceeding,— 15
- (i) for an individual, \$15,000; and
- (ii) for any other person, \$30,000:
- (db) prescribing fines in respect of any offence prescribed under **paragraph (d)** for otherwise contravening or failing to comply with regulations not exceeding,— 20
- (i) for an individual, \$5,000; and
- (ii) for any other person, \$15,000:
- (e) ~~prescribing fines not exceeding \$500 in respect of any offence and, in the case of a continuing offence, \$50 for every day on which the offence has continued:~~ 25
- (ea) specifying the offences in this Act that are infringement offences, and prescribing infringement fees not exceeding \$5,000 for those offences:
- (eb) prescribing infringement offences for breaches of the regulations and prescribing infringement fees for those offences not exceeding \$5,000: 30
- (f) prescribing forms, records, and notices for the purposes of this Act and the methods of keeping prescribed records:
- (g) providing for anything incidental that is necessary for carrying out, or giving full effect to, this Act. 35
- (2) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 1992 No 46 s 135

203 Notices

(1) The Minister may make notices providing for anything this Act says may or must be provided for by notice.

(2) Notices made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements). 5

Compare: 1992 No 46 s 135

204 Director-General may make guidelines and standards

(1) The Director-General may make—

(a) guidelines for the purposes of this Act; and

(b) standards for compulsory care of ~~patients~~ persons under compulsory care. 10

(2) The following are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements):

(a) guidelines under this section:

(b) standards under this section. 15

Compare: 1992 No 46 s 130

205 Forms

(1) The Director-General or the Director may specify a form to be used for any information required by or under this Act to be given or sent to the Director-General or the Director, if there is no prescribed form. The Director-General or the Director may specify that information relating to different ~~patients~~ persons under compulsory care or matters is to be included in the same form. 20

(2) If the Director-General or the Director specifies a form, it must be used.

(3) The Director-General or the Director may give notice to the Director of Area Mental Health Services or the responsible practitioner dispensing with any specified provision of this Act that requires the person in charge of a hospital to send the Director-General or the Director notices relating to the hospital or any specified class of ~~patients~~ persons under compulsory care in the hospital. 25

(4) The Director-General or the Director—

(a) may give an absolute dispensation or a dispensation to the extent that the Director-General or the Director thinks fit; and 30

(b) may at any time revoke or vary the dispensation by giving notice.

Compare: 1992 No 46 s 133A

*Information and reporting***206 ~~Patient information~~ Information about persons under compulsory care**

(1) A Director of Area Mental Health Services must ensure that in every service the person in charge keeps the information prescribed by notice in respect of ~~patients subject to this Act~~ persons under compulsory care. 5

(2) The information must be maintained and kept in the form prescribed by notice.

Compare: 1992 No 46 s 129

207 Reporting to Director-General

A responsible practitioner must send to the Director-General, or to any other person whom the Director-General may specify, any information that the Director-General requires for the purposes of this Act. 10

Compare: 1992 No 46 s 131

208 Giving or sending documents

(1) This section applies to any document that this Act requires to be given or sent.

(2) The document must be dealt with by the method in **subsection (3)** that the person giving or sending the document considers is most likely to ensure that the document reaches the person for whom it is intended. 15

(3) The methods by which a document may be dealt with are—

- (a) personally delivering it to the person; or
- (b) posting it to a usual address of the person; or 20
- (c) sending it to an electronic address of the person; or
- (d) providing it to the person in a manner approved by the person.

(4) A document posted under **subsection (3)(b)** is treated as being delivered to the person at the time it would have been delivered in the ordinary course of post. For the purposes of proving delivery,— 25

- (a) it is sufficient to prove that the document was properly addressed; and
- (b) the document is presumed, in the absence of proof to the contrary, to have been posted on the day on which it was dated.

~~(5) The receipt of an electronic message from the person posting the document stating that the message was dispatched at the same time as or after the posting of the document confers on the person to whom the message is addressed, on the date on which they receive it and within the next 7 days, the same authority as the receipt of the document.~~ 30

(6) A document sent under **subsection (3)(c)** is treated, in the absence of proof to the contrary, as being delivered on the day after the day on which it was sent, and it is sufficient proof of sending that a correct machine-generated acknowledgement of receipt exists. 35

Compare: 1992 No 46 s 133

209 Requirement for signature

- (1) A requirement in this Act for a signature other than a witness's signature is met by means of an electronic signature if the electronic signature—
- (a) adequately identifies the signatory and adequately indicates the signatory's approval of the information to which the signature relates; and 5
 - (b) is as reliable as is appropriate given the purpose for which, and the circumstances in which, the signature is required.
- (2) However, a requirement for a signature that relates to information required to be given to a person is met by means of an electronic signature only if that person consents to receiving the electronic signature. 10

*Fees***210 Fees of mental health practitioners**

- (1) A mental health practitioner who issues a record, notice, or statement in writing for the purposes of, and in accordance with, this Act must be paid the prescribed fee. 15
- (2) If no fee is prescribed, such a mental health practitioner must be paid the fee that the Minister, with the concurrence of the Minister of Finance, directs from time to time.
- (3) In any particular case to which **subsection (2)** applies, the Minister may withhold the whole or any part of the fee. 20
- (4) Fees payable under **subsection (2)** are met from any appropriation by Parliament for the purpose.
- (5) No fees are payable under this section to a mental health practitioner employed by a service, or by the Ministry of Health, for anything done in the course of that employment. 25

Compare: 1992 No 46 s 134

*Reporting on operation of Act***211 Annual report on implementation of Act**

- (1) The Director must publish a report annually on the implementation of this Act.
- (2) The report must— 30
- (a) include the information prescribed by regulations; and
 - (b) be published on an internet site that is accessible to the public free of charge.

212 Director-General must review Act every 5 years

- (1) The Director-General must conduct a review of the policy and operation of this Act within 5 years ~~of after~~ the commencement of this section, and afterwards at intervals of no longer than 5 years ~~5-yearly intervals~~. 35

- (2) A review under this section must include a review of progress towards the reduction and elimination of seclusion.

213 Minister to establish advisory committee

- (1) The Minister must, within 6 months of the commencement of this section, establish an advisory committee to advise on the operation of this Act. 5
- (2) When appointing members of the advisory committee, the Minister must be satisfied that the membership of the committee has, collectively,—
- (a) lived experience of being subject to compulsory mental health care; and
- (b) knowledge of tikanga and mātauranga Māori.
- (3) The advisory committee must be treated as being established under section 87 of the Pae Ora (Healthy Futures) Act 2022 and sections 87 and 88 of that Act apply with all necessary modifications. 10

Miscellaneous provisions

214 Application of other Acts

Except as expressly provided in this Act, nothing in this Act limits or affects in any way the provisions of any other Act. 15

Compare: 1992 No 46 s 136

215 Use of audiovisual links

- (1) This section applies if a person other than a Judge or a member of a Mental Health Review Tribunal or the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal (**person A**) performs a function or exercises a power under this Act that requires access to, or the presence of, 1 or more other persons (**person B**). 20
- (2) Person A may use an audiovisual link to access person B to exercise a power under this Act if ~~person A considers—~~ 25
- (a) ~~that~~ it is not practicable for person B to be physically present; and
- (aa) person A has considered the views of person B on the use of an audiovisual link; and
- (b) ~~that~~ the use of an audiovisual link is appropriate in the circumstances.
- (3) Person A must apply any relevant guidelines and standards for compulsory care issued by the Director-General under **section 204** when deciding whether— 30
- (a) it is ~~not~~ practicable for person B to be physically present; and
- (b) the use of an audiovisual link is appropriate in the circumstances.
- (4) If a mental health practitioner uses an audiovisual link under **subsection (2)**, 35
- (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 Director of Area Mental Health Services as soon as practicable after the use of the link. 5
- 216 ~~Examination by Use of audiovisual link by Judge or member of tribunal~~**
- (1) ~~This section applies if a Judge, any person directed by a Judge, or a member of a Mental Health Review Tribunal or the Forensic Patient Review Tribunal is required to examine a person under this Act.~~
- (2) ~~If the Judge or member of a Mental Health Review Tribunal or the Forensic Patient Review Tribunal considers that it is not practicable for the person to be physically present for an examination, the Judge, a person directed by a Judge, or a member of a Mental Health Review Tribunal or the Forensic Patient Review Tribunal may use an audiovisual link to examine the person under this Act.~~ 10
- (1) A Judge or a member of a Mental Health Review Tribunal or the Forensic Mental Health Review Tribunal may use an audiovisual link to examine a person under compulsory care if—
- (a) it is not practicable for the person to be physically present for an examination; and 20
- (b) they have considered the views of the person on the use of the audiovisual link.
- (2) A Judge may determine that all or any participants may appear at a hearing by audiovisual link if—
- (a) it is not practicable for the participant or participants to be physically present for the hearing; and 25
- (b) they have taken into account—
- (i) the views of the person under compulsory care on the use of an audiovisual link; and
- (ii) the potential impact of the use of the technology on the effective maintenance of the rights of the person under **section 95**, and on the right to assess the credibility of witnesses and the reliability of evidence presented to the court. 30
- (2A) In this section,—
- audiovisual link** means facilities that enable both audio and visual communication,— 35
- (a) in relation to an examination of a person under compulsory care, with that person:
- (b) in relation to a hearing, between all participants

participant means any of the following persons in a hearing:

- (a) a party:
 - (b) the person under compulsory care:
 - (c) counsel:
 - (d) a witness: 5
 - (e) the presiding Judge.
- (3) To avoid doubt, an examination may not be carried out under this section by audio link.

