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Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003

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Commencement see section 2

Contents

	Page
1 Title	8
Part 1	
Preliminary provisions	
2 Commencement	8
3 Purposes	8
4 Outline	8
5 Interpretation	10
6 Meaning of care recipient and related terms	13
7 Meaning of intellectual disability	15
8 Persons who do not have intellectual disability	15
9 Meaning of facility and secure facility	16
10 Act binds the Crown	16
Part 2	
Principles and general duties	
11 Principles governing exercise of powers under this Act	16

Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

This Act is administered by the Ministry of Health.

12	Principles governing decisions affecting children and young persons	16
13	Powers to be exercised with proper respect for cultural identity and personal beliefs	17
14	Interpreters to be provided	18

Part 3

Needs assessments and care and rehabilitation plans

Assessment of care and rehabilitation needs

15	Needs assessments required for certain care recipients	18
16	Purposes of needs assessment	19
17	When needs assessment process to be commenced	19
18	How needs assessment process to be commenced	19
19	Maximum period for needs assessment and preparation of care and rehabilitation plan	20
20	Co-ordinator to consult assessors	20
21	Co-ordinator to consult with persons concerned with welfare of care recipient	20
22	Case conferences	21
23	Cultural assessment	21

Care and rehabilitation plan

24	Care and rehabilitation plan to be prepared for care recipient	21
25	Care and rehabilitation plan to identify personal needs of care recipients	21
26	Care programme	22
27	Other matters	22
28	Care and rehabilitation plan may be varied	22

Part 4

Compulsory care and rehabilitation of prisoners and former special patients

Subpart 1—Assessment of prisoners and former special patients

29	Application for assessment of prisoner or former special patient	23
30	Matters to be stated in application	23
31	Application to be accompanied by certificate	23
32	Arrangements for assessment	24
33	Assessment of child or young person	24
34	Timing for, and place of, assessment	24
35	Proposed care recipients may have to stay in facility	24
36	Prisoners to appear in court	25
37	Assessment examination	25
38	Result of assessment	26

	Subpart 2—Compulsory care orders for prisoners and former special patients	
	<i>Applications for compulsory care orders</i>	
39	Conditions for applications under this subpart	26
40	Matters to be set out in application	27
	<i>Visit by Judge</i>	
41	Judge to examine proposed care recipient	27
42	Visiting Judge may order withdrawal of application	28
	<i>Making compulsory care order</i>	
43	Visiting Judge, wherever possible, to hear application	28
44	Court to consider proposed care recipient's condition	29
45	Jurisdiction to make compulsory care order	29
46	Term of compulsory care order	29
	Part 5	
	Status and rights of care recipients	
	Subpart 1—General status and specific rights	
	<i>Status generally</i>	
47	Requirement to accept care	30
	<i>Specific rights of care recipients</i>	
48	Care recipients are consumers under Code of Health and Disability Services Consumers' Rights	30
49	General rights to information	30
50	Respect for cultural identity	31
51	Medical treatment	31
52	Rights in case of visual or audio recording	31
53	Right to independent health and disability advice	31
54	Right to legal advice	31
55	Right to company	31
56	Right to receive visitors and communicate orally with persons outside facility	32
57	Right to receive and send written communications and other items	32
58	Written communications or other items not to be intercepted if sent by or to certain office holders	33
59	Procedure where written communications or other items intercepted	33
	Subpart 2—Specific powers exercisable over care recipients	
60	Seclusion	34
61	Restraint of care recipients	35
62	Enforced medical treatment	35
62A	Collection of biometric information from special care recipients	36

	Subpart 3—Requirement to stay in designated facilities or places	
	<i>Placement of care recipients</i>	
63	Designation notices relating to secure care	36
64	Directions relating to supervised care	37
	<i>Leave for care recipients no longer subject to criminal justice system</i>	
65	Care manager may grant leave	37
	<i>Leave for special care recipients</i>	
66	Minister may authorise leave for special care recipients	37
67	Director-General may authorise short-term leave	38
67A	Special care recipients not to leave secure facility or depart from New Zealand without permission	38
	Subpart 4—Status of special care recipients subject to sentences	
68	When liability to detention under sentence ceases	39
69	Relationship between detention in secure facility and sentence	39
70	Care recipient whose status changes under section 69 to be held in secure care	40
71	Former care recipients subject to sentence to be taken to prison	40
	Part 6	
	Reviews of condition and status of care recipients	
	Subpart 1—Initial review of care and rehabilitation plan or compulsory care order	
72	Co-ordinator to report to Family Court on appropriateness of order and plan	41
73	Co-ordinator must send copy of report to certain persons	41
74	Review by Family Court	42
75	Family Court may call for reports	42
76	Family Court may make recommendations	42
	Subpart 2—Condition of every care recipient to be reviewed	
77	Regular clinical reviews of care recipients	42
78	Reviews undertaken by specialist assessors	43
79	Specialist assessor to issue certificate	43
80	Specialist assessor to send certificate and reports to certain persons	43
81	Co-ordinator to send copy of certificate to certain persons	44

	Subpart 3—Change in status of care recipient no longer subject to criminal justice system and special care recipients liable to detention under sentence	
	<i>Form of certificate</i>	
82	Form of clinical review certificate for care recipients no longer subject to criminal justice system and care recipients liable to detention under sentence	44
	<i>Release from compulsory care</i>	
83	Status on expiry of term of compulsory care order	44
84	Cancellation of court orders of certain care recipients	44
	<i>Continuation of compulsory care</i>	
85	Extension of compulsory care order	45
86	Co-ordinator may seek variation of compulsory care order	45
87	Court may defer expiry of order if application for extension pending	45
88	Co-ordinator and court to have regard to specialist assessor's certificate	46
	Subpart 4—Status of certain special care recipients	
	<i>Special care recipients detained because unfit to stand trial</i>	
89	Form of clinical review certificate for special care recipients detained because unfit to stand trial	46
90	Attorney-General to be notified if special care recipient considered fit to stand trial	47
91	Ministers to be notified if care for person as special care recipient considered no longer necessary	47
	<i>Special care recipients detained because acquitted on account of insanity</i>	
92	Form of clinical review certificate for special care recipients detained because acquitted on account of insanity	47
93	Where person considered not to require further care as special care recipient	47
	<i>Change of status of certain special care recipients resulting from ministerial directions or court order</i>	
94	Status of special care recipients found unfit to stand trial or insane	48
	Part 7	
	Inspections and inquiries	
	Subpart 1—Inspections, investigations, and inquiries by district inspectors	
	<i>Inspections</i>	
95	Visits by district inspectors	48

96	Inspectors' access to persons and documents	49
	<i>Complaints about breaches of rights</i>	
97	Complaint of breach of rights	49
98	Investigation by district inspector	50
99	Care recipient to be informed of outcome of investigation	50
100	Duty of care manager to put things right	50
	<i>Inquiries by district inspectors</i>	
101	Inquiries by district inspector	50
	<i>Subpart 2—Inquiry by High Court Judge</i>	
102	Judge may call for report on care recipient or summon care recipient	51
103	Judge may summon witnesses	51
104	Judge may release care recipient no longer subject to criminal justice system	52
105	Orders Judge may make in relation to special care recipient detained because unfit to stand trial	52
106	Orders Judge may make in relation to special care recipient detained because acquitted on account of insanity	52
107	Judge may report to Minister	53
108	Other remedies still available	53

Part 8

Authority to take and detain care recipients

Authority to detain under court orders

109	Authority to admit and detain under orders	53
	<i>Authority to take care recipients who escape</i>	
110	Meaning of care recipient who has escaped	53
111	Power to retake care recipient absent without authority	54
112	Warrant to enter and search places to retake escaped care recipients	54
113	Entry of place without warrant	55
114	Matters to be observed when place entered	55
	<i>Protection from criminal responsibility</i>	
115	Matters of justification or excuse	55

Part 9

Procedural provisions

Which court?

116	Jurisdiction of Family Court	56
	<i>Persons entitled to be heard</i>	
117	Persons entitled to be heard on applications	56

118	Specialist assessors and care managers entitled to appear and be heard on certain applications	57
119	Entitlement to be served with application	57
120	Obligations of district inspector on receiving copy of application	58
121	Attendance at hearing by care recipient and person in support	58
122	Excusing or excluding care recipient	58
123	Representation of persons entitled to be heard, and special rights of care recipient	58
124	Appointment by court of lawyer to represent care recipient	59
125	Court may call for report on care recipient	59
126	Evidence on report	60
127	Court not bound by rules of evidence	60
128	Power of court to call witnesses	60
129	Proceedings not open to public	61
130	Publication of reports of proceedings	61
131	Court may dispense with hearing in certain circumstances	62
132	Care recipient to be given copy of order	62
	<i>Appeals</i>	
133	Appeals from decisions of Family Court	62
134	Further appeal to Court of Appeal	62
135	Orders stay in force during appeal	63
	Part 10	
	Relationship with other Acts	
136	Application to mentally disordered persons	63
137	Orders under Protection of Personal and Property Rights Act 1988	64
138	Orders under Oranga Tamariki Act 1989	64
139	Certain orders under Criminal Procedure (Mentally Impaired Persons) Act 2003 prevail over orders under this Act	64
	Part 11	
	Administration	
	<i>Co-ordinators, care managers, and district inspectors</i>	
140	Compulsory care co-ordinators	65
141	Designation of care manager	65
142	Co-ordinator or care manager may delegate powers	66
143	Status of delegations	66
144	Designation of district inspectors	66
145	No proceedings against district inspectors unless bad faith shown	67
146	Designation of specialist assessors and medical consultants	67
147	Director-General of Health may call for reports	67
147A	Crimes of Torture Act 1989 not limited	67
	<i>Standards, rules, and regulations</i>	
148	Director-General may promulgate guidelines and standards	68

149	Rules	68
150	Regulations	68

1 Title

This Act is the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003.

Part 1 Preliminary provisions

2 Commencement

This Act comes into force on a date to be appointed by the Governor-General by Order in Council; and 1 or more Orders in Council may be made appointing different dates for different provisions.

Section 2: section 5(1) and Part 11 brought into force, on 1 July 2004, by clause 2(1) of the Intellectual Disability (Compulsory Care and Rehabilitation) Act Commencement Order 2004 (SR 2004/148).

Section 2: Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 (except section 5(1) and Part 11) brought into force, on 1 September 2004, by clause 2(2) of the Intellectual Disability (Compulsory Care and Rehabilitation) Act Commencement Order 2004 (SR 2004/148).

3 Purposes

The purposes of this Act are—

- (a) to provide courts with appropriate compulsory care and rehabilitation options for persons who have an intellectual disability and who are charged with, or convicted of, an offence; and
- (b) to recognise and safeguard the special rights of individuals subject to this Act; and
- (c) to provide for the appropriate use of different levels of care for individuals who, while no longer subject to the criminal justice system, remain subject to this Act.

4 Outline

- (1) This Act provides a system for the compulsory care and rehabilitation of persons who have an intellectual disability and who have been charged with, or convicted of, an offence. There are 2 ways in which a person of that description can become subject to the Act—
 - (a) by an order made in the course of a criminal proceeding brought against the person; or
 - (b) by changing the regime applicable to the person from that under the Corrections Act 2004 or the Mental Health (Compulsory Assessment and

Treatment) Act 1992 to the regime under this Act. Such a change generally requires an order of the Family Court.

Persons subject to this Act are known as care recipients. Care recipients who are special care recipients must receive secure care, while other care recipients may be eligible for supervised care, that is care that may be given in a place other than a secure facility.

- (2) Part 2 sets out the principles that must guide courts and persons exercising powers over care recipients. Special principles apply when the care recipient is a child or young person.
- (3) Part 3 requires the preparation of a care and rehabilitation plan—
 - (a) for every person who, following a criminal proceeding brought against the person, is required to be cared for under this Act; and
 - (b) for every person with an intellectual disability for whom care under this Act is proposed.

Every care and rehabilitation plan must be preceded by a needs assessment of the person. Wherever possible, the assessment must involve consultation with the assessor or assessors who diagnosed the person's intellectual disability, and with the person's lawyer, and with members of the person's family or whanau and others who are close to the person.

- (4) Part 4 provides for a change of regimes from that under the Corrections Act 2004 or the Mental Health (Compulsory Assessment and Treatment) Act 1992 to the regime under this Act. This is an option for certain prison inmates with an intellectual disability and for certain patients under the Mental Health (Compulsory Assessment and Treatment) Act 1992 with an intellectual disability. If such a person is to receive care under this Act, the co-ordinator has to apply to the Family Court for a compulsory care order for the person. The Family Court may make such an order if satisfied that the person has an intellectual disability, and that he or she has been assessed under Part 4 as well as Part 3.
- (5) Part 5 is concerned with the status and rights of care recipients. It deals with the following matters:
 - (a) the care recipient's obligation to accept care lawfully given (section 47):
 - (b) the specific rights of care recipients (sections 48 to 59):
 - (c) the circumstances in which care recipients may be placed in seclusion, restrained, or receive medical treatment without their consent (subpart 2):
 - (d) the requirement for certain care recipients to stay in facilities, and the scope for authorised periods of leave (subpart 3):
 - (e) the status of care recipients who are liable to detention under a sentence (subpart 4).

