

The Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999

On 6 October 1999 Parliament passed the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (the 1999 Amendment). The 1999 Amendment comes into force on 1 April 2000.

The 1999 Amendment can be obtained from any government bookshop.

The Ministry of Health is revising all the guidelines in relation to the Mental Health (Compulsory Assessment and Treatment) Act 1992 to incorporate the relevant amendments. These revised guidelines will be made available prior to 1 April 2000. The revised guidelines will also be available on the Ministry of Health's website.

In addition to this, two newsletters (Update and Focus On) providing information about the 1999 Amendment's key changes and implementation strategy will be published. The Update is available from 3 December 1999 from the Ministry or the web site. The Focus On will be available from the Ministry or the web site late January 2000.

From 10 February 2000 to 3 March 2000, the Ministry of Health is conducting a number of roadshows throughout New Zealand about the 1999 Amendment. For further information about the venues and dates of the roadshows please refer to the newsletters.

In the interim period this document provides a brief description of all the amendments, section by section, to the Mental Health (Compulsory Assessment and Treatment) Act 1992.

Short title and commencement

The Act's full title is the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999. The principal Act is the Mental Health (Compulsory Assessment and Treatment) Act 1992. The Act will come into force on 1 April 2000.

Section 2 - Interpretation

Section 2 provides definitions of:

- first period of assessment and treatment
- second period of assessment and treatment
- proposed patient
- special patient
- person in charge in relation to a hospital or service.

Section 2A - Meaning of "proposed patient"

Section 2A clarifies the definition of proposed patient. Proposed patients are accorded with the same rights as patients except right to receive and send letters and postal articles (s73 and s74).

Section 4 - General rules relating to liability for assessment and treatment

The term "intellectual handicap" is changed to "intellectual disability".

Section 5(1)- Powers to be exercised with proper respect for cultural identity and personal beliefs

Section 5 clarifies the principal Act's requirement that all persons, court, or tribunal exercising a power under the Act must give proper recognition to a person's cultural identity, family and personal beliefs.

Section 6 - Interpreters to be provided

Under section 6 a significant amendment is the recognition of New Zealand Sign Language as a language. The new section also updates language and clarifies the intent of the section. Any person, court, or tribunal exercising a power under the Act must ensure that a competent interpreter is provided, if required.

Section 7A - Medical practitioner or responsible clinician to consult

Section 7A is a new section to deal with family/whanau involvement in the assessment and treatment process. The section includes the requirement that a medical practitioner

conducting an assessment examination under section 9 or a responsible clinician must consult with the families/whanau of a proposed patient or patient. The requirement to consult does not apply if:

- it is not reasonably practicable
- it is not in the best interests of the proposed patient or patient.

When making a decision about whether it is in the best interests of the proposed patient or patient to consult, a medical practitioner or responsible clinician must first consult with the patient. There is also a requirement that a practitioner must apply any relevant guidelines and standards of care and treatment issued by the Director-General of Health (issued under section 130 of the Act), when deciding:

- when and how to consult the family/whanau, or the proposed patient or patient
- whether or not consultation with the family/whanau is reasonably practicable
- whether or not consultation with the family/whanau is in the best interests of the proposed patient.

Section 8- New section substituted

Section 8 has been amended to clarify how an application for an assessment is made.

Section 9 - Assessment examination to be arranged and conducted

Section 9 sets out how a section 9 assessment examination is carried out. The word “proposed” is also inserted before the word “patient” as well as a reference to new sections 8A and 8B(4)(b).

Section 10 - Certificate of preliminary assessment

Section 10 is amended to insert references to a proposed patient and section 8A.

Section 11 - Further assessment and treatment for 5 days

Amendments to section 11 enable a responsible clinicians to allow a patient subject to compulsory inpatient assessment (during the first 5 day period) for a short period of controlled leave (‘trial leave’) in the community, or allow leave on compassionate grounds. If a patient has overnight leave, a written notice must be given to the patient. If a patient has day leave, the Act requires the day leave to be documented in the patients’ notes.

Section 12 - Certificate of further assessment

Section 12(12) is amended by omitting the words “of assessment and treatment (as so defined)”.

Section 13 - Further assessment and treatment for 14 days

Section 13 of the Act allows a period of trial leave during the second period of assessment and treatment process (see section 11).

Section 14 - Certificate of final assessment

Changes to section 14 related to the insertion of new section numbers and sets out the documents required to make an application for a compulsory treatment order.

Section 16 - Review of patient's condition by Judge

Section 16 allows a Judge some limited discretion in deciding whether or not to grant a review of a patient's condition under s16. This section enables a Judge to refuse to grant a review if a patient has had a previous review and there is evidence that there has been no change in the patient's condition.

Section 18 - Judge to examine patient where a compulsory treatment order sought

Section 18 clarifies how a Judge, when a compulsory treatment order is sought, conducts an examination of a patient.