217 **Transfer of ~~patients~~ persons under compulsory care**

- (1) ~~The Director may direct that any patient other than a forensic patient be transferred from any service in which the patient is detained to any other service specified in the direction, and may from time to time vary any such direction (see **section 111** for the transfer of forensic patients).~~ 10
- (1) The Director may—
- (a) direct that any person under compulsory care other than a person under forensic compulsory care be transferred from any service in which that person is detained to any other service specified in the direction (see **section 111** for the transfer of persons under forensic compulsory care); and 15
 - (b) vary the direction. 20
- (2) A Director of Area Mental Health Services must comply with any direction given under **subsection (1)** at the time or within the period stated in the direction or, if no such time or period is so stated, as soon as practicable within 14 days after the date of the direction.
- (3) However, the person in charge of any service (not being a secure mental health facility)— 25
- (a) may arrange with the person in charge of any other service (not being a secure mental health facility) for the transfer of any patient person under compulsory care other than a forensic patient person under forensic compulsory care or a restricted patient person on a restricted order to that other service; and 30
 - (b) may carry out the transfer in accordance with that arrangement.
- (4) A direction given under **subsection (1)** or an arrangement made under **subsection (3)** is sufficient authority for the transfer of the patient person under compulsory care and for the patient the person to be received and detained by the service to which it is directed or arranged that they be transferred. 35
- (5) ~~A direction for the transfer of a patient under this section must be complied with as soon as practicable after the date of the direction, and in all cases within 14 days after that date.~~

- (6) However, if the ~~patient~~ person under compulsory care is not in a fit state to be removed within ~~that period~~ the period in **subsection (2)**, the person in charge of the service in which the ~~patient~~ person under compulsory care is detained must—
- (a) provide the Director with a record to that effect; and 5
 - (b) transfer the ~~patient~~ person under compulsory care within 14 days after ~~the patient~~ the person has become fit to be removed.
- (6A) If the person under compulsory care to be transferred under this section is under the age of 18 years,—
- (a) that person or a member of their support network may request the Director of Area Mental Health Services to permit a support person to accompany the person for the duration of the transfer; and 10
 - (b) the request may not be unreasonably denied.
- (7) The transfer of a ~~patient~~ person under compulsory care under this section is not completed until ~~the patient~~ the person is received into the service to which ~~the patient~~ the person is transferred, and the responsibility for ~~the patient's~~ the person's care and control must be determined accordingly. 15
- (8) When a ~~patient~~ person under compulsory care is transferred from one service to another, certified true copies of the following documents must be delivered to the person in charge of the service to which the ~~patient~~ person under compulsory care is transferred: 20
- (a) the mental health care order;
 - (b) the record of assessment;
 - (c) the application that accompanied the mental health care order, or that accompanied any other instrument of authority under which ~~the patient~~ the person was admitted or detained: 25
 - (ca) the person's care plan;
 - (d) sufficient clinical records of the ~~patient~~ person under compulsory care to provide an adequate summary of the clinical condition of ~~the patient~~ the person immediately before ~~the patient's~~ the person's transfer. 30
- (9) The mental health care order or other instrument of authority remains in force as if ~~the patient~~ the person under compulsory care had been ordered to be received in the service to which ~~the patient~~ the person is transferred.

Compare: 1992 No 46 s 127

218 Notice of death 35

If a responsible practitioner becomes aware of the death of a ~~patient~~ person under compulsory care (whether within or outside the hospital), they must—

- (a) immediately notify a constable; and

- (b) notify the ~~patient's~~ person's nominated person, ~~principal caregiver~~ primary support person, or next of kin as soon as practicable; and
- (c) within 14 days after the death, notify the Director of—
 - (i) the death; and
 - (ii) the apparent cause of death; and
 - (iii) any other circumstances relevant to the death.

5

Compare: 1992 No 46 s 132

219 Removal from New Zealand

- (1) The Minister may, if the Minister is satisfied, having considered the advice of the Director under **subsection (1A)**, that ~~any patient who is subject to a mental health care order would benefit from the removal~~ it is appropriate for a person under compulsory care to be removed from New Zealand,—
 - (a) by warrant, authorise and direct the removal of the ~~patient~~ person to any place outside New Zealand; and
 - (b) make an order concerning the ~~patient's~~ person's custody pending their removal.
- (1A) The Director must advise the Minister on the following:
 - (a) the will and preferences of the person:
 - (b) the views of the person's support network:
 - (c) the care that the person will receive once removed from New Zealand:
 - (d) any other matters that the Director considers relevant.
- (2) The Minister may,—
 - (a) as a condition of issuing the warrant, direct that sufficient security be given, in any manner that the Minister thinks fit, for the safe custody and maintenance of the ~~patient~~ person after their removal from New Zealand; and
 - (b) give directions for the payment by or on behalf of the ~~patient~~ person or out of the ~~patient's~~ person's estate of any expenses incidental to their removal from New Zealand; and
 - (c) direct any person who is, by virtue of a property order made under Part 3 of the Protection of Personal and Property Rights Act 1988, the manager of any property belonging to the ~~patient~~ person under compulsory care to pay or transfer any property to a person or persons in the country to which the ~~patient~~ person under compulsory care is being removed, or to deal with the property in any other manner; that the Minister decides.
- (3) ~~The Minister may exercise the powers under this section, with the agreement of the Minister of the Crown who is responsible for the Department of Corrections in each case, in respect of any forensic patient.~~

- (4) A person removed from a hospital under the authority of this section must be treated as having been released from compulsory care status.

Compare: 1992 No 46 s 128

Repeals and amendments

220 Repeal of Mental Health (Compulsory Assessment and Treatment) Act 1992 5

The Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46) is repealed.

221 Consequential amendments and revocations

- (1) Amend the Acts specified in **Part 1 of Schedule 2** as set out in that Part. 10
- (2) Amend the secondary legislation specified in **Part 2 of Schedule 2** as set out in that Part.
- (3) The secondary legislation specified in **Part 3 of Schedule 2** is revoked.

Schedule 1

Transitional, savings, and related provisions

s 10

Part 1

Provisions relating to this Act as enacted 5

- 1 Interpretation**
- In this Part, **commencement date** means the date on which this Act comes into force under **section 2**.
- 2 Person subject to compulsory treatment order now subject to mental health care order 10**
- (1) A person who, immediately before the commencement date, was subject to a compulsory treatment order that is ~~an inpatient order~~ a hospital care order under the Mental Health (Compulsory Assessment and Treatment) Act 1992—
- (a) is subject to a mental health care order that is ~~an inpatient care order~~ a hospital care order under this Act, which commences on the commencement date; and 15
- (b) must receive a care plan review and a status review within 3 months of the commencement date.
- (2) A person who, immediately before the commencement date, was subject to a compulsory treatment order that is a community treatment order under the Mental Health (Compulsory Assessment and Treatment) Act 1992— 20
- (a) is subject to a mental health care order that is a community care order under this Act, which commences on the commencement date; and
- (b) must receive a care plan review and a status review within 3 months of the commencement date. 25
- 3 Person required to undergo assessment now required to undergo second assessment**
- A person who, immediately before the commencement date, was required to undergo assessment under section 11 or 13 of the Mental Health (Compulsory Assessment and Treatment) Act 1992 and had not undergone that assessment is required to undergo second assessment under **section 62** of this Act. 30
- 4 Duly authorised officers treated as authorised persons**
- A person who, immediately before the commencement date, was a duly authorised officer as defined in section 2(1) of the Mental Health (Compulsory Assessment and Treatment) Act 1992 must be treated as an authorised person for the purposes of this Act. 35

*Amendments to Mental Health (Compulsory Assessment and Treatment) Act
1992*

5 **Principal Act**

Clause 6 amends the Mental Health (Compulsory Assessment and Treatment) Act 1992.

