Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999

Public Act 1999 No 140
Date of assent 14 October 1999

Contents

		Page
	Title	4
1	Short Title and commencement	5
	Part 1 **Amendments to principal Act**	
2	Interpretation	5
3	Meaning of **proposed patient**	6
4	General rules relating to liability to assessment or treatment	6
5	Powers to be exercised with proper respect for cultural identity and personal beliefs	7
6	Interpreters to be provided	7
7	Medical practitioner or responsible clinician to consult	8
8	New sections substituted	9
	8 Any person may fill out application form	9
	8A Application for assessment	9
	8B Medical practitioner's certificate to accompany application for assessment	10
9	Assessment examination to be arranged and conducted	10
10	Certificate of preliminary assessment	11
11	Further assessment and treatment for 5 days	12
12	Certificate of further assessment	13

13	Further assessment and treatment for 14 days	14
14	Certificate of final assessment	15
15	Documents relating to application for compulsory treatment order	16
16	Review of patient's condition by Judge	17
17	Judge to examine patient when compulsory treatment order sought	18
18	Court may call for report on patient	19
19	Power of Court to call witnesses	19
20	Restriction of publication of reports of proceedings	19
21	Compulsory treatment orders	19
22	Community treatment orders	20
23	Absence without leave	21
24	Court may extend order	21
25	Compulsory treatment order to cease to have effect in certain cases	21
26	New Part heading substituted	22
27	Assistance when person may need assessment	22
28	Assistance in respect of outpatients and inpatients on leave	24
29	Assistance in taking or returning proposed patient or patient to place of assessment or treatment	24
30	Police assistance	25
31	New sections substituted	27
	42 Notice of admission	27
	43 Notice of events concerning patient	27
32	Application for assessment may be made in respect of persons detained in institutions	28
33	Relationship between detention in hospital and sentence	29
34	Absence without leave	30
35	No compulsory treatment except as provided in this Part or in section 110A	30
36	Treatment while undergoing assessment	30
37	Rights of proposed patients	30
38	Further rights in case of visual or audio recording	30
39	Right to independent psychiatric advice	31
40	Clinical reviews of patients subject to compulsory treatment orders	31
41	Clinical reviews of certain special patients	31
42	Clinical reviews of restricted patients	31
43	Tribunal reviews of patients subject to compulsory treatment orders	32

44	Judicial inquiry	32
45	Assessment examination	32
46	New sections substituted	33
	92 Directors of Area Mental Health Services	33
	92A Delegation by Directors of Area Mental Health Services	33
	92B Provisions applying to delegations under section 92A	34
47	District inspectors and official visitors	35
48	Powers of district inspectors and official visitors	35
49	Inquiries by district inspector	36
50	Visitations by district inspectors and official visitors	36
51	Extent of inspection	36
52	New sections substituted	37
	98 Reports on visits	37
	98A District inspectors to report monthly	37
53	No proceedings against district inspectors or official visitors unless bad faith shown	37
54	Delegation by persons in charge of hospitals	37
55	Functions and powers of Review Tribunals	38
56	Convener	38
57	Fees and travelling allowances	38
58	No proceedings against members of Review Tribunals unless bad faith shown	39
59	Police powers in relation to person appearing to be mentally disordered in public place	39
60	New sections substituted	40
	110 Powers of medical practitioner when urgent examination required	40
	110A Power of medical practitioner who issues certificate to sedate when sedation urgently required	40
	110B Powers of medical practitioner when urgent assessment required	41
	110C Powers of police when urgent assistance required	42
61	Powers of nurse when urgent assessment required	42
62	Judge may authorise apprehension of patients and proposed patients	43
63	Authority of person in charge of hospital or service to admit and detain	43
64	Judge or Registrar may issue warrants	44
65	New sections substituted	45

	114 Neglect or ill-treatment of proposed patients and patients	45
	115 Assisting patient on community treatment order not to attend for treatment	46
	115A Assisting patient on inpatient order to be absent without leave	46
66	Unlawful publication of reports of proceedings before Review Tribunal	47
67	Matters of justification and excuse	47
68	New sections inserted	47
	122A Certain sections of Crimes Act 1961 apply to powers to take and retake	47
	122B Use of force	48
69	Patient's pocket money	48
70	Transfer of patients	48
71	Registers and records	48
72	Notice of death	49
73	New sections substituted	49
	133 Giving or sending documents	49
	133A Forms	50
74	Fees of medical practitioners	50
75	Schedule 1 amended	51
76	Consequential amendments	52
	Part 2	
	Amendments to other enactments	
77	Amendment to Summary Proceedings Act 1957	52
78	Amendment to Victims of Offences Act 1987	52
	11A Notification of compulsorily detained person's escape or discharge	53
79	Amendment to Coroners Act 1988 *[Repealed]*	54
	Schedule	54
	Consequential amendments to principal Act	

An Act to amend the Mental Health (Compulsory Assessment and Treatment) Act 1992

BE IT ENACTED by the Parliament of New Zealand as follows:

1 Short Title and commencement

(1) This Act may be cited as the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999, and is part of the Mental Health (Compulsory Assessment and Treatment) Act 1992 ("the principal Act").

(2) This Act comes into force on 1 April 2000.

Part 1
Amendments to principal Act

2 Interpretation

(1) Section 2(1) of the principal Act is amended by inserting, after the definition of the term **duly authorised officer**, the following definition:

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

"(a) That begins with the date on which the patient receives a notice under section 11(1); and

"(b) That ends when 5 clear days have passed after that date:".

(2) Section 2(1) of the principal Act is amended by inserting, after the definition of the term **penal institution**, the following definition:

"**Person in charge**, in relation to a hospital or service, means the chief executive of the hospital or service:."

(3) Section 2(1) of the principal Act is amended by inserting, after the definition of the term **principal caregiver**, the following definition:

"**Proposed patient** has the meaning given to that term by section 2A".

(4) Section 2(1) of the principal Act is amended by inserting, after the definition of the term **restricted patient**, the following definition:

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

"(a) That begins with the date on which the patient receives a notice under section 13(1); and

"(b) That ends when 14 clear days have passed after that date:".

(5) Section 2(1) of the principal Act is amended by repealing the definition of the term **special patient**, and substituting the following definition:

"**Special patient** means—

"(a) A person who is subject to an order made under—

"(i) Section 115(1) or section 121(2)(b)(ii) or (11) of the Criminal Justice Act 1985; or

"(ii) The proviso to section 171(3) of the Summary Proceedings Act 1957; or

"(b) A person who is remanded to a hospital under section 115(4) of the Criminal Justice Act 1985; or

"(c) A person who—

"(i) Is detained in a hospital, either following an application under section 45(2) or under section 46; and

"(ii) Has not ceased, under section 48, to be a special patient:".

(6) Section 2(2) of the principal Act is repealed.

3 Meaning of proposed patient

The principal Act is amended by inserting, after section 2, the following section:

"**2A**

A person—

"(a) Starts being a proposed patient when an application is made under section 8A; and

"(b) Stops being a proposed patient when a medical practitioner records a finding—

"(i) Under section 10(1)(b)(i), in which case the person does not become a patient; or

"(ii) Under section 10(1)(b)(ii), in which case the person becomes a patient."

4 General rules relating to liability to assessment or treatment

Section 4 of the principal Act is amended by repealing paragraph (e), and substituting the following paragraph:

"(e) Intellectual disability."

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

The principal Act is amended by repealing section 5, and substituting the following section:

"**5**

(1) This section applies to—

"(a) A court, tribunal, or person exercising a power under this Act in respect of a person; and

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

"(2) The power must be exercised, or the proceedings conducted,—

"(a) With proper recognition of the importance and significance to the person of the person's ties with his or her family, whanau, hapu, iwi, and family group; and

"(b) With proper recognition of the contribution those ties make to the person's wellbeing; and

"(c) With proper respect for the person's cultural and ethnic identity, language, and religious or ethical beliefs."

6 Interpreters to be provided

The principal Act is amended by repealing section 6, and substituting the following section:

"**6**

(1) This section applies to—

"(a) A court, tribunal, or person exercising a power under this Act in respect of a person; and

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

"(2) The court, tribunal, or person must ensure that the services of an interpreter are provided for the person, if—

"(a) One of the following applies:

"(i) The first or preferred language of the person is a language other than English, including Maori and New Zealand Sign Language; or

"(ii) The person is unable, because of physical disability, to understand English; and

"(b) It is practicable to provide the services of an interpreter.