Section 21 - Court may call for report on patient

Amendments to section 21 require the Court to make a decision about who pays for a court report. It also gives persons or institutions the right to be heard by the Court before an order for payment is made against them.

Section 23 - Power of Court to call witnesses

Under section 23 terminology is updated to remove the phrase "money appropriated by Parliament" and replace it with the phrase "any appropriation by Parliament".

Section 25 - Restriction of publications of reports of proceedings

Section 25 brings the penalty for the publication of reports of Court reports offence into line with the maximum fine of \$10,000 under the Medical Practitioners Act 1995.

Section 28 - Compulsory treatment order

A reference to "the Board" is omitted and replaced it with a reference to "the service".

Section 29 - Community treatment order

Section 29 is amended to permit a responsible clinician to direct that an outpatient be treated as an inpatient for up to 14 days without the need to begin the assessment process and nullify the community treatment order.

Section 32(2) - Absence without leave

The word “returned” is substituted for the words “taken back”.

Section 34 - Court may extend the order

Changes to section 34 clarifies the status of a patient during the time the Court considers an application for an extension of a compulsory treatment order.

Section 36 - Compulsory treatment order ceases to have effect in certain cases

Section 36 clarifies references to sections in the Criminal Justice Act 1985.

Part III - New part heading substituted

Part III heading is changed from “Assistance to caregivers and supervision of outpatients” to “Advice and Assistance”.

Section 38(1) - Assistance where a person may need assessment

Section 38 is amended to allow any one request the assistance of a duly authorised officer if they are concerned about a person’s mental health. The section also identifies chronological steps that a duly authorised officer must first take to investigate the validity of the request. Under section 38(1) a duly authorised officer can require a person who they believe may be suffering from a mental disorder, in an emergency, to attend a nominated place for a medical examination.

Section 39(1) - Assistance in respect of outpatients and inpatients on leave

Section 39 has been amended for consistency with amendments to section 38.

Section 40 - Assistance in taking or returning proposed patient or patient to place of assessment or treatment

Section 40 requires a patient to attend their clinical review under section 76 and proposed patients to attend an assessment examination under section 9.

Section 41 - Police assistance

Section 41 enables a duly authorised officer to seek police assistance to require a person suspected of being mentally disorder, as defined by the Act, to:

- attend a nominated place for the purposes of a medical examination (section 38A(2)).
- take a proposed patient required to attend an examination under s9
- take a patient to an assessment (under sections 11 or 13), to the place they are required to attend
- return a patient subject to a notice given under s14(3)(b) to hospital.

The section also details the powers and responsibilities of a member of police when exercising this power. Under section 41 the time period a proposed patient or patient can be detained by the police is **decreased from 24 to six hours**.

Section 42 - Notice of Admission

Under section 24, Directors of Area Mental Health Services (DAMHS) are required to ensure that the person in charge of a hospital informs the Director of Mental Health of certain matters regarding special patients or restricted patients. Section 42 has also been redrafted to make clarify the purpose of the section.

Section 43 - Notice of events concerning patients

Section 43 has been amended to clarify the purpose of the section.

Section 45 - Application for assessment may be made in respect of a persons detained in a penal institution

Changes to section 45 clarify how an application for assessment and treatment is facilitated when a proposed patient is detained in prison.

Section 48(1) - Relationship between detention in hospital and sentence

Section 48 enables an offender who has been transferred to hospital for assessment and treatment to continue their treatment upon expiry of their prison sentence.

Section 53 - Absence without leave

The word “returned” is substituted for the words “taken back”.

Section 57 - No compulsory treatment except as provided in this Part or in section 110AA

Amendments to section 57 updates drafting style to make it consistent with current practice.

Section 58 - Treatment while undergoing assessment

The word “person” is substituted and replaced with “patient”.

Section 63A - Rights of proposed patients

Clause 28A accords proposed patients the same rights as patients except right to receive and send letters and postal articles (s73 and s74).

Section 68(3)(c) Further rights in case of visual or audio recording

Section 68(3)(c) has been amended by inserting before the word “service”, the words “hospital or”.

Section 69 - Right to independent psychiatric advice

Section 69 clarifies that the purpose of the right to independent psychiatric advice is to get a second opinion.

Section 76 - Clinical reviews of persons subject to compulsory treatment orders

Section 76 requires a patient to attend a clinical review. It also provides district inspectors (who receive a copy of the certificate of clinical review must communicate with the patient to find out whether the patient wants an application to be made to the Review Tribunal for a review of their condition), with the option of writing to a patient if speaking with a patient is not reasonably practicable.

The Mental Health Review Tribunal is no longer required to receive a copy of patients clinical review certificates.