- (6) Part 6 is concerned with reviews of the condition and status of care recipients. These reviews inform decisions taken about the nature and duration of the care given. The provisions include—
- (a) an initial review by the Family Court of a care recipient's care and rehabilitation plan and any compulsory care order (subpart 1):
 - (b) regular clinical reviews of every care recipient at intervals of not more than 6 months (subpart 2):
 - (c) rules (in subpart 3) governing the duration and changes to the nature of the care given to the following classes of care recipient:
 - (i) special care recipients who are liable to detention under a sentence:
 - (ii) care recipients no longer subject to the criminal justice system:
 - (d) clinical advice given to Ministers of the Crown who decide, under the Criminal Procedure (Mentally Impaired Persons) Act 2003, on changes to the status of special care recipients who are detained because they have been found unfit to stand trial or because they have been acquitted on account of insanity.
- (7) Part 7 is concerned with inspections and inquiries. District inspectors must regularly inspect facilities under this Act and act on complaints; they may also conduct formal inquiries. Under subpart 2 a High Court Judge may examine care recipients and order the release, or change of status, of certain classes of care recipient.
- (8) Part 8 provides authority to detain care recipients and to retake those who escape.
- (9) Part 9 sets out the procedures that govern the hearing and determination by the Family Court of applications under this Act.
- (10) Part 10 states that the provisions of this Act give way to determinations under certain Acts, and prevail over others.
- (11) Part 11 deals with matters of administration. It provides for the appointment or designation of office holders, specialist assessors, and medical consultants. It also authorises the making of standards and guidelines.
- (12) This section is only a guide to the general scheme of this Act.

Section 4(1)(b): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 4(4): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

5 Interpretation

- (1) In this Act, unless the context otherwise requires,—
- biometric information** has the same meaning as in section 2(1) of the Customs and Excise Act 1996

care and rehabilitation plan, in relation to a care recipient, means the care and rehabilitation plan prepared for the care recipient, under section 24, as varied from time to time under this Act

care manager means a person designated under section 141

care programme means a programme that—

- (a) is included in a care recipient's care and rehabilitation plan; and
- (b) provides for the matters specified in section 26

care recipient has the meaning given to it by section 6(1)

care recipient liable to detention under a sentence has the meaning given to it by section 6(6)

care recipient no longer subject to the criminal justice system has the meaning given to it by section 6(3)

child has the same meaning as in section 2(1) of the Oranga Tamariki Act 1989

Code of Rights means the Code of Health and Disability Services Consumers' Rights for the time being in force under the Health and Disability Commissioner Act 1994

compulsory care order means an order made under section 45 or an order made under section 25(1)(b) or section 34(1)(b)(ii) of the Criminal Procedure (Mentally Impaired Persons) Act 2003; and includes the order as varied from time to time

co-ordinator means a compulsory care co-ordinator appointed under section 140; and, in relation to a function, duty, or power, means the person appointed under that section who is responsible for the geographical area in which the function is to be performed, or the duty or power is to be exercised

court order means a compulsory care order or an order under section 24(2)(b) or section 34(1)(a)(ii) of the Criminal Procedure (Mentally Impaired Persons) Act 2003; and includes the order as varied from time to time

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

facility has the meaning given to it by section 9(1)

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

guardian includes a welfare guardian

intellectual disability has the meaning given to it by section 7

lawyer has the meaning given to it by section 6 of the Lawyers and Conveyancers Act 2006

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

mental disorder has the same meaning as in the Mental Health (Compulsory Assessment and Treatment) Act 1992

Minister means the Minister of Health

principal caregiver, in relation to a care recipient, means the person who is most evidently and directly concerned with the oversight of the care recipient's care and welfare

prison has the same meaning as in section 3(1) of the Corrections Act 2004

prisoner means a person who is liable to be detained in a prison—

- (a) under a sentence; or
- (b) while awaiting or during the course of a hearing or trial before a court or while awaiting sentence by a court or pending the determination of an appeal to a court

proposed care recipient has the meaning given to it by section 6(4)

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

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

secure care means care given to a care recipient who is required to stay in a secure facility

secure facility has the meaning given to it by section 9(2)

sentence includes an order of committal to, or an order of detention in, a prison

service means an organisation that provides services for persons who have an intellectual disability (whether or not it also provides services for persons who do not have an intellectual disability)

special care recipient has the meaning given to it by section 6(2)

specialist assessor or **assessor** means a suitably qualified and experienced health or disability professional who is for the time being designated by the Director-General of Health for the purposes of this Act

supervised care means care given to a care recipient who may be directed to stay in a facility or in another place

support person, in relation to a care recipient, means a person who has been nominated by the care recipient for the purposes of—

- (a) helping the care recipient express his or her wishes or needs; and
- (b) trying to explain to the care recipient the recommendations and requirements of persons exercising authority over the care recipient

welfare guardian has the same meaning as in section 2 of the Protection of Personal and Property Rights Act 1988

without notice, in relation to an application, has the same meaning as *ex parte*

young person has the same meaning as in section 2(1) of the Oranga Tamariki Act 1989.

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

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

psychologist means a psychologist registered under the Psychologists Act 1981

Section 5(1) **biometric information**: inserted, on 22 August 2017, by section 32 of the Enhancing Identity Verification and Border Processes Legislation Act 2017 (2017 No 42).

Section 5(1) **child**: amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

Section 5(1) **inmate**: repealed, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 5(1) **lawyer**: substituted, on 1 August 2008, by section 348 of the Lawyers and Conveyancers Act 2006 (2006 No 1).

Section 5(1) **prison**: substituted, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 5(1) **prisoner**: inserted, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 5(1) **young person**: amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

6 Meaning of care recipient and related terms

- (1) **Care recipient** means a person who is—
- (a) a special care recipient; or
 - (b) a care recipient no longer subject to the criminal justice system.
- (2) **Special care recipient** means—
- (a) a person who is liable to be detained in a secure facility under an order made under—

- (i) section 24(2)(b) or section 38(2)(c) or section 44(1) of the Criminal Procedure (Mentally Impaired Persons) Act 2003; or
 - (ii) section 171(2) of the Summary Proceedings Act 1957; or
 - (b) a person who is remanded to a secure facility under an order made under section 23 or section 35 of the Criminal Procedure (Mentally Impaired Persons) Act 2003; or
 - (c) a person who is liable to be detained in a secure facility under an order made under section 34(1)(a)(ii) of the Criminal Procedure (Mentally Impaired Persons) Act 2003 and who has not ceased, under section 69(3), to be a special care recipient; or
 - (d) a person who—
 - (i) is liable to be detained in a secure facility under a compulsory care order, made under section 45; and
 - (ii) is also liable to detention under a sentence; and
 - (iii) has not ceased, under section 69(3), to be a special care recipient; or
 - (e) a prisoner who is required, under section 35, to stay in a facility; or
 - (f) a person who, in accordance with section 47A(5) of the Mental Health (Compulsory Assessment and Treatment) Act 1992, must be held as a special care recipient.
- (3) **Care recipient no longer subject to the criminal justice system** means a person who—
- (a) is, or continues to be, subject to a compulsory care order, made under section 45, but is not, or is no longer, liable to be detained under a sentence; or
 - (b) is subject to an order made under section 25(1)(b) or section 34(1)(b)(ii) of the Criminal Procedure (Mentally Impaired Persons) Act 2003; or
 - (c) is subject to a compulsory care order resulting from the operation of section 69(3) or section 94(1); or
 - (d) is a former special patient who is required, under section 35, to stay in a facility.
- (4) **Proposed care recipient** means a person—
- (a) who is being assessed under Part 3 or Part 4; or
 - (b) in respect of whom an application for a compulsory care order is pending before the Family Court.
- (5) In Parts 2, 3, and 9, a reference to a care recipient includes a reference to a proposed care recipient.
- (6) **Care recipient liable to detention under a sentence** means a special care recipient to whom subsection (2)(c) or (d) applies.

Section 6(2)(e): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

7 Meaning of intellectual disability

- (1) A person has an **intellectual disability** if the person has a permanent impairment that—
 - (a) results in significantly sub-average general intelligence; and
 - (b) results in significant deficits in adaptive functioning, as measured by tests generally used by clinicians, in at least 2 of the skills listed in subsection (4); and
 - (c) became apparent during the developmental period of the person.
- (2) Wherever practicable, a person's general intelligence must be assessed by applying standard psychometric tests generally used by clinicians.
- (3) For the purposes of subsection (1)(a), an assessment of a person's general intelligence is indicative of significantly sub-average general intelligence if it results in an intelligence quotient that is expressed—
 - (a) as 70 or less; and
 - (b) with a confidence level of not less than 95%.
- (4) The skills referred to in subsection (1)(b) are—
 - (a) communication:
 - (b) self-care:
 - (c) home living:
 - (d) social skills:
 - (e) use of community services:
 - (f) self-direction:
 - (g) health and safety:
 - (h) reading, writing, and arithmetic:
 - (i) leisure and work.
- (5) For the purposes of subsection (1)(c), the developmental period of a person generally finishes when the person turns 18 years.
- (6) This section is subject to section 8.

8 Persons who do not have intellectual disability

- (1) A person does not have an intellectual disability simply because the person—
 - (a) has a mental disorder; or
 - (b) has a personality disorder; or
 - (c) has an acquired brain injury; or
 - (d) does not feel shame or remorse about the harm that person causes to others.

- (2) To avoid doubt, if—
- (a) a person does not have an intellectual disability, the provisions of this Act relating to compulsory care cannot apply to the person, whether or not the person has any other disability;
 - (b) a person does have an intellectual disability, those provisions are not prevented from applying to the person simply because the person also has 1 or more of the characteristics described in subsection (1)(a) to (d).

9 Meaning of facility and secure facility

- (1) A **facility** is a place that is used by a service for the purpose of providing care to persons who have an intellectual disability (whether or not the place is also used for other purposes).
- (2) A **secure facility** is a facility that—
- (a) has particular features that are designed to prevent persons required to stay in the facility from leaving the facility without authority; and
 - (b) is operated in accordance with systems that are designed to achieve that purpose.
- (3) A facility that is not a secure facility need not have any particular features and, accordingly, a building (such as a residential house) that is not an institution can be used as such a facility.
- (4) In no case can a prison be used as a facility.
- (5) Subsection (3) is subject to any other enactment.

10 Act binds the Crown

This Act binds the Crown.

Part 2

Principles and general duties

11 Principles governing exercise of powers under this Act

Every court or person who exercises, or proposes to exercise, a power under this Act in respect of a care recipient must be guided by the principle that the care recipient should be treated so as to protect—

- (a) the health and safety of the care recipient and of others; and
- (b) the rights of the care recipient.

12 Principles governing decisions affecting children and young persons

Whenever a court or a person exercises, or proposes to exercise, a power conferred by or under this Act over a child or young person, the court or person must be guided by any of the following principles that are relevant to the exercise or proposed exercise of the power:

- (a) wherever possible, the family, whanau, hapu, iwi, and family group of the child or young person should participate in the making of decisions affecting the child or young person, and, accordingly, regard should be had to the views of the family, whanau, hapu, iwi, and family group:
- (b) wherever possible, the links of the child or young person with his or her family, whanau, hapu, iwi, and family group should be maintained and strengthened:
- (c) a decision affecting the child or young person may be taken only after consideration of the likely impact of the decision—
 - (i) on the welfare of the child or young person; and
 - (ii) on the stability of the family, whanau, and family group of the child or young person:
- (d) consideration should be given to the wishes of the child or young person, to the extent that those wishes can reasonably be ascertained, and those wishes should be given the weight that is appropriate in the circumstances, having regard to the age, maturity, and culture of the child or young person:
- (e) decisions affecting the child or young person should, whenever practicable, be made and implemented within a time frame that is appropriate to the sense of time of the child or young person.

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

- (1) This section applies to—
 - (a) a court or person exercising a power under this Act in respect of a care recipient; and
 - (b) a court conducting proceedings under this Act in respect of a care recipient.
- (2) The power must be exercised, or the proceedings conducted,—
 - (a) with proper recognition of the importance and significance to the care recipient of the care recipient's ties with his or her family, whanau, hapu, iwi, and family group; and
 - (b) with proper recognition of the importance and significance to the care recipient's family, whanau, hapu, iwi, and family group of the ties of the family, whanau, hapu, iwi, and family group with the care recipient; and
 - (c) with proper recognition of the contribution the ties specified in paragraphs (a) and (b) make to the care recipient's well-being; and
 - (d) with proper respect for the care recipient's cultural and ethnic identity, language, and religious or ethical beliefs; and

- (e) with proper respect for the competencies and autonomy of the care recipient by keeping all procedures, so far as this can be done, within the care recipient's power of understanding.

Compare: 1992 No 46 s 5

14 Interpreters to be provided

- (1) This section applies to—
 - (a) a court or person exercising a power under this Act in respect of a care recipient; and
 - (b) a court conducting proceedings under this Act in respect of a care recipient; and
 - (c) a person discharging a duty under this Act—
 - (i) to provide information or advice to a care recipient; or
 - (ii) to ascertain the wishes of the care recipient.
- (2) The court or person must ensure that the services of an interpreter are provided for the care recipient if—
 - (a) one of the following applies:
 - (i) the first or preferred language of the care recipient is Maori or another language other than English; or
 - (ii) the care recipient is unable, because of physical or intellectual disability, to understand English; or
 - (iii) the care recipient is able to understand the substance of the matter in issue, but only if it is interpreted by an interpreter; and
 - (b) it is practicable to provide the services of an interpreter.
- (3) In selecting or approving an interpreter for the purposes of this section, the court or person must have regard to any views that the care recipient concerned has on the matter.