"(3) The court, tribunal, or person must ensure, as far as reasonably practicable, that the interpreter provided is competent."

7 Medical practitioner or responsible clinician to consult

The principal Act is amended by inserting, after section 7, the following section:

"**7A**

(1) In this section, **practitioner** means—

"(a) A medical practitioner conducting an assessment examination of a proposed patient under section 9; and

"(b) A responsible clinician providing an assessment of, or treatment to, a patient.

"(2) A practitioner must consult the family or whanau of the proposed patient or patient. This subsection is subject to subsection (3).

"(3) Subsection (2) does not apply if the practitioner has reasonable grounds for deciding that consultation—

"(a) Is not reasonably practicable; or

"(b) Is not in the best interests of the proposed patient or patient.

"(4) In deciding whether or not consultation with the family or whanau is in the best interests of a proposed patient or patient the practitioner must consult the proposed patient or patient.

"(5) A practitioner must apply any relevant guidelines and standards of care and treatment issued by the Director General of Health under section 130, when—

"(a) Deciding when and how to consult the family or whanau, or the proposed patient or patient; and

"(b) Deciding whether or not consultation with the family or whanau is reasonably practicable; and

"(c) Deciding whether or not consultation with the family or whanau is in the best interests of the proposed patient or patient."

8 New sections substituted

The principal Act is amended by repealing section 8, and substituting the following sections:

"**8 Any person may fill out application form**

"(1) Anyone who believes that a person may be suffering from a mental disorder may at any time fill out an application form asking the Director of Area Mental Health Services for an assessment of the person.

"(2) An application is made under section 8A when the Director of Area Mental Health Services receives a filled out application form that complies with section 8A.

"(3) In sections 8A and 8B,—

"(a) The person who fills out the application form is called the **applicant**; and

"(b) The person who is the subject of the application is called the **person**.

"**8A Application for assessment**

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

"(a) It is accompanied by a certificate issued under section 8B relating to the person that states a date of examination within the 3 days immediately before the date of the application; and

"(b) It states that the applicant is 18 years or over; and

"(c) It states that the applicant has personally seen the person within the 3 days immediately before the date of the application; and

"(d) It states the relationship or association of the applicant with the person; and

"(e) It states the grounds on which the applicant believes the person to be suffering from a mental disorder.

"**8B Medical practitioner's certificate to accompany application for assessment**

"(1) This section applies when—

"(a) A medical practitioner is asked, by an applicant, to issue a certificate to accompany the application form; or

"(b) A medical practitioner is the applicant and wishes to issue a certificate to accompany his or her application form.

"(2) A medical practitioner to whom subsection (1)(a) applies must not issue a certificate if he or she is related to the applicant or to the person.

"(3) A medical practitioner to whom subsection (1)(b) applies must not issue a certificate if he or she is related to the person.

"(4) The medical practitioner must—

"(a) Examine the person; and

"(b) If he or she considers that there are reasonable grounds for believing that the person may be suffering from a mental disorder, issue the certificate.

"(5) The certificate must—

"(a) State that the medical practitioner has examined the person:

"(b) State the date of the examination:

"(c) State that the medical practitioner considers that there are reasonable grounds for believing that the person may be suffering from a mental disorder:

"(d) Set out full particulars of the reasons for that opinion, explaining in what way the medical practitioner believes that the person's condition may come within the statutory definition of mental disorder:

"(e) State that the medical practitioner is not related to the person or to the applicant (except when the medical practitioner is the applicant)."

9 Assessment examination to be arranged and conducted

(1) Section 9(2)(e) of the principal Act is amended by inserting, before the word "patient" where it first occurs, the word "proposed".

(2) Section 9(3) of the principal Act is amended by—

(a) Omitting the word "gave", and substituting the word "issued":

(b) Omitting the words "referred to in section 8(3) of this Act", and substituting the words "under section 8B(4)(b)".

(3) Section 9 of the principal Act is amended by repealing subsection (4), and substituting the following subsection:

"(4) For the purposes of subsection (1), an application under section 8A is deemed to have been made if the Director of Area Mental Health Services or a duly authorised officer receives notice of it from the medical practitioner who issued the certificate relating to the person under section 8B(4)(b). The medical practitioner may give notice by any means, including by telephone. The assessment examination must not take place until the Director of Area Mental Health Services, or a duly authorised officer, or the medical practitioner who is to conduct the examination receives an application relating to the person and complying with section 8A."

10 Certificate of preliminary assessment

(1) Section 10(1) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:

"(b) That, in his or her opinion,—

"(i) The proposed patient is not mentally disordered; or

"(ii) There are reasonable grounds for believing that the proposed patient is mentally disordered and that it is desirable that the proposed patient be required to undergo further assessment and treatment."

(2) Section 10(2)(c) of the principal Act is amended by omitting the word "proposed".

(3) Section 10(2)(d) of the principal Act is amended by omitting the words "section 8 of this Act, and the supporting medical certificate, if these are", and substituting the words "section 8A, if it is".

(4) Section 10 of the principal Act is amended by repealing subsection (3), and substituting the following subsection:

"(3) If the medical practitioner is of the opinion that the proposed patient is not mentally disordered, that person is free from further assessment and treatment under this Part (without preju-

dice to the making of a further application under section 8A in respect of the person at some time in the future)."

11 Further assessment and treatment for 5 days

The principal Act is amended by repealing section 11, and substituting the following section:

"**11**

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

"(2) In the notice, the medical practitioner must—

"(a) Require the patient to attend at the patient's place of residence, or at some other place nominated in the notice, for the purposes of assessment and treatment throughout the first period; or

"(b) If the medical practitioner considers that the patient cannot be further assessed and treated adequately as an outpatient, direct that the patient be admitted to and detained in a specified hospital for the purposes of assessment and treatment throughout the first period.

"(3) If, at any time during the first period, the responsible clinician considers that a patient who is an outpatient cannot continue to be assessed and treated adequately as an outpatient, the clinician may give a written notice—

"(a) Directing the patient to present himself or herself at a specified hospital to be admitted and detained for the purposes of assessment and treatment during the remainder of the first period; and

"(b) Directing the person in charge of the hospital to admit and detain the patient for the purposes of assessment and treatment during the remainder of the first period.

"(4) If, at any time during the first period, the responsible clinician considers that a patient who is an inpatient can continue to be assessed and treated adequately as an outpatient, the clinician must give a written notice—

"(a) Directing the person in charge of the hospital to discharge the patient; and

"(b) Directing the patient to attend at the patient's place of residence, or at some other place nominated in the notice, for the purposes of assessment and treatment during the remainder of the first period.

"(5) If, at any time during the first period, the responsible clinician considers that a patient who is an inpatient is fit to be granted leave of absence from the hospital, the clinician may grant the patient leave on such terms and conditions as the clinician thinks fit. The clinician must ensure that the following records are made:

"(a) If the leave is for a period of up to 8 hours on 1 day between 8 am and 10 pm, the grant of leave, and its terms and conditions, must be recorded in the patient's clinical records:

"(b) If the leave is other than as described in paragraph (a), the grant of leave, and its terms and conditions, must be recorded—

"(i) In the patient's clinical records; and

"(ii) In a written notice given to the patient and to the person in charge of the hospital.

"(6) If, at any time during the first period, the responsible clinician considers that a patient is fit to be released from compulsory status, the clinician must give a written notice to the patient and, if necessary, to the person in charge of the hospital directing that the patient be released from that status immediately.

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

12 Certificate of further assessment

Section 12(12) of the principal Act is amended by omitting the words "of assessment and treatment (as so defined)".

13 Further assessment and treatment for 14 days

The principal Act is amended by repealing section 13, and substituting the following section:

"**13**

(1) If the responsible clinician records a finding under section 12(1)(b)(ii), the clinician must require the patient to undergo further assessment and treatment throughout the second period. The responsible clinician must give the patient written notice of this requirement.

"(2) In the notice, the responsible clinician must—

"(a) Require the patient to attend at the patient's place of residence, or at some other place nominated in the notice, for the purposes of assessment and treatment throughout the second period; or

"(b) If the responsible clinician considers that the patient cannot be further assessed and treated adequately as an outpatient, direct that the patient be admitted to and detained in a specified hospital for the purposes of assessment and treatment throughout the second period.

