



ANALYSIS

<p>Title</p> <p>1. Short Title and commencement</p> <p>2. Interpretation</p> <p>3. Duration of reception order</p> <p>4. Mentally disordered persons detained in penal or certified institutions</p>	<p>5. Detained persons in need of care and treatment</p> <p>6. Further provisions as to special patients</p> <p>7. Further powers of Court</p> <p>8. Leave and escape of special patients</p> <p>9. Notice of admission</p> <p>10. Judge may direct inquiry</p> <p>11. Meaning of "protected patient"</p> <p>12. Transitional provisions</p>
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1985, No. 122

An Act to amend the Mental Health Act 1969

[20 August 1985]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the Mental Health Amendment Act 1985, and shall be read together with and deemed part of the Mental Health Act 1969 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 1st day of October 1985.

2. Interpretation—(1) Section 2 of the principal Act is hereby amended by omitting from paragraph (c) of the definition of the term "committed patient" the words "Part VA of the Criminal Justice Act 1954", and substituting the words "Part VII of the Criminal Justice Act 1985".

(2) Section 2 of the principal Act is hereby further amended by repealing paragraph (a) of the definition of the term "special patient", and substituting the following paragraph:

"(a) Is subject to an order made under section 115 (1) or pursuant to section 120 of the Criminal Justice Act 1985, or under subsection (2) (b) (ii) or subsection (11) of section 121 of that Act, or under the proviso to section 171 (3) of the Summary Proceedings Act 1957; or"

3. Duration of reception order—(1) Section 28 (2) of the principal Act is hereby amended by omitting from the proviso the words “under subsection (4) of that section”, and substituting the words “pursuant to section 120 of the Criminal Justice Act 1985”.

(2) Section 28 of the principal Act is hereby further amended by repealing subsection (3), and substituting the following subsection:

“(3) Notwithstanding anything in subsections (1) and (2) of this section, if, at any time while a reception order is in force in respect of any person, that person becomes subject to a temporary reception order made on an application pursuant to section 120 of the Criminal Justice Act 1985, or to an order made by a Court under subsection (2) (b) (ii) or subsection (11) of section 121 of that Act, the first-mentioned reception order shall be suspended during the currency of the temporary reception order or of the court’s order, as the case may be.”

(3) Section 28 (4) of the principal Act is hereby amended—

(a) By omitting from paragraph (a) the words “section 39C or section 39J of the Criminal Justice Act 1954”, and substituting the words “section 115 or section 118 of the Criminal Justice Act 1985”:

(b) By inserting in paragraph (c), after the words “or community service” (as inserted by section 33 of the Criminal Justice Amendment Act 1980), the words “or to supervision or to community care”:

(c) By repealing paragraph (d).

(4) Section 28 (5) of the principal Act (as added by section 2 of the Mental Health Amendment Act 1976) is hereby amended by omitting the words “or paragraph (d)”.

4. Mentally disordered persons detained in penal or certified institutions—(1) Section 42 (1) of the principal Act is hereby amended—

(a) By omitting from paragraph (b) the words “or under section 48A of the Criminal Justice Act 1954”:

(b) By repealing paragraph (c).

(2) Section 42 of the principal Act is hereby further amended by repealing subsection (2), and substituting the following subsection:

“(2) Except as provided in section 120 of the Criminal Justice Act 1985, this section does not apply to any person kept in custody or detained in any place pending a hearing or trial or following conviction and pending sentence.”

(3) Section 42 of the principal Act is hereby further amended by repealing subsections (4) to (6).

5. Detained persons in need of care and treatment—

Section 43 of the principal Act is hereby amended by inserting, before the words “he shall”, the words “, subject to section 47 (1) of this Act,”.

6. Further provisions as to special patients—(1) Section 44 of the principal Act is hereby amended by repealing subsections (4) to (9), and substituting the following subsections:

“(4) While any person is detained in a hospital pursuant to a reception order made on an application under section 42 of this Act, or is detained pursuant to section 43 of this Act, or having been so detained is on leave pursuant to section 47 of this Act, the term of any sentence or order of committal or detention applicable to him before his admission to the hospital shall continue to run. If, at any time before his liability to detention under that sentence or order of committal ceases, he escapes from detention or custody, that term shall cease to run and shall not begin to run until he is retaken.