Compare: 1992 No 46 s 6

Part 3

Needs assessments and care and rehabilitation plans

Assessment of care and rehabilitation needs

15 Needs assessments required for certain care recipients

The co-ordinator must ensure that the needs of the following persons are, or have been, assessed in accordance with this Part:

- (a) every person whose assessment is required by section 23(5) or section 35(4) of the Criminal Procedure (Mentally Impaired Persons) Act 2003:

- (b) every person who is a care recipient because of an order made under the Criminal Procedure (Mentally Impaired Persons) Act 2003, following—
 - (i) a finding that the person is unfit to stand trial; or
 - (ii) the acquittal of the person on the ground of insanity; or
 - (iii) the conviction of the person:
- (c) every person who, in accordance with section 38, has been assessed as having an intellectual disability:
- (d) every patient who, in accordance with section 47A of the Mental Health (Compulsory Assessment and Treatment) Act 1992, is removed to a facility.

16 Purposes of needs assessment

The purposes of the process for assessing the needs of a care recipient are—

- (a) to assess the kind of care that the care recipient needs; and
- (b) to identify 1 or more suitable services capable of providing care of that kind for the care recipient; and
- (c) to prepare a care and rehabilitation plan for the care recipient.

17 When needs assessment process to be commenced

The co-ordinator must initiate the needs assessment process,—

- (a) in the case of a person referred to in section 15(a), as soon as practicable after the requirement under the Criminal Procedure (Mentally Impaired Persons) Act 2003 takes effect; and
- (b) in the case of a person who is referred to in section 15(b) and who has not previously been assessed in accordance with a requirement of the kind mentioned in section 15(a), as soon as practicable after the relevant order under the Criminal Procedure (Mentally Impaired Persons) Act 2003 is made; and
- (c) in the case of a person referred to in section 15(c), as soon as practicable after the co-ordinator receives the report that sets out the assessment; and
- (d) in the case of a patient referred to in section 15(d), as soon as practicable after the patient is removed to a facility.

18 How needs assessment process to be commenced

- (1) The co-ordinator must commence the needs assessment process by holding a meeting with the care recipient concerned, and any member of the care recipient's family or whanau or a caregiver of the care recipient or someone else concerned with the welfare of the care recipient.
- (2) At the meeting held under subsection (1), the co-ordinator must use his or her best endeavours to explain—

- (a) the substance of any assessment by an assessor that the care recipient has an intellectual disability; and
 - (b) the purpose of the needs assessment.
- (3) In this section, **assessor** includes a health assessor within the meaning of the Criminal Procedure (Mentally Impaired Persons) Act 2003.

19 Maximum period for needs assessment and preparation of care and rehabilitation plan

- (1) The process of assessing the needs of a care recipient and preparing his or her care and rehabilitation plan must be completed as quickly as practicable.
- (2) The process referred to in subsection (1) may not continue for longer than 30 days after the date on which the meeting is held in accordance with section 18.

20 Co-ordinator to consult assessors

- (1) The co-ordinator must assess the needs of a care recipient in consultation with,—
- (a) wherever possible, the assessor or assessors who assessed the care recipient's condition; and
 - (b) the care manager of the care recipient.
- (2) In this section, **assessor** includes a health assessor within the meaning of the Criminal Procedure (Mentally Impaired Persons) Act 2003.

21 Co-ordinator to consult with persons concerned with welfare of care recipient

- (1) During the needs assessment process, the co-ordinator must make all reasonable efforts to consult with the following persons:
- (a) the care recipient;
 - (b) any welfare guardian of the care recipient;
 - (c) if the care recipient is a child or young person, each parent or guardian of the child or young person;
 - (d) the principal caregiver of the care recipient;
 - (e) members of the care recipient's family or whanau;
 - (f) any support person of the care recipient;
 - (g) any lawyer of the care recipient.
- (2) The purpose of consultation under subsection (1) is to enable the co-ordinator—
- (a) to understand the care recipient's history, cultural identity, personal characteristics, aptitudes, and needs; and

- (b) to ascertain the level of support for the care recipient in the community; and
- (c) to ascertain the views of those consulted on the care proposed for the care recipient; and
- (d) to consult on any other matter that the co-ordinator considers relevant.

22 Case conferences

The co-ordinator may, if the co-ordinator considers it appropriate to do so, discharge his or her obligations under section 21 by inviting the persons specified in subsection (1) of that section and the care recipient's care manager to participate in a conference to be held at a specified place or to be conducted by the contemporaneous linking together by telephone or other means of communication.

23 Cultural assessment

- (1) The co-ordinator must try to identify the care recipient's culture, ethnicity, language, and any religious or ethical beliefs.
- (2) If, following the assessment under subsection (1), the co-ordinator considers that the care recipient is Maori and the care recipient agrees with that assessment, the co-ordinator must try to obtain the views of any suitable Maori person or Maori organisation concerned with, or interested in, the care of persons who have an intellectual disability.
- (3) The Maori person referred to in subsection (2) should, wherever possible, be a member of the care recipient's whanau, hapu, or iwi.

Care and rehabilitation plan

24 Care and rehabilitation plan to be prepared for care recipient

- (1) When the care recipient's care needs have been assessed, the co-ordinator must instruct the care manager of the care recipient to arrange for the preparation of a care and rehabilitation plan for the care recipient.
- (2) The care and rehabilitation plan must be approved by the co-ordinator.

25 Care and rehabilitation plan to identify personal needs of care recipients

- (1) Every care and rehabilitation plan must identify the following matters:
 - (a) the social, cultural, and spiritual needs of the care recipient;
 - (b) any medical or psychological treatment that the care recipient requires;
 - (c) any requirements for medication needed to manage the care recipient's condition;
 - (d) the circumstances in which the care recipient is likely to behave in a manner that endangers the health or safety of the care recipient or of others:

- (e) any aptitudes or skills of the care recipient that should, if practicable, be maintained and encouraged:
 - (f) any special concerns or aversions of the care recipient:
 - (g) any special dietary needs of the care recipient:
 - (h) any other special needs of the care recipient.
- (2) The identification, under subsection (1)(a), of the care recipient's needs must take into account any cultural assessment completed under section 23.
- (3) Every care and rehabilitation plan must indicate the extent to which, and the manner in which, the needs identified under subsection (1) can be met.
- (4) Every care and rehabilitation plan must deal with the kind of supervision the care recipient requires to avoid undue risk to the health or safety of the care recipient and of others.

26 Care programme

Every care and rehabilitation plan must set out a care programme for the care recipient that provides for the following matters:

- (a) the objectives of the care proposed to be provided to the care recipient, and the approach or approaches to be followed in achieving those objectives:
- (b) the general nature of the care proposed to be provided to the care recipient:
- (c) the degree of security required for the care of the care recipient and for the protection of others.

27 Other matters

- (1) A care and rehabilitation plan may contain any other matters that the care manager or the co-ordinator considers should be included in the plan.
- (2) Subsection (1) is subject to section 24(2).

28 Care and rehabilitation plan may be varied

The co-ordinator and the responsible care manager of a care recipient may from time to time vary the care and rehabilitation plan of the care recipient, but—

- (a) every variation must be consistent with any court order affecting the care recipient; and
- (b) in the case of a care recipient subject to an order under section 45, no variation of the care programme included in the care and rehabilitation plan is effective without the approval of the Family Court.

Part 4

Compulsory care and rehabilitation of prisoners and former special patients

Part 4 heading: amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Subpart 1—Assessment of prisoners and former special patients

Subpart 1 heading: amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

29 Application for assessment of prisoner or former special patient

- (1) A manager of a prison may apply to the co-ordinator to have a prisoner assessed under this subpart, if there are reasonable grounds for believing that the prisoner has an intellectual disability.
- (2) A Director of Area Mental Health Services under the Mental Health (Compulsory Assessment and Treatment) Act 1992 may apply to the co-ordinator to have a former special patient assessed under this subpart, if there are reasonable grounds for believing that the patient has an intellectual disability.
- (3) A manager may authorise any staff member of the prison to make the application referred to in subsection (1).

Section 29 heading: amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 29(1): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 29(3): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

30 Matters to be stated in application

An application under section 29 must be in writing, and must set out the applicant's reasons for believing that the person to be assessed has an intellectual disability.

31 Application to be accompanied by certificate

- (1) Every application under section 29 must be accompanied by a certificate of a person who—
 - (a) is a medical practitioner or a psychologist; and
 - (b) has examined the person to be assessed within the 3 days immediately before the date of the application.
- (2) Every certificate given under subsection (1) must state—
 - (a) that the person giving the certificate is a medical practitioner or a psychologist and has examined the person to be assessed, and the date of the examination; and
 - (b) that, in the opinion of the person giving the certificate, there are reasonable grounds for believing that the person to be assessed may have an intellectual disability; and

- (c) the reasons for that opinion, explaining why the person giving the certificate believes that the condition of the person to be assessed may come within the definition of the term intellectual disability in section 7.

32 Arrangements for assessment

The co-ordinator initiates an assessment of a person who is to be assessed—

- (a) by designating a care manager for the person in accordance with section 141; and
- (b) designating 1 or more specialist assessors who are to assess the person.

33 Assessment of child or young person

Whenever practicable, a specialist assessor who practises in the field of child and adolescent disability must be involved in the assessment of a child or young person.

Compare: 1992 No 46 s 86

34 Timing for, and place of, assessment

- (1) The assessment of a proposed care recipient must take place within 7 days after the receipt of the application under section 29.
- (2) If the assessment is to be conducted in a facility, the proposed care recipient may be taken under the direction of the appropriate manager or the Director of Area Mental Health Services to the facility for the purposes of the assessment, and may also be taken back, under the direction of the manager or the Director of Area Mental Health Services, to the place where the proposed care recipient is held.
- (3) A prisoner who is taken to a facility under subsection (2) may not stay in the facility overnight, except in accordance with a notice given under section 35.

Compare: 1992 No 46 s 45(4)(a)–(c)(i)

Section 34(2): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 34(3): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

35 Proposed care recipients may have to stay in facility

- (1) The co-ordinator may notify the appropriate manager or Director of Area Mental Health Services that the prisoner or former special patient must stay in a specified facility during 1 or more of the following periods:
 - (a) the period while the person concerned is assessed under this subpart;
 - (b) the period while the needs assessment of the person concerned is conducted under Part 3;
 - (c) the period while an application for a compulsory care order in respect of the person concerned is pending before the Family Court.

- (2) Unless notice is given under subsection (1), a prisoner who is being assessed in a facility continues to be in legal custody under the Corrections Act 2004, even though the prisoner is absent from the prison.
- (3) During the period or periods specified in a notice under subsection (1), the prisoner to whom the notice relates is in the legal custody of the care manager designated for the prisoner under section 32(a) and ceases to be in the legal custody of the manager concerned.

Compare: 1992 No 46 s 45(4)(c)(ii), (e)

Section 35(1): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 35(1)(c): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 35(2): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 35(3): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

36 Prisoners to appear in court

The fact that a prisoner who is charged with, or convicted of, an offence is also a proposed care recipient or a care recipient does not—

- (a) prevent the prisoner from being taken to—
 - (i) the trial or hearing of that offence; or
 - (ii) any sentencing for that offence; or
 - (iii) any hearing of an appeal in respect of that offence; or
- (b) operate to delay any trial, hearing, or sentencing referred to in paragraph (a).

Compare: 1992 No 46 s 45(5)

Section 36 heading: amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 36: amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 36(a): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

37 Assessment examination

- (1) The specialist assessor or assessors designated under section 32(b) must conduct an assessment examination—
 - (a) to ascertain whether the proposed care recipient has an intellectual disability and is in need of compulsory care; and
 - (b) if that is the case, to assess the level of care that is required to manage the risk that the proposed care recipient's behaviour poses to the health and safety of the proposed care recipient or of others.
- (2) Unless consultation is not practicable, the specialist assessor or one of the assessors involved in the assessment examination must consult with the following persons about the proposed care recipient's condition and background:
 - (a) the proposed care recipient's principal caregiver:

- (b) any welfare guardian of the proposed care recipient;
- (c) if the proposed care recipient is a child or young person, each parent or guardian of the child or young person;
- (d) the proposed care recipient's family or whanau.

38 Result of assessment

- (1) On finishing the assessment of a proposed care recipient, the specialist assessor or assessors designated under section 32(b) must set out in a report to the co-ordinator their assessment of the matters stated in section 37(1).
- (2) If more than 1 specialist assessor has been designated under section 32(b) to assess a proposed care recipient, the assessment is effective only if every designated assessor concurs with the assessment.
- (3) If the assessment does not indicate that the person concerned has an intellectual disability, the co-ordinator must immediately—
 - (a) advise the person of that result; and
 - (b) ensure that the person is returned to the control of the appropriate manager or the Director of Area Mental Health Services, as the case requires.
- (4) If the assessment indicates that the proposed care recipient has an intellectual disability, the co-ordinator must, without undue delay, initiate a process for assessing his or her care needs under Part 3.

Section 38(3)(b): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Subpart 2—Compulsory care orders for prisoners and former special patients

Subpart 2 heading: amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Applications for compulsory care orders

39 Conditions for applications under this subpart

- (1) An application for a compulsory care order may be made under this subpart only for a proposed care recipient—
 - (a) who is a prisoner or a former special patient; and
 - (b) who has been assessed under subpart 1 and Part 3; and
 - (c) for whom a care and rehabilitation plan has been completed.
- (2) When the proposed care recipient's care and rehabilitation plan has been completed, the co-ordinator must decide whether to apply for a compulsory care order for the proposed care recipient.
- (3) When the co-ordinator has made a decision under subsection (2), the co-ordinator must notify in writing the following persons of the decision:

- (a) the proposed care recipient;
 - (b) the appropriate manager or the Director of Area Mental Health Services, as the case requires;
 - (c) any welfare guardian of the proposed care recipient;
 - (d) if the proposed care recipient is a child or young person, each parent or guardian of the child or young person;
 - (e) the principal caregiver of the proposed care recipient;
 - (f) any support person of the proposed care recipient;
 - (g) any lawyer of the proposed care recipient;
 - (h) the care manager of the proposed care recipient;
 - (i) the responsible district inspector.
- (4) The co-ordinator must sign and date a notice given under subsection (3).
- (5) If the co-ordinator decides not to apply for a compulsory care order for a person who, at the time of the decision, is not in the control of the appropriate manager or Director of Area Mental Health Services, as the case requires, the co-ordinator must return the person to the control of the appropriate person.