"(3) If, at any time during the second period, the responsible clinician considers that a patient who is an outpatient cannot continue to be assessed and treated adequately as an outpatient, the clinician may give a written notice—

"(a) Directing the patient to present himself or herself at a specified hospital to be admitted and detained for the purposes of assessment and treatment during the remainder of the second period; and

"(b) Directing the person in charge of the hospital to admit and detain the patient for the purposes of assessment and treatment during the remainder of the second period.

"(4) If, at any time during the second period, the responsible clinician considers that a patient who is an inpatient can continue to be assessed and treated adequately as an outpatient, the clinician must give a written notice—

"(a) Directing the person in charge of the hospital to discharge the patient; and

"(b) Directing the patient to attend at the patient's place of residence, or at some other place nominated in the notice, for the purposes of assessment and treatment during the remainder of the second period.

"(5) If, at any time during the second period, the responsible clinician considers that a patient who is an inpatient is fit to be granted leave of absence from the hospital, the clinician may grant the patient leave on such terms and conditions as the clinician thinks fit. The clinician must ensure that the following records are made:

"(a) If the leave is for a period of up to 8 hours on 1 day between 8 am and 10 pm, the grant of leave, and its terms and conditions, must be recorded in the patient's clinical records:

"(b) If the leave is other than as described in paragraph (a), the grant of leave, and its terms and conditions, must be recorded—

"(i) In the patient's clinical records; and

"(ii) In a written notice given to the patient and to the person in charge of the hospital.

"(6) If, at any time during the second period, the responsible clinician considers that a patient is fit to be released from compulsory status, the clinician must give a written notice to the patient and, if necessary, to the person in charge of the hospital directing that the patient be released from that status immediately."

14 Certificate of final assessment

(1) Section 14 of the principal Act is amended by repealing subsections (4) to (7), and substituting the following subsection:

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

(2) The principal Act is amended by—

(a) Omitting from section 17(1) the expression "section 14(4)(a)", and substituting the expression "section 14(4)":

(b) Omitting from section 18(1) the expression "section 14(4)(a)", and substituting the expression "section 14(4)":

(c) Omitting; from section 34(3) the expression "section 14(4)(a)", and substituting the expression "section 14(4)".

15 Documents relating to application for compulsory treatment order

(1) The principal Act is amended by inserting, after section 14, the following section:

"**14A**

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

"(a) A copy of the certificate of final assessment relating to a patient who is the subject of an application under section 14(4); and

"(b) A statement of the legal consequences of the finding set out in the certificate of final assessment; and

"(c) A statement of the right of the person receiving the documents to appear before the Court and be heard in respect of the application.

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

"(a) Any welfare guardian of the patient:

"(b) The applicant for assessment:

"(c) The patient's principal caregiver:

"(d) The medical practitioner who usually attended the patient immediately before the patient was required to undergo assessment and treatment under this Part:

"(e) The Director of Area Mental Health Services:

"(f) A district inspector:

"(g) An official visitor.

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

"(a) A copy of the documents; and

"(b) A notice requiring the patient to attend at a place specified in the notice for an examination under section 18; and

"(c) A notice requiring the patient to attend at the Court hearing of the application for the compulsory treatment order under section 19.

"(4) A district inspector who receives the documents must—

"(a) Communicate with the patient and find out, if possible, whether or not the patient wants the district inspector to appear before the Court to be heard on the application for a compulsory treatment order. The district inspector must communicate with the patient by talking to him or her, unless talking to him or her is impracticable; and

"(b) Decide, having regard to any view expressed by the patient, whether or not the district inspector should appear before the Court to be heard on the application for a compulsory treatment order.

"(5) Instead of performing personally the functions specified in subsection (4), the district inspector may in any particular case arrange for an official visitor to perform them."

(2) The principal Act is amended by—

(a) Omitting from section 19(6) the expression "," and substituting the expression "section 14A":

(b) Omitting from section 24(1)(e) the expression "section 14(4)(b)", and substituting the expression "section 14A".

16 Review of patient's condition by Judge

(1) Section 16 of the principal Act is amended by repealing subsection (1), and substituting the following subsections:

"(1) When an application is made to the Court under section 11(7) or section 12(7) or section 12(12) for a review of the patient's condition,—

"(a) Subsection (1B) applies if the application is the only application that has been made for a review of the patient's condition during the first and second periods:

"(b) Subsection (1C) applies if the application is the second or subsequent application that has been made for a review of the patient's condition during the first and second periods.

"(1A) When an application is made under section 29(4) for a review of the patient's condition, subsection (1B) applies.

"(1B) When this subsection applies,—

"(a) The Court must grant the application; and

"(b) A Judge must examine the patient as soon as practicable; and

"(c) Subsections (2) to (7) apply.

"(1C) When this subsection applies, a Judge must decide whether or not to grant the application. In making this decision, the Judge must have regard to any evidence before the Judge that indicates that the patient's condition has not changed since the last review."

(2) Section 16 of the principal Act is amended by repealing subsection (3), and substituting the following subsection:

"(3) The Judge must do the following things before and during the examination, as appropriate and practicable:

"(a) Identify himself or herself to the patient; and

"(b) Explain to the patient the purpose of the visit; and

"(c) Discuss with the patient the patient's situation, the proposed course of assessment and treatment, and the patient's views on these matters."

17 Judge to examine patient when compulsory treatment order sought

Section 18 of the principal Act is amended by repealing subsection (3), and substituting the following subsection:

"(3) The Judge must do the following things before and during the examination, as appropriate and practicable:

"(a) Identify himself or herself to the patient; and

"(b) Explain to the patient the purpose of the visit; and

"(c) Discuss with the patient the patient's situation, the proposed course of assessment and treatment, and the patient's views on these matters."

18 Court may call for report on patient

Section 21 of the principal Act is amended by repealing subsections (5) to (7), and substituting the following subsections:

"(5) Any party to the proceedings may tender evidence on any matter referred to in any such report.

"(6) The Court may call the person making the report as a witness, either on its own initiative or on the application of any party to the proceedings.

"(7) A Court that requests a person to prepare a report must make 1 of the orders described in subsection (8). A Court considering whether or not to make an order under subsection (8)(a) must hear the party or parties affected.

"(8) The orders are—

"(a) An order for the fees and expenses of the person to be paid by any party or parties to the proceedings, as the Court orders:

"(b) An order for the fees and expenses of the person to be met from any appropriation by Parliament for the purpose."

19 Power of Court to call witnesses

Section 23 of the principal Act is amended by repealing subsection (5), and substituting the following subsection:

"(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 Restriction of publication of reports of proceedings

Section 25 of the principal Act is amended by repealing subsection (2), and substituting the following subsection:

"(2) A person who contravenes subsection (1) commits an offence against this Act and is liable to a fine not exceeding $10,000."

21 Compulsory treatment orders

(1) Section 28(3) of the principal Act is amended—

(a) By omitting the expression "sections 11 and 12 of this Act", and substituting the expression "sections 13 and 14"; and

(b) By omitting the expression "sections 13 to 27 of this Act", and substituting the expression "sections 15 to 27".

(2) Section 28 of the principal Act is amended by repealing subsection (4) and substituting the following subsection:

"(4) Before the Court makes a community treatment order, it must be satisfied of the following:

"(a) The service provides care and treatment on an outpatient basis that is appropriate to the needs of the patient. (**The service** means the service that the applicant for the order asks the Court to specify in the order); and

"(b) The social circumstances of the patient are adequate for his or her care within the community."

22 Community treatment orders

(1) Section 29(1) of the principal Act is amended by omitting the words "institution or".

(2) Section 29(2) of the principal Act is amended by omitting the words "institution or".

(3) Section 29 of the principal Act is amended by repealing subsection (3), and substituting the following subsections:

"(3) If, at any time during the currency of the community treatment order, the responsible clinician considers that the patient cannot continue to be treated adequately as an outpatient, the responsible clinician may direct that the patient—

"(a) Be treated as an inpatient for a period of up to 14 days; or

"(b) Be re-assessed in accordance with sections 13 and 14.

"(4) The following provisions apply when a responsible clinician gives such a direction:

"(a) When the direction is given under subsection (3)(a), the community treatment order does not cease to have effect:

"(b) When the direction is given under subsection (3)(b),

"(i) The community treatment order ceases to have effect; and

"(ii) Sections 13 to 15 and 17 to 27 apply, with any necessary modifications, to the re-assessment:

"(c) When the direction is given under subsection (3)(a) or (b), the patient, or a person specified in section 10(4)(a)(ii) to (v), may apply to the Court to have the patient's condition reviewed under section 16.

