SUBMISSION: Substance Addition (Compulsory Assessment and Treatment) Bill
1. JustSpeak welcomes the opportunity to submit on the Substance Addiction (Compulsory Assessment and Treatment) Bill (the Bill).

2. JustSpeak is a non-partisan network of people across Aotearoa interested in contributing to the debate on criminal justice in New Zealand. As an organisation comprised primarily of young people, JustSpeak represents a new generation of thinkers working for change in the criminal justice system. We advocate for an informed criminal justice discussion based on evidence, experience and compassion.

3. JustSpeak is submitting on the Bill because of the substantial overlap between drug policy and criminal justice policy. JustSpeak supports the Bill because it takes a health-based approach to addiction. This as a more effective, and more appropriate, lens through which to view addiction issues, as opposed to viewing addiction as a criminal problem requiring a punishment-based solution.

4. However, JustSpeak has a number of specific concerns about some aspects of the Bill:

   a. Clause 7 does not require that compulsory treatment be beneficial to a person before that person can be subject to compulsory treatment, contrary to the Law Commission’s recommendations;

   b. A person may be detained under the Bill for an unspecified period before a treatment certificate is issued;

   c. The Bill gives Police powers to enforce compulsory treatment orders. However, there is no requirement that Police acting under the Bill be appropriately trained to respond to those receiving addiction treatment;

   d. There is no requirement that Police act with minimal force necessary when enforcing compulsory treatment orders; and

   e. The Bill provides that the compulsory status of a person ends if that person is sentenced to a period of imprisonment, but does not provide for the transition of that person’s care.

**JustSpeak supports the Bill**

5. JustSpeak supports the Bill because it is an improvement on the Alcoholism and Drug Addiction Act (ADAA). The ADAA was rarely used and was out of touch with international developments in patient rights. As
the Committee will be aware, the Law Commission identified multiple problems with the ADAA in its 2010 report.¹

6. JustSpeak is encouraged by the inclusion of *Subpart 5 – Rights of Patients* to New Zealand’s compulsory treatment framework. While the Mental Health (Compulsory Assessment and Treatment) Act 1992 (MH(CAT)A) also has a rights of patients section, the Bill takes that and improves upon it. Now the patient has a right to nominate a person to protect their interests, and specifically has a right to be treated in accordance with the objective of compulsory treatment. These are safeguards which will make a real difference to those patients receiving compulsory treatment under the Bill.

7. JustSpeak is particularly pleased with the reduction in the maximum length of time for compulsory treatment from two years to eight weeks. For most individuals a treatment order will be for a maximum of 56 days with a requirement that a person be released sooner if capacity is restored. The Family Court will have the power to extend an order by a further 56 days where this is necessary (e.g. because a person is considered to have a brain injury and additional time is needed to complete assessment and treatment or to plan the person’s discharge from compulsory status). The initial eight weeks is a much more appropriate time frame for substance addiction treatment, as two years will very rarely be necessary for treatment that is in accordance with the objective of compulsory treatment under this Bill.² This is consistent with the objective of compulsory treatment as set out in the Bill and with the focus on patient rights.

8. JustSpeak also strongly supports the requirement in clause 43 that the responsible clinician must release the patient if there would be no useful purpose served by further treatment (even if the patient still fits the definition of having a severe substance addiction). That curtails the concerning fact that under the MH(CAT)A compulsory patients are only able to be released if they no longer meet the definition of “mentally disordered” – whether or not treatment is having any useful effect.

9. However, we would like to see the Committee discuss and clarify what is meant by “useful purpose” under clause 43. A relevant consideration should be the patient’s own perception of treatment – it should not solely be a matter of the responsible clinician’s view. The patient’s opinion of how useful the treatment is will be relevant because coerced treatment is

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² Clause 35 SA(CAT) Bill.
unlikely to be as effective as when there is buy-in and cooperation from the patient.

10. JustSpeak does have concerns about the resourcing of this Bill. Under-resourcing the treatment facilities charged with the care of people will mean that some vulnerable people with substance addictions will miss out. In fact, they may end up coming to the attention of the criminal justice system if they do not receive the help they need in the healthcare system, given the well-known correlation between substance addiction and criminal behaviour.

11. Conversely, if this Bill is well resourced, police may be able to use their discretion to direct low-level offenders to treatment under this Bill instead of into the criminal justice system. This could have a positive outcome both in terms of social benefits and economic benefits long-term.

JustSpeak supports the explicit threshold for treatment set out in the Bill

12. We refer to clauses 7 to 10 which provide:

7 Criteria for compulsory treatment
A person may be subject to compulsory treatment under this Act only if—
(a) the person has a severe substance addiction; and
(b) the person’s capacity to make informed decisions about treatment for that addiction is severely impaired; and
(c) compulsory treatment of the person is necessary; and
(d) appropriate treatment for the person is available.