5

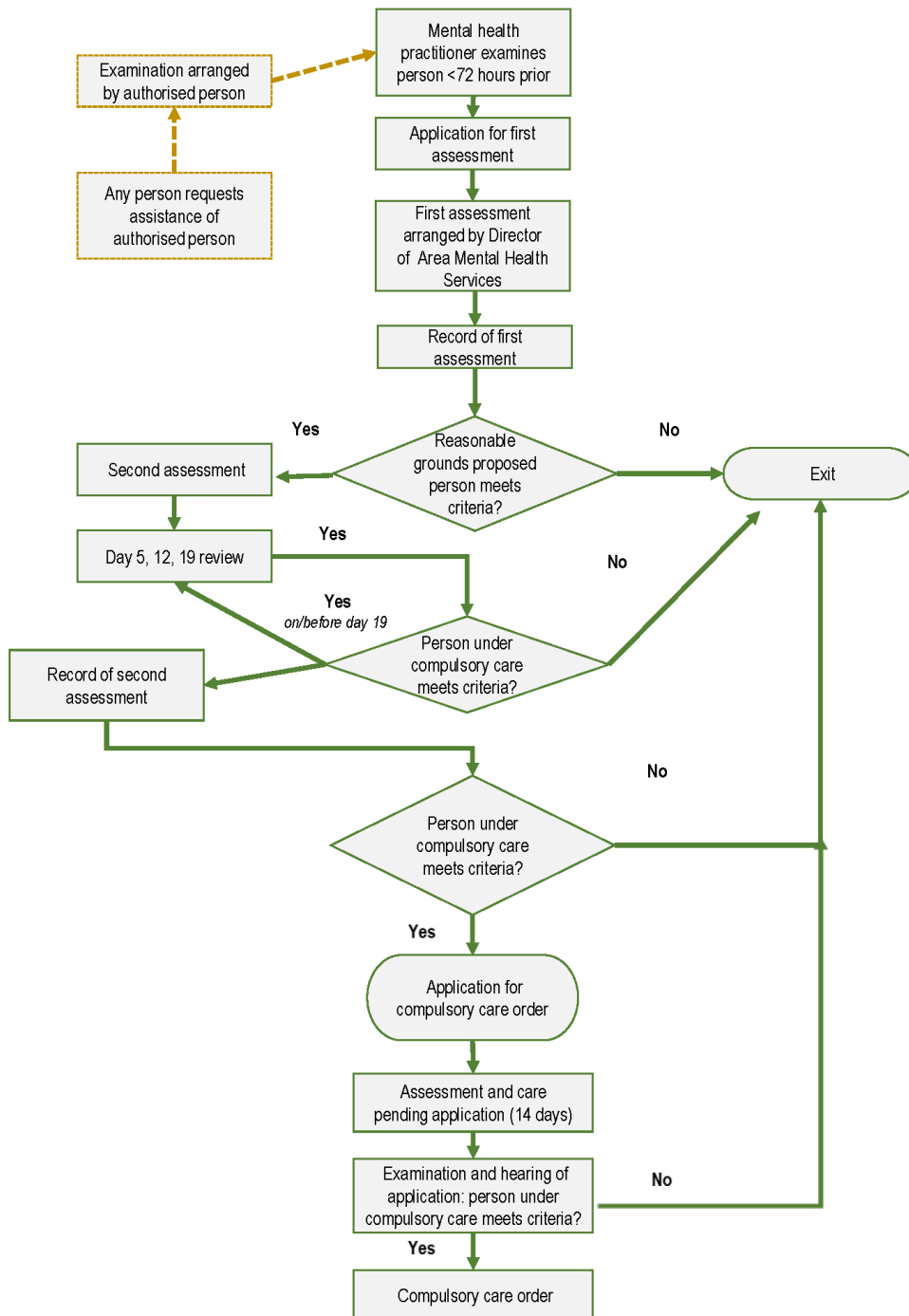
6 **Section 34D amended (Court may dispense with examination and hearing)**

(1) In section 34D(2)(a), replace “solicitor” with “lawyer”.

(2) In section 34D(3), replace “solicitor” with “lawyer”.

Schedule 1A
Process steps from application for first assessment to issue of mental health care order

s 54(2)



Schedule 2

Consequential amendments and revocations

s 221

Part 1

Amendments to Acts

5

Armed Forces Discipline Act 1971 (1971 No 53)

Replace section 175(2)(i) with:

- (i) for the removal of a person serving a sentence of imprisonment or detention from the place where they are imprisoned or detained to a hospital if they meet the compulsory care criteria while serving the sentence:

10

In section 187(1), repeal the definitions of **compulsory treatment order** and **mentally disordered**.

In section 187(1), definition of **patient**, replace “compulsory treatment order” with “mental health care order”.

In section 187(1), insert in their appropriate alphabetical order:

15

compulsory care criteria has the same meaning as in **section 7** of the Mental Health Act **2024**

~~**forensic patient** has the same meaning as in **section 4(1)** of the Mental Health Act **2024**~~

mental health care order means a mental health care order made under **Part 3** of the Mental Health Act **2024**

20

person under forensic compulsory care has the same meaning as in **section 4(1)** of the Mental Health Act **2024**

Replace section 187(2) with:

- (2) If any person is ordered or directed under this Act to be detained as a ~~forensic patient~~ person under forensic compulsory care or as a patient, the Mental Health Act **2024** applies to that person, subject to section 192 of this Act, as if that person were a ~~forensic patient~~ person under forensic compulsory care or a ~~patient~~ person under compulsory care within the meaning of that Act.

25

In section 191(1), replace “special patient” with “~~forensic patient~~ person under forensic compulsory care”.

30

Replace section 191(4A) with:

- (4A) An order made by the Court under subsection (2)(a) is treated for the purposes of the Mental Health Act **2024** as a mental health care order, and that Act applies accordingly.

35

In the heading to section 192, replace “**special patient**” with “~~**forensic patient**~~ **person under forensic compulsory care**”.

Armed Forces Discipline Act 1971 (1971 No 53)—continued

In section 192(1), replace “**special patient**” with “**forensic patient person under forensic compulsory care**”.

In section 192(2), replace “sections 84 and 128 of the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “**sections 143 and 219** of the Mental Health Act **2024**”.

Replace section 192(4) and (5) with:

- (4) If, at any time before the expiry of the maximum period of detention as a ~~forensic patient~~ person under forensic compulsory care, a record of status review given by the responsible practitioner under **section 107** of the Mental Health Act **2024**, or a record of tribunal review given by the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal under **section 138** of that Act, states that the person is no longer unfit to stand trial, the Attorney-General must direct that the person be placed in service custody for trial by the Court Martial or direct that the person be held as a patient.
- (5) If, at any time before the expiry of the maximum period of detention as a ~~forensic patient~~ person under forensic compulsory care, a record of status review given by the responsible practitioner under **section 107** of the Mental Health Act **2024**, or a record of tribunal review given by the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal under **section 138** of that Act, states that it is no longer necessary that the person, though still unfit to stand trial, should be subject to the order, the responsible Minister under the Mental Health Act **2024**, acting with the agreement of the Attorney-General, may direct that the person be held as a patient.

In section 192(6), replace “special patient” with “**forensic patient person under forensic compulsory care**”.

Replace section 192(6)(a) with:

- (a) if a record of status review given by the responsible practitioner under **section 107** of the Mental Health Act **2024**, or a record of tribunal review given by the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal under **section 138** of that Act, states that the defendant is no longer unfit to stand trial, the Attorney-General must direct that the person be placed in service custody for trial by the Court Martial or direct that the person be held as a patient; or

In section 192(6)(b), replace “certificate” with “record”.

Replace section 192(6A) with:

- (6A) A direction that the person be held as a patient must be treated for the purposes of the Mental Health Act **2024** as a mental health care order, and that Act applies accordingly.

In the heading to section 193, replace “**special patient**” with “**forensic patient person under forensic compulsory care**”.

Armed Forces Discipline Act 1971 (1971 No 53)—continued

Replace section 193(2) and (3) with:

- (2) If, at any time while the order continues in force, a record of status review given by the responsible practitioner under **section 107** of the Mental Health Act **2024**, or a record of tribunal review given by a Mental Health Review Tribunal under **section 138** of that Act, states that the person’s mental condition no longer requires, either in the person’s own interest or for the safety of any person, class of person, or the public, that they should be subject to the order, the responsible Minister under the Mental Health Act **2024** may direct that the person be held as a patient, or that the person be discharged. 5
- (3) A direction that the person be held as a patient must be treated for the purposes of the Mental Health Act **2024** as a mental health care order, and that Act applies accordingly. 10

In section 194(1)(a), replace “a special patient under the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “a forensic patient-person under forensic compulsory care under the Mental Health Act **2024**”. 15

In section 194(1)(b), replace “a patient under the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “a person under compulsory care under the Mental Health Act 2024”.