"(5) The responsible clinician may not give a direction under subsection (3)(a) in respect of any patient more than twice in any 6-month period.

"(6) As soon as practicable after giving a direction under subsection (3), the responsible clinician must notify the following:

"(a) Any welfare guardian of the patient:

"(b) The patient's principal caregiver:

"(c) The medical practitioner who usually attended the patient immediately before the patient was required to undergo assessment and treatment under Part I:

"(d) A district inspector:

"(e) An official visitor."

23 Absence without leave

Section 32(2) of the principal Act is amended by omitting the word "returned", and substituting the words "taken back".

24 Court may extend order

Section 34 of the principal Act is amended by repealing subsection (3), and substituting the following subsection:

"(3) The Court must treat the application as if it were an application made under section 14(4). Sections 15 and 17 to 33 apply with any necessary modifications."

25 Compulsory treatment order to cease to have effect in certain cases

Section 36(2)(a) of the principal Act is amended by omitting the expression "section 115 or section 118", and substituting the expression "section 115(1) or section 118(1)".

26 New Part heading substituted

The principal Act is amended by omitting the heading to Part 3, and substituting the heading "ADVICE AND ASSISTANCE".

27 Assistance when person may need assessment

The principal Act is amended by repealing section 38, and substituting the following section:

"**38**

(1) Anyone who believes that a person may be suffering from a mental disorder may at any time request the assistance of a duly authorised officer.

"(2) The duly authorised officer who receives the request must—

"(a) Investigate the matter to the extent necessary to satisfy himself or herself—

"(i) That the concern expressed by the maker of the request is genuine; and

"(ii) That there are reasonable grounds for believing that the person to whom the request relates may be suffering from a mental disorder; and

"(b) Decide, on reasonable grounds, whether or not the person needs to have a medical examination urgently in the person's own interests or the interests of any other person.

"(3) If the duly authorised officer decides that the person needs to have a medical examination, but not urgently, he or she must—

"(a) Arrange, or assist in arranging, for a medical practitioner to examine the person with a view to issuing a certificate under section 8B(4)(b); and

"(b) Once such a certificate is issued, assist someone else to apply under section 8A for assessment of the person, or apply himself or herself if nobody else is willing to apply; and

"(c) Arrange for an assessment examination to be conducted under section 9.

"(4) If the duly authorised officer decides that the person needs to have a medical examination urgently, he or she must—

"(a) Try to get a medical practitioner to come to the person to examine him or her with a view to issuing a certificate under section 8B(4)(b); and

"(b) If a medical practitioner is available to come to the person, take all reasonable steps to ensure that the medical practitioner is able to examine the person, including calling for police assistance under section 41; and

"(c) If no medical practitioner is available to come to the person, try to get the person to go willingly to a medical practitioner; and

"(d) If the person refuses to go willingly to a medical practitioner, take all reasonable steps to—

"(i) Take the person to a medical practitioner, including calling for police assistance under section 41; and

"(ii) Ensure that the medical practitioner is able to examine the person, including calling for police assistance under section 41; and

"(e) Once a certificate is issued under section 8B(4)(b), assist someone else to apply under section 8A for assessment of the person, or apply himself or herself if nobody else is willing to apply; and

"(f) Arrange for an assessment examination to be conducted under section 9.

"(5) A duly authorised officer who receives a request need not comply with subsections (3)(a) or (4)(a) to (d) if that officer has available to him or her a certificate issued under section 8B(4)(b) by a medical practitioner who examined the person who is the subject of the request within the 72 hours before the receipt of the request.

"(6) A medical practitioner doing an examination under subsections (3)(a) or (4)(b) or (d) need not issue another certificate if that medical practitioner has available to him or her a certificate issued under section 8B(4)(b) by

a medical practitioner who examined the person who is the subject of the request within the 72 hours before the receipt of the request."

28 Assistance in respect of outpatients and inpatients on leave

Section 39 of the principal Act is amended by repealing subsection (2), and substituting the following subsection:

"(2) Anyone may at any time request the advice or assistance of a duly authorised officer in relation to any aspect of the care, treatment, or conduct of a patient to whom this section applies."

29 Assistance in taking or returning proposed patient or patient to place of assessment or treatment

The principal Act is amended by repealing section 40, and substituting the following section:

"**40**

(1) This section applies to—

"(a) Every proposed patient or patient who—

"(i) Is required to attend at any place for—

"(A) An assessment examination under section 9; or

"(B) An assessment to which a notice given under section 11 or section 13 relates; or

"(C) An examination to which a notice given under section 14A(3)(b) relates; or

"(D) A hearing to which a notice given under section 14A(3)(c) relates; or

"(E) A review to which a notice given under section 76(1A) relates; and

"(ii) Is refusing to attend at that place; and

"(b) Every patient who—

"(i) Is subject to a community treatment order; and

"(ii) Is refusing to attend at a place for treatment in accordance with the order; and

"(c) Every patient who—

"(i) Is subject to an inpatient order; and

"(ii) Is absent from the hospital—

"(A) Without leave; or

"(B) When the patient's leave of absence from the hospital has expired or has been cancelled.

"(2) On becoming aware of a proposed patient or patient to whom this section applies, a duly authorised officer may take all reasonable steps to—

"(a) Take a proposed patient or patient referred to in subsection (1)(a) or (b) to the place at which he or she is required to attend:

"(b) Take a patient referred to in subsection (1)(c) back to the hospital."

30 Police assistance

The principal Act is amended by repealing section 41, and substituting the following section:

"**41**

(1) A duly authorised officer who is intending or attempting to do any thing specified in section 38(4)(b) or (d) or section 40(2) may call to his or her assistance a member of the police.

"(2) A member of the police called to the assistance of a duly authorised officer for the purposes described in section 38(4)(b) or (d) or section 40(2)—

"(a) May enter the premises where the person or proposed patient or patient is; and

"(b) Must, if that member is not in uniform, produce to a person in actual occupation of the premises his or her badge or other evidence that he or she is a member of the police.

"(3) A member of the police who enters premises under subsection (2) may, for the purposes of section 38(4)(b), detain the person where he or she is for the shorter of—

"(a) 6 hours; and

"(b) The time it takes to conduct the medical examination.

"(4) A member of the police who enters premises under subsection (2) may, for the purposes of section 38(4)(d),—

"(a) Take the person to the place at which he or she is to have a medical examination; and

"(b) Detain the person at the place for the shorter of—

"(i) 6 hours; and

"(ii) The time it takes to conduct the medical examination.

"(5) A member of the police who enters premises under subsection (2) may, for the purposes of section 40(2)(a),—

"(a) Take the proposed patient or patient to the place at which he or she is required to attend; and

"(b) Detain the proposed patient or patient at the place for the shorter of—

"(i) 6 hours; and

"(ii) The time it takes to conduct whichever of the following the proposed patient or patient was refusing to attend for:

"(A) An assessment examination under section 9; or

"(B) An assessment to which a notice given under section 11 or section 13 relates; or

"(C) An examination to which a notice given under section 14A(3)(b) relates; or

"(D) A review to which a notice given under section 76(1A) relates; or

"(E) Treatment in accordance with a community treatment order.

"(6) A member of the police who enters premises under subsection (2) may, for the purposes of section 40(2)(b), take the patient back to the hospital.

"(7) The member of the police must not exercise the power in subsection (2) without a warrant, if it would be reasonably practicable to obtain a warrant."

31 New sections substituted

The principal Act is amended by repealing sections 42 and 43, and substituting the following sections:

"**42 Notice of admission**

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

"(2) The information is—

"(a) Notice of the admission:

"(b) A copy of the order on which the patient was admitted:

"(c) A copy of every medical certificate and other document that accompanied the order:

"(d) A statement of both the mental condition and the physical condition of the patient at the time of the patient's admission.

"(3) The person in charge of the hospital must send the information within 14 days after the patient is admitted.

"**43 Notice of events concerning patient**

"(1) The Director of Area Mental Health Services must ensure that the person in charge of a hospital sends a notice to the Director of any of the events described in subsection (2) that concerns a special or restricted patient admitted to the hospital.

"(2) The events are—

"(a) Discharge from the hospital:

"(b) Transfer from the hospital:

"(c) Absence on leave from the hospital:

"(d) Cancellation of leave from the hospital:

"(e) Return from leave:

"(f) Escape from the hospital:

"(g) Retaking after an escape.