Section 77 - Clinical reviews of special patients

Section 77 clarifies references to sections in the Criminal Justice Act 1985.

The Mental Health Review Tribunal is no longer required to receive a copy of special patients clinical review certificates.

Section 78 - Clinical reviews of restricted patients

Under section 78 the Review Tribunal is no longer required to receive a copy of clinical review certificates for restricted patients.

Section 79 - Tribunal reviews of persons subject to compulsory treatment orders

Section 79 allows the Review Tribunal to:

- extend the time period from 14 to 21 days to review a patient's condition
- extend the period to review an application by a further period of no more than 7 days
- discretion to refuse an application for review if the Review Tribunal has reviewed the patient's condition the last 3 months and there is no reason to believe that the patient's condition has not changed
- adjourn a hearing that is in process.

Section 84 - Judicial Inquiry

The expression "section 115" is substituted with the expression "section 115(1)".

Section 86 - Assessment Examination

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

Section 92 - Directors of Area Mental Health Services

Section 92 clarifies how Directors of Area Mental Health Services are appointed and removed from office.

The section also requires that the Director-General of Health determines the terms and conditions on which each Director of Area Mental Health Services is appointed, including every area for which Directors of Area Mental Health Services are responsible.

Directors of Area Mental Health Services are also required to report 3 monthly in writing to the Director of Mental Health on the exercise of their powers, duties, and functions under the Act.

Section 92 also allows Directors of Area Mental Health Mental Services to delegate their duties and functions in specific circumstances, for example, when on leave or if ill.

Section 94 - District inspectors and official visitors

Section 94 sets out how district inspectors and official visitors are appointed and removed from office.

Section 94A - Powers of district inspectors and official visitors

Section 94A clarifies the powers, functions, and duties of official visitors, district inspectors, and deputy district inspectors under the Act.

Section 95 - Inquiries by district inspector

Section 95(1) is amended by substituting the words “other service” wherever they appear with the word “service”.

Section 96 - Visitations by district inspectors and official visitors

Under section 96 district inspectors and official visitors must visit hospitals and services where any inpatient is being assessed or treated at least once a month. Hospitals and services providing assessment and treatment for outpatients must be visited by district inspectors and official visitors at least 4 times a year at regular intervals, and when the Director of Mental Health directs.

Section 97 - Extent of inspection

Section 97(1) has been amended by substituting the words “other services” wherever they appear with the word “service”.

Section 98 - Reports on visits

Section 98 requires district inspectors or official visitors who visit any hospital or service to report on the visit to the Directors of Area Mental Health Services 14 days after a visit.

Section 98 A - District inspectors report monthly

District inspectors are required to report monthly to the Director of Mental Health, in writing, about the exercise of any of their power an duties, and functions under the Act.

Section 99A - No proceedings against district inspectors or official visitors unless bad faith shown

Section 99A provides district inspectors and official visitors with civil immunity so that they may function effectively, without being hampered by threats of litigation.

Section 99B - Delegations by person in charge of hospitals

Section 99B enables the person in charge of a hospital to delegate his or her powers under the Act to another person who is suitably qualified. The delegation must be in writing. Revocation of the delegation must also be in writing.

Section 102(1) - Functions and powers of the Review Tribunal

Section 102(1) is amended by omitting the word “such” in each place it appears.

Section 107(3) - Convenor

Section 107(3) is amended by omitting the words “(not being the deputy member)”. This enables a deputy member to act as a convenor if required.

Section 108(2) - Fees and travelling allowances

Amendments to section 108A updates terminology to remove the phrase “money appropriated by Parliament” and replaces it with the phrase “any appropriation by Parliament”.

Section 108A- No proceedings against members of the Review Tribunal unless bad faith shown

Section 108A extends civil immunity to Review Tribunal members so that they may function effectively, without being hampered by threats of litigation.

Section 109(3) - Police powers in relation to person appearing to be mentally disordered in public place

The section enables a medical practitioner having examined a person, who has reasonable grounds to believe the person to be mentally disordered as defined by the Act, to arrange for a section 9 assessment examination (providing there is an accompanying application for assessment). Police can detain the proposed patient for up to six hours or the time it takes to conduct the examination, whichever is shorter.

Section 110 - Powers of medical practitioner when urgent sedation is required

Under section 110 a medical practitioner can complete an application form and medical certificate, arrange for an urgent assessment examination to take place, and request police assistance. A medical practitioner acting under this section must make every reasonable effort to get the advice and assistance of a duly authorised officer.

The section also allows a medical practitioner who issues a medical certificate to administer sedation in an emergency in accordance with guidelines issued by the Director-General of Health (under section 130 of the Act).

Section 110A - Powers of police when urgent assessment required

The section sets out the powers of the police when urgent assistance is required by a medical practitioner. Police can be called to assist a medical practitioner under ss110(4), 110AA(5) or 110AB(4).