In section 194(1A)(a), replace “is mentally disordered” with “meets the compulsory care criteria in the Mental Health Act **2024**”. 20

Replace section 194(2A) with:

- (2A) An order made under subsection (1)(b) must be treated for the purposes of the Mental Health Act **2024** as a mental health care order, and that Act applies accordingly. 25

Replace section 196(1) and (2) with: 25

- (1) Despite anything to the contrary in the Mental Health Act **2024**, every service penal establishment in New Zealand must be treated as an institution for the purposes of **section 105** of that Act.
- (2) If a person under sentence of imprisonment or detention under this Act who is serving their sentence outside New Zealand meets the compulsory care criteria, then, without prejudice to any other provision for dealing with them, the Attorney-General may, on a record to that effect by a health assessor, order their removal to a hospital in New Zealand and that order has effect for the purposes of the Mental Health Act **2024** as if it were a mental health care order under that Act. 30 35

In section 198M(1) and (2)(f), replace “a special patient within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “a forensic patient-person under forensic compulsory care under the Mental Health Act **2024**”.

Armed Forces Discipline Act 1971 (1971 No 53)—continued

In section 198M(4), replace “section 31, 50, or 52 of the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “**section 89, 114, or 122** of the Mental Health Act **2024**”.

Arms Act 1983 (1983 No 44)

In section 2(1), definition of **health practitioner**, replace “a duly authorised officer under the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “an authorised person under the Mental Health Act **2024**”. 5

Auckland War Memorial Museum Act 1996 (1996 No 4 (L))

Replace section 6(1)(f) with:

- (f) becomes subject to a mental health care order made under **Part 3** of the Mental Health Act **2024** or becomes a forensic patient person under forensic compulsory care as defined in **section 4(1)** of that Act; or 10

Child Protection (Child Sex Offender Government Agency Registration) Act 2016 (2016 No 42)

In section 4, definition of **custody**, paragraph (b), replace “section 45 or 46 of the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “**section 105 or 106** of the Mental Health Act **2024**”. 15

Christchurch District Drainage Act 1951 (1951 No 21 (L))

Replace section 8A(c) with:

- (c) any person who is detained in a hospital under the Mental Health Act **2024**. 20

Replace section 12(1)(c) with:

- (c) is detained in a hospital under the Mental Health Act **2024**; or

Contract and Commercial Law Act 2017 (2017 No 5)

In Schedule 5, Part 4, paragraph (u), replace “Mental Health (Compulsory Assessment and Treatment) Act 1992” with “Mental Health Act **2024**”. 25

Coroners Act 2006 (2006 No 38)

In section 9, definition of **death in official custody or care**, paragraph (d), replace “a patient within the meaning of section 2(1) of the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “a person under compulsory care within the meaning of **section 4(1)** of the Mental Health Act **2024**”. 30

In section 9, definition of **other investigating authority**, paragraph (d), replace “section 2(1) of the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “**section 4(1)** of the Mental Health Act **2024**”.

Corrections Act 2004 (2004 No 50)

In section 3(1), definition of **escort duty**, paragraph (a)(v), replace “Mental Health (Compulsory Assessment and Treatment) Act 1992” with “Mental Health Act **2024**”.

In section 199G(1)(g), replace “section 45 of the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “**section 105** of the Mental Health Act **2024**”. 5

Court Martial Appeals Act 1953 (1953 No 100)

Replace section 9F(3) with:

- (3) If an appellant is ordered under this section to be detained as a ~~forensic patient person under forensic compulsory care~~, or as a patient, the Mental Health Act **2024** applies to them as if they were a ~~forensic patient person under forensic compulsory care~~ or a ~~patient, as the case may be, person under compulsory care~~ within the meaning of that Act. 10

Crimes Act 1961 (1961 No 43)

In section 122(a) and (b), replace “special patient under the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “~~forensic patient person under forensic compulsory care~~ under the Mental Health Act **2024**”. 15

In section 122(a) and (b), replace “within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “within the meaning of the Mental Health Act **2024**”.

In section 178(4)(a)(i) and (b), replace “Mental Health (Compulsory Assessment and Treatment) Act 1992” with “Mental Health Act **2024**”. 20

In section 178(5), replace “special patient under the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “~~forensic patient person under forensic compulsory care~~ under the Mental Health Act **2024**”.

Criminal Investigations (Bodily Samples) Act 1995 (1995 No 55) 25

In section 4A(1)(c)(i), replace “section 46 of the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “**section 106** of the Mental Health Act **2024**”.

In section 4A(1)(c)(ii), replace “section 45(2) of the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “**section 105(2) or (3)** of the Mental Health Act **2024**”. 30

In section 46(1)(d), replace “Mental Health (Compulsory Assessment and Treatment) Act 1992” with “Mental Health Act **2024**”.

Criminal Procedure Act 2011 (2011 No 81)

In section 169(3)(b), replace “section 2(1) of the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “**section 4(1)** of the Mental Health Act **2024**”. 35

Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115)

In section 4(1), insert in their appropriate alphabetical order:

Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115)—*continued*

compulsory care criteria has the same meaning as in **section 7** of the Mental Health Act **2024**

mental health care order has the same meaning as in **section 4(1)** of the Mental Health Act **2024**

In section 4(1), repeal the definition of **compulsory treatment order**. 5

In section 4(1), replace the definition of **hospital** with:

hospital has the same meaning as in **section 4(1)** of the Mental Health Act **2024**

In section 4(1), replace the definition of **victim** with:

victim has the same meaning as in **section 4(1)** of the Mental Health Act **2024**. 10

In the heading to section 24, replace “**special patient**” with “**forensic patient person under forensic compulsory care**”.

Replace section 24(2)(a) with:

(a) in a hospital as a **forensic patient person under forensic compulsory care** under the Mental Health Act **2024**; or 15

In section 25(1)(a), replace “patient under the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “person under compulsory care under the Mental Health Act 2024”.

In section 25(2), replace “is mentally disordered” with “meets the compulsory care criteria in the Mental Health Act **2024**”. 20

In section 26(1), replace “as a compulsory treatment order for the purposes of the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “as a mental health care order for the purposes of the Mental Health Act **2024**”.

In section 28(1) and (3), replace “patient” with “person under compulsory care”. 25

In the cross-heading above section 30, replace “*special patients*” with “*forensic patient persons under forensic compulsory care*”.

In the heading to section 30, replace “**special patient**” with “**forensic patient person under forensic compulsory care**”.

In section 30(1), replace “special patient” with “**forensic patient person under forensic compulsory care**”. 30

In section 30(3)(b), replace “patient” with “person under compulsory care”.

In section 30(4), replace “sections 84 and 128 of the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “**sections 143 and 219** of the Mental Health Act **2024**”. 35

Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115)—*continued*

In the heading to section 31, replace “**special patient to patient**” with “**forensic patient—person under forensic compulsory care to person under compulsory care**”.

In section 31(1) and (4)(a), replace “special patient” with “forensic patient—person under forensic compulsory care”. 5

In section 31(2), replace “the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “the Mental Health Act **2024**”.

In section 31(2)(b), replace “patient” with “person under compulsory care”.

In section 31(3), delete “the Mental Health (Compulsory Assessment and Treatment) Act 1992 or”. 10

In section 31(3)(b), delete “patient or, as the case requires, as a”.

After section 31(3), insert:

(3AAA) If, at any time before the expiry of the relevant maximum period specified in section 30, a review under the Mental Health Act **2024** finds that although the defendant is still unfit to stand trial, the continued detention of the defendant under section 24 is no longer necessary to safeguard the interests specified in subsection (3A), the Attorney-General must— 15

(a) consider whether, in the Attorney-General’s opinion, the continued detention of the defendant under that section is necessary to safeguard those interests; and 20

(b) direct that the defendant be held as a person under compulsory care ~~patient or, as the case requires, as a care recipient~~ if, in the Attorney-General’s opinion, that detention is no longer necessary to safeguard those interests. 25

In section 31(3B), replace “subsection (3)(a), the Minister”, with “subsection (3)(a) or **(3AAA)(a)**, the Minister or the Attorney-General”. 25

In section 31(4), replace “as a patient” with “as a person under compulsory care”.