"(3) The person in charge of the hospital must send the information within 14 days after the event occurs."

32 Application for assessment may be made in respect of persons detained in institutions

(1) Section 45 of the principal Act is amended by repealing subsections (2) and (3), and substituting the following subsections:

"(2) The superintendent of an institution, or any other officer of the institution authorised by the superintendent, may make an application under section 8A in respect of a person detained in the institution if the superintendent has reasonable grounds to believe that the person may be mentally disordered.

"(3) An application under subsection (2) is dealt with under Parts I and II, subject to the following provisions:

"(a) If the detained person is already subject to the process described in sections 9 to 16, he or she remains subject to that process:

"(b) If the detained person is already subject to a compulsory treatment order, and section 36 does not apply to the order, he or she remains subject to the order:

"(c) If neither paragraph (a) nor paragraph (b) applies to the detained person, Parts I and II apply to the application but must be read subject to any necessary modifications and to the modifications in subsection (4)."

(2) Section 45(4) of the principal Act is amended by omitting the words "An application under subsection (3) of this section shall comply with subsection (2) of section 8 of this Act and be accompanied by a certificate given by a medical practitioner for the purposes of subsection (3) of that section; and the provisions of Parts I and II of this Act shall apply, so far as they are applicable and with any necessary modifications, subject to the following provisions", and substituting the words "The modifications referred to in subsection (3)(c) are as follows".

(3) Section 45 of the principal Act is amended by repealing subsection (5), and substituting the following subsection:

"(5) Neither the making of an application under subsection (2) nor the making of a compulsory treatment order, in relation to a person detained in a penal institution, prevents the bringing of the person before a court for hearing or trial, or operates to delay the hearing or trial."

33 Relationship between detention in hospital and sentence

The principal Act is amended by repealing section 48, and substituting the following section:

"**48**

(1) For the purposes of this section,—

"(a) A reference to a person means a person who—

"(i) Is detained in a hospital, either following an application under section 45(2) or under section 46; or

"(ii) Having been so detained, is on leave:

"(b) A reference to leave means leave under section 50 or section 52:

"(c) A reference to a sentence means a sentence, an order of committal, or an order of detention:

"(d) Liability to detention under a sentence ceases—

"(i) As determined under section 90 of the Criminal Justice Act 1985; or

"(ii) When a direction for release given by the Parole Board under section 97 of that Act comes into effect; or

"(iii) When the sentence is determined.

"(2) The term of a sentence applicable to a person immediately before his or her admission to hospital—

"(a) Continues to run while the person is in a hospital or is on leave; and

"(b) Ceases to run if, before the person's liability to detention under the sentence ceases,—

"(i) He or she escapes from a hospital; or

"(ii) He or she fails to return on the expiry or cancellation of leave; and

"(c) Does not begin to run again until the person is retaken.

"(3) The person ceases to be detained as a special patient at the time he or she ceases to be liable to be detained under any sentence and,—

"(a) If at that time he or she is a person who is subject to the process described in sections 9 to 16 as the result of an application under section 45(2), he or she remains subject to the process:

"(b) If at that time he or she is a person who is subject to a compulsory treatment order as the result of an application under section 45(2), he or she remains subject to the compulsory treatment order:

"(c) If at that time he or she is a person in the hospital under section 46, he or she becomes a voluntary patient."

34 Absence without leave

Section 53 of the principal Act is amended by omitting the word "returned", and substituting the word "taken".

35 No compulsory treatment except as provided in this Part or in section 110A

The principal Act is amended by repealing section 57, and substituting the following section:

"**57**

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

36 Treatment while undergoing assessment

Section 58 of the principal Act is amended by omitting the word "person", and substituting the word "patient".

37 Rights of proposed patients

The principal Act is amended by inserting, before section 64, the following section:

"**63A**

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

38 Further rights in case of visual or audio recording

Section 68(3)(c) of the principal Act is amended by inserting, before the word "service", the words "hospital or".

39 Right to independent psychiatric advice

Section 69 of the principal Act is amended by inserting, after the word "choice", the words "in order to get a second opinion".

40 Clinical reviews of patients subject to compulsory treatment orders

(1) Section 76 of the principal Act is amended by inserting, after subsection (1), the following subsection:

"(1A) The responsible clinician must ensure that, before each review, a notice is given to the patient requiring him or her to attend at a place specified in the notice for the examination under subsection (2)."

(2) Section 76(7)(a) of the principal Act is repealed.

(3) Section 76 of the principal Act is amended by repealing subsection (9), and substituting the following subsection:

"(9) The district inspector who receives a copy of the certificate of clinical review must—

"(a) Communicate with the patient and find out, if possible, whether or not the patient wants an application to be made to the Review Tribunal for a review of the patient's condition. The district inspector must communicate with the patient by talking to him or her, unless talking to him or her is impracticable; and

"(b) Decide, having regard to any view expressed by the patient, whether or not an application should be made to the Review Tribunal for a review of the patient's condition."

41 Clinical reviews of certain special patients

Section 77 of the principal Act is amended—

(a) By omitting from subsection (1) the expression "section 115", and substituting the expression "section 115(1)":

(b) By repealing subsection (3)(b)(i):

(c) By repealing subsection (4)(b)(i).

42 Clinical reviews of restricted patients

Section 78(4)(a) of the principal Act is repealed.

43 Tribunal reviews of patients subject to compulsory treatment orders

Section 79 of the principal Act is amended—

(a) By repealing subsection (2)(b):

(b) By repealing subsections (5) and (6), and substituting the following subsections:

"(5) On receiving an application, the convener must—

"(a) Arrange for the Review Tribunal to review the patient's condition; and

"(b) Arrange for the review to start as soon as practicable after the receipt of the application and not later than 21 days after the receipt of the application.

"(6) The Review Tribunal may—

"(a) Extend the period specified in subsection (5)(b) by a further period not exceeding 7 days:

"(b) Refuse to consider an application, if—

"(i) It has considered an application for review of the patient's condition within the preceding 3 months, and has no reason to believe that there has been any change in the patient's condition in the intervening period; or

"(ii) It is satisfied that an application made by a relative or friend of the patient is made otherwise than in the interests of the patient:

"(c) Adjourn a hearing that is in progress."

44 Judicial inquiry

(1) Section 84(4) of the principal Act is amended by omitting the expression "section 115", and substituting the expression "section 115(1)".

(2) Section 84(5) of the principal Act is amended by omitting the expression "section 115", and substituting the expression "section 115(1)".

45 Assessment examination

Section 86 of the principal Act is amended by omitting the word "person", and substituting the words "proposed patient".

46 New sections substituted

The principal Act is amended by repealing section 92, and substituting the following sections:

"**92 Directors of Area Mental Health Services**

"(1) The Director-General of Health must—

"(a) Appoint as many Directors of Area Mental Health Services as the Director-General considers necessary; and

"(b) Determine the terms and condition on which each Director of Area Mental Health Services is appointed, including every area for which each Director of Area Mental Health Services is responsible; and

"(c) Publish a notice in the *Gazette* notifying each appointment and any area for which the appointee is responsible.

"(2) The Director-General of Health may—

"(a) Appoint Directors of Area Mental Health Services from time to time; and

"(b) Appoint a Director of Area Mental Health Services to replace a previously appointed Director of Area Mental Health Services from time to time.

"(3) A person appointed under this section may at any time be suspended or removed from office by the Director-General of Health for any of the following proved to the satisfaction of the Director-General:

"(a) Failure to perform adequately the duties of the office; or

"(b) Neglect of duty; or

"(c) Misconduct; or

"(d) Inability to perform the duties of the office.

"(4) Every Director of Area Mental Health Services must, every 3 months,—

"(a) Prepare a written report on the exercise of his or her powers, duties, and functions under this Act for the previous 3 months; and

"(b) Give the report to the Director.

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

"(1) A Director of Area Mental Health Services may delegate any of his or her powers, duties, and functions, except this power of delegation, to a person who—

"(a) Is suitably qualified to exercise it; and

"(b) Is approved for the purpose by the Director or Deputy Director.

"(2) A Director of Area Mental Health Services who makes such a delegation, or his or her delegate, must tell the Director or Deputy Director—

"(a) When the Director of Area Mental Health Services is intending to be, or is, absent from duty because he or she is ill or because he or she is on approved leave; and

"(b) Who the delegate is; and

"(c) When the delegation is revoked.