8 Meaning of severe substance addiction
(1) A severe substance addiction is a continuous or an intermittent condition of a person that—
(a) manifests itself in the compulsive use of a substance and is characterised by at least 2 of the features listed in subsection (2); and
(b) is of such severity that it poses a serious danger to the health or safety of the person and seriously diminishes the person’s ability to care for himself or herself.
(2) The features are—
(a) neuro-adaptation to the substance:
(b) craving for the substance:
(c) unsuccessful efforts to control the use of the substance:
(d) use of the substance despite suffering harmful consequences.

9 Capacity to make informed decisions
For the purposes of section 7(b), a person’s capacity to make informed decisions about treatment for a severe substance addiction is severely impaired if the person is unable to—
(a) understand the information relevant to the decisions; or
(b) retain that information; or
(c) use or weigh that information as part of the process of making
the decisions; or
(d) communicate the decisions.

10 Compulsory treatment to be option of last resort
For the purposes of section 7(c), compulsory treatment is necessary
only if voluntary treatment is unlikely to be effective in addressing
the severe substance addiction.

13. We support the Bill having explicit threshold criteria that must be met for
a person to be subject to compulsory assessment or treatment. The
clauses above are a major improvement on the ADAA that loosely defined
a ‘drug addict’ as a person who, inter alia, is likely to cause ‘serious
annoyance to others’. We agree with the Attorney-General that the criteria
is set at an appropriately high threshold.³ We strongly oppose any
watering down of that high threshold.

14. JustSpeak supports the omission of the ‘harm to others’ criterion in clause
8(1)(b) for the same reasons as set out in the Law Commission Report.
The focus of the Bill is to restore health to substance addicts and not to
protect others from harm. Any attempt to shift the focus of the Bill should
be resisted. Leaving the “risk of harm to others” consideration out of the
Bill reduces the chance that this legislation could be abused as a form of
social control where compulsory treatment is not appropriate

The threshold for compulsory treatment should include that the
treatment is beneficial

15. The threshold criteria largely reflect the Law Commission’s
recommendations at R4 and R5. However, we note that one of the
recommended criteria for compulsory treatment, that ‘the person is likely
to benefit from treatment’, is not explicitly provided for in the Bill.⁴
Currently, the definition of ‘treatment’ includes steps that alleviate or
prevent the worsening of substance addiction symptoms. Defined in this
way, ‘treatment’ is clearly designed to benefit the patient. However, we
believe the wording ‘likely to benefit’ has utility as part of the criteria for
compulsory treatment. It re-focuses the attention of the criteria on the
needs of the person. JustSpeak recommends the Select Committee
consider ways of incorporating personal benefit into clause 7 without
unnecessarily duplicating ideas in the clause. One suggested rewording of
clause 7 is as follows:

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³ See Attorney-General report at [31].
⁴ Law Commission Compulsory Treatment for Substance Dependence: A Review of the Alcoholism and Drug
7 Criteria for compulsory treatment
A person may be subject to compulsory treatment under this Act only if—
(a) the person has a severe substance addiction; and
(b) the person’s capacity to make informed decisions about treatment for that addiction is severely impaired; and
(c) compulsory treatment of the person is necessary and beneficial; and
(d) appropriate treatment for the person is available.

The Bill should be amended to limit the potential period of detention before a compulsory treatment certificate is issued

16. We refer to the application and assessment procedure created by subpart 1 of Part 2.

17. The Bill provides that on receipt of an application for the assessment of a person, the Area Director, or an authorised officer acting with the authority of that Area Director, must, as soon as practicable, make the necessary arrangements for the person to be assessed by an approved specialist (clause 19). The person is given written notice requiring attendance at a certain place and time for the assessment. The police may be called to assist if the person refuses to attend (clause 21). The approved specialist carries out an assessment pursuant to clause 22. If satisfied that the criteria for compulsory treatment are met, the approved specialist must sign a compulsory treatment certificate (clause 23).

18. JustSpeak is concerned about a potential period of detention before a compulsory treatment certificate is issued. The Bill does not specify the timeframe for an approved specialist to decide whether the criteria for compulsory treatment are satisfied. If the decision-making process takes several hours or days, the Bill is silent as to whether the person is allowed to leave the assessment premises. We consider detention at this stage of the process to unnecessarily infringe s 22 of the New Zealand Bill of Rights Act 1990.

19. We recommend the Select Committee consider these matters and make express provision for them in the Bill.

Police acting under the Bill should be required to be appropriately trained

20. JustSpeak is concerned as to the role of the police in enforcing compulsory treatment orders. The Bill is a health-focused response to addiction issues, an approach JustSpeak applauds as one attending to the social problems that lead to offending. Given this, the involvement and powers
of the Police should be limited and used with caution in the implementation of the Act.

21. The Bill primarily focuses on the enforcement of compulsory treatment orders by an authorised officer. An authorised officer may request police assistance where a person refuses to attend specialist assessment (clause 21) or treatment (clause 30(4)), or where a patient who is absent without leave is to be returned to a treatment centre (clause 40).