In section 31(5)(a), replace “patient is to be regarded as a compulsory treatment order for the purposes of the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “person under compulsory care is to be regarded as a mental health care order for the purposes of the Mental Health Act **2024**”. 30

In section 32, replace “patient” with “person under compulsory care”.

In the heading to section 33, replace “**special patient**” with “**forensic patient—person under forensic compulsory care**”.

In section 33(1), replace “special patient” with “forensic patient—person under forensic compulsory care”. 35

In section 33(2)(a), replace “patient” with “person under compulsory care”.

Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115)—*continued*

In section 33(3), delete “the Mental Health (Compulsory Assessment and Treatment) Act 1992 or”.

In section 33(3)(b)(i), delete “a patient or, as the case requires, as”.

After section 33(3), insert:

- (3A) If, at any time while the order continues in force, there is a review of a finding under **section 107(9)** of the Mental Health Act **2024** or a review under **section 138** of that Act,—
- (a) ~~the Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal (established under **section 174** of that Act) must record its findings in a record of tribunal review, stating whether, in its opinion, ~~the patient’s person’s~~ condition still requires, to safeguard the interests specified in subsection (4), that they should be subject to the order of detention as a ~~forensic patient person~~ under forensic compulsory care; and
- (b) if the record of tribunal review finding is that the defendant’s continued detention under the order is no longer necessary to safeguard the interests specified in subsection (4), the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal must direct—
- (i) that the defendant be held as a person under compulsory care ~~patient or, as the case requires, as a care recipient~~; or
- (ii) that the defendant be discharged.

Replace section 33(4A) with:

- (4A) In reaching a decision under subsection (3)(a) or **(3A)(a)**, the Minister or the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal must have regard to any report from the Director of Mental Health made under section 33A.

In section 33(5)(a), replace “patient is to be regarded as a compulsory treatment order for the purposes of the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “person under compulsory care is to be regarded as a mental health care order for the purposes of the Mental Health Act **2024**”.

In section 33A, after “Minister of Health”, insert “, the Attorney-General, or the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal”.

In section 33B(1), after “Minister of Health”, insert “, the Attorney-General, or the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal”.

In section 33B(2)(a), after “Minister of Health”, insert “, the Attorney-General, or the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal”.

In section 33B(2)(b)(i), replace “section 31(3) or 33(3)” with “section 31(3) or **(3AAA)** or 33(3) or **(3A)**”.

Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115)—*continued*

In section 33C(2), replace “section 31(3) or 33(3)” with “section 31(3) or **(3AAA)** or 33(3) or **(3A)**”.

In section 33C(3)(b), replace “section 31(3) or 33(3)” with “section 31(3) or **(3AAA)** or 33(3) or **(3A)**”.

In section 33D(2), replace “section 31(3) or 33(3)” with “section 31(3) or **(3AAA)** or 33(3) or **(3A)**”.

In section 33D(3)(a), after “Minister of Health”, insert “, the Attorney-General, or the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal”.

In section 33E(2)(a), after “Minister of Health”, insert “, the Attorney-General, or the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal”.

In section 33E(2)(b), replace “Minister has reached under section 31(3) or 33(3)”, with “Minister, the Attorney-General, or the ~~Forensic Patient Review Tribunal~~ Forensic Mental Health Review Tribunal has reached under section 31(3) or **(3AAA)** or 33(3) or **(3A)**”.

Replace section 34(1) with:

(1) If the court is satisfied of the matters specified in subsection (2), the court may deal with an offender who is convicted of an imprisonable offence—

(a) by sentencing the offender to a term of imprisonment and also ordering that the offender—

(i) be detained in a hospital as a ~~forensic patient person under forensic compulsory care~~ under the Mental Health Act 2024; or

(ii) be detained in a secure facility as a ~~forensic special care recipient~~ under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003; or

(b) ~~instead of passing sentence, by ordering that the offender be treated as a patient under the Mental Health Act 2024.~~

(b) instead of passing sentence, by ordering that the offender—

(i) be treated as a person under compulsory care under the Mental Health Act 2024; or

(ii) be cared for as a care recipient under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003.

In section 34(3), replace “is mentally disordered” with “meets the compulsory care criteria”.

In the heading to section 36, replace “patients” with “persons under compulsory care”.

Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115)—*continued*

In section 36, replace “as a compulsory treatment order for the purposes of the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “as a mental health care order for the purposes of the Mental Health Act **2024**”.

In section 36, replace “community treatment order” with “community care order”.

In section 36, replace “an inpatient order” with “a hospital care order”. 5

Crown Minerals Act 1991 (1991 No 70)

In section 79(1)(c), replace “a mentally disordered person” with “a person subject to ~~an inpatient care order~~ a hospital care order under **Part 3** of the Mental Health Act **2024**”.

Electoral Act 1993 (1993 No 87) 10

In section 55(1)(i), replace “becomes mentally disordered” with “meets the compulsory care criteria”.

In the heading to section 56, replace “**becoming mentally disordered**” with “**meeting compulsory care criteria**”.

In section 56(1), replace “compulsory treatment order made under Part 2 of the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “mental health care order made under **Part 3** of the Mental Health Act **2024**”. 15

In section 56(2), replace “an inpatient order made under Part 2 of the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “~~an inpatient care order~~ a hospital care order made under **Part 3** of the Mental Health Act **2024**”. 20

In section 56(3), replace “is mentally disordered” with “meets the compulsory care criteria in **section 7** of the Mental Health Act **2024**”.

In section 56(4), replace “is mentally disordered” with “meets the compulsory care criteria in **section 7** of the Mental Health Act **2024**”.

In section 56(4), replace “is still mentally disordered” with “still meets the compulsory care criteria in that Act”. 25

In section 80(1)(c), replace “under the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “under the Mental Health Act **2024**”.

In section 80(1)(c)(iii), replace “a compulsory treatment order made following an application under section 45(2) of the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “a mental health care order made following an application under **section 105(2) or (3)** of the Mental Health Act **2024**”. 30

In section 80(1)(c)(iv), replace “section 46 of the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “**section 106** of the Mental Health Act **2024**”.

In section 80(2), replace “compulsory treatment order” with “mental health care order”. 35

Employment Relations Act 2000 (2000 No 24)

In Schedule 1A, paragraph (b), replace “Mental Health (Compulsory Assessment and Treatment) Act 1992” with “Mental Health Act **2024**”.

End of Life Choice Act 2019 (2019 No 67)

In section 5(2)(a), delete “mental disorder or”.

5

Energy Companies Act 1992 (1992 No 56)

Replace section 6(1)(a) with:

- (a) a person who has seriously impaired mental health within the meaning of the Mental Health Act **2024**:

Extradition Act 1999 (1999 No 55)

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In section 2(1), definition of **hospital**, replace “section 2(1) of the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “**section 4(1)** of the Mental Health Act **2024**”.

Replace section 7(f) with:

- (f) the person is detained in a hospital as a ~~forensic patient~~ person under forensic compulsory care within the meaning of that term in **section 4(1)** of the Mental Health Act **2024**; or

15

Family Court Act 1980 (1980 No 161)

Replace section 11D(e) with:

- (e) a person who is a ~~patient or proposed patient~~ person under compulsory care or a proposed person under compulsory care within the meaning of the Mental Health Act **2024**:

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Family Proceedings Act 1980 (1980 No 94)

In the heading to section 96, replace “**mentally disordered person**” with “**person subject to inpatient care order** ~~hospital care order~~”.

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In section 96, replace “receiving care and treatment in a hospital as defined in section 2 of the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “subject to an ~~inpatient care order~~ a hospital care order under **Part 3** of the Mental Health Act **2024**”.

Greytown District Trust Lands Act 1979 (1979 No 4 (L))

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Replace section 8(c) with:

- (c) any person who is the subject of a mental health care order made under **Part 3** of the Mental Health Act **2024** or who is a ~~forensic patient~~ person under forensic compulsory care as defined in **section 4(1)** of that Act.

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Replace section 9(1)(c) with:

Greytown District Trust Lands Act 1979 (1979 No 4 (L))—continued

- (c) becomes subject to a mental health care order made under **Part 3** of the Mental Health Act **2024** or becomes a ~~forensic patient person~~ person under forensic compulsory care as defined in **section 4(1)** of that Act; or

Health Act 1956 (1956 No 65)

In section 120A(3) and (4), replace “Mental Health (Compulsory Assessment and Treatment) Act 1992” with “Mental Health Act **2024**”. 5

Health and Disability Commissioner Act 1994 (1994 No 88)

In section 3(b), replace “Mental Health (Compulsory Assessment and Treatment) Act 1992” with “Mental Health Act **2024**”.