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

"(1) This section applies to a delegation made under section 92A.

"(2) The maker of a delegation must make it in writing and sign it.

"(3) The maker of a delegation is not prevented from exercising, or affected in his or her exercise of, any of the delegated powers, duties, or functions.

"(4) The delegate may exercise the powers, duties, and functions—

"(a) Only when the maker of the delegation is absent from duty because he or she is ill or because he or she is on approved leave; but

"(b) Otherwise in the same manner and with the same effect as if they had been conferred on the delegate directly by this Act.

"(5) Every person purporting to act under a delegation is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation.

"(6) A delegation continues in force according to its tenor until it is revoked.

"(7) If the maker ceases to hold office, the delegation continues to have effect as if made by the successor in office of the maker.

"(8) The maker, or a successor, may revoke the delegation at any time by written notice to the delegate."

47 District inspectors and official visitors

Section 94 of the principal Act is amended by repealing subsections (5) and (6), and substituting the following subsections:

"(5) A person appointed under this section as a district inspector or an official visitor holds office for a term of 3 years.

"(6) A person appointed under this section as a deputy district inspector holds office for a specified term of up to 3 years.

"(7) A person appointed under this section—

"(a) Is eligible for reappointment from time to time:

"(b) May be replaced from time to time:

"(c) May at any time be suspended or removed from office by the Minister for any of the following proved to the satisfaction of the Minister:

"(i) Failure to perform adequately the duties of the office; or

"(ii) Neglect of duty; or

"(iii) Misconduct; or

"(iv) Inability to perform the duties of the office."

48 Powers of district inspectors and official visitors

The principal Act is amended by inserting, after section 94, the following section:

"**94A**

(1) Every district inspector and official visitor has—

"(a) The powers, duties, and functions conferred or imposed on holders of those offices by this Act; and

"(b) Such other powers, duties, and functions as may be conferred or imposed on them by the Director in writing in, and for the purpose of dealing with, situations of urgency.

"(2) A deputy district inspector—

"(a) Has—

"(i) The powers, duties, and functions conferred or imposed on a district inspector by this Act; and

"(ii) Such other powers, duties, and functions as may be conferred or imposed on a dis-

trict inspector by the Director in writing in, and for the purpose of dealing with, situations of urgency; but

"(b) May exercise any such power, duty, or function only at the direction of—

"(i) The district inspector to whom he or she is the deputy; or

"(ii) The Director."

49 Inquiries by district inspector

Section 95(1) of the principal Act is amended by omitting the words "other service" in each place they appear, and substituting in each place the word "service".

50 Visitations by district inspectors and official visitors

(1) Section 96 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

"(1) Every district inspector and every official visitor must visit each of the hospitals and services in the locality to which the district inspector or official visitor is appointed at the following times:

"(a) A hospital or service in or through which any patient is being assessed or treated as an inpatient must be visited at least once a month:

"(b) A hospital or service in or through which any patient is being assessed or treated as an outpatient must be visited at least 4 times a year at regular intervals and when the Director directs."

(2) Section 96(2) of the principal Act is amended by omitting the words "other service", and substituting the word "service".

51 Extent of inspection

(1) Section 97(1) of the principal Act is amended by omitting the words "other service" in each place they appear, and substituting in each place the word "service".

(2) Section 97(2) of the principal Act is amended by omitting the words "other service", and substituting the word "service".

52 New sections substituted

The principal Act is amended by repealing section 98, and substituting the following sections:

"**98 Reports on visits**

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

"**98A District inspectors to report monthly**

Every district inspector must, once a month,—

"(a) Prepare a written report on the exercise of his or her powers, duties, and functions under this Act during the preceding month; and

"(b) Give the report to the Director."

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

The principal Act is amended by inserting, after section 99, the following section:

"**99A**

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

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

54 Delegation by persons in charge of hospitals

The principal Act is amended by inserting, after section 99A, the following section:

"**99B**

(1) A person in charge of a hospital may delegate any of his or her powers, duties, and functions, except this power

of delegation, to a person who is suitably qualified to exercise it.

"(2) The maker of a delegation must make it in writing and sign it.

"(3) The maker of a delegation is not prevented from exercising, or affected in his or her exercise of, any of the delegated powers, duties, or functions.

"(4) The delegate may exercise the powers, duties, and functions in the same manner and with the same effect as if they had been conferred on the delegate directly by this Act.

"(5) Every person purporting to act under a delegation is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation.

"(6) A delegation continues in force according to its tenor until it is revoked.

"(7) If the maker ceases to hold office, the delegation continues to have effect as if made by the successor in office of the maker.

"(8) The maker, or a successor, may revoke the delegation at any time by written notice to the delegate."

55 Functions and powers of Review Tribunals

Section 102(1) of the principal Act is amended by omitting the word "such" in each place it appears.

56 Convener

Section 107(3) of the principal Act is amended by omitting the words "(not being the deputy of any member)".

57 Fees and travelling allowances

Section 108 of the principal Act is amended by repealing subsection (2), and substituting the following subsections:

"(2) The members of Review Tribunals are paid remuneration by way of fees, salary, or allowances, and travelling allowances and expenses, under the Fees and Travelling Allowances Act 1951, and that Act applies accordingly.

"(3) The remuneration referred to in subsection (2) is met from any appropriation by Parliament for the purpose."

58 No proceedings against members of Review Tribunals unless bad faith shown

The principal Act is amended by inserting, after section 108, the following section:

"**108A**

(1) No civil proceedings may be brought against any member of a Review Tribunal for any thing he or she may do or report or say in the course of the exercise or intended exercise of his or her powers, duties, or functions under this Act, unless it is shown that he or she acted in bad faith.

"(2) Nothing in this section affects the right of any person or organisation to apply, in accordance with law, for judicial review of a member of a Review Tribunal's powers, duties, or functions under this Act."

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

(1) Section 109 of the principal Act is amended by repealing subsection (3), and substituting the following subsections:

"(3) Subsection (3A) applies if the medical practitioner, having examined the person, considers that—

"(a) There are reasonable grounds for believing that the person may be suffering from a mental disorder; and

"(b) It is desirable for the person to have an assessment examination urgently in the person's own interests or the interests of any other person.

"(3A) The medical practitioner must, as soon as possible,—

"(a) Issue a certificate under section 8B(4)(b); and

"(b) Make an application under section 8A."

(2) Section 109(4) of the principal Act is amended by omitting the word "person" in each place it appears, and substituting in each place the words "proposed patient".

(3) Section 109 of the principal Act is amended by repealing subsection (5), and substituting the following subsection:

"(5) Detention under this section may last for no longer than the following times:

"(a) For the purposes of subsections (1) to (3A), 6 hours or the time it takes to carry out the actions described in those subsections, whichever is shorter:

"(b) For the purposes of subsection (4), 6 hours or the time it takes to conduct the assessment examination, whichever is shorter."

60 New sections substituted

The principal Act is amended by repealing section 110, and substituting the following sections:

"**110 Powers of medical practitioner when urgent examination required**

"(1) Subsection (2) applies to a medical practitioner who—

"(a) Conducts a medical examination of a person who is acting in a manner that could give rise to a reasonable belief that he or she may be mentally disordered; and

"(b) Concludes that—

"(i) There are reasonable grounds for believing that the person may be mentally disordered; and

"(ii) It is desirable for the person to have an assessment examination urgently in the person's own interests or the interests of any other person.

"(2) The medical practitioner must, as soon as possible,—

"(a) Issue a certificate under section 8B(4)(b); and

"(b) Make an application under section 8A.

"(3) A medical practitioner acting under this section must make every reasonable effort to get the advice and assistance of a duly authorised officer.

"(4) A medical practitioner who needs assistance to conduct a medical examination under subsection (1)(a) may call for police assistance under section 110C.

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

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

"(a) Issues, under section 110(2)(a), a certificate under section 8B(4)(b); and

"(b) Has reasonable grounds for believing that the person presents a significant danger to himself or herself or any other person; and

"(c) Has reasonable grounds for believing that it is in the interests of the person to receive a sedative drug urgently.

"(2) The medical practitioner may immediately administer an appropriate sedative drug to the person, by injection if necessary, in accordance with any relevant guidelines and standards of care and treatment issued by the Director-General of Health under section 130.