Section 111- Powers of nurse when urgent assessment required

The section clarifies the purpose of the section and substitutes a reference to section 8(3) with a reference to section 8B(4)(b).

Section 113 - Authority of person in charge of hospital or service to admit and detain

Changes to section 113 clarifies the circumstances in which a person in charge of a hospital or service can admit or detain a patient.

Section 113A - Judge may issue warrant

The section sets out who can apply for a warrant and when a Judge can issue a warrant. A Judge can now issue a warrant requiring a patient to attend 6 monthly reviews.

Section 114 - Neglect or ill treatment of mentally disordered patients

It is already an offence under the Act to neglect or ill treat patients who are mentally disordered (as defined by the Act). This is widened to apply to proposed patients.

Section 115 - Assisting patient on community treatment order not to attend for treatment

It is an offence if a person intentionally assists a patient subject to a community treatment order not to attend for treatment. If found guilty of such an offence a person is liable for a term of 3 months imprisonment or a fine not exceeding \$1000.

Section 115A - Assisting a patient on inpatient order to be absent without leave

Section 115A clarifies that it is offence to assist a patient on an inpatient order to be absent without leave. An offence under this section carries the same penalty as section 115.

Section 116 - Unlawful publication of court proceedings before the Review Tribunal

Section 116 protects the confidentiality of Review Tribunal proceedings so the confidentiality of patients are maintained. A person who is found guilty of such an offence is liable to a fine not exceeding \$10,000.

Section 122A - Certain sections of Crimes Act 1961 apply to powers to take and retake

The section specifies each section of the Act where and under what circumstances powers of force can be used.

Section 122B - Use of force

This section authorises a person who is exercising a specified power in an emergency to use such force that is reasonably necessary. A log recording the exact circumstances involving the use of force, must be completed. This log must be forwarded to the Director of Area Mental Health Services as soon as practicable.

Section 126 - Patients' pocket money

Section 126 is repealed.

Section 127(4) - Transfer of patients

Section 127(4) is amended by omitting the words "an order made" and substituting the words "A direction given". The word "order" is omitted and substituted with the word "directed".

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

Section 129 - Registers and records

Under section 129 the words "Person in charge" is replaced with the phrase "The Director of Area Mental Health Services must ensure that in every hospital or service the person in charge keeps".

The section also clarifies that Directors of Area Mental Health Services are responsible for ensuring that the person in charge of a hospital keeps registers and records pertaining to the Act.

Section 132 - Notice of Death

The words “the Board” are replaced with the words “a service”.

Section 133 - Giving or sending documents

Section 133 has been redrafted and updated to clarify when and how a document is considered to be sent and received.

Section 134 - Fees of medical practitioners

Section 134’s terminology is updated and circumstances when a medical practitioner is eligible for a payment of a fee is set out.

Clause 47 - First schedule amendment

Amendments to the first schedule clarifies the Review Tribunals’ procedural provisions including:

- requesting of reports
- tendering of evidence
- payment of fees and expenses of witnesses
- professional groups able to circulate Review Tribunal reports of proceedings.

Amendments to other Acts

Summary Proceedings Act 1957

The Summary Proceedings Act 1957 is amended to replace a reference to the “Mental Health Act 1969”, with “Mental Health (Compulsory Assessment and Treatment) Act 1992.

Victims Offences Act 1987

A new section 11A is inserted into the Victim Offences Act 1988. If a patient is subject to one of the following classes:

- s171(3) of the Summary Proceedings Act 1957 - release on bail of defendant committed for trial or for sentence/ or detention in a psychiatric hospital pending trial
- section 115(1) of the Criminal Justice Act 1985 (CJA) - not guilty by reason of insanity *or* under disability (too sick to stand trial) and detained as a special patient
- section 115(2)(a) CJA - not guilty by reason of insanity *or* under disability (too sick to stand trial) and detained as an ‘ordinary’ patient (under a compulsory treatment order)
- section 115(4) CJA - remanded to hospital for 7 days while court decides which order to make under section 115
- section 118 CJA - person convicted of an offence and court makes a compulsory treatment order instead of a prison sentence
- section 121(2)(b)(ii) CJA - remanded to hospital for a psychiatric report (14 days)
- section 121(11) CJA - remanded to hospital pending trial
- section 45(2) MHA - application for compulsory assessment of prisoner in hospital
- section 46 MHA - voluntary assessment of prisoner in hospital.

A victim of an offence of sexual volition or other serious assault or injury can apply for notification of escape, impending discharge, or long leave granted by the Minister of Health under s50 of the Mental Health (Compulsory Assessment and Treatment) Act 1992.

Coroners Act 1988

Section 4(1)(g) of the Coroners Act 1988 is amended by including the words “proposed patient” and updating a reference to the Mental Health Act 1969.