Section 39(1)(a): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 39(3)(b): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 39(5): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

40 Matters to be set out in application

- (1) When the co-ordinator applies for a compulsory care order for a proposed care recipient, the co-ordinator must support the application by an affidavit that sets out the co-ordinator's reasons for considering that the proposed care recipient has an intellectual disability.
- (2) Every application under subsection (1) must be accompanied by the following:
 - (a) the care and rehabilitation plan completed, under section 24, for the proposed care recipient;
 - (b) the care programme completed, under section 26, for the proposed care recipient;
 - (c) every relevant report prepared by a specialist assessor on the proposed care recipient during his or her assessment under subpart 1 and Part 3;
 - (d) the affidavit referred to in subsection (1).

Visit by Judge

41 Judge to examine proposed care recipient

- (1) If an application is made for a compulsory care order for a proposed care recipient, a Family Court Judge must examine the proposed care recipient as

soon as practicable and in no case later than 14 days after the application is filed in the court.

- (2) Subsection (1) does not prevent a Family Court Judge from completing an examination of the proposed care recipient under that subsection later than 14 days after the filing of the application in respect of the proposed care recipient.
- (3) The examination must be conducted—
 - (a) at the place where the proposed care recipient is staying; or
 - (b) if that is not practicable, at the nearest practicable place.
- (4) Before and during the examination, the Judge must (so far as that is appropriate and can be done)—
 - (a) identify himself or herself to the proposed care recipient; and
 - (b) explain to the proposed care recipient the purpose of the visit; and
 - (c) discuss the proposed care recipient's current situation and the effects that a compulsory care order would have on that situation; and
 - (d) obtain the proposed care recipient's views on the matters discussed under paragraph (c).
- (5) As well as examining the proposed care recipient, the Judge must consult with the co-ordinator and with at least 1 specialist assessor involved in the case and may consult with any other person that the Judge thinks fit concerning the proposed care recipient's condition.

Compare: 1992 No 46 s 18(1)–(4)

42 Visiting Judge may order withdrawal of application

If after examining, under section 41, a proposed care recipient the Judge is satisfied that the care recipient does not require a compulsory care order, the Judge may direct that the co-ordinator withdraw the application for the compulsory care order; and if the proposed care recipient is staying in a facility, he or she must be returned to the control of the appropriate manager or to the control of the Director of Area Mental Health Services, as the case requires.

Compare: 1992 No 46 s 18(5)

Section 42: amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Making compulsory care order

43 Visiting Judge, wherever possible, to hear application

- (1) The Judge who examines a proposed care recipient under section 41 must, wherever possible, conduct any hearing of the application for a compulsory care order in respect of that proposed care recipient.
- (2) An application for a compulsory care order—

- (a) may not be heard until the proposed care recipient has been examined by a Judge in accordance with section 41; but
- (b) may be heard immediately after that examination.

Compare: 1992 No 46 s 18(6)

44 Court to consider proposed care recipient's condition

- (1) On an application for a compulsory care order, the Family Court must determine whether or not the proposed care recipient has an intellectual disability.
- (2) If the court considers that the proposed care recipient has an intellectual disability, it must determine whether or not, having regard to all the circumstances of the case, it is necessary to make a compulsory care order.

Compare: 1992 No 46 s 27

45 Jurisdiction to make compulsory care order

- (1) The Family Court may, on an application of the co-ordinator, make a compulsory care order in respect of a proposed care recipient if the court is satisfied that the proposed care recipient—
 - (a) has an intellectual disability; and
 - (b) has been assessed under subpart 1 and Part 3; and
 - (c) is to receive care under a care programme completed under section 26.
- (2) On an application under subsection (1) relating to a former special patient, the court must consider and determine whether he or she must receive supervised care or secure care.
- (3) The court may order that a former special patient receive secure care only if it considers that supervised care would pose a serious danger to the health or safety of the care recipient or of others.

46 Term of compulsory care order

- (1) Every compulsory care order lasts for the term specified in the order.
- (2) The term specified under subsection (1) may not be longer than 3 years.
- (3) The term specified in the order may be extended under section 85.

Part 5

Status and rights of care recipients

Subpart 1—General status and specific rights

Status generally

47 Requirement to accept care

- (1) The compulsory care of a care recipient is entrusted to a care manager designated by the co-ordinator.
- (2) A care recipient must accept the care properly given to the care recipient under the care recipient's court order or the care recipient's care and rehabilitation plan.
- (3) A care recipient must comply with every lawful direction given by the care recipient's co-ordinator or care manager.

Specific rights of care recipients

48 Care recipients are consumers under Code of Health and Disability Services Consumers' Rights

Every care recipient is a disability services consumer for the purposes of the Code of Rights, and accordingly has all the rights under that Code.

49 General rights to information

- (1) As soon as a court order (as defined in section 5) is made in respect of a care recipient, the care recipient's care manager must—
 - (a) explain to the care recipient, in a manner that the care recipient is most likely to understand, the care recipient's rights under this Act, including, so far as applicable, the rights specified in subsection (2); and
 - (b) give a guardian of the care recipient or, if the care recipient does not have a guardian, the care recipient's principal caregiver a written statement of the care recipient's rights.
- (2) A care recipient's care manager must keep the care recipient informed, in a manner that the care recipient is most likely to understand, of his or her rights as a care recipient and, in particular, about—
 - (a) the care recipient's legal status as a care recipient; and
 - (b) the care recipient's right to have his or her condition reviewed by a specialist assessor in accordance with section 77; and
 - (c) the care recipient's right to seek a judicial inquiry under section 102; and
 - (d) the functions and duties of district inspectors designated under this Act.

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

Compare: 1992 No 46 s 64

50 Respect for cultural identity

Every care recipient is entitled to be dealt with in a manner that accords with the spirit and intent of section 13.

Compare: 1992 No 46 s 65

51 Medical treatment

Every care recipient is entitled to medical treatment and other health care appropriate to his or her condition.

Compare: 1992 No 46 s 66

52 Rights in case of visual or audio recording

- (1) Every care recipient is entitled to be informed if it is intended to make or use a videotape or other visual or audio recording of the following matters:

- (a) an interview with the care recipient:
- (b) an aspect of the care of the care recipient.

- (2) Nothing referred to in subsection (1) may be done without the prior consent of the care recipient or a guardian of the care recipient or, if the care recipient is dead, the care recipient's personal representative.

Compare: 1992 No 46 s 68

53 Right to independent health and disability advice

- (1) Every care recipient is entitled to seek a consultation with a specialist assessor of his or her own choice for the purpose of obtaining a second opinion about the care recipient's condition.

- (2) If the specialist assessor agrees to the consultation, the specialist assessor must be permitted access to the care recipient when he or she requests to see the care recipient.

Compare: 1992 No 46 s 69

54 Right to legal advice

- (1) Every care recipient is entitled to request a lawyer to advise the care recipient on his or her status and rights as a care recipient, or on any other legal issue.

- (2) If the lawyer agrees to act for the care recipient, the lawyer must be permitted access to the care recipient when he or she requests to see the care recipient.

Compare: 1992 No 46 s 70

55 Right to company

- (1) Every care recipient is entitled to the company of others.

- (2) Subsection (1) is subject to section 60.

56 Right to receive visitors and communicate orally with persons outside facility

- (1) Every care recipient is entitled, at reasonable times and at reasonable intervals, to receive visitors and to communicate orally with persons outside the facility, except where the care manager has reasonable grounds for believing that a visit or communication would be detrimental to the interests of the care recipient and to his or her care.
- (2) Nothing in this section limits anything in section 53 or section 54.

Compare: 1992 No 46 s 72

57 Right to receive and send written communications and other items

- (1) Every care recipient is entitled—
- (a) to receive, in a manner that safeguards the care recipient's privacy, any written communication or other item that is sent to the care recipient; and
 - (b) to the prompt dispatch, in a manner that safeguards the care recipient's privacy, of any written communication or other item that the care recipient wishes to send.
- (2) If there are reasonable grounds for believing that the receipt by, or the dispatch on behalf of, a care recipient of any written communication or other item could be detrimental to the interests and care of the care recipient or of other persons, the care manager may direct that the communication or item be checked; but a direction to check communications or items sent to the care recipient requires the approval of the co-ordinator.
- (3) Subsection (2) does not apply to a written communication or other item sent by, or on behalf of, or addressed to, any lawyer of the care recipient.
- (4) If, on checking a written communication or other item under subsection (2), the care manager considers that the receipt or dispatch of the communication or item could be detrimental to the interests and care of the care recipient or of other persons, the care manager may direct that the communication or item be withheld from the care recipient or not be sent, as the case requires; but a direction to withhold a communication or item requires the approval of the co-ordinator.
- (5) The care manager must ensure that a written communication or other item that is addressed to a person who has notified the care manager that he or she does not wish to receive communications from the care recipient concerned is not dispatched to that person.

Compare: 1992 No 46 ss 73, 74, 123(1), (2), 124(1)–(3)

58 Written communications or other items not to be intercepted if sent by or to certain office holders

- (1) Despite section 57(4), a written communication or item must not be withheld from a care recipient if it is sent by or on behalf of any of the persons described in subsection (3).
- (2) Despite section 57(4), a written communication or other item must be dispatched if it is addressed to any of the persons described in subsection (3).
- (3) The persons referred to in subsections (1) and (2) are:
 - (a) a member of Parliament:
 - (b) a Judge or officer of a court, or a member or officer of another judicial body:
 - (c) an Ombudsman:
 - (d) the Privacy Commissioner:
 - (e) the Health and Disability Commissioner:
 - (f) a Human Rights Commissioner:
 - (g) in the case of a care recipient who is a child or young person, the Commissioner for Children:
 - (h) the Director-General of Health:
 - (i) a district inspector:
 - (j) the care manager:
 - (k) a lawyer:
 - (l) a specialist assessor from whom the care recipient has sought a second opinion about the care recipient's condition.

Compare: 1992 No 46 s 123(3)

59 Procedure where written communications or other items intercepted

- (1) If the care manager withholds a written communication or other item under section 57, the communication or item must be dealt with as follows:
 - (a) if the address of the sender is known to the care manager, it must be returned to the sender:
 - (b) if the address of the sender is not known to the care manager, it must either be—
 - (i) sent to the responsible district inspector; or
 - (ii) produced to the responsible district inspector when he or she next visits the facility after the receipt of the communication or thing.
- (2) If the care manager directs, under section 57, that a written communication or other item not be sent, the communication or item must either be—
 - (a) sent to the responsible district inspector; or

- (b) produced to the responsible district inspector when he or she next visits the facility following the care recipient's request for the communication or thing to be sent.
- (3) If a written communication or other item is withheld or not sent under section 57, the care recipient must be informed of the fact, unless the care manager is satisfied that to do so would be detrimental to the interests and care of the care recipient.

Subpart 2—Specific powers exercisable over care recipients

60 Seclusion

- (1) For the purposes of this section, **seclusion**, in relation to a care recipient, means placing the care recipient without others in a room or other area that—
 - (a) provides a safe environment for the care recipient throughout the care recipient's stay in the room or area; but
 - (b) does not allow the care recipient to leave without help.
- (2) A care manager may place a care recipient in seclusion if it is necessary to prevent the care recipient from doing 1 or both of the following:
 - (a) endangering the health or safety of the care recipient or of others;
 - (b) seriously compromising the care and well-being of other persons.
- (3) A person who places a care recipient in seclusion—
 - (a) must ensure that the care recipient is not placed in seclusion for longer than is necessary to achieve the purpose of placing the care recipient in seclusion; and
 - (b) must comply with guidelines issued under section 148 that are relevant to placing the care recipient in seclusion.
- (4) The following provisions must be followed when a care recipient is placed in seclusion:
 - (a) a care recipient may be placed in seclusion only in a room or other area that is specifically designed for the purpose of seclusion in accordance with guidelines issued under section 148;
 - (b) in cases other than an emergency, seclusion may be used only with the authority of the care recipient's care manager;
 - (c) in an emergency, a care recipient may be placed in seclusion by a person who, under a delegation given by the care recipient's care manager, has immediate responsibility for the care recipient, but that person must immediately bring the case to the attention of the care manager;
 - (d) the duration and circumstances of each episode of seclusion must be recorded in a register kept in accordance with guidelines issued under section 148.

61 Restraint of care recipients

- (1) A care manager may restrain a care recipient if that is necessary to prevent the care recipient from doing 1 or more of the following:
 - (a) endangering the health or safety of the care recipient or of others;
 - (b) seriously damaging property;
 - (c) seriously compromising the care and well-being of the care recipient or of other care recipients.
- (2) A care recipient may not be restrained under subsection (1) by the application of a mechanical restraint if—
 - (a) 1 or more authorised individuals can personally restrain the care recipient to achieve the purpose for which the care recipient is to be restrained; and
 - (b) it is reasonably practicable for those individuals to do so.
- (3) The following provisions must be followed when a care recipient is restrained:
 - (a) a person exercising the power of restraint may not use a greater degree of force, and may not restrain the care recipient for longer, than is required to achieve the purpose for which the care recipient is restrained;
 - (b) a person exercising the power of restraint must comply with guidelines issued under section 148 that are relevant to the restraint of the care recipient;
 - (c) in an emergency, a care recipient may be restrained by a person who, under a delegation given by the care recipient's care manager, has immediate responsibility for the care recipient, but that person must immediately bring the case to the attention of the care manager;
 - (d) the duration and circumstances of each episode of restraint must be recorded in a register kept in accordance with guidelines issued under section 148.