In section 57(4), replace “a mentally disordered person within the meaning of section 2 of the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “a person who meets the compulsory care criteria in **section 7** of the Mental Health Act **2024**”. 10

Health and Disability Services (Safety) Act 2001 (2001 No 93)

In section 61, replace “Mental Health (Compulsory Assessment and Treatment) Act 1992” with “Mental Health Act **2024**”. 15

Health Practitioners Competence Assurance Act 2003 (2003 No 48)

In section 53(1), definition of **investigation**, paragraph (c), replace “section 95 of the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “**section 152** of the Mental Health Act **2024**”. 20

Replace section 67(b)(x) with:

- (x) the Mental Health Act **2024**; or

Replace section 100(2)(a)(x) with:

- (x) the Mental Health Act **2024**; or

Human Rights Act 1993 (1993 No 82) 25

In section 92N(2), replace “a mentally disordered person within the meaning of section 2(1) of the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “a person who meets the compulsory care criteria in **section 7** of the Mental Health Act **2024**”.

Human Tissue Act 2008 (2008 No 28) 30

In section 12(2)(b), replace “section 2(1) of the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “**section 4(1)** of the Mental Health Act **2024**”.

In section 12(2)(b)(i), replace “patient” with “person under compulsory care”.

Independent Police Conduct Authority Act 1988 (1988 No 2)

In section 14(5)(b), replace “patient of any hospital within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “person under compulsory care in any hospital within the meaning of the Mental Health Act 2024”.

Industrial and Provident Societies Act 1908 (1908 No 81)

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In section 9(h), replace “a mentally disordered person” with “a person subject to a mental health care order under **Part 3** of the Mental Health Act **2024**”.

Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 (2003 No 116)

In section 4(1)(b), replace “Mental Health (Compulsory Assessment and Treatment) Act 1992” with “Mental Health Act **2024**”. 10

In section 4(4), replace “or the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “or the Mental Health Act 2024” ~~in each place and replace “patients under the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “persons under compulsory care under the Mental Health Act 2024”.~~ 15

In section 5(1), replace the definition of **former special patient** with:

~~**former forensic patient person under forensic compulsory care**~~ 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 143(5)** of the Mental Health Act **2024**, has ceased to be a ~~forensic patient~~ person under forensic compulsory care within the meaning of the Mental Health Act **2024** but who, at the relevant time, continues, under that direction or order, to be a ~~patient person under compulsory care~~ under that Act 20

In section 5(1), repeal the definition of **mental disorder**.

In section 6(2)(f), replace “section 47A(5) of the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “**section 109(5)** of the Mental Health Act **2024**”. 25

In section 6(3)(d), replace “former special patient” with “~~former forensic patient person under forensic compulsory care~~”.

In section 8(1)(a), replace “has a mental disorder” with “meets the compulsory care criteria in **section 7** of the Mental Health Act **2024**”. 30

In section 15(d), replace “patient who, in accordance with section 47A of the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “person under compulsory care who, in accordance with **section 109** of the Mental Health Act 2024”.

In the Part 4 heading, replace “**former special patients**” with “~~former forensic patients~~ persons under forensic compulsory care”. 35

In Part 4, in the subpart 1 heading, replace “former special patients” with “~~former forensic patients~~ persons under forensic compulsory care”.

Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 (2003 No 116)—continued

In the heading to section 29, replace “**former special patient**” with “**former-forensic patient person under forensic compulsory care**”.

Replace section 29(2) with:

- (2) A Director of Area Mental Health Services under the Mental Health Act **2024** may apply to the co-ordinator to have a ~~former-forensic patient~~ person under forensic compulsory care assessed under this subpart, if there are reasonable grounds for believing that the ~~patient~~ person has an intellectual disability. 5

In section 35(1), replace “**former special patient**” with “**former-forensic patient person under forensic compulsory care**”.

In section 45(2) and (3), replace “**former special patient**” with “**former-forensic patient person under forensic compulsory care**”. 10

In section 117(1)(g), replace “**former special patient**” with “**former-forensic patient person under forensic compulsory care**”.

Replace section 136 with:

136 Application to persons meeting compulsory care criteria in Mental Health Act 2024 15

- (1) No compulsory care order may be made in respect of a person who is a ~~patient person under compulsory care~~ (other than a ~~former-forensic patient person under forensic compulsory care~~) or ~~proposed patient~~ a proposed person under compulsory care within the meaning of the Mental Health Act **2024**. 20
- (2) If a care manager has reason to believe that a care recipient may have developed seriously impaired mental health, the care manager must apply to have the care recipient assessed under **section 56** of that Act.
- (3) If a care recipient subject to a compulsory care order becomes a ~~proposed patient~~ proposed person under compulsory care within the meaning of the Mental Health Act **2024**,— 25
- (a) the care recipient’s mental health care order is suspended on the date of that occurrence; and
- (b) the care recipient’s care manager must keep a record of the date of the suspension and of the unexpired term of the care recipient’s compulsory care order. 30
- (4) A compulsory care order that is suspended in accordance with **subsection (3)(a)** is revived and continues to run from the date on which the care recipient ceases to be a ~~proposed patient~~ proposed person under compulsory care within the meaning of the Mental Health Act **2024** or is released from compulsory care under that Act. 35
- (5) If a special care recipient becomes subject to compulsory care under the Mental Health Act **2024**,—

Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 (2003 No 116)—*continued*

- (a) the special care recipient must be held as a ~~forensic patient person under forensic compulsory care~~ 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 their detention in a hospital under the Mental Health Act **2024**; and 5
- (c) any direction given during that period under section 31 or 33 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 that the special care recipient be held as a ~~patient person under compulsory care~~ 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. 10

In section 144(3) and (4), replace “Mental Health (Compulsory Assessment and Treatment) Act 1992” with “Mental Health Act **2024**”. 15

Land Act 1948 (1948 No 64)

In section 50A(7), definition of **member**, paragraph (c), replace “a mentally disordered person within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992, being a patient within the meaning of that Act” with “a ~~patient person under compulsory care~~ within the meaning of the Mental Health Act **2024**”. 20

Land Transfer Act 2017 (2017 No 30)

In section 5(1), definition of **intellectual or mental impairment**, replace paragraph (b) with: 25

- (b) meeting the compulsory care criteria in **section 7** of the Mental Health Act **2024**

Land Transport Act 1998 (1998 No 110)

In section 2(1), replace the definition of **responsible clinician** with:

responsible practitioner has the same meaning as it has in **section 4(1)** of the Mental Health Act **2024** 30

In the heading to section 19, replace “**Mental Health (Compulsory Assessment and Treatment) Act 1992**” with “**Mental Health Act 2024**”.

Replace section 19(1) with:

- (1) If a person who holds a driver licence becomes subject to a mental health care order that is ~~an inpatient care order a hospital care order~~ or becomes a ~~forensic~~ 35

Land Transport Act 1998 (1998 No 110)—continued

~~patient person under forensic compulsory care~~ under the Mental Health Act **2024**,—

- (a) the person in charge of the hospital to which the person is referred or at which the person is detained must notify the Director of Land Transport of the making of ~~an inpatient care order~~ a hospital care order or that the person is a ~~forensic patient person under forensic compulsory care~~ (as the case may be); and
- (b) the licence is suspended while the holder is subject to ~~an inpatient care order~~ a hospital care order or is a ~~forensic patient person under forensic compulsory care~~.

In section 19(4), replace “responsible clinician” with “responsible practitioner” in each place.

In section 19(6)(b), replace “a responsible clinician certifies in writing that, in the clinician’s opinion” with “a responsible practitioner certifies in writing that, in the practitioner’s opinion”.

Legal Services Act 2011 (2011 No 4)

In section 4(1), repeal the definition of **mentally disordered**.

~~In section 4(1), definition of **proposed patient**, replace “section 2A of the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “**section 4(1)** of the Mental Health Act **2024**”.~~

~~In section 4(1), repeal the definition of **proposed patient**.~~

In section 4(1), insert in its appropriate alphabetical order:

compulsory care criteria has the meaning given to it in **section 7** of the Mental Health Act **2024**

In section 4(1), definition of **specified application**, paragraph (b), replace “by a patient or proposed patient in respect of proceedings under the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “by a person under compulsory care or a proposed person under compulsory care in respect of proceedings under the Mental Health Act **2024**”.

In the heading to section 15, replace “**mentally disordered persons**” with “**persons who meet compulsory care criteria**”.

In section 15(2), (3), and (4), replace “is mentally disordered” with “meets the compulsory care criteria”.

In section 45(6), replace “is mentally disordered” with “meets the compulsory care criteria”.