“(5) At the time when any person to whom subsection (4) of this section applies ceases to be liable to be detained under any sentence or order of committal requiring him to be imprisoned or otherwise kept in detention, he shall cease to be detained as a special patient; but—

“(a) If, at that time, he is detained in a hospital pursuant to a reception order made on an application under section 42 of this Act, or having been so detained is on leave pursuant to section 47 of this Act, he shall thereafter be a committed patient; and

“(b) If, at that time, he is detained pursuant to section 43 of this Act, or having been so detained is on leave pursuant to section 47 of this Act, he shall be deemed,—

“(i) If he is or was detained in a hospital carried on by an area health board, to have been admitted to the hospital for treatment pursuant to the Area Health Boards Act 1983; or

“(ii) If he is or was detained in a hospital carried on by a hospital board, to have been admitted to the hospital for treatment pursuant to the Hospitals Act 1957; or

“(iii) If he is or was detained in a hospital carried on by the Crown, to be an informal patient admitted to that hospital under section 15 of this Act.

“(6) For the purposes of this section, liability to detention under a sentence ceases—

“(a) When the sentence is remitted under section 80 and section 102 of the Criminal Justice Act 1985; or

“(b) When a direction for release given by the Parole Board under section 94 of that Act comes into effect; or

“(c) When the sentence is determined.”

(2) The following enactments are hereby repealed:

(a) Section 7 of the Mental Health Amendment Act 1972:

(b) So much of the Schedule to the Area Health Boards Act 1983 as relates to section 44 (5) of the principal Act.

7. Further powers of Court—Section 45 of the principal Act is hereby repealed.

8. Leave and escape of special patients—(1) Section 47 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) If 2 medical practitioners appointed by the Minister certify that a person who is detained in a hospital as a special patient acquitted on account of insanity or pursuant to a reception order made on an application under section 42 of this Act (other than a temporary reception order) or pursuant to section 43 of this Act is fit to be allowed to be absent from the hospital, the Minister may grant leave of absence from the hospital on such conditions as he thinks fit, including, at his discretion, a condition that the person will return to the hospital on such date or within such period as the Minister may specify:

“Provided that the power to grant leave under this subsection shall not be exercised in respect of any person who is subject to a sentence of imprisonment for life or to a sentence of preventive detention.”

(2) Section 47 (3) of the principal Act is hereby repealed.

(3) Section 47 (4) of the principal Act is hereby amended by omitting the words “on an application under subsection (4) of section 42 of this Act, or pursuant to section 39B or section 47A of the Criminal Justice Act 1954”, and substituting the words “under section 42 of this Act on an application made pursuant to section 120 of the Criminal Justice Act 1985, or pursuant to subsection (2) (b) (ii) or subsection (11) of section 121 of that Act”.

9. Notice of admission—Section 52 (2) of the principal Act is hereby amended by omitting the words “Part VA of the Criminal Justice Act 1954”, and substituting the words “Part VII of the Criminal Justice Act 1985”.

10. Judge may direct inquiry—(1) Section 74 (4) of the principal Act is hereby amended—

(a) By omitting the words “section 39H of the Criminal Justice Act 1954”, and substituting the words “section 116 of the Criminal Justice Act 1985”:

(b) By omitting the words “Minister of Justice”, and substituting the words “Attorney-General”:

(c) By omitting the expression “39H”, where it secondly occurs, and substituting the expression “116”.

(2) Section 74 (5) of the principal Act is hereby amended by omitting the words “section 39H of the Criminal Justice Act 1954”, and substituting the words “section 116 of the Criminal Justice Act 1985”.

11. Meaning of “protected patient”—(1) Section 82 (1) of the principal Act is hereby amended by omitting from paragraph (a) of the definition of the term “protected patient” the words “Part VA of the Criminal Justice Act 1954”, and substituting the words “Part VII of the Criminal Justice Act 1985”.

(2) Section 82 (1) of the principal Act is hereby further amended by repealing paragraph (e) of the definition of the term “protected patient”, and substituting the following paragraph:

“(e) A special patient, other than a person who is subject to an order made under subsection (2) (b) (ii) or subsection (11) of section 121 of the Criminal Justice Act 1985 or under the proviso to subsection (3) of section 171 of the Summary Proceedings Act 1957, or to a temporary reception order made on an application under section 42 of this Act pursuant to section 120 of the Criminal Justice Act 1985, or to arrangements made under section 43 of this Act.”.

12. Transitional provisions—(1) Section 130 (2) of the principal Act is hereby repealed.

(2) Every convicted person awaiting sentence who, immediately before the date of the commencement of this Act, was detained pursuant to a reception order made on an application under section 42 of the principal Act shall continue to be subject to the provisions of that section and sections 44 and 45 of that Act as if this Act had not been passed.

(3) Notwithstanding anything in section 4 of this Act, every temporary reception order made on an application pursuant to section 42 (4) of the principal Act and in force immediately before the date of the commencement of this Act shall continue in force in all respects as if this Act had not been passed.

This Act is administered in the Department of Health.