62 Enforced medical treatment

- (1) A care recipient may be given medical treatment without the care recipient's consent only if the treatment is authorised by this section or another enactment or a rule of law.
- (2) In an emergency, a care recipient may receive medical treatment if the treatment is immediately necessary—
 - (a) to save the care recipient's life; or
 - (b) to prevent serious damage to the health of the care recipient; or
 - (c) to prevent the care recipient from causing serious injury to the care recipient or to others.

- (3) A care recipient may be given medication for the purpose of managing the care recipient's condition that gives rise to the care recipient's need for compulsory care if the medication is prescribed—
- (a) in accordance with requirements identified in the care recipient's care and rehabilitation plan; and
 - (b) in accordance with guidelines issued under section 148; and
 - (c) with the support of a second opinion given by a medical consultant designated by the Director-General of Health under section 146.

62A Collection of biometric information from special care recipients

- (1) This section provides for the collection of biometric information to—
- (a) strengthen the management of special care recipients; and
 - (b) ensure the safety and security of special care recipients; and
 - (c) better manage the risk of special care recipients breaching section 67A.
- (2) A special care recipient must allow the collection of biometric information if directed by—
- (a) the Director-General of Health; or
 - (b) the care manager for the special care recipient; or
 - (c) a compulsory care co-ordinator.
- (3) This section is subject to any regulations made under section 150(ca).

Section 62A: inserted, on 22 August 2017, by section 33 of the Enhancing Identity Verification and Border Processes Legislation Act 2017 (2017 No 42).

Subpart 3—Requirement to stay in designated facilities or places

Placement of care recipients

63 Designation notices relating to secure care

- (1) This section applies to every person—
- (a) who is a special care recipient; or
 - (b) who is a care recipient no longer subject to the criminal justice system and who is required to receive secure care.
- (2) A care recipient to whom this section applies—
- (a) must stay in a secure facility that the co-ordinator designates by written notice given to the care recipient and the care recipient's care manager; and
 - (b) may not leave the facility without authority given under this Act.

64 Directions relating to supervised care

- (1) The co-ordinator may direct a care recipient who is required to receive supervised care to stay in a designated facility or in a designated place.
- (2) A direction under subsection (1) takes effect when written notice of the direction is given to the care recipient and the care recipient's care manager.
- (3) A care recipient may be directed, under subsection (1), to stay in a secure facility only for the purpose of receiving care that—
 - (a) is required to deal with an emergency; and
 - (b) is of a kind provided for in the care recipient's care and rehabilitation plan.
- (4) While a direction under subsection (1) is in force, the care recipient to whom the direction relates must stay in the facility or place designated by the direction.
- (5) If a direction under subsection (1) requires the care recipient to stay in a facility, the care recipient may not leave the facility without authority given under this Act.

Leave for care recipients no longer subject to criminal justice system

65 Care manager may grant leave

- (1) Where a care recipient no longer subject to the criminal justice system is required to stay in a facility, the care manager in charge of the facility may authorise the care recipient to be on leave from the facility for a period of not more than 2 weeks on any terms and conditions that the care manager specifies.
- (2) The care manager may extend the period of authorised leave for a further period of not more than 2 weeks; but no care recipient may be absent under this section for a continuous period of more than 4 weeks.
- (3) The care manager may, at any time during the period of leave, cancel the leave by notifying the person who has undertaken the care of the care recipient during the period of leave or, if there is no such person, by notifying the care recipient.

Compare: 1992 No 46 s 31

Leave for special care recipients

66 Minister may authorise leave for special care recipients

- (1) The Minister may authorise a special care recipient to be on leave from the care recipient's secure facility on any terms and conditions that the Minister specifies, if a specialist assessor certifies that the care recipient is fit to be on leave.
- (2) The Minister may (at the Minister's discretion) include in the conditions specified under subsection (1) a condition that the care recipient return to the secure facility on a specified date or within a specified period.

- (3) No care recipient may be on leave, authorised under this section, if the care recipient—
- (a) is charged with, or convicted of, an offence, and—
 - (i) a trial or hearing of that offence is to take place; or
 - (ii) the care recipient is to be sentenced for that offence; or
 - (iii) an appeal in respect of that offence is pending; or
 - (b) is subject to a sentence of imprisonment for life or to a sentence of preventive detention.
- (4) The Minister may, at any time during a period of leave authorised under this section, cancel that leave by notifying the person who has undertaken the care of the care recipient during the period of leave or, if there is no such person, by notifying the care recipient.

Compare: 1992 No 46 s 50

67 Director-General may authorise short-term leave

- (1) The Director-General of Health may authorise a special care recipient to be on leave, from the secure facility in which the care recipient is detained, for a period of not more than 7 days on any terms and conditions that the Director-General specifies.
- (2) The power to authorise leave under this section may not be exercised in respect of a care recipient described in section 66(3).
- (3) The Director-General of Health may, at any time during a period of leave authorised under this section, cancel that leave by notifying the person who has undertaken the care of the special care recipient during the period of leave or, if there is no such person, by notifying the care recipient.
- (4) With the authority of the Director-General and subject to any conditions that the Director-General may impose, the co-ordinator may exercise in any particular case the powers conferred on the Director-General by this section.
- (5) Before the co-ordinator exercises a power under subsection (4) in respect of a care recipient who, following an application under section 29, has been transferred from a prison, the co-ordinator must consult with the manager of that prison.

Compare: 1992 No 46 s 52

Section 67(5): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

67A Special care recipients not to leave secure facility or depart from New Zealand without permission

- (1) A special care recipient may not leave the secure facility in which the special care recipient is detained unless—
- (a) authorised by the Minister under section 66; or
 - (b) authorised by the Director-General under section 67.

- (2) A special care recipient may not depart from New Zealand unless—
- (a) the special care recipient is on authorised leave; and
 - (b) the special care recipient is permitted by the Minister, on terms and conditions specified by the Minister, to be absent from New Zealand during that authorised leave; and
 - (c) the special care recipient's departure from New Zealand is in accordance with the terms and conditions of the Minister's permission given under paragraph (b).

- (3) In subsection (2),—

authorised leave, in relation to a special care recipient, means leave from the secure facility in which the special care recipient is detained that is authorised under section 66 or 67

depart includes—

- (a) attempt to depart;
- (b) prepare to depart.

Section 67A: inserted, on 22 August 2017, by section 34 of the Enhancing Identity Verification and Border Processes Legislation Act 2017 (2017 No 42).

Subpart 4—Status of special care recipients subject to sentences

68 When liability to detention under sentence ceases

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

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

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

69 Relationship between detention in secure facility and sentence

- (1) This section applies to a person who is liable to detention under a sentence, and also liable to detention in a secure facility—
- (a) in accordance with a compulsory care order made under section 45; or
 - (b) in accordance with an order under section 34(1)(a)(ii) of the Criminal Procedure (Mentally Impaired Persons) Act 2003.
- (2) The term of a sentence applicable to a person to whom this section applies—
- (a) continues to run while the person is in a secure facility, or is on authorised leave from the secure facility; and

- (b) ceases to run if he or she escapes from the secure facility before his or her liability to detention under the sentence ceases; and
 - (c) does not begin to run again until the person is retaken.
- (3) The person ceases to be detained as a special care recipient on the date on which he or she ceases to be liable to be detained under any sentence and,—
- (a) if on that date he or she is subject to a compulsory care order made under section 45, he or she remains subject to the compulsory care order:
 - (b) if on that date he or she is subject to an order under section 34(1)(a)(ii) of the Criminal Procedure (Mentally Impaired Persons) Act 2003, then for the purposes of this Act that order becomes a compulsory care order under section 45 that must be regarded as having been made on that date in respect of that person for a term of 6 months.
- (4) To avoid doubt, a compulsory care order resulting from the operation of subsection (3)(b) may be varied and extended under this Act.

Compare: 1992 No 46 s 48

70 Care recipient whose status changes under section 69 to be held in secure care

- (1) A compulsory care order referred to in section 69(3)(a) and a compulsory care order arising from the operation of section 69(3)(b) must be treated as requiring the care recipient to receive secure care.
- (2) Subsection (1) applies on and from the date on which the person ceases to be detained as a special care recipient.

71 Former care recipients subject to sentence to be taken to prison

- (1) When a person ceases to be a care recipient but does not cease to be liable to detention under a sentence, the person must—
 - (a) be taken to a prison to undergo the remainder of the sentence; or
 - (b) be otherwise dealt with according to law as if the person had never been a care recipient.
- (2) The co-ordinator must notify the Chief Executive of the Department of Corrections about a person to whom subsection (1) applies, and the chief executive must arrange for the person to be taken to a prison within 7 days after the date of the notification.
- (3) For the purposes of this section, **prison** includes a residence for the time being approved under section 34A of the Corrections Act 2004.

Compare: 1992 No 46 s 47(1), (3)

Section 71(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Part 6

Reviews of condition and status of care recipients

Subpart 1—Initial review of care and rehabilitation plan or compulsory care order

72 Co-ordinator to report to Family Court on appropriateness of order and plan

- (1) Six months after the approval under section 24(2) of the care and rehabilitation plan of a care recipient, the co-ordinator must present a report to the Family Court on the continued appropriateness of the contents of the care and rehabilitation plan.
- (2) If the care recipient is subject to a compulsory care order, the co-ordinator must also include in the report an assessment of the continued appropriateness of the order.
- (3) The report presented under subsection (1) must be accompanied by—
 - (a) a copy of the most recent certificate under section 79 as to the care recipient's condition; and
 - (b) copies of any relevant reports from the specialist assessor who gave that certificate and other specialist assessors involved in the case.
- (4) Despite subsection (1), if a care recipient's court order lasts for not more than 6 months, then the report under that subsection is due not later than 2 months after the date of that order.
- (5) If the co-ordinator has applied, or is about to apply, to the court for the cancellation of a care recipient's compulsory care order, the co-ordinator is not required to present a report under subsection (1).

73 Co-ordinator must send copy of report to certain persons

- (1) At the same time that the co-ordinator presents a report under section 72, the co-ordinator must give or send a copy of that report to the following persons:
 - (a) the care recipient;
 - (b) the care recipient's care manager;
 - (c) if the care recipient is a child or young person, each parent or guardian of the child or young person;
 - (d) any welfare guardian of the care recipient;
 - (e) any lawyer of the care recipient;
 - (f) the care recipient's principal caregiver;
 - (g) the specialist assessor who gave the certificate referred to in section 72(3)(a);
 - (h) the responsible district inspector;

- (i) in the case of a special care recipient, the Director-General of Health.
- (2) A person who receives, or is entitled to receive, a report under subsection (1) may make a written submission on the report to the Family Court.
- (3) At the time that the co-ordinator gives or sends, in accordance with subsection (1), the report to the persons specified in that subsection, the co-ordinator must provide each of those persons with written advice of the right to make a submission under subsection (2).

74 Review by Family Court

On receipt of the co-ordinator's report, under section 72, on a care and rehabilitation plan and any compulsory care order, the Family Court must review the contents of the care and rehabilitation plan and any such order.

75 Family Court may call for reports

For the purposes of a review under section 74, the Family Court—

- (a) may call for reports from the co-ordinator, the care manager, the responsible district inspector, or any specialist assessor concerned in the case; and
- (b) may obtain a second opinion from a specialist assessor other than the specialist assessor who issued the certificate referred to in section 72(3)(a); and
- (c) may require any of the persons referred to in paragraphs (a) and (b) to give evidence and to produce documents.

76 Family Court may make recommendations

On concluding a review under section 74, the Family Court may make any recommendations that it considers appropriate to the Director-General of Health or the co-ordinator or the care manager.

Subpart 2—Condition of every care recipient to be reviewed

77 Regular clinical reviews of care recipients

- (1) The condition of every care recipient who is subject to a court order must be formally reviewed at the times specified in subsection (2).
- (2) The times referred to in subsection (1) are,—
 - (a) in respect of the first review, not later than 14 days before the co-ordinator is required, under section 72, to present a report on the care recipient's care and rehabilitation plan; and
 - (b) from then on at intervals of not more than 6 months; and
 - (c) not later than 14 days before a care recipient's compulsory care order expires.

- (3) It is the responsibility of the care manager of a care recipient to ensure that the care recipient's condition is reviewed in accordance with subsection (1).

78 Reviews undertaken by specialist assessors

- (1) A review of a care recipient under section 77 must be conducted by 1 or more specialist assessors designated by the co-ordinator for the purpose.
- (2) When the co-ordinator designates 2 or more specialist assessors for the purpose of a review under section 77, the co-ordinator must nominate one of those assessors as the assessor who is principally responsible for the conduct of the review.
- (3) In reviewing a care recipient under section 77, the specialist assessor or specialist assessors must—
 - (a) examine the care recipient; and
 - (b) consult with other health or disability professionals involved in the care of the care recipient, and take their views into account when assessing the results of the review of the care recipient's condition.

79 Specialist assessor to issue certificate

- (1) A review of a care recipient under section 77 is concluded by the issue of a certificate as to whether the status of the care recipient needs to be continued or needs to be changed.
- (2) The certificate required by subsection (1) must be given by the specialist assessor who is responsible or principally responsible for the conduct of the review.
- (3) The certificate required by subsection (1) must comply with whichever of the following provisions is relevant:
 - (a) section 82 (which relates to a care recipient no longer subject to the criminal justice system and to special care recipients liable to detention under sentences); or
 - (b) section 89 (which relates to a person who is a special care recipient because of an order made, under the Criminal Procedure (Mentally Impaired Persons) Act 2003, following a finding that the person is unfit to stand trial); or
 - (c) section 92 (which relates to a person who is a special care recipient because of an order made, under the Criminal Procedure (Mentally Impaired Persons) Act 2003, following the acquittal of the person on account of insanity).