In Schedule 2, replace the item relating to Mental Health (Compulsory Assessment and Treatment) Act 1992 with:

Mental Health Act **2024**

Limitation Act 2010 (2010 No 110)

In section 46, definition of **intellectual or mental impairment**, replace paragraph (b) with:

- (b) meeting the compulsory care criteria in **section 7** of the Mental Health Act **2024**

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Limited Partnerships Act 2008 (2008 No 1)

Replace section 90(2)(a) with:

- (a) who is subject to a mental health care order made under **Part 3** of the Mental Health Act **2024**; or

Masterton Trust Lands Act 2003 (2003 No 1 (L))

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Replace section 26(1)(c) and (d) with:

- (c) becomes subject to a mental health care order made under **Part 3** of the Mental Health Act **2024**; or
- (d) becomes a ~~forensic patient person under forensic compulsory care~~ or a ~~restricted patient person on a restricted order~~ within the meaning of the Mental Health Act **2024**; or

15

Museum of Transport and Technology Act 2000 (2000 No 1 (P))

Replace section 7(1)(g) with:

- (g) becomes subject to a mental health care order made under **Part 3** of the Mental Health Act **2024** or becomes a ~~forensic patient person under forensic compulsory care~~ as defined in **section 4(1)** of that Act; or

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New Zealand Institute of Chartered Accountants Act 1996 (1996 No 39)

In Schedule 1, clause 6(2), replace “mentally disordered” with “a person with seriously impaired mental health”.

New Zealand Superannuation and Retirement Income Act 2001 (2001 No 84)

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In section 19(1), replace “psychiatric security institution within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “secure mental health facility within the meaning of the Mental Health Act **2024**”.

Niue Act 1966 (1966 No 38)

In section 611(1), replace “Mental Health (Compulsory Assessment and Treatment) Act 1992” with “Mental Health Act **2024**”.

30

Ombudsmen Act 1975 (1975 No 9)

In section 16(2), replace “by any patient of any hospital within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “by any person under compulsory care in any hospital within the meaning of the Mental Health Act **2024**”.

35

Oranga Tamariki Act 1989 (1989 No 24)

In section 2(1), definition of **hospital**, replace “section 2(1) of the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “**section 4(1)** of the Mental Health Act **2024**”.

Parole Act 2002 (2002 No 10)

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In section 4(1), insert in its appropriate alphabetical order:

mental health care order has the same meaning as in **section 4(1)** of the Mental Health Act **2024**

In section 4(1), definition of **hospital**, replace “the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “**section 4(1)** of the Mental Health Act **2024**”.

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In section 10(1)(a), replace “section 45(2) of the Mental Health (Compulsory Assessment and Treatment) Act 1992 or under an arrangement under section 46 of that Act” with “**section 105(2) or (3)** of the Mental Health Act **2024** or under an arrangement under **section 106** of that Act”.

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In section 10(4), replace “section 48(3) of the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “**section 110(3)** of the Mental Health Act **2024**”.

In section 43(1)(e) and (6), replace “responsible clinician” with “responsible practitioner”.

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In section 91(2)(e), replace “section 45(2) of the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “**section 105(2) or (3)** of the Mental Health Act **2024**”.

In section 91(2)(f), replace “section 46 of the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “**section 106** of the Mental Health Act **2024**”.

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In section 107P(3), replace “compulsory treatment order” with “mental health care order”.

Pitcairn Trials Act 2002 (2002 No 83)

In section 4(1), repeal the definition of **Director of Mental Health**.

In section 4(1), definition of **hospital**, replace “section 2(1) of the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “**section 4(1)** of the Mental Health Act **2024**”.

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In section 61(1), replace “special patient (as defined in section 2(1) of the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “~~forensic patient~~ person under forensic compulsory care (as defined in **section 4(1)** of the Mental Health Act **2024**”.

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In sections 61(3), 66(3)(a) and (b), and 67(4), replace “special patient” with “~~forensic patient~~ person under forensic compulsory care”.

Privacy Act 2020 (2020 No 31)

In section 103(7), replace “a mentally disordered person within the meaning of section 2 of the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “a person who meets the compulsory care criteria in **section 7** of the Mental Health Act **2024**”.

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In Schedule 3, replace “special patients” with “~~forensic patients~~persons under forensic compulsory care” in each place.

In Schedule 3, item relating to Ministry of Health and Health New Zealand, replace “special patient” with “~~forensic patient~~person under forensic compulsory care”.

In Schedule 4, item relating to Medical details, replace “special patients under the Mental Health (Compulsory Assessment and Treatment) Act 1992 or any former Act and the hospitals at which those persons are or have been detained as special patients, or as committed patients, or as patients (within the meaning of that Act)” with “~~forensic patients~~persons under forensic compulsory care under the Mental Health Act **2024** or any former Act and the hospitals at which those persons are being or have been detained as ~~forensic patients~~persons under forensic compulsory care or patients ~~persons under compulsory care~~ (within the meaning of that Act)”.

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Protection of Personal and Property Rights Act 1988 (1988 No 4)

In section 10(1)(d), replace “a psychiatric hospital or a licensed institution under the Mental Health Act 1969” with “an institution at which a hospital service is provided, as defined in **section 4(1)** of the Mental Health Act **2024**”.

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In section 22(b), replace “becomes a special patient or a committed patient under the Mental Health Act 1969” with “becomes a ~~forensic patient~~person under forensic compulsory care or subject to an ~~inpatient care order~~ a hospital care order under **Part 3** of the Mental Health Act **2024**”.

25

In section 52(b) and (c), replace “becomes a special patient or a committed patient under the Mental Health Act 1969” with “becomes a ~~forensic patient~~person under forensic compulsory care or subject to an ~~inpatient care order~~ a hospital care order under **Part 3** of the Mental Health Act **2024**”.

In section 93B(4), replace “the person is subject to compulsory treatment or has special patient status under the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “the person is subject to a mental health care order or has ~~forensic patient~~person under forensic compulsory care status under the Mental Health Act **2024**”.

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In section 106(1)(d), (e), and (ea)(ii), replace “compulsory treatment or a special patient under the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “a mental health care order or a ~~forensic patient~~person under forensic compulsory care under the Mental Health Act **2024**”.

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Public Lending Right for New Zealand Authors Act 2008 (2008 No 104)

Replace section 18(3)(d) with:

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Public Lending Right for New Zealand Authors Act 2008 (2008 No 104)—*continued*

- (d) ~~becomes a forensic patient person under forensic compulsory care as defined in section 4(1) of the Mental Health Act 2024;~~ or

Public Safety (Public Protection Orders) Act 2014 (2014 No 68)

In section 3, repeal the definition of **mentally disordered**.

In section 3, insert in its appropriate alphabetical order:

compulsory care criteria has the same meaning as in **section 7** of the Mental Health Act **2024**

In section 5(c), replace “Mental Health (Compulsory Assessment and Treatment) Act 1992” with “Mental Health Act **2024**”.

In the heading to section 12, replace “**mentally disordered or intellectually disabled**” with “**meets compulsory care criteria or is intellectually disabled**”.

In section 12(1), replace “be mentally disordered or intellectually disabled” with “meet the compulsory care criteria or be intellectually disabled”.

In section 12(2) and (4) replace “section 45 of the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “**section 105** of the Mental Health Act **2024**”.

In section 111(1)(a), replace “Mental Health (Compulsory Assessment and Treatment) Act 1992” with “Mental Health Act **2024**”.

In section 112(1)(e), replace “Mental Health (Compulsory Assessment and Treatment) Act 1992” with “Mental Health Act **2024**”.

In section 112(1)(e) and (2), replace “responsible clinician” with “responsible practitioner”.

In section 139(1)(a), replace “Mental Health (Compulsory Assessment and Treatment) Act 1992” with “Mental Health Act **2024**”.

Search and Surveillance Act 2012 (2012 No 24)

In section 3(1), definition of **unlawfully at large**, paragraph (e), replace “a special patient or restricted patient within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “a ~~forensic patient person under forensic compulsory care or restricted patient~~ a person on a restricted order within the meaning of the Mental Health Act **2024**”.

Sentencing Act 2002 (2002 No 9)

In section 4(1), definition of **hospital**, replace “Mental Health (Compulsory Assessment and Treatment) Act 1992” with “Mental Health Act **2024**”.

Social Security Act 2018 (2018 No 32)

In section 208(3), replace “psychiatric security institution within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “secure mental health facility within the meaning of the Mental Health Act **2024**”.