22. However, while authorised officers are required under the Bill to be “appropriately trained and have appropriate competence in dealing with persons who have severe substance addictions,” there is no similar requirement for Police under the Bill. JustSpeak recommends that Police who will be enforcing the Act also receive special training in detaining individuals under compulsory treatment orders, so as to best implement the Act in the most effective and safe way possible. Special training is also important in ensuring that any detention of individuals under the Act infringes upon their rights to the least extent possible, for example in regards to the right not to be arbitrarily arrested or detained (s22, New Zealand Bill of Rights Act 1990).

**Police must be required to use minimal force**

23. JustSpeak is also concerned that there may not be sufficient safeguards in the Bill to minimise the use of force in the case of police assistance. Clause 105 sets out the conditions and limits on the exercise of police enforcement powers in carrying out a compulsory treatment order. These include that the constable must identify themselves and, if not in uniform, provide evidence of their identity; that they must take the person to the place at which they are required to attend and detain them for the shorter of 6 hours, or the time it takes to conduct the specialist assessment. It also states that a constable must not exercise the power to enforce a compulsory treatment order without a warrant, if it would be reasonably practicable to obtain one under clause 107. However, there is nothing in the Bill pertaining to the minimisation of force. JustSpeak recommends a provision addressing this, so as to ensure individual rights are infringed upon to the least extent possible – especially in light of the Ministry of Justice finding that the justification for the limitation on the right not to be arbitrarily detained is finely balanced under the Bill.6

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24. It may also be prudent for the Act to include a provision requiring authorised officers to first attempt detainment of the individual without police assistance, where practicable. As stated in the Ministry of Health Regulatory Impact Statement, “it is undesirable both for the patient and for the Police, to routinely engage members of Police at the beginning of the compulsory assessment process,” given that individuals considered for compulsory assessment are likely to be extremely unwell and will often already have been hospitalized due to medical complications related to their addiction. Such a provision is also advisable, given that the police themselves have expressed concerns as to the impact of certain provisions of the Bill on front-line staff. Related to this, police involvement under the Act should also be monitored so as to assess the efficacy of their involvement under the new legislation.8

**Bill must provide for transition if a patient is sentenced to imprisonment**

25. Under the ADAA, the Minister of Corrections was able to order the transfer of a prisoner into a ‘certified institution’ for addiction treatment. Alternatively, an individual liable for imprisonment under the Act would first be treated in a ‘certified institution’ before being imprisoned. This is no longer required under the new Bill, as addiction treatment is now available in prison. Given this, the compulsory status of a person ends when that person is sentenced by a court to be detained in a prison (under clause 11(2)(g)).

26. However, there is nothing in the Bill pertaining to the transition of a patient between compulsory treatment and prison. JustSpeak is concerned about whether and to what standard treatment will continue to be carried out, in the event that the individual is sentenced to a term of imprisonment after having been subject to a compulsory treatment order. It would be prudent to see more safeguards in the Act to ensure that the standard of treatment the patient receives continues in the case of imprisonment, so as to ensure the best possible treatment of vulnerable persons and to enable better rehabilitation for offenders.

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Conclusion

27. JustSpeak supports the progression of this Bill. Justspeak is encouraged that Parliament is taking a health-based approach to drug and alcohol addiction, and is explicitly considering the rights of patients, as set out in Subpart 5 of the Bill.

28. However, JustSpeak recommends some minor amendments to the Bill to ensure the least possible infringement on a person’s rights. Specifically:

   a. Clause 7 should require that compulsory treatment would be beneficial to a person before that person can be subjected to compulsory treatment;

   b. A maximum period for detention prior to a treatment certificate being issued should be specified;

   c. Police should be required to undergo appropriate training before police officers act to enforce the Bill;

   d. The Bill should be amended to ensure that Police use minimal force when enforcing the Bill; and

   e. Clause 11 should be amended to ensure that a person subject to a compulsory treatment order, who is then sentenced to a term of imprisonment, continues to receive the same level of treatment while in prison.
JustSpeak Background

JustSpeak represents a non-partisan network of young people across Aotearoa interested in contributing to the debate on criminal justice in New Zealand. As a new generation of thinkers JustSpeak is working for change in the justice system through imagination, innovation and a belief that we can achieve a just Aotearoa. JustSpeak was formed in early 2011 as the youth branch of the organisation Rethinking Crime and Punishment.

The group is guided by a belief that this new generation has much to offer to the national conversation on criminal justice: an imaginative outlook; a feeling of urgency; and a sense of hope, amongst other things. The group values an informed criminal justice debate based on evidence, experience and ongoing learning. And within its own operations, JustSpeak has a genuine commitment to inclusion and diversity.

The aims of the group are to empower young people to think independently about criminal justice issues, to encourage networking and the engagement of those affected by the justice system, to foster learning from others, to develop a voice for a new generation of thinking on criminal justice, and to allow this next generation to own its rightful place at the policy table in this area.

The name “JustSpeak” reflects the group’s desire to encourage people to speak out, without fear of belittlement or ignorance, as well as the goal of the group to contribute to a culture of “speak” about what is “just” in relation to crime and punishment policy.

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