80 Specialist assessor to send certificate and reports to certain persons

A specialist assessor who has given a certificate, under section 79, on a care recipient must give or send to the care recipient's care manager and to the co-ordinator, and, in the case of a special care recipient, also to the Director-General, a copy of—

- (a) the certificate; and
- (b) full particulars of the reasons for his or her opinion on the care recipient's condition; and
- (c) any relevant reports from other specialist assessors involved in the case.

81 Co-ordinator to send copy of certificate to certain persons

On receipt, under section 80, of a certificate on a care recipient, the co-ordinator of the care recipient must give or send a copy of the certificate to the following persons:

- (a) the care recipient;
- (b) any welfare guardian of the care recipient;
- (c) if the care recipient is a child or young person, each parent or guardian of the child or young person;
- (d) any lawyer of the care recipient;
- (e) the care recipient's principal caregiver;
- (f) the responsible district inspector.

Subpart 3—Change in status of care recipient no longer subject to
criminal justice system and special care recipients liable to detention
under sentence

Form of certificate

82 Form of clinical review certificate for care recipients no longer subject to criminal justice system and care recipients liable to detention under sentence

When a specialist assessor completes a certificate, under section 79, in respect of a care recipient no longer subject to the criminal justice system or a special care recipient who is liable to detention under a sentence, the specialist assessor must state whether in his or her opinion—

- (a) the care recipient still needs to be cared for as a care recipient; or
- (b) the care recipient no longer needs to be cared for as a care recipient.

Release from compulsory care

83 Status on expiry of term of compulsory care order

On the expiry of a compulsory care order the care recipient ceases to be a care recipient under this Act.

84 Cancellation of court orders of certain care recipients

- (1) If the Family Court is satisfied that a care recipient no longer subject to the criminal justice system or a special care recipient who is liable to detention

under a sentence no longer needs to be cared for as a care recipient, the court may, on the application of the co-ordinator, cancel the care recipient's compulsory care order or the care recipient's order made under section 34(1)(a)(ii) of the Criminal Procedure (Mentally Impaired Persons) Act 2003.

- (2) The co-ordinator—
 - (a) may make an application under subsection (1) at any time; and
 - (b) must, as soon as practicable after a certificate under section 79 states that a care recipient no longer needs to be cared for as a care recipient, make an application under subsection (1) in respect of that care recipient's compulsory care order.

Continuation of compulsory care

85 Extension of compulsory care order

- (1) The Family Court may, on the application of the co-ordinator, extend the term of a care recipient's compulsory care order.
- (2) If the court extends a compulsory care order for a care recipient no longer subject to the criminal justice system, the court must consider and determine whether the care recipient must receive supervised care or secure care.
- (3) The court may order that a care recipient no longer subject to the criminal justice system receive secure care only if it considers that supervised care would pose a serious danger to the health or safety of the care recipient or of others.

86 Co-ordinator may seek variation of compulsory care order

- (1) If the co-ordinator, after consultation with a care recipient's care manager, reaches the view that a variation of any aspect (other than the term) of the care recipient's compulsory care order is desirable, the co-ordinator may apply to the Family Court for a variation of the order.
- (2) The court may, on an application under subsection (1), vary a compulsory care order.
- (3) On an application under subsection (1) relating to a care recipient no longer subject to the criminal justice system, the court must consider and determine whether the care recipient must receive supervised care or secure care.
- (4) The court may order that a care recipient no longer subject to the criminal justice system receive secure care only if it considers that supervised care would pose a serious danger to the health or safety of the care recipient or of others.

87 Court may defer expiry of order if application for extension pending

- (1) If a care recipient's order is due to expire at any time when an application, under section 85, to extend the term of that order is pending before the Family Court, the court may defer the expiry of the order by specifying a date as the

last day of a period that, in the opinion of the court, is sufficient for the application to be heard and determined.

- (2) The co-ordinator may apply without notice for an order, under subsection (1), to defer the expiry of a compulsory care order.
- (3) As soon as the court makes an order under subsection (1), the co-ordinator must serve a copy of the order on every person who is entitled to be served with a copy of the application under section 85.
- (4) Every person served, or entitled to be served, under subsection (3) with a copy of an order under subsection (1) may apply to the court for the cancellation or variation of the order.

88 Co-ordinator and court to have regard to specialist assessor's certificate

- (1) In deciding whether to apply for a cancellation of a care recipient's court order, or for an extension of the term of a care recipient's compulsory care order, the co-ordinator must have regard to the most recent certificate given, under section 79, for that care recipient.
- (2) In deciding whether to cancel, or to extend the term of, a care recipient's court order, the court—
 - (a) must have regard to the most recent certificate given, under section 79, for that care recipient:
 - (b) may obtain a second opinion from a specialist assessor other than the specialist assessor who issued the certificate referred to in paragraph (a).

Subpart 4—Status of certain special care recipients

Special care recipients detained because unfit to stand trial

89 Form of clinical review certificate for special care recipients detained because unfit to stand trial

- (1) This section applies to a person who is detained as a special care recipient because of an order, made under the Criminal Procedure (Mentally Impaired Persons) Act 2003, following a finding that the person is unfit to stand trial.
- (2) When a specialist assessor completes a certificate, under section 79, for a person to whom this section applies, the assessor must state in respect of the person one of the following opinions:
 - (a) the person is no longer unfit to stand trial:
 - (b) the person is still unfit to stand trial and it is necessary, in the person's own interests or in the interests of the safety of any person, class of person, or the public, that the person continue to be cared for as a special care recipient:
 - (c) the person is still unfit to stand trial, but it is no longer necessary, in the person's own interests or in the interests of the safety of any person,

class of person, or the public, that the person continue to be cared for as a special care recipient.

90 Attorney-General to be notified if special care recipient considered fit to stand trial

- (1) If a certificate in the form required by section 89 states that a person is no longer unfit to stand trial, the co-ordinator must forward the certificate to the Attorney-General for the purposes of section 31 of the Criminal Procedure (Mentally Impaired Persons) Act 2003.
- (2) In forwarding a certificate to the Attorney-General, the co-ordinator may add any comments or recommendations that the co-ordinator considers appropriate.

91 Ministers to be notified if care for person as special care recipient considered no longer necessary

- (1) If a certificate in the form required by section 89 states that a person is still unfit to stand trial, but that it is no longer necessary that the person be cared for as a special care recipient, the co-ordinator must forward the certificate to the Minister and the Attorney-General for the purposes of section 31 of the Criminal Procedure (Mentally Impaired Persons) Act 2003.
- (2) In forwarding a certificate to the Minister, the co-ordinator may add any comments or recommendations that the co-ordinator considers appropriate.

Special care recipients detained because acquitted on account of insanity

92 Form of clinical review certificate for special care recipients detained because acquitted on account of insanity

- (1) This section applies to a person who is detained as a special care recipient because of an order made under the Criminal Procedure (Mentally Impaired Persons) Act 2003, following the acquittal of the person on account of insanity.
- (2) When a specialist assessor completes a certificate, under section 79, for a person to whom this section applies, the assessor must state in respect of the person one of the following opinions:
 - (a) it is still necessary, in the person's own interests or in the interests of the safety of any person, class of person, or the public, that the person continue to be cared for as a special care recipient:
 - (b) it is no longer necessary, in the person's own interests or in the interests of the safety of any person, class of person, or the public, that the person continue to be cared for as a special care recipient.

93 Where person considered not to require further care as special care recipient

- (1) If a certificate in the form required by section 92 states the opinion specified in subsection (2)(b) of that section, the co-ordinator must forward the certificate

to the Minister for the purposes of section 33 of the Criminal Procedure (Mentally Impaired Persons) Act 2003.

- (2) In forwarding a certificate to the Minister, under subsection (1), the co-ordinator may add any comments or recommendations that the co-ordinator considers appropriate.

Change of status of certain special care recipients resulting from ministerial directions or court order

94 Status of special care recipients found unfit to stand trial or insane

- (1) On the date that a direction is given under section 31 or section 33 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 or section 105 or section 106 of this Act that a person be held as a care recipient, the direction becomes, for the purposes of this Act, a compulsory care order made under section 45 that must be regarded as—
 - (a) having been made on that date in respect of that person for a term of 6 months; and
 - (b) requiring that person to receive secure care.
- (2) To avoid doubt, a compulsory care order resulting from the operation of subsection (1) may be varied and extended under this Act.
- (3) Despite subsection (1), a person to whom this section applies must be reviewed under section 77 as soon as practicable after the direction under the Criminal Procedure (Mentally Impaired Persons) Act 2003 or this Act is given.
- (4) If the review conducted in accordance with subsection (3) is completed by a certificate to the effect that the person to whom this section applies no longer needs to be cared for as a care recipient, the person must be released from every restraint under this Act.

Part 7

Inspections and inquiries

Subpart 1—Inspections, investigations, and inquiries by district inspectors

Inspections

95 Visits by district inspectors

- (1) In each year, a district inspector must, at regular intervals, visit each facility—
 - (a) that is in the locality for which the district inspector is responsible; and
 - (b) in which care recipients are required to receive care.

- (2) Each facility must be visited, under subsection (1), at least twice a year or on a greater number of occasions that the Director-General of Health directs for a particular facility or class of facility.
- (3) The district inspector may, without previous notice, visit a facility as often as the district inspector thinks fit.
- (4) The district inspector may visit a facility at any time and for any length of time that the district inspector thinks fit.
- (5) A suitably qualified health or disability professional may accompany the district inspector on a particular visit to a facility.
- (6) The district inspector may obtain advice on a particular matter from a specialist assessor appointed for the purpose by the co-ordinator, and that specialist assessor has, for that purpose, the powers of the district inspector to visit and inspect facilities.

Compare: 1992 No 46 s 96

96 Inspectors' access to persons and documents

- (1) A district inspector who visits a facility for the purposes of this Act must be given access to every part of the facility and to every person in it, whether or not that person is a care recipient under this Act.
- (2) The care manager must present to the district inspector the following documents:
 - (a) every record relating to a care recipient, including the care recipient's court order and care and rehabilitation plan:
 - (b) every communication or item withheld by the care manager under section 57.

Compare: 1992 No 46 s 97

Complaints about breaches of rights

97 Complaint of breach of rights

- (1) A care recipient may complain to the responsible district inspector about a breach of the care recipient's rights under this Act.
- (2) Any person may complain on behalf of the care recipient.
- (3) A care manager or co-ordinator who receives a complaint about a breach of the care recipient's rights under this Act must refer the complaint to the responsible district inspector.
- (4) The responsible district inspector must notify the Health and Disability Commissioner under the Health and Disability Commissioner Act 1994 of every complaint that concerns a breach of a right under the Code of Rights.

98 Investigation by district inspector

- (1) If a complaint made or referred to the district inspector under section 97 is not a complaint that concerns a breach of a right under the Code of Rights, the district inspector must investigate the complaint.
- (2) In investigating a complaint, the district inspector must try to talk with the care recipient, any person who complained on behalf of the care recipient, the care manager, and everyone else involved in the case.
- (3) If, after investigating the complaint, the district inspector is satisfied that the complaint has substance, the district inspector must—
 - (a) conduct an inquiry under section 101 into the complaint; or
 - (b) report the matter together with any recommendations to the care manager.
- (4) The district inspector must send a copy of any report prepared under subsection (3)(b) to the Director-General of Health.

99 Care recipient to be informed of outcome of investigation

- (1) On concluding an investigation under section 98, the district inspector must report the outcome of the investigation to—
 - (a) the care recipient whose rights were in issue in the investigation; and
 - (b) any person who complained on behalf of the care recipient.
- (2) If the care recipient or the person who complained on behalf of the care recipient is not satisfied with the outcome of the complaint, he or she may request the Director-General of Health to examine the complaint, and the Director-General must consider if further investigation is warranted.

Compare: 1992 No 46 s 75

100 Duty of care manager to put things right

On receiving a report under section 98, the care manager must take all steps necessary to correct every deficiency identified in the report.

*Inquiries by district inspectors***101 Inquiries by district inspector**

- (1) Every district inspector may inquire into—
 - (a) an alleged breach of this Act or of regulations made under this Act, or an alleged breach of duty on the part of a director, employee, or agent of a service;
 - (b) whether a care recipient's condition is being reviewed in accordance with section 77;
 - (c) any other matter relating to a care recipient or the management of a service.

- (2) The Director-General of Health may direct a district inspector to conduct an inquiry under subsection (1), and that district inspector must comply with that direction.
- (3) Despite subsections (1) and (2), no district inspector may inquire into an alleged breach of a right under the Code of Rights.
- (4) For the purpose of conducting an inquiry under this Act, a district inspector has the same powers and authority to summon witnesses and receive evidence as are conferred on commissions of inquiry by the Commissions of Inquiry Act 1908; and the provisions of that Act, except sections 11 and 12 (which relate to costs), apply accordingly.
- (5) As soon as practicable after concluding an inquiry under this section, a district inspector must send a full report of the inquiry to the co-ordinator and to the Director-General of Health.

Compare: 1992 No 46 s 95

Subpart 2—Inquiry by High Court Judge

102 Judge may call for report on care recipient or summon care recipient

- (1) A High Court Judge may make an order directing a district inspector or 1 or more other persons—
 - (a) to visit and examine a care recipient who is detained in a facility; and
 - (b) to inquire into and report on any matter relating to that care recipient that the Judge specifies.
- (2) Whether an order under subsection (1) has been made or not, a High Court Judge may make an order directing a care manager to bring a care recipient for whom the care manager is responsible before the Judge in open court or in Chambers, for examination at a time specified in the order.
- (3) An order under subsection (1) or (2) may be made on the Judge's own initiative or on the application of any person.