Substance Addiction (Compulsory Assessment and Treatment) Act 2017 (2017 No 4) 5

Replace section 11(2)(f) with:

- (f) the person becomes subject to ~~an inpatient care order~~ a hospital care order under **Part 3** of the Mental Health Act **2024** or becomes a ~~forensic patient person~~ under forensic compulsory care as defined in **section 4(1)** of that Act: 10

Summary Proceedings Act 1957 (1957 No 87)

In section 2(1), definition of **infringement notice**, after paragraph (jl), insert:

- (jm) **section 197C** of the Mental Health Act **2024**; or

Te Ture Whenua Maori Act 1993 (1993 No 4) 15

In section 210, definition of **person under disability**, replace “not being a patient within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “not being a person under compulsory care within the meaning of the Mental Health Act **2024**”.

Telford Farm Training Institute Act 1963 (1963 No 5 (P)) 20

In Schedule 3, replace clause 2(1)(c) with:

- (c) becomes subject to ~~an inpatient care order~~ a hospital care order under **Part 3** of the Mental Health Act **2024**; or

Terrorism Suppression (Control Orders) Act 2019 (2019 No 79)

Replace section 28(1)(c) with: 25

- (c) in a hospital under the Mental Health Act **2024**; or

Victims’ Rights Act 2002 (2002 No 39)

In section 4, definition of **hospital**, replace “section 2(1) of the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “**section 4(1)** of the Mental Health Act **2024**”. 30

In section 30A(1)(b)(i) and (2)(a)(i), replace “a special patient as defined in section 2(1) of the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “a forensic patient person under forensic compulsory care as defined in **section 4(1)** of the Mental Health Act **2024**”.

Victims' Rights Act 2002 (2002 No 39)—continued

In section 30A(2)(a)(iii), replace “patient under the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “person under compulsory care under the Mental Health Act 2024”.

In section 33(3)(a), replace “section 45(2) of the Mental Health (Compulsory Assessment and Treatment) Act 1992, or under an arrangement under section 46 of that Act” with “**section 105(2) or (3)** of the Mental Health Act **2024**, or under an arrangement under **section 106** of that Act”. 5

In section 33(4), replace “section 47(1) of the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “**section 108(2)** of the Mental Health Act **2024**”. 10

In section 37(1)(a), replace “special patient as defined in section 2(1) of the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “forensic patient person under forensic compulsory care as defined in **section 4(1)** of the Mental Health Act **2024**”.

Replace section 37(4)(a) with: 15

(a) **section 89, 113, or 122** of the Mental Health Act **2024**:

In section 38(1)(a)(i), replace “section 45(2) of the Mental Health (Compulsory Assessment and Treatment) Act 1992, or under an arrangement under section 46 of that Act” with “**section 105(2) or (3)** of the Mental Health Act **2024**, or under an arrangement under **section 106** of that Act”. 20

In section 38(1)(b), replace “section 48 of the Mental Health (Compulsory Assessment and Treatment) Act 1992, to be a special patient within the meaning of that Act” with “**section 110** of the Mental Health Act **2024**, to be a forensic patient person under forensic compulsory care within the meaning of that Act”.

In section 52(1)(a), replace “section 91 of the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “**section 144** of the Mental Health Act **2024**”. 25

Part 2**Amendments to secondary legislation****Corrections Regulations 2005 (SR 2005/53)**

In regulation 3, definition of **psychiatric hospital**, replace “within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “as defined in **section 4(1)** of the Mental Health Act **2024**”. 30

District Court (Access to Court Documents) Rules 2017 (LI 2017/186)

In rule 7(2)(o), replace “Mental Health (Compulsory Assessment and Treatment) Act 1992” with “Mental Health Act **2024**”. 35

Fire and Emergency New Zealand (Fire Safety, Evacuation Procedures, and Evacuation Schemes) Regulations 2018 (LI 2018/96)

In regulation 5(4), definition of **hospital**, replace “section 2(1) of the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “**section 4(1)** of the Mental Health Act **2024**”.

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High Court Fees Regulations 2013 (SR 2013/226)

In regulation 4, definition of **exempt application**, paragraph (c), replace “section 84 of the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “**section 143** of the Mental Health Act **2024**”.

High Court Rules 2016 (LI 2016/225)

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In rule 18.1(b)(xii), replace “Mental Health (Compulsory Assessment and Treatment) Act 1992” with “Mental Health Act **2024**”.

Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (SR 2008/214)

In the Schedule, rule 14.5.2(n), replace “Mental Health (Compulsory Assessment and Treatment) Act 1992” with “Mental Health Act **2024**”.

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Misuse of Drugs Regulations 1977 (SR 1977/37)

In regulation 44(1), replace “Mental Health (Compulsory Assessment and Treatment) Act 1992” with “Mental Health Act **2024**”.

Outer Space and High-altitude Activities (Licences and Permits) Regulations 2017 (LI 2017/250)

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In Schedule 3, clause 12(f), replace “subject to a compulsory treatment order under Part 2 of the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “subject to a mental health care order made under **Part 3** of the Mental Health Act **2024**”.

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In Schedule 5, clause 6(f), replace “subject to a compulsory treatment order under Part 2 of the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “subject to a mental health care order made under **Part 3** of the Mental Health Act **2024**”.

In Schedule 6, clause 5(f), replace “subject to a compulsory treatment order under Part 2 of the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “subject to a mental health care order made under **Part 3** of the Mental Health Act **2024**”.

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Protection of Personal and Property Rights (Enduring Powers of Attorney Forms and Prescribed Information) Regulations 2008 (SR 2008/310)

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In the Schedule, forms 1 to 4, under the heading “*Glossary of terms*”, definition of **ends**, replace “compulsory treatment or special patient status under the Mental Health (Compulsory Assessment and Treatment) Act 1992” with “compulsory care or

Protection of Personal and Property Rights (Enduring Powers of Attorney Forms and Prescribed Information) Regulations 2008 (SR 2008/310)—*continued*

becomes a ~~forensic patient~~ person under forensic compulsory care under the Mental Health Act **2024**".

In the Schedule, forms 1, 2, and 4, under the heading "**Glossary of terms**", definition of **mentally incapable**, replace "compulsory treatment or has special patient status under the Mental Health (Compulsory Assessment and Treatment) Act 1992" with "compulsory care or becomes a ~~forensic patient~~ person under forensic compulsory care under the Mental Health Act **2024**". 5

In the Schedule, form 3, under the heading "**Glossary of terms**", definition of **mentally incapable**, replace "compulsory treatment, or has special patient status under the Mental Health (Compulsory Assessment and Treatment) Act 1992" with "compulsory care or becomes a ~~forensic patient~~ person under forensic compulsory care under the Mental Health Act **2024**". 10

In the Schedule, form 7, under the heading "**Notes**", definition of **event revoking the power of attorney**, replace "Mental Health (Compulsory Assessment and Treatment) Act 1992" with "Mental Health Act **2024**" in each place. 15

Residential Care and Disability Support Services Regulations 2018 (LI 2018/203)

In regulation 6(d), replace "subject to a compulsory treatment order made under section 30 of the Mental Health (Compulsory Assessment and Treatment) Act 1992" with "subject to a mental health care order made under **Part 3** of the Mental Health Act **2024**". 20

In regulation 6(e), replace "a restricted patient (as defined in section 2 of the Mental Health (Compulsory Assessment and Treatment) Act 1992) under section 55 of the Mental Health (Compulsory Assessment and Treatment) Act 1992" with "a ~~restricted patient~~ person on a restricted order under **section 133** of the Mental Health Act **2024**". 25

Replace regulation 6(f) with:

- (f) is a ~~forensic patient~~ person under forensic compulsory care (as defined in **section 4(1)** of the Mental Health Act **2024**), whether or not that person has been granted leave of absence from a hospital—
 - (i) under **section 114** of that Act; or 30
 - (ii) under **section 122** of that Act; or

Senior Courts (Access to Court Documents) Rules 2017 (LI 2017/193)

In rule 7(2)(o), replace "Mental Health (Compulsory Assessment and Treatment) Act 1992" with "Mental Health Act **2024**".

Student Allowances Regulations 1998 (SR 1998/277) 35

In regulation 4(4)(d)(iii), replace "Mental Health (Compulsory Assessment and Treatment) Act 1992" with "Mental Health Act **2024**".

Part 3
Revocation of secondary legislation

**Mental Health (Compulsory Assessment and Treatment) Amendment Act 2016
Commencement Order 2017 (LI 2017/196)**

Mental Health (Forms) Regulations 1992 (SR 1992/305) 5

Mental Health (Medical Fees) Regulations 1992 (SR 1992/304)

Legislative history

1 October 2024
23 October 2024

Introduction (Bill 87–1)
First reading and referral to Health Committee