

Departmental Disclosure Statement

Substance Addiction (Compulsory Assessment and Treatment) Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Health.

The Ministry of Health certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

24 November 2015.

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Part One: General Policy Statement

The Substance Addiction (Compulsory Assessment and Treatment) Bill provides for the compulsory assessment and treatment of individuals who are considered to have severe substance addiction as it is defined in the legislation, and who do not have the capacity to participate in treatment.

The Bill will replace the Alcoholism and Drug Addiction Act 1966. It is required because the current legislative framework is inadequate for the compulsory treatment of people who suffer from severe substance addiction and who do not have the capacity to engage in treatment. The current Alcoholism and Drug Addiction Act 1966 does not reflect modern treatment delivery nor does it protect the rights of individuals who are subject to compulsory assessment and treatment.

The Bill is likely to apply to a small number of individuals and recognises the fact that for most people with substance addiction problems, compulsion is not the best way to facilitate treatment.

The Bill provides for –

- applications for assessment to determine whether an individual suffers from severe substance addiction and does not have the capacity to participate in treatment to reduce this risk:
- a limited duration for compulsory treatment, with a focus on enabling the individual to gain the capacity to consent to and participate in ongoing treatment:
- provisions to protect the rights of individuals subject to the legislation and to investigate alleged breaches of those rights:
- offences and penalties for breaches of the legislation:
- regulation-making powers to include certain substances within the definition of substance:
- transitional provisions to allow continued management of individuals who are subject to the Alcoholism and Drug Addiction Act 1966, at the time of enactment.

The new legislation has been developed on the basis of extensive consultation with service providers and service users and reflects the input from the Law Commission's review in 2010 (see *Compulsory Treatment for Substance Dependence: A Review of the Alcoholism and Drug Addiction Act 1966* (NZLC R118, 2010)).

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<i>Compulsory Treatment for Substance Dependence: A Review of the Alcoholism and Drug Addiction Act 1966</i> (NZLC R118, 2010)	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO

2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	NO

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
Yes. A RIS was presented to Cabinet Policy Committee in 2010 to support the policy underlying the legislation. The RIS was not published at that time, but is available from the Ministry of Health on request. An updated RIS has been prepared and published on the Ministry of Health website (link to come)	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
The 2010 RIS indicated that the estimated cost of implementing the Bill was \$775,000 per annum. This figure is being reviewed by the Ministry of Health in consultation with the Treasury.	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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The Ministry regards it as a low risk of the Bill conflicting with New Zealand's international obligations, and that it contains sufficient safeguards to manage any such risk. The international obligations affected in this instance are:

UN Convention on the Rights of Persons with Disabilities

UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The Ministry is working with the Office of the Ombudsman to ensure any concerns that Office may hold, are appropriately managed within the context of the legislation.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

The Bill specifically requires that the cultural rights of people subject to compulsory status are respected.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

The Ministry of Justice has prepared advice to the Attorney-General on the extent to which the provisions of the Bill impact on the New Zealand Bill of Rights Act 1990. A copy of this advice can be obtained from (link to come).....

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	YES
<p>Offences</p> <p>The Bill creates the following offences set out in Subpart 9 of the Bill:</p> <ul style="list-style-type: none"> • It is an offence for the manager of a treatment centre, a person employed or engaged by the manager of the service that operates the treatment centre, or any other person performing any function or exercising any power in relation to a patient under the Bill to intentionally ill-treat or intentionally neglect a patient. • It is an offence for the manager of a treatment centre, or a person employed or engaged by the manager or the service that operates the treatment centre, to intentionally permit or assist a patient to be absent without leave or to attempt to be absent without leave. It is also an offence to facilitate such an absence or attempted absence or to assist a patient to avoid or attempt to avoid being apprehended or taken back to a treatment centre. • It is an offence for the manager of a treatment centre, or a person employed or engaged by the manager or the service that operates the treatment centre, to wilfully obstruct an inspection by a district inspector or to conceal anything from a district inspector. • Offences are also established relation to including anything in a certificate that is false or misleading and to fail to include in documents particulars required by the Bill and to include false particulars in documents. • It is an offence to obstruct an inspection of a treatment centre by a district inspector, the Director or Area Director. <p>Jurisdiction of a court</p> <p>The Bill establishes the role of the district court in making decisions about compulsory treatment orders and extensions of compulsory treatment orders.</p> <p>The Bill also enables patients, or identified individuals acting on behalf of a patient, to appeal the patient's compulsory status to the court.</p>	