"(3) A medical practitioner who administers a sedative drug under subsection (2) must, as soon as practicable,—

"(a) Record the circumstances in which the drug was administered; and

"(b) Give a copy of the record to the Director of Area Mental Health Services.

"(4) A medical practitioner acting under this section must make every reasonable effort to get the advice and assistance of a duly authorised officer.

"(5) A medical practitioner who needs assistance to administer a sedative drug under subsection (2) may call for police assistance under section 110C.

"110B Powers of medical practitioner when urgent assessment required

"(1) Subsection (2) applies to the medical practitioner nominated to conduct the assessment examination of a proposed patient who is the subject of an application made under section 110(2)(b).

"(2) The medical practitioner must conduct the assessment examination as soon as possible.

"(3) A medical practitioner acting under this section must make every reasonable effort to get the advice and assistance of a duly authorised officer.

"(4) A medical practitioner who needs assistance to conduct an assessment examination under subsection (2) may call for police assistance under section 110C.

"**110C Powers of police when urgent assistance required**

"(1) A member of the police called to the assistance of a medical practitioner under section 110(4), section 110A(5), or section 110B(4)—

"(a) May enter the premises where the person or proposed patient is; and

"(b) Must, if that member is not in uniform, produce to a person in actual occupation of the premises his or her badge or other evidence that he or she is a member of the police.

"(2) A member of the police who enters premises under subsection (1) may, at the request of the medical practitioner,—

"(a) Detain the person or proposed patient where he or she is; or

"(b) Take the person or proposed patient to a place nominated by the medical practitioner and detain the person or proposed patient at the place.

"(3) Detention under subsection (2) may last for no longer than the following times:

"(a) For the purposes of section 110(1)(a), 6 hours or the time it takes to conduct the medical examination, whichever is shorter:

"(b) For the purposes of section 110A(2), 6 hours or the time it takes to administer the sedative drug, whichever is shorter:

"(c) For the purposes of section 110B(2), 6 hours or the time it takes to conduct the assessment examination, whichever is shorter."

61 Powers of nurse when urgent assessment required

Section 111(1) of the principal Act is amended by—

(a) Omitting the words "in the interests of the person or of any other person or of the public that an assessment examination of the person be conducted as a matter of urgency", and substituting the words "for the person

to have an assessment examination urgently in the person's own interests or the interests of any other person":

(b) Omitting the words "for the purposes of section 8(3) of this Act", and substituting the words "under section 8B(4)(b)".

62 Judge may authorise apprehension of patients and proposed patients

Section 112 of the principal Act is repealed.

63 Authority of person in charge of hospital or service to admit and detain

The principal Act is amended by repealing section 113, and substituting the following section:

"**113**

(1) Every notice under section 9 requiring a proposed patient to attend at a hospital or service for an assessment examination is sufficient authority for the person in charge of the hospital or service to take all reasonable steps to detain the proposed patient in the hospital or service for the shorter of—

"(a) 6 hours; and

"(b) The time it takes to conduct the assessment examination.

"(2) Every notice under section 11 or section 13 requiring a patient to attend at a hospital for the purpose of assessment and treatment as an inpatient is sufficient authority for the person in charge of the hospital—

"(a) To admit the patient to the hospital; and

"(b) To take all reasonable steps to detain the patient in the hospital during the period of assessment and treatment to which the notice applies.

"(3) Every inpatient order made in respect of a patient is sufficient authority for the person in charge of the hospital specified in the order—

"(a) To admit the patient to the hospital; and

"(b) To take all reasonable steps to detain the patient in the hospital during the period for which the order is in force."

64 Judge or Registrar may issue warrants

The principal Act is amended by inserting, after section 113, the following section:

"**113A**

(1) This subsection and subsections (2) to (4) apply to—

"(a) Every proposed patient or patient who—

"(i) Is required to attend at any place for—

"(A) An assessment examination under section 9; or

"(B) An assessment to which a notice given under section 11 or section 13 relates; or

"(C) An examination to which a notice given under section 14A(3)(b) relates; or

"(D) A hearing to which a notice given under section 14A(3)(c) relates; or

"(E) A review to which a notice given under section 76(1A) relates; and

"(ii) Is refusing to attend at that place; and

"(b) Every patient who—

"(i) Is subject to a community treatment order; and

"(ii) Is refusing to attend at a place for treatment in accordance with the order; and

"(c) Every patient who—

"(i) Is subject to an inpatient order; and

"(ii) Is absent from the hospital—

"(A) Without leave; or

"(B) When the patient's leave of absence from the hospital has expired or has been cancelled.

"(2) In subsections (3) and (4), **warrant** means a warrant in the prescribed form to take such a proposed patient or patient to a place specified in the warrant.

"(3) The Director of Area Mental Health Services may apply for a warrant.

"(4) A District Court Judge or, if no Judge is available, a Registrar may issue a warrant authorising any member

of the police to take a proposed patient or patient to the place specified in the warrant, if the Judge or Registrar is satisfied that—

"(a) The proposed patient or patient is refusing to attend at the place at which he or she is required to attend; or

"(b) The patient is absent from the hospital—

"(i) Without leave; or

"(ii) When the patient's leave of absence from the hospital has expired or has been cancelled.

"(5) In subsections (6) and (7), **warrant** means a warrant in the prescribed form to enter premises under section 41(2).

"(6) A member of the police may apply for a warrant.

"(7) A District Court Judge or, if no Judge is available, a Registrar may issue a warrant authorising any member of the police to enter premises under section 41(2), if the Judge or Registrar is satisfied that the issue of a warrant is necessary."

65 New sections substituted

The principal Act is amended by repealing sections 114 and 115, and substituting the following sections:

"**114 Neglect or ill-treatment of proposed patients and patients**

"(1) This section applies to—

"(a) The person in charge of a hospital or service at which a proposed patient attends for an assessment examination; and

"(b) The person in charge of a hospital in which a patient is an inpatient; and

"(c) A person employed in any such hospital or service and engaged—

"(i) In the conduct of an assessment examination of a proposed patient; or

"(ii) In the assessment or treatment of a patient; and

"(d) The person in charge of a home, house, or other place where a proposed patient or patient resides.

"(2) Every such person who intentionally ill-treats or intentionally neglects any such proposed patient or patient commits an offence and is liable on conviction on indictment to imprisonment for a term not exceeding 2 years.

"**115 Assisting patient on community treatment order not to attend for treatment**

"(1) Subsection (2) applies to a person who is employed in or about a place at which a patient who is subject to a community treatment order is required to attend for treatment.

"(2) Every such person commits an offence and is liable to imprisonment for a term not exceeding 3 months or to a fine not exceeding $1,000, if he or she—

"(a) Intentionally permits any such patient not to attend, or to attempt not to attend, at the place; or

"(b) Connives at any such absence or attempted absence.

"(3) Every person commits an offence and is liable to imprisonment for a term not exceeding 3 months or to a fine not exceeding $1,000, if he or she—

"(a) Intentionally instigates or assists any patient who is subject to a community treatment order not to attend, or to attempt not to attend, at any place at which the patient is required to attend for treatment; or

"(b) Intentionally assists any patient who is so absent to avoid, or to attempt to avoid, being taken to the place.

"**115A Assisting patient on inpatient order to be absent without leave**

"(1) Subsection (2) applies to a person who is employed in or about a hospital in which a patient who is subject to an inpatient order is detained.

"(2) Every such person commits an offence and is liable to imprisonment for a term not exceeding 3 months or to a fine not exceeding $1,000, if he or she—

"(a) Intentionally permits such a patient to become, or to attempt to become, absent without leave from the hospital; or

"(b) Connives at any such absence or attempted absence.

"(3) Every person commits an offence and is liable to imprisonment for a term not exceeding 3 months or to a fine not exceeding $1,000, if he or she—

"(a) Intentionally instigates or assists any patient who is subject to an inpatient order to become, or to attempt to become, absent without leave from the hospital specified in the order or to which the patient has been transferred under section 127; or

"(b) Intentionally assists any patient who is so absent to avoid, or to attempt to avoid, being retaken."

66 Unlawful publication of reports of proceedings before Review Tribunal

The principal Act is amended by repealing section 116, and substituting the following section:

"**116**

A person who contravenes clause 8(1) of the First Schedule commits an offence against this Act and is liable to a fine not exceeding $10,000."

67 Matters of justification and excuse

Section 122 of the principal Act is amended by repealing subsection (4).