Compare: 1992 No 46 s 84(1), (2)

103 Judge may summon witnesses

For the purposes of an examination of a person under section 102(2), the Judge may summon any specialist assessor or other witness to testify on oath in respect of any matter involved in the examination, and to produce any relevant documents.

Compare: 1992 No 46 s 84(7)

104 Judge may release care recipient no longer subject to criminal justice system

After the examination, under section 102(2), of a care recipient no longer subject to the criminal justice system, the Judge may order that the care recipient cease to be a care recipient if the Judge is satisfied—

- (a) that the care recipient is detained illegally as a care recipient; or
- (b) that the care recipient no longer needs to be cared for as a care recipient.

Compare: 1992 No 46 s 84(3)

105 Orders Judge may make in relation to special care recipient detained because unfit to stand trial

- (1) This section applies to a person who is detained as a special care recipient because of an order under the Criminal Procedure (Mentally Impaired Persons) Act 2003, made following a finding that the person is unfit to stand trial (the **accused**).
- (2) After examining the accused under section 102(2), the Judge may,—
 - (a) if the Judge considers the accused is capable of being tried on the charge, direct that the accused be brought before the appropriate court; or
 - (b) if in the circumstances of the case the Judge considers it proper to do so and the interests of justice so permit, direct that the charge against the accused be dismissed (whether or not the accused is capable of being tried).
- (3) If, after examining the accused under section 102(2), the Judge is satisfied that it is no longer necessary, in the accused's own interests or in the interests of the safety of any person, class of person, or the public, that the accused continue to be cared for as a special care recipient, the Judge may order that—
 - (a) the accused be cared for as a care recipient no longer subject to the criminal justice system under this Act; or
 - (b) the accused cease to be a care recipient under this Act.

Compare: 1992 No 46 s 84(4)–(6)

Section 105(2)(a): replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 105(2)(b): replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

106 Orders Judge may make in relation to special care recipient detained because acquitted on account of insanity

If, after examining a person acquitted on account of insanity under section 102(2), the Judge is satisfied that it is no longer necessary, in the person's own interests or in the interests of the safety of any person, class of person, or the

public, that the person continue to be cared for as a special care recipient, the Judge may order that—

- (a) the person be cared for as a care recipient no longer subject to the criminal justice system under this Act; or
- (b) the person cease to be a care recipient under this Act.

107 Judge may report to Minister

The Judge may in any case under this subpart, if the Judge thinks fit, report his or her opinion to the Minister, with any comments and recommendations that the Judge thinks fit.

Compare: 1992 No 46 s 84(8)

108 Other remedies still available

Nothing in this subpart prevents the exercise of any other remedy or proceeding available by or on behalf of any person who is, or is alleged to be, unlawfully detained, confined, or imprisoned.

Compare: 1992 No 46 s 84(9)

Part 8

Authority to take and detain care recipients

Authority to detain under court orders

109 Authority to admit and detain under orders

A care manager has authority—

- (a) to admit a care recipient to a facility in accordance with the care recipient's court order or a notice of designation given by the co-ordinator under section 63(2); and
- (b) to take all reasonable steps to detain that care recipient in the facility during the period the designation is in force.

Compare: 1992 No 46 s 113(2)

Authority to take care recipients who escape

110 Meaning of care recipient who has escaped

In sections 111 to 113, **care recipient who has escaped** means a care recipient—

- (a) who has left the care recipient's facility without authority; or
- (ab) who has breached any terms or conditions of authorised leave; or
- (b) who has failed to return to the care recipient's facility after the expiry of authorised leave; or

- (c) who has failed to return to the care recipient's facility after the cancellation of previously authorised leave; or
- (d) who has departed from New Zealand in contravention of section 67A(2).

Section 110(ab): inserted, on 22 August 2017, by section 35(1) of the Enhancing Identity Verification and Border Processes Legislation Act 2017 (2017 No 42).

Section 110(c): amended, on 22 August 2017, by section 35(2) of the Enhancing Identity Verification and Border Processes Legislation Act 2017 (2017 No 42).

Section 110(d): inserted, on 22 August 2017, by section 35(3) of the Enhancing Identity Verification and Border Processes Legislation Act 2017 (2017 No 42).

111 Power to retake care recipient absent without authority

The co-ordinator or the care manager of a care recipient who has escaped may retake and return that care recipient to the care recipient's facility or to another facility specified by the co-ordinator.

112 Warrant to enter and search places to retake escaped care recipients

- (1) A District Court Judge or (if no Judge is available) a Registrar may issue a warrant in the prescribed form authorising any constable to search a specified place and take a named person to a facility, if the District Court Judge or Registrar is satisfied that there are reasonable grounds for believing that the person—
 - (a) is a care recipient who has escaped; and
 - (b) is in the place that is to be specified in the proposed warrant.
- (2) A warrant under subsection (1) can only be issued on an application, in writing, made on oath by the co-ordinator or the care manager of the care recipient who has escaped.
- (3) A constable who executes a warrant under subsection (1) may do so with any assistance from the care recipient's care manager that the constable requests.
- (4) A warrant authorises the constable who is executing it and the care manager who may be requested to assist the constable—
 - (a) to enter and search at any time the place specified in the warrant; and
 - (b) to remove the care recipient from that place and to take him or her to the care recipient's facility or to another facility specified by the co-ordinator; and
 - (c) to use any reasonable force that may be required to carry out any action referred to in paragraph (a) or paragraph (b).

Section 112(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 112(3): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 112(4): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

113 Entry of place without warrant

- (1) A constable may enter a place without a warrant if there are reasonable grounds for believing that—
 - (a) entry is necessary in order to retake a care recipient who has escaped; and
 - (b) the care recipient is endangering, or there is an imminent risk that the care recipient will endanger, the health or safety of the care recipient or of others.
- (2) A constable who enters a place under subsection (1) may be accompanied and assisted by the co-ordinator or by the care recipient's care manager.
- (3) A constable who enters a place under this section, and the co-ordinator and care manager who may be required to assist the constable, may—
 - (a) enter and search the place, at any time; and
 - (b) use any reasonable force that may be required to enter or search the place or to take and remove the care recipient.

Section 113(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 113(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 113(3): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

114 Matters to be observed when place entered

A constable who enters a place under section 112 or section 113 must,—

- (a) if the constable is not in uniform, produce evidence to the person appearing to be in charge of the place that he or she is a constable; and
- (b) explain the purpose of the entry to that person; and
- (c) explain to that person the authority of the entry, and, where entry is made with a warrant, show the warrant to that person.

Section 114: amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 114(a): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Protection from criminal responsibility

115 Matters of justification or excuse

- (1) Every person is protected from criminal responsibility for anything done or omitted in good faith and in reliance on a document appearing to be—
 - (a) a compulsory care order; or

- (b) an order (other than a compulsory care order) made under the Criminal Procedure (Mentally Impaired Persons) Act 2003 directing that a person be cared for under this Act.
- (2) The protection given by subsection (1) applies even if the order is defective, as long as the person who relied on the order believed, in good faith and without culpable ignorance or negligence, that the order was good in law; and in this case ignorance of the law is an excuse.
- (3) For the purposes of subsection (2), it is a question of law whether in the circumstances a person's belief is based on culpable ignorance or negligence.
- (4) Sections 30, 31, 34, 39, and 40 of the Crimes Act 1961 apply with any necessary modifications in respect of the power described in each of the sections listed in subsection (5) as if the power were a power of arrest.
- (5) The sections referred to in subsection (4) are sections 111, 112(4), and 113(3).
- Compare: 1992 No 46 s 122

Part 9

Procedural provisions

Which court?

116 Jurisdiction of Family Court

- (1) Every application under any of sections 45 and 84 to 87 must be heard and determined in the Family Court.
- (2) If an application under any section referred to in subsection (1) needs to be determined within a particular period, and it is not practicable to have the application determined in that period by a Family Court Judge, any District Court Judge may exercise the jurisdiction of the Family Court—
- (a) by hearing the application, if that is necessary; and
- (b) by determining the application.

Compare: 1992 No 46 s 17

Section 116(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Persons entitled to be heard

117 Persons entitled to be heard on applications

- (1) The following persons may appear and be heard at every hearing of an application (other than an application without notice) that relates to a care recipient:
- (a) the care recipient;
- (b) any welfare guardian of the care recipient;
- (c) the principal caregiver of the care recipient;

- (d) if the care recipient is a child or young person, each parent or guardian of the child or young person:
 - (e) any lawyer of the care recipient:
 - (f) if the care recipient is a prisoner, the superintendent who has the control of the care recipient or to whose control he or she is to be returned on ceasing to be a care recipient:
 - (g) if the care recipient is a former special patient, the Director of Area Mental Health Services who applied to have the care recipient assessed under section 29(2):
 - (h) the co-ordinator:
 - (i) the responsible district inspector:
 - (j) any other person the court considers should be entitled to appear and be heard because of that person's interest in the welfare of the care recipient.
- (2) Subsection (1)(a) is subject to sections 122 and 123.

Section 117(1)(f): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

118 Specialist assessors and care managers entitled to appear and be heard on certain applications

A care recipient's care manager and a specialist assessor who has completed the most recent certificate under section 79 relating to the status of the care recipient are each entitled to appear and be heard at every hearing of—

- (a) an application under section 84 for a cancellation of a care recipient's court order:
- (b) an application under section 85 for an extension of a compulsory care order:
- (c) an application under section 86 for a variation of a compulsory care order.

119 Entitlement to be served with application

- (1) When an application under this Act is filed in the Family Court, every person (other than the applicant) who is entitled to appear at a hearing of the application is entitled to be served with a copy of the application and any affidavit filed in support of the application.
- (2) If a person cannot be served with a copy of an application in accordance with subsection (1), the Family Court may, on such terms and conditions as it thinks fit, dispense with service on that person.

Section 119(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

120 Obligations of district inspector on receiving copy of application

- (1) The responsible district inspector who is served with a copy of an application under this Act must consider whether to appear and be heard at the hearing of the application.
- (2) In considering that question, the district inspector must talk to the care recipient and (where that can be done) ascertain his or her wishes on the matter.

121 Attendance at hearing by care recipient and person in support

- (1) The care recipient must be present throughout the hearing of every application unless,—
 - (a) in the case of an application for a compulsory care order, the Judge who examines the care recipient in accordance with section 41 certifies that it would be in the best interests of the care recipient to excuse the care recipient from attending the hearing; or
 - (b) the care recipient is excused or excluded by the court under section 122.
- (2) The care recipient may be supported at the hearing of an application by a person nominated by the care recipient or by the care recipient's guardian, principal caregiver, or support person.
- (3) A person nominated under subsection (2) is not entitled to be heard at the hearing, unless the person is otherwise entitled to be heard.

Compare: 1992 No 46 s 19(1)

122 Excusing or excluding care recipient

- (1) The court may excuse the care recipient from the hearing of an application if it is satisfied that the care recipient wholly lacks the capacity to understand the nature and purpose of the application, or that attendance or continued attendance is likely to cause the care recipient serious mental, emotional, or physical harm.
- (2) The court may exclude the care recipient if it is satisfied that the care recipient is causing a disturbance that makes it impracticable to continue with the hearing in his or her presence.
- (3) A discretion conferred by this section may be exercised at any stage of the hearing.

Compare: 1992 No 46 s 19(2)–(4)

123 Representation of persons entitled to be heard, and special rights of care recipient

- (1) Every person who is entitled to appear and be heard at a hearing of an application may be represented by a lawyer, and may call witnesses, and may cross-examine every witness called by another party to the proceeding.
- (2) If the care recipient is present and appears capable of addressing the court, the court must give the care recipient an opportunity to do so.

- (3) While the care recipient is addressing the court under subsection (2), the court may, if it thinks it desirable to do so, require any of the following persons to withdraw from the court:
- (a) a parent of the care recipient:
 - (b) a guardian of the care recipient:
 - (c) a person with whom the care recipient is living:
 - (d) an employee or agent of a service:
 - (e) a lawyer representing a person referred to in any of paragraphs (a) to (d).

Compare: 1992 No 46 s 20

124 Appointment by court of lawyer to represent care recipient

- (1) The court may, if the court is satisfied that it is necessary or desirable to do so, appoint a lawyer to represent the care recipient.
- (2) If the court appoints a lawyer under subsection (1) to represent a care recipient who is a child or young person, it must, so far as practicable, appoint a lawyer who is, by reason of personality, cultural background, training, and experience, suitably qualified to represent the child or young person.
- (3) A lawyer appointed under this section may call witnesses, and may cross-examine every witness in the proceeding.
- (4) Fees for professional services provided by lawyers appointed under this section, and reasonable expenses incurred,—
- (a) may be determined in accordance with regulations made under this Act; and
 - (b) are payable out of public money appropriated by Parliament for the purpose.
- (5) The bill of costs rendered by a lawyer appointed under this section must be given to the Registrar of the court in which the proceeding was heard, and the Registrar may tax the bill of costs.
- (6) If the lawyer is dissatisfied with the decision of the Registrar as to the amount of the bill of costs, the lawyer may, within 14 days after the date of the decision, apply to a Family Court Judge to review the decision; and the Judge may confirm the decision or vary the decision in a way that the Judge considers fair and reasonable.