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
The Ministry of Justice was consulted at several stages in the development of the Bill.	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	YES
The Bill provides for certain parties (the patient's support person, principal caregiver, welfare guardian) to be advised of the patient's legal status and the centre in which they are receiving treatment, and other matters including absence without leave and transfer between treatment centres.	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES
The Office of the Privacy Commissioner has been consulted on the draft Bill, and has provided feedback.	

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
The policy and operational concepts underlying the Bill have been discussed with key organisations and individuals involved in the delivery of addictions treatment service. Consultation primarily took the form of face-to-face meetings, and has addressed the threshold for compulsory assessment and treatment, whether the legislation needs to include specific provisions relating to children and young persons and the extent to which the proposed legislation could impact on addiction treatment services.	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	NO

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	YES
<p>Clauses 57-60 provide for mail or electronic communication to be restricted and in defined circumstances, to be removed or withheld from the patient. The impact of these provisions is mitigated by the fact that they can only be used in defined circumstances (i.e. detriment to the patient or to the interests of the sender). Furthermore, material that is withheld and (in the case of mail) not returned to the sender must be provided to a district inspector the next time that person visits the facility. Finally, patients have the right to complain to a district inspector if they feel their rights have been breached and the district inspector may choose to investigate that complaint.</p>	

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	YES
<p>Clause 115 provides for matters of justification or excuse for to protect individuals from criminal responsibility in certain instances, for example, acting on a compulsory treatment certificate in good faith, in the belief that it was properly given by the person having the authority to give it.</p>	

Significant decision-making powers

<p>4.6. Does this Bill create or amend a decision-making power to make a determination about a person’s rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?</p>	<p>YES</p>
<p>The Bill enables an approved specialist and the patient’s responsible clinician to determine that the patient requires compulsory treatment status and to direct that the patient be admitted to a treatment centre.</p> <p>These powers in the Bill are restricted to certain officials and may only be used in respect of people who are considered to have a severe substance addiction and have limited capacity to participate in treatment. Furthermore, compulsory treatment can only be used if there is no other less restrictive option available, and if treatment is available.</p> <p>Subpart 5 of the Bill sets out the rights of patients and provisions for any breach of those rights to be investigated.</p> <p>Patients subject to compulsory status can ask a judge to review their status.</p>	

Powers to make delegated legislation

<p>4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?</p>	<p>YES</p>
<p>Clause 116 empowers the Governor-General by Order in Council to make regulations for specified purposes, including prescribing forms, registers and notices for the purposes of the Bill, prescribing the powers and duties of district inspectors, declaring any substance to be a substance for the purposes of the legislation and providing for other matters necessary to enable the legislation to be effectively administered.</p>	
<p>4.8. Does this Bill create or amend any other powers to make delegated legislation?</p>	<p>NO</p>

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	YES
<p>The Bill has the potential to be controversial, as it provides for compulsory addiction treatment and detention in a treatment centre. This would ordinarily be considered to be contrary to the New Zealand Bill of Rights Act, but is mitigated by the following provisions:</p> <ul style="list-style-type: none">• A restrictive threshold for admission under the Bill• Provisions for protecting the rights of patients and for investigating breaches of rights• The ability for patients to seek a review from the court <p>The threshold for compulsory assessment under the Bill may be a matter for debate, with potential pressure for the threshold to be lowered, enabling the legislation to be used as an early intervention for people who have substance addiction. The Bill is deliberately designed to be legislation of last resort, and applies to a very small group of individuals whose addiction is such that continued use is likely to result in serious and irreversible physical, social and psychological outcomes.</p> <p>For most people with addictions, voluntary treatment is appropriate and available. Because addiction is a chronic, relapsing condition, treatment may need to continue for a prolonged period, and may need to be repeated. The aim of the SACAT legislation is to restore the capacity of people with severe substance addictions to be able to engage in, and remain in treatment.</p>	