68 New sections inserted

The principal Act is amended by inserting, after section 122, the following sections:

"**122A Certain sections of Crimes Act 1961 apply to powers to take and retake**

Sections 32(1), 38(4)(d), 40(2), 41(4), 41(5), 41(6), 50(4), 51(3), 53, 109(1), 109(4), 110C(2), 111(2), and 113A contain a power to take or retake a person, a proposed patient, or a patient. In respect of each of these powers, sections 30, 31, and 34 of the Crimes Act 1961 apply—

"(a) As if the power were a power of arrest; and

"(b) With any necessary modifications.

"**122B Use of force**

"(1) A person exercising a power specified in subsection (2) may, if he or she is exercising the power in an emergency, use such force as is reasonably necessary in the circumstances.

"(2) The powers are—

"(a) A power to take or retake a person, proposed patient, or patient in any of sections 32(1), 38(4)(d), 40(2), 41(4), 41(5), 41(6), 50(4), 51(3), 53, 109(1), 109(4), 110C(2), 111(2), or 113A:

"(b) A power to detain a person, proposed patient, or patient in any of sections 41(3), 41(4), 41(5), 109(4), 110C(2), 111(2), or 113:

"(c) A power to enter premises in either of sections 41(2) or 110C(1).

"(3) A person treating a patient to whom section 59 applies may use such force as is reasonably necessary in the circumstances.

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

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

"(b) A copy of the record must be given to the Director of Area Mental Health Services as soon as practicable."

69 Patient's pocket money

Section 126 of the principal Act is repealed.

70 Transfer of patients

(1) Section 127(4) of the principal Act is amended by—

(a) Omitting the words "An order made", and substituting the words "A direction given":

(b) Omitting the word "ordered", and substituting the word "directed".

(2) Section 127(5) of the principal Act is amended by omitting the word "order" in each place it appears, and substituting in each place the word "direction".

71 Registers and records

Section 129(1) of the principal Act is amended by omitting the words "In every hospital or service the person in charge

shall keep", and substituting the words "The Director of Area Mental Health Services must ensure that in every hospital or service the person in charge keeps".

72 Notice of death

Section 132(1)(b) of the principal Act is amended by omitting the words "the Board", and substituting the words "a service".

73 New sections substituted

The principal Act is amended by repealing section 133, and substituting the following sections:

"**133 Giving or sending documents**

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

"(2) Any such document must be dealt with by the method in subsection (3) that, in the opinion of the person giving or sending the document, is most likely to ensure that the document reaches the person for whom it is intended.

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

"(a) Personally delivering it to the person; or

"(b) Posting it to a usual address of the person; or

"(c) Sending it to the person by fax or some other electronic means; or

"(d) Providing it to the person in a manner approved by the person.

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

"(a) It is sufficient to prove that the document was properly addressed; and

"(b) The document is presumed, in the absence of proof to the contrary, to have been posted on the day on which it was dated.

"(5) The receipt of an electronic message from the person posting the document stating that the message was dispatched at the same time as or after the posting of the document confers on the person to whom the message is addressed, on the date he or

she receives it and within the next 7 days, the same authority as the receipt of the document.

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

"**133A Forms**

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

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

"(3) The Director-General of Health or the Director may from time to time give notice to the Director of Area Mental Health Services or the responsible clinician dispensing with any specified provision of this Act that requires the person in charge of a hospital to send the Director-General of Health or the Director notices relating to the hospital or any specified class of patients in the hospital.

"(4) The Director-General of Health or the Director—

"(a) May give an absolute dispensation or a dispensation to such extent as the Director-General of Health or the Director thinks fit; and

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

74 Fees of medical practitioners

The principal Act is amended by repealing section 134, and substituting the following section:

"**134**

(1) A medical practitioner who issues a certificate, notice, or statement in writing for the purposes of, and in accordance with, this Act must be paid the prescribed fee.

"(2) If no fee is prescribed, such a medical practitioner must be paid the fee that the Minister, with the concurrence of the Minister of Finance, directs from time to time.

"(3) In any particular case to which subsection (2) applies, the Minister may withhold the whole or any part of the fee.

"(4) Fees payable under subsection (2) are met from any appropriation by Parliament for the purpose.

"(5) No fees are payable under this section to a medical practitioner employed by a service or by the Ministry of Health, for anything done in the course of that employment."

75 Schedule 1 amended

(1) Clause 4 of Schedule 1 of the principal Act is amended by repealing subclauses (5) to (7), and substituting the following subclauses:

"(5) Any party to the proceedings may tender evidence on any matter referred to in any such report.

"(6) The Tribunal may call the person making the report as a witness, either on its own initiative or on the application of any party to the proceedings.

"(7) A Tribunal that requests a person to prepare a report must make 1 of the orders described in subclause (8). A Tribunal considering whether or not to make an order under subclause (8)(a) must hear the party or parties affected.

"(8) The orders are—

"(a) An order for the fees and expenses of the person to be paid by any party or parties to the proceedings, as the Tribunal orders:

"(b) An order for the fees and expenses of the person to be met from any appropriation by Parliament for the purpose."

(2) Clause 6 of Schedule 1 of the principal Act is amended by repealing subclause (5), and substituting the following subclause:

"(5) The expenses of any witness called by the Tribunal under this clause must be met, in accordance with the prescribed scale of witnesses' expenses, in the first instance from any appropriation by Parliament for the purpose."

(3) Clause 8(2) of Schedule 1 of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:

"(b) Is intended for circulation among—

"(i) Members of the legal or medical professions:

"(ii) Psychologists:

"(iii) Social workers:

"(iv) Employees of a service, the Health Funding Authority, or the Ministry of Health."

76 Consequential amendments

The principal Act is consequentially amended in the manner provided in the Schedule.

Part 2
Amendments to other enactments

77 Amendment to Summary Proceedings Act 1957

The Summary Proceedings Act 1957 is amended by omitting from Part 2 of Schedule 1 the item relating to the Mental Health Act 1969, and substituting the following item:

Mental Health (Compulsory Assessment and Treatment) Act 1992	114 Neglect or ill-treatment of proposed patients and patients

78 Amendment to Victims of Offences Act 1987

The Victims of Offences Act 1987 is amended by inserting, after section 11, the following section:

"**11A Notification of compulsorily detained person's escape or discharge**

"(1) This section applies to the victim of an alleged offence, or of an offence, of sexual violation or other serous assault or injury, if the defendant is—

"(a) Subject to an order made under the proviso to section 171(3) of the Summary Proceedings Act 1957; or

"(b) Subject to an order made under any of sections 115(1), 115(2)(a), 118(1), 121(2)(b)(ii), or 121(11) of the Criminal Justice Act 1985; or

"(c) Remanded to a hospital under section 115(4) of that Act; or

"(d) Detained in a hospital, either following an application under section 45(2) of the Mental Health (Compulsory Assessment and Treatment) Act 1992 or under section 46 of that Act.

"(2) Such a victim should be given the opportunity to request notification of—

"(a) Any escape by the defendant; and

"(b) Any impending discharge of the defendant; and

"(c) Any grant by the Minister of leave to the defendant under section 50 of the Mental Health (Compulsory Assessment and Treatment) Act 1992.

"(3) Such a victim should be promptly notified of the matters described in subsection (2), if he or she has—

"(a) Requested notification; and

"(b) Supplied a current address and telephone number to the chief executive of the Department of Corrections.

"(4) The chief executive of the Department of Corrections may disclose the following to the Director-General of Health:

"(a) The fact that the victim has requested notification; and

"(b) The address and telephone number supplied by the victim.

"(5) In this section, **hospital** has the meaning given to it by section 2 of the Mental Health (Compulsory Assessment and Treatment) Act 1992."

79 Amendment to Coroners Act 1988

[Repealed]

Section 79 was repealed, as from 1 July 2007, by section 146 Coroners Act 2006 (2006 No 38).

Schedule

Section 76

Consequential amendments to principal Act

Section of principal Act to be amended	Amendment
Section 9(1)	Omit "section 8 of this Act", and substitute "section 8A".
Section 12(3)	Omit "section 8 of this Act", and substitute "section 8A".
Section 14(3)	Omit "section 8 of this Act", and substitute "section 8A".
Section 15(3)	Omit "section 8 of this Act", and substitute "section 8A".
Section 47(3)	Omit "section 8 of this Act", and substitute "section 8A".
Section 47(4)	Omit "section 8 of this Act", and substitute "section 8A".