Compare: 1980 No 94 s 162(1)–(5); 1989 No 24 s 159(2)

125 Court may call for report on care recipient

- (1) The court—
- (a) may, if it is satisfied that it is necessary for the determination of an application under this Act, request a qualified person to prepare a report on any matter relating to the care recipient that the court specifies; and

- (b) must, if it makes such a request, make an order or decision under subsection (5).
- (2) In deciding whether or not to request a report under subsection (1), the court may ascertain and have regard to the wishes of the care recipient and any other party to the proceeding.
- (3) The Registrar of the court must give a copy of a report obtained under this section to the lawyer for the care recipient and to the lawyer for each of the other parties to the proceeding or, if a party is not represented by a lawyer, to that party.
- (4) The court must order that a copy of a report given to a lawyer under subsection (3) may not be given or shown to the person for whom the lawyer is acting if the court has reason to believe that disclosure of the contents of the report may pose a serious threat to the health or safety of the care recipient or of any other person.
- (5) Where a person prepares a report under subsection (1), the court must order either—
- (a) that a party to the proceeding pay the fees and expenses of that person; or
- (b) that those fees and expenses be paid out of public money appropriated by Parliament for the purpose.

Compare: 1992 No 46 s 21(1)–(4), (8)

126 Evidence on report

- (1) Where a report has been prepared, under section 125, for a proceeding, every party to the proceeding may give evidence on a matter referred to in the report.
- (2) The court may call the person making the report as a witness, either on its own initiative or on the application of a party to the proceeding.

Compare: 1992 No 46 s 21(5), (6)

127 Court not bound by rules of evidence

In a proceeding on an application under this Act, whether at first instance or on appeal or otherwise, the court may receive any evidence that it thinks fit, whether it is admissible in a court of law or not.

Compare: 1992 No 46 s 22

128 Power of court to call witnesses

- (1) In a proceeding on an application under this Act, the court may, on its own initiative, call as a witness any person whose evidence may in its opinion be of assistance to the court.
- (2) A witness called by the court under this section has the same privilege to refuse to answer any question that the witness would have had, if called by a party to the proceeding.

- (3) A witness called by the court under this section may be examined and re-examined by the court, and may be cross-examined by or on behalf of any party to the proceeding.
- (4) Sections 159 and 161 to 165 of the Criminal Procedure Act 2011, so far as they are applicable and with all necessary modifications, apply with respect to a person called as a witness by the court under this section as if that person had been called by a party to the proceeding.
- (5) The expenses of a witness called by the court under this section must be met in the first instance, in accordance with the prescribed scale of witnesses' expenses, out of public money appropriated by Parliament for the purpose.

Compare: 1992 No 46 s 23

Section 128(4): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

129 Proceedings not open to public

- (1) No person may be present during a hearing under this Act except the following:
 - (a) the Judge:
 - (b) officers of the court:
 - (c) parties to the proceeding and their lawyers, any person entitled under this Act to appear at the hearing, and any other person nominated by the care recipient:
 - (d) witnesses:
 - (e) any other person whom the Judge permits to be present.
- (2) A witness must leave the courtroom if asked to do so by the Judge.
- (3) Nothing in this section limits any other power of the court to hear proceedings in private or to exclude any person from the court.

Compare: 1992 No 46 s 24

130 Publication of reports of proceedings

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

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

Section 130: substituted, on 18 May 2009, by section 4 of the Intellectual Disability (Compulsory Care and Rehabilitation) Amendment Act 2008 (2008 No 81).

Section 130: amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 130(a): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

131 Court may dispense with hearing in certain circumstances

Despite any other provision of this Part, the court may determine an application without a formal hearing if it is satisfied that no person wishes to be heard in respect of the application.

Compare: 1992 No 46 s 26

132 Care recipient to be given copy of order

After a court has made an order on an application under this Act, the Registrar of the court must give or send the care recipient and the care recipient's lawyer and any guardian of the care recipient a copy of the order.

*Appeals***133 Appeals from decisions of Family Court**

- (1) Where, in a proceeding under this Act, the Family Court has made or has refused to make an order, or has otherwise determined or has dismissed the proceeding, a party to the proceeding may, within 28 days after the making of the order or decision or within such further time as the High Court may allow, appeal to the High Court.
- (2) The High Court Rules 2016 and sections 126 to 128 of the District Court Act 2016, with all necessary modifications, apply to an appeal under subsection (1) as if it were an appeal under section 124 of that Act.
- (3) Despite subsection (2), on the appellant's application without notice, the Family Court may order that the appellant must not be required under section 126(1) of the District Court Act 2016 to give the Registrar of the High Court security for costs.
- (4) The decision of the High Court on an appeal to that court under subsection (1) is final unless section 134 applies.

Compare: 1980 No 94 s 174(1), (8)

Section 133 heading: amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 133(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 133(2): replaced, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 133(3): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

134 Further appeal to Court of Appeal

- (1) A party to an appeal under section 133 may, with the leave of the Court of Appeal, appeal to the Court of Appeal against a determination of the High Court on a question of law arising in an appeal under that section.
- (2) On an appeal to the Court of Appeal under this section, the Court of Appeal has the same power to adjudicate on the proceeding as the High Court had.

- (3) The decision of the Court of Appeal on an appeal, and on an application for leave to appeal, is final.

Compare: 1980 No 94 s 174(5)–(7)

135 Orders stay in force during appeal

The fact that an appeal has been brought against an order made under this Act does not affect the operation of the order, and every person to whom the order applies continues to be bound by it during the appeal period.

Compare: 1980 No 94 s 174(9)

Part 10 Relationship with other Acts

136 Application to mentally disordered persons

- (1) No compulsory care order may be made in respect of a person who is a patient (other than a former special patient) or proposed patient within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992.
- (2) If a care manager has reason to believe that a care recipient may have developed a mental disorder, the care manager must apply to have the care recipient assessed under section 8A of that Act.
- (3) If a care recipient subject to a compulsory care order becomes a proposed patient within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992,—
- (a) the care recipient's compulsory care order is suspended on the date of that occurrence; and
 - (b) the care recipient's care manager must keep a record of the date of the suspension and of the unexpired term of the care recipient's compulsory care order.
- (4) A compulsory care order that is suspended in accordance with subsection (3)(a) is revived and continues to run on the date on which the care recipient ceases to be a proposed patient within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992 or is released from compulsory status under that Act.
- (5) When a special care recipient becomes subject to compulsory status under the Mental Health (Compulsory Assessment and Treatment) Act 1992,—
- (a) the special care recipient must be held as a special patient under that Act until the status of the person is changed in accordance with that Act or the Criminal Procedure (Mentally Impaired Persons) Act 2003; and
 - (b) any order under the Criminal Procedure (Mentally Impaired Persons) Act 2003 requiring the detention of the special care recipient in a secure

facility is deemed to require his or her detention in a hospital under the Mental Health (Compulsory Assessment and Treatment) Act 1992; and

- (c) any direction given during that period under section 31 or section 33 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 that the special care recipient be held as a patient must be treated, on the return of that person to a facility, as a direction that the person be held as a care recipient no longer subject to the criminal justice system.

137 Orders under Protection of Personal and Property Rights Act 1988

- (1) An order made under the Protection of Personal and Property Rights Act 1988 in respect of a person does not stop the application of the provisions of this Act to that person.
- (2) To the extent of any inconsistency,—
 - (a) a provision of this Act prevails over a provision of the Protection of Personal and Property Rights Act 1988; and
 - (b) a power or other form of authority conferred under this Act prevails over a power or other form of authority conferred under that Act.

138 Orders under Oranga Tamariki Act 1989

An order made under the Oranga Tamariki Act 1989 in respect of a child or young person does not stop the application of the provisions of this Act to that child or young person.

Section 138 heading: amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

Section 138: amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

139 Certain orders under Criminal Procedure (Mentally Impaired Persons) Act 2003 prevail over orders under this Act

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

Part 11 Administration

Co-ordinators, care managers, and district inspectors

140 Compulsory care co-ordinators

- (1) The Director-General of Health must—
 - (a) appoint as many compulsory care co-ordinators as the Director-General considers necessary; and
 - (b) determine the geographical areas for which compulsory care co-ordinators are responsible; and
 - (c) determine the terms and conditions on which each compulsory care co-ordinator is appointed, including every operational area for which each compulsory care co-ordinator is responsible.
- (2) The Director-General—
 - (a) may appoint compulsory care co-ordinators; and
 - (b) may appoint compulsory care co-ordinators to replace previously appointed compulsory care co-ordinators; and
 - (c) must publish a notice in the *Gazette* notifying each appointment and the geographical and operational areas for which the appointee is responsible.
- (3) A person appointed under this section may at any time be suspended or removed from office by the Director-General for neglect of duty, misconduct, bankruptcy, or disability affecting his or her duties proved to the satisfaction of the Director-General.

Compare: 1992 No 46 s 92

141 Designation of care manager

- (1) The co-ordinator must designate a care manager for every care recipient—
 - (a) for whom an assessment is initiated in accordance with section 32; or
 - (b) who becomes subject to a court order, and who does not have a care manager designated under paragraph (a).
- (2) The co-ordinator may at any time, by notice to the individual concerned, revoke a designation under subsection (1) and designate another individual as the care manager of the care recipient.
- (3) The individual designated under subsection (1) or subsection (2) must be an employee or agent of a service.
- (4) When the co-ordinator designates a care manager for a care recipient or revokes a designation, the co-ordinator must follow every relevant direction contained in the care recipient's court order.

142 Co-ordinator or care manager may delegate powers

- (1) Every co-ordinator and every care manager may each delegate any of his or her respective powers, duties, and functions, except this power of delegation, to a person who is suitably qualified to exercise them.
- (2) The maker of the delegation must make the delegation in writing and sign it.
- (3) The maker of the 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.

143 Status of delegations

- (1) A delegation made under section 142 continues in force according to its tenor until it is revoked.
- (2) If the maker of the delegation ceases to hold office, the delegation continues to have effect as if made by the successor of the office holder.
- (3) The maker of the delegation, or successor, may revoke the delegation at any time by written notice to the delegate.

144 Designation of district inspectors

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

- (i) the district inspector to whom he or she is the deputy; or
 - (ii) the Director-General of Health.
- (6) The Minister may, with the concurrence of the Minister of Finance, fix the remuneration of district inspectors or deputy district inspectors designated under this section, either generally or in any particular case, and may, also with the concurrence of the Minister of Finance, vary the amount or nature of that remuneration.

145 No proceedings against district inspectors unless bad faith shown

- (1) No civil proceedings may be brought against a district inspector for any thing he or she may do or report or say in the course of the exercise or performance or intended exercise or performance 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 a person or organisation to apply, in accordance with law, for judicial review of the exercise or performance of a district inspector's powers, duties, or functions under this Act.

146 Designation of specialist assessors and medical consultants

The Director-General of Health may, by notice in writing, designate on any terms and conditions specified in the notice—

- (a) health or disability professionals who are suitably qualified and experienced as specialist assessors for the purposes of this Act; and
- (b) 1 or more medical practitioners as medical consultants for the purposes of section 62(3).

147 Director-General of Health may call for reports

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

147A Crimes of Torture Act 1989 not limited

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

Section 147A: inserted, on 5 December 2006, by section 11 of the Crimes of Torture Amendment Act 2006 (2006 No 68).

*Standards, rules, and regulations***148 Director-General may promulgate guidelines and standards**

- (1) The Director-General of Health may issue—
 - (a) guidelines for the purposes of this Act; and
 - (b) standards of care and treatment of care recipients.
- (2) The Director-General must ensure that guidelines are issued, under subsection (1), relating to—
 - (a) the placing of care recipients in seclusion; and
 - (b) the prescribing of medication for care recipients.
- (3) All guidelines and standards issued under subsection (1) are disallowable instruments, but not legislative instruments, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Compare: 1992 No 46 s 130

Section 148(3): replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

149 Rules

Rules may be made under section 16A of the Family Court Act 1980 regulating the practice and procedure of the Family Court in proceedings under this Act.

Section 149: amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

150 Regulations

The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:

- (a) prescribing forms for the purposes of this Act;
- (b) prescribing the powers and duties of district inspectors, and regulating the exercise of such powers and the performance of such duties;
- (c) regulating the management of secure care facilities;
- (ca) restricting or otherwise regulating the collection under section 62A of biometric information from special care recipients;
- (d) making provision for determining the amount of fees and expenses, including minimum and maximum amounts, payable in respect of professional services provided by lawyers appointed under section 124 or qualified persons appointed under section 125, and those fees and expenses may differ according to—
 - (i) the complexity of the proceeding and the time spent; and
 - (ii) whether or not professional services are to be provided in a specified number of proceedings during a specified period:

- (e) providing for any other matters contemplated by this Act or necessary for its administration or necessary for giving it full effect.

Section 150(ca): inserted, on 22 August 2017, by section 36 of the Enhancing Identity Verification and Border Processes Legislation Act 2017 (2017 No 42).

Reprints notes

1 *General*

This is a reprint of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Enhancing Identity Verification and Border Processes Legislation Act 2017 (2017 No 42): Part 2 sub-part 5

Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31): section 149

District Court Act 2016 (2016 No 49): section 261

Legislation Act 2012 (2012 No 119): section 77(3)

Criminal Procedure Act 2011 (2011 No 81): section 413

Intellectual Disability (Compulsory Care and Rehabilitation) Amendment Act 2008 (2008 No 81)

Policing Act 2008 (2008 No 72): section 116(a)(ii)

Crimes of Torture Amendment Act 2006 (2006 No 68): section 11

Lawyers and Conveyancers Act 2006 (2006 No 1): section 348

Corrections Act 2004 (2004 No 50): section 206

Intellectual Disability (Compulsory Care and Rehabilitation) Act Commencement Order 2004 (SR 2004/148)